

August 17, 2015

The Honorable Loretta E. Lynch  
Attorney General of the United States  
Deputy Assistant Attorney General Renata Hesse  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Dear Attorney General Lynch and Ms. Hesse:

As the association members of the MIC (Music.Innovation.Consumers) Coalition, the undersigned write you with concerns about the fair and efficient licensing of public performance rights for musical works, particularly in light of SESAC's recent acquisition of the Harry Fox Agency. Every day, many of the undersigned provide music in our stores, restaurants and taverns, over the nation's airwaves and through the Internet for the enjoyment of consumers. Our members and our organizations strongly support the legal use of musical works and, as such, obtain licenses from each of the three major Performing Rights Organizations (PROs) – ASCAP, BMI, and SESAC.

We appreciate the Department's long-standing attention to the potential harm and observed anti-competitive behavior associated with the PROs, and the necessary safeguards for the broad array of broadcasters, digital music services and various retail establishments that license musical compositions as they serve the consuming public at large. Recent antitrust litigation brought by the television and radio broadcast music licensing committees against SESAC exemplify these anticompetitive behaviors and the imperfect remedies available to music licensees as private litigants. This experience, along with SESAC's acquisition and aggregation of additional licensing rights,<sup>1</sup> calls for increased scrutiny of whether SESAC should be subject to the same type of antitrust oversight as ASCAP and BMI.

Our organizations firmly believe that the existing consent decrees governing ASCAP and BMI are as relevant and necessary today as they were when they were first entered into. The consent decrees promote fair music licensing while protecting music users, venues where music is played, and various music platforms, from the market power and potential anti-competitive behavior<sup>2</sup> that is inherent to the PROs and their large music publisher affiliates.

The consent decrees also enable efficient licensing and payment to songwriters and publishers for the performances of their musical works, with the intent of ensuring balanced and non-

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<sup>1</sup> Press Release, SESAC, SESAC to Acquire the Harry Fox Agency (July 7, 2015), *available at* [http://www.sesac.com/News/News\\_Details.aspx?id=2253](http://www.sesac.com/News/News_Details.aspx?id=2253).

<sup>2</sup> Nevertheless, recent federal rate-setting proceedings have resulted in a finding of "troubling coordination" between large music publishers and their PRO. *In re Pandora Media, Inc.*, 6 F. Supp. 3d 317, 357 (S.D.N.Y. 2014).

discriminatory rates and terms. Without the protections of the consent decrees, licensees would be subject to individual negotiations with potentially hundreds of thousands of licensors, almost all of which possess significant market power over non-substitutable musical works. This would harm all stakeholders involved, including not only consumers, but also the individual songwriters who benefit from the efficient and competitive marketplace that the consent decrees ensure.

For the same reasons we support a rigorous assessment of whether SESAC should be governed by a parallel consent decree, we also urge you to reject calls to weaken the ASCAP and BMI consent decrees as part of your ongoing review. Rather, the Department should maintain and strengthen the important safeguards provided by the consent decrees, particularly in times of unprecedented consolidation in the publishing industry, to further promote a stable and transparent marketplace for musical works.

Thank you for your attention to this matter.

Sincerely:

American Beverage Licensees

American Hotel and Lodging Association

Computer and Communications Industry Association

Consumer Electronics Association

Digital Media Association

Educational Media Foundation

National Association of Broadcasters

National Council of Chain Restaurants

National Restaurant Association

National Retail Federation