

From: Lydia Melton [REDACTED] >
Sent: Monday, July 29, 2019 2:58 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 Lydia Melton, Gunter Hans- European Pub & 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 Pub & Cafe owner from Columbia, Missouri, that licenses music for the enjoyment of our customers (background music). 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 lead to chaos for small businesses across the country. Yes. When I first opened, I was trying my best to understand an already complicated law. I initially payed them, but various agencies kept coming out of the wood work wanting more and more. Eventually we switched to a licensed software like "Sound Track your Brand" which pays for all their fees at a low monthly rate. When this happened, I could not stop the calls from BMI. It got so bad, and they kept trying to trick my staff into admitting guilt that I contacted the Better Business Bureau who got the harassing calls to stop on my behalf.

Five years later, the calls have started again. This is because we had "live music" on the patio which they saw online and/or heard about by phone. Fortunately, all the music played was in the public domain. So they don't have any legal rights to pursue, but nevertheless the calls are a distraction to my staff and incredibly annoying. Without the decrees in place, the harassment from ASCAP and BMI will only get worse. Yes! One time we had a live performer come in. Because of the way music licensing works, we had told this man he could only play original music. He promised to do so. That night the house was packed and one of my bartenders approached me. He said "this is not his song. I've heard this before." After his set we had to pull from him stage and disinvite him back. Despite my best efforts to do the right thing and be compliant with the law, I would still have been liable for his poor behavior. This is absurd to me! How can someone else commit a crime and me be liable?!? 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. I have been harassed by ASCAP and BMI and often times it's impossible to know which licenses I need. 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 system is already too complicated. With technology, this need not be the case!

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.