

From: Nick Campolo [mailto:squ[Redacted]]
Sent: Friday, November 20, 2015 1:38 AM
To: ATR-LT3-ASCAP-BMI-Decree-Review
Subject: Comments for Submission

To Whom It May Concern,

As a musician, I would like to thank the Department of Justice for offering myself and other musicians the opportunity to voice our opinions on this important matter.

As it stands the Consent Decree is already a bad deal for musicians as applied to new media services like Pandora. And that is stating it mildly. It forces those who are not fortunate enough to be accepted by SESAC or GMR to license their songs to Pandora and similar services at a rate far below anything most musicians in their right mind would agree to. What makes the miniscule royalties even worse is the awareness that Pandora (which is somehow classed as non interactive) is so customizable that use of this service cannibalizes sales. So on top of that the Department of Justice wants to impose yet another burden on musicians? This proposal would add complexity and be nearly impossible to carry through. For a better idea how about eliminating the antiquated Consent Decree all together? Or at least allow for partial withdrawals for categories like new media (Pandora)?

The argument that the Consent Decree is needed is that the two major PRO's; ASCAP and BMI – would engage in anti competitive behavior, forcing music services to pay excessively for the use of music available if it were not to exist. This is said to occur because these two entities have too large a market share and exude excessive market power.

With the current Consent Decree as it stands, musicians and publishers representing them are asking for the right to opt out of the new media category of services like Pandora. That would allow them to negotiate directly with services like Pandora. What that would then do is increase the number of sellers on the market. Considering that there are many publishers and many artists that are self published, the increase in sellers would be dramatic. Which would mean that market dominance by ASCAP and BMI would shrink considerably. Or to look at it another way – the Department of Justice is actually forcing market dominance by the PROS by not allowing musicians to negotiate independently or through other entities. Perhaps someone from the Department of Justice could explain the logic here?

Our nation has a long history of protecting property rights and liberty of contract. There are certainly cases where there has been abuse of market power and anti trust intervention has been a very welcome move. I am well aware of our history of anti trust laws and understand the importance of them. But I must say I am confused as to how and where anti competitive regulation is applied. I see a drug maker increase their rates for a life saving drug by 5,000 % and that gets no attention. I see a search engine that has a 70 % share of the search engine market and has been found in several countries to abuse it's position by steering users to it's own or related services. Again, the DOJ does not notice. But songwriters pose a threat and billion dollar companies must be protected from them? I am not a lawyer and I cannot claim to understand details of our anti trust laws. But I would welcome an explanation.

To conclude I would like to suggest that the problem stated by the current proposal can most efficiently solved by eliminating the Consent Decree.

Regards,

Nick Campolo