

**From:** Matthew Cohen <Matthew.Cohen.217203 [REDACTED]>  
**Sent:** Friday, August 9, 2019 5:00 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 Matthew Cohen, Ruth Eckerd Hall, Digital Media Manager  
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 aware that the Performing Rights Organizations (PRO) BMI and ASCAP have requested that the U.S. Department of Justice end the Antitrust Consent Decrees which have regulated both BMI and ASCAP since the early 1940s. Removal is significantly detrimental to the viability of cultural institutions as well as on the entertainment industry as a whole. The termination of the Consent Decrees would allow these PROs to increase rates without any judicial oversight, allowing differing license fees from presenter to presenter as well as the ability to decline a license and therefore control which artists can be hired. In effect, a monopoly on the industry. The intent is to demand higher royalty fees and force access to revenue streams such as food sales, parking fees, program ads, etc. which are unrelated to the creation or performance of the art or music. Our arts organization relies heavily on these other sources of revenue to remain viable, keep prices accessible, and reinvest back into the local community with educational programming. Ruth Eckerd Hall plays a large role in our state, having an economic impact of \$9.1M and is only one of hundreds of such arts institutions, employing thousands of people across the country serving millions of citizens who will all lose if the PROs are granted their request. We ask you to advocate on the community's behalf to maintain judicial oversight. The Consent Decrees must remain in place. owner from Clearwater, Florida, 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 Digital Media Manager 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. Without the decrees in place, the harassment from ASCAP and BMI will only get worse. 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 I am aware that the Performing Rights Organizations (PRO) BMI and ASCAP have requested that the U.S. Department of Justice end the Antitrust Consent Decrees which have regulated both BMI and ASCAP since the early 1940s. Removal is significantly detrimental to the viability of cultural institutions as well as on the entertainment industry as a whole.

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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.