GLOBAL MUSIC RIGHTS

BEFORE THE

U.S. COPYRIGHT OFFICE

Issues Related to Performing Rights Organizations	**Docket No. 2025–1**

RESPONSE COMMENTS OF GLOBAL MUSIC RIGHTS, LLC

Global Music Rights, LLC ("GMR") appreciates the opportunity to respond to the comments submitted to the U.S. Copyright Office (the "Office") in connection with its February 10, 2025 Notice of Inquiry concerning Performance Rights Organizations ("PROs") and the public performance right under the Copyright Act. The volume and diversity of the feedback received demonstrate the complexity and importance of the issues at hand. GMR acknowledges the concerns raised by a broad range of stakeholders and submits this response to address several key thematic areas that emerged across the comments. At the same time, GMR seeks to clarify mischaracterizations, offer context for the Office where needed, and affirm its commitment to a fair and efficient performing rights marketplace that recognizes the value of songwriters' contributions.

I. The proliferation of PROs.

Various comments raise concerns about the increasing number of PROs operating in the marketplace, suggesting that the entry of newer PROs has led to inefficiencies, confusion, and/or increased costs for licensees.

GMR strongly disagrees with the premise that the existence of more PROs inherently represents a problem in need of regulatory correction. To the contrary, GMR has already expressed its view that the emergence of additional PROs increases competition and offers a meaningful alternative

for songwriters and composers in the performing rights marketplace. However, GMR recognizes that some organizations are engaged in bad behavior—namely, AllTrack and PRO Music Rights—and have justifiably drawn criticism from many in the marketplace, including from GMR.

The administrative challenges that some licensees complain of are not failures of the system; rather, they are byproducts of the dynamically evolving music marketplace. Licensees may need to deal with multiple counterparties, but they also benefit from the efficiency of being able to perform millions of copyrighted works through blanket licenses. The incremental burdens of dealing with additional PROs cannot justify suppressing competition and diminishing songwriter rights.

Today's music marketplace offers administrative streamlining with respect to performing rights. As noted in GMR's initial comments to the Office, music streaming services tailored for businesses, such as Soundtrack Your Brand (formerly known as "Spotify for Business") and Mood Music, enable licensees to secure performance licenses directly through such services, allowing those licensees to secure a single music service that includes virtually every song in the world without needing to negotiate with any PRO. The very issues that many commenters raise pertaining to additional PROs causing increased administrative and financial burdens can be solved by those commenters simply availing themselves of technology and services that already exist.

A. The Performing Arts Venues Alliance ("PAVA") notes that "with each new PRO that comes online, greater systemic inefficiencies soon follow."[1]

PAVA's claims are not only vague but also attempt to shift responsibility for basic licensing compliance away from its own member businesses that use music onto rightsholders. PAVA notes that many of its members sign and even "pa[y] invoices from new PROs without the ability to verify due to the administrative burden…" If a venue or establishment does not need a license, it should not pay an invoice, let alone execute a license. To the contrary, if a venue or establishment

[1] Performing Arts Venues Alliance, *Comment Submitted in Response to U.S. Copyright Office's Notice of Inquiry, Issues Related to Performing Rights Organizations*, Docket No. 2025-1, at 2 (February 10, 2025), available at https://www.regulations.gov/docket/COLC-2025-0001/comments.

does wish to publicly perform music that requires a license, that venue or establishment should conduct its own due diligence by checking four databases, determining the requisite licenses to lawfully perform such music, and securing those licenses as required by copyright law. It is the responsibility of every commercial user of music to not only understand what performance licenses are needed but also to operate in a changing PRO marketplace—just as many other marketplaces continue to change. Willful ignorance or simple unwillingness to review PROs' publicly available catalog and repertoire search should not provide any basis for PAVA to argue that its members cannot navigate the administrative burdens that come with performance licensing. Exploiting a copyright to presumably enhance one's own business carries responsibilities to ensure that the appropriate copyright permissions have been secured.

B. The Digital Media Association ("DIMA") notes that additional PROs "driv[e] up costs, creat[e] additional uncertainty, reduc[e] transparency, and [erect] barriers to efficient licensing and payment of royalties."[2]

As further discussed below in response IV, new songs are created and new songwriters emerge every day. DIMA's members seem to envision a world where their platforms benefit immensely from the bounty of new hit songs—driving user engagement, retention, and profits—without any corresponding increase in the fees paid to songwriters responsible for creating that value. If a platform chooses to make every song ever written available on its service, it follows that such platform's license fees would increase as a result. The existence of additional PROs does not inherently increase overall licensing costs for licensees. If a licensee is experiencing a rise in aggregate licensing costs, that is due to growth in the number of songs it chooses to make available to its subscribers or to a failure by that licensee to secure rate adjustments from those PROs whose catalogs have materially diminished.

