



May 27, 2025

Register of Copyrights

U.S. Copyright Office
101 Independence Ave, SE
Washington, D.C. 20559

Re: Docket No. 2025-1 – Response to PRO Submissions on Performance Licensing Reform

Dear U.S. Copyright Office:

On behalf of the National Independent Venue Association (NIVA), which represents more than 1,500 independently owned and operated performance venues, festivals, and promoters across the United States, we submit this letter in response to the comments filed by Performing Rights Organizations (PROs) ASCAP, BMI, SESAC, and GMR. We appreciate the Office's thorough attention to the important and complex issues surrounding performance rights licensing, and we urge the Office to continue examining structural deficiencies that harm music creators and the small businesses and nonprofits that support their work.

As the proud representative of the independent live music ecosystem, which financially supports and enables songwriters, we fully agree that creators deserve fair compensation for the use of their works. Our venues are the frontlines of music discovery, serving as vital platforms for emerging and mid-career artists, and our promoters dedicate their professional careers to connecting creators and audiences. However, some comments by the incumbent rights holders reflect a perspective that often overlooks or misrepresents the operational realities and inequities that small to mid-sized music venues face under the current performance rights licensing regime.

While the PROs assert that the current system is functioning fairly and efficiently, our experience on the independent level tells a very different story. The status quo disadvantages both working-class creators and the independent venues that serve as the critical infrastructure of the live music ecosystem. Neither have previously had a voice in the creation or operation of the current system. We are grateful for this opportunity to share insights and recommendations and have our perspective considered.

The Economics of the Independent Music Ecosystem

The prevailing narrative in letters from ASCAP and BMI suggests that licensees “just want to pay less.” NIVA members are not seeking to avoid licensing obligations. To the contrary, NIVA and its members want a licensing system that works—one where licensing fees paid by our members are distributed accurately to the songwriters of works performed, whose music fuels our events and keeps our doors open. But the current model fails to deliver fairness,

transparency, or accountability. It advantages incumbents and opportunistic actors while unnecessarily leaving working musicians and small venues to absorb the cost of an inefficient and outdated system. Imagine you went to work and someone else got paid for your work instead of you? That's what today's system does to the touring songwriters who play our venues. It is unfair and unnecessary. There are fixes that can be implemented to ensure the touring songwriters who write the works they play actually get paid for their work, as it should be.

The PROs fail to take into account the true economic realities facing both the creators they represent and the concert presenters that bring those songs to fans. The economics of a club-level touring musician are often precarious, with most artists operating on thin, often negative, margins. According to a 2018 report from the Music Industry Research Association (MIRA) in partnership with Princeton University, the median annual income for musicians from music-related sources was just \$21,300, with live performance earnings comprising the majority of that amount.¹ For club-level acts playing 200–500-capacity rooms, typical guarantees range from \$250 to \$2,500 per show, depending on the market. However, touring costs—including transportation, lodging, crew, meals, and agent/manager commissions—can quickly erode earnings. This same MIRA survey found that over 60% of independent touring musicians reported net losses or near break-even results on tour, even with sold-out shows. Rising fuel prices, inflation, and the predation of secondary ticket brokers have further strained touring viability. Charmetric most recently found the share of mid-level touring artists fell from 19% in 2022 to just 12% in 2024². These economic realities highlight a live music ecosystem where working musicians carry outsized risk for modest and unreliable reward.

These touring artists are at the very core of our businesses. This is why we care deeply about how the royalties we pay to PROs are distributed. For these artists, receiving those royalties could be the difference between a profitable tour or a losing one. If independent artists continue to lose money from touring, they will cease doing it and our businesses will fail.

The Venue Perspective

Operating a small, independent music venue in today's climate presents significant economic challenges. Rising operational costs, competitive pressure from corporate promoters, the impacts of ticket scalping, and downward trends in alcohol consumption threaten the financial sustainability of the club-level ecosystem. Inflation has driven up expenses across the board—including talent fees, production, staffing, and insurance. Independents must also navigate an increasingly saturated market dominated by vertically integrated giants like Live Nation, which leverage national exclusivity deals, preferential routing, and bundled ticketing to crowd out independents.

¹ Allan B. Kruger et al., "Inaugural Music Industry Research Association (MIRA) Survey of Musicians," Princeton University. Retrieved from https://psrc.princeton.edu/sites/g/files/toruqf1971/files/resource-links/report_on_mira_musician_survey.pdf

² Daniel Tencer, "Study Suggests 'Noticeable Decline' in Artists Heading Out on Tour," *Music Business Worldwide*, May 21, 2025.

