

Before the
UNITED STATES COPYRIGHT OFFICE
The Library of Congress
Washington, DC

In the Matter of
Issues Relating to Performance Rights
Organizations

Docket No. 2025-1

COMMENTS OF BROADCAST MUSIC, INC.

Broadcast Music, Inc. (“BMI”) hereby submits these comments to the United States Copyright Office (the “Copyright Office”) in response to the notice of inquiry issued by the Copyright Office on February 10, 2025, 90 Fed. Reg. 9253, requesting stakeholder perspectives on various issues relating to performing rights organizations (“PROs”) (Docket No. 2025-1) (the “Notice”). These comments focus on those issues BMI believes it is best positioned to comment on at this time. BMI reserves the right to submit reply comments further addressing these and any other issues raised by the Notice or other comments submitted in response thereto.

I. INTRODUCTION

BMI is the world’s largest PRO, representing the public performance rights in over 22 million musical works created and owned by more than 1.4 million songwriter, composer, and music publisher affiliates. Songwriters, composers, and publishers are the music industry’s creative engine. Their musical compositions, and the recordings encompassing those works, contribute to the success of countless industries and businesses, ranging from radio, television, commercial music streaming services, and live concerts to local bars, restaurants, and bowling alleys. Nevertheless, these music creators often face significant obstacles to securing fair and appropriate compensation for the public performance of their works.

Music creators and their PROs are subject to extensive legal and regulatory frameworks that govern the licensing of their musical works and impact the royalties songwriters and composers receive. Music users are significant beneficiaries of these constraints. Nevertheless, large music platforms and other well-funded and influential music users and industry organizations have lobbied Congress for years to regulate PROs even more heavily, with the goal of further reducing licensing fees at the expense of the songwriters, composers, and music publishers who depend on those income streams. It appears that the potentially abusive practices of certain newly-formed entities have now served as a pretext for the reinvigoration of these efforts, which seek to cast doubt on the effectiveness and efficiency of the PRO system in order to bolster arguments regarding the need for additional regulation, potentially in the form of a compulsory licensing regime. This long-running campaign contravenes the primary purpose of U.S. copyright law—namely, to ensure that copyright owners are economically incentivized to create.

In the September 11, 2024 letter from three members of the U.S. House Committee on the Judiciary (the “Judiciary Committee Members”) to the Copyright Office (the “Congressional Request”),¹ the Judiciary Committee Members relayed concerns among licensees “that the proliferation of PROs represents an ever-present danger of infringement allegations and potential litigation risk from new and unknown sources.”² In addition, the Judiciary Committee Members questioned “how efficiently PROs are distributing general licensing revenue” and how current practices impact “lesser known and independent artists as well as smaller publishers.”³ The Judiciary Committee Members also asked that the Copyright Office explore related technological

¹ Letter from Rep. Jim Jordan *et al.*, H. Comm. on Judiciary to Shira Perlmutter, Reg. of Copyrights, U.S. Copyright Off. (Sept. 11, 2024), <https://www.copyright.gov/policy/pro-issues/letter-to-usco-pro-issues.pdf>.

² *Id.*

³ *Id.*

and business practices, the impact of legal and regulatory constraints on current distribution practices, and potential policy recommendations for improving: (1) “clarity and certainty for licensees”; and (2) PROs’ information-gathering and distribution practices.⁴

In evaluating the issues raised in the Congressional Request, the Copyright Office must first appreciate the prevailing ecosystem, including: (1) the substantial legal and regulatory framework that already governs public performance licensing and provides significant advantages to music users; (2) the critical role of PROs in facilitating public performance licensing, including by (a) maintaining transparency in the market for the licensing of the public performance right and (b) ensuring accuracy, efficiency, and fairness in the distribution of royalties to the songwriters and composers they represent; and (3) the communal interest in establishing a system that encourages continued creative expression, including by ensuring fair compensation to songwriters and composers for the use of their legally protected copyrighted works. BMI submits that consideration of these factors makes clear that additional regulation of PROs is not necessary to address the concerns reflected in the Congressional Request and would only increase costs and burdens to music users and songwriters alike.

It is beyond dispute that copyright owners are entitled to fair compensation for the use of their works and thus to a healthy licensing market. PROs bring convenience and efficiency to that market by facilitating licensing transactions between countless songwriters and composers, on the one hand, and countless music users, on the other. The emergence of legitimate new PROs could stimulate competition and thus benefit all participants in the licensing market.

PROs already digitally display information regarding the contents of their respective repertoires, including information regarding copyright ownership. As the first PRO to do so, BMI

⁴ *Id.*

has made its repertoire information available online for more than three decades.⁵ BMI has continued to innovate in this space. To the extent new market entrants are engaged in abusive practices, including by misrepresenting the scope and nature of their purported repertoires, existing legal and regulatory frameworks provide a broad suite of mechanisms to address and remedy that conduct.

The music users raising the specter of misallocated distributions would benefit from a regime under which imperfections void or reduce music users' obligations to pay royalties for their use of copyrighted works. But any imperfections associated with distributions have no bearing whatsoever on the obligation of music users to compensate songwriters and composers: Neither U.S. copyright law nor PRO-issued licenses (including BMI licenses which have been approved by rate courts) excuse a licensee's payment obligation on the basis of its judgments about the quality of distribution methodologies.

In any event, PROs already invest extensively in performance monitoring and distribution processes. BMI devotes considerable resources to the collection and processing of data associated with *trillions* of public performances annually, which it leverages to ensure its distribution practices are as fair and accurate as possible. BMI continuously evaluates and seeks to update and improve these processes. Despite these efforts, royalty distribution methodologies can be imperfect, particularly given the challenging nature of estimating public performance counts for general licensees that are not obligated to report such data. To the extent the Copyright Office seeks greater accuracy in monitoring and distributions, the burden of enhancement should fall to the general licensees whose own music use is the missing piece of information that might address

⁵ The earliest archived version of BMI's repertoire homepage, from October 1996, is available on archive.org. See *Repertoire*, Broadcast Music, Inc., <https://web.archive.org/web/19961020065650/http://bmi.com/repertoire/>.

these purported concerns. Any necessary compromises inherent in distribution methodologies do not justify systemic upheaval, particularly upheaval uninvited by and detrimental to music creators.

Despite the immense value of copyrighted works to businesses, and the efficiencies provided by the PROs, major music users continue to lobby for additional regulation that would not only increase the federal government's oversight burden but also restrict even further the PROs' bargaining power in negotiating on behalf of songwriters and composers. Indeed, the enactment of a compulsory licensing regime would remove public performance licensing from the free market altogether. Ultimately, to the extent further potential regulation would reduce certain costs to music users, it would do so at a cost to the copyright owners who rely on PROs to secure fair compensation for the use of their works.

BMI takes pride in representing and supporting music creators while providing businesses with a transparent, efficient, and competitive source of licensing. BMI recognizes the necessity of protecting music users from predatory actors and has committed itself to transparent licensing practices. The solution to the concerns embodied by the Notice lies not in adding to the web of government oversight that already constrains PROs' activities but rather in the enforcement of existing laws and regulations aimed at protecting music users.

II. BACKGROUND

BMI's relationship with each of its affiliates is governed by the terms of individual affiliation agreements, pursuant to which BMI receives the right, non-exclusive in the United States, to license the public performance rights in its affiliates' musical works. BMI, in turn, enters into and administers performing rights licenses with thousands of music users, distributes royalties to its affiliates, protects its affiliates' copyrights, and otherwise champions their interests, including by offering programs and services designed to cultivate their careers.

