



October 30, 2023

Ms. Suzanne V. Wilson  
General Counsel and  
Associate Register of Copyrights  
U.S. Copyright Office  
101 Independence Ave. SE  
Washington, DC 20540

Ms. Maria Strong  
Associate Register of Copyrights and  
Director of Policy and International Affairs  
U.S. Copyright Office  
101 Independence Ave. SE  
Washington, DC 20540

Re: Notice of Inquiry and Request for Comments on “Artificial Intelligence and Copyright,” Docket No. 2023-6

Dear Ms. Wilson and Ms. Strong:

Digital Media Association (“DiMA”) appreciates this opportunity to contribute to the U.S. Copyright Office’s (“Copyright Office” or “Office”) Notice of Inquiry (“NOI”) as it examines “Artificial Intelligence and Copyright.” DiMA represents the leading audio streaming services and innovators— Amazon, Apple Music, Feed.fm, Pandora, Spotify, and YouTube. Together these services connect millions of fans across the nation and around the world with essentially the entire history of recorded music, providing unique listening experiences and constantly innovating to strengthen the connection between artists and fans. While DiMA’s member companies differ in size and business model, the revolutionary services they have built rely on the guidance provided by the current U.S. copyright laws. This legal framework allows our members the flexibility that is critical to continue to innovate and develop global audio platforms that drive the recorded music industry’s revenues and have returned the music industry to growth. DiMA’s members are proud of the services they have built and their substantial efforts to provide legal access to music and reduce piracy while ensuring a dynamic and engaging experience for fans.

DiMA members encourage fans to legally engage with copyrighted content. Equally, DiMA members partner with rightsholders to protect that content online. As the data over the last decade shows, streaming has played a central role in the resurgence of the music industry<sup>1</sup> and we urge extreme caution with regard to any legislation or recommendations from the Office that may upend (even inadvertently) the reliability that existing copyright laws provide.

---

<sup>1</sup> See RIAA, *Year End Music Industry Revenue Report 2022* (Dec., 2022), available at <https://www.riaa.com/wp-content/uploads/2023/03/2022-Year-End-Music-Industry-Revenue-Report.pdf>.

In 2022, streaming revenue in the U.S. continued to grow by 7 percent to “a record high [of] \$13.3 billion in revenue,” accounting for nearly 84 percent of the total revenue of the U.S. recording industry, according to the RIAA’s year-end report.<sup>2</sup> The 2022 report notes that “[s]treaming continued to be the biggest driver of growth,” resulting in the seventh consecutive year of growth for music revenues, which grew by 6 percent (to \$15.9 billion) in 2022 after growth of 23 percent (to \$15.0 billion) in 2021.<sup>3</sup> The story is similar for music publishing revenues, with overall growth of 19 percent in 2022 to \$5.6 billion, with streaming at the heart of that increase.<sup>4</sup> Streaming has also been a central driver of successful music company IPOs,<sup>5</sup> billions of dollars of rights catalog acquisitions,<sup>6</sup> and major investments throughout the industry.

The state of the music industry in 2023 represents a true sea-change from the circumstances of just a decade ago, when the music industry was faced with declining revenues and struggling with how to get people to pay for music. DiMA’s members and their rightsholder partners changed that trajectory.<sup>7</sup>

DiMA member companies have unquestioningly set the gold standard in working with rightsholders to ensure fans can discover and listen to the music that they love and access what they want to hear. DiMA’s members have used AI for years to improve the experience between artists and fans, including through artist discovery tools, playlist creation, and unrivaled recommendation engines.

Copyright law was purposefully created to be technology neutral.<sup>8</sup> This has served all stakeholders in the copyright ecosystem well for decades and has allowed for constant innovation – innovation that has established the United States as a leader in copyright-related industries on a global scale.

DiMA’s position on AI centers around four key principles. First, the digital music industry has long been vexed by data challenges and, while important industry progress has been made to

---

<sup>2</sup> “Streaming revenue” includes paid subscription services, ad-supported on-demand services, digital and customized digital radio in addition to music license revenues from social media sites and digital fitness apps, and others. RIAA, *Year-End 2022 RIAA Revenue Statistics* (Dec., 2022), available at <https://www.riaa.com/wp-content/uploads/2023/03/2022-Year-End-Music-Industry-Revenue-Report.pdf>.

<sup>3</sup> RIAA, *Year End Music Industry Revenue Report 2022* (Dec., 2022), available at <https://www.riaa.com/wp-content/uploads/2023/03/2022-Year-End-Music-Industry-Revenue-Report.pdf>.

