

From: Anita Wiglesworth <[REDACTED]>

Sent: Friday, August 9, 2019 5:09 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 Anita Wiglesworth, Luther Burbank Center for the Arts, Director of Programs & Patron Services

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 I work for a non-profit performing arts venue owner from Santa Rosa, California, 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 Director of Programs & Patron Services 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 end my business. Without the decrees in place, the harassment from ASCAP and BMI will only get worse. 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. It is impossible to tailor my licenses based on the needs of my business. I should be able to license with only one licensing organization rather than all of them. 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 We strongly disagree with the U.S. Department of Justice ending the Antitrust Consent Decrees which have regulated the Performing Rights Organizations BMI and ASCAP since 1941.

Ending this decree would severely adversely impact the Luther Burbank Center for the Arts as well as all other non profit, educational, community, state and national performance venues, as well as restaurants, hotels, breweries, wineries, and bar ACROSS THE ENTIRE NATION in the following manner:

- It would allow BMI and ASCAP to increase fees, without any judicial or DOJ oversight, to every performance venue, thereby raising tickets prices for consumers; and
- It would endow BMI and ASCAP with the ability to unfairly control the performing artists that venues may hire.

Ending this decree will create significant uncertainty in how arts and concert venues and promoters would license performance rights for events going forward..

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.