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The Department of Justice, after lengthy and thorough review, decides that ASCAP and BMI consent decrees should not be altered, as they continue to serve as a vital check against ASCAP's and BMI's anticompetitive market power.

Nashville, TN - The media licensee community is poised for a significant victory in the ongoing battle with performing rights organizations (PROs) and major publishers over proposed changes to the ASCAP and BMI consent decrees. After an exhaustive, multi-year investigation by the Antitrust Division of the Department of Justice, including participation from nearly the entire music publishing industry and licensee community, the Division concluded that ***the ASCAP and BMI consent decrees should not be altered and that the decrees continue to serve as a vital check against ASCAP's and BMI's anticompetitive market power.***

The investigation began in 2013, when ASCAP, BMI and their largest publisher affiliates asked the Department of Justice to review the consent decrees governing the PROs. The music publishing industry argued that these decrees were "outdated" and needed to be updated for the modern age. While this rallying cry against the "WWII-era" decrees garnered significant media attention, it conveniently left out that these decrees have in fact been reviewed and updated—most recently in 2001 for ASCAP and 1994 for BMI. And, after years of investigation into possible additional modifications to the decrees, the Division concluded that the decrees are not outdated, because the threat posed by ASCAP's and BMI's aggregated market power is as real today as it ever was. ***The Division agreed with licensees that ASCAP and BMI continue to wield sufficient market power requiring the continued application of the consent decrees and oversight of the Department of Justice.***

In the course of the Division's investigation, no issue was more hotly contested than that of "100%" versus "fractional" licensing of works co-owned by songwriters or publishers affiliated with different PROs. This issue was prompted by the publishers' proposal to amend the decrees to permit publishers to "partially withdraw" from ASCAP and BMI. The publishers argued that, if they were they permitted to withdraw, they would have the right to veto a user's performance of works including where publishers controlled only partial interests in works — even if the other shares in such works were owned by rights-owners affiliated with ASCAP or BMI ***and*** the user had obtained licenses from ASCAP and BMI.

Faced with the threat of being "held up" by the major publishers based on asserted "fractional" shares, media licensees argued — and the Division agreed — that the licenses historically granted by ASCAP and BMI to users do ***not*** limit the rights granted to licensees to "fractional" interests in compositions. Rather, they grant licensees the right to perform all the compositions in the ASCAP and BMI repertoires, whether the compositions are owned entirely

by members of the same PRO or by co-owners affiliated with different organizations. The Division made clear it was ***not*** altering the status quo in rejecting the PRO and publisher argument that ASCAP and BMI licenses conveyed only "fractional" grants of rights. The Division stated that requiring an ASCAP and BMI licensee to undergo the arduous process of confirming that it had secured separate licenses for every fractional interest in every work within its programming before using the work would be incompatible with ASCAP's and BMI's obligations, as articulated by the U.S. Supreme Court, to provide "immediate, indemnified access" to all the works in their repertories. The Division noted, as well, that the PRO and publisher arguments were contradicted by prior case authorities, notably the *Buffalo Broadcasting* case from the 1990s and the more recent decisions of both rate court judges in the *Pandora* cases (and affirmed by the Second Circuit Court of Appeals) which supported the view that the PROs are obligated to offer licenses to all works in their repertories.

But this battle is not over. The PROs have threatened that the Division's proposed conclusions will destroy the music licensing marketplace. The PROs claim that some of their members have privately agreed only to convey "fractional" interests in their works to ASCAP and BMI. They are suggesting that, if they heed the Division's interpretation, any work subject to these restrictions will fall out of its repertory.

The PROs are attempting to use the specter of industry calamity to dissuade the Department of Justice from adopting the conclusions of the Antitrust Division. But the Division's conclusions need not disrupt the music licensing marketplace. It is confirmed industry practice that when songwriters affiliate with ASCAP or BMI, the membership agreements have conveyed to ASCAP and BMI the right to license their "works" — not some fractional interests in those works. Membership in ASCAP and BMI is, and has always been, voluntary. Songwriters and publishers choose to affiliate with PROs and derive benefits from that membership; indeed, ASCAP and BMI have each reported record revenues in the past two years. Part and parcel of the decision to join a PRO is that songwriter's agreement to be subject to the consent decrees that govern his or her PRO, including the requirement of 100% licensing.

The Division has proposed a one-year period in which it will not bring any enforcement actions against ASCAP and BMI while the PROs work in good faith to come to a "common understanding" with their affiliates that PRO licenses convey 100% rights. ***If stakeholders act in good faith, there is no credible basis to believe that the music licensing marketplace will deteriorate into chaos, as the PROs/rights-owners have proclaimed.***

The licensee community remains optimistic that the PROs will work with their members to resolve any misunderstanding between them as to the scope of ASCAP and BMI's license grants so that productive relationships with ASCAP and BMI can continue. "The radio industry has had a constructive relationship with ASCAP and BMI over many decades that has served the mutual interests of the radio industry and music copyright owners fairly. We are pleased that the foundations of that relationship are likely to remain in place and that radio broadcasters will not face the severe disruption to their business that would have been brought about by the changes sought by music industry interests," said Ed Christian, Chairman of the RMLC.

About RMLC
The Radio Music License Committee is a non-profit organization that represents the vast majority of commercial radio stations in the U.S. with regard to music licensing matters involving performing right organizations such as ASCAP, BMI and SESAC.

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