The Register of Copyrights of the United States of America
United States Copyright Office · 101 Independence Avenue SE · Washington, DC 20559-6000

The Honorable Jim Jordan
Chairman
Committee on the Judiciary
U.S. House of Representatives
2056 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Darrell Issa
Chairman
Subcommittee on Courts, Intellectual Property, Artificial Intelligence, and the Internet
U.S. House of Representatives
2108 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Scott Fitzgerald
U.S. House of Representatives
2444 Rayburn House Office Building
Washington, D.C. 20515

November 20, 2025

Dear Chairman Jordan, Chairman Issa, and Mr. Fitzgerald,

We are pleased to deliver this response to your letter dated September 11, 2024, which asked the Copyright Office ("the Office") to examine certain practices involving licensing fees paid to performing rights organizations ("PROs"). That letter asked the Office to provide information related to stakeholder concerns over (1) the recent increase of PROs, including "the increased costs and burdens imposed on licensees for paying an ever-increasing number of PROs, factors that may be contributing to the proliferation of new PROs, and . . . how to improve clarity and certainty for licensees," and (2) PROs' licensing revenue distribution practices, including how efficiently PROs are distributing general licensing revenue, how difficult it is to make such an assessment, and "how accurately lesser known and independent artists as well as smaller publishers are being compensated compared to widely popular artists and major publishers."[1]

After consulting with your staff, the Copyright Office published a Notification of Inquiry ("NOI") on February 10, 2025, requesting public comments.[2] The NOI provided background on the history of public performance rights for musical works, including how PROs were created to address practical challenges associated with licensing, the increase in PROs over time, and PROs' licensing and royalty distribution practices. The Office received over 5,000 comments in response to the NOI.

Comments came from a wide range of individuals and groups representing music licensees (*e.g.*, bars, restaurants, venue owners, broadcasters, and digital music providers) and

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[1] Letter from Rep. Jim Jordan, Chair, Comm. on the Judiciary, Rep. Darrell Issa, Chair, Subcomm. on Courts, Intellectual Property, Artificial Intelligence, and the Internet, and Rep. Scott Fitzgerald, to Shira Perlmutter, Register of Copyrights and Dir., U.S. Copyright Office (Sept. 11, 2024), https://www.copyright.gov/policy/pro-issues/letter-to-usco-pro-issues.pdf.

[2] Issues Related to Performing Rights Organizations, 90 Fed. Reg. 9,253 (Feb. 10, 2025) ("NOI").

licensors (*e.g.*, PROs, music publishers, songwriters, performance, managers, and attorneys). Songwriters—ranging from unknown artists to famous performing songwriters like Chris Stapleton, Jermaine Dupri, Lyle Lovett, and Michael McDonald—represented the largest group of commenters.[3] In addition to receiving unique comments, the Office received over 4,600 nearly identical comments from ASCAP songwriter members, as well as a joint comment from over 6,800 BMI songwriter members.[4]

All comments submitted in response to the NOI are available on the Office's website at copyright.gov/policy/pro-issues. Additionally, the enclosed document provides summaries of commenters' views. Comments reflect several key themes:

- Stakeholders' responses affirm that music remains not only culturally essential but economically significant to a wide-range of interests—from larger publishers and media conglomerates to individual songwriters, local businesses, and independent music venues. Both the number of comments and the breadth of responses underscored the importance of the issues that your letter raised.

- PROs, their songwriter and publisher members, and others representing these interests believe that the degree of government regulation of musical work licensing is excessive and devalues copyright owners' property rights. These stakeholders oppose any further government regulation and strongly favor free-market solutions.

- Music licensors, and some licensees, believe that PROs provide significant efficiencies to the music ecosystem. They note that PROs zealously compete for songwriter and publisher members by offering different benefits and services.

- Licensees believe that the addition of new PROs undercuts current efficiencies and increases licensees' legal risks, especially as licensing alternatives to the PRO system are impractical.

- Licensees favor the development of a central, authoritative PRO repertoire database and disfavor a system where each PRO operates their own decentralized database.

- Some licensees are particularly concerned with the business practices of two PROs, AllTrack and Pro Music Rights, including the accessibility and transparency of these PROs' public repertoire data.

- Both music licensors and licensees say that further education about copyright and the operation of the PROs would be beneficial.

The Office also understands that stakeholders have been working towards solutions to address some of the issues raised in your letter. PROs GMR and SESAC have now joined BMI

[3] *See, e.g.*, Chris Stapleton Initial Comments at 1–2; Jermaine Dupri Initial Comments at 1; Lyle Lovett Initial Comments at 1; Michael McDonald Initial Comments at 1.

[4] BMI Affiliates Initial Comments at 1.

and ASCAP in committing to make their repertoire data available on Songview, a platform designed to provide a single source of detailed public performance copyright information.[5]

We note that although the enclosed summaries reflect views of commenters, rather than policy recommendations of the Office, several of the Office's past publications also relate to musical works licensing. In its 2015 *Copyright and the Music Marketplace* report, for instance, the Office identified four key principles that we continue to believe should guide copyright policy decisions about music licensing:

- Music creators should be fairly compensated for their contributions.
- The licensing process should be more efficient.
- Market participants should have access to authoritative data to identify and license sound recordings and musical works.
- Usage and payment information should be transparent and accessible to rightsowners.[6]

Additionally, the Office has expressed views on implementing new statutory licenses to address challenges facing the music industry.[7] Based on our analysis and experience, the Office continues to disfavor statutory licenses except "in exceptional cases, when the marketplace is incapable of working"[8] and we note that Congress has expressed similar views.[9]

We hope that this information will aid your consideration of public performance rights licensing for musical works in the United States. The Copyright Office remains committed to ensuring that the copyright system is meeting the needs of copyright owners, users, and the public, as well as supporting Congress's work in this area.

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[5] *See* Press Release, ASCAP, Four Major US PROs Announce Expansion of Songview to Include Musical Works Information from GMR and SESAC (Sept. 29, 2025), https://www.ascap.com/press/2025/09/09-29-songview-expansion.

[6] U.S. COPYRIGHT OFFICE, COPYRIGHT AND THE MUSIC MARKETPLACE 1 (2015) ("MUSIC MARKETPLACE REPORT"), https://copyright.gov/policy/musiclicensingstudy/copyright-and-the-music-marketplace.pdf.

[7] U.S. COPYRIGHT OFFICE, U.S. COPYRIGHT OFFICE ANALYSIS AND RECOMMENDATIONS REGARDING THE SECTION 119 COMPULSORY LICENSE 7 (2019), https://www.copyright.gov/laws/hearings/views-concerning-section-119-compulsory-license.pdf; MUSIC MARKETPLACE REPORT at 148, 163; U.S. COPYRIGHT OFFICE, SATELLITE HOME VIEWER EXTENSION AND REAUTHORIZATION ACT SECTION 109 REPORT 78 (2008), https://www.copyright.gov/reports/section109-final-report.pdf; U.S. COPYRIGHT OFFICE, A REVIEW OF THE COPYRIGHT LICENSING REGIMES COVERING RETRANSMISSION OF BROADCAST SIGNALS iv, 12, 32 (1997), https://www.copyright.gov/reports/study.pdf; *Music Licensing Reform: Hearing Before the Subcomm. on Intell. Prop. of the S. Comm. on the Judiciary*, 109th Cong. (2005) (statement of Marybeth Peters, Register of Copyrights); Copyright Law Revision Part 6: Supplementary Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law: 1965 Revision Bill 14, 35 (Comm. Print 1965); *see also* U.S. COPYRIGHT OFFICE, SATELLITE TELEVISION EXTENSION AND LOCALISM ACT § 302 REPORT 1 (2011), https://www.copyright.gov/reports/section302-report.pdf.

[8] *Music Licensing Reform: Hearing Before the Subcomm. on Intell. Prop. of the S. Comm. on the Judiciary*, 109th Cong. (2005) (statement of Marybeth Peters, Register of Copyrights).

[9] *See, e.g.*, S. REP. NO. 106-42, at 10 (1999) ("[T]he Committee is aware that in creating compulsory licenses, it is acting in derogation of the exclusive property rights granted by the Copyright Act to copyright holders, and that it therefore needs to act as narrowly as possible to minimize the effects of the Government's intrusion on the broader market in which the affected property rights and industries operate."); H.R. REP. NO. 100-887, pt. 1, at 15 (1988) ("Congress should impose a compulsory license only when the marketplace cannot suffice.").

Please do not hesitate to contact me should you require any further information.

Respectfully,

Emily L. Chapuis
Acting General Counsel and
Associate Register of Copyrights
U.S. Copyright Office

Summary of Comments
on Issues Related to Performing Rights Organizations
90 Fed. Reg. 9,253 (Feb. 10, 2025)

Topic 1: The Increase in PROs

1. ***To what extent, if any, have there been increased financial and administrative costs imposed on licensees associated with paying royalties to additional PROs***

Licensees reported additional financial and administrative costs associated with the entry of new PROs into the marketplace.[1] While some suggested that additional costs are due to natural free market forces or licensees' business decisions,[2] others suggested that the emergence of new PROs have caused costs to increase without any increase in license coverage.[3] As the

[1] 2Fer's Gametime Retreat et al. Initial Comments at 1 (letter signed by over 450 small businesses); Fox Theatre Initial Comments at 1–2; CCIA Initial Comments at 2 ("[T]he emergence of additional PROs, each representing distinct catalogs, has made it difficult for any licensee to operate without undue expense and complexity."); International Association of Venue Managers ("IAVM") Initial Comments at 1 ("The proliferation in the number of PROs—combined with the lack of a comprehensive, reliable, and centralized database or requirements for PROs to register or provide detailed invoices —makes it virtually impossible for venues to confidently determine how much they owe and to whom to pay after a performance."); National Association of Broadcasters ("NAB") Reply Comments at 3; MIC Coalition Initial Comments at 3 ("The need to negotiate public performance licensing agreements with an ever-expanding number of PROs poses an increased administrative burden on licensees and eliminates many of the efficiencies often achieved via collective licensing."); Music Library Association and & Major Orchestra Library Association Initial Comments at 1 ("The disparate reporting requirements, unique repertoire catalogs, a lack of transparency from PROs about which works they represent, and the loss of collaborative negotiations for blanket licenses are consistent challenges."); National Apartment Association, the National Multifamily Housing Council, & Real Estate Technology and Transformation Center Initial Comments at 3 (licensees "are being asked to pay additional and higher licensing fees to what could become an unlimited number of additional companies. And with the demand for additional licenses comes additional administrative costs associated with managing additional licensing agreements."); National Independent Venue Association ("NIVA") Reply Comments at 3 ("The increasing number of PROs may have theoretical competitive benefits for creators, but for licensees, it has created complexity, legal exposure, and expense."); Performing Arts Venues Alliance Initial Comments at 2 ("[W]ith each new PRO that comes online, greater systemic inefficiencies soon follow."); Radio Music License Committee & Motion Picture Association ("RMLC & MPA") Initial Comments at 2, 10–12; Television Music License Committee LLC ("TVMLC") Initial Comments at 10 ("the proliferation of new PROs only further complicates the music licensing marketplace, drives up license fees, drives up administrative costs, and offers no offsetting benefits"); *see also* Amy Schonig Initial Comments at 2 ("agree[ing] that the current PRO situation in the U.S. is onerous and burdensome towards [general licenses for in-person venues]"). *But see* First Church of Christ, Scientist Initial Comments at 3–4 (noting that while increased PROs have caused "expense, confusion, and administrative overhead," they have not directly experienced "increased financial and administrative costs imposed on licensees associated with paying royalties to additional PROs . . . at this time").

[2] ASCAP Reply Comments at 6 ("That overall PRO fees may now be higher for a music user than it was in the [era before competition] is due, of course, in large part due to the fact that those users now pay true market value for some of those rights. Moreover, given that the product the PROs sell – their musical works repertories – has only been growing the past number of years . . . it is natural that overall costs for significantly more music would likewise increase."); BMI Initial Comments at 14 (noting that additional costs associated with obtaining licenses from multiple PROs are "the direct byproducts of a *business choice* made in a competitive music licensing marketplace").

