

U.S. Department of Justice
Antitrust Division

Richard M. Summa
Tallahassee, FL 32301

August 5, 2014

PUBLIC COMMENT RE: ASCAP/BMI CONSENT DECREES

ASCAP and BMI administer and exploit a complete monopoly in the intellectual property comprising their respective repertoires. There is no competition in the licensing of music performance rights, save for the choice of which monopoly to join. Having recently examined a BMI demand letter and discussed an ASCAP demand letter with a potential purchaser, I can see that BMI and ASCAP each exploit their monopolistic power to demand exorbitant licensing fees. The current system offers little competitive benefit to the songwriters/publishers and is exercised to the detriment of licensees and affected third parties such as performing musicians. The status quo is outdated given today's technology and causes substantial harm to the economy in general.

I will first address the ease or difficulty in accessing the contents of the repertoire (ASCAP or BMI). I have never attempted to research the complete repertoire of either organization. Given today's technology, however, each

organization could make that information readily accessible on its website, and provide the specific link to potential licensees in the demand letters. Under the present system, each organization assumes the music users are using their property, and thus demands payment. The music user has no practical way of verifying whether they are using property for which ASCAP or BMI is entitled to payment. Demonstrating monopolistic abuse, ASCAP and BMI demand payment without even knowing whether they are entitled to payment, with no basis of ascertaining the correct fee based upon actual usage, and with no relation to the true value of the property.

I assume that the following billing practices are approved under the consent decree. BMI, for example, establishes a base rate for nightly music. BMI then uses a multiplier based upon the occupancy of the music user/establishment to arrive at a base rate for the particular establishment. BMI then assumes, without any factual basis, the number of nights per year that the potential licensee will use its property. BMI then demands an *annual* licensing (regardless of the actual usage during the course of a year). The demand for an annual fee will often, in my experience, cause the potential licensee to forego the use of live entertainment and extinguish the prospect of revenue that may inure to the benefit of the songwriter/publishers.

The songwriters/publishers should have more flexible options which should be

available given today's technology. For example, the songwriter/publisher should be able to join an organization which will work with licensees to determine which songs are used and thus insure that licensing fees are distributed to the proper parties. Licensing fees should be based upon actual usage and not a presumptive annual fee. This will encourage more licensing and generate more revenue. The current system stifles these competitive interests.

The current system does harm to the economy in general. I have been a performing musician for more than 40 years. Under current economic conditions, I observe the chilling effect that ASCAP and BMI have on economic activity. I am increasingly aware that ASCAP and BMI demand letters have caused businesses to forego live entertainment. The licensing demands are counterproductive. The demands cause harm to songwriters and publishers because exorbitant demands curtail usage and fees. The demands hurt the potential licensees because they cannot develop the full potential of their business. Finally, the demands hurt the musicians who perform the copyrighted material because they lose work directly because of the exorbitant demands. The demand for overvalued and exorbitant fees is directly attributable to the exploitation of the monopoly power.

The current system is unfair to songwriters/publishers and has a chilling effect on the economy in general. We need a system that will foster true competition for the

right to jointly administer performance rights, provide a more realistic accounting for usage of copyrighted material, and provide a more realistic means of valuing the intellectual property.