The musical works in BMI's repertoire span all genres of music and range from chart-toppers and perennial favorites to lesser-known works that demonstrate great music exists beyond the spotlight. BMI's affiliates include both established superstars and thousands of up-and-coming songwriters and composers. The U.S. music industry and these affiliates' livelihoods depend on their receipt of full and fair compensation for their contributions.

Since its founding in 1939, BMI has stayed true to its original mission: to provide businesses with a robust and competitive source of licensing while supporting the creators who deliver the world's most compelling music. In coordination with its industry partners, BMI has developed a variety of competitive licenses designed to meet the specific uses and needs of different industries and businesses. BMI offers more than 60 different licensing arrangements, which account for a variety of factors, including the music user's business and/or music use. For example, BMI offers licenses designed for commercial broadcast radio stations, digital music services, and a range of different brick-and-mortar businesses, including licenses for bars, restaurants, coffee shops, fitness clubs, and hotels, among many others.

As an industry leader in innovation, BMI has developed and implemented technology platforms and processes designed to increase its offerings and capabilities. These developments have benefited music creators and music users alike by, among other things, increasing transparency in copyright ownership, allowing BMI to meet the ever-growing data management demands of today's music marketplace, reducing transaction costs, and increasing the availability of music to an ever-expanding and -diversifying universe of music users.

BMI likewise remains focused on building strong relationships and partnerships with business owners who support the creation of music through licensing with BMI. For more than 20 years, BMI has been a proud partner to nearly 70 state and national associations in various

industries, including hospitality, brewery, retail, fitness and more. Through a dynamic program of in-person events across the nation, BMI fosters synergies by bringing together the writers behind the songs with the businesses that perform them.

At the same time, BMI steadfastly advocates for its songwriter, composer, and music publisher affiliates. BMI conducts music showcases nationwide; books stages and performance slots at premier festivals and conferences; and offers—including through its recently launched *Spark* program⁶—a variety of programs, workshops, and other services aimed at identifying opportunities for its affiliates, providing them with educational resources, and otherwise cultivating their careers. BMI also engages in legal and legislative endeavors aimed at protecting songwriters and fostering the continued creation of new music by ensuring that songwriters are fairly compensated for the public performance of their works.

BMI’s role is based on the Copyright Act of 1976 (the “Copyright Act”), which broadly protects the rights of music creators by explicitly recognizing a “musical work” copyright.⁷ The Copyright Act grants music creators a “monopoly limited to specified ‘exclusive’ rights in [their] copyrighted works,”⁸ and the right “to authorize” others to exploit those exclusive rights.⁹ These exclusive rights include the right “to perform the copyrighted work publicly”¹⁰—by radio, television, or digital stream; in bars, restaurants, bowling alleys, and other brick-and-mortar establishments; and so on.

⁶ See Press Release, Broad. Music, Inc., *BMI Launches Spark, an Exciting New Program to Help Music Creators Thrive Throughout Their Career* (Mar. 11, 2025), <https://www.bmi.com/news/entry/bmi-launches-spark-an-exciting-new-program-to-help-music-creators-thrive-throughout-their-careers>; see *BMI Spark*, Broad. Music, Inc., <https://www.bmi.com/creators/spark> (last visited Apr. 9, 2025).

⁷ 17 U.S.C. § 102(a)(2).

⁸ *Twentieth Century Music Corp. v. Aiken*, 422 U.S. 151, 155 (1975).

⁹ 17 U.S.C. § 106.

¹⁰ *Id.* § 106(4).

The public performance of musical works vitalizes modern society, but its ubiquity presents logistical problems for both music creators and music users. It would be virtually impossible for all such music users to monitor and transact with the individual copyright owner of each song or music catalog they play. Likewise, it would be virtually impossible for individual copyright owners to monitor and transact with the hundreds of thousands of businesses in the United States that publicly perform music.

PROs solve these problems. Songwriters, composers, and music publishers who own or acquire musical works typically associate with a PRO, which licenses the right to publicly perform their musical works. Four established PROs license the public performance right in the United States: BMI, the American Society of Composers, Authors and Publishers (“ASCAP”), SESAC, Inc. (f/k/a the Society of European Stage Authors and Composers) (“SESAC”), and Global Music Rights (“GMR”). These PROs license the public performance right for works in their respective repertoires to music users, collect license fees and distribute royalties to their affiliates, and police copyright infringement vis-à-vis the works in their repertoires.

III. COMMENTS

A. The Implications of the Emergence of Additional PROs

See Notice, Questions 1, 2, and 3.

Since 1941, BMI and ASCAP have operated under the constraints of antitrust consent decrees overseen by the Antitrust Division of the U.S. Department of Justice (the “DOJ”). When the consent decrees were initially entered, BMI and ASCAP were the only viable PROs through which most songwriters and publishers could license and manage their rights in the United States.

SESAC only later emerged as a significant domestic competitor.¹¹ As the Notice and underlying Congressional Request highlight, greater competition has come in the form of new PROs.

In 2013, GMR emerged to compete with BMI, ASCAP, and SESAC, with a focus on developing a curated repertoire of musical works by high-profile songwriters on an invitation-only basis.¹² In addition, music publishers now more frequently license their catalogs directly to music users, particularly for digital uses.¹³ Other collective rights management organizations have also emerged as potential alternatives to PROs.¹⁴

More recently, at least two new organizations have entered the public performance rights licensing market. Pro Music Rights (“Pro Music”) was founded in 2018, and AllTrack Performing Rights (“AllTrack”) was founded in 2019.¹⁵ As addressed further below, at the time of this writing, no reliable, readily-accessible, publicly-available information exists regarding the number or

¹¹ BMI was the third entrant to the PRO market (formed in 1939), as it was preceded by both ASCAP (formed in 1914) and SESAC (formed in 1930). However, for the first several decades of its existence, SESAC focused exclusively on promoting European songwriters and was not viewed as a meaningful competitor for ASCAP or BMI because its repertoire was much more limited in size and genre.

¹² See *Who We Are*, Glob. Music Rights, <https://globalmusicrights.com/about#who-we-are> (last visited Apr. 9, 2024).

¹³ Major music publishers, such as Universal Music Publishing Group, Sony/ATV Music Publishing, and BMG Rights Management GmbH, have very significant catalogs in their own right (larger than those of SESAC and GMR) and can and do directly license the works of their own songwriters and those with whom they have representation agreements.

¹⁴ At present, BMI and ASCAP remain the two largest U.S. PROs. BMI has approximately 1.4 million affiliates, and ASCAP has approximately 1 million members. As of 2023, BMI’s and ASCAP’s combined repertoires covered approximately 92% of musical works performed in the U.S. market. See *Broad. Music, Inc. v. N. Am. Concert Promoters Ass’n (BMI v. NACPA)*, 664 F. Supp. 3d 470, 474 (S.D.N.Y. 2023), *appeal pending*, 23-935(L) (2d Cir.) (argued May 20, 2024). SESAC has approximately 15,000 affiliates, and GMR has between 150 and 200 affiliates. See *About Us*, SESAC, <https://www.sesac.com/about/> (last visited Nov. 18, 2024); *Global Music Rights’ Owner in “Understanding” to Sell to Private Equity Firm*, *Billboard* (Sept. 25, 2024), <https://www.billboard.com/pro/global-music-rights-majority-owner-reaches-understanding-sell-private-equity-firm>. Like GMR (and unlike BMI and ASCAP), SESAC operates on an invitation-only basis. As of 2023, GMR’s and SESAC’s combined repertoire accounted for the remainder of musical works performed in the U.S. market. See *BMI v. NACPA*, 664 F. Supp. 3d at 474.

