

## SECOND SUPPLEMENT TO MEMORANDUM 2024-32

### **Antitrust Law: Status Update (Experts, Panelists, and Public Comment)**

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This supplement presents additional information about individuals presenting the expert reports on Concerted Action, Enforcements and Exemptions, and Consumer Welfare presented at the Commission’s August 15, 2024 meeting, and the individuals or organizations serving on a panel to respond to the expert reports.<sup>1</sup> It also includes additional public comment that the staff has received relative to the Antitrust Study.

The biographical information on the panelists and the public comment are attached as Exhibits to this supplement.

<i><b>Exhibits</b></i>	<i><b>Exhibit page</b></i>
<b>Panelists’ Biographical Information .....</b>	<b>1</b>
<b>Civil Justice Association (8/2/2024) .....</b>	<b>3</b>
<b>Chamber of Progress (8/5/2024) .....</b>	<b>7</b>
<b>Recording Industry Association of America (8/8/24) .....</b>	<b>10</b>

## EXPERTS

The expert report on [Concerted Action](#) (Group 3) will be presented by Professor Joshua Davis<sup>2</sup> and Professor Peter Carstensen. Professor Peter Carstensen’s biographical information can be found in [Memorandum 23-7](#), at page 7.

The expert report on [Enforcements and Exemptions](#) (Group 6) will be presented by

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<sup>1</sup> Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website ([www.clrc.ca.gov](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise. The Commission welcomes written comments at any time during its study process.

Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

<sup>2</sup> Professor Joshua P. Davis is a nationally recognized expert on AI, antitrust, class actions, civil procedure, free speech, legal ethics, and jurisprudence. He has published more than thirty scholarly papers on these subjects and is currently writing a book on AI titled “Unnatural Law,” which will be published by Cambridge University Press. Beginning on Jan. 1, 2022, he will become a shareholder and the head of the San Francisco Bay Area Office of Berger & Montague, PC, a national plaintiffs’ class action law firm. Prior to joining the firm, he was a tenured professor of law at University of San Francisco Law School for more than twenty years, where he also served as the Director of the Center for Law and Ethics. In his role as Research Professor of Law at the Center, Professor Davis conducts research and publishes papers on litigation and courts and organizes several conferences hosted by the Center.

Kathleen Foote, whose biographical information can be found in [Memorandum 2023-7](#), at page 9.

The expert report on the [Consumer Welfare Standard](#) (Group 4) will be presented by Professor Douglas Melamed and Professor Barak Orbach.<sup>3</sup> Professor Melamed's biographical information can be found in [Memorandum 2023-7](#), at page 12.

## PANELISTS

At the June meeting, following presentation of the expert working group reports, four individuals or organizations will participate in a panel to present responses to the expert reports.

**On behalf of the [California Nurses Association](#):** Carmen Comsti

**On behalf of the [American Economics Project](#):** Lee Hepner

**On behalf of the [International Center for Law and Economics](#):** Geoffrey Manne

**On behalf of the [Western States Petroleum Association](#):** Roxane Polidora and Lee Brand

## PUBLIC COMMENT

The staff has received a number of public comments relating to the Antitrust Study. The most recent comments are attached as Exhibits to this memorandum.

If the staff receives additional public comments, the comments will be provided in another supplemental memorandum.

### **Civil Justice Association**

This comment was submitted by Kyla Christofferson Powell on behalf of the [Civil Justice Association of California](#). According to its website, the association is:

... the only statewide association dedicated solely to improving California's civil liability system, in the legislature, the regulatory arena, and the courts. Our

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<sup>3</sup> Barak Orbach is the Robert H. Mundheim Professor of Law & Business at the University of Arizona James E. Rogers College of Law and serves as the College's founding director of the Business Law Program. He also serves as a Special Advisor for Arizona International (the University of Arizona's global affairs arm) and a member of the University of Arizona's Campus Safety Commission. Professor Orbach is recognized globally as a thought leader in antitrust and corporate governance. He periodically advises government agencies, companies, boards of directors, investors, and trade associations. Professor Orbach is a fellow of the American College of Governance Counsel, a fellow of the Thurman Arnold Project at Yale, a fellow of the Salzburg Global Seminar, a fellow of the American Bar Foundation, a member of the American Law Institute, and a member of the advisory board of the American Antitrust Institute. Additionally, he is a member of Emmanuel College, University of Cambridge, where he served as a Derek Brewer Visiting Fellow. Professor Orbach holds undergraduate degrees in law and economics from Tel Aviv University and master's and doctorate degrees in law (LLM and SJD) from Harvard Law School.

membership base consists of businesses and associations from a broad cross-section of California industries.

