

**From:** bpiad [REDACTED] on behalf of  
a [REDACTED]  
**Sent:** Tuesday, August 5, 2014 3:06 PM  
**To:** ATR-LT3-ASCAP-BMI-Decree-Review <ASCAP-BMI-Decree-Review@ATR.USDOJ.GOV>  
**Subject:** COMMENT: making the market for songs work

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The consent-decree system has spawned kludges, legal workarounds.

The practical effect of trying to build on this system is this: government is substituting its judgment for the judgment of the market. That's bad medicine.

Why assume what this system needs is a tweaking? Time has come for DOJ to think from first principles.

What is the point of the Sherman, Clayton, and FTC Acts if not to **stop restraining trade**? When we think antitrust, we think free markets. The obvious solution now -- the strategic one -- is to strip away the layers of crud, get a clean surface to work on, and build an open market in which

a. consumers of music and

b. creators of music

negotiate at arm's length, collectively or otherwise, to determine the price of the music.

A government, however noble its intentions, is simply not in a position to set the right price better than the participants who are trading money for goods or services. Look honestly at governmental interventions since the industrial revolution: attempts to get between buyers and sellers distorts prices. If you understand that, the question here is, *Do you really want to make the music industry healthy -- or are you mostly trying to perpetuate the system?*

Because if you do want a healthy market for songs, then understand you have a straightforward way of getting that: remove the plaques that have built up from consent decrees, statutes, and regulations and caused the arteriosclerosis in the flow of value between sellers and buyers of music. FREE this market to set prices all by itself, the way other markets do. Get government OUT of the pricing business.

Today's historic opportunity is to get back to letting buyers and sellers decide what songs cost. They do that by negotiating, or through the normal, everyday commercial process of consumers' buying or not buying at the price a seller is offering.

Your job is to find tactical solutions that enable buyers and sellers to set prices themselves.