

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

In the Matter of

Issues Related to Performing Rights
Organizations

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Docket No. 2025-1

**REPLY COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS**

I. INTRODUCTION AND SUMMARY

As outlined in the National Association of Broadcasters’ (“NAB’s”) initial comments, the current music licensing system has become increasingly fragmented, uncertain, and legally burdensome, especially for radio broadcasters. NAB appreciates the Copyright Office’s (“Copyright Office” or “Office”) continued attention to these structural challenges and its effort to evaluate how performance rights organizations (“PROs”) can operate more efficiently and transparently for all participants in the music licensing marketplace.

NAB submits these reply comments on behalf of its radio members to address claims by certain PROs and music publishers that dismiss and mischaracterize broadcaster concerns. We also highlight flaws with PRO-proposed solutions and instead identify a potential solution that would benefit not just licensees, but rather, all stakeholders in the system.

II. THE STRUCTURAL AND LEGAL CHALLENGES BROADCASTERS FACE WHEN LICENSING MUSICAL WORKS ARE REAL AND MUST BE ADDRESSED

NAB unequivocally continues to support lawful compensation for songwriters and rightsholders, but the licensing system must also function for those required by law to participate in it. Several PRO and music publisher commenters suggest that the concerns

raised by broadcasters and other music users are merely part of a veiled scheme to minimize the cost of licensing fees.¹ That narrative is both inaccurate and dismissive of the real-world legal, operational, and structural challenges radio broadcasters face in today's licensing landscape.

As NAB illustrated in our initial comments, the current music licensing system is fragmented, opaque and legally precarious as a result of PRO proliferation. One need look no further than the lengthy litigation between RMLC and GMR to underscore how the unchecked proliferation of unregulated PROs has escalated costs, created legal uncertainty, and left broadcasters with no meaningful alternatives.²

These challenges are exacerbated by the absence of a centralized, transparent, and legally reliable database identifying copyright ownership and PRO affiliation. Without comprehensive data from *all* PROs, broadcasters are forced to license defensively and redundantly to mitigate the risk of statutory liability.³ This burden falls especially hard on

¹ See American Society of Composers, Authors and Publishers, *Comments Submitted in Response to the U.S. Copyright Office's Notice of Inquiry on PROs* 4 (Apr. 11, 2025), <https://www.regulations.gov/comment/COLC-2025-0001-4996> ["ASCAP Comments"]; National Music Publishers' Association, *Comments Submitted in Response to the U.S. Copyright Office's Notice of Inquiry on PROs* 1 (Apr. 11, 2025), <https://www.regulations.gov/comment/COLC-2025-0001-4884> ["NMPA Comments"].

² See *Radio Music License Comm., Inc. v. Global Music Rights, LLC*, No. 2:19-cv-03957-TJH-AS (C.D. Cal. filed May 7, 2019) ["RMLC v. GMR"] (alleging that GMR sought to compel radio stations into paying exorbitant licensing fees for its repertory by implicitly threatening copyright litigation); Television Music License Committee, *Comments Submitted in Response to the U.S. Copyright Office's Notice of Inquiry on Issues Related to Performing Rights Organizations* 8-9 (Apr. 11, 2025), <https://www.regulations.gov/comment/COLC-2025-0001-4871> ["TVMLC Comments"].

³ See TVMLC Comments at 9, 19; Radio Music License Committee & Motion Picture Association, *Comments Submitted in Response to the U.S. Copyright Office's Notice of Inquiry on Issues Related to Performing Rights Organizations* 7-8 (Apr. 11, 2025), <https://www.regulations.gov/comment/COLC-2025-0001-4849> ["RMLC/MPA Comments"].

radio stations, where programming is often shaped by syndicated content and national charts – factors largely outside broadcasters’ control.⁴

Each new PRO adds another layer of cost, compliance risk, and administrative burden, without delivering added value to stations or their audiences. The concerns raised in NAB’s initial comments are not hypothetical; they are grounded in the realities of an increasingly unworkable system that should be recalibrated to ensure fairness and functionality for all participants.

