

**Before the
U.S. Copyright Office
Washington, D.C.**

In the Matter of)	
)	
Issues Related to Performing Rights Organizations)	Docket No. 2025-1
)	
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**COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS**

I. INTRODUCTION AND SUMMARY

The National Association of Broadcasters ("NAB") appreciates the opportunity to submit these comments in response to the U.S. Copyright Office's Notice of Inquiry ("NOI") regarding issues related to performance rights organizations ("PROs"). NAB is the voice of local television and radio stations in the nation's capital, advocating on behalf of broadcasters throughout the United States. Our members provide freely available news, sports, and entertainment, keeping people connected and informed.

Broadcasters have been and continue to be longstanding licensees in the music licensing marketplace and pay significant licensing fees to PROs annually. We aim for a functional music marketplace that enables efficient licensing between broadcasters and PROs, songwriters, and publishers. To that end, NAB generally aligns its comments with those of the Television Music Licensing Committee ("TVMLC") and the Radio Music Licensing Committee ("RMLC"), both of which negotiate with PROs regularly to license public performance rights on behalf of TV and radio broadcasters respectively.

Given broadcasters' longstanding vantage point in this space, we have seen the music licensing landscape become significantly more complex and opaque over the past decade. Today, broadcasters are often required to pay well over 100% in licensing fees for

essentially the same pool of works, reflecting structural inefficiencies rather than expanded music usage. This comment outlines how broadcasters engage with PROs, describes the rising burdens broadcasters face in today's market, identifies the structural causes behind those trends, and recommends reforms to promote transparency, efficiency, and fairness within the music licensing ecosystem.

II. BROADCASTERS RELY ON EFFICIENT PRO LICENSING TO REDUCE LEGAL EXPOSURE AND FULFILL PROGRAMMING NEEDS

Broadcasters depend on licenses from PROs to lawfully incorporate musical works into a wide range of programming on TV and radio, including live performances, syndicated shows, national and local advertisements, and incidental or background uses. While broadcasters may control certain aspects of their content, such as station-produced programs or in-house advertisements, a significant portion of the content aired is produced externally by third parties or shaped by other factors beyond broadcasters' control.¹ Local television stations, for example, frequently air programming that contains music already "in the can," meaning the music was embedded by content producers before the program reached the station.² Similarly, radio stations do not decide which songs appear in Billboard's "Hot 100," but the chart reflects and reinforces audience demand, which often influences which songs are included in station playlists.

This lack of control, coupled with the strict liability and statutory damages framework of copyright law, creates substantial legal exposure for broadcasters. Under the Copyright Act, liability for infringement does not depend on intent or knowledge; the statute makes no

¹ NAB, *Comment Letter on Review of ASCAP and BMI Consent Decrees 10* (Aug. 6, 2014), <https://www.justice.gov/atr/page/file/1083571/download> ["2014 Comment Letter"].

² Janet E. McHugh, *Music Licensing: A Practical Guide* (Television Music License Committee, LLC 2021).

distinction between intentional and unintentional violations.³ Moreover, copyright owners may seek statutory damages of up to \$30,000 *per work*.⁴ Accordingly, a broadcaster that publicly performs a copyrighted work without authorization may be held liable for each work performed, even if the use was inadvertent or unknown. Indeed, unintentional uses of music, such as those embedded in third-party content, can subject broadcasters to infringement claims and substantial statutory damages. To mitigate this risk and ensure compliance, broadcasters often choose to secure blanket licenses from PROs. However, this approach imposes substantial operational and financial burdens as it is difficult to know with legal certainty which PRO owns which percentage of each work or accurate information of each PRO's overall market share.

III. THE PROLIFERATION OF FRACTIONAL LICENSING AND UNREGULATED PROS IMPOSES DISPROPORTIONATE BURDENS ON BROADCASTERS

A. Fractional Licensing Has Transformed the Marketplace and Increased Compliance Risks

It is common for a single composition to involve multiple rightsholders, each of whom may be affiliated with a different PRO. Until somewhat recently, copyright holders and licensees alike operated under the belief that when a licensee obtained a license from a PRO to use a particular musical work, the PRO was licensing the full work. If that were not the case, then any individual right obtained would be meaningless unless the licensee could identify and obtain licenses from every other rightsholder. However, in *United States v. Broadcast Music, Inc.*, the Second Circuit upended established norms and held that a blanket license issued by a PRO conveys only the fractional interest held by its affiliated

³ 17 U.S.C. § 501(a) (“Anyone who violates any of the exclusive rights of the copyright owner as provided by sections 106 through 122 . . . is an infringer of the copyright.”).

