Before the
UNITED STATES COPYRIGHT OFFICE
Washington, D.C.

In the Matter of: Music Licensing Study	Docket No. 2014-03

COMMENTS OF THE
RECORDING INDUSTRY ASSOCIATION OF AMERICA, INC.

The Recording Industry Association of America, Inc. ("RIAA") provides these comments in response to the Copyright Office's second Notice of Inquiry ("NOI") in the above-captioned proceeding. *Music Licensing Study: Second Request for Comments*, 79 Fed. Reg. 42,833 (July 23, 2014).

The subject matter of the Copyright Office's study is extremely important to RIAA and its members because record companies occupy a central place in the ecosystem the Office is studying. Record companies work with talented artists (many of whom are also songwriters) to create recordings and find an audience for their music, and at the same time enable consumers to enjoy a broad selection of music products in as many ways as possible. To do these things, record companies obtain licenses to musical works, and both distribute music products and license out recordings. Across this full spectrum of activity, RIAA and its members believe it is critical for all creators to receive fair market value for the use of their works.

Many commercial musical works are both created and given their commercial life as part of the album projects record companies orchestrate and finance, and the core record company functions of production, promotion and distribution of sound recordings significantly impact

songwriter/publisher royalties. Likewise, broadcasters and digital music services would not have music to play or distribute if record companies did not invest tremendous resources in nurturing talent, producing, marketing and distributing music products, and helping fans take full advantage of innovative ways to find, access and enjoy their favorite music. Over the last decade, the major record companies have invested more than $20 billion in U.S. talent, and an additional $6 billion to market recordings in the U.S. As the economic engine that drives the music industry, record companies commend the Office for its focus on music licensing, and hope that this study will ultimately help make America's music industry even more vibrant than it is.

The initial comments filed pursuant to the Office's Notice of Inquiry ("NOI"), 79 Fed. Reg. 14,739 (Mar. 17, 2014), and the subsequent public roundtables confirmed that there are significant problems and widespread dissatisfaction with current systems for licensing musical works, as well as significant agreement concerning at least a few key principles for reform. Broadly speaking, commenters generally seem to agree that it is important to move in the direction of a more rational licensing process that streamlines administration, eliminates separate licensing of different rights implicated by a single product or service, and provides for fair compensation for all contributors to music products. RIAA encourages the Office to identify in its report those principles on which it believes consensus exists or seems achievable, along with the issues it believes require further thought and attention. Within the framework established by such principles, RIAA looks forward to working with the Office and with its partners in the music industry to explore possible approaches and see whether it will be possible to achieve the kind of meaningful reform that almost all stakeholders believe is needed.

By contrast, stakeholders mostly agree that sound recording licensing[1] works reasonably well, although RIAA and many other stakeholders suggested targeted changes to the statutory provisions concerning sound recordings. Most importantly, RIAA believes that Section 114 should be amended to incorporate the concept of "platform parity," including a terrestrial performance right, and that pre-1972 recordings should be brought within the statutory license system. *See* RIAA Comments, at 30-33, 36-37. Many other stakeholders agree that there should be platform parity and that something should be done to address the status of pre-1972 recordings. If the Office is inclined to recommend any other changes to the statutory licenses, RIAA believes that the other changes suggested in RIAA's comments also should be considered for inclusion in any proposed package of reforms. *See* RIAA Comments, at 33-35.

We begin these comments with RIAA's thoughts concerning the overall landscape of this proceeding, which RIAA provides in response to question number 10 in the Office's Second Request for Comments, 79 Fed. Reg. 42,833 (July 23, 2014). Part I of these comments addresses musical works, and Part II addresses sound recordings. In Part III, we address the Office's specific questions numbered 1 through 9 in the Second Request for Comments.

I. Musical Works

The initial comments and public roundtables in this proceeding confirm that many stakeholders believe the current system for licensing musical works "is in need of substantial improvement."[2] As David Israelite, the CEO of NMPA recently put it:

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[1] When these comments refer to "licensing" of sound recordings, we primarily mean the statutory licensing of sound recordings pursuant to Sections 112/114.

