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THE MISSING GUILD: WHY SONGWRITERS NEED COLLECTIVE BARGAINING RIGHTS IN THE STREAMING ERA

I. INTRODUCTION

Across the world, human beings understand the value of creative work. We understand the importance of staying committed to a passion. We have built systems to support it. We fund school programs to inspire and support young artists. We keep our communities engaged with the arts through maintaining theaters and museums. Our Constitution itself reflects the belief that creative work deserves protection, granting authors rights in their creations and the chance to earn a living from them.[1] These protections exist because we recognize that art enriches our lives, strengthens our communities, and it cannot survive without our support.

For many young artists, pursuing a career in art represents the purest form of creative ambition, and the dream is simple: to turn ideas into work that can be shared and to build a life sustained by passion rather than compromise. Songwriting, in particular, is a discipline that demands patience, vulnerability, and persistence. Yet songwriters remain excluded from protections that support other creative professionals, even as streaming now accounts for more than seventy percent of their income through performance and mechanical royalties.[2] Their pay is set not through fair negotiation, but by compulsory licenses and decades-old consent decrees. Unlike other professionals who can organize and bargain collectively, songwriters face unique legal barriers. Antitrust and copyright laws operate in tension. Copyright grants individual rights, while antitrust law discourages collective action. The result is a profession fragmented by design, leaving independent songwriters to face powerful corporations alone. Complaints about low pay for songwriters are far from uncommon, but progress has been slow. Low royalties get the most attention, but they are symptoms of a larger system that limits songwriters' power. Now, with the rise of streaming giants and artificial intelligence ("AI"), even that limited share of revenue is under greater threat.[3]

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[1] U.S. CONST. art. I, § 8, cl. 8 ("[Congress shall have Power . . .] To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.").
[2] *Infra* Part III.A.
[3] Jem Aswad, *Songwriters Are Getting Screwed by Streaming Even Worse Than They'd Thought, New Study Shows*, VARIETY (2024), https://variety.com/2024/music/news/songwriters-are-getting-screwed-by-streaming-midia-1236090862/.

The causes of songwriters' financial erosion are threefold. First, under 17 U.S.C. § 115, the compulsory mechanical license governs the reproduction and distribution of musical works, including downloads and interactive (on-demand) streaming. These rates are set by the Copyright Royalty Board ("CRB") and administered through the Mechanical Licensing Collective ("MLC"), leaving little room for free negotiation.[4] Physical formats, by contrast, are typically licensed directly by publishers or intermediaries, while non-interactive streaming services pay only performance royalties, not mechanicals.[5] Second, the Department of Justice's ("DOJ") consent decrees over the American Society of Composers, Authors, and Publishers ("ASCAP") and Broadcast Music, Inc. ("BMI") impose perpetual oversight.[6] This forces performing rights organizations ("PRO") to license entire catalogs on nondiscriminatory terms and leaving rates to be determined by federal courts rather than market bargaining.[7] Courts have repeatedly upheld these structures, emphasizing efficiency for licensees at the expense of songwriter leverage.[8] Finally, songwriters are typically classified as independent contractors and therefore are not protected under the "labor exemption", which shields unions from antitrust scrutiny, but only when they represent workers classified as employees under the National Labor Relations Act ("NLRA").[9] While this status does not prohibit them from attempting to organize, antitrust law bars them from coordinating on licensing terms, since joint negotiations risk being labeled unlawful price-fixing, which is a practice deemed anti-competitive.[10]

This essay argues that copyright's compulsory license, DOJ consent decrees, and antitrust rules barring independent-contractor coordination together exclude songwriters from collective bargaining. Strengthening collective rights would preserve space for innovation, protect independent creators, and create a more diverse and authentic music marketplace. The solution is structural reform, which is outlined in Part IV of this essay. The proposal suggests three key changes: (1) an antitrust safe harbor for songwriter bargaining, (2) modernization and

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[4] *See* 17 U.S.C. §§ 115, 801; 37 C.F.R. §§ 210.29, 210.31 (establishing the statutory mechanical license, the Mechanical Licensing Collective, and authorizing the Copyright Royalty Board to set rates and terms).

