

From: Jehy Thompson [REDACTED]
Sent: Friday, August 9, 2019 12:07 PM
To: ATR-LitIII-Information (ATR) <ATR.LitIII.Information@ATR.USDOJ.gov>
Subject: Regarding ASCAP and BMI Consent Decrees

To Whom It May Concern,

I write to urge the Department of Justice to preserve the American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music, Inc. (BMI) consent decrees (the “Decrees”), and particularly to urge the Department to maintain the movie theater licensing exemption embodied in Sections IV(E) and (G) of the ASCAP Decree. For decades, this provision has benefited consumers and artists, and should not be subject to the ensuing uncertainty that would follow termination of the Decrees.

In order to publicly exhibit a movie, movie theaters secure a single license from a movie’s distributor that covers all of the various rights embedded within a single feature, and then compensate the movie’s distributor for use. Essentially, the payments for all the creative rights embedded within the films licensed by exhibitors are effectively incorporated into the negotiated film rental rates with each distributor. Just as producers are responsible for clearing all rights required for theatrical exhibition of a film, exhibitors are responsible for playing the title with no alterations in exchange for a share of the box office. This is the most sensible approach, as theaters have no choice in what music is included in a movie; have no ability to negotiate the rights for the music in a movie; and cannot avoid playing the music altogether, as the music is integrated into a movie’s audio file, like the dialogue. Movie producers, on the other hand, necessarily make choices about what music to include in their movies, and can do so in a competitive negotiation before the music has been integrated into the movie’s audio file.

The movie theater licensing exemption places the negotiating responsibility for music in movies where it belongs: with the party selecting songs for films. This is a common-sense, pro-competitive, and efficient process that works best for songwriters, exhibitors, and audiences. A filmmaker who creates a film with multiple integrated rights should not be able to license the film for exhibition without clearing all associated rights “at the source”—i.e. when a film is being made—including the right of public performance inherent in exhibition. This licensing process ensures that the rights-holders are able to negotiate directly for the true value of their music, rather than being subject only to an opaque royalty process.

Further, the Decrees benefit consumers by helping to keep the movie-going experience affordable, and ensuring that it retains the variety of programming consumers expect. Movie theaters already struggle to keep ticket prices low in the face of increased regulation and costs of doing business. Unchecked performing rights organization license fees, combined with the licensing fees paid to movie distributors, would come right off the theaters’ bottom lines to the detriment of moviegoers, songwriters, and filmmakers.

On a personal note, I see first-hand the expenses of enjoying a movie at present. It is a luxury that many cannot enjoy anymore. It is my opinion that if a movie theatre would be responsible for additional costs because of royalties associated with the music of a movie (which they have no control over), movie companies may have no choice but to jack up, not only their ticket prices, but food and beverage prices, making theatre-going near impossible from a financial perspective. Hollywood has enough money. If they want people to be able to see their films, it might be prudent for them to budget like the rest of us.

Thank you for your time and consideration.

Jessica Thompson

Appleton, WI