

MUSIC CREATORS

MCNA

NORTH AMERICA
5120 Virginia Way, Suite C22
Brentwood, TN 37027
615 742 9945

December 6, 2023

BEFORE THE
U.S. COPYRIGHT OFFICE

Artificial Intelligence and Generative
Artificial Intelligence (GAI)

Docket No. 2023-6

**REPLY COMMENTS OF SONGWRITERS GUILD OF AMERICA (SGA),
SOCIETY OF COMPOSERS & LYRICISTS (SCL), AND
MUSIC CREATORS NORTH AMERICA (MCNA)**

I. Statements of Interest

The following Reply Comments are respectfully submitted by the signatory organizations Songwriters Guild of America, Inc. (“SGA”),¹ Society of Composers & Lyricists (“SCL”),² and Music Creators North America (“MCNA”),³ and by the individual music creators Rick Carnes,⁴ Ashley Irwin⁵ and Eddie Schwartz⁶ (referred to collectively herein as the “Independent Music Creators”).”

SGA is the longest established and largest music creator advocacy and copyright administrative organization in the United States run solely by and for songwriters, composers, and their heirs. Its positions are reasoned and formulated independently and solely in the interests of music creators, without financial influence or other undue interference from parties whose interests are in conflict with those of songwriters, composers, and other authors of creative works. Established in 1931, SGA has for 92 years successfully operated with a two-word mission statement: “Protect Songwriters,” and continues to do so throughout the United States and the world. SGA’s organizational membership stands at approximately 4500 members. SGA is

¹ <https://www.songwritersguild.com/site/index.php>

² <https://thescl.com/>

³ <https://www.musiccreatorsna.org>

⁴ <https://www.songwritersguild.com/site/rick-carnes>

⁵ <http://www.ashleyirwin.com/bio.html>

⁶ <https://www.musiccreatorsna.org/mcna-executive-eddie-schwartz/>

represented by signatory Rick Carnes, who is signing as an individual music creator and copyright owner, and as an organizational officer.

SCL is the premier US organization for music creators working in all forms of visual media (including film, television, video games, and musical theatre). It has a membership of over 3500 professional composers and lyricists and is a founding co-member --along with SGA and other independent music creator groups-- of MCNA. SCL is represented by signatory Ashley Irwin, who is signing as an individual music creator and copyright owner, and as an organizational officer.

MCNA is an alliance of independent songwriter and composer organizations that advocates and educates on behalf of North America's music creator community. As the only internationally recognized voice of American and Canadian songwriters and composers, MCNA, through its affiliation with the International Council of Music Creators (CIAM), is part of a coalition that represents the professional interests and aspirations of more than half a million creators across Africa, Asia, Austral-Asia, Europe, and North and South America. MCNA is represented by signatories Rick Carnes and Ashley Irwin, who are signing as organizational officers, and by its president, songwriter Eddie Schwartz. Direct organizational members of MCNA include the following music creator advocacy groups: **The Alliance for Women Film Composers (AWFC); The Game Audio Network Guild (GANG); MusicAnswers; The Screen Composers Guild of Canada (SCGC); and the Songwriters Association of Canada (SAC).**

Of particular relevance to these comments, SGA, SCL and MCNA are also founding members of the international organization Fair Trade Music,⁷ which is the leading US and international advocacy group for the principles of transparency, equitable treatment, and financial sustainability for all songwriters and composers.

II. Background to and Reasons for this Submission

By these Reply Comments to the United States Copyright Office ("USCO"), the Independent Music Creators hereby repeat, reaffirm, and further amplify their views of the principles set forth in the submissions of the US Copyright Alliance, of which SGA, SCL and MCNA are members.

