

STAND WITH SONGWRITERS



The work of American songwriters is overregulated and undervalued in the modern music marketplace, due to outdated and overreaching federal regulations that govern how they license their work.

Over a million songwriters choose to collectively license their music to the thousands of businesses that want to use it through the nation's two leading performance rights organizations (PROs)—ASCAP and BMI. On behalf of their members, these PROs also track and collect the royalties earned when that music is played. This income is what songwriters depend on to support their livelihoods.

We need policymakers in Washington to stand with songwriters in support of reasonable, free market reforms for the new music economy. As the music marketplace continues to evolve, here are the challenges facing U.S. songwriters...

Problems with the Consent Decrees

What are the Consent Decrees?

The consent decrees entered into with the United States Department of Justice (DOJ) regulate how ASCAP and BMI, which collectively represent more than 1.2 million music creators, operate. While the DOJ now has a policy that consent decrees expire after a decade or so, the ASCAP and BMI consent decrees have been in place for 76 years, making them two of the longest-standing antitrust consent decrees on the books today. In fact, the ASCAP consent decree hasn't been updated since 2001, and the BMI consent decree was last modified in 1994.

The Problem

These antiquated regulations are out of step with how the rest of the world works and stifle the ability of American songwriters – quintessential American entrepreneurs and small business owners – to obtain fair market rates for their work, preventing them from adapting in a rapidly evolving marketplace.

Why It Matters

Not only are American songwriters choked by outdated regulations, but taxpayer money is wasted to enforce these unnecessary and burdensome regulations. Multibillion dollar, Wall Street-traded Internet companies are taking advantage of this arcane regulatory regime to pay songwriters less than fair market value for the use of their musical works. As a result, the collective licensing system that songwriters increasingly depend on to earn a living and that music users rely on to license music is at risk of collapse.

Problems with the Rate Court System

What is Rate Court?

Under the consent decrees, ASCAP and BMI are each overseen by a single Federal judge (the "rate court" judges) who is assigned to each PRO. Sitting in the Southern District of New York, each PRO's rate court judge oversees both administration of the PRO's consent decree with the DOJ and rate court disputes with businesses that license music.

The Problem

When music users and PROs can't reach an agreement on a license, the ASCAP and BMI rate court system relies on a single judge for each PRO, rather than willing buyers and sellers in the free market, to determine the rate that songwriters and publishers are paid for the use of their music. Furthermore, federal rate court proceedings take several years, wasting taxpayer dollars and robbing songwriters of millions that otherwise would have been paid out in royalties.

This Rate-Setting Process is...

OUT OF STEP WITH THE MARKETPLACE

- In a free market, pricing is ultimately set by a variety of willing buyers and sellers who value goods and services differently
- ASCAP must license virtually all applicants on demand and sets its rates in the shadow of the rate court or through rate court proceedings; therefore, ASCAP, licensees, and the rate courts have few competitive market benchmarks to use in rate setting
- Because rates for ASCAP and BMI are set by two different rate court judges, music users have learned to game the system by making their arguments in front of the judge they perceive will give them a more favorable rate

OUT OF STEP WITH OTHER CREATIVE INDUSTRIES

- The marketplace—not a federal judge—determines the value of books, films, TV shows, video games and other creative goods; why not musical compositions?
- Outside of the ASCAP and BMI rate courts, we are unaware of any other instance in which a rate-setting function resides with a single decision-maker for an indefinite period
- In other industries, rate disputes are decided by arbitrators with industry experience or multi-member administrative bodies with staggered terms

How Congress Can Help

American songwriters and publishers deserve to be paid fair market value for the use of their musical compositions, just like any other small business owner is for the use of his or her product.

As technology changes the music landscape, the federal government should modernize its regulations to give songwriters:

- more control over their copyrighted works, and
- more flexibility to negotiate, so the free market can do its job and competition can thrive.

WE NEED:

- ✓ **PERIODIC REVIEW OF THE DOJ CONSENT DECREES** to ensure they are encouraging and not hindering more vigorous competition in the marketplace.
- ✓ **RATE COURT REFORM** to replace the antiquated and inefficient rate court system with a faster, cheaper dispute-resolution/rate-setting process.

It's time to update U.S. music licensing regulations to account for how people listen to music today and protect the future of American songwriting.

Learn more at StandWithSongwriters.org

