THE FUTURE OF AUDIO

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY

OF THE

COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

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CONTENTS

	Page
Hon. Greg Walden, a Representative in Congress from the State of Oregon, opening statement	1
Prepared statement	3
Hon. Cliff Stearns, a Representative in Congress from the State of Florida, opening statement	4
Hon. Lee Terry, a Representative in Congress from the State of Nebraska, opening statement	4
Hon. Anna G. Eshoo, a Representative in Congress from the State of California, opening statement	4
Hon. Fred Upton, a Representative in Congress from the State of Michigan, opening statement	6
Prepared statement	7
Hon. Marsha Blackburn, a Representative in Congress from the State of Tennessee, opening statement	8
Hon. Henry A. Waxman, a Representative in Congress from the State of California, opening statement	8
Hon. Michael F. Doyle, a Representative in Congress from the Commonwealth of Pennsylvania, opening statement	9

WITNESSES

Ben Allison, Bassist, Composer, and Governor, New York Chapter, The Recording Academy	10
Prepared statement	13
Answers to submitted questions	171
David M. Israelite, President and Chief Executive Officer, National Music Publishers' Association	18
Prepared statement	20
Answers to submitted questions	172
Cary Sherman, Chairman and Chief Executive Officer, Recording Industry Association of America	26
Prepared statement	28
Answers to submitted questions	173
Jeff Smulyan, Chairman, President, and Chief Executive Officer, Emmis Communications	58
Prepared statement	60
Answers to submitted questions	174
Steven Newberry, President and Chief Executive Officer, Commonwealth Broadcasting Corp., on Behalf of the National Association of Broadcasters	71
Prepared statement	73
Answers to submitted questions	175
Tim Westergren, Chief Strategy Officer and Founder, Pandora	88
Prepared statement	90
Answers to submitted questions	177
Christopher Guttman-McCabe, Vice President, Regulatory Affairs, CTIA–The Wireless Association	94
Prepared statement	96
Answers to submitted questions	178
Gary Shapiro, President and Chief Executive Officer, Consumer Electronics Association	101
Prepared statement	104
Answers to submitted questions	180

Page

SUBMITTED MATERIAL

Statement, dated February 3, 2012, of National Association of Broadcasters, "NAB Statement on Voluntary Inclusion of FM Chips in Cellphones," submitted by Mr. Walden 112
Report, undated, of McLaughlin & Associates and Penn Schoen Berland, "MyWireless.org 2012 Annual Consumer Survey Data," submitted by Ms. Eshoo 115
Report, dated July 8, 2011, of Gigom, "Mobile broadband usage by activity,"submitted by Ms. Eshoo 117
Statement, dated June 6, 2012, of David Lowery, submitted by Mrs. Blackburn 127

THE FUTURE OF AUDIO

WEDNESDAY, JUNE 6, 2012

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:23 a.m., in room 2123, Rayburn House Office Building, Hon. Greg Walden (chairman of the subcommittee) presiding.

Members present: Representatives Walden, Terry, Stearns, Shimkus, Bono Mack, Blackburn, Bilbray, Gingrey, Scalise, Latta, Guthrie, Kinzinger, Upton (ex officio), Eshoo, Markey, Doyle, Matsui, Barrow, Christensen, and Waxman (ex officio).

Also present: Representative Green.

Staff present: Nick Abraham, Staff Assistant; Gary Andres, Staff Director; Ray Baum, Senior Policy Advisor/Director of Coalitions; Michael Beckerman, Deputy Staff Director; Patrick Currier, Counsel, Energy and Power; Nicholas Degani, FCC Detailee; Andy Duberstein, Deputy Press Secretary; Neil Fried, Chief Counsel, Communications and Technology; Katie Novaria, Legislative Clerk; David Redl, Counsel, Communications and Technology; Charlotte Savercool, Executive Assistant; Tim Torres, Deputy IT Director; Lyn Walker, Coordinator, Admin/Human Resources; Tom Wilbur, Staff Assistant; Phil Barnett, Democratic Staff Director; Shawn Chang, Democratic Senior Counsel; Elizabeth Letter, Democratic Assistant Press Secretary; Margaret McCarthy, Democratic Professional Staff Member; Roger Sherman, Democratic Chief Counsel; David Strickland, Democratic FCC Detailee; and Kara Van Stralen, Democratic Special Assistant.

OPENING STATEMENT OF HON. GREG WALDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. WALDEN. Good morning everyone, and welcome to the Subcommittee on Communications and Technology and the hearing on "The Future of Audio."

I was telling our counsel I am really tempted to start out by saying the old radio thing I did in college: Arctic First Federal Savings and Loan time in 30 seconds will be 10:25. The temperature in downtown Fairbanks 30 below zero. CBS News is next on the mighty nighty KFRB Fairbanks.

That goes back to 1974, and I still remember.

There is a saying, allegedly from the Chinese, that says, "May you live in interesting times." It is supposedly a curse, but the alternative is living in boring times. And I think you all at this panel are going to convince us we are not living in boring times.

Today's audio market is certainly not boring. As I mentioned, I was a radio broadcaster for more than two decades and, my, how the industry has changed.

The number of full power broadcast radio stations has jumped by 23.7 percent since 1996 to more than 15,000. More than 2,000 local broadcast radio stations have gone HD, each offering as many as four channels and the benefits of digital technology. Many broadcasters now also simulcast their stations over the Internet as well as offer dedicated Internet content. Satellite radio offers more than 150 digital channels to more than 20 million subscribers. Internet radio garners more than 89 million listeners each month. The number of subscribers worldwide to mobile music streaming services is expected to reach 160 million by 2016. Anyone with a Web page can transmit his or her songs to the world. The majority of Americans over the age of 12 possess a portable music player that lets them take their music wherever they go. And the growth of the Cloud now enables consumers to have their music everywhere they go without even taking it.

On the one hand, this means today's song writers and performers have a wealth of options for reaching music lovers. On the other, it means securing a critical mass of listeners may be harder as audiences fracture. Are artists liberated by the digital age or finding it harder to cut through the cacophony? Is it, ironically, easier to start a career but harder to make a living in the music business today? Is the pie getting larger or is everyone nibbling at each other's slice?

One thing is certain, experimentation will be critical as new technologies challenge existing business models. That is why I was intrigued by the announcement yesterday that Clear Channel and record label Big Machine will share over-the-air revenue while trying to grow the online market. This deal shows that radio broadcast stations and record labels can get to "yes" on issues that have vexed the industry for years.

I for one encourage the private sector to negotiate deals without government involvement. It is much better for stakeholders to solve their own business matters than for Congress and Washington to try and solve them for them. I will be interested to hear if other broadcasters and record labels are willing to enter into similar deals with Clear Channel and Big Machine and with each other.

We have an amazing panel today that spans almost the entire distribution chain, from songwriter to performer to service provider to device manufacturers. I will be curious to hear from our witnesses how changes in communication services and consumer electronics equipment is affecting the way audio content is distributed and consumed.

So we certainly live in interesting times, and I think that is a good thing.

I would now yield to the former chairman of the full committee, Mr. Stearns.

[The prepared statement of Mr. Walden follows:]

Opening Statement of the Honorable Greg Walden
Subcommittee on Communications and Technology
Hearing on "The Future of Audio"
June 6, 2012

(As Prepared for Delivery)

There's a saying, allegedly of Chinese origin: "May you live in interesting times." It's supposedly a curse, but what's the alternative? Living in boring times?

Today's audio market is certainly not boring. I was a radio broadcaster for more than 20 years, and I barely recognize the industry anymore. The number of full-power broadcast radio stations has jumped 23.7 percent since 1996 to more than 15,000. More than 2,000 local broadcast radio stations have gone HD, each offering as many as four channels and the benefits of digital technology. Many broadcasters now also simulcast their stations over the Internet, as well as offer dedicated Internet content. Satellite radio offers more than 150 digital channels to more than 20 million subscribers. Internet radio garners more than 89 million listeners each month. The number of subscribers worldwide to mobile music streaming services is expected to reach 160 million by 2016. Anyone with a web page can transmit their songs to the world. A majority of Americans over the age of 12 possess a portable music player that let's them take their music wherever they go. And the growth of the cloud now enables consumers to have their music everywhere they go without even taking it.

On the one hand, this means today's songwriters and performers have a wealth of options for reaching music lovers. On the other, it means securing a critical mass of listeners may be harder as audiences fracture. Are artists liberated by the digital age or finding it harder to cut through the cacophony? Is it ironically easier to start a career but harder to make a living in the music business today? Is the pie getting larger or is everyone nibbling on each other's slice?

One thing is certain. Experimentation will be critical as new technologies challenge existing business models. That is why I was intrigued by the announcement yesterday that Clear Channel and record label Big Machine will share over-the-air revenue while trying to grow the online market. This deal shows that broadcast radio stations and record labels can get to "yes" on issues that have vexed their industries for years. I, for one, encourage the private sector to negotiate deals without government involvement. It is much better for stakeholders to solve their own business matters than for us to try to solve them for them. I will be interested to hear if other broadcasters and record labels are willing to enter into similar deals with Clear Channel and Big Machine, and with each other.

We have an amazing panel today that spans almost the entire distribution chain from songwriter, to performer, to service provider, to device manufacturer. I will be curious to hear from our witnesses how changes in communications services and consumer electronics equipment is affecting the way audio content is distributed and consumed.

We certainly live in interesting times. And I think that's a good thing.

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OPENING STATEMENT OF HON. CLIFF STEARNS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. STEARNS. Thank you, Mr. Chairman.

I think you have echoed pretty much what I was going to say. Consumers are listening to music that can be chosen from terrestrial radio, HD radio, Sirius XM, satellite radio, cable, Pandora, live radio, YouTube, iTunes, Vevo, Muve Music, Rhapsody, and the list goes on. So I think we have competition.

As one of our witnesses, Gary Shapiro, states in his testimony, we have rapidly shifted to a growing set of choices with a phenomenal array of devices, products, sources and services; and I had the opportunity to see this recently at the consumer electronics show. And our witnesses today represent an important competition in the music space, offering consumers an array of choices and musicians new opportunities to gain new audiences.

Gone are the days when consumers were limited to radio and just television; and gone, too, should be the archaic policies of the old era of prohibiting free market decisions. In today's struggling economy, we are looking at a market that is working, and let's keep it that way.

Thank you, Mr. Chairman.

Mr. WALDEN. I would now yield to the vice chair of the subcommittee, Mr. Terry.

OPENING STATEMENT OF HON. LEE TERRY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mr. TERRY. I appreciate that, as well.

I appreciate your college experience. I also DJ'd, just not on radio but parties, weddings, and I will tell you what. In my time, when I had to go to Homer's Music to buy vinyl, it was really hard to find the Flying Dutchman in Homer's Records back in the '70s and early '80s, but on today's digital world it is a lot easier.

My how things have changed since then. And in fact my three sons, two of them teenagers, only the oldest even cares what a CD is. The other two don't care. It is all about the digital world. It is about organizing their music as they want it and see it, having the devices necessary to play it. And where it goes, I don't know. But I like it, like the Rolling Stones say.

Now I will say that I am intrigued as well with the contract or agreement between Big Machine and Clear Channel. But I need to work through this a little bit more before I have a level of enthusiasm. Because I also remember private contracts between radio stations and record labels, that was called payola, and so I don't know where we are going with this. But it is intriguing.

And I will yield back.

Mr. WALDEN. The gentleman yields back.

I now recognize the ranking member of the subcommittee from California, Ms. Eshoo.

OPENING STATEMENT OF HON. ANNA G. ESHOO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. ESHOO. Thank you, Mr. Chairman, and good morning and welcome to all of the witnesses.

More than 90 years ago, Pittsburgh's KDKA launched the Nation's first commercial radio broadcast. For decades, AM and FM radio served as the primary source for local news, information, and music for millions of Americans.

While I continue to believe that broadcast radio plays an important role in local communities around our country, the Internet has opened up a world of innovation that is driving new business models like on-demand streaming, providing new opportunities for independent musicians and even expanding the reach of traditional AM and FM stations to audiences not only around the country but around the world.

Many of these innovations are being developed in my congressional district in Silicon Valley. Last year, I had an opportunity to visit a Palo Alto startup known as TuneIn. It is headquartered in an old plumbing supply store which I remember going to when my children were small. They had 40 employees when I was there last year. TuneIn has developed a mobile app featuring over 60,000 AM, FM, HD, and Internet radio stations and an active monthly listener base of more than 30 million people. That is stunning, just in and of itself.

And TuneIn is just one example. Over the past decade, we have seen the emergence of Spotify, Pandora, iHeartRadio, Apple iTunes, Amazon Music Store, Google Music, and Slacker Radio. The significance of these services is, in fact, quite stunning.

Last year, within the United States, 52 percent of record company revenues came from digital sources. So we need to embrace these innovative technologies and not hinder their growth. The future of audio is about enhancing, in my view, consumer choice, whether at home or on the go, using smart phones, tablets, or other portable devices.

I have always opposed technology specific mandates—always—because technology moves at the speed of lightning. Before our ink is even dry, the technology has changed. And for that reason I have always opposed technology specific mandates, which is why last year a joined with Representative Issa to introduce the Creativity and Innovation Resolution. The resolution asserts that Congress should not mandate specific technology that limits the way consumers listen to local news, information, and music. The resolution has the rare distinction of being endorsed by CEA, CTIA, and RIAA; and I hope my colleagues will join me in supporting this bipartisan resolution.

As consumers increasingly stream audio through their mobile devices, I am also interested in learning whether data caps impact user behavior. While more often discussed in the context of data-intensive video, users who stream just 1 hour per day of high fidelity audio through a typical online music subscription service can easily exceed the monthly data package offered by many wireless carriers. This is an issue that rests squarely with our subcommittee's jurisdiction, and I think it is important for us to examine this closely.

Mr. Chairman, the future of audio looks bright, as consumers have a growing array of options, including online music stores, subscription-based services, satellite radio, and HD radio. So thank you for holding this morning's hearing. We have a great panel, and

I am anxious to hear what they have to instruct us, and I welcome the witnesses again and thank you for holding the hearing.

I yield back, Mr. Chairman.

Mr. WALDEN. The gentlelady yields back the balance of her time.

The chair recognizes the chairman of the full committee, the gentleman from Michigan, Mr. Upton.

OPENING STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. UPTON. Thank you, Mr. Chairman.

From the radio dramas and fireside chats of the '30s to talk radio and to online streaming of today, audio content has been an integral part of American society for the last century. Twenty years ago, the world of audio choices was pretty simple, AM, FM, cassette, CD.

The world of audio in 2012 offers so much more. Broadcasters are using digital services to deliver HD radio, satellites 22,000 miles above the Earth provide subscription radio service to millions of Americans, technological advances make it possible to carry an entire music library in your pocket, and an increasing number of Americans are streaming music over the Internet to their computers and wireless devices.

Not only has the ability to access the world of professional audio content gotten so much easier and more universal, the ability for people around the world to produce and distribute their own works over the Internet has changed major industries, music, journalism, entertainment, just to name a few.

So today we are going to hear from the broadcasters that are innovating, mobile wireless providers that are making access to media ubiquitous, Internet pioneers that are leveraging the Internet to bring users personalized content channels, and professional artists at the center of it all on how this new media frontier is changing their industries and the way that we listen.

I will be particularly curious to hear, as would Chairman Walden, to hear their reaction to yesterday's announcement by Clear Channel and the Big Machine. It looks to me like an agreement that might break the logjam that has plagued this space and help advance online radio. Best of all, it doesn't require legislation or regulation.

[The prepared statement of Mr. Upton follows:]

Opening Statement of the Honorable Fred Upton
Subcommittee on Communications and Technology
Hearing on "The Future of Audio"
June 6, 2012
(As Prepared for Delivery)

From the radio dramas and fireside chats of the 1930s to talk radio and the online streaming of today, audio content has been an integral part of American society for the last century. Just twenty years ago, the world of audio choices was relatively simple: AM, FM, cassette, or CD.

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Mr. UPTON. So I thank the witnesses, and I don't know if any other members on my side——

Mr. WALDEN. Mrs. Blackburn.

OPENING STATEMENT OF HON. MARSHA BLACKBURN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mrs. BLACKBURN. Thank you, Mr. Chairman.

I want to say welcome to all of our witnesses. I enjoy working with each of you on this issue. I think it is vitally important.

Audio distribution systems can't be successful without compelling content, and in Nashville we think that is a really important thing. Likewise, the music won't enjoy wide distribution without innovative technologies, and Mr. Shapiro and I continue to have this ongoing discussion.

The audio marketplace is constantly evolving, but the music and the technology industries need each other in order to thrive. I believe we can be both pro intellectual property and pro innovation. I am determined that we are going to find a way to do that. And we must be both if we want to grow and be successful. And for our Nation's economy, Tennessee's economy, and for our exports, we need to figure this one out.

Big Machine records, which is a national Tennessee company and a major broadcaster, as Chairman Upton said, did enter into a voluntary agreement yesterday on the performance rights issue. We are pleased to see that. We are looking forward to more good things so that the industry does continue to grow in Nashville. We like to say it all starts with the song. We believe it does, and we want to make certain that we figure this one out.

Thank you so much. I yield back.

Mr. WALDEN. The gentlelady yields back to the chairman.

Mr. Chairman, do you have anyone else you want to yield to? Anyone else on our side?

Apparently not. The chairman yields back the balance of his time.

I now recognize the former chairman of the committee, the gentleman from California, Mr. Waxman.

OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WAXMAN. Thank you, Chairman Walden, for holding this hearing to examine the future of audio.

We live in an era of rapidly changing technologies and consumer behavior. Innovation over the past decade has led to a proliferation of choices in the way consumers access audio content, whether it is news-subscription-based streaming services, Web casting, or HD radio offered by traditional over-the-air broadcasters. But the dynamic audio marketplace has brought consumers more choices, greater accessibility, and lower prices.

As technology advances, it is important that we do not lose sight of the artists, musicians, and songwriters whose work compels consumers to seek out these innovative new services. Thanks to these new technologies, barriers to entering the music market have never been lower, but, paradoxically, the number of people who identify themselves as musicians has declined over the last decade. We need to understand why this is happening. Congress has an important role to play in ensuring that singers, songwriters, and other musicians are compensated fairly both through combating online piracy and ensuring an equitable licensing and royalty system.

I am proud to have co-sponsored the Performance Rights Act during the last Congress. This bill would ensure that musicians are compensated by over-the-air broadcasters for the right to publicly perform their music. As we will hear from some of our witnesses today, the exemption for broadcasters is not only grossly unfair to performing artists, it also creates an unlevel playing field that disadvantages innovative audio services such as Pandora. Whatever their rationale may have been in the past, there is no reason in today's environment that over-the-air broadcasters should be allowed to play music without compensating the artists that perform it.

Although we are still learning the full details of the agreement between Clear Channel and Big Machine, I am encouraged that a major broadcasting group has acknowledged that performing artists should be compensated for their music on over-the-air radio.

I look forward to hearing from our panel about the impact of wireless data caps and proposals to require or encourage FM chips. We also need to ask whether policymakers should encourage FM chips to be incorporated into mobile handsets.

I would like to now yield the balance of my time to Mr. Doyle.

OPENING STATEMENT OF HON. MICHAEL F. DOYLE, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF PENNSYLVANIA

Mr. DOYLE. Thank you, Mr. Waxman, and thank you to our witnesses here today.

Mr. Chairman, I am continually amazed by the massive changes in recent years in how music is created, shared, and promoted. Changes in the industry have shifted music consumption away from the mega artists to support more production and distribution of independent music, and this has allowed new musical genres and subgenres to thrive.

I am not exactly sure what Nerdcore is, for instance. I think it is a mix between Star Wars and Vanilla Ice. But as this subcommittee well knows, I have been a supporter of the mixtape and the mashup for a long time; and I am fascinated to see how innovative musical production has not only exploded but found near endless ways to reach an audience. Web sites like Kickstarter, for example, have allowed musicians from my home town of Pittsburgh to make a living selling records and merchandise entirely from online donations. I think these are very positive trends.

Increasing the diversity of audio programming and providing ways for more people to be heard are some of the main reasons that I have been such a strong supporter of low power FM radio. LPFM is another platform that can bring greater diversity to our media landscape, and it is a platform for independent artists to gain a listenership.

Internet ratio has also been a key driver of this kind of innovation. The Internet has opened the door for more terrestrial broadcasters to stream their content live on the air. So now people around the world can listen to a station they love. I hope that can expand even more in the future. And countless online Web casters, one of which has joined our panel, let us listen to any artist we want whenever we want.

So I am really interested to hear our witnesses share their thoughts on what audio looks like today and where it is headed moving forward.

I thank Mr. Waxman for yielding me the time, and I yield back.

Mr. WALDEN. The gentleman yields back the balance of his time.

We are ready to get on with the panel then. Thank you all for being here. I think we have a terrific array of witnesses and a lot of supporting people around you, as well.

So, Mr. Allison, we are going to start with you.

Mr. Ben Allison is a bassist, a composer, and governor of the New York Chapter of the National Academy of Recording Arts and Sciences.

Thank you for being here. Pull that microphone pretty close, make sure the light is on, and it is all yours.

STATEMENTS OF BEN ALLISON, BASSIST, COMPOSER, AND GOVERNOR, NEW YORK CHAPTER, THE RECORDING ACADEMY; DAVID M. ISRAELITE, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NATIONAL MUSIC PUBLISHERS' ASSOCIATION; CARY SHERMAN, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, RECORDING INDUSTRY ASSOCIATION OF AMERICA; JEFF SMULYAN, CHAIRMAN, PRESIDENT, AND CHIEF EXECUTIVE OFFICER, EMMIS COMMUNICATIONS; STEVEN NEWBERRY, PRESIDENT AND CHIEF EXECUTIVE OFFICER, COMMONWEALTH BROADCASTING CORP.; TIM WESTERGREN, CHIEF STRATEGY OFFICER AND FOUNDER, PANDORA; CHRISTOPHER GUTTMAN–MCCABE, VICE PRESIDENT, REGULATORY AFFAIRS, CTIA–THE WIRELESS ASSOCIATION; AND GARY SHAPIRO, PRESIDENT AND CHIEF EXECUTIVE OFFICER, CONSUMER ELECTRONICS ASSOCIATION

STATEMENT OF BEN ALLISON

Mr. ALLISON. Good morning, Chairman Walden, Ranking Member Eshoo, and members of the subcommittee.

My name is Ben Allison. I am a jazz musician, a composer, and a producer based in New York. I am also a board member of the New York Chapter of The Recording Academy. Outside the Beltway, The Recording Academy is best known for producing the Grammy Awards. But here in DC the Academy is the trade association representing more than 20,000 performers, songwriters, and studio professionals. I want to thank the members for the privilege of being able to share my perspective as an artist and to represent the Academy.

In less than 24 hours, I will be traveling to the Bonnaroo Music Festival in Tennessee to perform. But the music created at Bonnaroo will not be confined to the 80,000 people attending the concerts. Bonnaroo will offer live streaming of performances, while Internet radio services like Pandora will offer Bonnaroo-themed stations. This is just one example of why I am excited about the future of audio. The infinite possibilities of stations on Internet radio and the niche genres available on satellite have given more artists a chance to be heard.

As a working musician on the New York music scene, I meet many young and emerging artists who are using these new services to connect to fans. And these new platforms don't only provide promotion. They provide compensation to artists and songwriters. And the sound quality offered through these services, while sub par in its early days, is improving. I have chosen my instrument, which is an 1840 American-made bass, for its pure and nuanced sound, so I want my listeners to hear a recording that sounds as close to the original performance as possible.

The Recording Academy's producers and engineers wing have been very active on the issue of sound quality, and consumers, music services, and manufacturers are responding. But, to creators, compensation from these new services is the most important aspect of this issue.

Internet and satellite radio services primarily pay performers through a compulsory license processed by Sound Exchange, a nonprofit entity that pays 50 percent of the royalties collected directly to performers. But with interactive or on-demand services, unlike Internet radio, the consumer can choose to listen to a particular track whenever they want.

Streaming services such as Spotify are currently paying a very low royalty rate, a fraction of a penny per spin. We are told that we are benefitting from the promotion, but promotion should never replace compensation. If on demand services replace downloads and the royalties don't increase, this will be a great concern for creators.

But, ironically, one of the most pressing issues for performers is not about the future of audio but its past. Terrestrial radio broadcasters have an inexplicable free ride when it comes to performance royalties. They are exempt from paying performers any royalties when they use our recordings to fuel their multibillion-dollar industry. This makes corporate radio the only business in America that can legally use another's intellectual property without permission or compensation.

All of the other broadcast platforms pay a performance royalty for sound recordings. Every other country in the developed world has such a right. But, in the U.S., over-the-air broadcasters are required to pay songwriters, as they should, but not performers.

Previous private negotiations led to an industry agreement that would have created a terrestrial performance royalty in exchange for specific rate reductions on simulcasting. Unfortunately, when the NAB board voted on the deal, they changed the agreed-upon numbers making it a net loss for the music side, and the deal collapsed.

To add insult to injury, terrestrial broadcasters are now asking for another legislative perk, a mandate to include FM receivers in Smartphones. They already exploit one anomaly in the law. They do not pay performers, while new audio technologies do. Now they want a second legislative anomaly, to have a free ride, quite literally, on the backs of new devices. Artists believe that Congress should address the first anomaly before there can be any discussion of the second.

Finally, I would like to close by discussing the lowered barriers to entry for music creators. I am a professional musician. I started taking music lessons at the age of 9 and played my first gig when I was 16. This is my life and my livelihood. That said, I am delighted that those for whom music is a part-time pursuit can have access to the digital marketplace; and while it is fine for the market to welcome nonprofessional musicians, we must not allow the market to make music a nonprofession.

Each one of my fellow panelists here have a role in connecting the music creator to the fan. But they will have no business if there is no great music. Without the songwriter putting that first note on paper, without the musicians performing that song in ways that move us, without the producer and engineer capturing that performance, there will be no iPods, no Pandoras, no labels, no publishers. Music must be respected, content protected on line, and all creators compensated.

So let me close by stating one constant in the music industry. In this regard, the future of audio is the same as the past. It is dependent upon the creator. And we, distinguished members of the subcommittee, are dependent on you to protect our rights.

Thank you.

[The prepared statement of Mr. Allison follows:]

Hearing on
The Future of Audio

Before the
House Committee on Energy and Commerce
Subcommittee on Communications and Technology

Testimony of
Ben Allison
Bassist/Composer
Governor, New York Chapter of The Recording Academy

June 6, 2012

Good morning Chairman Walden, Ranking Member Eshoo and members of the Subcommittee. My name is Ben Allison, I am a musician, composer and producer based in New York. I am also a board member of the New York Chapter of The Recording Academy. Outside the beltway, The Recording Academy is best known for producing the GRAMMY Awards. But here in DC, the Academy is the trade association representing music creators — more than 20,000 performers, songwriters and studio professionals. I want to thank the members for the privilege of being able to share my perspective as an artist, and to represent The Academy.

In less than 24 hours, I'll be traveling the Bonnoroo Music Festival in Tennessee to perform with my band. But the music created at Bonnoroo will not be confined to the 80,000 people attending the concerts. Like many festivals, Bonnoroo will offer live streaming of performances, while internet radio services like Pandora will offer Bonnoroo-themed stations. This is just one example of why I'm excited about the Future of Audio. New technologies will allow us to connect to more fans in new and innovative ways.

Internet and satellite radio are growing exponentially as a source for fans to access music. I'd like to focus on three issues regarding these new technologies: discovery, audio quality and compensation.

Discovery

As for discovery, the infinite possibilities of stations on Internet radio and the niche genres available on satellite have given more artists a chance to be heard that would never be played on AM or FM radio. The beauty of Internet radio services like Pandora is that song selection is blind to popularity and is simply based on matching tracks to the consumers' tastes. So artists without large promotional budgets will be played if the music suits the listener's ear, and a new fan may be born.

As a board Member of the Recording Academy's New York Chapter and a working musician on the New York music scene, I meet many young and emerging artists who are using these new services to connect to fans. And a number of niche styles of music that never get played on AM or FM radio are finding homes on Internet radio. And these platforms don't only provide promotion, they provide compensation—to artists and songwriters.

Audio quality

Early on, the transition to a digital marketplace had led to the use of inferior listening formats and resulted in there being less of an emphasis on sound quality. One of the results of this is a "disposable" attitude toward consuming music—there is less perceived value in the music itself. When people actually hear higher quality sound the difference can be very apparent—like going from black and white to color.

As an acoustic musician, the quality of the sound delivered is of the utmost importance to me. I've chosen my instrument, an 1840 American-made bass, for its pure and nuanced sound. So I want my listeners to hear a recording that sounds as close to the original performance as possible.

The Recording Academy's Producers and Engineer Wing has been very active on the issue of sound quality, working with labels, technology companies and consumers to raise the level of quality.

And now, consumers are waking up. There is a renewed interest in higher quality audio, as evidenced by the desire for premium headphones and higher resolution downloads. Increased bandwidth will make it easier for consumers to access higher quality audio and to make listening to it commonplace again.

Compensation

Noninteractive Internet and Satellite radio services primarily pay performers through a compulsory license, allowing the services to play any song they choose, as long as they pay the rate established by the Copyright Royalty Board set up by Congress. The payments are processed by SoundExchange, a nonprofit entity with oversight that includes artist representatives. SoundExchange ensures that 50% of all payments go directly to performers, and in the past five years, payments to artists through SoundExchange have increased by 400%. The ease of payment to one entity has allowed new businesses to emerge without the burden of multiple licensing deals. And because of this ease of payment to SoundExchange, services have almost exclusively taken advantage of the compulsory license. However, one concern for artists is that services may in the future choose to license directly with record labels. Such a scenario could mean lower payments to artists, which is why performers generally prefer their payment be made through SoundExchange.

Another concern has to do with interactive, or "on demand" services. Unlike Internet radio, the consumer can choose to listen to a particular track whenever they want. Streaming services such as Spotify are currently paying a very low royalty rate—a fraction of a penny per spin. These arrangements are negotiated in the marketplace by the services and copyright owners. As artists, we are told the rates will grow. I hope that's true. We're also told that we are benefitting from the promotion, but promotion should never replace compensation. If on-demand services replace downloads, then that reduces the compensation for creators—and this is a great concern.

The Future of Audio—and the Past

But, ironically, one of the most pressing issues for performers is not about the *future* of audio, but its past. And the concern is not caused by a *new* technology—but rather by one that has been around for more than a century: traditional, over-the-air radio.

Terrestrial broadcasters have an inexplicable "free ride" when it comes to performance royalties. They are exempt from paying performers any royalties when they use our recordings to fuel their multi-billion dollar industry. This makes corporate radio the only business in America that can legally use another's intellectual property without permission or compensation.

All of the other broadcast platforms—Internet, satellite and cable—pay a performance royalty for sound recordings, regardless of promotion. Every other country in the developed world has such a right. But in the U.S., over-the-air broadcasters are required to pay songwriters—as they should—but not performers.

The previous Congress made great progress in addressing this issue, which led to private negotiations. And in fact, after a year of negotiations, the National Association of Broadcasters and the musicFIRST Coalition (representing artists and labels) agreed on a settlement that would have created a terrestrial performance royalty in exchange for specific rate reductions on simulcasting. Unfortunately, when the NAB Board voted on the deal, they changed the agreed-upon numbers, making it a net loss for the music side, and the deal collapsed.

To add insult to injury, terrestrial broadcasters are now asking for another legislative perk—a mandate to include FM receivers in smart phones. They already exploit one anomaly in the law—they do not pay performers while new audio technologies do. Now they want a second legislative anomaly—to have a free ride—quite literally—on the backs of new devices.

Artists believe Congress should address the first anomaly before there can be any discussion about the second.

One last word on this point—just yesterday Clear Channel announced a deal to pay performance royalties to one record label. With the largest radio broadcaster agreeing that a terrestrial performance right should exist, there is no longer any legitimate argument for the NAB to oppose the right. Congress should resolve this issue once and for all and remove the corporate radio loophole.

Democratization of Music

Finally, I'd like to close by discussing the lower barriers to entry for music creators, often referred to as "the democratization of music." With new platforms for audio allowing nearly every musician to be in the virtual record store, there's an ongoing debate about how much music is too much for the consumer to absorb.

I'm a professional musician. I started taking music lessons at the age of nine, went to a performing arts high school, and graduated from NYU with a degree in music performance. I played my first gig at 16. This is my life and my livelihood.

That said, I am delighted that those for whom music is a part-time pursuit can have access to the digital marketplace. And some of those part-timers may be great musicians who might just find a fan base on Pandora or Sirius Satellite radio and be able to become full-time musicians. More music is always a good thing and quality will always find its place in the market.

But while it's fine for the market to welcome non-professional musicians, we must not allow the market to make music a non-profession. Recently, John McCrea, the lead singer of the band Cake, stated, "Can you put food on the table with music? Probably not. I see everybody I know, some of them really important artists, studying how to do other jobs."

Each one of my fellow panelists here has a role in connecting the music creator to the fan. But they'll have no business if there's no great music. Without the songwriter putting that first note on paper...without the musicians performing that song in ways that move us...without the producer and engineer capturing that performance...there would be no iPods, no Pandoras, no labels, no publishers.

We do not want the next generation of great artists studying how to do other jobs. Music must be respected, content protected online, and all creators compensated.

So let me close by stating one constant in the music industry. In this regard, the future of audio is the same as the past: it is dependent on the creator. And we, distinguished members of the subcommittee, are dependent on you to protect our rights.

Thank you.

Mr. WALDEN. Thank you, Mr. Allison. We appreciate your testimony and your music, and we welcome you here.

Our next witness is Mr. David M. Israelite, President and CEO of the National Music Publishers' Association.

Mr. Israelite, we are delighted to have you here today. Thanks for your testimony and please go ahead.

STATEMENT OF DAVID M. ISRAELITE

Mr. ISRAELITE. Thank you.

Good morning, Chairman Walden, Ranking Member Eshoo, and members of the subcommittee. Thank you for the opportunity to appear before you today to talk about the future of audio as it pertains to music publishers and songwriters.

I serve as President and CEO of the National Music Publishers' Association, the principal trade association representing music publishers and songwriters in the United States. Now in our 95th year, we represent over 2,800 member companies with the goal of protecting and advancing their property rights on the legislative, litigation, and regulatory fronts. Prior to this position, I also had the honor of serving at the Department of Justice where I chaired the Department's Task Force on Intellectual Property.

Issues involving the music industry are complicated in part because there are two separate and distinct copyrights in music. The first copyright, which we represent, is for the underlying musical composition created by songwriters and often owned or represented by a music publisher. I am here representing that half of the music industry. The second copyright is for any recording of that song, commonly known as the sound recording copyright, and represented by Mr. Sherman and the record labels. It is crucial to understand that these two different copyrights are controlled and represented by different interests and are often treated very differently under the law and in business practices.

If that were not complicated enough, the different uses of our musical composition copyright are also treated very differently under the law and through government regulation.

Songwriters and music publishers attempt to earn a living through three primary means of utilizing their separate copyrights—mechanical reproductions, public performances, and audiovisual synchronizations. Depending on the particular songwriter or publisher, each type of income represents roughly a third of our income.

First, there is the mechanical reproduction right. An example is when a consumer downloads a song from iTunes or streams music through a service like Spotify. For songwriters, this right is regulated by section 115 of the Copyright Act which imposes a compulsory license system on the songwriter community. Songwriters and music publishers do not get to negotiate the value of our intellectual property in a free market. For record labels, this is a free market right and not regulated by law.

Second, there is the public performance right. An example is when music is performed on the radio, whether it be broadcast or digital. While this right is inherently unregulated by law for us, the vast majority of the market is regulated by consent decrees with the Department of Justice. Again, under these consent decrees, songwriters and music publishers do not negotiate the value of their intellectual property in a free market.

In addition, there are situations where the rights of songwriters and music publishers are utilized using these consent decrees, but there is no compensation for vast lengths of time due to the terms of the consent decrees.

Finally, there is the use of music synchronized with video. Traditionally, this has included using music in movies, television, and commercials. For songwriters and music publishers, this is a free market right not regulated by law. Newer forms of this right include music videos and the use of music in user-generated content such as YouTube.

Music publishers and songwriters face three primary challenges when we look to the future.

First, we must do a better job of protecting music from theft. While there can be legitimate debate about how to best deal with new technologies, it can never be right to steal the intellectual property of songwriters. It also cannot be right for parties to facilitate or turn a blind eye from such theft while profiting from that theft.

Second, we must find efficient ways to license our copyrights and empower new business models. Much of the current licensing system is outdated and inefficient.

And, finally, we must ensure that future business models fairly compensate songwriters. Licensing new business models efficiently does no good if new business models do not allow a songwriter to earn a living.

The impact of theft on the music world is a familiar subject to all of you. It is important to consider that it is significantly more difficult for songwriters to police the Internet for infringement. Just a few months ago, 25 parties completed a year-long negotiation over rates for 5 new categories of music services to allow flexibility in creating new services that enable consumers to access and use and purchase music in previously impossible ways. These new categories allow consumers to enjoy and access their own music across almost every electronic device; and parties representing digital services, record labels, and songwriters are currently involved in discussions on how to work together to improve our licensing system.

I believe the streaming market is one of the significant growth areas for music in the future. As this area of the market grows, we need to ensure that songwriters are fairly compensated for their work. It is also crucial that new services like Vevo properly license and compensate songwriters.

In conclusion, songwriters and music publishers will continue to embrace new delivery models and technology, but as the future of audio develops, Congress and the music community must ensure that laws protect intellectual property while providing fans the music they want and in the manner that they want.

Thank you, Mr. Chairman, for the time.

