

**BEFORE THE
U.S. COPYRIGHT OFFICE
LIBRARY OF CONGRESS
WASHINGTON, D.C.**

**In the Matter of Orphan Works
and Mass Digitization**

Docket No. 2012-12

**JOINT COMMENTS OF THE AMERICAN SOCIETY OF COMPOSERS, AUTHORS
AND PUBLISHERS AND BROADCAST MUSIC, INC. REGARDING ORPHAN
WORKS**

The American Society of Composers, Authors and Publishers (“ASCAP”) and Broadcast Music, Inc. (“BMI”) respectfully submit comments in response to the U.S. Copyright Office’s (the “Office”) Notice of Inquiry dated October 22, 2012 for written comments on issues regarding “orphan works and mass digitization” (the “NOI”).¹ While ASCAP and BMI recognize the importance of the orphan works issue, we urge the Office to proceed deliberately and with caution in this area because any orphan work regime that may be adopted entails the risk of unfairly compromising the rights and economic interests of this country’s music creators.

I. INTEREST OF ASCAP AND BMI

ASCAP and BMI are the nation’s two leading music performing rights licensing organizations (“PROs”), collectively representing hundreds of thousands of songwriter, composer and publisher members and a repertoire of millions of copyrighted musical works. The PROs both license the non-dramatic public performance rights in musical works to their respective repertoires on a non-exclusive basis to a wide range of users, including digital broadcasting entities such as radio, broadcast television, cable, satellite and the Internet, as

¹ 77 Fed. Reg. 64555 (Oct. 22, 2012). On November 27, 2012, the Office extended the time for the comment period. See 77 Fed. Reg. 71452 (Nov. 30, 2012).

well as restaurants, stores, concerts, background music services, aerobics and dance studios, and many more.² The vast majority of ASCAP and BMI member songwriters and publishers are the consummate “small businessmen and women” who depend on their royalties for a major portion of their income.

ASCAP and BMI represent not only U.S. writers and publishers, but also hundreds of thousands of foreign writers and publishers through reciprocal license agreements with PROs in nearly every country in the world. Through these reciprocal agreements, ASCAP and BMI are each permitted to license in the U.S., the public performing right in many thousands of musical works by foreign songwriters and composers. ASCAP and BMI also receive royalties from those foreign PROs for performances of ASCAP and BMI musical works occurring overseas.

ASCAP and BMI’s repertoires span decades and are as richly diverse as this country’s history. ASCAP and BMI composers and lyricists write in every musical genre, including pop, jazz, symphonic and concert, film and television scoring, rock, country, new age, hip-hop, Latin, gospel, and rhythm and blues, and their works range from some of the most familiar standards to the latest top hits. As creators and owners of this vast array of musical works, ASCAP and BMI’s writers and publishers have an important stake in ensuring that the copyright law continues to adequately protect their rights, both now and in the future.

II. ISSUES OF CONCERN TO ASCAP AND BMI

A. Creators and Music Users Face No Significant Difficulties in Obtaining Rights and Clearance Information for Public Performances in Musical Works

ASCAP and BMI have submitted comments in response to prior inquiries conducted by

² Both ASCAP and BMI operate as non-profit-making businesses and do not retain earnings. Instead ASCAP and BMI return all license fees collected, less operating expenses, as royalties to their respective affiliated songwriters, composers, and music publishers whose works are publicly performed.

the Office on the subject of orphan works, as well as comments on legislation in Congress.³ During the past four years, little has changed regarding the licensing of the public performance of copyrighted musical works that would dictate a new approach. ASCAP and BMI reiterate their belief that no action regarding orphan works needs to be taken in connection with the use of copyrighted musical works.