<sup>4</sup> Billboard, *U.S. Music Publishing Revenue Grew 19% to \$5.6B Last Year* (June 14, 2022), available at <https://www.billboard.com/pro/music-publishing-revenue-2022-united-states-nmpa/>.

<sup>5</sup> Billboard, *Why UMG’s Public Debut Boosted Warner & Other Music Stocks Too* (Sept. 21, 2021), available at <https://www.billboard.com/pro/universal-music-public-listing-warner-stocks/>.

<sup>6</sup> MusicBusiness Worldwide, *At Least \$5 Billion was Spent on Music Rights Acquisitions in 2021. Could 2022 be Even Bigger?* (Jan. 10, 2022), available at <https://www.musicbusinessworldwide.com/at-least-5-billion-was-spent-on-music-catalog-acquisitions-in-2021-could-2022-be-even-bigger/>.

<sup>7</sup> “Over six in ten (63%) that have stopped illegally downloading music now use streaming services.” Russell Feldnman, *Number of Britons illegally downloading music falls*, YouGov (Aug. 2, 2018), available at <https://yougov.co.uk/topics/arts/articles-reports/2018/08/02/number-britons-illegally-downloading-music-falls>; see also Joost Poort et al., *Global Online Piracy Study*, 48, Univ. of Amsterdam (July 2018), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3224323](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3224323) (in 13 countries studied by the University of Amsterdam, streaming is the most commonly used channel to access music, ahead of digital downloads and physical copies).

<sup>8</sup> See 17 U.S.C. § 102.

address these issues,<sup>9</sup> generative AI has the potential to be a force multiplier to help address those data challenges. (Conversely, new data requirements relating to AI-generated content could confound these challenges if not carefully tailored.) Second, and related to the data issues, any potential regulation or legislation in the AI space must recognize the fundamental importance of properly assigning the correct responsibilities to the correct actors. DiMA's members must not be tasked with being the arbiter of what is or is not created by or using AI, the enforcer of AI-related mandates (that are reliant on the action or inaction of others, for example, regarding data labeling), or the target of infringement or other claims simply because AI material appears on their platforms or is used by others to train AI systems. Third, DiMA members have beneficial and robust partnerships with rightsholders that should continue to be leveraged to work through AI-related concerns. And fourth, music streaming is ultimately a consumer-driven industry. Any discussions of potential policy must not undermine consumer choice, for instance by increasing the barriers to entry into the market, or by otherwise limiting access to music that fans legally wish to hear.

DiMA's comments will focus on matters that are within the U.S. Copyright Office's jurisdiction. We believe that we must not conflate copyright and non-copyright matters as AI policy is developed, to ensure that any policies properly target and scope the issue they are meant to address.

#### Responses to Questions:

##### ***General Questions:***

*Questions 1 & 2: What are your views on the potential benefits and risks of generative AI technology? Does the increasing use or distribution of AI-generated material raise any unique issues for your sector or industry as compared to other copyright stakeholders?*

Questions about the use and impact of AI technology, its applications, and how they intersect with existing law are an area of focus for music industry stakeholders, including DiMA and our member companies. While questions 1 and 2 of the NOI are specific to generative AI, we urge the Office to also acknowledge the use of AI more generally, including its use as a beneficial tool that can and has been used to enhance music and the music industry.

The NOI rightly observes that “over the last year [AI] systems and the rapid growth of their capabilities have attracted significant media and public attention.”<sup>10</sup> But AI has been used as a tool in the music industry for many years. As the technology continues to rapidly evolve, it has the ability to assist creators (including professional human musicians and songwriters) and improve the way music is created, distributed, and consumed. AI technology has been used to provide unique features and personalize music streaming services for fans, create new works, and provide new tools to creators.

---

<sup>9</sup> See DDEX, “a standards setting organisation focused on the creation of digital value chain standards to make the exchange of data and information across the music industry more efficient,” available at <https://ddex.net/>.

<sup>10</sup> FRN Vol. 88, 167 at 59942 (Aug. 20, 2023).

Music has long been at the forefront of potentially disruptive technology, and the development of new technology has often been met with initial concern by many in the music industry. However, the success of today's streaming-driven music industry is proof positive that technical advancement can and does lead to improvements that enrich creator and consumer experiences, and enhance operational efficiencies. When evaluating AI and the music industry broadly, DiMA believes that the further potential and new uses for AI technology are promising and still being discovered.

Importantly, there is no one type of AI. Artificial intelligence spans a broad range of very different kinds of technologies, from recommendation algorithms that are commonplace across a range of businesses, to systems that generate new creative content. We believe this study, future Copyright Office discussions, and ongoing Congressional engagement, are key to helping to highlight the different types of AI and its uses, and providing greater context for more fruitful and productive conversations.

