



August 5, 2014

Chief, Litigation III Section
Antitrust Division
U.S. Department of Justice
450 5th Street NW, Suite 4000
Washington, DC 20001

RE: Review of ASCAP and BMI Consent Decrees

The American Society of Association Executives (“ASAE”) respectfully submits these comments in response to the Final Judgments in *United States v. ASCAP*, 41 Civ. 1395 (S.D.N.Y.), and *United States v. BMI*, 64 Civ. 3787 (S.D.N.Y.) (“Consent Decrees”).

ASAE is a section 501(c)(6) individual membership organization representing more than 21,000 association executives and industry partners from nearly 10,000 tax-exempt organizations. Our members manage leading trade associations, individual membership societies, and voluntary organizations in every state as well as in 50 countries around the globe.

The U.S. Department of Justice, Antitrust Division, seeks comments on the state of current antitrust decrees. ASAE appreciates the Department of Justice’s proactive endeavor to consider comments from the industries and individuals likely to be affected by revisions to the consent decrees. On behalf of the association community ASAE’s comments will address the following issues:

A. Simplified licensing agreements for trade show operators and exhibitors

Taking advantage of the possibility for revisions to the current licensing agreement system, ASAE advocates for a simplified process that would benefit both license owners and music users. The current system of arranging separate, blanket agreements with each licensing organization is an expensive and burdensome process, particularly in cases when a licensee is uncertain what music may be played at their event. It would be a great improvement if the Department of Justice could facilitate an all-encompassing singular licensing agreement that spared all parties the need for gratuitous procedures and redundant agreements.

B. Clarification on the issue of vicarious liability

One of the association industry’s greatest concerns is the lack of rigid guidelines to determine “vicarious liability” in various situations, particularly in conference or exposition settings. Event organizers are eager to comply with the necessary fees and procedures, but the current state of liability designations is ambiguous and inhibitive. For fear of potential liability, conference and exposition organizers might err on the side of caution and simply

forgo the use of music at their events. This negatively impacts both the conferences and the license holders of music rights now unused. This outcome contradicts the sole purpose of establishing a system in which individuals and organizations can legitimately use and pay for licensed music.

C. Means of settling rate disputes

Regarding the recent rulings made by the U.S. District Court of the Southern District of New York, ASAE recommends that the Department of Justice, Antitrust Division, should establish a neutral, fair and economically feasible mechanism for resolving licensing fee disputes. The current process which requires that disputes be settled only in the US District Court in New York discourages challenges and favors the licensing organizations. A better solution would be to allow a federal court to appoint a rate expert to hear and decide challenges in the licensee's geographic region.

Thank you for consideration of these comments. ASAE appreciates the Department of Justice's review of consent decrees and hopes the comments provided are beneficial to the review process. If there are any questions about these comments or if ASAE could be of further assistance as the Department of Justice moves forward with this proposed revision, please contact Jim Clarke, ASAE's senior vice president of public policy, at [REDACTED] or [publicpoli\[REDACTED\]](mailto:publicpoli[REDACTED])