



# Chorus of Voices Praise DOJ Action to Continue Protecting Music Users

## What They're Saying About DOJ's Decision to Maintain ASCAP, BMI Consent Decrees

**MIC Coalition:** *"The decision to maintain current protections against anti-competitive behavior ensures that even though ASCAP and BMI control more than 90% of the U.S. music marketplace, music licensees can continue to access music under a system that fairly compensates music creators for their work."*

*DOJ is absolutely correct in clarifying that music users who purchase ASCAP and BMI blanket licenses unambiguously obtain the unlimited right to play the songs in these organizations' repertoires."*

**Public Knowledge:** *"The Department of Justice has reached an outcome that appropriately takes into account the public interest and the pro-competitive role played by ASCAP and BMI in the music licensing marketplace. We're heartened by the Department's decision to leave the protections of the consent decrees in place, ensuring that the PROs will continue to offset the harms posed to the licensing marketplace by industry consolidation, rather than amplify them."*

**NAB:** *"We appreciate the hard work of the DOJ during its diligent, comprehensive review and believe that this decision will ensure that ASCAP and BMI continue to fairly and efficiently license musical works in a manner that is pro-competitive."*

**CTA:** *"The Antitrust Division's decision to maintain the consent decrees in their current form ensures an efficient and fair licensing system for all stakeholders. We also applaud DOJ's clarification that music users who purchase ASCAP and BMI blanket license obtain the unlimited right to play the songs in these organizations' repertoires."*

**CCIA:** *"This is an important decision that will help promote competition and protect users and consumers of music. The DOJ also clarified that those who purchase blanket licenses from ASCAP and BMI have the unlimited right to these organizations' songs."*

**National Restaurant Association:** *"As America's restaurants continue to be the gathering place for millions of Americans each day, food and entertainment go hand in hand. Music plays a pivotal role in creating a welcoming environment for diners, but the process of music licensing continues to be a challenge for our membership. We are pleased that the U.S. Department of Justice will keep the BMI and ASCAP consent decrees unchanged."*

**WineAmerica:** *"Wineries already face difficult choices when offering live music at their venue, often forcing the winery to cancel their programs. WineAmerica believes that*

*fractionalized licensing would have eliminated buyer's choice in the marketplace, encourage anti-competitive behavior, and ultimately raise the cost of performing music."*

**Digital Music Association (DiMA):** *"It's now more important than ever that industry partners unite to focus on the real task at hand. Namely, the creation of new music that fans across the U.S. will love and adore; while continuing to develop a legitimate marketplace for the online distribution of such works that compensates songwriters for their creative endeavors."*

**The Internet Association:** *"The legal certainty and the careful guidance provided by DOJ maps out helpful rules of the road regarding access to creative works. This is particularly relevant for music delivered through the internet, which must be afforded fair and equal treatment by all actors in the digital music ecosystem."*

**(Full Statements Below)**

**[MIC Coalition Applauds DOJ Action to Protect Consumers' Access to Music](#)**

Today the [MIC Coalition](#), a group of associations whose members provide music over the nation's airwaves, through the Internet and in stores, hotels, restaurants, bars and taverns through the country, released the following statement on the conclusion of the Justice Department Antitrust Division's review of consent decrees governing ASCAP and BMI:

*"The MIC Coalition applauds the Department of Justice Antitrust Division for completing a thorough, multi-year review of the longstanding voluntary consent decrees governing ASCAP and BMI after consideration of extensive input from music publishers, music users and the PROs themselves.*

*The decision to maintain current protections against anti-competitive behavior ensures that even though ASCAP and BMI control more than 90% of the U.S. music marketplace, music licensees can continue to access music under a system that fairly compensates music creators for their work.*

*DOJ is absolutely correct in clarifying that music users who purchase ASCAP and BMI blanket licenses unambiguously obtain the unlimited right to play the songs in these organizations' repertoires. ASCAP and BMI's own contracts and public representations of their licenses make clear that this is and always has been standard operating procedure. Deviating from this widely accepted practice would significantly harm consumers, services, venues and songwriters.*

