

**Statement of Senator Patrick Leahy (D-Vt.),
Ranking Member, Senate Judiciary Committee,
Hearing on
“How Much For a Song?: The Antitrust Decrees That Govern the Market for Music”
March 10, 2015**

Music has long been one of our nation’s greatest artistic and cultural contributions. Today, there are more ways than ever for consumers to enjoy their favorite songs and for songwriters and recording artists to reach old fans and make new ones. The Internet has transformed few industries as much as the music industry. Many of these transformations have been undeniably positive for consumers, such as the ability to walk around with your entire music collection loaded onto your smart phone. Other developments have been negative for songwriters and recording artists, such as the ease with which a song can be unlawfully distributed online. A third development—the emergence of a wide variety of legitimate digital music services—has renewed questions about the proper compensation for songwriters and recording artists and the efficiency of a music licensing system that, in some respects, is almost a century old.

Music copyright is complicated, involving separate copyrights over the underlying composition and the final recording of a work, and a licensing landscape that treats different rights, works and services differently. When listening to music, consumers do not generally give much thought to how the song was created, how the creators are being paid, whether those payments are sufficient to help the creators make another song, or the efficiency of the process through which the service playing the song licensed the performance. Yet these questions are fundamentally important to the music ecosystem listeners know today.

In this complicated landscape, performing rights organizations (PROs) play a valuable role in how music is licensed to a wide variety of businesses, including radio and television stations, bars and restaurants, and now online and mobile music services. By representing songwriters and their publishers in licensing the public performance of musical compositions to businesses through a collective licensing approach, the PROs create efficiencies both for creators and for users.

For more than 70 years, two consent decrees between the Department of Justice and the two largest PROs in the country, the American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music, Inc. (BMI), have helped regulate this market. The consent decrees have been adjusted to respond to new marketplace realities on several occasions, but the last such revision was well over a decade ago. Now, recent changes in technology and the music marketplace warrant renewed attention to the consent decrees to ensure the decrees’ purposes are still being met.

Last spring, I sent a letter to the Attorney General, encouraging the Department to undertake any review of the consent decrees expeditiously. This review is important for consumers and the many participants in the music marketplace, including songwriters, music publishers, and licensees like broadcasters, digital music services, and restaurants. No matter your views on whether or how the consent decrees should be amended, all participants will benefit from the increased certainty that will come from swift completion of the review.

The ongoing review of the consent decrees takes place in the context of a large and complex music licensing ecosystem. Recently, Register of Copyrights Maria Pallante issued a comprehensive report on the state of the music licensing marketplace and set out a blueprint for reform of a system that virtually all participants believe is broken in some manner.

Although the vast majority of those issues lie beyond the scope of today's hearing, I am hopeful that the Register's report will spark renewed interest in comprehensive solutions to improve the functioning of the music marketplace for all participants. We must work to ensure that all music creators are fairly compensated for all of their works; that innovative, legitimate delivery methods can continue to benefit consumers and marginalize illegitimate alternatives; and that technology can bring increased transparency to the data that is essential to an efficient licensing system.

Senator Lee and Senator Klobuchar have assembled a thoughtful panel of witnesses with a wide range of views on the consent decrees and the role they play in this landscape. I look forward to today's discussion.

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