As stressed in those submissions, our organizations are highly supportive of the use of Artificial Intelligence (AI) technologies as *tools* to assist human creators in stretching the boundaries of human creativity. Our concerns today focus on clarifying under US copyright and intellectual property laws that the blatant *misuse* (i.e. "theft"),⁷ of our copyrighted musical compositions -- with neither consent, credit nor compensation-- by their wholesale, unauthorized ingestion into *generative AI* systems to artificially create infringing derivative works, represent illegal and actionable acts of infringement.⁸

⁷ <https://www.fairtrademusicinternational.org/>

⁸ It not so incidentally should be recognized that at least in the category of musical composition, what has come to be known as "generative AI" really should be and often is now referred to as "AI music plagiarism software." Such software systems simply ingest existing works and regurgitate derivatives based upon such ingestion, generally without the interposition of human creativity of any substance. For purposes of these Reply Comments, however, we shall continue to use the popular term "generative" to avoid further linguistic confusion in this round of review.

We wish to further note the level of our disappointment over the many comments submitted to the USCO by multi-billion-dollar technology sector corporations and their well-funded supporters. Those submissions nearly unanimously, without legal foundation, assert that (1) under Section 106 of the US Copyright Act there is no clear right of reproduction or right to create derivative works pertaining to generative artificial intelligence systems, and (2) that even if such rights do exist, the principles of the fair use doctrine under Section 107 excuse such unauthorized takings (in the course of what they continue to refer to in Orwellian double speak as the “training” of their generative AI systems) to create unauthorized derivatives for purposes of commercial exploitation.⁹

Those assertions, we believe, are grounded exclusively in greed rather than in law.

That belief on our part is bolstered by the fact that commenters from the technology sector uniformly omitted or minimized in their comments the fact that the United States Supreme Court drastically reduced the influence of “transformative use” on fair use determinations earlier this year in *Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith et al.* (“Warhol”). As stated in Justice Sotomayor’s majority opinion:

⁹ See, i.e., <https://www.theverge.com/2023/11/4/23946353/generative-ai-copyright-training-data-openai-microsoft-google-meta-stabilityai>.

According to the Big Tech supported and financed organization “Chamber of Progress” in its comments to the USCO, technology companies are currently being victimized by creators seeking consent, credit and fair compensation for the unauthorized *scraping* of entire works off the Internet for use in general AI “training:”

“The most prominent Generative AI services today necessitate exhaustive training, often involving the aggregation of publicly available content from the web. This scraping exercise is pivotal to instruct large language models on the multifaceted ways humans interact and comprehend the world around them. Using this data, AI services generate outputs—whether text or images—that are comprehensible to humans. Consequently, today’s rights holders contend that both the training data and the resultant outputs infringe upon their works, threatening devastating lawsuits.... Consequently, user-induced infringement exposes Generative AI providers to claims of secondary liability, mirroring the challenges regularly faced by user-generated content services (‘UGC services’), like YouTube. These liability concerns jeopardize the viability of Generative AI services. Therefore, if consumers and policymakers envision a vibrant future for Generative AI, it’s imperative that the USCO emphasizes regulations that foster competition in this nascent field, rather than suppress it. Without such supportive measures, Generative AI risks becoming a fleeting phenomenon. See, https://progresschamber.org/wp-content/uploads/2023/10/Chamber-of-Progress-Comments_-_Copyright-Office-Notice-of-Inquiry-Artificial-Intelligence-and-Copyright.pdf

Other, similar quotes have been widely reported upon in the press. See, i.e. <https://completemusicupdate.com/tech-companies-insist-training-ai-models-with-existing-content-is-fair-use-in-copyright-office-submissions/>:

"We believe", writes Stability AI, "that training AI models is an acceptable, transformative and socially beneficial use of existing content that is protected by the fair use doctrine and furthers the objectives of copyright law, including to 'promote the progress of science and useful arts.'" Echoing the comments of Stability, OpenAI says in its submission that it "believes that the training of AI models qualifies as a fair use, falling squarely in line with established precedents recognizing that the use of copyrighted materials by technology innovators in transformative ways is entirely consistent with copyright law."And Google states that "the doctrine of fair use provides that copying for a new and different purpose is permitted without authorization where - as with training AI systems - the secondary use is transformative and does not substitute for the copyrighted work."

