



**Comments from Marcus Theatres to
Department of Justice Antitrust Division (“DOJ”)
With Respect to ASCAP and BMI Consent Decrees**

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I write on behalf of Marcus Theatres (“Marcus”), a movie theatre circuit headquartered in Milwaukee, Wisconsin. For the reasons set forth below, Marcus strongly believes that the DOJ should preserve consent decrees (the “Decrees”) established with two performing rights organizations (each, a “PRO”): the American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music, Inc. (BMI). Marcus’s primary concern is the movie theatre 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.

Currently, licensing in the movie exhibition business is straightforward: In order to publicly exhibit a movie, movie exhibitors secure a single license from a movie’s distributor. In this paradigm, movie producers are responsible for clearing all rights required for theatrical exhibition of a film. This includes paying for all necessary licenses for creative rights, particularly music selected for films. All of these rights are then embedded in the movie, and the license obtained by the exhibitor includes all such rights. Exhibitors pay for this synchronized license through its film rental cost, which is generally based on a percentage of box office receipts.

This is the most sensible approach, as theatres have no choice in what music is included in a movie; have no ability to negotiate the rights for the music in a movie; and 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 can do so in a competitive negotiation before the music has been integrated into the movie’s audio file.

The movie theatre 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, procompetitive, 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 rightsholders 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 moviegoing experience affordable. Movie exhibitors already struggle to keep ticket prices low in the face of increased regulation and costs of doing business. Unchecked PRO license fees, combined with the licensing fees paid to movie distributors, would force exhibitors to increase ticket prices to the detriment of moviegoers and, ultimately, filmmakers and songwriters. Increased costs would, in turn, have a deleterious effect on the market as a whole, and would ultimately make it difficult for the market to support the variety of programming consumers expect.

Movie theatres are crucial cultural touchstones in the United States. They are gathering places that have a positive economic and social impact on their communities. They are worth protecting and the Decrees still play an important role in that as outlined above.

We sincerely appreciate your consideration of this critically important issue to our business. We would be happy to discuss this further and/or answer any questions that you have. Thank you.



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