[5] *What Are Mechanical Royalties? Who Pays Mechanical Royalties & Who Collects Them*, SOUNDCHARTS BLOG (Mar. 3, 2020), https://soundcharts.com/blog/mechanical-royalties.

[6] While other PROs such as SESAC and Global Music Rights operate outside of consent decrees, they are invitation-only organizations still subject to general antitrust laws, and both have faced litigation challenging their licensing practices. ASCAP and BMI, however, continue to control roughly 90% of the U.S. market for performance rights.

[7] *See* In re Pandora Media, Inc., 6 F. Supp. 3d 317, 323 (S.D.N.Y. 2014) (interpreting the ASCAP consent decree); Broad. Music, Inc. v. N. Am. Concert Promoters Ass'n, 664 F. Supp. 3d 470, 474-478 (S.D.N.Y. 2023) (applying BMI's consent decree); U.S. COPYRIGHT OFFICE, *Copyright and the Music Marketplace*, 90-104 (2015), https://copyright.gov/policy/musiclicensingstudy/copyright-and-the-music-marketplace.pdf.

[8] *See* Broad. Music, Inc. v. CBS, Inc., 441 U.S. 1, 20–24 (1979) (upholding blanket licensing as consistent with the rule of reason because it promoted efficiency and convenience for licensees); *Copyright and the Music Marketplace*, *supra* note 7, at 90–104 ("In general, licensees expressed more confidence in the rate court process than did the PROs and copyright owners. For instance, DiMA opined that the 'time-tested' rate-setting standards under the ASCAP and BMI consent decrees have 'consistently established royalty rates that appropriately approximate the "fair market value" of particular licenses in different contexts.' … In contrast, PROs and copyright owners stated that the rate courts deflate public performance royalties below their true market value.").

[9] 15 U.S.C. § 17; 29 U.S.C. § 52; 29 U.S.C. § 157; *see also* Connell Constr. Co. v. Plumbers & Steamfitters Local Union No. 100, 421 U.S. 616, 622–26 (1975) (holding that while the labor exemption protects collective bargaining over employees' wages and conditions, it does not immunize union-employer agreements that directly restrain competition in the business market, particularly where the union does not represent the employees in question).

[10] *See* Sherman Act, 15 U.S.C. § 1; *Broad. Music, Inc.*, 441 U.S. at 8–10 (explaining that collective licensing resembles price fixing but is subject to rule-of-reason analysis).

amendment of the mechanical license and consent decrees, and (3) federal recognition of a Songwriters Guild empowered to negotiate minimum terms. Such reforms would transform songwriting from a fragile pursuit into a sustainable profession, while ensuring the industry uplifts not only established stars but also emerging voices.

II. THE LEGAL STRUCTURE THAT BLOCKS SONGWRITER ORGANIZATION

A. Fragmented Licensing Under Copyright Law

Unlike other creative professionals who negotiate compensation through guilds, songwriters rely on copyright royalties divided primarily into three distinct rights: performance, mechanical, and synchronization.[11] While publishers and some self-published songwriters may directly license certain rights, particularly for physical mechanicals and synchronization, performance rights are typically administered through PROs. This division disperses bargaining power across multiple intermediaries and limits the ability of songwriters to negotiate collectively. Courts have noted that blanket licensing of rights can be efficient for licensees,[12] but those efficiencies often benefit platforms, broadcasters, and publishers far more than the songwriters whose work fuels the system.[13] In a system designed for efficiency, songwriters have become efficient to everyone but themselves.

B. Compulsory Licensing Under § 115

The statutory mechanical license codified under 17 U.S.C. § 115, remains a cornerstone of songwriter bargaining exclusion.[14] Once a song has been publicly distributed, anyone can reproduce or stream it by following statutory procedures and paying royalties set by the CRB.[15] The Music Modernization Act of 2018 (“MMA”) established the MLC to streamline administration, but the fundamental structure remains unchanged. Rates are imposed rather than negotiated. Songwriters cannot withhold their works to gain leverage, while record labels face no

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[11] 17 U.S.C. §§ 106(4), 115, 106.