[2] Transcript of Los Angeles Roundtable at 6 (June 16, 2014) (statement of Jacqueline Charlesworth, Copyright Office General Counsel); *see also* Transcript of New York Roundtable at 6 (June 23, 2014) (statement of Jacqueline Charlesworth that "there is, certainly agreement

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> Music licensing certainly is too difficult and frustrating for both licensors and licensees. A tremendous amount of value is being lost due to the inefficient and complex ways in which music is licensed. It can, and should, be better.[3]

In considering how to make musical work licensing better, we focus our discussion on the products that are central to the music business and occupy most of the attention of other commenters, although the record reflects dissatisfaction with various narrower aspects of musical work licensing as well.[4] "[A]s the market further shifts away from physical goods and digital downloads towards a 'rental'-like streaming market,"[5] almost all stakeholders involved in licensing of musical works for use in music products agree that the musical work licensing models developed for the early twentieth century are not up to the task of fully enabling creation and commercialization of music products in today's digital environment.

Stakeholders cite different reasons for their dissatisfaction. Broadly speaking, songwriter and publisher groups view the Section 115 compulsory license and ASCAP and BMI consent decrees as "historic relics" that "establish governmental price controls resulting in royalty rates

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that this is a system that could be working better."). As we read the initial comments addressing musical work licensing, only Brigham Young University and Music Reports, Inc. express general satisfaction with current systems for musical work licensing. The former finds that existing systems generally work well for acquiring licenses for its limited purposes, but is not representative of stakeholders more involved in musical work licensing. The latter is an independent license administrator that makes a business of helping its customers navigate the problems cited by other stakeholders.

[3] Continuing the Songwriter Compensation Conversation, https://www.nmpa.org/aboutnmpa/presidentscorner.asp.

[4] *E.g.*, Global Image Works Comments; National Public Radio Comments, at 6; Netflix Comments; Public Television Coalition Comments; Society of Composers & Lyricists Comments; Willey Comments.

[5] NMPA/HFA Comments, at 20.

disconnected from the free market."[6] As a result, "many songwriters and music publishers believe the compulsory license should be phased out to allow the market the chance to operate freely,"[7] and think the consent decrees "must be updated, if not eliminated."[8] In particular, they complain that "recent ASCAP and BMI rate court decisions have set what many publishers consider below-market rates."[9]

Conversely, digital music services complain that the current "framework enhances the negotiating leverage of rights owners."[10] They view Section 115 as "vital," but having "a number of significant problems with the licensing process that currently limit its effectiveness."[11] Among these problems, they cite an "inefficient and expensive" licensing process, "incredibly costly" administrative burdens, and various accounting difficulties.[12] They likewise believe the ASCAP and BMI "consent decrees serve several important roles that are critical to an efficient, properly functioning marketplace for these rights."[13] However, they worry that "[w]ithdrawals of musical works from the repertories of ASCAP and BMI threaten to undermine the

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[6] NMPA/HFA Comments, at 21; *see also* SGA Comments, at 4 ("the governmentally imposed consent decrees to which the PROs remain subject are severely outdated, crippling the ability of the PROs to establish fair, market value rates for the performance of musical compositions in digital environments on behalf of music creators").

[7] NMPA/HFA Comments, at 8.

[8] ASCAP Comments, at 2.

[9] BMI Comments, at 9.

[10] DiMA Comments, at 8.

[11] DiMA Comments, at 20 (emphasis omitted).

[12] DiMA Comments, at 20-22.

[13] DiMA Comments, at 26.

effectiveness of the current process,"[14] and cite other ways in which the current performance licensing process "could be made more effective."[15]

Stakeholders across the spectrum view current systems of overlapping, separately-licensable rights and work-by-work reproduction/distribution licensing of musical works as unnecessarily complicated, and noted difficulties tracking copyright ownership. They complained about the overhead costs of the licensing process, including the costs of performance and mechanical ratesetting proceedings. A number of commenters also noted the need to further address widespread music piracy.[16] It remains a problem that the legitimate market for licensed musical works must operate in an environment in which there is also a huge amount of infringing use. These are significant and broad-ranging issues. As a result, it seems clear that the problems in musical work licensing cannot be remedied with a little tinkering and will instead require a comprehensive solution.