[The prepared statement of Mr. Israelite follows:]

Testimony of David M. Israelite
President and Chief Executive Officer
National Music Publishers' Association
Before the House Energy & Commerce
Subcommittee on Communications and Technology

June 6, 2012

Good morning Chairman Walden, Ranking Member Eshoo, and Members of the Subcommittee. Thank you for the opportunity to appear before you today to talk about the future of audio as it pertains to music publishers and songwriters.

I serve as President and CEO of the National Music Publishers' Association ("NMPA"), the principal trade association representing music publishers and songwriters in the United States. Now in our 95th year, the NMPA represents over 2,800 member companies with the goal of protecting and advancing their property rights on the legislative, litigation, and regulatory fronts. Prior to this position, I also had the honor of serving at the Department of Justice where I chaired the Department's Task Force on Intellectual Property.

The Role of Music Publishers

Issues involving the music industry are complicated, in part because there are two separate and distinct copyrights involved in music.

The first copyright is for the underlying musical composition created by one or more songwriters, and often owned or represented by a music publisher. I am here representing that half of the music industry. The second copyright is for any recording of that song – commonly known as the sound recording copyright – and represented by record labels. It is crucial to understand that these two different copyrights are controlled and represented by different interests, and are often treated very differently under the law and in business practices.

If that were not complicated enough, the different uses of the musical composition copyright are also treated differently under the law and through government regulation.

Songwriters and music publishers attempt to earn a living through three primary means of utilizing their separate copyright – mechanical reproductions, public performances, and audio-visual synchronizations. Each type of income represents roughly a third of their revenue.

First, there is the mechanical reproduction right. An example is when a consumer downloads a song from iTunes or streams music through a service like Spotify. For songwriters, this right is regulated by Section 115 of the Copyright Act which imposes a compulsory license system on the songwriter/publisher community. Songwriters and music publishers do not get to negotiate the value of our intellectual property in a free market. For record labels, this is a free market right and not regulated by law. The compulsory license dates back to 1909 – before the existence of recorded music – when Congress decided to regulate the mechanical reproduction of musical compositions embodied on piano rolls for player pianos.

Second, there is a public performance right. An example is when music is performed on the radio. While this right is inherently unregulated by law, the vast majority of the market is regulated by consent decrees with the Department of Justice. Again, under these consent decrees, songwriters and music publishers do not generally get to negotiate the value of their intellectual property in a free market. In addition, there are situations where the rights of songwriters and music publishers are utilized using the consent decrees, but there is no compensation for vast lengths of time due to provisions of the consent decree allowing for temporary free-rate licensing.

Third, there is the use of music synchronized with video. Traditionally this has included using music in movies, television, and commercials. For songwriters and music publishers, this is a free market right not regulated by law. Newer forms of this right include music videos and the use of music in user-generated content such as in YouTube.

The Future of Audio

For songwriters and music publishers, the future of audio presents both opportunities and challenges. New technologies allow us to deliver music through innovative legal channels that give fans what they want. For example, the iPhone -- introduced just five years ago -- has revolutionized how consumers access and listen to music. And services such as Spotify -- just recently introduced in the U.S. -- give music fans unprecedented access to large music catalogues. We have embraced all of these developments and are looking forward to the next new services that will enhance the culture of music.

However, there are also three challenges music publishers and songwriters face as we move toward the future.

First, we must do a better job of protecting music from theft. While there can be legitimate debate on how best to deal with new technologies, it can never be right to steal the intellectual property of songwriters. It also cannot be right for parties to facilitate or turn a blind eye to such theft while profiting from that theft.

Second, we must find efficient ways to license our copyrights and empower new business models. Much of the current licensing system is outdated and inefficient. It was built to service outdated business models.

Finally, we must ensure that future business models fairly compensate songwriters. Licensing new business models efficiently does no good if such new business models do not allow a songwriter to earn a living.

THEFT

The impact of theft on the music world is a familiar subject to all of you. It is important to consider that it is significantly more difficult for songwriters to police the internet for infringement than it is for large corporations. Most songwriters simply do not have the resources or capacity to find the ever-increasing number of unauthorized uses of their works on the Internet, and to engage in the process of sending numerous take-down notices for each new unauthorized posting. Take-down notices to infringing websites now number in the thousands and even millions for some internet service providers. Many corporations are barely able to keep up. Songwriters have, to a large extent, simply stopped trying.

Songwriters are particularly reliant on receiving fair compensation for the use of their works online and through digital music services because unlike recording artists, many songwriters do not have the ability to generate income in other ways, such as through touring or merchandise sales. Alternative income streams are simply not available for most songwriters, which makes the theft of their music that much more devastating.

LICENSING

Just a few months ago, 25 parties completed a year-long negotiation over rates for five new categories of music services to allow flexibility in creating new services that enable consumers to access, use and purchase music in previously impossible ways. These new categories cover things like mixed service bundles that bundle music products with non-music products, and cloud based locker services that allow consumers to store and access their own music across almost every electronic device. And, parties representing digital services, record labels, and songwriters and publishers are currently involved in discussions on how to work together to improve our licensing system.

COMPENSATION

Right now, interactive streaming music services comprise a fairly small percentage of the income that songwriters collect. However, I believe the streaming market is one of the significant growth areas for music in the future. As this area of the market grows, we need to ensure that songwriters are fairly compensated for their work. It is also crucial that new services like Vevo properly license and compensate songwriters.

CONCLUSION

The marketplace for music is constantly evolving in ways that are both beneficial and potentially detrimental for music's creators. Songwriters and music publishers will continue to embrace new delivery models and technology, but as the future of audio develops Congress and the music community must ensure that laws protect intellectual property while providing fans the music they want in the manner they want.

Mr. WALDEN. Mr. Israelite, thank you for your testimony. We appreciate it.

Now we will turn to Mr. Cary Sherman, who is chairman and CEO of the Recording Industry Association of America.

Welcome, Mr. Sherman, and please go ahead.

STATEMENT OF CARY SHERMAN

Mr. SHERMAN. Thank you Chairman Walden, Ranking Member Eshoo, and members of the subcommittee.

The music industry has a great story to tell. Record companies have transformed how they do business, and the evolution will continue, enabling new artists to prosper and allowing consumers to enjoy music in many different ways.

The music industry is now primarily digital, and if you look at the slides on the screens, you will see that CDs are no longer the primary format or the primary source of revenue. Digital is not just our future. It is our present.

In 2004, the first year we had real digital revenues, the industry earned only $190 million from digital services. Last year, we earned nearly $3.5 billion. That is quite a change.

We used to hear that we needed to get a new business model. Well, our companies have done just that. You want DRM free downloads? We have got that. You want to pay a small monthly fee for a subscription to unlimited music on your computer or Smartphone? We have got that, too. You want free ad-supported streaming? Got it. You want a music service bundled with your mobile phone? Got that. You want to store all your music in the Cloud so that you can access it from anywhere? That is now here. You want specialized digital radio services? Lots are available. You want AM/FM radio stations online? That is available, too. In fact, there are over 500 digital services authorized by our member companies worldwide, offering 20 million authorized tracks.

And we are not stopping there. One of our highest priorities is to develop the infrastructure that will make it faster and easier to offer even more innovative models to fans. Just last month, as David said, we announced with NMPA and a large number of music services a groundbreaking licensing agreement that will make it easier for digital services to clear rights for new models, and we are also working on new industry-wide databases and royalty distribution systems to make royalty payment functions more efficient.

It probably goes without saying that we are embracing these new offerings under the continuing threat of rampant piracy. In fact, we are less than half the size we used to be, down to $7 billion in 2011 from nearly $15 billion in 1999.

Even more worrying is that, according to BLS data, the number of people who identify themselves as musicians has declined over the last decade by 41 percent since the industry's high point in 1999. Clearly, piracy affects not just our economy but our culture.

When it comes to protecting creative rights, strategic copyright enforcement combined with robust new legal services can make a difference. For example, LimeWire, which was the world's most popular illegal peer-to-peer file sharing service, was finally shut down by a Federal Court in 2010. The very next month, digital sales of music improved; and they have remained higher ever since.

Just a couple of months ago, a market research firm released a survey showing that more than half the people who had used LimeWire did not go to another illegal music site to get their music after the shutdown. So one of the most important anti-piracy strategies remains innovation. Experimenting and working with our technology and Internet partners on consumer-friendly new business models, we also need some enforcement.

So how are we protecting our rights these days? By forging voluntary marketplace agreements with Internet partners.

Just last year, we announced a voluntary program of ISPs to address illegal downloads on P-to-P networks. We also helped craft an agreement with major credit card companies to reduce sales of counterfeit and pirated goods. And just last month major advertisers and ad agencies announced a series of voluntary best practices designed to stop enriching rogue Web site operators. We hope other intermediaries, like search engines, will follow suit to do their part in preventing the theft of U.S. creativity. These voluntary programs are not a panacea, but collectively we think these collaborative efforts will make a difference.

Speaking of working together, I would be remiss if I didn't take this opportunity to, once again, point out a glaring inequity when it comes to compensating creators. Every platform that legally plays music pays to do so except for one. AM/FM radio stations use music just like Internet radio, cable music channels, and satellite radio services do. The difference is that all these other radio services compensate artists and labels for the music they play while promoting artists at the same time. AM/FM radio does not.

Yesterday, we were glad to hear that Bob Pittman, the CEO of Clear Channel, the largest radio group, stated that artists and record companies deserve to be paid and that promotion alone is not enough. It is time for the NAB to join with us in working toward an industry-wide solution to ensure that all artists and record companies are rewarded for their work.

One thing remains abundantly clear. Music matters, now more than ever. Of the top 10 most followed people on twitter, seven are music artists. Of the top six videos on YouTube, five are music. Music remains a centrifugal force in culture and in commerce, and it is only going to get stronger. It is worth creating, and it is worth protecting.

Thank you.

[The prepared statement of Mr. Sherman follows:]

Statement of Cary Sherman
Chairman and CEO
Recording Industry Association of America
before the
Subcommittee on Communications and Technology
Committee on Energy and Commerce
U.S. House of Representatives
on
"The Future of Audio"

June 6, 2012

Good morning Chairman Walden, Ranking Member Eshoo, and Members of the Subcommittee. Thank you for inviting me to testify this morning on "The Future of Audio." My name is Cary Sherman and I am Chairman and CEO of the Recording Industry Association of America. We represent America's major music labels.

I'm glad to be here today, because I believe that the recording industry, and the music industry in general, has a great story to tell. The bottom line is that the music industry today has transformed how it does business, and we expect the industry to continue to evolve, enabling new artists to prosper and allowing consumers to enjoy their works in many different ways.

Today, the music business earns more than half of its revenues from an array of digital formats. That's right, CDs are no longer the primary format for the music business or the primary way the industry generates revenues. Digital is not just our future, it is our present. In 2004, the first year we had any meaningful digital revenues, the industry earned a grand total of $190 million from digital services. Last year, we hit nearly $3.5 billion. Quite a change.

We often hear the complaint that we need to get a new business model. Well...our companies have done just that:

- You want DRM-free downloads? We've got that: iTunes, AmazonMP3, eMusic, 7digital.
- You want to pay a modest monthly fee for all the music you can ever listen to – on your computer or smart phone? We've got that: Rhapsody, Spotify, MOG, Rdio, Music Unlimited, rara.com, Zune Music Pass.
- You want free, ad-supported video and audio streaming? We've got that: Spotify, YouTube, Vevo, Myspace Music, AOLMusic.

- You want music bundled with your mobile phone? We've got that: Muve Music, Metro PCS/Rhapsody
- You want to store all your music in the cloud, so you can access it from wherever you might be? We've got that: iTunes Match, and more deals in the works.
- You want specialized digital radio services that offer you the niche kind of music you like to hear? We've got that: Pandora, SiriusXM, Last.fm, Yahoo!Music, AOLMusic, and over750 more such services.
- You want online simulcasts of AM/FM radio stations? That is available too: iHeartRadio, WJLK-FM 994.3 (The Point), KPWR-FM (Power 106), WXLC-FM (102.3 XLC), and over 750 more online radio stations fully licensed through our sister organization SoundExchange.

There are over 500 digital services authorized by our member companies worldwide offering 20 million authorized tracks. ALL of these business models have been embraced and authorized by major and independent music companies.

And we're not stopping there. One of our highest priorities at RIAA is to develop the infrastructure that will make it faster and easier for entrepreneurs to offer even more innovative business models to music fans.

Just last month, we announced, along with my colleague David Israelite of NMPA and digital music services, a groundbreaking licensing agreement that will make it easier for digital services to clear publishing rights for five categories of new business models.

We're also working on new industry-wide databases and royalty distribution systems to make royalty payment functions more efficient; and licensing reform to update the statutory mechanism for the old "mechanical" licensing system. We are intent on working with our Internet and publishing partners to simplify and expedite the licensing process.

It probably goes without saying that we are seeking out and embracing these new structures and offerings under the continuing threat of rampant piracy. In fact, we're less than half the size we used to be: down to $7 billion in 2011 from nearly $15 billion in 1999. Certainly, piracy does not account for that entire loss. But nearly every academic study, and nearly every economist – not to mention common sense – has concluded that illegal downloading has hurt us badly. What kind of harm? Massive layoffs, of course. But also less money to invest in artists. That means fewer artists on our rosters, fewer people who can make a living from music, fewer songs permeating through our culture that help form a piece of our national identity. In fact, according to Bureau of Labor Statistics data from the Federal government, the number of people who identify themselves as "musicians" has declined over the last decade, conspicuously tracking the decline of the industry. Piracy is not just a parochial corporate problem. This is an issue that affects many industries, our economy, our culture, tens of thousands of creative individuals, and most importantly, the consumers who enjoy the music we create.

When it comes to protecting or enforcing creative rights, the effort is often caricatured as a quixotic game of whack-a-mole that only enriches the lawyers. But fresh evidence is emerging that strategic copyright protection combined with robust legal digital offerings can put money into the pockets of artists and songwriters and the companies who invest in them.

For example, most people are familiar with Limewire, which was the world's most popular peer-to-peer (P2P) file-sharing service. Between 2007 and 2010, about 2/3 of file-sharers on the Internet used the service. At the end of October 2010, a federal court finally shut them down for inducing massive copyright infringement. The very next month, digital sales of music improved and they've remained higher ever since. While this may not be the sole cause, it is not a coincidence. Just a couple of months ago, market research firm NPD released a survey showing that more than half of the people who had used Limewire did NOT go to another illegal music site to get their music after the shutdown, thanks to the availability of all those authorized services I mentioned.

Government enforcement of criminal copyright laws to protect our nation's economic interests is also vitally important. The indictment of Megaupload has had a tremendous impact on other such rogue cyberlocker sites. The government's action sends a signal that the United States will not tolerate the use of the Internet for criminal activity that violates our laws.

We continue to believe that the best and single most important anti-piracy strategy remains innovation — experimenting and working with our technology and Internet partners on consumer-friendly new business models. But enforcing our constitutional property rights is also a necessary part of the equation.

So how are we approaching protecting our rights these days? For the most part, by forging voluntary, marketplace agreements with others in the Internet ecosystem under which everyone plays a part in addressing the problem. Just last year, we announced a voluntary program with ISPs that will be implemented later this year to address illegal downloads on P2P networks. We also helped craft an agreement with major credit card companies and payment processors on voluntary best practices to reduce sales of counterfeit and pirated goods. And just last month, major advertisers and ad agencies announced a series of voluntary best practices so that their valuable brands are not associated with rogue Internet sites that offer illegal goods, and advertisers don't inadvertently enrich rogue website operators. We hope other intermediaries like search engines will follow suit in negotiating voluntary marketplace best practices to prevent directing users to sites that are dedicated to violating property rights.

These voluntary programs are not a panacea. No program ever will be. And sometimes, the Congress must step in to assure that our property rights, and U.S. economic interests, are being protected. Especially against sites overseas whose business model is the theft of U.S. works. But collectively, we think these collaborative efforts will make a difference. They are the product of outreach, and a lot of conversation over several years – not only with these intermediaries, but also with public interest groups who want to figure out how to address online problems while ensuring the reasonable preservation of a free and open Internet.

We need to engage in the same sort of outreach directly with the tech and Internet communities, and I am committed to doing that – because, in the end, we all have an interest in an Internet that is open and accessible, but not lawless.

Speaking of working together, I would be remiss if I didn't take this opportunity to once again point out a glaring inequity when it comes to compensating creators. The bottom line is that every platform that (legally) plays music pays to do so – except for one. AM/FM radio stations use music to draw billions of dollars in advertising revenue for themselves, but they don't pay a cent to artists, musicians and sound recording owners who make the music they use. Internet radio, cable music channels, and satellite radio all compensate artists and labels for the music they play, while promoting artists at the same time. All other copyrighted works, without exception, receive payment for their use, regardless of promotion. Radio stations in every other developed country in the world compensate artists and labels for the use of music, regardless of promotion. This extraordinary government subsidy for U.S. broadcasters at the expense of U.S. music creators is due to an unfair and unfortunate anomaly in our law that has persisted for decades, and must be addressed.

I do think many of us in the music industry find it frustrating that, instead of working with us to find a fair resolution to this issue, broadcasters are more focused on getting the government to mandate the insertion of an FM chip in mobile devices that was rejected by an intergovernmental advisory group. We suspect that the broadcasters' real agenda is to get an FM chip installed or activated in every U.S. cell phone, regardless of consumer demand, to prevent being overtaken by the popularity of Internet radio services on those devices, such as the one by our partners at Pandora. Pandora and others are making great strides with consumers on these devices, and challenging traditional broadcasters in the home, in the car and on the move. They are giving consumers what they want, based on consumer demand, and paying artists and record companies while they do it. Certainly, broadcasters like ClearChannel also offer Internet radio services like iHeartRadio that are available on cell phones and that go head to head against other Internet radio services on all mobile devices. Those services do have to pay artists and labels. But it is the old line, old-fashioned terrestrial service, the one that is exempted and subsidized, the one that does not pay artists and labels for the use of music, that broadcasters want to require on all mobile devices. That does not sound like moving forward to me.

These issues are important. But in the end, what gives us hope and optimism is that music matters, perhaps now more than ever. Music is often the hub of your smart phone experience, it is the backbone and soundtrack to many TV shows, it is the focal point of conversation in social media. Of the top ten most followed people on Twitter, seven are music artists. Of the top six videos on YouTube, five are music. Music remains a centrifugal force in culture and commerce, and it's only going to get stronger. It's worth creating, and it's worth protecting.

My conclusion? The music industry is on an exciting and promising trajectory right now. Whether you are with a major label or an indie, or you just have a dream and are trying to find an audience on your own, online and mobile services give artists and the people who invest in them a chance to succeed. And a broad array of authorized music services are giving music fans what they want, and how they want it.

We've still got a lot of work to do to get piracy under control, and we need the help of other industry sectors in the Internet ecosystem to get there, especially search engines, who have yet to dedicate themselves like others in that ecosystem have to protecting against theft. But we're seeing the results of more than a decade of adapting to the digital environment finally start to come to fruition. Our companies have been working with an enormous number of partners to embrace every opportunity, to license every viable kind of digital music service and make them attractive and successful, and they deserve great credit for the transformation of their business models. We will continue to work with anyone dedicated to the legal consumption of music. We believe that we have a vibrant digital future, and relying on your help to protect our rights, we look forward to marketplace solutions to get there.

Thank you.

TYPE OF SERVICE	SERVICES IN THE U.S. MARKET
DRM-Free Digital Downloads	7Digital AmazonMP3 eMusic iTunes
Subscriptions: All You Can "Eat" on Your Computer or Device	MOG Music Unlimited rara.com Rdio Rhapsody Spotify Zune Music Pass
Free On-Demand Audio and Video Streaming	AOLMusic MySpace Music Spotify Vevo YouTube
Music Bundled with Mobile Phones	Metro PCS/Rhapsody Muve Music
Access Your Collection From the Cloud	iTunes Match and more on the way
Specialized Digital Radio	AOLMusic Last.fm Pandora Sirius XM Slacker Yahoo! Music and over 750 more
Online Simulcasts of AM/FM Radio Stations	iHeartRadio KPWR-FM (Power 106) WJLK-FM (94.3 The Point) WXLC-FM (102.3 XLC) and over 750 more

Digital Music Services Worldwide

The featured list of legitimate digital music services appears on the Pro-music information resource (www.pro-music.org). This is the most comprehensive up-to-date directory of the world's legitimate music website. The list numbers around 500 legitimate services in 78 countries.

ANDORRA
Deezer

ARGENTINA
BajáMúsica
Faro Latino
iTunes
Personal Música
Sonora
Ubby Música
YouTube

AUSTRALIA
Anubis.fm
Bandit.fm
BigPondMusic
Cartell Download
DanceMusicHub
Getmusic.com.au
Guvera
Hutchison "Three"
Inertia
iTunes
Jamster
JB Hi Fi
Liveband.com.au
Mobile Active
Music Unlimited
Nokia Music
Optus Music Store
Qtrax
Rdio
Samsung Music Hub
Songl
The in Song
Third Mile
Ticketek Music
Virgin Mobile
Vodafone
YouTube

AUSTRIA
3MusicStore
7digital
A1 Music
AmazonMP3
Artistxite.com
Deezer
DG Webshop
eMusic
Finetunes
iTunes
Jamba
JUKE
Ladezone
Last.fm
Musicbox
Musicload
Mycokemusic
MySpace
Nokia Music

AUSTRIA CONT.
Orange
Preiser
rara.com
Simfy
SMS.at
Soulseduction
Spotify
Telering
T-Mobile
Weltbild
YouTube
Zed
Zero-inch
Zune

BELARUS
Yandex Music

BELGIUM
7digital
Beatport
Dance-Tunes.com
Deezer
DjTUNES
Downloadmusic.nl
eMusic
Fnac
iTunes
Jamba
Jamster
Junodownload
La Mediatheque
Legal Download
Nokia Music
Proximus
rara.com
Simfy
Spotify
We7
YouTube

BOLIVIA
iTunes

BRAZIL
Claro Music Store
Ideas Music Store
Ideas Musik
iTunes
iMusica
Mercado da Musica – Transamerica
MSN Music Store
Mundo Oi
Nokia Music
Oi Rdio
Power Music Club (GVT)
Sonora
TIM Music Store
Universal Music Loja

BRAZIL CONT.
UOL Megastore
Vivo Play
Warner Music Store
Yahoo! Music
YouTube

BULGARIA
4tun
7digital
eMusic
Hitbox.bg
iTunes
M.Dir.bg
mp3.bg
MTel Music Unlimited
Musicspace

CANADA
7digital
BBM Music
Bell Mobility
Classical Archives
eMusic
Galaxie Mobile
HMV Digital Canada
iTunes
Motime
Puretracks
rara.com
Rdio
Slacker
TELUS
urMusic
VEVO
YouTube
Zik
Zune

CHILE
Bazuca
Claroideas
Entel-Napster Mobile
iTunes
Mimix
Nokia Music
Portaldisc

CHINA
Baidu
China Mobile
China Telecom
China Unicom
Douban
Google Music
Netease
Nokia CWM
Renren
Sina
Tencent
Tudou
Top100
Youku

CHINESE TAIPEI
Emome
Ezpeer+
Far Eastone
Hami Music
iNDIEVOX
iNmusic
KKBOX
muziU
Omusic
Taiwan Mobile
VIBO
YouTube

COLOMBIA
Codiscos
ETB Musica
Ideas Comcel Music Store
iTunes
Música
Prodiscos – Entertainment Store
Supertienda Movistar
Sonora
Tigo

COSTA RICA
iTunes

CROATIA
Cedeterija
Fonoteka

CYPRUS
7digital
eMusic
iTunes

CZECH REPUBLIC
7digital
eMusic
iTunes
MusicJet
Nokia Music
O2 Active
Stream
1-music
Vodafone
YouTube

DENMARK
3musik
BibZoom.dk
Bilka Musik
Billigcd.dk
CDON Danmark
Deezer
DSB
DVDOO.dk
Ekstrabladet.dk
eMusic
GUCCA
Inpoc
iTunes
M1
Music Unlimited
PlayNow Arena (Sony Ericsson)
rara.com
Spotify
TDC Play
Telia
TouchDiva
TP Musik
VoxHall
WavesOut
WiMP

DOMINICAN REPUBLIC
iTunes

ECUADOR
iTunes

EGYPT
Alamelphan
Mazzika Box

EL SALVADOR
iTunes

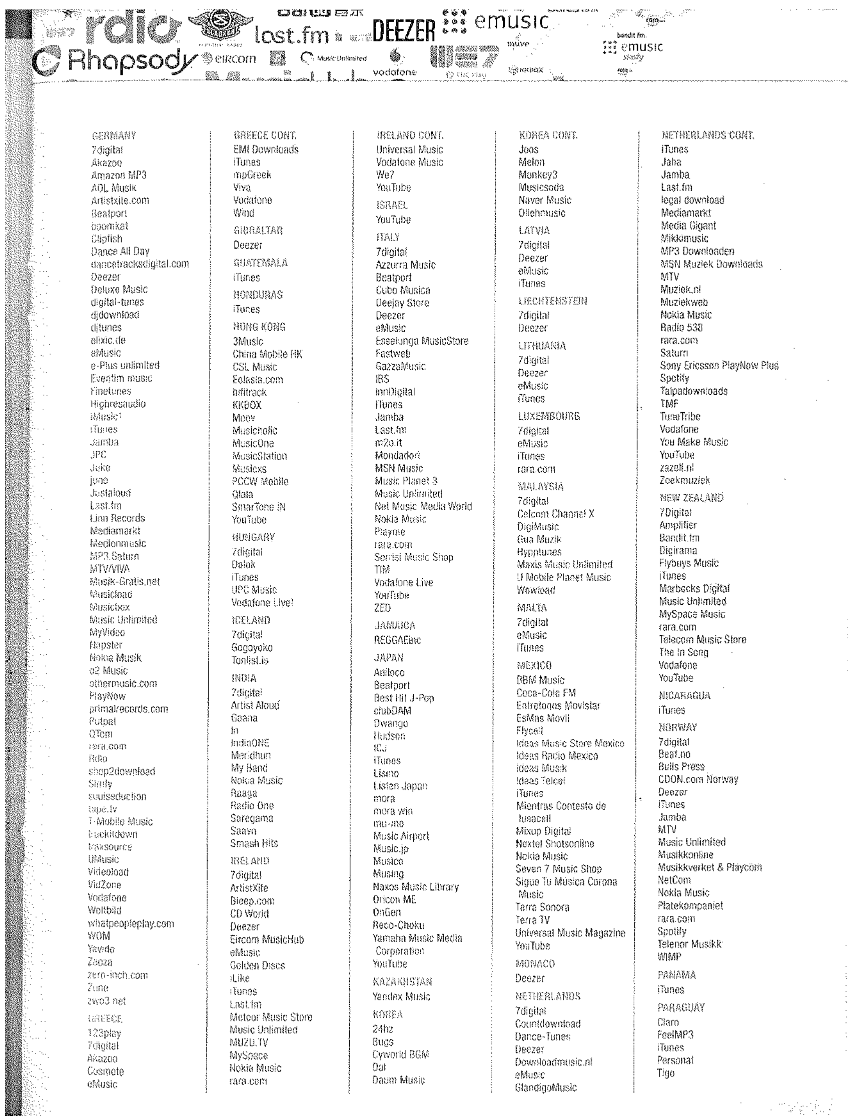
ESTONIA
7digital
Deezer

ESTONIA CONT.
eMusic
iTunes
Muusika24

FAROE ISLANDS
Deezer

FINLAND
7digital
City Market CM Store
Deezer
DNA Musiikkikauppa
download.MTV3.fi
Download.NetAnttila
Downloads.cdon.com
eMusic
Equal Dreams
iTunes
Meteli.net
MTV Music Shop
Music Unlimited
Nokia Musiikki
NRJ Kauppa
Poimuri
rara.com
Spotify
Store.radiorock.fi

FRANCE
121 MusicStore
7digital
Allomusic
Amazon
Beatport
Beezik
Carrefour
cd1d
Cultura.com
Deezer
Disquaire en line
Dogmazic
E-Compil
eMusic
Ezic
Fnac.com
Gkoot electronic
iTunes
Jamba
Jamendo
Jazz en ligne
Last.fm
Lazy Live
MiooZic
Mondomix
musicMe
Musiclassics
Musicovery
Music Unlimited
MyClubbingStore
MySurround
Neuf Music
Nokia Music
Nuloop
Off TV
Orange Music
Qobuz
rara.com
SFR Music
Spotify
Starzik
Virgin Mega
YouTube
Zaoza



GERMANY
7digital
Akazoo
Amazon MP3
AOL Musik
Artistxite.com
Beatport
boomkat
Clipfish
Dance All Day
dancetracksdigital.com
Deezer
Deluxe Music
digital-tunes
djdownload
djtunes
elixic.de
eMusic
e-Plus unlimited
Eventim music
Finetunes
Highresaudio
iMusic1
iTunes
Jamba
JPC
Juke
juno
Justaloud
Last.fm
Linn Records
Mediamarkt
Medionmusic
MP3 Saturn
MTV/VIVA
Musik-Gratis.net
Musicload
Musicbox
Music Unlimited
MyVideo
Napster
Nokia Musik
o2 Music
othermusic.com
PlayNow
primalrecords.com
Putpat
QTom
rara.com
Rdio
shop2download
Simfy
soulseduction
tape.tv
T-Mobile Music
trackitdown
traxsource
UMusic
Videoload
VidZone
Vodafone
Weltbild
whatpeopleplay.com
WOM
Yavido
Zaoza
zero-inch.com
Zune
zwo3 net

GREECE
123play
7digital
Akazoo
Cosmote
eMusic

GREECE CONT.
EMI Downloads
iTunes
mpGreek
Viva
Vodafone
Wind

GIBRALTAR
Deezer

GUATEMALA
iTunes

HONDURAS
iTunes

HONG KONG
3Music
China Mobile HK
CSL Music
Eolasia.com
hifitrack
KKBOX
Moov
Musicholic
MusicOne
MusicStation
Musicxs
PCCW Mobile
Qiala
SmarTone iN
YouTube

HUNGARY
7digital
Dalok
iTunes
UPC Music
Vodafone Live!

ICELAND
7digital
Gogoyoko
Tonlist.is

INDIA
7digital
Artist Aloud
Gaana
In
IndiaONE
Meridhun
My Band
Nokia Music
Raaga
Radio One
Saregama
Saavn
Smash Hits

IRELAND
7digital
ArtistXite
Bleep.com
CD World
Deezer
Eircom MusicHub
eMusic
Golden Discs
iLike
iTunes
Last.fm
Meteor Music Store
Music Unlimited
MUZU.TV
MySpace
Nokia Music
rara.com

IRELAND CONT.
Universal Music
Vodafone Music
We7
YouTube

ISRAEL
YouTube

ITALY
7digital
Azzurra Music
Beatport
Cubo Musica
Deejay Store
Deezer
eMusic
Esselunga MusicStore
Fastweb
GazzaMusic
IBS
InnDigital
iTunes
Jamba
Last.fm
m2o.it
Mondadori
MSN Music
Music Planet 3
Music Unlimited
Net Music Media World
Nokia Music
Playme
rara.com
Sorrisi Music Shop
TIM
Vodafone Live
YouTube
ZED

JAMAICA
REGGAEinc

JAPAN
Aniloco
Beatport
Best Hit J-Pop
clubDAM
Dwango
Hudson
ICJ
iTunes
Lismo
Listen Japan
mora
mora win
mu-mo
Music Airport
Music.jp
Musico
Musing
Naxos Music Library
Oricon ME
OnGen
Reco-Choku
Yamaha Music Media Corporation
YouTube

KAZAKHSTAN
Yandex Music

KOREA
24hz
Bugs
Cyworld BGM
Dal
Daum Music

KOREA CONT.
Joos
Melon
Monkey3
Musicsoda
Naver Music
Ollehmusic

LATVIA
7digital
Deezer
eMusic
iTunes

LIECHTENSTEIN
7digital
Deezer

LITHUANIA
7digital
Deezer
eMusic
iTunes

LUXEMBOURG
7digital
eMusic
iTunes
rara.com

MALAYSIA
7digital
Celcom Channel X
DigiMusic
Gua Muzik
Hypptunes
Maxis Music Unlimited
U Mobile Planet Music
Wowload

MALTA
7digital
eMusic
iTunes

MEXICO
DBM Music
Coca-Cola FM
Entretonos Movistar
EsMas Movil
Flycell
Ideas Music Store Mexico
Ideas Radio Mexico
Ideas Musik
Ideas Telcel
iTunes
Mientras Contesto de Iusacell
Mixup Digital
Nextel Shotsonline
Nokia Music
Seven 7 Music Shop
Sigue Tu Música Corona Music
Terra Sonora
Terra TV
Universal Music Magazine
YouTube

MONACO
Deezer

NETHERLANDS
7digital
Countdownload
Dance-Tunes
Deezer
Downloadmusic.nl
eMusic
GlandigoMusic

NETHERLANDS CONT.
iTunes
Jaha
Jamba
Last.fm
legal download
Mediamarkt
Media Gigant
Mikkimusic
MP3 Downloaden
MSN Muziek Downloads
MTV
Muziek.nl
Muziekweb
Nokia Music
Radio 538
rara.com
Saturn
Sony Ericsson PlayNow Plus
Spotify
Talpadownloads
TMF
TuneTribe
Vodafone
You Make Music
YouTube
zazell.nl
Zoekmuziek

NEW ZEALAND
7Digital
Amplifier
Bandit.fm
Digirama
Flybuys Music
iTunes
Marbecks Digital
Music Unlimited
MySpace Music
rara.com
Telecom Music Store
The In Song
Vodafone
YouTube

NICARAGUA
iTunes

NORWAY
7digital
Beat.no
Bulls Press
CDON.com Norway
Deezer
iTunes
Jamba
MTV
Music Unlimited
Musikkonline
Musikkverket & Playcom
NetCom
Nokia Music
Platekompaniet
rara.com
Spotify
Telenor Musikk
WiMP

PANAMA
iTunes

PARAGUAY
Claro
FeelMP3
iTunes
Personal
Tigo

PERU
iTunes

PHILIPPINES
Globe
myMusic.ph
Smart
Star Music
Star Records

POLAND
7digital
eMusic
iplay.pl
iTunes
Last.fm
mp3.pl
Muzodajnia
MySpace
Niagaro
Nokia Music
Orange World
Soho.pl
YouTube

PORTUGAL
7digital
Beatport
Deezer
eMusic
iTunes
Jamba
Music Box (TMN)
Myway
Nokia Music
Optimus
Qmúsika
SAPO/ Musicaonline
Vodafone

ROMANIA
7digital
Best Music
Cosmote
Dump.ro
eOk
Get Music
iTunes
Music Mall
Music Nonstop
Orange
TriluliLu.ro
Vodafone

RUSSIA
Beeline
Deezer
Fidel
iviMusic
Megafon
Mp3.ru
MTS
Muz.ru
Nokia Music
Tele2
Yandex Music
YouTube

SAN MARINO
Deezer

SINGAPORE
7digital
M1 Music Store
Nokia Music
OBuddy
Samsung Mobile
Singtel AMPed
Singtel Ideas

SINGAPORE CONT.
Starhub Music Store
YouTube

SLOVAKIA
7digital
eMusic
iTunes
Music Jet
Nokia Music
Orange
YouTube

SLOVENIA
7digital
eMusic
iTunes
inZone

SOUTH AFRICA
DJs Only
Jamster
Just Music
Lookandlisten.co.za
MTN Loaded
Music Station
Nokia Music
Omusic.com
Pick n Play
Rhythm Online
ThatGig
Vodafone Live

SPAIN
7digital
Beatport
Blinko (Buongiorno)
Dada
Deezer
eMusic
Fnac
IbizaDanceClub.com
iTunes
Jamba
Last.fm
Los40.com
Magnatune
Media Markt
Movistar
MTV
MUZU.TV
Music Unlimited
MySpace
Nokia Music
Olemovil (Jet Multimedia)
Orange
rara.com
Rockola.fm
Spotify
Tuenti
Vodafone
Yes.fm
Yoigo
YouTube
Zune

SWEDEN
7digital
Beatport
Bengans
CDON
Check-in music
Deezer
eClassical
eMusic
Enjoy
Gazell Digital Store
iTunes

SWEDEN CONT.
Klicktrack
Last.fm
Mr Music
Music Unlimited
Musikbiten
Musikshopen
MySpace
Nokia Music
Omnifone
rara.com
Sound Pollution
Spotify
WiMP

SWITZERLAND
7digital
AmazonMP3
ArtistXite
Cede.ch
Deezer
Ex Libris
Finetunes
Hitparade.ch
iTunes
Jamba
Musicload
Nokia Music
Orange
PlayNow Arena
rara.com
Simfy
Soundmedia
Spotify
Sunrise Joylife
Weltbild

THAILAND
AIS
DTAC
i-humm
Music Combo
Music One
N-content
Shinee
ThinkSmart
Total Reservation
True Digital
W Club

TURKEY
Avea
Fizy.com
Gnoplay.com
İzlesene
Müzik İçin Efes
Muzikin.com
Mynet
Nokia Music
Orjinalindir.com
TTnetmuzik
Turkcell
Vodafone
YouTube
Videonmusic
Vidivodo

UKRAINE
Djuice
MUZon
Yandex Music
YouTube

UNITED KINGDOM
3V Music Store
7digital
Amazing Tunes
AmazonMP3

UNITED KINGDOM CONT.
ArtistXite
Babelgum
BBM Music
Beatport
Bleep
Boomkat
BT Vision
Classical.com
Classical Archives
Classics Online
Coolroom
Deezer
DJ Download
Drum & Bass Arena
eMusic
Fairsharemusic
Historic Recordings
HMV Digital
iLike
Imodownload
iTunes
Jamster
Jango
Joost
Juno
Karoo
last.fm
Linn
Mewbox (Android)
mFlow
Mobile Chilli
MSN
MTV
Music Anywhere
Music For Life (Talk Talk)
MusicStation
Music Unlimited
MUZU.TV
Musicovery
MySpace
Napster
Naxos Music Library
Nectar Music Store
Nokia Music
02
Ooizit
Orange Music Store
Orange Monkey
Partymob
Passionato
Play.com
PlayNow
Pure Music
rara.com

UNITED KINGDOM CONT.
Spotify
Tesco Downloads
Textatrack UK
The Classical Shop
T-Mobile UK
Track It Down
Traxsource
TuneTribe
Vevo
Vidzone (PS3 only)
Virgin
Virgin Mobile
Vodafone
We7
Yahoo! Music
YouTube
Zune

URUGUAY
Ancel Musica
Botia
Claro Music Store
La Rocola
Tmuy

USA
7digital
AmazonMP3
AOL Music
Artist Direct
BearShare
eMusic
iLike
iMesh
iTunes
MySpace Music
MOG
MTV
Music Unlimited
Muve Music
Pandora
rara.com
Rdio
Rhapsody
Slacker
Spotify
Vevo
Yahoo! Music
YouTube
Zune

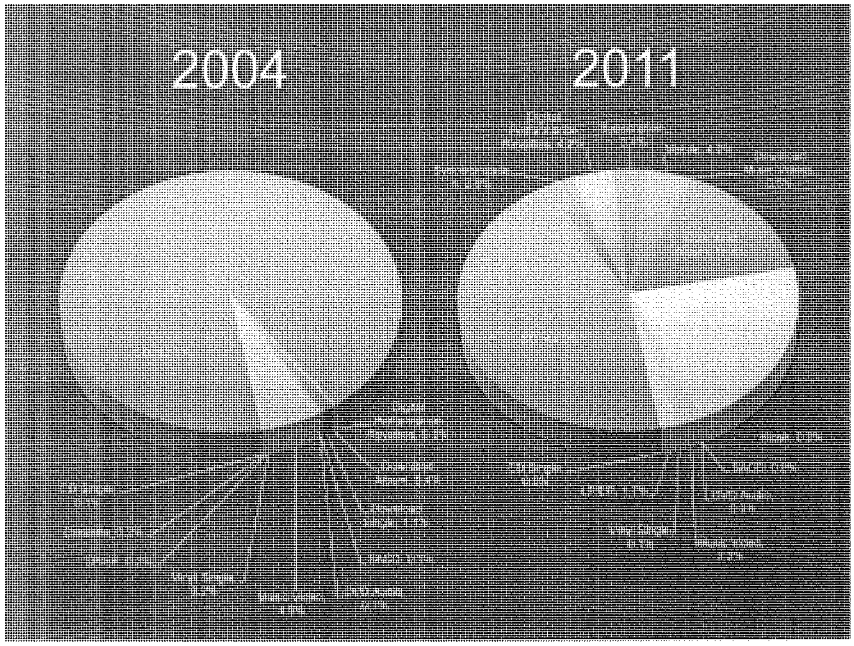
VENEZUELA
iTunes
Música Movistar

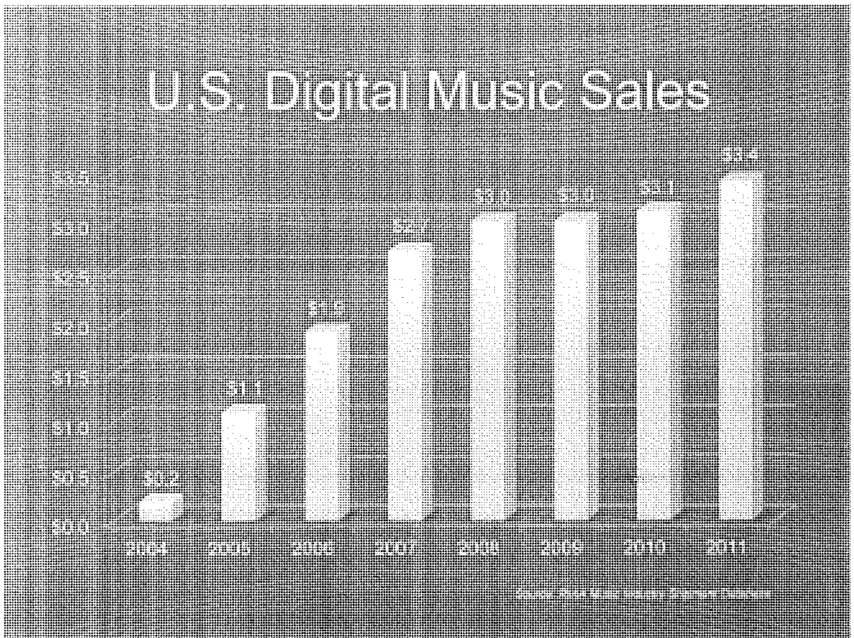
This is a list of digital music services from around the world that appears on the Pro-music website (www.pro-music.org). Pro-music is endorsed by an alliance of organisations representing international record companies (majors and independents), publishers, performing artists, and musicians' unions.

