

From: Jona Birr <Jona.Birr.216983[REDACTED]>
Sent: Friday, August 9, 2019 3:04 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 Jona Birr, Rock-A-Billies Bar of Northwood, Member
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 Bar owner from Northwood, Iowa, 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 Member 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. They initially sought us out for payment. We didn't know any different, so we just paid to stay in compliance. Without the decrees in place, the harassment from ASCAP and BMI will only get worse. No, but if they keep raising the fees we will. 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. ASCAP and BMI have threatened to sue me and I didn't understand why. 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 We, as small business owners, are being nicked

and dined to death by everyone from satellite TV to PROs. Everyone else on the planet gets away with stealing music or streaming content on the internet for free. It is obvious these services are taking a hit, financially; however, we as business owners shouldn't be expected to foot the bill. It would be nice if there was one fee to one company that had to be paid, but it's not like that, so you know the fees aren't even going to the right artists. We play the local radio station and the customers have access to the jukebox. That's it, yet we're paying out the nose just to have background noise. It's an awful situation and doesn't make sense. Every year they raise their fees and it's getting to be a heavy burden, especially on small businesses like ours..

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.