¹⁵ See Notice at 9254 & nn.6-7.

identity of the songwriters, composers, and music publishers represented by AllTrack and Pro Music, or the number of musical works in their respective repertoires.

The current market provides music users with a variety of options: Music users can (i) obtain licenses from all four established PROs, (ii) obtain a license from a subset of established PROs and curate their playlists to avoid copyright infringement, or (iii) subscribe to a commercial music service that pre-clears music and designs playlists geared toward certain businesses. Ultimately, a music user's licensing decisions within this market are business decisions. To the extent the Congressional Request reflects purported concerns among music users regarding threats posed by increased lawful competition in the PRO marketplace, those concerns are inconsistent with fundamental tenets of copyright law, the economic precepts that motivated the antitrust regulation of BMI and ASCAP, the longstanding consensus of industry stakeholders, and, indeed, the frequently-stated concerns of music users complaining of BMI's and ASCAP's purported market power.

First, the Copyright Act grants copyright owners the exclusive right to publicly perform their musical works or authorize others to do so.¹⁶ PROs, in turn, solve the problems of efficiency and economic impracticability that would result from individual licensing negotiations and transactions between innumerable music creators and music users, thereby benefiting music creators and music users alike. If music creators grant to a new PRO the right to license their copyrighted musical works, that PRO is entitled to license such works, collect payment on behalf of those music users, and protect their rights.

Second, the consent decrees—which have governed BMI and ASCAP for more than 80 years—were intended to promote competition in the public performance licensing industry.

¹⁶ 17 U.S.C. § 106.

Indeed, they resulted from concerns regarding a *lack* of multilateral competition. As the now-former head of the Antitrust Division, Assistant Attorney General Makan Delrahim, recently explained, the purpose of the consent decrees was to “encourage competition between ASCAP, BMI, and other PROs for members and music users, and between ASCAP, BMI, and their respective members to license copyrighted works to music users.”¹⁷ Mr. Delrahim identified as a key “guiding principle” the need to “ensur[e] that songwriters and other intellectual property rightsholders are not shortchanged by the non-market effects of the ASCAP and BMI consent decrees, or by other efforts to regulate the music marketplace.”¹⁸ He emphasized that, going forward, “competition must be the watchword” and “most importantly, competition for the benefit of the artists and songwriters without whom the American music industry would not exist.”¹⁹

Third, for decades, music creators and music users have consistently advocated in favor of competition. As the Copyright Office recognized, “[s]ongwriters and publishers have highlighted the importance of the existence of multiple PROs in the music marketplace, indicating that they carefully choose the PRO with which they affiliate based on their perception of which organization will bring them the most benefit.”²⁰ PROs and other performing rights licensees compete for songwriters, composers, and music publishers on a broad range of factors, including those related to license terms and fees, royalty distributions, and the services and programs they offer.

The hypocrisy of the music user advocates cannot go unmentioned. When it suits their goals, music users (and affiliated industry groups) purport to champion competition. For example,

¹⁷ *Remarks by Assistant Attorney General Makan Delrahim on the Future of ASCAP and BMI Consent Decrees*, U.S. Department of Justice (Jan. 15, 2021), <https://www.justice.gov/archives/opa/speech/remarks-assistant-attorney-general-makan-delrahim-future-ascap-and-bmi-consent-decrees>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Notice at 9254 (internal citations omitted).

in BMI and ASCAP rate court proceedings litigated pursuant to the consent decrees, licensees have frequently lamented the alleged ongoing *lack* of competition in the market. These licensees have cited the purported entrenched and unrestrained market power ASCAP and BMI allegedly possess through their aggregation of a significant number of copyrights to argue for decreased license fees and more favorable terms. In other words, these music users (and industry groups supported by them) have long claimed that additional competition among PROs and other public performance right licensees would benefit music users.

On the other hand, when it suits their goals, certain music users—and the industry and lobbying organizations they support—take the opposite position, decrying the emergence of new PROs and the resulting burdens placed on them. In other words, music users and other industry organizations that have long claimed that the existing comprehensive regulation of PROs such as BMI and ASCAP *preserves* competition now champion further regulation designed to *stifle* the very competition they claim to prize.

In any event, music users already have all the tools necessary to manage the supposed problems created by the emergence of additional PROs—or, as it is more commonly described, competition.

The concerns expressed in the Notice (by reference to the Congressional Request) regarding increased competition reflect the oft-stated views of certain music users that (i) each PRO's repertoire is not fungible but rather is a "must have," and (ii) the threat of copyright infringement poses risks so great as to require all music users to obtain licenses from all PROs. These characterizations are unduly reductive, inaccurate as applied to the broad population of music users, and otherwise unavailing.

As an initial matter, a substantial number of small establishments and businesses that elect to play music for their patrons need not obtain a public performance right license from *any* PRO, let alone all of them. Copyright law exempts an expansive mix of restaurants, bars, and retail stores from public performance licensing requirements,²¹ and qualifying businesses may reap all the significant benefits, financial and otherwise, associated with playing music at no cost.

Next, most other music users—including the vast majority of small businesses—do not need the ability to perform all musical works available in the United States and, therefore, need not secure licenses from all four domestic PROs. Businesses that perform a limited amount of music can elect, for example, to secure only a BMI license and limit their playlists to musical works in BMI’s repertoire. As discussed further below, BMI provides tools and resources to music users to alleviate burdens associated with playlist selection and music monitoring. BMI also indemnifies its licensees against claims alleging copyright infringement of the rights licensed by BMI.²² This allows businesses to perform BMI music without fear of copyright infringement liability.

When small businesses desire maximum flexibility in music selection, maximum immunity from liability, and to assume no burden associated with monitoring their music use, they may decide to secure licenses from multiple PROs. Businesses that make that decision are of course required to pay for the additional rights and protections they receive. They may also experience increased administrative burdens associated with that decision, including in connection with negotiating licenses with multiple PROs, complying with varying license terms, and managing

²¹ See 17 U.S.C. § 110(5).

²² See, e.g., BMI Music License for Eating and Drinking Establishments at 2, available at <https://www.bmi.com/forms/licensing/gl/ede.pdf> (indemnifying BMI licensee for “any and all claims . . . alleging copyright infringement . . . with respect to the public performance of any musical works which are licensed by BMI”); BMI Music License for Retail Establishments at 1, available at [bmi.com/forms/licensing/gl/rtl.pdf](https://www.bmi.com/forms/licensing/gl/rtl.pdf) (same); BMI Music License for Fitness Clubs at 1, available at <https://www.bmi.com/forms/licensing/gl/fit1.pdf> (same).

multiple fee structures.²³ However, these outcomes are not the result of some systemic flaw in need of correction. They are the direct byproducts of a *business choice* made in a competitive music licensing marketplace, including the choice to play music at all.

In sum, BMI strongly believes the U.S. market for the licensing of the public performance right benefits from free and fair competition. BMI takes pride in the services and programs it offers to its affiliates and customers—which it believes are second to none—and welcomes fair competition in the public performance licensing marketplace to the benefit of all stakeholders. Among other things, competition drives innovation, productivity, and efficiency; increases choice (for music creators and music users); and promotes fair compensation to music creators for the use of their intellectual property. In turn, it encourages copyright holders to create more music and promotes a more vibrant music industry.

