

Statement of

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before the

Senate Judiciary Subcommittee on Antitrust, Competition Policy
and Consumer Rights

on

How Much For a Song?: The Antitrust Decrees that Govern the
Market for Music

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My name is Lee Thomas Miller. I am an American songwriter. I grew up on a small tobacco farm in Kentucky. When I was 11, I started playing piano, then guitar, then violin. Music has a way of kind of taking you over. And I knew early on that it wasn't just a hobby.

I went to college and instead of studying something sensible like business, as my mother wished, I studied classical music composition (which basically just meant I was overqualified to play in the bars I worked at night). But, there I was - classically trained and writing honky-tonk songs on the side.

Then I learned about "Broadcast Music, Incorporated". I was always looking for an excuse to visit Nashville so I took a trip to BMI. I met with a "songwriter representative" who explained to me what BMI did. "When your song plays on the radio we collect the money," he said. And I said sign me up. Then I played him my self-made recordings of the songs I had been writing. He was very blunt. "You're not much of a singer and guitar players are a dime a dozen. But I believe you can be a songwriter".

So I graduated college, saved \$1000 and moved to music city.

For years I wrote songs. Hundreds of songs. I played in bands and took temporary jobs to pay the bills. I studied the songs I heard on the radio and began meeting and learning from the songwriters who wrote them. At the time the music business was healthy and music publishers could take chances. A prominent publisher took a chance on me. Then the real work began. My first cuts were not memorable, when BMI sent me my first performance royalty check it was for \$4.69. Today it is framed and hanging on my office wall. That check meant everything. That check meant that I was a professional songwriter.

All in all, it took eleven years after I moved to Nashville to have a hit on the radio.

In 2003, I received my first BMI award, for a song titled "The Impossible". Ironically, this song was about overcoming insurmountable odds through faith and determination and believing anything is actually possible.

To me, earning my first BMI award was like a ball player going from Triple A to the major leagues.

In today's music industry environment songwriters count on their performing rights societies. The one thing keeping us afloat is that performance royalty check. We do not tour. We do not sell t-shirts. We write songs - all day. Every day. And when we succeed we pay self-employment income tax. With what remains we buy gas and bread and white picket fences.

But since the year 2000, the Nashville Songwriters Association International, where I serve as president, estimates that America has lost between 80-90% of its professional songwriters whose primary income is from royalties.

I'm talking about creators. And what we create is not some obsolete, irrelevant, cultural product of days gone by. It's music. What we create is there when you fall in love, it is there when your heart breaks. It heals. It inspires. It time travels. It crosses party lines.

So how does the BMI consent decree impact me? I feel that it puts BMI—and songwriters—at a disadvantage in several important ways:

- For instance, if rate disputes could be resolved by arbitration, rather than expensive litigation, that would feel like a win for everyone. New services could launch, and songwriters could get paid, quickly without spending lots of money on lawsuits.
- Songwriters also worry that BMI is not allowed to license rights other than the performance right. Most new services need *several* rights. A “one-stop” license from BMI would be a quick and efficient way to get those services off the ground.

These aspects of the BMI consent decree, in my view, have devalued the musical composition to the point where the songwriters are being crushed. It is bad enough that it is so easy to steal the music today. But a legal framework that allows songs to be streamed for nearly free *will* destroy the livelihood of the American songwriter if it is allowed to continue.

The US Department of Justice is presently undertaking a comprehensive review of the ASCAP and BMI consent decrees. And we hope that they will recommend substantial changes that will allow us the flexibility we need to operate in the free market.

I am America's smallest small business. I sit down and make stuff up. I can make you laugh. I can make you cry. I can make you do both with one 3 minute story.

That's the power of music, and it all begins with a song. But I am here to tell you there are not many of us left.

Thank you Chairman Lee, Ranking Member Klobuchar and Members of the Subcommittee.