Year after year, the business community counts on CJAC's [Public Policy](#) efforts to hold the line on numerous bill proposals containing litigation threats aimed at California businesses. In the current legislative session, we have stopped numerous new private rights of action and unwarranted employer liability expansions.

## **Chamber of Progress**

This comment was submitted by Todd O'Boyle on behalf of the [Chamber of Progress](#). According to its website, the Chamber of Progress:

...is a new tech industry coalition devoted to a progressive society, economy, workforce, and consumer climate. [The Chamber of Progress] back[s] public policies that will build a fairer, more inclusive country in which all people benefit from technological leaps.

The website also indicates:

The Chamber's corporate partners range from large multinational companies to smaller startup businesses across a variety of technology industries.

## **Recording Industry Association of America**

This comment was submitted by Victoria Sheckler on behalf of the [Recording Industry Association of America](#) (RIAA). According to their letter:

The RIAA is the trade organization that supports and promotes the creative and commercial vitality of music labels in the United States, the most vibrant recorded music community in the world. Our membership – which includes several hundred companies, ranging from small-to-medium-sized enterprises to global businesses – creates, manufactures, and/or distributes sound recordings representing the majority of all legitimate recorded music consumption in the United States. In support of its mission, the RIAA works to protect the intellectual property and First Amendment rights of artists and music labels; conducts consumer, industry, and technical research; and monitors and reviews state and federal laws, regulations, and policies. Several of RIAA's members are either headquartered in California or have a significant presence in California.

Respectfully submitted,

Sharon Reilly  
Executive Director

Sarah Huchel  
Staff Counsel

## BIOGRAPHIES OF PANELISTS

### **Carmen Comsti**

Carmen Comsti is the Lead Regulatory Policy Specialist with California Nurses Association/National Nurses United, the largest union and professional association of registered nurses in California and the country with over 100,000 members in the state. Previously serving as Legal Counsel for the union, she has been a key member of the union's legislative drafting and policy teams on numerous state and federal issues, including on health care consolidation, state and federal merger and acquisition regulatory engagement, single-payer health care legislation, hospital closures, and unfair labor market competition through the use of restrictive employment covenants. On behalf of the union, Carmen has regularly presented and written public comments and reports on labor market standards in antitrust enforcement, employer-mandated training repayment agreements, safe nurse-to-patient staffing ratios, workplace health and safety on Covid-19, and many other policy issues. She recently served as a Commissioner on the Healthy California for All Commission, which was tasked with developing a plan to achieve a state-based universal health care program in California.

### **Lee Hepner**

Lee Hepner is a California-based antitrust lawyer and Senior Legal Counsel for the [American Economic Liberties Project](#). He started his career in civil litigation, representing plaintiffs in labor and First Amendment litigation. For the last decade, he has worked in and out of government on policies that address corporate power at the local, state, and federal level.

### **Geoffrey Manne**

Geoffrey A. Manne is the president and founder of the International Center for Law and Economics (ICLE), a nonprofit, nonpartisan research center based in Portland, Oregon. He is also a visiting professor of law at IE University in Madrid and a distinguished fellow at Northwestern University's Center on Law, Business, and Economics. Manne holds AB & JD degrees from the University of Chicago. He is an expert in the economic analysis of law, focusing particularly on antitrust, consumer protection, telecom, IP, and technology regulation. From 2003 to 2006 he was an assistant professor at Lewis & Clark Law School, where he taught law & economics, international economic regulation, corporations, and other courses. In 2006 he decamped from Lewis & Clark to work in Microsoft's legal

department, heading up a program on law & economics academic engagement. He subsequently founded ICLE in 2009. Prior to teaching, Manne practiced antitrust law and appellate litigation at Latham & Watkins, clerked for Hon. Morris S. Arnold on the 8th Circuit Court of Appeals, and worked as a research assistant for Judge Richard Posner. He was also once (very briefly) employed by the FTC.