See Footnote 10 of these Reply Comments for further elucidation.

The statute defines derivative works, which the copyright owner has “the exclusive righ[t]” to prepare, §106(2), to include “any other form in which a work may be recast, transformed, or adapted,” §101. In other words, the owner has a right to derivative transformations of her work. Such transformations may be substantial, like the adaptation of a book into a movie. To be sure, this right is “[s]ubject to” fair use. §106; see also §107. The two are not mutually exclusive. But an overbroad concept of transformative use, one that includes any further purpose, or any different character, would narrow the copyright owner’s exclusive right to create derivative works. To preserve that right, the degree of transformation required to make “transformative” use of an original must go beyond that required to qualify as a derivative....

In a narrower sense, a use may be justified because copying is reasonably necessary to achieve the user’s new purpose. Parody, for example, “needs to mimic an original to make its point.”Similarly, other commentary or criticism that targets an original work may have compelling reason to “conjure up” the original by borrowing from it....An independent justification like this is particularly relevant to assessing fair use where an original work and copying use share the same or highly similar purposes, or where wide dissemination of a secondary work would otherwise run the risk of substitution for the original or licensed derivatives of it....

Once again, the question of justification is one of degree. See Leval 1111 (“[I]t is not sufficient simply to conclude whether or not justification exists. The question remains how powerful, or persuasive, is the justification, because the court must weigh the strength of the secondary user’s justification against factors favoring the copyright owner”). In sum, the first fair use factor considers whether the use of a copyrighted work has a further purpose or different character, which is a matter of degree, and the degree of difference must be balanced against the commercial nature of the use. If an original work and a secondary use share the same or highly similar purposes, and the secondary use is of a commercial nature, the first factor is likely to weigh against fair use, absent some other justification for copying.¹⁰

The “transformative use” doctrine, in other words, has been considerably narrowed and downgraded by the US Supreme Court to one minor consideration among many more important ones in determining whether an unauthored use of a copyrighted work is “fair,” and the technology sector is well aware of that fact. They simply refuse to acknowledge it.

Turning to other recent history, commencing at the turn of the 21st Century the Independent Music Creator community was forced to wage a two-decade battle with unauthorized, electronic distributors of music, who in making similar fair use claims to build their multi-billion-dollar businesses on the theft of our works, decimated the ability of American songwriters and composers to earn viable livings at their profession. It has been estimated that the number of Americans able to sustain living-wage careers as music creators has dropped by over 80% since

¹⁰ Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith et al.. (USSC 2023) https://www.supremecourt.gov/opinions/22pdf/21-869_87ad.pdf, (slip opinion at 15-20).

the year 2000.¹¹ We simply cannot afford to endure yet another outrageously draining chapter in US economic and cultural history without the likely collapse of a music creator ecosystem in the United States altogether, one that has served as the launching pad for a music sector that for well over a century has been the financial and artistic envy of the world.

As such, the Independent Music Creators hold to the conviction that the USCO, the US Congress, and the Executive Branch need to treat the issue of protecting the rights of creators and copyright owners against unlicensed use of their works in generative AI systems as one of *enormous urgency*. In light of the devastation that rampant, illegal activities such as so-called “file sharing” and “benign piracy” (i.e., looting) of our works over the past twenty years caused, we believe it self-evident that well-considered but immediate legislative action is warranted. The principle goal must be to clarify Congressional intent that the US Copyright Act is not to be utilized once again as an escape hatch from copyright infringement liability by some of the wealthiest, multi-national conglomerates in global history, seeking to delay justice through exorbitantly expensive legal maneuverings based on non-existent legislative ambiguities.

In many ways, what we are witnessing is a repeat of the same contest waged for a good part of the past twenty years, pitting the callous contempt of corporate profiteers against legal and Constitutional norms governing the sanctity of creators’ rights, both economic and cultural. And as we have learned the hard way, in circumstances such as this, it is axiomatic that delay always favors the wealthy perpetrator over the less fortunate target.