The list is compiled by IFPI based on information from its national groups at time of publication. It does not purport to be exhaustive and IFPI cannot guarantee its 100 per cent accuracy. Readers should consult the www.pro-music.org website for the most up to date information.


RIAA


The Music Industry Is Now
Primarily Digital


2004
2011


U.S. Digital Music Sales
$3.5
$3.0
$2.5
$2.0
$1.5
$1.0
$0.5
$0.0
$0.2
$1.1
$1.9
$2.7
$3.0
$3.0
$3.1
$3.4
2004
2005
2006
2007
2008
2009
2010
2011


Get a new business model?
We have.


DRM Free Digital Downloads
iTunes
amazon.com
emusic
7digital


Subscriptions:
All You Can "Eat" on
Your Computer or Device
Rhapsody
Spotify
MOG
muve MUSIC
Music Unlimited
rara.com
zune


Free On Demand Audio
and Video Streaming
spotify
YouTube
VEVO
myspace
MUSIC
Aol Music.


Music Bundled
with Mobile Phones
muve MUSIC
from cricket
Rhapsody


Access Your Collection
From the Cloud
iTunes Match
and more to come...

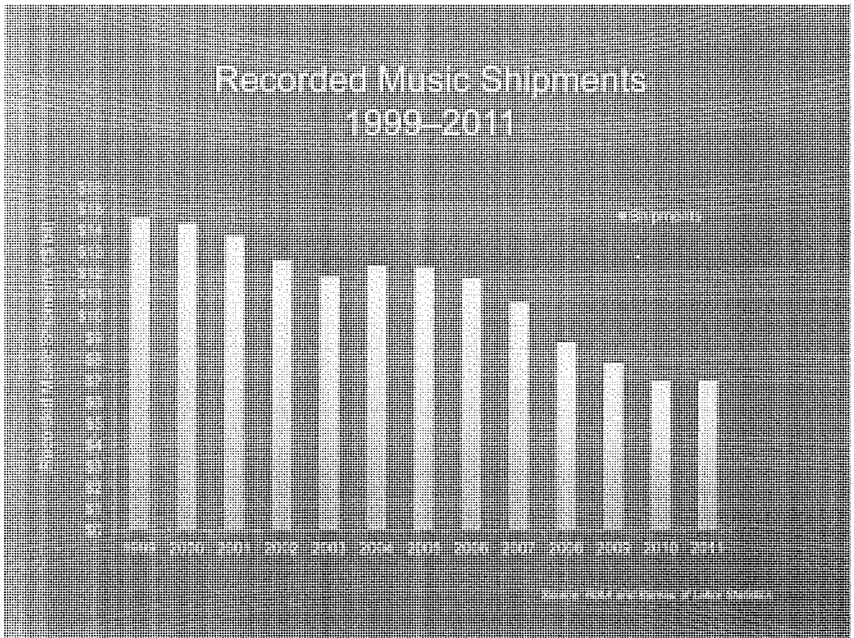

Specialized Digital Radio
PANDORA
Aol Music.
and over 750 more

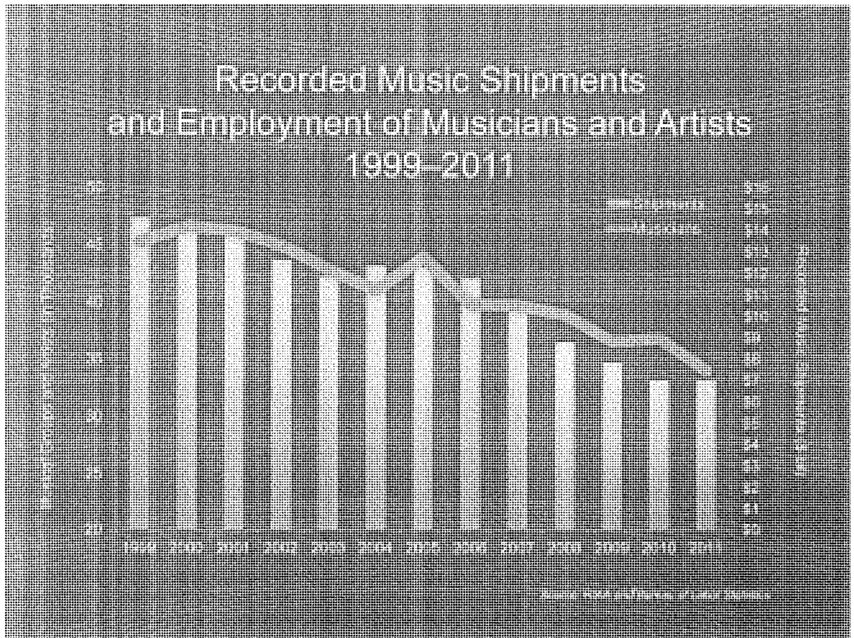

Online Simulcasts of
AM/FM Radio Stations
iHeartRADIO
POWER
106 FM
And over 750 more

ALL business models embraced and licensed by major music companies

20 million tracks licensed worldwide

500 services licensed worldwide


Recorded Music Shipments
1999–2011


Recorded Music Shipments
and Employment of Musicians and Artists
1999–2011
Shipments
Musicians
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008
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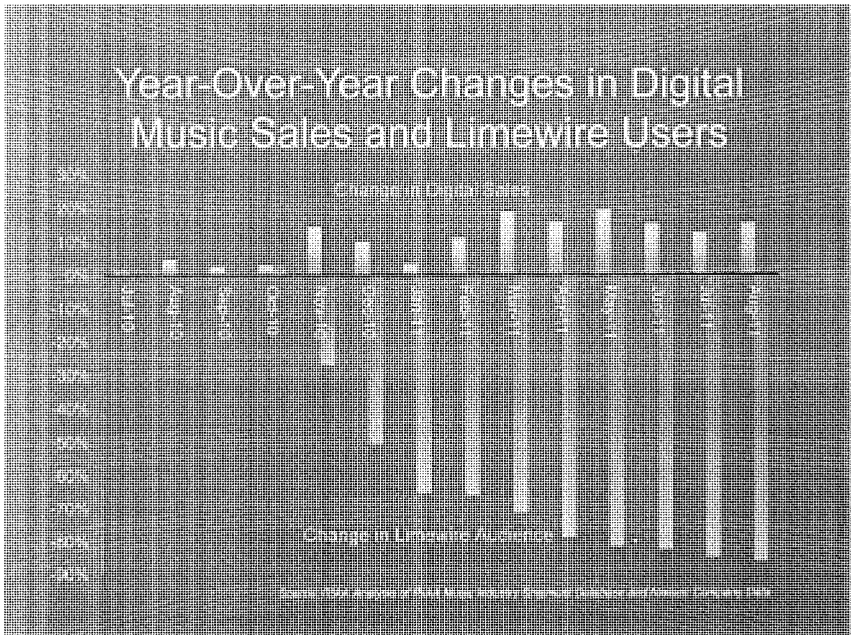
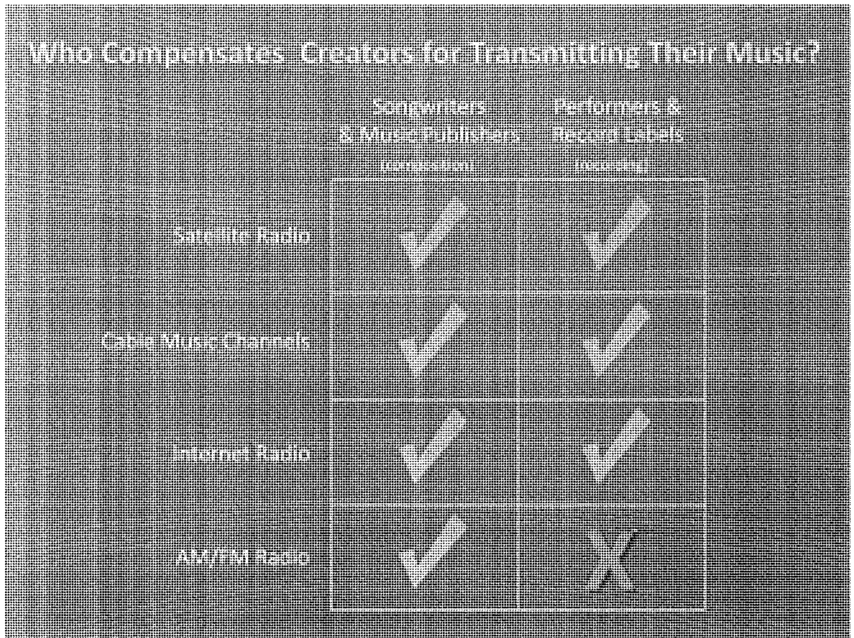
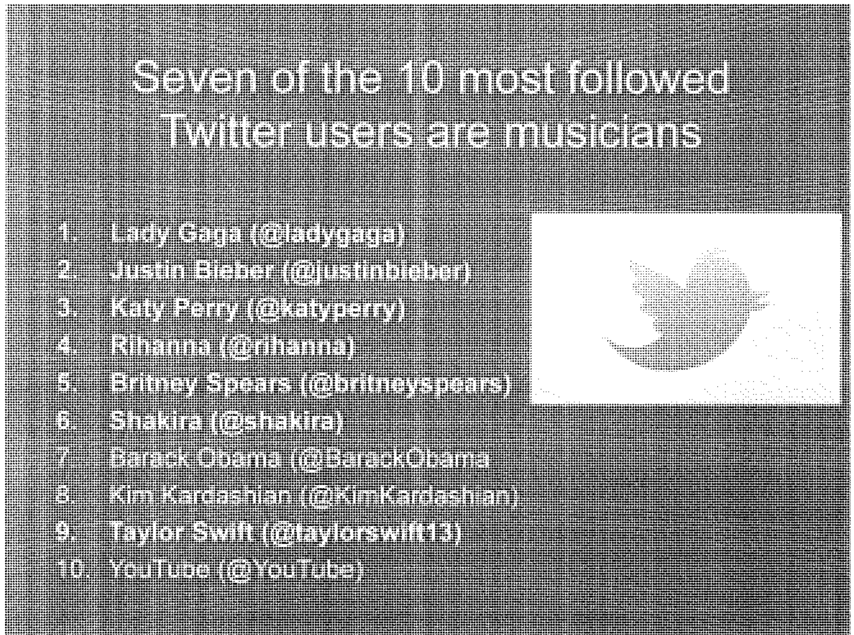
2010
2011


Year-Over-Year Changes in Digital Music Sales and Limewire Users
Change in Digital Sales
Change in Limewire Audience


Voluntary Marketplace Agreements: Intermediaries Stepping Up to the Plate
2011: ISP Agreement on P2P Copyright Alert Program for Subscribers
2011: Payment Processor Agreement on Process to Stop Affiliating with Pirate Sites
2012: Advertiser and Ad Agency Agreement on Best Practices to Stop Advertising on Pirate Sites
20__: Search Engine Agreement?


Who Compensates Creators for Transmitting Their Music?
Songwriters & Music Publishers
Performers & Record Labels
Satellite Radio
Cable Music Channels
Internet Radio
AM/FM Radio
X


Seven of the 10 most followed Twitter users are musicians
1. Lady Gaga (@ladygaga)
2. Justin Bieber (@justinbieber)
3. Katy Perry (@katyperry)
4. Rihanna (@rihanna)
5. Britney Spears (@britneyspears)
6. Shakira (@shakira)
7. Barack Obama (@BarackObama
8. Kim Kardashian (@KimKardashian)
9. Taylor Swift (@taylorswift13)
10. YouTube (@YouTube)


1
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6
Music videos comprise five of the six
most watched YouTube videos of all time.


RIAA

Mr. WALDEN. Thank you Mr. Sherman. We appreciate your testimony.

We will now go to Mr. Jeff Smulyan, Chairman, President and CEO of Emmis Communications.

Mr. Smulyan, we are delighted to have you here. Please go ahead with your testimony.

STATEMENT OF JEFF SMULYAN

Mr. SMULYAN. Good morning, Chairman Walden, Ranking Member Eshoo, and members of the subcommittee.

My name is Jeff Smulyan, and I am chairman and CEO of Emmis Communications based in Indianapolis, Indiana. I am here today because I believe in the future of radio and cell phones and what it can mean to all Americans.

I have spent many years working to get local radio signals accessible on mobile phones. Radio chips, which are just mini radio receivers installed in a cell phone, are literally the size of a Tic Tac, cost pennies, and can give you the ability to listen to your favorite local radio station wherever you may be.

Now let me start by dispelling a myth that has been repeated by my friends in the wireless industry. Neither I nor the NAB is pursuing a legislative mandate that radio chips be included in phones. We are not asking for a mandate. What I am committed to pursuing is an education campaign to explain the enormous benefits that come from installing radio chips in mobile devices and activating the ones that are already in phones today.

Radio chips are the definition of consumer friendly. Today, mobile customers are streaming music through apps they have down loaded. But, in the process, they are possibly racking up hefty charges to their data plans. You see, when you stream music, you are using the Internet, and the wireless carriers charge you for that access. And, as most of you know, unlimited data plans are ending for most carriers.

A radio chip, on the other hand, picks up the free over-the-air broadcast signal. The chip turns your device into a handheld radio. So a radio chip provides mobile phone consumers with a way to listen to music and information for free without meeting and exceeding their growing data caps.

Giving mobile phone users cost-free options is the definition of consumer-friendly ideas and something we hope that the cellular industry can certainly embrace.

Something in which this committee should be particularly interested in are the spectrum efficiencies that can be gained from integrating radio chips into mobile devices. Pandora alone said its listeners streamed over 3 billion hours of music in the last quarter. That doesn't even include the additional hours for popular sites like iHeart or TuneIn or my own stations. Music streaming which uses the Internet is part of the reason we have a very congested broadband system.

A radio chip utilizing the free over-the-air radio signal can offload traffic from congested broadband markets, helping relieve what we know are significant and growing spectrum demands. And now FM chips use less than 20 percent of the battery life that streaming requires.

Finally and most importantly, there are tremendous public safety reasons for putting radio chips in cell phones and activating the chips that are already in there. As we have seen during times of crisis, radio broadcasters stay on the air with the use of generators when mobile phone users are often left with devices that are unable to make calls or send emails due to an overwhelmed cellular system.

Even more important, when the power grid goes down, the cell system is off. Since most broadcasters have emergency generators, we are able to provide lifesaving information at the times of greatest peril.

I appreciate that the CTIA has embraced the commercial mobile alert system. But the system limits emergency warnings to a 90-character text that lacks the kind of detail desperately needed by citizens during an emergency.

In a life-and-death situation, the importance of redundancy of information cannot be overstated. If you think a 90-character text message is sufficient—if it gets through at all—ask the people in Joplin, Missouri, or New Orleans or the people in Owensboro or the people in Fargo or the people who have endured any major crisis in this country.

The real irony here is that, if educated about radio chips, consumers want them. According to a recent Harris interactive poll, 81 percent of those polled who own a mobile phone would consider paying a small, one-time fee to access their local radio stations. Curiously, many cell phones in the U.S. Already have the radio chip embedded in the phone. These chips just haven't been activated.

I am holding here two Samsung Galaxy Notes, the one from the U.K. And this one from the U.S. They look identical, but the U.K. version has activated a radio chip. You can listen to any FM station in Washington right now on it. The U.S. version actually has a radio chip, but that chip has been deactivated.

We agree with CTIA. We should let the market decide, just as in the rest of the world where over 1 billion phones have been sold with radios, but that market has been closed in this country.

The good news is that the consumer experience is only getting better. The brand-new, state-of-the-art HD radio chip was recently unveiled. This low-powered, low-cost, high-processing chip uses an app which allows a user to tune to their local stations. The HD chip offers song tagging features and delivers an interactive radio which benefits the listeners, the advertisers, the wireless industry, and consumers. It is a true win-win.

For all of the reasons I have discussed, I believe the time is now for a reasonable and factual discussion on the merits of radio-enabled mobile phones. I look forward to working with this committee on this issue, and I thank you for your invitation.

[The prepared statement of Mr. Smulyan follows:]

Statement of Jeff Smulyan
Emmis Communications Corporation

Before the
United States House of Representatives
Committee on Energy and Commerce
Subcommittee on
Communications and Technology

Hearing on
"The Future of Audio"

June 6, 2012

Good morning Chairman Walden, Ranking Member Eshoo, and Subcommittee members, my name is Jeff Smulyan. I am the Chairman, President and CEO of Emmis Communications Corporation, which owns and operates 20 radio stations in six markets in the United States, as well as radio stations in Slovakia and Bulgaria. Emmis also has a publishing division, which publishes the *Texas Monthly* and other city and regional magazines.

Thank you for the opportunity to speak with you today about the valuable services provided by local radio stations like those operated by Emmis. My testimony will focus on the public interest benefits of extending the reach of those services through mobile phone devices. Unlocking the mobile phone market would provide the millions of mobile phone subscribers with greater access to the free news, public affairs and entertainment programming provided by local radio broadcasters. Perhaps most importantly, the inclusion of activated radio chips in mobile phones would expand access to the critical public safety information that Americans have come to expect from their local radio broadcasters during times of emergency.

Local Radio Serves the Public in Many Ways, Particularly During Emergencies

With a growing weekly audience of 241 million listeners age 12 and older,[1] local radio's reach is unparalleled. Radio's strength and popularity benefits recording artists and record labels through free promotion, but more importantly, serves listeners across the country in myriad ways.

[1] *Radio's Audience Continues to Grow*, Arbitron Newsroom (Dec. 5, 2011), available at http://arbitron.mediaroom.com/index.php?s=43&item=793.

Radio is the primary audio source for local news and information, political discourse, music and other entertainment. Despite difficult economic conditions, and an increasing number of alternatives for consumers' attention, radio stations produce and provide many hours of live, local programming, including news and information, every day, along with national news and public interest programming. Indeed, studies have shown that those who listened to news and to discussions about campaigns on the radio showed greater interest in political campaigns and were more likely to hold specific opinions on political issues and to be more aware of candidates" positions on policy issues.[2] And, as the Federal Communications Commission's ("FCC") *Future of Media Report* recognized, the importance of radio to the public discourse has heightened even more in recent years with the rise of all news/talk formats.[3]

Beyond providing a wide array of programming, radio stations are committed to serving their local communities in other tangible ways. The average radio station airs hundreds of Public Service Announcements each year, the majority of which pertain to local community issues, and provide critical support for the fundraising efforts of local charities, other community organizations and disaster recovery projects.

Moreover, radio broadcasting is, and will continue to be, the optimal audio method for reaching mass audiences during emergencies. America's local radio

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[2] D. Drew and D. Weaver, "Voter Learning in the 2004 Presidential Election: Did the Media Matter?," 83 *Journalism & Mass Communication Quarterly* 25, 38 (Spring 2006); S. Kim, D. Scheufele and J. Shanahan, "Who Cares About the Issues? Issue Voting and the Role of News Media During the 2000 U.S. Presidential Election," *Journal of Communication* 103, 11-12 (March 2005).

[3] *The Information Needs of Communities*, Report, Federal Communications Commission, at 66 (July 2011), available at http://www.fcc.gov/info-needs-communities#download ("*Future of Media Report*") (noting that news/talk radio serves an important function in a democracy by giving voice to millions who use the medium to express their opinions).

broadcasters provide a powerful combination of nationwide ubiquity and local journalism that has served communities as the primary audio source of information during emergencies and disasters for nearly 100 years. Despite significant advances in communications during that period, local radio remains irreplaceable as a means to inform the public. Through our unique role as the backbone of the Emergency Alert System ("EAS"), as well as the emergency journalism provided by local stations, radio helps protect lives and property during severe weather conditions and other disasters.

We embrace our role as "first informers" during times of emergency. Federal Emergency Management Agency Chief Administrator Craig Fugate recognized this when he instructed Americans to turn to their local radio stations for critical information as Hurricane Irene approached the East Coast last year.[4] Radio stations took similar measures to aid citizens during the rash of tornadoes that have devastated the nation's mid-section the past few years, the floods in North Dakota and storms in Massachusetts in 2011, and numerous other emergency situations.[5] In addition, radio stations helped create and are active partners with law-enforcement agencies in the approximately 120 local, regional and statewide AMBER Plans across the nation. Since the program began in 1997 in the Dallas, Texas area, the AMBER Plan has been credited with successfully returning 584 abducted children.[6]

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[4] *See* http://www.cnn.com/video/#/video/bestoftv/2011/08/25/exp.am.craig.fugate.cnn.
[5] *See* Ann Marie Cummings, *Broadcasters: America's "First Informers,"* National Association of Broadcasters (Jan. 31, 2012), available at http://nabroadcasters.wordpress.com/2012/01/31/broadcasters-americas-first-informers/.
[6] *See* http://www.missingkids.com/missingkids/servlet/PageServlet?LanguageCountry=en_US&PageId=4319 (last visited May 31, 2012).

The "one-to-many" architecture of broadcasting provides powerful signals that blanket communities. It is the most robust, reliable mode of delivery of information to a mass audience, especially during emergencies, when wireline and wireless networks (including Internet access) can be quickly overwhelmed by a surge in traffic. Radio is infinitely scalable to additional users, and because radio tuners rely on over-the-air signals, there is no risk of network congestion. During a disaster, this superior reliability could be the difference between life and death, and after major disasters, radio signals may be the only connection available to citizens in harm's way. Also, during major disasters, the electrical grid often goes down, rending cellular networks useless. However, most broadcasters have back-up emergency generators that allow them to be the only point of connection and information for many Americans.

Access to Broadcast Radio Via Mobile Phones Would Benefit Consumers and Enhance Public Safety

For all the reasons discussed above, it is imperative that Americans be able to access radio service over the most ubiquitous, widely-carried portable device, the mobile phone. The consumer benefits of incorporating radio reception into mobile phones are many and varied. Americans will be able to listen to their favorite local radio stations wherever they are, over their mobile phones. This also means mobile access to local news, entertainment, weather and traffic information, and potentially life-saving information during emergencies.

Let me be clear: despite the continued claims of wireless industry advocates, broadcasters are not seeking a mandate that radio chips be included in mobile devices. Rather, we have worked to educate policymakers on the benefits of expanding the availability of radio-enabled mobile phones. We have also worked for many years to incentivize wireless operators to expand consumer options for radio-enabled devices. For example, last month Emmis Interactive, iBiquity Digital Corporation and Intel (with financial support from NAB Labs) announced the development of a new energy efficient, affordable, state-of-the-art HD radio chipset. This new technology offers song tagging features and delivers an enhanced, interactive radio experience, for the mutual benefit of wireless carriers and radio stations, as well as their subscribers/listeners and advertisers.[7] We are in the process of presenting this exciting new opportunity to major wireless carriers.

Given the popularity and value of radio service, access to broadcast radio could be, and should be, an attractive feature in mobile devices. To date, however, wireless operators have declined to produce radio-enabled mobile phones on a scale commensurate with general consumer demand for radio.

Indeed, recent evidence demonstrates the public's strong interest in access to radio via mobile phones. According to a recent Harris Interactive poll, an increasing number of Americans who own a mobile phone would consider paying a small, one-time fee to access their favorite local radio stations on their phone.[8] Specifically, 81 percent responded positively to this inquiry, compared to 76 percent in 2010. For mobile phone owners with children at home, this figure is 85 percent, up from 79 percent in 2010, and retirees who favor radio chips in mobile devices rose to 76 percent from 66 percent in 2010. The Harris survey documented that 70 percent of mobile phone owners believe

[7] *See* Leslie Stimson, *HD Radio, Cell Ecosystem Hailed*, Radio World (Apr. 17, 2012), available at http://www.nabshowdaily.com/2012/TuesdayEdition/127866.
[8] *See* http://www.nab.org/documents/newsRoom/pdfs/050812_Radio_Chips_Cellphones_Survey.pdf.

that having a radio built into their phones would be "very" or "somewhat" important, and 76 percent of adults and 86 percent of 18-34 year-olds would use a radio built into their mobile phones. Assertions by the wireless industry as to an alleged lack of demand for radio in mobile devices are thus contrary to evidence.

Consumer demand for radio-enabled mobile devices is further demonstrated by looking at the global market. For example, a 2008 study from TNS found that 45 percent of mobile users in Latin America and Asia cite AM/FM radio as one of their top three reasons for purchasing a mobile phone — making it more popular than mobile Internet access, texting and a camera function.[9] It is estimated that over 800 million radio-enabled mobile phones are available on the global market. Nokia alone has sold more than 700 million mobile devices with radio capability. In the United Kingdom, approximately 56 percent of mobile phone models offered by the two primary wireless carriers include radio as a feature. Compare that to the U.S. market, where a recent survey found that only 21 percent of AT&T, 21 percent of T-Mobile, and seven percent of Verizon's mobile phone models offer broadcast radio as an available feature.

In the global market, mobile phone carriers generally do not exercise gatekeeper control over which features are included in mobile devices. There, manufacturers create phones with a variety of options, and consumers choose their devices based on which features they value. Consumers separately choose their carrier based largely on price and network reliability.

[9] *Mobile Reviving Radio Listening: TNS Survey*, IndianTelevision.com (Mar. 5, 2008), available at http://www.indiantelevision.com/headlines/y2k8/mar/mar50.php, stating that "in markets like India, a mobile phone without FM radio is difficult to sell."

In stark contrast, the U.S. mobile phone market is characterized by exclusive contracts between consumer electronics manufacturers and mobile phone carriers. It is incumbent upon manufacturers to conform to the device specifications desired by carriers if they want to meaningfully compete in the market.[10] This is clearly shown by the fact that many of the *same* models of phones include radio capability when sold overseas, but not when sold in this country. In most cases, the radio chip is present in both identical models, but the chip is simply not activated in the United States. As a result, the percentage of mobile phones with radio reception in the United States significantly lags the global market.

Moreover, it is needlessly difficult for consumers to identify the few device models that do include activated radio chips. Radio is not typically featured, or even listed, as an available search option on wireless carriers' phone purchasing websites. Verizon's website, for example, allows consumers to research phones by selecting and searching for any combination of 18 various features; however, Verizon does not include free, over-the-air radio on that long list of features.[11] The story is the same at mobile phone retail stores, where radio is rarely indicated as an available feature on the display cards for mobile devices. In-store salespersons and telephone customer service representatives are largely unaware as to which of their own devices are radio-enabled. Indeed, while they are often surprised to learn that a particular phone is

[10] *See Study of the Potential for FM Radio to be a Universal Feature on Cellular Handsets*, Dr. Joseph S. Kraemer, Director, Law and Economics Consulting Group, at 24-25 (May 28, 2008), available at http://www.nabfastroad.org/Reports/FMRadioFeatureCellularHandsets052808.pdf.
[11] *See* http://www.verizonwireless.com/b2c/store/controller?item=phoneFirst&action=viewPhoneOverviewByDevice&deviceCategoryId=1 (last visited June 1, 2012).

equipped to receive free, over-the-air radio, they are clearly aware of, and able to inform consumers about, streaming, data-based radio apps, like Pandora.com.[12] Some industry experts observe that mobile phone providers would rather reap the revenue of data-intensive, fee-based streaming apps than offer consumers a free and local audio alternative.

The control of U.S. wireless carriers over the manufacture of mobile devices ultimately results in consumers being unable to access radio's free, local news, information and entertainment programming via their mobile phones. More seriously, this lack of access could jeopardize the lives and property of Americans by restricting the availability of critical information during emergencies. Including and activating radio chips in mobile phone devices, and making them widely available to consumers, would substantially increase the accessibility of important emergency information, and keep Americans safer.

Both members of Congress and the FCC have recognized this potential. In February, members of the Congressional Black Caucus called on the FCC to hold a hearing to explore the benefits of including activated radio tuners in mobile phones.[13] Following a rash of severe weather and tornado outbreaks in the summer of 2011, former FCC Commissioner Michael Copps said, "We share a duty to think creatively about how we can arm consumers with additional ways to communicate during

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[12] *See Study of FM Radio-Enabled Handsets in the U.S.*, The Insight Research Corporation (Sep. 2010), available at http://www.nabfastroad.org/Reports/FM-Enabled_Cell_Phones_9-16a.pdf.

[13] Letter from the Honorable Yvette D. Clarke (D-NY), *et al.*, to FCC Chairman Julius Genachowski (Feb. 3, 2012), available at http://www.radiorocksmyphone.com/ClarkeFMChipLetter-Final2012.pdf.

disasters. . . I think the time is here for a thorough, calm and reasoned discussion about FM chips in handsets."[14]

I recognize that the wireless industry is deploying a text-based Commercial Mobile Alerting System ("CMAS") system (also known as "Personal Localized Alerting Plan" and "Wireless Emergency Alerts"). But, the limitations of that system restrict emergency warnings to a 90-character text that lacks the critical details routinely provided by local radio stations during an emergency. Thus, important, lifesaving information, such as the location, path and expected impact of a severe storm or other disaster, and public safety instructions concerning shelter and evacuations typically is not provided on CMAS. Radio stations also are able to provide valuable post-disaster information (e.g., where to obtain emergency provisions or medical care, how to assist in disaster relief, etc.). Thus, radio chips in mobile handsets, in conjunction with CMAS texts, would provide vital emergency warning redundancy, and offer "one-stop shopping" for both initial alerting and the critical, potentially life-saving emergency information that Americans expect from local radio broadcasters.

The FCC has specifically recognized the benefits of a CMAS-radio chip combination in mobile phones. As noted in the FCC's *Future of Media Report*, "FM chips in mobile devices can provide a number of benefits to consumers."[15] During emergencies, broadcast chips would greatly assist listeners in obtaining information and, as the *Future of Media Report* noted, could enhance other emergency notification

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[14] Remarks of Commissioner Michael J. Copps, Workshop/Webinar on Proposed Extension of Outage Reporting and on Network Reliability and Continuity (Sep. 8, 2011), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-309509A1.pdf.

[15] *Future of Media Report*, at 309.

services. "[A]fter getting a short text about the emergency, [consumers] could tune into radio news broadcast for more information (particularly if congestion on mobile networks or power outages make it hard to get on the Internet)."[16]

Conclusion

In the end, this is a matter of consumer access. Americans deserve better choices and should be free to choose mobile phones with activated radio chips. Both the demonstrated demand for radio-enabled mobile phone devices, and local radio's role as a lifeline service during times of crisis, are considerations that this Subcommittee should take into account as it explores this issue.

Thank you again for the opportunity to speak with you today.

[16] *Id.*

Mr. WALDEN. Mr. Smulyan, thank you for your testimony and for being here today.

We will now go to Mr. Steven W. Newberry, President and CEO of Commonwealth Broadcasting Corporation.

Mr. Newberry, we are delighted to have you here today as well. Please go ahead with your testimony.

STATEMENT OF STEVEN NEWBERRY

Mr. NEWBERRY. Good morning, Mr. Chairman, Ranking Member Eshoo, and other members of the committee.

My name is Steve Newberry, and I am president and CEO of Commonwealth Broadcasting Corporation, which operates 24 stations in rural Kentucky.

The Future of Audio is a broad title for a hearing, but as a radio broadcaster who has been in the business since I was 14 years old, I believe the future of radio broadcasting is extraordinarily bright.

Not only does radio provide free entertainment, but the radio industry is for responsible for hundreds of thousands of jobs, delivers crucial information in times of crises, reaches deeply into the underserved communities of our country, and gives facts to its listeners in every local American community.

There are more than 14,000 local radio stations across our country. With a growing audience, over 270 million Americans listen to radio every week, one of the most popular entertainment options anywhere.

What makes broadcast radio so enduring is its local programming, its connection to its community. Radio works because it forms relationships with its listeners. That is how we differentiate ourselves from all the other audio platforms. We are far more than just music, far more than just news and information. We are part of the fabric of American culture and its families.

The future of radio is in maintaining our commitment to localism. As an industry, we are investing in going digital. There are now over 2,000 HD stations providing crystal-clear, static-free audio to listeners with HD radio receivers. We are leveraging the Internet and streaming our radio content so no matter where you are you can tune in to your favorite radio station. We are pushing to get our free signals available on all mobile devices so in times of emergencies when broadband and cellular systems may fail, Americans in distress can still access critical emergency alert and response information.

But as bright as our future is, radio still has our challenges. A major issue for radio is one we call the performance tax.

As you may know, the recording industry would like Congress to require radio stations to pay for every song we play over the air, songs we provide to our listeners for free. We believe the value of the promotion the artist and record label receive from free radio airplay is equal to and exceeds the value of the music.

In fact, for decades, radio airplay has been and continues to be the best friend of artists and record labels. Airplay exposes new music and artists to millions of Americans every day for free, and it is the engine that drives the sale of music. That is why the system has worked for over 90 years.

