1. <u>Introduction</u>

Who We Are. Celebrating over 80 years of service to songwriters, composers, music publishers and businesses, Broadcast Music, Inc.® (BMI®) is a global leader in music rights management, serving as an advocate for the value of music. BMI represents the public performance rights in over 22 million musical works created and owned by more than 1.4 million songwriters, composers, and music publishers. The Company negotiates music license agreements and distributes the fees it generates as royalties to its affiliated writers and publishers when their songs are performed in public. In 1939, BMI created a groundbreaking open-door policy becoming the only performing rights organization to welcome and represent the creators of blues, jazz, country, and American roots music. Today, the musical compositions in BMI's repertoire, from chart toppers to perennial favorites, span all genres of music and are consistently among the most-performed hits of the year.

2. <u>Comments</u>

AI Perspective Overview. *(Questions 1-2, 5.)* BMI has engaged with our affiliates in direct conversations about how they use Artificial intelligence ("AI") in their creative process and the potential impact on their livelihoods. AI is a key concern for BMI affiliates. Although AI tools have been used by the songwriting community for years and will continue to be used in the future, recent rapid technological advances to AI raise new concerns. BMI affiliates recognize the potential for AI to disrupt the industry and displace creators in the process. The development and deployment of AI systems should be done responsibly, ethically, and respectful of the songwriters, artists, creators, and performers who have shaped our history and will, as they have always done, chart the next chapters of human experience.

At its core, we believe that the approach to responsible AI innovation and deployment requires a human-centric approach. This is why BMI has signed onto the Human Artistry Campaign. *See* https://www.humanartistrycampaign.com/. The Human Artistry Campaign calls for policy makers, AI developers, and those that deploy AI to take into account the following principles:

(i) technology has long empowered human expression, and AI will be no different;

(ii) human created works will continue to play an essential role in our lives;

(iii) use of copyrighted works and the use of voices and likenesses of professional performers requires authorization and free market licensing from all rights holders;

(iv) governments should not create new copyright or other IP exemptions that allow AI developers to exploit creations without permission or compensation;

(v) copyright should only protect the unique value of human intellectual creativity;

(vi) trustworthiness and transparency are essential to the success of AI and protection of creators; and

(vii) creators' interests must be represented in policy making.

Ethical use of AI can help foster creativity and expand economic opportunities in the creative industries, including for individual creators by, for example, serving to assist ideation, creating authorized versions of a person's voice in multiple languages to increase the audience for the

particular audio work using that person's voice, and as a means to reduce the time to edit and finalize human creative expression.

However, jobs in each of these areas are under threat by the development and deployment of unethical and unfair AI systems that ingest copyrighted works without authorization, trade on a person's identity and good will without their consent, and provide output that competes with or dilutes a person's creative expression, good will, and/or identity.

To mitigate against these harms, U.S. policy should promote strong protection of human rights, including copyrights, as a key pillar of its AI policy. This includes:

- requiring AI developers to obtain appropriate licenses or authorization to ingest or otherwise use materials that are copyrighted or that implicate a person's rights of publicity or privacy;
- requiring adequate record-keeping and auditing; and
- ensuring that appropriate transparency is maintained.

In addition, the U.S. should promote and invest in proper education on the ethical development and deployment of AI, including education on copyright law and the importance of seeking authorization before ingesting copyrighted materials or materials that implicate a person's rights of publicity or privacy.

The United States Copyright Office ("Copyright Office") holds a pivotal role in implementing such an AI policy. We applaud the Copyright Office's decisions to reject registration application for works that were created entirely or mostly using AI. However, it is critical that the Copyright Office update its regulations to address AI as it relates to copyright and to provide the creative community with proper guidance, as discussed in more detail below.

Transparency and Recordkeeping. *(Questions 15-17.)* The Copyright Office should require AI developers and deployers to keep accurate and meaningful records, ensure that those records are periodically audited, disclose appropriate information to the public about their AI systems, and label content solely generated by their AI systems.

Proper record-keeping should include complete documentation establishing (i) what materials were ingested to develop the AI system (or to fine tune or adapt a pretrained AI system) and in what manner, (ii) the source of such materials, including whether any licenses or authorizations were sought or obtained to authorize such use and copies of those licenses or authorizations, (iii) the individual(s) and/or organization(s) responsible for the AI system (including who is responsible for ingesting the materials, who is responsible for any foundational AI model, who is responsible for any fine tuning of the AI model, who is deploying the AI system, etc.), (iv) risk assessments concerning the potential misuse and abuse of such a model, and (v) what parameters and processes were used, and what decisions were made, during the AI system development and deployment.