Despite media narratives that live music revenues are at all-time highs, profit margins for independent operators remain slim—often between 1% and 3%, if profitable at all³. For example, a 500-capacity venue hosting 150 shows per year at an average \$30 ticket price, with 400 attendees per show and a per-patron spend of \$14, generates approximately \$1.8 million in gross ticket revenue and \$840,000 in gross ancillary revenue. Even with \$2.64 million in gross revenue, standard net profit margins yield only \$26,000 to \$80,000 annually. Aggregate PRO licensing fees (ASCAP, BMI, SESAC, and GMR) in this scenario can range from \$27,000 to \$33,000—enough to consume or exceed a venue’s entire profit (See Exhibit 1). Unlike corporate entities such as Live Nation, independent venues lack economies of scale. While food and beverage sales may help buffer losses, this business model remains an uphill battle for sustainability.

ASCAP’s claim that live music licensees do not overpay for PRO fees and that fees are “a small fraction of venue costs” fails to account for scale. For a 10,000-capacity amphitheater, that might be true. For a 100-capacity community venue, the same blanket license can be a major financial obstacle. This one-size-fits-all approach does not reflect actual music use or a venue’s ability to pay. Notably, ASCAP itself acknowledges that fees from these venues represent only a small portion of its revenue, which raises questions as to why it opposes more flexible, usage-based alternatives.

PRO fees are among the largest annual licensing expenses, often exceeding costs for alcohol licenses, food permits, insurance and even some utilities. PROs have historically made smaller venues and promoters pay more, while large corporations pay less. BMI and ASCAP have historically offered preferential rates to large corporate promoters. BMI’s agreements with NACPA allowed Live Nation, AEG, and other multi-national promoters to pay significantly lower rates than their independent counterparts⁴. In fact, for 15 years, small and mid-sized venues were routinely charged two to five times the rates of these corporate giants. As recently as 2024, BMI applied a rate court decision against NACPA to all venues, regardless of market position, without modification, effectively imposing a regressive tax on small, independent venues that do not have the same vertically integrated assets as their corporate counterparts.

To avoid costly infringement litigation (at worst) or persistent, aggressive, strong letters (at best), venues and promoters pay all four major PROs to ensure legal coverage—even if only one PRO represents the music actually performed. This quadruples licensing costs for venues but does not provide a corresponding value to the creators of the works performed in those rooms.

PRO Proliferation and Exploitation of Ambiguity

The increasing number of PROs may have theoretical competitive benefits for creators, but for licensees, it has created complexity, legal exposure, and expense. Entities like AllTrack have taken advantage of the vague nature of live performance licensing. AllTrack claims to represent a vast repertoire of works but does not provide an easily accessible and transparent catalog of works. Despite its limited real-world footprint, AllTrack aggressively approaches small venues

³ D Tour. (2023). *Internal Member Study of Pre and Post Pandemic Profit Margins*.

⁴ *Broadcast Music, Inc. v. North American Concert Promoters Association*, No. 1:18-cv-08749 (S.D.N.Y. Mar. 28, 2023).

with threats of litigation for performances that cannot be confirmed to fall within their rights (see Exhibit 2). This predatory behavior highlights a key failure of the current system: without a unified, accurate public database of copyrighted works and rights holders across PROs, licensees cannot meaningfully verify what they owe—or to whom.

The lack of clarity benefits bad actors, not creators. And it places the burden of compliance and cost on already resource-strapped small businesses which must either overpay to mitigate legal risk or face the threat of infringement claims from entities with questionable standing.

While ASCAP and BMI claim to support transparency via tools like Songview, these databases are incomplete, excluding non-ASCAP and non-BMI repertoire, leaving venues exposed to duplicative payments and ambiguous claims. BMI and ASCAP hold themselves as stable forces amid the rise of newer PROs, yet they fail to acknowledge how this proliferation compounds the cost and complexity for licensees who lack any truly reliable way to verify repertoire ownership.

The absence of a unified, comprehensive repertoire database makes it nearly impossible for small venues to tailor their licensing responsibly. Tools like Songview should be expanded to include all PROs, and participation should be mandatory.