Fortunately, the initial comments and roundtable discussions also confirm that there is significant agreement on at least a few key principles for reform. We encourage the Office to identify in its report those principles on which it believes widespread agreement already exists (or is reasonably achievable) along with the issues it believes require further thought and attention. Hopefully, the points of agreement will provide a framework within which the Office

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[14] DiMA Comments, at 27.

[15] DiMA Comments, at 28.

[16] *E.g.*, DotMusic Comments, at 2, 7-8; Geo Music Group Comments, at 2, 4, 32-33; NAB Comments, at 9; NMPA/HFA Comments, at 35; Novak Comments; RIAA Comments, at 43; SGA Comments, at 2, 33-35; Shocked Comments.

and the stakeholders could explore whether it might be possible to find common ground on a comprehensive solution to the problems identified.[17]

As we review the record of this proceeding to date, we believe there is significant agreement concerning five principles for reform, which we describe briefly in the remainder of this section.

A. Royalty Rates Should Reflect Fair Market Value

"There was general agreement, at least in principle, to the concept that music creators deserve fair compensation for their work."[18] It is appropriate that "[m]usic publishers seek a robust and successful digital music marketplace providing fair market royalties when their musical compositions are exploited,"[19] and that representatives of songwriters and publishers believe it is a "simple and self-evident notion that creators should be paid at a fair-market-value

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[17] *See* Transcript of Nashville Roundtable at 14 (June 4, 2014) (statement of Jacqueline Charlesworth, Copyright Office General Counsel, that "I'm hoping we can find some points of common ground. There are clearly many points of disagreement, but there may be areas where compromise is possible, where we can think about tradeoffs that might benefit both users of music and the creators and the intermediaries in this sector and see if we can think creatively about some solutions.").

[18] Transcript of Los Angeles Roundtable at 10 (June 16, 2014) (statement of Jacqueline Charlesworth).

[19] NMPA/HFA Comments, at 8; ABKCO Comments, §§ 1, 2, 19 (rates should reflect market conditions and willing buyer/willing seller price; current allocation not fair); Geo Comments, at 5 (free market would require payment of "an actual fair market rate"); Wixen Comments, at 2 (compulsory rates "ought to be based on fair market rates negotiated by a willing seller and willing buyer"); Transcript of Nashville Roundtable at 217 (June 4, 2014) (statement of Brittany Schaffer, NMPA, that "if we are going to keep 115, there has to be . . . a fair market base rate for how we set the 115 compulsory licensing rate"); Transcript of New York Roundtable at 291 (June 24, 2014) (statement of Peter Brodsky, Sony/ATV Music Publishing, that "a willing buyer/willing seller standard[] we think will create fair market value for us"); Transcript of Los Angeles Roundtable at 17 (June 16, 2014) (statement of Ed Arrow, UMPG, that "we represent the rights of songwriters, and are interested in making sure that they're fairly compensated for their creativity").

rate."[20] However, licensees also seek "fair and reasonable license fees"[21] and "fair market" licensing of musical works.[22] Thus, while there are divergent views concerning what the fair market value of a musical work is, and how to best arrive at musical work royalty rates that represent fair market value, nobody seems to question the basic premise that royalty rates *should* reflect fair market value. Accordingly, any reformed system for the licensing of musical works should be designed in a manner that will satisfy stakeholders across the spectrum that the royalties payable do reflect fair market value.