More fundamentally, the Copyright Act is premised on the principle that creators—including songwriters—should enjoy exclusive rights in their works as a means of incentivizing continued

[2] Digital Media Association, *Comment Submitted in Response to U.S. Copyright Office's Notice of Inquiry, Issues Related to Performing Rights Organizations*, Docket No. 2025-1, at 2-3 (February 10, 2025), available at https://www.regulations.gov/docket/COLC-2025-0001/comments.

creation. Undermining those rights in the name of licensing "efficiency" not only disregards that statutory framework but also risks destabilizing the very incentive structure that has made the U.S. the world's leading exporter of musical works. U.S. songwriters have produced many of the most iconic and commercially successful songs of the modern era, and the licensing system must be designed to ensure that they are fairly compensated for the value their work generates across platforms.

Finally, DIMA's subsequent invocation of "uncertainty" and "reduced" transparency fails to recognize the tools already put in place by the four major PROs. As described numerous times both in its initial comments to the Office and further hereinbelow, all of the resources needed to identify GMR's repertoire and secure a license from GMR are freely available and easily accessible to all music users. There is no lack of clarity as to how to determine whether a song is in GMR's repertoire or how to secure a license. Licensees must be prepared to engage in licensing that reflects the actual ownership structures of the works they choose to use. The real issue underlying DIMA's concern here seems not to be inefficiency; rather, it is perhaps a misguided desire to perform millions of songs solely by securing a single license.

C. **The National Restaurant Association notes that GMR "offer[s] much smaller or [a] rather ambiguous [catalogue]… soliciting small business restaurants and bars looking to charge licensing fees at similar price points as incumbent PROs."**[3]

GMR does not solicit businesses with ambiguity around its repertoire. GMR licenses a clearly defined catalog of music, which is composed of some of the most culturally impactful and commercially successful songs in the world. The value of a performing rights license is not only measured by the number of works included, but by the relevance and usage of those works across the body of music users who wish to exploit those copyrights.

[3] National Restaurant Association, *Comment Submitted in Response to U.S. Copyright Office's Notice of Inquiry, Issues Related to Performing Rights Organizations*, Docket No. 2025-1, at 5 (February 10, 2025), available at https://www.regulations.gov/docket/COLC-2025-0001/comments.

GMR's licensing fees are determined based on the scope of rights granted, the extent of music usage by a given licensee, and the value of its underlying repertoire. A business that wishes to perform GMR-represented works must obtain the appropriate license and pay a fair market price for that use. If, after reviewing GMR's repertoire, restaurants and bars decide that paying for the right to perform GMR's repertoire is not economically beneficial to them, then those businesses are free to forgo a license and perform works represented by other PROs—similar to the business decisions that they make with respect to every other expense that they may face.

II. Transparency around PRO repertoires.

Several comments raise concerns regarding the availability and transparency of repertoire information from PROs. Many suggest that due to a lack of transparency, music users are unable to ascertain which works are represented by which PRO.[4]

One of GMR's goals from its inception was to promote transparency in the music licensing marketplace. To that end, it has always maintained a free, publicly accessible, searchable online database of the musical works it represents, updated on a monthly basis to reflect changes in its repertoire. As noted in its initial comment to the Office, any member of the public may request a free downloadable catalog simply by accessing GMR's website, and GMR will never seek any kind of enforcement of any song that is not listed on that catalog.[5] GMR's licensing team is also trained to troubleshoot questions surrounding GMR's repertoire, and licensees are free to avail themselves of that resource. GMR is committed to transparency around its repertoire and strongly disapproves of any PRO that fails to provide similar transparent repertoire information to the public.

