

## **Questions for the Record**

### **How Much for a Song?:**

#### **The Antitrust Decrees that Govern the Market for Music**

##### **Senator Lee**

###### **Beth Matthews**

During the hearing, the potential coordination among the publishers and ASCAP referenced in Judge Cote's opinion in Pandora v. ASCAP came up repeatedly.

- What is your response to the allegations mentioned in the hearing and in Judge Cote's opinion?

ASCAP argues that modifying the Consent Decree to allow for partial withdrawals by its members will help promote a competitive market.

- Why is that the case?

I understand that ASCAP is making significant investments in transparency. Transparency is important for two reasons: first, it allows potential licensors to properly assess the value of the catalog they are acquiring a license for; second, it allows them to avoid costly infringement suits.

- What do your transparency efforts look like?
- Will potential licensors be able to rely on the information you provide to protect them from infringement suits?

###### **Chris Harrison, Pandora**

The publishers have threatened to fully withdraw from the PROs if DOJ does not allow partial withdrawals. The PROs believe that such full withdrawals would seriously damage the blanket license system.

- Is the threat of full withdrawal sufficiently compelling to justify amending the consent decree?

###### **Matt Pincus, SONGS Music Publishing**

As one of the largest independent publishers, SONGS benefits greatly from the administrative efficiencies offered by collective licensing.

- How would a full withdrawal of the major publisher catalogs from the PROs affect smaller publishers like SONGS?

Senator Lee, as I outlined in my testimony, the consent decrees have effectively left music publishers with two harmful, all-or-nothing business decisions. The first is to avail themselves of the benefits of collective licensing for all performance rights and accept the high costs, inefficiencies and below-market royalty rates that result from government regulation. The second is to fully withdraw all performance rights from collective licensing, thereby destroying longstanding licensing efficiencies and business relationships that have proven beneficial to all parties. Neither choice is economically beneficial to my business as a music publisher and both result from the regulation of my performance rights through the consent decrees. To my knowledge, most publishers - including the majors - would prefer to maintain general licensing through the PROs and are only seeking to negotiate directly with certain specific categories of licensees. My hope is that DOJ amends the consent decrees to provide enough flexibility to allow publishers to avoid this Hobson's choice. So, in short, as an independent publisher, I support the right of publishers to withdraw all or partial rights from the PROs.

However, there is potential outcome that could affect independent publishers disproportionately, and threaten the ability for new independents to enter the market. If major publishers withdraw rights from the PROs, and smaller independent publishers stay within the collective licensing system under the regulatory constraints we suffer under today, the market will become untenable for smaller companies as they may achieve rates that are repressed by government regulation while withdrawing publishers achieve higher rates.

Therefore in addition to allowing for partial rights withdrawal, I think it is imperative that the DOJ reform the Consent Decrees to allow for arbitration rather than supervision by the current rate courts.

**Mike Dowdle, Bonneville**

I understand that you are a songwriter yourself and had a long career in music before your time in broadcasting. Your background gives you a particularly helpful perspective on these issues.

- In what ways do the PROs and their blanket licenses benefit both songwriters and broadcasters?
- Do you believe the consent decrees as written are necessary to preserve those benefits, or can they be achieved outside the decrees?

## **Questions Posed by Senator Orrin G. Hatch**

### 1. Question for all panel members:

With respect to transparency of license agreements negotiated directly by publishers, I am concerned about one situation in particular: a publisher striking a deal to license its works under which a licensee pays an upfront fee to the publisher—not disclosed to or shared with the songwriters affiliated with the publisher—in exchange for the licensee paying to the publisher directly a lower royalty rate.

How can we make certain that all payments by licensees for musical works pursuant to agreements negotiated directly by publishers are fully disclosed to songwriters and shared with them?

Additionally, how could such requirements be enforced?

Senator Hatch, publishers and songwriters voluntarily enter into contractual relationships. While the details of particular agreements may vary, publishers' fundamental job is the same: to negotiate deals that maximize the value of the songs they control for the mutual benefit of themselves and their writers. My company – SONGS – would not take actions that are contrary to the interests of our writers, and I believe that also applies to the overwhelming majority of publishers.

While transparency is indeed one of the important cornerstones of building trust in any business relationship, it would not be constructive for the government to attempt to regulate the partnership between writers and publishers. The market provides sufficient incentive for publishers to compensate their writers fairly and to provide transparency.

### 2. Question to Ms. Jodie Griffin, Public Knowledge:

Ms. Griffin, in your prepared testimony, you note “[w]ith technologically neutral competition policies, new music distribution platforms will have a fair shot at thriving in a sustainable way...”

How do you reconcile this statement with the fact that there is not a performance right for terrestrial radio?

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**Questions 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**

**Question for the Record for All Witnesses**

The ASCAP and BMI consent decrees with the Department of Justice exist in the context of a larger and complicated music licensing ecosystem that many say is in need of reform. I believe strongly that any comprehensive music licensing improvements must 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.

**Q: Please share your thoughts on what elements are critical to any efforts to improve the music marketplace.**

Senator Leahy, I strongly support all of the goals you enumerated. While the government should continue to have a role in prosecuting commercial-scale piracy operations and facilitating voluntary agreements among stakeholders to help curb infringement, Congress should reevaluate the government’s footprint with regard to music licensing. The ability of songwriters and music publishers to license our rights unencumbered by government regulation, whether collectively or directly, is critical to the ongoing viability of our businesses and the continued creation of the songs we all love. Licenses for the intellectual property rights of movies, books, video games, magazines, television shows and recorded music are all negotiated in the free market while songwriters and music publishers remain subject to heavy regulation under antiquated consent decrees. If Congress concludes that the government must continue to be involved in setting rates for the use of musical compositions, then, at a minimum, the rate setting processes must be modernized to yield outcomes that more accurately reflect rates that would have been negotiated in a free market.