

Comments by Kobalt Music Publishing America, Inc.

Submitted in Response to US Justice Department Antitrust Division

Request for Comments on Review of ASCAP and BMI Consent Decrees

Background

Kobalt Music Publishing is a leading global independent music publishing administration company. Kobalt uses proprietary technology to establish and maintain direct data exchange and reporting relationships with licensees and societies around the world and, most importantly, to provide unparalleled transparency to Kobalt's writer and publisher clients. Kobalt has agreements with all three major US performance rights organizations (PROs). A substantial portion of Kobalt's revenues are derived from US performance income.

While Kobalt's relationship with PROs is helpful to facilitate licensing public performance right where it would be inefficient for us to license those rights directly, we believe that consent decree restrictions impinge on our ability to manage the exploitation of performance rights controlled by us where direct licensing is, from our perspective, both feasible and desirable.

Under Copyright Laws publishers should have ability to exploit rights, including performance rights, in the free market. However, currently, in order to avail itself of the benefits of collective licensing for some performance rights, a publisher has to license the performance rights for all of their works collectively, binding them to the PRO rate court system rather than allowing them to withdraw certain categories of rights.

Comments

The consent decrees should be modified to allow publishers to engage in direct licensing for some categories of rights. These modifications will (i) introduce greater competition and efficiency to the performance rights market; (ii) provide market deals on which to understand the true value of publishers' performance rights and provide benchmarks for PRO rate setting processes; and (iii) provide publishers more control over the exploitation of rights and allow companies to avoid paying administrative fees.

Allowing publishers to selectively withdraw certain categories of rights will allow them to bundle various types of licenses to their works, creating a more efficient and streamlined licensing process that benefits both publishers and music users.

The increased competition that would result from allowing publishers to selectively withdraw certain categories of rights would exert pressure on the industry to increase overall service standards to writers and composers, including by (i) enabling publishers to

obtain better data and reporting from music users, and (ii) allowing/requiring more transparent accounting and disclosure of information to writers and composers.

As part of publishers' direct licensing rights with respect to selected rights categories, there must be no legal impediment to an express agreement between a withdrawing publisher and a PRO stating that the PRO will not license or purport to license that portion of a song which is controlled by the withdrawing publisher when the PRO is licensing portions of the same song which are controlled by a non-withdrawing publisher. Without this, the effect of the rights withdrawal could be vitiated.

As part of publishers' direct licensing rights, the consent decrees should be modified to require that PRO licenses provide for adjustability of the license grant and corresponding fees (on a "like-for-like" basis to fully adjust for PRO fees for the withdrawn repertoire) to accommodate (i) publishers who elect to withdraw rights during the term of the PRO license and (ii) publishers who elect to enter into a direct license with a specific willing licensee during the term of a PRO license.

We appreciate the opportunity to participate in the Justice Department's process as it reviews the ASCAP and BMI consent decrees. It is our hope that the DOJ will consider the above suggestions and the perspective of independent publishers throughout this process.

Respectfully submitted,

Kobalt Music Publishing America, Inc.