



September 13, 2016

*Legal Eagles: Annual Music Industry Update*

# NEWSLETTER

An Entertainment Industry Organization

## **The DOJ's Discordant Decision: An Overview of the Ruling and its Repercussions**

by Erin M. Jacobson, Esq.

### **The President's Corner**

As we begin the 2016-2017 season of the California Copyright Conference, we find key aspects of our industry in a period of flux that challenge the fundamentals of many traditional business models and practices. We have assembled a panel that will address many of these issues offering insight and opinion as to the shape of things to come.

I would like to thank our panelists Josh Binder, Kent Klavens, Steve Winogradsky along with moderators Cheryl Hodgson and Michael Morris for leading the conversations and tackling some of the most compelling issues that face our industry going forward. I am excited to begin my presidency with such an esteemed group of professionals starting the season!

Many thanks to outgoing President Diane Snyder-Ramirez for her example set during her 2015-2016 term. I appreciate your support and efforts on behalf of the CCC and of my Presidency. You did an amazing job!

To our guests new and returning, I speak for the entire board in thanking for your continued support. We have many timely panels planned and look forward to having you join us throughout the year!

Please be sure to join us September 29th as we join the A.I.M.P. in presenting the Music Industry Toolbox at the American Federation of Musicians Local 47 (817 Vine Street, Hollywood). Admission is free and provided as a service to all music industry professionals. See you there!

**James R. Leach**  
**President, California Copyright Conference**

Performance rights organizations ("PRO's") are organizations that track and collect performance royalties on behalf of songwriters and music publishers. In the United States, there are four PRO's: ASCAP, BMI, SESAC, and Global Music Rights ("GMR"). ASCAP and BMI are the two largest U.S. PRO's and are also non-profit organizations. Since 1941, ASCAP and BMI have been subject to consent decrees issued by the Department of Justice ("DOJ"). These consent decrees are agreements that allow the government to regulate ASCAP and BMI's license fees and how they operate in order to prevent monopolization and encourage competition. SESAC and GMR are both independent, privately owned companies that operate on a for-profit basis and are not subject to consent decrees.

In 2014, the music community asked for a review of these decrees and requested the removal of digital licensing from the blanket licenses offered by the PRO's, allowing publishers to negotiate directly with and be paid higher rates by companies licensing music for digital uses. This is referred to as "Digital Rights Withdrawal" or "DRW." Digital giants like Google, Pandora, and Sirius/XM, joined by terrestrial radio, lobbied against DRW in order to pay smaller licensing fees to music owners. The DOJ denied the music community's request for DRW and has now mandated that music publishers be either "all-in" or "all-out" with the PRO's, meaning that publishers must allow the PRO's to license all types of performances of their catalogues or none at all.

In its recent ruling, the DOJ also chose to enforce "full-work licensing," also known as "100% licensing." Under the practice of 100% licensing, any person with a percentage of ownership of the work has the right to license 100% of the work, not just the

percentage owned. That licensor is then liable to account to other co-owners of the work for those co-owners' share of compensation. This principle is in line with the provisions of copyright law governing joint works, and the longstanding

language of the consent decrees supports the practice of full-work licensing. Despite the language of the consent decrees, the music industry has never operated on a 100% licensing basis. The principle of allowing one co-owner to license an entire work can be overridden by a contract between the parties, and the music industry has always operated on a “fractional licensing” basis where most owners agree in writing that each owner will administer its own share. Music users obtaining licenses have also historically accepted the practice of fractional licensing, and those users experienced with PRO licenses know that one must get a license from each PRO so that all shares of co-written compositions are covered. PRO’s also collect license fees from music users and pay its members/affiliates on a fractional basis, i.e. the amount collected or paid is proportional to the share of the composition controlled by that PRO.