And Congress also believes the current system works. When this issue was at its height in the 111th Congress, the Local Radio Freedom Act, which opposed any performance tax on local radio, had over 260 cosponsors of bipartisan nature in the House and 26 in the Senate.

In 2010, in the spirit of wanting to work out a fair compromise, we sat down with our friends in the music industry, and for months we worked to hammer out a potential agreement. We believe we made a fair, good-faith offer, but, unfortunately, the musicFIRST Coalition declined our offer and never returned to the negotiating table. Since November of 2010, we have been ready to sit down, roll up our sleeves, and work to find common ground that properly recognizes the promotional value that broadcasters provide and the value of the music.

Yesterday, a negotiated royalty deal between Clear Channel radio and Big Machine records was announced. As I understand the details, Clear Channel has agreed to pay a percentage of advertising revenue for Big Machine songs, whether they are heard digitally or terrestrially. It is a free enterprise transaction between two willing partners with no government involvement. From NAB's perspective, nothing about this deal changes our strong opposition to a congressionally mandated performance tax.

What this announced deal really does highlight is the major challenge we face as radio continues to grow on line and into other new platforms. The current royalty structure for Web casting is broken. When initially set in 2007 and then built upon in 2009, the rates set by the Copyright Royalty Board were universally decried as being ridiculously high, so high radio stations cannot afford to be successful on line. The more listeners you attract, the less profitable it becomes.

Believe me, radio broadcasters want to take advantage of all the possibility that the Internet presents, but these royalty rates create a financial disincentive to Web cast. Solving this problem for broadcasters is essential. If we want music streaming to survive, we need to find a way to strike a better balance between royalty payments and platform growth, which at the end of the day will help broadcasters and artists.

In summary, the future of radio is strong. New technologies like HD, a robust, ubiquitous delivery platform of local, over-the-air, freely delivered radio stations and new delivery methods will enable radio to serve our local listeners for decades to come. I believe local broadcast radio has a very bright future, and I am very proud to be a part of that industry.

Thank you, and I look forward to your questions, Mr. Chairman.

[The prepared statement of Mr. Newberry follows:]

NAB
NATIONAL ASSOCIATION OF BROADCASTERS

Hearing on "The Future of Audio"

United States House of Representatives
Committee on Energy and Commerce
Subcommittee on
Communications and Technology

June 6, 2012

Statement of Steven Newberry
Commonwealth Broadcasting Corporation

On behalf of the
National Association of Broadcasters

Good morning, Chairman Walden, Ranking Member Eshoo and members of the Subcommittee, and thank you for inviting me to testify today. My name is Steve Newberry, and I am President and CEO of Commonwealth Broadcasting Corporation, which operates 24 radio stations in Kentucky. I am testifying today on behalf of the free, local, over-the-air radio members of the National Association of Broadcasters.

Introduction

For ninety years, broadcast radio has impacted the lives of Americans in many beneficial and significant ways. Radio broadcasters inform, educate and alert our listeners to important events, topics and emergencies. We introduce them to new music. We entertain them with sports, talk and interviews. We are local, involved in our communities and proud to serve the public interest.

Technological changes over the past decade have led to exciting new developments in the radio industry. Streaming, podcasting, HD radio, mobile devices and other new platforms present both opportunities and challenges for radio broadcasters. Digital distribution is still only a small part of overall audio consumption, but it is providing innovative ways for us to reach and serve our listeners.

One thing that has not changed is America's love for radio and all that the word "radio" embodies. More people are listening to broadcast radio than ever before. According to 2012 Arbitron data, approximately 241 million persons aged

12 and over listen to radio each week, a number that continues to increase.[1] Indeed, that number is some 2 million higher than in Arbitron's 2010 study, which found at that time, that broadcast radio reached more than 93 percent of persons aged 12+ each week and about 91 percent of young listeners aged 12-17.[2] This last percentage is particularly interesting since teens in this age group are the most accustomed to using new technologies and media platforms. The data also show radio's universal appeal, with more than 93 percent of African Americans and 95 percent of Hispanic persons tuning in to radio each week.[3]

Given this evidence of broadcast radio's continuing appeal, I am not at all surprised that new digital music services endeavor to style themselves as "radio." They want to claim our heritage, but the concept and reality of the radio industry that I represent before you today is much more than the mere audio transmission offered by many services. We are part of the fiber of our local communities, and we intend to stay that way.

The radio industry looks forward to a robust future that embraces the fundamental nature of broadcasting, as well as new opportunities arising from evolving digital technologies. In that regard, however, broadcast radio today faces numerous challenges, and I would like to mention just a few of them here.

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[1] *The Infinite Dial 2012, Navigating Digital Platforms*, Study, Arbitron Inc. and Edison Research, available at http://www.arbitron.com/study/digital_radio_study.asp.
[2] *More Than 239 Million Listen to Radio Every Week According to the Arbitron Radar 105 Report*, News Release, Arbitron Inc. (June 15, 2010), available at http://arbitron.mediaroom.com/index.php?s=43&item=693.

[3] *Id.*

Broadcasters Should Not Be Subject to a New Performance Tax

Efforts to encourage Congress to establish a new performance fee, what we call a "performance tax," come at a volatile time for both the radio and recording industries. Both industries are fighting intense competition for consumers through the Internet and other new technologies, and both industries are experiencing changes to their traditional business models. These technological and marketplace developments, however, do not justify a government-mandated shift in the relationship between radio and the recording industry.

From the very first days of commercial radio, broadcasters and the music and recording industries have enjoyed a well-balanced relationship that has benefited all parties. Record labels and performing artists profit from the free exposure provided by radio airplay, while local radio stations receive revenues from advertisers that purchase airtime to sell their products and services. Despite the many dramatic changes that have occurred in the digital music industry over the past decade, this interdependent relationship between radio and the music and recording industries remains fundamentally the same.

What has changed is the financial dominance of the four (perhaps soon to be three) major record labels.[4] Digital audio transmission services abound, offering nearly unlimited opportunities for consumers to listen to music on-

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[4] Universal Music Group's proposed merger with EMI Music (subject to U.S. and E.U. regulatory approval) will give Universal roughly 40% of the U.S. market for recorded music.

demand, to make digital copies of songs, and to create personalized listening experiences for themselves and others.

In contrast, while making many technological improvements, radio broadcasting retains the same basic character that it has had for decades. It is local. It is free to listeners. It is supported by commercial advertising. Local stations use on-air personalities and DJs to differentiate their programming, including by commenting on the music they play. While increasing, there are not an unlimited number of radio stations in the U.S., and stations still expose listeners to new and varied songs by choosing what to play. In addition, radio is characterized by its public service to local communities and is subject to numerous Federal Communications Commission ("FCC") restrictions and obligations.

As I mentioned, many digital audio transmission services are eager to associate themselves with radio's rich history, consumer familiarity and affection. They often style themselves as offering "radio" services. But simply marketing digital audio transmission services as "radio" does not make them so. In fact, in 1995 and 1998, Congress recognized the vast differences between digital audio transmission services and local radio when it created a limited digital sound recording performance right for those new services that diverged so dramatically from the nature of traditional radio.

Prior to 1995, U.S. copyright law did not recognize <u>any</u> public performance right for owners of sound recordings. The narrow digital performance right Congress created in 1995 was intended to address very specific concerns about copying and piracy issues. This limited right did not attach to a wide variety of recorded music, including radio, hotels, restaurants, bars, nightclubs, sporting arenas, shopping malls, retail stores, health clubs, etc. As explained in the Senate Report accompanying the Digital Performance Rights in Sound Recordings Act of 1995, "The underlying rationale for creation of this limited right is grounded in the way the market for prerecorded music has developed, and the potential impact on that market posed by subscriptions and interactive services – but not by broadcasting and related transmission."[5] Consistent with Congress's intent, the DPRA expressly exempted non-subscription, non-interactive transmissions, including "non-subscription broadcast transmission[s]" – transmissions made by FCC-licensed radio broadcasters, from any sound recording performance right liability.[6]

Despite the advent of new technologies and digital audio transmission services that permit sophisticated user manipulation of music in on-demand and customized ways, the impact of the promotional value of traditional local radio remains strong. The fact that consumers have new ways in which to locate and obtain music does not diminish the value of over-the-air radio's marketing and promotion to the recording industry.

In the new, fragmented world of the digital environment, in which millions of bands are vying for the attention of hundreds of millions of fans, on millions of websites, one of radio's greatest strengths is that it cuts through the clutter.

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[5] S. Rep. No. 104-128 (1995) at 17 (emphasis added).

[6] 17 U.S.C. §114 (d)(1)(A).

Radio exposes listeners to new music and new artists and drives listeners to the websites where their desire for the music that they heard can be monetized.

Congress has repeatedly rejected calls by the recording industry to impose a tax on the public performance of sound recordings. In explaining its refusal to impose new burdens on FCC-licensed terrestrial radio broadcasters, Congress identified numerous features of radio programming that place such programming beyond the concerns that animated the creation of the limited public performance right in sound recordings. Specifically, over-the-air radio programs (1) are available without subscription; (2) do not rely upon interactive delivery; (3) provide a mix of entertainment and non-entertainment programming and other public interest activities to local communities;[7] (4) promote, rather than replace, record sales; and (5) do not constitute "multichannel offerings of various music formats."[8]

Although NAB vigorously opposes the imposition of a Congressionally-mandated performance tax as it has been set forth in previously proposed legislation, in 2010 NAB engaged in discussions with the recording industry in a

[7] Radio broadcast stations provide local programming and other public interest programming to their local communities. In addition, there are specific requirements that do not apply to Internet-only webcasters. *See* 47 U.S.C. §§ 307, 309-10 (1998). *See, e.g.*, 47 C.F.R. § 73.352(e)(12) (requiring a quarterly report listing the station's programs providing significant treatment of community issues); 47 U.S.C. . § 312(a)(7) (requiring a station to allow reasonable access to federal candidates); 47 U.S.C. § 315(a) (requiring a station to offer equal opportunity to all candidates for a public office to present views, if station affords an opportunity to one such candidates); 47 C.F.R. § 73.1212 (requiring identification of program sponsors); *id.* § 73.1216 (providing disclosure requirements for contests conducted by a station); *id.* § 73.3526 (requiring maintenance of a file available for public inspection); *id.* § 73.1211 (regulating stations' broadcast lottery information and advertisements).

[8] S. Rep. No. 104-128 (1995) at 15.

good faith effort to resolve this issue in the best interests of both radio and the music industry. NAB's Board of Directors subsequently endorsed a thoughtfully-drafted compromise based on those discussions, which was peremptorily dismissed by the recording industry without any constructive comment.

Radio broadcasters continue to oppose any performance tax like those previously proposed because such a tax would undermine local station viability and harm the public's free radio service. As local radio broadcasters have demonstrated on many occasions, stations serve the public interest by airing local and national news and public affairs programming and a variety of other local programming that serves the needs and interests of their audiences, including weather, emergency information, sports, religious and other community-oriented programming.

It goes without saying, however, that maintaining this high level of local programming and other services requires radio stations to be economically sound. Only competitively viable broadcast stations sustained by adequate advertising revenues can serve the public interest effectively and provide a significant local presence. As the FCC concluded two decades ago, the radio "industry's ability to function in the 'public interest, convenience and necessity' is fundamentally premised on its economic viability."[9] Anyone concerned about the service of radio stations to their local communities and listeners must necessarily be concerned about these stations' abilities to maintain their economic vibrancy in light of new fees that could be levied though the creation of a new performance

[9] *Report and Order*, 7 FCC Rcd 2755, 2760 (1992).

tax. Clearly, these local and community services could be jeopardized by imposition of new fees, especially during difficult economic times.

Broadcasters Urge the FCC to Implement Low Power FM Legislation Consistent with Congress's Balanced Approach

Radio broadcasters are also addressing questions about the relationship between low power FM radio ("LPFM") and full power FM stations as the FCC implements the Local Community Radio Act of 2010 ("LCRA"). My view of the relationship between full-power radio and LPFM is that both services provide value to the American public, and both should be preserved and promoted through appropriate interference protections.

Broadcasters worked closely with Congress to help craft the LCRA in a manner that reasonably balances the needs of both full power FM stations and LPFM stations. The LCRA reflects our common understanding that both full-power FM and LPFM stations serve the public interest, albeit in different, but complementary, ways.

Full power radio broadcasters provide a free, over-the-air service that reaches virtually every household in America, keeping local communities – and your constituents – informed and connected. Local broadcast stations are committed to providing a wealth of local and national news, public affairs programming, political information, vital emergency information, music, sports and other entertainment programming. These broadcasters are also committed to community service as evidenced by billions of dollars annually of free air time devoted to public service announcements, and monies raised for charities and other local causes.

Broadcasters' commitment to public service is particularly evident in times of crisis, such as the ongoing wildfire in New Mexico, and the recent tornado outbreaks in Missouri and Arkansas, during which radio stations delivered life-saving information around the clock, commercial free. Even Federal Emergency Management Agency Chief Administrator Craig Fugate recognized broadcasters' unique role during disasters when he instructed Americans to turn to their local radio station as Hurricane Irene approached the East Coast last year. In addition, through our participation in the Emergency Alert System (EAS) and additional coverage of emergencies, full power radio broadcasters help save lives with extensive, timely emergency information. Coordination with local law enforcement via Amber Alerts has led to the recovery of 584 abducted children.[10] In fact, the Amber Plan was originally created by the Association of Radio Managers with the assistance of law enforcement agencies in the Dallas/Ft. Worth area.

The service that LPFM stations provide is also valuable. LPFM can serve very localized, niche audiences. LPFM stations provide a hyper-local signal, sometimes covering an area no more than a few miles in diameter, with niche programming serving limited sections of a market. Indeed, the FCC created LPFM to "serve very localized communities" and to allow small groups and

[10] *See* http://www.missingkids.com/missingkids/servlet/PageServlet?LanguageCountry=en_US&PageId=4319 (last visited May 31, 2012).

organizations, such as schools and churches, to provide programming.[11] LPFM stations simply cannot provide the same kinds of community service – especially during emergencies – that full power stations provide. Nor should it be expected to, given their geographic constraints. In addition, as a noncommercial service serving very small geographic areas and discrete audiences, LPFM stations lack the resources to provide the extensive community-wide service offered by full power stations. Few LPFM stations broadcast 24 hours a day, like most full power radio broadcasters.

Nevertheless, both full-power radio and LPFM stations serve the public interest, and the value of each service, as well as their differences, are clearly recognized in the LCRA. The LCRA seeks to balance the dual goals of providing additional licensing opportunities for LPFM stations while preserving the audio quality of full-service FM stations. Specifically, the LCRA eliminated third-adjacent channel minimum distance requirements between LPFM and FM stations, while reaffirming the interference protections of FM stations by prohibiting any changes to the FCC's current second-adjacent spacing requirements. The LCRA permits waivers of these latter requirements, but only under strictly defined, truly unusual circumstances. We have urged the FCC to take a cautious, careful approach to any grant of such waivers, and suggested several reasonable steps designed to ensure that LPFM stations that operate on second-adjacent channels do not inadvertently cause interference to full-service FM stations. For instance, we have proposed that a potentially short-spaced FM

[11] Report and Order, *Creation of a Low Power Radio Service*, 15 FCC Rcd 2205, 2208, 2213 (2000).

station given an opportunity to review the engineering showing of "no interference" required to be submitted by any LPFM applicant seeking a second-adjacent channel waiver. Such a process would help preserve the integrity of the FM band, and also prevent situations in which an LPFM station must cease operations because it has caused interference to a full-service FM station.

Broadcasters have sought to preserve the carefully designed, balanced approach set forth in the LCRA. For example, we have opposed LPFM advocates' proposal to create an entirely new class of LPFM stations that could operate at a maximum of 250 watts. The LCRA is based explicitly on the FCC's current regulations and technical requirements, all of which reflect the long-standing LPFM maximum power limit of 100 watts. Moreover, the LCRA's legislative history, including representations by LPFM advocates themselves, shows that Congress enacted the LCRA based on an understanding of LPFM as a 100 watt service. Accordingly, authorization of 250 watt LPFM stations would not only be contrary to the Congressional basis for the LCRA, but it would change the fundamental, highly localized nature of LPFM service.

Both full power FM and LPFM stations provide valuable service, and the LCRA seeks to preserve and foster both services. Broadcasters believe that if the Commission implements the LCRA in a manner faithful to Congressional intent, thereby preserving the integrity of the FM band, then both services should be able to prosper and serve their listeners going-forward.

The Standard and Procedures Used To Set Streaming Rates Discourage Streaming and Should Be Changed

A significant ongoing impediment to broadcasters' ability to innovate in the digital arena is the current rate-setting standard under the statutory licenses for streaming. Rates that have resulted from proceedings by the Copyright Royalty Board ("CRB") under the so-called "willing buyer/ willing seller" standard have been artificially high, to the detriment of both services that wish to stream and the songwriters and performers who would benefit, in the form of increased exposure and royalties, from increased streaming.

Broadcasters favor abandoning the "willing buyer/willing seller" standard and transitioning to the "801(b)(1)" standard for setting streaming royalty rates. The 801(b)(1) standard (so named because it is found in that section of the Copyright Act) has effectively, efficiently and equitably balanced the interests of copyright owners, copyright users and the public for decades, in various contexts and proceedings.[12]

As currently codified, this standard considers the interests of all stakeholders and the public, recognizes the value of all contributions of licensors and licensees and has long been accepted and ratified by Congress. It reflects a Congressional intent not to set rates so onerous that they would stifle new businesses and uses of creative works, or disrupt structure of existing industries.

[12] Instead of determining rates for the a statutory license through a hypothetical marketplace, 17 U.S.C.§ 801(b)(1) sets forth four objectives to be considered: "(A) To maximize the availability of creative works to the public; (B) To afford the copyright owner a fair return on his or her creative work and the copyright user a fair income under existing economic conditions; (C) To reflect the relative roles of the copyright owners and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communications; (D) To minimize any disruptive effect on the structure of the industries involved and on generally prevailing industry practices."

The 801(b)(1) criteria are particularly appropriate where, as now, there are essentially four companies controlling the majority of the distribution of sound recordings.[13]

The "willing buyer/willing seller" standard was perhaps most obviously inadequate when it led to rates for the 2006-2010 license period (set by the CRB) that were so egregious that webcasters directly appealed to Congress. Passage of the Webcaster Settlement Acts of 2008 and 2009 provided an opportunity to negotiate more appropriate arrangements with the recording industry.

Recent developments have further illustrated the dysfunction of the current rate setting procedures. The constitutionality of the appointment of the CRB itself has recently been called into question with an appeal before the D.C. Circuit Court of Appeals. And an additional complication to the broken CRB/SoundExchange system came when SiriusXM recently filed a lawsuit against SoundExchange and A2IM (American Association of Independent Music) claiming antitrust violations. This suit essentially alleges that SoundExchange and A2IM conspired to prevent SiriusXM from negotiating direct licenses with musicians (which would take music out of the statutory royalty scheme administered by the Copyright Royalty Board).

[13] Significantly, the 801(b)(1) standard has a history of yielding results that are more equitable, effective, and predictable than those supposedly based on market or "fair" value. The relatively uncontroversial and unchallenged results demonstrate the equity of the standard. In each of the four proceedings that have occurred under the 801(b)(1) standard since 1976 (two involving the recording industry as licensor and two involving the recording industry as licensee), not only have the royalty awards been upheld by the courts, but none of the parties have felt compelled to ask Congress to remedy any of the determinations.

In short, the royalty rate setting process has become a royal mess, and an opportunity to remedy that process would be embraced by all who stream music. NAB would welcome an opportunity to discuss reform of this dysfunctional process in greater detail.

Conclusion

Thank you for the opportunity to testify before the Subcommittee. I believe radio broadcasting will remain strong, and our commitment to our local communities will keep our industry vibrant.

Mr. WALDEN. Mr. Newberry, thank you for your testimony on this issue.

We will now go to Mr. Westergren, who is the Chief Strategy Officer and Founder of Pandora.

We are delighted to have you here, sir. Please go ahead with your comments.

STATEMENT OF TIM WESTERGREN

Mr. WESTERGREN. Thank you, Mr. Chairman. Good morning.

My name is Tim Westergren. I am the Founder and Chief Strategy Officer of Pandora.

Twelve years ago, after spending my 20s and early 30s playing in rock bands and composing film scores, I founded a music discovery service to help independent musicians like me find their audiences. I had a vision that by marrying musicology and technology I could solve the great problem of music discovery—how to help listeners find new music to love and how to bring all these talented artists the attention and careers they deserve.

It took 6 long years before the Music Genome Project finally found its home in the form of Pandora. We have gone from a cramped studio apartment in south San Francisco, financed through salary deferral, credit card debt—and lots of it—and the extraordinary effort of a talented group of musicians and engineers, to the country's largest Internet radio service, with over 150 million registered listeners and close to 600 employees in offices all across the country. We stream more hours of music every month on Pandora than YouTube streams hours of video and refer more music sales to iTunes and Amazon than virtually any other service in the world.

Today, more than ever, the dream of connecting listeners and artists seems within our grasp. Thanks to Pandora's Music Genome Project and its rich understanding of musical recordings, Pandora now plays the music of over 90,000 artists, 70 percent of them independent, represented by a catalog of over 1 million songs, and over 95 percent of these songs play every month.

Let me repeat that. Over 950,000 unique songs play every month on Pandora, and the music spans hundreds of genres that are rarely heard in any medium: bluegrass, big band, classic country, klezmer, New Orleans jazz, you name it. For most of these artists, Pandora is the only radio they have ever enjoyed.

It is conceivable that this new promotional vehicle as it continues to grow may eventually lead to the emergence of a musicians' middle class.

We have created a democratic and inclusive form of radio that listeners can access the same way they listen to terrestrial broadcasting. Seven of the world's largest automakers now include Pandora in new models. We are embedded in over 650 consumer electronics devices that enable Pandora to be enjoyed throughout people's homes. We are the second most downloaded iPhone app and one of the most popular iPad apps. Pandora is even built into refrigerators.

Long gone are the days when customers accessed the Internet radio only through their PCs or laptops. In fact, over 70 percent of our listening now takes place off the computer.

But beneath this exciting transition is a severe and fundamental problem. While Pandora and other Internet radio services compete directly with broadcast and satellite radio for listeners in every place you find music—the home, the car, the office, and on the go—we are subject to an astonishingly disproportionate royalty burden compared to these other formats.

All forms of radio pay songwriters a very similar percentage of revenue, but there are enormous differences in how performing artists and labels are compensated.

Last year, on revenues of $274 million, Pandora paid 50 percent of that revenue in performance fees. That same year, Sirius XM, on revenues of $2.74 billion, paid 7–1/2 percent of revenue. And broadcast radio, on revenues of roughly $15 billion, paid zero.

Just to be clear, we are fully supportive of fair compensation for artists. We strongly believe that radio can and should reward musicians for the use of their work, both songwriters and performers. But this lack of a level playing field is fundamentally unfair and indefensible.

So why the disparity in royalties? The inequity arises from the fact that Congress has made decisions about radio and copyright law in a piecemeal and isolated manner. As each new form of radio transmission was invented, new legislation was passed but only to address the new form. The effect has been to penalize new media and advantage old media when setting the rules for music royalties.

To give you a sense of how absurd the current situation is, consider this example. Drivers of most current Toyota—excuse me, Ford cars—can receive AM/FM, satellite, and Internet radio all through the vehicle's sounds system. If a song is delivered over AM/FM, the associated performance artist and label receive no compensation. If a song is delivered over a satellite, the performing artist do receive compensation. But if the song is delivered using Internet transmission over 3G or 4G, then the effective percentage of revenue that must be paid by the company delivering the song goes up sixfold. It is the same song, same car, and the same sound system.

It is time for Congress to level the playing field and to approach radio royalties in a technology neutral manner. The current ratesetting law is unfair to performing artists, unfair to record labels, and unfair to Internet radio as we compete every day with broadcast and satellite radio for listener loyalty and for advertising and for subscription revenue. What amounts to a subsidy of entrenched radio media stifles innovation, discriminates against the Internet, and adversely affects consumers. It is time to unshackle innovation and allow new technologies and new forms of audio consumption to compete fairly.

Thank you for your time and consideration. I look forward to your questions.

[The prepared statement of Mr. Westergren follows:]

Statement of
Tim Westergren
Chief Strategy Officer & Founder
Pandora
before the
Subcommittee on Communications and the Internet
Committee on Energy and Commerce
U.S. House of Representatives
on
"The Future of Audio"
June 6, 2012

Good morning Chairman Walden, Ranking Member Eshoo, and Members of the Subcommittee. Thank you for inviting me to testify this morning on "The Future of Audio." My name is Tim Westergren and I am Chief Strategy Officer and Founder of Pandora.

Twelve years ago, after spending my twenties and early thirties playing in rock bands, and composing film scores, I founded a music discovery service to help independent musicians like me find their audiences. I had a vision that by marrying musicology and technology, I could solve the great problem of discovery - how to help listeners find new music to love, and how to bring all these talented artists the attention and careers they deserve.

It took six long years before the Music Genome Project finally found its home in the form of Pandora. We have gone from a cramped studio apartment in South San Francisco, financed through salary deferral, credit card debt, and the extraordinary effort of a talented group of musicians and engineers, to the country's largest Internet radio service, with over 150 million registered listeners and close to 600 employees in offices all across the country. We stream more hours of music every month on Pandora than YouTube streams hours of video and refer more music sales to iTunes and Amazon than virtually any other service in the world.

Today, more than ever before, the dream of connecting listeners and artists seems within our grasp. Thanks to Pandora's Music Genome Project, and its rich understanding of musical recordings (every song in our collection is hand-analyzed by a trained musician along hundreds of musical attributes per song), Pandora now plays the music of over 100,000 artists (70% of them independent), represented by a catalogue of over a million songs. And over 95% of these songs play every month. Let me repeat that. Over 950,000 unique songs play every month on Pandora. And the music spans hundreds of genres that are rarely heard in any medium – bluegrass, big band, classic country, baroque, klezmer, a cappella, New Orleans jazz, you name it. For most of these artists, Pandora is the only radio play they've ever enjoyed. It is conceivable that this new promotional vehicle, if it continues to grow, may eventually lead to the emergence of a musician's middle class.

We have created a democratic and inclusive form of radio that listeners can access the same way they listen to terrestrial broadcasting. Eight of the world's largest automakers now include Pandora in new models. We are embedded in over 650 consumer electronics devices that enable Pandora to be enjoyed throughout people's homes. We are the second most downloaded iPhone app. Pandora is even built into refrigerators. Long gone are the days when customers accessed internet radio only through their PCs or laptops. In fact, over 70% of our listening now takes place off the computer.

But beneath this exciting transition is a severe and fundamental problem. While Pandora and other Internet radio services compete directly with broadcast and satellite radio for listeners in every place you find music – the home, the car, the office, on the go - we are subject to an astonishingly disproportionate royalty burden compared to these other formats.

All forms of radio pay *songwriters* a very similar percentage of revenue but there are enormous differences in how *performing artists and labels* are compensated.

Last year, on revenues of $274MM, Pandora paid $137MM in performance fees to performing artists and labels, or 50% of revenue. That same year, Sirius/XM, on revenues of $2.74B, paid $205MM, or 7.5% of revenue; and broadcast radio, on revenues of roughly $15B, paid zero. Now I am fully supportive of fair compensation for artists. I'm a musician, and I strongly believe that radio can and should reward musicians for the use of their work – both songwriters AND performers. But this lack of a level playing field is fundamentally unfair and indefensible.

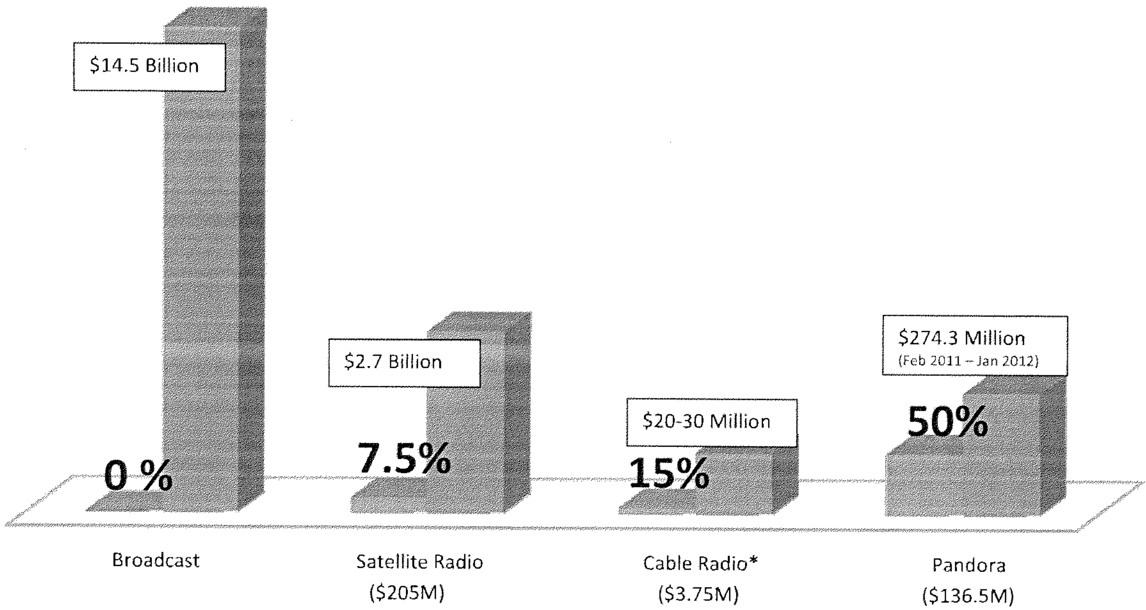
So why is there such a disparity in royalties? The inequity arises from the fact that Congress has made decisions about radio and copyright law in a piecemeal and isolated manner; as each new form of radio transmission was invented, new legislation was passed but only to address the new form. The effect has been to penalize new media and advantage old media when setting the rules for music royalties.

To give you a sense of how absurd the current situation is, consider this example: Drivers of most current Toyota cars can receive AM/FM, satellite and internet radio, all through the vehicle's sound system. If a song is delivered over AM/FM, the associated performing artist and label receive no compensation. If the same song is delivered over satellite, the performing artist and label do receive compensation. But if the song is delivered using internet transmission over 3G or 4G, then the effective percentage of revenue that must be paid by the company delivering the song goes up six fold. It's the same song, same car, and the same sound system.

It is time for Congress to level the playing field and to approach radio royalties in a technology neutral manner. The current rate-setting law is unfair to performing artists, unfair to record labels, and unfair to Pandora and internet radio as we compete every day with broadcast radio and satellite radio for listener loyalty and advertising and subscription revenue. America's obligations to our performers should be shared proportionally by all who use their music. What amounts to a subsidy of entrenched radio media stifles innovation, discriminates against the internet and adversely affects consumers. It is time to unshackle innovation and allow new technologies and new forms of audio consumption to compete fairly.

Thank you for your time and consideration. I look forward to your questions

2011 Royalty Rates as a Percentage of Annual Income



*Exact cable radio annual income unknown at time of submission, percentage calculated using $25M estimate.

Mr. WALDEN. Thank you very much, Mr. Westergren, both for your testimony and your creativity.

Mr. Christopher Guttman-McCabe is next, Vice President, Regulatory Affairs of CTIA.

Good morning. We are delighted to have you here. We look forward to your testimony, sir.

STATEMENT OF CHRISTOPHER GUTTMAN–MCCABE

Mr. GUTTMAN-MCCABE. Thank you and good morning, Chairman Walden, Ranking Member Eshoo, and members of the subcommittee. Thank you again for the opportunity to participate in this morning's hearing.

CTIA believes the future of audio is mobile, it is personal, it is what the consumer wants it to be, and it is bright. The consumer's desire is a theme that you will hear from me throughout my testimony. I want to share some of the reasons we feel this way as well as a few suggestions for how to ensure that our optimistic projection turns out to be true.

As mobile broadband becomes ubiquitous, the mobile platform provides a compelling opportunity for artists and entrepreneurs to deliver all sorts of audio products. No matter where their interest lie, consumers can and will be able to access content of their choosing tailored to their preferences at that moment.

This shift from a producer-and-distributor-driven model to a consumer-driven model will test existing businesses and force them to adapt. We see this in the way that the music and news-gathering business, for instance, are being transformed by the twin forces of digitization and disintermediation. This is a challenge for some in the old order in much the same way that telephony was a challenge for the telegraph and wireless is a challenge for wired.

At the same time, these forces are unleashing a wave of creativity and innovation that is giving rise to new businesses like Pandora—thank you, Tim—Spotify, and TuneIn, all of which are on my phone, none of which yet are on my refrigerator. It is morphing communications devices into music devices andenabling services like Cricket's MUVE.

While many of those of us who grew up in the age of the LP lament the loss of album art and liner notes, this transformation is one that is good for consumers, and it is good for America. Consumers gain control as they can choose the time and the method by which their content is delivered or accessed. And America wins because it is at the center of this transformation. America is the epicenter of the development of these new services, and we are the world's undisputed leader in wireless broadband.

So what needs to be done to enable continued American leadership in this area and ensure that the future of audio is, indeed, bright? The short answer is that we must continue to have access to spectrum, the highway across which audio traffic moves, and we need a light regulatory touch that permits services and applications providers to experiment with new product offerings and new pricing structures. Policymakers need to resist calls to use government to protect business models that find themselves subject to new competitive challenges.

I want to expand a bit on this last point, as I know that some in the radio industry will use this hearing as an opportunity to reiterate their call for wireless devices to include FM chips or some other type of commercial radio capability. This effort should be rejected.

To be clear, CTIA is not opposed to including FM capabilities in wireless devices. If you listen to Mr. Smulyan's testimony, one would think that the capability that he seeks does not exist. It does. Indeed, at least 59 wireless devices today have an FM chip included. But the decision to offer FM capability or not should be driven by consumer preference, not government fiat. A mandate would be at odds with the idea that a competitive marketplace does a superior job of delivering products and services that consumers value.

Our members provide phones with and without radio capability, just as they provide handsets with or without keypads, with or without cameras, and devices with or without Internet access capabilities. This differentiation allows consumers to find what they want and what they value, rather than taking any phone, as long as it is black and connected to the wall, as was once the norm.

If some in the radio business want to encourage consumers to buy FM-enabled devices, they are free to do so. But they should not seek to have the government impose their business plan on others. The Commercial Mobile Service Alert Advisory Committee's conclusion, by a vote of 41–1, that FM is not appropriate for wireless emergency alerts was correct; and thus decisions regarding the inclusion of FM capability and wireless devices must be driven by commercial factors.

Today's audio sector demonstrates reliance on the churn and the ingenuity of the marketplace will force better product outcomes for platform providers, content creators, and consumers alike.

Mr. Chairman, members of the subcommittee, thank you for the opportunity to appear on the panel. With the right combination of good spectrum policy and regulatory restraint, reliance on the innovative capabilities of American entrepreneurs, and trust that consumers know what they want, the future of audio is and should remain bright.

Thank you.

[The prepared statement of Mr. Guttman-McCabe follows:]

CTIA
The Wireless Association®

Expanding the Wireless Frontier

Testimony of

Christopher Guttman-McCabe
Vice President Regulatory Affairs
CTIA – The Wireless Association ®

June 6, 2012

Hearing on the Future of Audio

House Subcommittee on Communications & Technology
Committee on Energy and Commerce

Testimony of Christopher Guttman-McCabe, CTIA – The Wireless Association, before the House Subcommittee on Communications & Technology, June 6, 2012

Chairman Walden, Ranking Member Eshoo, and members of the Subcommittee, on behalf of CTIA – The Wireless Association®, I want to thank you for the opportunity to participate in this morning's hearing on "The Future of Audio."

From the vantage point of the wireless industry, we believe the future of audio is mobile, it is personal, it is what the consumer wants it to be.

I want to share with you some of the reasons we feel this way, as well as a few suggestions for how to ensure that our optimistic projection turns out to be true.

As mobile broadband becomes more and more ubiquitous, the mobile platform – whether accessed by phone, by tablet, or by some other connected device – provides a compelling opportunity for artists and entrepreneurs to deliver, and consumers to access, all sorts of audio products. Whether their interests lie in music, in news, in sports, or even in politics, consumers can and will be able to access content of their choosing, tailored to their preferences of the moment.

This shift from a producer and distributor driven model to a consumer driven model will test existing businesses and force them to adapt. We see this in the way that the music and news gathering businesses, for instance, are being transformed by the twin forces of digitization and disintermediation. This is a challenge for some in the old order, in much the same way that telephony was a challenge for the telegraph, and wireless is a challenge for wired. At the same time, these forces are unleashing a wave of creativity and innovation that is giving rise to new businesses like Pandora, Spotify, and TuneIn, morphing iPods into iPhones, and enabling new services, like Cricket's MUVE, which has greeted enthusiastically by consumers and investors alike.

While many of us who grew up in the age of the LP lament the loss of album art, liner notes, and lyric sheets, we should recognize that this transformation is one that is good for consumers - and good for America. Consumers gain control, as they can choose the time and method by which their content is delivered or accessed. And

America wins because it is at the center of this transformation, as home to many of the innovators bringing these new services to market and as the world's undisputed leader in wireless broadband.

So what needs to be done to enable continued American leadership and ensure that the future of audio is, indeed, bright? The short answer is that we must continue to have access to spectrum, which is the highway across which audio traffic moves. We need a light regulatory touch that will enable service and applications providers to experiment with new product offerings and pricing structures. And we need to resist calls to use the legislative or regulatory process to protect or extend the life of business models that find themselves subject to new competitive challenges.