Such record-keeping should occur at various stages of the AI development and deployment process, including when an AI model is developed, when it is fine-tuned or adapted for a particular purpose or use case and when the model is deployed. Consistent with generally accepted record-keeping rules in other contexts, these records should be maintained and updated throughout the AI

system's development and deployment lifecycle, and for a period of at least seven years following its discontinuance, and the keepers of such records should be bound to produce them when it is determined to be appropriate by an applicable government agency or court.

Additionally, these records should be periodically audited. These audits should include, among other things, checks on the origination of data sources (including checks for whether those data sources include protected intellectual property), AI validation checks that include checks for information leakage (which could result in a security breach, personal data breach, or infringement of copyright), checks on transparency and human oversight during deployment, and checks on long-term consequences of AI deployment, including its social impact and model drift.

Content generated solely by AI should be labeled clearly as such. Such labeling should also either describe all inputs and methodology used to create that content or include a link or other mechanism that permits the public to access such information. This will help inform consumer choices and protect creators and rights holders. To the extent technical standards are needed or desired to implement requirements for record-keeping, auditing, or transparency, all of the relevant stakeholders, including creators and copyright holders, should be at the table for the development of such standards. Such standards should not be left solely to AI developers.

The Copyright Office should consider adopting a regulatory framework requiring registration of AI systems before they may be made available to the public for use. Such a framework should include not only registration requirements, but also the record-keeping, auditing, and transparency obligations described above. It should also permit private parties to bring a cause of action against the AI developer or deployer in the event the developer or deployer fails to comply with their obligations.

In addition to regulating other high-risk, foundational, or highly capable AI systems, such a regulatory framework should also apply to AI systems that mimic an individual's voice, image, or identity, or provide the capability to clone an individual's voice, image, or identity without the consent of the individual.

Training and Licensing. *(Questions 6-14, 28-29.)* BMI is especially concerned about AI developers and deployers taking our affiliates' copyrighted works, or their name, image, likeness, or voice, without their authorization or consent. This is happening not only with large language models and other generative AI systems that have ingested our affiliates' creative expression and generated content that directly competes with our affiliates' works, but also with vocal cloning models that let others create synthetic, unauthorized speech or music that mimics artists' voices without their consent or authorization. In addition to consent or authorization, disclosure should be required to inform purchasers or other users that the new content is imitative rather than authentic.

Creators do not want their work to be used without consent. They want AI companies to obtain permission before using their Intellectual Property, and they want the ability to opt in or opt out of having their works be included in generative AI training. If they decide to opt in and let their work be used for AI training, creators deserve to be compensated and credited.

The Copyright Office should require AI developers to first obtain appropriate licenses and authorizations in connection with any materials they desire to copy and ingest for AI development purposes before engaging in such copying or ingestion, and to require AI developers to refrain from engaging in any such copying or ingestion unless and until they have received such licenses and authorizations. In addition, AI developers and deployers should be cognizant of whether their use of the ingestion materials, or the AI model development, deployment, or output, implicate a person's rights of publicity, including rights to one's name, image, voice, and likeness, or a person's right of privacy. If the ingestion materials or their proposed use implicate any such rights, AI developers should first obtain appropriate licenses, consents, and authorizations from the applicable rights holders before ingesting or using such materials.

The Copyright Office should address concerns with the lack of quality data—or any data at all—by prioritizing the use of high-quality materials for ingestion into AI models. The use of high-quality materials for ingestion is facilitated through marketplace licenses among the creators and owners of such materials and those AI developers that seek to use such materials for their AI development and deployment purposes. Creators and owners of high-quality materials will continue to make high-quality materials only if they have assurances that they have the right to control whether and how those materials are used for AI ingestion and are appropriately compensated for such use of those materials.

Failure to respect the rights of the creators and owners of copyrightable content, or the rights of performers in their name, image, likeness, or voice, will lead to the degradation of materials available for AI ingestion, loss of human content producers, and ultimately to poor performance of AI models themselves. The quality of our nation's cultural output will decline if we continue to rely on AI systems made by AI developers and deployers who refuse to pay for the use of content. This would harm not only the creative community but would also lead to lasting negative impacts on our nation's cultural identity.

Likeness. (Questions 30-34.) BMI affiliates have expressed particular concern about unauthorized vocal cloning and the misuse of a person's likeness. BMI affiliates see potential for the use of AI in producing demos more efficiently and pitching songs to artists, for example, using a clone of the artist's voice. However, more protection is needed. As discussed in more detail above, AI-generated material that features the name, image, or likeness, including vocal likeness, of a particular person should be subject to required permissions from the artist and fair compensation. Additionally, a human artist's right to their own voice and likeness should be legally recognized. Specifically, a person's name, image likeness, and voice should have federal protection.

3. <u>Conclusion</u>

We thank the Copyright Office for the opportunity to share these views and look forward to continuing to advocate on behalf of BMI affiliates for the promotion of human-centric, trustworthy, and ethical AI development and deployment.