Under such circumstances, we respectfully request that the USCO assist our community in requesting prompt Congressional and Executive action which helps to ensure that in the present instance, law, culture and market value remuneration prevail over plagiarism, commercial expedience, and corporate windfall profits.

III. Specific Issues of Concern

A. Clarification of Creators’ Rights Under Section 106 of the US Copyright Act

In answer to the comments submitted by the technology sector representatives regarding the so-called unauthorized “training” of generative AI systems on copyrighted works and its alleged legality under the US Copyright Act, the Independent Music creators remain of one firm, legal certitude. That is, that the “scraping” copies of entire copyrighted works off the Internet and ingesting such works without permission into their systems by the hundreds and sometimes hundreds of thousands to serve as the basis for synthesizing derivative works for commercial purposes, is beyond question a violation of the exclusive rights granted by Congress to authors and creators under Section 106 of the US Copyright Act. Those rights include the right of reproduction, and the right to prepare derivative works.

¹¹ See, i.e., <https://www.tennessean.com/story/entertainment/music/2015/01/04/nashville-musical-middle-class-collapses-new-dylans/21236245/>

Nevertheless, rather than risk the enormous time and massive resources that may be necessary to prove those obvious principles through litigation, we urge the USCO to consider recommending to Congress either of the following sets of immediate clarifications to Section 106.

The first set, which we do not favor as the optimal solution, would require a brief and simple addendum to language already included in Section 106 and denoted in bold, draft form below (plus any accompanying definitions Congress deems necessary):

Subject to sections 107 through 122, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

- (1) to reproduce the copyrighted work in copies or phonorecords, **including but not limited to the reproduction or ingestion of the copyrighted work within a generative artificial intelligence system;***
- (2) to prepare derivative works based upon the copyrighted work **including but not limited to preparation of derivative works by means of ingesting such copyrighted work into a generative artificial intelligence system alone or together with other works and thereby enabling a derivative work output by the system.***

While the Independent Music Creators would support the first set of legislative clarifications suggested above, we also recognize that in their simplicity, they embody one unfortunate flaw. They do not take into account the reality that the advent of generative AI was wholly unanticipated by the creator community not only in the United States, but throughout the world. No one could genuinely have foreseen that computer programs might actually be invented to serve not as human tools, but as plagiarism devices intended to turn existing copyrighted works into derivatives without any human intervention, least of all by the original, human creator with whose works the new derivatives would now be in commercial competition.

Thus, neither the licensing of generative AI ingestion uses nor the anticipation of compensation pertaining to it were factored into past negotiations between creators on the one hand and licensees, administrators or copyright assignees on the other. Moreover, and of equal and unique importance, human creators had no opportunity in such past transfers to consider whether they were willing to assign the right to develop --through the application of computer software-- competing, commercial derivative works based upon *their own, prior artistic expression*.

Such a result, we believe, is not what the Founders had in mind when they included in Article I Section 8 of the US Constitution the authority for Congress to grant rights in intellectual property *to the benefit of human authors, inventors and the public*.

Under the forgoing circumstances, as a matter of economic, ethical, and cultural fairness, we believe the *most* fair and beneficial legislative clarification consistent with Constitutional ideals would be to amend Section 106 by adding an independent, stand-alone GAI *ingestion* right as “Section 106 (7)” in legislative language that stipulates the following:

1. That the unique aspects of the generative AI ingestion right require that it accrue to the human author, and be assignable by such human author *only* after the enactment date of the legislation; and,
2. That such right accrues as an unencumbered right to the human author under the amended Section 106 regardless of any prior assignment, license, or transfer (whether general or specific) executed by such human author prior to the enactment date of the legislative clarification, including but not limited to work for hire agreements.