I want to expand a bit on this last point, as I know that some of our friends in the radio industry will use this hearing as an opportunity to reiterate their call for wireless devices to include an FM chip or some other type of commercial radio capability.

To be clear, CTIA is not opposed to including FM capability in wireless devices. Many of CTIA's manufacturers build handsets that include FM chips and each of the largest carriers offers handsets that contain this functionality. Indeed, close to fifty wireless devices today have a FM chip included. But the decision to offer FM capability – or not – should be driven by consumer preference, not government fiat, and for this reason we absolutely oppose a mandate involving FM chips. We take a face value NAB President and CEO Gordon Smith's statements to this Subcommittee that he is not seeking a mandate in this space and are pleased that he agrees with us on this point.

CTIA opposes a mandate in this space for a variety of reasons, but mostly because such a requirement is at odds with the idea that a competitive marketplace does a superior job of delivering products and services that consumers value. Our members provide phones with and without radio capability, just as they provide handsets with or without keypads, and devices with or without Internet access capabilities. This differentiation allows consumers, who often have widely divergent preferences, to find what they want and value, rather than taking any phone they want, as long as it's black and connected to the wall, as was once the norm.

Proponents of an FM chip mandate will try to wrap themselves in the cloak of public safety to justify their request. I urge you to reject this effort, which has been considered and dismissed by a panel charged with ensuring that the mobile platform can augment the emergency alerting capabilities currently provided by television and radio broadcasters.

I had the privilege of serving on the Commercial Mobile Service Alert Advisory Committee when it met to develop recommendations for implementation of the Warning, Alert and Response Network, or WARN, Act. In evaluating the technological options available for executing on the WARN Act's call for a mobile alert system, the CMSAAC considered and rejected the use of technologies like an FM receiver, a NOAA Weather Radio, a paging chip, and a satellite chip, as possible solutions to enabling emergency alerting in commercial mobile devices. As the CMSAAC noted, there are serious technical challenges to using these non-native services in commercial mobile handsets, including providing an antenna that is not integrated with a wired headset and addressing power consumption. Additionally, none of these potential solutions offer the geo-targeting opportunities that are possible with the cell broadcast model that was ultimately adopted and is now available to many consumers.

If some in the radio business want to encourage consumers to buy FM-enabled devices, they are free to do so, but they should not seek to have the government impose their business plan on others. The CMSAAC's conclusion was correct in finding that FM is not appropriate for wireless emergency alerts, and thus decisions regarding the inclusion of FM capability in wireless devices must be driven by consumer preference and market forces. That will produce better outcomes for platform providers, content creators, and consumers, as Congressman Issa and

Congresswoman Eshoo have acknowledged in their "Creativity and Innovation Resolution," H.Con.Res. 42, which CTIA is pleased to support.

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to appear on the panel. With the right combination of good spectrum policy and regulatory restraint, reliance on the innovative capabilities of American entrepreneurs, and trust that consumers know what they want, the future of audio is, and should remain, bright.

Mr. WALDEN. Mr. Guttman-McCabe, thank you for your testimony.

We will conclude our panel with Mr. Shapiro, who is the President and CEO of the Consumer Electronics Association.

Mr. Shapiro, welcome to our committee again, and we look forward to your testimony.

STATEMENT OF GARY SHAPIRO

Mr. SHAPIRO. Thank you very much, Mr. Chairman. We represent over 2,000 U.S. consumer electronics companies, every one of which directly or indirectly touches or relies on or sells sound or audio. And we welcome this hearing because it is very gratifying to see Congress focusing on something we cherish but we rarely discuss in Washington: the spoken word, music, and sound. And we are pleased to share our views.

First, I am proud that many of our members make loudspeakers and other audio products here in the United States and export worldwide. Audio files around the globe actually recognize and appreciate the phenomenal quality of these U.S. products, including scores of great companies both large and small.

Second, the popularity of American culture and products abroad ties in directly with this type of innovation including innovation in both audio, music, and word as our national brand. If we can continue to innovate, our economy will continue to grow and mitigate our tax and spending dilemma. Of course, the challenge of innovation, including innovation in technology and music and news distribution, is that innovation always threatens incumbents, and they too often come to Washington to protect their legacy business models.

Third, the world of reproduced audio parallels the world of energy. Just a few decades ago we had a few choices. It was radio or television or telephone in terms of reproduced sound. Well, as we have heard from many witnesses and the members in their opening statements, things have changed dramatically. And just like with energy, we suggest an all-of-the-above policy, which means that no one source should be given preferential treatments over all others. For this reason alone, we are puzzled why Congress favors broadcast radio over every other source of audio.

Fourth, the phenomenal growth in digital video, the resulting flattening of TV screens, and the high quality of displays has created a huge opportunity and demand for quality audio, and that is a big shift. And corresponding to that is advancements in the science of sound reproduction which is changing the world of audio. What we are starting to see in the next generation is streaming surround-sound audio which will solve a lot of problems and create a lot of opportunities.

Now, if you think about it, music is the only area where millions of people still spend hours enjoying creativity from hundreds of years ago. But the fact is that our best times are still ahead of us, not only with content creation but with devices and in terms of solving some of our problems. For example, we have products that are starting to appeal to an aging population, audio solutions that provide amplification, and sound clarity will emerge through such devices as phones and headsets. In fact, we have initiated a standards project to enable people with hearing impairments to adjust audio presentations for their specific needs.

We also are focusing on health maintenance, socialization, and service to remote, aging, and other populations. Related to this is an area of concern that we haven't heard about today, and that is what we can do collectively to educate Americans about the importance of protecting their hearing. Since 1981, most reputable headphone makers have warned about playing music too loud. And CEA has joined with the RIAA, the American Speech—Language-Hearing Association, and others in a national campaign aimed at ensuring children and parents learn very early to value hearing as a very precious sense which must be protected. We don't seek your action, but we do ask you to use your bully pulpit.

Now, clearly the audio marketplace for music and information is vibrant. We have been hearing about that in the last hour. Innovations are entering very quickly, and thriving new business models are being created. Consumers are the winners here and new businesses. But with all of the advances in audio distribution and consumption, it troubles me that we are still fighting efforts to mandate the incorporation of old technologies in new products; namely, radio broadcasters, which they have been doing in writing and lobbying, seeking Congress to intervene in the marketplace and require analog radio receivers be installed in a host of digital devices. The fact is is that analog radio and digital phones is not popular with consumers. And if you look at independent research, the fact is, consumers are not choosing and they are not saying they want to buy them. In fact, all the products out there are not generally being used. And the argument for them—all of a sudden this new argument about emergencies, frankly, defies logic.

First, many, if not most radio stations do not operate 24 hours in attended mode with live human beings present. In a famous 2002 disaster, a train carrying deadly toxic chemicals derailed near Minot, North Dakota. No emergency alert was sent out because no one at the stations nearby could be reached by phone.

Second, in the event of an emergency, what are people going to do? Well, they will use their phones. They will use their Internet devices. They could go to their home radio or their car radio. They could access the Internet or platforms such as Facebook and Twitter. These provide more specialized and localized information that is more helpful than a generalized radio update.

Finally, as we heard earlier, there is already a solution in place that the Federal Government has required which basically requires text alerts to telephones. We oppose a mandate for FM chips in cell phones but also the current effort should simply get a study. Taxpayers should not be spending money about why there should be mandates. And we applaud you, Representative Eshoo and Congressman Issa, for introducing House Concurrent Resolution 42 which opposes the FM chip.

Innovation is driving our economy, and nowhere is this truer than the audio industry. Hardware makers, online innovators, and artists are all taking advantage of new business opportunities. We urge Congress to ignore self-interested pleas from declining industries and continue to promote a vibrant and dynamic free-market economy that creates investments in jobs. And we look forward to working with you in these efforts. Thank you very much.

Mr. WALDEN. Mr. Shapiro, thank you for your testimony.

[The statement of Mr. Shapiro follows:]

Hearing on

The Future of Audio

Before the

House Committee on Energy and Commerce

Subcommittee on Communications and Technology

Testimony of

Gary Shapiro

President and CEO

Consumer Electronics Association

June 6, 2012

CEA is the preeminent trade association representing over 2000 U.S. consumer electronics companies. Every one of our members directly or indirectly has products or services relying on or conveying sound. At our industry's annual trade show, the International CES, over 156,000 attendees admired more than 20,000 new products, including numerous innovations in audio.

We welcome this hearing as it is gratifying for Congress to focus on something we cherish but rarely discuss in Washington: the spoken word, music and sound. We appreciate this unprecedented opportunity to share some little known facts and views.

First, I'm proud to share that many of our members make loudspeakers and other audio products here in the United States and export worldwide. Audiophiles around the globe recognize and appreciate the phenomenal quality of these U.S. products including Altec Lansing, Atlantic Technology, Audioengine, Bose, Conrad-Johnson, Definitive Tech, Eminence,Harman International, HUMAN Speakers, Infinitiy, JBL, Klipsch, Koss Headphones, Legacy Audio, Leon Speakers, Inc., Martin Logan, McIntosh Laboratory Inc., Misco Loudspeakers, Mitek, Orb Audio, Polk Audio, Rayco Sound Industries, Inc., Rockford Fosgate, Specialty Technologies, Thiel Audio Products, Triad, Voxx International, Westone Laboratories, Wilson Audio Specialties and Z Box.

Other members, such as Microsoft, Apple and Livio Radio give listeners extraordinary and previously unimagined ways to enjoy music when and where they wish.

Still others, like Pandora, Google and Grooveshark open up a vast new universe of choices and content to music fans.

Indeed, Internet radio is booming. Recent research by TargetSpot found 42 percent of U.S. households with broadband Internet listen to Internet radio. Similarly, research from the NPD Group found 43 percent of the Internet population listened to digital radio broadcasts in 2011 – up from 29 percent in 2009. The Consumer Electronics Association recently found 39 percent of the Internet population listened to online streaming audio content in the last 12 months and 42 percent listed to MP3 files.

Second, our creativity and innovation is reflected by tens of thousands of independent musicians and by the big company members of the RIAA. The more I travel around the world the more I appreciate how we export our culture through the Internet, our movies and our music. The result is that so many in the world want to be like us and also learn or want to learn English. This is an American influence force multiplier and should not be taken for granted.

Indeed, the popularity of American culture and products abroad ties in directly in with innovation, including innovation in audio, both music and word, as our national brand. CEA believes our long term national strategy must be based on our strength in innovation. If we can continue to innovate, our economy will continue to grow and mitigate our tax and spending dilemma. Of course the challenge of innovation, including innovation in technology and music and news distribution, is that innovation always threatens incumbents and they too often come to Washington to protect their legacy business models.

Third, the world of reproduced audio is parallel to the world of energy in that we had only a few choices or sources in the 1960s: radio, the phonograph, the telephone and television. And as with energy, we have rapidly shifted to a growing set of choices with a phenomenal array of devices, products, sources and services. It's not just music and news over tablets and telephones, its HD Radio providing choices and music over standard radio spectrum, its Sirius-XM satellite radio appreciated by over 22 million subscribers, its Pandora, and Spotify. It's Gracenote cataloguing the world's music and offering music based on emotion or by lyrics. It's Livio Radio offering direct Internet access. It's independent musicians raising literally millions of dollars on internet platforms like KickStarter. It's the plethora of Internet choices including YouTube and sharing over Facebook. It's the websites of artists and fan clubs. It's audio books expanding rapidly in scope and service to children, the elderly and the disabled. It's storage devices beginning with the Walkman which morphed several times into the groundbreaking iPod. It's webcasts and podcasts and playlists.

Consumers who wish to get their audio news and entertainment in a variety of ways have an incredible amount of choices and the marketplace has responded with all its glory expanding quickly the diversity of business models, offerings and content created. Paralleling with video, we have entered a golden age of content creation and while some of the big distribution companies may see their markets shrink, entrepreneurs and new creators rapidly jump in and create new services, products and groundbreaking content.

And just like with energy, we suggest an "all of the above" policy, which means no one source should be given preferential treatment over all others. For this reason alone, we do not agree that Congress should take any action favoring broadcast radio over any other source of audio. Currently, Internet, satellite and cable broadcasters pay significant royalties to performers when their songs are broadcast. By contrast, over their air radio broadcasters are not required to pay performers. This situation is a creature of historical accident, and it is simply unjustifiable. Congress should ensure that over-the -air broadcasters do the right thing, and fairly compensate musicians.

Fourth, the phenomenal growth in digital video, the resulting flattening of TV screens and the high quality of the displays have created huge opportunities in and demand for quality audio. Americans buy over 30 million flat panel displays every year. To ensure the optimal viewing experience, consumers are increasingly looking for quality audio products to ensure that the sound matches the stunning HDTV pictures.

Fifth, recent advancements in the science of sound reproduction are changing the world of audio. In the early 1980s when we leapt from analog to digital and the compact disc and digital radio, some complained that music delivered with this new digital technology lacked "warmth". We rarely hear those complaints today. Instead, we only see enhancements. Listeners can hear, in their own personal environment, audio that is identical to what was captured in the mixing room, the sound stage or concert hall. Surround sound provides a more immersive experience that makes one a participant more than a casual observer and communicates the emotion of the moment.

Dolby True HD is now part of a download music service. More the traditional packaged media business is being complemented by electronic delivery. Vudu, CinemaNow, HBOGo, Netflix, Apple TV and Amazon are streaming television and motion picture content to the home accompanied by multi-channel (up to 7.1) surround sound.

Meanwhile, Americans are using a variety of devices to access their digital music. According to CEA market research, over the last year 70% of Americans listened to music on a desktop or laptop computer, and 60% on an MP3 player.

Sixth, although music is the only area where millions still spend hours enjoying creativity from hundreds of years ago, the fact is that our best times are still ahead of us. Social networking allows collaborative music creation and sharing. Imagine how our kids' creativity will be unleashed as they learn music and collaborate with bands on line. Given the high correlation with music education and math development this is a good thing culturally and scientifically for innovation.

More, at the other side of the spectrum, with an aging population, audio solutions that provide amplification and sound clarity will emerge through devices such as phones and headsets. In fact, CEA has initiated a standards project to enable people with hearing impairments to adjust audio presentation for their specific needs. We will rely in audio delivered electronically for health maintenance, socialization and service to remote, aging and other populations at need.

The tremendous recent growth in interest in high quality headphones likely presages further business opportunities for higher quality content, media and delivery methods. This headphone-driven interest in high-quality audio may help give legitimate content providers a critical marketplace edge over low-quality, unauthorized internet downloads. More, the growth in surround sound also is being followed by surround streaming. Companies like Olive, Sonos, Sooloos, Sonore and others are manufacturing servers that include surround sound music playback.

Finally, if there is one area of concern it is what we can do collectively, to educate Americans about the importance of protecting their hearing. Many in my generation attended – and may still attend – concerts where their passion for the music put them too close to loud speakers. We also know that playing music too loud can affect hearing and for this reason since 1981 most reputable headphone makers have added warnings with their headphones about playing music too loud. And CEA has joined with the RIAA, the American Speech-Language-Hearing Association (ASHA) and others in a national campaign aimed at ensuring children and parents learn early to value hearing as a precious sense that must be protected. We don't seek Congressional action other than the "bully pulpit" that concerned public officials can utilize on this important issue.

Clearly, the audio marketplace for music and information is incredibly vibrant. Remarkable innovations are entering the market at a rapid pace, and thriving new business models are being created. The winners are US consumers, who have unparelled access to news and information from a multiplicity of sources.

With all of these advances in audio distribution and consumption, I am sad to report that we are still fighting efforts to mandate the incorporation of old technologies in new products – namely, radio broadcasters' demands that Congress forcibly intervene in the marketplace and require analog radio receivers be installed in a host of digital devices.

The fact is that at least two dozen phones equipped with FM tuners are already on the marketplace for consumers who desire that feature, although surveys indicate that it is not widely used.

Faced with the fact that analog radio in digital phones is not popular with consumers, broadcasters are trying a new argument. They now claim that FM tuners are somehow necessary so that Americans can be alerted in the event of a tornado. This argument defies logic for a number of reasons.

The vast majority of radio stations operate in unattended mode, meaning without people present to manually control the programming. Some stations do have people present during specific periods of time, such as morning drive time, but operate unattended during other periods. When it comes to informing their audiences about time sensitive information unattended stations typically either don't do it at all, or are very slow to get the information out. This is because to operate in unattended mode the programming has to be planned out and recorded well in advance.

This unattended operation is a natural result of technological progress. Many other industries have also embraced unattended operation, such as banks, which have for years allowed us to get money from ATM machines when there is nobody present at the bank. Also, gas stations allow us to fill up our tanks without attendants present.

Unattended operation is great for consumers because it provides all of us with easy access to services whenever we need them. However, if we need urgent, timely service in a crisis an unattended business is usually not much help. If your car breaks down in the middle of the night it will be easy to find working gas pumps at an unattended gas station, but very hard to find a mechanic. And if there is a local emergency in your community it will be easy to find pre-recorded programming on unattended radio stations, but hard to find up-to-date information about the crisis.

Also, in the event of an emergency, people increasing use their mobile phones to access the Internet or platforms such as Facebook and Twitter. The services provide specific and localized information that is often more helpful than a generalized radio update.

Finally, and most important, wireless carriers and the federal government are already rolling out a system to provide geographically targeted emergency alerts.

The Wireless Emergency Alert (WEA) system, deployed this past April, will transmit emergency alerts for severe weather, as well as AMBER alerts for missing children and Presidential Alerts for national emergencies. The text based messages are vastly more effective than FM transmissions because they will instantly be displayed on the phone. A warning sent by analog radio is useless unless you happen to be listening to the radio at the exact moment the radio is transmitted.

CEA opposes not only a mandate for FM chips in cell phones, but also opposes the broadcasters' current effort to require a government study of this issue. The marketplace has shown that Americans are perfectly capable of deciding for themselves what functions and features they want in their smart phones. Wasting taxpayer funds for something as absurd an unnecessary mandate on innovation is the kind of special interest-driven expenditure that frustrates average Americans.

Clearly, broadcasters have lost their historic monopoly on music transmission, and now exist in a more competitive environment. Indeed, research TargetSpot research found nearly half of those surveyed (47 percent) spend less time listening to broadcast radio than they did a year ago. Not surprisingly, the steepest decline in broadcast radio listenership was among "digital natives" - young adults age 18 to 24.

The correct answer for broadcasters, however, is not to beg Congress to protect their historic business model. Instead, broadcasters must do what other industries do when faced with new market entrants – learn to compete smarter and harder.

Indeed, if the broadcasters wish to compete effectively, redoubling their commitment to HD Radio would be a good first step. Delivered over the AM/FM analog spectrum, HD Radio allows over-the-air broadcasters to offer the same digital sound quality and wide array of programming now offered by their digital competitors.

We applaud Ranking Member Eshoo and Congressman Issa for introducing House Continuing Resolution 42 , the "Creativity and Innovation" declaring, among others, that new Government mandate forcing mobile device manufacturers and wireless carriers to include terrestrial broadcast radio tuners in new mobile devices will stifle innovation, competition, and consumer choice. We hope other members of this subcommittee will join in support of the resolution.

Rather than imposing mandates that would restrict choice and impose costs on consumers, Congress should act to make sure that the vital music marketplace continues to thrive.

Today, a growing amount of music is enjoyed on spectrum-dependent mobile technologies. We applaud Congress' efforts to promote the voluntary auctions of underused television broadcast spectrum, and we call on you to ensure that these auctions take place as expeditiously as possible. The result will be more investments, more startups, and more high-skill, high-wage jobs.

Similarly, as an intellectual property (IP) industry, we call on Congress to promote smart IP policies that protect creators while maintaining the dynamism of the Internet economy. While we had disagreed with some in the content industry over the approach taken in the Stop Online Piracy Act (SOPA), we continue to believe that we can reach a consensus on strategic and targeted ways to cut off funding to overseas "rogue" web sites. We also encourage content owners to aggressively offer licenses to legitimate music services that will compete effectively with unauthorized purveyors

Finally, to compete effectively, American audio companies need access to the best, brightest and most innovative workers in the world. We urge Congress to enact strategic immigration reform, removing barriers to highly-skilled workers and entrepreneurs, and ensure that immigrants receiving advanced degrees in US universities can stay in America to create jobs.

Innovation is driving our economy, and nowhere is this truer than the audio industry. Hardware manufacturers, online innovators, and artists are all taking advantage of extraordinary new business opportunities. As always during times of disruptive innovation, incumbent industries come to Congress and request special protections. We urge Congress to ignore these self-interested pleas, and continue to promote a vibrant and dynamic free-market economy that creates investment and jobs. We look forward to working with you in those efforts.

Thank you.

Mr. WALDEN. Now we are going to go into our question phase. We welcome everyone to take on these questions.

Mr. Allison, I know not all the details are out yet, but I would like to hear you elaborate on what you know of the Clear Channel/ Big Machine agreement from the artists' perspective. And are you supportive of it? Obviously some of the details aren't out, the concepts.

Mr. ALLISON. I think what is kind of interesting about it is that it seems to kind of open the door. I mean, here we have the biggest broadcaster conglomerate in America basically agreeing that performance rights should exist. So I think it kind of diminishes the argument that this right should not exist.

Mr. WALDEN. Mr. Sherman, could you tackle that same question, just from what you know?

Mr. SHERMAN. We are obviously delighted that the biggest radio group has acknowledged that something should be done and has actually gone and done something. I mean that is a breakthrough. We have been advocating for this for about 80 years. So obviously it is very important. But we need an industry-wide solution, not a label-by-label, piecemeal solution. And we don't know whether other radio groups will feel the same economic motivation to do a deal. So we need to come up with something broader.

Mr. WALDEN. Thank you. Mr. Newberry, would you like to commkent on this as well?

Mr. NEWBERRY. Mr. Chairman I don't know the specifics of the transaction. But I think what should be pointed out is—and I referenced this in my statement—is it is a free-market transaction. So to Mr. Allison's point, I don't believe that Clear Channel simply made a statement about performance rights as much as they entered a transaction and received something back in return for that. What did encourage me as much as anything was that it appeared to be a universal solution that addressed the digital expense that that company is incurring. So I think that that needs to be measured as part of the analysis of that transaction that occurred.

Mr. WALDEN. I appreciate that.

I would like to ask unanimous consent to enter into the record this February 2012 statement by the NAB saying the Association does not support an FM chip mandate. Without objection, so ordered.

[The information follows:]

FOR IMMEDIATE RELEASE **CONTACT**
February 3, 2012

NAB Statement on Voluntary Inclusion of FM Chips in Cellphones

WASHINGTON, D.C. -- In response to a letter from CEA, CTIA and musicFirst to members of the Congressional Black Caucus claiming that NAB is seeking a "mandate" of FM chips in cellphones, the following statement may be attributed to NAB Executive Vice President of Communications Dennis Wharton:

"It is disappointing that CEA, CTIA and musicFirst are falsely claiming that NAB is seeking a mandated radio chip in cellphones. We have said repeatedly to these organizations that NAB supports a market solution to this issue, and even CTIA admits as much in the attached fact sheet.

"By distorting our position, CEA, CTIA and musicFirst are doing a disservice to policymakers who deserve open and honest information.

"From a public safety perspective alone, voluntary introduction of radio chips in cellphones makes perfect sense. It would be our hope that when it comes to saving lives in times of emergency, our friends at CEA, CTIA and musicFirst would move beyond intimidation tactics and special interest politics and encourage a substantive debate on the merits of this issue."

About NAB
The National Association of Broadcasters is the premier advocacy association for America's broadcasters. NAB advances radio and television interests in legislative, regulatory and public affairs. Through advocacy, education and innovation, NAB enables broadcasters to best serve their communities, strengthen their businesses and seize new opportunities in the digital age. Learn more at www.nab.org.

Return to Top

Mr. WALDEN. Mr. Smulyan, your written statement also makes clear you are not seeking an FM chip mandate. If you are not looking for legislation, can you tell us what you are looking for?

Mr. SMULYAN. We are looking for an honest assessment evaluation. I take issue with Mr. Shapiro's statement we don't want to study this. We think it is an issue that needs to be studied. We are, as an industry, open to negotiations with the wireless industry. We are engaged in those now. We think the more people understand this issue, both from the wireless side and the consumer side and here in Congress and at the FCC, that they will understand that this is an idea whose time has come.

Mr. WALDEN. Mr. Shapiro mentioned that—we are talking about analog radio, I think, in your comment. But you also mentioned there is a newly developed HD digital chip?

Mr. SMULYAN. Right. We have actually developed an HD chip along with Intel and Ubiquity through the sponsorship of NAB, and we are now demonstrating that. We previewed it at the NAB convention. And not only does it provide HD and all the intended benefits, but it also provides a back channel for commerce, where consumers can hear an ad on the air, download a coupon, walk into a store. They can find out the location of events. They can find out the time of events, calendar. We think there are some remarkable benefits to this. The HD chip really does a lot more. There have been well over a billion analog phones sold with radios in them around the world. This is the next generation.

Mr. WALDEN. Mr. Newberry, there was a comment made about an unattended operation, a situation in North Dakota. Are you familiar with that one? And can you tell us your perspective from a broadcaster about what happened there?

Mr. NEWBERRY. I can. It is Minot, I believe, would be the pronunciation.

It is a situation that occurred that the station had provided a phone number to emergency personnel. And unfortunately the emergency services personnel there dialed the wrong number. So they were unable to reach the station personnel.

But many stations in rural America do operate unattended at night, Mr. Chairman. It is an economic reality and it is much like volunteer fire departments in rural America. Just because someone is not sitting at the fire department 24 hours a day does not mean that those firefighters are not willing to answer the call 24 hours a day when that emergency occurs.

But all of us have abilities, and I can go on online from here with my phone and I can broadcast live on my station from this location if I needed to.

Mr. WALDEN. And from my own experience, I know we were 24/7 and unattended. But we weren't the primary station. But we were set up so that the primary station, when it triggered, triggered all of our stations to do the alert. So we used to sign off at 11:00 at night, like a lot of stations did. So we wouldn't even be on the air. Now we are 24/7. I am out of business but——

Mr. NEWBERRY. If I can make a point. I think that is the dilemma that broadcasters face. We could sign our stations off the air at 10 at night and not have anyone there and not provide any service, or we can provide service 24 hours a day and have a very solid emergency plan to make sure that our station is responsive in those overnight hours.

Mr. WALDEN. Thank you very much. My time has expired. Now I will turn to the gentlelady from California, Ms. Eshoo.

Ms. ESHOO. Thank you, Mr. Chairman. And thank you to all of the witnesses. I think that we had an excellent array of testimony on several subjects.

I want to first go to Mr. Smulyan. But before I do, Mr. Chairman, I would like to ask unanimous consent that—I have two pieces to place in the record. One, an Annual Consumer Survey Data 2012, and the other, activity and data use in megabits, which I think are pertinent to our hearing.

Mr. WALDEN. Without objection.

[The information follows:]

Data Center

MyWireless.org 2012 Annual Consumer Survey Data

MyWireless.org reaches out to consumers annually to learn more about their satisfaction levels and opinions about wireless service. The 2012 edition of this bipartisan survey was conducted by McLaughlin & Associates and Penn Schoen Berland and reached 1,000 adult wireless users, all of whom are likely voters. See more about the survey methodology here.

Key Findings

- Wireless phone consumers remain highly satisfied.
- Wireless consumers believe adding regulations would either make their service worse or make no difference.
- Wireless consumers are very price sensitive – they oppose adding new wireless taxes and fees and believe adding new regulations would make their wireless service more expensive.
- Wireless consumers believe current competition among wireless carriers provides them with enough choices so they can pick the wireless device, plan, options and content that best fits their needs.

Survey Structure

The survey is divided into 9 sections. Jump to a section or explore the whole survey.

- Consumer Lifestyle
- Consumer Satisfaction
- Government Regulations
- Applications
- Digital Downloads
- Parental Controls
- Taxes & Fees
- Account & Consumer Tools
- Recycling

Consumer Lifestyle Back to Top

For you personally, what is the most important reason for having a cell phone?

Reason	2011	2012
Emergency	28	29
Stay in Touch	12	7
Convenience	10	9
Talk to Family	9	11
For Business	8	8
Talk / Check on Kids	5	5
Quick Communication	4	11
Safety	4	4
Roadside Emergency	3	–
Portable / Always with Me	2	–
Stay in Touch	–	7
Travel Usage	–	3
Reach Me Anytime	–	2

Other than making or receiving voice calls, which one of the following cell phone features is most important to you?

Reason	Total	18-29	30-40	41-55	56-65	Over 65
Texting	37	44	62	44	34	13
Internet Access	11	20	12	13	10	10
Email	8	9	8	8	7	6

Taking Pictures	5	6	2	4	6	8
GPS Navigation	3	7	1	3	4	3
Applications	2	2	4	2	0	1
Videos	1	0	0	2	2	1
Music	1	2	0	1	0.4	2
Games	0.4	0	1	0.3	0.4	1
FM Radio Chip Set	0	0	0	0	0	0
Other	1	0	2	2	0.4	3
Don't Know	31	11	9	21	37	54

Regarding your cell phone service, which one of the following is the most important to you?

	10/07	3/08	3/09	3/10	3/11	3/12
Better value for your service	39	48	51	55	48	43
Improving cell phone coverage and quality	31	37	34	29	36	25
Ensuring consumer privacy and security	–	–	–	–	–	14
Educating parents about age appropriate content for minors	–	–	–	–	–	6
Cell phone features like access to the Internet and apps	–	–	–	–	–	5
Improving cell phone speed	–	–	–	–	–	2
Eliminating "early termination fees" for customers who cancel their contract early	17	–	–	–	–	–
Adding more consumer protections	6	9	7	10	5	–
Access to all of the "apps" you want	–	–	–	–	3	–
Cell phone features like Internet access	–	–	4	2	3	–
Providing longer trial periods for customers signing up for service	2	–	–	–	–	–
Providing more detailed advertising disclosures	–	–	–	–	–	–
Other	1	1	0	1	1	0
Don't Know	5	5	5	4	6	4

Please tell me whether you agree or disagree with the following statement. "Wireless companies keep offering customers more choices, more innovation and more services, so you have the freedom to do just about anything with your phone."

	3/10	3/11	3/12
Agree	84	85	85
Disagree	11	9	11

If you had to choose one, which one of the following is the most important for you to have?

	Total	White	Afr-Am	Hisp	18-30	29-40	41-55	56-65	Over 65	Men	Women
Cell/Smart Phone	38	37	39	43	62	48	41	29	34	37	39
Home Landline Phone	21	21	19	17	9	12	16	25	31	19	23
Broadband Internet	20	20	13	21	18	23	25	20	11	21	18
Cable/Satellite TV	18	18	28	14	6	15	17	23	20	19	18

Activity	Data use in Megabytes (MB)
Streaming low quality music (64 kbps / 1 hour)	28.8
Streaming high quality music (192 kbps / 1 hour)	86.4
Low quality video (1 hour)	200
High definition video (1 hour)	400
Upload / download a 5 megapixel photo (JPEG)	1.5
Upload / download a 1080p video (1 hour)	2,000
Upload / download a 720p video (1 hour)	1,000
Download an average 400 page ebook	0.77
Video call (1 hour)	75
Typical email, text only	0.01
Install Angry Birds on Android	19
Install Need for Speed Shift on iPhone	179
Download a 42 minute album from iTunes	85
Note: 1,000 MB = 1 GB	
Mobile broadband usage by activity	

Source: Gigom, Jul. 8, 2011

http://gigaom.com/mobile/so-what-is-a-gigabyte-for-mobile-users-anyway/

Ms. ESHOO. Now, Mr. Smulyan, you have been very clear that the broadcasters are not seeking to mandate radio chips in mobile devices.

Mr. SMULYAN. Right.

Ms. ESHOO. But you have also raised the issue that in the European market, what you would like to see in the American market is flourishing, but you are essentially blocked by the wireless industry. Now I think that consumers have a lot to do with this, most frankly. And one of the pieces that I just asked to be placed in the record is really instructive. And I would like to hear your reaction to it.

This is the 2012 edition of a bipartisan survey that was conducted by McLaughlin and Associates and the Penn Schoen Berland of 1,000 adults. And what it asks of the people that were contacted, other than making or receiving voice calls, which one of the following cell phone features is most important to you? And there is a long list: texting, Internet access, email, a whole long list. And it goes across all age groups, from 18 to over 65.

Now of the some 12 or 14 choices, FM radio chip set, you know what, it is zero across the board. So how do you square that off with your testimony? You make it sound like there is something that you know tens of millions of people are clamoring for. And yet consumers across the board in this are saying, nyet.

Mr. SMULYAN. It is interesting you say "nyet" because you have a free market, probably, in the Soviet Union for this issue. We don't have one here.

In the rest of the world——

Mr. SHAPIRO. No. But you used the word "the free market." This is consumers saying that they have no interest in it. You don't want a mandate. Consumers are not interested. Now I think that if you can get people to put this in the sets and people can make up their minds, I don't have any problem with that. And I am glad you don't want it mandated. But I do think it is interesting that consumers across the board—from the ages of 18 to 29, 30 to 40, 41 to 55, 56 to 65 and over 65, of all these categories—are not interested in it. It is zero.

Mr. SMULYAN. Interestingly enough, in this country consumers aren't aware of this issue. It has become ubiquitous in the rest of the world. If you go into a phone store in London——

Ms. ESHOO. Let me ask CTIA or the wireless people or Mr. Guttman-McCabe, do you block this? Are you not allowing access to this?

Mr. GUTTMAN-MCCABE. No, Ranking Member. And I think that is the point I tried to make in my original testimony. There is almost a sense here that these devices don't exist. And we had an intern yesterday spend 25 minutes and found 59 devices. And then we sent him out at lunchtime to go to Best Buy. He picked up the Best Buy catalog, which we use a lot. There are 26 devices in the center pull-out section of the Best Buy catalog. That is a third of the devices in that section that are FM chip-enabled. But what we are hearing from our manufacturers is the point that you made earlier which is, we are not seeing consumer demand for it. And yet it is right here in the center of Best Buy. It is not not available.

Ms. ESHOO. Sure. I understand that there are 40 phone models on the market today with the chip. So there is a discrepancy here. But it seems to me, long-short, that there is not consumer demand for it. That is my take on it.

Mr. GUTTMAN-MCCABE. We have a survey——

Ms. ESHOO. I just have 6 seconds left.

I would like to thank Mr. Westergren for what you have done. It is inspiring. What is the kind of royalty regime you are advocating for?

Mr. WESTERGREN. We are advocating for a technology-neutral regime, so give us all the same starting point, the same language, the same criteria, and let the chips fall where they may. We are not coming to you asking you for a specific rate——

Ms. ESHOO. Good expression.

Mr. WESTERGREN. Forgive me for that. I didn't mean to do that. Just something technology-neutral.

Ms. ESHOO. Thank you. Thank you, Mr. Chairman.

Mr. WALDEN. I now recognize the gentleman from Illinois, Mr. Shimkus, for 5 minutes.

Mr. SHIMKUS. Thank you, Mr. Chairman. I will go into this round of questions with a lot of trepidation because they are all my friends and it is a great panel. But obviously there are struggles. And many of you know who have come to the committee numerous times, that I am a late adopter of technology. I still have teenage sons so they push me to see what really the consumer—that is who is driving this—the youth, it moves fast, it moves quick. You can't control it.

But one thing that was raised, just an observation of the youth of our society right now is that I think this hearing thing is an important thing because they walk around now with headphones on all the time, whether they are gaming or whether they are listening, streaming, maybe Pandora, but then there it is Bluetooth over a headset device. I mean, I don't know how we can really get a handle on that.

But I deal with a lot of Korean vets and World War II vets who didn't have ear plugs in when the artillery cannons fired. And hearing loss is a struggle for a lot of our society. So I don't know, I just will put that on the record as something that—I see my son and I try to listen to make sure that it is not overly burdensome.

I am going to tactfully steer away from some issues. And you know how tactful I am.

In my local community—not in my district but next door—they have Art on the Square and there was a story—and it has been very successful in the last couple of years. One of the stories was how, from an iPhone, you could debit your payment with an app and a little connection device. And I have seen it happen a couple of times, too. Credit card readers. Thank you. Pretty good technology, wouldn't you say, Mr. Shapiro?

Mr. SHAPIRO. It is terrific. It is a dongle, yes.

Mr. SHIMKUS. How did that evolve?

Mr. SHAPIRO. It evolved because innovators saw an opportunity. They solved a problem. I mean Apple does a great job in their stores of getting you in and out of there without going to a cash register, and their store is always full. There is a vibrant marketplace obviously for innovation in our country. And we lead the word in it and that should be our strategy. So every policy you look at, I suggest that you focus on will it be good or bad for innovation?

As I think was Congresswoman Eshoo said so eloquently, technology mandates choke off innovation. That is just a fact and that is just what we have to be cautious about.

Mr. SHIMKUS. I was called yesterday by a reporter—and Anna would appreciate this—from The Dallas Morning News who is following CMAS and digital texting of warning alerts based upon legislation that passed in about 2006, the WARN Act.

So to Mr. Guttman-McCabe right there, if I am emailing or surfing the Internet on my smartphone, would I still receive a CMAS alert?

Mr. GUTTMAN-MCCABE. Yes, sir. You will get a distinctive tone. It will alert you to it and it will pop up on your device. You do not have to do anything proactive. It is not an opt-in service. It is a service that will come to you. And by legislation, you will get the three classes of alerts. You can later decide not to receive two of the three. But you will proactively, without any effort on your behalf, receive those alerts.

Mr. SHIMKUS. Which is a really good application. I was trying to remember when the heck we did that piece of legislation. And I try to remember. And I always fall back to my days in the Army, up a tree on west German soil when we were worried. The information we needed to have was which direction do we need to go in case there is an emergency and a disaster. And that texting ability is critical.

