

From: Alan Basche <alan.bas[REDACTED]>
Sent: Saturday, July 20, 2019 3:39 PM
To: ATR-LitIII-Information (ATR) <ATR.LitIII.Information@ATR.USDOJ.gov>
Subject: DOJ Review of ASCAP & BMI Consent Decrees

I am a northeast Wisconsin performing musician, in this business for over 40 years. As such, I will generally limit my comments regarding the DoJ's review of Performing Rights Organization (PROs) Consent Decrees to that which directly affects people like me.

I have also reviewed more than half of the solicited individual comments from the 2014 DoJ review, and refer to that research as well.

Locally, I know of venues that no longer host live music because they can't afford the excessive performance fees demanded by the PROs. In reading the 2014 comments, I saw consistent stories by venues from around the country who described mafia-style shake-downs by these PROs. While some venues stand up to the high pressure tactics / threats and negotiate a lower price, others capitulate and pay, and still others give up and cancel live music. In the end, the PROs 'get-as-much-as-you-can-get' attitude is a serious violation of the Decree's mandate that 'similarly situated licensees are charged the same'. The PROs abuse has eliminated many live-music venues nation-wide, costing musicians work, and denying the public entertainment opportunities. Clearly the status quo does not serve the public. I strongly suggest the DoJ interview venues nation-wide to get a sense of the widespread abuse that is occurring, or re-read the individuals' comments from your past public comment solicitations.

Another fundamental problem is that when it comes to charging for live music, these PROs are not competing with each other, because they have different catalogs of music (so we can't expect lower prices from competition). Therefore, they can all shake-down every venue; and they do. In fact, the three largest PROs are very active in northeast Wisconsin. So a venue pays off one PRO thinking they are done, and another shows up demanding fees as well. The creation of one performing rights fee collection point is needed with simple, consistent, affordable pricing.

The government currently mandates that mechanical rights licenses cost 9.1¢ per copy. This is at least a workable solution where every licensee is supposed to pay the same. A similar solution is needed for live performance. If an individual can pay 9.1¢ for a song and play it a million times in private, why shouldn't venues be able to pay 9.1¢ for a song to be played once to a couple hundred people in public? Live musicians generally play up to 40 or 50 songs in a 3 or 4 hour gig. At 9.1¢ per tune, this would amount to under \$5 for a live music license fee for the performance. Maybe that fee should cover a 24-hour period for a stage. So for under 500 people they pay \$5, under 5000 people is more, over 5000 people is even more.

To implement this, we must create a central website to collect fees for licensable music, for both live-music performances and also mechanical rights, with a major focus on transparency. Music-users (licensees) sign-up to obtain an account, and they pay their 'stage-fees' or mechanical 'per-copy-fees', with no additional administrative fee (ala the Harry Fox Agency abuse). Anybody can access the website and see how much was collected this quarter, if a music-user is paying the proper licensing fees, etc. I would

also cut out the PROs, and payout the song-writers directly, again with complete transparency to all website users.

In summary, over the decades, ASCAP and BMI have proven they can't be trusted to properly and fairly collect performing rights fees from live venues. The consent decrees must be changed to eliminate the PROs from this area of licensing collection.

Other issues:

Why are there multiple decrees? This created an opportunity to favor a PRO.

Shouldn't decrees prohibit royalty advances, royalty premiums and other forms of favoritism that is damaging to lesser-known song-writers and publishers? The rich get richer at the expense of the poor.

Do I understand that when the DoJ investigates PROs for compliance and they find wrongdoing, they are not allowed to inform their members or the public unless the DoJ files a lawsuit?

Thank you for soliciting public comment.

Alan Basche
Musician