Musical works are not “orphaned” when users seek to make non-dramatic public performances due to the ready availability of licenses from the PROs⁴ and the extensive public databases they maintain. As previously expressed by ASCAP and BMI, with respect to the public performing right in musical works, the orphan works scenario should not be a problem because the PROs – BMI, ASCAP and SESAC – together represent the rights to in excess of 99% of copyrighted works registered with the Office (and many tens of thousands of works not yet registered). The significance of this is that a user seeking to license the public performing right in music can always obtain a license from the performing right organization whose repertoire includes that work. It can be expected therefore that very few musical works will fall into the “orphaned” category with respect to the public performing right.

Musical works are also not “orphaned” when users seek to make uses *other* than performances. Despite the problems claimed by users in obtaining ownership or clearance information for other kinds of “orphaned” copyrighted works, such problems are relatively rare in the context of sync and mechanical licensing of musical works. In ASCAP and BMI’s

³ See generally Written Statement of BMI at Oversight Hearing before the Subcomm. on Courts, the Internet, and Intellectual Property of the House Comm. on the Judiciary on “Promoting the Use of Orphan Works: Balancing the Interests of Copyright Owners and User,” 110th Cong., 2d Sess. 141 (2008); Comments of ASCAP Regarding Orphan Works in Docket No. 2005-1434 (March 25, 2005); Initial Comments of BMI on Orphan Works (March 25, 2005); Reply Comments of ASCAP Regarding Orphan Works in Docket No. 2005-1434 (May 9, 2005).

⁴ Indeed, in the case of ASCAP and BMI, which each operate under consent decrees with the U.S. Department of Justice, a music user need only “apply for a license” to be licensed; once the application is made to ASCAP and/or BMI, the music user cannot be sued for infringement. If a fee cannot be agreed upon, the parties can apply to have a fee fixed by the court.

experience, creators and music users face no substantial difficulties in procuring clearance information for those uses of musical works that the PROs do not license – for example, dramatic performances, and synchronizing music with motion pictures or television shows (so-called “synch licenses”), in large part, because PROs and other music organizations such as the Harry Fox Agency maintain extensive databases of copyright information, as well as contact information for their respective affiliates and members, which creators and music users can freely access at any time and without charge to determine where to obtain rights and clearances.⁵ These musical works databases are invaluable resources for those who want to use musical works. Often the first stop for rights and clearance information, the PROs maintain information on virtually all copyrighted musical works, and up-to-date contact information for the overwhelming majority of works, allowing potential creators and music users to contact and seek appropriate license for any uses of musical works. In effect, the PROs could be considered as having already established industry guidelines or best practices for musical works. Accordingly, the problem of “orphan works” simply does not exist in connection with musical works.

Moreover, for decades now, the PROs around the world through their participation in the International Confederation of Societies of Authors and Composers (known as “CISAC” -- based on the acronym for its French name, Confédération Internationale des Sociétés d’Auteurs et Compositeurs), a global trade association of collecting right organizations, have worked to develop “Common Information Standards” for the maintenance and exchange of information

⁵ BMI pioneered an online database greatly facilitating the public’s ability to identify the creators and copyright owners of BMI musical works. See <http://www.repertoire.bmi.com>. Similarly, ASCAP offers copyright information through its ACE database (“ACE”), located at <http://www.ascap.com/ace>. ACE is a database of all song titles licensed by ASCAP in the U.S. that have been performed and have appeared in any of ASCAP’s domestic performance surveys, and includes copyrighted arrangements of public domain works and foreign compositions licensed by ASCAP songwriters, including co-writers who are either affiliated with other PROs or not affiliated with any organization; the names, contact persons, addresses, and phone numbers of publishers or administrators of the works; and even the names of some of the performers who have made commercial recordings of the works.

regarding their musical works repertoires, including agreed upon protocols and unique numbering systems. Most recently, certain of the larger PROs are funding the design of a Global Repertory Database (“GRD”) that will further assist music services in identifying (and properly compensating) the copyright owners of musical works. Attached for the Office’s reference is an appendix, describing in more detail the practices and efforts of PROs to maintain and link their databases (the “Appendix”).