As an additional note regarding the potential, alternative Section 106 clarifications set forth above, the Independent Music Creators wish to further emphasize an important caveat for consideration by the USCO in making its evaluations and recommendations as set forth immediately above. In some cases, AI-generated *outputs* may infringe works ingested by the AI system, *even if the act of ingestion is authorized*. We respectfully suggest that the USCO make clear its support for the premise that absent specific authorization to the contrary, permission issued by authors and copyright owners to allow generative AI systems to ingest copyrighted musical works for the purpose of preparing algorithmically machined content *in no way exempts those systems from liability for copyright infringement under standard legal tests for illegal takings in the event that such generative output includes works substantially similar to one or more of the works ingested by the system*. We respectfully suggest that this concept be recommended to Congress for inclusion in the legislative history if the above or similar statutory clarifications are enacted.¹²

B. Clarification of Fair Use Standards as Applied to Ingestion and Output by Generative AI Systems

As the Independent Music Creators previously asserted in their comments dated July 7, 2023, to the US Office of Science and Technology Policy concerning “National Priorities for Artificial Intelligence,”¹³ the ingestion in their near entirety of massive numbers of copyrighted musical works into generative AI systems for the purpose of creating commercially competing derivative works is the absolute antithesis of the acknowledged principles underlying the fair use doctrine in the United States. Such unauthorized, generative AI uses are not cases of criticism, comment, social commentary, parody and the like in the pursuit of more robust public discourse. Rather, they are garden variety, unauthorized takings for purely commercial purposes by wealthy corporate predators, regardless of what the tech sector has stated in its multiple, unsupported comments to the contrary.

¹² Moreover, even in rare instances (if any) in which unauthorized ingestion of a copyrighted musical work is judged to be non-infringing, such finding should still not serve as a shield against copyright infringement liability for the owner or controller of the generative AI system concerning substantially similar generative *output*.

¹³ Available in pdf form at <https://www.musiccreatorsna.org/mcna-submits-comments-on-national-priorities-for-artificial-intelligence/>

Yes, these unauthorized users enjoy portraying themselves as visionary organizations seeking to remove impediments to progress.¹⁴ In reality, however, they are massive, global enterprises that simply do not want to license and pay for the copyrighted works that form the bedrock on which their business models were built and rest.¹⁵

It is no exaggeration, in fact, to suggest that should the fair use doctrine be perverted (as some technology conglomerates have suggested it should be)¹⁶ to sanction such unauthorized generative AI uses of copyrighted works as non-infringing, within a generation the contribution to American culture of the professional creator class would all but cease. Music creation would finally and fully be rendered a hobby, not a career. And without new human creation, the entire music sector would eventually suffer the same fate, to the grave detriment of American consumers, culture, the US trade balance, and the overall US economy. Ironically, it would also more than likely cause a similar downturn among the financially cannibalistic takers of the generative AI community, once deprived of new works to ingest.

As was recognized long ago by the Founders under the Constitutional guidance of James Madison, and repeated time and again throughout American history by the US Supreme Court, copyright and intellectual property protections are to be regarded as the very “engines of free expression,” not *impediments* to progress and free speech.¹⁷ Balancing the rights of human creators unfavorably against the commercial benefits of fair use when extended to the designers and owners of computer-based systems of artificial plagiarism is not the intended purpose of Section 107.¹⁸

In that regard, we respectfully ask the USCO to consider advising Congress that clarification of Congressional intent needs to be made crystal clear concerning the fair use doctrine. As noted above in Section II of these Reply Comments, the judicial trend *away* from utilizing the principle of “transformative use” as a keystone for granting fair use exceptions to copyright protection is made abundantly clear by the US Supreme Court’s recent decision in the *Warhol* case.¹⁹ Congress should follow suit by amending Section 107 of the US Copyright Act to clarify its unequivocal agreement with the Court that the alleged transformative nature of an unauthorized use (including but not limited to generative AI ingestion and output) is by no means dispositive, or even especially influential on the issue of whether such use is fair.

¹⁴ Refer to quotes set forth in Footnote 9 of these Reply Comments.

