Before the
UNITED STATES COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter Of: **Issues Related to Performing Rights Organizations**	Docket No. 2025-1

COMMENTS OF THE RADIO MUSIC LICENSE COMMITTEE AND MOTION PICTURE ASSOCIATION IN RESPONSE TO THE COPYRIGHT OFFICE'S NOTICE OF INQUIRY CONCERNING THE PROLIFERATION OF PERFORMING RIGHTS ORGANIZATIONS

INTRODUCTION

The Radio Music License Committee ("RMLC") and Motion Picture Association ("MPA") are pleased to provide these comments in response to the Notice of Inquiry ("NOI") regarding "issues related to performance rights organizations ('PROs') and the Copyright Act's public performance right for musical works."[1] The NOI stems from a House Judiciary Committee letter dated September 11, 2024, to the Copyright Office which, among other things, reflected "concerns over ... the increase of PROs" in recent years.[2] In its NOI, the Copyright Office stated that it is "soliciting input to aid Congress' consideration" of this and related issues; and, quoting the Judiciary Committee letter, noted "the possibility of substantial statutory copyright damages [to licensees which] poses an existential risk" to licensees if they do not obtain licenses from all the U.S. PROs, including those that have recently entered the PRO marketplace.[3]

---

[1] 90 Fed. Reg. 9253, 9253 (Feb. 10, 2025).

[2] *Id.* at 9257.

[3] *Id.* The Judiciary Committee letter recognizes that this multiplicity of PROs in the U.S. (and the difficulties that this multiplicity presents) is an anomaly worldwide: "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." It goes on to note that "licensees have reported receiving demands for royalties from new entities claiming to represent songwriters, and threatening litigation if the demands are not met"; and that, given the above-cited "existential risk" factor, licensees have "fel[t] compelled to

RMLC/MPA appreciate the opportunity to offer their comments concerning the recent proliferation of PROs and the deleterious marketplace impact this development has had on competition associated with the sale of public performance rights in musical works (also referred to herein as "compositions") in the United States. In particular, RMLC/MPA explain below that although the recent proliferation in the number of PROs in the United States may increase competition among PROs themselves to acquire composer/songwriter members, that phenomenon has done nothing to increase price competition when it comes to the licensing of composition public performance rights to licensees. In fact, it has caused substantial price increases for the same universe of rights licensed to RMLC/MPA members and other licensees—never mind the substantial increase in transactional costs to licensees associated with having to negotiate licenses with this growing universe of PROs.

THE COMMENTERS

The RMLC is a non-profit entity that has roots dating back to the 1930s. It represents the interests of the substantial majority of commercial radio stations in the United States with regard to music licensing matters involving PROs; RMLC's mission is to seek to achieve fair and reasonable license fees with PROs.[4]

The MPA is a not-for-profit trade association founded in 1922. The MPA serves as the voice and advocate of the film and television industry, advancing the business and art of storytelling, protecting the creative and artistic freedoms of storytellers, and bringing entertainment and inspiration to audiences worldwide. Its member companies are Amazon Studios LLC, Netflix Studios, LLC, Paramount Pictures Corporation, Sony Pictures Entertainment Inc., Universal City Studios LLC, Walt Disney Studios Motion Pictures, and Warner Bros. Entertainment Inc. These entities and their affiliates operate the leading audiovisual content program services and platforms for the transmittal of filmed entertainment in the United States—including via broadcast, cable and streaming platforms.

I. The U.S. Public Performance Rights Licensing Marketplace

Radio stations, television, and audiovisual program services must secure public performance rights from the owners of such rights or their representatives to play music on their services. The risk of failing to secure a license prior to playing music is severe: RMLC and MPA members which do not successfully license all the compositions embodied in their programming could face statutory copyright infringement penalties as high as $150,000 *per work* infringed.[5] This "poses [the]

pay these [new PROs] on top of what they already pay for blanket licenses from the traditional PROs." Judiciary Committee letter at pp. 1-2.

[4] *See* RADIO MUSIC LICENSE COMM., https://www.radiomlc.org/ (last accessed Mar. 18, 2025).