As also noted in its initial comments to the Office, the four major PROs are currently exploring the inclusion of GMR and SESAC data to enhance Songview's reconciled view of copyright

[4] *See* Fox Theatre, Inc., *Comment Submitted in Response to U.S. Copyright Office's Notice of Inquiry, Issues Related to Performing Rights Organizations*, Docket No. 2025-1, at 1 (February 10, 2025), available at https://www.regulations.gov/docket/COLC-2025-0001/comments (alleging a lack of transparency regarding intellectual property ownership).
[5] www.globalmusicrights.com/catalogrequest (last visited on May 22, 2025).

ownership information. As the Office is aware, ASCAP and BMI launched Songview after GMR entered the marketplace. Songview is a free, publicly available database of music ownership information, originally developed to provide an additional source of transparency regarding the works each PRO licenses. While GMR has always believed that its own public-facing database is sufficiently clear and easy to use, it has taken this additional step to hopefully even further accommodate its licensees through a collaborative and concerted effort with the other major PROs.

A. The Music Library Association ("MLA") asserts that "a lack of transparency from PROs about which works they represent… [is] [a] consistent challeng[e]."[6]

It is unclear whether the MLA is referring to a particular PRO or all PROs that currently operate in the U.S. As noted above, the four major PROs have continued to make their repertoire information publicly available, giving any licensee full transparency into the works that they represent and the coverage that is afforded by each such license, as discussed earlier in this response. GMR acknowledges that the same such transparency is not afforded by AllTrack and PRO Music Rights and agrees that those PROs should operate with the same requisite level of transparency with which the four major PROs operate.

Simply put, the tools exist, and the information is already accessible by any user of music. What is being described as a "lack of transparency," as far as it pertains to the four major PROs, may simply be a reluctance by music users to engage with those tools as opposed to a failure by PROs to make their repertoires known. As discussed further in response IV below, licensees must be willing to engage with the accessible information that is being provided to them by rightsholders. An unwillingness to invest resources into that process should not be deemed a failure by PROs to provide transparency.

[6] Music Library Association, *Comment Submitted in Response to U.S. Copyright Office's Notice of Inquiry, Issues Related to Performing Rights Organizations*, Docket No. 2025-1, at 1 (February 10, 2025), available at https://www.regulations.gov/docket/COLC-2025-0001/comments.

B. <u>The Television Music License Committee, LLC ("TVMLC") asserts that "because of the lack of transparency in the music licensing marketplace… there is no way for a station to be certain that it is not using any GMR music. As a result, it is simply too risky for a station to not take a GMR license."</u>[7]

This statement is categorically and demonstrably false. As noted throughout this response comment and in GMR's initial comments to the Office, GMR maintains a publicly accessible, searchable online database of its repertoire, allowing any broadcaster or licensee to determine whether a specific work falls under GMR's representation. If a station is still then uncertain about whether it is performing GMR-represented music, that seems to reflect an internal information gap or an administrative limitation on the part of the broadcaster—not a failure of transparency on GMR's part.

It seems more likely that the TVMLC and its TV broadcaster constituents simply do not want to incur even the most basic administrative costs associated with performing music. A broadcaster must simply review its own programming, determine if GMR-represented musical works are being performed, and secure a license in order to lawfully perform those works. If the TVMLC chooses to rely on embedded music without being willing to navigate the basic elements of a licensing marketplace, that is its prerogative. However, that decision does not justify an argument by the TVMLC or its broadcasters that they should pay less for the right to perform the works represented by GMR.

III. <u>Aggressive enforcement tactics by PROs.</u>

Various comments express concerns that some PROs engage in aggressive and/or intimidating licensing practices, including the issuance of demand letters and threats of litigation. GMR reminds the Office and any user of music that the act of using copyrighted material requires permission of the copyright owner prior to that use. To date, GMR has experienced less than a dozen instances

[7] Television Music License Committee, *Comment Submitted in Response to U.S. Copyright Office's Notice of Inquiry, Issues Related to Performing Rights Organizations*, Docket No. 2025-1, at 11 (February 10, 2025), available at https://www.regulations.gov/docket/COLC-2025-0001/comments.

in which a notorious, open user of copyright contacted it prior to the usage or in a timely manner soon after. The users of music in the performing rights landscape have therefore, in practice, oftentimes erroneously placed the burden on the copyright owner to track down and ultimately license the user, in contravention of existing copyright law.

While GMR cannot speak to the conduct of every PRO, GMR categorically rejects the suggestion that it engages in any bad faith behavior. GMR engages in good faith outreach with potential licensees, seeks to resolve licensing matters amicably wherever possible, and only escalates issues to formal enforcement after repeated, documented attempts to engage with habitual and willful infringers have failed.

GMR asserting its rights under copyright law should not be deemed "aggressive" behavior—it is lawful and a necessary component of the copyright system. Copyright law passes on the policing and enforcement of copyrights to entities like GMR. When faced with bad faith infringers, GMR must zealously enforce rights on behalf of its members to ensure that they are fairly compensated for their works.