Royalty Misallocation Undermines the Value Chain

BMI suggests that concerns about royalty distribution are raised by "music users" seeking to avoid fair compensation. This is a mischaracterization. As venue owners and promoters, we are concerned because the royalties collected from our shows often do not reach the rights holders of the very works performed on our stages. The core of our concern is the mismatch between licensing payments made by venues and royalty distributions to the actual creators of the works performed.

A NIVA study found that 94% of the songs performed in small venues are written by the artists performing on the stage—many of whom are not even affiliated with any PRO at all⁵. Yet, royalties are still paid to all four major PROs, regardless of repertoire relevance. A recent review of a major SESAC-affiliated artist's show revealed that less than 3% of licensing fees paid went to SESAC, with 97% distributed to unrelated PROs.

This systemic mismatch means the very artists driving ticket sales and writing the performed works are frequently excluded from meaningful royalty payments. Small venues end up subsidizing a royalty pool that benefits PROs with no interest in their events, while the intended recipients—emerging, independent, and working class creators—are left out.

BMI and ASCAP downplay this issue citing their BMI Live and ASCAP OnStage Programs. These programs allow artists to self-report, but are fragmented, duplicative, and lack transparency or effectiveness. Artists must submit separately to each PRO, and even when they do, there is no clear link between the royalties collected and the amount they are paid. As a result, most working-class creators remain underpaid or unpaid entirely.

⁵ National Independent Venue Association (NIVA). (2023). *Internal Study of Setlists Performed by Artists in Member Venues*.

The PROs also suggest that small venues and promoters resist reporting as an excuse for their reliance on crowd-sourced platforms like setlist.fm (owned by Live Nation) or proxies like radio airplay and top tours for distributions. These proxies tend to skew towards the most commercially successful songwriters. As such, they know these types of proxies disadvantage the very creators our members work with most. We suggest they work in partnership with venues and promoters to develop streamlined, accessible, and integrated reporting tools that actually reflect usage and support accurate distribution.

Exclusion of the Secondary Ticketing Market

Another critical omission in current PRO practice is the complete absence of royalty collections from the secondary ticketing market—a multi-billion-dollar industry. Promoter licensees pay royalties based on tickets sold, not ears in the room. This practice is completely out-of-date as it discounts the high volume of tickets purchased by professional brokers that go unsold on the secondary market. Recent studies show as many as 40% of tickets are placed for sale on the secondary market at the same time customer counts as a percentage of tickets sold (drop counts) are dwindling⁶.

The global secondary ticketing market has experienced significant growth in recent years. In the United States, the secondary ticket resale industry is estimated to be a \$5 billion market. Major platforms like StubHub and Vivid Seats earn billions of dollars in revenue with little operational overhead, yet contribute nothing to the songwriters, artists, or promoters whom they exploit. For example, StubHub reported a revenue increase to \$1.77 billion in 2024, up from \$1.37 billion the previous year⁷. Similarly, Vivid Seats' full-year revenue for 2024 was reported at \$775.6 million⁸.

Despite the substantial revenue generated in the secondary ticketing market, creators do not receive royalties from these secondary sales. Presently, the sole royalty obligation falls upon the primary ticket seller, which is generally the venue, promoter, or artist. But when tickets are resold at a premium on the secondary market—sometimes two to 10 times the original price—none of that added value is accounted for in the royalties collected and distributed by PROs. This has two compounding effects: (1) creators are not compensated in proportion to the commercial value their works generate, and (2) ticket scalpers, platforms, and brokers profit from concerts they had no role in creating while contributing nothing back to the rights holders or the entities that took the financial risk to present the concert in the first place.

This gap in compensation highlights the need for a more equitable collection system that ensures all avenues of ticket sales, including the secondary market, are held to account in the same way as primary sellers. PRO fees should be paid by the seller of the ticket to the customer and not left solely to the primary ticketer. This economic leakage is substantial and growing and damaging the earning potential of rights holders.

⁶ Global Growth Insights. (2024). *Secondary tickets market analysis: Trends and opportunities*. Retrieved from <https://www.globalgrowthinsights.com/market-reports/secondary-tickets-market-110702>

⁷ Reuters. (2025, March 21). *Ticketing marketplace StubHub files for U.S. IPO*. Reuters. Retrieved from <https://www.reuters.com/markets/deals/ticketing-marketplace-stubhub-files-us-ipo-2025-03-21/>

⁸ GlobeNewswire. (2025, March 12). *Vivid Seats reports fourth quarter and full year 2024 results*. GlobeNewswire. Retrieved from <https://www.globenewswire.com/news-release/2025/03/12/3041200/0/en/Vivid-Seats-Reports-Fourth-Quarter-and-Full-Year-2024-Results.html>

Though the new licensing forms by some of the US PROs address tickets sold “directly” to the secondary market, they have overlooked the vast majority of secondary resellers. This is an oversight that represents an increasingly urgent failure of the performance royalty system to keep pace with modern market dynamics, and their fundamental lack of understanding of the live music ecosystem.

