

From: Kelly Guay <Kelly.Guay.217971 [REDACTED]>
Sent: Friday, August 9, 2019 5:19 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 Kelly Guay, Sunset Point Winery, Owner
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 am the business owner of a small winery in central Wisconsin and the area has a ton of wonderful musicians and we love having them play for us. Our customers enjoy it and it adds to the relaxed environment we strive for. It also helps us pay our bills, on Saturday when we have music we double our income over a night we don't have music. We don't bring in much a week - if we can hit \$6000 we are happy, for our business that is break even. That being said we don't charge a cover, our capacity is less than 50 people and we have to pay the entertainer, ASCAP, SESAC and BMI just to make sure we don't get into trouble. I find this very frustrating and I understand that artists need to get paid for their music, but let's keep it easy for the small businesses to navigate. I'm not bringing in thousands of dollars on a music night. I make on average an extra \$900.00. Please take this information into consideration as you make your decisions for legislation. owner from Stevens Point, Wisconsin, 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 Owner 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 make my business a place that is less appealing to my customers and therefore impacting my bottom line. Yes, as well as SESAC, at the end of the day we negotiated to the smallest amount I could pay and still have live music. I eventually just decided to pay all 3 because it was easier. Overall ASCAP was the most persistent and complicated to deal with by the time BMI came around we just decided it wasn't worth the argument. 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 I want to keep having live music for a few hours on a Saturday evening, allowing my customers to have a good time and support my local musicians..

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.