



FINAL DRAFT

July 15, 2024

Via Electronic Delivery

Assistant Attorney General Jonathan Kanter
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: Comments of the Independent Music Creator Community regarding Generative Artificial Intelligence and US Department of Justice Views on Regulation as Discussed at the Stanford Workshop on Promoting Competition in AI on May 30, 2024

Dear Assistant Attorney General Kanter:

The Songwriters Guild of America (“SGA”), the Society of Composers & Lyricists (“SCL”), and Music Creators North America (“MCNA”) represent a coalition of the largest and longest established music creator advocacy groups in the United States and North America.¹ We write to applaud your insightful remarks on behalf of the U.S. Department of Justice (“DOJ”) at the May 30, 2024 Stanford Workshop on Promoting Competition in AI (“the Stanford Conference”), and to offer further comments regarding the existential threats that unregulated, generative AI (“GenAI”) systems pose to American music creators.

We also wish to emphasize our eagerness to participate in future DOJ and US Government discussions and initiatives designed to address such GenAI threats, and to help maximize the opportunities that such new technologies can provide when subjected to thoughtful regulatory oversight. We agree that prompt action is necessary to avoid catastrophic damage to the American economy and to American musical culture, and thank the DOJ for its foresight in seeking the input of all affected parties, including members of the often-overlooked community of American songwriters and composers. The multi-national corporate music publishing industry may purport to speak on our behalf, *but we speak for ourselves*. We very much appreciate that the DOJ recognizes that fact, and we look forward to working with the Department in that spirit now and in the future.

¹ For reference, descriptions of each organization are included at the end of this letter.

The Stanford Conference

Our groups could not have been more pleased by your landmark pronouncement at the Stanford Conference, presented in the form of the rhetorical question as follows:

What incentive will tomorrow’s writers, creators, journalists, thinkers and artists have if AI has the ability to extract their ingenuity without appropriate compensation? ²

We have long been asking that very same question, derived from the “promoting progress of the arts and sciences” clause of Article I Section 8 of the US Constitution. As such, we were exceptionally gratified by your recognition that maintaining incentivization for human creators must be an important element in the complex evaluation of competition rules in GenAI contexts:

The people who create and produce these inputs must be properly compensated... Absent competition to adequately compensate creators for their works, AI companies could exploit monopsony power on levels that we have never seen before, with devastating consequences. ³

We emphatically agree, and urge the DOJ to take all available opportunities in the age of GenAI to preserve the incentives for creation in art and science that the Framers clearly intended as guiding principles for the Nation’s cultural and economic future.

Music Creators’ Rights in the GenAI Context

As set forth in the *Statement Concerning Generative Artificial Intelligence and the Global Music Community by the National Music Council of the United States* (“NMC Statement”), published on July 1, 2024, and in the creation of which our groups took a leading role:

“GenAI systems” [are] machine-based content generators that are artificially “trained” on a set of ingested, often copyright-protected data, to find patterns within that data, and thereafter to generate additional content based upon such data (including text, image, video, audio, multimedia, or other forms of output) pursuant to a given set of human-defined or machine-derived objectives or “prompts.”⁴

The central aim of GenAI systems, in other words, is to take --for the system’s sole economic benefit and principally without authorization -- the copyrighted works of human creators such as songwriters and composers, and use those works to algorithmically manufacture derivatives for the literal purpose of placing the original creator *in competition with him or herself*. The inevitable result of this grotesquely unfair, cannibalistic scenario will be putting human creators

² <https://www.justice.gov/opa/speech/assistant-attorney-general-jonathan-kanter-delivers-remarks-promoting-competition#:~:text=What%20incentive%20will%20tomorrow's%20writers,with%20the%20IP%20system%2C%20creates.>

³ Id.

⁴ <https://www.musiccouncil.org/wp-content/uploads/sites/4/2024/07/NMC-Statement-on-GenAI-July-1-2024-v2.pdf> at 1.

out of business, or at the very least, rendering them incapable of financially supporting themselves at a sustainable level on a long-term basis. Moreover, by removing the incentives for original, human creation, nearly the entire creative arts sector of American commerce (for the past 100 years the cultural and financial envy of the world) is likely before long to collapse.

An apt analogy might be the start-up car manufacturer who simply cherry-picks from the patented, technical designs of his market competitors, and incorporates the various stolen designs via algorithm into the start-up's own competing car model without a license to do. Having bypassed independent automotive research, development, and IP licensing costs, the start-up can claim that its thefts will nevertheless pass pro-competition muster, as they benefit consumers by lowering the price of *its* "new" model (an unauthorized derivative now available at a lower price as the result of the start-up's lower investment costs).