[12] *See Broad. Music, Inc.*, 441 U.S. at 20–21 (1979) (recognizing efficiencies from blanket licensing in reducing transaction costs); *In re Pandora Media, Inc.*, 6 F. Supp. at 320–2 (noting that blanket licensing benefits users while limiting songwriters’ autonomy under consent decrees).

[13] *See* U.S. v. Broad. Music, Inc., 720 Fed. Appx. 14 (2d Cir. 2017) (discussing how blanket licensing under the BMI consent decree was justified by procompetitive efficiencies in reducing transaction costs for users, while leaving unresolved questions about the allocation of benefits to individual rightsholders).

[14] The statute provides a compulsory license for nondramatic musical works that permits the reproduction and distribution of phonorecords, including digital phonorecord deliveries, once a work has been distributed to the public with the copyright owner’s authorization, and further allowing necessary musical arrangements so long as they do not alter the work’s fundamental character. 17 U.S.C. § 115.

[15] *See* Johnson v. Copyright Royalty Bd., 969 F.3d 363, 367–69 (D.C. Cir. 2020) (explaining CRB’s role in setting mechanical royalty rates); 17 U.S.C. §§ 115, 801 (requiring notice of intent and authorizing CRB to establish statutory rates and terms).

such statutory constraint and instead negotiate directly with digital service providers ("DSPs") for often far more lucrative terms.[16] This stark contrast highlights the asymmetry where the very law designed to facilitate access now guarantees songwriter disempowerment.[17] Consequently, mechanical royalty income for nonperforming songwriters has steadily declined, driven by the industry's shift to streaming, stagnant statutory rates, and ongoing disputes before the CRB.[18] Recent litigation over the CRB's *Phonorecords III* and *IV* proceedings underscores this point, as the modest rate increase from 11.4% to 15.1% was stalled for years by streaming service appeals, leaving songwriters without timely or effective relief.[19]

C. Consent Decrees Governing ASCAP and BMI

The DOJ consent decrees governing ASCAP and BMI similarly bind songwriters to a regime of perpetual availability. These decrees require the PROs to license entire catalogs on nondiscriminatory terms, with rates set in federal "rate courts" rather than through bargaining.[20] While this system ensures predictability for licensees, it strips songwriters of leverage, as PROs cannot credibly threaten to withhold rights.[21] The Copyright Office has observed that licensees praise this system as efficient and fair, while PROs and songwriters insist that it suppresses compensation below market value.[22] What may have been justified in the era of broadcast radio now locks songwriters into an outdated framework that prioritizes convenience for users over fairness for creators.

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[16] *See* 17 U.S.C. § 115(a)(1) (providing that once a musical work has been distributed, "any other person" may obtain a compulsory license to make and distribute phonorecords if statutory requirements are met); 17 U.S.C. § 114 (establishing only a limited statutory license for certain digital sound recording transmissions, leaving most sound recording uses to private negotiation); *Johnson*, 969 F.3d at 367–69 (explaining the CRB's role in setting statutory mechanical rates under §115); U.S. COPYRIGHT OFFICE, *Compulsory License for Making and Distributing Phonorecords*, CIRCULAR 73 (2021) (noting that the license is available to "an individual or entity" once a work has been released to the public).

[17] U.S. COPYRIGHT OFFICE, *Copyright and the Music Marketplace Executive Summary,* 1–2, (2015) (observing that the current licensing framework, much of it rooted in early twentieth-century statutes, is widely perceived as "broken," and recommending greater parity between musical works and sound recordings by allowing musical work owners more free-market options comparable to those enjoyed by sound recording owners), https://www.copyright.gov/policy/musiclicensingstudy/executive-summary.pdf.

[18] *See Johnson*, 969 F.3d at 369–70; Determination of Royalty Rates and Terms for Making and Distributing Phonorecords (Phonorecords III), 84 Fed. Reg. 1918 (Feb. 5, 2019) (addressing adjustments to mechanical rates in light of streaming's dominance); *Copyright and the Music Marketplace*, *supra* note 7 at 68-74 (noting that songwriter and artist incomes have declined due to the shift from physical and download sales to lower-paying streaming models, particularly affecting nonperforming songwriters); *supra* note 3.

