

From: Bagpipes FAO <bagpipesfao.c [REDACTED]>
Sent: Monday, August 4, 2014 1:33 PM
To: ATR-LT3-ASCAP-BMI-Decree-Review <ASCAP-BMI-Decree-Review@ATR.USDOJ.GOV>
Subject: Commentary regarding consent decree review

To whom it may concern and/or your Honor:

The day that I first received a payout for two thousandths of a cent (\$0.002 US) for an online performance of one of my songs, was the day the system stopped working for me. Respectfully I put it to the court that the payout of such infinitesimal sums is in violation of federal minimum wage guidelines, stymies competition, and furthermore circumvents the scope of existing organizations which have the procedural ability and legality to collect and payout royalties that appropriately reflect the cost and value of my product in today's marketplace.

The court has asked the public:

" What, if any, modifications to the Consent Decrees would enhance competition and efficiency?"

ASCAP & BMI need authorization to collect on behalf of, and payout royalties to, their membership from usage of licensed content by online listening clubs at rates that are equivalent to current rates for live performances, and/or radio and television broadcasting. Even though they pay a token royalty to rights holders, online listening clubs remain licensees of content, and are not Performing Rights Organizations.

The court has also asked the public:

"Should the Consent Decrees be modified to allow rights holders to permit ASCAP or BMI to license their performance rights to some music users but not others?"

Yes. Rights holders must retain all rights of control over how their content (i.e. copyrighted intellectual product) is licensed, published, and distributed. If I, as a content creator/copyright holder, do not wish my property to be accessed or sublicensed and then devalued by an online listening club whose royalty payouts are criminally low; then I must have the right to restrict the use of my product by media platforms and services from which I do not profit. I ask the court to uphold the right of content creators and/or rights holders to retain all control over their product, period.

The court has also asked the public:

"Should the Consent Decrees be modified to permit rights holders to grant ASCAP and BMI rights in addition to rights of public performance?"

Yes. It is clear that expansion of the powers of ASCAP and BMI to collect fees for their membership from any and all users, and have the right to take legal action against violatory and unlicensed use of their catalog, is long overdue.

The court has also asked the public:

"Should the rate-making function currently performed by the rate court be changed to a system of mandatory arbitration?"

If anything, rate court should be expanded and its powers realigned to ensure that content creators and/or rights holders are compensated appropriately for licensing their property. Payout rates such as \$0.002 per song from online listening clubs are clearly in violation of federal minimum wage laws when considering the amount of hourly labor involved in creating, managing and licensing product. Negotiating or lobbying for even lower rates effectively halts all competition. The power of the court should be further expanded to ensure that all present past and future entities that pay royalties to rights holders for licensed use of product, may not set rates that are less than federal wage guidelines. At currently \$7.25 per hour, one usage of a 3 minute long song must profit each rights holder no less than \$0.36 per live performance, on-air play, online play, or download - irregardless of the venue or medium.

Respectfully, rate court needs to first consider the economic ripples of lowering rates to 'accommodate' newer technologies and distribution methods. Enabling the few creators that are able to absorb huge discrepancies in

high production costs vs. superlow royalty payouts, effectively creates a monopoly. If assurance of market competition on a level playing field is the court's intent, it cannot be achieved without 1.) expanding the scope and powers of ASCAP and BMI to collect fees on behalf of rights holders from all content users, and; 2.) defining online listening clubs as licensees competing for access to rights holders intellectual property, therefore subject to the same regulations as any brick-and-mortar venue that uses intellectual property; not as competitive Performing Rights Organizations on the same footing as ASCAP and BMI.

I strongly urge the court to uphold the rights of hundreds of thousands of American musicians to continue to earn a decent living wage through the applied practice of their craft by granting expanded powers to existing Performing Rights Organizations regarding collection and payouts to their membership and rights holders. To do anything less, is tantamount to income-based censorship: only those voices able to absorb production costs against the superlow royalty payouts from online listening clubs flashing a new technology who flood the market and thus devalue product for all, will be heard.

In consideration before the court are more than the interests of famed billionaire superstars and their support corporations. With the exception of these few top acts, today's working musician is faced with grim prospects: 'pay-to-play' venues, disregard for our organized labor, obscenely low royalty rates created by online listening clubs that flood the market with our property while touting record quarterly profits to their shareholders. The few dollars in payment most of us get from performing live shows is supplemented by modest royalties from ASCAP & BMI, physical sales of recordings, and the occasional broadcast. The current situation allows members of internet-based online listening clubs to pay a small fee for unlimited access to & unlimited usage of, our intellectual property: for which we rights holders see virtually no appreciable income. Why would such online listening club members purchase my physical recording, or pay to attend my live performance, when all my creative property is available for next to nothing courtesy of an internet-based listening club that I can't opt-out of? ASCAP and BMI help us stay in business and continue to create content, securely promote it for profit, and ultimately benefit the economy as a whole. I implore the court to litigate at every opportunity in favor of the legitimate Performing Rights Organizations who have the best interests of creative taxpaying Americans at heart: ASCAP and BMI.

Thank you for the opportunity to be heard on this critical issue.

Charlie Rutan