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### BMI wins legal battle with DOJ over music licensing

Nate Rau, USA TODAY NETWORK - Tennessee Published 6:06 p.m. CT Dec. 19, 2017



(Photo: BMI)

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CONNECT TWEET LINKEDIN COMMENT EMAIL MORE Music rights organization BMI scored a critical legal win on Tuesday when a federal appeals court rejected the Department of Justice's argument over how songs are licensed.

The fight between Nashville-based BMI and the government has continued for two years.

Songwriters and publishers argued that the DOJ's decision under the Obama administration to enforce so-called 100 percent licensing rules would have complicated their professions and damaged an industry they say is already over-regulated by the

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copyright may license it without the approval of the other owners of a song. Under the Nashville songwriting model, there are often a handful of owners, because multiple songwriters and music publishing companies work together to create and copyright a song.

The DOJ instituted 100 percent licensing after a review of the consent decrees that govern BMI and ASCAP, its top competitor. BMI and ASCAP are nonprofit organizations that handle licensing for songwriters and publishers.

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The organizations had been hoping the DOJ, under President Barack Obama, would loosen the consent decrees to allow for more favorable licensing rules and, in turn, better royalty rates. To their surprise, the DOJ said 100 percent licensing had always been the actual law under the consent decrees, and announced it would begin enforcing it. That decision prompted the BMI lawsuit.

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BMI won a lower court ruling, and then the DOJ appealed. On Tuesday, the 2nd U.S. Circuit Court of Appeals agreed with lower court Judge Louis Stanton's initial ruling.

BMI President and CEO Mike O'Neill told The Tennessean the ruling was validation that the organization was right to defend songwriters and publishers against the ruling.

"We wish we didn't have to go down this road. We wish the DOJ didn't try to use our consent decree to regulate a whole marketplace," O'Neill said. "We've approached this from day one to modernize our decree and to update outdated laws. I think now we have the platform and the visibility to do just that."

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The DOJ could try another appeal to the U.S. Supreme Court. And the department could still impose 100 percent licensing rules on ASCAP, prompting another legal battle.

Under the common licensing practice, anyone wanting to license a song needed approval of all the parties with an ownership stake. That meant songwriters from different publishers and represented by different performance rights organizations could collaborate without worrying about how it might affect their copyright claims when licensing opportunities arose. Tuesday's ruling was praised by the Nashville Songwriters Association International. Its

president, hit-making songwriter Steve Bogard, expressed hope that the ruling could prompt President Donald Trump's administration to end the consent decrees. Trump has touted his administration's push to cut business regulations in other industries, and songwriters have been begging for an end to the consent decrees. "The Nashville Songwriters Association International (NSAI) is thrilled and relieved that

BMI songwriters no longer have to be concerned about the U.S. Department of Justice's misguided ruling on 100 percent licensing," Bogard said. "The time has come to discuss sunsetting or updating the ASCAP and BMI consent decrees so that songwriters can earn fair performance royalty rates from streaming services." The DOJ did not immediately respond to an email on Tuesday afternoon seeking

Reach Nate Rau at nrau@tennessean.com or 615-259-8094 and on Twitter

@tnnaterau.

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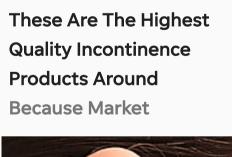
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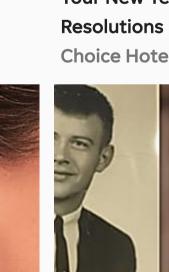
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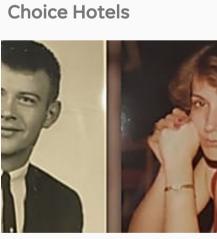






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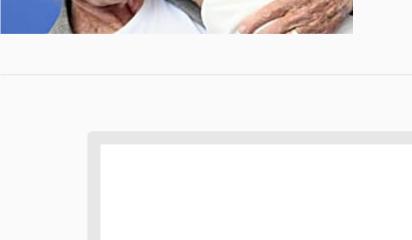
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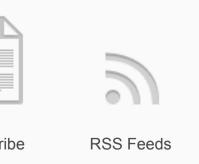
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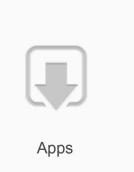
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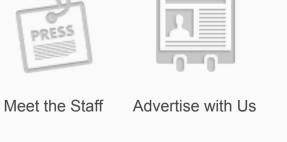








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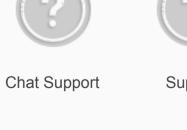
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