

CMCNY

Council of Music Creators of New York

Issues of Importance: The Consent Decrees

So here's the thing: In America, when business competitors get together and discuss how much things should cost, they can go to jail. It's illegal for anyone to fix prices in a free market. Even songwriters and composers like you!

Back in the last century, the people who *use* music in their businesses - like radio and TV stations and networks - sued ASCAP its songwriter and publisher members were essentially getting together and setting prices when they licensed performances of their music.

Nobody denied it. In fact, it was - and still is - the only realistic way to work out a deal to provide millions of songs to thousands of music users. Eventually, even the Supreme Court agreed: there's just no other effective system.

Nonetheless, the government decided to keep an eye on ASCAP and its members. As a result, ASCAP and the Government agreed to a settlement, a document called a "Consent Decree." Eventually, BMI signed a Consent Decree, too.

The first Consent Decree was signed in 1947. Since then, both ASCAP and BMI's Decrees have been amended from time to time, but pretty much they still do the same thing. And while they cover many points, there are two areas in which they have a profoundly negative impact on all songwriters and composers.

First, the Consent Decrees force ASCAP and BMI to grant a license to use your music to anyone who asks, even if it's not clear what the user is doing (or is going to do) with your music, or how much (or even if) they're going to pay for it. That's right: under the Consent Decrees, just by asking, a user must be given a license.

Now even the oldest profession in the world understands that a business model where you give away the product, first, and discuss the price, later, is a loser. But that's what the Consent Decrees make ASCAP and BMI do on your behalf.

The other thing the Consent Decrees do is give a single, individual judge the authority to make deals for you and your work. ASCAP has its judge, and BMI has one, too. So, whenever there's a dispute about how much a user should pay for the performance of your music in their business, these judges, acting on their own, get to decide exactly how much gets paid.

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Recently, the Consent Decrees and their process have led to some very bad outcomes for those of us who create music, including unfairly and unrealistically low payments for songwriters and composers in the digital music world.

With all the changes in the music business, many people believe we need a better system for helping music creators and the people who profit from the use of our music to do business. Re-evaluating and revising the Consent Decrees could be a crucial part of fair and just solutions that work for everyone.