[3] NAB Reply Comments at 3–4 (observing that "[s]ome commenters argue that rising PRO licensing costs are the result of inflation, increased music use, or ordinary market dynamics. While those elements may comprise some

American Hotel & Lodging Association noted, "there is no recognition by an incumbent PRO that the value of its license is reduced by the emergence of a new PRO."[4] As discussed further below, licensees believe that a lack of repertoire transparency or a single, comprehensive PRO affiliation database creates marketplace confusion and compounds these problems.

Some commenters, while recognizing the possibility of additional costs to licensees associated with the emergence of new PROs, proposed that those costs should be weighed against the benefits to songwriters.[5] Others noted that copyright owners do not have to be affiliated with a PRO[6] and that even increased coverage of licensed musical works does not solve licensees problems, as "obtaining a license from each PRO will *not* provide certainty that licensees can verify that they have obtained 100% of the rights that they need."[7]

2. *Factors that may be contributing to the formation of new PROs*

Commenters identified several possible factors that may be contributing to the emergence of new PROs. As an initial matter, the Office notes that antitrust law was generally outside the scope of this inquiry. However, the antitrust consent decrees governing ASCAP and BMI are an important factor related to the formation of new PROs which, while still subject to antitrust law, are not subject to the more stringent restrictions associated with a consent decree. In 2015, the Office's *Copyright and the Music Marketplace* report noted concerns that such disparate legal

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small measure of rising rates, they certainly do not tell the whole story. Indeed, radio stations are paying more today not because they are using more music, but primarily because they must now obtain additional licenses to continue performing the same works that were once covered by licenses from fewer PROs" and "the increase in PROs has simply turned three-stop licensing into four-stop licensing, driving up costs while delivering no additional access or functionality"); TVMLC Initial Comments at 12 (stating that when a fourth PRO—comprised of members that previously affiliated with preexisting PROs—entered the marketplace, television stations needed to take a fourth PRO license, but "were left with the same overall license coverage they previously secured by taking three licenses, only at greater expense").

[4] American Hotel & Lodging Association ("AHLA") Initial Comments at 1–2.

[5] Artist Rights Institute, North Music Group LLC & Blake Morgan ("Artist Rights Institute et al.") Initial Comments at 4 ("While the existence of multiple PROs may add to the overall cost of securing licenses—particularly for small or independent venues—this transaction costs of these complexities must be weighed against the importance of providing songwriters with real options for representation and ultimately compensation."); Reservoir Media Management Initial Comments at 1 ("While there may be increased financial and administrative costs due to entrance of additional PROs to the marketplace, the benefits of competition in a free marketplace outweighs any potential minor increase in the administrative costs of the licensee.").

[6] First Church of Christ, Scientist Initial Comments at 5 ("Because there is no requirement for copyright owners to be represented by any PRO, no matter how many licenses a [licensee] might obtain, from how many PROs, the framework is fundamentally incapable of providing certainty that performing music . . . will not give rise to liability for inadvertent infringement."); NIVA Reply Comments at 4–5 (citing unpublished study) ("A NIVA study found that 94% of the songs performed in small venues are written by the artists performing on the stage—many of whom are not even affiliated with any PRO at all."); *see* RITE Royalties Coalition Initial Comments at 2 ("[M]usic census data from cities across the U.S., collected by Sound Music Cities, estimates that 45 to 60% of local creatives are not affiliated with a PRO at all."); Sound Music Cities Initial Comments at 1 ("Local venues are often paying blanket license fees to PROs even when most of the music being performed is original work by unaffiliated local creators. That means those license fees aren't flowing back to the artists creating the music on their stages.").

[7] DiMA Initial Comments at 5.

treatment of PROs could create "unwarranted competitive imbalance and opportunities for regulatory arbitrage."[8] Commenters representing licensees reiterated such views.[9]

Commenters suggested that the following additional factors may be contributing to the formation of new PROs:

- The increased average number of songwriters that create a musical work and the practice of allowing those with separate fractional interests in a musical work to separately license those interests[10] ("fractional licensing"[11]);

- The "widescale adoption of music streaming services"[12] and the resulting increased

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[8] MUSIC MARKETPLACE REPORT 95.

[9] American Beverage Licensees ("ABL") Initial Comments at 4 ("Unlike ASCAP and BMI, these new PROs do not operate under any consent decrees and are not subject to the same guardrails."); Artist Rights Institute et al. Initial Comments at 6 ("gaps in PRO repertoire coverage may create arbitrage incentives for new entrants"); DiMA Initial Comments at 4, 13–14 (citing MUSIC MARKETPLACE REPORT at 95); DiMA Reply Comments at 7; IAVM Initial Comments at 2; Marriott International Initial Comments at 3–5; Kauffman Center for the Performing Arts Reply Comments at 1–2 ("While the Department of Justice consent decrees governing ASCAP and BMI have been critical for keeping license fees in check and ensuring music users can gain access to large catalogs on reasonable terms, new PROs operate outside these frameworks."); MIC Coalition Initial Comments at 2 ("The proliferation of the PROs is, simply put, an end run around the critical protections of the consent decrees (and is, in fact, the direct result of the fact that the consent decrees only regulate two PROs in the market, ASCAP and BMI."); NAB Initial Comments at 5–7, 9; National Restaurant Association Initial Comments at 5 ("new marketplace entrants are not subject to . . . consent decree restrictions imposed on ASCAP and BMI, and despite offering much smaller or rather ambiguous catalogues, they are soliciting . . . licensing fees at similar price points as incumbent PROs despite offering even less transparency around what music they own the rights to"); RITE Royalties Coalition Initial Comments at 8 ("SESAC, GMR, Pro Music Rights, and AllTrack, are not governed by consent decrees, which means they are not subject to the same pricing and licensing terms set by the DOJ, creating a more unpredictable environment for live music licensing."); RMLC & MPA Initial Comments at 6, 10–13 (discussing belief that PROs that are not subject to consent decrees can extract comparatively disproportionate royalties); *see also* ASCAP Reply Comments at 5 ("Because SESAC and GMR are not subject to compulsory access requirement pursuant to consent decrees, music users must pay those PROs what the value of the PRO repertories are worth to them."); Anonymous 13 Initial Comments at 1 ("SESAC, GMR, AllTrack, and PRO Music Rights should be held to consent decrees just like ASCAP and BMI."); TVMLC Initial Comments at 15–17.

[10] ABL Initial Comments at 4 ("Fractional licensing has fostered the formation of new PROs."); DiMA Initial Comments at 14–15; *see* CCIA Initial Comments at 1–2; Marriott International Initial Comments at 3–4; MIC Coalition Initial Comments at 3; NAB Initial Comments at 3–5; RMLC & MLC Initial Comments at 8–9; *see also* Brewers Association Initial Comments at 4 ("We recognize that there may be legitimate business reasons for a song or catalogue to be represented by multiple PROs due to multiple songwriters and other considerations. Nevertheless, this practice also could facilitate collusive behavior among PROs."); MLA & MOLA Initial Comments at 1 (noting that "challenges [associated with the proliferation of PROs] are made more daunting because of fractional licensing"). *But see* BMI Reply Comments at 4 (discussing the benefits of fractional licensing).

[11] *See* NOI at 9,255. *See generally* Letter from U.S. Copyright Office to the Honorable Doug Collins, Vice-Chairman, Subcomm. on Courts, Intellectual Property and the Internet, United States House of Representatives (Jan. 29, 2016), https://copyright.gov/policy/pro-licensing.pdf.

[12] ASCAP Initial Comments at 16; *see also* Warner Chappell Music Initial Comments at 2 (noting that "[m]ost Americans now get their music through digital music services").

financial investments in musical works and publishing;[13]

- The "emergence and adoption of independent music distributors" and increase of "independent and self-published artists and songwriters";[14]
- Technological advancements that have lowered market-entry barriers;[15]
- The benefits of marketplace competition among PROs for songwriter and publisher members;[16]
- The risk that a missing license will result in significant legal risks,[17] including the potential of a high statutory damages award, which allows "new entrants [to] extract

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[13] ASCAP Initial Comments at 16; NMPA Initial Comments at 5 ("The market for musical compositions continues to grow year over year, as does the volume of copyrighted music."); SESAC Reply Comments at 4 n.9 ("the growth in music[al] works every year means that a new PRO may simply service a different portion of the market").

[14] ASCAP Initial Comments at 16; Go to Eleven Entertainment Initial Comments at 2 ("because of the access creators now have to put their music online, there are thousands of new creators entering the music business every month"); GMR Initial Comments at 3 ("Given increased competition and technological advances, the performing rights licensing ecosystem has become more accessible and less administratively burdensome."); Music Licensing, Inc. & Pro Music Rights, Inc. ("Pro Music Rights") Initial Comments at 2, 5.

[15] ASCAP Initial Comments at 17; AHLA Initial Comments at 3 ("The emergence of new PROs has been driven by various factors, including advancements in digital music tracking technologies and a competitive push for alternative royalty distribution structures.").

[16] *See* A2IM Initial Comments at 2; Artist Rights Alliance Initial Comments at 2; BMAC Initial Comments at 2 ("The diversity of PROs allows for more competitive royalty rates, better client services, and advocacy that directly benefits songwriters."); BMI Initial Comments at 14 (associating increased competition among PROs with "encourag[ing] copyright holders to create more music and promot[ing] a more vibrant music industry"); CISAC Initial Comments at 2 (noting that new PROs have increased competition for rightsholders); Concord Music Publishing Initial Comments at 1–2 ("Songwriters and publishers affiliate with PROs for multiple reasons such as creative support, speed of payments, transparency, and advocacy, amongst others. Having multiple PROs encourages competitive services offerings amongst them."); Copyright Alliance Initial Comments at 2 ("The competitive markets in the PRO space have resulted in varied offerings of products and services, as well as increased choices for consumers and music creators alike."); CMPA Initial Comments at 1 ("[S]ongwriters and music publishers should have the option to choose the PRO(s) whose methodologies and procedures best serve the licensing and collection needs for our musical compositions."); CribNote Entertainment Initial Comments at 1 ("gaps in areas such as royalties, services, transparency, and efficiency . . . have prompted the emergence of new PROs"); NMPA Initial Comments at 5 ("New market entrants to this space mean more competition between PROs for members, which improves PRO performance for their members."). *But see* DiMA Reply Comments at 8 n.18 (suggesting that competition between PROs may not be in songwriters' best interest, including because of increased administrative costs); Amy Schonig Initial Comments at 1 (form letter reflecting belief that the "proliferation of PROs . . . only benefits the top 1% of songwriters").

[17] Brewers Association Initial Comments at 2 ("Many of our members report that they have stopped offering music to their guests due to the high costs of PRO fees and the threat of litigation and Copyright Act damages."); CCIA Initial Comments at 3; Exhibitions & Conferences Alliance et al. Initial Comments at 1 ("The proliferation of PROs and their lack of transparency have made it increasingly difficult for us to comply with the law without excessive costs, administrative burdens, and harassment."); DiMA Initial Comments at 10; Marriott International Initial Comments at 1; MIC Coalition Initial Comments at 2.

supracompetitive rates and nuisance fees";[18] and

- "PROs do not need approval from a licensing body or other governmental organization before operating."[19]

3. Recommendations on how to improve clarity and certainty for entities seeking to obtain licenses from PROs to publicly perform musical works

Notwithstanding the broad view that PROs provide significant efficiencies to the music ecosystem,[20] commenters suggested that licensing clarity and certainty could be improved with increased transparency, marketplace solutions, and deterrence of any fraudulent or abusive practices by bad-faith licensors through existing legal frameworks. As ASCAP observed, "[t]o avoid infringing, a music user must (1) know what music it will be performing and (2) have information regarding the copyright owner(s) of that music."[21] Without this information, users cannot license the necessary rights of the musical works that they are performing with any certainty. While obtaining licenses from copyright owners on a song-by-song basis may be impractical for most licensees,[22] some have other options, including: obtaining licenses from all

[18] DiMA Initial Comments at 17–18; DiMA Reply Comments at 9–10; s*ee also* ABL Initial Comments at 4; CCIA Initial Comments at 3; MIC Coalition Initial Comments at 4; RMLC & MPA Initial Comments at 2–3, 5.