⁴ 17 U.S.C. § 504(c)(1)-(2).

rights holders, and not the entirety of the public performance right.⁵ Thus, the cumbersome process of “fractional licensing” was born.⁶

As a result, broadcasters must now secure multiple PRO licenses for the same work to ensure full clearance. Any one co-rightsholder can hold up the entire process. This puts far more power in the hands of PROs, as even if a songwriter has a 5% interest in a song, they can tie up a prospective licensee who may already have the rights to the remaining 95%. This issue is now more the norm than the exception. Whereas songs in the 1960s typically had one to two writers, industry studies show that roughly 85% of modern compositions are co-owned by multiple authors, and the average Billboard Hot 100 song is written by four to six individuals.⁷ Since each co-writer may be affiliated with a different PRO, obtaining a single PRO blanket license or even two or three PRO blanket licenses may not ensure complete legal coverage.

Complicating matters, there is no centralized, authoritative, and legally reliable database that clearly identifies all co-owners and their PRO affiliations. A few years ago, ASCAP and BMI launched a joint database called “Songview” in an attempt to address this issue. Unfortunately, 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

⁵ *United States v. Broad. Music, Inc.*, 720 F.2d 372, 376 (2d Cir. 1983).

⁶ Letter from U.S. Copyright Office to the Honorable Doug Collins, Vice-Chairman, Subcommittee on Courts, Intellectual Property and the Internet, United States House of Representatives 26 (Jan. 29, 2016) [“Fractional Licensing Letter”], <https://copyright.gov/policy/pro-licensing.pdf> (defining fractional licensing as “the practice of licensing only partial interests in co-owned works”).

⁷ See *Music Reports Songdex Analysis*, https://www.musicreports.com/html_pages/press/press_article_4/index.php; Dan Kopf, *How Many People Take Credit for Writing a Hit Song?*, *Priceonomics* (Oct. 30, 2015), <https://priceonomics.com/how-many-people-take-credit-for-writing-a-hit-song/>.

updated, and includes a disclaimer that it may not be legally relied upon. Without access to reliable information, broadcasters cannot accurately determine what fraction of a work is covered by the licenses they hold. The resulting inefficiency drives up licensing costs, increases legal risk, and complicates compliance.

Moreover, the repertoires of major PROs are so vast and interwoven into programming and advertising that, for most broadcasters, it is not feasible to fully isolate or exclude a particular PRO's catalog. While exclusion may be possible in limited circumstances, doing so is typically impractical and cost-prohibitive, particularly for broadcasters seeking to assemble competitive and engaging content.

B. The Proliferation of Unregulated Pros Has Exacerbated Market Inefficiencies

The challenges of fractional licensing are compounded by the proliferation of PROs, many of which operate outside of any regulatory framework. ASCAP and BMI are longstanding PROs that are subject to consent decrees administered by the U.S. Department of Justice (“DOJ”) due to their significant market share. The decrees ensure that their respective blanket licenses are available on fair, reasonable, and non-discriminatory terms and provide important procedural safeguards for licensees. These safeguards mandate that licenses be granted upon request, offer alternatives to the blanket license (such as a per-play and direct licenses), and provide access to a neutral rate court to resolve disputes.⁸ Together, these safeguards help preserve stability and predictability for all participants in the music licensing ecosystem.

⁸ See *United States v. Am. Soc’y of Composers, Authors & Publishers (ASCAP)*, No. 41-1395 (S.D.N.Y. 2001); *United States v. Broad. Music, Inc. (BMI)*, No. 64-CIV-3787 (S.D.N.Y. 1966), amended 1994.