Mr. Westergren, you may not want to answer this question because it is top secret information. I am a Pandora user when I run. Seventies era. I am interested in how many people opt out or—what percentage of people eventually go back and say, I don't want these advertisements? I want to pay the $3 a month for uninterrupted? How many?

Mr. WESTERGREN. It is a very, very low, single-digit percentage that subscribe.

Mr. SHIMKUS. So most people will put up with the ads or two, every three to five songs?

Mr. WESTERGREN. The vast majority, yes.

Mr. SHIMKUS. I successfully treaded this without causing too much damage. I yield back my time.

Mr. WALDEN. We will make note of that in the record as a first-time occurrence.

I will now turn to Mr. Doyle for 5 minutes.

Mr. DOYLE. Thank you, Mr. Chairman.

Mr. Newberry, I know there has been a lot of talk today about royalties and other issues. But I was looking at your written testimony. And about a third of it was devoted to FCC implementation of low-power FM and regarding power levels and second adjacent waivers. And I would just like to ask you a few questions for the record.

You agree that the FCC regulates operating hours for radio stations, right?

Mr. NEWBERRY. That they regulate operating hours?

Mr. DOYLE. Does the FCC regulate operating hours for radio stations?

Mr. NEWBERRY. Yes, sir.

Mr. DOYLE. And does it regulate what kind of antenna stations can use?

Mr. NEWBERRY. Not what model. It does set a technical requirement for the station but it does not specify model.

Mr. DOYLE. And it regulates for underwriting and advertising?

Mr. NEWBERRY. For public stations, yes.

Mr. DOYLE. Are any of these issues addressed in the Local Community Radio Act?

Mr. NEWBERRY. There are power requirements that are addressed in there. There are specifications in terms of what the restrictions on the power for the low-power stations would be. I haven't read that act in detail for some period of time.

Mr. DOYLE. Right. I will help you out there since I wrote it. So it is not in there?

Mr. NEWBERRY. No.

Mr. DOYLE. Thanks.

Now, you mention in your written testimony, you think the FCC should not allow LPFM stations to increase their power levels from 100 watts to 250 watts because power levels are not mentioned in the Local Community Radio Act. The Local Community Radio Act was written to address the issuing of insuring licenses for LPFM. There are lots of other issues related to LPFM that are not discussed in the bill, like power levels, but also operating hours, antennas, programming, and everything else the FCC has the authority to determine.

I just want to make the argument for you that 250 watt service is still a very localized service compared to 50,000 and 100,000 watt full-power stations. So in fact, translator stations routinely operate at 250 watts at greater tower heights than LPFM without any problems. So I guess my question is, as long as LPFMs are still required to operate under the same very strict interference protections required by the Local Community Radio Act, what difference would it make if LPFMs run at a higher power level as long as they don't interfere with neighboring stations?

Mr. NEWBERRY. Mr. Doyle, that would be comparable to if I have a radio station that has 25,000 watts of power, but it wouldn't interfere with someone, so I could arbitrarily increase that power to whatever level I could reach my contours without causing interference. That is not the way the system has been devised. That is not the way the system has operated. There are classes of stations. You have maximum power within each of those classes of stations. And that is how the FCC has operated for years. It is not get as much space or coverage as I can; it is operate a particular class.

Mr. DOYLE. Sure. But you acknowledge translators run at 250 watts and there are not interference problems.

Mr. NEWBERRY. Yes, sir. It is a different class of station.

Mr. DOYLE. Yes, I understand. But I am just saying that since we already know that translators run at that wattage without causing interference problems, it wouldn't be an interference issue. I mean, if the issue is interference, do you think that somehow a low-power FM station operating at 250 watts would cause interference that a translator wouldn't?

Mr. NEWBERRY. Well, I think the issue is what the intent of the act of 2010 was that the NAB did go on record supporting and we advocated for. And that was these were to be microstations that cover particular neighborhoods, 100 watt stations at 100 feet. And that was the class of station that was authorized by that act. And that would be NAB's position, just asking that the spirit of that legislation be continued.

Mr. DOYLE. Thank you. And let me ask you about the second adjacent frequency waivers, too. The act says that the FCC may only grant an LPFM station a second adjacent waiver if that station—and I will quote the act—"will not result in interference to any authorized radio service."

So a second adjacent frequency waiver cannot be granted to an LPFM station that might cause interference to any radio station no matter how far away, even outside that station's protective listening range. And if interference somehow happens anyway, the LPFM must suspend operations immediately. This is a much stronger standard than full-power stations have to abide by.

So what I want to ask, in your written testimony, you propose that a full-power station should be able to review the second adjacent waiver application of an LPFM station. This is on top of the already exhaustive interprotections that are enacted by the Local Community Radio Act. I am just curious why you find it necessary to have that extra layer of scrutiny.

Mr. NEWBERRY. It goes back to the principle of the concerns of the degradation of the quality of the audio band. You can look at what happened to the AM band in this country and see why the NAB was so protective of the second adjacent channels. The third adjacent does provide enough separation between the stations that it avoids an unintended consequence of interference. The second adjacent does cause more interference; that is a fact of physics.

Mr. DOYLE. But you acknowledge the act requires them to shut down immediately if that is the case.

Mr. NEWBERRY. Right. But what we are asking is that broadcasters have the opportunity to be proactive and avoid that problem so that our listeners are not—that the listeners are not interfered with their habits of listening to our station.

Mr. DOYLE. But our experience has been that translators, which are higher than 100 watts, that only about 5 percent of translators have had to move or go off the air as a result of this kind of scenario that you are describing. So I am just curious; since it doesn't seem to be a big problem and we have not had any issues with it, or very few issues with it, why you see the need for the extra layer of scrutiny. I see my time has run out.

Mr. WALDEN. I will let you respond.

Mr. NEWBERRY. I would respond again by saying a different class of stations with different license intentions through the act of 2010.

Mr. DOYLE. Thank you, Mr. Chairman.

Mr. WALDEN. Thank you, Mr. Doyle.

I will now turn to the gentlelady from California, Mrs. Bono Mack, for 5 minutes of questions.

Mrs. BONO MACK. Thank you, Mr. Chairman. And thank you for this exciting, interesting hearing. It is great to have all of you here. We appreciate very much your testimony.

I am just going to start by saying how important the delivery of music has become. But I am a firm believer that Shimkus started with dating ourselves. I will continue on in that vein. Way back when, when you used to buy a car, we actually used to look under the hoods and see what was under the hood of a car, what kind of engine it had. Nobody cares any longer. But we care what is in the dash. And that is the most important thing, whether it is Pandora or whatever it is. We are now buying two things, the gadgetry and the cupholders, I am convinced.

My first question is to Mr. Israelite and then to Mr. Sherman and to Mr. Allison. Is there a lot of discussion with broadening the definition of a sync right?

Mr. ISRAELITE. The synchronization right, where you marry the music with video, is growing in importance for a lot of reasons; obviously, things like professionally produced music videos are becoming more popular. They are making income now. YouTube user-generated content postings. So it is becoming a very much more important income stream for songwriters.

The good news is that it is in a free market. Our rights are not governed by consent decrees or compulsory licenses, so we get to negotiate the value of that which is a valuable thing. And in many instances the songwriter gets 50 percent of the revenue with the record label and artist when we are both in a free market, which is a wonderful thing for songwriters.

The challenge is we are not built for licensing. So one of the things that we have been discussing among some of the interested parties is how we can set up a system that doesn't change the free-market nature of licensing synchronizations but can make it more efficient so that when you need a mass amount of synchronization that there is a way to license it. And we had a pretty big ground-breaking deal with YouTube that NMPA entered into, which I think can be a model for how to do this in the future.

Mrs. BONO MACK. Thank you. Mr. Sherman.

Mr. SHERMAN. I agree with what David has said. And there are uses of sync now that are well beyond anything at the level historically. For example, it is very common now to release music videos as part of an album. So we need more of an ability to license that stuff easily than the current system allows. So we have been having conversations to figure out how to do that. There is a lot of resistance to doing it under existing copyright law at section 115, but we are trying to find alternatives.

Mrs. BONO MACK. Would either one of you care to clarify the difference between a YouTube version of Lady Gaga performing—for example, one of her songs, and then I just pulled it up on YouTube, now there are various fans with, what, 50 million views of a song—is there a difference, whether it is Lady Gaga herself or if it is a fan performing that song and how the two would be treated?

Mr. ISRAELITE. Yes. Actually there is quite a big difference. Right now when a record label releases a professionally produced music video, it will license to YouTube or through Vivo the entirety of the licensing so that all of the money that gets paid goes to the record label and the record label then is responsible for licensing and paying the songwriters. Sometimes that is happening. Sometimes it is not. And we are going to address that.

When a user posts a video that includes that music or, for example, does a cover song, then the person posting it is supposed to have the responsibility of getting that licensing. And one of the things we are trying to work out with YouTube is that for advertising that is now placed on those videos, YouTube is now actually paying directly the music publisher and songwriter for the use of that composition. So that is a tremendous step forward from where we were a few years ago when that music was being used and the songwriter wasn't seeing any income from the use. So music videos are still a challenge for us, professional ones. User-generated, we have actually made more progress on with this type of groundbreaking deal with YouTube.

Mrs. BONO MACK. Do you want to add anything?

Mr. SHERMAN. That is right.

Mrs. BONO MACK. Thank you.

Mr. Allison, you are leaving tomorrow for Bonnaroo. So that is very exciting. I don't know if you got the opportunity to play Coachella but I hope you will be at the Coachella festival next year. Can you speak a little bit about the importance of touring in relation to all of this?

Mr. ALLISON. Sure. I mean, touring is a major part of my income. It is at least half. And I would say it is the reason why I do what I do. I just want to perform. I just want to play the bass. That is my goal in life. And touring, I derive a certain percentage of my income from touring.

I guess the big problem in terms of the performing rights part of the equation is that where I will have income from touring and I will have income as a songwriter, I don't get income—a royalty stream, that is—as a performer. And I work in a kind of a field where as a musician, it is very collaborative when we make recordings. We are working together. And we are getting of each other. When we are in the studio, people come up with great ideas and they throw them out there.

We were talking before about the great bassist Carol Kaye, and she would contribute a great bass line to a pop tune.

Mrs. BONO MACK. I know one in particular.

Mr. ALLISON. Yes. And may go unrecognized. I guess you could say I have two jobs. I am a songwriter, for which I receive royalties. But I am also a performer, for which I do not receive royalties. And I am talking about terrestrial radio here. And usually if you have two jobs you get two paychecks. In this case, I don't.

Mrs. BONO MACK. Mr. Chairman, my time has expired. Thank you very much.

Mr. WALDEN. Thank you. I was going to say we were going to play your music, but we don't have a copyright agreement.

I will turn now to the former chairman, Mr. Waxman, for 5 minutes.

Mr. WAXMAN. Thank you, Mr. Chairman.

Mr. Shapiro, you mentioned in your testimony that advancements in audio technology have brought about more immersive, enriching experiences for listeners. Some of these technologies are relatively bandwidth-intensive. Are you concerned that data caps could potentially undercut these types of consumer experiences?

Mr. SHAPIRO. Well, clearly these use more data. But generally, audio uses a lot less data than video. I think the consumers really understand what they buy and there will be transparency by the providers, and also that we have enough spectrum so that we can do this both wirelessly—well, wirelessly. I think wired is less of an issue now. We do have pretty good broadband deployment and there is increasing competition. But wireless definitely needs more spectrum because we are facing a spectrum cliff.

I so much appreciate what was done by Congress and signed by the President recently in terms of private broadcast incentive auctions. But that will not be enough. And I think that should be our focus: How do we plan 5, 10 years out for this spectrum explosion? Because let's be honest, it is just not about audio and new services and audio. It is about so many things which the U.S. is leading on.

Mr. WAXMAN. Do you think the data caps could potentially undercut these?

Mr. SHAPIRO. I think the broadband providers have certain rights to offer their product and the best thing we can do from a matter of public policy is to ensure vigorous competition. And the consumers understand what they are buying and it is disclosed very clearly.

Mr. WAXMAN. Mr. Allison, you mention in your testimony that the Recording Academy has been very active on the issue of sound quality which would require increased bandwidth for higher resolution streaming and downloads. Could you share with us your perspective on data caps and how that might affect your efforts in raising the levels of sound quality?

Mr. ALLISON. I have no strong informed opinion on that. That is above my pay grade in terms of data caps. But I can say as a musician, sound quality is essential. I think art is an immersive experience. And I come up in the era of vinyl records. Still have them, still listen to them. And now we are recording very high-resolution formats, 24 bit at the minimum, which sound incredible. And I think that having high-quality audio available has a lot to do with how people experience art.

Mr. WAXMAN. Well, we hear a lot about the technology changing the business model for distributing music, but technology is also changing the business model for the artist in other ways. Have these new technologies and the Internet changed how you and other artists create, record, and promote your music?

Mr. ALLISON. Well, certainly the recording side has changed a lot as technologies emerge. My first few records were recorded on 2-inch analog tape which sounds great. The last eight were recorded directly into a computer. So technology certainly has changed. Also, of course, as a small businessman—that is what I am, I am out there kind of hawking my wears, trying to get people interested in my music—I use social media quite a bit to try to get the word out. I think that has definitely transformed how musicians connect with their audience and hope to build their audience.

Mr. WAXMAN. Mr. Westergren, you note that for many of the artists featured through your service, Pandora is the only air play that they have ever received. Why do you think these independent artists have such a hard time getting their work on traditional radio? Have you seen changes in the traditional radio industry's willingness to feature new or independent content in the last 15 years?

Mr. WESTERGREN. I think it is a fundamental feature of broadcast. I have been a fan of broadcast radio all my life. I have listened to it, growing up with it. They can only play a single play list at a time, as opposed to the Web where you can stream literally millions of simultaneous completely different radio stations. So it just has a natural, innate ability to be much more inclusive.

And if I may, to Mr. Allison's comment, for touring, Pandora has the ability to alert listeners to local lesser-known musicians when they are playing. We have email addresses and zip codes upon registration. We have actually been experimenting with filling clubs in small cities around the U.S. by inviting people based on musical preference.

Mr. WAXMAN. So based on the preference that they have expressed to you, you can inform them of a concert.

Mr. WESTERGREN. That is right. We hope to build a musician's middle class, like I said.

Mr. WAXMAN. Well, I appreciate the comments that all the witnesses have given and I think that this has been a very important and worthwhile hearing. Thank you, Mr. Chairman.

Mr. WALDEN. Thank you, Mr. Waxman. I appreciate that.

Now we go to Mrs. Blackburn from Tennessee for 5 minutes.

Mrs. BLACKBURN. Thank you. Mr. Allison, I hope you enjoy Bonnaroo.

Mr. ALLISON. I know I will.

Mrs. BLACKBURN. It is a great Tennessee happening. Never been. I hear it is a great happening out there.

Mr. Chairman, I would like to submit for the record some testimony from a musician named David Lowery.

Mr. WALDEN. Without objection.

[The information follows:]

June 6, 2012

Members of the Subcommittee on Communications and Technology:

Please find attached the presentation-turned-blog piece I authored that weighs the pros and cons of the old record label system versus the new digital distribution models, from the perspective of an artist and veteran of the music industry.

By way of background, I am a mathematician turned musician. After earning a degree in mathematics, I enjoyed success as a professional singer/songwriter with the bands Cracker, and Camper Van Beethoven. I have a gold and a platinum album, and eight top ten Modern Rock/Rock/AAA tracks. When I talk about the "Old Boss" (the record labels), I know of what I speak: I have been on a major recording label, I have been an independent artist, and I have even run my own label. I have also been an early-adopter of technology, and a technology entrepreneur, becoming involved with the start-up that evolved into Groupon. When I talk about the "New Boss" (the Silicon Valley crowd), I also know what I'm talking about, I can out-Geek just about anyone.

I recognize that this is an unconventional presentation of these issues, but I hope that you will find the attached an informative, and perhaps even entertaining, consideration of the current state of audio as you consider the future. Music – like all art – is meant to be enjoyed, but the quality and value of art should never be sacrificed for convenience.

Sincerely,

David Lowery

Contact information for Mr. Lowery is available via the Copyright Alliance; please contact Amanda Reynolds (areynolds@copyrightalliance.org; 202-540-2243) for more information.

Meet The New Boss, Worse Than The Old Boss?

By David Lowery (Copyright in the author, used by permission)

I was like all of you. I believed in the promise of the Internet to liberate, empower and even enrich artists. I still do but I'm less sure of it than I once was. I wrote this because I want to start a dialogue. I feel that what we artists were promised has not really panned out. Yes in many ways we have more freedom. Artistically this is certainly true. But the music business never transformed into the vibrant marketplace where small stakeholders could compete with multinational conglomerates on an even playing field.

In the last few years it's become apparent the music business, which was once dominated by six large and powerful music conglomerates, MTV, Clear Channel and a handful of other companies, is now dominated by a smaller set of larger, even more powerful, tech conglomerates. And their hold on the business seems to be getting stronger.

On one hand it doesn't bother me because the "new boss" doesn't really tell me what kind of songs to write or who should mix my record. But on the other hand I'm a little disturbed at how dependent I am on these tech behemoths to pursue my craft. In fact it is nigh impossible for me to pursue my craft without enriching Apple, Amazon, Facebook and Google. Further, the new boss through its surrogates like Electronic Frontier Foundation seems to be waging a cynical PR campaign that equates the unauthorized use of other people's property (artist's songs) with freedom. I say cynical because when it comes to *their* intellectual property, software patents for instance, these same companies fight tooth and nail.

Meet the new boss, he wants to collectivize our songs!

The other problem? I've been expecting for years now to see aggregate revenue flowing to artist increase. Disintermediation promised us this. It hasn't happened. Everywhere I look artists seem to be working more for less money. And every time I come across aggregate data that is positive it turns out to have a black cloud inside. Example: Touring revenues have been up since 1999. Why is that? Because more bands are touring, staying on the road longer and playing for fewer people. Surely you all can see Malthusian trajectory?

My company is faster than your company.

Musicians are constantly derided by the Digerati. It's usually after someone like myself suggests that if other people are profiting from distributing an artist's work (Kim Dotcom, Mediafire, Megavideo, Mp3tunes,) they should share some of their proceeds with the artists. At this point the Digerati then proceed to call us "dinosaurs," "know nothings" or worse. Suddenly your Facebook page is filled with angry comments from their followers .

The most virulent of these folks are almost always unsuccessful musicians. It fascinates me. I can only surmise that part of their anger seems tied to the hatred of the record companies that rejected them. Successful (even marginally successful) musicians are often viewed as some kind of traitors. A special kind of hatred is reserved for these apostates. The file sharing/ cyber locker industry has figured this out and purposely stokes them with a faux populism. I would say it's juvenile but it's really more medieval. That's why I call them *Freehadists*. People like me are actually looking out for these young musician's rights. I am trying to keep the new boss from taking advantage of them.

Despite the tech lobby's portrayal of musician as luddites or doddering old hippies, musicians-- especially independent musicians – are often the early adopters of technology. We are always a couple years ahead of the "straight" business world when it comes to technology. As an example, we perfected "social marketing" before it even had a name. We were outsourcing and insourcing services for our highly flexible virtual companies when Windows 3.0 was state of the art.

When it comes to the web, we not only understand the consumer side of the Internet, we understand the producer/supplier side as well. And like any producer or supplier we want to be compensated. The reason the Digerati are so fixated on "what the consumer wants" is simply because most of them have only experienced the web as consumers.

"The consumer wants music to be free," they shout as they pound their tiny fists on their Skovby tables.

The consumer also wants cars to be free. And beer. Especially beer. But any market involves a buyer and a seller. A consumer and a producer. If GM can't afford to give away their product for free, it isn't gonna happen. No matter what the consumer wants.

Often overlooked by Digerati is the glaringly obvious fact that musicians and bands have long been a part of the new economy. We've been a web-enabled business since 1992. We've been a web-based business since Napster. Virtually every interaction that an artist and a fan have is web based. Even live concerts are web-enabled. The artist and the fan communicate about the upcoming concert through Twitter, Facebook events or traditional email. Recording has long been web enabled. We might all get together in the same spot to record basic tracks, but oftentimes overdubs and even mixing happens remotely, exchanging files and notes via the web.

So please forgive us if we roll our eyes at the Digerati who tell us we need to "embrace the web", "work the new digital ecosystem" or come up with a "new model". It's a little like your great aunt seeing you at thanksgiving dinner and telling you something like: "you should make some T-shirts for your band and sell them on tour."

You politely smile and try not to roll your eyes.

Actually, that's the number one "new model" that the Digerati suggest. Sell T-shirts at your shows to make money! This despite the fact it's not new. Bands have been selling t-shirts at live shows since the early 1970s. Recording albums to sell a few t-shirts is a terrible way to make money. Thanks for the advice, but no thanks. Plus t-shirts are just as bootlegable as music.

"Information wants to be free. Information also wants to be expensive"-Stewart Brand

Everyone knows there a second half to his quote, right? I ask because I usually only see the first sentence bandied about in technology circles.

Sound recordings are information. Sound recordings are not cheap to make. The technology is not the expensive part of making songs and sound recordings. It hasn't been since the late 1980s. Many in the tech community blindly assume that recording budgets have gone down because the technology is less expensive and provides greater productivity. With absolutely no facts to back up their argument I often hear:

"Well artists are making less money but recording costs are lower, so the artists are doing okay".

In other words, technology has lowered your revenues in the form of unlicensed file-sharing on an industrial scale but that's okay because Digidesign (the makers of Pro-Tools™) has given back some cost savings. As if Kim Dotcom and Digidesign share the same bank account. These people believe in technology like it is a religion: the lord Technology Industry taketh, and The Lord Technology Industry giveth back.

The data I have from recording studios says something different. Recording budgets are lower because artists spend dramatically less time recording. They just don't have the money.

Recording budgets didn't start shrinking until after the advent of file-sharing, circa 2002, while most of the improvements in technology and gains in productivity occurred in the early 1990s. By 1996 the home studio/pro studio production chain was firmly in place, with pro studios used for tracking and mixing, and home or project studios used for overdubs and editing. If lower recording budgets were caused by improvements in technology, they should have started shrinking 10 years earlier.

Sound recordings are very labor intensive. If you want to make good ones you are relying on highly skilled labor. The cost of sound recordings is largely dependent on labor costs. Technological advances have little effect on recording cost.

This is the main problem with the technologists' contention that recordings should be free. They seem to think that the only people who work on recordings are the touring performers themselves. Artists still have to pay for that highly skilled labor.

Is the mix engineer going to follow us around on tour hawking his T-shirts to the audience?

Freemiumnistas Of The World Unite!

I'm what you might call a "Freemiumnista." I was a Freemiumnista before there was an Internet. I understand that not all interactions between fans and artists should be monetized. I get that you can give away something and make more money in the long run. Virtually every live show we've ever played is available for free on archive.org. Even before the internet we've encouraged and organized tape trees and later CD burn trees for distributing our live shows and we spend a lot of time trying to get people to buy our studio albums as well.

Unlike a lot of the Digerati I have walked the walk. I still do.

I've embraced many of the things that those on the tech side of the music business want musicians to embrace. But what many of you forget is that it is my choice whether I choose to give away my songs or sell them. It is my choice how and where to distribute my songs. It is my choice to decide which websites get to exploit my songs. Like it or not, the right to control one's intellectual property (like songs) is a constitutional right. It is also part of every international human rights agreement. Technology company-funded blogs that think there should be no song copyrights are actually advocating violating my constitutional and human rights.

Many in the digital music industry rightfully condemn the past exploitation of artists by record labels. But at the same time they seem to be doing the same thing. Trying to bully artists into giving up their rights so that companies like MegaUpload or YouTube can make money is the same thing.

With exploitative record contracts the Old Boss tried to take your songs a dozen at a time and pay you pennies. The New Boss wants to take ALL of your songs, --past, present and future -- and pay you nothing.

I'll make technologists a deal; I'll give up my song copyrights if you give up your software patents. Software patents are even less unique than your typical song. Talk the Talk. Walk the Walk.

Nonsense Hippy Capitalism.

When Napster and P2P came along, honestly I wasn't pleased. At best, I was ambivalent. I thought that we'd lose sales to large scale sharing, but that through more efficient distribution systems and disintermediation we artists would net more. So, like many other artists, I embraced the new paradigm and waited for the flow of revenue to the artists to increase. It never did. In fact everywhere I look the trend seemed to be negative. Less money for touring. Less money for recording. Less money for promotion and publicity. The old days of the evil record labels started to seem less bad; they started to seem downright rosy.

This presentation grew out of this bit of hyperbole: Was the old record label system better?

Under the old label system, it didn't seem like the artists were literally starving and living in their vans like they are now. Even the independent bands seemed able to stay in a hotel every once in a while and being a "Freegan" was a lifestyle choice, not a necessity.

Sadly, I think the answer turns out to be yes and things are worse now for musicians than they were under the old label system. This was not really what I was expecting and I'd be very happy to be proved wrong. It is hard for me to sing the praises of the major labels (I've been in legal disputes with two of the three remaining major labels) but sadly, I think I'm right. And the reason is quite unexpected. It's seems the Bad Old Major Record Labels "accidentally" shared too much revenue and capital through their system of advances. Also the labels "accidentally" assumed most of the risk. This is contrasted with the new digital distribution system where some of the biggest players assume almost no risk and share zero capital.

I've Got a Great View, and the View Isn't So Great.

To be clear, when I'm talking about how things are now, I'm not talking about my band or my friends' bands. I've owned a studio complex for 18 years. We've recorded everything from hobbyists to Lamb of God. High school punk rockers to octogenarian blues singers. My wife is a concert promoter of some note. She probably books over 300 artists a year. We share an office, and from where I write this, I feel like I have a comprehensive view of the music scene in the Southeastern US, if not the entire United States. We live in a city that has one of the highest concentrations of musicians outside of Nashville and Austin.

I generally know what artists are grossing, and I also have a pretty good idea of what they are netting. If a four piece band shows up at the 40 Watt Club with two crew members, a beat up old van and they sell 200 tickets they are probably making about $150 a day, each. If a band shows up at my wife's Atlanta theatre with two buses, a truck, 10 crew members and an eight piece band? Well I can tell you they need to sell it out or they (or the promoter) are losing money. Likewise, having detailed knowledge of different artists' recording budgets and schedules through my studios tells me a lot about how much these artists are expecting to make from sales and touring.

Artists have seen their most important assets collectivized by file-sharing. They no long control the distribution and exploitation of these assets. If this were happening to practically any other group of Americans there would be mass outrage and civil unrest. Other than Ted Nugent and John Popper most musicians are not heavily armed. Hence the lack of armed standoffs.

Without the ability to effectively and fairly exploit their sound recordings the vast middle and lower class, the 99 percent of the music business has been impoverished.

The Big Picture

64% decline in recorded music revenues since advent of file sharing. 47% decline since 1973.

More artists touring, playing more shows, but for less people.

Revenue from streaming for most artists is too low.* 200 record labels have pulled catalogs from Spotify.

Recording budgets, studio rates and length of recording sessions are dramatically lower since advent of file sharing.

Unscientific polling of bands at 40 Watt Club: Did you sell enough copies of your last album to pay for recording? 100 percent answered "No."

Anecdotal evidence from small independent labels: Actively combatting file sharing in first couple of weeks increases sales. In other words, file sharing does reduce sales.

** There have been a couple serious arguments that if artists received 0.3 – 0.9 cents a song each stream this would be a "sustainable" amount. "All you can eat streaming" services would be able to charge a reasonable rate to the consumer and it would stabilize recorded music revenues or even lift them a little.*

Spock.

So this is the data I am looking at. It's all aggregate and most of it is hard data. Those who argue things are better for the artist now usually cite anecdotal cases as evidence, cook the books by excluding data, or simply argue that there is no conclusive evidence that file sharing has had any effect on recorded music revenues. In other words it's an unproven theory, like global warming, evolution and the roundness of the earth. It's just a coincidence recorded music revenues dropped 64% since the advent of file sharing.

I think the recording studio data is really important. This is an expense that is common to the independent artist and the label artist (label artists pay for recording out of their advance money). Further, they can roll in revenue from live performance and other sources into the recording budgets, so you get an expression of the artist's entire revenue outlook when you look at the recording process. The fact that artists are spending much less time recording can only mean they have less money, or expect to make less money. When hundreds of artists of all kinds do this simultaneously it's hard to argue that artists are making more money.

Improved technology is not the explanation. Technology may have produced some productivity gains, but not in the time consuming tasks of getting sounds, composition and arrangement. Many people who haven't worked in a studio don't realize how long it takes just to position microphones and instruments in a room to capture the sounds right. And every drumset, studio, microphone, piano, guitar amp and player is a little different. There are no shortcuts.

No matter how good the recording engineer, he or she can't make the drummer figure out the right beat for the song, what words the singer should sing or the melody of the guitar solo. No, the only explanation for why artists are spending much less time recording is the obvious one. Occam's razor. Every other explanation adds assumptions.

I'm With Stupid.

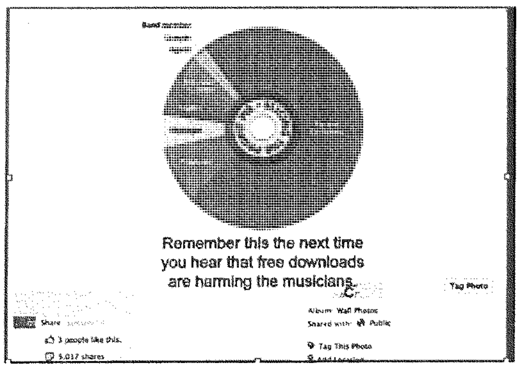
"But wait a minute, I keep reading stuff on the internet that says artists are doing much better now? Why do so many people think artists are doing better?"

Let me give you an amusing answer and a serious answer.

The internet is making us stupider. You can make a strong mathematical argument to this effect. The internet is an entertainment medium. It propagates what is entertaining. The internet does a much better job of propagating the wacko-tin-foil-hat way-out-in- the-long-tail untruths than it does propagating the sober accepted scientific facts that live in the head of the curve.

Wacko-tin-foil-hat is way more entertaining *especially* if it claims to be true. I'm not knocking it because the entire Camper Van Beethoven oeuvre is based on these kinds of untruths. It's much more exciting to believe that global warming is a hoax or the RIAA is throwing old ladies in jail for singing happy birthday to their grandchildren in YouTube videos.

Here is a chart that a well intention but hopelessly un-informed friend shared on my Facebook page.



If you look at the chart you will see that it is wildly non-factual:

- It includes percentages of revenue from record sales going to the agent. Agents only charge fees on live performance.
- Former record label (?!)
- The studio. Usually paid a flat fee not a percentage of sales.
- The manager slice is too large. 15%-20% of net on recorded music not gross as represented here.

Yet, it's been shared over five thousand times. How many hundreds of thousands of people have absorbed this as fact!

In actuality, a much higher share of revenue goes to most artists under a typical record deal. In the 1990's, typical deals were 15-25% of wholesale. I'm told some superstars got as much as 50%. Add another 70-95 cents for mandatory and statutory "mechanical royalties"and your "typical' artist was getting more than 25% of wholesale on physical CDs.

Further mechanical royalties are paid regardless of whether a record is recouped or not. So "downloading a free album" almost always takes 70-95 cents out of the artist's pocket, even if the artist is recouped.

This negative view of record deals is the result of what I call "the whiner bias." You only hear about the "bad" record deals. And believe me, there were bad deals out there, however, most weren't. But what artist is going to go out and say "Man my record label is paying me so much money it's amazingly fair!"?

Also people often confuse artistic conflicts with monetary conflicts. Record labels definitely sought to control artists creatively. But as Morrissey notes: "you could have said no, if you wanted to, you could have said no."

I remember being told to dress in powdered wigs and 18th century clothing for a video. I said no.

Then there is the matter that most record deals end badly. Record deals end when the artist is no longer selling enough albums to justify the deal. The artist is then dropped, which leads to a very public falling out.

The more serious reason that people think artists are doing much better post Napster? There has been a concerted effort by a certain part of the tech blogosphere to paint a rosy picture of the music industry. They have two techniques:

1. **Totally misleading fake studies.** Like the Computer and Communications Industry Association's "The Sky is Rising" Report. First off this was passed around as independent research when it was actually industry lobby generated propaganda. Among the most outrageous obfuscations and bizarre metrics: Including gaming revenue to help disguise recorded music revenue decline, Not mentioning the drop in live music revenues in North America, and creating the bizarre metric of "number of recorded music transactions" instead of using recorded music revenues. Recorded music transactions are up because people buy individual tracks now instead of 1 album of 10 songs. Get it?

   There are 14 academic peer reviewed studies that paint quite a different picture. Yet you rarely see these quoted by the digerati.

2. **Anecdotal Examples.** Ok Go is a success story. Louis CK is another success story. But the music business is like the casino business. You can't look at one or two players' winnings and tell how the casino or all the other players are doing. And like a casino, the house lets a few people win but overall the game is rigged.

The Future of Music Coalition, or as I like to call them *the Fooling our Musicians Coalition,* seems to be the new innovator in this field. Their recent "case studies" seem to be taking it to the next level. They appear to have combined misleadingly titled studies with meaningless anecdotal information.

Example 1. *Are Musicians benefiting from Music Tech?*

Their conclusion is a resounding yes, but dig into the paper and you find that by "benefiting" they mean things like "being able to keep in touch with fans through Twitter" and being able to use .Zip files. While the .Zip file was a real game changer for musicians, especially banjo players, most people reading the headline and not reading the article would think they were addressing a much more important question:

> "Despite the loss of revenue to file sharing has technology allowed the artists to make up the loss of revenue in other ways?"

We all know that Twitter allows us to talk to our fans already. This has been established. Why did FOMC need to do a study on this? Anytime I read something put out by the FOMC I find myself asking "what exactly was the point of that?"

Example 2. *Case Study: Indie Rock Composer-Performer*

Their "case study" of the veteran 13 year indie rock musician-composer showed that this particular artist had increasing revenues in 2008-2011. Why not 1999-2011, since the artist's professional career began in 1999? Also, the artist's identity was not revealed, and FOMC refused to release raw data. Further, they refused to publish actual total dollars in revenue, instead they only published relative percentages of revenues and expenses. When pressed on these matters on the Digital Music News blog, the FOMC study director refused, citing "privacy concerns". Whose privacy concerns?

I call foul. I don't think the FOMC wanted to release the raw data because as clever bloggers deduced, it appears this 13 year veteran artist netted less than $34 thousand in his/her best year (they interpolated this from the percentage assigned to American Federation of Musicians dues). "Famous indie rocker only makes $34k a year!" was not a headline they wanted to see in relation to the study.

Why would self-proclaimed artist advocates publish such a study?

I don't really know, but the FOMC is relentlessly praising technology and the technology industry. Fawning might be more accurate. In fact, they spend way more time talking about technology issues than they do issues of interest to musicians. Just look at their blog. It's as if there was an organization called "Friends of Mary Todd Lincoln" but all they did was talk about the theatre.

> *"Creators must be able to maximize value from their copyrights in a legitimate digital marketplace. We understand the very real problem of intellectual property infringement and its impact on the music ecosystem. We*

also share the convictions of those who depend on the Internet in practically every aspect of their lives and careers that free expression and entrepreneurship are too important to be undermined by overly-broad policy.

"We look forward to working with our many friends in the music and arts communities, as well as those in the innovation sector to find ways to achieve stronger protections for artists while preserving the dynamics of innovation and expression that are the engines of the internet."

–Casey Rae Hunter Dept Director Future of Music Coalition. Statement on Intellectual Property Bills "Reset".

"Free expression" and "Innovation" are tech speak for being able to use artists' songs, sound recordings, films, photos and books without having to license or share any revenue.

And step back for a second. Look at the absurdity of this statement. How the heck are indie artists making $34k a year slowing down and preventing Google and other billion dollar companies from innovating?

And why am I pointing this out instead of an organization that claims to represent artists in the digital world?

Maybe if the "Innovation Sector" spent a little less time "innovating" novel legal arbitrages, trying to intimidate struggling indie film makers by posting her DMCA takedown notices on the appropriately named www.chillingeffects.org or wasting shareholder dollars building driverless cars they wouldn't need the subsidy that the unlicensed use of our music is providing them. But I digress.

And referring to the tech industry as "The Innovation Sector"? I mean is it possible to be more of a sycophant? This is why I've started calling FOMC the *Fooling our Musicians Coaliton.* Helping musicians does not seem to be at the top of their agenda.

White Riot.

If we're going to have a dialogue about this, we need to be honest. So let's be honest. The fact that many in the tech community keep saying "artists and record labels need to find a new model" is an admission that the current digital status quo doesn't work. Not for the artist anyway. As I will explain, it actually makes a lot of money for a lot of companies.

First I need to point out that there is a stable digital music distribution model. We are not still trying to invent it. It's been here for at least 10 years and has been relatively stable for the last six. It has three legs:

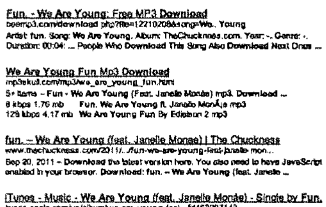
1. **File sharing/Cyber Lockers.** MegaUpload, FirstLoad, Pirate Bay, Bittorrent etc etc
2. **Streaming type services.** Pandora, Spotify, YouTube, Grooveshark, etc.

3. **Digital Music Stores.** iTunes, Amazon Mp3, Rhapsody, Google Play etc

This digital distribution model is firmly entrenched with all of the "distributors" revenue models firmly in place and, with the exception of streaming, solidly profitable.

