

**BEFORE THE  
U.S. COPYRIGHT OFFICE  
LIBRARY OF CONGRESS  
WASHINGTON, D.C.**

**In the Matter of Notice of Inquiry  
Regarding Issues Related to Performing  
Rights Organizations**

**Docket No. 2025-1**

**COMMENTS OF SESAC PERFORMING RIGHTS, LLC  
IN RESPONSE TO NOTICE OF INQUIRY  
REGARDING ISSUES RELATED TO PERFORMING RIGHTS ORGANIZATIONS<sup>1</sup>**

**I. SESAC Performing Rights**

SESAC Performing Rights LLC (“SESAC PRO”) respectfully responds to the Library of Congress U.S. Copyright Office’s (the “Office”) Notice of Inquiry dated February 10, 2025, seeking written comments regarding issues related to performing rights organizations. SESAC PRO is the second oldest and first for-profit domestic musical works performing rights organization in the United States. SESAC PRO currently licenses the public performances of more than 1.5 million songs on behalf of its 15,000+ affiliated songwriters, composers, and music publishers, which include such familiar names as Bob Dylan, Stevie Nicks, RUSH, Adele, Jack Harlow, Ariana Grande, Green Day, REM, Disclosure, Zac Brown, Rosanne Cash, Hillary Scott, Lee Brice, Margo Price, Nicky Jam, Blanco Brown, and many more. SESAC PRO also represents the music heard on some of TV’s biggest shows including *Grey’s Anatomy*, *How I Met Your*

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<sup>1</sup> Library of Congress U.S. Copyright Office Notice of Inquiry, Issues Related to Performing Rights Organizations, 90 Fed. Reg. 9253 (February 10, 2025) (hereinafter, “NOI”).

*Mother, A Million Little Things, Dateline NBC, Dr. Phil, Seinfeld, and Modern Family*, and is the choice for many of Hollywood’s most sought-after film and television composers including Christophe Beck, Danny Lux, Randy Newman, The Newton Brothers, John Ehrlich, Dennis C. Brown, Evan Frankfort, Laura Karpman, and others. As a historic leader in performance rights, SESAC PRO is passionate about its work supporting the best songwriters and composers in the world and appreciates the opportunity to respond to the NOI.

## **II. Freedom of Choice Benefits Songwriters**

Too frequently, songwriter, composer, and publisher freedom of choice has been overlooked when evaluating music licensing. As the Copyright Office notes in the NOI, songwriters and publishers carefully choose the performing rights organizations with which they affiliate based on a variety of criteria.<sup>2</sup> SESAC PRO holds a unique perspective on the importance of such choice. SESAC PRO was the first privately owned performing rights organization in the United States and competes every day to represent songwriters and music publishers by offering appealing products and services that help them achieve their commercial and creative goals.

The entrance of a modest number of new performing rights organizations into the market has not changed that focus nor has it changed the fact that blanket licenses are still “significantly more efficient for businesses, songwriters, and publishers when compared to song-by-song licensing.”<sup>3</sup> As DOJ Antitrust Chief Makan Delrahim explained, “collective licensing provides significant efficiencies to many businesses across the country that benefit from immediate access to music, as

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<sup>2</sup> NOI at 9254.

<sup>3</sup> NOI at 9254 (citing U.S. Copyright Office, *Copyright and the Music Marketplace 112* (2015)), <https://www.copyright.gov/policy/musiclicensingstudy/copyright-and-the-music-marketplace.pdf>. It should go without saying that contracting with six performing rights organizations does not compare with the possibility of obtaining licenses from thousands of individual music publishers and/or songwriters.

well as to songwriters, composers, and publishers who would otherwise have to individually license or enforce against multiple music users.”<sup>4</sup>

The NOI responds to a Congressional inquiry about (1) a recent increase in the number of PROs and (2) purported difficulties assessing the efficiency of PRO distribution practices regarding general licensing revenues.<sup>5</sup> Recent entrants into the market are better situated to address their actions, business models, and motivations than SESAC PRO. However, SESAC PRO believes many of the questions raised in the NOI are driven by misinformation and an incomplete understanding of the facts – and we believe this NOI process will ultimately do a great service by developing a clear record regarding mainstream PRO practices including robust repertory transparency and accurate royalty distribution that will build confidence in the strong and competitive market that exists today.

It is particularly incongruous that concerns regarding how performing rights organizations distribute general licensing revenue to their members and affiliates would be raised alongside questions about the increase in the number of performing rights organizations in the market. It is precisely the ability of songwriters and publishers to choose their performing rights organization that ensures distribution practices will be adjusted or modified when they raise concerns. As noted by the Antitrust Division of the Department of Justice, “[c]ompetition from BMI and SESAC is likely to be far more effective in disciplining ASCAP's distribution practices than regulation by the Department or the

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<sup>4</sup> Remarks by Assistant Attorney General Makan Delrahim on the Future of ASCAP and BMI Consent Decrees, *available at* <https://www.justice.gov/archives/opa/speech/remarks-assistant-attorney-general-makan-delrahim-future-ascap-and-bmi-consent-decrees> (last visited April 3, 2025).

<sup>5</sup> NOI at 9257.

Court.”<sup>6</sup> More generally, “[t]o best promote innovation and competition, the government instead should clear the path for innovation . . .”<sup>7</sup>

### III. Music Licensing Background—Exemptions and Alternatives

SESAC PRO further believes that additional background is required to put the topics identified in the NOI into proper perspective. First, many casual observers are not aware that the Fairness in Music Licensing Act<sup>8</sup> already exempts the vast majority of food and beverage establishments in the United States from paying music performance licensing royalties for radio and television broadcasts because they are too small or do not operate large scale sound amplification systems.<sup>9</sup>

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<sup>6</sup> Mem. of the U.S. in Supp. of the Joint Mot. to Enter Second Am. Final J. at 42, *United States v. ASCAP*, No. 41-1395 (S.D.N.Y. Sep. 4, 2000). *See also*, Mem. of the U.S. in Response to Public Comments on the Joint Mot. to Enter Second Am. Final J. at 41, *United States v. ASCAP*, No. 41-1395 (S.D.N.Y. Mar. 16, 2001) (“The United States believes that SESAC’s use of technology has pushed ASCAP to improve its music tracking systems. Moreover, the new provisions allowing easier exit for ASCAP members will provide additional incentives for ASCAP to improve its technology for music tracking and royalty distribution so as to retain members.”).

