

From: Ken Hatfield <kdhatfie [REDACTED]>
Sent: Tuesday, August 5, 2014 6:09 PM
To: ATR-LT3-ASCAP-BMI-Decree-Review <ASCAP-BMI-Decree-Review@ATR.USDOJ.GOV>
Subject: Comments on Consent Decree review:

To whom it may concern,

I'm a composer, publisher, recording artist, sole proprietor and producer for a small record label. I've been in the music business for most of my life (over 50 years and counting). I have worked as a studio musician performing on over 100 commercially released recordings. I've been a professional arranger and composer creating the sound tracks for T.V. series, sporting events and scores for feature films. The means by which we receive our content and how content creators are remunerated for our work has changed dramatically during the time I've been in this business. As the technology develops I suspect the pace of such changes will accelerate, making it harder for regulatory bodies to keep up. Which is why this rare opportunity to revisit and update the consent decrees, so crucial to our livelihood, is so important.

Though there has been a great deal of back and forth between those that want to maintain their inherited advantage versus those that want to exploit any advantage new technologies may provide, a few things remain constant: some folks create content, while others consume content, and still others make content available via various "platforms". Be it terrestrial radio, cable T.V. or streaming of digital music via the cloud, without content there is nothing to broadcast, and nothing to consume, and consequently no business. Increasingly consumers get their music for free via streaming. Most consumers do not "own" the music they listen to anymore, they access it. While the apparent differences between consumers' desire for access to content and the content creators' desire for fair compensation may seem at odds, every content creator I know is also a content consumer, and we do not want to lose the access to content that digital technology has given us. But when we also see that as content creators we are being forced in to a kind of servitude where others get the lion's share of the profits our content generates, something is clearly not fair. It is my opinion that those that both consume and create content are well placed to recognize what a fair deal should look like.

While it may be appealing to think individual composers, publishers and record companies could negotiate individual deals with individual broadcasters, such a process would be complex and cumbersome for all involved, and would invariably favor a small percentage of the content creators at the expense of the vast majority of musicians, especially those like myself that are truly independent content creators. Such a system, where we all had to negotiate for ourselves with each and every broadcaster, would dramatically hinder our access to the very platforms and subsequent "exposure" that the new technologies promised, thus giving us the worst of both the old and the new paradigms. This would inevitably inhibit creation of new content.

I therefore strongly encourage the DOJ to be careful to insure the survival of the PROs: ASCAP (which I belong to), BMI and SESAC. It is simply impractical for all but a handful of "stars" (who often have a big record company as their ally) to negotiate individually with broadcasters without some kind of collective, organization or society like ASCAP to stand with them or for them. The tactics employed by broadcasters when one tries to unite with like minded content creators to insure fair remuneration or remove our content (such as using labor laws to threaten law suits) is a clear indication of what many independent artists would face, should we be forced to go it alone. This tactical approach can best be summed up as "divide and conquer". Without the PROs we simply lack the strength that comes with numbers. And that lack of strength will be exploited just like the recent attempt at exploiting a loophole regarding not paying performers' royalties for terrestrial broadcasts, which Pandora's recent purchase of the small market South Dakota station KXMZ-FM is designed to exploit, despite the fact that Pandora is streaming digital content!

One additional point for your consideration: The new broadcasting companies such as Pandora and Spotify provide content to those that either subscribe to their streaming services for a fee or for those that listen for free, in return for exposure to advertising. These streaming broadcasters pay a much lower fee than do some traditional broadcasters like NBC. The subscription fees and the ad rates these and other streaming platforms generate are clearly based upon the broadcaster's appraised value of the content they broadcast/stream, in negotiations with their advertisers. For all the emphasis on new technologies, this broadcast model increasingly resembles the terrestrial radio of decades ago, in that we access content over the airwaves (which are a resource belonging to the American public), and we listen for free in exchange for periodic advertising. Since the content creators currently do not and realistically cannot actually participate in the negotiations between broadcasters and advertisers regarding ad rates (or subscription fees), I believe that the percentage of the ad rates paid to the content creators should be uniform across the various platforms. I'm not advocating that all content is of equal value, merely that content creators get uniform percentages of the ad rates which the broadcasters and advertisers have negotiated as a reflection of the agreed value of the content being broadcast. Since the ad rates vary so broadly, it seems to me that a uniform percentage of the true currency our content generates, i.e. advertising rates, would go a long way to fulfilling the promise of greater access to more content, for more consumers, and do so in a way that would help restore the many livelihoods that have been devastated by the digital revolution, even as it creates new opportunities for middle class jobs, thus growing a part of the economy that is involved in creating intellectual property a good thing as our nation moves from its former

industrial base to an information based economy.

Thank you for the opportunity to comment on this important issue.

Sincerely,

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