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VIA WEB FORM

Suzanne V. Wilson, Esq.
General Counsel and Associate Register of Copyrights
United States Copyright Office
www.regulations.gov

Comments of Music Reports, Inc. re: Docket No. 2023-6 – Artificial Intelligence and Copyright

Dear Ms. Wilson:

Music Reports, Inc. (“Music Reports”) welcomes this opportunity to respond to the Copyright Office’s notice of inquiry and request for comment regarding Artificial Intelligence and Copyright in relation to Music Reports’ platform for music rights administration.¹ I write today as Music Reports’ Vice President and General Counsel and am authorized to submit this response on behalf of the company.

Introduction: Music Reports’ Interest in the NOI

Music Reports is the largest provider of comprehensive, objective music copyright ownership information and rights administration in the world and believes it may be invaluable to any future system for the licensing and administration of generative artificial intelligence platforms (herein, “AI Platforms”), especially those involving the use of musical compositions.

Our proprietary software and information technology platform supports a myriad of licensing, royalty reporting, and micropayment processing services across all types of media ownership rights. Founded in 1995, Music Reports developed and operates Songdex®, the world’s largest registry of music copyright and related business information, containing detailed, curated, relational data on tens of millions of songs, recordings, and their owners.

While perhaps best known for the “mechanical” license administration and royalty accounting capabilities that represent a small but significant share of its business, Music Reports is widely diversified and provides copyright administration, software-as-a-service platforms, and consulting services to clients in digital media, television, visual arts, and other intellectual property-driven industries. Importantly, it provides these services in every country of the world and with respect to a wide range of rights types, including public performance,

¹ See 88 Fed. Reg. 59,942 (Aug. 30, 2023) (the “NOI”).

synchronization, print, and others. Our company is thus broader and more diversified than any other music rights administration organization in the world.

Our sophisticated information technology development capabilities are a continuing hallmark and have transformed the administration of licenses across these industries. For example, Music Reports' Cuetrak™ platform has automated and streamlined accounting for music use in broadcast television and streaming VOD platforms, transforming traditional "cue sheets" through the use of Songdex data and analytics and promoting unparalleled accuracy and transparency in such accounting.

Music Reports processes billions of royalty transactions monthly and administers more than \$500 million in yearly royalty allocations to music and sound recording copyright owners, including composers, music publishers, and other rights owners. Each year, Music Reports issues such payments in respect of hundreds of thousands of rights owners around the world pursuant to a wide range of voluntary direct licenses as well as statutory compulsory licenses. Music Reports' clients include virtually all the major digital music providers ("DMPs") headquartered in the United States as well as numerous DMPs based and/or operating in markets outside the United States, not to mention radio and television broadcasters, consumer products companies, and commercial music services.

Music Reports now has nearly three decades' experience in "matching" sound recordings to the musical works they embody,² and in accurately identifying, locating, and accounting to the owners of fractional shares of such works.³

In sum, Music Reports long ago amassed the infrastructure, expertise, and efficiencies that would be required to license and administer musical composition and sound recording rights at the scale required by emerging AI Platforms. Accordingly, Music Reports is well-positioned to offer these comments, and thanks the Copyright Office for providing this opportunity.

Music Reports' Comments on the Subjects of Inquiry

The NOI seeks public comment on a broad range of questions. Music Reports offers these responses solely to the specific numbered questions indicated below.

10. If copyright owners' consent is required to train generative AI models, how can or should licenses be obtained?

Music Reports takes no position on the question *whether* such consent is required but provides the following answers *assuming for the sake of argument that it is*.

² See U.S. Patent No. 10,157,434, "Methods and Systems for Identifying Musical Compositions in a Sound Recording and Licensing the Same."

³ See William Colitre, "Metadata for Rights Management: A Guide for Legal Practitioners," as printed in the International Association of Entertainment Lawyer's Annual Book, "Keeping It Honest: Transparency and Legal Issues in the Entertainment Industry" (© 2019 IAEL).