### **Roxane Polidora**

Roxane Polidora has been the firmwide leader of [Pillsbury Winthrop Shaw Pittman](#)'s Antitrust & Competition practice for the past 20 years, is the Managing Partner of the San Francisco office, and is a nationally renowned litigator in the antitrust and unfair competition field. Roxane is regularly recognized in the area by third-party sources such as Chambers, Legal500, Best Lawyers and Global Competition Review. She has represented corporate clients in antitrust, unfair competition, and consumer class action cases for over 30 years, and her skills and expertise are well known throughout the country. Roxane has served as Chair, Executive Committee Member, and is a current Advisor to the Antitrust and Unfair Competition Law Section of the California Lawyers Association (formerly the California State Bar). Roxane speaks and publishes about antitrust and unfair competition issues, and she is an author of several chapters of the Section's treatise.

### **Lee Brand**

Lee Brand is a partner in [Pillsbury Winthrop Shaw Pittman](#)'s San Francisco office, where his practice focuses on antitrust and unfair competition matters. Lee has been repeatedly named a Super Lawyers Rising Star and by Best Lawyers: Ones to Watch. He is currently Vice Chair of the Antitrust and Unfair Competition Law Section of the California Lawyers Association. Lee frequently speaks and publishes about antitrust and consumer law issues, including as an author of annual updates to the California Antitrust and Unfair Competition Law treatise.



August 2, 2024

***Sent via Email***

sreilly@clrc.ca.gov

The Honorable Ambassador David Huebner, Chairperson  
and Honorable Commissioners  
California Law Revision Commission  
c/o Office of Legislative Counsel  
925 L Street, Suite 275  
Sacramento, California 95814

Re: *Antitrust Law – Study B-750 – Comment by Civil Justice Association of California*

Dear Chairperson Huebner and Commissioners:

Thank you for the opportunity to provide comments on the California Law Revision Commission's review of the state's antitrust law. Founded in 1979, the Civil Justice Association of California (CJAC) is the only statewide association dedicated solely to improving California's civil liability system, in the legislature, the regulatory arena, and the courts. Our membership base consists of businesses and associations from a broad cross-section of California industries. As there are not yet any formal proposals, we are providing general recommendations and feedback based upon working group output and discussions to date.

We write to urge the Commission to give strong consideration to impacts of any potential proposals on California's civil liability system, which is already viewed as one of the most burdensome in the country by businesses.<sup>1</sup> At a time when California is experiencing significant budgetary challenges and unprecedented numbers of departures by businesses, policymakers should be hyper-focused on promoting positive economic activity.<sup>2</sup>

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<sup>1</sup> American Tort Reform Association Judicial Hellholes Report 2023-2024 (California 3<sup>rd</sup> worst "judicial hellhole"); U.S. Chamber Institute for Legal Reform Harris Study 2019 (California legal climate in bottom 3) <https://instituteforlegalreform.com/2019-lawsuit-climate-survey/>.

<sup>2</sup> See, e.g., [The Exodus Begins: Tech Companies Leaving California in Droves](https://lachamber.com/news/2023/06/05/press-release/a-recently-released-report-finds-that-businesses-continue-to-relocate-to-more-business-friendly-states-but-offers-recommendations-to-help-california-stem-the-tide/) (tms-outsource.com); <https://lachamber.com/news/2023/06/05/press-release/a-recently-released-report-finds-that-businesses-continue-to-relocate-to-more-business-friendly-states-but-offers-recommendations-to-help-california-stem-the-tide/>.

