

March 6, 2019

Assistant Attorney General Makan Delrahim
Department of Justice Antitrust Division
950 Pennsylvania Ave. NW
Washington, DC 20530-0001

Dear Assistant Attorney General Delrahim,

The organization I represent, the League of American Orchestras, is the not-for-profit service organization for the field of symphony orchestras. Founded in 1942 and chartered by Congress in 1962, the League has a diverse membership of orchestras across North America and it links a national network of thousands of instrumentalists, conductors, managers and administrators, board members, volunteers, and business partners.

There are more than 1,600 nonprofit orchestras in all 50 states, serving virtually every community, most with annual budgets of under \$300,000. As members of the 501(c)(3) charitable sector, orchestras depend upon private philanthropy and civic support to fuel programs that serve community needs.

We have been following with great interest your public comments related to the Department of Justice review of the ASCAP and BMI consent decrees. Orchestras are usually responsible for the payment of the public performance license fees associated with the compositions embodied in the works they perform. For decades, they have relied on the protections provided by the ASCAP and BMI consent decrees (particularly the license-upon-request and reasonable fee/rate oversight provisions thereof) in securing licenses from ASCAP and BMI.

At a December 12, 2018 antitrust enforcement oversight hearing conducted by the House Judiciary Subcommittee on Regulatory Reform, Commercial, and Antitrust Law, Committee members from both sides of the aisle called on the Department to ensure that any changes to the consent decrees would not detrimentally disrupt activity in the music sector. During the hearing, you stated that you have begun meeting with “every interested party” related to the consent decrees, and that you had not yet formed any conclusions related to the ASCAP and BMI consent decrees, which remain under review.

The outcome of that review and related actions by the Department will have a significant impact on nonprofit orchestras throughout the country that pay royalties to ASCAP and BMI. As organizations that encompass both content creators and music presenters, we urge you to ensure that a complete public engagement process is undertaken to inform an outcome that will balance fair compensation with ongoing protection from anticompetitive activity. We would welcome an opportunity to meet with you to discuss why it is so important that the protections of the existing consent decrees (including the two provisions noted above) be maintained, whether via the continuation of the consent decrees or legislative reform.

America is brimming with extraordinary musicians, live concerts, and orchestras as unique as the communities they serve. Orchestral music making is flourishing in our country, encouraging creativity and bringing people together to share the experience of live music. As the Department takes next steps related to the review of ASCAP and BMI consent decrees, we ask that you ensure that the perspective of nonprofit orchestras is taken into consideration.

I stand ready to be of assistance and can be reached at jrosen@americanorchestras.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jesse Rosen', with a stylized flourish at the end.

Jesse Rosen
President & CEO