10.1. Is direct voluntary licensing feasible in some or all creative sectors?

Yes, unequivocally. Voluntary licensing is feasible at least for musical compositions and sound recordings. Although some licensees may prefer a compulsory statutory blanket license or extended collective license because they want to enjoy maximum access to the copyrighted works of others, such regimes are not essential to the commercial availability of vast and varied repertoires to AI Platforms. Music Reports operates today as a rapid, efficient mechanism for the voluntary licensing of the music used to operate massive commercial music services on behalf of a long list of leading brands⁴, including through “opt-in” licenses made available to music rights owners via an online portal. The basis of any such capability is a comprehensive registry of music rights ownership and administration information, and for this we rely on our proprietary Songdex[®] registry.⁵ In a pre-Internet world, finding and transacting separately with every rights owner was prohibitively expensive and time consuming. But in a networked world, many-to-many transactions happen in countless domains every day, including in music.⁶ Moreover, voluntary licenses allow parties to offer and accept terms that are more precisely in line with their needs than any “one-size-fits-all” compulsory license could ever be, and are better adapted to ever-changing business conditions.

10.2. Is a voluntary collective licensing scheme a feasible or desirable approach? Are there existing collective management organizations that are well-suited to provide those licenses, and are there legal or other impediments that would prevent those organizations from performing this role? Should Congress consider statutory or other changes, such as an antitrust exception, to facilitate negotiation of collective licenses?

Like statutory licensing, *collective* licensing is typically desired by licensees because it is not just feasible but expedient. But collective licensing is inherently anticompetitive and existing collective management organizations (“CMOs”) for music have repeatedly demonstrated their tendency to use their collective power to the detriment of both their licensees and their constituent authors.⁷ Having been organized to help ‘many buyer/many seller’ markets function in a pre-computerized world,⁸ CMOs have largely outlived the need for antitrust exemption,⁹ especially in contexts involving digital media where full census, as

⁴ Representative client list available at: www.musicreports.com.

⁵ See www.songdex.com.

⁶ Examples outside of music include the Uber, AirBnB, and Etsy platforms; examples in music other than Music Reports’ platform include Bandcamp (www.bandcamp.com/), Splice (www.splice.com) and Beatport (www.beatport.com).

⁷ See, for example, the repeated conclusions of successive reviews of the ASCAP and BMI Consent Decrees by the Department of Justice available at <https://www.justice.gov/atr/antitrust-consent-decree-review-ascap-and-bmi-2019>.

⁸ See <https://www.cisac.org/services/education-program/collective-management/organisations>.

⁹ See Memorandum of the United States in Support of The Joint Motion to Enter Second Amended Final Judgment (September 4, 2000) at Footnote 10 (“Technologies that allow rights holders and music users to easily and inexpensively monitor and track music usage are evolving rapidly. ***Eventually, as it becomes less and less costly to identify and report performances of compositions and to obtain licenses for individual works or collections of works, these technologies may erode many of the justifications for***

opposed to sample-based proxy, reporting is not only feasible but is practiced every day on numerous platforms.¹⁰ In fact, CMOs are so poorly suited by their history and infrastructure to deal with the volume of today's digital media services that they are typically forced to outsource their administrative functions to third party providers.¹¹ They have proven incapable of efficiently administering the kinds of high-volume and complex transactions already demanded by AI Platforms, and certainly should not be granted monopolies to do so. Congress emphatically should not consider statutory or other changes—especially not an antitrust exemption—that would facilitate or prioritize collective licenses. In any case, authors of musical compositions and sound recordings who wish to avail themselves of any perceived benefits of collectivism have a wide range of specialist administrators to choose from¹² and should not be compelled by law or policy to join any one collective.

10.3. Should Congress consider establishing a compulsory licensing regime? If so, what should such a regime look like? What activities should the license cover, what works would be subject to the license, and would copyright owners have the ability to opt out? How should royalty rates and terms be set, allocated, reported and distributed?