[19] *See* Determination of Royalty Rates and Terms for Making and Distributing Phonorecords (Phonorecords III), 88 Fed. Reg. 54406 (Aug. 10, 2023) (final rates for 2018–2022); *see also* L.B. Cantrell, *Copyright Royalty Board Upholds 15.1% Rate Increase, Reduces Some Protections*, MUSICROW (2022) https://musicrow.com/2022/07/breaking-copyright-royalty-board-upholds-15-1-rate-increase-reduces-some-protections/.

[20] *Copyright and the Music Marketplace*, *supra* note 7 at 90-104.

[21] *Id.*; *see also* In re Pandora Media, Inc., 6 F. Supp. 3d 317 (S.D.N.Y. 2014); United States v. ASCAP, 782 F. Supp. 778 (S.D.N.Y. 1991) (affirming the requirement that ASCAP must offer licenses to all applicants on nondiscriminatory terms).

[22] *Copyright and the Music Marketplace*, *supra* note 7 at 90-104.

D. Antitrust Law and the Independent-Contractor Problem

Antitrust law provides the most insurmountable barrier. While copyright treats each song as a separate work, antitrust law regards collective negotiation among songwriters with caution. Joint efforts to set licensing terms can risk being classified as unlawful price-fixing, a per se violation under the Sherman Act.[23] While some artists have formed advocacy groups, songwriters are typically classified as independent contractors rather than employees. This status excludes them from the statutory and non-statutory labor exemptions that shield unions such as SAG-AFTRA and the WGA.[24] In practice, if songwriters attempted to bargain collectively, their efforts would not be recognized under the NLRA or any comparable framework as protected worker advocacy, but instead treated as competitor collusion under antitrust law. Unlike actors, screenwriters, and musicians, who organize through guilds shielded by the labor exemption, songwriters face the paradox of being indispensable to the industry yet structurally barred from organizing.

III. WHY REFORM IS URGENT IN THE STREAMING ERA

Songwriters' exclusion from collective bargaining would be troubling in any context, but in today's music economy it has become untenable. Structural inequities in revenue distribution, concentrated buyer power, and the rise of generative AI have reshaped the industry in ways that magnify the costs of legal fragmentation.

A. Inequitable Revenue Distribution

The way music is consumed has shifted to a subscription-based model by streaming, but the distribution of revenue leaves songwriters last in line and receiving the least percentage of streaming earnings. In 2022, *Variety* reported that approximately 75–80% of streaming revenue flows to the recording side (labels and performing artists), while only 20–25% is allocated to publishing (songwriters and publishers).[25] Within that fraction, standard contracts divide royalties into a "writer's share" and a "publisher's share," with co-publishing arrangements, administrative fees, and recoupable advances further reducing what reaches the writer. DSPs also retain a substantial portion before royalties are distributed. According to *ANote Music*, most deduct about 30% of subscription or advertising revenue as overhead, with the remaining pool

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[23] *See* 17 U.S.C. § 102(a)(2); Broad. Music, Inc. v. CBS, Inc., 441 U.S. 1, 8–9, 22–23 (1979); 15 U.S.C. § 1; 29 U.S.C. § 152(3) (defining "employee" under the NLRA but excluding independent contractors).

[24] *See* Bernstein v. Universal Pictures, Inc., 517 F.2d 976 (2d Cir. 1975) (reversing dismissal of antitrust claims and noting that composers' status as employees or independent contractors was a disputed factual issue, also citing prior NLRB rulings classifying composers as independent contractors); *cf.* H.A. Artists & Assocs., Inc. v. Actors' Equity Ass'n, 451 U.S. 704 (1981) (holding the statutory labor exemption applied to Equity's regulation of agents' commissions because they directly affected actors' wages, but striking down unrelated franchise fees).

