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# Antitrust Consent Decree Review

## American Society of Composers, Authors and Publishers/Broadcast Music, Inc.

Related documents:

- [ASCAP - Second Amended Final Judgment \[AFJ2\] \(June 11, 2001\)](#)
- [BMI - \[Amended\] Final Judgment \(November 18, 1994\)](#)

Related page:

- [ASCAP and BMI Consent Decree Review Public Comments](#)

### Antitrust Division Opens Review of ASCAP and BMI Consent Decrees

The U.S. Department of Justice, Antitrust Division, is responsible for overseeing the enforcement of the Final Judgments in *United States v. ASCAP*, 41 Civ. 1395 (S.D.N.Y.), and *United States v. BMI*, 64 Civ. 3787 (S.D.N.Y.) (“Consent Decrees”). The Consent Decrees, originally entered in 1941, are the products of lawsuits brought by the United States against ASCAP and BMI under Section 1 of the Sherman Act, 15 U.S.C. § 1, to address competitive concerns arising from the market power each organization acquired through the aggregation of public performance rights held by their member songwriters and music publishers. Since their entry in 1941, the Department has periodically reviewed the operation and effectiveness of the Consent Decrees. Both Consent Decrees have been amended since their entry. The ASCAP Consent Decree was last amended in 2001 and the BMI Consent Decree was last amended in 1994.

The Antitrust Division currently is undertaking a review to examine the operation and effectiveness of the Consent Decrees. The Department understands that ASCAP, BMI and some other firms in the music industry believe that the Consent Decrees need to be modified to account for changes in how music is delivered to and experienced by listeners. The Department’s review will explore whether the Consent Decrees should be modified and, if so, what modifications would be appropriate.

### Public Comments Are Solicited

As part of its review, the Department invites interested persons, including songwriters and composers, publishers, licensees, and service providers, to provide the Division with information or comments relevant to whether the Consent Decrees continue to protect competition. While Performance Rights Organizations, such as ASCAP and BMI, monitor for unlicensed uses, enforce copyrights against unlicensed users, and administer copyright royalties, the Department is most interested in comments on competitive concerns that arise from the joint licensing of music by Performance Rights Organizations and the remediation of those concerns.

In particular, the Department requests that the public comment on the following issues:

- Do the Consent Decrees continue to serve important competitive purposes today? Why or why not? Are there provisions that are no longer necessary to protect competition? Are there provisions that are ineffective in protecting competition?
- What, if any, modifications to the Consent Decrees would enhance competition and efficiency?
- Do differences between the two Consent Decrees adversely affect competition?
- How easy or difficult is it to acquire in a useful format the contents of ASCAP’s or BMI’s repertory? How, if at all, does the current degree of repertory transparency impact competition? Are modifications of the transparency requirements in the Consent Decrees warranted, and if so, why?
- Should the Consent Decrees be modified to allow rights holders to permit ASCAP or BMI to license their performance rights to some music users but not others? If such partial or limited grants of licensing rights to ASCAP and BMI are allowed, should there be limits on how such grants are structured?
- Should the rate-making function currently performed by the rate court be changed to a system of mandatory arbitration? What procedures should be considered to expedite resolution of fee disputes? When should the

payment of interim fees begin and how should they be set?

- Should the Consent Decrees be modified to permit rights holders to grant ASCAP and BMI rights in addition to “rights of public performance”?

All comments should be submitted by electronic mail to [ASCAP-BMI-decree-review@usdoj.gov](mailto:ASCAP-BMI-decree-review@usdoj.gov) by August 6, 2014 and will be posted in their entirety for public review at [this web address](#). Information that parties wish to keep confidential should not be included in their comments. Comments may also be sent, preferably by courier or overnight service, to

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