

CMCNY

Council of Music Creators of New York

Issues of Importance: Pandora

Pandora is the world's fastest growing internet music supplier, with projected revenues this year of more than \$500,000,000. But under its business model, the people who create the music that is Pandora's primary product receive only two cents out of every dollar Pandora collects. Obviously, something is wrong.

ASCAP, BMI, and the major music publishers have been trying to negotiate with Pandora a license fee that reflects the real value of the music in the marketplace. In response, Pandora filed suit against ASCAP in Federal Court, claiming that the two cents they were paying to songwriters was too much. They demanded to pay less.

The recent "Summary Judgment" that made the news last week is not the end of the Pandora story - it's only a minor legal event in the much larger case between ASCAP and Pandora. But it has big implications for all songwriters, composers, and publishers.

The summary judgment handed down by Federal Judge Denise Cote clarifies that publishers belonging to ASCAP may not grant or withdraw *partial* rights to the works under their control. Those works are either completely "in" the ASCAP repertory for purposes of licensing, or completely "out." Therefore, according to the Court, the strategy employed by Sony, Universal, and several other publishers to withdraw the "digital" rights to their works and license them directly to New Media users like Pandora is not permitted under ASCAP's Consent Decree, the agreement between ASCAP and the Department of Justice which regulates many aspects of ASCAP's licensing practices.

Importantly, this ruling does not prevent any publisher from making its own direct deal with a user that might bundle performance rights with mechanical rights and administrative fees. In such deals, deciding how much of the total fee is attributed to performance, how much for mechanicals, and how much for administration is at the sole discretion of the publisher. As a result, there will be no public record, no transparency, and no way for any writer to know if he or she is receiving the right amount in royalties, as there would be if the royalty was collected and distributed by ASCAP