



August 14, 2020

The Honorable Makan Delrahim  
Assistant Attorney General, Antitrust Division  
U.S. Department of Justice  
950 Pennsylvania Ave, NW  
Washington, DC 20530

Dear Assistant Attorney General Delrahim,

This correspondence follows the July 22, 2020 submission of the Digital Media Association (“DiMA”) in advance of workshops hosted by the Department of Justice’s Antitrust Division on July 28 and 29, 2020, concerning “Competition in the Licensing of Public Performance Rights in the Music Industry.” That submission concluded by noting that DiMA had requested an opportunity to participate in the workshops, which the Division denied.

As events unfolded, the discussion at the workshops focused in large measure, if not predominantly, on issues related to digital music streaming services such as DiMA’s members—Spotify, Apple, Amazon, Pandora/SiriusXM, and Google/YouTube. Virtually every panel included substantial conversation about the technological capabilities of these services, the economics of their businesses, the extent of their ability to enter “direct deals” with music publishers and other rights-owners, the relationship of such deals to various alternatives to the “blanket” licenses offered by ASCAP and BMI, the services’ predicted responses to and ability to withstand a decision by the Division to seek to terminate the ASCAP and BMI consent decrees, speculation about the effects of such a decision on consumer welfare, or other topics that specifically concerned DiMA’s members and few if any other streaming services of similar scale. Neither DiMA nor its members were able to share their perspectives on these issues.

DiMA members’ digital music streaming services provide music to nearly 100 million American consumers. Given the extent to which the American public enjoys the use of these services, DiMA respectfully seeks an opportunity to respond on the record to these discussions. As you are aware, Congress provided in the Music Modernization Act that “[b]efore filing with the appropriate district court of the United States a motion to terminate a consent decree between the United States and a performing rights society,” the Department of Justice must submit to Congress a written report detailing among other things “the impact of the proposed termination on the market for licensing the public performance of musical works would the motion be granted.” *See* Orin G. Hatch-Bob Goodlatte Music Modernization Act, Pub. L. No. 115-264, 132 Stat. 3676 (2018) § 105(c). DiMA does not, of course, presume to know whether the Division is contemplating such a motion, along with the antecedent report it would require. But we do wish to note that in any such report, it would be inappropriate and not in the public interest for the

Division to rely on discussion or information gathered through the July 2020 workshops, without affording DiMA and its members a reasonable opportunity to supply the Division with responsive information and perspectives in a comparable public forum.<sup>1</sup>

DiMA welcomes the prospect of a robust public debate about the important issues raised in the recent workshops, and once again requests the chance to formally participate.

Sincerely,



Garrett Levin  
President & CEO, DiMA

CC:

Chairman Lindsey Graham, Senate Judiciary Committee

Ranking Member Dianne Feinstein, Senate Judiciary Committee

Chairman Mike Lee, Senate Judiciary Antitrust Subcommittee

Ranking Member Amy Klobuchar, Senate Judiciary Antitrust Subcommittee

Chairman Jerrold Nadler, House Judiciary Committee

Ranking Member Jim Jordan, House Judiciary Committee

Chairman David Cicilline, House Judiciary Antitrust Subcommittee

Ranking Member Jim Sensenbrenner, House Judiciary Antitrust Subcommittee

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<sup>1</sup> DiMA reiterates the views articulated in its August 2019 submission that a fulsome study of the requisite issues would require a substantially different process than any that has transpired to date. *See* ASCAP/BMI Consent Decree Review, Joint Public Comments of Radio Music License Committee and Digital Media Association (Aug. 9, 2019) at 22-23.