[19] DiMA Initial Comments at 18; *see* AHLA Initial Comments at 3; ABL Initial Comments at 5; Blakeport LLC Initial Comments at 2; Maximilian Hass Initial Comments at 2; National Independent Talent Organization ("NITO") Initial Comments at 4; Sound Music Cities Initial Comments at 3.

[20] A2IM Initial Comments at 2 ("PROs are essential to the sustainability of our members' businesses and the broader independent music community. . . . Without the services provided by PROs, most independent music creators would be unable to monitor the performances of their works, let alone license them effectively at scale."); ASCAP Initial Comments at 1–2, 5–6 ("If not for PRO blanket licensing, it would be virtually impossible for music creators to get paid for the use of their copyrighted works across all the varied ways and means by which people enjoy music today [and] equally impossible for music users to efficiently secure the legal rights to use millions of copyrighted musical works."); BMI Initial Comments at 8 (Without PROs "[i]t would be virtually impossible for . . . music users [and] individual copyright owners to monitor and transact with [each other]."); CISAC Initial Comments at 1–2; Concord Music Publishing Initial Comments at 2; Copyright Alliance Initial Comments at 2 ("Without PROs, the system would break down."); DiMA Initial Comments at 3 ("there is no effective way for publishers or their licensees to license compositions on a work-by-work, or even catalog-by-catalog basis"); DiMA Reply Comments at 2 ("[T]he role of the PROs is critical, and without the aggregation of rights they make possible, the industry would grind to a halt."); NSAI Reply Comments at 2 ("Collective licensing mechanisms benefit both the creators and users of music. PROs bring efficiency to small businesses who, by utilizing such licenses, do not have to license the music they use on a song-by-song basis, something that would be virtually impossible."); MIC Coalition Initial Comments at 2; RMLC & MPA Initial Comments at 3; TVMLC Initial Comments at 9; *see also* ASCAP Reply Comments at 3 ("Negotiating with four or even five PROs is certainly exponentially easier than negotiating separately with dozens, hundreds or even thousands of music publishers, or millions of individual songwriters."); NMPA Initial Comments at 4 (The PRO system "developed as a voluntary solution to the inefficiencies and high transaction costs associated with licensing performance rights to the disparate array of traditional businesses that wish to use music."); SONA Initial Comments at 2 (observing that PROs improve licensing efficiency).

[21] ASCAP Initial Comments at 17.

[22] *See* Marriott International Initial Comments at 3 ("it is impractical for general music licensees such as hotel companies to identify musical works and license them directly from the tens of thousands of individual music publishers"); TVMLC Initial Comments at 6 (referring to the need for PRO licenses as a "practical necessity"); CISAC Initial Comments at 1; NSAI Reply Comments at 2 (noting that licensing musical works performance rights "on a song-by-song basis . . . would be virtually impossible"); *see also* RMLC & MPA Initial Comments at 9 n.19

PROs; obtaining licensees "from a subset of established PROs and curat[ing] their playlists to avoid copyright infringement;" or for licensees using background music, "subscrib[ing] to a commercial music service that pre-clears music and designs playlists geared toward certain businesses."[23] Commenters noted that there were already several pre-licensed background music services operating in the marketplace, including Jukeboxy, CloudCover Music, Mood Media, Pandora for Business, Rockbot, SiriusXM for Business, SoundMachine, Soundsuit, and Soundtrack Your Brand.[24] The responses to question 6 further addresses the challenges associated with identifying musical work owners or licensors.

Some commenters suggested that existing legal frameworks could be used to deter PROs from engaging in fraudulent or abusive practices.[25] Enforcement efforts could include federal antitrust,[26] unfair competition, false advertising, or wire fraud causes of action,[27] or similar state laws.[28] As commenters noted, twenty-seven states have specific laws governing PROs' licensing

("writer members of non-ASCAP/BMI PROs typically must assign rights to their songs on an exclusive basis to such PROs—thus making any such attempt to circumvent such PROs fruitless").

[23] BMI Initial Comments at 10; s*ee also* NSAI Reply Comments at 2 ("Many small businesses do not need to secure licenses from every PRO and they have the option of securing licenses for specific playlists; as another option, businesses are able to subscribe to background music services."); SESAC Reply Comments at 4 (noting that "businesses have the option to track their use of music and could limit performances to songs represented by one or two PROs, or . . . could engage a background music service to provide fully licensed music to their establishment").

[24] BMI Initial Comments at 14 n.23 (identifying SiriusXM for Business, Soundtrack Your Brand, and Pandora for Business); Go to Eleven Entertainment Initial Comments at 4 (identifying "Mood Media, Jukeboxy [and] CloudCover Music"); SESAC Initial Comments at 6–7 (identifying Soundtrack Your Brand, Mood Media, SiriusXM for Business, Rockbot, Soundsuit, SoundMachine, and Jukeboxy); *see* GMR Reply Comments at 2; SESAC Reply Comments at 1; *see also* Brewers Association Initial Comments at 1–2 (noting that "much of the music (*e.g.*, from a business streaming service) already is covered by licensing, and the cost of that license is built into the price of the service[,]" but other performances "such as hosting a local band, require the business to obtain its own PRO license").

[25] ASCAP Initial Comments at 39 ("music users are well protected from unscrupulous PRO entrants by virtue of numerous state and federal laws that address fraudulent and deceptive business practices to protect music users"); BMI Initial Comments at 4 ("To the extent new market entrants are engaged in abusive practices, including by misrepresenting the scope and nature of their purported repertoires, existing legal and regulatory frameworks provide a broad suite of mechanisms to address and remedy that conduct."); Music Artists Coalition ("MAC") Initial Comments at 3 ("If there are specific concerns about fraudulent or deceptive business practices, these would fall under existing consumer protection laws, Federal Trade Commission jurisdiction, or state business regulations – not copyright law.").

[26] NMPA Initial Comments at 4 ("If a PRO is engaged in anticompetitive conduct, an antitrust action is the proper enforcement mechanism."); s*ee also* MIC Coalition Initial Comments at 5 (noting the Department of Justice's antitrust enforcement authority).

[27] BMI Initial Comments at 17; *see also* MIC Coalition Initial Comments at 5 (noting the FTC's enforcement authority).

[28] Anfinn Skulevold Initial Comments at 1 ("Existing state laws protect consumers from deceptive practices, so additional regulations are unnecessary, merely stronger enforcement of current laws."); BMI Initial Comments at 17 ("there exists in nearly every state a well-developed body of common law prohibiting fraudulent conduct along with statutory provisions prohibiting unfair business practices and other business misconduct" and "most states specifically prohibit certain false or misleading advertising practices or treat such practices as violative of deceptive trade practice or consumer protection laws"); Copyright Alliance Initial Comments at 4 ("existing laws and regulations that address bad business behaviors in the PRO space include laws that deter fraudulent and deceptive

practices.[29] As SESAC summarized, "[t]hese statutes typically require certain information to be provided to potential licensees, including transparent contract terms and the identification of represented musical works. They prohibit unfair or deceptive sales practices and establish processes for resolving disputes between music users and performing rights societies."[30]

Some licensees do not favor these remedial approaches, including because of their associated costs and perceived inefficiency.[31] Instead, they would prefer to place additional, proactive responsibilities on PROs or copyright owners, for example by requiring the use of a centralized PRO affiliation database and penalizing those who do not comply, including by limiting infringement damages.[32] Other suggested approaches included creation of a federal PRO registration system[33] or establishing minimum operating standards for PROs.[34]

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business practices and a panoply of federal and state laws governing competition and antitrust issues"); SESAC Initial Comments at 7 ("most states have laws on the books that establish a private right of action for the use of unfair or deceptive acts or practices and/or unfair methods of competition by a business"); *see also* MIC Coalition Initial Comments at 5 (noting "patchwork" of state laws); Exhibitions & Conferences Alliance et al. Initial Comments at 2 ("[T]he overly aggressive, and often misleading and threatening, sales and collection practices of PROs have encouraged 12 states to pass laws restricting some of their business practices.").

[29] BMI Initial Comments at 16; SESAC Initial Comments at 7 (identifying 26 states).

[30] SESAC Initial Comments at 7; *see also* BMI Initial Comments at 16 ("there exists in nearly every state a well-developed body of common law prohibiting fraudulent conduct along with statutory provisions prohibiting unfair business practices and other business misconduct"); SESAC Reply Comments at 5 ("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.").

[31] *See* DiMA Reply Comments at 9 n.23 (responding to this claim by asserting that "litigation is a highly inefficient way to resolve complex policy issues affecting the entire structure of the market").

[32] AHLA Initial Comments at 3 (suggesting "[a] grace period (*e.g.* 3 months) for catalog searches and infringement penalties, to combat the PRO disclaimers that the catalog may not be current"); DiMA Initial Comments at 19 ("Good actors . . . should not face the risk of crushing liability, without a corresponding clarity and certainty from that same system."); IAVM Initial Comments at 2 ("Require PROs to update and maintain their data in that database" and "[t]hose who fail to do so should not be entitled to seek statutory damages for infringement."); Marriott International Initial Comments at 6 ("amend the copyright law . . . to limit liability arising from the unlicensed public performance of musical works in public areas of a business in circumstances where its proprietor has no meaningful or practical right or ability to control the selection of the musical works that are actually performed on the premises"); MIC Coalition Initial Comments at 6 ("Require PROs to deposit public performance data in a centralized database and keep such data up to date. PROs that fail to comply should not be eligible to be awarded statutory damages for infringement."); *see also* Artist Rights Institute et al. Initial Comments at 5 ("If the Copyright Office were ever to consider a safe harbor that would be useful, it might apply to venues that have secured licenses from the four major PROs (ASCAP, BMI, SESAC, and GMR) but inadvertently host a performance of a work administered by a startup PRO.").

[33] ABL Initial Comments at 5 ("Congress and/or the Copyright Office should establish a regulatory framework for all PROs, including registration, reporting requirements, and accountability measures."); NITO Initial Comments at 4 ("New PROs seeking to collect live performance royalties should be subject to minimum requirements, including catalog size and songwriter representation. In an era of AI-generated content, the absence of standards invites abuse."); Sound Music Cities Initial Comments at 3 ("Explore the creation of a federal registration process for PROs.").

[34] AHLA Initial Comments at 3 (suggesting "[s]trengthened regulatory oversight to ensure fair and reasonable licensing terms, reducing ambiguity and conflicts in music licensing agreements" and "[r]egulations or heightened enforcement to address how PROs communicate with potential licensees"); ABL Initial Comments at 5 ("Require

Topic 2: General Licensing Revenue Distribution Methods

4. ***How PROs currently gather information concerning musical works publicly performed at live music venues, on music services, and by other general licensees***

PROs consistently stated that they obtain performance data through a variety of sources, including from: licensee reporting; third-party data providers; or the PRO's own publisher and songwriter members (including the songwriter's manager, promoter, or other team member). Data may vary, however, for different user types (*e.g.*, digital music services, live venues, broadcast radio, etc.).

Digital music services provide PROs with highly detailed usage reports.[35] Generally, these reports contain sound recording metadata, but not necessarily musical work metadata.[36] DiMA noted, however, that some PROs "may not be able to handle or process the volume of data supplied by [digital music services]," and others "are not interested in receiving usage reporting at all."[37]

The Office received fewer comments addressing how PROs gather performance information from larger live music venues, and those comments were consistent with the

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PROs to specify whether a license grants full or fractional rights, and to identify any other known parties with claims to the same works."); Blakeport LLC Initial Comments at 2 (suggesting "[d]etailed royalty statements indicating source platform, territory, and usage type," "[d]isclosure of calculation methodologies and redistribution policies," and "[t]imeline requirements for royalty issuance."); DiMA Initial Comments at 19 ("Royalty rates should be transparent and clear, and the rates for Section 115 services should reflect the fact that performance and mechanical rights are inextricably intertwined."); Maximilian Hass Initial Comments at 2 ("Require PROs to provide detailed, transparent information about the specific license options available for the most common 3-4 ways that business establishments typically engage with live music . . . . This information should have all key terms, pricing, and parameters made clear up front, and not require the establishment to contact a generic email address at the PRO in order to get more information."); Pro Music Rights Initial Comments at 7 ("All PROs (including BMI, ASCAP) should publicly file itemized accounts of overhead, reciprocal deals, private equity payments, and any guaranteed payouts to specific affiliates" and "PROs failing to meet transparency benchmarks should face regulatory consequences, such as fines or operational limitations."); Sound Music Cities Initial Comments at 3 ("Establish minimum disclosure requirements for any PRO seeking to license performance rights from venues or businesses.").

