

From: Brittany Gibson <britt[REDACTED]>
Sent: Thursday, July 25, 2019 10:46 AM
To: ATR-LitIII-Information (ATR) <ATR.LitIII.Information@ATR.USDOJ.gov>
Subject: Maintain Consent Decrees Governing ASCAP and BMI

To whom it may concern:

The ASCAP and BMI Consent Decrees have far-reaching implications. If these decrees are canceled, small businesses everywhere will be impacted, including dozens of wineries on Seneca Lake. These wineries utilize live music as a way to attract visitors for events, evening social hours, and wine tasting experiences. These visitors enjoy the music but also purchase wine, food, and merchandise – generating revenue for the winery, as well as sales tax for the county and state. To summarize:

1. The ASCAP and BMI Consent Decrees Have Fueled Tremendous Growth in Songwriting Revenues, While Simultaneously Providing Important Guardrails that Benefit Licensees and Consumers.

- Under the decrees, ASCAP and BMI repeatedly report receiving record high annual revenues and a substantial portion of those royalties are divided equally between songwriters and music publishers.
- From the perspective of licensees, the consent decrees serve as a powerful tool to detect and remedy anticompetitive behavior. A recent example is the 2016 fine levied by the Justice Department against ASCAP for engaging in competition distorting conduct.
- Finally, thanks to the decrees, consumers have access to more music than ever before and from a greater number of outlets.

2. Embodied in the Consent Decrees are a Series of Fundamental Principles that Help Promote Competition.

- At the heart of the ASCAP and BMI consent decrees are four essential principles. Namely, obligations that:
 - prohibit either PRO from discriminating against similarly-situated licensees;
 - require ASCAP and BMI to provide a license to any potential licensee that applies for one, even if the parties cannot agree on rate prior to the license grant;
 - forbid exclusive licensing on the part of either PRO as a means of guaranteeing alternatives to the blanket license; and
 - provide licensees with access to a forum to establish *reasonable* licensee fees in the event that ASCAP or BMI cannot agree with a licensee.
- These principles are responsible, in large part, for the success of the consent decrees and should be preserved without modification.

- Indeed, if policymakers are interested in making any changes to the existing regime, the framework should be altered in such a way as to guarantee greater transparency and in a manner that would apply with equal force to all collectives that license the right to publicly perform musical works. (Question: do we also want to tackle full-work licensing?)
- The recent allegations of anticompetitive behavior levied against SESAC demonstrate how collectives that license even the smallest share of musical work catalogues can still engage in troubling conduct that arguably violates federal antitrust law.

3. The Justice Department Should Allow Congress to Act, Prior to Taking Steps to Sunset or Terminate Either Decree.

- On multiple occasions, Members of Congress in both the House and Senate have expressed concern with a rush to judgment on this topic. Most notably, in the recent passage of Section 105 of the Music Modernization Act. Also, in the bicameral and bipartisan series of letters that were sent to the Justice Department.
- The stern words of caution likely stem from a deep understanding of the complexities involved in developing a suitable framework for the licensing of musical works that would be embraced by all interested parties. The recently enacted MMA took more than a decade to pass from start to finish.
- Undoubtedly, policymakers are also acutely aware of the negative impact that termination of the consent decrees would have on the millions of local businesses, located across the nation, that routinely rely on the consent decrees to license music at a fair and reasonable price.

Thank you for your time and consideration.

Sincerely,

Brittany Gibson

Executive Director

2 N. Franklin Street, Suite 320, Watkins Glen, NY 14891

607-535-8080 | www.senecalakewine.com

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