Systemic Reform Is Necessary

BMI's filing calls for maintaining the status quo under the premise that it “protects songwriters.” ASCAP argues that any change to the current system would “cause immeasurable harm” to creators. But protecting songwriters also means collecting all money on the market and not just from the most vulnerable entities. It means making sure money collected on songwriters’ behalf gets to those very songwriters. It means building a licensing system that supports the sustainability of the very venues that showcase their music and allows audiences to experience it in vibrant local settings.

We appreciate the historical roles ASCAP, BMI, and SESAC play in the current marketplace and the value GMR has recently brought to songwriters. We agree that abusive practices by new entrants must be addressed. But the failures of certain new PROs do not excuse the shortcomings of the established ones. What we seek is not to dismantle the PRO system, but to reform it in ways that promote fairness, transparency, and sustainability for all stakeholders—especially those at the grassroots level. The live music sector has evolved dramatically since the inception of the current licensing model. It's time for the system to reflect that evolution through:

- Mandating a centralized, authoritative database of copyrighted works and associated PRO affiliations that licensees can consult to determine accurate licensing needs.
- Tying royalty distributions to actual setlist data for live concerts, allowing the rightful creators—often independent and self-published artists—to receive fair compensation.
- Implementing enforcement mechanisms to prevent bad-faith licensing practices from new PROs lacking easily verifiable repertoire transparency.
- Exploring models for capturing performance royalties from the secondary ticketing market, ensuring that creators are compensated when their work drives significant after-market revenue.

Conclusion

Independent stages are not seeking to avoid our licensing obligations. To the contrary, we want a system that works—one where licensing fees paid by our members go to the songwriters whose music fuels our events.

The current performance licensing and royalty distribution system is outdated and fails small venues, independent artists, and the very creators it purports to support. We urge the Copyright Office to take seriously the experience and voices of the independent music community and provide guidance on how licensors can prioritize fairness, transparency, and accuracy in practice.

Sincerely,

A handwritten signature in dark ink, reading "Stephen Parker". The signature is fluid and cursive, with the first name "Stephen" and last name "Parker" clearly legible.

Stephen Parker
Executive Director
National Independent Venue Association (NIVA)

EXHIBIT 1

INDEPENDENT VENUE ECONOMICS

500 Capacity Venue

- 150 Concerts Per Year
- 400 Attendees Per Show
- \$30 Ticket Price
- \$14 per Patron Spend

GROSS TICKET REVENUE CALCULATION:

$$400 \times \$30 \times 150 = \$1.8 \text{ Million}$$

GROSS ANCILLARY REVENUE CALCULATION:

$$400 \times \$14 \times 150 = \$840,000$$

GROSS REVENUE: \$2.6 Million

ANNUAL NET PROFIT MARGIN (1%-3%): \$26,400 - \$79,200

ANNUAL PRO FEES (1.5% - 1.8%): \$27,000 - \$32,400

EXHIBIT 2

From: [REDACTED]
Date: Thu, Mar 23, 2023 at 9:15 AM
Subject: [REDACTED] Unlicensed status with AllTrack
To: [REDACTED]

Hi [REDACTED],

Despite numerous attempts to reach you, we unfortunately have not received any response regarding the **non-compliant status of** [REDACTED] for the use of AllTrack-represented music.

As a performing rights organization (PRO) that has been legally appointed to represent our affiliated songwriters, composers, publishers and producers, we are obligated to inform you that, under US copyright law, if your business performs unlicensed music, it could be subject to statutory losses of up to **\$150,000 per unlicensed song played**, plus reimbursement of attorneys' fees incurred by the copyright owners.

A valid copyright compliant music license is typically a nominal fee that protects your business from significant unforeseen infringement liability.

Please secure a license for [REDACTED] today to ensure the proper permissions are in place moving forward:

[Pay License Fee](#)

Thank you,

[REDACTED]
Licensing & Compliance
AllTrack Performing Rights

www.alltrack.com

Music Licensing [FAQs](#)