[35] ASCAP Initial Comments at 19, 32 ("In the best cases, if the performances are digital in nature, the licensees typically are able to readily provide electronically lists of all music performed by the licensees with embedded metadata on rights holders."); BMI Initial Comments at 27 ("BMI's music use data largely consists of detailed data obtained regarding performances by digital services, including Spotify, Pandora, YouTube, and TikTok, among others . . . ."); CribNote Entertainment Initial Comments at 2 ("Digital music and audiovisual providers submit comprehensive usage reports."); GMR Initial Comments at 10 ("digital service provider' licensees directly supply GMR with transparent and reliable data that GMR, in turn, uses to track performance usage and calculate its royalty distributions").

[36] DiMA Initial Comments at 7–8 ("DSPs provide highly detailed reporting to the PROs about billions of performances per year. The information includes metadata about every single piece of recorded music they perform, with specific information about the track, including standard identifiers such as track's International Sound Recording Code, or ISRC," however, "[t]hat information often does not include publishing information of any kind.").

[37] DiMA Initial Comments at 7–8 (referencing AllTrack).

statements in the Office's NOI.[38] Commenters recognized that general licensees and smaller live music venues have unique challenges with collecting performance data. As BMI explained, "the administrative costs and burdens . . . associated with monitoring and tracking all live performances would outweigh the resulting incremental royalty distributions made to rightsholders."[39]

Generally, venues, promoters, and performers are not required to submit setlists of performed works.[40] Although PROs may request this information from these parties, PROs have concerns regarding the accuracy of their reporting.[41] In some cases, PROs may use third-party sources, such as setlist.fm, Pollstar, and Muzooka to obtain setlist information.[42] PROs also commonly receive performance information from their own members,[43] with some developing

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[38] NOI at 9,256; *see, e.g.*, ASCAP Initial Comments at 30 ("ASCAP includes live concert performances within its surveys" and "reviews overall industry revenue information and creates a survey basis from the higher grossing popular concert tours and festivals, as well as numerous larger and notable music venues. The survey includes all opening acts, stages and headliner acts at these events. In addition, ASCAP tracks performances at all other concerts by those artists who perform at the higher grossing events, even if they fall outside the survey parameters."); BMI Initial Comments at 27–28 ("BMI uses an independent source of live pop concert information to identify and create a database of the top 300 events (*i.e.*, tours and festivals) by revenue each quarter. Set lists are solicited from headliners and opening acts performing at those events."); NITO Initial Comments at 2 ("For ASCAP, only the top 2,500 shows qualify for direct tracking, while for BMI it is limited to the top 300 tours. The rest are paid from pooled systems based on aggregate data and artist-submitted setlists.").

[39] BMI Reply Comments at 10; CribNote Entertainment Initial Comments at 2 ("Businesses such as bars, restaurants, gyms, and retail stores typically do not report any data, as it would not be cost-effective to document all the music played within their establishments.").

[40] ASCAP Initial Comments at 20–21 (ASCAP "request[s] setlists directly from managers, promoters and venues where available, but, more frequently than not, they do not provide them."); DiMA Initial Comments at 7 ("[G]eneral licensees are not expected to provide reporting of the actual music they perform, which means general licensing revenues are, as a general rule, received by the PROs without any information about how they should be distributed."); Hunter Williams Initial Comments at 3 ("With the exception of live music venues where artists are allowed to submit their set lists, there is no reporting of general licensing income on PRO statements. The administrative burden is therefore very low."); SESAC Initial Comments at 9 ("Bars, restaurants, stores, hotels, and similar venues are not required to report the music they use to SESAC.").

[41] GMR Initial Comments at 10 ("most physical business establishments that perform music have not availed themselves of a music service that provides data for use in a distribution. . . . Some music users provide data to GMR that is incomplete, inaccurate, or deliberately manipulated so as to underrepresent the extent of their music usage.").

[42] ASCAP Initial Comments at 20–21; BMI Reply Comments at 9; SESAC Initial Comments at 8; *see also* ASCAP Initial Comments at 19 ("In other cases, third-party services provide technologies that monitor real-time performances and make available that data to ASCAP for a fee.").

[43] ASCAP Initial Comments at 20–21 ("[O]ur members send us music usage information directly, which is a key means by which members receive distributions for performances of their music at live popular music concerts."); BMI Reply Comments at 9 ("With respect to concert performances in particular, BMI solicits setlists from headliners and opening acts for the largest concerts and events . . . and has otherwise developed systems to allow artists to report performance data through its BMI Live platform."); SESAC Initial Comments at 8 (noting that SESAC "employs a variety of means to allocate licensing revenue to its members, including self-reporting from SESAC PRO's songwriters and publishers, data supplied by SESAC PRO's licensees, and data purchased from third-party providers").

dedicated setlist reporting portals (*e.g.*, ASCAP's "OnStage" and BMI's "BMI Live").[44] While PROs noted efforts to improve their reporting systems[45] and some commenters commended their work to aid the self-reporting of setlists,[46] others noted various complaints with existing reporting systems.[47] Commenters expressed an interest in standardizing and otherwise improving the process of reporting live music setlists.[48]

Finally, the Office received information on other licensees' reporting practices that were not identified in our NOI, including television and movie producers, commercial radio stations, and others. Commenters noted that television and movie producers are commonly required by contract to provide detailed cue sheets to PROs.[49] Some PROs supplement this data with data

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[44] ASCAP Initial Comments at 22; BMI Reply Comments at 9–10; *see* SESAC Initial Comments at 8 (nothing that it "permits all songwriters and publishers to self-report live performances through our online member portal up to one year after a performance has occurred" and that it "receives over 17,000 setlist submissions per year through its portal").

[45] *See* ASCAP Initial Comments at 32 (discussing the use of "[f]ingerprinting technologies" to supplement reporting data); BMI Reply Comments at 9–10 ("BMI is constantly developing and improving BMI Live. For example, BMI is working to significantly expand the reach of its quarterly 'LivePop' distribution, which compensates affiliates for performances of popular music. BMI is also in the process of enhancing its technology to make it easier for affiliates to upload setlists. To improve transparency, BMI is also exploring options to provide additional details, such as venue and date of performance, on affiliates' quarterly royalty statement.").

[46] CMPA Initial Comments at 2 ("Regarding ASCAP, BMI and SESAC, our publishers regularly take advantage of the opportunity and reporting mechanisms by which to submit concert playlists for both large and small concert venues. Many of our publishers have reported the ease they find in using these mechanisms and have found them to be a productive way to ensure proper crediting and payment for these type performances."); MMF-US Initial Comments at 2 ("ASCAP's OnStage, BMI Live, and PRO integrations with platforms like Soundmouse and Mus000ka—demonstrate the PRO's commitment to leveraging technology to improve the precision and transparency of royalty distributions to their members.").

[47] NITO Initial Comments at 2–3 (nothing that "[w]hile PROs created mechanisms for artists and their teams to self report set list data, we have been told multiple times that the process is overly cumbersome and not worth the payout received." And "many artists report rarely receiving the expected [performance royalty] amounts on their quarterly royalty statements" from playing at live venues); Richard Paul Initial Comments at 1 ("[W]hen I submit my set lists to ASCAP's OnStage program, including songs cowritten with BMI cowriters (and almost certainly cover songs written or cowritten by writers in other PROs), ASCAP does not forward these set lists to BMI (and so assumedly also not to SESAC, GMR, and any others that may be applicable).").

[48] A2IM Initial Comments at 3 ("A2IM urges PROs to prioritize equitable representation in tracking and payout systems, particularly for smaller venues and live performances. That said, much of the current system's shortcomings are due to incomplete reporting from licensees and technical limitations. A2IM would support initiatives that incentivize more accurate and comprehensive usage reporting by licensees, especially from general licensees."); MMF-US Initial Comments at 3 ("We acknowledge the need for greater standardization and education around setlist reporting within the live performance sector, as well as encouragement to use available technological solutions amongst all stakeholders."); SONA Initial Comments at 3 ("SONA emphasizes the need for standardization in the live music sector in regards to reporting set lists. We also recognize that more collaboration needs to happen between the live industry and the PROs to ensure accuracy and transparency in the system overall."); *see also* NIVA Reply Comments at 5 (suggesting that PROs "work in partnership with venues and promoters to develop streamlined, accessible, and integrated reporting tools that actually reflect usage and support accurate distribution").

[49] ASCAP Initial Comments at 20 ("Producers of television and motion pictures are responsible for delivering cue sheets to ASCAP mainly via electronic means but on occasion manually, in writing."); CribNote Entertainment Initial Comments at 2 ("audiovisual providers submit comprehensive usage reports, while terrestrial/linear

purchased from third parties, including from Gracenote, Vivvix, and Muzooka.[50] Regarding broadcast radio, PROs may engage in performance monitoring of licensed commercial radio stations, including via the use of third-party data services.[51] PROs may also receive performance data from background music services, digital jukeboxes, satellite radio, non-commercial terrestrial radio, sports leagues, theme parks, and airlines that provide music services.[52]

5. Whether the manner in which the PROs gather information regarding public performances adversely impacts lesser-known artists and smaller publishers

None of the PROs that responded to the Office's notice believed that their usage information gathering process was to the comparative detriment of lesser-known artists (or songwriters) or smaller publishers.[53] CISAC stated that "[PRO] representation is traditionally on a non-discriminatory basis, and any creator should be able to benefit equally from the services provided by a [PRO] in accordance with its respective rules."[54] When discussing streaming services, ASCAP noted that "performances of lesser-known writer-artists . . . are much more commonplace," due to the "existence of independent music distributors and the technical capabilities of the largest music streaming services."[55]

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broadcasters utilize different methods of reporting"); *see also* ASCAP Initial Comments at 31 ("PROs historically obtain more complete cue sheets for produced episodic programming and movies, where producers traditionally clear synchronization rights and have cue sheet processes in place, but less complete cue sheets for live broadcast programming such as sporting events, where it is not business practice to have a monitor in the stadium logging music play, or programming produced and aired by local broadcast stations (e.g., a public affairs news program).").

[50] SESAC Initial Comments at 9 (noting that SESAC purchases data, including from Gracenote, Vivvix, and Muzooka, "to use in connection with other licensee channels, including broadcast television, basic and premium cable channels, pay-per-view services, syndicated television, full- and low-power local television, public television, music-intensive cable channels and several thousand commercial and non-commercial radio stations").

[51] BMI Initial Comments at 27–28 ("This census information creates a statistically reliable and highly accurate representation of feature performances on all commercial music format radio stations throughout the country."); *see also* ASCAP Initial Comments at 19 ("Whereas decades ago, ASCAP employed people to literally listen to the radio and log songs played on paper, today, modern technologies and data sources allow ASCAP to process trillions of bytes of music usage information using the most up-to-date technologies available in the market" and "services employing fingerprinting technologies can monitor thousands of terrestrial radio transmissions and make available performance information for those radio stations within ASCAP's applicable radio station survey.").

[52] BMI Initial Comments at 27–28.

[53] ASCAP Initial Comments at 21 (noting that its distribution policy is "objective and agnostic"); GMR Initial Comments at 8 ("GMR's information gathering procedures do not adversely impact any lesser-known artists and/or smaller publishers" and "GMR is the only PRO that offers an identical rate card to each of its clients, which describes the various streams from which royalties will be paid. Thus, each GMR client has a robust understanding of what royalties will be paid to them before those distributions are even made.").