B. Legislation Considerations

The PROs believe that if any legislation is contemplated that includes or addresses musical works, it must acknowledge that copyrighted works for which a license is available through a readily locatable collective licensing organization, such as the music PROs, should not be considered orphaned.⁶ The statutory scheme should also clarify that: (1) a reasonably diligent good faith search to locate the owner must include research of databases of collective licensing organizations that may have the rights to license to the user; and (2) if a musical work is available to be licensed from the collective (which itself is an “owner” of non-exclusive licensing rights in the musical work) and such a license is not taken, the work would *not* be considered “orphaned” with respect to the public performing right. Stated otherwise, without accessing the music organizations’ databases, the search would not be considered reasonable within the meaning of the U.S. Copyright Act, and the failure to take an available blanket license should not permit a user to take advantage of an orphan works system. Such an express statutory provision would serve as a further incentive to the

⁶ ASCAP and BMI also believe that orphan works treatment should not be applicable for any uses subject to statutory compulsory licenses (*e.g.*, sections 111, 114, 115, 118, 119 and 122) where Congress has created the means of access to a statutory license and the Copyright Royalty Board has established the fees, and there are established methods and practices for dealing with unidentified works. H.R. 5439, 109th Cong., 2d Sess. (2006) incorporates this view by stating in section 2(c) that “if another provision of this title provides for a statutory license when the copyright owner cannot be located, that provision applies”

marketplace “reform” that has been advocated by the Report on Orphan Works issued by the Register of Copyrights in 2006 (the “2006 Report”).⁷

Although the 2006 Report noted the existence and the efficacy of collective licensing organizations,⁸ orphan works legislation introduced during the 109th Congress (the Orphan Works Act of 2006) initially did not reflect the role that collective licensing organizations can play in reducing the incidents of orphan works problems.⁹ In written testimony, the Office did suggest that the adoption of the proposed legislation might galvanize the non-music copyright industries to create collective licensing organizations similar to the music PROs. The testimony continued: “In fact, enactment of orphan works legislation may be the catalyst necessary to prompt the non-legal, marketplace reforms that will most efficiently address the problems identified by photographers and creators of visual images.”¹⁰ The logic of this statement is apparent.

Furthermore, as the then Register of Copyrights (Marybeth Peters) stated in her written statement at a House Judiciary Committee Subcommittee’s hearing on March 13, 2008, a user should take advantage of all reasonable tools likely to lead him to the copyright owner.¹¹ The Register continued, by stating that it is the case already that when searching for a copyright owner, users look to the collective rights organizations and many other resources.¹² ASCAP and BMI agree with the Register’s statements.

⁷ See generally Report on Orphan Works, A Report of the Register of Copyrights (January 2006).

⁸ *Id.* at 30-31.

⁹ H.R. 5439, 109th Cong., 2d Sess. (2006). Subsequent amendments to the bill and legislative history were prepared that fixed this oversight.

¹⁰ 109th Congress House Hearing on Orphan Works, at 8 (statement of Jule Sigall), *available at* <<http://www.copyright.gov/docs/regstat030806.htm>>.

¹¹ Statement of Marybeth Peters on “The Orphan Works Problem and Proposed Legislation,” *supra* note 3, at 25.

¹² *Id.*

To that end, if the Office desires to establish “best practices guidelines” for searches for different types of copyrighted works, the PROs would like to participate in the formulation of any such guidelines; perhaps such guidelines could ultimately take the form of a Copyright Office Circular or the Office could host on its website suggested guidelines produced by different copyright ownership groups, with links to relevant database and search sources. Alternatively, legislation could direct the Office to maintain an “approved registry” list, by industry, which a user need search as a precondition to orphan use.

While the Orphan Works Act of 2006 did not require mandatory registration of works (and is therefore arguably compliant with the Berne Convention (“Berne”)), it appears that, for all practical purposes, a copyright owner will have to keep his or her address on file somewhere that is publicly available in order to preserve the economic value of his or her copyright rights. Even if the creator is capable of meeting this burden, the creator must ensure that the corporate entity owning or controlling the copyright (*e.g.*, in the case of a work-for-hire) is similarly locatable. In addition to public access to contact information, there must be adequate assurance that someone coming across a copy of the work can reasonably link it to that particular creator or copyright owner.¹³ We again note that the musical works industry has made great advances to this end. *See* Appendix, attached hereto.