¹⁵ As the US Copyright Alliance has stated, “[s]ome AI developers assert that AI innovation will be impeded if the ingestion process is not deemed to be categorically fair use. This false narrative purposely omits the fact that in many cases licenses are available for ingestion. As history has shown, creators and copyright owners are usually willing to license their works when the parties can agree on appropriate terms and compensation; that is, of course, how creators typically earn a living. Copyrighted works provide immense value to AI developers, and they can and should pay for that value—as many are already doing. In other words, when properly applied, copyright law sets the conditions for the market to prevail.” (Alliance Comments to the US Office of Science and Technology Policy (July 7, 2023) at 3.

¹⁶ Refer to Footnote 9 of these Reply Comments.

¹⁷ See, *Harper & Row v. Nation Enterprises*, 471 U.S. 539 (1985), wherein the US Supreme Court (Justice O’Connor) ruled: “The Framers intended copyright itself to be the engine of free expression. By establishing a marketable right to the use of one’s expression, copyright supplies the economic incentive to create and disseminate ideas.”

¹⁸ See, the discussion above in the text of these Reply Comments accompanying Footnote 10 re *Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith et al.* (USSC 2023).

¹⁹ *Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith et al.* (USSC 2023) https://www.supremecourt.gov/opinions/22pdf/21-869_87ad.pdf.

Even more importantly, Congress should be further encouraged to establish a firm presumption under the fair use doctrine that the use of computer software to utilize human-created, copyrighted works as the basis for machining derivative works without authorization is axiomatically unfair. Why? Because for a court to rule otherwise is tantamount to elevating what is now commonly referred to as “plagiarism software” to the status of an essential element of democratic discourse, a result never intended by Congress on any level since the advent of the digital age or stretching back to the time of the Founders. And the results of doing so would be as dangerous as they are profound.²⁰

C. Transparency, the Public’s Right to Know, and Data Tracking Requirements

The Independent Music Creators likewise seek to underline the crucial need for adequate *transparency* regarding generative AI ingestion of copyrighted works. In particular, we join our fellow US Copyright Alliance members in asserting that it is vital that generative AI developers maintain meticulous electronic records detailing which copyrighted works are being ingested and how those works are being used, and make those records publicly accessible as appropriate.

We likewise believe it is essential to the integrity of any system designed to ensure fairness through transparency (and to make possible proper accounting to creators whose works are used in generative AI systems) that information concerning *all* ingestive AI uses of copyrighted musical works be maintained on a mandatory basis by users. In other words, such identification and use information must be maintained not just by generative AI developers, but by copyright owners, administrators and licensees engaged in generative AI activities as well.

Going this further step will serve not only the interests of songwriters, composers and lyricists whose works are being incorporated into any and all AI systems, but will also accrue to the benefit of a public that maintains the right to know the sources of the AI-generated entertainment and information it is consuming. Whether a work has been generated by a human being or a computer program is an important element in a listener’s valuing of it as a source of wisdom, sincerity and experience. That is especially true when it comes to song lyrics and emotive musical compositions.

D. Market Consolidation, Collective Licensing and Antitrust Exemptions

²⁰ As the dean of American linguistics, Noam Chomsky, recently pointed out in a New York Times opinion essay: “ChatGPT exhibits something like the banality of evil: plagiarism and apathy and obviation. It . . . and its brethren are constitutionally unable to balance creativity with constraint. They either overgenerate (producing both truths and falsehoods, endorsing ethical and unethical decisions alike) or undergenerate (exhibiting noncommitment to any decisions and indifference to consequences). Given the amorality, faux science and linguistic incompetence of these systems, we can only laugh or cry at their popularity.” See. <https://www.nytimes.com/2023/03/08/opinion/noam-chomsky-chatgpt-ai.html>

Regardless of whether an author's right to control generative AI uses is clarified as part of Sections 106 (1) and (2) of the US Copyright Act or as a preferred, stand-alone right in a new Section 106 (7), the Independent Music Creators strongly support voluntary collective licensing as the most cost-effective and efficient manner of authorizing the ingestion of copyrighted works into generative AI systems. Such methods of licensing and royalty collection assist creators, authors and administrators in achieving their goals of consent, credit and compensation, while streamlining the licensing process for generative AI users who recognize the fairness and value in respecting the legal and ethical rights of human creators.