While the language of the consent decrees and the practice of the industry have long been out-of-sync, the DOJ’s sudden decision to enforce 100% licensing may force an entire industry to change its longstanding way of doing business. The DOJ’s ruling stipulated that if a PRO cannot license 100% of a composition, then that PRO cannot license that composition at all. This means that any compositions written by co-writers belonging to different societies would potentially become unlicensable by the PRO’s.

### **What Problems Does This Create?**

Those that lobbied against reforming the consent decrees failed to realize that their efforts to pay less may also prevent them from using or playing a large percentage of music, or may require them to remove music from rebroadcasts of older programming, because much of the music they wish to use may become unlicensable by the PRO’s. If compositions are unlicensable by the PRO’s, then music users will have to go directly to music owners for performance licenses. While obtaining direct licenses may be feasible for more experienced users, many music users will not know where to find composition owners or how to go about obtaining licenses from them. If compositions become unlicensable by the PROs and licenses are not obtained directly from the music owners, it is possible that many compositions may not be used, or many compositions may be used without permission resulting in copyright infringement.

All of these scenarios may hinder music owners from receiving payments for performance royalties, and without the PRO’s, music owners will be responsible for tracking and policing all uses of their music, which is normally too labor intensive and financially burdensome for most music owners.

Foreign performance societies, writers, and publishers are also affected by the DOJ’s ruling. Via reciprocal agreements, U.S. and foreign PRO’s work together to track and collect royalties for performances in a work’s home country and foreign countries. If certain works become unlicensable by U.S. PRO’s, then foreign societies and owners may have to track U.S. performances of their works in the U.S. Anyone in the U.S. wishing to use a foreign work not licensable by a U.S. PRO will have to get a direct license from the foreign licensor. In addition, U.S. owners issuing direct licenses may have to track and collect on foreign performances outside of the societies. Again, this creates burdens on all societies and owners, as well as opening the door for mass amounts of infringement and owners not receiving payments.

The DOJ proposed a solution of modifying all past agreements between co-writers of different societies to allow administration by one owner or PRO. This would apply to both U.S. and foreign writers and publishers. However, this is an impractical solution because many writers will not want another PRO that is not their chosen PRO collecting on their behalf; many writers do not speak to past co-writers or know where to find them; many writers are deceased, leaving one or more co-writers to deal with heirs that may not understand the principles involved or cannot be found; and many writers will not have the financial resources to have their agreements amended.

From a creative standpoint, many writers feel the DOJ’s decision will restrict them to only writing with co-writers from their chosen PRO. Restricting the freedom of writers to collaborate would be a fatal blow to creativity itself and cause many musicians to relegate music to a hobby rather than a career.

## Where Are We Now?

The DOJ has allowed ASCAP and BMI a period of one year to comply with the new mandated changes, and if they are still non-compliant after one year, the DOJ can sue ASCAP and BMI for non-compliance with its decision. However, the one-year compliance period has not started yet, and will be delayed by the current efforts of BMI and ASCAP to get this decision reversed.

As of this writing, BMI has sued the DOJ and is appealing the ruling through legal proceedings. ASCAP is developing a lobbying strategy to seek much needed Congressional support and achieve changes from the legislative side. Those of us on the forefront of this issue feel it is best to wait until we have a definite outcome before spending time and resources on modifying agreements or making other changes to longstanding industry practices. Some resources to take action and stay up to date include [www.standwithsongwriters.org](http://www.standwithsongwriters.org) and [www.artistrightswatch.com](http://www.artistrightswatch.com).

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*Erin M. Jacobson is a practicing music attorney, experienced deal negotiator, and seasoned advisor of intellectual property rights. She protects clients ranging from Grammy and Emmy Award winners to independent artists, record labels, music publishers, and production companies. For more information or to contact Ms. Jacobson, visit [www.themusicindustrylawyer.com](http://www.themusicindustrylawyer.com). © 2016 - Reprinted with Permission.*

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## How a Court Decision on Remastering Could Completely Change Copyright Law

by Michael S. Poster, Victor K. Sapphire and Joshua Blechner

*Record companies and recording artists should take heed – according to at least one federal judge, sound engineers are performing copyrightable work when they digitally remaster old recordings.*

A Federal District Court in California has determined that remastered versions of pre-1972 recordings are entitled to federal copyright protection separate from the original recording. The Court found that there was enough originality in the remastering process for a remastered digital version of a pre-1972 recording to be copyrightable as a “derivative work.”