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[20] BMI Comments, at 3; *see also, e.g.*, ASCAP Comments, at 15, 24-25 (criticizing the consent decrees as allowing users to avoid paying fair market value); Copyright Alliance Comments, at 2 (referring to "fair market value for songwriters and music publishers"); IPAC Comments, at 1, 6 (expressing preference for licensing based on willing buyer/willing seller negotiations, but supporting creation of licensing agencies to negotiate fair market license rates); LaPolt Comments, at 12 (supporting legislation to "enable the rate courts to reach fair market value when setting license fees"); Recording Academy Comments, at 1 ("Performers, songwriters and studio professionals should always receive fair market value for their work across all platforms."); SESAC Comments, at 5 (supporting legislation encouraging rate courts "to set a 'willing buyer/willing seller' rate"); SGA Comments, at 3 (referring to "indispensible need[]" for "fair market value compensation for the use of musical works"); Transcript of Nashville Roundtable at 34 (June 4, 2014) (statement of John Barker, IPAC, expressing desire for licensing system "in which rates can truly be fair market value").

[21] RMLC Comments, at 1-2*see also, e.g.*, TMLC Comments, at 1 (TMLC seeks "fair and reasonable licenses").

[22] Music Choice Comments, at 5 ("Although the rate court process is not perfect, it is essential to the fair market collective licensing of musical composition copyrights."); *see also, e.g.*, CTIA Comments, at 13 (rate courts have done an "excellent job" of setting rates "at a level that approximates the fees that would be charged in a competitive market, taking into account the economic value of the performance"); DiMA Comments, at 12, 27 & n.57, 30 & n.64 (quoting approvingly rate court statements concerning fair market value); RIAA Comments, at 2, 18 ("any reform effort must . . . ensure that everyone in the value chain receives fair market value for their works"); TMLC Comments, at 4 (encouraging early negotiation of performance rates "when meaningful negotiation over their fair market value can take place").

B. Collective Licensing and Administration Is Necessary

Collective licensing has been a central part of the musical work licensing landscape ever since the sale of sheet music ceased to be the primary means of commercializing musical works.[23] Given the vast number of commercial musical works and their fractional and widely-distributed ownership, many stakeholders pointed to the benefits – and indeed the necessity – of collective licensing and administration.

The musical work performing rights organizations ("PROs") think collective licensing of musical works is "effective, efficient and compelling."[24] They particularly emphasized the ability of PROs "to handle large volumes of transactions on a cost-efficient basis."[25] Collective administrators of mechanical rights view aggregation of such rights as important whether they bring together rights owned by "tens of thousands of music publishing clients and self-published

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[23] We use the term collective licensing to mean simply that one source can provide licenses to works owned by a large number of copyright owners, without necessarily implying anything about the nature of those licenses or the details of the collective's relationship with those copyright owners. Various collective licensing models are represented in the marketplace. Performance licenses for essentially all commercial musical works are available through ASCAP, BMI and SESAC, but they each have different ownership and control structures. Mechanical licenses to many commercial musical works are available on an agency basis through HFA.

[24] ASCAP Comments, at 1-2, 20-21; *see also* Transcript of New York Roundtable at 46 (June 23, 2014) (statement of Matt Defilippis, ASCAP, that "collective licensing plays a very critical role in the broader ecosystem . . . [a]nd that is serving the music users and, therefore, and ultimately consumers").

[25] BMI Comments, at 6; *see also, e.g.*, SESAC Comments, at 2 ("By aggregating large catalogs of musical works that are most often licensed collectively, the PROs bring economies of scale and efficiency to the marketplace.")

songwriters,"[26] administer "direct licensing agreements among publishers and digital music service providers,"[27] or "administer the Section 115 license for services in innovative ways."[28]

Many representatives of songwriters and publishers also view the "tradition of collective performing rights licensing" as "important,"[29] and think "the music marketplace would benefit from a collective licensing entity or entities."[30] Licensees also think "[c]ollective administration of musical work copyrights has worked in the context of public performance rights in musical works."[31] Pointing to benefits of collective licensing, they "would oppose any amendments to the Copyright Laws that would undermine the collective licensing of public performance of musical works."[32] One of the key benefits of collective licensing that stakeholders cited is efficiency, which leads to more money for creators and licensees.[33]

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[26] NMPA/HFA Comments, at 2.

[27] *Id.*

[28] MRI Comments, at 2.

[29] SGA Comments, at 7.

[30] IPAC Comments, at 7-8.