Recognizing the importance of these safeguards, NAB has consistently supported the continuation of the ASCAP and BMI consent decrees. This view is shared by both the DOJ and Congress. The DOJ reaffirmed its commitment to maintaining the decrees following its 2014 and 2019 reviews.⁹ Congress has also explicitly expressed support for maintaining the consent decrees through direct correspondence with the DOJ¹⁰ and through the enactment of the Orrin G. Hatch-Bob Goodlatte Music Modernization Act, which among other things, mandates that Congress be consulted prior to any termination of the decrees.¹¹

However, this regulatory structure does not extend to all PROs. Although SESAC is subject to a comparable form of oversight through arbitration-based rate setting and code of conduct restrictions under private settlements with broadcaster groups, it is not governed by a consent decree.¹² Of greater concern, newer PROs, such as Global Music Rights (“GMR”), operate entirely outside any similarly established regulatory or adjudicatory framework and have leveraged their unregulated status to extract monopolistic rates from radio broadcasters. Despite managing smaller catalogs, even “smaller” entities like GMR can still

⁹ U.S. Dep’t of Justice, *Statement of the Department of Justice on the Closing of the Antitrust Division’s Review of the ASCAP and BMI Consent Decrees* (Aug. 4, 2016), <https://www.justice.gov/atr/file/882101/dl?inline>; U.S. Dep’t of Justice, *Statement of the Department of Justice on the Closing of the Antitrust Division’s Review of the ASCAP and BMI Consent Decrees* (Jan. 15, 2021), <https://www.justice.gov/atr/page/file/1355391/dl>.

¹⁰ Letter from Senate and House Judiciary Committee Leadership to Makin Delrahim, Assistant Attorney General, U.S. Department of Justice, June 8, 2018 (stating “[I]t is obvious that the marketplace for licensing public performance rights in musical works has been shaped for decades by these decrees. Terminating them without a clear alternative framework in place would result in serious disruption in the marketplace, harming creators, copyright owners, licensees and consumers.”).

¹¹ See Orrin G. Hatch–Bob Goodlatte Music Modernization Act, Pub. L. No. 115-264, § 105(b), 132 Stat. 3676, 3722 (2018).

¹² *Radio Music License Comm. v. SESAC, Inc.* (“RMLC v. SESAC”), 2013 WL 12114098, at *11 (E.D. Pa. Dec. 23, 2013) (settled in 2015 by agreement providing for arbitration to resolve rate disputes).

wield considerable leverage due to the strict liability nature of copyright law, their “must-have” programming, the threat of substantial statutory damages, and the increasing prevalence of fractional licensing.

The lack of regulatory uniformity has serious implications for licensees. While PROs may compete amongst each other to attract new members, they do not compete as substitutes for licensees. Each controls distinct rights in separate works, meaning broadcasters cannot simply seek more favorable licensing terms from one in lieu of another. Thus, the growing number of PROs has not introduced meaningful competition or mitigated market power concerns – it has exacerbated existing market distortions, only adding to the cost burdens for licensees.

Even smaller PROs can exert disproportionate leverage if they hold a fractional interest in the rights of widely used or must-have works.¹³ As a repertory grows larger and its contents become less transparent, licensees may find it economically unfeasible to determine what rights they need or to avoid infringement through reasonable efforts.¹⁴ In this context, opacity is not merely a byproduct – it is a source of market leverage and creates pressure to license broadly and redundantly.

This current structure creates an overly complex licensing system that lacks sufficient transparency for licensees to know with certainty what it is they are licensing from each PRO. This not only undermines efficiency but also imposes unnecessary legal and financial burdens on broadcasters and other licensees.

¹³ See *Meredith Corp. v. SESAC, LLC*, 1:09-cv-09177 (S.D.N.Y. filed Nov. 4, 2009) (finding that SESAC’s control over music embedded in popular television programming gave it market power despite being the smallest PRO).

¹⁴ See NAB, 2014 Comment Letter, *supra* note 1, at 17.

IV. THE ABSENCE OF A TRANSPARENT, CENTRALIZED AND LEGALLY RELIABLE PRO OWNERSHIP DATABASE FUELS PRO PROLIFERATION AND UNDERMINES LICENSING EFFICIENCY

The increasing number of PROs is at least in part a symptom of structural incentives created by the lack of transparency and the widespread use of fractional licensing. We have even recently seen private equity investing in PROs to capitalize on the flaws in this system.¹⁵ In a marketplace where there is an absence of a centralized, comprehensive, and legally authoritative database identifying all co-owners and their affiliated PROs, uncertainty becomes a business model. Broadcasters, faced with the crippling threat of copyright infringement and statutory damages, are effectively compelled to obtain a license from PROs claiming even a fractional interest in a must-have composition, regardless of whether they know that composition is being used.

This environment enables PROs to enter the marketplace with minimal repertory ownership but still demand blanket licenses. By acquiring small, strategically valuable shares of popular works, these organizations can leverage the opacity of the system and the legal exposure broadcasters face to command disproportionate licensing fees. The result is a licensing system that rewards fragmentation at the expense of efficiency.