The case in question is *ABS Entertainment Inc. v. CBS Corp. et al.*, case number 2:15-cv- 06257, in the U.S. District Court for the Central District of California. CBS, one of the largest radio operators in the country, is one of several companies to be sued in recent years for refusing to pay royalties to the owners of pre-1972 recordings. This has long been a legal gray area because songs recorded prior to 1972 are protected by a patchwork of state laws rather than federal copyright law.

As such, this decision was probably intended to clarify a murky corner of the music copyright landscape. However, the significant implications of this decision generate a host of new questions regarding the future of music copyright law.

## The Curious Case of Pre-1972 Sound Recordings

The Sound Recording Act of 1971 (Pub. L. No. 92-140, 85 Stat. 391) (the “Act”) granted new copyright protection to sound recordings made after February 15, 1972, separate from the underlying compositions which had long received copyright protection (see 17 U.S.C. §§ 101, 102). Following passage of the Act, post-1972 sound recording copyright holders were required to grant a compulsory license for the performance of these recordings (see 17 U.S.C. § 114). However, there were no royalties payable for the use of these recordings in terrestrial radio. Later changes to U.S. copyright law resulted in royalties for compulsory licenses for performances via satellite radio, Internet-based webcasting, and certain other streaming uses.

Pre-1972 sound recordings were not granted federal protection nor were they included in the compulsory license scheme. Instead, these recordings were only protected under non-uniform state laws. In California, for example, these rights are protected by Cal. Civ. Code § 980(a)(2), which protects an exclusive public performance right in the sound recordings. The implication is that radio stations that broadcast pre-1972 songs without permission could be liable for copyright infringement under state law.

In *ABS Entertainment Inc. v. CBS Corp*, CBS Radio was sued by four record companies in relation to 175 songs for violation of California copyrights.

- (1) ABS Entertainment, Inc. (“ABS”), the owner of sound recordings made by Al Green, Willie Mitchell, Ace Cannon, and Otis Clay;
- (2) Barnaby Records, Inc. (“Barnaby”) the owner of sound recordings made by Andy Williams, Johnny Tillotson, The Everly Brothers, Lenny Welch, Ray Stevens, and The Chordettes;
- (3) Brunswick Record Corporation (“Brunswick”), the owner of sound recordings made by Jackie Wilson, The Chi-Lites, The Lost Generation, The Young-Holy Unlimited, and Tyrone Davis; and
- (4) Malaco, Inc. (“Malaco”), the owner of sound recordings made by King Floyd, Mahalia Jackson, and The Cellos.

## A Question of Originality

CBS argued that it was not performing the plaintiffs’ pre-1972 sound recordings, but rather post-1972 remastered digital versions of these recordings. These remastered versions, according to CBS, were separately copyrightable works created after 1972 and were therefore subject to the compulsory licensing system created under the Act (and therefore not subject to state law protections).

The court framed the central questions of the case as “whether a sound engineer’s remastering of a pre-1972 sound recording – through subjectively and artistically altering the work’s timbre, spatial imagery, sound balance, and loudness range, but otherwise leaving the work unedited – is entitled to federal copyright protection.”

To resolve this dispute, the Court relied on bedrock principles of copyright law. “The sine qua non of copyright is originality.” (*Feist Publications, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345, 111 S. Ct. 1282, 1287, 113 L. Ed. 2d 358 (1991)). The degree of creativity need only be “minimal” or “extremely low; even a slight amount will suffice.” *Id.* The requisite originality does not increase when the new copyrightable work is derivative of a pre-existing work (see *Schrock v. Learning Curve Int’l, Inc.*, 586 F.3d 513, 521 (7th Cir. 2009) (holding that “the originality requirement for derivative works is not more demanding than the originality requirement for other works”).