Although BMI strongly favors free and fair competition in the marketplace, significant concerns arise when industry participants engage in potentially deceptive or otherwise abusive business practices—including through threat of costly litigation and/or obfuscation of the rights being licensed—to obtain fees and other payments to which they are not otherwise entitled. The Congressional Request suggests that certain new market entrants claiming to represent songwriters may be attempting to misrepresent, conceal, or otherwise obfuscate the scope and nature of their purported repertoires, cast doubt on existing copyright ownership information, and deceive music

²³ A business decision to obtain the right to publicly perform musical works in multiple PRO repertoires need not result in increased administrative burdens. Several commercial music providers offer solutions and services that obviate such burdens. *See, e.g.*, SiriusXM for Business, <https://www.siriusxm.com/business>; Soundtrack Your Brand, <https://www.soundtrackyourbrand.com>; Pandora for Business, <https://pandora.moodmedia.com>. By bundling multiple PRO licenses into a single subscription, these companies provide businesses with pre-cleared, legally licensed access to musical works in multiple PRO repertoires in exchange for a single fee. Many of these companies also offer other services, including curated playlists tailored to specific businesses.

users into paying fees to which those organizations are not entitled.²⁴ This, in turn, raises the concern that the resulting uncertainties can expose licensees (particularly small businesses) to substantial financial risk.²⁵

BMI takes seriously its role as a long-standing industry leader with respect to transparency in copyright ownership and appreciates the difficulties faced by music users in determining whether they need to obtain a license from new market entrants. For decades, BMI has invested significant resources to make robust information available to music users regarding the contents of its repertoire, including the identities of the works covered in the grant of rights under a BMI license.

In stark contrast, it appears that at least two new market entrants—AllTrack and Pro Music—make little information readily available regarding the contents of their respective repertoires. As explained *infra* Section III.B.2, the information they do make available raises substantial questions regarding its reliability.

As for the alleged predatory behavior of new entrants to the licensing market,²⁶ BMI agrees with the Judiciary Committee Members that deceptive and abusive business practices can significantly harm businesses that play music. However, abusive business practices are neither a new phenomenon nor unique to the music licensing space and thus are already the subject of well-established laws and regulations.

²⁴ Congressional Request at 1-2 (observing that the emergence of new PROs has coincided with licensees “receiving demands for royalties from new entities claiming to represent songwriters, and threatening litigation if the demands are not met”).

²⁵ Congressional Request at 2 (noting that the “possibility of substantial statutory copyright damages poses an existential risk for most bars, restaurants, and other small businesses” and motivates those licensees “to pay these entities on top of what they already pay for blanket licenses from the traditional PROs”).

²⁶ *See* Congressional Request at 1-2 (“[L]icensees have reported receiving demands for royalties from new entities claiming to represent songwriters, and threatening litigation if the demands are not met.”).

As an initial matter, 27 states have enacted comprehensive laws governing the licensing of public performance rights that, among other things, establish certain safeguards for businesses and prohibit deceptive licensing practices. These statutes promote transparency and fair dealing by imposing a number of obligations on PROs, including the requirement that PROs disclose or make available the rates and terms of their licenses, the identities of their members or affiliates, the copyrighted works in their repertoires (or information as to whether specific copyrighted works are in their repertoires), and/or a toll-free number to receive inquiries from music users.²⁷ Similarly, various state statutes explicitly prohibit PROs from (i) collecting royalty payments absent the existence of a statutorily compliant license agreement, and/or (ii) engaging in (a) deceptive or fraudulent conduct, (b) unfair business practices, or (c) acts disruptive to music users' businesses.²⁸ These statutes each impose liability for violations of their provisions. Nearly all establish a private right of action permitting music users to address such violations directly.²⁹

²⁷ See Alaska Stat. § 45.45.500; Ark. Code Ann. § 4-76-103; Cal. Bus. & Prof. Code §§ 21751, 21751.5; Colo. Rev. Stat. §§ 6-13-103, 6-13-201 to -202; Fla. Stat. § 501.93; Idaho Code § 48-1303; 815 Ill. Comp. Stat. 637/10; Ind. Code § 32-37-3-1; Iowa Code § 549.3; Kan. Stat. Ann. § 57-222; Md. Code Ann., Com. Law § 11-1402; Mich. Comp. Laws §§ 445.2103-2104; Minn. Stat. § 325E.51; Mo. Rev. Stat. §§ 436.153, 436.155; Neb. Rev. Stat. §§ 59.1403.01-.02; N.J. Stat. Ann. § 56:3A-3 to -4; N.Y. Arts & Cult. Aff. Law § 31.04; N.D. Cent. Code §§ 47-21.2-02, 47-21.2-03; Okla. Stat. tit. 15, § 790; Or. Rev. Stat. § 647.705; Tex. Occ. Code Ann. § 2102.003; Utah Code Ann. §§ 13-10a-3 to -5; Va. Code Ann. § 59.1-461 to -462; Wash. Rev. Code §§ 19.370.030, 19.370.070; Wis. Stat. § 100.206; W. Va. § 47-2A-3; Wyo. Stat. Ann. § 40-13-302.

²⁸ See Alaska Stat. § 45.45.530; Ark. Code Ann. § 4-76-105; Cal. Bus. & Prof. Code § 21753; Colo. Rev. Stat. § 6-13-103; Fla. Stat. § 501.93; Idaho Code § 48-1303; 815 Ill. Comp. Stat. 637/20; Ind. Code § 32-37-4-1; Iowa Code § 549.5; Kan. Stat. Ann. § 57-224; Mich. Comp. Laws § 445.2106; Minn. Stat. § 325E.53; Md. Code Ann., Com. Law § 11-1403; Mo. Rev. Stat. § 436.159; Neb. Rev. Stat. §§ 59-1403.01, 59-1403.03; N.J. Stat. Ann. § 56:3A-7; N.D. Cent. Code § 47-21.2-04; N.Y. Arts & Cult. Aff. Law § 31.04; Or. Rev. Stat. §§ 647.708, 647.715; Tex. Occ. Code Ann. § 2102.005; Va. Code Ann. § 59.1-463; Wash. Rev. Code § 19.370.050; Wis. Stat. § 100.206; Wyo. Stat. Ann. § 40-13-303.

²⁹ See Alaska Stat. § 45.45.550; Ark. Code Ann. § 4-76-107; Cal. Bus. & Prof. Code § 21755; Colo. Rev. Stat. § 6-13-104; Fla. Stat. § 501.93; Idaho Code § 48-1306; 815 Ill. Comp. Stat. 637/30; Ind. Code § 32-37-5-1; Iowa Code § 549.7; Kan. Stat. Ann. § 57-225; Md. Code Ann., Com. Law § 11-1405; Mich. Comp. Laws § 445.2107; Minn. Stat. § 325E.55; Mo. Rev. Stat. § 436.161; N.J. Stat. Ann. § 56:3A-9; N.Y. Arts & Cult. Aff. Law § 31.04; N.D. Cent. Code § 47-21.2-05; Okla. Stat. tit. 15, § 790; Or. Rev. Stat. § 647.720; Tex. Occ. Code Ann. § 2102.006; Utah Code Ann. § 13-10a-6; Va. Code Ann. § 59.1-464; Wis. Stat. § 100.206; Wyo. Stat. Ann. § 40-13-304.

In addition to these statutes specifically addressed to licensing of the public performance right, there exists in nearly every state a well-developed body of common law prohibiting fraudulent conduct along with statutory provisions prohibiting unfair business practices and other business misconduct.³⁰ For example, most states specifically prohibit certain false or misleading advertising practices or treat such practices as violative of deceptive trade practice or consumer protection laws, and many states have criminalized certain of those practices.³¹ Most states task the attorney general or another agency with enforcing these laws. Many states also afford victims the right to bring a private cause of action against any violator. Federal law likewise prohibits unfair competition,³² including false advertising³³ (and vests the Federal Trade Commission with the authority to enforce such prohibitions³⁴), and the federal criminalization of interstate wire fraud applies with full force to PROs.³⁵

Given the robust existing framework at the state and federal level, no additional regulation in the music licensing industry is necessary. Indeed, any further heightened regulation aimed at addressing unlawful conduct by a few bad actors would further undermine competition and impede innovation to the detriment of copyright holders and music users.