Finally, we believe certain remedies must be available to copyright owners. In the 109th Congress, the Professional Photographers of America association testified that in the case of uses that have relatively small value, it will not be cost efficient for the owner of an orphan work to negotiate a reasonable fee when the incentives created by statutory damages and attorneys’ fees

¹³ In this regard, concern has been expressed that the proposal incorporated in the Orphan Works Act of 2006 for attribution to copyright owners by orphan works users (which in theory should be helpful to authors) could actually lead to improper or incorrect information being put on works by orphan works’ users, which in turn could lead to reliance by subsequent orphan works users on incorrect data when they do their searches. All of this tends to argue for the creation of collective licensing organizations in non-music fields.

are removed from the negotiating equation.¹⁴ A representative of the Office testified that a “small claims” court for copyright owners could be the solution to this problem but the cost of going to even a small claims court is going to be relatively high in some cases.¹⁵ Attorneys’ fees should therefore be available to copyright owners who have to pursue legal remedies such as reasonable license fees for orphan works uses, at least in cases of flagrant and willful disregard of the owners’ economic interest (*e.g.*, such as when a user refuses to negotiate for a reasonable fee for past uses).

C. International Implications

ASCAP and BMI are also concerned about international repercussions – both for ASCAP and BMI members and the entire community of U.S. copyright owners – that would arise from orphan works legislation that reduces the rights of copyright owners, limits the terms of protection for copyrighted works, or imposes new burdens on copyright owners to maintain their rights.

In this regard, we urge the Office to examine the approach taken in the European Union’s (“EU”) October 2012 directive on certain permitted uses of orphan works.¹⁶ In its directive to EU member states, the EU notably extends the new orphan works protection only to users whose function is to serve the public interest, including publicly accessible libraries, educational establishments and museums, archives and the like. The EU did not adopt a general amnesty for commercial users of copyrighted works. Further, the EU directive appears to exclude photographic works (which are at great risk of being “orphaned”) from its scope. This limited

¹⁴ See 109th Congress House Hearing on Orphan Works, *supra* note 10, at 30 (statement of David Trust).

¹⁵ *Id.* at 16-17 (statement of Jule Sigall).

¹⁶ See *Directive of the European Parliament and of the Council on Certain Permitted Uses of Orphan Works*, Art. 1(1), available at <http://register.consilium.europa.eu/pdf/en/12/pe00/pe00036.en12.pdf>.

approach to granting orphan works status is well in keeping with the potential harm that a broad orphan works law could cause to creators.

Enactments regarding orphan works that require formalities could conceivably violate U.S. obligations under Berne and the Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS”). Berne mandates that the “enjoyment and exercise” of copyright rights “shall not be subject to any formality.”¹⁷ Any requirement that authors and proprietors of foreign works satisfy certain formalities to avoid having those works deemed “orphaned” would likely violate Berne. TRIPS incorporates Berne’s articles governing formalities and a limitation on rights or imposition of burdens on copyright owners would violate TRIPS as well.¹⁸

D. Mass Digitization

Mass digitization is not of direct concern to the PROs. However, no mass digitization of musical works can be made without direct permission from copyright owners even if best practices have been followed. The policy implications of mass digitization do not coincide with concerns of putative users of orphaned works and they should be separately addressed by Congress. Simply, there is no reasonable search option for an institution that desires to convert an immense quantity of copyrighted works to digital form and must locate and contact the owners of all those works. Accordingly, mass digitization necessarily entails a separate framework and solution.

III. CONCLUSION

By virtue of the PROs’ readily available bulk licenses and publicly accessible works databases, musical works – virtually all of which are licensed for non-dramatic public

¹⁷ Berne Convention for the Protection of Literary and Artistic Works, art. 5(2) (Paris Text, 1971).

