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**

REPLY COMMENTS OF SESAC PERFORMING RIGHTS, LLC IN RESPONSE TO NOTICE OF INQUIRY REGARDING ISSUES RELATED TO PEFORMING RIGHTS ORGANIZATIONS[1]

I. Introduction

SESAC Performing Rights, LLC ("SESAC PRO") respectfully submits this additional response 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 ("PRO(s)"). As SESAC PRO discussed in its initial comments, a competitive marketplace with multiple PROs provides choice for songwriters and publishers, and ensures concerns about distribution practices are addressed when raised by PRO members and affiliates. This music licensing marketplace has produced pre-licensed background music services permitting hundreds of thousands of general licensees to operate without needing to engage with a PRO. In addition, the vast majority of food and beverage establishments are exempt from paying license fees for music on radio and television broadcasts performed on their premises pursuant to the

[1] 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").

Fairness in Music Licensing Act.[2] Moreover, competition in the market has driven SESAC PRO to spend millions of dollars per year purchasing, storing, and processing data from numerous sources, including self-reporting from SESAC PRO's songwriters and publishers, in order to inform its royalty allocation and distribution processes. As a result, SESAC PRO can and does distribute a considerable majority of royalties to our affiliates based on census and survey data.

SESAC PRO also explained that it, along with the other established PROs, offers a publicly accessible repertory information database that is easily searched by artist, song title, writer or publisher. ASCAP, BMI, SESAC, and GMR are currently exploring the inclusion of SESAC and GMR data in the Songview repertory platform maintained by ASCAP and BMI in order to provide a reconciled view of copyright ownership information across the majority of music performed in the U.S.

II. Concerns Regarding the Lack of Publicly Available Repertory Information does not Present a Complete Picture of the Music Licensing Landscape

We understand from the first round of comments submitted in response to the NOI that the availability of PRO repertory information is a concern of licensee organizations and in particular, commentators seem particularly focused on "newer PROs that don't clearly communicate their catalogues and who have been reported to engage in threatening or coercive behaviour [sic] . . ."[3] SESAC PRO's repertory is publicly available and SESAC PRO believes that all PROs should

[2] 17 U.S.C.S. § 110 (LexisNexis, Lexis Advance through Public Law 119-5, approved April 10, 2025) (hereinafter, "FMLA").
[3] Comments of the National Restaurant Association 3 (April 11, 2025) (hereinafter, "Restaurant Comments") at 2 (stating that restaurant operators have "to pay multiple PROs for music licenses without a concrete understanding of the repertories of musical works they are permitted to use.").

make their catalog publicly available so that a quick search of those top artists any establishment would like to play will indicate whether a license from a specific PRO is needed.

The concern about the availability and accessibility of the PROs' repertories, however, is more broadly animated, implicitly and explicitly, by a purported desire to understand and track "actual music consumption."[4] This would enable business owners to avoid works from particular PROs and/or limit the number of licenses needed.[5] Notwithstanding this underlying purpose, the first round of comments submitted in response to the NOI are oddly devoid of discussion or proposals regarding how restaurants, hotels, retail establishments and similar businesses currently collect, or could collect, the usage information necessary to understand actual consumption and the burden and costs associated with such an endeavor. PRO repertory information is only half the equation. To understand actual music consumption, businesses that use music on their premises would need to track the music performed and match it against each of the PROs' repertories in order to realize the benefits they seek. The omission of this entire aspect of the process conveniently enables commentators to avoid discussion of the administrative cost savings that blanket performance licenses provide to their constituents and shift responsibility for their business decision.[6]

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[4] *See e.g.*, Comments of the American Hotel & Lodging Association 2 (April 11, 2025) at 2 ("PROs should implement fair, usage-based licensing models that reflect actual music consumption, the types of public performances, venue size and audience reach."); Comments of the MIC Coalition 2 (April 11, 2025) (hereinafter, "MIC Comments") at 1-2 ("[Business] owners do not have any way of knowing who owns the music being played in their establishments."); Restaurant Comments at 2.

[5] MIC Comments at 2 ("It is therefore difficult, if not impossible, for small businesses to know how to avoid the works that the new PROs claim to represent.")

[6] Indeed, it is difficult to understand how the overworked small business owners described in many of the comments would use the repertory data or "itemized statements. . . which provide a receipt and full accounting of the works licensed from PROs." MIC Comments at 6. The volume of such information would be challenging for establishments to handle and is only useful, as discussed, where the business is maintaining detailed information about the music played on the premises.

Instead, several commentators argue that the purported lack of data transparency in a market with multiple PROs is used to coerce businesses into obtaining licenses from all PROs rather than incur liability for infringement under the Copyright Act.[7] These commentators further complain that these licenses are overpriced or that businesses are somehow paying for "more than 100% of the value of music."[8] Left unsaid are the facts that (i) the number of PROs in the market is orders of magnitude smaller than the number of songwriters and publishers the PROs represent (ii) businesses have the option to track their use of music and could limit performances to songs represented by one or two PROs, or (iii) businesses could engage a background music service to provide fully licensed music to their establishment. That businesses choose to take multiple PRO licenses demonstrates that licenses from multiple PROs are a more cost-effective alternative to incurring the administrative cost of tracking actual music consumption on the business's premises and reveals the high value many businesses place on the ability to perform a wide variety of music in their establishment without tracking music usage.

Growth in the PRO market and the volume and value of copyrighted music justifies the need for additional licenses and the increasing costs of those licenses.[9] Concerns about certain new entrants in the PRO market and their lack of repertory transparency are simply being leveraged by several commentators in an insincere attempt to impose governmental price controls on small, unregulated PROs and further reduce the fees paid to use songwriters' musical works.

To the extent actual concerns exist about the business practices of new entrants into the PRO market, SESAC PRO explained in its initial comments that licensees have several avenues through

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[7] *See e.g.*, Restaurant Comments at 2.
[8] MIC Comments at 3-4 (April 11, 2025).
[9] *See* National Music Publishers' Association Comments 5 (April 11, 2025). The AHLA argues that the value of an incumbent PRO's license "is reduced by the emergence of a new PRO." Restaurant Comments at 2. However, the growth in music works every year means that a new PRO may simply service a different portion of the market.

which they can seek recourse. State laws regulating unfair or deceptive acts or practices and unfair competition in general, along with state laws specifically regulating PROs, are all available to businesses across the country. Such issues are simply not appropriate for further Federal regulation.

III. Conclusion

A competitive marketplace with multiple PROs provides choice for songwriters and publishers, ensures competitive distribution practices, and has encouraged the development of alternatives to PRO licenses such as background music services. SESAC PRO makes a searchable database of its repertory available to the public and is working to integrate that data into Songview in response to the concerns expressed by members of Congress. Concerns about new PROs that are capable of being addressed under existing law and a half-solution to the challenges involved in tracking the use of music at general licensees' establishments should not be leveraged to further regulate an already overregulated music licensing market.

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Respectfully submitted,

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