

A Statement Concerning Generative Artificial Intelligence and the Global Music Community by the National Music Council of the United States

July 1, 2024

Introduction

The National Music Council of the United States (“NMC”) is the Congressionally chartered umbrella organization for the broad spectrum of US music community advocacy groups. Founded in 1940, NMC’s membership is today comprised of almost fifty leading American trade organizations representing four distinct categories of music community interests: those of music creators; musical artists & performers; music copyright owners & administrators; and music educators. (See, musiccouncil.org).

As a consensus-based organization, NMC often canvasses its organizational members to help communicate the positions of each group to both the public, and to one another on issues of import to the entire American and global music communities. Those matters range from remunerative fairness for creators, performers, owners, and administrators, to encouraging universal music education, protecting music-related speech freedoms, and ensuring diversity, equity, and inclusion throughout the music industry. At present, few issues rise to the importance of fostering dialogue and action concerning the dangers and opportunities presented by fast-track development of generative artificial intelligence (“GenAI”) systems.

For purposes of developing this Statement, NMC defines “GenAI systems” as 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.”

Obviously, such GenAI systems pose an existential danger to the sustainability of human-centric creation on both a cultural and financial basis if left wholly unregulated. Legal issues including matters of consent, credit, and compensation are just a few of the aspects of GenAI ingestion, manipulation, and output that need to be expeditiously clarified and resolved before GenAI systems become even more ubiquitous, and a threat to the viability of music as an important cultural art form, as a major contributor to the US economy and balance of trade, and as the basis for sustaining the ability of all persons in the music community value chain to earn a living.

Consistent with NMC’s goals of demonstrating that there is broad consensus among music industry stakeholders on the imperative of protecting the music creator and copyright communities from wholesale misuse of copyrighted musical works by unlicensed GenAI systems, the following Statement outlines the general concerns and positions of NMC, and is intended to inform cooperative legislative dialogue. It is our hope that by providing such information, we will increase the likelihood that adequate legal protections for all interested parties can be developed and supported not only by NMC organizational members, but also by music-loving consumers of the worldwide music repertoire and responsible GenAI system operators.

Principally, GenAI has the capacity to enhance human musical expression and public enjoyment of the musical arts, or to cause longstanding, crushing, and potentially irreparable damage to musical creativity, commerce, and culture. Our goal is to support the best of all possible outcomes for our organizational members and their constituencies, leading to ever-increasing advancement of human-centric musical excellence, progress, equitable remuneration, and cultural preservation around the globe.

The NMC Statement

With the foregoing in mind, the following points summarize the general positions of NMC member organizations regarding the importance of various aspects of GenAI-related regulation. The following also includes descriptions of those GenAI issues on which discussion continues without unanimous recommendation. Please note that the NMC does not speak on behalf of its members, and each member organization is --as always-- free to express contrary views to what the NMC perceives as “consensus positions” such as those presented here:

1. Continuing Support for Artificial Intelligence Tools and Technological Advancement

There is NMC 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. NMC member groups 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.

2. The Creator/Copyright Owner’s Exclusive Right to Control GenAI Use of Copyrighted Works

There is NMC consensus that human creators and copyright owner assignees of copyrighted musical works must be guaranteed by US and international laws the unambiguous, exclusive right to control the use of their works in all GenAI contexts related to ingestion, manipulation, and output. The organizations further stress support for clarification 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 licensing of general GenAI use rights to a copyright user should be legislatively clarified as not being tantamount to a license permitting generation of new works obviously derived from and/or substantially similar to one or more particular, original works, absent the licensing of additional rights to do so.

3. Presumption Against Unauthorized GenAI Use as Fair Use

There is NMC consensus favoring US and international legislative clarification that unlicensed ingestion, manipulation, and output of copyrighted works by GenAI systems presumptively falls outside the boundaries of the US fair use doctrine and similar international defenses, except in

narrowly delineated cases of use -- to be specifically agreed upon through legislative dialogue -- in the course of non-profit educational activities. Apart from the narrow fair use exceptions noted immediately above, NMC acknowledges that all US legislation is subject to the free speech principles set forth in the First Amendment, as they may be judicially delineated.

4. The 3 Cs: Consent, Credit, and Compensation

There is NMC consensus on expressing support for the principle that creators and copyright owners around the world should as a matter of universal right and custom (pursuant to laws and treaties including but not limited to the US Constitution, the constitutions and laws of other nations, the Berne Copyright Convention, and the Universal Declaration of Human Rights) be guaranteed the rights of consent, credit and compensation in regard to GenAI use of their copyrighted works, subject to the right to voluntarily license such rights at whatever rate they deem proper, or to decline consent of use in any and all cases (subject to available defenses to infringement, if any).

5. The “Human-Centric” Approach to GenAI Regulation

There is NMC consensus on support for a “human-centric” approach to all aspects of GenAI regulation, whereby the creative, moral, and remunerative rights of humans are favored over the economic and other desires of those seeking to supplant human creators and their works by technological means.