*ASCAP and BMI's massive market power remains as real a threat to a fair and competition-driven music marketplace as it has ever been. DOJ's decision to maintain the current protections of the consent decrees appropriately serves as a check against antitrust violations that would create unworkable cost and complexity for those looking to play music publicly."*

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**[Public Knowledge Welcomes DoJ Decision on ASCAP and BMI Consent Decrees](#)**

Today, the Department of Justice [concluded its review](#) of the antitrust consent decrees governing ASCAP and BMI, the two largest music performance rights organizations (PROs) in the United States. After two years of extensive public comment and analysis, the Department has determined it would be inappropriate to amend the consent decrees in ways that would enable music publishers to take greater

advantage of their market dominance in negotiating licenses. Additionally, it has clarified licensing practices that came to light during its review. Public Knowledge has advocated for the Department to adopt these positions throughout the review and welcomes the decision.

The following can be attributed to Raza Panjwani, Policy Council at Public Knowledge:

“The Department of Justice has reached an outcome that appropriately takes into account the public interest and the pro-competitive role played by ASCAP and BMI in the music licensing marketplace. We’re heartened by the Department’s decision to leave the protections of the consent decrees in place, ensuring that the PROs will continue to offset the harms posed to the licensing marketplace by industry consolidation, rather than amplify them.

“Allowing the large publishers to engage in strategic ‘partial withdrawals’ would have had a negative impact, given that similar maneuvers have been used by publishers in the past as cover for collusive behavior and striking deals that have harmed songwriters. We note that we’re joined by the songwriter community in supporting the Department on this aspect of their determination.

“The clarification that the consent decrees require the PROs to only offer “100%” or “full-work” licenses -- licenses that permit paying users ranging from restaurants to radio stations, and from bars to yoga studios, to play any song in the PRO’s catalog without further investigation or negotiation of rights -- is [logical and similarly pro-competitive](#). In reaching its determination on this point, the Department was correct to disregard a flawed [Copyright Office letter on the issue](#) that failed to account for any competition considerations, part of an [obvious pattern](#) of overreach for the Office.

“Simply put, PRO licenses are valuable because they offer licensees a simple, clear, and efficient method of clearing rights. The ‘fractional licensing’ approach advanced by the industry is not only unsupported by a plain reading of the consent decrees, but would also undermine the very benefits of the PRO licenses themselves.

“Major music publishers invited the Department of Justice to scrutinize the licensing practices of the PROs, expecting to win permission to leverage their catalogs in troubling ways. Instead, the Department carried out its mandate in evaluating the marketplace, the public interest, and potential threats to both. The result is that in addition to clarifying the issue of full-work licensing, the Department also identified a conflict of interest in how ASCAP’s publisher members partook in licensing negotiations, and other violations of the consent decree that resulted in a [\\$1.75 million fine](#).

“We applaud the Department for its diligent and thorough review of the PRO consent decrees, and for reaching conclusions that will preserve the existing efficient marketplace.”

Please view our [music licensing page](#) for more information, or contact [Shiva Stella](#) to arrange an interview.

### [National Association of Broadcasters: Statement on Justice Department Decision on ASCAP and BMI Consent Decrees](#)

In response to today's announcement by the Department of Justice (DOJ) that it has completed its multi-year review of antitrust consent decrees regulating two of the nation’s largest music performing rights organizations, the following statement can be attributed to NAB President and CEO Gordon Smith:

"Local radio and television broadcasters strongly support the Justice Department's decision not to modify the ASCAP and BMI consent decrees. We appreciate the hard work of the DOJ during its diligent, comprehensive review and believe that this decision will ensure that ASCAP and BMI continue to fairly and efficiently license musical works in a manner that is pro-competitive. Broadcasters look forward to continuing our close relationship with these performance rights organizations, which have worked to the mutual benefit of songwriters, music licensees, and listeners around the world for decades."

In comments submitted to the DOJ last month, NAB and the Television Music License Committee (TVMLC) expressed their support for the proposed conclusion that no changes were warranted to the consent decrees. Under the current system, radio broadcasters pay \$350 million and local television broadcasters some \$150 million to songwriters and their music publishers every year.