¹⁸ Agreement on Trade- Related Aspects of Intellectual Property Rights, arts. 9(1), 13.

performance by the PROs – cannot be “orphaned.” In addition, the Office should recognize that orphan works legislation would have serious international implications, and could ultimately weaken the international protection of U.S. works.

ASCAP and BMI applaud the Office’s efforts and initiative in this challenging area of law. Collective licensing organizations, such as ASCAP and BMI, can serve as a cost-effective marketplace solution to orphan works licensing, and ASCAP and BMI believe that at a minimum any orphan works bill must reflect this valuable role by specifying that reasonable searches include searching the databases of the PROs and that if a license from a PRO is available such musical work(s) cannot be considered to be orphaned.

ASCAP and BMI respectfully reserve the right to submit further comments in response to the initial comments submitted to the Office. ASCAP and BMI also stand ready to assist the Office to draft statutory language and/or participate in drafting proposed, “best practices” guidelines for good faith searches for owners of musical works.

Respectfully submitted,

Dated: New York, New York
February 4, 2013

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APPENDIX: OVERVIEW OF PROs DEVELOPMENT OF GLOBAL DATABASES

As mentioned in the Joint Comments of ASCAP and BMI, performing right organizations (PROs) have for decades now worked on developing protocols for exchanging information about the ownership of musical works under the aegis of the International Confederation of Societies of Authors and Composers (known as “CISAC” – based on the acronym for its French name, Confédération Internationale des Sociétés d’Auteurs et Compositeurs), a global trade association of collecting right organizations. The PROs have been driven to do so given the extensive means by which individual musical works are used and performed through all types of media and platforms worldwide. It is absolutely crucial for the PROs to carry complete and accurate databases, maintained under agreed standards, listing the musical works, writers and owners which they represent in their territories to enable the licensing of such works by music users as well as accurate distribution of royalties paid under such licenses.

While we do not expect that these database systems, which the PROs have created, would or could be replicated fully or easily for other types of copyrighted materials, we respectfully submit that the Copyright Office should understand how an industry can work jointly to minimize almost completely the issue of orphan works. Thus, set forth below is a high level summary of some of the procedures that have been adopted by PROs, as well as their present work on designing a Global Repertory Database (the “GRD;” also sometimes referred to as the “GRDB”).

A. IPIs: How Writers and Publishers are Identified

Upon joining a PRO, the writer (all songwriters, composers and lyricists are hereinafter referred to as “writers”) or music publisher member discloses to that PRO its full contact and other personal information that the PRO might find relevant and necessary to pay the writer or publisher royalties. The PRO keeps this information confidentially in its own proprietary and confidential membership database. No other PRO has access to the non-public, personally identifying, and confidential data or membership database of any other PRO. However, because PROs must know which musical works are licensed through which PROs in order to properly distribute both domestic and foreign royalties, all the PROs worldwide have adopted a system of uniform number coding used to link musical works with their writers and publishers and their PRO affiliation. As noted, this system is overseen by CISAC.

CISAC has 231 societies, as either full, associate and provisional members, in 121 countries, which collect for creators or “authors” of musical, literary, audiovisual, graphic and dramatic works, with the majority being collecting societies for musical works. *See www.cisac.org*. One of CISAC’s “essential purposes” is to co-ordinate the technical activities of collecting right organizations. To that end, CISAC’s societies have worked to develop a “common information system” or “CIS,” the purpose of which is to introduce, develop and maintain: (i) standards for the efficient distribution of royalties (“CIS Standards”); and, more importantly for our purposes, (ii) databases which enable members to share information based on the CIS Standards. Referenced therein are several standards, which are discussed in greater

detail below, including the “IPI” (interested party identifier), the “ISWC” (the international standard work code for musical societies) and CIS-Net (the network of databases used for referencing data on musical works, which allows for cross- referencing of ISWCs to IPIs, including unique PRO codes).

