

From: Conneaut Cellars [mailto:Redacted]
Sent: Thursday, November 19, 2015 7:31 PM
To: ATR-LT3-ASCAP-BMI-Decree-Review
Subject: Comments regarding Antitrust Consent Decree Review

Antitrust Division of the Department of Justice,

I appreciate the opportunity to submit comments on the Performance Licensing Organizations (PRO) licensing of jointly owned works.

Conneaut Cellars Winery & Distillery was established in 1982 and is a small family business (second generation as of 1995) located in the northwestern part of Pennsylvania. Currently, we produce about 7,000 cases of wine, ciders, and distilled spirits. Conneaut Cellars has a one day Blues Festival in June where two local blues bands would play three hours each of their own original music for customers. In September, we have the one day Harvest Picnic that a local guitarist would walk round and entertain. Also, one of the workers had a "boom box" to play the radio while they work. Due to threats by PROs of federal lawsuits (hired former federal judges and always win), regardless that the local blues bands play their own original music or there is only one boom box, Conneaut Cellars cancelled any entertainment at the Harvest Picnic. We do pay the PBO a flat rate fee of 160.65 with early discount in 2015 (\$159.30 in 2014 and \$156.15 in 2013) for the Blues Festival. The PBO said that we have to pay the minimal standard fee regardless that the event fee is less than the minimal fee. Why can't the PRO charge me a one day event fee? Also when we talk to our local bands, they claim that the fees collected by the PROs go to the wealthy entertainers and the local bands receive meager monies at best or a joke. PROs should "truly" help the small local bands, which is a moral issue, instead of giving false statements that they do help the "little guys."

The following six requested questions by the Antitrust Division and are answered succinctly by Conneaut Cellars:

1. Have the licenses ASCAP and BMI historically sold to users provided the right to play all the works in each organization's respective repertoire (whether wholly or partially owned)?

The Pros never disclosed to us their repertoire or data base.

2. If the blanket licenses have not provided users the right to play the works in the repertoires, what have the licenses provided?

The PROs said they will cover all music, but later I found out that the PROs will later claim that they make no warranties to the accuracy of this statement or even in regards to their database. It is what we call "buyer beware."

3. Have there been instances in which a user who entered a license with only one PRO, intending to publicly perform only that PRO's works, was subject to a copyright infringement action by another PRO or rightsholder?

We have been fortunate that this issue has not happened to us.

4. Assuming the Consent Decrees currently require ASCAP and BMI to offer full-work licenses, should the Consent Decrees be modified to permit or require ASCAP and BMI to offer licenses that require users to obtain licenses from all joint owners of a work? Absolutely NOT. We need more competition and not less. The Department of Justice is suppose to protect the " little guys," including small businesses. The PROs (aka music mafia by most small businesses) have a lot of influence in federal court and operates without congressional oversight. Giving the PROs, which have a lot of power to start with, would hurt the small local bands playing for small businesses. We would cancel our events and any future to expand music events. Why pay double for the rights to play and still be at risk of PROs lawsuits?

5. If ASCAP and BMI were to offer licenses that do not entitle users to play partially owned works, how (if at all) would the public interest be served by modifying the Consent Decrees to permit ASCAP and BMI to accept partial grants of rights from music publishers under which the PROs can license a publisher's rights to some users but not to others?

How would you expect small businesses or a business of any size to be in compliance in tracking more than \$7.5 million music works? If the PROs don't know (data bases), who does? There should be a list that the PROs make available and stand behind their list, make their list available to all, promote the list in their literature and website, and song ownership. We are not looking at perfection; we are looking at transparency. Again, it is ironic that the PROs say it is too hard for them to be in the know and don't want any risk, just the money .. but let the small guy assume all risks while paying more.

6. What, if any, rationale is there for ASCAP and BMI to engage in joint price setting if their licenses do not provide immediate access to all of the works in their repertoires? The PROs should be forced to compete among themselves by not allowing joint pricing. Competition is Good. We do believe entertainers should get paid for their works and gladly pay to use their music. We do not believe that PROs should threaten small businesses with federal legal actions if we make an honest mistake and acted in good faith. We need the Department of Justice on the side of the little guy.

Sincerely,

Joal

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