However, “the variation from the original must be sufficient to render the derivative work distinguishable from its prior work in a [] meaningful manner (*Mass. Museum of Contemporary Art Found., Inc. v. Buchel*, 593 F.3d 38, 65 (1st Cir. 2010) (internal quotations omitted)).

To ascertain “whether a derivative work meets copyright law’s fundamental requirement of originality,” the Ninth Circuit requires a showing that: “(1) the original aspects of a derivative work must be more than trivial and (2) the original aspects of a

derivative work must reflect the degree to which it relies on preexisting material and must not in any way affect the scope of any copyright protection in that preexisting material.” (U.S. Auto Parts Network, Inc. v. Parts Geek, LLC, 692 F.3d 1009, 1016 (9th Cir 2012)). “In some cases, the editing of a previously recorded work may in itself involve such originality as to command copyright, as where it involves such acts as equalizing, changing the highs and lows, providing more bass and treble, adding echo, or abridging by making discretionary and not obvious internal cuts.” (Pryor v. Jean, No. CV 13-02867 DDP (AJWx), 2014 WL 5023088 at \*4 (C.D. Cal. Oct. 8, 2014) (quoting 1 Melville B. Nimmer and David Nimmer, Nimmer on Copyright § 2.10[A][2][b])).

The focus of the Court’s analysis of originality was United States Copyright Office’s Circular No. 56, Copyright Registration for Sound Recordings (“Circular 56”), which details derivative works for sound recordings. The pamphlet notes, in part, that “The preexisting recorded sounds must have been rearranged, remixed, or otherwise altered in sequence or character, or there must be some additional new sounds. Further, the new or revised sounds must contain at least a minimum amount of original sound recording authorship,” and “Mechanical changes or processes applied to a sound recording, such as a change in format, declipping, and noise reduction, generally do not represent enough original authorship to be registered.”

### **Significant Alterations**

Plaintiffs focused their argument on the language requiring a minimum amount of original authorship. CBS focused instead on the fact that sound recordings can be altered in character. Based on this phrase, CBS argued that the sound recordings they broadcast were not the original pre-1972 recordings, but were in fact post-1972 remastered recordings that were entitled to post-1972 federal copyright protection. The remastered recording, CBS argued, were altered in character enough to be considered a derivative work.

To bolster their argument, CBS introduced evidence that the recordings played on air were actually not pre-1972 recordings. They introduced expert testimony from a sound engineer that worked on remastering some of the songs as well as a forensic audiologist. The sound engineer explained that each remastering has its own unique take on the original song, including making “significant and noticeable alterations and modifications to the acoustic properties of the recordings.”

The forensic audiologist agreed that remastering does involve a level of creativity that creates new works. He examined 57 works that CBS had saved on their server of the actual recordings they broadcast. He found that each one of them differed from the original sound recordings by “ timbre, spatial imagery, sound balance, and loudness range.” In fact, he found that CBS had at times even played different remastered recordings of the same songs.

The court also knocked Plaintiffs’ expert’s method of examining the recordings “by performing waveform and spectral analysis, as well as critically listening to them – a technique which is unexplained in Mr. Geluso’s declaration but appears to involve listening while also paying attention.” Plaintiffs’ expert seemed to switch methodology mid-testing and could not provide concrete examples during his deposition. The court found that his methodology was not scientific and he could not be considered an adequate expert.

Without the benefit of their expert, plaintiffs were unable to show a genuine issue of material fact so as to block summary judgment. The court also noted that the Plaintiffs’ expert agreed with CBS’s expert that the “remastering process requires subjective choices, involving matters of taste, which alter perceptible aspects of a sound recording.” Plaintiffs even agreed “that a sound engineer’s choices made during the remastering process are creative and subjective.”

