

**Congress of the United States**  
**Washington, DC 20515**

June 8, 2018

**VIA ELECTRONIC TRANSMISSION**

The Honorable Makan Delrahim  
Assistant Attorney General, Antitrust Division  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Assistant Attorney General Delrahim,

We write to express our concerns about reports regarding the Antitrust Division's Judgment Termination Program. Specifically, we are concerned about its impact on the consent decrees governing the two largest performing rights organizations – ASCAP and BMI – which collectively license over 90 percent of musical works to licensees that publicly perform music, including restaurants, retail stores, bars, radio and TV broadcasters, and digital music services.

The ASCAP and BMI decrees have been in place since the 1940s and reflect antitrust concerns arising from an entity collectively licensing works from competitors and offering them at a single price. While there are differing opinions on the substance of the ASCAP and BMI decrees, it is obvious that the marketplace for licensing public performance rights in musical works has been shaped for decades by these decrees. Terminating them without a clear alternative framework in place would result in serious disruption in the marketplace, harming creators, copyright owners, licensees, and consumers.

Moreover, destabilization of the music marketplace would undermine our efforts on the Music Modernization Act which passed the House by a vote of 415 - 0. As you are aware, the Senate is currently working on this legislation to improve how music is licensed and how songwriters, recording artists, record producers, engineers and copyright owners are paid. The Music Modernization Act enjoys widespread support from stakeholders in the music marketplace, and was unanimously passed by the House of Representatives.

We ask that the Justice Department not move to terminate the ASCAP and BMI decrees without first having worked with Congress to establish an alternative framework to govern the marketplace for musical works public performance rights in the absence of these decrees. Enacting the Music Modernization Act only to see the Antitrust Division move forward with termination of the decrees without such a framework could displace the legislation's improvements to the marketplace with new questions and uncertainties for songwriters, copyright owners, licensees and consumers.

Will you commit to work with us and other Members of the House and the Senate, to minimize market disruption and maximize benefits to songwriters, copyright owners, music licensees and consumers, before you move on action with respect to the ASCAP and BMI consent decrees?

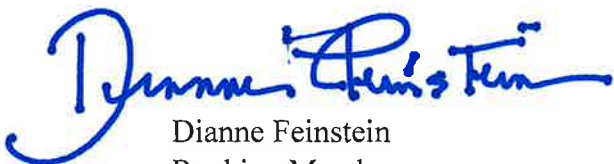
Thank you for your attention to this important issue. We look forward to receiving your reply by June 15, 2018.



Chuck Grassley  
Chairman  
Senate Judiciary Committee



Bob Goodlatte  
Chairman  
House Judiciary Committee



Dianne Feinstein  
Ranking Member  
Senate Judiciary Committee



Jerrold Nadler  
Ranking Member  
House Judiciary Committee

# United States Senate

WASHINGTON, DC 20510

June 7, 2018

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

Dear Assistant Attorney General Delrahim:

As members of the Senate Subcommittee on Antitrust, Competition Policy and Consumer Rights, we write in response to the Antitrust Division's recently announced initiative to terminate outdated antitrust judgments.<sup>1</sup> We understand the need to periodically review antitrust judgments that do not automatically sunset to ensure that they continue to serve the goals for which they were initially implemented. At the same time, we are concerned that some judgments, which still protect competition or play a role in the functioning of certain markets, may be prematurely terminated or weakened with potentially harmful consequences to consumers, industry, and competition.

While we appreciate the benefits of having a uniform process to review and terminate obsolete consent decrees, we also recognize that the scope and industry context of each consent decree is unique. Some "legacy" consent decrees have defined the rights, obligations, and expectations of market participants for decades, protecting competition, providing certainty, and allowing for the efficient conduct of business. Whatever their deficiencies, weakening or terminating such judgments after only a 30-day public comment period could result in unnecessary harm to market participants and consumers.

Two prominent examples of industry-shaping "legacy" judgments are the Broadcast Music, Inc. (BMI) and American Society of Composers, Authors and Publishers (ASCAP) consent decrees, which have governed the licensing of public performance rights since the 1940s. We understand that the Division is reviewing these decrees under the "legacy" judgment initiative. We have heard concerns from within the music industry regarding weakening or termination the BMI and ASCAP consent decrees without an alternative regime in place, which could introduce uncertainty into public performance licensing, increase the risk of litigation for licensors and licensees, disrupt compensation to songwriters, and reduce the availability of musical works for the public.

As the music industry has developed in reliance on these consent decrees and music licensing legislation before Congress assumes the continued existence of the framework established under

---

<sup>1</sup> Dept. of Justice Press Release, *Department of Justice Announces Initiative to Terminate "Legacy" Antitrust Judgments* (Apr. 25, 2018), at <https://www.justice.gov/opa/pr/department-justice-announces-initiative-terminate-legacy-antitrust-judgments>.

consent decrees, we urge the Division to allow consumers, industry representatives, and members of Congress to negotiate and develop an alternative solution – without the threat of litigation or the market disruption that would result from altering the current regime – before the Division takes any action to weaken or terminate these judgments.

As the Division works to assess its backlog of potentially outdated antitrust judgments, we urge you to remain mindful of the disruptive and harmful effects that terminating or weakening certain “legacy” judgments may have on markets and consumers. When considering your approach to the judgments that still have a pervasive influence on current markets, we respectfully request that the Division take appropriate action to allow relevant parties to negotiate an alternative regime before taking unilateral action by terminating or weakening these judgments. We stand ready to work with you to address these issues.

Thank you for your attention to this matter.

Sincerely,



Amy Klobuchar  
United States Senator



Patrick Leahy  
United States Senator



Richard Blumenthal  
United States Senator



Cory A. Booker  
United States Senator