B. Transparency in Ownership of Copyrighted Musical Works

1. BMI Has Been a Market Leader in Transparency

See Notice, Questions 4, 5, 6(a), and 7.

³⁰ See, e.g., Federal Trade Commission Act of 1914 § 5, 15 U.S.C. § 45; 215 Ill. Comp Stat. 5/423; Mass. Gen. Laws ch. 93A, § 2.

³¹ See, e.g., Cal. Bus. & Prof. Code § 17500; 720 Ill. Comp. Stat. 5/17-5.7; N.Y. Gen. Bus. Law § 396-b; N.Y. Penal Law § 190.20; Tex. Bus. & Com. Code § 17.12; Tex. Penal Code Ann. § 32.42.

³² 15 U.S.C. § 45.

³³ *Id.* § 52; see also Lanham Act § 43, 15 U.S.C. 1125 (establishing private right of action for false advertising).

³⁴ 15 U.S.C. § 45.

³⁵ 18 U.S.C. § 1343.

BMI has long been an industry leader with respect to transparency in copyright ownership information and has invested in resources to cultivate such transparency. BMI has made ownership information for each work in its repertoire publicly available online since 1995—when it became the first PRO to do so³⁶—in an effort to maximize transparency as to its repertoire and works covered by its license grant. BMI continues to innovate in this space.

BMI provides song title registration information for each work that has been registered with BMI, as well as both songwriter/composer and the BMI-affiliated music publisher ownership information (including phone number and address contact information) for each work. BMI also consistently engages in direct, candid communications with music users in response to any questions regarding the identity, nature, and scope of the musical works in BMI’s repertoire.³⁷

BMI likewise has consistently stood behind the repertoire information it makes available. BMI’s website confirms that it will not sue for infringement for the performance of BMI’s music if, at the time of the music’s performance, the music is not listed in BMI’s database.³⁸ Indeed, BMI has never sued any music user for infringement where there was potentially inaccurate or incorrect ownership information on its website regarding the works performed. Moreover, BMI

³⁶ See Broad. Music, Inc., Additional Comments on Copyright Office Music Licensing Study 3 (Sept. 12, 2014), https://www.copyright.gov/docs/musiclicensingstudy/comments/Docket2014_3/extension_comments/Broadcast_Music_Inc_BMI.pdf. The earliest archived version of BMI’s repertoire homepage, from October 1996, is available on archive.org. See *Repertoire*, Broad. Music, Inc., <https://web.archive.org/web/19961020065650/http://bmi.com/repertoire/>.

³⁷ Music users can contact a BMI licensing representative via contact information made available on its website (including via phone number or through an electronic form submission). See *Contact Us: Music Licensing*, BMI, https://www.bmi.com/about/entry/contact_us_music_licensing (last visited Apr. 9, 2025); *Contact Licensing*, BMI, <https://www.bmi.com/licensing/contact> (last visited Apr. 9, 2025).

³⁸ See *Songview FAQs*, BMI, <https://www.bmi.com/special/songview> (last visited Apr. 9, 2025) (see “Q: Will BMI guarantee the accuracy of the information included in Songview or any of its databases? A: . . . BMI will not sue an individual or business for infringement for the performance of music in which BMI has an interest, if, when that music is performed, it was not listed in our database.”)

indemnifies licensees in the event a third party contests the licensee's right to perform any BMI work.³⁹

More recently, BMI, together with ASCAP, engaged in significant dialogue with various industry music users from diverse market segments to better understand how PROs could continue to innovate and further progress transparency in the industry, including what types of data would be most helpful for them as they make their music licensing decisions. In July 2017, based on feedback received from music users, BMI and ASCAP announced that they were working on an initiative to provide a reconciled set of information related to the musical works within their respective repertoires to the public.⁴⁰

This was no simple task. Consolidating information for millions of musical works from hundreds of thousands of songwriters and publishers across two different technological platforms was a complex cross-company effort, requiring tens of thousands of development hours. Among other things, the project required (i) creating and agreeing upon a joint set of data policy rules to coordinate across repertoire data, (ii) developing a cloud-based reconciliation engine that ingests song data and compares the data across their respective repertoires, and (iii) integrating the data into BMI's and ASCAP's respective user interfaces.

This endeavor culminated in December 2020 with BMI's and ASCAP's joint launch of Songview, a free and publicly available public performance rights data reconciliation engine. Songview provides easily searchable, transparent, and authoritative performing rights data on songwriters, composers, music publishers, and copyright ownership shares for over 20 million

³⁹ See, e.g., *Latin Am. Music Co. v. Spanish Broad. Sys., Inc.*, 2020 WL 2848232, at *6 (S.D.N.Y. June 1, 2020) (referencing BMI's indemnification of defendant, to whom it licensed the rights to perform the songs at issue).

⁴⁰ See Press Release, Broad. Music, Inc., BMI & ASCAP Announce Creation of New Musical Works Database (July 26, 2017), <https://www.bmi.com/news/entry/bmi-ascap-announce-creation-of-new-musical-works-database>.

works, amounting to over 90% of the music performed in the U.S. Accessible through both BMI's and ASCAP's online repertoires, Songview permits users to run various specific and general searches across the BMI and ASCAP repertoires.

Songview provides detailed information regarding the musical works of each BMI and ASCAP affiliate or member. For example, for each musical work, Songview provides information regarding the identity of the title of the work (and any alternative titles), songwriter, composer, and publishers (and, when available, the PRO affiliation thereof); the nature of each copyright owner's ownership interest (whether full or fractional and, if fractional, the identity of any co-owner's interest, and BMI, ASCAP, and other PRO's ownership share of each work); performers of the musical work; and other identifying information, such as the International Standard Musical Work Codes ("ISWC") associated with the work.

A typical example of the information provided by Songview can be seen immediately below.

The screenshot displays the Songview interface for the song "EDGE OF GLORY". At the top, a header row includes columns for Title, BMI Work ID, SV Status, Writer / Composer, Performer, and Expand. The song title "EDGE OF GLORY" is highlighted with a star icon. Below the header, the BMI Work ID is 12871270, and the SV Status is indicated by a diamond icon. The Writer / Composer section lists BLAIR PAUL EDWARD and GARIBAY FERNANDO. The Performer section lists BABY BLANKET MUSIC and FERNANDO GARIBAYLADY. A "Reconciled" status is shown with a diamond icon and a question mark. The interface is divided into three main sections: Writers / Composers, Publishers, and Performers. The Writers / Composers section shows a table with columns for Writers / Composers, Current Affiliation, and IPI #. The Publishers section shows a table with columns for Publishers, Current Affiliation, and IPI #, along with contact information for Warner-Tamerlane Publishing Corp and Sony ATV Songs LLC. The Performers section lists BABY BLANKET MUSIC, FERNANDO GARIBAYLADY GAGAPPAUL BLAIR, GAGA GIRLS, GERMANOTTA STEFANI, and GLEE CAST THE. A "View Catalog" button is visible next to the publisher information.

