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From: Jeri Benson <j.b [redacted]
Sent: Thursday, August 8, 2019 8:44 PM
To: ATR-LitIII-Information (ATR) <ATR.LitIII.Information@ATR.USDOJ.gov>
Subject: My comments on the ASCAP and BMI consent decrees

Department of Justice:

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 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 it should not be subject to the ensuing uncertainty that would follow termination of the Decrees.

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 they 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; they have no ability to negotiate the rights for the music in a movie; and they 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 they 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, pro-competitive, 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.

Further, the Decrees benefit consumers by helping to keep the movie-going 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.

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 of my concerns.

Jerilyn Benson, Partner
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