[31] DiMA Comments, at 24-25; *see also, e.g.*, Music Choice Comments, at 3 ("The current process for collective licensing of musical composition performance rights through ASCAP and BMI works well").

[32] Spotify Comments, at 11; *see also, e.g.*, TMLC Comments, at 6 (describing the need to balance "the potential benefits of such aggregations" with potential competition concerns).

[33] *E.g.*, IPAC Comments, at 6-7 (to provide "an efficient process by which to obtain licenses . . . IPAC supports the creation of one or more licensing agencies"); Public Knowledge/CFA Comments, at 28 ("Collective licensing offers the benefit of decreasing transaction costs, both in negotiating and in paying licensing fees."); Spotify Comments, at 10-11 ("public performance rights are efficiently administered through collective licensing").

Because there is so much support for collective licensing, there is widespread concern over the "looming specter of publisher withdrawals from ASCAP and BMI."[34] Stakeholders would like to keep ASCAP and BMI viable for traditional licensing (such as for bars, retail establishments, radio and television[35]) and, if possible, for new media licensing as well.[36] However, one large publisher expressed the view that even if it were to withdraw from ASCAP and BMI, "[t]he societies don't go away. The societies continue to exist for those writers and publishers who don't have the resources that we're fortunate enough to have to create infrastructures to deal with licensing and data management."[37]

The Office has observed that "there are many who think . . . there's still an ongoing need for collective licensing, for reasons of efficiency and to meet the needs of smaller market participants."[38] Indeed, noting that "neither BMI nor ASCAP currently license mechanical rights, synchronization rights or lyrics rights for digital music services," many stakeholders advocated extending collective licensing to "reproduction and distribution rights required by

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[34] DiMA Comments, at 15; *see also, e.g.*, ASCAP Comments, at 36 ("[d]espite the clear benefits and pro-competitive efficiencies of collective licensing for both music creators and users – and the complexities and expense that would inevitably arise in the absence of collective licensing – [publishers' complete withdrawal] is a legitimate possibility"); SGA Comments, at 8 (SGA "cannot and does not support a solution that will allow music publishers to partially or fully withdraw their catalogs . . . without formal commitment to complete transparency as well as to music creators being granted the full value of their rights").

[35] These are huge revenue streams for songwriters and publishers that today represent approximately 90% of ASCAP/BMI revenues. Corresponding revenue streams are not available to sound recording copyright owners and their artist partners, even though these revenue streams are driven to a significant degree by interest in, and use of, popular sound recordings.

[36] *E.g.*, DiMA Comments, at 15-16; IPAC Comments, at 10; NMPA/HFA Comments, at 20; RIAA Comments, at 21; SGA Comments, at 7-9.

[37] Transcript of Los Angeles Roundtable at 35 (June 17, 2014) (statement of David Kokakis, UMPG).

[38] Transcript of Los Angeles Roundtable at 9 (June 16, 2014) (statement of Jacqueline Charlesworth, Copyright Office General Counsel).

digital services, either separately or as part of bundled rights."[39] As NMPA pointed out, "digital services can only go to so many people to negotiate."[40] Another publisher representative elaborated:

> I don't know how you could expect them to go to 300,000 music publishers, independent copyright owners and get licenses. It doesn't make sense for them and it doesn't make sense for us. So I would be certainly in favor of more discussion around the collective entities, agencies, whatever they may be considered.[41]

However, while collective licensing is necessary, and some stakeholders express concerns about direct licensing agreements,[42] many more stakeholders note that copyright owners and licensees

