

A Guide to the Department of Justice Ruling on “100% Licensing” By Steve Winogradsky and Chris Castle

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*. And 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.

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