BEFORE THE

U.S. COPYRIGHT OFFICE

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

COMMENTS OF THE COPYRIGHT ALLIANCE

The Copyright Alliance appreciates the opportunity to submit the following comments in response to the notice of inquiry ("NOI") published by the U.S. Copyright Office in the Federal Register on February 10, 2025, regarding issues related to Performance Rights Organizations ("PRO(s)") and the Copyright Act's public performance right for musical works. The Copyright Alliance believes that it is critical to have a thriving music ecosystem where music creators, songwriters, and music publishers are being paid for the public performances of their songs, and that neither the Copyright Office nor Congress should take action on the issues raised in the NOI.

The Copyright Alliance is a non-profit, non-partisan public interest and educational organization representing the copyright interests of over 2 million individual creators and over 15,000 organizations in the United States, across the spectrum of copyright disciplines. The Copyright Alliance is dedicated to advocating policies that promote and preserve the value of copyright, and to protecting the rights of creators and innovators. The individual creators and organizations that we represent rely on copyright law to protect their creativity, efforts, and investments in the creation and distribution of copyrighted works for the public to enjoy. In particular, we represent

numerous songwriters, music publishers, four longstanding PROs (ASCAP, BMI, GMR, and SESAC), and many others who are directly or indirectly affected by the issues raised in this NOI.[1]

PROs play a critical and essential role in the music ecosystem. They act as the bridge between venues, services, and other music users who publicly perform musical works and the songwriters and music publishers to whom royalties for such public performances are owed. We appreciate the Copyright Office's statements in the NOI clearly recognizing the valuable role that PROs play.[2] Through PROs, billions of dollars of revenue from public performance royalties are collected and distributed to music creators, including individual songwriters and small music publishers. The revenue from these public performance royalties make it possible for music creators to continue creating songs for the public to enjoy, while at the same time allowing venues and other licensees to add value to their own businesses, which may give them a competitive edge.[3]

PROs make it possible for the public performance licensing of musical works at scale. Over the years, each PRO has created an efficient and effective system that allows licensees to secure the performance rights to nearly every song that they wish to publicly perform.[4] Without PROs, the system would break down—as it would be near impossible for most music users to secure the rights to publicly perform music and would be impossible for most music creators to collect royalties. There can be no doubt that without PROs everyone loses.[5]

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. This increased

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[1] Unless otherwise stated, references to "PROs" throughout these comments are intended to apply to the aforementioned four PROs that are Copyright Alliance members and not any other PROs. We do not represent the copyright interests of any other PROs and cannot speak to their practices.

[2] Notice of Inquiry ("NOI") for Issues Related to Performing Rights Organizations, 90 Fed. Reg. 9254-55 (Feb. 10, 2025).

[3] The American Society of Composers, Authors, and Publishers ("ASCAP") alone distributed $1.696 billion in revenue in 2024. *See* American Society of Composers, Authors, and Publishers, *Annual Report 2024*, Record-Breaking Revenue (2024), https://www.ascap.com/~/media/site-pages/annual-report/2024/2024-ascap-annual-report-optimized.pdf.

[4] NOI *supra* note 2, at 9254-55.

[5] *See* U.S. Copyright Office, *Copyright and the Music Marketplace: A Report of the Register of Copyrights*, at 32-34 (2015), https://www.copyright.gov/policy/musiclicensingstudy/copyright-and-the-music-marketplace.pdf.

competition provides songwriters and music publishers with more choices to license their musical works. Undue government interference with these markets will undermine the rights of music creators and owners, especially if government interference results in unfairly or otherwise inappropriately favoring certain types of business models, products, services, and providers over others. Such interference—such as the imposition of compulsory licensing—devalues creative works, discourages copyright owners from developing innovative business models, and creates significant obstacles in their abilities to do so. Such a result would lead to fewer options for the public to access new copyrighted works and run counter to the purposes of the copyright law.

When discussing the PROs' role in collecting and distributing public performance revenue it is important to recognize that wide swaths of small establishments and businesses are already exempt from paying public performance royalties when playing songs for the benefit of their patrons. Section 110(5) of the Copyright Act includes an exemption that permits certain public performances of nondramatic musical works without payment to the rightsholder of the works. This exemption was dramatically expanded under the Fairness in Musical Licensing Act,[6] and is estimated to have resulted in a substantial number of eating and drinking establishments being able to play music via television or radio without having to pay any royalties to songwriters or music publishers for those public performances.[7]

The Fairness in Musical Licensing Act already provides a sufficient advantage for licensees at the expense of music creators. Because the exemption nullified an estimated amount of €1,219,900 per year in royalties payable to European rightsholders, the European Community filed a complaint in 1999 in the World Trade Organization ("WTO") against the U.S.[8] The WTO's

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[6] *See* Fairness in Music Licensing Act of 1998, Title II of Pub. L. No. 105-298, 112 Stat. 2827, 2830 (amending, *inter alia*, §110, Title 17, *United States Code*), enacted October 27, 1998.