<sup>7</sup> Assistant Attorney Gen. Makan Delrahim, Antitrust Div. U.S. Dep’t of Justice, “Life in the Fast Lane”: Antitrust in a Changing Telecommunications Landscape 13 (Nov. 7, 2018). Indeed, in January 2021, AAG Delrahim specifically cited the entrance of new PROs as a positive competitive factor in the industry. *See* Remarks by Assistant Attorney General Makan Delrahim (“[C]hanges in the music marketplace, including the rise of additional PROs and significant transformations in the way Americans consume music, have placed important aspects of the industry on a different competitive footing.”).

<sup>8</sup> 17 U.S.C.S. § 110 (LexisNexis, Lexis Advance through Public Law 118-274, approved January 6, 2025) (hereinafter, “FMLA”).

<sup>9</sup> Specifically, the FMLA establishes a music licensing exemption:

“... in the case of a food service or drinking establishment, [where] either the establishment in which the communication occurs has less than 3,750 gross square feet of space (excluding space used for customer parking and for no other purpose), or the establishment in which the communication occurs has 3,750 gross square feet of space or more (excluding space used for customer parking and for no other purpose) and – (I) if the performance is by audio means only the performance is communicated by means of a total of not more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space; or (II) if the performance or display is by audiovisual means, any visual portion of the performance or display is communicated by means of a total of not more than 4 audiovisual devices, of which not more than one audiovisual device is located in any 1 room, and no such audiovisual device has a diagonal screen size greater than 55 inches, and any audio portion of the performance or display is communicated by means of a total of not more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space[.]”

At the time the FMLA was passed, the research established that most restaurants and bars were exempt from paying music licensing royalties.

- A 1995 study prepared for the Senate Judiciary Committee by the Congressional Research Service estimated that approximately 65 percent of restaurants and 72 percent of bars were less than 3,500 square feet.<sup>10</sup>

- A 1998 study conducted by the National Restaurant Association (NRA) estimated that 36 percent of sit-down restaurants and 95 percent of quick service restaurants were less than 3,750 square feet.<sup>11</sup>

- A 1999 study prepared by Dun and Bradstreet found that 70 percent of restaurants (SIC 5812) and 73 percent of bars (SIC 5813) were less than 3,750 square feet.<sup>12</sup>

In 2025, SESAC PRO commissioned NERA Economic Consulting to update these findings. The NERA paper, attached as Exhibit A to this filing, establishes that, decades later, the extremely broad reach of the FMLA remains largely unchanged. According to NERA, nearly 70% of restaurants and over 90% of bars remain exempted from paying royalties to songwriters or publishers for music broadcasts. And the exception's reach only increases when we focus on genuine "small business" operations – covering 74% of restaurants and 94% of bars with 10 or fewer employers.

SESAC PRO shares this information not to question the small-business protections of the FMLA. But to ensure all stakeholders appreciate the significant loss in revenue absorbed by the

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<sup>10</sup> Congressional Research Service, CRS Study Comparing Aiken Standard to "ASCAP/BMI Proposal" (1995) cited in World Trade Organization, Report of the Panel, United States – Section 110(5) of the US Copyright Act WT/DS160/R (June 15, 2000) at ¶2.11.

<sup>11</sup> Letter from the National Restaurant Association (November 18, 1999) cited in World Trade Organization, Report of the Panel, United States – Section 110(5) of the US Copyright Act WT/DS160/R (June 15, 2000) at ¶2.13.

<sup>12</sup> Dun & Bradstreet, Dun's Market Identifiers Market Profiles created by Dun & Bradstreet's Database (1999).

smallest of small businesses – songwriters – due to the broad FMLA exemption reaching hundreds of thousands of establishments.

Second, one of the animating concerns of this proceeding appears to be the perceived difficulty music-using-businesses have determining whether they need to take a license from any particular PRO. That may be a legitimate concern in some cases (a question on which we lack information to opine) but it does not apply to SESAC PRO and other responsible PROs.

All of the established PROs offer publicly accessible repertory information. For example, SESAC PRO maintains an open, online database that is easily searched by artist, song title, writer or publisher. A quick search of the top artists any establishment would like to play will indicate whether a SESAC PRO license is needed.<sup>13</sup> In addition, ASCAP and BMI have combined their repertory in a platform called Songview which is available on their websites.<sup>14</sup> ASCAP, BMI, SESAC, and GMR are currently exploring the inclusion of SESAC and GMR data to enhance Songview’s reconciled view of copyright ownership information.

Third, to the extent establishments choose not to track the music they use and compare it to the easily accessible databases provided by SESAC PRO and other performing rights organizations, the market has provided a complete, practical, and cost-effective solution. Mood Media provides fully-licensed, ad-free music for over 100,000 businesses and brands.<sup>15</sup> Soundtrack Your Brand competes with Mood Media and offers over 100 million songs and 1,500 playlists to customers.<sup>16</sup> Other background music services active in the market include SiriusXM for Business, Rockbot, Soundsuit,

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<sup>13</sup> <https://www.sesac.com/repertory/> (last visited on March 11, 2025).

<sup>14</sup> <https://songview.com/> (last visited on April 10, 2025).

<sup>15</sup> <https://us.moodmedia.com/shop/?source=usmmcom> (last visited March 11, 2025).

<sup>16</sup> <https://soundtrackyourbrand.com> (last visited March 11, 2025).

SoundMachine, and Jukeboxy.<sup>17</sup> As demonstrated by the hundreds of thousands or more customers of these background music services, any establishment that is concerned about working with multiple performing rights organizations or is unwilling or unable to identify which performing rights organization controls the music it plays has numerous options for fully-licensed music, much of it customized or customizable without the need to obtain a license directly from a performing rights organization.