The Court decided the case on summary judgment without oral argument, ultimately siding with CBS that the remastering was unique enough to warrant new copyright protection under the post-1972 regime. “For example, for Ace Cannon’s “Tuff,” Dr. Begault found that the CBS version had additional reverberation, was played in a different musical key and at a faster tempo, and differed in the musical performance. Additionally, many of the remastered versions included different channel assignments and adjustments in equalization.”

The court did caution, however, that the ultimate rights do sit with the holder of the copyright in a sound recording. This means the copyright holder has the control when having a work remastered to restrict and maintain the copyright of the remastered version of the song.

## **A New Frontier**

This decision raises many questions, and the music industry will no doubt keep a close eye on this case (should it be appealed), as well as matters in other jurisdictions. For instance, does this mean that copyright holders of sound recordings can extend their copyrights indefinitely by simply remastering the recordings at some point before the works become public domain?

Similarly, does this decision present a defense to accused infringers that the alleged infringement involved a “recording” that was actually a remastered work, and thus there is no standing to sue? Moreover, it raises fundamental questions about whether mastering or remastering engineers can be considered “authors,” raising issues about joint ownership, licensing authority and other concerns.

In addition, the implications of the decision may affect the exercise of termination rights regarding sound recordings (which has not been tested in the courts to date) since the remastering of a sound recording may call into question the date of the copyright (which affects the timing of termination rights) and the scope of the termination.

Cases currently pending could test this unique theory: CBS has filed a summary judgment motion in another case brought by ABS and the three other plaintiffs in the Southern District of New York. The same plaintiffs also have suits pending against iHeartMedia and Cumulus Media.

Some critics are already weighing in that this federal decision offers a playbook for radio companies regarding how to publicly perform older sound recordings without liability. The true impact of this ruling remains to be seen. For example, when is remastering sufficient to constitute creative authorship?

Different courts are likely to approach this question from contrasting perspectives. Finally, record producers and studio engineers now have stronger footing with regard to any efforts to share in SoundExchange income, because they may assert that they are involved in the “performance.”

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*Authors Michael Poster, Victor Sapphire and Joshua Blechner are attorneys with Michelman & Robinson: one of two firms originally launching class action lawsuits against Spotify for failure to pay mechanical licenses. This article originally appeared on Digital Music News ([digitalmusicnews.com](http://digitalmusicnews.com)). © 2016 - Reprinted with Permission.*

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## ***PANELIST BIOS***

### **JOSHUA P. BINDER**

Joshua P. Binder is a partner at the Beverly Hills office of Davis Shapiro Lewit, whose client base includes established and developing artists/bands, production companies, producers, songwriters, and independent record labels and publishers. Josh’s practice focuses on securing, structuring, negotiating and documenting business transactions in the music industry.

Josh represents music clients from diverse genres including urban, rock, country, and electronic. Notably, Josh represents TDE, which includes artists such as Kendrick Lamar, Schoolboy Q, SZA, and Black Hippy. Among his roster are country darling Cam, rising hip-hop artist Russ, DJ’s Marshmello and Jauz, singer-songwriter James Hersey, and the band Milky Chance.

Josh also represents production companies and talent in new media and television. Prior to joining Davis Shapiro, Josh ran his own practice for over 12 years. In addition to practicing law, Josh spends his time wrangling his 4 young children.

## **CHERYL HODGSON**

Cheryl Hodgson offers a unique combination of legal expertise and practical business experience based upon years of experience in the music industry at a manager, agent, and music publisher. Cheryl's expertise in music publishing was tapped by the late Bill Graham, when Cheryl joined the Bill Graham management team where she worked with Eddie Money, Joe Satriani, and the Neville Brothers and oversee the Bill Graham music publishing catalog.