[7] In a dispute in the World Trade Organization ("WTO") as detailed further in these comments, the U.S., the European Community, and the WTO panel agreed that the Act exempted an estimated around 70 percent of eating and drinking establishments. *See* Panel Report, *United States – Section 110(5) of the U.S. Copyright Act,* WTO Doc. WT/DS160/R at 36 (adopted Jul. 27, 2000), https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/DS/160R-00.pdf&Open=True; *see also* Award of the Arbitrators, *United States – Section 110(5) of the U.S. Copyright Act – Recourse to Arbitration under Article 25 of the DSU*, WTO Doc. WT/DS160/ARB25/1 at 32 (Nov. 9, 2001), https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/DS/160ARB25-1.pdf&Open=True.

[8] *DS160: United States – Section 110(5) of U.S. Copyright Act*, WORLD TRADE ORGANIZATION ("WTO") (Apr. 8, 2025, 3:51PM), https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds160_e.htm .

Dispute Settlement Body ("DSB") agreed that the Fairness in Musical Licensing Act was an impermissibly broad exception and that the U.S. had violated Article 13 of the TRIPs Agreement and Articles 11*bis* and 11 of the Berne Convention.[9] The DSB's conclusion resulted in the U.S. reaching a mutual temporary agreement with the European Community which included an understanding that U.S. law would need to be changed according to the DSB's recommendations.[10] Since that temporary agreement was reached in 2003, the U.S. files multiple addendums every year to the WTO about the status of progress of amending Section 110(5).[11] Yet each year continues to pass where under the exception licensees continue to indefinitely play music in venues and music creators lose out on those public performance royalties. There can be no more scrutiny of copyright law in favor of music users when it is clear that a preexisting exception like the Fairness in Musical Licensing Act already provides more than enough for music users at the expense of music creators.

To the extent other issues have been raised in the NOI,[12] we believe that those issues are unsuitable to address through copyright law because either these issues have (i) already been addressed through voluntary industry-led initiatives, or (ii) are more appropriately addressed through other areas of the law—areas which fall outside the purview of the Copyright Office. For example, as the Copyright Office notes in the NOI, ASCAP and BMI created and launched a joint song data platform called Songview to address concerns about the availability of public information about musical work ownership. In addition, GMR and SESAC make their repertories available to the public via their websites, allowing music users to have searchable access to virtually all commercially used music in the U.S. These actions demonstrate the capability of

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[9] *US – Section 110(5) Copyright Act (DS160)*, WTO LEGAL AFFAIRS (2023), https://www.wto.org/english/tratop_e/dispu_e/cases_e/1pagesum_e/ds160sum_e.pdf.

[10] WTO, *supra* note 8.

[11] An addendum was filed most recently as March 2025. *See* Search Results for WT/DS160, WTO, https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=(@Symbol=%20wt/ds160/*)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#

[12] We understand that the additional issues identified in the NOI stem from an inquiry from certain members of Congress. *See* Letter from Reps. Jordan, Issa, and Fitzgerald to Shira Perlmutter, Register of Copyrights, U.S. Copyright Office (Sept. 11, 2024) (''Congressional Letter"), https://www.copyright.gov/policy/pro-issues/letter-to-usco-pro-issues.pdf.

PROs to offer voluntary, business-oriented solutions to address potential issues and further highlight why government intervention regarding the licensing of copyrights by PROs is unnecessary and inappropriate.

The Copyright Alliance takes no position on the business practices or sales processes of new entrants into the PRO space. However, to the extent such practices and processes raise issues, there is little doubt that those issues should not be addressed through changes to the copyright law. Rather, existing laws and regulations that address bad business behaviors in the PRO space include laws that deter fraudulent and deceptive business practices and a panoply of federal and state laws governing competition and antitrust issues. Calls for additional scrutiny and investigation into new entrants or business practices in the PRO space as detailed in the NOI, therefore, more appropriately fall within the jurisdiction of other government entities (as opposed to the U.S. Copyright Office) such as the Federal Trade Commission if it had reason to believe that any new entrant had or has continued to engage in fraudulent or deceptive business practices that run afoul of existing laws and regulations.

For the reasons stated above, the Copyright Alliance urges the Copyright Office and Congress to take no copyright-related action of the issues raised in the NOI. We stand ready to assist the Copyright Office in any way we can and are happy to discuss any aspect of these comments in further detail.

Respectfully Submitted,

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