Of course, as all rational economists recognize, theft is not the proper driver for increasing market competition. Rather, it is an unfair business practice that will ultimately result in the cessation of technological progress and eventually the arrival of commercial devastation. Who, indeed, would invest in research and development if the resulting advancements can be stolen by a competitor at will? Where is the incentive to create under such circumstances if a sustainable living cannot be achieved? The answers are simple. As you succinctly put it, Mr. Kanter, in order for the economic system to properly function in both the short and long terms, "the people who create and produce...must be properly compensated." That is as true for music and the arts as it is for automotive design.

It is important to note that appreciation of these simple principles of ethics and economics are in stark contrast to the recent, somewhat astonishing opinions expressed by spokespersons for Big Tech and open GenAI. Speaking three weeks ago at the Aspen Ideas Festival, Microsoft AI's chief executive officer Mustafa Suleyman indicated his company's eye-opening position --based on fictitious norms-- that anything on the Internet is available for free use in GenAI contexts:

With respect to content that is already on the open web, the social contract of that content since the 90s has been that it is fair use. Anyone can copy it, recreate with it, [and] reproduce with it. That has been freeware, if you like. That's been the understanding.⁵

Earlier this year, Spotify CEO Daniel Ek similarly denigrated the value of American musical culture and the artistic and financial contributions of music creators, who by their years of study, practice and creative experiments in composition have made him one of the world's wealthiest online music distributors. This past June, he remarked flatly --in justifying a refusal to pay music royalties at fair market value-- that "the cost today of creating content [is] close to zero."⁶ That is news to all of us who have invested our entire professional lives in pursuit of musical creation at great cost in terms of time, hard work and monetary expenditures.

These are not the statements of those whose goals are the realization of greater opportunities for *free speech* through new technologies, but rather of those in pursuit of an increase in the amount

⁵ See, <https://www.youtube.com/watch?v=IPvqvt55I3A>

⁶ <https://thesource.com/2024/06/04/billionaire-spotify-ceo-claims-the-cost-of-making-content-is-close-to-zero-and-sparks-immediate-backlash/>

of available *free lunch* that new technologies can provide to them.⁷ They seek to turn capitalism on its head, taking away incentives and remuneration from entrepreneurial creators by robbing them of property rights and thereby, of economic opportunity. We are thankful that DOJ is able to see through these charades, and look forward to discussing such troubling trends with you in greater detail in the near future.

As the DOJ is likewise aware, it is common for critics of the creative community in the tech industries to react to demands by music creators that their rights be respected with specious attempts to brand us as “anti-technology.” Nothing could be further from the truth. The American creator community is consistently among the commercial sectors’ most highly enthusiastic supporters and earliest adopters of technological advancements. As was further explained in the NMC Statement:

There is...[creator] consensus regarding the crucial importance of distinguishing GenAI systems from Artificial Intelligence (“AI”) tools and other technologies used to support and assist in human creativity. [We] remain highly supportive of the use of AI tools and technologies that seek to help, rather than supplant, human creators in the pursuit of stretching the boundaries of musical creativity.⁸

It bears repeating that our goals *are not and will never be to stop technology or to impede honest market competition*. Rather, we simply want our rights and incentives as creators to be respected in all contexts by the owners and operators of GenAI systems. If those rights and incentives are found to be unclear or lacking, we support immediate, corrective legislation, whether to sharpen existing rights and/or to establish *sui generis* rights that apply specifically to GenAI uses.

To briefly elaborate, we are in firm accord with the “consent, credit and compensation” principles announced by the Human Artistry Campaign to which we are signatories,⁹ and with the incentive-related transparency, disclosure and record-keeping mandates we support through NMC’s legislative Statement.

Thus, we believe that human music creators and their assignees (including composers of works for hire) should be guaranteed by US and international law the unambiguous, exclusive right to control the use of their works in all GenAI contexts related to ingestion, manipulation, and output. We further stress that the right to control ingestion, manipulation, and output-related GenAI uses must be considered as separate and distinct from the right to create traditional derivative works. As such, the voluntary licensing of general GenAI use rights to a copyright user should be legislatively clarified as not being tantamount to a license permitting generation

⁷ See, Charles J. Sanders, “The Engine of Free Expression,” *Insights On Law & Society* (American Bar Association Division for Public Education), Winter 2004.

⁸ <https://www.musiccouncil.org/wp-content/uploads/sites/4/2024/07/NMC-Statement-on-GenAI-July-1-2024-v2.pdf> at 2.

⁹ <https://www.humanartistrycampaign.com/>

of new works obviously derived from and/or substantially similar to one or more particular, original works, absent the voluntary licensing of additional rights to do so.¹⁰

We also favor US and international legislation that mandates prominent disclosure by distributors (as broadly defined) that a particular GenAI-derived work being made available to consumers and other members of the public is in fact the product of GenAI and not of substantial human creation. Likewise, in regard to the crucial importance of transparency in GenAI contexts, we believe that any party making use of GenAI should be required by law to keep, maintain, and retain complete records of every copyrighted musical work utilized in the training and/or ingestion process dating back to day one of first initiation, and full details of all subsequent uses.¹¹

Of equal or perhaps even greater importance, we believe that it must be made unambiguously clear in legislation that the unlicensed use of copyrighted works in GenAI contexts is presumptively unfair.¹²

All of these protections serve the purpose of preserving the creative incentives viewed as indispensable by the Constitutional framers in Article I Section 8 to promoting progress in the arts and sciences to the greater benefit of all. As James Madison so famously articulated in Federalist Paper 43, the utility of copyright and patent protection for creators and inventors as incentives for human and cultural progress can “scarcely be questioned.” They must not be abandoned at the request of those seeking higher, short-term profit margins without regard for the devastating, long-term effects on American culture and the U.S. economy.

