



Friday, August 09, 2019

The Honorable Makan Delrahim
Assistant Attorney General
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Assistant Attorney General Delrahim:

Wolf Trap Foundation for the Performing Arts (“Wolf Trap”) submits this public comment to respectfully urge the U.S. Department of Justice Antitrust Division (“DOJ”) to continue to uphold the ASCAP and BMI consent decrees. These decrees provide necessary protections against anticompetitive behavior and continue to play an integral role in facilitating fair and equitable music licensing for music performance in the United States.

Wolf Trap is a non-profit organization dedicated to presenting and creating excellent and innovative performing arts programs for the enrichment, education and enjoyment of diverse audiences and participants. We present numerous musical, opera, theater, dance, puppetry and storytelling performances across our venues in each year that are attended by over 350,000 members of our community. Wolf Trap reaches 100,000+ children, families, care-givers and teachers nationwide through its acclaimed arts education programs. In addition, its opera company is a premier residency program for young singers from across the U.S. Additionally; Wolf Trap’s Young at Arts program is an accessibility initiative that invites families and caregivers to introduce children to the joy of the performing arts by providing free youth tickets to select events across select programming.

Terminating the consent decrees would disrupt the music marketplace and jeopardize Wolf Trap’s ability to license music for its performances for the community. Not only are the dictated rates four times the current rate with no opportunity to negotiate, but it is unreasonable to expect a percentage on ancillary revenue that does not involve live or recorded music. The proposed increases will in turn effect what culture and public services provided to the community both by Wolf Trap and other non-profit arts organization nationally.

The consent decrees promote competition and mitigate market abuses by requiring all licenses be non-exclusive and all license requests be granted. Further, by stipulating for judicial oversight, the consent decrees provide a necessary check on ASCAP and BMI by providing an avenue to settle rate disputes for all licensees outside of private arbitration. In an industry already heavily skewed in favor of ASCAP and BMI, the limitations imposed by the consent decrees ensure smaller venues can still afford to provide patrons with performed musical content.



Market conditions have not changed to warrant termination, or alteration, of the consent decrees. BMI and ASCAP continue to monopolize the ownership of performance rights in the music industry. Because the consent decrees continue to serve the music industry and the general public at large we urge the DOJ to follow its precedent in upholding the consent decrees. As the DOJ stated just three years ago, "the current system has well served music creators and music users for decades and should remain intact."

Thank you for your consideration of Wolf Trap's comments on the consent decrees.

Sincerely,

Sara Beesley
Vice President, Program & Production
Wolf Trap Foundation for the Performing Arts

cc: Mark Warner, U.S. Senator of Virginia
Tim Kaine, U.S. Senator of Virginia
Gerald Connolly, Virginia Congressman
Jennifer Wexton, Virginia Congresswoman