

Written Statement of **The Association of Independent Music Publishers** regarding the
ASCAP & BMI CONSENT DECREE REVIEW before the
Chief, Litigation III Section
Antitrust Division
U.S. Department of Justice
450 5th Street NW, Suite 4000
Washington, DC 20001

August 5, 2014

Thank you for the courtesy of accepting our statement in this proceeding, the review of the effectiveness and operation of the consent decrees. We would like to begin by explaining who we are and then where our interests lie within these proceedings.

The Association of Independent Music Publishers (AIMP) was formed in 1977 by a group of Los Angeles music publishers, and has local chapters in Los Angeles, New York and Nashville. The organization's primary focus is to educate and inform music publishers about the most current industry trends and practices by providing a forum for the discussion of the issues and problems confronting the music publishing industry.

The AIMP provides a unique medium for those in the music industry to discuss with their colleagues various points of view from the cutting edge of the ever-changing music business. The opportunity to exchange ideas and opinions with others on issues of mutual concern is fostered by the informal atmosphere of the AIMP's monthly meetings, forums, and workshops.

The AIMP includes in its membership not only independent music publishers, but individuals from other areas of the entertainment community, such as motion picture, television, multimedia and home video producers, the record industry, music licensing and supervision, songwriters, artist managers and members of the legal and accounting professions.

Member Interests:

- As a collective body, the AIMP has a keen interest in the protection of the results and proceeds of its business activities which is the creation of intellectual property in the form of music (both instrumental and vocal) and subsequent earnings.
- We seek fair remuneration for the creation and exploitation of our music. In particular, we seek a willing buyer, willing seller free market place. We strongly believe that there is great merit and need for the Songwriter Equity Act which would bring forth fair market value royalties for performance and mechanical earnings. Our once robust music industry is now saddled with a micro-penny business which is not sustainable in the long run by any sense.
- As independent publishers we need to act so that our interests can be acknowledged in a meaningful way. We do not individually possess the resources like those of a major music publisher. However, we represent many important songs and songwriters. Since we are comprised of many small and large independent business owners we need representation by a trusted broker who is aligned with our interests.

Statement regarding the ASCAP & BMI Consent Decree Review:

There are four main areas we would like to address concerning ASCAP & BMI in this critical time of review:

- **The Role of the Performing Rights Organization (PRO):**
 - The role the PROs serve in the marketplace is essentially to the Independent Music Publisher as they are uniquely situated to represent the collective interest of the publishers and their writers;
 - They act as THE trusted broker for writers and publishers;
 - They provide efficient access to repertoire for hundreds of thousands of large and small businesses that use music;
 - They are on the forefront of new technology and use of music across all media.

- **Preferably Abolish or at least Amend the ASCAP & BMI consent decrees so as to permit ASCAP & BMI to license multiple rights:**
 - Most PROs outside the U.S. have the right to not only license the performing right, but they also have the right to license mechanical, synchronization or lyric display rights on a non-mandatory basis. If permitted here in the US, Publishers would have the option to grant to ASCAP & BMI some or all additional rights and music users would have the option to license those rights from ASCAP & BMI. This is a win-win for all sides of the equation and has been working well consistently for many years outside the US.
 - In addition, this ability would allow ASCAP & BMI to compete fairly with the for profit PRO SESAC which is not subject to a consent decree and who is actively preparing to offer all of these licensing & collection services to their writer and publisher members.
 - ASCAP & BMI's ability to license multiple rights is, of course, of particular importance to the smaller independent publishers who do not have the means to compete with the larger publishers in this area.
 - In this review of the effectiveness and operation of the consent decrees it is imperative that the DOJ understand how important it is for ASCAP & BMI to compete without unreasonable restrictions in today's rapidly evolving marketplace.

- **Preferably Abolish or at least Amend the ASCAP & BMI consent decree to change the rate-setting forum from the federal rate court to private arbitration, resulting in a quicker and less expensive rate-setting mechanism:**
 - The money spent on federal rate court proceedings belongs to the Writers and Publishers of ASCAP & BMI; ASCAP & BMI have to spend an incredible amount of money (our money) just to defend rates for writer and publisher royalties in a forum that could be better handled in private arbitration.
 - A swift and fair process such as arbitration will allow users of music and creators of music to resolve issues without lengthy delays and costly expenses.

- The consent decrees keep rates artificially below current market standards. ASCAP & BMI cannot compete when they are held to sub-standard rates. And we as owners of music lose an incredible amount of revenue because of it. Royalties are what sustain our business and our employees' and writers' personal health & welfare.
- Amend the ASCAP & BMI consent decree to ensure accurate and timely information from those requesting a license:
 - Although ASCAP & BMI must grant, upon written request, a license to use its repertory, and must offer license terms and rates equivalent to other licensees using the repertory in a similar manner, the entity requesting the license is not required to timely and accurately submit information on how they intend to use the repertory. This provision of the consent decree has created a means for licensees to avoid paying fees while their businesses are launched.

Closing Statement:

The ability to create music for the enjoyment of all is becoming more and more difficult each day. If we cannot adequately protect our copyright interests and be paid a fair market rate for our music, we cannot continue to provide music to meet public consumption/expectation. Can you imagine life without music? It is unimaginable for most. It all starts with the songwriter/composer and then the Publisher who supports the creative process and exploits the music in all media. It is also the responsibility of the Publisher to collect and protect these musical copyrights. As independent music publishers we cannot do this without the fair market ability of our trusted representatives ASCAP and BMI to act on our behalf.

We appreciate the courtesy to be able to present this statement and hope you will earnestly and openly consider our sincere comments above.

It is simply American attributes that we seek.....A Fair Market and Protection of Property.

Sincerely,

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Association of Independent Music Publishers

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