[5] 17 U.S.C. § 504(c)(2).

existential risk" (quoting the Judiciary Committee letter) for such licensees should they not secure licenses from all the PROs that accumulate "must have" repertories of works (as discussed more fully below).[6] And the recently emerging PROs, such as GMR, have not only threatened such infringement liability but actually have filed suit against radio stations.[7]

The PROs aggregate the copyrights held by vast numbers of different owners and collectively license those rights to music users like radio stations and television program services. Each PRO offers a "blanket license," or a license to publicly perform the compositions in a PRO's respective repertory during the term of the license for a single license fee or rate. Historically, blanket licenses have reflected the fact that "most users want unplanned, rapid, and indemnified access to any and all of the repertory of compositions, and . . . owners want a reliable method of collecting for the use of their copyrights." *BMI*, 441 U.S. at 20–21. These benefits serving the interests of composition owners and licensees alike were a primary reason the Supreme Court (before the proliferation of other PROs) did not condemn ASCAP's and BMI's blanket license activities as a per se violation of the antitrust laws. *See BMI v. Columbia Broad. Sys., Inc.*, 441 U.S. 1, 5 (1979).

But as RMLC and MPA members have experienced, the practice of providing at a single price the rights to play multiple thousands (or hundreds of thousands) of separately owned and otherwise competing songs carries with those benefits a separate and substantial price: it risks lessening competition and licensing music at unfair and supra-competitive levels. That aggregation of so many licensing rights in the hands of so few results in PROs (including SESAC and GMR) wielding extraordinary power that, absent external correction, distorts normal marketplace economics, and raises profound antitrust concerns.

Indeed, these concerns are why the United States first brought price-fixing charges against ASCAP and BMI more than 80 years ago. Those suits were resolved through consent decrees that saved the then-existing two essential PROs from condemnation as a *per se* restraint of trade. *See United States v. Am. Soc'y of Composers, Auths. & Publs.*, No. 41-1395, 2001 WL 1589999 (S.D.N.Y June 11, 2001) (hereinafter "ASCAP Decree"); *United States v. Broad. Music, Inc.*, No. 64 CIV. 3787,

---

[6] 90 Fed. Reg. 9253, 9257.

[7] *See, e.g.*, Complaint for Copyright Infringement, *GMR v. Entravision Comms.*, No. 2:19-cv-08535 (C.D. Cal. Oct. 3, 2019); Complaint for Copyright Infringement, *GMR v. Vermont Broad. Assoc., Inc.*, No. 2:24-cv-00066 (D. Vt. Jan. 18, 2024); Complaint for Copyright Infringement, *GMR v. Red Wolf Broad.*, No. 3:22-cv-01235 (D. Conn. Oct. 4, 2022); Complaint for Copyright Infringement, *GMR v. One Putt Broad.*, No. 1:22-cv-01262 (E.D. Cal. Oct. 4, 2022); Complaint for Copyright Infringement, *GMR v. S. Stone Comms.*, No. 6:22-cv-01792 (M.D. Fla. Oct. 3, 2022).

Stations have also acknowledged that they had "no choice but to either pay for GMR's usurious blanket license . . . or face the fear of future copyright infringement lawsuits filed by GMR." Entravision's 1st Amend. Answer at *18, *Entravision* (Jan. 16, 2020).

1994 WL 901652 (S.D.N.Y. Nov. 18, 1994) (hereinafter "BMI Decree"). Those consent decrees constrain ASCAP and BMI, but they do not apply to other PROs.

While the ASCAP and BMI consent decrees have been amended over the last 80 years, their central purpose remains: "to disinfect" ASCAP and BMI "as . . . potential combination[s] in restraint of trade." *ASCAP v. Showtime/The Movie Channel, Inc.*, 912 F.2d 563, 570 (2d Cir. 1990). When the government decided in 2016 to reevaluate whether those consent decrees should either be eliminated or significantly pared back, it concluded that they should not because "the current system has well served music creators and music users for decades and should remain intact." *Statement of the Department of Justice on the Closing of the Antitrust Division's Review of the ASCAP and BMI Consent Decrees* ("2016 DOJ Closing Statement"), U.S. DEP'T OF JUSTICE (Aug. 4, 2016), https://www.justice.gov/atr/file/882101/dl?inline=, at 3. The DOJ again declined to amend the decrees after another investigation in 2021.[8] The Decrees thus continue to serve the purpose of curbing the market power of ASCAP and BMI by ensuring that those PROs' blanket licenses are required to be available on fair, reasonable, and non-discriminatory terms—all while continuing to promote marketplace licensing efficiency.

