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Georgia Theatre Company (GTC) is a fourth-generation, family-owned business specializing in movie theater exhibition. The company, headquartered on St. Simons Island, Georgia, operates 263 screens at 25 locations in Georgia, Florida, South Carolina and Virginia.

GTC writes this comment letter to the Department of Justice supporting the preservation of the American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music, Inc. (BMI) consent decrees (the "Decrees"), and particularly to 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.

GTC has been in the business of showing movies for almost 100 years. The original company started with silent movies and has seen the industry grow into the digital age we are in today. The way music is used in the theatre and the way music is licensed has changed dramatically since GTC's beginnings, but neither have changed materially since the Decrees were put in place almost 70 years ago. Exhibitors are in the business of showing movies and trailers in theatres. Those movies and trailers contain copyrighted audio files that need to be cleared before they can be played in theatres. When a movie or trailer arrives at the theatre, usually via satellite, the audio files are embedded in the same file as the movie or trailer. As part of the agreement between the exhibitor and the producer or distributor of the movie, we agree not to alter the content of the movie. It would be illogical for exhibitors to negotiate for a product that has already been negotiated once, and that we cannot alter. We would have the choice to pay whatever exorbitant rate the performance rights organizations (PRO) charge or not play the film. This is as anticompetitive of a situation as you will find. Each PRO has a monopoly over the market for its repertory so we would be held hostage by any PRO with a song in its repertory that a film producer chooses to use.

Under the Decrees, movie producers are responsible for clearing all rights required for theatrical exhibition of a film. This is referred to as source licensing. In turn, exhibitors are responsible for playing the film on the big screen without altering the content in any way. Before the consent decrees, movie producers paid for the synchronization rights to the music played in films, but the PROs withheld the public performance rights to the same music. Rightfully so, the court found in *Alden – Rochelle, Inc. v. Am. Soc. Of Composers* and then the DOJ codified in the Decrees that the PROs cannot withhold the public performance rights at the time the synchronization rights are granted and then require exhibitors to turn around and license the public performance rights. This would leave the exhibitors in a less than competitive situation to say the least. Thus, licensing at the source became the normal course of business and continues to be today. Source licensing makes the most sense because the movie producer is in the prime position to determine what musical works should be played at exactly the right times in their movies. They are in a position to negotiate with the license holder on terms that are most beneficial for both parties, as free markets should work. If a producer wants a hit song in the penultimate scene of his or her movie, then he or she can pay more to get the song that they want. If

a producer wants to take a chance on an up and coming artist, then he or she may not have to pay as much to have that song in their movie.

If the consent decrees are vacated, PROs will likely engage in similar activity that led to the consent decrees and require movie theatres to obtain blanket licenses. Online streaming companies have no choice but to obtain licenses from PRO's. If the consent decrees are vacated there would be no rate courts so PRO's could charge any rate they want. There is some relevant case law in this area, but the case law does not nearly provide the same protections as the Decrees. Absent the Decrees, it would take costly litigation and time to recreate the legal protections afforded to movie theatre operators and put in place a system to determine what cost structure is appropriate and legal.

In closing, the Decrees should remain in place in some form or fashion so that the movie theatre exemption is preserved. If an audio work is licensed at the source, the proper free market negotiations can take place. A more popular artist negotiating a more popular song played at a more important time in the movie should get paid more for his/her rights than a lesser known artist with a song playing at a less important time in the movie. Those negotiations have been had before the movie is in the possession of the exhibitor. At the time a movie first reaches the exhibitor, the original work of art, the movie, is already complete. There are no competitive forces driving the negotiation between the PRO and the exhibitor at that point in time. If PROs were allowed to extract payment for a blanket license from exhibitors after producers have paid for synchronization rights of the same audio files that would be akin to double taxation. Exhibitors would be forced to raise prices, which would be bad for the consumer, or close theatres in smaller markers because they would no longer be financially viable. For these reasons, the consent decrees still serve an important competitive function.

Respectfully submitted,

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