III. PRO PROLIFERATION FOSTERS MARKET DISTORTION AND RADIO BROADCASTERS ARE PAYING MORE FOR THE SAME MUSIC AS A RESULT

Some commenters argue that rising PRO licensing costs are the result of inflation, increased music use, or ordinary market dynamics.⁵ While those elements may comprise some 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.⁶ This increase in cost is driven by structural inefficiencies resulting from PRO fragmentation. As catalogs shift into newer entrants like GMR, broadcasters must pay additional, separate fees for works previously

⁴ RMLC/MPA Comments at 9-10; National Association of Broadcasters, *Comments Submitted in Response to the U.S. Copyright Office’s Notice of Inquiry on Issues Related to Performing Rights Organizations* 2-3 (Apr. 11, 2025), <https://www.regulations.gov/comment/COLC-2025-0001-4887> [“NAB Comments”].

⁵ ASCAP Comments at 11; Broadcast Music, Inc., *Comments Submitted in Response to the U.S. Copyright Office’s Notice of Inquiry on Issues Related to Performing Rights Organizations* 13-14 (Apr. 11, 2025), <https://www.regulations.gov/comment/COLC-2025-0001-4902> [“BMI Comments”]; NMPA Comments at 1.

⁶ TVMLC Comments at 12-13; RMLC/MPA Comments at 11.

included under existing PRO blanket licenses.⁷ This shift has not expanded access to music or improved competition or service. It reflects a duplicative and increasingly costly framework that imposes greater financial and administrative burdens on licensees, without delivering any offsetting benefits.

PROs and publishers further claim that the emergence of new PROs is evidence of a competitive and well-functioning market.⁸ In reality, however, the increase in PROs has simply turned three-stop licensing into four-stop licensing, driving up costs while delivering no additional access or functionality.⁹ While PROs may compete for songwriters and publishers, they do not compete as substitutes for broadcasters. And due to fractional licensing, each PRO controls distinct rights. Thus, access to one PRO's repertory does not eliminate the legal obligation to license from others. The result is cumulative, not competitive, licensing.

Using the example referenced above, GMR's claim that its presence has fostered competition by providing music users with negotiating leverage is contradicted by its own conduct.¹⁰ Its refusal to offer commercially reasonable blanket licenses triggered several years of costly litigation with RMLC, imposing uncertainty and legal cost on radio stations nationwide.¹¹ Despite holding "less than one percent of all performances of musical works

⁷ TVMLC Comments at 12; RMLC/MPA Comments at 3-4.

⁸ NMPA Comments at 5; BMI Comments at 9-10; Global Music Rights, Inc., *Comments Submitted in Response to the U.S. Copyright Office's Notice of Inquiry on Issues Related to Performing Rights Organizations* 2, 12 (Apr. 11, 2025), <https://www.regulations.gov/comment/COLC-2025-0001-4947> ["GMR Comments"]; ASCAP Comments at 8.

⁹ TVMLC Comments at 11-13.

¹⁰ See GMR Comments at 3.

¹¹ See *RMLC v. GMR*; RMLC/MPA Comments at 3-4.

on local television,” and a similarly small percentage for radio licensees, GMR has extracted licensing fees from major radio broadcasters due to the risk of statutory damages.¹² This is not evidence of a functioning market – it is a reflection of how unregulated PROs can exploit gaps in the current system to extract disproportionate leverage.

The proliferation of PROs has not provided broadcasters with more choices. Instead, it has multiplied licensing obligations and costs. Each new entrant imposes its own terms, fee structure, and administrative process, with no corresponding benefit to broadcasters or listeners. What PROs describe as competition is, in reality, market distortion and fragmentation. This system does not empower choice; it compels participation, at greater cost and risk each time a new PRO enters the market.

IV. PROGRAMMING AROUND INDIVIDUAL PRO LICENSES IS NOT A VIABLE SOLUTION FOR BROADCASTERS

As a potential solution, some PROs assert that music licensees can simply “program around”¹³ PRO licenses, arguing that existing competition among PROs and the availability of third-party music licensing services provides licensees with meaningful flexibility in choosing what music to use and from whom to seek a license. ASCAP, for example, suggests that licensees can opt to license public performance rights solely from ASCAP or “opt to avoid works from particular PROs if licensing terms are unsatisfactory.”¹⁴ BMI similarly states that “music users . . . do not need the ability to perform all musical works available in the United States, and therefore, need not secure licenses from all four domestic PROs,” suggesting that many businesses, particularly smaller businesses, can limit their music use

¹² TVMLC Comments at 16.