File Sharing.

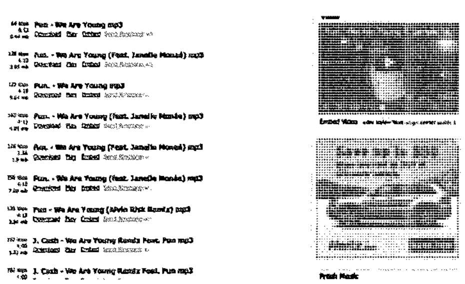
Unlicensed File-sharing sites make money off advertising and upgrades that allow faster downloads of unlicensed materials. As demonstrated in the video "Pop up Pirates," Google and other web advertising companies make money placing ads on these site, as well as making money from people searching for things like "download we are young fun." Let me quickly demonstrate.



Note the first two sites are unlicensed; the artist's own site is third, iTunes is fourth. There is a lot of data on how important it is to be the first or second link in search results. This is when the Digerati suddenly become ignorant of consumer behavior on the web.

"Nah….you really think unlicensed file sharing has any effect on legal sales?"

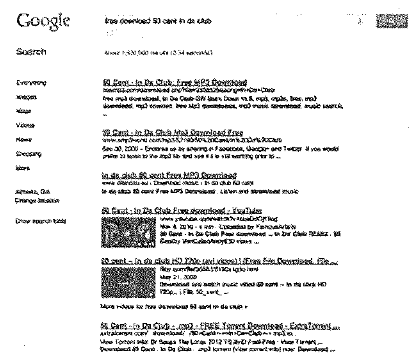
Let's click on the Mp3skull link.



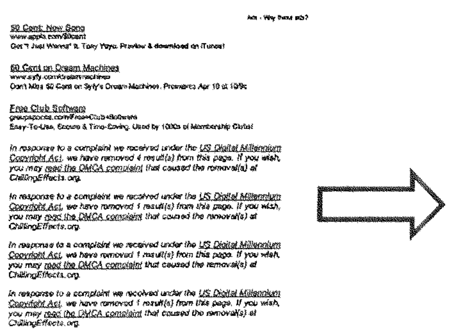
As you can see, Mp3skull.com is making money from that Hertz ad. I'm sure it's not much per view, but considering this is the number one song in the country, it likely adds up. And the web advertising company that placed it there is also making money. These are not small companies. And some of these file sharing companies (Kim Dotcome and MegaUpload, for example) are making big money.

Now an artist or record label can request that Google take these links down by filing a DMCA takedown notice. I sometimes do this. Usually only if an advance copy has leaked and my album is not commercially available yet. But look what happens when you file a DMCA takedown notice with Google.

First, redo the search, this time for a 50 Cent track.



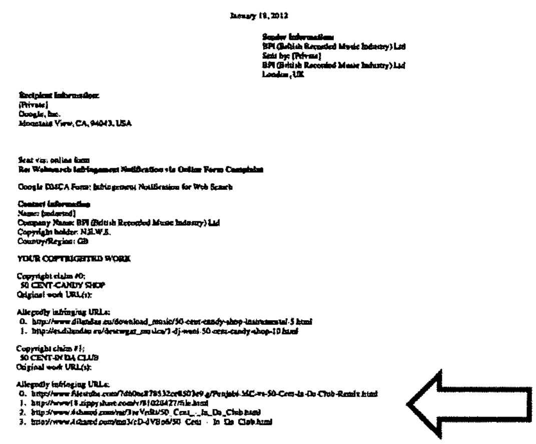
Scroll down a bit and you will find that Google has included these strange notices:



"In response to a complaint we received under the US Digital Millennium Copyright Act, we have removed 1 result(s) from this page. If you wish you may read the DMCA complaint that caused the removal(s) at ChillingEffects.org"

Google removes the links because it is required to do this by law. But the next part is not required by law.

Google has chosen to proclaim it has removed this link, and it provides you with a link to the complaint on the (ironically named) Chillingeffects.org. If you click on "read the DMCA complaint" you are taken to www.chillingeffects.org, where you get to see the actual complaint. But more importantly, you also get to see the offending links. The unlicensed download link you wanted is just one extra click away.



January 19, 2012

Sender Information:
BPI (British Recorded Music Industry) Ltd
Sent by: [Private]
BPI (British Recorded Music Industry) Ltd
London, UK

Recipient Information:
[Private]
Google, Inc.
Mountain View, CA, 94043, USA

Sent via: online form
Re: Websearch Infringement Notification via Online Form Complaint

Google DMCA Form: Infringement Notification for Web Search

Contact Information
Name: [redacted]
Company Name: BPI (British Recorded Music Industry) Ltd
Copyright holder: N.E.W.S.
Country/Region: GB

YOUR COPYRIGHTED WORK

Copyright claim #0:
50 CENT-CANDY SHOP
Original work URL(s):

Allegedly infringing URLs:
0. [illegible]
1. [illegible]

Copyright claim #1:
50 CENT-IN DA CLUB
Original work URL(s):

Allegedly infringing URLs:
0. [illegible]
1. [illegible]
2. [illegible]
3. [illegible]

Copy and paste the link into your browser and you can download the file. So really nothing has been accomplished. I can't imagine I'm the first one to discover this. (I can't find a DMCA agent for Chillingeffects.org. If they happen to not have one aren't they liable for posting these links under DMCA??)

This is why Google is the giant of the "Innovation Industry;" here is one of the most beautifully executed legal *kludges* I've ever seen. Google crushes the spirit of the law while keeping to the letter.

The new boss thinks we're stupid.

Apparently they are partially right because Stanford, UC Berkeley, Harvard, University of San Francisco, George Washington School of Law, Santa Clara University of Law and (inexplicably) The University of Maine are all listed as sponsors of this website.

This is from the home page of www.chillingeffects.org:

> *Monitoring the legal climate for internet activity.*

A joint project of the Electronic Frontier Foundation and Harvard, Stanford, Berkeley, University of San Francisco, University of Maine, George Washington School of Law, and Santa Clara University School of Law clinics.

There is a bunch of mumbo jumbo on this site about how it's supposed to help individuals navigate through the DMCA legal thicket. They claim the idea is to combat the Chilling Effects of DMCA on free speech. This is all fine and dandy if the typical individual needing help was some poor innocent teenager who didn't know it was not legal to share long clips of *Hugo* on her movie review blog.

But dig into the site and you will find that almost all the activity is Twitter or Google publishing the DMCA takedown notices *they* receive. Because you must list your legal name and address on these DMCA notices, I believe these are published to specifically intimidate those who ask for links to be removed. I certainly think twice before I file one of these notices with Google specifically because there is a good chance Google will put me this on this site.

Congrats on making it easier for the rich, powerful and unaccountable to intimidate the little guy!

So how much does the file sharing part of the digital ecosystem share with artists?

Zero. Nada. Zilch.

Old Boss: pays the artist too little. New Boss: pays the artist nothing.

This part of the new digital ecosystem is clearly worse than the old system. Plus, at least one player profiting from this system seems to be trying to intimidate the artists into not exercising their rights.

Streaming

When I refer to streaming I include not only Spotify, Pandora and other similar services, but also YouTube. Virtually every song I've ever written is streamable on YouTube, even if it's just a static shot of the cover and the audio uploaded by some well-meaning fan.

Pandora pays the artists according to statutory rates. Personally I'm happy that Spotify is attempting to pay artists, even if it's not really enough yet. YouTube wouldn't pay anything if it didn't have to, so they don't get my thanks. And Grooveshark pays nothing to artist.

First thing you need to know about streaming? Aside from Pandora, there is a huge dispute about how much any of these services pay. And unfortunately I won't be able to clear it up much.

I have friends, artists and record label execs who swear they, or their artists, are receiving about .3 to .6 cents a spin from Spotify (a rate some regard as "sustainable and equitable"). Others swear that's not true and that the royalties are more like hundredths or thousandths of a penny.

I've looked at royalty statements from various artists and both groups appear to be right.

I'll just add my voice to the call for transparency in Spotify and all streaming licensing. It's never good when there is no transparency. It inevitably part of some scheme to take advantage of someone somewhere. Usually the artist. Or to quote P.J. O'Rourke "Complexity IS fraud".

Regardless, in the last few months, a lot of artists have come out with their personal stories on how their revenues from streaming are quite small.

When pressed on this, Spotify seems to point the finger at the record labels. And the record labels point back at Spotify. And curiously one label, UMG, seems to defend Spotify more than the other labels. No one knows what deal UMG cut with Spotify but clearly they have some sort of stake in the service. How this effects revenue flowing to artists is unknown. I belive that UMG needs to clarify.

So for now let's just say artist's share of revenue from Spotify and other streaming services is:

Unknown and subject to possibly shady deals.

Sounds just like the old boss right?

The White Hats.

Finally, what about the "white hats" in the digital music ecosystem? By this I mean the legitimate digital music stores like iTunes, Amazon's MP3 store, Rhapsody, eMusic and Google's Play. I call them white hats because this seems to be the only part of the digital music ecosystem which has consistently paid artists. Still if you dig into how the money gets split you start to encounter problems when you compare it to the old record label system. The big stores take about 30 percent of gross on a 99 cent song. But here is the catch: if you are an independent artist, you have to go through an "aggregator" to get your songs into these big stores (ie iTunes/Amazon). This will cost you a minimum of 9 percent. In this case, Google is an exception and should be commended for not requiring the aggregator for their store. However, iTunes represents about 70 percent of the digital music market. Amazon is a distant second (roughly 13 percent) and I could find no data on Google's music store, now called Play. So for now, let's just focus on iTunes. The genius of Steve Jobs was that he was not afraid to be greedy. Like most Apple products, Steve Jobs built the thing he wanted and picked the price and margin he wanted. This is commendable in a CEO. That's why I own Apple stock. I doubt there were any consumer studies. He didn't really negotiate with the suppliers and consumers on price. A kind of take it or leave it proposition. Fortunately, it paid off for Apple.

When you are building a brand new digital music store, a concept no one else has ever really done on a large scale there is considerable risk. So in 2003 (when the iTunes store launched) a 30 percent margin is totally justified. Nearly a decade later, after the concept is proven, after the store has brought millions of new consumers into the Apple ecosystem, and after billions of dollars of hardware have been sold, is 30 percent still a reasonable margin? It's no longer a risky proposition, and I say no. My techie friends immediately point out that all those servers, all those engineers and all that software is really, really expensive. So what does this say about the theory behind disruptive innovations?

Disruptive innovations are supposed to be much, much cheaper than what they "disrupted." Thus if the mom and pop record stores could sell physical product profitably on a 40 percent margin with all that shipping, returns, breakage, shrinkage, real estate and stoned employees AND big chains like Best Buy and Walmart with their deep discounts could sell music on a 20 percent margin, then the only conclusion is that the iTunes store is incredibly wasteful and inefficient way to do business. I don't think that is the case. I think that selling music as mp3 downloads from Apple/Amazon servers has to be more efficient than shipping thousands of breakable CDs all over the world. I think what has happened is that over the years that 30 percent margin has become *parasitic*. Parasitic in an economic sense meaning it's not really justified by the value it's adding. The 30 percent is simply the result of iTunes/Amazon being more of a bottleneck or gatekeeper. The fact that sites like www.bandcamp.com and www.cdbaby.com can do the same job on a lower margin suggests that the 30 percent is artificially high. I know the "Apple-can-do-no-wrong" crowd is sharping their knives right now. But hear me out. If the market lets Apple take 30 percent, they should take 30 percent. The part of me that is an Apple shareholder applauds this action. And Apple should continue to charge this margin until it is forced to lower it by its suppliers or competitors.

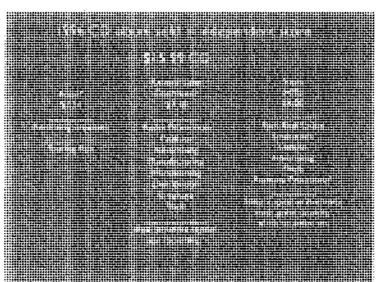
Until Apple really has some reasonable competition, until the music conglomerates figure out it's in their interest to license new online stores, to create other competitors cheaply and efficiently, iTunes is not going to have any competition. And as iTunes sales grow and physical sales shrink, Apple's market share is only going to get bigger. Apple will become more powerful and behave more like a monopoly. If iTunes recorded music store were its own separate company, its gross revenues would represent over 30 percent of the market. It would be the biggest recorded music company by revenue except UMG. Apple is the most valuable company in the world. In a way you can argue that Apple IS The Man 2.0. But unlike UMG , WMG or Sony, Apple (or any of the digital music stores) does not recycle any of their revenues back into the creation and development of artists and songs. And this is part of the problem.

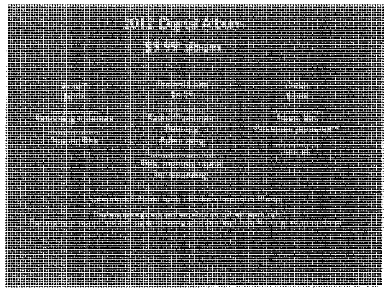
What percentage of revenue from digital sales goes to an artist on a record label?

This is a long and fairly complicated calculation and I'll save the details for my book. But the percentage of revenue that goes to artists on a label is about the same as under the old record label model. It may be slightly better because there have been some improvements from the artists perspective. For instance the old record company scam known as "free goods" is impossible to justify with digital downloads.Under the new digital model I calculate that most label artists get between 15%- 35% of wholesale. For example the most recent of my recording contracts says I should get a total of 20.5 cents on a 99 cent song (including mechanical royalties). This works out to 29.7% of wholesale. So this part of the new digital paradigm is about the same as the old record label system.

So when you compare share of revenue for artists on record labels under the new digital system to the old system it looks pretty good. At least until you consider the fact that the price of music has dropped. For instance, an artist's royalty on an album is now calculated at $6.90, not at a $10.00 wholesale price as it was in the 1980s. This drop in the price of music was inevitable, but the record label's expenses fell considerably in the switch from physical to digital products, whereas the artist's expenses (the recording budgets) did not. So this had the effect of reducing artists' net revenues and shifting revenue towards the record labels. For the new digital distribution model to be as "fair" to the artist, the artist share of download revenue should have increased. Instead, it stayed the same or increased only marginally.

But let's look at this in real dollars. Let's take my artist royalty rate of 16 percent and compare who gets what under the old pre digital system and the new system (this is including tbe mechanical royalty).





When looked at this way, you can see the problem. Artists' revenue falls, but the artist still needs to pay for recording. Record label revenue falls, but the new digital distribution system provides them enormous savings. They have eliminated manufacturing warehousing and shipping costs.

And then there is that iTunes store 30 percent, which seems high to me. What is their risk? Especially today in 2012? Do they really deserve more per album than the artist? At least the record labels put up capital to record albums. At least the record labels provide the artist with valuable promotion and publicity. Historically, in the music business, when someone was taking more than 20 percent of gross revenues that had some "skin in the game." They risked losing a lot of money.

Between the record labels and the digital retailers like iTunes, once again the artist gets squeezed. If you add to this the cannibalization of sales from streaming sources that pay too little, and illegal file-sharing that pays nothing at all, you can see why the artists have much less money now. This also helps explain why artists are spending dramatically less time and money recording.

The New Boss – in this case Apple – takes 30 percent, takes no risk and provides the artist with almost nothing in return.

Always look for that Union Label.

In the late 1980's through the late 1990's the Music Business experienced a boom. Though not as big as some have reported – when adjusted for inflation and population only 13 percent higher than the previous peak in the 1970s – nevertheless it was a boom. It is instructive to look at what the record labels did with their profits when it was flush with cash. They created what I like to call "The Grunge Bubble." Record labels bid up the advances for new artists to unheard of levels. Unknown rock bands were getting signing bonuses of $750,000 dollars.

The record labels flush with cash not only dumped a lot of money into signing artists directly, they also gave money to other people, veteran artists for instance, myself included, to start our own sub-labels. Then the sub-labels went out and gave that money to other artists as well. This was a really good time to be an artist.

But here is the important point: record labels value content and content creators. Yes, they kept a lot of money for their executives (although even mid 1990's music executive pay is dwarfed by today's tech executive pay), but record labels – unlike tech companies – know they built their businesses on those who create content. Therefore, when they were flush with cash they set out to buy the services of as many artists as they could. This had the effect of sharing the wealth with musicians. It may have been uneven, it may have been wasteful, it may have not touched every artist, and the labels may have pocketed most of the revenue, but at least they felt they needed to give something back to the content creators. They knew artists created something of value.

For a very long period of time record labels provided a decent living to thousands of lucky artists. They may not have guaranteed an artist riches, but It was like having one of those good union manufacturing jobs. In fact, you could have your royalties paid to you in such a way that you qualified as an AFTRA/SAG member, and then you had union health insurance and a pension. Unlike the tech industry the music conglomerates are pro-union.

Now look at the "Innovation industry." They do not value content. In fact, they argue they are doing the content creators a huge favor by "distributing" content. They think their services and networks are the only thing of value in the digital ecosystem. This is like the owner of Shoreline Amphitheater thinking people are paying for the privilege of sitting on the chairs. Further, they seem collectively obsessed with their own self-proclaimed genius, while regarding we lowly content creators as some sort of ungrateful wretches. Just look at how their blogosphere surrogates talk about musicians. If Wall Street titans hadn't claimed the mantle "Masters of the Universe" in the 1980's, the zeppelinesque egos of the tech industry would claim it.

A friend of mine who works in Silicon Valley likes to point out that Silicon Valley is the new Wall Street.

And just like Wall Street, the tech industry has funded an army of professional Washington lobbyists to weaken, undo and even eliminate laws it finds inconvenient. In this case, those laws are copyright protections for artists on the internet. The desired result is that internet/tech companies will never have to pay for using artists' songs, movies, books and photos.

The New Boss doesn't value what you create. And the New Boss would like to change the laws so that your songs are no longer yours.

Freebird.

So at last we get to the part of the new digital paradigm where things should work as promised: the independent artist on their own label who directly releases their recorded music through iTunes, the Amazon Mp3 store, and other outlets. This is where we would expect to find the artists benefiting from the process of "disintermediation." This is where we should find the artists that are capturing the lion's share of revenue. This is where we should find that vibrant marketplace of small stakeholders competing with multi-national conglomerates. This is where the playing field should be even. This is what the tech visionaries promised us anyway.

What percentage of revenue from digital sales goes to an independent artist?

iTunes/Amazon: 61%*
Google Play: 70%
Bandcamp: 85% (minus fees)**
Cdbaby: 75%
Directly off the artist's Website: 100% (minus fees)
*Requires using an aggregator like Cdbaby, generally 9 percent fee.
**It appears that Bandcamp pays after the credit card / paypal fees are deducted.

Given this data, it is clear that the best thing for an artist is to sell fans digital downloads of their music directly off their own website. And indeed, that is what most artists try to do. And the most engaged fans will go to your website and buy your music that way. Failing that, an artist could also sell their music through Bandcamp or CDbaby and net a little more than they would on iTunes.

Here's the problem with that: Facebook, YouTube and Twitter ate our web traffic.

It started with Myspace and got worse when Facebook added band pages. Somewhere around 2008, every artist I know experienced a dramatic collapse in traffic to their websites. The Internet seems to have a tendency towards monopoly. All those social interactions that were happening on artists' websites aggregated on Facebook. Facebook pages made many band's community pages irrelevant, because Facebook is so much more convenient for your fans. Because an artist's fans are probably already on Facebook all day anyway, it's so much easier for them to interact with other fans and artists on Facebook.

Today, most artists I know primarily use their websites to manage their Facebook and Twitter presence. There are band-oriented CMS services that automatically integrate with Facebook and Twitter. They turn your website news, tour dates and blog posts into Facebook events, Facebook posts and Tweets. Most band websites now function more as a backend control panel for their web presence.

In the mid-1990's, bands had complex websites and fulltime web masters. This is really rare now because Facebook, YouTube and others have absorbed all our web traffic. Managing a unique website is not really worth the time you put into it unless you are a very popular artist. And the only reason fans would go to your website often is if you have unique content for your visitors. Yes some of us sell swag and downloads on our websites but unless you are a really, really popular band, or you have a major record label that can help you promote your website, it's generally a few hundred of the most ardent fans that ever spend any time on a band's website.

Think of websites as TV networks or TV stations. A very popular channel has enough viewers and revenue to justify creating its own content. A little public station in a tertiary market does not. Admittedly, not having unique content because you are too small is a self-reinforcing dynamic. But it's one that I have found is virtually impossible to conquer.

I spent 40 hours shooting and editing a video for the song "Raise 'Em Up On Honey" and put it on my website. It received several hundred views on my website then slowed to a trickle. But the version on YouTube got tens of thousands of views. I had to put it on YouTube. It would have been stupid to have not. My fans are all on YouTube watching cute cat videos. They can see when I add a new video to my channel. Why bother going to www.davidlowerymusic.com?

A similar situation occurs with the process of selling music online. Our fans already have an iTunes account. They already have a credit card on file with Amazon. That small hassle of getting your credit card out of your wallet to buy music directly from the artist website is a giant hurdle that most people will not jump over. The internet has a tendency to monopoly because we are lazy.

65%

iTunes and Amazon account for approximately 83 percent of the digital music market, and this *duopoly* share about 61 percent of revenue with the independent artist. Now let's assume that the artist manages to sell some music directly off their website and a few other slightly more generous stores like www.bandcamp.com or CDBaby and round up the artists share of digital download revenues to 65 percent.

This is pretty good. It dwarfs the revenue that record labels shared with artists. And indeed there are some spectacular success stories of artists selling their music directly to fans and making a lot of money. Imagine how much Radiohead made off the album they sold directly to their fans.

These are the stories that you hear when the tech true believers, the evangelicals ecstatically shout "Things have never been better for musicians!"

While that is true for these musicians, is it true overall? Is it better for musicians as a group? Consider lottery winners. I can find three or four Jackpot winners and say "Things have never been better for Lottery players," and this would not be true because we are not accounting for all the losers. The house or the lottery always wins, but there are just enough winners that keep people playing the game. And this is exactly how the new digital paradigm works. It's a lottery. A few musicians win every year, but overall money steadily flows to file-sharing companies, YouTube, AdSense, Google, Apple, Amazon, Spotify and the record labels.

Artists haven't been liberated. We've been enslaved in a new and fancier way. It's been sold to us as freedom. Michael Robertson of Mp3tunes has been on a crusade to "liberate" artists like Pink Floyd from their record companies. Liberate them how? Take their songs and share them on Mp3tunes then share none of the revenue with Pink Floyd? Why would they do that? At least EMI pays them something.

Meet the new boss, worse than the old boss.

When I Win The Lottery.

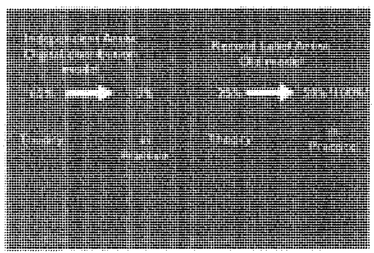
The music business has always been a lottery. This is nothing new. It has always been ruled by unpredictability and luck. That's why you often hear something like this attributed to Ahmet Ertegum:

"The secret to the music business? Throw ten records against the wall and see what sticks."

Never mind that I can find no evidence that he ever said this, this is clearly how the music business has worked for a long time. It's built into the very structure of the business. In the 1960s when a music scene would pop up someplace like San Francisco (Haight Ashbury) or Boston (The Bosstown Sound), record companies would come in and sign anyone with long hair and a guitar. They did the same all through the 70s, 80s and 90s. That's what they did during Seattle's Grunge Bubble. Historically, the companies that tried to be selective and only pick the stars were no more successful than the companies that were not selective. From this, record companies learned to spread their bets around. In this way record companies have long resembled hedge funds, venture capital funds or "black box" trading firms that buy hundreds of longshot bets, losing on most of them, with the few winners paying spectacular returns.

The crucial difference between the old boss and the new boss is that the old boss – the record labels – saw that it was in their best interest to invest in the creation of music. Further, they knew success in the music business was highly unpredictable. Therefore, they spread their investment around. They didn't do this out of the kindness of their own hearts, they did this because it was in their long term interest, and it was the surest way to make money. So up until the early 2000's, record companies essentially overpaid the nine "losing" artists and underpaid the one "winning," or hit, artist through their system of advances for each album. It was a semi-socialist system. A system in which the superstar's revenue subsidized all those new and developing artists. The destruction of this revenue and risk sharing system is another important reason why artists are poorer now.

How risk sharing/revenue sharing made record label artist royalty rates a "floor".



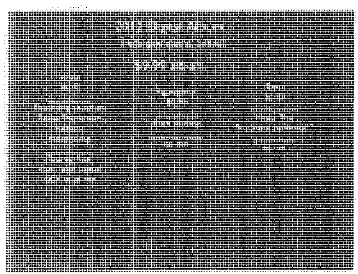
This is where the disconnect occurs. When people look at the royalties that the record labels paid artists it doesn't seem like a lot. It seems unfair, until you consider the guaranteed advances. Let's say the artist was to be paid a lowly 12 percent royalty by contract. That compares unfavorably to the 61 percent of revenue that the independent artist gets from iTunes. But the artist is always given an advance and usually the advance assumes moderate success. But nine of those 10 bands did not achieve great success, or even moderate success. It was never expected that all 10 would be successful, so the result was that the record label artist actually received a lot more than that contractual 12 percent. The unsuccessful artist may have received an advance that was equal to 90 percent of the gross revenue generated by that recording. And most artists were unsuccessful. So your average record label artist was actually receiving way more than 12 percent. The artist royalty rate is actually the floor. It's the minimum share of revenue the artist will receive.

I know this is probably quite confusing. Am I really saying it's better to be un-recouped as an artist? Yes, it is. Quantitative finance wizzes will see this as selling a series of juicy "covered calls." Being un-recouped means you took in more money than you were due by contract; you took in more money than your sales warranted. And there was a sweet spot: being un-recouped but not too un-recouped. For instance, I estimate that over my 15 year career at Virgin/EMI, we took in advances and royalties equivalent to about 40 percent of our gross sales. In other words, we had an effective royalty rate of 40 percent, despite the fact that by contract our rate was much lower.

Sympathy For The Record Labels.

Under the old school record label system most artists had a much higher effective royalty rate than the contracts would lead you to believe. This was directly a result of this socialistic risk sharing/revenue sharing scheme that record companies devised. It was directly the result of the record companies financing the recording of albums through it's system of advances.

But these "effective" royalty rates were still mostly lower than that 65 percent that the independent artist receives under the new digital distribution model. However, under the new digital distribution model the independent artist is now shouldering all the risk and expenses.



With the exception of a few lottery winners, the independent artists that seem most successful under this new digital model seem to fall into two categories:

1.Established recording artists recently freed from major label contracts.

2.Artists playing to a specific non-commercial niche. For example Black Metal.

These types of artists do not have to spend a lot of money on marketing, advertising, radio promotion or publicity, expenses that can be huge. The ex-major label artists are able to sell significant albums as independents because they are able to rely on their brand that was built with years of record company money. Niche artists only have to promote and publicize themselves to a very limited tightly grouped audience.

If you are not in one of these categories the independent artist route is tough.

In 2010 there were 75,000 albums released. Of those, about 60,000 sold less than 100 copies. Only approximately 2,000 sold more than 5,000 copies. Slightly less than 1,000 sold more than 10,000 copies. Most of those artists were on record label artists.

An album that sells 10,000 copies for the independent artist would gross around $65,000. From that $65,000 the independent artist must pay for recording, a publicist, radio promotion, advertising, photos artwork and on and on. You quickly realize that the independent artist is unlikely to be better off under the new system because in practice, the independent artist is unlikely to net anywhere near the 65 percent we estimated.

Rock and Roll Animal Spirits.

Then there is the matter that the independent artist must raise the capital to record and promote the record. The record label artist has the advantage of receiving a loan of sorts from the record company. The independent artist must either scrounge together or borrow the money. Imagine being an independent artist and trying to borrow money from someone to make a record. In this day and age, it is less likely that anyone would loan an artist the money specifically because of widespread illegal file-sharing. Digeridiots pounding tables and shouting "intellectual property is not property" makes the investment environment even worse. Ask yourself, would you loan anyone money to make an album these days? I wouldn't. I don't even know if I would loan myself money to make an album in this day and age. This air of uncertainty, this "animal spirit" as Keynes would term it, discourages investment.

There is also a strange quirk of human nature studied by behavioral economists called *Prospect Theory*. Among other things it predicts an individual artist will risk much less of their own money on an uncertain venture (like recording an album) than a company would risk. Actually *Prospect Theory* and what derivatives traders call *Volatility Theory* can explain the entire structure of the music business. Basically these two things combine to starve the independent artist of capital, and this lack of capital available to the independent artist makes it highly unlikely that the independent artist will sell many records.

Freakin' at the Freaker's Ball.

I think in this presentation I have demonstrated how important it was to the old system that record labels shared risk and invested capital in the creation of music. And that by doing this, the record labels "accidentally" shared more revenue with the artists. What I have yet to explain is why it is that the New Boss refuses to share risk and invest in content creation, even though the old record labels eventually saw that it was in their long term interest to do so.

My only explanation is that there is just something fundamentally wrong with how many in the tech industry look at the world.

Taking no risk and paying nothing to the content creators is built into the collective psyche of the Tech Industry. They do not value content. They only see their services as valuable. They are the "Masters of the Universe." They bring all that is good, and content magically appears on their blessed networks.

I'm using this language for good reason. There is a quasi-religious tone to many tech convention speeches and press releases. What other industry constantly professes utopian visions for all humanity? What other industry would dare proclaim they were liberating artists, students, workers? What other industry thinks they are mystical shaman: "Let's send our magic objects, our laptops to poor children in third world countries." What other industry genuinely believes they (and only they) possess the *lapis philosophorum?* They have even created their own God: a Superhuman intelligence that they (naturally) have created. *The singularity.* Their egos know no bounds.

Not only is the New Boss worse than the Old Boss. The New Boss creeps me out.

Mrs. BLACKBURN. Thank you. I appreciate that. He wanted to be able to weigh in on what we were hearing today.

Let me go back, I want to come to Mr. Sherman and Mr. Newberry. The chairman referenced the agreement with Big Machine and Clear Channel yesterday and talked a little bit about that. And Mr. Newberry, come on back down to Tennessee, I will introduce you to Mr. Bruschetta. He is one of my constituents. And I think that this is something that we all find interesting. And certainly it has been quite a part of the subject that we are hearing today. So I would like to hear from the two of you just very quickly. And if you want to expand on it in writing, I think that would be interesting to the committee.

Let's talk about what this agreement means to each of your entities and to the future of performance rights as we move on down the line in this discussion. So very briefly now. And if you want to submit something in detail later, that is fine too. So Mr. Sherman, I will start with you.

Mr. SHERMAN. Well, as I said before, we don't know how many other radio stations and groups will think that this is something that they want to do. So the mere fact that Clear Channel has done this with one label doesn't solve the problem for the entire industry. We have had Dionne Warwick come testify in Congress. She is no better off today than she was yesterday, notwithstanding the Clear Channel deal with Big Machine. And most, 99.9 percent of the artists, are not any better off.

Mrs. BLACKBURN. Let me cut you off and go to Mr. Newberry.

Mr. NEWBERRY. Congresswoman, I would tell you that I think it is a good thing from the standpoint of private enterprise transaction. It was a decision made by a private company, Clear Channel, to engage with a private company, Big Machine, and reach an agreement—the terms of which I am not privileged to, but reached an agreement that they were both satisfied with, without government intervention. So it doesn't change our position that there should not be a congressionally mandated, but I think it signifies the willingness of both sides to engage in conversations and look for solutions.

Mrs. BLACKBURN. Thank you. Mr. Israelite, I want to go back to your testimony. And you mentioned a more efficient licensing system for new business models. I just want to ask you this: Do you agree that reforming section 115 of the Copyright Code would be a good step in bringing the law up to speed with the new technologies? And what type reforms would you like to see in your organization, like to see us follow and consider?

Mr. ISRAELITE. Well, thank you for the question. I think reforming 115 is very important. The mechanical licensing system was built on an old model where you would license one song to one record label to put out. Today when Apple iTunes store has 20 million tracks and others may want to open their store with that many licenses, we are not built for that right now. And I think we have some very innovative progressive proposals of how we can change that licensing system to make that work.

I would still be concerned about the existence of a compulsory license on the songwriter. It doesn't exist for the record label or the artist, but the songwriter is told the value of their intellectual property. And I think once you reform licensing we ought to take a look at removing that compulsory license and let the free market operate.

On the performance base, we are very efficient in how we license. We have three performance rights organizations that license very efficiently. But, again, because of the existence of consent decrees, there is no free-market negotiation and I think the value for songwriters is diminished.

And on the synchronization front, while there is not a consent decree and there is not a compulsory license, it is a free market exercise, I do think that reforming 115 can lead to opportunities and do a better job of licensing synchronization in a free market. And that is basically what we have tried to do with YouTube, where there was a model deal, it was offered to all music publishers and songwriters who walked in, we had very good success of people voluntarily doing that.

So thank you for the question. I think it is something that is very important for the future of music.

Mr. SHERMAN. If I could just jump in. David left the impression that there are no compulsory licenses for record companies. We are actually subject to a compulsory license for Pandora and all of Internet radio.

Mrs. BLACKBURN. Precisely. And that was part of the point of the question and getting to the reforms in 115. I do have other questions that I will submit for the record. I have got one on the FM chip. I know we are about out of time. I have got one on DMCA and Google, Mr. Sherman, that I have wanted to discuss with you. And I will have to say, dealing with the FM chip, I have just pulled up WSM online here and was tempted to hit the on-air right now, listen live, so I could entertain y'all. I will yield back.

Mr. WALDEN. I thank the gentlelady for her questions and her interest in this hearing. And I congratulate her on this, the anniversary of her 30th birthday.

Mrs. BLACKBURN. I am so pleased that you couched that so delicately and gingerly.

Mr. WALDEN. Trying to be diplomatic here, but happy birthday.

We now turn to the gentleman from Massachusetts Mr. Markey. For 5 minutes.

Mr. MARKEY. Thank you, Mr. Chairman, very much. I would just like to have a little bit of an additional conversation on this FM chip issue.

Mr. Smulyan, in Europe they include a chip in cell phones. What is the frequency of use in Europe from your perspective?

Mr. SMULYAN. It is one of the most widely used features. What you find is, when you go into a cellular store there, it is always listed. When the manufacturer lists the features, it is one of the most widely accepted features. We have had manufacturers say, look, for years people would pay a couple of extra dollars to have an FM radio in there, and that has been true. We have got research that shows that it is one of the most requested features all over the world. And the NAB did a study with Harris which said that 81 percent of the public would want it. It has just not——

Mr. MARKEY. In Europe?

Mr. SMULYAN. No, in the United States. But it hasn't been known in this country. If you go into a cellular store today and you ask about radio, they will talk about Pandora, they will talk about streaming, but nobody talks about over-the-air broadcasting. It has been left out of the literature.

Mr. MARKEY. So let me turn to you, Mr. McCabe and Mr. Shapiro. What is your response to that? They are saying in Europe it is widely accepted and it is a part of the culture. Why not in the United States?

Mr. GUTTMAN-MCCABE. Sure. I guess first I would start off by saying it is in 59 phones here in the United States, so that is pretty significant if you can find 59 phones using a 20-minute search. That is number one.

Number two, we have a manufacturer who manufactures phones globally and they have done a similar survey—not in the context of our discussion here—and they gave consumers 33 choices. In the United States, the FM chips came in 31st out of 33rd. In the United Kingdom, it came in 25th out of 33. In Brazil it came in second.

Now it is just a different environment. The United States is a different environment. We have Pandora, we have Spotify, we have TuneIn. We have a range of options here that other entities don't.

Mr. MARKEY. Let me go back to Mr. Smulyan then. He says there are already 59 devices that have that in the United States and it just won't work in our country. What is your response?

Mr. SMULYAN. Well, we are convinced that, yes, there are 59 and there are literally thousands of phones manufactured and sold in the United States. It has been sort of gradually put in since we have been having this discussion. Chips have finally been activated. But I think what you will find is in the rest of the world, most of the chips manufactured in the world today are multifunction chips. So when they are shipped anywhere else in the world—because it is a standard part of the system—they are there. When they come into this country, they are still installed in the phones. They are just not turned on. And our question is, we would like—especially as we get into an era of data caps, when people start paying not $30 a month for unlimited data but maybe $40 or $50 or $60 or $70, we all like the personalization of streaming. But when people understand the cost, we think the idea of having a free option is a big, big difference. We are going into the era of data caps.

Mr. MARKEY. You are saying they are just not turned on.

Mr. SMULYAN. They are not turned on.

Mr. MARKEY. Yes. So would there be a problem with turning them on, Mr. McCabe or Mr. Shapiro?

Mr. GUTTMAN-MCCABE. No. Again, the 59 that we have identified are active FM chips that you can utilize. Again, we continue to have a discussion with NAB where they say they are not seeking a mandate. And yet here we are in front of Congress talking about something that NAB suggests is a business issue. And if it is a business issue, why are they not advertising this? If Mr. Westergren wants his product to be known to people, he advertises it. I have yet to hear a single advertisement or a single mention by Mr. Smulyan and his multitude of radio stations——

Mr. MARKEY. Let's get back to Mr. Smulyan, if you could answer that.

Mr. SMULYAN. The industry has started promoting the fact that you can get radios, but they have been so infrequent until the last 6 months. But I think the question is we don't understand—since obviously you use less battery life turning on a cell phone with a radio than you do streaming—why aren't they activated? They are activated all over the world. All you have to do is turn them on. That was a question that we would ask.