Title	BMI Work ID	SV Status	Writer / Composer	Performer	Expand
★ EDGE OF GLORY	12871270	◆	BLAIR PAUL EDWARD GARIBAY FERNANDO	BABY BLANKET MUSIC FERNANDO GARIBAYLADY ...	⊗

Writers / Composers		Publishers	
% CONTROLLED BMI: 46.25% ASCAP: 3.75%		% CONTROLLED BMI: 46.24% ASCAP: 3.75%	
WRITERS / COMPOSERS	CURRENT AFFILIATION	IPI #	
BLAIR PAUL EDWARD	ASCAP	00643556927	C/O WARNER-TAMERLANE PUBLISHING CORP 777 S SANTA FE AVE LOS ANGELES, CA 90021 (310) 441-8800 WCMADMIN@WARNERCHAPPELL.COM HTTP://WWW.WARNERCHAPPELL.COM View Catalog
GARIBAY FERNANDO	BMI	00403607297	
GERMANOTTA STEFANI	BMI	00519338442	

Performers	
BABY BLANKET MUSIC	
FERNANDO GARIBAYLADY GAGAPPAUL BLAIR	
GAGA GIRLS	
GERMANOTTA STEFANI	
GLEE CAST THE	

By making this information available to the public on a first-of-its-kind, easily-searchable platform, Songview increases efficiencies by empowering copyright owners and licensees alike, enabling licensees to confirm that their licenses cover the music being performed and/or to seek out direct licensing opportunities from the copyright owner. Indeed, the DOJ commended BMI's and ASCAP's collaborative effort "to promote competition in the music licensing industry to the benefit of music licensees, artists, and American consumers."⁴¹

ASCAP, BMI, SESAC and GMR are currently exploring the inclusion of GMR and SESAC data to enhance Songview's reconciled view of copyright ownership information.

2. New Market Entrants Have Introduced Informational Opacity to the Licensing Marketplace

See Notice, Questions 3 and 6(a).

The Congressional Request and the Notice suggest that certain new market entrants have attempted to obfuscate the scope and nature of their repertoires to cast doubt on existing copyright ownership information and obtain fees to which they are not otherwise entitled. Based on a review of the publicly available information regarding two new entrants—AllTrack and Pro Music—and their respective repertoires, BMI appreciates these concerns and the difficulties faced by music users in determining whether to obtain a license from these entities and at what cost.

AllTrack purports to maintain a repertoire search feature on its website. That feature does not, however, provide sufficient functionality to allow a user to straightforwardly access copyright ownership data. To search AllTrack's repertoire, a user must provide *two* of the following data

⁴¹ *Justice Department Commends ASCAP and BMI's Launch of SONGVIEW*, U.S. Dep't of Just. (Dec. 22, 2020), <https://www.justice.gov/opa/pr/justice-department-commends-ascap-and-bmis-launch-songview>; *see also* U.S. Dep't of Justice, *Statement of the Department of Justice on the Closing of the Antitrust Division's Review of the ASCAP and BMI Consent Decrees: Remarks of Assistant Attorney General Makan Delrahim* 4 (2021), <https://www.justice.gov/atr/page/file/1355391/dl> ("There also have been important strides in market transparency. . . . ASCAP and BMI announced the launch of their SONGVIEW databases, which the PROs say will provide an authoritative listing of the copyright ownership and shares of musical works in their respective repertoires.").

inputs: (1) song title, (2) publisher, (3) songwriter, and (4) performer. In other words, identifying the copyright owners affiliated with AllTrack and the musical works in its repertoire requires, at a minimum, running many time-intensive, granular, individualized searches based on inputs a user would need to obtain independently of the information AllTrack makes available. For example, for a user to determine the existence and scope of AllTrack’s rights in songs by a given songwriter, the user would need to: (1) independently identify (outside of any information made available by AllTrack) the name of each song written by that songwriter, the performer of each such song, or the publisher of each such song; and then (2) manually input, in separate searches, each potential combination of the songwriter’s name and one of these other data points to determine which, if any, songs by a given songwriter are contained in the repertoire.

In addition, AllTrack’s website is potentially misleading in several respects that—particularly in light of its cumbersome repertoire search feature—could lead a music user to vastly overestimate the value of an AllTrack license. For example, AllTrack’s homepage advertises its ownership of musical works performed by several major “artists,” such as Billy Ray Cyrus.⁴² However, given the above-described limitations, it becomes very difficult to determine what, if any, rights AllTrack has to license the public performance right in the musical works written or performed by Mr. Cyrus (and what, if any, interests AllTrack’s affiliates or members have in those works). Based on BMI’s independent research, it appears that, despite advertising on its homepage that Mr. Cyrus is an “artist” who performs AllTrack music, AllTrack holds a *partial* interest in only *one* song performed by Mr. Cyrus.⁴³

⁴² See AllTrack, <https://www.alltrack.com/> [<https://web.archive.org/web/20250214162524/>] (“The artists above are examples, but not an all-inclusive list of performers of AllTrack music.”).

⁴³ In stark contrast, Songview allows users to search for Mr. Cyrus’s name alone. The results of such a search on Songview demonstrate that BMI has the right to license rights in 182 songs written by Mr. Cyrus (and disclose information sufficient to allow a user to determine the scope of those rights).

More troubling is the publicly available information regarding Pro Music. Pro Music claims “an estimated 7.4% share of the performance rights market based solely on the estimated 2,000,000 works in its repertoire,”⁴⁴ including music purportedly generated through Pro Music’s artificial intelligence (“AI”) program.⁴⁵ In other words, Pro Music claims to have rights in more songs than the combined repertoires of SESAC (over 1.5 million⁴⁶) and GMR (approximately 100,000⁴⁷). However, works are only important to music users if they’re performed, and the known performance shares of BMI, ASCAP, GMR, and SESAC, not to mention the performances of works in the public domain, suggest that Pro Music greatly overstates its relative share of copyrighted and *performed* works. Although Pro Music’s website allows searches of its purported repertoire by work, publisher, writer, or artist, it does not allow users to combine those inputs, and it is therefore unclear from the search results what portion of a given musical work Pro Music controls.

Perhaps more significantly, it is unclear whether certain of the results Pro Music’s search function generates are even authentic musical works (*e.g.*, musical works titled “anew the,” “goodish mesothelioma,” and “earthy ola” purportedly associated with the heretofore unknown

⁴⁴ Pro Music Rights, Inc., Registration Statement (Form S-1), at 2 (Dec. 29, 2020); *see also* Press Release, Pro Music Rights, Inc., *US-Based Public Performance Rights Organization Pro Music Rights Reaches a 7.4% Market Share Making It the 3rd Largest Public Performance Rights Organization in the United States* (Aug. 16, 2018), <https://www.prnewswire.com/il/news-releases/us-based-public-performance-rights-organization-pro-music-rights-reaches-a-74-market-share-making-it-691001891.html> (“Pro Music Rights is the fifth-ever formed Public Performance Rights Society in the United States, one that controls a market share of 7.4% in the U.S. . . .”).

⁴⁵ Press Release, Pro Music Rights, Inc., *Music Licensing, Inc.’s Subsidiary Pro Music Rights Renews Agreement with ByteDance and TikTok, Offering Innovative Music and AI Solutions* (Mar. 3, 2023), <https://www.prnewswire.com/news-releases/music-licensing-incs-subsiary-pro-music-rights-renews-agreement-with-bytedance-and-tiktok-offering-innovative-music-and-ai-solutions-301761808.html>.

⁴⁶ *See About Us*, SESAC, <https://www.sesac.com/about> (last visited Apr. 9, 2025) (see “Our History”).

⁴⁷ *See Home*, Global Music Rights, <https://globalmusicrights.com/> (last visited Apr. 9, 2025) (see 108,000+ works).

and potentially non-existent artists “IggykoopTie,” “Trebledur27,” and “Theoryboy2010,” respectively).

