

Before the
U.S. DEPARTMENT OF JUSTICE
Washington, DC 20001

In the Matter of)
)
American Society of Composers,) Antitrust Consent Decree Review
Authors and Publishers/Broadcast)
Music, Inc.)

COMMENTS OF THE CONSUMER ELECTRONICS ASSOCIATION

The Consumer Electronics Association (“CEA”)¹ comments specifically from the perspective of its responsibility as the owner, manager, and host of the International Consumer Electronics Show® (“CES”), the world’s largest to-the-trade event, as well as the sponsor of other events that are open to members, the trade, or the public. From a more general policy perspective with respect to the questions asked, CEA endorses the comments of the Digital Media Association (“DiMA”) as submitted to the U.S. Copyright Office on May 23, 2014.²

CES is a 4-day annual event that showcases more than 3,200 exhibitors, including manufacturers, developers and suppliers of consumer technology hardware, content, technology delivery systems and more; a conference program with more than 300 sessions; and more than

¹ CEA is the principal U.S. trade association of the consumer electronics and information technologies industries. CEA’s more than 2,000 member companies lead the consumer electronics industry in the development, manufacturing and distribution of audio, video, mobile electronics, communications, information technology, multimedia, and accessory products, as well as related services, that are sold through consumer channels. Ranging from giant multi-national corporations to specialty niche companies, CEA members cumulatively generate more than \$208 billion in annual factory sales and employ tens of thousands of people in the United States.

² See Digital Media Association at 26 – 33, http://copyright.gov/docs/musiclicensingstudy/comments/Docket2014_3/ (“DiMA CO Comments”).

152,000 attendees from more than 150 countries.³ CEA also sponsors a number of other events and forums, some open to industry or press groups and some open to the public.⁴ For some venues and occasions, where music is presented as a performance, CEA has agreed with one or more Performing Rights Organizations on a reasonable license. More generally, segments of music may be heard incidentally as portions of audiovisual works or otherwise incident to a product or service demonstration. In such incidental circumstances, CEA is not providing a venue for public performance. In both circumstances CEA has an interest in the Consent Decrees being maintained, and believes they continue to serve an important competitive purpose.

The Consent Decrees remain vital for associations that provide performance venues.

Where an association such as CEA does provide a venue for public performance, the business focus usually is on the event, the attendees, and the purposes for which they are brought together. CEA staff and its volunteer industry leaders cannot spend their time picking and choosing for artistic purposes, nor, as the provider of a venue, can they delegate any venue licensing obligation to artists, no matter how responsible or worthy. In this circumstance the “blanket license” made possible by the Consent Decrees is at least as important, and perhaps more important, than it is for venues that are primarily directed toward artistic achievement, where it is their core business to select artists and music on a performance by performance basis.

The Consent Decrees remain vital for trade shows. The incidental use of music in trade shows, primarily as synchronized in audiovisual works, should not require any performing rights license. CEA as a venue sponsor, however, has been approached by, and explained its position to, Performing Rights Organizations. In the absence of the Consent Decree CEA would

³ See <http://www.cesweb.org/about-us>.

⁴ CEA events are listed on a published calendar. See <http://ce.org/Events-and-Awards/CEA-Event-Calendar.aspx>.

be subject to requests for discussions by any number of music publishers. Yet CEA cannot possibly track, before or after the fact, whether any of these publishers will have any of their music encountered. Moreover, CEA would potentially be subject to differing legal interpretations and suits, based on essentially similar facts. As in the case where an association does provide a performing venue, such disparate controversies and potentially conflicting results by courts would be an intolerable distraction from the main purpose and function of the association. Under such circumstances the association's only recourse would be to hamper performing artists (where a performing venue is provided), and trade show exhibitors, in ways that unnecessarily limit their respective creativity.

CEA opposes partial or full withdrawals. CEA would strongly oppose modification to allow ASCAP or BMI to make partial or limited grants of license, or for members to withdraw on a venue-selective basis. To the extent CEA provides a venue that requires a license, CEA staff could not possibly deal with music publishers on an *a la carte* basis. CEA understands that courts, for similar reasons, have not permitted the partial withdrawal of catalogs from licensing by ASCAP or BMI.⁵ Nor should full withdrawal be permitted. It is simply not feasible for a venue to instruct artists to limit their performances on the basis of current negotiations among publishers and service providers that are directed to relative service rate issues that are of no interest to either the artist or the venue.

Associations and trade shows could risk vicarious liability. The concerns described above are multiplied in the context of association and trade show endeavors because the variety of differing claimants might seek to hold the association or show sponsor responsible vicariously for actions and decisions taken by members or lessees of space who effectively provide their

⁵ See DiMA CO Comments at 15 – 16 and nn. 34 & 35.

own venue within the context of an association-sponsored event or show. This would add to the reluctance of associations and sponsors to allow or include music in circumstances where it otherwise may be commercially valuable for all concerned, including artists.

Respectfully submitted,

Consumer Electronics Association

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