

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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September 11, 2024

Ms. Shira Perlmutter
Register of Copyrights
United States Copyright Office
Washington, D.C. 20559-6000

Dear Register Perlmutter:

We write to request that the U.S. Copyright Office examine current practices involving licensing fees paid to performing rights organizations (“PROs”). The Committee on the Judiciary, through the Subcommittee on Courts, Intellectual Property, and the Internet, has dedicated significant resources over the past year to examining issues relating to music copyrights to safeguard the interests of creators, publishers, broadcasters, online music platforms, venues, and other stakeholders. A number of stakeholders have raised concerns about emerging issues relating to PROs, and we ask the Office to investigate and provide the Committee with its findings with respect to the following areas.

The Proliferation of PROs

The United States differs from most of the world in that licensees typically must engage with more than one PRO for the rights to play music publicly. The United States had three PROs for over 70 years: ASCAP, BMI, and SESAC.¹ For decades, general licensees such as bars, restaurants, stores, hotels, and music venues could be confident that they were not infringing music copyrights by obtaining licenses from these three entities. That list grew to four when, in 2013, GMR became the first new PRO since the 1930s.²

Since then, however, more purported PROs have emerged.³ As a result, licensees have reported receiving demands for royalties from new entities claiming to represent songwriters,

¹ Ryan Santangelo, *Choosing the Right Music Licensing Solution for Your Business: GMR vs BMI vs ASCAP vs SESAC*, SIRIUSXM, <https://sxmbusiness.com/gmr-vs-bmi-vs-ascap-vs-sesac/> (last visited Aug. 28, 2024).

² *Id.*

³ E.g., InsideRadio, *Pro Music Rights Joins Ranks Of PROs Seeking Radio Licenses* (Oct. 15, 2018), https://www.insideradio.com/free/pro-music-rights-joins-ranks-of-pros-seeking-radio-licenses/article_027f57a8-d046-11e8-8b2c-d7a21925d5b4.html.

and threatening litigation if the demands are not met.⁴ Considering that the possibility of substantial statutory copyright damages poses an existential risk for most bars, restaurants, and other small businesses, many feel compelled to pay these entities on top of what they already pay for blanket licenses from the traditional PROs.⁵ Thus, licensees are concerned that the proliferation of PROs represents an ever-present danger of infringement allegations and potential litigation risk from new and unknown sources.

Given these concerns, we request that the USCO examine 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 recommendations on how to improve clarity and certainty for licensees.

The Distribution Methods of General Licensing Revenue

The core purpose of PROs is to issue licenses and to collect and distribute royalties paid on those licenses to songwriters, composers, and music publishers.⁶ To do this, PROs collect data from licensees and other sources to determine what music was performed (including by playing it publicly or by broadcast), where it was performed, and how often it was performed, among other information.⁷ They then calculate royalties and determine how the royalties will be distributed.⁸ But it is difficult to assess how efficiently PROs are distributing general licensing revenue based on publicly available data. For example, it is difficult to determine how accurately lesser known and independent artists as well as smaller publishers are being compensated compared to widely popular artists and major publishers.

In light of these questions, we request that the Office examine how the various PROs currently gather information from live music venues, music services, and other general licensees about public performance; the level of information currently provided by PROs to the public; whether any gaps or discrepancies occur in royalty distribution; what technological and business practices exist or could be developed to improve the current system; the extent to which the current distribution practices are the result of existing legal and regulatory constraints; and potential recommendations for policymakers.

We look forward to your reply, and to working with you on this issue and other issues important to the music copyright ecosystem. If you have any questions about these requests, please contact Committee staff at (202) 225-6906.

⁴ MIC Coalition, *Music Licensing's Complex and Opaque System Remains a Challenge for Many Small Businesses* (Oct. 30, 2022), <https://medium.com/mic-coalition/music-licensings-complex-and-opaque-system-remains-a-challenge-for-many-small-business-92cd8000c9cd>.

⁵ *Id.*; John Martini, *All I Want Is to Drink a Nice Glass of Wine, Enjoy a Beautiful View of Seneca Lake and Have Mozart Playing in the Background* (Oct. 4, 2023), https://medium.com/mic-coalition/all-i-want-is-to-drink-a-nice-glass-of-wine-enjoy-a-beautiful-view-of-seneca-lake-and-have-mozart-55d18d5b5c31_

⁶ E.g., BMI, *About BMI*, <https://www.bmi.com/about> (last visited Aug. 28, 2024).

⁷ See generally ASCAP, *ASCAP Payment System*, <https://www.ascap.com/help/royalties-and-payment/payment> (last visited Aug. 28, 2024).

⁸ *Id.*

Ms. Shira Perlmutter
September 11, 2024
Page 3

Thank you for your prompt attention to these matters.

Sincerely,



Jim Jordan
Chairman



Darrell Issa
Chairman
Subcommittee on Courts, Intellectual
Property, and the Internet



Scott Fitzgerald
Member of Congress

cc: The Honorable Jerrold L. Nadler, Ranking Member

The Honorable Hank C. Johnson, Ranking Member, Subcommittee on Courts,
Intellectual Property, and the Internet