We are very concerned that a number of proposals under deliberation by the Commission will instead do the opposite – increase unfair litigation burdens on businesses and in turn negatively impact California’s economy and the consumers that businesses serve. In this vein, we provide the following recommendations:

- 1. The Commission should avoid making any significant changes to California law since current law already provides for robust enforcement and further duplicative or excessive regulation will be harmful to consumers and the economy.**

Any concerns policymakers may have about consolidation in market power are more than sufficiently addressed by existing laws. California’s antitrust law, the Cartwright Act, is already broader than its federal counterpart.<sup>3</sup> Unfounded new regulatory expansions currently being considered by the Commission include the following:

- a. Mergers & Acquisitions**

It is unnecessary to amend California law to cover mergers and acquisitions (M&As), as California regulators are already able to bring actions against mergers deemed anticompetitive under federal law. California’s Attorney General and local prosecutors have been actively pursuing antitrust actions under existing law.<sup>4</sup>

Additionally, the Commission’s experts have disregarded substantial benefits M&As can have for consumers. For example, the “Concentration and Competition in California” report relies on scant evidence to support claims that federal law does not go far enough and ignores numerous instances of new treatments and therapies benefitting consumers that would not have been possible without M&As.<sup>5</sup>

California should moreover avoid adopting state-level laws that do not align with federal Hart-Scott-Rodino (HSR) requirements.<sup>6</sup> Because many California-based companies conduct business in multiple states or globally, a patchwork of state proposals will be unworkable and chill merger activity, most of which is procompetitive and beneficial to consumers.

California should also refrain from piling on a state-specific pre-merger notification rule, as the HSR currently provides extensive notification requirements. Federal agencies also recently proposed sweeping revisions to the

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<sup>3</sup> Cal. Bus. & Prof. Code §16600, *et. seq.*

<sup>4</sup> See, e.g., <https://oag.ca.gov/antitrust/highlights>; <https://www.jdsupra.com/legalnews/california-announces-intent-to-3966466/>.

<sup>5</sup> See, <https://pulseforinnovation.org/news-resources/innovations-advanced-by-ma/>; [https://downloads.regulations.gov/FTC-2021-0025-0039/attachment\\_1.pdf](https://downloads.regulations.gov/FTC-2021-0025-0039/attachment_1.pdf).

<sup>6</sup> Clayton Act 7A, 15 USC § 18a.



federal HSR Act notification rules that are expected to go into effect shortly.<sup>7</sup> Under the new rules, merging parties will be required to provide significantly more information to the government about their transactions and business activities.<sup>8</sup> A set of California-specific notification rules on top of this will be onerous.

#### **b. Concerted Action**

Likewise, as the Commission considers any changes to the law pertaining to "concerted action," it should ensure any changes to the law do not chill critical and beneficial activity that results from most business collaborations.

For example, collaborations among drug manufacturers allow combinations of expertise and capabilities that a single company does not possess, promoting innovation and success in drug development including new, life-saving therapies.

Large biopharmaceutical company acquisitions also supply 47 percent of funding for small biotechs. They provide greater clinical and regulatory speed, higher probability of success given institutional memory on decision making, and unequal reach to patients for the therapeutic candidates originating in small companies.

#### **c. Unilateral Conduct**

There is also no basis to amend California's Cartwright Act to directly address unilateral conduct, as the state can already bring enforcement actions under Section 2 of the Sherman Act.

The proposed statutory language in the report on single firm conduct is also vague and confusing and disregards over a century of federal case law. It will create significant uncertainty for California companies and could expose them to abusive challenges by competitors.

### **2. The Commission should not broaden the scope of the law or applicable standards because California already provides a broad private right of action along with treble damages and attorneys' fees.**

Unnecessary and unwarranted expansions of California's antitrust law, including the foregoing, will also worsen California's hostile legal climate by adding more bases to bring suit under our all-encompassing private right of action. This will invite excessive and abusive litigation and ultimately harm California's consumers and the economy.

California's antitrust statute broadly provides that "any person who is injured in his or her business or property by reason of anything forbidden or declared unlawful

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<sup>7</sup> See, <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-doj-propose-changes-hsr-form-more-effective-efficient-merger-review>.