No. Compulsory, statutory, or extended collective license regimes contravene authors' exclusive rights, negating the "consent" element of authors' oft-repeated requests for "consent, credit, and compensation."¹³ Any compulsory licensing regime the U.S. Congress could offer would be limited to the borders of the United States, leaving AI Platforms to find solutions for licensing and administration for the rest of the world. Worse, those platforms would be left to manage the rest of the world without the benefit of the economy of scale afforded by this country's massive domestic economy—while simultaneously undermining U.S. companies' opportunity to use that economic base to support their efforts to build a market-based solution at the global scale AI Platforms need.

10.4. Is an extended collective licensing scheme a feasible or desirable approach?

collective licensing of performance rights by PROs. The Department is continuing to investigate the extent to which the growth of these technologies warrants additional changes to the antitrust decrees against ASCAP and BMI, ***including the possibility that the PROs should be prohibited from collectively licensing certain types of users or performances.*** *emphasis added*).

¹⁰ See Murray Stassen, ON-DEMAND AUDIO STREAMS GREW 13.5% TO REACH 616.5BN IN THE US IN H1...AND 5 OTHER KEY STATS FROM LUMINATE'S MIDYEAR REPORT, *Music Business Worldwide* (July 12, 2023) available at: <https://variety.com/2022/music/podcasts/music-catalog-sales-explained-strictly-business-podcast-1235292005/>.

¹¹ For example numerous CMOs depend on the services of BMAT (www.bmat.com/cmo) and ICE (<https://www.iceservices.com/services/>), and at least sixteen Latin American CMOs rely on Back Office Music Services (www.backoffice-ms.com).

¹² Examples, in addition to at least five performance rights organizations operating in the United States alone (ASCAP, BMI, SESAC, GMR, and Alltrack), include special purpose print rights administrators such as Hal Leonard, Alfred Music, and Faber Music, and "digital mechanical" administrators such as Audiam and Word Collections, not to mention at least 33,000 other publishing administration companies operating in the United States.

¹³ See Lucy Knight, AUTHORS CALL FOR AI COMPANIES TO STOP USING THEIR WORK WITHOUT CONSENT, *The Guardian* (July 20, 2023), available at: <https://www.theguardian.com/books/2023/jul/20/authors-call-for-ai-companies-to-stop-using-their-work-without-consent>.

No, extended collective licensing is neither feasible or desirable in the United States. Unlike some jurisdictions where a single quasi-governmental CMO exists on which an extended collective license could be based, the United States takes a competitive market approach to collective rights management. This market-based competition has generally favored rights owners who have seen collections increase and member services improve as competition has increased in recent years, but it means that there is no single CMO to which an extended collective license can be entrusted. In any case, extended collective licensing is not desirable, as it combines the worst anticompetitive tendencies of CMOs with the evisceration of rights owner agency that stems from statutory compulsory licensing.

10.5. Should licensing regimes vary based on the type of work at issue?

Yes, licensing regimes should vary based on the type of work at issue. A precondition for any licensing and administration system is a registry of works subject to license. Such a regime for music would have to comprise both a registry of sound recordings and the underlying musical compositions embodied in such sound recordings (if applicable). Such registries are notoriously difficult to construct and maintain, especially since musical compositions in particular tend to be severally- or fractionally-owned as well as actively traded in a secondary market.¹⁴ Music Reports has risen to this challenge by building and managing the Songdex® registry. However, we do not have a corresponding ownership registry of all books or all software publishers, or all owners of audiovisual works. By the same token, it is unlikely anyone who operates a registry of those other types of authorship has a registry of music rights that is as complete or as broad as Songdex. Finally, AI Platforms are often media specific, such as those created for image generation, music creation, and text creation, which would each have different training set requirements. Therefore, it is logical that, unless some form of federated licensing regime should be constructed, licensing regimes should be separate and vary by type of work.

Music Reports thanks the Copyright Office for providing the public with this opportunity to comment on this important topic, and respectfully submits these comments for consideration.

Sincerely,

MUSIC REPORTS, INC.

/s/

William B. Colitre
Vice President & General Counsel

¹⁴ Glenn Peoples, MUSIC CATALOGS ARE WORTH MORE AS STREAMING GROWS—HERE'S WHY, *Billboard* (November 1, 2022) available at: <https://www.billboard.com/pro/song-recording-catalogs-worth-more-streaming-grows-why/>.