A. The American Beverage Licensees ("ABL") note that "a PRO demand letter can be broad, legalistic and intimidating, which is enough to scare small beverage business owners into sending a check. For many bar owners these tactics feel more like shakedowns than good faith attempts to ensure songwriters are compensated."[8]

GMR finds this rhetoric to not only be misleading, but also a clear attempt to recast lawful copyright enforcement as bad faith coercion—all in a continued effort to avoid paying for the commercial use of music. GMR does not send demand letters as a first step, and it certainly does not target business owners operating in good faith and trying to comply with copyright law. GMR only sends formal demand letters after repeated, documented attempts to engage a venue or business that is habitually and willfully infringing GMR's repertoire. These are not isolated

[8] American Beverage Licensees, *Comment Submitted in Response to U.S. Copyright Office's Notice of Inquiry, Issues Related to Performing Rights Organizations*, Docket No. 2025-1, at 4 (February 10, 2025), available at https://www.regulations.gov/docket/COLC-2025-0001/comments.

misunderstandings or missed emails—these are businesses that knowingly use GMR's music, oftentimes for years on end, while refusing to take a license, ignoring communications, and outright rejecting lawful efforts to reach a resolution. When that pattern becomes clear, GMR has an obligation—indeed a duty—to its songwriters to take enforcement action.

Furthermore, bar owners who actually seek to operate in good faith and ensure appropriate compensation to songwriters have access to commercially available licensing solutions (such as Mood Music or Soundtrack Your Brand) covering millions of songs, as discussed in response I above. Utilizing these platforms guarantees that performance licenses are properly secured and that rightful songwriters receive their due royalties.

To the extent that any purported PRO is issuing demand letters without a factual basis for infringement or attempting to pressure business owners into purchasing licenses that they do not actually need—or engaging in any other form of bad faith conduct—existing state and the federal legal and regulatory frameworks already provide the tools to address and remedy such behavior. GMR fully supports the use of appropriate enforcement mechanisms where misconduct is found and encourages regulators to take action against any entities that undermine the integrity of the performance rights system.

B. **The Radio Music License Committee ("RMLC") and Motion Picture Association ("MPA") note that GMR has "not only threatened… infringement liability but actually have filed suit against radio stations."**[9]

The RMLC and MPA cite in their comment various complaints filed by GMR against radio groups, presumably as evidence of a problematic licensing marketplace or aggressive enforcement tactics. Litigation is a lawful and necessary tool under the Copyright Act, particularly in cases involving repeated, willful infringement. Each of the complaints that the RMLC and MPA cites is linked to an individual radio group that was flagrantly violating copyright law, refused to engage in good

[9] Radio Music License Committee and Motion Picture Association, *Comment Submitted in Response to U.S. Copyright Office's Notice of Inquiry, Issues Related to Performing Rights Organizations*, Docket No. 2025-1, at 3 (February 10, 2025), available at https://www.regulations.gov/docket/COLC-2025-0001/comments.

faith negotiation (or in some cases any kind of conversation at all) with GMR to secure a license, and/or had signed a license but refused to fulfill its contractual obligations to pay a license fee to GMR. Each of these groups ignored numerous attempts by GMR to resolve its infringement amicably—only then did GMR elect to pursue litigation as an absolute last resort.

The fact that GMR has initiated litigation in these narrow, egregious cases does not reflect an inappropriate enforcement posture. Rather, it underscores GMR's commitment to protecting the rights of its clients—many of whom rely on license fees as their primary source of income—and to upholding the integrity of copyright law. Moreover, apart from these complaints, GMR has never filed a copyright infringement claim against any user of music as of the date of this filing. While GMR believes that litigation is an essential tool in protecting the rights of its clients, it has continued to attempt to resolve issues directly before turning to the courts. If the RMLC and MPA's concern is that GMR enforces its rights when faced with flagrant, ongoing violations of copyright law, it is unclear what alternative they propose, or why a rightsholder should be expected to tolerate unlawful use of its repertoire without meaningful remedy. Moreover, the RMLC itself has regularly used litigation as a negotiation tactic against PROs, including GMR. To fault GMR for using litigation to protect its interests at law is both ironic and disingenuous.