Once a writer’s or a publisher’s membership in a PRO is accepted, the PRO will apply for a unique IPI for that unique member. The function of an IPI number is the de facto international identifier of that person or entity and link to its PRO of affiliation by territory. It is the IPI that is thereafter associated globally with the writer of the work and the work’s publisher (on a territorial basis), even if his, her or its society of affiliation may change. If, for example, a writer resigns from ASCAP and joins BMI, he or she retains the same IPI.¹⁹

While the PRO itself retains detailed information regarding its members and affiliates in its own confidential databases, the IPI database contains only limited identifying information regarding the writers and publishers, limited to the name of the writer or publisher, its affiliated PRO, date of birth and nationality. The IPI database does not contain the writer’s or publisher’s address, residence or contact information, the identity of any assignees, or in the case of a deceased writer, his or her heirs. However, the IPI database is accessible by all PROs, as well as certain music users, as part of a network of databases with musical work information known as CIS-Net, as overseen by CISAC.

Standing alone, the IPI database has little significance as it serves merely to list centrally all writers and publishers that are members of PROs to permit such writers and publishers to be identified internationally by a specific code number; it is only when the IPI is used in connection with other data that it has the utility, for example (and most importantly) to connect writers and publishers with the musical works they have created, as explained below.

B. ISWCs: How Musical Works are Identified

Every musical work, whether a song, classical composition or television soundtrack cue, has been written by one or more writers, who divide their interests in their work by an agreed-upon percentage. These writers typically, but not always, assign their copyright interests in the work to one or more music publishers, generally in the same fractional ratio; sometimes a writer will retain some share of ownership as a “publisher.” The writers of a specific work will, of course, never change once the work is written, whereas publishers of works sometimes change when they sell their works to other publishers, writers terminate their contracts with publishers and take back their publishing interests, give their copyright interests to another publisher and/or authorize another publisher to administer their works.²⁰

¹⁹ Those writers that work under various pseudonyms will obtain a “Base IPI number” and separate sub-IPI numbers for each pseudonym. The pseudonym sub-IPIs will automatically link to the Base IPI, such that usage of any of the writer’s sub-IPIs will refer back to the Base IPI. This ensures that works authored by one writer under various pseudonyms will all link back to the same writer and the writer’s PRO of affiliation.

²⁰ In the case of foreign PROs, however, the writer remains with the foreign PRO – typically having given it an exclusive right to license – and whatever changes may take place vis-à-vis the writer’s publishing relationship, the new publishing relationship would still run through the foreign PRO.

The writer and publisher share data regarding a musical work (*i.e.*, who wrote and published a work) is unknown to PROs until the creators of the work – the writer(s) and/or publisher(s) – publicize that information. This publication is accomplished through registration processes operated by each PRO separately. Members of a PRO are required to register their works with their PRO for inclusion in that PRO’s own title database. The title registration will contain the identities of the writers and the publishers (updated as necessary), the appropriate fractional shares and affiliated PROs of each. Once registered by a PRO member, the work becomes a part of that PRO’s repertory. Many PROs maintain free, publicly searchable databases of the works which they represent in their territories; ASCAP’s is known as ASCAP Clearance Express or ACE, and is available through ASCAP’s website, at www.ascap.com/ace/; BMI’s database is available at www.bmi.com; and SESAC’s is available at <http://www.sesac.com/Repertory/Terms.aspx>. By virtue of these searchable title databases, any member of the public can peruse the vast repertories of the U.S. PROs, which together contain practically the entire U.S.-based copyrighted song repertory,²¹ as well as the works of foreign PRO members as represented by ASCAP, BMI and SESAC here in the U.S.

To ensure, however, that the entire world musical works repertories are aligned, works registration follow CISAC-agreed registration standards, referred to as “Common Works Registration” standards, and which in turn allow for obtaining a unique “ISWC.” Much as each PRO member is given a unique IPI code to identify the member in a standardized manner, each musical work is similarly given a unique international work code, known as the ISWC, to identify that work internationally in a standardized manner.