6. Public Disclosure and Mandatory Record Keeping Concerning GenAI Derived Works

There is NMC consensus favoring 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, there is NMC consensus 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 (with possible exceptions for certain non-profit educational uses to be specifically agreed upon through legislative dialogue).

7. High Standard of Human Curation for Copyrightability

There is NMC consensus in support of the current position of the US Copyright Office that in order to qualify as copyrightable, a musical work must have been created by a human author(s) whose level of curation over the creative process, among other criteria, rises far above the level of providing mere prompts requesting incorporation of artificially produced stylistic and sound-alike influences.

8. Individual Name, Image, Likeness, Voice, and Instrumental Sound Protections

There is NMC consensus in support of efforts to secure US federal and international protections for individuals' rights of publicity (including an *individual's* name, likeness, voice, instrumental sounds, and other identifiers) in the context of GenAI usage, as well as enactment of "anti-deep fake" laws (especially in for-profit and commercial advertising contexts). Such rights would be subject to non-commercial, free speech-based exceptions including parody and satire, if rendered unlikely to mislead the public as to origin or facts.

9. Diversity, Equity, Inclusion, and Transparency

NMC member organizations support the embracing of DEI principles in the context of ensuring fairness in GenAI regulation. These principles include but are not limited to support for (i) mitigating biases in algorithms, data, and decision-making processes; (ii) ensuring diverse representation in the development and deployment of GenAI systems, with attention to diverse demographics in categories including age, race, ethnicity, religion, gender, identity, and disability; (iii) providing clear and understandable information in multiple languages concerning how GenAI systems work and may be utilized; and, (iv) adopting measures and procedures designed and dedicated to the advancement of environmental sustainability and accessibility to persons with disabilities.

10. Support for Prompt Legislative Action

There is NMC consensus regarding the importance of robust participation by music community advocacy groups in the legislative process concerning GenAI regulation. While some member groups favor a litigation strategy as a necessity to ensuring the full and immediate protection of music creator, performer, and copyright owner rights -- and others have constituents that are already engaged in direct GenAI licensing -- most support a multi-track approach whereby Congress (and foreign legislatures acting within their own territories) will play an important role in shaping the future of GenAI regulation. With several GenAI-related draft bills already circulating on Capitol Hill in Washington, D.C., few, if any, NMC members consider as viable a continuing "wait and see" approach to Congressional action, not only as a matter of logic but also in light of the rapidly increasing threats that wholly unregulated GenAI commerce presents.

11. Increased Cooperative Dialogue

There is NMC consensus that immediate cooperative dialogue among all interested stakeholders is the best way to proceed toward prompt establishment of necessary legal and regulatory solutions that will adequately protect the rights and/or interests of all music creators, performers, owners, and educators as soon as possible. Such cooperative process should in no way, however, be permitted to result in undue delay in, or serve as an obstruction to, advocacy for timely legislative and/or administrative action.

12. Licensing Frameworks

There is NMC consensus against implementation of a compulsory licensing solution with government-set royalty rates to address the issue of GenAI ingestion and output authority.

NMC members believe GenAI-related licensing systems and practices must operate on a voluntary market basis. The framework of collective licensing of GenAI rights on a voluntary basis, however, is still being considered. Some NMC member groups, especially music creator organizations, support legislative clarification that voluntary collective licensing of GenAI ingestion and output authority (potentially at collectively negotiated royalty rates) are essential to facilitating and streamlining the GenAI licensing process and establishing a level licensing marketplace for independent songwriters, composers, and performing/recording artists. NMC will continue to monitor the positions of its members on this, and related open issues.

Conclusion

The broadly-based US member organizations of the NMC are hopeful that this outline of its current positions on GenAI will be helpful in moving legislative discussions forward, toward the promise of more effective rights protections and marketplace efficiencies in the immediate future. If the dangers presented by GenAI can be cooperatively converted through laws and regulations into opportunities, and years of litigation can be avoided in favor of creating workable, voluntary licensing systems approved by government and agreeable to the private sector, the results should be both fair and highly remunerative to all in the value chain.

NMC looks forward to working with Members of Congress, Executive Agencies, and all interested parties in creating and sustaining that level of legislative cooperation until the job is completed. Please feel free to direct any questions concerning the issues discussed herein to Dr. David Sanders, Executive Director of the National Music Council of the United States.

THE NATIONAL MUSIC COUNCIL

The National Music Council of the United States is celebrating its 82nd year as a forum for the free discussion of the nation's national music affairs and challenges. Founded in 1940 to act as a clearinghouse for the joint opinion and decision of its members and to work to strengthen the importance of music in our lives and culture, the Council's initial membership of 13 has grown to almost 50 national music organizations, encompassing every important form of professional and commercial musical activity. Through the cooperative work of its member organizations, the National Music Council promotes and supports music and music education as an integral part of the curricula in the schools of our nation, and in the lives of its citizens. The Council provides for the exchange of information and coordination of efforts among its member organizations, and speaks with one voice for the music community whenever an authoritative expression of opinion is desirable. www.musiccouncil.org