This comment is being submitted on behalf of Downtown Music Publishing (DMP) and in response to the Department of Justice's (DOJ) request for comments on the Consent Decrees regulating the licensing of music performance rights by ASCAP and BMI. Our hope is that the DOJ will revise the Decrees, taking into account current market conditions and the revolutionary advance in technology since the Decrees were last amended.

DMP is a full service music publishing company with headquarters in New York City and with offices in Los Angeles, Nashville, London and the Netherlands. Founded in 2007, we have striven to create a business that excels at both the traditional tasks of a music publisher and the technological aspects necessary to compete in today's ever changing business climate. Given the decline in the economy which coincided with our commercial launch and the seismic shifts in consumer patterns and business models due to technological changes, it has been both a challenging and extremely interesting time to build a publishing business. That said, it is not for the faint of heart and our passion for music and representing writers has been a key element to our success and our desire to grow our business.

We are direct members of ASCAP, BMI and SESAC and a significant portion of our domestic revenue is derived from the PROs' collective licensing activities on our behalf. We believe that a collective licensing process, with modifications, continues to be the best path forward for both the publishing business and our licensees.

Although we have made substantial investments in technology for a company our size, we do not think that a dismantling of a successful collective bargaining process is a productive step forward for the industry. Instead, individual publishers should have the freedom continue to use the PROs for all or some licensing, depending on each publisher's needs. If free to do so, some publishers may choose to withdraw some rights in order to engage in

direct, bilateral licensing. Absent choice, some publishers will feel compelled to opt out completely, to the detriment of all publishers as well as music users.

As it is, the threat of complete withdrawal by individual major publishers, coupled with the lack of flexibility under the current scheme, will severely damage independent publishers as: (a) licensees will prioritize new deals with majors, further delaying the already laborious licensing process; (b) the PROs' bargaining position will be further eroded, forcing them to continue to accept what we believe to be below-market rates (absent offsetting protections in modified Consent Decrees); (c) the independents will remain subject to the slow moving and expensive rate court process.

For these reasons, we believe that collective bargaining and the Consent Decrees continue to be the most effective path forward for the publishing business and its licensees. However, the changes in the industry and the challenges of the last several years shed light on some obvious modifications that should be implemented.

As it currently stands, Publishers must either completely opt in or opt out of collective licensing. Our licensees are not required by the Consent Decrees to enter into collective licenses and have on occasion chosen to enter into direct licenses. Whether major publishers can or will opt out, there is currently only one logical choice for independent publishers: collective licensing. While not the goal of the Consent Decrees, the lack of independent choice is a clear and direct unintended consequence of the Decrees and is contrary to general principles of fairness and antitrust law. The Consent Decrees should be modified so that any publisher may opt out of the collective licensing scheme for individual licenses or for certain sets of rights (e.g., digital licenses). This would place the independents on an even playing field with its major competitors and its licensees by

allowing any publisher to withdraw and directly negotiate limited rights where economically and technologically feasible.

The most recent set of decisions from the rate court also illustrates the need for a clearer, more expedient rate court process. Regardless of what their capital structures may be, most independent publishers are, by any measure, small stand-alone businesses. The writers we represent are most often individuals whose livelihood is dependent on timely and accurate payment of their royalties. As our licensees have become dominant internet platforms, frequently as a result of the exploitation of our intellectual property, the music publishing industry has struggled with slow growth and spotty reporting and digital tracking from our licensees and their agents. A process needs to be implemented that puts our respective industries on more even footing so that; (a) negotiations are conducted on an arms length basis; and (b) disputes can be resolved quickly. Binding arbitration procedures should be put in place so that publishers are not waiting for years to determine fair license fees and to allow them to better manage and forecast the cash flow associated with these fees. Without such a process, our larger competitors will opt out and certainly negotiate true market-based fees, advances and more expedient accounting and payment terms. Conversely, independent publishers would likely continue to rely on the PROs for these services and be saddled with older, non-competitive agreements and years of waiting for rate court decisions. They will also be required to bear the costs of this process without sharing that burden with larger competitors, further impacting the bottom line and payments to writers.

As it currently stands, we believe that our licensees are not properly incentivized to move quickly or to bargain in good faith. As new services are established and existing services grow, they can avail themselves of the benefits of collective licensing, without the litigation risk associated with copyright infringement and limited downside in pricing.

Furthermore, the current process has encouraged certain services to base their business model on otherwise unsustainable economics. Adopting the suggested changes to the Decrees should help to rectify the imbalance.

Finally, it is our understanding that the Department of Justice generally favors the establishment of sunset provisions in decrees of this nature. Given that music has been at the heart of much of the technological change surrounding the distribution and monetization of intellectual property, we believe a sunset clause is a crucial element of a revised decree. If we have learned anything over the last decade, it is that business models and license terms are changing at an ever-increasing speed and our industry needs the flexibility to change - a flexibility not afforded by the current licensing scheme.

Respectfully submitted by,

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