[54] CISAC Initial Comments at 3 (adding that "even lesser-known artists and smaller publishers, given that they also participate in existing informational identifier systems, may benefit from collective management of their rights on equal footing with more well-established artists and publishers: in other words, [PROs'] information gathering practices shall not diminish the collections and distributions of royalties attributable to independent artists or smaller publishers").

[55] ASCAP Initial Comments at 3, 22–23.

Others believed that lesser-known artists or songwriters and smaller publishers could be adversely impacted by a PRO's information-gathering practices.[56] For example, the Performing Arts Venue Alliance claimed that "PROs seem to prioritize the large touring artists, and new or emerging artists are deprioritized until they become financially significant."[57] Terry McDaniel suggested that lesser-known songwriters might not have the ability to know if they were paid properly.[58] Richard Paul offered an opposing view, stating that despite not having had "big hit songs" and being an "independent songwriter/publisher and musical artist," he received compensation from his PRO after submitting his set lists.[59]

Some commenters suggested that problems associated with identifying performances of lesser-known artists (or songwriters) or smaller publishers were related to the reporting challenges of smaller venues and general licensees and reliance on proxy data. Artist Rights Institute, North Music Group LLC, and Blake Morgan stated that "anything other than a census-type reporting system will inevitably result in missing local artists performing in local venues just like radio sampling is prone to miss developing artists who are played infrequently."[60] NIVA agreed that using proxy data to supplement small venue reporting would benefit copyright owners of more popular songs, as those songs are better reflected by the proxy data.[61] Similarly, Hunter Williams suggested that the lack of general licensing reporting "effectively gives the PRO a free pass to do whatever they want with general licensing revenues," which "typically results in bonuses and more incentive payments to major artists, songwriters and publishers."[62] NIVA noted a similar perspective, stating that "[s]mall venues end up subsidizing a royalty pool that benefits PROs with no interest in their events, while the intended recipients—emerging, independent, and working class creators—are left out."[63]

Others argued that it would be inappropriate for the government to become involved in private contractual relationships, and that "[i]t is precisely the ability of songwriters and publishers to choose their performing rights organization that ensures distribution practices will be adjusted or modified when they raise concerns."[64]

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[56] *See, e.g.*, Artist Rights Institute et al. Initial Comments at 7 ("The current performance tracking ecosystem routinely disadvantages lesser-known artists and small publishers."); Go to Eleven Entertainment Initial Comments at 4 ("It is true that the survey data analysis route in which the PROs often pay, does adversely impact lesser-known artists and smaller publishers.").

[57] Performing Arts Venue Alliance Initial Comments at 2; *see* Kimar Miller Initial Comments at 1 ("It is evident that PROs . . . often prioritize the interests of those who can generate the most revenue, rather than those of all their participants.").

[58] Terry McDaniel Initial Comments at 1.

[59] Richard Paul Initial Comments at 1.

[60] Artist Rights Institute et al. Initial Comments at 6.

[61] NIVA Reply Comments at 5 ("These proxies tend to skew towards the most commercially successful songwriters. As such, they know these types of proxies disadvantage the very creators our members work with most.").

[62] Hunter Williams Initial Comments at 3.

[63] NIVA Reply Comments at 4.

[64] SESAC Initial Comments at 3; *see* ASCAP Initial Comments at 3 ("ASCAP is constantly in the process of refining and improving its distribution policies. To the extent that they can be improved, it is a matter best resolved

6. *What information PROs currently provide to the public, including with respect to: repertoire information and metadata; and royalty distribution practices and policies*

Repertoire metadata

To the extent known to each PRO, their repertoires include the following song metadata: title; alternative titles; songwriter(s) (including composers); publishers; fractional interest of the musical work represented by the PRO; performing artists; Interested Parties Information number[65] ("IPI"); and (except for Pro Music Rights and SESAC) International Standard Musical Work Code[66] ("ISWC").[67] Pro Music Rights may also provide information on the song's duration, language, and International Standard Recording Code[68] ("ISRC") for the recorded song.[69] Additionally, the databases for ASCAP and BMI provide the ability to search for either works that are 100% licensed by either PRO or that are in either PRO's repertoire.[70]

Repertoire information

Commenters generally agreed that ASCAP, BMI, GMR, and SESAC make their repertoire information accessible to the public.[71] Many viewed Songview,[72] the online "joint song data platform" created by ASCAP and BMI to "reconcile songwriter and publisher

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between PROs and their members through their contractual relationships – not licensees, not the Copyright Office and certainly not Congress or the federal government.").

[65] This identifier "allows a musical work to be associated with the various parties that are involved in its creation, marketing, and administration" and "appl[ies] to composers, authors, composer/authors, arrangers, publishers, administrators, and sub-publishers." MUSIC MARKETPLACE REPORT at 61.

[66] This identifier represents "a unique, permanent, and internationally recognized reference number for the identification of musical works." *Id.* at 59.

[67] AllTrack Reply Comments at 9–10; ASCAP Initial Comments at 25–26; BMI Initial Comments at 20; GMR Initial Comments at 9. SESAC did not list the publicly available metadata that it provides, but noted that it "maintains an open, online database that is easily searched by artist, song title, writer or publisher." SESAC Initial Comments at 6. Information on the metadata SESAC and Pro Music Rights provide to the public was taken from their respective websites. *See FIND WORKS – Music licensing in Pro Music Rights*, PRO MUSIC RIGHTS, https://promusicrights.com (last visited Sept. 29, 2025); *Search Repertory*, SESAC, https://www.sesac.com/repertory (last visited Sept. 29, 2025). Pro Music Rights did not respond to this question.

[68] This identifier represents "a unique, permanent, and internationally recognized reference number for the identification of sound and music video recordings." MUSIC MARKETPLACE REPORT at 60.

[69] Pro Music Rights did not respond to this question. Information on the metadata it provides was taken from its website. *See FIND WORKS – Music licensing in Pro Music Rights*, PRO MUSIC RIGHTS, https://promusicrights.com (last visited Sept. 29, 2025).

[70] ASCAP Initial Comments at 26; *see also Songview*, BMI, https://repertoire.bmi.com (last visited Sept. 29, 2025) (reflecting the same search capabilities for BMI's works).

[71] *See, e.g.*, A2IM Initial Comments at 3; ASCAP Initial Comments at 26; ASCAP Reply Comments at 2; Go to Eleven Entertainment Initial Comments at 1; MAC Initial Comments at 2; Michelle Shocked Initial Comments at 1; SESAC Initial Comments at 6 ("All of the established PROs offer publicly accessible repertory information.").

[72] In comments, Songview was also stylized as "SONGVIEW" or "SongView."

information,"[73] as a positive step in improving transparency, and supported GMR's and SESAC's efforts to add their repertoire information to the platform.[74] Some commenters representing licensees, however, were critical of Songview's current limitations. They reported that Songview does not have comprehensive PRO data, the data displayed can be inconsistent, incorrect, can lack complete share information, and does not include ISRCs, and that the platform includes disclaimers that its data may be unreliable.[75] A. Schroeder International suggested, however, that "the real problem" is that that the "majority of U.S. citizens and businesses do not know where to find or how to navigate [PROs' web]sites."[76]

Commenters were relatively more critical of AllTrack and Pro Music Rights' repertoire information.[77] As GMR stated, "new entrants like AllTrack and PRO Music Rights have not entered the performing rights marketplace with the same degree of candor, legitimacy, and

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[73] GMR Initial Comments at 9 ("the four major PROs are currently exploring the inclusion of GMR and SESAC data to enhance Songview's reconciled view of copyright ownership information"); GMR Reply Comments at 5–6; SONA Initial Comments at 3; *see also* SESAC Initial Comments at 6.

[74] A2IM Initial Comments at 3; ASCAP Initial Comments at 26; GMR Initial Comments at 9 ("the four major PROs are currently exploring the inclusion of GMR and SESAC data to enhance Songview's reconciled view of copyright ownership information ownership information housed in the MLC database."); GMR Reply Comments at 5–6; MIC Coalition Initial Comments at 5; MLA & MOLA Initial Comments at 1–2; SGA, SCL & MCNA Initial Comments at 5; SONA Initial Comments at 3; *see also* SESAC Initial Comments at 6.

[75] A. Schroeder International LLC Comments at 2 (noting that "while [Songview is] invaluable, [it] still contain[s] incorrect information"); DiMA Initial Comments at 15–16 ("While Songview contains the repertoire of ASCAP and BMI, this is a privately controlled solution that does not have information from all the other PROs and is not reconciled with mechanical rights."); First Church of Christ, Scientist Initial Comments at 6 (calling Songview a "helpful resource," but noting that it "doesn't solve the larger problems caused by proliferating PROs, incomplete databases, and the lack of a requirement for copyright owners to register with a PRO"); MIC Coalition Initial Comments at 5 ("An unsympathetic observer might describe Songview as a 'Potemkin database' -- created to provide the illusion of transparency, without providing a solution that businesses can truly use in their operations."); NAB Initial Comments at 4–5 ("Songview cannot serve as a centralized, transparent, or legally reliable resource, as it only contains data from two PROs (ASCAP and BMI), is not consistently updated, and includes a disclaimer that it may not be legally relied upon."); National Restaurant Association Initial Comments at 4 (noting that while establishing Songview was "a good faith effort to help expand transparency for general licensees" and it "provides music users with a more comprehensive view of public performance copyright ownership and administration shares for the music they license[,]" it "does not have licensing information pertaining to the repertoires of other operating PROs, making it an incomplete solution for the entirety of the marketplace"); RMLC & MLC Initial Comments at 7 (noting concerns over Songview's disclaimer and terms of use); *see also* DiMA Initial Comments at 16 ("even if [Songview's] data were authoritative and reliable, it is not presented in a way that is operationally useful" as "licensees cannot obtain bulk access to Songview data, at least in a useful format, and it is subject to significant usage restrictions in its terms of use"). *But see* ASCAP Initial Comments at 27 ("the performing rights information at ASCAP is updated nightly; a licensee should have full confidence with respect to the data").

[76] A. Schroeder International LLC Initial Comments at 2.

[77] BMI Initial Comments at 9–10, 21–25 ("[A]t the time of this writing, no reliable, readily-accessible, publicly-available information exists regarding the number or identity of the songwriters, composers, and music publishers represented by AllTrack and Pro Music [Rights], or the number of musical works in their respective repertoires."); Exhibitions & Conferences Alliance et al. Initial Comments at 1 (referring to Pro Music Rights and AllTrack as "new entrants with questionable repertoires"); GMR Initial Comments at 4–5, 12; NIVA Reply Comments at 3–4 (addressing AllTrack); RITE Royalties Coalition Initial Comments at 6 ("Given [that ASCAP, BMI, SESAC, and GMR] encompass[] 100% of the musical works market, it is unclear how much of the overall live music repertoire is represented by new entrants like AllTrack or Pro Music Rights.").

transparency that is required of and upheld by the four major PROs."[78] BMI claimed that AllTrack and Pro Music Rights "make little information readily available regarding the contents of their respective repertoires" and "the information they do make available raises substantial questions regarding its reliability."[79]

Regarding AllTrack, several commenters complained that it "does not publish any meaningful level of repertoire information on its website,"[80] its repertoire was "painfully difficult to locate,"[81] and it does not "allow a user to straightforwardly access copyright ownership data."[82] As BMI explained:

> To search AllTrack's repertoire, a user must provide *two* of the following data inputs: (1) song title, (2) publisher, (3) songwriter, and (4) performer. In other words, identifying the copyright owners affiliated with AllTrack and the musical works in its repertoire requires, at a minimum, running many time-intensive, granular, individualized searches based on inputs a user would need to obtain independently of the information AllTrack makes available. For example, for a user to determine the existence and scope of AllTrack's rights in songs by a given songwriter, the user would need to: (1) independently identify (outside of any information made available by AllTrack) the name of each song written by that songwriter, the performer of each such song, or the publisher of each such song; and then (2) manually input, in separate searches, each potential combination of the songwriter's name and one of these other data points to determine which, if any, songs by a given songwriter are contained in the repertoire.[83]

Multiple commenters also referenced frustration over determining whether AllTrack represented artists displayed on its website, such as No Doubt and Billy Ray Cyrus.[84] Some suggested that

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[78] GMR Initial Comments at 4–5 ("AllTrack and PRO Music Rights[] . . . have (1) failed to amass any meaningful repertoire that a licensee would find valuable to its business and (2) represented to licensees that they have acquired the rights to a much more substantial body of work than they actually have, thereby misleading and placing undue pressure on small businesses to take a performance license that they may not even need (but cannot verify).")