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**[Consumer Technology Association: DOJ Affirmation of Blanket Licensing Benefits Innovators and Creators](#)**

The following statement is attributed to Gary Shapiro, president and CEO, Consumer Technology Association (CTA), regarding the United States Department of Justice (DOJ) Antitrust Division's review of consent decrees governing the American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music, Inc. (BMI):

"The Antitrust Division's decision to maintain the consent decrees in their current form ensures an efficient and fair licensing system for all stakeholders. We also applaud DOJ's clarification that music users who purchase ASCAP and BMI blanket license obtain the unlimited right to play the songs in these organizations' repertoires. We will continue to work with all stakeholders to promote a healthy, vibrant music marketplace that benefits innovators and music creators."

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**[Consumer & Communications Industry Association: CCIA Welcomes Decision to Protect Competition, Consumer Access to Music](#)**

The Department of Justice [announced today](#) that it has concluded its multi-year review of the ASCAP and BMI consent decrees, and that it will refrain from altering the pro-competition provisions. The Computer & Communications Industry Association has been committed to fighting for effective competition and antitrust laws for decades, and had [filed comments](#) two years ago asking DOJ to strengthen and uphold the consent decrees for ASCAP and BMI.

The following can be attributed to CCIA President & CEO Ed Black:

"ASCAP and BMI control 90 percent of the music marketplace, so keeping the current protections against anticompetitive behavior is important. After a multi-year investigation and talking to a wide variety of stakeholders, the Department of Justice wisely decided not to modify the ASCAP and BMI consent decrees. This is an important decision that will help promote competition and protect users and consumers of music. The DOJ also clarified that those who purchase blanket licenses from ASCAP and BMI have the unlimited right to these organizations' songs."

For more on the DOJ decision, including its finding on “fractional licensing,” see Ali Sternburg’s blog post on the Disruptive Competition Project: <http://www.project-disco.org/intellectual-property/080416-doj-decision-on-consent-decrees-and-fractional-licensing-good-news-for-competitive-music-marketplace/>

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### **National Restaurant Association Applauds DOJ Actions on Music Licensing**

(Washington, D.C.) Today, National Restaurant Association Director of Commerce and Entrepreneurship, Laura Chadwick, issued the following statement regarding the Department of Justice’s decision to uphold protections against anti-competitive music licensing practices:

“As America’s restaurants continue to be the gathering place for millions of Americans each day, food and entertainment go hand in hand. Music plays a pivotal role in creating a welcoming environment for diners, but the process of music licensing continues to be a challenge for our membership. We are pleased that the U.S. Department of Justice will keep the BMI and ASCAP consent decrees unchanged.

“We are also pleased that the Department of Justice has reaffirmed the concept of 100% or blanket licensing. Our members have been and continue to be sold blanket licenses, allowing them to play and stream any and all music within a performance rights organization’s repertoire. Any change to this long-held practice would have created even more complexity for our members when it comes to music licensing.”

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### **Statement by WineAmerica, The National Association of American Wineries**

“Today the Department of Justice (DoJ) announced that it has concluded its two year consent decree review, and that it will refrain from altering the existing decrees regulating Broadcast Music, Inc. (BMI) and American Society of Composers, Authors and Publishers (ASCAP), as well as other elements of the music industry. The consent decree has regulated BMI and ASCAP since 1941 in response to anti-competitive behavior. **Importantly, the DoJ struck down the Performing Rights Organizations (PROs) requests for “fractionalized licensing.”**

This is an important decision for wineries who purchase a “blanket license” from PROs in order to play music at their venue. A blanket license allows a venue to play a PROs entire repertory. Had the DoJ agreed to fractionalized licensing, a winery would have had to pay every PRO that represents a songwriter for a song with multiple writers: for example, if a song has four writers, each with a different PRO, then all four PRO could claim royalties for that single song.

Wineries already [face difficult choices when offering live music](#) at their venue, often forcing the winery to [cancel their programs](#). WineAmerica believes that fractionalized licensing would have eliminated buyer’s choice in the marketplace, encourage anti-competitive behavior, and ultimately raise the cost of performing music.