<sup>8</sup> *Id.*

by the law” may bring a lawsuit, including class actions.<sup>9</sup> The act also provides for treble damages, prejudgment interest, and attorneys’ fees.<sup>10</sup>

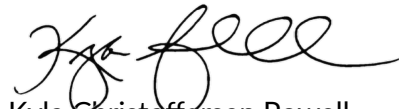
The prevalence of California statutes that combine a wide private right of action with high damages awards and attorneys’ fees recovery is a big contributor to the state’s hostile legal climate. Several California laws with this dangerous combination have led to widespread abuse by lawyers looking to run up attorneys’ fees. Most notably, the California Private Attorneys General Act which also provided high damages and attorneys’ fees was just amended to narrow its provisions after rampant misuse of the law by attorneys.<sup>11</sup>

It is critical that any proposals the Commission brings forward out of this process balances the scope and ease of bringing enforcement actions under California’s antitrust law with the available remedies. As California’s antitrust statute is already lacking in balance, we ask the Commission to carefully avoid any expansions of the law that will create further imbalance.

## Conclusion

For the foregoing reasons, we implore the Commission to reject expansions of California’s antitrust laws in its proposals and instead focus efforts on federal conformity and ameliorating California’s hostile legal climate. We also respectfully request the Commission provide ample time for public comment on any proposals it issues, given the complexity of the topics under consideration and the potentially far-reaching implications.

Respectfully submitted,



Kyla Christoffersen Powell  
President & Chief Executive Officer

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<sup>9</sup> Cal. Bus. & Prof. Code §16750.

<sup>10</sup> Cal. Bus. & Prof. Code § 16761.

<sup>11</sup> Labor Code Private Attorneys General Act, SB-92 (Umberg), Chapter 45, (Cal. Stat. 2024).



August 5, 2024

Sharon Reilly, Executive Director  
California Law Revision Commission  
925 L Street, Suite 275  
Sacramento, CA 95814

Dear Executive Director Reilly and Members of the California Law Revision Commission:

On behalf of Chamber of Progress—a tech industry association supporting public policies to build a more inclusive society in which all people benefit from technological advances—I write today regarding your upcoming report on competition and artificial intelligence (AI)<sup>1</sup>.

As the Commission considers policy recommendations on AI, it should prioritize preserving California as the epicenter of global AI innovation. Stringent regulations stifle innovation by creating high barriers for startups and smaller firms, limiting their ability to compete and innovate. The Commission should support open access, encourage innovation, and avoid excessive constraints, thereby supporting a vibrant, competitive AI ecosystem.

### **Competition in AI is vibrant**

California is home to the most renowned AI companies in the world. Entrepreneurs have broad access to venture capital and rich pools of talent on which to build world-changing AI companies. A broad array of California companies are innovating in AI, from the largest, household name tech companies like Google and Meta to startups like Anthropic and Midjourney. This competition has been great for consumers and innovation more broadly. It has also bid up the wages of workers in the sector. All of this reflects a thriving AI sector in California.

Vibrant competition from the foundation model layer to the Application Programming Interface (API) and application levels shows that the current policy mix is working

We do note, however, that AI development is highly capital intensive. AI model training can cost billions of dollars, necessitating significant capital investments from larger entities. Recently, some commentators have critiqued large tech companies investing in

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<sup>1</sup> See MEMORANDUM 2024-32 Antitrust Law: Status Report  
<http://www.clrc.ca.gov/pub/2024/MM24-32.pdf>

AI startups; however, without this financial support much of this innovation would simply not happen. Accordingly, we urge you not to recommend limits on established tech firms investing into AI startups.

### **Vertical integration benefits consumers**

Highly competitive supply chains often give rise to vertical integration, which happens when producers and consumers of inputs combine. Economists have long noted that this eliminates so-called double marginalization, which in turn lowers costs and advances consumer welfare. However, vertical combinations may be problematic in some situations, such as denying competitors access to critical inputs like training data.

Accordingly, policymakers should not view vertical combinations skeptically by default, and only intervene when there is evidence of a significant consumer impact. One key determinant would be whether consumers would still have latitude to change suppliers post-merger. At present, consumers can easily switch between competitive alternatives - for instance, moving between cloud providers or from one AI API provider to another. Absent clear evidence that a combination would significantly increase consumer costs, they should assume the vertical efficiencies are consumer welfare enhancing.

