

From: Fred Squier <[REDACTED]>
Sent: Friday, August 9, 2019 1:59 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 Fred Squier, Gil's Cafe, 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 Bar/Restaurant owner from South Park Township, Pennsylvania, that licenses music to support local musicians through live performances. 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. Yes. I used to have music on a regular basis and paid both ASCAP and BMI. I discontinued several years ago due to the cost. My establishment only holds 30 to 40 people when I set up for a live band. By the time I pay them, and license fees, staff, etc. there isn't anything left for me or I've lost money. I still get an invoice from BMI every couple months despite telling them in writing I don't offer performances any more. Without the decrees in place, the harassment from ASCAP and BMI will only get worse. Yes. I used to have music on a regular basis and paid both ASCAP and BMI. I discontinued several years ago due to the cost. My establishment only holds 30 to 40 people when I set up for a live band. By the time I pay them, and license fees, staff, etc. there isn't anything left for me or I've lost money. I still get an invoice from BMI every couple months despite telling them in writing I don't offer performances any more. 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. ASCAP and BMI have misled my business charging arbitrary amounts with no promise that I still have the right license.

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 I'm a small venue and cannot afford to pay the license fees now. There is no profit in live music for me as the business is now structured. Local musicians are suffering because no one will hire them due to the blatant lies and threats by BMI especially. Eliminate the license fee altogether for venues under a certain size and more musicians will have an opportunity to perform and learn their craft..

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.