[79] BMI Initial Comments at 15.

[80] GMR Initial Comments at 4; NIVA Reply Comments at 3 ("AllTrack claims to represent a vast repertoire of works but does not provide an easily accessible and transparent catalog of works.").

[81] RITE Royalty Coalition Initial Comments at 7.

[82] BMI Initial Comments at 21; *see also* Go to Eleven Entertainment Initial Comments at 3 ("I asked the President of AllTrack to give me a list of their top repertoire and he would not do that.").

[83] BMI Initial Comments at 21–22.

[84] *Id.* at 22 ("Based on BMI's independent research, it appears that, despite advertising on its homepage that Mr. Cyrus is an 'artist' who performs AllTrack music, AllTrack holds a partial interest in only one song performed by Mr. Cyrus."); Go to Eleven Entertainment Initial Comments at 3 (describing an alleged refusal to state which No Doubt songs are in AllTrack's licensing control); GMR Initial Comments at 5 n.2 ("[O]n its home page, AllTrack continues to represent that it represents well-known music group, No Doubt, yet each of the group's members are affiliated with one of the other four major PROs. It is fundamentally unclear which works, if any, AllTrack represents with respect to No Doubt."); RITE Royalty Coalition Initial Comments at 7 ("Factually, AllTrack does technically represent a composition once recorded by No Doubt. However, their use of No Doubt's image is disingenuous at best.").

AllTrack owns a partial interest in one song performed by each of these artists and suggested that their use of the artists' images was misleading.[85]

AllTrack responded to some of these criticisms in submitted comments. With respect to its repertoire search function, it stated that its "repertoire is and has always been readily available to search at any time," "produce[s] comprehensive search results," and displays the same data fields as BMI and GMR.[86] It also stated that users only need "*one* data input for song title, songwriter, and publisher rather than two," to search its repertoire.[87] Regarding the meaningfulness of its repertoire, it stated that it "never represents that [it] ha[s] acquired the rights to music that [it] do[es] not have" and noted that "thousands of businesses . . . have found its music valuable enough to have publicly performed it."[88] AllTrack also clarified that it "does not 'own' musical works, advertise 'ownership' of any musical works, nor purport to 'own' any musical works within any [of its] properties or materials whatsoever" and "does not advertise musical works or performers of ALLTRACK-represented musical works for performing rights under any circumstances unless we represent the underlying performing rights in the associated works."[89] AllTrack also objected to criticisms of its repertoire disclaimer and general challenges to its legitimacy.[90]

Regarding Pro Music Rights, some commenters criticized its repertory search function, with BMI stating that "[a]lthough Pro Music [Right]'s website allows searches of its purported repertoire by work, publisher, writer, or artist, it does not allow users to combine those inputs, and it is therefore unclear from the search results what portion of a given musical work Pro Music [Rights] controls,"[91] and that the website was "not properly configured, so inputting a well-known artist they claim to have rights to will bring up a long list of what appear to be mainly nonsense names."[92] BMI and Sarah Weiser alleged that Pro Music Rights was engaging in unfair business practices, if not outright fraud. For example, they claimed that Pro Music

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[85] BMI Initial Comments at 22; RITE Royalty Coalition Initial Comments at 7.

[86] AllTrack Reply Comments at 12, 14

[87] *Id.* at 12.

[88] *Id.* at 15.

[89] *Id.* at 13.

[90] *Id.* at 13–15.

[91] BMI Initial Comments at 23.

[92] Brook Haley Reply Comments at 1; BMI Initial Comments at 23 ("significantly, it is unclear whether certain of the results Pro Music's search function generates are even authentic musical works").

Rights overstated the amount of works in its repertoire database by including AI-generated, "fabricated works."[93] They also claimed that Pro Music Rights was abusing the legal system.[94]

Following this NOI's publication, Pro Music Rights' parent company, Music Licensing, Inc., published a press release asserting that Pro Music Rights "has been officially recognized in the Federal Register of the United States of America as a Performing Rights Organization" and such act constitutes an "official acknowledgment" that "validates Pro Music Rights' authority in managing performance rights."[95] To be clear, the Copyright Office has made no such claims, and the publication of a Notification of Inquiry in the Federal Register that mentions Pro Music Rights does not have any effect on that business's legitimacy or legal status.

Pro Music Rights did not submit reply comments to the Office's NOI responding to other commenters' criticisms.

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[93] BMI Initial Comments at 23 ("Pro Music [Rights] claims 'an estimated 7.4% share of the performance rights market based solely on the estimated 2,000,000 works in its repertory,' including music purportedly generated through Pro Music's artificial intelligence ('AI') program. In other words, Pro Music [Rights] claims to have rights in more songs than the combined repertoires of SESAC (over 1.5 million) and GMR (approximately 100,000). However, . . . the known performance shares of BMI, ASCAP, GMR, and SESAC, not to mention the performances of works in the public domain, suggest that Pro Music [Rights] greatly overstates its relative share of copyrighted and performed works."); Sarah Weiser Initial Comments at 1 (claiming that "[Pro Music Rights'] catalog is largely comprised of fabricated works, many of which are AI-generated or credited to shell companies owned by [Pro Music Rights founder] Jake P. Noch, rather than legitimate artists" and it "has been selling music licenses for works that do not actually exist or are not available for use, misleading businesses into purchasing a service that cannot be fulfilled"); *see also* BMI Initial Comments at 23–24 ("it is unclear whether certain of the results Pro Music's search function generates are even authentic musical works (*e.g.*, musical works titled 'anew the,' 'goodish mesothelioma,' and 'earthy ola' purportedly associated with the heretofore unknown and potentially non-existent artists 'IggykoopTie,' 'Trebledur27,' and 'Theoryboy2010,' respectively"); Sarah Weiser Initial Comments at 1 (alleging that Pro Music Rights "is engaging in fraudulent business practices, deceptive marketing, and potential securities violations").

[94] BMI Initial Comments at 24 n.49 (citing *Pro Music Rights, LLC v. Meijer Inc.*, No. 20-cv-933, 2020 WL 8182478 (M.D. Fla. Jan. 11, 2021) ("To gain access to [Pro Music's] website, [the defendant's employee] had to create an account and give his personal bank account information and the company he was with, so he provided his employer . . . . [The employee] believed he was just browsing the inventory and was waiting for a response from Pro Music regarding his inquiry into licensing costs. [The employee] unintentionally and without knowledge entered into a licensing agreement with Pro Music when he signed up for an account on the website. Within hours . . . , $4,300 was withdrawn from his personal bank account and [he] received an invoice for over $9,500." (citations omitted))); *id.* (citing Pl.'s First Am. Counterclaims and Third Party Compl. ¶ 6, Sosa Entmt. LLC v. Spotify AB, No. 19-cv-843 (M.D. Fla. July 2, 2020), ECF No. 52 ("[Pro Music's founder] is a fraudster who has engaged in a multi-year campaign to generate artificial streams on Spotify's online music service, scam undeserved payments from Spotify, and gin up bogus claims of copyright infringement after Spotify discovered [Pro Music's founder's] scheme and removed his content from its service.")); *see also* Sarah Weiser Initial Comments at 1, 6 (stating that Pro Music Rights "has engaged in abusive litigation practices, using lawsuits to pressure victims into paying for rights they do not need or that PMR does not control" and discussing its litigation history).

[95] *Music Licensing, Inc. Receives Official Federal Recognition of Its Wholly Owned Subsidiary, Pro Music Rights, as a Performing Rights Organization in the United States Federal Register*, PRO MUSIC RIGHTS (Feb. 10, 2025), https://www.globenewswire.com/news-release/2025/02/10/3023368/0/en/Music-Licensing-Inc-Receives-Official-Federal-Recognition-of-Its-Wholly-Owned-Subsidiary-Pro-Music-Rights-as-a-Performing-Rights-Organization-in-the-United-States-Federal-Register.html; *see also* Jane Doe Initial Comments at 1 (referring to Pro Music Rights as "a known fraudster stealing from the public markets and scamming the PRO market").

Royalty distribution practices and policies

PROs responding on this topic claimed that their distribution practices and policies are largely available to its members, with some also making this information available to the public. ASCAP noted that its songwriter and publisher Board of Directors "establishes the rules and regulations that govern ASCAP membership and royalty distribution"[96] and that such rules are "publicly available."[97] BMI stated that its publicly available "Royalty Policy Manual . . . contains information regarding its distribution practices"[98] and that it launched a "new Royalty Dashboard" in 2024, "which provides additional transparency to affiliates about their earnings."[99] GMR stated that its "affiliated songwriters, composers, and publishers are privy to otherwise confidential terms and conditions of its royalty distribution structure."[100] AllTrack did not provide details on any royalty distribution policy, but stated that it "pays all of its members the same royalty rates per equivalent type of performance" and "does not provide non-recoupable advances (signing bonuses) or minimum guarantees."[101] Finally, Pro Music Rights stated that its "royalty distribution methods include clearly itemized statements on every overhead cost and usage-based payout, without hidden carve-outs"[102] and added that "[r]ights holders and licensees can view usage counts and corresponding fees in real time, enabling frictionless auditing and transparent settlement."[103]

Other commenters called for increased clarity or transparency in royalty distribution information. In some cases, however, it was not clear whether such information was unavailable or unable to be located by the commenter.[104] Some would mandate the disclosure of additional

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[96] ASCAP Initial Comments at 10 (These are found in "ASCAP's Compendium of ASCAP Rules and Regulations and Policies Supplemental to the Articles of Association" and "ASCAP's Survey and Distribution System: Rules & Policies.").

[97] ASCAP Reply Comments at 7 (ASCAP added that "[i]f a music creator believes another PRO will provide better distribution (or other) benefits to them, individually, they are free to choose another PRO. It is this competition that actually drives innovation and advancement, and these matters are between musicians and their PROs.").

[98] BMI Initial Comments at 25 (adding that BMI also makes "routine disclosures to its affiliates").

[99] *Id.* at 25–26.

[100] GMR Initial Comments at 9.

[101] AllTrack Reply Comments at 10 (also noting that AllTrack "pays royalties on all live performances submitted . . . by its members as long as they were performed at licensable locations").

[102] Pro Music Rights Initial Comments at 2 (also noting that "[a]dvanced data analytics and real-time usage tracking ensure that each usage event can be attributed accurately, guaranteeing proportional compensation to rights holders").

[103] *Id.* at 5; *id.* at 6 (stating that it "does not carve out inflated 'minimum guarantees' for superstar acts. All registered composers/publishers are paid proportionally to their actual performed usage").

