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Sent: Thursday, June 5, 2014 2:11 AM
To: ATR-LT3-ASCAP-BMI-Decree-Review <ASCAP-BMI-Decree-Review@ATR.USDOJ.GOV>
Subject: re:ascap-bmi

To Whom It May Concern,
I am both an ASCAP member and someone who has booked music in Chicago's local music scene.

I believe the current system is badly broken at both ends.

From the point of view of the person running a venue/booking music it is a flat out protection racket. They tell you how much to pay. They don't provide any way of knowing which copyrights they hold. If you point out that you are just doing improvised jazz or local original music that does not fall under their domain they call you repeatedly and send you letters with increasingly threatening language.

If a venue asks performers to only perform their original material and the performer happens to play a cover song, then the venue is held responsible for the copyright breach rather than the artist who played the song against the venue's policy. This gives venues no choice but to pay the fees, even if the venue's mission is improvised jazz, classical or ancient music, or all original songwriters material.

A venue or presenter should be able set reasonable policies about the music they are expecting their artists to perform and not be held accountable for an artist's onstage decision to perform a song outside of that policy.

Imagine if Youtube could be sued for someone posting copyrighted material rather than being allowed to remove it afterwards. If the internet portals had to operate under the same rules as venues they could not exist. Yet a venue has no more control of an artist's set list than a portal has on its users. A venue should have the same protection where it could ask an artist who had played a particular song not to play that song in any later engagements for copyright reasons.

Furthermore, it is impossible for a venue to just sign up with either BMI or ASCAP. You must sign with both because of the conditions outlined above.

Instead ASCAP and BMI can simply send someone with a recording device to a venue (even if the venue prohibits recording), catch an artist playing a song they own (even if that song is requested by someone working for ASCAP or BMI) and start an expensive lawsuit that threatens ridiculous \$20,000 fines for the unlicensed performance of a single song. Plus legal fees and other expenses. The cost for a single, unlicensed use is punitive and has nothing to do with what that single use should be worth. It functions as the "muscle" that this protection racket needs in order to function.

On the songwriter's end for payments it is equally broken.

The system is skewed towards the large publishing companies and against independent and local artists

interests.

For starters: this is from ASCAP's website about how they distribute payments:

"GENERAL LICENSING ALLOCATION

Fees collected from non-broadcast, non-surveyed licensees (bars, hotels, restaurants and the like) are applied to broadcast feature performances on radio and all performances on television, which serve as a proxy for distribution purposes."

In other words: We are shutting down your local bar or restaurant's open mic or local music showcase unless they are willing to pay a chunk of cash to radio and tv stars and the big companies that own half of their publishing.

ASCAP and BMI are collecting money for the big, registered music establishment and have no interest in, or concern for, any local music scene.

Large companies almost always own half the publishing of major songwriters.

An large portion of ASCAP and BMI's work for "songwriters" is in fact for the big music companies.

They crush local music creative outlets by hassling small venues who often just stop having music performances.

They just recently started allowing any songwriter to register their live setlists and get paid something for their small venue shows.

The songwriter has to have each and every song registered in a database first.

The payouts are very small and not really worth the time and trouble.

ASCAP and BMI will collect a licensing fee from that small venue that far exceeds any local songwriter payouts they will ever make.

Non-profits and small local venues need to be able to present and encourage local, original work without dealing with big publishing payout pressure.

How much do ASCAP and BMI charge the Chicago local restaurants, bars, and small venues? How much do they pay back into Chicago's massive, exciting, original local scene?

Comparing those two numbers would be a great place to start.

If small venues, bars, and restaurants who want to feature local, original work are protected:

On the plus side: vibrant, live local music scenes.

On the down side: some band plays a cover song for 35 people and no big company or songwriter (who has already been well paid for the song in question) gets additional money out of that moment.

Let them get the radio, tv, film, video, sales, download, internet, and large venue money.

End the large "music business" tax on local, small culture.

Respectfully,
Michael Greenberg