

**From:** Robert Smith <[REDACTED]>  
**Sent:** Friday, July 19, 2019 12:34 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 Robert Smith, Jazz Cellars LLC, Co-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 I am the business owner of a small winery and wine tasting room owner from Foster City, California, that licenses music to support artists and make the customer experience enjoyable. 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 Co-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 my business a place that is less appealing to my customers and therefore impacting my bottom line. Yes, BMI. I have an ASCAP license for our small tasting room to cover our occasional background music and live performances. About a year ago, BMI started sending me emails (several a week) telling me that we had to meet and that the ASCAP license was not sufficient. Frankly, I am all in favor of musicians receiving value for their creativity and work. However, I am not in favor of extortion by the music licensing legal community. Without the decrees in place, the harassment from ASCAP and BMI will only get worse. No. But I know another small business owner near us who eliminated their 10+ year tradition of Friday music after they were squeezed to pay exorbitant license fees. For them, it was either stop the music or close the business. 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 Music is an important part of our business. We are known for both our fine wines and our support of the local music scene. We are contributing to the local economy by paying our live musical performers. Removal of the consent decrees could quite likely result in the end of our business. We are fully in favor of musician's earning money for their efforts. But this (ASCAP / BMI) is not about serving the musicians. It is a land grab for the high-powered law firms under the guise of protecting the musicians.

The typical BMI pitch is that "ASCAP" doesn't cover all of the music space. It is impossible to tell which licensing service covers which musicians without an unrealistic amount of work. If these groups were truly transparent and forthcoming they would make an easily searchable online database that is fast. That would at least give us all the option to choose how to tailor or playlists / live bands to fit under license..

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.