

**From:** Alisa Coleman <acolem[REDACTED]>  
**Sent:** Wednesday, August 6, 2014 4:11 PM  
**To:** ATR-LT3-ASCAP-BMI-Decree-Review <ASCAP-BMI-Decree-Review@ATR.USDOJ.GOV>  
**Subject:** Comments regarding the Consent Decree made on behalf of ABKCO Music & Records, Inc.

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Chief, Litigation III Section  
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U.S. Department of Justice  
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Washington, DC 20001

ABKCO Music & Records, Inc. ("ABKCO") is a small independent music publisher and record company which owns and represents prominent copyrights, including the compositions and recordings of the Sam Cooke, Ray Davies, The Kinks, Bobby Womack, Eric Burdon, Mick Jagger, Keith Richards and The Rolling Stones to name a few. We welcome the opportunity to submit comments in support of the DOJ's review of the ASCAP and BMI consent decrees because we believe that, as a result of the decrees, there is a substantial imbalance and inequity in the licensing of performance rights that harms publishers and songwriters.

In a best case scenario, the performing rights organizations should be able to freely negotiate royalty rates at market conditions without government interference. At the very least, significant changes must be made to the consent decrees whose provisions are currently allowing big tech companies to license our works at will and at sub-par rates, and are leading large music publishers to contemplate complete withdrawal from the PROs, threatening the survival of the collective licensing structure on which independent publishers like ABKCO rely.

The inequities resulting from the consent decrees have become more acute with the rise of billion dollar digital conglomerates. Large technology companies can use ABKCO's significant copyrights when they request a license, but often work the system so that no royalties are paid for that use during the interim rate negotiations and during rate court proceedings. This is particularly harmful to small publishers and songwriters. And, while these companies may have funds to pay for rate proceedings, the costs to ASCAP and BMI are ultimately borne by publishers and songwriters. Large companies leveraging their might are a huge concern for an independent company like ours that each day battles with these issues in an effort to survive and provide value to our community and writers. These companies must be required to pay fair rates for music from the first day they begin using it. And, there must be changes that reduce the length and cost of the rate negotiation and rate court proceeding process.

Unlike the corporate entities that control these conglomerates, our business is family owned and run and has been for over 50 years. We fully support our writers and their dependents by providing financial resources and expertise in all areas of the industry; nonetheless, we have some writers that struggle to make ends meet while the corporations benefit from the use of the material without fair payment.

ABKCO is also extremely concerned as to what a potential dismantling of the current rights societies will mean to the future of our industry – and the future of small music publishers who depend upon these societies.

1) Forcing the largest music publishers to completely remove their works from societies in order to ensure fair market rates would have a debilitating effect on these societies which will not benefit music users, independent music publishers or songwriters. Smaller independent music publishers and songwriters who depend upon the societies will have to bear the cost of such changes and may well prevent the smallest publishers from participating in competitive pricing, unless the consent decrees are amended to require the rate court to account for the full, true value (including advances, equity and minimum guarantees) of those free market deals in the setting of collective licensing rates. Without this, independent publishers will lose the ability to compete simply because they are not able to effectively license their works outside of the PROS and therefore are restricted from securing the same value for those works.

2) If any withdrawals (either partial or complete) by publishers are permitted, they should be restricted only to the rights and percentages owned by the publisher, and future agreements must be limited to such percentages, but again, this

would require that the consent decrees are amended to require the rate court to account for the full, true value of those free market deals in the setting of collective licensing rates.

3) The possible combination of mechanical and performance income in one license by the societies for users requiring both rights would be beneficial to users but would need to be structured in a way to ensure the integrity of business models and the success of songwriters and independent music publishers.

We believe that a collective license system benefitting music publishers and songwriters must be protected and preserved for all. This requires modifications to the consent decrees that allow the PROs to negotiate with less government regulation and more ability to obtain fair rates for our songs. It also requires new provisions that protect publishers that elect to remain in the collective licensing structure by ensuring that they fully and fairly benefit from the true market value of performances of their creative works. If changes do not occur, the smallest and least powerful publishers and songwriters will continue to be dominated by the goliaths of the digital, technology and music industries. We appreciate you reviewing our comments on the consent decrees and trust that you will take into consideration that any changes to do not just affect the larger and perhaps more vocal companies but the entire community which includes countless small independent publishers and songwriters as well.

Sincerely,

ABKCO Music & Records, Inc.