Fourth, most states have laws on the books that establish a private right of action for the use of unfair or deceptive acts or practices and/or unfair methods of competition by a business.<sup>18</sup> Accordingly, a potential licensee would have the same recourse against a PRO attempting to license the public performances of its members' copyrighted works as it would against any other type of business operating in the licensee's state. Moreover, a majority of states already impose a variety of obligations on PROs regarding the licensing sales process by way of music licensing statutes. These statutes typically require certain information to be provided to potential licensees, including transparent contract terms and the identification of represented musical works. They prohibit unfair or deceptive sales practices and establish processes for resolving disputes between music users and performing rights societies.<sup>19</sup> General licensees, therefore, have the ability to address concerns about licensing

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<sup>17</sup> See <https://siriusxm.com/business>; <https://rockbot.com/>; <https://soundsuit.fm/how-soundsuit-works/>; <https://sound-machine.com>; <https://www.jukeboxy.com/> (last visited March 11, 2025).

<sup>18</sup> American Bar Association, *Business Torts and Unfair Competition Handbook*, § III. C. (3rd ed. 2014).

<sup>19</sup> See Alaska: Alaska Stat. §§ 45.45.500 et seq.; Arkansas: Ark. Code Ann. §§ 4-76-101 et seq.; California: Cal. Bus. & Prof. Code §§ 21750 et seq.; Colorado: Colo. Rev. Stat. §§ 6-13-101 et seq.; Florida: Fla. Stat. Ann. §§ 501.93 et seq.; Idaho: Idaho Code §§ 48-1301 et seq.; Illinois: 815 Ill. Comp. Stat. Ann. §§ 637/1 et seq.; Indiana: Ind. Code Ann. §§ 32-37-1-1 et seq.; Iowa: Iowa Code §§ 549.1 et seq.; Maryland: Md. Code Ann., Com. Law §§ 11-1401 et seq.; Michigan: Mich. Comp. Laws Serv. §§ 445.2101 et seq.; Minnesota: Minn. Stat. Ann. §§ 325E.50 et seq.; Missouri: Mo. Rev. Stat. §§ 436.150 et seq.; Nebraska: Neb. Rev. Stat. Ann §§ 59-1401 et seq.; New Jersey: N.J. Stat. §§ 56:3A-1 et seq.; New York: N.Y. Arts & Cult. Aff. Law §§ 31.04 et seq.; North Dakota: N.D. Cent. Code §§ 47-21.2-01 et seq.; Oklahoma: Okla. Stat. tit. 15, §§ 790 et seq.; Oregon: Or. Rev. Stat. Ann. §§ 647.700 et seq.; Texas: Tex. Occ. Code §§ 2102.001 et seq.; Utah: Utah Code Ann. §§ 13-10a-1 et seq.; Virginia: Va. Code Ann. §§ 59.1-460 et seq.; Washington: Wash. Rev. Code Ann. §§ 19.370.010 et seq.; West Virginia: W. Va. Code §§ 47-2A-1 et seq.; Wisconsin: Wis. Stat. Ann. §§ 100.206 et seq.; Wyoming: Wyo. Stat. Ann. §§ 40-13-101 et seq.

and repertory practices of any PROs that do not meet basic standards under general deceptive trade practices laws or directly under these statutes in much of the country.

#### **IV. SESAC PRO Data Collection and Royalty Distribution**

Lastly, the NOI raises questions about data collection and distribution of royalties by PROs. SESAC PRO employs a variety of means to allocate licensing revenue to its members, including self-reporting from SESAC PRO's songwriters and publishers, data supplied by SESAC PRO's licensees, and data purchased from third-party providers. SESAC PRO spends millions of dollars per year purchasing, storing, and processing data from numerous sources in order to inform its royalty allocation and distribution processes. As a result, we are able to distribute a considerable majority of royalties to our affiliates based on census and survey data.

For example, SESAC PRO permits all songwriters and publishers to self-report live performances through our online member portal up to one year after a performance has occurred. SESAC PRO receives over 17,000 setlist submissions per year through its portal. In addition, SESAC PRO purchases live performance data from Pollstar and Muzooka to account for performances not submitted directly by songwriters and publishers. These companies obtain their data from concert promoters, performing artists, music venues, ticket agencies, and other sources. SESAC PRO receives data for over 40,000 concerts each year from these providers. Such data is particularly useful in instances where a SESAC PRO-represented song is performed by an artist who is not the SESAC PRO songwriter. We believe that through these efforts SESAC PRO captures and pays royalties for works performed on the overwhelming majority of professional tours and shows as well as smaller gigs and local singer-songwriter performances by its members. However, we believe this NOI can serve a valuable purpose educating writers and artists on the ability to submit setlists and get paid for works performed even at smaller venues.

SESAC PRO also purchases data to use in connection with other licensee channels, including broadcast television, basic and premium cable channels, pay-per-view services, syndicated television, full- and low-power local television, public television, music-intensive cable channels and several thousand commercial and non-commercial radio stations. Some examples are Gracenote, which provides program schedules that SESAC PRO matches to cue sheets provided by film and TV producers that identify the features, themes, and bed music in programs. Vivvix provides electronic commercial airing reports for jingles. SESAC PRO also purchases radio airplay detection reports from Muzooka for thousands of broadcast stations. Digital music services, background music services, and satellite radio typically provide census data regarding their use of music. In addition to its copyright, royalty, and data teams, SESAC PRO maintains a significant IT infrastructure to ingest, manage, and allocate payments associated with the billions of rows of data received each year from these services. Such information allows SESAC PRO to make census and sample distributions as well as proxy distributions where specific data is not available.

