

**From:** Jennifer Armstrong <Jennifer.Armstrong.217969 [REDACTED]>  
**Sent:** Friday, August 9, 2019 5:17 PM  
**To:** ATR-LitIII-Information (ATR) <ATR.LitIII.Information@ATR.USDOJ.gov>  
**Subject:** ASCAP and BMI Consent Decrees Continue to Serve Small Business Owners

Dear Assistant Attorney General Makan Delrahim,

COMMENTS OF Jennifer Armstrong, Armstrong Family Winery, owner  
Submitted in Response to the U.S. Department of Justice Antitrust Division's  
June 5, 2019, Solicitation of Public Comments Regarding the Pro-Competitive Benefits  
of the ASCAP and BMI Consent Decrees

I respectfully submit these comments as a Winery owner from Walla Walla, Washington, that licenses music to support artists and make the customer experience enjoyable. I write today to urge the Department of Justice to preserve and protect the pro-consumer consent decrees governing the American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music, Inc. (BMI).

Together, ASCAP and BMI control nearly ninety percent of the music licensing business, and these decrees serve the public interest by providing essential protections from anti-competitive behaviors. The consent decrees, in particular, prohibit ASCAP and BMI from discriminating against similarly-situated music users; ensure reasonable royalty rates; and require that every business—no matter how large or small—can get a license upon request.

While far from perfect, ASCAP and BMI provide an efficient way for owner to play music while ensuring we compensate the songwriters and copyright holders who create it. Their blanket licenses, made possible by the decrees, underpin the music licensing system. Terminating or sunseting the decrees would lead to chaos for the entire marketplace, jeopardizing the licensing system as we know it.

This disruption would make it impossible to pay for the music played for our patrons' enjoyment. For years we were called and threatened by ASCAP and BMI because we had hired local musicians a few times to play background music for our customers (who did not pay a cover or otherwise compensate us financially). We had not realized we needed to be licensed to hire local musicians. Because of the expense and the fact that it only cost us money to hire musicians and did not help our business, we stopped hiring musicians for years. After about 2 years of calls and emailed threats, someone at each company actually listened and stopped calling. - One note... we had a tasting room at an address with multiple units. Some of the other units were doing live music and because our address was active for live music, they refused to leave us alone even though we had stopped hiring musicians years earlier. Without the decrees in place, the harassment from ASCAP and BMI will only get worse. Yes. See above. However, a year ago we opened a second tasting room and because of the pricing established for wineries, we were able to cost justify licensing and have gotten music licenses from BMI and ASCAP and now hire local musicians in our second location (at our expense - with no compensation by customers). In order to keep paying artists, it is vital that these decrees are not eliminated or sunset.

Many businesses that regularly play and license music already face ongoing challenges when working with ASCAP and BMI. The outcome of terminating the consent decrees would further exacerbate these burdens.

As it stands today, business owners lack access to essential, reliable information about what each

performance rights license entails and, as a result, cannot make an informed decision when seeking to license music from any one of the ever-increasing number of music licensing collectives. It is impossible to tailor my licenses based on the needs of my business. I should be able to license with only one licensing organization rather than all of them. Given this long-standing lack of transparency and ASCAP and BMI's reliance on heavy-handed tactics and take-it-or-leave-it demands, many businesses have dropped music altogether. Without the consent decrees, many more businesses would discontinue music, resulting in fewer places across our communities for musicians to perform and decreased songwriter compensation.

In considering the future of the ASCAP and BMI consent decrees, I would like the Justice Department to know that the consent decrees are important because The ASCAP and BMI consent decrees are important to us because they make an already terrible situation marginally possible to navigate as a small business. Hiring local musicians is a contribution to our community and doesn't add viable value to our business. We want to support the arts and provide music to our customers (and frankly, people come in to hear music who don't even buy from us so truly it is often merely a value to the community). However, as a small business we are struggling to succeed and any more complication or expense cannot be justified. Please help streamline this process so everyone wins - especially local musicians, small businesses, and people who want to enjoy local talent. Thank you..

Just as the Department of Justice concluded less than three years ago and after a two-year review, the ASCAP and BMI consent decrees continue to be relevant and necessary today and in the future. We ask the Department of Justice to protect our ability to play music, host new and upcoming artists, and ensure these pro-consumer decrees are protected.