[25] Jem Aswad, *Inside the Multi-Billion Dollar Battle Royale Over Music-Streaming Royalties*, VARIETY (July 28, 2022), https://variety.com/2022/music/news/streaming-royalties-music-biz-dsps-spotify-1235327760/.

divided pro rata among rights holders.[26] Applying this deduction to the *Variety* split yields an approximate real-world allocation of roughly 30% to DSPs, 50–55% to labels and performers, and 15–20% to publishers and songwriters combined.[27] More recent commentary confirms these proportions. A 2024-2025 industry analysis explains that Spotify alone paid over $9 billion to rights holders in 2023 under the same pro-rata model, with only incremental adjustments such as "artist-centric" bonuses or stream-count thresholds.[28] For many, specifically for nonperformers, the already modest royalties from streaming are further diminished by intermediaries, leaving only pennies on the dollar even when works generate millions of streams.

Structural conflicts of interest worsen the problem. The major publishers (Universal Music Publishing, Sony Music Publishing, and Warner Chappell) are vertically integrated with their corresponding record labels (Universal Music Group, Sony Music Entertainment, and Warner Music Group) which dominate sound recording revenues.[29] This alignment blunts publishers' incentive to fight aggressively for higher songwriter rates.

B. DSP Consolidation and Bundling Practices

Within the streaming marketplace, Spotify remains the dominant streaming platform with roughly 32% of global subscriptions, while Apple Music, Amazon Music, YouTube Music, and Tencent together account for most of the remaining market.[30] This concentration creates asymmetries in bargaining power. These companies possess considerable market power and are increasingly bundling music with services that are not music, like audiobooks and podcasts, as well as video, cloud storage, and other retail subscriptions. Bundling obscures the value attributable to music, which shrinks the royalty pool and complicates audits.[31] Courts have recognized that bundled pricing arrangements create distinct challenges for transparent revenue allocation.[32]

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[26] *How Do Streaming Platforms Distribute Royalties to Music Rights Holders?*, ANOTE MUSIC (Feb. 22, 2023), https://www.anotemusic.com/news/articles/how-do-streaming-platforms-distribute-royalties-to-music-rights-holders#:~:text=We%20can%20consider%20the%20pro,User%201%20really%20listened%20to.

[27] UK closely mirrors these U.S. split estimations. The Musicians' Union estimates that streaming revenue is divided as 30% to the platform, 55% to the record label, and 15% to publishers/songwriters. MUSICIANS' UNION, *Music Streaming: What Does a Fair Deal for Musicians Look Like?* (Feb. 11, 2025), https://musiciansunion.org.uk/news/music-streaming-what-does-a-fair-deal-for-musicians-look-like.

[28] Meghan O'Donnell, *So, How Exactly Do Streaming Services Calculate Royalties?*, TROLLEY BLOG (May 2, 2024, updated June 24, 2025), https://trolley.com/learning-center/so-how-exactly-do-streaming-services-calculate-royalties/.

[29] *Record Labels in the U.S. – Statistics & Facts*, STATISTA (Aug. 8, 2025), https://www.statista.com/statistics/record-labels-in-the-us; *Copyright and the Music Marketplace*, *supra* note 7 at 19.

[30] *Music Subscriber Market Shares 2024*, MIDIA RESEARCH (2024), https://www.midiaresearch.com/blog/music-subscriber-market-shares-2024-slowdown-what-slowdown.

[31] Jem Aswad, *NMPA Chief Calls Out "Unique Problem" in the Music Industry: Songwriters Don't Stick Together*, NATIONAL MUSIC PUBLISHERS ASSOCIATION (2024), https://www.nmpa.org/nmpa-chief-calls-out-unique-problem-in-the-music-industry-songwriters-dont-stick-together/.

[32] Nat'l Cable Television Ass'n v. BMI, 772 F. Supp. 614 (D.D.C. 1991) (noting that BMI's blanket license, which ties fees to overall revenues rather than actual use of works, complicates price transparency and royalty distribution, even while surviving rule-of-reason scrutiny).