Bars, restaurants, stores, hotels, and similar venues are not required to report the music they use to SESAC PRO under its blanket licenses. Not only are such licenses more efficient because they avoid the administrative costs associated with negotiating and managing licenses with individual publishers and songwriters or, more onerously, song-by-song licensing,<sup>20</sup> they relieve general licensees from all reporting obligations related to their use of music. As a result, the administrative cost savings for such businesses are substantial. As noted above, however, SESAC PRO obtains a vast amount of performance data directly from background and digital

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<sup>20</sup> NOI at 9254; U.S. Copyright Office, Copyright and the Music Marketplace at 33, 112 (<https://www.copyright.gov/policy/musiclicensingstudy/copyright-and-the-music-marketplace.pdf>)

music companies and purchases additional performance data for thousands of radio stations and other music distribution channels. SESAC PRO believes this information has sufficient depth and breadth to serve as a proxy for usage where census and survey data are not available. Although not every distribution is tied directly to a single use of music, SESAC PRO's use of this data allows for fair distributions to its members. Furthermore, SESAC PRO's songwriters and publishers are aware that not every performance of their musical compositions can be tracked.

## **V. Conclusion**

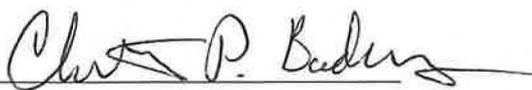
SESAC PRO recognizes the complexity of the music licensing landscape and the challenges it raises for many stakeholders including songwriters and potential licensees. We believe that such complexity should compel advocates in this space to adhere closely to the established facts and use their means and expertise to clarify and simplify the issues and resist the urge to leverage complexity to advance parochial agendas. A competitive music licensing marketplace with multiple PROs provides choice for songwriters and publishers, and ensures concerns about distribution practices will be addressed when raised by PRO members and affiliates. It has produced pre-licensed background music services such that hundreds of thousands of general licensees operate without engaging with a performing rights society. And the competitive market has led SESAC PRO to innovate and expend considerable resources to attract songwriter and publisher affiliates by ensuring its distribution of license fees is equitable.

While SESAC PRO hopes and believes its songwriters and publishers are satisfied with the work it undertakes to ensure the appropriate distributions of license fees, we welcome the feedback offered by this NOI process and also continue to maintain an open door with robust channels for songwriters and their teams to contact us to better understand our practices and share any suggestions how we can better serve them. We also recognize that to the extent our affiliates believe concerns

regarding adjustments or modifications are not being addressed, our affiliates always have the freedom to choose another PRO in the marketplace. SESAC PRO's relationships with its songwriters, composers, and publishers, along with the powerful discipline of the free market are the ultimate drivers of SESAC PRO's investment in and efforts to constantly improve its data collections and distributions.

Date: April 11, 2025

Respectfully submitted,  
SESAC Performing Rights, LLC

By: 

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**EXHIBIT A**

*[see attached]*

# **Music Royalty Exemptions for Food and Beverage Service Establishments Under the FMLA**

**Robert Kulick**

**April 2025**

## **About the Author**

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The author is grateful to SESAC for its sponsorship and to Meghan Scheffey for research assistance. The views expressed are exclusively those of the author and do not necessarily represent the views of NERA Economic Consulting or any of the other institutions with which the author is affiliated.

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## I. Introduction

Public performances of music in the United States are subject to copyright laws. Consequently, non-exempt restaurants and bars that perform music are required to obtain copyright licenses and pay royalties. However, under the Fairness in Music Licensing Act (FMLA, 17 U.S.C. §110(5)(B)) certain establishments are exempt from these requirements. Prior studies, now somewhat dated, have found that the majority of food and beverage service establishments meet the necessary criteria for exemption and are thus not required to pay music licensing royalties. At the request of SESAC, this study presents updated estimates of the proportion of food and beverage service restaurants exempt from paying music licensing royalties. Specifically:

- The majority of food and beverage service establishments in the United States are not required to pay music licensing royalties due to the FMLA's exemption for establishments smaller than 3,750 square feet.
- Overall, data from D&B Hoovers indicates that 69.0 percent of restaurants, 91.3 percent of bars, and 71.4 percent of food and beverage service establishments qualify for the FMLA exemption for establishments smaller than 3,750 square feet.
- The exemption from music licensing provided by the FMLA applies broadly across the main sub-sectors of the restaurant industry. The data show that 71.0 percent of Full-Service Restaurants, 65.4 percent of Limited-Service Restaurants, 63.3 percent of Cafeterias, Grill Buffets, and Buffets, and 86.4 percent of Snack and Nonalcoholic Beverage Bars are less than 3,750 square feet and therefore exempt from paying music licensing royalties.
- The FMLA provides proportionately more protection to small businesses in the food and beverage service sector.
  - For restaurants, the data show that 84.3 percent of establishments owned by firms with five or fewer employees, 73.5 percent of establishments owned by firms with ten or fewer employees, and 71.6 percent of establishments owned by firms with 19 or fewer employees are less than 3,750 square feet and therefore exempt.
  - For bars, the data show that 98.0 percent of establishments owned by firms with five or fewer employees, 94.4 percent of establishments owned by firms with ten or fewer employees and 93.3 percent of establishments owned by firms with 19 or fewer employees are less than 3,750 square feet and therefore exempt.

Section II presents a brief overview of the FMLA exemption criteria and explains the methodology and data sources used in this study. Section III presents the results and discusses their implications. Section IV provides a brief conclusion.

## II. Research Design

The first part of this section describes the exemptions from music licensing requirements created by the FMLA and outlines the purpose of this study. The second part of this section describes the data and methodology.