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[39] BMI Comments, at 6-7; *see also, e.g.*, ASCAP Comments, at 30-34 (advocating collective licensing of bundled performance and mechanical rights); Lincoff Comments, at 6-7 (advocating designation of a single collective management organization to administer a new digital transmission right, or failing that "a combination of voluntary collective rights management and direct licenses"); Modern Works Music Publishing Comments, at 4 ("Congress should authorize a collective rights society to license mechanicals in a manner similar to societies in foreign markets"); NPR Comments, at 3 ("we seek a reasonable and predictable collective licensing scheme"); Spotify Comments, at 9 (advocating receiving agent/designated agent system for Section 115); Transcript of Nashville Roundtable at 48-49 (June 4, 2014) (statement of Lee Knife, DiMA, that "the idea of some type of collective licensing, whether or not that's actually compulsory or blanket or whether it's statutorily set or it's voluntarily set, I think that a blanket license, a collective license has to happen"); *see also* Transcript of Nashville Roundtable at 38 (June 4, 2014) (statement of Brittany Schaffer, NMPA, that "I think what you'll see happen if 115 is eliminated and we end up with a free market system is that you'll see collective license agencies evolve"); Transcript of Nashville Roundtable at 165-66 (June 4, 2014) (statement of Brittany Schaffer, NMPA, that "there is going to have to be some type of a collective licensing"); Transcript of Los Angeles Roundtable at 113 (June 17, 2014) (statement of Vickie Nauman, CrossBorderWorks, that services "want to know that they can come to a simple source and pay for the rights"); Transcript of New York Roundtable at 75 (June 23, 2014) (statement of Jay Rosenthal, NMPA, that "by proposing that we get rid of Section 115 we are not, in any way, proposing that we walk away from collective licensing").

[40] Transcript of Nashville Roundtable at 171 (June 4, 2014) (statement of Brittany Schaffer, NMPA).

[41] Transcript of Nashville Roundtable at 68 (June 4, 2014) (statement of Marc Driskill, AIMP, that "if you don't have [collective licensing], I don't know how the digital companies, I don't know how anybody really works – I don't know how licensing works").

[42] *E.g.*, SGA Comments, at 7.

should retain the option to negotiate direct agreements outside a collective licensing system.[43]

C. Licensing Should Be Made More Efficient by Reducing Transaction Costs Through Blanket Licensing

Commenters desire a more efficient licensing process, and focused on blanket licensing as one way to achieve such efficiency. Blanket licensing is a form of licensing in which a whole catalog of works is made available in a single transaction on uniform terms.[44] Blanket licensing is generally the most efficient means of licensing when large numbers of works are used. It avoids the overhead associated with negotiating and managing large numbers of licenses with varying terms and provides a way for legitimate services to mitigate infringement risk. As a result, it "has been endorsed over the decades by virtually all parties across the copyright licensing spectrum and has been embraced by Congress as a model for statutory licensing and applauded by the Registers of Copyright in several reports presented to Congress."[45]

As NMPA explained, "1400 mechanical licenses for one album is a lot, and I think that there's a recognition amongst everyone at this table that that's unrealistic for a record company when it comes to the many digital services that are out there, it's unrealistic for digital

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[43] *E.g.*, DiMA Comments, at 24-25; Geo Music Group Comments, at 5 ("It's still a free country and any author should have the choice to direct license their own property or not since it's their property."); NAB Comments, at 3 ("Even where statutory or collective licenses are appropriate, they should allow for direct licensing alternatives."); NRBMLC Comments, at 10 ("direct licensing is an important alternative to the PRO blanket licenses"); NMPA/HFA Comments, at 29-30 (describing benefits of direct licensing).

[44] Although collective licensing of musical work performances has generally involved blanket licensing, the two concepts are distinct. Licenses are available from the PROs on other than a blanket basis, and reproduction and distribution licensing is often collective, but rarely blanket.

[45] BMI Comments, at 1; *see also, e.g.*, Transcript of Nashville Roundtable at 66-67 (June 4, 2014) (statement of Marc Driskill, AIMP, that "historically everyone has looked at the PROs as that's a model that works, not perfectly but it works, possibly the best model within licensing").

companies."[46] As an alternative to work-by-work licensing, there was broad recognition that "blanket licensing of mechanical royalties would add efficiencies to the marketplace."[47] Thus, many commenters advocated the extension of blanket licensing to mechanical rights, and some to a broader range of music products that might include audiovisual products. RIAA and its members believe that simplifying musical work licensing for music products with visual elements is particularly important, because such products are increasingly among the most common ways in which consumers wish to enjoy music.