[104] Artist Rights Alliance Initial Comments at 3 ("PROs often fall short in providing even basic data regarding artist earnings and revenue streams . . . [a]nd PROs could surely do better at providing clear explanations of their licensing processes, data reporting mechanisms, and payout structures."); Artist Rights Institute et al. Initial Comments at 9 ("Distribution policies are also not always transparent, making it difficult for both licensees and rights-holders to solve the problem of how royalties are calculated or disbursed."); Cathy Gellis Initial Comments at 2 n.2 ("ASCAP no longer posts—at least not in a readily noticeable way—what the terms are that govern participation in its system."); Christopher Fudurich Initial Comments at 1 ("I do not think the PROs are transparent on what percentage they're taking of our money."); Louie the Producer Initial Comments at 1 ("I want to state my comments on my PRO not giving me full details about how performance rights are managed and compensated.").

royalty distribution information,[105] with DiMA claiming that "the lack of clarity around distribution rules can generate substantial confusion in the marketplace, and songwriters may not have a complete picture of how much services are actually paying for the use of their works."[106] Others believed that government regulation in this area would be improper,[107] with some criticizing music users' comments in this topic, with ASCAP stating that "[t]o the extent that music users have a role in distribution matters, it is in providing comprehensive and accurate data about music usage."[108]

7. *Whether any gaps or discrepancies occur in royalty distributions, including circumstances where it is likely for performance data to be unavailable or incomplete and where PROs must rely on proxy or survey data for royalty distributions*

All PROs who responded to this question reported that they use proxy or survey data for royalty distributions, to some extent.[109] Commonly, proxy or survey data is used for royalty distributions when specific data (or a census survey) is not available, incomplete, or uneconomical to obtain.[110] Proxy or survey data appears to be most often used to supplement incomplete data for performances at smaller live performance venues and by general licensees.[111]

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[105] Frank Jackson Initial Comments at 2 ("Require Performing Rights Organizations to provide detailed reporting to copyright holders, ensuring that collected fees are distributed equitably and reflect actual music usage" and "[m]andate that PROs distribute royalties promptly to copyright holders to prevent delays and ensure creators receive their fair share without undue administrative lags.").

[106] DiMA Initial Comments at 9.

[107] NMPA Initial Comments at 6 ("The proper venue for addressing concerns regarding the distribution of general licensing royalties from PROs to their members is the affiliation agreements between those parties."); *see also* A2IM Initial Comments at 3 ("A2IM supports transparency and accuracy in repertoire and royalty distribution. However, we believe these concerns are best addressed through collaborative, industry-led solutions—not top-down government mandates."); Concord Music Publishing Initial Comments at 2.

[108] ASCAP Reply Comments at 7.

[109] AllTrack Reply Comments at 8–9; ASCAP Initial Comments at 30–31; BMI Initial Comments at 29; SESAC Initial Comments at 9–10; *see also* GMR Initial Comments at 10 (noting that "[i]n agreements with its licensees, GMR requires that each licensee provides GMR with a requisite level of music usage data in order to inform its royalty calculation and distribution process—the first major PRO to do so" while also recognizing that, in some cases, "it is not feasible to get performance data directly from a licensee"). Although Pro Music Rights did not respond to this question, it criticized PROs who "have historically relied on sample-based surveys, archaic data processing, and minimal real-time tracking." Pro Music Rights Initial Comments at 5.

[110] ASCAP Initial Comments at 29–31; GMR Initial Comments at 10 ("GMR utilizes proxy distributions because it is not feasible to get performance data directly from a licensee."); SESAC Initial Comments at 9–10 (SESAC "make census and sample distributions as well as proxy distributions where specific data is not available."); *see also* NMPA Initial Comments at 6 ("The use of sampling surveys or other proxy data as a means to allocate royalties for types of licensing for which census reporting is not available is a longstanding practice on the part of PROs, and is not a new development that necessitates regulatory intervention.").

[111] ASCAP Initial Comments at 30–31 & n.41 ("With respect to live performances occurring at smaller bars and clubs . . . each of these licensees does not relatively represent significant license fees, and therefore, coupled with ASCAP's costs of gathering the data, the inclusion of these performances within the survey has been found to be economically impractical."); BMI Initial Comments at 29 ("BMI leverages the substantial performance data it obtains from other music users (which collectively account for the vast majority of BMI's total revenues) as a proxy for purposes of distributing revenues generated from general licenses (which constitute a small portion of BMI's total revenues)."); BMI Reply Comments at 9 ("Although live performance venues and promoters are required to

As Go to Eleven Entertainment explained, "it would be nearly impossible to monitor every general licensing establishment from an expense perspective."[112] NMPA added that "[b]ecause PROs' administrative costs come directly out of the pocket of songwriters and music publishers, it must be left up to the rightsholders and their PROs to determine when, and whether expenditures to achieve full census reporting are worth the cost."[113]

PROs also pointed out that, unlike other licensees, general licensees do not typically have usage reporting requirements, which they argue helps keep those licensees costs' lower.[114] Finally, in responding to this question, they touted either the quality of their proxy or survey data[115] or their efforts to supplement that data in other ways[116] (*e.g.*, with self-reporting programs, as discussed above).

8. *What technological and business practices exist or could be developed to improve the current systems for usage tracking and royalty distribution*

Commenters were generally optimistic that technological solutions could improve current usage tracking and royalty distribution systems, in particular, the possibility of using technology to handle usage reporting challenges for smaller venues. Some suggested the use of audio

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obtain a public performance rights license covering the songs performed, the vast majority do not assume responsibility for tracking and reporting live performances."); CribNote Entertainment Initial Comments at 2 ("Gaps or discrepancies in royalty payments will occur. For businesses like bars and restaurants, a proxy is used due to the absence of data, which is acceptable. It is not cost-effective for these businesses to track and report music. Logging music daily would disadvantage businesses and PROs alike. As expected, using a proxy is not exact but it captures current trends in music.").

[112] Go to Eleven Entertainment Initial Comments at 4.

[113] NMPA Initial Comments at 6.

[114] BMI Initial Comments at 29 ("Most general licensees favor a blanket license for its simplicity: In exchange for a minimal flat fee, the user receives the right to perform any work in the BMI repertoire at will during the license term without assuming any obligation to track and report performances," and "[t]his feature of the general licensee blanket license is particularly important for small businesses that operate under resource and infrastructure constraints, but it leaves BMI without the benefit of general licensee performance data."); SESAC Initial Comments at 9 (suggesting that agreements which "relieve general licensees from all reporting obligations related to their use of music" generate "substantial" "cost savings for such businesses").

[115] ASCAP Initial Comments at 29 ("All times of the day, all days of the year, every region of the country and all types and sizes of licensees are represented in the ASCAP sample surveys."); GMR Initial Comments at 10 ("Proxy distributions are, by definition, derived from data sets used as substitutes for incomplete or unavailable original data, with the explicit aim of approximating the characteristics of the intended data set. Every proxy distribution generated by GMR reflects the key properties of the original data—such as its structure, distribution, and underlying patterns.").

[116] *See, e.g.*, ASCAP Initial Comments at 33 (discussing its "detailed distribution statements" and work with members to cure "omissions or other issues" as well as its "Data Health Check, an innovative application that permits members through their mobile phones to scan their catalogue for missing meta data to enable ASCAP to better match and pay on performances of a member's works"); BMI Initial Comments at 27–28 (discussing BMI's usage tracking systems, including BMI Live); SESAC Reply Comments at 2 (noting that "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['s] songwriters and publishers").

recognition services, such as Shazam or Soundhound to aid setlist identification.[117] Others identified the possibility of collaborating on technologies that could be used to compile setlist data.[118] Commenters, however, noted that investing in any technological solutions would come at a cost, either to PROs or to venues themselves.[119] And GMR cautioned that "no amount of novel technological innovation will fix a blatant exploitation of songwriters and composers by certain music users."[120]

Fewer comments addressed business practices, though Artist Rights Institute, North Music Group, and Blake Morgan stated that a "songwriter royalty audit—like the audit rights found in record label contracts—could also promote transparency and accountability."[121]

9. The extent to which current PRO royalty distribution practices are the result of existing legal and regulatory constraints

Relatively few comments directly addressed this topic, as PROs' distribution practices are not regulated by the government.[122] Some commenters representing copyright owners noted that the Copyright Act's "homestyle" exception, as expanded by the Fairness in Music Licensing Act ("FMLA") and codified at 17 U.S.C. § 110(5), diminishes royalties that would otherwise be

[117] CribNote Entertainment Initial Comments at 2 ("Audio recognition services can monitor the music but also come with a fee, which likely exceeds the cost of the PRO fees."); Frank Jackson Initial Comments at 2 ("Utilize app-based systems (such as Shazam, SoundHound, or similar technology) to record and verify live performance setlists, ensuring accurate identification and fair compensation for rights holders.").

[118] Artist Rights Institute et al. Initial Comments at 10 (supporting "the development of localized or regional data collection systems integrated with venue-driven reporting tools, or user-friendly check-in technologies for performers"); NITO Initial Comments at 4 ("A centralized system should be developed to collect setlists and gross box office receipts. Artists and venues already possess this data—it should not be burdensome to share it. Such a system would reduce errors and ensure more equitable royalty distribution."); NIVA Reply Comments at 5 ("We suggest [PROs] work in partnership with venues and promoters to develop streamlined, accessible, and integrated reporting tools that actually reflect usage and support accurate distribution.").

[119] Artist Rights Alliance Initial Comments at 3 ("Technology development is one example of an area where open dialogue and real collaboration across the music community – including writers, venues, managers, and PROs – can pay great dividends (literally). . . . At the same time, we recognize the tension PROs face between the imperative to keep administrative costs low and the burdens of operating what amounts to large, nationwide customer service operations."); ASCAP Initial Comments at 34 ("It may be that new technologies, such as those associated with artificial intelligence, may offer benefits and efficiencies in the future to enhance ASCAP's distribution process. ASCAP is open to exploring all options. However, the cost of acquiring and implementing any new technologies and any costs incurred by ASCAP to do any additional matching and processing work will need to be borne either by ASCAP's membership or its licensees."); CribNote Entertainment Initial Comments at 2.

[120] GMR Initial Comments at 11.

[121] Artist Rights Institute et al. Initial Comments at 10.

[122] ASCAP Initial Comments at 36 ("ASCAP's distribution process is at the discretion of ASCAP's membership, as represented by ASCAP's Board of Directors, and a function of its prized self-governance. ASCAP's distribution practices are not currently regulated."); GMR Initial Comments at 11–12 ("GMR's entire business model, including its royalty distribution practices, is the result of arms-length transactions with each of its own clients and licensees that ultimately seek to attribute a fair value for premium music.").

collected by PROs and distributed to copyright owners, and called for Congress to address this concern.[123] Other commenters called for Congress to expand the existing exception.[124]

10. Additional recommendations for Congress to address these issues

Commenters suggested a variety of potential approaches for Congress to address the issues associated with general licensing revenue distribution challenges. A selection of those suggestions follow:

- Artist Rights Institute, North Music Group LLC, and Blake Morgan suggested developing a regionally tailored solution, which would create a new system of local PROs.[125] They also suggested focusing on metadata standardization efforts.[126]
- NIVA suggested "[t]ying royalty distributions to actual setlist data for live concerts" and "[e]xploring models for capturing performance royalties from the secondary ticketing market, ensuring that creators are compensated when their work drives significant after-market revenue."[127]
- First Church of Christ, Scientist suggested updating the "religious services" exemption, stating that it no longer fits current needs.[128]

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[123] ASCAP Initial Comments at 40 n.52 ("The passage of the FMLA 1998 was determined by a World Trade Organization (WTO) Dispute Panel to be in violation of certain Articles of the Trade Related Aspects of Intellectual Property Rights provisions of the WTO Agreement."); Copyright Alliance Initial Comments at 3–4 ("The WTO's Dispute Settlement Body . . . agreed that the [FMLA] was an impermissibly broad exception and that the U.S. had violated Article 13 of the TRIPs Agreement and Articles 11bis and 11 of the Berne Convention."); MAC Initial Comments at 2 ("It is worth noting that the [FMLA] already exempts a substantial number of businesses from paying performance royalties when playing music for their patrons. This exemption has been found to violate international copyright treaties, yet it continues to limit the income of music creators."); SESAC Initial Comments at 4–6; SESAC Reply Comments at 1–2; *see also* Artist Rights Institute et al. Initial Comments at 5 (referring to the [FMLA] as "[b]ad policy and illegal").

[124] AHLA Initial Comments at 4 ("Congress should consider updates to the exceptions to the licensing requirement in Section 110 of the Copyright Act. The applicable section, 110(5)(B), was adopted in 1998 and has not kept pace with current technology. A direct means for Congress to grant relief to our members who are increasingly burdened by each of the issues cited above is to provide that one or more televisions, regardless of size, in any public space of a hotel, resort or other lodging establishment is not infringing a copyright solely by the passive performance or display, without fee or charge and without further transmission, of broadcast, cable or satellite content on such televisions.").

