

Before the
UNITED STATES COPYRIGHT OFFICE
The Library of Congress

In the Matter of:

Notice of Inquiry regarding Performing Rights Organizations.

Docket No. 2025-1

COMMENTS OF DUFF BERSCHBACK OBO CONCORD MUSIC PUBLISHING, LLC TO NOTICE OF INQUIRY REGARDING ISSUES RELATED TO PERFORMING RIGHTS ORGANIZATIONS.

Concord Music Publishing, LLC (“Concord”) submits these comments in response to the U.S. Copyright Office’s (the “Office”) Notice of Inquiry dated February 10th, 2025 regarding Issues Related to Performing Rights Organizations (“NOI”), requesting comment on issues raised by a letter sent to the Office by members of the House Judiciary Committee. Those issues are: 1) the proliferation of new PROs; and 2) a lack of transparency around how PROs distribute royalties to their members and affiliates.

Concord Music Publishing is a global music publisher representing thousands of the world’s premier songwriters, and hundreds of thousands of the world’s most beloved songs, such as Proud Mary, In the Air Tonight, My Favorite Things, and Despacito, to name just a few. Concord has extensive dealings with U.S. PROs and is well versed in how PROs distribute royalties to members, as such royalties are a core part of Concord’s business. Below are Concord’s comments with respect to the NOI.

Uniquely amongst creators and owners of (not just) intellectual property, music publishers and songwriters are already subject to significant regulation which distorts the market for and depresses the value of our property. Our mechanical reproduction rights have been subject to a compulsory license for decades, which artificially reduces the rates for those rights below what we might charge if we could refuse such licenses. The majority of public performance rights are similarly subject to a compulsory process governed by the ASCAP and BMI consent decrees which require those PROs to offer licenses upon demand. In the event of disagreement on the license rates, the parties must resolve those disputes via rate court, an expensive and lengthy court process where these two PROs fight with one hand tied behind their backs. Predictably, that process distorts the normal pricing mechanisms that govern markets for other goods and services, resulting in lower payments to publishers and songwriters because our agent PROs lack the ability to say “no.” Concord believes that neither Congress nor the Office should make things worse for us with additional regulation requested by licenses who want to pay less than the already below market rates.

1. The Proliferation of PROs.

- a. Selection and Competition. As the Office recognized in the NOI, multiple PROs affords songwriters and publishers choice and thus contributes to a functioning market. Songwriters and publishers affiliate with PROs for multiple reasons such as creative

support, speed of payments, transparency, and advocacy, amongst others. Having multiple PROs encourages competitive services offerings amongst them.

- b. **Market Efficiency.** Licensees are not required to take PRO licenses. As the Office noted in the NOI, “businesses have the option of obtaining performance licenses directly from publisher or songwriter copyright owners.” In many cases, licensees take blanket licenses (covering a PRO’s entire catalog) not because they have to, but because licensing from several PROs is vastly more efficient, and carries lower transaction costs than finding and obtaining a license from each individual rightsholder for the thousands of works they wish to play. Likewise, oftentimes songwriters and music publishers engage in collective licensing of their works, especially when identifying and enforcing against the thousands of individual businesses that profit from using music would be nearly impossible without collective licensing. The DOJ recognized the benefits of collective licensing in appropriate circumstances for both copyright owners and licensees, and blessed their use in the marketplace with certain guardrails, in the form of consent decrees. But it seems that the instant performance licensees want both the efficiency of the collective licensing system and also to pay less than the already sub-market rates they currently pay.
2. **PRO Distributions.** There is no reason for Congress or the Office to regulate the proper distribution of royalties between PROs and their affiliates, much less allow licensees to have a say on that topic. PRO affiliation agreements are private contracts, and both parties to such contracts are perfectly capable of addressing their respective concerns (if any) on this or any other related agreement topic between themselves, without further governmental interference. Songwriters and publishers know what’s best for them and their business. Licensee attempts to regulate, reduce, or even remove the public performance right should be seen for what it is—an effort to improve the bottom line of the licensees at the expense of the already overregulated songwriters and publishers.

In sum, songwriters and music publishers’ already have their creations and property undervalued due to overregulation. Congress and the Copyright Office should not intervene to further remove musical composition rights from the free market and should be wary of licensees who purport to speak on behalf of copyright owners but are really just seeking to reduce what they pay us.

Respectfully submitted,

Concord Music Publishing, LLC



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