Although overall industry revenues have grown, songwriters' share has not kept pace. In 2024, the National Music Publishers' Association ("NMPA") reported $7.04 billion in U.S. publishing revenues, a 13.4% increase over the prior year, but emphasized that Spotify's bundling of audiobooks and other non-music content diverted hundreds of millions of dollars away from the songwriters.[33] The MLC also sued Spotify in 2024 over its "Audiobooks Access" plan, arguing that bundling effectively halved songwriter royalties.[34] The court sided with Spotify, confirming that current regulations permit such practices, leaving songwriters without meaningful recourse.[35] The NMPA has condemned these practices, stating that bundling enables DSPs to pay "hundreds of millions of dollars less to songwriters" than they otherwise would.[36]

Although § 115 grants the MLC audit authority over DSPs, and publishers may audit the MLC,[37] individual songwriters lack any comparable right or collective mechanism to ensure transparency. Without direct leverage, they cannot challenge revenue allocations or compel platforms to distinguish between music and non-music income streams. As DSPs continue to expand their market power, the gap between streaming's overall growth and songwriters' stagnant compensation only widens.

C. Technological Disruption and AI

Generative AI now produces music "in the style of" established writers and even clones performers' voices.[38] The legality of these outputs is unsettled, but the economic risk is immediate: AI can displace human labor at scale. Other creative industries have responded by securing collective protections. The Writers Guild of America and SAG-AFTRA recently negotiated contractual "AI guardrails"[39] to limit the use of synthetic performances and protect

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[33] Press release, *NMPA Honors Kacey Musgraves, Rhett Akins, Features Billboard Honorees Gracie Abrams and Aaron Dessner at Annual Meeting*, NMPA (June 11, 2025), https://www.nmpa.org/nmpa-honors-kacey-musgraves-rhett-akins-features-billboard-honorees-gracie-abrams-and-aaron-dessner-at-annual-meeting-which-pushes-for-songwriter-power-through-unity/.

[34] *See* Mech. Licensing Collective v. Spotify USA Inc., 763 F. Supp. 3d 608 (S.D.N.Y. 2025) (holding that Spotify's "Premium" plan qualifies as a "Bundled Subscription Offering" under 37 C.F.R. § 385.2 because the regulation does not require the bundled service to be a preexisting or standalone product and defines "token value" by its ordinary meaning; fifteen hours of audiobooks has more than token value, and the court declined to "read words into the law that are not there"); *see also* Aruni Soni, *Spotify's Court Win Exposes Gap in Streaming Royalty Debate*, BLOOMBERG LAW (2025), https://news.bloomberglaw.com/ip-law/spotifys-court-win-exposes-gap-in-streaming-royalty-debate.

[35] *Id.*

[36] *See* Aswad, *supra* note 31.

[37] *Member Audits*, THE MLC, https://www.themlc.com/member-audits.

[38] See *When you realize your favorite new song was written and performed by AI*, NPR Illinois, https://www.nprillinois.org/2023-04-21/when-you-realize-your-favorite-new-song-was-written-and-performed-by-ai; *see also* Vaughn Gendron, *A New Frontier: The Music Industry's Struggle Against Generative AI,* 33 U. MIA BUS. L. REV. 161 (2024).

[39] *Summary of the 2023 WGA MBA*, WRITERS GUILD OF AMERICA (Sept. 2023), https://www.wga.org/contracts/contracts/mba/summary-of-the-2023-wga-mba; *TV/Theatrical Contracts 2023*, SAG-AFTRA (2023), https://www.sagaftra.org/sites/default/files/sa_documents/TV-Theatrical_23_Summary_Agreement_Final.pdf.

human authorship.[40] Abroad, some progress has been made with Sweden's STIM introducing the world's first AI music license in 2025, requiring royalties when copyrighted songs are used in training models.[41] In contrast, U.S. songwriters remain unprotected. Without a guild or bargaining framework, they lack any mechanism to negotiate similar protections, leaving them uniquely vulnerable to technological substitution.