RMLC stations and MPA member services have relied time and time again on the consent decrees' protections that "disinfect" ASCAP and BMI as a restraint of trade. Those protections include the requirements: (i) that ASCAP and BMI issue licenses on request, (ii) that any fee set by ASCAP or BMI be reasonable, and (iii) that ASCAP's and BMI's rate proposals be subject to the oversight of a US district court, where parties can litigate disputes over rates and courts determine "a reasonable fee for the license requested." *See* BMI Decree § XIV(A); ASCAP Decree § IX.A. The "rate-setting courts . . . exist as a result of monopolists exercising disproportionate power over the market for music rights." *U.S. v. BMI (In re Application of Music Choice*), 426 F.3d 91, 96 (2d Cir. 2005); and licensees have relied on them to avoid supra-competitive prices sought by BMI and ASCAP on multiple occasions. *E.g.*, *BMI v. DMX*, 683 F.3d 32, 46 (2d Cir. 2012) (rate proposals "did not reflect rates that would be set in a competitive market"); *In re Application of MobiTV, Inc.*, 712 F. Supp. 2d 206, 244 (S.D.N.Y. 2010) (rejecting ASCAP fee request); *Pandora Media, Inc. v. ASCAP*, 6 F. Supp. 3d 317 (same).

As discussed below, however, changes in the PRO landscape, including the proliferation of PROs and of fractional licensing of musical works, have eroded the

[8] *Statement of the Department of Justice on the Closing of the Antitrust Division's Review of the ASCAP and BMI Consent Decrees*, U.S. DEP'T. OF JUSTICE (Jan. 15, 2021), https://www.justice.gov/atr/page/file/1355391/dl?inline.

procompetitive benefits and balance sought to be achieved by the ASCAP and BMI consent decrees.[9]

II. The Emergence of Newer PROs – And Lack of Pro-Competitive Impact in the Market for the Licensing of Public Performance Rights

While the BMI and ASCAP decrees' protections to licensees have proven to be essential in ensuring that BMI and ASCAP rates remain available to Commenters and other licensees at reasonable, competitive market levels, SESAC and GMR are not subject to any of these constraints. The fact that BMI and ASCAP collectively control some 85–90% of the works publicly performed by mass content distributors such as RMLC stations and MPA member television and audiovisual services[10] does not diminish the indisputable need for almost all RMLC member stations and MPA television and audiovisual services to secure licenses from SESAC and GMR for the reasons discussed below.

That is primarily because SESAC and GMR, as they and their substantial repertories have developed and grown over the last several years, are also "must have" licenses for licensees such as radio stations and television services. *See, e.g.*, *Meredith Corp. v. SESAC LLC*, 1 F. Supp. 3d 180 (S.D.N.Y. 2014); *Radio Music License Comm. v. SESAC, Inc. ("RMLC v. SESAC")*, 2013 WL 12114098, at *11 (E.D. Pa. Dec. 23, 2013). As summarized below, this is a function of several factors including: (i) the lack of complete transparency associated with composition ownership, especially as to newly released recordings of musical works; (ii) the lack of control that radio stations and television and audiovisual services have over the musical content embodied in various aspects of the content they transmit; (iii) the competitive harm facing many licensees were they to seek to avoid using SESAC and GMR works (even assuming that would be a viable path to pursue, which it is not for the other reasons set forth below); and (iv) the "existential risk" of massive copyright infringement damages they would face should they seek to operate without SESAC or GMR licenses.