Years in the courtroom provide her clients with strong advocacy for in business transactions, calculated to seal the deal, while minimizing future risks. Cheryl has extensive experience in litigating record and publishing contracts, collection of royalties, as well as trademark and copyright infringement. Cheryl has championed the rights of artists and independent labels and publishers for years. She was the first attorney to rescind a recording agreement, recovering title to the famous Kingsmen's recording of "Louie Louie." She also took on Fonovisa and Univision in a hard fought battle over willful theft of the BANDA ZETA music group name, resulting in a large financial settlement.

Cheryl was one of the first music attorneys to advocate strong brand protection for musical artist names and lyrics. In the late 90's, she won an important legal decision granting protection for the song title "Louie Louie" as a trademark. She presently serves trademark counsel to artists such as The Cure, Gregg Allman, Black Flag and Miguel as well as a number of music libraries and music technology companies in Los Angeles. When it comes to protection for artistic brand names, Cheryl has become the "lawyer's lawyer" to whom other entertainment attorneys turn for advice for their clients.

Cheryl is licensed in California, New York, and Tennessee and has served as Professor of Music Law at Loyola University School of Law. Cheryl has served as President of the California Copyright Conference, a 65 year old music industry group in the Los Angeles area. Her most recent panel on Branded Entertainment in March 2015 featured a panel of experts from Creative Artists, Red Bull Media, and Gap Brands. Cheryl Hodgson is the founder of Hodgson Legal and an entrepreneur in her own right, founding the successful online publication BrandAide.com, focused on providing brand owners with expert insights and advice in brand building. She is the author of the book Brandaide and has been a featured speaker in many professional groups including the California Copyright Conference, eMarketing Association, the ABA Sports & Entertainment Forum, and the Beverly Hills Bar Association. Cheryl is a certified yoga instructor and devoted scuba diver in warm climates.

## **KENT KLAVENS**

Now an attorney in private practice, Kent Klavens was Sr. VP and General Counsel of Paramount's Famous Music for almost 17 years (before it was sold by Viacom to Sony/ATV in 2007). More recently, he was Sr. VP of Business and Legal Affairs for Universal Music Publishing Group for 2-1/2 years. The many agreements he has negotiated and drafted during his career include those with Eminem, Justin Timberlake, Paul Simon, Shakira, Neil Diamond, The Grateful Dead, Glenn Frey, Keith Urban, Boyz II Men, Busta Rhymes and Burt Bacharach. He was also significantly involved with legal issues concerning administration of the film and TV music catalogs of NBC/Universal, Warner Bros. Pictures, Paramount, CBS, MTV and Nickelodeon. Kent is a former board member of the CCC, a former officer and board member of the LA chapter of the Recording Academy and was at one time Chairman of the National Academy of Songwriters (which was merged into the Songwriters Guild of America in the 1990s).

## **MICHAEL R. MORRIS**

Michael R. Morris, Esq., the managing principal at Valensi Rose, PLC, has blended his tax law expertise with a passion for music and entertainment into a unique practice. Experienced in tax, estate planning, music, entertainment and general business law, Mr. Morris' practice has allowed him to develop a broad-based clientele. His entertainment clients include producers, record

labels, composers, music publishers, actors, talent agencies, motion picture companies, post-production houses and Grammy-winning recording artists.

Mr. Morris is a former trial lawyer for the IRS and a certified specialist in taxation law. He has since written for a variety of publications, including Billboard Magazine, Los Angeles Daily Journal, Los Angeles Lawyer and Journal of Multistate Taxation (for which he wrote "Songwriters and Music Publishers Continue to Score Tax Breaks").

Mr. Morris has served as the president of the California Copyright Conference and spoken at a variety of conferences and seminars. He has been named a "Super Lawyer" among Southern California lawyers for 2006 - 2016 by Los Angeles Magazine, and the Los Angeles Business Journal has named him among L.A.'s Top 100 Lawyers. He has received a Martindale-Hubbell Peer Review Rating: AV® Preeminent™ 5.0 out of 5. Mr. Morris is a member of both the Arizona and California bars.

