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Sent: Friday, August 9, 2019 5:00 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 Christi Dortch, Tennessee Performing Arts Center, EVP of Programming & Sales
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 a not-for-profit performing arts center owner from Nashville, Tennessee, 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 EVP of Programming & Sales 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 it impossible to pay for the music played for our patrons' enjoyment. All of the PROs, BMI has certainly been the most difficult to deal with. Their employees call, email, issue threats in attempt to get payment for things they are often already paid for and/or not entitled to. They have proven with great frequency their inability to maintain accurate records of payments from establishments and have been known to harass us and the client for the same show after one of us has paid. Without the decrees in place, the harassment from ASCAP and BMI will only get worse. We have investigated un-licensed music or SESAC-only artists to play in our venues. The clients using our spaces can not afford the fees charged by ASCAP & BMI. As a not-for-profit we have to account for those costs as an "expense". This expense has prevented some artists from having a public show in a space their audiences can afford a ticket. 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. Determining which music licenses I need to play music is nearly impossible. 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 are looking into specific PRO relationships of show/artists with a plan to find music they do not control to play in our spaces. Though as a not-for-profit we offer spaces for artists & performing arts groups to play at reasonable rates, these new extortion-level fees (even on free events where no revenue is received) will lead to fewer artists being heard and ultimately earning less money..

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.