Given the must-have nature of the SESAC and GMR licenses, the emergence of these additional PROs (and potentially new PROs like AllTrack that are mentioned in the NOI) does nothing to mitigate the market power of ASCAP and BMI. That is

---

[9] *See* 79 Fed. Reg. 14739 (seeking comments from the public in 2014 regarding the effectiveness of music licensing in the modern music marketplace); 79 Fed. Reg. 42833 (seeking a second round of comments regarding the same).

[10] *Remarks from ASCAP CEO Elizabeth Matthews to DOJ Workshop on Competition in the Licensing of Public Performance Rights in the Music Industry*, AM. SOC'Y OF COMPOSERS, AUTHS. & PUBLS. (July 28, 2020) ("Together with BMI we account for about 90% of the U.S. market in public performance rights."). *See also* Larry Wayte, *Pay for Play: How the Music Industry Works, Where the Money Goes, and Why* 256 (2023) ("Together, ASCAP and BMI still control over 90% of the performance rights license market today.").

because PROs that have accumulated must-have repertories do not compete against one another in the licensing of users such as RMLC stations and MPA television services; rather, they are complements, not substitutes for one another. Licensees are not able to "play off" one PRO against another to secure more favorable license fees or terms. Instead, they must take licenses from all PROs that have amassed a catalog that is "must have" for them. This phenomenon has been recognized by courts and the Copyright Royalty Board alike.[11]

A. **More PROs Does *Not* Mean More Competition**

One might think that more PROs in the marketplace would create more competition. Not so. As discussed more fully below (*infra* at 11-12 and n. 22), because PROs offer market complements rather than substitutes, they are complementary oligopolies and vitiate effective competition in the marketplace. GMR's songwriter members, for example, were almost all former ASCAP and BMI songwriters (like Bruce Springsteen, Bruno Mars and many others) that GMR induced to move to GMR with the promise that, as an unregulated PRO, it would achieve higher compensation than could be achieved by a PRO operating under a consent decree whose fees were constrained by rate courts requiring that PRO fees be reasonable (which courts have interpreted to mean as the equivalent to what a willing buyer would pay a willing seller in a hypothetical market with some degree of effective competition). *See United States v. ASCAP (RealNetworks),* 627 F.3d 64, 76 (2d Cir. 2010). SESAC engaged in much the same conduct in luring away songwriters like Bob Dylan and Adele (and many others) from the established PROs BMI and ASCAP.

It is worth noting that even a PRO whose membership numbers (and share of overall performances) is small relative to that of BMI and ASCAP can still have a large impact on pricing once it controls a "must have" license. As discussed below, the consolidation of thousands of works including those of just a few big-name artists within a PRO's repertory—coupled with the other factors discussed *infra*—can render (and have made) such PROs' blanket licenses "must have" licenses for licensees. [12]

---

[11] *See, e.g. RMLC v. SESAC*, 2013 WL, at *11 (finding that, prior to the emergence of GMR, "a radio station must obtain licenses that cover the works contained in the repertories of all three PROs [ASCAP, BMI, and SESAC]"); *Meredith v. SESAC*, 1 F. Supp. 3d at 218 (making same finding as to local television stations). *See also* Determination, *In re Determination of Royalty Rates and Terms for Ephemeral Recording and Webcasting Digital Performance of Sound Recordings* ("*Web IV*"), No. 14-CRB-0001-WR (2016–2020), at 134 ("There appears to be a consensus that the repertoire of each of the three Major[Labels] is a "must have" in order for a noninteractive service to be viable.").

[12] Music users are doubly taxed when a significant catalogue of works is moved from the repertory of either ASCAP or BMI into the repertory of an unregulated PRO (such as GMR and SESAC). *First*, the unregulated PRO (which is not "disinfected" by any consent decree) is generally unconstrained in its pricing demands. An unregulated PRO can, therefore, demand higher compensation for the same catalogue of music that was previously available from ASCAP or BMI. And *second*, after a catalogue of works changes hands, history has shown that the price of the ASCAP and BMI blanket licenses is

B. Factors Contributing to the Need of Radio Stations and Television Services to Take Blanket licenses from Newer PROs Including SESAC and GMR

1. Lack of Necessary Transparency Associated With Composition Ownership.

Even if a radio station or television service wished to seek to circumvent use of songs controlled by a new PRO, the fact is—as the NOI recognizes[13]—there is no reliable source of data that would enable the station/service to navigate such a path.