GMR also finds it deeply ironic that the MPA would question the integrity of enforcing copyright concerns, given that virtually every piece of content performed in theaters, on television, and on streaming services is accompanied by conspicuous warnings against copyright infringement. The MPA's own mission statement reads: "We are the leading advocate of the film, television and streaming industry around the world."[10] Perhaps the MPA has forgotten that composers of music for film, television, and streaming content are part of those same industries and are not unionized and not supported by any other organization to ensure the fair compensation for the public performance of their work other than their PRO. In addition, for nearly eight decades, it has been customary in the U.S. PRO marketplace not to impose public performance license fees on movie theaters—a longstanding industry practice that diverges from the copyright licensing approaches used in much of the rest of the world. While this custom may have reflected certain economic or

[10] https://www.motionpictures.org/about/#mission (last visited on May 22, 2025).

technological considerations of an earlier era, its continued relevance is increasingly questionable. In light of the MPA's stated concerns about copyright infringement, the Office should consider whether this practice remains appropriate in the modern licensing landscape.

IV. Issues related to ownership-based licensing.

Several comments discuss the concept of ownership-based licensing of performing rights. As the Office is aware, the court in *United States v. Broadcast Music, Inc.*, 207 F. Supp. 3d 374 (S.D.N.Y. 2016) ruled that Broadcast Music, Inc. ("BMI") could license ownership-based interests of performing rights that it controlled, consistent with longstanding industry practice and the Copyright Act's recognition of co-ownership principles. This decision was further affirmed by the Second Circuit Court of Appeals, which rejected the United States Department of Justice's argument that BMI was required to offer "full-work" licenses to music users.[11]

Ownership-based licensing is neither a loophole nor an aberration in the performing rights marketplace—it is a licensing structure that reflects the fact that (1) musical compositions are often co-authored by multiple artists, (2) each such artist deserves to be compensated fairly for the value of their copyrighted contribution, and (3) there is no administratively feasible mechanism for any PRO to license or distribute royalties on behalf of rightsholders who are not within its representation. Moreover, it enables songwriters to affiliate with the PRO that best reflects their own creative and business objectives. GMR believes that ownership-based licensing supports—not undermines—a competitive and free PRO marketplace where copyrights are respected, and the value of creators of art is properly recognized.

At the same time, ownership-based licensing affirms the core principle that songwriters, as business owners, are entitled to make independent decisions about how their works are represented—including the freedom to affiliate with the PRO that best reflects their creative and commercial priorities. This notion is consistent with the administration of composition copyrights

[11] *United States v. Broadcast Music, Inc.*, 207 F. Supp. 3d 374 (S.D.N.Y. 2016), aff'd, 720 F. App'x 14 (2d Cir. 2017).

across the marketplace: each songwriter makes decisions surrounding synchronization rights and which publishers can license and collect their mechanical royalties. The autonomy for songwriters to also do the same for performing rights is consistent with a functioning and competitive performing rights marketplace.

A. Small business owners assert that due to ownership-based licensing, "businesses… are paying more than 100% for the music [they] play."[12]

This comment expresses a fundamental misunderstanding of how ownership-based licensing operates. Ownership-based licensing does **not** mean that licensees are paying for the same portion of a work multiple times; rather, each of the four major PROs licenses only the specific share of a work it represents. The notion that licensees are "paying more than 100%" is erroneous, unclear, and misleading. Moreover, the suggestion that any of the four major PROs, including GMR, may be charging for rights that they do not own, is categorically false. As stated above, the practice of ownership-based licensing is neither new nor obscure—it has been the industry norm for decades and further confirmed by the court's ruling in 2016.

From an economic standpoint, ownership-based licensing ensures that public performance royalties are accurately allocated to all of the rights holders that are responsible for the creation of a musical composition. This is not an overpayment; rather, it is the correct and lawful allocation of compensation across all owners of the copyright. The assertion that certain businesses are paying "more than 100%" for the music that they freely elect to play in their business establishments is simply untrue.

[12] Small Business Owners, *Comment Submitted in Response to U.S. Copyright Office's Notice of Inquiry, Issues Related to Performing Rights Organizations*, Docket No. 2025-1, at 1 (February 10, 2025), available at https://www.regulations.gov/docket/COLC-2025-0001/comments.