Some representatives of songwriters and copyright owners "support[ed] the creation of one or more licensing agencies to negotiate fair market license rates and grant licenses on behalf of the copyright owners of the musical works on a blanket license or individual song basis."[48] They specifically suggested "consider[ing] a revision of the mechanical compulsory license to make blanket licenses available as an option."[49] They also explained that songwriters and publishers would "benefit greatly from blanket licensing," noting that "[b]lanket license agreements would create ease of use of music . . . and would help Licensees minimize notification and reporting issues."[50] As one PRO stated:

> blanket licensing is not really a concept that is controversial. Blanket licensing brings a lot of efficiencies to the process, both from music users, and creators of music. So it sounds like that is a

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[46] Transcript of Nashville Roundtable at 165 (June 4, 2014) (statement of Brittany Schaffer, NMPA).

[47] Recording Academy Comments, at 3-4 (all caps omitted).

[48] IPAC Comments, at 6-7.

[49] BMI Comments, at 5; *see also* ASCAP Comments, at 30-31 (ASCAP could license reproduction rights "on a blanket repertory-wide basis").

[50] ABKCO Comments, at 1-2; *see also, e.g.*, Modern Works Music Publishing Comments, at 5 ("A blanket licensing scheme for mechanical rights would be desirable if a collective rights society were able to afford a greater weight to specific successful recordings").

> fundamental and a foundation, you know, for going forward with any kind of improvement in copyrights.[51]

Other commenters agreed that "the music marketplace would benefit greatly from replacing the current process of licensing music on a song-by-song basis with a blanket license system."[52]

Blanket licensing does not need to imply that licensees would account to a collective, or a collective would account to its payees, on a less granular basis than any other licensing model. A blanket licensing regime can and should ensure that songwriters and publishers have appropriate visibility into royalty distributions, and that licensees provide appropriately detailed usage data to support the royalty distribution methodology employed.[53] In the first instance, songwriters and publishers should be the ones to figure out how they would like their collectives to allocate blanket license royalties.

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[51] Transcript of New York Roundtable at 279-80 (June 24, 2014) (statement of Bill Lee, SESAC).

[52] DiMA Comments, at 24; *see also, e.g.*, FMC Comments, at 4 ("[b]lanket licensing of the mechanical right may offer greater efficiencies"); Global Image Works Comments, at 1 ("to have some form of blanket licensing rubric in place would actually open up markets and allow more money to flow more freely through the system"); Kohn Comments, at 7 ("Section 115 should be amended to compel a blanket license"), 8, 9-11; Public Knowledge/CFA Comments, at 28; RIAA Comments, at 6 ("the modem marketplace needs a blanket license that conveys all necessary publishing rights"); Spotify Comments, at 3, 5-6 ("the effectiveness of the Section 115 license can be ensured if uses of musical works were covered pursuant to a blanket license").

[53] *E.g.*, Geo Music Group Comments, at 14 ("If we want to calculate blanket fees after the fact, fine, but it's scary to think the Copyright Office would even consider eliminating individual copyright royalty calculation."), 18 (criticizing ASCAP use of two-week samples); NMPA/HFA Comments, at 18 (a blanket license "is likely to reduce the incentives for compulsory licensees to invest in and operate the processes necessary to accurately account for their use of musical works on a track-by-track basis"); Simpson Comments, at 2 (criticizing PRO tracking of live performances).

D. Bundling of Rights Should Be Enabled So That Separate Licensing of Overlapping Rights Is Avoided

There is widespread agreement that bundling performance, reproduction/distribution and any other rights needed to exploit modern music products in the ways consumers have come to expect and demand "would be beneficial to the rights holders and music users."[54]

The comments reflected a range of suggestions for how such bundling might be accomplished. NMPA/HFA suggested that "the efficiency of bundled licenses" could be achieved by "obtain[ing] the complete bundle of necessary rights directly from music publishers."[55] NMPA/HFA also noted that "the only thing stopping performance rights organizations such as ASCAP and BMI from offering a bundle of reproduction, performance, and distribution rights from songwriters/publishers willing to appoint them as their agents for