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). That is true even as it relates to the Songview database created by ASCAP and BMI recently. While the website proclaims that this database was formed "in order to make copyright data more transparent and accessible," the fact is that before a user can even access the database, a user is required to agree to terms including the following:

> Although ASCAP uses reasonable efforts to update ASCAP Repertory Search and improve the accuracy of the information contained therein, **ASCAP makes no guarantees, warranties or representations of any kind** with regard to and **cannot ensure the accuracy**, completeness, timeliness, quality or reliability of any information made available on and through Repertory.
>
> **ASCAP** specifically **disclaims** any and all **liability** for any loss or damage of any kind that you may incur, directly or indirectly, **in connection with** or arising from, your access to, use of or reliance upon **ASCAP Repertory Search, including any errors or omissions in the information** contained therein. ...
>
> **Your use of and reliance upon any information** contained in ASCAP Repertory Search **is solely at your own risk**.[14]

---

not reduced to reflect the withdrawal of the catalogue from their repertory. This is, separately, also evidence that PROs do not exist in a competitive market.

[13] *See* 90 Fed. Reg. 9253, 9255.

[14] *See ASCAP Repertory Search*, AM. SOC'Y OF COMPOSERS, AUTHS., & PUBLS., ascap.com/repertory (last accessed Mar. 19, 2025) (emphasis added).

ASCAP thus disclaims any responsibility to provide reliable song-ownership data—and in fact shifts the onus on the website visitor for any errors in its published data. Similarly, BMI explains on its version of Songview that "[t]he total share percentage [of a song] made available by ASCAP and BMI to Songview [may] not add up to 100% (and also places significant limitations on how Songview data may be used)."[15] SESAC and GMR make similar disclaimers on their respective websites.

Apart from the unavailability of comprehensive repertory information to licensees, there are other industry realities that make it impossible for a music user to reliably avoid all the music of a given PRO (even if a licensee sought to do so). One such industry reality is that when new recordings are released, it is common knowledge who the recording artist and record label is for a given song, but it often takes many months for song ownership information to be determined or made available (even to the PROs). Consequently, radio stations (e.g., top-40 radio stations) and television and audiovisual services whose content includes recently released recordings would be at grave risk of infringement were they to not secure blanket licenses from non-BMI/ASCAP PROs that have developed substantial repertories.

These issues are compounded by the issues surrounding fractional ownership of compositions—an all-too-common phenomenon as the NOI calls out specifically.[16] As one commentator has noted, "fractional song ownership has increased substantially: the mean number of songwriters and publishers per song has tripled between 1958 and 2021."[17] While copyright law affords each author (or fractional author) the power to exercise any and all rights, in the context of music licensing, users must secure licenses from *every* fractional owner (or their PRO) to avoid the specter of infringement.[18] Put another way, every fractional owner of a song holds immense power to unilaterally block a radio station or television or audiovisual service from using the entire song absent obtaining a license from the fractional owner's PRO. Even if a fractional owner only controls 10% of the rights, that

---

[15] *See Songview*, BROAD. MUSIC, INC., https://www.bmi.com/special/songview/ (last accessed Mar. 30, 2025). For example, Songview's Terms of Use forbid visitors from copying, downloading, or extracting (among many other limitations) any part of the data platform or repertory search results "for any purpose whatsoever" without BMI's express written permission. *See Section 6, Use of BMI Searchable Song Title Databases, Terms and Conditions of Use*, BROAD. MUSIC, INC., http://bmi.com/legal/entry/terms_and_conditions_of_use (last accessed April 08, 2025).

[16] *See* 90 Fed. Reg. 9253, 9255.

[17] El Hadi Caoui and Alberto Galasso, *Fractional Ownership and Copyright Licensing: Evidence from the Music Industry*, at Abstract (2024). As an extreme example of fractional ownership, Beyonce's hit song "Alien Superstar" credited *24* writers. Joe Lynch, *Beyonce's 'Renaissance' Songwriting Credits: Here's Who Wrote Each Song*, BILLBOARD (July 29, 2022), https://www.billboard.com/lists/beyonces-renaissance-songwriters-credits-album/.

