Joint Comments of Music Artists Coalition and Songwriters of North America
United States Department of Justice, Antitrust Division
Review of ASCAP and BMI Consent Decrees

August 9, 2019

In the course of the Department of Justice's current review of the ASCAP and BMI Consent Decrees, the Music Artists Coalition ("MAC") and Songwriters of North America ("SONA") feel that it is appropriate and imperative to remind the Department that both Judge Louis Stanton, overseeing the BMI Consent Decree, and the 2nd Circuit Court of Appeals ruled that the BMI Consent Decree does not require BMI to offer a 100% license. *See United States v. Broadcast Music, Inc*., 207 F. Supp. 3d 374, 376 (S.D.N.Y. 2016), *aff'd*, 720 Fed. Appx. 14, 18 (2d Cir. 2017). Moreover, the creative community of songwriters represented by MAC and SONA (including the many recording artists who compose music) overwhelmingly opposes any move away from fractional licensing, as evidenced by the multitude of pro-fractional licensing comments submitted on behalf of thousands of US and International songwriters when the Department initially raised this issue in 2015. Those submissions are categorically unified in their message, as true today as it was then, that songwriters do not support the view that PROs can, or should be able to, license works on a 100% basis that they control less than 100% of, nor do they support the view that PROs have to exclude works that they control less than 100% of from their blanket licenses. This clear message was reinforced by the lawsuit filed by SONA against the Department in 2016, in which SONA, on behalf of its over 600 songwriter-members, ardently contended that the Department's *sui generis* edict in connection with a 2014 Consent Decree review requiring ASCAP and BMI to provide 100% licenses violated songwriters' constitutional rights and exceeded the Department's authority under the Administrative Procedure Act. *See Songwriters of North America, et al. v. United States Department of Justice, et al.*, No. 1:16-cv-01830 (D.D.C. 2016). While SONA's lawsuit was eventually obviated by the 2nd Circuit's ruling in *United States v. Broadcast Music, Inc.*, it shed light on the devastating impact any move away from industry-standard fractional licensing would have on songwriters. Whole work licensing is an abrogation of copyright law and constitutes a taking of co-authors' exclusive property rights.