¹³ ASCAP Comments at 12 (“If a music user wishes to limit or reduce its PRO licensing fees, the music user can do so by programming around the need to take a given PRO’s license.”).

¹⁴ *Id.* at 19.

to musical works in BMI's repertory.¹⁵ While this may be viable for businesses that can hand-select music on a track-by-track basis, it is not a realistic option for radio broadcasters.

As NAB and the RMLC previously stated, "[b]roadcasters often do not have practical ability to alter programming to avoid works licensed by a particular PRO."¹⁶ Radio playlists and coverage of live events over the radio are driven by programming that is unable to be changed. Radio is also driven by audience demand and national charts like Billboard's Hot 100. Just imagine listener outrage if a radio DJ were forced to skip several songs on the "top 100 hits" chart because a station "programmed around" a particular PRO. Counter to ASCAP and BMI's suggestion of a simple cure-all, radio broadcasters cannot selectively license from particular PROs. Instead, they must obtain blanket licenses from PROs with "must-have" catalogs – a dynamic that leads broadcasters to overpay for licensing coverage based on asserted market share.¹⁷

V. A CENTRALIZED, LEGALLY RELIABLE DATABASE IS AN ESSENTIAL STEP FORWARD

As it stands, the current licensing system enables unregulated PROs to inflate their market share, compel over-licensing, and obstruct efficiencies that would otherwise benefit all participants. Improved transparency around PRO ownership data is a necessary step toward addressing these structural flaws. Otherwise, at present, broadcasters "have no way of knowing with certainty which works they are publicly performing and which PROs they need licenses from."¹⁸

¹⁵ BMI Comments at 13.

¹⁶ RMLC/MPA Comments at 5.

¹⁷ NAB Comments at 8.

¹⁸ TVMLC Comments at 18.

In 2021, Members of Congress wrote to the Copyright Office, also concerned with “the historic lack of a comprehensive database of musical works information.”¹⁹ The congressional letter described the then newly launched Songview database as a “step in the right direction,” but noted that alone, Songview fails as a comprehensive solution because it “does not provide users with access to authoritative information about works represented by other PROs, including SESAC and GMR.”²⁰

Some commenters suggest that Songview could yet become such a comprehensive database, noting that SESAC and GMR have expressed an openness to participate alongside ASCAP and BMI.²¹ While NAB is supportive in theory, any database would need to include all PROs, including new entrants, and serve as a legally reliable source of information when used by licensees.²² Without a legally authoritative and comprehensive database, broadcasters are still forced to license defensively – even where a PRO controls only a small or questionable fraction of their actual music use. This ultimately results in over-licensing and, potentially, expensive litigation. Moreover, if Songview is to be seriously considered as “the” centralized database, the data would need to be significantly modernized, updated, and made consistent throughout to allow for ease of searching capabilities.

¹⁹ Letter from Members of Congress to Shira Perlmutter, Register of Copyrights (Dec. 16 2021), available at <https://www.copyright.gov/laws/hearings/response-to-dec-16-2021-letter.pdf>.

²⁰ *Id.*

²¹ ASCAP Comments at 13–15; BMI Comments at 9; SESAC Performing Rights, LLC, *Comments Submitted in Response to the U.S. Copyright Office’s Notice of Inquiry on Issues Related to Performing Rights Organizations* 6 (Apr. 11, 2025), <https://www.regulations.gov/comment/COLC-2025-0001-4858>; GMR Comments at 7.

²² See RMLC/MPA Comments at 7–8.

Regardless of the particular entity, however, 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. The Copyright Office is uniquely positioned to encourage this standard of transparency and accountability, and we strongly urge the Office to do so in its communications with Congress.

VI. CONCLUSION

We sincerely appreciate the Office's attention to these important issues and look forward to continued collaboration. We also urge the Office to advance the much-needed transparency of PRO data in the currently opaque music licensing system.

Respectfully submitted,

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



Rick Kaplan
Keyana Pusey
Kirsten Donaldson

May 27, 2025