



THE FOX THEATRE

August 8, 2019

The Honorable Makan Delrahim
Assistant Attorney General
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

BY EMAIL: ATR.MEP.Information@usdoj.gov

Dear Assistant Attorney General Delrahim,

This public comment is being submitted by the Fox Theatre, Atlanta, to respectfully implore the U.S. Department of Justice Antitrust Division to continue to uphold the BMI and ASCAP consent decrees. The protections provided by these decrees are necessary to continue fair music licensing agreements for all venues in which musical content is performed.

The Fox Theatre is a nonprofit organization and national historic landmark located in midtown Atlanta. About to celebrate its 90th birthday, the Fox Theatre was saved from destruction by its community in the 1970's and is now one of the leading theatres in the world. Hosting an average of 250 public events and 200 private events annually, the Fox Theatre brings in over 600,000 patrons through its doors every year. The Fox Theatre is synonymous with Atlanta and is beloved by theatre-lovers, concert-goers, and preservation supporters alike.

Through the Fox Theatre Institute, the Fox Theatre has given over 1.6 million dollars in grants to historic theatres throughout the state of Georgia and neighboring states. These grants help with everything from preservation assistance to emergency needs to historic structures studies, and support the theatres so they have a significant economic and cultural impact on their communities. As well, the Fox Theatre Institute has a free traveling interactive school exhibit which focuses on how important events in the Fox Theatre's timeline intersect with key classroom lessons, from American history and the Civil Rights Movement, to economics and the importance of communities. Over 28,023 students have been served by this exhibit to date.

Not only would the Fox Theatre be impacted by terminating the consent decrees, but the goals of BMI to enhance what is included in licensing on top of ticket sales would cause significant negative impact for the metro-Atlanta community and communities across the state of Georgia. The judicial oversight provided by the consent decrees are crucial for licensees for settling rate disputes. By requiring all licenses be non-exclusive and all license requests be granted, the consent decrees support venues of all sizes and make sure there are no abuses of power.

In the music industry, the monopolization of ownership of performance rights is controlled by ASCAP and BMI. The current consent decrees have served the music industry and live entertainment venues well and there is no legitimate reason to change or terminate them now. Upholding the consent decrees is essential for the safety of the music marketplace.

Further, you should be aware a letter was issued to the Fox Theatre on August 2nd, 2019 by BMI with a revised License. The terms of the proposed license stake claims to revenue streams generated by the venue as well as third parties, that have no bearing on the music licensing. The letter states that if we continue to object to the interim license and interim fee structure, which is undetermined, and decline to enter into the proposed license agreement, BMI will terminate our license. The proposed terms are overly expansive and the tone is extortive in nature. The alternative, which is to attempt to licenses with publishers directly, is unachievable, given BMI's and ASCAP's monopolistic practices of the past.

We welcome the Department of Justice's involvement in this process.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Allan C. Vella', with a long horizontal flourish extending to the right.

Allan C. Vella
President & CEO