Pro Music’s significant litigation history since its founding in 2018 raises other concerns. Shortly after its formation, Pro Music commenced (and then quickly dropped) a number of lawsuits, including copyright infringement actions in the U.S. District Court for the Southern District of New York against such music users as Amazon, Apple, Google, iHeartMedia, Pandora, SoundCloud, and YouTube.⁴⁸ Moreover, music users have alleged business abuses or similar misconduct by Pro Music, its affiliates, and/or its founder.⁴⁹

Notably, in response to civil claims brought by Sosa Entertainment, LLC (“Sosa”)—a record label formed by Pro Music’s founder, Jake P. Noch—Spotify alleged that Mr. Noch: (1) “flood[ed] online streaming services with large quantities of” such AI-generated music “in an effort to make himself look like a legitimate and successful artist and label”; and (2) “generat[ed] artificial streams of his content on streaming services to trigger unearned and undeserved royalty

⁴⁸ See *Pro Music Rights, LLC v. 7digital Grp., Inc.*, No. 19-cv-11597 (S.D.N.Y. dismissed Mar. 19, 2020); *Pro Music Rights, LLC v. Amazon.com, Inc.*, No. 19-cv-11598 (S.D.N.Y. dismissed Mar. 19, 2020); *Pro Music Rights, LLC v. Apple, Inc.*, No. 19-cv-11599 (S.D.N.Y. dismissed Mar. 19, 2020); *Pro Music Rights, LLC v. Deezer, S.A.*, No. 19-cv-11608 (S.D.N.Y. dismissed Mar. 19, 2020); *Pro Music Rights, LLC v. Google, LLC*, No. 19-cv-11613 (S.D.N.Y. dismissed Mar. 19, 2020); *Pro Music Rights, LLC v. iHeartMedia, Inc.*, No. 19-cv-11614 (S.D.N.Y. dismissed Mar. 19, 2020); *Pro Music Rights, LLC v. Pandora Media, LLC*, No. 19-cv-11616 (S.D.N.Y. dismissed Mar. 19, 2020); *Pro Music Rights, LLC v. Rhapsody Int’l, Inc.*, No. 19-cv-11615 (S.D.N.Y. dismissed Mar. 19, 2020); *Pro Music Rights, LLC v. SoundCloud Ltd.*, No. 19-cv-11617 (S.D.N.Y. dismissed Mar. 19, 2020); *Pro Music Rights, LLC v. YouTube, LLC*, No. 19-cv-11618 (S.D.N.Y. dismissed Mar. 19, 2020).

⁴⁹ See Defendant Meijer Inc.’s Motion to Dismiss for Lack of Personal Jurisdiction and Memorandum of Law at 2, *Pro Music Rights, LLC v. Meijer Inc.*, No. 20-cv-00933, 2021 WL 82853 (M.D. Fla. Jan. 11, 2021), ECF No. 6 (“To gain access to [Pro Music’s] website, [the defendant’s employee] had to create an account and give his personal bank account information and the company he was with, so he provided his employer [The employee] believed he was just browsing the inventory and was waiting for a response from Pro Music regarding his inquiry into licensing costs. [The employee] unintentionally and without knowledge entered into a licensing agreement with Pro Music when he signed up for an account on the website. Within hours . . . , \$4,300 was withdrawn from his personal bank account and [he] received an invoice for over \$9,500.” (citations omitted)); Spotify AB & Spotify USA Inc.’s First Amended Counterclaims and Third Party Complaint ¶ 6, *Sosa Entmt. LLC v. Spotify AB*, No. 19-cv-843 (M.D. Fla. Apr. 20, 2020), ECF No. 52 (“[Pro Music’s founder] is a fraudster who has engaged in a multi-year campaign to generate artificial streams on Spotify’s online music service, scam undeserved payments from Spotify, and gin up bogus claims of copyright infringement after Spotify discovered [Pro Music’s founder’s] scheme and removed his content from its service.”).

payments.”⁵⁰ To the extent such allegations are true, private and government actors can address this conduct by invoking, as Spotify did, the extensive array of already-existing laws that specifically regulate PROs or that more broadly address business abuses to prevent and remedy such misconduct. Notably, Spotify’s assertion of counterclaims against Sosa and third-party claims against Mr. Noch (including, among other things, for violation of New York’s prohibition of deceptive business practices) ultimately led to a settlement of that dispute whereby all parties, including Sosa, withdrew their claims.⁵¹

C. BMI Royalty Distributions

See Notice, Questions 6(b), 7, and 8.

Contrary to the self-serving “concerns” of music users that appear to have animated the Congressional Request and Notice, BMI’s affiliates are aware of BMI’s distribution policies and are aware of BMI’s ongoing advancements in this area. In addition to routine disclosures to its affiliates, BMI’s Royalty Policy Manual, which BMI makes publicly available on its website, contains information regarding its distribution practices.⁵² As BMI’s disclosures make clear, BMI uses the performance data it collects to allocate licensing revenues to affiliates. BMI continues to review its distribution methodologies to better serve its affiliates. For example, in 2024, BMI launched a new Royalty Dashboard, which provides additional transparency to affiliates about

⁵⁰ See Spotify AB & Spotify USA Inc.’s First Amended Counterclaims and Third Party Complaint ¶ 7, *Sosa Entmt. LLC v. Spotify AB*, No. 19-cv-843 (M.D. Fla. Apr. 20, 2020), ECF No. 52.

⁵¹ See Joint Notice of Settlement, *Sosa Entmt. LLC v. Spotify AB*, No. 19-cv-843 (M.D. Fla. Mar. 24, 2021), ECF No. 72.

⁵² *BMI Royalty Policy Manual*, Broadcast Music, Inc. (Feb. 16, 2024), https://www.bmi.com/creators/royalty_print; *Royalty Introduction*, Broadcast Music, Inc., https://www.bmi.com/creators/royalty/how_we_pay_royalties (last visited Apr. 9, 2025).

their earnings. The Royalty Dashboard is the fruit of meetings BMI convened with its affiliates to better understand which features would be most useful to them.⁵³

The stated concerns are plainly pretextual, with a goal of reducing licensing fees for music users. In this context, it is important to note that many small businesses, including certain restaurants, bars, and retail stores are exempt from paying PROs for public performance licenses.⁵⁴ For example, the Copyright Act’s “homestyle exemption” permits small business to play music via a “single receiving apparatus of a kind commonly used in private homes.”⁵⁵ The Fairness in Music Licensing Act of 1998 (the “FMLA”) expanded this exemption by creating a “small business exemption” for various establishments depending on the type and size of the establishment and the type of equipment used to play music.⁵⁶ Many other small businesses avoid the need for PRO-granted licenses by subscribing to background music services (*e.g.*, SiriusXM for Business), which in turn cover license fees owed to PROs. The areas of inquiry contemplated by the Notice generally relate only to the remaining small businesses that obtain general licenses.

1. BMI’s Primary Sources of Performance Data

See Notice, Questions 4 and 5.

For years, BMI has devoted substantial resources to, and made great strides in, optimizing its technological infrastructure systems and operating processes to increase its capabilities and to reflect the ever-growing scale of data management in today’s music marketplace. These

⁵³ Broad. Music, Inc., Year in Review FY 2024, at 19 (2024), <https://www.bmi.com/about/2024-year-in-review>; *see BMI Launches Dynamic New Royalty Dashboard and Enhanced Online Services Platform to Significantly Improve Affiliate Experience*, Broad. Music, Inc., <https://www.bmi.com/specials/new-ols> (last visited April 9, 2025).

⁵⁴ *See* 17 U.S.C. § 110(5). Exempt establishments can publicly perform copyrighted works via AM/FM radio or a television under certain conditions without obtaining a public performance license. *See id.*

⁵⁵ 17 U.S.C. § 110(5)(A).