WineAmerica will continue to work to bring transparency to the licensing process. We believe that small business should have the tools to make sound business decisions based on their unique needs.

WineAmerica applauds the Department of Justice in its decision, meanwhile we will continue our lobbying efforts to alleviate undue burdens put upon wineries by PROs.”

For more information, contact, Tara Good, Director of Operations at [tgood@wineamerica.org](mailto:tgood@wineamerica.org), 202-223-5175.

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### Digital Media Association (DiMA) Statement

“With today’s announcement behind us, it’s now more important than ever that industry partners unite to focus on the real task at hand. Namely, the creation of new music that fans across the U.S. will love and adore; while continuing to develop a legitimate marketplace for the online distribution of such works that compensates songwriters for their creative endeavors. There’s more to accomplish, along these lines, and it’s imperative that we work together to accomplish this goal. We would like to express our sincerest appreciation and gratitude towards all Justice Department officials for the time, dedication, commitment and professionalism exhibited during the course of this review, and for bringing this matter to a close.”

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### CallInnovates:

[@CALInnovates](#): The problems inherent in allowing ASCAP & BMI to engage in fractional lisc. would be exacerbated by the absence of (reliable ownership db)

[@CALInnovates](#): [@TheJusticeDept](#) "confirmed that the current system has well served music creators and music users for decades and should remain intact."

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### [DISCO: DOJ Decision on Consent Decrees and Fractional Licensing Good News for Competitive Music Marketplace](#)

Today the Department of Justice [announced](#) it would make no changes to the antitrust consent decrees that govern coordinated action by the music performing rights organizations (PROs) known as ASCAP and BMI. In addition, the Department has [concluded](#) that the existing language of the decrees requires “full-work” licensing, and consequently prohibits so-called “[fractional licensing](#).” This means that for songs with multiple songwriters (which are increasingly prevalent in popular recorded music) any individual songwriter or rightsholder can license the song, as long as they distribute royalties to the other rightsholders. In a “fractional licensing” system, PROs would purport to issue blanket licenses only to fractions of songs, thus requiring licensees to license the remaining fractions from other rightsholders. DOJ’s conclusion will maintain important protections in the ASCAP and BMI consent decrees. This news confirms leaks from the end of June, when Billboard had [reported](#) that the Department of Justice was moving toward denying requests to amend the ASCAP and BMI consent decrees.

Until now, the Department of Justice had maintained that the review was still ongoing. The DOJ had been examining the ASCAP and BMI consent decrees for several years, coinciding with a federal appellate court’s [finding of “troubling coordination”](#) in the music publishing sector. DOJ [solicited](#) one round of comments in August 2014 on several competition issues, [followed](#) by a second round of comments in November 2015 specifically on jointly owned works and fractional licensing. CCIA filed comments in response to both of these requests, as did a wide variety of stakeholders.

As DisCo has discussed before [1] [2], the consent decree review process has provided an important opportunity for discussing the need for transparency in the music marketplace and ways to resolve music licensing gridlock.

Today's news is good news for a competitive music marketplace, as the consent decrees are an important mechanism for protecting competition in the music industry. Preserving the consent decrees and explicitly prohibiting fractional licensing will also help alleviate the "[weaponized uncertainty](#)" problem, because it will prevent rightsholders from saying "no" as frequently, and will facilitate more transactions that make more music available on more lawful services.

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**[The Internet Association: Statement in Support of DOJ Decision on Consent Decrees](#)**

Internet Association President and CEO Michael Beckerman issued the following statement in support of the DOJ's decision to close its review of consent decrees:

"The internet industry applauds the DOJ's decision regarding the ASCAP and BMI consent decrees. Competitive dynamics in the music licensing industry are more problematic today than when the consents were first put into place, making the case for the consents stronger than ever before. ASCAP and BMI's market power is at an all time high and should not be left unfettered.

"The legal certainty and the careful guidance provided by DOJ maps out helpful rules of the road regarding access to creative works. This is particularly relevant for music delivered through the internet, which must be afforded fair and equal treatment by all actors in the digital music ecosystem. We are pleased that the DOJ Antitrust Division agrees with our position and we commend its common sense decision."