## A. The FMLA

Under 17 U.S.C §106, the owner of the copyright in a musical work has “the exclusive rights to do and authorize” the public performance of the work. A public performance of a musical work occurs when it is played “at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered,” or when it is “transmit[ted] or otherwise communicate[d] ... to the public[.]”<sup>1</sup>

The FMLA was enacted in 1998 and amends 17 U.S.C. §110 to permit restaurants bars and other commercial establishments meeting certain criteria to play copyrighted works “intended to be received by the general public” without acquiring a public performance license. Specifically, the FMLA licenses performances of musical works which consist of:

... communication by an establishment of a transmission or retransmission embodying a performance or display of a nondramatic musical work intended to be received by the general public, originated by a radio or television broadcast station licensed as such by the Federal Communications Commission, or, if an audiovisual transmission, by a cable system or satellite carrier[.]<sup>2</sup>

The FMLA establishes a music licensing exemption:

... in the case of a food service or drinking establishment, [where] either the establishment in which the communication occurs has less than 3,750 gross square feet of space (excluding space used for customer parking and for no other purpose), or the establishment in which the communication occurs has 3,750 gross square feet of space or more (excluding space used for customer parking and for no other purpose) and – (I) if the performance is by audio means only the performance is communicated by means of a total of not more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space; or (II) if the performance or display is by audiovisual means, any visual portion of the performance or display is communicated by means of a total of not more than 4 audiovisual devices, of which not more than one audiovisual device is located in any 1 room, and no such audiovisual device has a diagonal screen size greater than 55 inches, and any audio portion of the performance or display is communicated by means of a total of not more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space[.]”<sup>3</sup>

The FMLA thus exempts both small establishments (measured by square footage) and other establishments that make limited use of copyrighted material. Our analysis is limited to estimating the proportion of establishments that qualify for exemption under the size criterion and therefore understates the reach of the exemption.

Previous studies have found that a large proportion of U.S. restaurants and bars were covered by the FMLA exemptions.

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<sup>1</sup> 17 U.S.C. §101.

<sup>2</sup> 17 U.S.C. §110(5)(B).

<sup>3</sup> 17 U.S.C. §110(5)(B). For commercial establishments other than restaurants and bars, the FMLA promulgates similar exemptions but with a size threshold of 2,000 square feet rather than 3,750 square feet.

- A 1995 study prepared for the Senate Judiciary Committee by the Congressional Research Service estimated that approximately 65 percent of restaurants and 72 percent of bars were less than 3,500 square feet.<sup>4</sup>
- A 1998 study conducted by the National Restaurant Association (NRA) estimated that 36 percent of sit-down restaurants and 95 percent of quick service restaurants were less than 3,750 square feet.<sup>5</sup>
- A 1999 study prepared by Dun and Bradstreet found that 70 percent of restaurants (SIC 5812) and 73 percent of bars (SIC 5813) were less than 3,750 square feet.<sup>6</sup>

Thus, at the time the FMLA was passed, most restaurants and bars were exempt from paying music licensing royalties. This study uses current data from D&B Hoovers to quantify the proportion of U.S. restaurants and bars that are exempt from royalties under the FMLA.

## B. Data and Methodology

This study relies on data from D&B Hoovers, which is maintained by Dun & Bradstreet.<sup>7</sup> The D&B Hoovers data covers almost 300 million business records taken from 30,000 sources and updated in real time.<sup>8</sup> Business records in the data are maintained at the establishment level, i.e., the individual records are “business locations with a unique, separate and distinct operation.”<sup>9</sup> Each establishment is assigned a unique identifier known as a “DUNS Number” which stays with the establishment “throughout the duration of its life cycle, including name and address changes, changes in corporate structure and even bankruptcy.”<sup>10</sup> The process of assigning DUNS Numbers is controlled exclusively by Dun & Bradstreet and governed by “rigorous rules for assignment and maintenance” and “validation from multiple sources” to ensure that DUNS Numbers are assigned only to entities at the lowest organizational level within the business structure.<sup>11</sup>

The information available through the D&B Hoovers database is drawn from a wide body of sources including: company financial filings and statements, insolvency records, public registries and data collected through additional research performed by Dun & Bradstreet.<sup>12</sup> Through the assignment of DUNS Numbers, Dun & Bradstreet not only tracks individual establishments but also links related establishments to one another, distinguishing (for example) between corporate headquarters and individual retail locations.<sup>13</sup> The D&B data is thus suitable for our purposes because it identifies

<sup>4</sup> Congressional Research Service, CRS Study Comparing Aiken Standard to “ASCAP/BMI Proposal” (1995) cited in World Trade Organization, Report of the Panel, United States – Section 110(5) of the US Copyright Act WT/DS160/R (June 15, 2000) at ¶2.11.

<sup>5</sup> Letter from the National Restaurant Association (November 18, 1999) cited in World Trade Organization, Report of the Panel, United States – Section 110(5) of the US Copyright Act WT/DS160/R (June 15, 2000) at ¶2.13.

<sup>6</sup> Dun & Bradstreet, Dun’s Market Identifiers Market Profiles created by Dun & Bradstreet’s Database (1999).

<sup>7</sup> Dun & Bradstreet, “About Us” (<https://www.dnb.com/about-us.html>).

<sup>8</sup> Dun & Bradstreet, “What is D&B Hoovers?” (<https://www.dnb.com/products/marketing-sales/dnb-hoovers/what-is-dnb-hoovers.html>); Dun & Bradstreet, “D&B Hoovers,” (<https://www.dnb.com/content/dam/bisnode/nordics/pdf/DNB-Hoovers-external-brochure-long-NE-24-03.pdf>).

<sup>9</sup> Dun & Bradstreet, “Master Data: Implementing Dun & Bradstreet Hierarchies and Custom Hierarchy Views,” (2019) at 6 (available at [https://www.dnb.com/content/dam/english/dnb-solutions/DNB\\_Master\\_Data\\_Hierarchies-Whitepaper.pdf](https://www.dnb.com/content/dam/english/dnb-solutions/DNB_Master_Data_Hierarchies-Whitepaper.pdf)).

<sup>10</sup> Dun & Bradstreet, “Master Data: Implementing Dun & Bradstreet Hierarchies and Custom Hierarchy Views,” (2019) at 6 (available at [https://www.dnb.com/content/dam/english/dnb-solutions/DNB\\_Master\\_Data\\_Hierarchies-Whitepaper.pdf](https://www.dnb.com/content/dam/english/dnb-solutions/DNB_Master_Data_Hierarchies-Whitepaper.pdf)).