One critical issue within the music industry is the ongoing data challenges that may be relatively unique in scale and scope as compared to other creative industries. Digital technology, even outside of the AI context, has lowered the barriers to entry for the creation of music over the past decades, and DiMA's members have built platforms that allow for essentially any creator to reach a global audience. This incredible combination of forces has resulted in the creation of more music on a daily basis than ever before. That influx of music, along with historic data challenges that have been well documented in other contexts,<sup>11</sup> has led to persistent challenges in accurately identifying works, creators, and rightsholders in order to efficiently and correctly process royalties at the speed of digital commerce.

Progress is being made on this front, including a clear recognition that solutions to these data challenges cannot simply be found by mandating additional actions by streaming services, and that creators and rightsholders are best positioned to properly identify themselves and their works. The potential for AI-generated works to amplify these data challenges should not be underestimated. These challenges are not solely about royalty processing, they also relate to questions of copyrightability when human creators use AI tools in their process and a wide range of other issues. And they are challenges recognized by rightsholders and streaming services alike.<sup>12</sup> Any potential regulatory or legislative changes in response to AI-generated works must not only acknowledge these data challenges but provide clear, explicit, consensus-based, and efficient solutions.

---

<sup>11</sup> See *Report of the Senate Judiciary Committee on the Music Modernization Act*, 115<sup>th</sup> Congress, 2d Session, Calendar No. 569, Report 115-339, available at <https://www.govinfo.gov/content/pkg/CRPT-115srpt339/html/CRPT-115srpt339.htm>.

<sup>12</sup> See Testimony of Tim Cohan (Peermusic) the U.S. Copyright Office hearing on "Copyright and Artificial Intelligence Music and Sound Recordings Listening Session," May 31, 2023, available at <https://www.copyright.gov/ai/transcripts/230531-Copyright-and-AI-Music-and-Sound-Recordings-Session.pdf> (it is difficult for publishers to know whether the musical works being provided by writers to publishers are copyrightable in light of the Office's guidance on registrability of AI-generated works).

*Question 4: How important a factor is international consistency in this area across borders?*

Most of DiMA's members operate on a global scale. In fact, the ability of streaming to seamlessly deliver music to fans around the world irrespective of geographic boundaries is one of the foundational elements of streaming's success. Yet the U.S. model of technology-neutral and flexible copyright laws is a world-class standard that we should continue to strongly protect. Any change that diminishes these qualities of the U.S. standard can come at a cost. These costs could include degradation of the consumer music streaming experience to the detriment of all stakeholders in the music ecosystem – an outcome that must be avoided to protect the vitality of our industry.

*Questions 5 & 31: Is new legislation warranted to address copyright or related issues with generative AI? If so, what should it entail? Should Congress establish a new federal right, similar to state law rights of publicity that would apply to AI-generated material? If so, should it preempt state laws or set a ceiling or floor for state law protections?*

DiMA members believe that existing U.S. copyright laws, including those addressing (1) copyrightability (including originality, *de minimis* uses, scenes a faire, and the idea/expression dichotomy); (2) infringement (including questions of unlawful appropriation, substantial similarity, and causation); and (3) platform safe-harbors are well-equipped to address novel issues raised by AI technology. There are also laws at the state level that protect the right of publicity including one's name, voice, and likeness. Accordingly, DiMA does not believe that new legislation to amend the copyright law is necessary or appropriate at this time. Different legal doctrines as well as the use of contracts can and should be employed to consider questions arising from AI-generated music, but existing copyright law should not be stretched or changed to address questions that properly arise under laws relating to trademark, right of publicity, or unfair competition.

The resurgence of the music industry, and the innovations that sparked fans to use streaming services to legally access music, was never guaranteed. But it was made possible, in no small part, because of a legal framework that aligns the incentives of DiMA's members and their rightsholder partners to vigorously identify and protect copyrighted material by employing the technical measures that best fit each unique service. Notably, this legal framework was achieved through reliance on the existing U.S. copyright laws and through highly successful industry partnership and innovation, which continue to be leveraged even as new challenges – such as AI in music – advance. The aligned incentives of streaming services and rightsholders have and will continue to lead to simultaneous benefits to consumers, creators, rightsholders, and service providers discussed above.