### **An abundance of foundation models promotes competition**

An abundance of foundation models, both open and closed, is vital for maintaining competition in the technology sector. Policy should encourage the proliferation of models - since models have different use cases depending on their size, design, etc. The recent National Telecommunication and Administration (NTIA) report on open source models underscores that open source models provide a base for researchers and developers to build upon.<sup>2</sup>

Burdening foundation model development with excessive licensing requirements, rigorous mandatory compliance audits, or high financial penalties would create significant barriers for smaller firms and startups, limiting their ability to innovate and compete. **We strongly oppose legislative proposals that discriminate against open source models and urge you not to propose policies that favor either approach<sup>3</sup>.**  
**Industry is leading the way to promote competition and innovation**

Foundation models are just that - they provide the tools on which developers build innovative applications. Anthropic already offers an application programming interface

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<sup>2</sup> See Dual-Use Foundation Models with Widely Available Model Weights Report  
<https://www.ntia.gov/issues/artificial-intelligence/open-model-weights-report>

<sup>3</sup> See Chamber of Progress letter on SB 1047  
<https://progresschamber.org/wp-content/uploads/2024/06/CA-SB-1047-AI-Safety-Bill-OPPOSE-2.pdf>

(API) access to advanced AI models designed for researchers to integrate into their projects and explore new applications.<sup>4</sup>

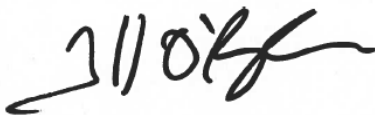
Formal policy making may not be the optimal intervention to promote sustained innovation and competition. Instead, voluntary action by social media platforms and fact-checking by the media are likely preferable. Rather than implementing blanket regulations that stifle innovation, regulators should focus on targeted measures such as transparency and promoting best practices for content verification where appropriate. This approach would address specific risks while allowing companies to continue developing and deploying advanced AI technologies, thus maintaining a competitive edge and fostering innovation.

**Improving access to key inputs - chips and compute - will improve the AI supply chain**

A healthy AI supply chain has significant competitive impacts. Fortunately, there is competition throughout the software levels of this chain. Developers currently have many choices among cloud providers - including Amazon Web Services, Microsoft Azure, Google Cloud, and Oracle Cloud Infrastructure. However, despite vibrant competition, those services can still be costly for startup developers and academic researches. For these reasons, Chamber of Progress supports SB 893 which would establish public cloud computing resources.

At the hardware layer, a notable bottleneck in the AI supply chain is the access to semiconductors. Semiconductors are a critical input and currently supply-constrained. Congress took a critical first step by passing the Chips and Science Act, but there may be additional steps legislators in California can take to improve access to cutting edge semiconductors.

Sincerely,

A handwritten signature in black ink, appearing to read 'T O'Boyle', with a stylized flourish at the end.

Todd O'Boyle  
Senior Director, Technology Policy  
Chamber of Progress

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<sup>4</sup> *Introducing the Next Generation of Claude*, Anthropic (Mar. 2024). <https://www.anthropic.com/news/claude-3-family>



August 8, 2024

The Honorable Ambassador David Huebner  
Chairperson California Law Revision Commission  
c/o Legislative Counsel Bureau  
925 L Street  
Suite 275  
Sacramento, California 95814

Submitted via email to sreilly@clrc.ca.gov

Re: Recording Industry Association of America, Inc. comments with respect to the  
California Law Revision Commission Study on Antitrust Law – Study B-750

Dear Chairperson Huebner and Commissioners,

The Recording Industry Association of America, Inc. (RIAA) welcomes this opportunity to provide you with additional information with respect to the California Law Revision Commission Study on Antitrust Law, Study B-750 (Study).

The RIAA is the trade organization that supports and promotes the creative and commercial vitality of music labels in the United States, the most vibrant recorded music community in the world. Our membership – which includes several hundred companies, ranging from small-to-medium-sized enterprises to global businesses – creates, manufactures, and/or distributes sound recordings representing the majority of all legitimate recorded music consumption in the United States. In support of its mission, the RIAA works to protect the intellectual property and First Amendment rights of artists and music labels; conducts consumer, industry, and technical research; and monitors and reviews state and federal laws, regulations, and policies. Several of RIAA's members are either headquartered in California or have a significant presence in California.