[18] *See United States v. Broad. Music, Inc.*, 720 F. App'x 14 (2d Cir. 2017) (holding that BMI is not required to engage in 100%-licensing of fractional works within its repertory).

fractional owner (or his/her PRO) holds 100% of the ability to restrict a station from playing that song.[19]

2. Lack of Control Over the Musical Content of Radio Station/Television Service Programming.

Putting aside the lack of reliable and complete song ownership information, the predicament facing any radio station or television service which might otherwise seek to bypass taking licenses from emerging PROs is their lack of control over the musical content of certain categories of programming integral to their operations—thus making it impossible to avoid the "existential risk" of copyright infringement liability (absent taking licenses from all PROs) stemming from the airing of such programming.

One quite common example of such programming is syndicated program content, i.e., previously produced content provided by third parties to radio stations and television services for their broadcast/transmission to listeners/viewers (such as "reruns" of popular TV shows). Radio stations and television and audiovisual services typically lack knowledge of the identity of all the songs (and copyright owners thereof) embodied in this programming. In the context of television, this is sometimes referred to as the "music in the can" problem. It is the radio stations and television services which are the parties engaging in public performances of such programming when it is delivered to listeners and viewers; and they effectively must take blanket licenses from all the PROs with substantial repertories in order to avoid the risk of infringing works embodied in such third-party programming. The same is true of advertisements transmitted by ad-supported radio stations and television services.[20]

Radio stations and television services also lack control over the performance of "ambient" music, i.e., music audible in the background of live event coverage. This is a commonplace occurrence relating to, for example, their delivery of sports

---

[19] It is finally worthy of note that, even if a given radio or television service were to contemplate seeking to overcome all the foregoing (impossible) hurdles and attempt to obtain licenses for a universe of songs traced to identifiable non-ASCAP/BMI songwriters, the fact is that 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.

[20] The "music in the can" problem is further complicated by the fact that writers can—and often do—change PRO affiliations after a show is already "in the can" and commercially successful. Such PRO affiliation changes introduce two negative consequences relating to the proliferation of PROs. *First*, it provides non-regulated PROs with a shortcut to assembling a "must have" catalogue by targeting one or two key writers who already account for a significant percent of the music used by audiovisual broadcasters and streaming services. The PRO can then leverage such writers to secure increased profits for private equity investors who do nothing to identify or nurture new talent. *Second*, changes in PRO affiliation that occur after the musical work is "in the can" often take a very long time to be reflected in music ownership databases, further contributing to the repertory transparency problems that render futile any attempt to circumvent taking licenses from newer "must have" PROs.

programming and news/event coverage. Once again, blanket licenses from all the PROs with substantial repertories are required to avoid copyright infringement risk.

3. Competitive Concerns.

In addition to the above circumstances rendering it a practical impossibility for radio stations and television services to bypass entirely the performance of works controlled by the likes of SESAC and GMR, there are competitive concerns that would imperil the ability of stations/services to operate without SESAC and GMR blanket licenses. By way of example, it is axiomatic that radio stations operating a "Top 40"-format radio station must play the songs currently in the Top 40 Charts. No *one* PRO has every Top 40 song on its roster for a given week—and even if it somehow did, the music from the Top 40 changes every week, meaning one week's Top 40 can heavily derive from ASCAP's repertory, whereas the next week could heavily derive from GMR's repertory. Similarly, a "Classic Rock" station cannot survive competitively without playing the music of a core group of artists such as "The Eagles," "Bon Jovi," and "Bruce Springsteen"—all of which are represented by GMR affiliates. We could cite example after example of this phenomenon applicable to each of SESAC, BMI and ASCAP as well.

* * *

All three of the factors identified above make it a practical impossibility for radio stations and television services to operate without blanket licenses not only from BMI and ASCAP, but also from any PROs that emerge and command a substantial repertory—including each of SESAC and GMR. The alternative is to face the very "existential risk" of "substantial copyright damages" that was noted in the Judiciary Committee's letter to the Copyright Office that triggered this NOI.

