

November 20, 2015

Chief, Litigation III Section  
Antitrust Division  
U.S. Department of Justice  
450 5<sup>th</sup> Street NW, Suite 4000  
Washington, DC 20001

Re: Justice Department Review of the BMI and ASCAP Consent Decrees

To the Chief of the Litigation III Section:

My name is Mark James and I am a songwriter living in Nashville, Tennessee. I am also an artist, arranger, and producer. I have been an affiliate of BMI for 50 years and I truly value the service and support BMI has provided me throughout my career. I find the hardest thing in this profession is maintaining or keeping what you have through the years. If it had not been for BMI speaking up and fighting for myself and other writers, our writing royalties would have been diminished a long time ago. Unlike Artist, Musicians, Arrangers, Producers, etc.; we do not receive any money up front only to believe in what we have created, hoping to get compensated for our work. That work or compensation is not daily, weekly, monthly or annually. Only when the recording of that special song's magic is captured through a performance, arrangement, production, and promotion is when dreams come true. Then and only then you can expect a royalty until the next one.

I write today in response to the Justice Department's request for public comments on the issue of whether BMI and ASCAP's consent decrees mandate music licensing on a 100% basis, rather than the long-established industry practice of fractionally licensing jointly-owned songs. It's vital that my voice is heard, because if 100% licensing were required it would severely impact my creative freedom, my ability to choose which PRO licenses my music, and ultimately, my livelihood as a songwriter. Beyond my career, these ramifications would profoundly affect songwriters across our nation.

My profession is writing songs, making me America's smallest small business. My songwriting career journey has been a creative one from Houston, Memphis, New York, Nashville, to film scoring in Los Angeles. I have received many awards for my compositions including Song of the Year from BMI, CMA and Memphis Music. I recently have been inducted into the "Songwriters Hall of Fame" in New York and Nashville. Some of my songs are "Suspicious Minds", "Hooked On A Feeling" and "Always On My Mind". BMI, my carefully chosen PRO, was with me from the start, looking out for my rights and providing a stable source of income. I am loyal to BMI because of the trusted relationships I have there, and, essentially, I like the way they value my music and fight for all writers to get fees that reflect the fair value of our creative work.

Like most music creators today, I choose to collaborate with other writers. In fact, of my dozen Top 10 hits, 3 are the result of co-writes. What a 100% licensing model could mean for me is lower royalty payments if I collaborate with a songwriter represented by a PRO other than BMI. My co-written works could be licensed – and I could be paid – by a PRO that represents my co-writers' share in my songs. The licensing fee the other PRO charges might be lower than the one BMI has negotiated or fought for in rate court, and despite my chosen affiliation, I would have to accept the lower fee. My royalties could also be delayed since they would have to flow through two PROs.

As a result, rather than choosing the best artistic fit in a writing partner, I would be restricted to writing solely with fellow BMI writers to keep my royalties flowing from BMI under the benefits of their specific valuation system. Otherwise, I would be forced to rely on a PRO I have no relationship with to accurately track my performances and pay me, including my fair share of bonuses, on their timetable under their distribution system. How could I be sure I would be paid fairly or at all? Where is the assurance of accountability under 100% licensing? With this uncertainty, it might no longer be financially or creatively viable for me to collaborate with a writer outside of BMI. Under 100% licensing, the core of my creative freedom and the primary source of revenue I depend on would be threatened.

Traditionally, music users from radio to streaming services to local television have all paid the PROs according to their respective shares of the music. Similarly, BMI has only ever paid me for my shares of co-written songs. 100% licensing would upend the well-established ways the PROs have been conducting business for decades, and consequently, have a drastic effect on the profession of songwriting.

If protection under copyright law was developed as an incentive for creativity, with its resulting works to be shared to benefit all of society, then requiring PROs to license music on a 100% basis – which would impede the way I work creatively – goes against the very premise of copyright policy. I urge you to carefully consider your decision and consider the impact it will have not only on all songwriters across our nation, but also on the continual creation of the music that forms the soundtrack to our lives and positions America on the forefront of the global creative marketplace.

Sincerely,

A handwritten signature in black ink that reads "Mark James". The signature is written in a cursive, flowing style with a large, prominent "M" and "J".