

From: Andy Gaines <and[REDACTED]>
Sent: Wednesday, August 7, 2019 9:34 AM
To: ATR-LitIII-Information (ATR) <ATR.LitIII.Information@ATR.USDOJ.gov>
Subject: BMI/ASCAP Consent Decree Review

As the General Manager of the last historic theatre in Cobb County, Georgia, I felt the need to address the issue regarding the Performing Rights Organizations (PRO) BMI and ASCAP that could have a significant impact on my business.

Your body is considering ending the Antitrust Consent Decrees which have regulated both BMI and ASCAP since the early 1940s. These Consent Decrees require, among other things, that both organizations provide licenses to anyone who requests a license and to apply standardized fees for the performance of works by similarly situated licensees. The termination of the Consent Decrees would allow these PROs to significantly increase rates without any of the judicial or DOJ oversight required under the Consent Decrees, allow differing fees between presenters and give them the ability to decline licenses potentially giving the PROs the ability to control which acts presenters may hire.

This could also create significant uncertainty in how venues and promoters would license performance rights for events going forward. BMI is in the Rate Court right now requesting licensing fees that include percentages of additional revenue earned from secondary markets, sponsorships, VIP packages, ticket broker charges and other relevant streams of income. Although we do not know how the Rate Court will decide this issue, without judicial oversight under the Consent Decrees, it will be much easier for the PROs to pursue these additional revenue streams.

Fun fact – we just received the updated BMI contract (we declined signing the interim one since it did not list any specific rates). The terms are a flat 1.15% on all gross revenue (up from .8% and .6%), and gross revenue is now to include: ticket sales, service charges, VIP lifts, merchandise, concessions, parking, sponsorship, and advertising. And the fees are retroactive to July of 2018. BMI is in rate court with NACPA with this same request.

I am very concerned about the relationship between BMI/ASCAP and facilities throughout the country moving forward. Please take a long look at the practices taking place.

Thank you,

Andy

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