An Antitrust Exemption for Collective Licensing

As one final note, we would like to draw to the DOJ’s attention our continuing belief that an antitrust exemption permitting collective negotiation of GenAI “ingestion” rights for musical compositions is indispensable to market fairness and competition. The reason for this necessity is simple.

As the DOJ is well aware, the global and domestic music recording and publishing industries have undergone massive consolidation and vertical integration over the past four decades. Currently, just three major record labels and their music publishing arms control between approximately seventy and eighty percent of the world’s musical recordings and compositions.¹³ GenAI systems can therefore economically negotiate for a huge percentage of the American and global recording and musical compositions catalogs from just three source companies. The copyright owners of the remaining twenty to thirty or so percent of recordings and compositions,

¹⁰ See, <https://www.musiccouncil.org/wp-content/uploads/sites/4/2024/07/NMC-Statement-on-GenAI-July-1-2024-v2.pdf> at 3-5.

¹¹ Id.

¹² Id.

¹³ <https://www.statista.com/statistics/422926/record-companies-market-share-worldwide-physical-digital-revenues/> and <https://musicandcopyright.wordpress.com/2024/04/23/new-market-share-results-reveal-the-recorded-music-and-music-publishing-winners-and-losers-in-2023/>.

numbering in the tens and perhaps hundreds of thousands of small businesses and independent creators, are therefore likely to be closed out of the market by reason of the inconvenience to GenAI licensees of seeking rights from so many sources. Without a legal way for members of this market segment --potentially smaller in total than each of the three “majors” individually-- to participate in GenAI commerce will be through voluntary, collective bargaining and licensing. We have raised this important issue in the past, and will continue to do so in the future.

Conclusion

We thank the DOJ for consideration of these comments, and for its steadfast work regarding issues of crucial importance to the future economic health and survival of the US and global music creator community. As noted above, we embrace the DOJ suggestion that collaboration among a broad spectrum of stakeholders from different parts of the AI continuum is crucial for addressing these issues, especially including creators themselves, and we stand ready to participate in such discussions and initiatives as soon as possible.

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

cc: Charles J. Sanders, Esq.
Ms. Carla Hayden, US Librarian of Congress
Ms. Shira Perlmutter, US Register of Copyrights
Mr. Eddie Schwartz, President, MCNA and International Council of Music Creators (CIAM)
Members of the US Senate and House Sub-Committees on Intellectual Property

List of Other Affiliated Organizations

Alliance for Women Film Composers (AWFC), <https://theawfc.com>
Game Audio Network Guild (G.A.N.G.) <https://www.audiogang.org/>
Screen Composers Guild of Canada (SCGC), <https://screencomposers.ca>
Songwriters Association of Canada (SAC), <http://www.songwriters.ca>
Asia-Pacific Music Creators Alliance (APMA), <https://apmaciam.wixsite.com/home/news>
Music Answers (M.A.), <https://www.musicanswers.org>
Fair Trade Music International (FTMI), <https://www.fairtrademusicinternational.org/>

Pan-African Composers and Songwriters Alliance (PACSA), <http://www.pacsa.org>
Alliance of Latin American Composers & Authors (AlcaMusica) <https://www.alcamusica>.

The Songwriters Guild of America (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 vary from or are in conflict with those of songwriters, composers, and other authors of creative works. Established in 1931, SGA has for over 93 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. For more information: <https://www.songwritersguild.com/site/index.php>

The Society of Composers & Lyricists (SCL) is the premier U.S. organization for music creators working in all forms of visual media. With chapters in Los Angeles, New York and Nashville, and members in every state of the U.S. as well as over 80 countries around the world, the SCL operates as the primary voice for close to 4,000 members who work as creators of scores and songs for film, television, video games, and theatre. The SCL is a founding co-member -- along with SGA and other independent music creator groups -- of Music Creators North America (MCNA). For more information: <https://thescl.com>

Music Creators North America (MCNA) is an alliance of independent songwriter and composer organizations that advocates and educates on behalf of North America’s music creator community. It includes, by way of example, the organizations Music Answers, The Alliance for Women Film Composers (“AWFC”), the Game Audio Network Guild (“G.A.N.G.”), and other leading North American music creator groups throughout the US and Canada. 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-Oceania, North and South America, and Europe. For more information: <https://www.musiccreatorsna.org/>