At a minimum, Congress should ensure that content related matters have consistent standards by preempting state and common laws where doing so would ensure consistency in application and reduce operational challenges and improve the customer experience. Additionally, DiMA opposes the creation or expansion of new notice-and-takedown system(s) that would expand liability or impose monitoring obligations for AI-related activity. The structure of the existing laws was created deliberately by Congress to carefully balance protections for rightsholders against the burdens on services providers. To alter the existing laws in this regard would

undermine the existing balance and doing so may have (whether direct or unintended) impacts on the success story of music streaming and its role in revitalizing the music industry.

A federal right of publicity presents both challenges and opportunities. DiMA strongly believes that any such right should not be deemed a form of “intellectual property,” nor should it be added to the existing bundle of enumerated copyright rights. Furthermore, any new federal right of publicity must not compound the data challenges already prevalent in the music industry. DiMA welcomes the opportunity to engage with Congress regarding whether a federal right of publicity may be beneficial as it relates to AI and music, but at its core, a federal right of publicity must not be conflated with copyright law.

Lastly, consumers must not be restricted in the music they consume (subject to applicable laws), regardless of whether AI was involved in its creation. Streaming has empowered consumers in previously unimaginable ways, leaving them as the ultimate arbiter of the economic value of a work, through their listening choices. The entire industry benefits when streaming services offer listeners the music they want to hear and return that economic benefit to rights holders. No legislative or regulatory efforts related to music and AI should interfere with this foundational pillar of consumer choice that has been central to the global success of music streaming, and that has created significant benefits for all stakeholders in the music industry.

*Question 25: If AI-generated material is found to infringe a copyrighted work, who should be directly or secondarily liable?*

Issues of potential copyright infringement related to AI-generated material involve highly fact-specific questions and will depend on the particular circumstances in each case. To the extent this question is about the scenario in which the outputs of a generative AI model are found to be infringing, such findings must not create direct or secondary liability for music streaming services for merely distributing the music to fans.

As an initial matter, there is often no way for services to know whether any given sound recording or musical work was created with the use of AI, let alone whether such use resulted in copyright infringement. Streaming services must not be made the arbiters of legal status of music delivered to them by third parties, whether due to the use of AI or otherwise. Moreover, the use of a particular streaming services by a third party to train an AI model likewise should not lead to a finding of liability for the streaming service in the event the AI model is found to have engaged in infringing conduct. There is often no way for services to know whether AI is training from their platforms, or how to block any such use at a technical level. While services work to detect and prevent uses that violate their terms of use, services must not be held liable for the actions of third parties. Instead, existing copyright laws and precedent should be the default framework with which to analyze these complex, fact-specific questions.

*Questions 28, & 28.1: Should the law require AI-generated material to be labeled or otherwise publicly identified as being generated by AI? If so, in what context should the requirement apply and how should it work? Who should be responsible for identifying a work as AI-generated?*

Discussions around AI – particularly as they relate to music – must take into account existing shortcomings in music data including how data originates and flows through the ecosystem, a topic on which DiMA members have extensive experience. As noted above, there have long been data challenges in the music space, including with ensuring that accurate and complete metadata identifiers are included in recordings at the time of distribution. These challenges existed before streaming, continue to exist today, and are highly relevant to discussions of the treatment of AI-generated music. Music streaming services should not be – and cannot be – expected to independently ascertain or determine what is or is not AI-generated. It is not possible with the existing data, and any new data must come from the copyright owners and creators. Data accountability must exist throughout the chain from creation to distribution.

While DiMA members do not believe that all AI works must be publicly labeled as such, DiMA members agree that labeling of music should not be misleading, and support efforts to facilitate adequate identification or information regarding music via metadata, including for AI-related creations. DiMA firmly believes that the responsibility to identify and/or label music via metadata rests with the rightsholders or owners of those works or creations. Any obligation to include labels or identifiers related to whether music includes AI-generated material must require them to be built in before they reach the streaming services, in a way that services can ingest and deploy in their own systems. There is not a meaningful or practicable way for streaming services to identify these works on an individualized basis, let alone at scale, nor is it appropriate to make the service, rather than the source of the work, responsible for ascertaining how a work was made. Rather, the responsibility of streaming services is to ingest data provided to them and be a good steward of that data as it moves through the supply chain.

In conclusion, we thank the U.S. Copyright Office for requesting stakeholder input on such important questions regarding AI and copyright law. We look forward to continuing this valuable dialogue as the Office continues its consideration of these issues. We would be glad to provide any additional information and welcome any questions or comments that you may have.

Sincerely,

A handwritten signature in dark ink, appearing to read "Kirsten Donaldson", written in a cursive style.

Kirsten Donaldson  
Vice President, Legal  
Digital Media Association (DiMA)