Lake Cumberland Winery, Inc.
122 Cedar Lane Farm
Monticello, Ky 42633
606.348.5253
www.lakecumberlandwinery.com

November 20, 2015

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

Dear Chief

I appreciate the opportunity to contribute to the Comments on PRO Licensing of Jointly Owned Works.

I operate a small farm winery in southern Kentucky. We produce less than 1,000 cases of wine each year. We do sell wine from other small farm wineries in the area for the benefit of visitors. In 2013 I procured a license from ASCAP so that I could host some live music events at the winery. I had 5 outdoor concerts with the largest crowd being 60 people for one event. The other events averaged 25 to 30 with most attendees being friends and families of the musicians. At the end of the one-year license I determined that I could not afford to pay the licensing fee (by then I had learned that there were two more POSs in the wings i.e. BMI and SESAC) and the musicians. My one-year relationship with ASCAP has now drug on to three years although I have been "dark" for two years.

I understand the focus of your research is on the "Jointly Owned Works" and not the plethora of other issues that relate to ASCAP, BMI and SESAC so I will focus on what I perceive as the continuing overreach of ASCAP and BMI informed by my personal experience:

1. I contacted ASCAP on behalf of my Winery because I wanted to be in compliance with the law and because I do believe that people who create should be compensated for their effort. I did not contact BMI or SESAC.

   I was not given a reference to a database or list of music in their repertoire but was simply told that all live performances had to have a license or the venue would be subject to thousands of dollars in fines.

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I signed an agreement but was not sent a copy signed by them of the "General License Agreement-Restaurants, Bars, Nightclubs, and Similar Establishments" until two years after I had tendered the fee.

I terminated the license agreement after one year because I could no longer afford the cost of licenses and pay musicians too. SESAC had contacted me and between ASCAP, $500 annually and SESAC, $600 annually- I would have to rent the Ryman Auditorium to break even.

In the process of termination (which continues to this day) I learned that the intimidation that ASCAP employs with a licensees is that, unless you buy the General License you may be subject to thousands of dollars in fines so you better not play or perform ANY music since you don't really know what is in or out of their repertoire.

2. There was never any discussion with ASCAP representatives on what music they owned or the fact that there might be music that was owned by them but not available to the licensee. I was to naïve to inquire.

   There needs to be a database that all PROs must contribute to that lists all music, which they consider to be in their repertoire whether singly or jointly owned. In addition the database should include the relevant information regarding the creators copyright status and their membership(s) in the PROs.

   It would be relevant and helpful to include in the database for purposes of transparency, which composers are connected with which PRO. The legal status of each PRO, officers, directors, financials and who is receiving the royalties. I have spoken with a number of musicians that belong to ASCAP and when asked if they have received any royalties for their music they indicate that they have not.

3 When I signed the license agreement with ASCAP I assumed that would cover my needs and guarantee copyright holders a piece of the action. I was soon disabused of that assumption when I learned (from another winery) that there was another organization called BMI that expected a subsidy and then there was SESAC which starts it's brochure by informing you that your fines will be $750 to $150,000 if you play anything in their repertoire.

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My letter from SESAC came coincidently soon after I was in a heated disagreement with ASCAP's Nashville office over renewing the license agreement. I believe that ASCAP "sicced" SESAC on me to intimidate me into renewing their license agreement. There are no coincidences in Nashville's music industry.

I am not currently paying anyone for a license although ASCAP continues to bill me for over $1,000 plus interest (this is for two years of alleged license fees even though I sent them a termination letter under the terms of the agreement in June of 2014). The hills in my Kentucky are not alive with the sound of music. The PROs which may have had a noble goal in protecting the copyright of individuals have become something akin to thugs, intimidators and rogues that are abusing the special status which as been accorded them in the consent decree. The result is that small venues like my own cannot afford to provide musicians seeking to play, entertain and possibly be discovered a place to do so and must therefor shut down musically or risk having their lively hoods jeopardized by exorbitant fines.

With current technology, venues that want to have live performances could submit digital playlists and compensate creators appropriately each time a piece of their music was played. Currently the "big names" are paid based on a radio station playlist; if you are just getting started in the music industry and not being played you get nothing. A digital playlist from the venue gives the "lesser knowns" a chance to be heard and to be paid an amount commensurate with their skill, ability and popularity! The PROs can continue to compete in the service area based on real values and not what amounts to extortion of small wineries. Compensation based on digital playlists incentivizes musicians and creators to more creativity because they will get paid and incentivizes PROs to focus on providing services for their members and recruitment of new members.

4. To change the decree to require my winery to buy all two or three licenses would without question kill any chance I have of providing a venue for performance and I believe it would ultimately kill the live music industry except for established musicians, composers and writers.

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5. ASCAP and BMI thrive in their faux competition because of confusion, obscurity and obfuscation except for the hell they threaten the venue with if you don't fall in line. Transparency is the solution, not more obscurity.

   Offering licensing that does not allow for partially owned works would make the burden on the public (licensee) more onerous and confusing than it currently is. It is hard to check non-existent databases.

6 There is no rationale that I can visualize from which the public would benefit if the decree were to be amended to allow ASCAP and BMI to engage in joint price setting (price fixing would be the more appropriate term). Logically price fixing would destroy the need for competition and would eliminate the necessity of having more than one POS; it would also turn the foxes loose in the henhouse.

   We need to preserve what little competition there is until such time as the business model under which the POSs operate can be modified with emphasis on service rather than strong arming venues to the detriment of their own membership and the existence of the very thing they purport to protect, the creative spirit.

   Sincerely yours

   Norrie Wake
   President, Lake Cumberland Winery