C. Commenters' Answer to Question 1 of the NOI.

The Copyright Office asks, in its first question contained in section II of its NOI, "to what extent, if any, have there been increased financial and administrative costs imposed on licensees associated with paying royalties to additional PROs?" In short: the increased financial and administrative costs have been substantial.

Start with the financial costs. The discussion above explains why it is imperative for radio stations and television services to obtain licenses not only from BMI and ASCAP, but also any other PRO (including SESAC and GMR) that emerges and assembles a substantial repertory. On its face, that alone has imposed on licensees the "increased financial and administrative costs" associated with having to negotiate those additional licenses.

But the far greater financial costs that this development has engendered for licensees relate to the noncompetitive fees imposed by PROs that are not subject to rate oversight as are BMI and ASCAP. Secure in the knowledge that their blanket

licenses are necessary complements, not substitutes, for BMI's and ASCAP's licenses, SESAC and GMR can take full advantage of this lack of oversight to exact fees far in excess of those applicable to BMI and ASCAP when considering the relatively small share of overall performances that those PROs represent.

BMI and ASCAP cannot "hold up" a licensee because the consent decrees' protections require them to provide a license upon request and to do so for a "reasonable," competitive market fee subject to judicial oversight. By contrast, GMR and SESAC can and do.

In turn, BMI and ASCAP point to those licenses obtained from SESAC and GMR to demand higher rates from their music users.[21] And so the cycle continues. The upshot is that the RMLC and MPA end up paying more to ultimately secure access to the same compositions than they did prior to the emergence of SESAC and GMR. At the same time, many of the traditional protections thought to be conveyed by a blanket license—including the ability to play any song on demand or protection from copyright infringement—have been chipped away by fractional licensing and other changes.

This phenomenon replicates the issue with complementary oligopolies that prevails in the market for sound recordings—and that has been observed by the Copyright Royalty Board and D.C. Circuit. *E.g.*, *Johnson v. Copyright Royalty Bd.*, 969 F.3d 363, 372 (D.C. Cir. 2020). [22] In a complementary oligopoly, each licensor "wield[s] the individual economic power of a monopolist, but the exercise of that power leads to royalty rates that are even greater than those that would be set by a single monopolist." Final Determination, *In re Determination Of Rates And Terms For*

---

[21] Dkt. No. 20, ASCAP's Response to RMLC's Petition for the Determination of Reasonable Final License Fees, at ¶ 3, *Radio Music License Comm. v. Am. Soc'y of Composers, Auths. & Publs.*, No. 1:23-cv-07228-DEH (S.D.N.Y.) ("[B]oth the SESAC and GMR agreements are benchmarks for materially higher fees for ASCAP."); Dkt. No. 49, Response of Broadcast Music, Inc. to the Amended Petition of Radio Music License Committee, Inc. for the Determination of Reasonable Final License Fees, at ¶ 61, *Radio Music License Comm. v. Broad. Music, Inc.*, No. 1:22-cv-5023-JPC (S.D.N.Y.) ("Public reports about the GMR-22 License suggest that its rate is significantly higher than BMI's past commercial radio station license rates, when adjusted to account for BMI's significantly greater market share, and higher than the interim rates RMLC stations paid GMR during the pendency of the dueling antitrust cases.").

[22] Complementary oligopolies are also referred to as the Cournot complements problem, where the owner of each complementary input is able to price its license above competitive levels; this fails to produce the most utility to consumers or account for adverse effects of the input's higher price on the demand for the other complementary inputs. In the PRO space, because of the PROs' must-have repertories (and absent rate oversight), each PRO can set a price independent of the others—without competing against each other. As one rate-setting body has determined: "[E]ven economists quite unwilling to assume that a given monopoly or oligopoly structure is inefficient and anticompetitive bristle at the idea that supranormal pricing arising from a complementary oligopoly is reflective of a well-functioning competitive market." Determination, *Web IV*, at 121–22 (emphasis added). The potential proliferation of even more new PROs to the current field of complementary oligopolies will only aggravate the anticompetitive effects music users experience today.

