From: Ron Mendelsohn <r[redacted]
Sent: Wednesday, August 6, 2014 3:22 AM
To: ATR-LT3-ASCAP-BMI-Decree-Review <ASCAP-BMI-Decree-Review@ATR.USDOJ.GOV>
Subject: Comment regarding ASCAP-BMI consent decree review

Few would contend that the world hasn't changed since 1941, yet remarkably ASCAP & BMI still operate under "consent decrees" handed down in that year from the Department of Justice.

In those days, the PROs were widely seen as wielding a monopoly over music licensing and it is therefore somewhat understandable that the DOJ imposed restrictions on the scope of their operations in an effort to curtail their power and make music more available and affordable to licensees such as radio stations, TV stations, bars and restaurants.

However nothing could be further from the truth today. As performances shift online and consumers increasingly opt to stream music and video online, the balance of power has clearly shifted away from copyright owners and into the hands of technology interests whose business models rest upon the music that we create. Whereas most songwriters and composers represented by ASCAP and BMI are independent small businesspeople trying to eke out a living in an increasingly challenging industry, technology interests are represented by huge publicly-traded companies such as Google/YouTube and Pandora that effectively wield a monopoly over online video and streaming.

Unlike 1941, we now live in a world where music rights are under assault on multiple fronts, where piracy is rampant on the Internet and where technology interests continue to argue that music should be free. This is a far cry from any semblance of monopoly on the part of copyright holders.

There are many stories circulating about the paltry sums paid to songwriters from online streaming services, but ultimately it boils down to two simple questions: what is the value of music, and how should that value be determined? In our democracy should music rates be determined via lobbying by well-heeled corporate interests and by arbitrary rate court decisions? Or should market forces be allowed to determine fair value based on unconstrained negotiation between willing buyers and sellers?

Clearly, the only way for fair IP value to be determined in the digital age is through unfettered negotiation between the parties. The current consent decree system makes it impossible for the PROs to negotiate since they are forced to offer up their repertory to any willing licensee and then negotiate the price later. In what other business in America is an entity forced to give up its rights to the likes of Google and Pandora and then negotiate or litigate a price later?

Case in point: in the music industry, publishing and sound recording copyrights are traditionally assigned equal value in any licensing deals. In the online world, however, performances of compositions are actually paid at a much lower multiple than sound recordings due to the constraints of the consent decree. Pandora, for example, paid over $313 million to record companies last year whereas the PROs collected only a tiny fraction of that amount ($26 million) for writers and publishers. There is no logical reason for this lopsided disparity to exist.

Finally, in the digital age it is essential for music licensing to be streamlined and simplified for the sake of both licensees and rights holders. Whereas at one time mechanical, synchronization and performance rights were clearly distinct and separate, the lines are far more blurred and confusing in the online world. The most efficient way to simplify music licensing is to allow the PROs to bundle rights so that users can obtain all necessary rights through one centralized clearinghouse, rather than have to negotiate separately with multiple entities. This is a win-win for everyone: consumers, music licensees and copyright holders.

As an independent publisher, composer and small business owner, I urge the DOJ to reform or jettison the antiquated consent decrees and allow the PROs to negotiate the fair value of their repertory in a free market. It is time for composers, songwriters and publishers to receive fair and adequate compensation for performances of their works on digital platforms on a par with the recorded music side. Finally, it is time to seize the opportunity to simplify and streamline the arcane music licensing landscape and allow the PROs to evolve into centralized hubs for administering all rights in connection with musical compositions: performance, mechanical and synchronization. Having bundled rights administered by centralized entities will help protect and maintain the value of music in the digital age and greatly simplify the licensing process for all. The recent announcement that SESAC may be in talks to acquire HFA (the Harry Fox Agency) is already an indication that the industry is moving in this direction.

Let's stop trying to play the game of figuring out who wields a bigger monopoly, music publishers or technology interests. Instead, let's allow the parties to negotiate freely so that market forces can determine the fair value of music.

Thank you for your consideration.

Ron Mendelsohn
President and CEO
Go To Megatrax.com
MEGATRAX PRODUCTION MUSIC
7629 FULTON AVENUE, NORTH HOLLYWOOD CA 91605
e r[redacted] t 818 255 7100 f 818 255 7199