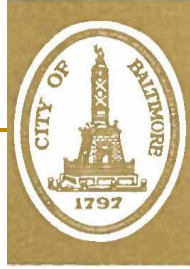

CITY OF BALTIMORE

Bernard C. "Jack" Young, Mayor



DEPARTMENT OF LAW

101 City Hall
Baltimore, MD 21202

August 9, 2019

VIA EMAIL TO ATR.MEP.INFORMATION@USDOJ.GOV

Makan Delrahim
Assistant Attorney General
Antitrust Division
United States Department of Justice
950 Pennsylvania Avenue, Suite 8700
Washington, DC 20530

RE: Review of ASCAP and BMI Consent Decrees

Dear Mr. Delrahim,

On behalf of the Mayor and City Council of Baltimore, thank you for the opportunity to submit comments in response to the United States Department of Justice's ("DOJ") request for public comment regarding the operation and effectiveness of the American Society of Composers, Authors and Publishers ("ASCAP") and Broadcast Music Inc.'s ("BMI") Consent Decrees.

Baltimore City was founded July 30, 1729 and is home to over 600,000 residents. The City's Department of Recreation & Parks hosts a diverse array of events and festivals for its citizens throughout the year, including farmers' markets, AFRAM (one of the largest African American festivals on the East Coast), roller skating at the Shake and Bake Family Fun Center, recreational leagues, camps, races, and events at pools, parks, and nature centers across the City.

The City sometimes uses copyrighted music at its events. The music may be played pursuant to an individual license with an artist or under the City's license agreements with ASCAP and BMI.

The DOJ's potential termination of the Consent Decrees would be contrary to the public interest and further disadvantage local governments such as Baltimore. The Consent Decrees play an important role in enabling effective and efficient music licensing. Individual artists cannot adequately police their public performance rights across the country, so performing rights organizations ("PROs") such as ASCAP and BMI serve as a mechanism by which royalties can be paid to artists. Independent and smaller performers or studios can take advantage of the same licensing structure as larger studios or artists with greater commercial power.

Reinterpretation of the Consent Decrees by the DOJ on August 4, 2016 requiring ASCAP and BMI to provide full-work licensing instead of fractional licensing is an example of how the

DOJ's oversight benefits the public. For the City, these full-work licenses allow the use of songs in ASCAP or BMI's catalog without contacting each copyright owner. This is particularly beneficial when there is more than one author or performer.

The DOJ also required ASCAP and BMI to publish their full music portfolios online and update the list weekly, making it easier for the City to check whether a work is in the repertoire of songs it has a license to play publicly. If the Consent Decrees are terminated, ASCAP and BMI would no longer be required to publish these catalogs. Not only would this lead to reduced transparency, the City would encounter enormous hardship as it would have to find other means of verifying copyright ownership on a real-time basis. This would likely result in less music being used at public events. This is because local governments, unlike private restaurants, bars, fitness clubs, or online streaming services, cannot pass the cost of paying for music licenses on to their customers through higher fees. For local governments, the customers are the citizens and the governments must use taxpayer dollars to purchase the licenses. Predictable and uniform government fees are essential.

Further, under the Consent Decrees, ASCAP and BMI must offer the same rates to all governments based upon their population size. Without the oversight of the DOJ, ASCAP and BMI would be free to charge variable rates without justification. Not only would rates likely rise, governments like the City would find it hard to budget for unknown future costs. This could also lead to less music being used at public events.

It is undeniable that the Consent Decrees provide protection to local governments. However, there is always room for improvement. Specifically, the Consent Decrees should be amended to protect municipalities from the predatory practices Baltimore has experienced at the hands of PROs. ASCAP and BMI can take advantage of local governments by claiming entitlement to fees regardless of usage.

In 2014, the City restructured its event hosting. Between 2014 and 2016, the City received multiple phone calls, emails, invoices, and letters from ASCAP and BMI demanding payment. The letters notified the City of being in default of its license agreements, claiming past due balances, and setting deadlines for payment, even though the PROs were not certain whether the City was using licensed music. In 2016, the City began receiving emails and letters from the Society of European Stage Authors and Composers ("SESAC") requesting payment. One letter from an agent of SESAC advised the City that "copyright infringement is a strict liability cause of action" and the City "has no immunity for infringements."

Most recently, the City has received numerous phone calls and emails from Global Music Rights, LLC ("GMR") demanding the City sign a licensing agreement, pay GMR license fees, and warning the City that if it plays music without permission it is in violation of United States Copyright laws.

While the City explained that its Department of Recreations & Parks states it plays music that it licensed from ASCAP and BMI, GMR does not accept that explanation. This is why amending the Consent Decrees to better protect local governments from aggressive sales tactics by PROs would allow the government to spend more time and money serving its citizens. PROs including ASCAP and BMI should not be permitted to demand payments from governments without any basis for their claims. The amendment could also provide a template for the type of information required to be presented by PROs before additional payments are considered.

Thank you for considering amending the Consent Decrees to strengthen protections for governments. Certainly, these Consent Decrees protect the public interest in allowing artists to receive just compensation for the use of their work while at the same time providing a level playing field for all governments based on population size. This insures music can be available at public events at reasonable and predictable prices.

Sincerely,

A handwritten signature in blue ink that reads "Andre M. Davis". The signature is written in a cursive, flowing style.

Andre M. Davis
City Solicitor
City of Baltimore Department of Law