

**From:** Byron Berkley <bmov[REDACTED]>  
**Sent:** Thursday, August 8, 2019 6:52 PM  
**To:** ATR-LitIII-Information (ATR) <ATR.LitIII.Information@ATR.USDOJ.gov>  
**Subject:** ASCAP & BMI Consent Decrees

I'm writing to urge the Department of Justice to preserve the American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music, Inc. (BMI) consent decrees (the "Decrees"), and particularly to urge the Department to maintain the movie theater licensing exemption embodied in Sections IV(E) and (G) of the ASCAP Decree. For decades, this provision has benefited consumers and artists, and should not be subject to the ensuing uncertainty that would follow termination of the Decrees.

Theaters have no choice in what music is included in a movie; have no ability to negotiate the rights for the music in a movie; and cannot avoid playing the music altogether, as the music is integrated into a movie's audio file, like the dialogue. Movie producers, on the other hand, necessarily make choices about what music to include in their movies and can do so in a competitive negotiation before the music has been integrated into the movie's audio file. The movie theater licensing exemption places the negotiating responsibility for music in movies where it belongs: with the party selecting songs for films.

As a small-town movie theatre owner and operator, having to absorb the additional expense of a music licensing fee added to the rental cost of films I exhibit is both burdensome and unfair. While I have no objection to artists receiving fair compensation from those who wish to use their music in film productions, that compensation must occur at the film production level and not "double dipped" by carrying it forward to the theatre that exhibits the film as well.

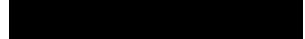
When I first started in this business in 1980, I had the unfortunate experience of dealing with ASCAP and BMI on licensing rights for music used during intermissions between movies. I don't want to see that unpleasant experience return and theatres like mine once again become subject to the costly, gangster like and strong arm enforcement tactics of these two organizations.

I urge you not to vacate the BMI and ASCAP decrees and, most importantly, to ensure that whatever action you do elect to take maintains the movie theatre exemption and protects us from this potentially burdensome inroad in our business.

Thank you for your consideration and attention to this request.

Byron Berkley  
*Foothills Cinemas*  
PO Box 2549  
Kilgore, TX 75663-2549

Office 903-758-4749



Fax: 903-758-0720

[bmovies@sbcglobal.net](mailto:bmovies@sbcglobal.net)