

**From:** Brigid McLoughlin [REDACTED] >  
**Sent:** Friday, August 9, 2019 5:15 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 Brigid McLoughlin, Odyssey Cellars, Director of Operations  
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 Winery owner from Mesa, Arizona, 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 Director of Operations 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, in 2007 I was constantly harassed for payment even though I proved that my jukebox was licensed by the lessor and that I only booked independent musicians that played original music. I did not book cover bands. I currently have a license through Pandora Music for satellite music, but am being pressured to pay for a street musician that comes in on the weekends and plays his own songs for tips. I cannot advertise that he plays for me because it is an open door for the constant threats and phone calls from ASCAP and BMI because he may or may not play a licensed song in his set. The musician should pay for the licensing, not the business. Govt wants to write all these laws, but has no ability to enforce them, so they dump it on the business owners. That is wrong. We do not tell the musicians what to play and we are not paid or compensated by any government entity to enforce laws. Without the decrees in place, the harassment from ASCAP and BMI will only get worse. No. I told ASCAP to come and listen to the sets and to listen themselves for a licensed song protected by them. 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. It is impossible to tailor my licenses based on the needs of my business. I should be able to license with only one licensing organization rather than all of them. 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 In considering the ASCAP and BMI consent decrees, I would like the Department of Justice to know the ASCAP and BMI consent decrees are important to me because it is not fair to have to pay multiple entities for duplicated licensing rights when we as business owners don't know what we are paying for or why. We just fear being sued, so we pay. That is extortion..

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.