B. <u>The National Association of Broadcasters ("NAB") notes that "from an economic standpoint, licensees are paying more for access to the very same music they previously licensed in full…"</u>[13]

The idea that licensees are paying "more for the same music" misrepresents both how licensing works and how the marketplace continues to evolve. The universe of musical works is constantly expanding—not only as existing songwriters release new material, but also as new songwriters enter the marketplace. At the same time, licensees increasingly demand broad access to all available works, seeking comprehensive rights that reflect the expectations of their audiences and business models. This growth—both in available content and in licensee usage—naturally drives increased licensing value. More songs, more creators, and greater performance flexibility necessarily require greater investment. New musical works are added to each PRO's repertoires throughout the duration of a license—for some PROs, nearly on a daily basis. Once a license fee has been set for a term, licensees are not asked to pay additional fees for additional works added to a PRO repertoire. They are free to perform those additional works at no additional cost until the term of that license expires.

Furthermore, the idea that licensees, by virtue of securing additional performance licenses are paying "more for the same music" ignores the fact that the ownership and representation of that music may change hands, and instances of these changes illustrate the competitive nature of the marketplace. Consider that if GMR acquires the right to represent a client's works that were previously represented by another PRO, such acquisition would naturally increase the value of a GMR license. At the same time, the value of a corresponding license with such other PRO could be adjusted to reflect such PRO's loss of the same repertoire of those works. If licensees are experiencing higher aggregate costs due to factors apart from inflation, it is not because ownership-based licensing is somehow inherently more expensive—it is because licensees have failed to negotiate reduced rates with the PROs which previously represented compositions to reflect loss in repertoire and because the volume of musical works continues to increase. In a functioning

[13] National Association of Broadcasters, *Comment Submitted in Response to U.S. Copyright Office's Notice of Inquiry, Issues Related to Performing Rights Organizations*, Docket No. 2025-1, at 9 (February 10, 2025), available at https://www.regulations.gov/docket/COLC-2025-0001/comments.

marketplace, it is incumbent upon licensees to reassess how they allocate their licensing budgets in light of the redistribution of valuable repertoire among PROs. This is neither a flaw of ownership-based licensing nor the performing rights marketplace more generally.

V. Consent Decrees and governmental regulation.

A number of comments also suggest that all PROs, including GMR, should be bound by regulatory measures, similar to the Consent Decrees that have been placed upon ASCAP and BMI. The call for all PROs, regardless of their size, to operate pursuant to Consent Decrees demonstrates a fundamental misunderstanding of the justification for the Consent Decrees that govern ASCAP and BMI. The Consent Decrees governing ASCAP and BMI are not general regulatory measures meant to apply to all PROs. They are specific, historically contingent remedies designed to address the unique market dominance and longstanding antitrust concerns associated with ASCAP and BMI's conduct. Those organizations control the vast majority of the market and, for decades, operated with unparalleled leverage over both music users and songwriters. The Consent Decrees were crafted in direct response to that dominance—not as a general template for regulating all rights holders.

Calls to extend those extraordinary remedies to all PROs, regardless of market power or conduct, are not grounded in antitrust principles or legitimate policy concerns. Rather, they are driven by music users' desire to suppress license fees by importing rate-setting mechanisms into contexts where they do not belong. In essence, these users are seeking to override the rights and protections afforded to copyright owners under the Copyright Act—chief among them the right to negotiate licenses freely in the marketplace.

GMR's existence as an independent PRO enhances competition, expands choice for songwriters, and diversifies the performing rights marketplace. Far from representing a threat to the system, GMR's presence offers an alternative to legacy structures and empowers creators who seek more tailored, responsive representation. Competition between PROs—both regulated and

unregulated—promotes innovation, drives better service, and encourages more efficient, market-driven licensing solutions.

A. **The NAB and RMLC posit that GMR's repertoire has become a "must-have" in an attempt to call for further PRO regulation.**[14]

GMR's small catalog of popular compositions is not a "must-have" simply because it is desirable and valuable to radio stations. That assertion seems to conveniently reflect the particular preferences and/or commercial strategies of the NAB, RMLC, and each of their constituent members. Music users make programming choices every day—playlists, ads, broadcasts—that reflect certain economic decisions. Indeed, NAB member stations sometimes decide not to play certain music because of public statements by artists (e.g., The Chicks, Green Day, and Morgan Wallen) so as to politicize access to their platforms. Broadcasters are entirely free to assess the value of a GMR license vis-à-vis its business and ultimately decide to secure that license or not. But simply deeming a song a "must-have" because broadcasters' own listeners have made the song popular certainly should not diminish the rights of the creator or that creator's ability to negotiate and demand fair compensation for the use of that song. In fact, the more popular the song is, the more the free market demands that such creator be commensurately compensated.