We write to provide you with additional resources about the state of the recorded music industry today, and how it has diversified and evolved in the last couple of decades. As previously noted, the California Law Commission – Antitrust Law Study B-730, March 26, 2024 report titled "Concentration and Competition in California: A Focus on Critical Sectors and

**RECORDING INDUSTRY  
ASSOCIATION OF AMERICA**

1000 F. ST. NW | FLOOR 2  
WASHINGTON, DC 20004

[riaa.com](http://riaa.com)



Labor Markets” appears to be based on information about the music industry as it existed in 2004.<sup>1</sup>

The recorded music industry has changed dramatically since then, and we are providing current information to present an accurate overview of the robust competition in the industry today. We encourage you to review these resources so that your work can better reflect the current state of our industry.

First, we point you to the 2023 MiDIA report titled Recorded music market 2023 | Back to life.<sup>2</sup> According to this report, global recorded music revenues grew by 9.8% in 2023, with \$12.9 billion in revenue from combined non-major label revenue and artists direct revenue. The report finds that the “recorded music market is becoming more diversified, and although streaming is still the center piece, its role is lessening” and that the “non-major label market share was up for the fourth consecutive year, reaching 31.5%.”<sup>3</sup>

Next, we note the November 29, 2022 report from the United Kingdom Competition and Markets Authority (CMA) on music and streaming.<sup>4</sup> It found that the non-major label share of UK streams in 2021 was 25-30%.<sup>5</sup> It also concluded that it was unlikely that outcomes causing concern for many stakeholders, including artists, were primarily driven by competition, noting that in recent years there is more choice for artists about the type of deals available to them with record labels and with more artists able to directly release their music on streaming services.<sup>6</sup> It further noted that a competition intervention would be unlikely to result in a material increase in revenues for artists.<sup>7</sup>

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<sup>1</sup> See *Concentration and Competition in California: A Focus on Critical Sectors and Labor Markets*, Expert Report, California Law Commission – Antitrust Law Study B-750, March 26, 2027, p. 39-40, available at <http://www.clrc.ca.gov/pub/Misc-Report/ExRpt-B750-Grp7.pdf>.

<sup>2</sup> Mark Mulligan, *Recorded music market 2023 | Back to life*, MiDIA, Mar. 18, 2024. This report is available for purchase via <https://www.midiaresearch.com/reports/recorded-music-market-2023-back-to-life>.

<sup>3</sup> Mark Mulligan, *Global recorded music revenues grew by 9.8% in 2023*, MiDIA, Mar. 18, 2024, available at <https://www.midiaresearch.com/blog/global-recorded-music-revenues-grew-by-98-in-2023>.

<sup>4</sup> *Music and streaming Final report*, United Kingdom Competition and Markets Authority, Nov. 29, 2022, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1120610/Music\\_and\\_streaming\\_final\\_report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1120610/Music_and_streaming_final_report.pdf).

<sup>5</sup> *Executive Summary to the Music and streaming Final report*, United Kingdom Competition and Markets Authority, Nov. 29, 2022, available at <https://www.gov.uk/government/publications/music-and-streaming-market-study-final-report/executive-summary>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*



Finally, we request that you review the Billboard reports on record label market share. For example, in the 2023 year-end report, Billboard noted that, by label ownership, “the independent sector claims the largest piece of the industry, at 35.74%.”<sup>8</sup>

These resources show how the industry has diversified and evolved since the 1990s. We thank you for looking at these resources in connection with your work on the Study. Please let us know if you have any questions or would like to discuss further.

Sincerely,

/Victoria Sheckler/

Victoria Sheckler  
SVP, Deputy General Counsel  
Recording Industry Association of America, Inc.

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<sup>8</sup> Dan Rys, *Record Label Market Share Year-End 2023: Republic Sets High Watermark; RCA, Warner Finish Strong*, Billboard, Jan. 10, 2024, available at <https://www.billboard.com/pro/taylor-swift-republic-records-label-market-share-2023/>.