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[54] ASCAP Comments, at 30; *see also, e.g.*, DiMA Comments, at 25 ("A mechanism should be put in place that enables the collective administration of an 'all-in,' combined mechanical and performance royalty."); IPAC Comments, at 8 ("A unified licensing scheme for uses that require both public performance and mechanical licenses could benefit both licensees and copyright owners"); Kohn Comments, at 7 ("Licenses under Section[] 115. . . should include any necessary reproduction licenses and public performance licenses"); Lincoff Comments, at 4-5 (suggesting new digital transmission right that would combine reproduction, distribution and performance rights in musical works, and also apply to sound recordings); Public Knowledge/CFA Comments, at 28 (to "maximize the benefits of collective licensing" Congress should "consolidate licensing for the reproduction, distribution, and public performance rights"); RIAA Comments, at 6 ("the marketplace needs bundles of rights"); Society of Composers & Lyricists Comments, at 12 ("music creators will be best served by rights collection organizations having the ability to bundle all rights").

[55] NMPA/HFA Comments, at 18; *see also* Transcript of New York Roundtable at 239 (June 24, 2014) (statement of Jay Rosenthal, NMPA, that "we need to talk more about where we can empower publisher rights to get involved in this world and to make some things simpler. The bundling of rights, absolutely."); Continuing the Songwriter Compensation Conversation, https://www.nmpa.org/aboutnmpa/presidentscorner.asp ("we could simplify the licensing process significantly by removing the artificial divisions among different types of licenses").

such rights are outdated consent decrees."[56] Other commenters looked for "[a] *singular* rights-clearing platform . . . essential to conform to current consumer behavior and online distribution methods."[57] It was noted that such bundling would "bring the United States into line with collective licensing practices in Europe."[58] Either way, there seemed to be broad agreement that for the use of a musical work in any activity it should not be necessary separately to license and pay for multiple rights to that work.[59]

E. Provide Better Access to Information About Repertoire and Payments

A flourishing musical work licensing marketplace requires both that potential licensees can get licensed and that royalties flow properly to music publishers and songwriters. Reliable and accessible information is critical to making that happen, and is a key part of creating a

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[56] NMPA/HFA Comments, at 18; *see also* ASCAP Comments, at 30-34 ("amending the ASCAP Consent Decree or the Copyright Act to allow bundled licensing would be beneficial to the rights holders and music users"); BMI Comments, at 15-16 ("BMI should be able to bundle rights to meet marketplace demand"); Modern Music Publishing Comments, at 5-6 ("Performing rights organizations . . . should be authorized by Congress to license mechanical rights."); Transcript of New York Roundtable at 274 (June 24, 2014) (statement of Richard Reimer, ASCAP, that "it is imperative that the ASCAP and BMI consent decrees be modified to allow for licensing of multiple rights"); Transcript of New York Roundtable at 38, 40 (June 24, 2014) (statement of Stuart Rosen, BMI, that the PROs should "have the flexibility to bundle rights").

[57] Cate Comments, at 1 (emphasis in original); Spotify Comments, at 10 (a "licensing regime in which public performance rights and mechanical reproduction rights could be obtained from a single source or pursuant to a single license is an interesting idea").

[58] BMI Comments, at 6; Transcript of Nashville Roundtable at 32-33 (June 4, 2014) (statement of Dan Coleman, Modern Music Works Publishing, that "I believe that Congress should expand the mandate of collective rights societies in the model of Europe").

[59] Some digital music services suggested achieving this result by expanding exemptions where multiple rights overlap. *See* CTIA Comments, at 13-18; DiMA Comments, at 25; Music Choice Comments, at 11-13; NRBMLC Comments, at 12-17; Sirius XM Comments, at 7-10. To the extent their purpose in making such proposals is to pay less than fair market value for all the rights they use, their proposals are contrary to the premise accepted by some of the same commenters that royalty rates should reflect fair market value, and such a rationale should be rejected. To the extent their purpose is to reduce marketplace friction, bundling of rights would achieve the same purpose.