What the NAB and RMLC appear to suggest is that if a particular musical work is valuable to its constituent members—because that musical work is commercially important to them—then they should be entitled to perform that musical work at a cheaper rate than the rate that would be otherwise charged by the relevant creator. That logic is backwards. The high demand for that musical work from entities like the NAB's members reflects its market value, ties in directly to listenership and advertising revenue, and therefore makes the NAB's position tantamount to a plea for a subsidy. The NAB has regularly supported a free market negotiating system when it comes

[14] *Id*. at 7; MPA and RMLC, *Comment on NOI Regarding PROs*, at 5.

to carrier fees for retransmission of local broadcasts[15]—it should not now argue against a free market when it conveniently suits its interests.

It is particularly striking that the RMLC—an organization that aggregates the interests of thousands of commercial radio stations into a single negotiating bloc and has brazenly exercised market dominance—now attempts to again cast GMR as an anticompetitive actor in the marketplace. The RMLC and its members have consistently rejected basic underpinnings of a free market for decades, leveraging their power to force PROs—and by extension, songwriters—to accept artificially suppressed license fees. For the RMLC to now invoke concerns about competition is not only ironic but also a deflection from its own long-standing role in undermining fair market outcomes for copyright holders.

Finally, GMR notes that copyright—even the most valuable copyright—is an exclusive right. The ability for a copyright holder to say "no," for any reason or no reason, or to negotiate fair compensation for use of that right, is not a market failure. It is the essence of a functioning intellectual property rights marketplace, and the notion of a copyright holder having "disproportionate leverage" simply because of the desirability of works in its repertoire is antithetical to the very basis of the U.S. copyright licensing regime.

A. **The NAB notes that GMR "operate[s] entirely outside any similarly established regulatory or adjudicatory framework and ha[s] leveraged [its] unregulated status to extract monopolistic rates from radio broadcasters."**[16]

The fact that GMR is not bound by an ASCAP or BMI-type consent decree does not mean that GMR operates without oversight or outside of the confines of the law. GMR is fully subject to the Copyright Act, federal antitrust law, and other general principles of fair competition.

[15] See National Association of Broadcasters, *Allow Broadcasters to Continue Negotiating in the Free Market*, https://www.nab.org/advocacy/issue.asp?id=1891&issueid=1008 (last visited May 22, 2025) (explaining that the NAB supports free market negotiation in retransmission consent deals).
[16] NAB, *Comment on NOI Regarding PROs*, at 6.

What the NAB and its constituent broadcasters truly seek is not regulatory fairness. Rather, they seek to simply pay less to access GMR's premium repertoire—while profiting off of that music usage—simply by labeling the rates that GMR has negotiated in good faith with broadcasters as "monopolistic." If broadcasters such as those comprising the NAB desire to perform highly popular, culturally impactful works, they should expect to pay a price that matches that value. That is the basic operation of property rights in a free and competitive marketplace. As of the date of this submission, GMR estimates that terrestrial music radio stations—comprising a multi-billion dollar industry that relies on music for its lifeblood—pay less than four to five percent of their revenues to the songwriters who create that music. By contrast, it is estimated that major music streaming services like Spotify and Apple Music pay sixty to seventy percent of their revenue to music rights holders. The lack of collective leverage of the U.S. PROs—both due to the Consent Decrees and their rate court mechanisms and due to the very small size of GMR and SESAC—has allowed the radio industry to pay the lowest cost for content of any service provider in the modern era.

B. **The Digital Media Association ("DIMA") notes that "unregulated PROs have a strong incentive to inflate their pro rata share, either in aggregate or through various 'cuts' of data done at their own discretion, and the relative value of their repertoire."**[17]

This claim is baseless and demonstrably false as far as it relates to GMR. GMR does not—and has never—"inflated" its pro rata share of its repertoire. GMR negotiates and licenses based solely on the actual repertoire it represents—any suggestion to the contrary reflects a profound misunderstanding of how repertoire ownership and usage data operate in the performing rights market. It is fundamentally unclear what DIMA refers to when it asserts that PROs' claimed market shares exceed one hundred percent. Licensees like DIMA have every opportunity to engage with GMR to verify its repertoire information that it makes readily accessible to DIMA and its

[17] Digital Media Association, *Comment Submitted in Response to U.S. Copyright Office's Notice of Inquiry, Issues Related to Performing Rights Organizations*, Docket No. 2025-1, at 11 (February 10, 2025), available at https://www.regulations.gov/docket/COLC-2025-0001/comments.

constituent members, review usage information, and negotiate licensing terms based on that analysis.