[125] Artist Rights Institute et al. Initial Comments at 6–8.

[126] *Id.* at 6.

[127] NIVA Reply Comments at 6.

[128] First Church of Christ, Scientist Initial Comments at 2–3 ("the so-called 'religious service exemption' embodied in 17 U.S.C. § 110(3) of the 1976 Act is no longer adequate to meet the actual circumstances of today's houses of worship").

- Warner Chappell Music suggested allowing publishers to partially (or selectively) withdraw their rights from PROs, so that those works would not be available for PROs to license to certain categories of users.[129]

- Several parties also noted concerns regarding the practice of venues requiring performing artists to absorb the cost of PRO licenses, with some asking Congress to further investigate this practice.[130]

As noted above, some commenters suggested creation of a federal registration system, establishing minimum operating standards for PROs, and amending the "homestyle" exception. The most common suggestions, however, were the creation of a central, authoritative PRO repertoire database and the creation of a new statutory license.

Central Database

As noted above, licensees are interested in the creation of a central, authoritative PRO repertoire database.[131] They would prefer it to be comprehensive, present data in an updated,

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[129] Warner Chappell Music Initial Comments at 1–2; *see also* Artist Rights Institute et al. Initial Comments at 8–9 ("One of the most significant structural barriers to innovation and local autonomy in PRO rights administration is the restriction on partial withdrawals imposed by many PROs—especially about general licensing.").

[130] A. Schroeder International LLC Initial Comments at 1–2 ("[L]ive performance venues frequently require artists—who are often also songwriters to pay performance fees, sometimes profiting by deducting more from the performer than what is paid to PROs. This lack of transparency in royalty distribution raises serious concerns about the fairness of the system, as creators are left in the dark about how their music is being used and whether they are receiving their fair share."); A2IM Initial Comments at 3 ("A2IM is also alarmed by reports that venues make deductions when settling with artists for their live performances, allegedly to cover the cost of license fees charged by PROs. . . . The cost of PRO licenses is as integral to a live music venue as the construction of a stage, the purchase of microphones, or electricity for a building. Artists should never be asked to absorb these costs—particularly without any requirement that venues justify the amount of the deductions."); Anfinn Skulevold Initial Comments at 1 ("an investigation into venues that deduct public performance fees from artists' compensation would be prudent, especially when these artists are also songwriters"); BMI Reply Comments at 10–11 ("Although BMI lacks direct visibility into the relevant arrangements between venues and artists, BMI views the practice of passing on license fees to artists as unfair and improper and agrees with other commentors that venues and promoters, not artists, should bear the licensing costs for live concerts."); BMI Affiliates Initial Comments at 2; NITO Initial Comments at 2 ("Charging the artist for the right to perform their own music is neither fair nor practical."); Zoe Keating 1 Initial Comments at 1–2.

[131] Brewers Association Initial Comments at 3 ("Users need a single database for all artists so they can rely on a single source for learning what artists are licensed with what PROs. . . . Users should not be expected to search through six or more individual databases."); DiMA Initial Comments at 15; Exhibitions & Conferences Alliance et al. Initial Comments at 2; Fox Theatre Initial Comments at 1–2; MIC Coalition Initial Comments at 4; MIC Coalition Reply Comments at 2; NAB Initial Comments at 10 ("To address the persistent uncertainty and inefficiency in the current licensing system, NAB encourages the creation of a centralized, authoritative, and legally reliable public database that identifies copyright ownership and PRO affiliation for all musical works."); NIVA Reply Comments at 4 ("without a unified, accurate public database of copyrighted works and rights holders across PROs, licensees cannot meaningfully verify what they owe—or to whom"); RMLC & MLC Initial Comments at 7; TVMLC Initial Comments at 1, 18 (noting that "[t]here also currently is no database available to licensees that identifies the music embedded in audio-visual programming and advertisements"); *see also* Matthew Gates Initial Comments at 1 ("[i]n the near future a public database of ownership of works may be required, such as BMI/ASCAP's SONGVIEW, to work across all PROs; one that all PROs must author jointly"); Theo Theademan

consistent, comprehensible format, enable bulk searching and downloads, and be legally reliable.[132] Some suggested that Songview could be this central, authoritative PRO repertoire database, and that the government could mandate its use by PROs.[133]

Others opposed these requests, stating that "criticism around PRO databases and the call for a new centralized database are unwarranted and are simply based on music users' quest to pay less than the fair market value for licensed music."[134] Blakeport cautioned that creation of a central database may "pose risks of misuse and exploitation-especially when not clearly governed."[135] Artist Rights Institute, North Music Group, and Blake Morgan stated that "[i]t is not necessary to wait for a theoretical 'centralized database' that will likely never come when what may be necessary is an API or other software that can process queries, preferably batch queries, to all existing authoritative databases at the PROs."[136]

In September 2025, a press release announced that Songview will soon include data from the four oldest PROs (ASCAP, BMI, SESAC, and GMR) on a voluntary basis.[137]

Initial Comments ("A centralized, public database of musical works and rights ownership (expanded from tools like SONGVIEW) seems like a much-needed step forward.").

[132] ABL Initial Comments at 5 ("Require all PROs to submit up-to-date, interoperable, legally dependable, publicly accessible catalogs of the works they represent, including percentage shares and songwriter affiliations."); MIC Coalition Reply Comments at 2; NAB Reply Comments at 8 ("at a minimum any centralized database must present PRO data in an up-to-date, consistent, comprehensible format, enable bulk searching and downloads, and, most importantly, be deemed legally reliable by PROs such that licensees can confidently use and rely upon the data within the database without fear of crippling copyright infringement liability"); *see also* CCIA Initial Comments at 2; Exhibitions & Conferences Alliance et al. Initial Comments at 2 ("There is no single, publicly available, authoritative database that allows us to verify which songs are covered by which PROs"); First Church of Christ, Scientist Initial Comments at 6 ("the U.S. PRO framework . . . lacks a single authoritative database of accurate and timely information regarding copyright ownership and PRO affiliation from which [licensees] can obtain the information necessary to seek licenses"); IAVM Initial Comments at 2 (advocating for "a central, publicly accessible, and legally reliable database showing which PROs represent which shares of which works"); Marriott International Initial Comments at 5–6 ("Make a recommendation for Congress to amend the copyright law (and implementing regulations promulgated thereunder) to require PROs to establish and maintain a publicly available, centralized, searchable database – available to users free of charge – which identifies what musical works are covered by each respective PRO's blanket licenses, on an individual musical work and overall PRO catalog basis, including the relative market share of each PRO for musical work public performance rights in the U.S."); RMLC & MPA Initial Comments at 7 ("While some PROs publish on their websites information about the works in their repertories, that information is explicitly subject to disclaimers (and not available in a user-friendly format)."); Sound Music Cities Initial Comments at 3 ("Require all PROs to publish a comprehensive, searchable public database of the works they represent.").

[133] NIVA Reply Comments at 4 ("Tools like Songview should be expanded to include all PROs, and participation should be mandatory."); *see also* NAB Reply Comments at 7 (noting "any database would need to include all PROs, including new entrants, and serve as a legally reliable source of information when used by licensees").

[134] ASCAP Reply Comments at 3.

[135] Blakeport LLC Initial Comments at 3 (referencing "the growing misuse of rights metadata in machine learning and AI training applications" and concern over "increased public exposure of rights holder information").

[136] Artist Rights Institute et al. Initial Comments at 9.

[137] *See* Press Release, ASCAP, Four Major US PROs Announce Expansion of Songview to Include Musical Works Information from GMR and SESAC (Sept. 29, 2025), https://www.ascap.com/press/2025/09/09-29-songview-expansion.

New Statutory License

Commenters representing licensors and licensees were sharply divided on whether Congress should create a new statutory license for the public performance of musical works. Some licensees would favor this approach,[138] believing that it would stabilize pricing and simplify compliance.[139] Licensors strongly disfavor further government regulation,[140] including the creation of a new statutory license, believing that it would destroy competition among PROs, lower songwriter and publisher royalties,[141] and raise administrative costs.[142] To the extent that a

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[138] Marriott International Initial Comments at 5 ("Make a recommendation for Congress to amend the copyright law (and implementing regulations promulgated thereunder) to make the public performance of musical works subject to a compulsory or 'statutory' license."); Polo's Bar and Grill Initial Comments ("All PROs should be replaced by a single, central licensing organization."); *see also* Nathan T. Nicholson Initial Comments at 2 ("There should be one federal agency that collects money on behalf of songwriters and music publishers."); Sound Music Cities Initial Comments at 3 ("Move toward a universal blanket license that gives businesses coverage for all publicly performed music.").

[139] AHLA Initial Comments at 3 (supporting "a standardized, transparent licensing framework that simplifies compliance for businesses of all sizes" that would operate "similar the Copyright Royalty Board's current process for statutory licenses or a 'rate court' or other mechanism that stabilizes pricing across PROs").

[140] Artist Rights Alliance Initial Comments at 1–2; Artist Rights Institute et al. Initial Comments at 1–4; ASCAP Initial Comments at 1–2, 4, 38; BMI Initial Comments at 2; Concord Music Publishing Initial Comments at 1; Copyright Alliance Initial Comments at 3; CMPA Initial Comments at 1–2; MAC Initial Comments at 1, 3; NITO Initial Comments at 1; NMPA Initial Comments at 1–2; Production Music Association Initial Comments; Reservoir Media Management Initial Comments at 1; SONA Initial Comments at 2; Sony Music Publishing at 1–2; SGA, SCL & MCNA Initial Comments at 4–5; SGA, SCL & MCNA Reply Comments at 2; *see also* NSAI Reply Comments at 2 ("Generations of American songwriters have suffered through piracy, low streaming rates, less commercial opportunities in the digital era including little income from albums or physical products, which many counted on for years. In this environment, it cannot be overstated the extent to which a songwriter depends on his/her PRO. Direct payments to songwriters from their chosen PRO are the constant income they can depend on – it's what pays the electric bill and buys food for the dinner table.").

[141] Artist Rights Institute et al. Initial Comments at 12–13 (noting opposition to "further centralization of general licensing under a federal compulsory model"); ASCAP Initial Comments at 39 ("Any further regulation of ASCAP and its members, including by means of compulsory licenses set at below-market royalty rates, would only serve to harm music creators and impede the Copyright Act's ability to incentivize and protect the creative efforts of ASCAP's members and provide consumers with a wider variety of affordable choices."); CMPA Initial Comments at 2 ("We are aware that some entities suggest that moving to a compulsory licensing system for public performances might be a good solution in some cases. We believe that nothing could be worse. Being subjected to any notion of this sort would devalue our creative works, and create an infrastructure that would be unwieldy when one considers the millions of musical copyrights used across the U.S."); NITO Initial Comments at 4 ("We strongly oppose a government-mandated compulsory rate. History has shown that such regulations tend to benefit large corporations over creators. U.S. live performance royalty rates are already lower than the global average (typically 4–6%), with domestic rates totaling less than 2%. A compulsory rate would likely further disadvantage artists."); SGA, SCL & MCNA Initial Comments at 4–5 ("We hasten to add that switching to a single-source collective licensing system for US performing rights, thereby destroying competition among US PROs in the marketplace while artificially driving down royalty rates, would be both counter-productive and extremely short-sighted. American musical culture and commerce would suffer immediate and potentially irreparable harm. Moreover, expansion of compulsory licensing in this sector of the music licensing economy, or worse still, enlarging the scope of the fair use doctrine, would be similarly devastating to music creator performing rights earnings.").

[142] Kathryn Deioma Initial Comments ("It is possible that some form of consolidated license payment system could be implemented, but it would require another umbrella organization to distribute funds to PROs based on set lists turned in, which would add an additional cost. This would either (or both) require higher payments from venues, or/and pay lower royalties to songwriter.").

new statutory license would be used to address antitrust concerns, NMPA suggested that "[i]f a PRO is engaged in anticompetitive conduct, an antitrust action is the proper enforcement mechanism."[143]

[143] NMPA Initial Comments at 4 (citing MUSIC MARKETPLACE REPORT at 152).