

George C. Landrith
President & CEO



Senator Malcolm Wallop
(1933 - 2011)
Founder

August 6, 2019

The Honorable William P. Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Barr,

The undersigned free market organizations write to raise serious concerns regarding the possible termination, sunset or significant changes to the antitrust consent decrees between the Department of Justice and the two largest music collectives: the American Society of Composers, Authors, and Publishers (ASCAP) and Broadcast Music, Inc. (BMI).

The Department's Antitrust Division is currently reviewing scores of legacy consent decrees for possible termination. Many of these decrees are outdated, governing industries that no longer exist or markets that no longer pose antitrust concerns. In those cases, such needless regulation should be eliminated. The ASCAP and BMI consent decrees, however, remain extremely relevant to a functioning marketplace. Millions of businesses across the country rely on the efficiencies and anticompetitive protections that these decrees provide.

The market for music licenses is inherently anticompetitive, and traditional free market principles do not necessarily translate. Rather than competing against one another to sell their products, the vast majority of songwriters and publishers have chosen instead to band together under the ASCAP and BMI umbrella (representing about ninety-five percent of all music) in order to collectively set a standard price for music. This approach of music sellers colluding instead of competing recently led a Federal court to find that SESAC, the next largest music collective, with less than five percent of all music licenses, does possess market power. This finding resulted in the much smaller SESAC agreeing to an antitrust settlement with terms similar to the ASCAP and BMI consent decrees.

This sort of market power, collusion, and price fixing is antithetical to a traditional free market, yet it remains necessary for the music licensing market to operate efficiently. Most businesses, from restaurants to local radio stations, must license millions of songs to indemnify themselves from ruinous infringement damages. Rather than negotiate with

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thousands of individual rights holders, ASCAP and BMI offer a one-stop shop opportunity. Similarly, thousands of rights holders rely upon the scale of ASCAP and BMI to maximize the enforcement of their copyrights.

These benefits, however necessary to market efficiency, should not excuse ASCAP and BMI from the nation's antitrust laws.

Given the anticompetitive nature of the music licensing market as a whole, ending the ASCAP and BMI consent decrees would assuredly necessitate some other form of government regulation over the market. Disrupting entire industries, potentially harming millions of individual businesses in the process, only to trade one form of regulation for another, is not in line with conservative, free market principles.

Sincerely,

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