C. **The TVMLC notes that after GMR emerged, its constituent stations "were left with no choice but to take GMR's license, at fees set unilaterally by GMR… taking a GMR license is now a necessity of doing business."**[18]

This statement by the TVMLC is also demonstrably false. No entity is compelled to enter into a license with GMR. TVMLC and its constituent broadcasters—and any licensee in the marketplace—are absolutely free to evaluate whether GMR's repertoire is valuable to their particular businesses and ultimately decide whether to enter into a license with GMR. If a broadcaster believes that GMR's works are not essential to its programming, it is fully within its rights to decline a license and structure its programming accordingly. To the contrary, if a broadcaster believes that the music represented by GMR across its programming is indeed valuable, then it is free to negotiate and pay a fair fee for that usage.

TVMLC's real grievance appears to be twofold: first, that its member stations continue to use programming that is embedded with music that those stations do not select themselves[19]; and second, that GMR has negotiated licensing fees with TVMLC and its broadcasters that are reflective of its premium repertoire. As for the first issue, the fact that a broadcaster has voluntarily entered into a programming contract that does not include all of the necessary rights (including performing rights) does not absolve it of its legal obligations or entitle it to discounted access with respect to those rights. That is an issue that should be negotiated and accounted for in its negotiations with the programming counterparts that it chooses to enter into business with. As for the second issue, the suggestion that GMR "unilaterally sets fees" entirely misrepresents the nature of copyright licensing and is symptomatic of a music user that likely either does not understand the value of certain copyrights that it is exploiting or simply desires to pay less—or both. GMR, like any rights holder, proposes rates based on the market value of its repertoire, subject to good

[18] TVMLC, *Comment on NOI Regarding PROs*, at 11.
[19] See *id*. at 4 (discussing that a "material portions of the programs… [is] not produced by the stations themselves, but rather, by third parties who incorporate the music…").

faith negotiation. Broadcasters remain free to negotiate, decline a license, or adjust programming accordingly.

Interestingly, in the same set of comments, the TVMLC notes that "because of GMR's extremely small share of overall performances on local television, it is possible that there are some stations that, if armed with the necessary information, could avoid using GMR music altogether and forgo taking a GMR license."[20] GMR reiterates that those local stations are indeed armed with the necessary information—all any local station needs to do is access the information that is already made available by GMR. The deliberate decision to possess yet not review and ingest that data expresses a continued unwillingness by these businesses to invest into a basic level of resources (e.g., personnel) to ensure copyright compliance while still desiring to exploit copyrights. The fact that local stations "feel compelled to take a license"[21] is simply a result of that business not adopting the basic responsibilities and undertaking basic good business practices of any person or entity that wishes to commercially exploit a copyright.

VI. Concluding Thoughts.

The performing rights ecosystem in the United States serves a marketplace of millions of copyrighted compositions, millions of songwriters, and hundreds of thousands of music licensees who wish to perform those compositions in order to enhance their own businesses. PROs remain the most effective solution to managing this volume and complexity. Through a blanket licensing regime, the PROs have fostered a system whereby public performing rights are efficiently managed with clarity and consistency, allowing songwriters to be compensated and music users to operate legally in a highly dynamic environment.

The four major PROs have each developed the legal, administrative, and technological infrastructure necessary to meet this challenge. These four PROs—GMR included—have invested in infrastructure to provide clear public access to their repertoires, engage in good-faith

[20] *Id*. at 18.
[21] *Id*. at 19.

negotiations, and fully comply with the Copyright Act. In addition, technological advancements have provided a commercial solution pursuant to which many licensees can obtain access to the catalogs of the four major PROs through one license. The call for further regulation is a thinly disguised desire to pay less for unlimited access to the songs that fans want to hear and ignores the nature of modern copyright licensing as well as GMR's track record of serving the needs of creators and licensees alike.

Many of the concerns raised in these initial comments reflect not legal or PRO failings, but economic objections from licensees who would simply prefer to pay less for access to valuable copyrights and who seek to shift the burden of securing appropriate licenses from the licensees to the licensors. PROs serve as a cornerstone of the creative economy—ensuring that songwriters are fairly paid, that businesses can confidently use the music their audiences love, and that the U.S. remains a global leader in music innovation, culture, and commerce.

GMR is proud to represent a premium repertoire of songwriters and composers, and to do so with integrity, fairness, and professionalism.

Respectfully submitted,

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