



**Before the US Copyright Office**  
**In the matter of Artificial Intelligence and Copyright**  
**Docket No. 2023-6**  
**Additional reply comment of Future of Music Coalition**

Future of Music Coalition (“FMC”) is pleased to submit the following additional reply comment to the U.S. Copyright Office (USCO) in response to the Notice of Inquiry on Copyright and Artificial Intelligence.

Let’s begin with a straightforward observation: the quantity of comments in this docket is remarkable, as a representation of the broad public interest in these issues, as well as a demonstration of the depth of concern that these issues elicit from creative communities as well as varied business interests. We recognize that this also amounts to a seriously burdensome workload for USCO staff, and so at the outset, we wish to offer a note of appreciation to the hard-working folks attempting to summarize and pull out key points from this extremely voluminous discourse. As an organization that often strives to make invisible and under-appreciated labor visible, we see you!

This volume of commentary also means that provision of substantive reply comments presents practical challenges, even apart from the resource disparities that empower larger firms with legal and research resources to offer more detailed feedback than groups representing artists typically can contribute. Elsewhere<sup>1</sup> we have offered more general views on three foundational issues jointly with our friends at Artist Rights Alliance. In this comment, we seek to briefly reflect on a few specific matters. Rather than attempt to comprehensively reply to the full range of perspectives—disagreeable and agreeable, substantive and inflammatory, we seek instead to offer a handful of brief reflections on a small selection of interesting filings that touch on broader creative labor marketplace issues, drawing on our own experiences at the intersection of music, antimonopoly advocacy, and regulatory policy.

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<sup>1</sup> see Reply Comment of Artist Rights Alliance and Future of Music Coalition

Let's begin with the Federal Trade Commission.<sup>2</sup> While it may be unusual for FTC to weigh in on a USCO policy study, it is in this case highly appropriate and FMC concurs with FTC's appraisal of its authority on AI related and adjacent matters, and welcomes the Commission's helpful summary of creator feedback and interest in doing more to protect workers and other citizens from potentially unfair and anticompetitive uses of AI technology. Also enthusiastically independently endorsing the FTC's exercise of its statutory authority are our friends at Music Workers Alliance.<sup>3</sup> FTC may indeed have a role in protecting against AI works posing falsely as human created works as part of a broader transparency rulemaking, and is well positioned to take on other unfair and deceptive business practices. The fact that FTC doesn't have jurisdiction over copyright policy directly does not limit the FTC's ability to address issues related to how copyright is used and abused in areas where the Commission does have clear authority.

It is precisely concern about unfair business practices that leads us to concur with a comment from Writers Guild of America (WGA), which argues, "Legislators and regulators like USCO should also require AI trainers to seek affirmative consent from the human creators of such works, whether or not those creators are the copyright owners."<sup>4</sup> WGA goes on to describe the typical business structures of their industry which often separate creative workers from any ownership stake in the copyrighted work that results from their labor.

Music industry structures are more varied than film and TV writing; artist groups including FMC typically contend that sound recordings should not be considered "works for hire. Nonetheless, the labor market considerations that WGA illuminates in its comment are deeply relevant to musicians. MWA notes some of the historical reasons that union penetration is not as strong in the recording musician population<sup>5</sup> and thus collectively bargained labor contract protections are inadequate to address the range of labor considerations at issue. Musicians who own their own copyrights cannot get monopsonists like Spotify and Youtube, Meta, or Amazon to even sit down at the bargaining table.<sup>6</sup>

For us, this underscores that consent before ingestion must be sought from workers who contribute to sound recordings and compositions, not just the owners of those works. We further concur with the many filers who contend that opt in rather than opt out must be the

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<sup>2</sup> see Comment of Federal Trade Commission

<sup>3</sup> Comment of Music Workers Alliance, p. 4.

<sup>4</sup> Comment of Writers Guild of America West and Writers Guild of America East, p. 3.

<sup>5</sup>Comment of Music Workers Alliance, p. 4.

<sup>6</sup> This is an issue addressed by HR 5576, the Protect Working Musicians Act, which creates collective bargaining rights for a narrowly defined class of independent musicians who own their own copyrights in negotiations with dominant platforms and AI developers.

rule.<sup>7</sup> In light of the rapid proliferation of so many different AI companies apparently training their models on unlicensed datasets, sending endless opt out notices to every new firm would constitute a novel form of uncompensated labor imposed on artists of various mediums. That in turn amounts to a new barrier to entry for those considering creative careers.

Thoughtful analysis of industry structure offered by labor unions and creator groups stands in contrast to handwaving about “creative monopolies” offered by commenters like Fight For The Future. While we welcome serious discussion of the role of unchecked consolidation of ownership in driving dysfunction and exploitation, USCO should not be sidetracked by irrelevant complaints about DMCA requests or sampling law<sup>8</sup>, which are issues that intersect with corporate power but are much more complicated and nuanced than FFTF grasps. “Work for hire” is similarly a serious issue but FFTF’s comment imagines wrongly that copyrightability would offer leverage against the use of AI in works for hire and thus disincentivize the use of works for hire. We have good reason to believe this isn’t the case. If firms like Amazon, Google & Spotify wished to use cheaply created AI works for hire to replace human created work in algorithmically-driven delivery— their ability to profit from this simply does not rest on their ability to copyright these works. These firms don’t have to own copyrights to sell advertising against that material or include it in a subscription-based service. Nonetheless, we welcome FFTF’s contention that human authorship is necessary for copyrightability and see this as an encouraging sign of the breadth of consensus.

A much more rigorous comment is offered by Public Knowledge, but this comment too suffers from attempts to change the subject. PK argues that many of the bigger issues would be better solved by social safety nets and competition fixes: “Copyright cannot, and has never been able to, secure a living wage for the vast majority of creators. There is no reason to believe that this core problem can be fixed (or even meaningfully ameliorated) by simply adding ‘more copyright.’”<sup>9</sup>

It’s true that copyright alone can’t provide a living wage for most creators; copyright is one factor among many. FMC has long advocated for universal health care, for example, in addition to our copyright advocacy. However, PK fails to identify any party who they feel is “simply” seeking to “add” “more copyright.” What is evident is many commenters who instead argue that governments should not create new copyright or other IP exemptions that allow AI developers to exploit creations without permission or compensation. That isn’t “adding” “more copyright”, it’s simply refusing to “subtract” copyright.

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<sup>7 7</sup> See for example, comments by Music Artists Coalition, Black Music Action Coalition, Songwriters of North America,

<sup>8</sup> Comment of Fight For The Future, p. 4

<sup>9</sup> Comment of Public Knowledge.

And indeed there are a small number of powerful commercial interests in this proceeding that would simply have us subtract copyright if it gets in the way of their ability to make more money. USCO must reject this thinking.

Furthermore, we must move beyond narrow “less/more” binary thinking about copyright and recenter ourselves on the task of simply making copyright *better*—aligned with its public purpose and in that way, aligning the interests of human creative workers and human consumers.