More specifically, maintaining fair and open competition in the marketplace is predicated on the ability of all participants in the value chain to have an opportunity to engage in commerce on a level playing field (or as close to level as consolidation and vertical integration within the music industry will effectively permit). Music creators who choose not to assign their generative AI rights to a third-party copyright administrator (whether or not the assignee is one of the three major, global music conglomerates which together control a vast majority of the world's music copyrights)²¹ must somehow be afforded the practical ability to compete fairly in the generative AI licensing space.

Consideration of an opt-in system for voluntary, collective negotiation and blanket licensing by music creators who retain their own rights to license generative AI uses should therefore be the subject of immediate consideration by Congress as perhaps the best way to ensure that the works of such creators are neither shut out of the AI licensing market --nor infringed with impunity-- due to the lack of a viable, voluntary system of licensing, collective rate negotiation, and administration that the major conglomerates already individually possess.

As such, the opportunity to establish private, voluntary systems of collective licensing, whereby groups of music creators (and potentially copyright administrators) are enabled to collectively negotiate licenses at fair market value for a mixed group of copyrighted works to be used in generative AI ingestion, is a high priority for our community.

The Independent Music Creators respectfully request that the USCO recognize and support such efforts, and recommend to Congress that it enact an antitrust exemption that would enable the collective negotiation and licensing process to flourish in the area of generative AI ingestion. In that way, music creators who retain their generative AI licensing rights would be enabled to construct a market-based licensing system on a more level playing field, a result that would ultimately benefit all interested parties (including consumers).

E. Uniform Protection of Ancillary Rights including Rights of Publicity

The Independent Music Creators are fully in accord with suggestions that it is time to consider enactment of nation-wide protections for publicity rights. Such rights should include the exclusive authority to control uses of name, voice and likeness, with certain minimal, non-

²¹ <https://musically.com/2023/04/26/music-copyright-publishes-its-market-share-analysis-for-2022/> The world's largest music conglomerate already controls more musical composition copyrights than the entire universe of independent songs, with the combined market shares of the next two largest surpassing the holdings of both the largest and the combined independents.

commercial exceptions (so long as in all cases clear notice of imitation and/or generative AI manipulation is given to avoid public deception).

F. Copyrightability of AI Generated Musical Works

The Independent Music Creators are similarly in support of the decisions rendered so far by the USCO regarding the issue of copyright registrability of artificially generated works. We believe that a high threshold of demonstrable human creative contribution and curation must be satisfied for a generative AI facilitated musical work to be deemed copyrightable and registrable, and that such threshold can never be satisfied by mere prompts suggested by human curators.

IV. Conclusion

We thank the United States Copyright Office for this opportunity to submit these Reply Comments. As is our custom, and consistent with our commitment to the principle that the independent American music creator community speaks with its own voice (especially regarding issues likely to exert substantial influence over the cultural and economic future of musical creativity in the United States), we are gratified by this chance to submit the foregoing suggestions and setting forth our independent views on specific issues.

In short, the points herein are respectfully provided in answer to the comments previously submitted by those who appear to value windfall profit over economic fairness and cultural advancement, and to underline once again (as in the previous Copyright Alliance submissions) those concerns related to generative AI systems that we believe to be most critical to the interests of songwriters, lyricists and composers.

We are, as always, available to discuss these and other related matters further and in greater detail at your request and convenience.

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Respectfully submitted,



Rick Carnes
President, Songwriters Guild of America
Officer, Music Creators North America



Ashley Irwin
President, Society of Composers & Lyricists
Co-Chair, Music Creators North America



Eddie Schwartz
President, Music Creators North America

cc:

Charles J. Sanders, Esq.
Hon. Carla Hayden, US Librarian of Congress
The Members of the US Senate and House Judiciary Committees