

**Before the
ANTITRUST DIVISION of the
Department of Justice
Washington, D.C.**

In re

Consent Decree Review
for ASCAP and BMI

2019

**SONGWRITER GEORGE JOHNSON'S (GEO) PUBLIC COMMENTS IN FAVOR OF
ABOLISHING THE 78 YEAR OLD CONSENT DECREES IMMEDIATELY**

George D. Johnson (“GEO”) an individual American author, songwriter and independent music publisher respectfully submits the following Objection to continuation of the outdated Consent Decrees at BMI and ASCAP *which should be abolished immediately after 78 years* since they only hurt member songwriters and independent publishers.

First, I would like to applaud U.S. Assistant Attorney General Makim Delrahim for reviewing all outdated consent decrees as well as the music consent decrees. There are no two consent decrees more ripe for abolishment than the music consent decrees on BMI and ASCAP, but in reality, they are simply consent decrees on most individual American songwriters.

After 78 years, the consent decrees no longer serve any competitive purposes today since there is plenty of competition between BMI, ASCAP, SESAC and now Global Rights PRO, plus the landscape had changed so drastically with computer tracking of digital performances. So unlike 1941 when there was 1 PRO, now 4 PRO’s compete and even SoundExchange is moving into the underlying works collection business, *so there is plenty of competition here in 2019 and*

abolishing the consent decrees would absolutely serve the public interest and all American songwriters.

None one of the provisions in either the BMI or ASCAP decrees are still necessary to protect competition among PROs and in fact, the consent decree provisions are now ineffective in protecting competition, getting in the way of songwriters, their private property, their choices, outside negotiations, their profits and art? The consent decrees are exactly why I left BMI.

There were no computers in 1941, so consent decrees were necessary, but almost 80 years later, computers have *solved the transaction cost problem*, in fact, all licensing is done by computers in 2019 so transaction costs are solved and this is no longer a valid excuse.

This is another main reason to abolish both decrees immediately.

GEO was also the only music publisher to leave BMI in the digital withdrawal of 2013 and the reason why I left was because of the very existence of the 1.) consent decrees as well as the 2.) rate court interference into my songs due to the consent decrees. I still haven't decided if I should remain independent or sign with SESAC, but these are my choices to make with my songs and I am glad I am no longer with BMI since I remain "consent decree free" as all American songwriters should.

In reality, immediately abolishing the consent decrees after 78 years would enhance competition and efficiency in an actual free-market, but a "*willing buyer, willing seller*" statute is not a free-market since that statute still keeps streaming rates at \$.000 cents per stream for songwriters whether it be mechanical streams in CRB rate proceedings or streaming performances in PRO rate court.

It is also disingenuous of BMI or ASCAP to say they want to abolish the consent decrees for a *free-market*, yet claim a free-market would actually be under a government imposed “willing buyer, willing seller” statute, and that is certainly not a free-market. An actual free-market is what the music business needs after over 110 years of compulsory licensing on music, consent decrees and government intervention which has left royalty rates at literally \$.000000012 cents for a BMI stream on Spotify.

In 2013, I saw a Spotify performance on a BMI statement that had 7 zeros beside it at \$.000000012, that was split among songwriters and publishers and this is all because there are no negotiations with licensees under a consent decree in an actual free-market — which is the only solution. After 110 years of government intervention, \$.000 music royalty rates could literally not be lower, all because of government imposed consent decrees and compulsory licenses.

As a songwriter who has experienced the 801(b) standard and “willing buyer, willing seller” standard in 3 Copyright Royalty Board rate proceedings, I can assure the DOJ that neither standard will help songwriters or their income, and the decrees will only *guarantee that their streaming rates will remain in the \$.000*, or so-called “zone of reasonableness” which is not reasonable whatsoever for songwriters or any American citizen.

What seller/songwriter is willing to sell his art and songs for \$.000000012 per-stream, unless he is under a government imposed compulsory license and consent decree?

Nobody.

I also believe that the DOJ made a public statement within the past few years that no consent decree should last more than 17-19 years, so 78 years is long enough.

What songwriters want is an actual free-market in music and also the ability to negotiate in a free-market through BMI, ASCAP, SESAC and Global Rights with the Services - this way there will be competition between 4 PRO's and prices will increase for songwriters instead of remaining below market. This way transaction costs remain low as well.

So, I hope the DOJ will no longer ignore the practically reality of the plight of individual American songwriters and let them chose to go to the best of the 4 PRO's who negotiate the best deals in a free-market, but that can't happen until the DOJ abolishes the consent decrees immediately. If the federal government and DOJ truly want a renaissance in music I pray there is no delay in abolishing both decrees. I say, "good riddance" to them both.

Just like the outdated 1909 §115 compulsory license, the consent decrees have always forced royalty rates below-market for songwriters and why I am no longer a member BMI, plus songwriters have no freedom of choice with their own songs and copyright under a consent decree, yet the government claims to be all about choice. The consent decrees are really just a second compulsory license on songwriters that keep rates below-market.

Please abolish both consent decrees immediately and watch freedom of choice by songwriters enhance competition, increase their profits, and therefore create more works of art that will only benefit the public good.

CONCLUSION

As a lifetime songwriter and an independent music publisher on Music Row for over 20 years, GEO strenuously Objects to continuation of the ASCAP and BMI consent decrees and respectfully asks the DOJ to immediately abolish both decrees in exchange for an actual free-market in music, and with no transition period *since 78 years has been long enough*. Thank you for your time and thoughtful consideration.

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Respectfully submitted,

By: /s/ George D. Johnson

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