⁵⁶ *Id.* § 110(5)(B). Studies conducted around the time of the FMLA’s passage estimated that approximately 70% of restaurants and bars qualified for the exemption afforded by the FMLA. *See* Graeme B. Dinwoodie, *The Development and Incorporation of International Norms in the Formation of Copyright Law*, 62 Ohio State L.J. 733, 752 (2001).

enhancements have enabled BMI to seamlessly process enormous volumes of data and to more efficiently and accurately match the music use data to BMI's repertoire database. BMI continues to onboard new resources and data sources across many markets to ensure fair and efficient distribution of royalties to BMI's affiliates.

BMI's music use data largely consists of detailed data obtained regarding performances by digital services, including Spotify, Pandora, YouTube, and TikTok, among others, on commercial broadcast radio and television and at live concerts. For the past several years, BMI has processed music use data associated with more than *two trillion* performances annually.⁵⁷ BMI collects music use data from music users in different ways, including:

- *Digital Streaming.* BMI obtains detailed play-by-play song-level information from digital streaming services (e.g., Spotify, Pandora, YouTube, and TikTok).
- *Commercial Radio.* BMI uses performance monitoring data, continuously collected from a large percentage of all licensed commercial radio stations, to determine payable performances. This includes available commercial radio performance data purchased from third-party data providers. This census information creates a statistically reliable and highly accurate representation of feature performances on all commercial music format radio stations throughout the country.
- *Top 300 Concerts.* BMI uses an independent source of live pop concert information to identify and create a database of the top 300 events (*i.e.*, tours and festivals) by revenue each quarter. Set lists are solicited from headliners and opening acts performing at those events.
- *BMI Live.* BMI recognizes that concerts, events, and festivals that are not in the top 300 popular music concerts, including those hosted at small and medium-size live music venues, are particularly important for new and upcoming songwriters. Although monitoring performances in connection with such live events presents significant challenges, BMI strongly believes that affiliates should be fairly compensated for the public performance of their songs at such venues. Accordingly, BMI has developed systems to track the public performance of musical works at such venues. The BMI Live program, which BMI launched in 2011, allows performing songwriters to self-report up to six months of performance data from concerts to be considered for payment. BMI has invested considerable resources in maintaining BMI Live and encouraging affiliates to

⁵⁷ See Broad. Music, Inc., *Annual Report* 9 (Oct. 12, 2023), [bmi.com/pdfs/publications/2023/bmi-annual-report-2023.pdf](https://www.bmi.com/pdfs/publications/2023/bmi-annual-report-2023.pdf).

report their performances through the program and has distributed royalties attributable to nearly a million performances since BMI Live's inception in 2015.

- *Other Segments.* BMI receives performance data from other sources including background music services (which power many retail environments, including most chain restaurants), digital jukeboxes in bars and restaurants, satellite radio (*i.e.*, SiriusXM), non-commercial terrestrial radio (including college and public radio), major sports leagues (including Major League Baseball, the National Football League, and the National Hockey League), theme parks (including Disney Experiences and Universal Destinations & Experiences theme parks and Dollywood), and multiple airlines.

2. General Licensing Distribution Methodologies

See Notice, Questions 6(b) and 7.

The four established PROs most commonly license the works in their respective repertoires through blanket licenses. Blanket licenses grant the public performance right to all the musical works in a PRO's repertoire in exchange for a fee—typically either a flat fee (for most music users) or a percentage-of-revenue fee (for significant commercial music users). The blanket license thus permits unlimited performances of works in the licensed repertoire during the license term at a charge that does not vary with the amount of music performed.

Blanket licenses are the most efficient and affordable form of license for most music users. Small businesses, like the bars, restaurants, and other brick-and-mortar establishments that constitute BMI's hundreds of thousands of "general licensees," strongly favor the blanket license. General licensees can secure a BMI blanket license at an affordable price while deriving substantial benefits from public performance right.⁵⁸ Minimizing transaction costs and maximizing licensing efficiencies are paramount considerations for these small businesses, and BMI thus offers a variety of competitive licensing solutions. For example, individual bars and restaurants can secure a BMI

⁵⁸ A recent study confirmed that music positively impacts the way consumers interact with local eating and drinking establishments. See BMI, Value of Music Research, July 2022, available at <https://www.bmi.com/pdfs/publications/2023/bmi-value-music--research-analysis.pdf>. According to the findings, bars and restaurants that feature live music have customers who eat, drink, and spend more when listening to music they enjoy, resulting in higher revenues for many business owners. *Id.*

blanket license, often at a cost of just over one dollar per day, with the precise fee varying based on how the establishment uses music (*e.g.*, jukeboxes, karaoke, live performance), the frequency of such use, and the establishment's occupancy.⁵⁹ BMI offers small businesses additional flexibility by permitting bars and restaurants whose use of music varies seasonally to update their reported music use and change their license fee up to three times per calendar year.

Most general licensees favor a blanket license for its simplicity: In exchange for a minimal flat fee, the user receives the right to perform any work in the BMI repertoire at will during the license term without assuming any obligation to track and report performances. This feature of the general licensee blanket license is particularly important for small businesses that operate under resource and infrastructure constraints, but it leaves BMI without the benefit of general licensee performance data. Accordingly, BMI leverages the substantial performance data it obtains from other music users (which collectively account for the vast majority of BMI's total revenues) as a proxy for purposes of distributing revenues generated from general licenses (which constitute a small portion of BMI's total revenues). The increased use and importance of digital services has made it even more likely that the total mix of performance data from sources for which song-level information is available, for example, broadcast radio, digital streaming services (*e.g.*, Spotify, Pandora, YouTube, and TikTok), live concerts (including through BMI Live), among many others, closely approximates the mix of established and up-and-coming songwriters likely to be featured at restaurants, bars, nightclubs, fitness classes, karaoke bars, bowling alleys, and other general licensing venues.

⁵⁹ See *Music Licensing FAQs*, BMI, <https://www.bmi.com/licensing/faqs> (last visited Apr. 9, 2025) (see "Q: How much is a BMI music license and how is that fee determined?").

IV. CONCLUSION

Songwriters and composers constitute the backbone of our dynamic music marketplace, serving as the creative force behind the music that shapes culture, defines genres, and drives commercial success for large and small businesses alike. PROs serve an essential intermediary role that benefits both music creators and music users given the impracticability of individualized licensing transactions between countless songwriters and composers, on the one hand, and countless music users, on the other.

To that end, BMI remains committed to informational transparency concerning BMI's repertoire, to maximizing the accuracy and fairness of BMI's distributions, and to assisting lesser-known songwriters in achieving their full potential through programs like Spark and BMI Live. However, BMI rejects the view pressed by certain music users that further legislation or regulation is necessary: A robust web of state and federal strictures (including the consent decrees) already governs public performance licensing and constrains PROs' operations.

BMI equally rejects any suggestion that complexities and imperfections in royalty distribution methodologies have any impact on a licensee's obligation to compensate copyright owners for the use of copyrighted works: Whether a PRO ultimately distributes the "correct" amount of royalties to the "correct" songwriter – and BMI is confident that we succeed in this effort – impacts neither the obligation to license nor the value of the license to the music user.⁶⁰ The concerns underlying the Notice call not for further legislative or regulatory action but simply for the enforcement of the same laws that already protect copyright owners and music users alike.

⁶⁰ Moreover, BMI affiliates, rather than music users, are the key stakeholders with respect to the accuracy of BMI's distributions. That music users, rather than BMI affiliates, are raising these issues provides further assurance that there is no systemic problem in need of correction.