Digital Performance Of Sound Recordings And Making Of Ephemeral Copies To Facilitate Those Performances ("*Web V*"), No. 19-CRB-0005-WR (2021–2025), at 7 (discussing labels). In such a market, the oligopoly can command higher prices than would obtain even if an individual monopolist controlled the entire market. As in the market for sound recordings, each PRO is a "must have" for licensees such as the RMLC and MPA. And when those catalogs are a "must-have," it creates a licensing market where PROs can command supra-competitive rates because they know a service cannot say no. Again, licensees end up paying more for the same.

Transaction costs have similarly increased—both in the time to obtain licenses from newer PROs, and in how multiple PROs exacerbate the transparency issues that pervade in the PRO marketplace. The Department of Justice has properly noted (consistent with the discussion above) both the lack of transparency and impossibility of licensing songs on an individual song-by-song basis in a marketplace characterized by multiple thousands of dispersed and often nonidentifiable copyright owners, as well as the economic hold-up opportunity that these circumstances create absent the consent decrees' protections. *See* 2016 DOJ Closing Statement at 13–14 ("[M]usic users seeking to avoid potential infringement liability would need to meticulously track song ownership before playing music. As the experience of ASCAP and BMI themselves shows, this would be no easy task."). The courts, as well, have recognized that music copyright owners have exploited these information asymmetries to compel music users like Commenters to accept a license on their terms or face copyright infringement. *E.g.*, *Pandora*, 6 F. Supp. 3d at 360.

In short, the economic circumstances of the marketplace in which GMR and SESAC negotiations take place—as will be the case with respect to any other emerging PROs that command substantial repertories—thus have "imposed" enormously "increased financial and administrative costs ... on licensees associated with paying royalties to [such] additional PROs" (quoting Question no. 1 of the NOI).

D. Commenters' Answer to Question 2 of the NOI.

The Copyright Office asks Commenters, in its second question contained in section II of its NOI, to identify the "[f]actors that may be contributing to the formation of new PROs."

The answer is reflected in the economic discussion above. The roadmap has been established; and it seemingly has become apparent to emerging PROs that once they form a "must have" repertory, they will be able to generate supra-competitive prices for their licenses. So much so that the newer PROs have attracted investment from private equity firms as reflected by: (i) Blackstone's purchase of SESAC[23], and

[23] *About*, SESAC, https://www.sesac.com/about/ (last accessed Mar. 30, 2025) ("In February 2017, SESAC was acquired by Blackstone.); *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/.

(ii) the recently announced sale to a private equity firm (for a reported $3.3 billion) of a majority interest in GMR.[24] Even one of the two consent decree regulated PROs, BMI, recently was sold to New Mountain Capital for $1.7 billion.[25] Commenters understand that the latest PRO identified in the NOI, AllTrack, was organized at least in part by former representatives of these preexisting PROs who no doubt plan to follow in the footsteps of the latest PROs.[26]

* * *

The RMLC and MPA appreciate the opportunity to submit these comments, and they would be willing to provide additional comments to the extent helpful to the Office or the Judiciary Committee regarding any of the subject matters discussed herein.

Dated: August 26, 2025

/s/ *Kenneth L. Steinthal*
Kenneth L. Steinthal

KING & SPALDING LLP
50 California Street, Suite 3300
San Francisco, CA 94111
Telephone: (415) 318-1200
ksteinthal@kslaw.com

Counsel for Radio Music License Committee, Inc. and Motion Picture Association

[24] 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/.

[25] *New Mountain Capital Announces the Closing of its Majority Growth Investment in BMI*, BROAD. MUSIC, INC. (Feb. 8, 2024), https://www.bmi.com/news/entry/new-mountain-capital-announces-the-closing-of-its-majority-growth-investment-in-bmi. *See also* Ed Christman, *BMI Sells to New Mountain Capital*, BILLBOARD (Nov. 21, 2023), https://www.billboard.com/business/publishing/bmi-sold-new-mountain-capital-1235503629/.

[26] *See About*, ALLTRACK, https://www.alltrack.com/about/ (last accessed March 30, 2025).