D. Fragmented Voices and the Problem of Unity

Songwriters' weakness is compounded by internal fragmentation. As NMPA President David Israelite has remarked, "songwriters don't stick together."[42] Those who also perform or record may have revenue streams outside publishing and therefore different priorities, while pure writers feel the brunt of declining mechanical and performance royalties.[43] This divergence undermines unified advocacy. The cost of disunity is clear. Bundling practices alone have deprived writers of vast sums, yet platforms and labels face little coordinated resistance.[44] The NMPA's Legal and Business Program has generated significant revenues for the industry,[45] but its gains remain uneven and highlight the limits of individual enforcement efforts. Without cohesion among nonperforming and performing writers alike, reforms such as statutory revisions, antitrust safe harbors, and collective bargaining frameworks risk lacking the political force necessary to succeed.

IV. THREE PATHWAYS TO REFORM

The challenges songwriters face are rooted not in market forces alone but in laws built for another era. Compulsory licenses, consent decrees, and antitrust rules once aimed at efficiency now entrench inequity. Reform must move beyond marginal rate adjustments and recognize songwriters as a creative workforce entitled to collective bargaining rights. Congress has modernized cultural industries before, doing so again would align law with today's music economy and ensure that songwriters can sustain their craft in the age of streaming and AI. Three suggested reforms follow.

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[40] Despite these provisions, controversy arose over the creation of the "AI actress" Tilly Norwood, whose digital likeness was marketed as a performer, underscoring the practical limits of contractual guardrails in curbing synthetic performances.

[41] *Sweden launches AI music license to protect songwriters*, REUTERS (Sept. 9, 2025), https://www.reuters.com/business/media-telecom/sweden-launches-ai-music-licence-protect-songwriters-2025-09-09/.

[42] *See* Aswad, *supra* note 31.

[43] *Id.*

[44] *Id.*

[45] *Supra* note 33, noting the NMPA's Legal and Business Program has generated over $1.3 billion for the industry and helped establish nearly 27 percent of total music revenue streams.

1. Antitrust Safe Harbor

The threshold challenge is antitrust law, which treats each songwriter as a competitor and deems joint negotiations unlawful price-fixing.[46] So long as this doctrine remains in place, even informal attempts to coordinate will be seen as collusion rather than advocacy. Congress has recognized the need for targeted antitrust carve-outs where transaction costs or bargaining imbalances justify intervention. For example, 17 U.S.C. § 118 provides a specific exemption allowing voluntary negotiations between copyright owners of nondramatic literary works and public broadcasting entities regarding royalty payments.[47] This model demonstrates Congress's willingness to craft limited safe harbors in contexts where individual negotiations would be impractical or inequitable. Congress should enact a narrow statutory exemption, authorizing collective bargaining between songwriters and digital platforms. This would ensure that collaborative rate-setting is treated as protected labor advocacy rather than competitor collusion.

2. Modernize Section 115 and Consent Decrees: Opt-Out Function

The compulsory license for musical works under § 115 and the consent decrees governing ASCAP and BMI reflect assumptions from the time of piano rolls and broadcast radio. Today, they function as permanent constraints that guarantee availability at below-market rates and strip songwriters of any meaningful leverage. Reform must give songwriters a choice: remain in the compulsory system if it serves their interests or opt out and bargain directly with DSPs. CRB oversight could remain as a fallback, but the default should be negotiation, not government-set ceilings. This would mirror the WGA's model, where free bargaining governs but arbitration or strike leverage disciplines negotiations.[48] The same logic applies to the consent decrees. Nondiscriminatory access for licensees can be preserved without chaining songwriters to rate courts that consistently undervalue their work. A modern regime should prioritize fairness for creators, not only efficiency for platforms.

3. Establish a Federally Recognized Songwriters Guild

Even with legal permission to negotiate collectively, songwriters cannot bargain without an institutional vehicle. Congress should establish a federally recognized Songwriters Guild, modeled on the WGA and SAG-AFTRA, with authority to negotiate minimum royalties, audit rights, transparency obligations, and protections against AI displacement.[49] Such a guild would

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[46] *Supra* note 10.