<sup>11</sup> Dun & Bradstreet, “Master Data: Implementing Dun & Bradstreet Hierarchies and Custom Hierarchy Views,” (2019) at 6 (available at [https://www.dnb.com/content/dam/english/dnb-solutions/DNB\\_Master\\_Data\\_Hierarchies-Whitepaper.pdf](https://www.dnb.com/content/dam/english/dnb-solutions/DNB_Master_Data_Hierarchies-Whitepaper.pdf)).

<sup>12</sup> Dun & Bradstreet, “D&B Global & U.S. Business Data,” ([https://www.dnb.com/content/dam/english/dnb-data-insight/global-data-collection/dnb\\_global\\_and\\_us\\_business\\_data.pdf](https://www.dnb.com/content/dam/english/dnb-data-insight/global-data-collection/dnb_global_and_us_business_data.pdf)).

<sup>13</sup> Dun & Bradstreet, “Master Data: Implementing Dun & Bradstreet Hierarchies and Custom Hierarchy Views,” (2019) at 4-5 (available at [https://www.dnb.com/content/dam/english/dnb-solutions/DNB\\_Master\\_Data\\_Hierarchies-Whitepaper.pdf](https://www.dnb.com/content/dam/english/dnb-solutions/DNB_Master_Data_Hierarchies-Whitepaper.pdf)).

“establishments” in a manner consistent with the FMLA – that is, by the individual location in which musical works are performed.

For each establishment in the United States, the D&B Hoovers database tracks industry affiliation and establishment size measured in square feet. For the purposes of this study, we identify restaurants as establishments classified within the NAICS industry code system as “Restaurants and Other Eating Places” (NAICS 7225) and bars as establishments classified as “Drinking Places” (NAICS 7224).<sup>14</sup> Cumulative results for the overall food and beverage service sector are also presented.

Square footage data is available for nearly all of the restaurants and bars in the D&B Hoovers data. Table 1 provides establishment counts for restaurants, bars, and the food and beverage service sector in aggregate, quantifying the number of establishments with and without square footage data for each category.

**TABLE 1:  
AVAILABILITY OF SQUARE FOOTAGE DATA FOR  
FOOD AND BEVERAGE SERVICE ESTABLISHMENTS (2025)**

	<b>Restaurants</b>	<b>Bars</b>	<b>Food and Beverage Service</b>
Available	1,103,455	136,019	1,239,474
Unavailable	92,595	2,946	95,541
<b>Total</b>	<b>1,196,050</b>	<b>138,965</b>	<b>1,335,015</b>
<b>% Available</b>	<b>92.3%</b>	<b>97.9%</b>	<b>92.8%</b>

*Source: D&B Hoovers.*

As the table shows, as of March 31, 2025, the D&B Hoovers database identified 1,196,050 restaurant establishments and 138,965 bar establishments currently operating in the U.S. Square footage data is available for 1,103,455 restaurants (92.3 percent) and 136,019 bars (97.9 percent). Overall, square footage data is available for 92.8 percent of food and beverage service establishments.<sup>15</sup>

By necessity, the proportion of restaurants and bars with less than 3,750 square feet of space is calculated using the records where size information is available. Thus, interpreting our results as generally representative of all U.S. restaurants and bars implicitly assumes that the proportion of food and beverage service establishments less than 3,750 square feet is equal for the missing and non-missing records. Interpreting the results in this manner is reasonable, and, likely conservative, as establishment level datasets are typically more likely to be missing information for small establishments.<sup>16</sup>

In addition to tracking individual establishments, the D&B Hoovers data contains information on the firms with which each establishment is associated, including firm-level employment. We use this

<sup>14</sup> Executive Office of the President Office of Management and Budget, “North American Industry Classification System United States, 2022” at 68 (available at [https://www.census.gov/naics/reference\\_files\\_tools/2022\\_NAICS\\_Manual.pdf](https://www.census.gov/naics/reference_files_tools/2022_NAICS_Manual.pdf)). The North American Industry Classification System (NAICS) is “the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.” See U.S. Census Bureau, “Introduction to NAICS” (available at <https://www.census.gov/naics/?99967>).

<sup>15</sup> Because the D&B Hoovers data is continuously updated, the counts vary from day to day.

<sup>16</sup> See e.g., T. Kirk White, Jerome P. Reiter and Amil Petrin, “Imputation in U.S. Manufacturing Data and Its Implications for Productivity Dispersion,” *Review of Economics and Statistics* 100;3 (2018) 502-509; Robert Kulick, “Ready-to-Mix: Horizontal Mergers, Prices and Productivity,” *Center for Economic Studies Working Paper 17-38* (2017). Note the results do not change materially if the exemption rates are calculated using the extreme (and highly improbable) assumption that all of the missing records are 3,750 square feet or larger.

information to examine the extent to which exempt establishments are associated with small businesses, i.e., those with small numbers of employees.<sup>17</sup>

### III. Results and Discussion

The first part of this section presents our findings regarding the proportion of U.S. food and beverage service establishments exempt from paying music licensing royalties under the FMLA and the extent to which exempt establishments are owned and operated by small businesses. The second part discusses the broader implications and robustness of our findings, including consideration of the extent to which exemptions beyond the FMLA exemption for small establishments provide additional protection to the food and beverage service sector.

#### A. Results

Table 2 shows the number and proportion of U.S. restaurant and bars that fall above and below the 3,750 square foot threshold for exemption from music licensing royalties under the FMLA.

**TABLE 2:  
EXEMPT RESTAURANTS AND BARS UNDER THE FMLA SQUARE FOOTAGE CRITERION (2025)**

FMLA Status	Restaurants		Bars		Food and Beverage Service	
Exempt (<3,750 Sq. Ft.)	760,949	69.0%	124,231	91.3%	885,180	71.4%
Non-Exempt (≥3,750 Sq. Ft.)	342,506	31.0%	11,788	8.7%	354,294	28.6%
<b>Total</b>	<b>1,103,455</b>	<b>100.0%</b>	<b>136,019</b>	<b>100.0%</b>	<b>1,239,474</b>	<b>100.0%</b>

Source: D&B Hoovers.

