

NOVEMBER 2017

The issue:

The Department of Justice (DOJ) recently reviewed and reaffirmed the critical importance of antitrust consent decrees in licensing the public performance of songs. Television and radio broadcasters strongly support these findings.

Here's why:

The two largest performing rights organizations (PROs) – ASCAP and BMI – license performances of songs to local radio and television stations as well as restaurants and retail stores. This includes the music you hear on shows, during the broadcast of live events, as part of advertising or over the sound system as you are shopping or dining out.

To comply with copyright laws, broadcasters and others obtain blanket licenses from ASCAP and BMI (in addition to two unregulated organizations, SESAC and GMR) to use the songs they control. These licenses cover all the works in each organization's repertoire.

Because these few organizations control huge catalogs of works, the music licensing marketplace is inherently anticompetitive. To address this, DOJ has entered into long-standing antitrust consent decrees with ASCAP and BMI to ensure they conduct business in a fair and equitable manner. Under the consent decrees, ASCAP and BMI are required to provide a blanket license covering all works in their catalog to any entity willing to pay a fair market rate. As a backstop, there are federal courts to oversee the PROs' behavior and decide rate disputes between ASCAP and BMI and any entity wishing to license their songs.

In 2016, after a thorough, multi-year review, the DOJ rejected proposed modifications from ASCAP and BMI that would weaken the consent decrees, and reaffirmed their fundamental protections:

- PRO licenses only provide value so long as they can provide full-work rather than fractional licenses. So-called "fractional" licenses would allow anyone with an economic interest in a song, but who is not represented by BMI or ASCAP, to sue a license holder. This undermines the entire purpose of purchasing licenses from PROs.
- Having a federal rate court to decide disputes creates stability and confidence in the system for all parties involved.

BMI challenged the DOJ's decision and, unfortunately, a federal judge misinterpreted its consent decree and rejected the DOJ's interpretation. The DOJ has appealed this ruling to the 2nd Circuit Court in New York. Broadcasters – and many other licensees – support the DOJ's appeal.

(See reverse)



Broadcasters Support Justice Department Findings: Music Licensing Consent Decrees Are Critical

The bottom line:

A fractional license is useless. Why should an entity pay for a license from a PRO when other partial owners of a song – who may very well be unknown to the licensee – could come forward to claim copyright infringement? A blanket license that offers immediate, indemnified access to the entire PRO catalog has been recognized by the Supreme Court as one of the benefits that justifies the PROs' otherwise problematic aggregation of rights.