

**SOCIETA' ITALIANA DEGLI AUTORI ED EDITORI (S.I.A.E.)**

**R O M E (Italy)**

Rome, August 5 2014

Chief, Litigation III Section  
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USA

*By email: [ASCAP-BMI-decree-review@usdoj.gov](mailto:ASCAP-BMI-decree-review@usdoj.gov)*

**Re: American Society of Composers, Authors and Publishers (ASCAP)  
Broadcast Music Inc. (BMI)  
Antitrust Consent Decree Review**

SIAE is a multi-purpose society, as it administers copyright related to all kinds of intellectual works.

SIAE's members are approximately 77,600, of which, as to the Music Section, more than 69,000 authors and their heirs and over 2,300 publishers.

SIAE's interest in the participation to the consultation on the Consent Decrees ruling the activities of ASCAP and BMI derives from the fact that the repertoires of its members are administered in the USA by said societies, on the basis of representation agreements.

Therefore, this submission offers SIAE the opportunity to intervene in a constructive debate, in its full global meaning, centered on the need to actualize the rules on the collective administration of copyright in the USA, so to adapt them to the demands and challenges of the market, which in fact is a considerable market for the Italian works.

The Consent Decrees continue to serve important competitive purposes, but the changes in the digital market require some modifications in order to make the collective administration more adequate to the present needs of right owners, users and consumers.

The present relevant legislation fixes some limits to the management operation of ASCAP and BMI. Clearing the limits put by the Consent Decrees to the activities of ASCAP and BIEM and introducing an operational flexibility will be in the interest not only of the US right holders, but also of the Italian and all foreign right holders represented by ASCAP and BMI in the US market.

We believe that the Consent Decrees modifications should be addressed on the following topics:

- **Both BMI and ASCAP should be able to license additional rights, such as mechanical rights.**

Right holders should be permitted to grant ASCAP and BMI rights other than those of public performances.

This will meet the needs of both right holders and users.

The right holders will be allowed to confer the administration of their repertoires to the same Collecting Society for both performing and mechanical rights, and consequently the Collecting Society will be able to provide users with a “one-stop shop”, thus facilitating their job.

This will result in a more efficient administration of copyright, especially for new media services and uses in the digital market, where multiple rights are involved.

- **Members should be allowed to partial assignments of their rights and waive their works from the Collective Society in order to directly license certain digital uses**
- This will meet the needs of publishers for a more flexible collective administration in the field of digital uses and, at the same time, will not prevent them to benefit from the advantages of the collective administration.
- **The rate-setting process should be submitted to a private arbitration rather than to the judicial Court**

This will speed up the rate-setting process, in the interest of all subjects involved, and unburden it with the costs of the judicial litigations.

- **ASCAP and BMI should be allowed to refuse issuing a license in certain circumstances**
- **Applicants should be required to pay an interim fee during the licensing process**
- **Applicants (and licensees) should be obliged to provide Collective Societies with all the information and documentation needed to establish fees**

The first two provisions are included in the recent EU Directive about Collecting Societies in the digital market that will be adopted by Member States within 2016.

This mechanism creates a more balanced relation between the two subjects of the licensing process and it is fairer for the right holders, who have the right to be compensated when their works are used.

The third hoped modification will allow the fixation of tariffs proportioned to the use and to its economic value. Besides, such a fruitful collaboration by the user is a substantially important element in order to reach a tariff in line with the relevant market.

- **It should be established the presumption that a license voluntary negotiated by the parties involved (right holders/collecting Societies and users) gives evidence of the reasonableness of the fee agreed.**

As a matter of fact, after the wills of the two involved parties have met, giving as a result the finding of a shared fee for the use indicated in the license, such fee should be considered as being reasonable for both parties.

Such a presumption is particularly useful in relation to the ASCAP’s Consent Decree, where there is no clarification about the requirements for what a “reasonable fee” is.

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