

THE
BICYCLE MUSIC COMPANY

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August 5, 2014

VIA ELECTRONIC MAIL

Chief, Litigation III Section
Antitrust Division
U.S. Department of Justice
450 5th Street NW, Suite 4000
Washington, DC 20001

Ladies and Gentlemen:

Thank you for this opportunity to share a brief statement with you concerning the ASCAP and BMI consent decrees. First I would like to briefly introduce myself and provide some background about my company.

My name is Roger Miller and I am the Chief Executive Officer of The Bicycle Music Company ("Bicycle"). Bicycle is a proud independent music publishing company that was founded forty years ago. Since Bicycle opened its doors to songwriters four decades ago, we have always enjoyed our well-deserved reputation as an artist-friendly boutique publishing shop.

Bicycle owns or administrates the music publishing rights to fifty thousand songs including many great American standards made famous by great American artists. Our catalog includes the works of such legends as Pete Seeger, Marvin Hamlisch, Billie Holiday, Tammy Wynette and Robert Johnson, as well as works by numerous other cherished artists from this country and around the globe.

We believe that music is one of this great country's most valuable and enduring forms of intellectual property and the performing rights organizations ASCAP and BMI have always played a tremendous role in recognizing this value for independent music publishers such as Bicycle. However we are concerned that the current ASCAP and BMI consent decrees greatly restrict ASCAP's and BMI's efficacy in playing this very important role for us in the current digital age.

Under the consent decrees, for an end-user to obtain a blanket license it need only write a letter to ASCAP or BMI asking to do so. While the ensuing blanket license process is a highly efficient means of clearing music rights for use in the media, rates are sometimes disputed in the rate court where prior licenses are cited to help the rate court determine a reasonable fee for the music user. When the parties cannot agree to an actual or interim rate then the performing rights organizations need to bring a motion to their rate courts. This sets in motion a lengthy and expensive process where the end-user gets to use the repertoire while the rates for that use are disputed.

While this process had worked in the past when the media consisted of mature broadcasting platforms such as radio and television, in today's digital age of rapidly evolving platforms the process is unnecessarily slow,



inefficient, and can result in below-market rates for these new media that are unfair to the creators and owners of music rights.

In exchange for immediate access to our repertoire, it is only reasonable that there should be some form of financial consideration required from the onset for the use of our music even in the event of rate disputes, and it would seem arbitration would be a much more expedient and efficient forum in which to resolve such disputes.

Below-market fees borne from this antiquated process have recently caused some major music companies to seek to license their own repertoire for digital use. While this is a viable option for very large companies, independent companies such as Bicycle lack the enormous economies of scope and resources that a few major publishing companies have to identify, license and monitor the use of their repertoire by many thousands of digital broadcasters.

In short, we rely tremendously on the efficiency and value that ASCAP and BMI offer as single-stop destinations for thousands of commercial music users wishing to avail themselves of our repertoire through the blanket licenses offered by these organizations. Yet with the current consent decrees in place, this also means that we can easily be put in the position of having to accept below-market license fees and sometimes no fees at all, while commercial users of our music dispute royalty rates for an indeterminate period of time.

We believe that any publishing company that wishes to issue its own digital rights should be able to do so rather than being forced to have "all or nothing" licensed by the performing rights organization as was recently determined by the rate courts. As many large companies have already set out to do so, and rights agencies new and old from around the world are now competing to offer these services in a rapidly changing and global digital marketplace, it is evident that ASCAP and BMI no longer have the market power that the consent decrees were originally intended to mitigate. As such, and with so many companies seeking to establish fair value for their music in the open and unregulated market, we believe that ASCAP and BMI should be able to do the same for the benefit of independent music publishers and without the encumbrances imposed by their current consent decrees.

In closing, we believe that the ASCAP and BMI consent decrees should be modified to reflect the realities of the current marketplace. We believe that the rate courts should be eliminated and replaced with a more expedient and efficient process that is fair to creators and music owners and that thereafter the consent decrees be reviewed periodically, should they remain necessary at all, to ensure that they stay in sync with rapidly changing market conditions.

I thank you again for the opportunity to share this statement with you and for your very thoughtful consideration to this important matter.

Yours truly,



Roger Miller
Chief Executive Officer