[47] 17 U.S.C. § 118(b) (providing that copyright owners of nondramatic literary works "may negotiate and agree upon the terms and rates of royalty payments" with public broadcasting entities, notwithstanding antitrust law concerns).

[48] William Morris Endeavor Entm't, LLC v. Writers Guild of Am., W., Inc., 432 F. Supp. 3d 1127, 1132-36 (C.D. Cal. 2020) (discussing the WGA's collective bargaining authority and enforcement mechanisms against studios).

[49] Congress has constitutional authority to establish such guilds through its commerce and labor powers. National Labor Relations Act § 9, 29 U.S.C. § 159 (2018); NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937) (upholding the NLRA as a valid exercise of Congress's commerce power, emphasizing that labor relations in a

unify songwriters across publishers and independent channels, turning fragmented rightsholders into a coherent bargaining unit. States like California have already recognized the legitimacy of contractor organizing for creative professionals;[50] federal action must follow. Through statutory recognition, such a guild would gain authority to negotiate minimum royalty floors, secure transparency and audit rights, and establish protections against AI substitution. Guild-negotiated agreements could operate as industry-wide baselines, much like WGA minimums in film and television.[51]

Collective bargaining depends on defining a "community of interest" under the National Labor Relations Act.[52] For songwriters, this concept could take several forms. One approach would be publisher-aligned units, in which writers affiliated with the publishing arm of a label such as Universal, Sony, or Warner organize in parallel to traditional labor–management structures. Another possibility is a national guild: a centralized body representing all songwriters and negotiating directly with DSPs and labels, much like the WGA bargains with a consortium of studios.[53] A third option is a hybrid model, where a central guild would negotiate industry-wide minimums and transparency rights, while sub-agreements address the unique practices of labels or DSPs. Each model presents practical challenges of administration, but all fit comfortably within the "community of interest" framework. Importantly, any statutory recognition of a Songwriters Guild should expand authors' termination rights under §§ 203 and 304 by reinforcing their enforceability in collective settings. While these rights cannot be waived by contract, some industry practices attempt to sidestep them through premature terminations and reassignments. A modernized framework should clarify and restrict these tactics to ensure that songwriters retain genuine control over the recapture of their works. In this way, collective bargaining would enhance songwriters' short-term leverage while safeguarding their long-term ownership. What unites songwriters, whether they write for major publishers or independently, is the shared goal of securing fair compensation from dominant DSPs and labels, a common interest sufficient to justify recognition of a bargaining unit.

VI. CONCLUSION

Songwriters remain essential to the music industry, but the legal framework surrounding them has failed to keep pace with modern realities. Rules once justified as efficient now serve to limit bargaining power and undermine livelihoods. In a market increasingly shaped by streaming

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national industry may have such a "close and intimate relation to interstate commerce" as to justify regulation); H.A. Artists & Assocs. v. Actors' Equity Ass'n, 451 U.S. 704 (1981) (holding that a union's regulation of agents' fees fell within the statutory labor exemption where the rules directly affected actors' wages, but striking down franchise fees as unjustified).

[50] Cal. Lab. Code § 2780 (West 2020).

[51] *Supra* note 39.

[52] 29 U.S.C. § 159(b) (authorizing the NLRB to determine the "community of interest" for collective bargaining units); *see also* Am. Fed'n of Musicians of U.S. & Canada v. Carroll, 391 U.S. 99, 109–10 (1968) (holding that even independent contractors could be considered part of a labor group where their practices directly impacted union members' wages).

[53] William Morris Endeavor Entm't, LLC v. Writers Guild of Am., W., Inc., 432 F. Supp. 3d 1127, 1132–36 (C.D. Cal. 2020) (describing the WGA's guild structure and its collective bargaining practices with industry-wide entities)

services, bundled pricing models, and emerging AI, these outdated structures leave songwriters at a growing disadvantage.

Congress has intervened before to strengthen creative professions, extending collective bargaining rights to actors, screenwriters, and musicians. It should now do the same for songwriters. Establishing a Songwriters Guild, modernizing licensing systems, and creating a limited antitrust safe harbor would not only improve compensation but also help secure the future of the profession.