## STEVEN WINOGRADSKY

With over thirty five years experience as an attorney in the music industry, Steven Winogradsky is a partner in Winogradsky/Sobel in Studio City, California, providing global media and music business affairs & legal support for composers, songwriters, music publishers, recording artists and television, film, video and multi-media producers. In addition to an entertainment law practice, the company handles music clearance and licensing in all media for many production companies, worldwide administration of the publishing catalogs for a number of clients and New Media strategies and Revenue Modeling.

He is the author of *"Music Publishing: The Complete Guide"*, Alfred Publishing, 2013. He was also awarded the 2012 Texas Star Award by the Texas State Bar Entertainment and Sports Law section for his contributions to legal education in the State of Texas.

Prior to being in solo practice with The Winogradsky Company from 1992 to 2009, Mr. Winogradsky had served as Director of Music Business Affairs for Hanna-Barbera Productions, Inc., Managing Director of Music, Legal & Business Affairs for MCA Home Entertainment, Director of Music Licensing and Administration for Universal Pictures and Universal Television and Vice President of Business Affairs for The Clearing House, Ltd.

He was twice elected President of the California Copyright Conference, after spending nine years on the Board of Directors, served for four years as President of The Association of Independent Music Publishers. Mr. Winogradsky is an adjunct professor at California State University, Northridge (CSUN) in the Masters degree program in Music Industry Administration and was named as one of the Outstanding Instructors in Entertainment Studies and Performing Arts at UCLA Extension, where has taught since 1997. He has written numerous magazine articles on the subject of music for motion pictures and television and lectured on a variety of music-related topics at various symposia.

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Presented by the AIMP and the CCC

# TOOLBOX

Sept 29 - The AFM 47 - Hollywood

# A Guide to the Department of Justice Ruling on “100% Licensing”

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*from MusicTechPolicy.com  
September 12, 2016*

*By Steve Winogradsky and Chris Castle, all rights reserved.*

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The recent ruling by the U.S. Department of Justice in *United States v. Broadcast Music, Inc.* and *United States v. American Society of Composers, Authors and Publishers* has left many songwriters, publishers, motion picture and television producers and, yes, even lawyers scratching their heads to understand the import of the ruling. Not to mention Texas Governor Greg Abbott who has written to Attorney General Loretta Lynch asking her to reconsider the DOJ ruling.

The authors have summarized the ruling in the chart that follows. The thing speaks for itself.

As you will see, the left hand column lists the various roles of a music creator (starting with “Songwriter”) or music user. The rows describe some of the potential combinations of co-writers who will run afoul of the DOJ’s ruling. The chart is followed by a list of descriptions of what rule will apply to your situation.

If you find yourself in the left hand column, scan across the rows to see if you fit in any of the co-writer positions. Then look for which note applies to you in the list of notes below the chart.

For example, if you are an ASCAP songwriter who has co-written with a BMI songwriter (1st box in column and 6th row across), Note E applies to you.

This chart is based on the authors’ interpretations of the DOJ’s statement and is not dispositive or based on a court ruling as there has been none as of this writing. Obviously, this is not meant as legal advice and you should not rely on it. This is a complex area that has gotten even more complex, and you should consult with your own lawyers.

For further background, listen to the MTP podcast with Steve Winogradsky, David Lowery and Chris Castle and read Steve’s book *Music Publishing—the Complete Guide*. An essential reading on the issue is that evergreen resource for legal research on takings and other government behavior in the digital age, *The Trial*, by Franz Kafka.