As the table shows, of the 1,103,455 restaurants in the D&B Hoovers database as of March 31, 2025 with data on establishment square footage, 760,949 (69.0 percent) are less than 3,750 square feet and thus exempt under the FMLA. For bars, 124,231 (91.3 percent) of the 136,019 establishments qualify for the exemption. Overall, 885,180 (71.4 percent) of all food and beverage service establishments are exempt.

In Table 3, we provide further detail on how the exemption criteria apply to specific categories of restaurants.<sup>18</sup> Specifically, the NAICS industry classification system breaks the restaurant industry into four categories: Full-Service Restaurants (NAICS 722511),<sup>19</sup> Limited-Service Restaurants (722513),<sup>20</sup> Cafeterias, Grill Buffets, and Buffets (NAICS 722514)<sup>21</sup> and Snack and Nonalcoholic

<sup>17</sup> Economists typically define small businesses using firm-level employment, i.e., total employment across establishments under common operational control.

<sup>18</sup> The NAICS industry code classification system does not separate bars into sub-sectors.

<sup>19</sup> Full-Service Restaurants are defined as “establishments primarily engaged in providing food services to patrons who order and are served while seated (i.e., waiter/waitress service) and pay after eating.” See U.S. Census Bureau, “2022 NAICS Definition 722511 Full-Service Restaurants,” (available at <https://www.census.gov/naics/?input=722511&year=2022&details=722511>).

<sup>20</sup> Limited-Service Restaurants are defined as “establishments primarily engaged in providing food services (except snack and nonalcoholic beverage bars) where patrons generally order or select items and pay before eating.” See U.S. Census Bureau, “2022 NAICS Definition 722513 Limited-Service Restaurants,” (available at <https://www.census.gov/naics/?input=722513&year=2022&details=722513>).

<sup>21</sup> Cafeterias, Grill Buffets, and Buffets are defined as “establishments ... engaged in preparing and serving meals for immediate consumption using cafeteria-style or buffet serving equipment, such as steam tables, refrigerated areas, display grills, and self-service nonalcoholic beverage dispensing equipment. See U.S. Census Bureau, “2022 NAICS Definition 722514 Cafeterias, Grill Buffets, and Buffets,” (available at <https://www.census.gov/naics/?input=722514&year=2022&details=722514>).

Beverage Bars (NAICS 722515).<sup>22</sup> Table 3 presents the number and proportion of restaurants falling above and below the 3,750 square foot threshold for exemption in each of these categories.

**TABLE 3:  
EXEMPT RESTAURANTS UNDER THE FMLA SQUARE FOOTAGE CRITERION  
BY NAICS SUB-SECTOR (2025)**

FMLA Status	Full-Service Restaurants		Limited-Service Restaurants		Cafeterias, Grill Buffets, and Buffets		Snack and Nonalcoholic Beverage Bars	
	Count	Percentage	Count	Percentage	Count	Percentage	Count	Percentage
Exempt (<3,750 Sq. Ft.)	489,614	71.0%	267,106	65.4%	1,704	63.3%	2,525	86.4%
Non-Exempt (≥3,750 Sq. Ft.)	199,579	29.0%	141,541	34.6%	989	36.7%	397	13.6%
<b>Total</b>	<b>689,193</b>	<b>100.0%</b>	<b>408,647</b>	<b>100.0%</b>	<b>2,693</b>	<b>100.0%</b>	<b>2,922</b>	<b>100.0%</b>

Source: D&B Hoovers.

Of the 689,193 U.S. establishments classified as Full-Service Restaurants in the D&B Hoovers data as of March 31, 2025 with data on establishment size, 489,614 (71.0 percent) are less than 3,750 square feet and therefore exempt under the FMLA. For Limited-Service Restaurants, of the 408,647 establishments in the D&B Hoovers data, 267,106 (65.4 percent) qualify for the exemption. For Cafeterias, Grill Buffets, and Buffets, of the 2,693 establishments in the D&B Hoovers data, 1,704 (63.3 percent) qualify for the exemption. For Snack and Nonalcoholic Beverage Bars, of the 2,922 establishments in the D&B Hoovers data, 2,525 (86.4 percent) are exempt.

Economists often define small businesses as firms with 19 or fewer employees,<sup>23</sup> but also frequently consider definitions involving fewer employees.<sup>24</sup> We present data showing the proportion of exempt establishments based on three definitions: firms with five or fewer employees, firms with ten or fewer employees and firms with 19 or fewer employees.

Table 4 shows the number and proportion of U.S. restaurant establishments owned and operated by small businesses above and below the 3,750 square foot threshold for exemption from music licensing royalties under the FMLA.

**TABLE 4:  
EXEMPT RESTAURANTS UNDER THE FMLA SQUARE FOOTAGE CRITERION  
BY FIRM SIZE (2025)**

FMLA Status	5 or Fewer Employees		10 or Fewer Employees		19 or Fewer Employees	
	Count	Percentage	Count	Percentage	Count	Percentage
Exempt (<3,750 Sq. Ft.)	598,045	84.3%	703,459	73.5%	712,160	71.6%
Non-Exempt (≥3,750 Sq. Ft.)	111,547	15.7%	253,652	26.5%	282,290	28.4%
<b>Total Non-Missing Observations</b>	<b>709,592</b>	<b>100.0%</b>	<b>957,111</b>	<b>100.0%</b>	<b>994,450</b>	<b>100.0%</b>

Source: D&B Hoovers. Note: Businesses for which the employee count is unknown are excluded from the count.

