

LINDSEY O. GRAHAM, SOUTH CAROLINA, CHAIRMAN

CHARLES E. GRASSLEY, IOWA
JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TED CRUZ, TEXAS
BEN SASSE, NEBRASKA
JOSHUA D. HAWLEY, MISSOURI
THOM TILLIS, NORTH CAROLINA
JONI ERNST, IOWA
MIKE CRAPO, IDAHO
JOHN KENNEDY, LOUISIANA
MARSHA BLACKBURN, TENNESSEE

DIANNE FEINSTEIN, CALIFORNIA
PATRICK J. LEAHY, VERMONT
RICHARD J. DURBIN, ILLINOIS
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE HIRONO, HAWAII
CORY A. BOOKER, NEW JERSEY
KAMALA D. HARRIS, CALIFORNIA

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

February 12, 2019

The Honorable Makan Delrahim
Assistant Attorney General, Antitrust Division
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Assistant Attorney General Delrahim,

I'm writing to inquire about the status of the Division's Judgment Termination Program, particularly with respect to the Department's consent decrees with the two largest Performing Rights Organizations, the American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music, Inc (BMI). These two organizations license the vast majority of music composition performance rights to millions of businesses across the country, including thousands of stores, restaurants, bars, and radio stations in South Carolina.

The purpose of my letter is not to pre-judge the outcome of your review, but rather to express my concern that moving to terminate or even sunset the ASCAP & BMI consent decrees, without first working with my committee and the Congress as a whole to establish an alternative licensing framework, could severely disrupt the entire music licensing marketplace.

Over the past 75 years, the American music landscape has developed around the ASCAP & BMI consent decrees. Licensees and songwriters have depended upon the efficiencies that ASCAP & BMI offer on such a large scale. The antitrust protections of the decrees have allowed businesses to innovate and expand music offerings, which has generated greater revenue for songwriters. As a result, the American consumer currently enjoys the world's most vibrant music market. While there can be disagreements over the ideal form of oversight, the reality is that the current market is functioning rather well.

Last year, Congress passed the Music Modernization Act (MMA) - the most comprehensive music licensing legislation in more than a decade. That legislation included a number of reforms to improve the music landscape as a whole, spanning many different types of rights. Without an alternative licensing framework first in place, any significant changes to the ASCAP & BMI consent decrees could threaten to undo the very reforms enacted into law just months ago. In fact, it was this concern that led the

Senate to amend the MMA to require the Department to consult with Congress before sunseting or terminating these two consent decrees specifically.

I do not contend that the current ASCAP & BMI consent decrees are the perfect solution for the marketplace, and I would welcome your suggestions for a legislative framework that provides the needed efficiencies of collective licensing, and at the same time protects consumers from anticompetitive abuses in this marketplace. I invite you or your designee to participate in a Committee staff level discussion among the licensor and licensee communities regarding what framework might replace the existing consent decrees.

Thank you for your attention to this issue, and I look forward to your update on the status of your review.

Sincerely,



Lindsey O. Graham
Chairman
Senate Judiciary Chairman