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	<b>100% ASCAP or 100% BMI</b> (single writer or all co-writers belong to the same PRO)	<b>100% SESAC and/or GMR</b> (single writer or all co-writers belong to one of these PROs)	<b>100% Foreign PRO/ASCAP Collects in US</b>	<b>100% Foreign PRO/BMI Collects in US</b>	<b>Co-write ASCAP &amp; BMI</b>	<b>Co-write ASCAP or BMI with Other U.S. PRO</b>	<b>Co-write foreign writers, where 1st writer is represented in the U.S. by either ASCAP or BMI and 2nd writer is represented by a different PRO</b>
<b>Songwriter</b>	Note A, below	Note B, below	Note A, below	Note A, below	Note E, below	Note E, below	Note E, below
<b>Publisher</b>	Note A, below	Note B, below	Note A, below	Note A, below	Note F, below	Note F, below	Note F, below
<b>TV Producer</b>	Note C, below	Note B, below.	Note C, below	Note C, below	Note G, below	Note G, below	Note G, below
<b>Film Producer</b>	Note C, below	Note D, below	Note C, below	Note C, below	Note G, below	Note G, below	Note G, below
<b>Webcaster</b>	Note A, below	Note B, below	Note A, below	Note A, below	Note G, below	Note G, below	Note G, below
<b>TV Broadcaster</b>	Note A, below	Note B, below	Note A, below	Note A, below	Note H, below	Note H, below	Note H, below
<b>Radio broadcaster (terrestrial or satellite)</b>	Note A, below	Note B, below	Note A, below	Note A, below	Note I, below	Note I, below	Note I, below
<b>Interactive Streaming (Sub. B&amp;C)</b>	Note A, below	Note B, below	Note A, below	Note A, below	Note J, below	Note J, below	Note J, below

- A. All songs may be licensed under either ASCAP or BMI's blanket licenses
- B. All songs may be licensed under both SESAC and GMR's blanket licenses
- C. Obtain synchronization licenses from each party for their respective shares, as is current custom and practice. All songs may be licensed under either ASCAP or BMI's blanket licenses
- D. Obtain synchronization licenses from each party for their respective shares, as is current custom and practice. All songs may be licensed under both SESAC and GMR's blanket licenses
- E. Songs may not be licensed under a blanket license from ASCAP or BMI unless the co-writers agree to have only 1 PRO administer a particular song, which may require restructuring their co-writer agreement and PROs setting up a structure for paying non-member writers. Depending on their songwriter/publisher agreements, writers could issue direct licenses to users upon request and collect performance royalties directly
- F. Songs may not be licensed under a blanket license unless the co-publishers agree to have only 1 PRO administer a particular song, which may require restructuring their co-publishing agreement and PROs setting up a structure for paying non-member writers & publishers. Publishers could issue direct licenses to users upon request (which might include the writer's share) and collect performance royalties directly
- G. Obtain synchronization licenses from each party, as is current custom and practice. Songs may not be licensed under a blanket license unless the co-publishers agree to have only 1 PRO administer a particular song, which may require restructuring their co-publishing agreement. **TV, film or webcaster producer** could request directly performance licenses and pay parties directly. If no direct licenses are available and songs are not covered under the blanket license, producer may not include songs in their productions.
- H. Songs may not be licensed under a blanket license unless the co-publishers agree to have only 1 PRO administer a particular song, which may require restructuring their co-publishing agreement. **Broadcaster** can either require TV & film producers to obtain direct licenses or broadcaster can obtain them directly from publishers (which would include the writer's share of royalties). If no direct licenses are available and songs are not covered under the blanket license, producer may not include songs in their productions.
- I. Songs may not be licensed under a blanket license unless the co-publishers agree to have only 1 PRO administer a particular song, which may require restructuring their co-publishing agreement. **Broadcaster** can obtain direct licenses from publishers (which would include the writer's share of royalties). If no direct licenses are available and songs are not covered under the blanket license, broadcaster may not include these songs in their broadcasts.
- J. Songs may not be licensed under a blanket license unless the co-publishers agree to have only 1 PRO administer a particular song, which may require restructuring their co-publishing agreement. **Streaming service** can obtain direct licenses from publishers (which would include the writer's share of royalties). If no direct licenses are available and songs are not covered under the blanket license, broadcaster may not include these songs in their streaming service.