¹⁵ See, e.g., Cherie Hu, *Back to Basics: Where Music Tech Money Really Flows*, Water & Music (Dec. 28, 2024), <https://www.waterandmusic.com/music-tech-money-flows-2024?utm>; Tim Ingham, *Irving Azoff's GMR just struck a \$3.3 billion private equity deal*, say MBW sources, Music Bus. Worldwide (Sept. 19, 2024), <https://www.musicbusinessworldwide.com/irving-azoffs-gmr-just-sources/>; Tibor Heskett, *Private Equity Firm New Mountain Capital Is Acquiring BMI*, Mixmag (Nov. 28, 2023), <https://mixmag.net/read/private-equity-firm-new-mountain-capital-bmi-acquisition-performing-rights-organisation-goldman-sachs-news>; *Leading Music Rights Organization SESAC to be Acquired by Blackstone*, Blackstone (Jan. 4, 2017), <https://www.blackstone.com/news/press/leading-music-rights-organization-sesac-to-be-acquired-by-blackstone/>.

Moreover, the lack of a transparent, publicly accessible mechanism for verifying legally reliable copyright ownership and PRO affiliation enables emerging PROs to make unverifiable assertions about the scope of their repertoires and market share without consequence. These claims are then used to justify higher licensing fees during negotiations. The U.S. Copyright Office itself has acknowledged that one of the most significant challenges for licensees is the lack of access to accurate and complete ownership information for musical works, which increases transaction costs and hinders both direct and collective licensing.¹⁶

Compounding the issue, fractional licensing enables rightsholders to fragment control of musical works across multiple PROs, further increasing the number of licenses required for full legal coverage. This system does not merely tolerate proliferation – it encourages it; and as the number of PROs grows, so does the complexity and cost of compliance. From an economic standpoint, licensees are paying more for access to the very same music they previously licensed in full before the court ruled that fractional licensing is permitted under the decrees. Even when a licensee receives only a fractional interest in a song – rights that are meaningless on their own – they still have to pay the full freight.

Ultimately, these dynamics are self-reinforcing. Lack of transparency forces licensees to over-license. Fractional ownership enables PROs to maximize leverage by controlling even small interests. And, given that new PROs are not subject to the same consent decrees as ASCAP and BMI, new PROs can operate with greater flexibility and fewer constraints. The result is a marketplace fragmented by design, where proliferation is incentivized, leaving

¹⁶ See U.S. Copyright Office, *Copyright and the Music Marketplace* 123-24 (2015), <https://www.copyright.gov/policy/musiclicensingstudy/copyright-and-the-music-marketplace.pdf>.

broadcasters and other licensees to bear the burden of piecing together overlapping rights in a good faith effort to comply with the law.

V. A CENTRALIZED AND RELIABLE OWNERSHIP DATABASE IS ESSENTIAL TO RESTORING TRANSPARENCY AND FAIRNESS IN MUSIC LICENSING

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. Greater access to this information would empower broadcasters, especially local stations, to determine whether the blanket licenses they hold grant full performance rights, identify any gaps in coverage, minimize duplicative licensing, and help avoid the “whipsaw” effect in which each PRO claims to control a larger share of performances than it actually does. Such information is also crucial for the development of real alternatives to the blanket licenses, which in turn may help lessen some of the inherent anti-competitive effects of the blanket licenses. Any such database must also be able to be legally relied upon absent the threat of copyright infringement. In short: a fair and efficient licensing system depends on broadcasters’ ability to understand what rights they are acquiring, from whom, and on what terms. Complete and accurate transparency regarding PRO data is critical to a functioning music licensing system.

VI. CONCLUSION

Broadcasters support a fair, transparent, and workable music licensing system. One that ensures rightsholders are compensated while enabling broadcasters to provide the public with the content they value. Unfortunately, the current licensing system falls short of that goal. Greater transparency, however, could provide a clearer path toward meaningful reform. We thank the Copyright Office for its attention to this important issue and we

encourage the Office to consider heightened transparency in PRO licensing which would ensure the licensing system functions more efficiently for broadcasters and licensees, which in turn benefits all stakeholders across the music ecosystem.

Respectfully submitted,

**NATIONAL ASSOCIATION OF
BROADCASTERS**
1 M Street SE
Washington, DC 20003
(202) 429-5430



Rick Kaplan
Keyana Pusey
Kirsten Donaldson

April 11, 2025