Of the 709,592 U.S. restaurant establishments owned by firms with five or fewer employees, 598,045 (84.3 percent) are less than 3,750 square feet and thus exempt from music licensing royalties under

<sup>22</sup> Snack and Nonalcoholic Beverage Bars are defined as “establishments primarily engaged in (1) preparing and/or serving a specialty snack, such as ice cream, frozen yogurt, cookies, or popcorn, or (2) serving nonalcoholic beverages, such as coffee, juices, or sodas for consumption on or near the premises.” See U.S. Census Bureau, “2017 NAICS Definition 722515 Snack and Nonalcoholic Beverage Bars,” (available at <https://www.census.gov/naics/?input=722515&year=2022&details=722515>).

<sup>23</sup> See e.g., Erik Hurst and Benjamin Wild Pugsley, “What Do Small Businesses Do?” *Brookings Papers on Economic Activity* (Fall 2011) 73-137 at 74.

<sup>24</sup> See e.g., Ryan Decker, John Haltiwanger, Ron Jarmin and Javier Miranda, “The Role of Entrepreneurship in US Job Creation and Economic Dynamism,” *Journal of Economic Perspectives* 28;3 (Summer 2014) 3-24 at 10.

the FMLA. For restaurant establishments owned by firms with ten or fewer employees, 703,459 (73.5 percent) qualify for the exemption. For restaurant establishments owned by firms with 19 or fewer employees, 712,160 (71.6 percent) are exempt. Thus, the FMLA provides proportionately more protection to small businesses under all three definitions relative to the overall exemption rate of 69 percent reported in Table 2.

Table 5 presents the number and proportion of U.S. bars establishments owned and operated by small businesses above and below the 3,750 square foot threshold for exemption from music licensing royalties under the FMLA.

**TABLE 5:  
EXEMPT BARS UNDER THE FMLA SQUARE FOOTAGE CRITERION  
BY FIRM SIZE (2025)**

FMLA Status	5 or Fewer Employees		10 or Fewer Employees		19 or Fewer Employees	
Exempt (<3,750 Sq. Ft.)	99,535	98.0%	120,847	94.4%	122,593	93.3%
Non-Exempt (≥3,750 Sq. Ft.)	1,985	2.0%	7,162	5.6%	8,780	6.7%
<b>Total Non-Missing Observations</b>	<b>101,520</b>	<b>100.0%</b>	<b>128,009</b>	<b>100.0%</b>	<b>131,373</b>	<b>100.0%</b>

*Source: D&B Hoovers. Note: Businesses for which the employee count is unknown are excluded from the count.*

Of the 101,520 U.S. bar establishments owned by firms with five or fewer employees, 99,535 (98.0 percent) are less than 3,750 square feet and therefore exempt under the FMLA. For bar establishments owned by firms with ten or fewer employees, 120,847 (94.4 percent) qualify for the exemption. For bar establishments owned by firms with 19 or fewer employees, 122,593 (93.3 percent) are exempt. Thus, for bars, the FMLA also provides proportionately more protection to small businesses under all three definitions relative to the overall exemption rate of 91.3 percent reported in Table 2.

## B. Discussion

The results presented above confirm the findings of previous studies that the majority of food and beverage establishments in the U.S. are exempt from paying copyright royalties based on the FMLA’s square footage criterion. Our results also demonstrate that the majority of establishments in each sub-sector of the restaurant industry are exempt. And, we find that the FMLA exemption disproportionately applies to small businesses.

Our estimates are based solely on the square footage criterion and do not account for the fact that all restaurants and bars can also achieve exempt status by installing FMLA compliant sound systems. The exemption for compliant sound systems is likely to be of particular importance to Limited-Service Restaurants which, as indicated above, have a lower rate of protection under the square footage criteria compared to Full-Service Restaurants. Examples of Limited-Service Restaurants provided by the U.S. Census Bureau include delicatessens, pizza delivery shops, takeout places, fast-food restaurants and fast-casual restaurants.<sup>25</sup> Business at these sorts of restaurants is typically characterized by quick turnover with patrons spending less time on premises than at other types of restaurants.<sup>26</sup> Limited-Service Restaurants thus typically have fewer amenities compared to Full-

<sup>25</sup> U.S. Census Bureau, “2022 NAICS Definition 722513 Limited-Service Restaurants,” (<https://www.census.gov/naics/?input=722513&year=2022&details=722513>).

<sup>26</sup> Adam Jones, “What Is a Limited-Service Restaurant?” Yahoo! Finance (available at <https://news.yahoo.com/limited-restaurant-130116142.html>) (“Limited-service restaurants usually serve lunch and dinner menus, and some offer breakfast, afternoon, and late-night meals. Usually you pay upfront before you eat the food. Limited-service restaurants may or may not offer a seating area. It usually has a drive-through ordering facility where customers can place their orders and obtain food to go in a few minutes.”)

Service Restaurants and prioritize speed, efficiency, or food quality over on-premise entertainment and ambience.<sup>27</sup> While we do not have the data necessary to estimate what proportion of restaurants qualify for the sound system exemption, it is reasonable to infer that Limited-Service Restaurants are, on average, less likely to derive significant commercial benefits from the ability to play copyrighted music on non-compliant sound systems, and are therefore more likely to benefit from the FMLA's sound system exemption.

#### **IV. Conclusion**

Consistent with prior analyses, our results demonstrate that the FMLA continues to exempt the majority of U.S. food and beverage service establishments from the requirement to pay music licensing royalties. We also find that the exemption provided by the FMLA disproportionately protects small businesses. The results presented above understate the full extent of the protection afforded to the food and beverage service sector by the FMLA as they do not account for establishments that qualify for exemption based on the sound system criteria. Overall, the results show that music royalties are paid primarily by large establishments, typically owned by large firms, that derive material financial benefit from the ability to play copyrighted music.

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<sup>27</sup> Beth Egan, "Food Service in the Hospitality Industry," in Beth Egan eds., *Introduction to Food Production and Service* (BC Cook Articulation Committee, 2015) at 8-9 ("Quick service restaurants (QSRs), commonly known as fast food by the general public, are those where the customer orders at a counter, pays prior to receiving the product, and picks food up at the counter. Drive-thru service is also commonplace in the QSR segment. The service level is minimal, fast, and efficient[.]").



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