

JUSTICE NEWS

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Department of Justice Opens Review of ASCAP and BMI Consent Decrees

As part of The Department of Justice's ongoing review of legacy antitrust judgments, the Antitrust Division today announced that it has opened a review of its consent decrees with The American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music, Inc. (BMI). For more than seventy-five years, these decrees have governed the process by which these two organizations license rights to publicly perform musical works. The purpose of the Division's review is to determine whether the decrees should be maintained in their current form, modified, or terminated.

ASCAP and BMI are the two largest performing rights organizations in the United States. Their primary function is to pool the copyrights held by their composer, songwriter, and publisher members or affiliates and collectively license public performance rights to music users such as radio and television stations, streaming services, concert venues, bars, restaurants, and retail establishments. The Antitrust Division first entered into consent decrees with ASCAP and BMI in 1941 and they have since been modified – the ASCAP decree most recently in 2001 and the BMI decree in 1994. The decrees require ASCAP and BMI to issue licenses covering all works in their repertory upon request from music users. If the parties are unable to agree on an appropriate price for a license, the decrees provide for a “rate court” proceeding in front of a U.S. district judge. Neither decree contains a termination date.

“The ASCAP and BMI decrees have been in existence in some form for over seventy-five years and have effectively regulated how musicians are compensated for the public performance of their musical creations,” said Makan Delrahim, Assistant Attorney General for the Antitrust Division. “There have been many changes in the music industry during this time, and the needs of music creators and music users have continued to evolve. It is important for the Division to reassess periodically whether these decrees continue to serve the American consumer and whether they should be changed to achieve greater efficiency and enhance competition in light of innovations in the industry.”

The Antitrust Division has posted an invitation for public comment on its public website (<https://www.justice.gov/atr/antitrust-consent-decree-review-ascap-and-bmi-2019>), inviting interested persons, including songwriters, publishers, licensees, and other industry stakeholders to provide the Division with information or comments relevant to whether the ASCAP and BMI decrees should be modified, terminated, or retained unchanged. The period for public comment ends on July 10, 2019.

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