

From: Bill Stephan <[REDACTED]>
Sent: Friday, August 9, 2019 3:08 PM
To: ATR-LitIII-Information (ATR) <ATR.LitIII.Information@ATR.USDOJ.gov>
Subject: ASCAP and BMI Consent Decrees Continue to Serve Small Business Owners

Dear Assistant Attorney General Makan Delrahim,

COMMENTS OF Bill Stephan, Lied Center for Performing Arts, Executive Director
Submitted in Response to the U.S. Department of Justice Antitrust Division's
June 5, 2019, Solicitation of Public Comments Regarding the Pro-Competitive Benefits
of the ASCAP and BMI Consent Decrees

I respectfully submit these comments as a Performing Arts Center owner from Lincoln, Nebraska, that licenses music to support artists and make the customer experience enjoyable. I write today to urge the Department of Justice to preserve and protect the pro-consumer consent decrees governing the American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music, Inc. (BMI).

Together, ASCAP and BMI control nearly ninety percent of the music licensing business, and these decrees serve the public interest by providing essential protections from anti-competitive behaviors. The consent decrees, in particular, prohibit ASCAP and BMI from discriminating against similarly-situated music users; ensure reasonable royalty rates; and require that every business—no matter how large or small—can get a license upon request.

While far from perfect, ASCAP and BMI provide an efficient way for Executive Director to play music while ensuring we compensate the songwriters and copyright holders who create it. Their blanket licenses, made possible by the decrees, underpin the music licensing system. Terminating or sunseting the decrees would lead to chaos for the entire marketplace, jeopardizing the licensing system as we know it.

This disruption would lead to chaos for small businesses across the country. ASCAP and BMI are very aggressive in charging fees to non-profit arts organizations without regard to the needs of arts organizations to be financially sustainable. They required my previous venue to submit reports on every event (1,000 events) about if any music was played at the event. For a small arts organization, this request was unreasonable and financially a major burden. For some arts organizations, it could play a major role in their financial ruin. Without the decrees in place, the harassment from ASCAP and BMI will only get worse. A local winery in Nebraska does not hold performing arts events because of ASCAP and BMI telling them they had to pay major fees. (Central City, Nebraska) In order to keep paying artists, it is vital that these decrees are not eliminated or sunset.

Many businesses that regularly play and license music already face ongoing challenges when working with ASCAP and BMI. The outcome of terminating the consent decrees would further exacerbate these burdens.

As it stands today, business owners lack access to essential, reliable information about what each performance rights license entails and, as a result, cannot make an informed decision when seeking to license music from any one of the ever-increasing number of music licensing collectives. Determining which music licenses I need to play music is nearly impossible. Given this long-standing lack of transparency and ASCAP and BMI's reliance on heavy-handed tactics and take-it-or-leave-it demands,

many businesses have dropped music altogether. Without the consent decrees, many more businesses would discontinue music, resulting in fewer places across our communities for musicians to perform and decreased songwriter compensation.

In considering the future of the ASCAP and BMI consent decrees, I would like the Justice Department to know that the consent decrees are important because they regulate organizations that could have a major negative impact on small businesses and arts presenting organizations. The fees charged by ASCAP and BMI must be regulated and continue to be fair. Arts organizations and non-profits really need the consent decrees to remain to make sure that donations and sponsorships do not end up being part of ASCAP/BMI compensation. Non profits are not profit generating organizations. They survive on sponsorship and donations. Many non-profits have already taken a hit with the new federal tax law leading to lower donations. Non Profit organizations increase the quality of life in Nebraska. Please protect arts organizations and small business in Nebraska..

Just as the Department of Justice concluded less than three years ago and after a two-year review, the ASCAP and BMI consent decrees continue to be relevant and necessary today and in the future. We ask the Department of Justice to protect our ability to play music, host new and upcoming artists, and ensure these pro-consumer decrees are protected.