

**From:** in [REDACTED]  
**Sent:** Tuesday, August 5, 2014 6:12 PM  
**To:** ATR-LT3-ASCAP-BMI-Decree-Review <ASCAP-BMI-Decree-Review@ATR.USDOJ.GOV>  
**Subject:** COMMENTS: Antitrust Division Review of ASCAP and BMI Consent Decrees

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I am an American composer, a member of BMI, and formerly a member of ASCAP. I'm submitting this comment on my own behalf in opposition to the ASCAP and BMI consent decrees. These government actions appear to essentially be a compulsory license outside of the Congress and strip away the rights to due process of law for all songwriters and composers.

The way in which these particular consent decrees operate is oppressive to all composers and songwriters. Due to the extremely long period of time they have been in effect, they essentially force songwriters into being judged guilty before we've even expressed ourselves. Additionally they strip away our valuable property rights to negotiate our own licenses.

- Why Music Matters

In an era where American manufacturing has declined, many corporations who make up a major part of our economy have shipped jobs overseas for cost effective reasons, and entire US cities' economies collapse as a result, (Detroit for example); I would like to pose the following perspective: one of the few goods we still globally export as a nation is media.

A vital part of this media is the music behind it. Be it a popular song that influences the global culture, a film score, or background music in a television series; music is often a driving force in shaping the economic worth of the media being consumed.

If music was of no monetary value to thousands of television series, movie franchises, or the culture at large, than major corporations would not spend hundreds of millions of dollars licensing music each year. Music would be rendered as an "unnecessary cost" and replaced with something else more cost effective. The simple fact is that media relies music to "sell" the story, or the image of a competitive brand.

Furthermore, television networks and media companies would not pay out millions of dollars annually in performance royalties if the music was of no value. It would be deemed as an unnecessary cost.

Companies such as Pandora would not pay to license music, (as the end product no less) if it was of no value.

Massive companies such as Apple would not have spent millions of dollars developing online sales platforms such as iTunes if music were of no value.

Media giants like Disney would not have spent millions of dollars hiring composers, music editors, and licensing music to create their uniquely

whimsical global brand if it was of no value.

I must drive the point home again; the fact is that music is of incredible value, and the proof is in the dollars spent by media companies to license, sell, and/or broadcast music.

- Where Will The Next Generation Of Music Come From In A Broken Economy?

So as a composer I am left asking myself: Where will the next generation of background music, film scores, pop songs, digital streams, or music used to sell a brand come from?

Where will the next wave of music for media come from when it is simply no longer viable to make a living as a composer, songwriter, or music publisher?

Under the current decree, companies such as Pandora, Google, and Spotify continue to drive down the value of music. The more we drive down the value of music the less of us there will be for future media. For, the simple fact is that we will no longer be able to put a roof over our head if the consent decree continues as it currently stands.

At what point will the end product stop being available when we as composers, songwriters and publishers have to "close up shop"?

Where will media giants such as Disney find their unique sonic identity they rely on to sell their brand?

Where will the "Hot New Artists" come from that iTunes relies on to stay at the cutting edge of online music sales?

Where will the next compelling film score for the next big movie franchise come from when there's essentially no one left to write it?

- An Empire's Legacy Is Its Culture

A country's legacy can be measured in its cultural impact.

Stop and think about the great empires of the ages; Ancient Egypt, Athens, Rome, etc. What stands the test of time after an empire is gone? The culture.

Be it paintings on the ceiling of the Sistine Chapel, the architectural marvels of Ancient Egypt, Rome and Greece, a 40,000 year old rock painting that tells a story of how humanity evolved, or a Viennese musical work by Mozart, a culture's legacy will always be measured by its' artistic record.

For example, where would this country be without its beloved National Anthem?

Why does every country have a musical anthem?

Music is undeniably of value when every major country in the world can be

identified by a unique piece of music.

Just as the brilliant composers of the Baroque or Romantic periods are still deeply engrained in our musical culture, so are the musical works of our time. Furthermore, I would argue that it may be one of its most valuable cultural relics we have in the media driven era we live in.

#### - The Consent Decree In The Digital Era

I would put to you that the Consent Decrees of both BMI and ASCAP are out of date, and do not account for the impact of the world wide web on the musical economy.

I would argue that companies such as Google and Pandora are manipulating loopholes in the current decrees to drive down royalty rates for digital streaming at the expense of the songwriters, composers and publishers.

I would additionally argue that these companies do so by the breaking of antitrust laws. These digital streaming monoliths rely on music as an end product. Driving down rates through possible misuse of political influence clearly illustrate an intentional monopoly, (or "trust"-like practices.)

Furthermore, I would put to you that Google's latest policy in which they intend to remove music by any artist or label from youtube that does not sign up for their forthcoming streaming music service is a blatant violation of antitrust laws.

The Consent Decree should be updated to allow Performing Rights Organizations such as ASCAP or BMI to negotiate or enforce fair laws, and fair market rates. Laws and rates that compensate songwriters and composers fairly for digital streaming of their music. Rates that reflect the standard set in broadcast television.

In short, digital streaming should be treated with the same scrutiny for broadcast as terrestrial or cable television. Streaming monoliths such as Google should not be allowed to drive down the royalty rates through influence, or by exploiting legal loopholes. These digital streaming monoliths should be subject to the same process, and rates as any cable or television entity is. The Consent Decree should be updated to allow ASCAP and BMI the ability enforce the same fair market rates on them, and allow them due process if fair compensation not upheld.

Television will inevitably "move" to the internet in the future. The Consent Decree must be updated to take this into account. As companies such as Google become more and more influential on the world wide web, it is vital the organizations such as ASCAP and BMI can do their job of collecting and distributing royalties, and companies such as Google should be held to the same standard as television.

#### - Reconsider The Constitutionality Of The Consent Decrees

I urge our Department Of justice to re-consider the constitutionality of

the decades old consent decrees put in place. These decrees no longer compensate for the digital economy we now live in.

I ask the Department Of Justice to consider the value of music as not only a cultural relic, but as a commodity that is absolutely vital in shaping economy and driving global markets.

I put to you the examples of the dollars spent annually by media conglomerates to license music legally. As such, I ask you to consider that composers and songwriters are of deep financial value to our economy by considering the economic impact our media has as an export to the global market.

I urge the Department Of Justice to respect the value of music, re-consider the constitutionality of the Consent Decrees, and I thank you for your time.

Sincerely,

Justin Crosby