To ensure that all PROs have access to the same musical work interest information, the PROs, through CISAC, make their musical works title database information accessible through the CIS-Net.²² In this way, PROs all access the CIS-NET, and thereby have access to a connected listing of all works by ISWC and all writers/publishers by IPI. Of course, again, the information a PRO makes available regarding a work – as available on CIS-Net – does not contain any contact information. The contact information for the copyright owners is available at the PRO level, on their publicly available databases. If a member of the public wishes to determine who is the copyright owner of a particular work, it need only contact (or search the databases of) the PRO with which that owner is affiliated. The PRO can advise a user whether the work is indeed in its repertory, and how to contact its copyright owner, or by utilizing the CIS-NET direct the user to the proper PRO who can advise the user of the copyright ownership information. The key point is that because of the CISAC CIS-NET systems, all PROs worldwide access uniform information regarding tens of millions of copyrighted works worldwide. Moreover, because of the worldwide access to the same databases, which are used to

²¹ It should be noted that some PROs have a legal requirement to make its list of members and repertories publicly available. See, e.g., Section X of the ASCAP Consent Decree at <http://www.ascap.com/~media/Files/Pdf/members/governing-documents/ascapafj2.pdf>.

²² Again, CIS-Net is actually a network of database nodes, including individual PRO database nodes and multi-society nodes, or nodes that are gateways to networks, like the WID (“Works Information Database,” managed by ASCAP) or “LatinNet,” which is managed by the Spanish society, SGAE, and used largely by societies handling predominantly Hispanic title works and writer names. A work may appear in multiple “nodes,” but the information that is considered authoritative is always the one that can be found in the PRO’s node affiliated with the work’s writer(s) and publisher(s), or the node of the group in which that PRO is participating.

ensure full and accurate distribution of royalties, the PROs have the ability and incentive to ensure that the data in the CIS-NET is complete and accurate. Each PRO routinely reviews the data therein, particularly to complete information for any “unidentified” works.

C. GRD: The Global Repertoire Database

As explained, CIS-NET, which contains undoubtedly the world’s most comprehensive, interlinked databases of writers/publishers and their works is not searchable by the public directly, nor does it contain contact information of the copyright owners; one must still contact the PROs directly for that information or use their publicly accessible databases. However, a working group was created in December 2009 following certain “Online Roundtable” discussions sponsored and facilitated by the DG Competition of the European Commission. The working group’s role was to consider how a GRD for musical works might be created and deployed to provide access to a single, consolidated source of data which music creators, music publishers, music rights societies and other users can rely on for authoritative, multi-territorial information about the ownership and/or control of musical works.

After a period of study, twelve PROs formed the “GRDDesign SAS,” to employ contractors to design the GRD and lay out its requirements.²³ These societies have already invested substantial sums in the GRDDesign SAS for this purpose. In addition, the GRDDesign SAS is working under a collaboration agreement with representatives of various other international and European based music publisher and songwriter associations, as well as a wide range of the major online and mobile music service providers. It is hoped that through the creation of the GRD, music users and copyright owners will have an even more efficient means of identifying the owners of specific copyrighted musical works.

²³ These societies are: APRA – Australasian Performing Right Association Limited; ASCAP – American Society of Composers, Authors and Publishers; BMI – Broadcast Music, Inc.; BUMA/STEMRA -Vereniging Buma en Stichting Stemra; GEMA – Gesellschaft für Musikalische Aufführungs- und mechanische Vervielfältigungsrechte; The MCPS – PRS Alliance Limited (trading as “*PRS for Music*”); SABAM – Société Belge des Auteurs, Compositeurs et Editeurs belgische Vereniging Auteurs, Componisten Uitgevers; SIAE – Società Italiana Degli Autori ed Editori; SGAE – Sociedad General de Autores y Editores; SOCAN – Society of Composers, Authors and Music Publishers of Canada; STIM – Sveriges Tonsättares Internationella Musikbyrå; and, UBC – União Brasileira de Compositores.