



## Music Giants Slam Pandora Rights Ruling In 2nd Circ.

By Max Stendahl

Law360, New York (March 19, 2015, 1:39 PM ET) -- Universal Music Publishing Inc., Sony/ATV Music Publishing LLC and EMI Music Publishing on Thursday urged the Second Circuit to overturn a ruling barring them from partially withdrawing licensing rights to Internet radio giant Pandora, with an attorney for EMI and Sony calling the decision “absolutist.”

A three-judge panel heard oral arguments in the appeal, which stems from U.S. District Judge Denise Cote’s September 2013 ruling blocking the publishers’ attempt to withdraw digital rights to their catalogs through the American Society of Composers, Authors and Publishers, or ASCAP. Judge Cote later rejected the performance rights group’s bid to charge Pandora higher royalty rates.

Daniel Collins, an attorney for Universal, said Thursday that Judge Cote had infringed on the publishers rights by broadly interpreting a consent decree that governs ASCAP. In particular, he said the district court had wrongly determined that the consent decree required ASCAP to grant Pandora performance rights to the publishers’ works, even though the publishers had refused to grant ASCAP those rights.

“That’s a really startling notion in copyright law,” Collins said. “Our reading is a plausible reading of the agreement and should be accepted.”

Donald Zakarin, an attorney for EMI and Sony, called Judge Cote’s ruling “an absolutist determination.”

“The judge said you can’t restrict rights —if you give them one, you give them all — but it’s nowhere stated” in the agreement, Zakarin told the panel.

ASCAP attorney Jay Cohen sided with the publishers and also urged the appeals court to reverse Judge Cote’s decision setting a 1.85 percent royalty rate for Pandora over a five-year period. That decision, Cohen said, “turns the consent decree on its head.”

The decree stems from a U.S. Department of Justice antitrust lawsuit. Pandora has argued that some larger music publishers' purported withdrawals of the digital rights to their catalogs, which allegedly apply only to Pandora and not other conventional ASCAP clients like terrestrial radio stations or to smaller streaming services, are unfair and not allowed under the DOJ decree.

On Thursday, Jeffrey Bucholtz, an attorney for Pandora, said both rulings by Judge Cote should stand. He noted that the consent decree stated that ASCAP must grant a license to perform all of the works in ASCAP’s repertory.

“There’s no unfair surprise here. There’s no forcing changes to the agreement,” Bucholtz said.

The panel reserved a decision in the case.

Judges Pierre Leval, Chester Straub and Christopher Droney sat on the panel for the Second Circuit.

ASCAP is represented by Jay Cohen, Eric Stone and Darren Johnson of Paul Weiss Rifkind Wharton & Garrison LLP.

Universal is represented by Glenn Pomerantz, Daniel Collins and Melinda Lemoine of Munger Tolles & Olson LLP.

EMI and Sony are represented by Donald Zakarin, Frank Scibilia and Erich Carey of Pryor Cashman LLP.

Pandora is represented by Jeffrey Bucholtz, Ethan Davis, Kenneth Steinthal and Joseph Wetzel of King & Spalding LLP.

The case is Pandora Media Inc. v. The American Society of Composers, Authors and Publishers, et al., case number 14-1158, in the U.S. Court of Appeals for the Second Circuit.

--Additional reporting by Bill Donahue. Editing by Christine Chun.