

MAY 2021

The issue:

The Department of Justice (DOJ) recently completed a review of the critically important antitrust consent decrees that underpin the music licensing marketplace. The DOJ decided to leave the decrees intact, without modifications. Television and radio broadcasters applaud this action, as modification or termination of the decrees would upset the balance Congress strived to achieve in the 2018 Music Modernization Act (MMA).

Here's why:

Terminating the consent decrees without an effective alternative licensing framework in place would bring chaos to the music marketplace, threatening the availability of music to consumers on every platform and in every venue across the country. This is why Congress included explicit oversight of the DOJ's ongoing review of the decrees in the Music Modernization Act (MMA), enacted into law in 2018, along with clear DOJ reporting requirements regarding any efforts to terminate or modify the decrees. The DOJ recognized that terminating the decrees just as the music industry works to implement the most extensive rewrite of music licensing laws in decades was ill-advised and left the decrees in tact.

The bottom line:

The music licensing marketplace is complex and requires certainty for all parties. Congress has recognized efforts to bring more clarity through the MMA, which is largely premised on the continued existence of the ASCAP and BMI consent decrees. Congress specifically acknowledged the importance of the decrees by including critical oversight of any DOJ review. Although the DOJ review has now ended, in order to avoid harming licensees, songwriters and consumers, and raising serious questions about the ability of the public to continue enjoying music, Congress should continue to support the decrees.