



August 9, 2019

U.S. Department of Justice
Antitrust Division

Via Email: ATR.MEP.Information@usdoj.gov

Re: Comment on ASCAP and BMI Consent Decree Review

Dear Ladies and Gentlemen:

I write to urge the Department of Justice to preserve the American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music, Inc. (BMI) consent decrees (the "Decrees"), and particularly urge the Department to maintain the movie theater licensing exemption embodied in Sections IV(E) and (G) of the ASCAP Decree. For decades, this provision has benefited consumers and artists, and should not be subject to the ensuing uncertainty that would follow termination of the Decrees.

My company does business as "Flix Brewhouse" and is considered an independent, operating a total of eight theaters in seven states. We employ roughly 1,450 full and part-time associates.

As you know, in order to publicly exhibit a movie, movie theaters secure a single license from a movie's distributor that covers all of the various rights embedded within a single feature, and then compensate the movie's distributor for use. Essentially, 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. Just as producers are responsible for clearing all rights required for theatrical exhibition of a film, exhibitors are responsible for playing the title with no alterations in exchange for a share of the box office. This is the most sensible approach, as theaters have no choice in what music is included in a movie; have no ability to negotiate the rights for the music in a movie; and cannot avoid playing the music altogether, as the music is integrated into a movie's audio file, like the dialogue. Movie producers, on the other hand, necessarily 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.

In fact, since movie producers and their distributors are typically paid a percentage of the box office gross, there's a built-in mechanism for paying royalties to both the composers and performers of music should the parties so negotiate. Or any other free-market negotiated arrangement.

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 rights holders are able to negotiate directly for the true value of their music, rather than being subject only to an opaque royalty process channeled through a third-party.

Right now, as a theater operator, it’s a major 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, filmmakers, and in our case, 1,500 hard-working associates. We’ve already seen a glimpse of what this portends from the actions of SEASAC.

Movie theaters are crucial cultural touchstones in the United States. Our concept is unique in that we incorporate a fully functioning craft microbrewery in every theater location. A Flix Brewhouse theater is a gathering place that not only entertains moviegoers, but also provides an important economic and social engine for the communities we serve. 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 over time force us into downsizing or closure. At a minimum, it would likely stop our growth.

Thank you for your consideration of my concerns.

Very truly yours,
FLIX ENTERTAINMENT LLC



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