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Sent: Wednesday, August 7, 2019 12:01 PM
To: ATR-LitIII-Information (ATR) <ATR.LitIII.Information@ATR.USDOJ.gov>
Subject: ASCAP and BMI Comments

I write to urge the Department of Justice to preserve the ASCAP and BMI consent decrees particularly to urge the Department to maintain the movie theater licensing exemption embodied in the ASCAP Decree. This provision benefits consumers and artists and would be subject to immense uncertainty should the decrees be terminated.

Currently, movie theaters secure a single license from a movie's distributor that covers all the various rights embedded within a single feature. We then pay film rental to the distributor to compensate them for the exhibition of the film to the public. The payments for all the creative rights embedded within the films licensed by exhibitors are effectively incorporated into the negotiated film rental rates with each distributor. We are required to play the film without alterations. This arrangement is sensible: we have no choice in what music is included in a movie; we have no choice to negotiate the rights for the music in a movie; and we have no choice to exclude playing the music altogether, as the music is integrated into a movie's audio file, like the dialogue, and, again, our contracts with distributors require us to play the film without alteration. Movie producers, on the other hand, make choices about what music to include in their movies, and can do so in a competitive negotiation before the music has been integrated into the movie's audio file.

The movie theater licensing exemption places the negotiating responsibility for music in movies where it belongs: with the party selecting songs for films. This is a common-sense, procompetitive, and efficient process that works best for songwriters, exhibitors, and audiences. A filmmaker who creates a film with multiple integrated rights should not be able to license the film for exhibition without clearing all associated rights "at the source"—i.e. when a film is being made—including the right of public performance inherent in exhibition. This licensing process ensures that the rightsholders are able to negotiate directly for the true value of their music, rather than being subject only to an opaque royalty process.

Further, the Decrees benefit consumers by helping to keep the moviegoing experience affordable, and ensuring that it retains the variety of programming consumers expect. Movie theaters already struggle to keep ticket prices low in the face of increased regulation and costs of doing business. Unchecked performing rights organization license fees, combined with the licensing fees paid to movie distributors, would come right off the theaters' bottom lines to the detriment of moviegoers, songwriters, and filmmakers. Most of us would have no choice but to pass these increased costs on to consumers through increases in the price of a ticket.

Movie theaters are crucial cultural touchstones in the United States. From large chains to mid-size regional circuits to single-screen theaters, movie theaters are vital to American life. They are gathering places that not only entertain moviegoers, but also provide an important economic and social engine for their communities. Without the protections offered by the Decrees, the competitive marketplace for public performance rights enjoyed by movie theaters would likely evaporate, and the impact of new, unregulated performing rights organizations fees could force movie theaters into downsizing or closure.

Thank you for your consideration. On behalf of B&B Theatres, I strongly ask the Department of Justice to preserve the decrees in their current form.

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Vice President of Finance

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