Mr. MARKEY. Well, Mr. Guttman-McCabe is saying they are turned on.

Mr. GUTTMAN-MCCABE. Well, I could submit this for the record, Congressman. This is a Best Buy catalog that lists 26 of them. Out of the less than 80 that they identify, 26 have FM chips. There is a little dot in that FM chip category.

Mr. MARKEY. I will come back to Mr. Smulyan again, please.

Mr. SMULYAN. It is interesting, the NAB did a study that when they went to the Verizon catalog they had 18 specific features that you could buy on their phones. Never was radio mentioned. What we are finding is, it is almost deliberately kept from the consumer. Yes, there are 59 phones and I am thrilled that there are. Six months ago, there were probably 20 phones. A year ago there were none. But the reality is, we sell thousands of different models of phones in this country. And I would submit that out of thousands of those phones, of the smartphones, a great majority of them have a FM chip that is not turned on.

Mr. MARKEY. Mr. Shapiro?

Mr. SHAPIRO. If broadcast is such a powerful medium, they should be advertising it to the consumers. If many of them wanted to go buy it, then Best Buy and others will carry more. I would also suggest, in comparing us to other countries, it is cultural perhaps, but we are very different. We have a different digital television system. We have a unique geography and a unique culture. And also, we are the fountain of Internet creation here. So there is nothing wrong with that.

And I want to paraphrase the acting chairman, Mrs. Bono Mack, who I read a quote from this morning. But why not mandate them in cars, in lights, in pillows; why all of a sudden smartphones? And it is just not a matter of activating a chip, I want to point out. You have to have an antenna that works for FM which is not necessarily the same antenna that will work well for the cellular signal.

Mr. MARKEY. So you are saying that the phones in the United States, even if you activated them, would not be able to receive it because they don't have the proper antenna?

Mr. SHAPIRO. Well, it is the quality of the reception as well. I mean, you could get a very weak staticy signal without a great antenna, but you might have to add a better antenna.

Mr. MARKEY. A quick final word, Mr. Smulyan.

Mr. SMULYAN. The antennas that come with cell phones are the antenna in almost every case. There are also internal antennas. The phone I have here in the Fidelity is perfect. It is the size of a human hair. So they are available. They have dealt with this problem over a billion times everywhere else in the world.

Mr. MARKEY. Thank you all for being here. It is a very important discussion. Thank you all.

Mrs. BONO MACK. [Presiding.] The gentleman yields back. And the chair now recognizes Mr. Latta for 5 minutes.

Mr. LATTA. Thank you, Madam Chair. Thank you all for being here today. As was already stated by others, it has been a very, very interesting discussion.

Mr. Guttman-McCabe, if I could start with a couple of questions of you. I found it interesting in your testimony that you were saying that of course America is really at the forefront of innovation across the globe. And also with that innovation comes job creation. Any idea what is being created out there, jobs in the industry today?

Mr. GUTTMAN-MCCABE. Yes. We are responsible directly for several million jobs and indirectly for tens of millions of jobs. And that continues to evolve as you see our service go into areas—we call them vertical. So Mr. Shimkus, I think, talked about the credit card swipe; mHealth, I am a beneficiary of mobile mHealth products as well, mobile education. So it is almost impossible to quantify the volume of jobs because you see, you know, services like Mr. Westergren's and others moving onto the mobile platform and things evolving on a daily basis. Right now we have 6 percent of the world's wireless subscribers, but we have 70 percent of the world's LTE subscribers. So we are at the cutting edge—Mr. Shapiro talked about sort of we are the Internet country. I think that is true. I think that is why you see a different approach to FM radio here than you do in other countries, because all of the companies that we mentioned earlier began here in the United States. They are all driving employees, they are driving revenues, they are driving taxes and capex. And it is happening here. And all we say with regard to this FM chip set discussion, let there be choice, let the consumer choose. Let innovation continue and flourish. And if consumers want more and more FM-enabled products, I assure you, one of the 30 to 40 handset manufacturers will find ways of getting those products to the consumers.

Mr. LATTA. Well, I also see in your next paragraph in your testimony you go on to talk about spectrum and the access to it. Are you going to have enough spectrum out there?

Mr. GUTTMAN-MCCABE. Well we certainly—I think you may recall CTIA, along with our friends at CEA put a paper together which began the discussion about the incentive broadcast auction, because we looked at the needs that were coming up and then the spectrum that was in the pipeline, and it was an equation that caused us concern. So we started talking about a looming spectrum crisis.

We are, as Mr. Shapiro suggested, extremely happy with what Congress did and what the President signed into law about bringing more spectrum to market. That is key. It has to happen in the next 3 to 5 years. There needs to be a move to get the spectrum, not just from the broadcasters but from some of the Federal Government users, into the pipeline and out to the carriers so that we can meet up with this, whether it is audio demand or video demand or the verticals with Am Health and education. So we will continue to sort of bang that drum to say Congress did its part.

Now we need the agencies to push this over the goal line to finalize that part of it, to actually get the spectrum to market.

Mr. LATTA. You also stated that you also need a light regulatory touch. Could you define "light regulatory touch"?

Mr. GUTTMAN-MCCABE. Sure. And I think the best way to describe it is, if we look back 3 years ago—or if we will go back 5 years ago—5 years ago, the hottest selling phone was the Motorola RAZR. It was a flip phone. There weren't app stores. There were less than 100 applications. And in that 5-year period, almost 60 percent of the phones are now smartphones. We have tablets. We have an environment that is changing so dramatically that to suggest—and this is the ranking member's opening statement talked about trying to not lock in technology, because once you do that with a mandate, you are overtaken by events.

In this world, it moves so quickly that by the time I have a phone that I call new, you know, my team members have three or four other phones that do things that I can't even contemplate.

And so, for us, it is first do no harm, the physician's mantra. Look at a regulation not just independent but as a whole. Look at it holistically and, say, boy, adding this on top of the other regulations that are out there, how is it going to impact these tier 2 or tier 3 carriers, not just the large carriers but all the others out there that are trying to upgrade their networks? So, for us, a light regulatory touch is, unless you see a significant failure in the market, you really shouldn't be contemplating regulation in such a fast-moving market segment as ours.

We have taken to calling it an ecosystem, because companies like Pandora are now part of it. And our trade association is changing dramatically as we sit here. We have more companies now from the west coast, from Silicon Valley. We have the Googles and the Microsofts, but we also have the smaller companies. Because this ecosystem is evolving.

And so a light regulatory touch is first do no harm. Have a sense of what you are regulating and make sure you don't have a negative impact on investment, on jobs, on innovation.

Mr. LATTA. Thank you very much.

Madam Chair, I see my time has expired, and I yield back.

Mrs. BONO MACK. Thank you, Mr. Latta.

The chair now recognizes Ms. Matsui for 5 minutes.

Ms. MATSUI. Thank you, Madam Chair.

Mr. Westergren, Pandora I know is a very popular app with my constituents. I think I have 150,000 active listeners in my district. And I am buying a new refrigerator. I am thinking about having it embedded, I suppose. But I would spend a lot of time with my refrigerator then I think, and I don't want to do that.

Anyway, since everybody else has commented on the Clear Channel business model, what do you think about that online streaming business model of Clear Channel?

Mr. WESTERGREN. I won't give you a course of the details of that transaction.

The one way we think about it is it clearly is evidence that, even for a company of Clear Channel's size and sort of business competence, they are realizing that Internet radio is a tough business. That is for a company that is probably one of the world's best at selling advertising. So I feel it is just one more signal that something is broken in the royalty rate setting for Internet radio.

Ms. MATSUI. So do you think that is a big signal?

Mr. WESTERGREN. A huge signal. Absolutely. There could not be a bigger one.

Ms. MATSUI. How does the growth and the availability of Smartphones and tablets correspond to the growth of Internet radio?

Mr. WESTERGREN. Smartphones is the ball game for Pandora. Our growth rate doubled overnight the day we launched on the iPhone. And it has not only led to a massive increase in Smartphones. They have also driven adoption across consumer electronics and cars, because people began taking Smartphones and plugging them into their car dashboards and really using Pandora in the car. That led to now virtually every major car manufacturer partnering with us to embed it in the dashboard. So mobile technology has completely transformed the whole Internet radio industry.

Ms. MATSUI. Mr. Guttman-McCabe, monthly data caps potentially—could they have an affect potentially on innovation for new audio services available through mobile broadband connection and can you provide some examples?

Mr. GUTTMAN-MCCABE. Sure. I would say that when we look at monthly data caps the word you chose is actually a perfect word. It is innovation. So often we think of innovation in our ecosystem. We talk about it in the context of devices or networks or things like that. In our space, I have seen in my 11 years at CTIA as much or more innovation in the service plan space as I have seen in the technology space.

So if you think back 10 years ago, we paid for every minute coming and going. And then someone magically came up with buckets of minutes and then we had nights and weekends and we had prepaid and we had rollover minutes and myFaves and My Circle, and then we had sort of the all you can eat and now we have different entities offering levels of caps.

And the way that we look at it at CTIA, because of our friends over at the Department of Justice, we tend to stay away from pricing issues. But we look at it as allow the market to continue to evolve and innovate. And we saw Cricket Leap came up with a new service called MUVE, which is an audio-based service, and came up with a unique pricing structure for it which was separate from their cap—or their plan.

Ms. MATSUI. Does anyone else have a comment on that?

Mr. SMULYAN. I think what people have to understand is—and you can see it with AT&T having—what—21,000 percent data growth since the introduction of the iPhone—there is a staggering amount of data being consumed for entertainment. We are all big believers. We stream everyone in the broadcast industry streams. We find it. And I guess the best way is to give you an example, if I can, for a minute.

I have a radio station in Los Angeles. We reach a little under 3 million people a week. My cost of electricity of that radio station is $39,000 a year. So for $39,000 I can reach one person in southern California or 15 million. But I actually reach just under 3 million. If I took my transmitter down, my cost of reaching my just under 3 million people would be a little over $1 million a year. That is my cost to reach them. Their cost to receive the signal would be identical or probably actually higher, because I buy in bulk.

The question you have—and I think it is really the heart of all this—listen, innovation, the consumer will make the decision whether I am out of business or Tim is out of business or anyone. But the real issue here that we are not noticing is, is the American public willing to pay ever-increasing costs to receive its entertainment in a spectrum that is becoming increasingly crowded?

You now can use your entire monthly data cap on your Smartphone or your tablet in watching a baseball game or a movie in 3 hours. The fact is, if the American public wants to pay it, great. Our whole point is, look, we have a free alternative. Just turn the chip on. But the reality is the data consumption for the American public is growing at staggering rates and the question that really needs to be asked is, is this the best way to entertain the American public or inform them?

Ms. MATSUI. I understand. Thank you very much.

Mrs. BONO MACK. The gentlelady's time has expired.

The chair now recognizes Mr. Bilbray for 5 minutes.

Mr. BILBRAY. Well, let's just follow up on and allow anyone to jump in on this thing. But the question again is, if we have the chips available, what is the opposition to turning those on, again?

Mr. SMULYAN. I have no idea. I think I know. Because if people are consuming free radio, they are not buying data. That is the opposition. Bluntly. They are not buying data.

Mr. BILBRAY. OK. One thing that shocks me is that in a techie, savvy world as we think it is, how few of consumers realize that this is something that is available in the United States or could be available. When you go over to third world countries and you go overseas, you see this as being a matter of course a lot more and more and more.

Of course, sometimes I think that people that are not being distracted by old technology is getting a lot more hype on that. I was actually, Madam Chair, surfing on an island off Panama and a kid spoke perfect English. And when I asked him what school he went to to learn it, he said, no, my iPhone taught me the English language. But that shows you what they have got.

How can we move this and allow the consumer to know this is an option to where they can make an informed decision?

Mr. SMULYAN. One of the things that we appreciate from our friends at CTIA is, finally, in the last year you can now—there are phones that are being activated. The chips are being turned on. I am thrilled to see it is 59. A month ago, it was about 20 or 25. And, again, there are hundreds maybe thousands of phones.

But the reality is that up until recently—the NAB did a study. They sent people into phone stores. And when they went into phone stores, the sales people had no idea—when you got the sales card, if you go into a phone store anywhere else in the world, it says top features, and FM is always listed. You found that card in the United States. It was never mentioned. We need to change that, and we think it has been an active idea to sort of not have the consumer be aware of it.

And I will also say something else. We as a broadcast industry must also say, you can now get phones in cell phone stores with radios in them. We haven't been able to say that until recently.

Mr. GUTTMAN-MCCABE. Congressman, if I could, I don't think you were here for this earlier, but I sent our intern, who used to work on Capitol Hill, out to Best Buy to secure their June catalog. They put out a wireless catalog each month, and here it is. It always has a pullout section, and this pullout section lists phones and features from carriers and from manufacturers, and it lists about 80 phones. It specifically identifies 26 that have the FM chip set available in it. And, as I said, we have found 59.

So, again, Mr. Smulyan says he wants to have a factual discussion, and the facts are that this capability is available and if consumers desire it, they have access to it.

In the third world countries, some of those wireless carriers don't have second generation, let alone fourth, or what we have is a third, let alone fourth—what we have—generation here. So our consumers are savvier. They see services like Pandora and Spotify and others, and they take advantage of those, and they get their music in their format when they want it.

Yet there are still 59 phones available, and when our manufacturers do an analysis of what sells in Germany versus Brazil versus the United States, that differs, and they——

Mr. BILBRAY. I am going to interrupt a second. Because, Madam Chair and myself, we have districts that have suffered massive wildfires, and one of the things that my consumers would like to know about is the fact that it could be lifesaving if they had that capability during an emergency when, instead of using a reverse 9/11 call and all the stuff that we have been doing with hardwire and with cell phones, is the ability of somebody to be able to tune in and know exactly from the local station what is going on and be able to carry it with them, not have to be in their car and still be able to have that information.

There is a big one there from the safety factor, that I think you are going to see disaster preparedness people raising that as being an option, much like the 9/11 chip was.

Mr. GUTTMAN-MCCABE. And we recognize that. And, again, I guess I would point to the fact that if consumers want that capability it is in 59 phones. I have testified in the Homeland Security Committee on the Warren Act and emergency alerts.

Several months ago, I was crossing the Roosevelt Bridge, and I got my alert through my wireless device. We had our radio on. We had our daughters in our car. It was tuned to a local channel. We got our emergency alert through Arlington alerts through our wireless device.

So we don't look that wireless is replacing the emergency alert capabilities of radio. We look at it as supplemental. And, to us, having both of those capabilities is fantastic, just like having television broadcasts and others and——

Mr. BILBRAY. I understand that. But, Madam Chair, my time is up. I think that the fact is people are starting to depend on this for more and more, and they want it consolidated. They don't want to be carrying four or five or whatever. It is becoming all inclusive. We just want to make sure the consumer has that choice.

I yield back.

Mrs. BONO MACK. I thank the gentleman.

The chair now recognizes Mrs. Christensen for 5 minutes.

Mrs. CHRISTENSEN. Thank you, Madam Chair.

Mr. Smulyan, you seemed as though you wanted to answer that last question?

Mr. SMULYAN. Yes. I think I would ask the question, in his district or your district or any district, when there is an emergency are people actually going to be alerted and get the information they need in a 90-character text?

We would say—we have been doing this—we have been alerting and informing the American public for almost 90 years, and I believe that especially in a world in which the Internet clogs up, the cell system is jammed, or in the worst emergencies it is gone completely, when we have emergency generators, backup generators, we still remain the only people who can inform the American public at the time they need it the most.

Mrs. CHRISTENSEN. I just saw that you were chomping at the bit to respond and my colleague's time had been up.

But let me also ask you a question about something that took place in my general neighborhood. The Puerto Rico legislature recently held a hearing on legislation that would require FM chips in cell phones in order to deliver those emergency alerts, and the bill was endorsed by the Puerto Rican Broadcasters Association. Did NAB support this legislation?

And as a follow-up I would like to ask you and also Mr. Guttman-McCabe, do you believe that States and territories should have the right to establish their own emergency alerting systems and mechanisms?

Mr. SMULYAN. I want to defer to the NAB, because I am not sure what the position was. But, obviously, I can tell you I believe that every portable device should have this chip. It is included in most, and it can come on in any emergency.

I will defer to the NAB on what the position——

Mr. NEWBERRY. We didn't take a position. I understand NAB did not take a position.

Mrs. CHRISTENSEN. OK. A lot of the questions that I had were already asked.

But it is interesting we have had this discussion about chips that are not activated. Do you know how many systems' cell phones are not activated?

Mr. SMULYAN. I think the question was how many chips are not activated. It is hard to tell, because we understand that almost every Smartphone shipped in the United States now has a multi function that includes FM radio, but——

Mrs. BONO MACK. We were right about to change the chair here. So give us 1 minute to do see what the technical problem is; and it seems like the perfect point for me to leave and hand it over to you, Steve. I think it was your seersucker that did it.

Mrs. CHRISTENSEN. Go ahead.

Mr. SMULYAN. We don't know exactly. We think that most Smartphones shipped to this country have a multi-function chip which includes FM radio. For example, in every iPhone there has been an FM chip that has not been turned on. We don't know the exact number, but we think the great majority. And the only way to do it is to tear a phone apart. But we understand, based on sales figures, that almost all Smartphones that are shipped to this country—and this is, obviously, millions—have an FM chip that just hasn't been turned on.

Mrs. CHRISTENSEN. Mr. Shapiro, did you want to answer that?

I remember having a phone maybe about 10 years ago, and I like to walk and listen to music, and I used to listen to the radio on my phone. I can't do it anymore. Did something change?

Mr. SHAPIRO. You can buy phones that do that. There are several available—several dozen available in the marketplace. As Ms. Eshoo pointed out, consumers don't really demand that feature. I think the radio broadcasting industry can change that dynamic by aggressively advertising for it, and then consumers will do it.

The other way they can change the dynamic is, although we have heard a witness testify it costs almost nothing, well, if it costs almost nothing, they should be willing to pay for that feature as other feature providers often do to have that in telephones.

What this is really about is not about emergencies at all. This is about an industry trying to preserve its market share. Forty-seven percent of Americans listen to less radio today than they did just 1 year ago. So it has gone down dramatically. And they are coming to Congress and say they are not requesting a mandate, but yet in word and action they are acting very differently.

So all this talk about emergencies—and I specify in my written testimony why the emergency feature is somewhat greatly overrated, because you can—for various reasons. But this is just about a rather old industry trying to deal with the fact that there are new players out there and despite the fact they don't even play fairly——

Mrs. CHRISTENSEN. Let me try to get my last question to Mr. Smulyan. Since they are already available, why should individuals be forced to get these FM chips in their mobile devices if they didn't want them?

Mr. SMULYAN. Well, number one, I want to respond to Mr. Sherman—Mr. Shapiro—forgive me. I really apologize.

Number one, the statement there is 41 percent less listening is crazy. There are more people who listen to radio stations in the United States today than ever have been. We have 241 million of the 12-plus population and about 275 million of the 6-plus population. The fact is, more Americans listen to radio today than ever in the history of this country.

Our whole point is we think, based on experiences around the world and based on the study that has been done, that the great majority of people would use the radio if it were activated. We think that it is an opportunity, especially at a time when data caps are coming and people are going to be forced to understand how much more they are paying for audio that they haven't had to pay before data caps came.

Mrs. CHRISTENSEN. OK. My time is well up. So, thank you, Mr. Chairman.

Mr. SCALISE [presiding]. The gentlelady yields her time, and I will recognize myself for 5 minutes to ask questions.

I will start with Mr. Westergren. I have used Pandora many times. It is an honor to meet the founder of Pandora.

I want to first ask on the royalty arrangement that you have, 50 percent of revenue is what Pandora pays, is it based—when you are dealing with the Copyright Royalty Board, is it based on revenue? Is it based on the number of plays? How do they come to the amount that you have to pay versus what XM and what other platforms have to pay?

Mr. WESTERGREN. Sure. It is actually written as a greater of a per song fee or 25 percent of revenue. That is how it is calculated. And, currently, that per song fee is the larger number, and it equals about 50 percent.

Mr. SCALISE. Was there a back and forth or did they just impose this upon you and you have got your business model and now you have to pay 50 percent of whatever revenue you have, knowing that your competitors are paying a much lower rate? How did that come about? And is there any kind of appeals process?

Mr. WESTERGREN. It was imposed upon us by an arbitration, a Copyright Royalty Board, which is a three-judge panel that is part of the copyright office that actually legislative—per law, Federal law, every 5 years determines what our rate will be for the ensuing 5 years. And they came up with a ruling last time that led to our current rates.

Really, the argument we are here to make is we are OK with a centralized license. We actually really embrace that. It really enables our business. But we want the rate setting that we have to come from the same guidelines that other forms of radio derive their rates, which currently is not true.

So that three-judge panel, when they consider our rates, are guided by a different and worse or more disadvantageous set of criteria than, say, XM Sirius or, of course, broadcast.

Mr. SCALISE. And on the deal that was just reached between Clear Channel and Big Machine, that to me seems like an example of the system working, where private parties go and negotiate rates and once they come to an agreement that is what they pay and now they have got the ability to move forward and do business. Is that a better model, do you think, than having a government agency with their arbitration panel imposing rates upon you where you don't really get that opportunity to go and negotiate with the actual artist you are helping to promote?

Mr. WESTERGREN. That is a great question. Where we come to that topic on is part of Pandora's mission as a company is about giving wide exposure to a huge catalog of artists, both from the standpoint of artists as well as listeners, so playing old big band music for somebody that is older and playing the latest hip hop for kids.

Mr. SCALISE. Or New Orleans jazz, as you mentioned in your opening statement, which I am very fond of.

Mr. WESTERGREN. You name it, we are playing it. And that requires our ability to easily license and access a huge catalog of music, much of what is being created by artists who are not on labels, some of whom are literally hobbyists that do it on the weekends at home making great music.

Absent a compulsory license, in other words, one place we can go to to get permission to do all that, it would be impossible for us to go find all those people and get the proper permission to do it. That catalog which is about 1 million songs right now would be dramatically smaller. So the great benefit of a compulsory license is inclusion for artists and breadth of listening for music, for listeners.

Mr. SCALISE. I will have to get name of the band that you were in when you were playing, because I couldn't find it.

Mr. WESTERGREN. I am never giving that up.

Mr. SCALISE. I can't find it on Pandora when I search it.

Mr. Newberry, you had something you wanted to add.

Mr. NEWBERRY. I would like to make a couple of observations.

First of all, I think, while we disagree on some points, Mr. Westergren and I would both agree that the Copyright Royalty Board has set a rate structure that has suffocated the expansion of the industry and makes it very difficult. I don't know if I would have gone into his business model. But that is a decision he made, and I will respect that. He is perfectly capable of making that.

But where we disagree is that radio——

Mr. SCALISE. If you could wrap it up, because my time is running out.

Mr. NEWBERRY. Radio is not just music. Radio stations—what we represent as the National Association of Broadcasters—have local information, compelling personalities, emergency services. And when Mr. Shapiro says this is just an effort for us as an outdated technology and questions our commitment to emergency information and our services, I take disagreement with that. We have a long heritage of providing that information, and we are very sincere about that intent.

Mr. SCALISE. My time is about to run out, and I have got a question I wanted to ask Mr. Smulyan.

On the NAB Web site, you actually call on Congress—it is a section that says action needed, and you are calling on Congress to consider ways to expand availability of these FM chips.

And, again, in a free market, if somebody wants one, I think Mr. McCabe showed some examples of where people can go purchase it. I know on laptops and other tablet devices if you want a wireless card in some cases you have to pay extra for that, even though it is something people use every single day. I am happy to pay extra for it, but I have the option as a consumer not to pay extra for it or to buy it later.

Are you asking for Congress to do something that they—right now, you are saying that Congress needs to take action. I am just asking you to expand on that.

Mr. SMULYAN. Number one, we did a study that said 81 percent of the American public would pay more to have an activated radio station.

Mr. SCALISE. But what are you calling on Congress to do? Because you are calling on Congress in the Web site.

Mr. SMULYAN. We would like a study that was requested. We would like this issue to be fully vetted. We believe that the most important thing is it is not a question of paying more, turn on the chips that people have already paid for.

When I bought this phone——

Mr. SCALISE. So you are calling on Congress to take action regarding mandates on—one way or another?

Mr. SMULYAN. No. We are not. We are asking for a full and complete discussion.

But my only point is—I don't want to call it a mandate, but I paid for an FM radio in this phone. It is turned off. If I buy this phone in London, England, it has got an FM radio. I pay. I pay the same price in the United States for the same phone. They turned the radio off. So we are saying, wait a minute. And we would like that issue studied and discussed more fully.

Mr. SCALISE. My time is expired. I see that we have one of our colleagues from the full committee not on the subcommittee but is interested in asking questions. So I would ask unanimous consent to allow Mr. Green from Texas to be allotted 5 minutes to ask questions.

Without objection, the gentleman from Texas is recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman, Ranking Member Eshoo, and members of the committee, for allowing me to weigh in on our committee today.

At any given time—I have been on Energy and Commerce since '97. So I have been on the Telecom Subcommittee and off of it, depending on where our seniority is at.

I want to thank our witnesses for appearing today.

I have been an advocate of free over-the-air radio for many years, and the future of audio is an important topic for my constituents in the Houston, Texas, area. All of us along the Gulf Coast and I know my colleague sitting in the chair now realizes we rely on radio for alerts, hurricanes, floods, and other emergencies.

There is a proposal that the government set fees for radio stations to pay to record labels, and it is deeply flawed. Again, as the chairman mentioned, the announcement from Clear Channel and Big Machine label group indicates that the private marketplace is well suited for those negotiations and show the government does not have to have a role here.

Mr. Allison, I would like to ask you a question. And again we don't have a whole lot of time, but keep your answers as brief as possible.

In your testimony, you say that broadcasters are getting a free ride by playing music without having to pay. What would the music industry do without radio now that actually provides free coverage of a lot of music, no matter what venue?

Mr. ALLISON. I am certainly not advocating getting rid of radio. I love radio. I am fortunate to have had six number one albums, albeit on noncommercial independent radio.

But I think the big problem for me is, whereas they are these royalty streams for Internet radio, satellite, cable for performers, there is none for terrestrial radio.

Mr. GREEN. The Internet radio, oftentimes you pay a subscription fee.

Mr. ALLISON. Yes, but there is no——

Mr. GREEN. But the difference is, if I turn on my radio in my car—and, believe me, I am one of the huge group that every time I am in my vehicle I listen to the radio. In my area, it is country music or news. And thank goodness we do have an FM news station now in Houston.

But artists are bound to benefit from that exposure on radio.

Mr. ALLISON. Well, Pandora, is free as well.

Mr. GREEN. But the consumer pays for a subscription to Pandora, is that not correct?

Mr. ALLISON. No.

Mr. GREEN. Well, Pandora must make money somehow from it.

Mr. ALLISON. For advertising, I guess.

Mr. GREEN. But, I guess my concern is Pandora is not required to do, for example, emergency announcements. I don't know if they do or not. Maybe Mr. Scalise could tell me.

But our free over-the-air radio has been there for decades and provides that. No matter what venue you have, they all have some kind of a public interest, whether it is news at the top or bottom of the hour. But they also have access to emergency alerts like 911 for a number of other issues that maybe Pandora or other newer generations cannot do.

Do you believe that artists who are not currently getting a lot of airtime would benefit from a fee regimen if there was a certain fee agreement that was reached by a government agency or something else?

Mr. ALLISON. You mean start charging for terrestrial radio? Is that what you are asking?

Mr. GREEN. Yes.

Mr. ALLISON. I don't understand the question. I am sorry.

Mr. GREEN. Well, I guess the question is, do you believe that artists who are not—who do not currently get a lot of airtime would benefit from the fee-based regimen?

Mr. ALLISON. From a performance?

Mr. GREEN. From a fee-based regimen that royalties—that radio would pay for royalties for paying, you know, similar to other venues? Do you think that artists who are not receiving free over-the-air radio now, are not currently getting a lot of airtime, would benefit from a fee-based regimen, no matter who imposes it?

Mr. ALLISON. No, I don't think so.

Mr. SHERMAN. Can I just jump in here?

Many artists will get payments. Background musicians, not just featured musicians, will be paid if there is a performance royalty for terrestrial over-the-air radio.

I would also like to just comment on the public interest obligation. There is no subsidy given for rent or for electrical use or transmissions or anything else for radio. Songwriters are still paid even though—and they should be—even though there is a public interest obligation by radio stations. They get their spectrum for free.

Mr. GREEN. I only have 30 seconds left. Let me finish, though.

That is the difference. We have a lot of new generation technology that is great. But at the same time I don't want to eliminate what may be—whether it is in the rural area of Louisiana or a very urban area of Houston, that people will turn on that radio and limit that availability because of the costs that may be imposed by a regimen, whether it be Congress, unless it is agreed to like what happened in Clear Channel.

Mr. SHERMAN. I can assure you that we have in—all the legislation thus far has made huge accommodations to make sure that small radio stations in rural Louisiana are not impacted in any way.

Mr. GREEN. Well, I have been in those negotiations typically with our jurisprudence or Judiciary Committee, and so far they haven't reached that commonality where we could get an agreement. That is the concern. I am mainly here because I am concerned about the loss of that information available to my constituents that are not provided by a lot of other new venues.

And, Mr. Chairman, I appreciate the time.

Mr. SCALISE. The gentleman yields back.

With that, I would like to remind members that they have 10 business days to submit any questions to our panelists, and I would ask that the panelists respond to those questions.

I would like to thank you for participating in our hearing today; and, with that, the subcommittee stands adjourned.

[Whereupon, at 12:48 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

The Honorable Anna Eshoo

1. Record label consolidation has been a continuing trend in the industry – from six major labels in 1998 to three if the Universal Music Group/EMI merger is approved by the Federal Trade Commission. What do you see as the impact of this merger on the future of audio?

Dear Congresswoman Eshoo,

Thank you for your follow up question. I appreciate the chance to contribute my views both as an artist and on behalf of The Recording Academy.

Consolidation is an important issue for music creators. While The Recording Academy has not taken a position on the Universal-EMI merger, we have and continue to express concern about the consolidated state of the radio industry. Just a handful of major media companies control much of what citizens hear over the public airwaves, reducing access to, and awareness of, the countless regionalized styles that exist in modern music. When it comes to the arts, variety is the spice of life.

Additionally, through the power they have amassed, terrestrial radio conglomerates have resisted any attempt to pay a fair fee for the content they use (sound recordings), making radio the only business in America that can legally use another's intellectual property without permission or compensation. Congress needs to address this anomaly.

Ben Allison
Bassist/Composer
Governor, New York Chapter of The Recording Academy

NMPA
National
Music Publishers'
Association

975 F Street, NW
Suite 375
Washington, DC 20004
Tel: 202-393-NMPA (6672)

40 Wall Street
6th Floor
New York, NY 10005-1344
Tel: 212-370-5330

David M. Israelite
President & CEO

August 28, 2012

Congressman Greg Walden
2182 Rayburn House Office Building
Washington, DC 20515

Re: House Subcommittee on Communications and Technology hearing "The Future of Audio"

Dear Mr. Walden:

Thank you for the opportunity to appear at the House Subcommittee on Communications and Technology hearing entitled "The Future of Audio" on June 6, 2012. In response to your letter of August 14, 2012, and pursuant to the format you require, my answer to your question is as follows:

1. The member asking the question is the Honorable Anna Eshoo.
2. The question is: **"Record label consolidation has been a continuing trend in the industry – from six major labels in 1998 to three if the Universal Music Group/EMI merger is approved by the Federal Trade Commission. What do you see as the impact of this merger on the future of audio?"**
3. NMPA does not take a position on the impact of the merger. However, NMPA stresses that as the Sub-Committee continues to address these issues it is important to note that songwriters and publishers receive in royalties for the use of their musical compositions only a small fraction of what record labels receive for the use of sound recordings of the same musical composition. This inequitable treatment should cease, and we hope the Sub-Committee will take this into consideration as it continues its investigation of "The Future of Audio."

Thank you for the opportunity to continue to communicate with Sub-Committee members on this important topic. If there are any further questions from the Sub-Committee staff or any member, please do not hesitate to contact me.

Regards,

David Israelite

Question from The Honorable Anna Eshoo

Record label consolidation has been a continuing trend in the industry - from six major labels in 1998 to three if the Universal Music Group/EMI merger is approved by the Federal Trade commission. What do you see as the impact of this merger on the future of audio?

Response by Cary Sherman, Chairman & CEO, RIAA

As the trade association that represents all of the major labels together, RIAA does not take positions on any mergers in which our members may have competing or differing interests. What I can say, however, is that America's major record labels remain dedicated to investing in artists and bringing our consumers the best music whenever, wherever and however they want it.

Written Responses for Jeff Smulyan
"The Future of Audio" Hearing
Subcommittee on Communications and Technology
June 6, 2012

The Honorable Anna Eshoo

1. Record label consolidation has been a continuing trend in the industry – from six major labels in 1998 to three if the Universal Music Group/EMI merger is approved by the Federal Trade Commission. What do you see as the impact of this merger on the future of audio?

From the perspective of radio broadcasters, the specific impact of the impending merger on the future of audio is difficult to predict. It seems unlikely that this merger will alter the historic symbiotic relationship between radio and the recording industry. Since the advent of commercial broadcasting, record labels and performers have benefited from the exposure and promotional value of radio airplay, while local radio stations have earned revenues from advertisers eager to reach station listeners. The pending merger should not fundamentally change this long-standing beneficial relationship.

I also observe that continuing technological and other marketplace developments will likely have greater influence on the future of audio than this one merger. For example, as I made clear in my testimony, radio broadcasters are working diligently to become accessible to listeners via a wider range of platforms, especially on mobile phones and other mobile devices. The development and growth of new platforms for broadcast radio and other audio content are factors that truly have the potential to transform the audio marketplace.

Written Responses for Steve Newberry
"The Future of Audio" Hearing
Subcommittee on Communications and Technology
June 6, 2012

The Honorable Greg Walden

1. Do the newspaper-broadcast cross-ownership, radio-television cross-ownership, and local radio ownership limits make sense anymore? The number of full-power broadcast radio stations has jumped 23.7 percent since 1996 to more than 15,000. Satellite radio offers more than 150 digital channels to more than 20 million subscribers. Internet radio garners more than 89 million listeners each month. A majority of Americans over the age of 12 possess a portable music player that lets them take their music wherever they go. With all this competition, why single out broadcasters for restrictions?

The data cited in your question show that the Federal Communications Commission's (FCC) broadcast-only ownership restrictions do not reflect today's multichannel, multiplatform marketplace. These limitations distort marketplace competition and place local broadcasters at a severe disadvantage. The rules limit broadcasters' ability to respond to market forces, as satellite, cable and Internet-based media outlets proliferate and compete for audiences and advertising revenues without comparable restrictions. As a result, many broadcast stations struggle to maintain their economic vibrancy and to continue providing a high level of service to local communities. Broadcast outlets in small markets with more limited advertising potential face a particularly challenging economic environment.

With regard to newspaper/broadcast cross-ownership, radio/television cross-ownership, and local radio ownership specifically, these restrictions do not reflect marketplace realities. NAB has long argued that the ban on common ownership of a daily newspaper and a broadcast station in the same market – unchanged since its adoption in 1975 – cannot be justified in today's highly competitive and diverse digital marketplace. NAB agrees that the remaining restrictions on radio/television cross-ownership should be eliminated, as the FCC has proposed in its pending quadrennial review of the ownership rules. Congress set the existing local radio ownership caps in 1996 in a much less competitive and diverse audio marketplace, before the emergence of satellite radio, online streaming, and iPods and MP3 players. Accordingly, NAB has urged the FCC to continue the process begun by Congress of relaxing local radio restrictions.

All of these outmoded restrictions limit the ways broadcasters – and *only* broadcasters – can compete, and hurt local stations' ability to serve their diverse audiences and local communities. Numerous studies, moreover, have shown that common ownership of media outlets in local markets enhances local service, including stations' news and informational programming. For these reasons, outdated restrictions on the ownership of local broadcast stations need reform.

The Honorable Anna Eshoo

1. Record label consolidation has been a continuing trend in the industry – from six major labels in 1998 to three if the Universal Music Group/EMI merger is approved by the Federal Trade Commission. What do you see as the impact of this merger on the future of audio?

The potential effect of the impending Universal Music Group/EMI merger on the future of radio broadcasters is difficult to predict. The recording industry is already a classical oligopoly, where a small number of firms dominate the revenues of a particular industry. Broadcasters have previously expressed to Congress our concern that the predominantly foreign ownership of those few major record labels means that monies paid to copyright owners of sound recordings (*i.e.*, the labels) flow from American businesses to overseas conglomerates. We would hope that the merger would not further exacerbate that situation.

We believe it is unlikely that the merger will affect the fundamental symbiotic relationship between radio and the music and recording industries. For decades, performers and record labels have profited from the exposure and promotional value provided by radio airplay, through the sale of music and related goods and services, while local radio stations receive revenues from advertisers that pay for access to station listeners. We do not anticipate that the merger would significantly alter this mutually beneficial dynamic.

Future of Audio Hearing before House Energy and Commerce Subcommittee on Communications and Technology
June 6, 2012

Question for the Record from Representative Anna Eshoo for Tim Westergren of Pandora:

Record label consolidation has been a continuing trend in the industry- from six major labels in 1998 to three if the Universal Music Group/EMI merger is approved by the Federal Trade Commission. What do you see as the impact of this merger on the future of audio?

Westergren response: The general trend of large record label mergers, including the most recent proposed consolidation of Universal Music Group and EMI, has many potential negative consequences. But there is one in particular that we believe requires the greatest scrutiny, and response. The consolidation of market share brings with it a commensurate concentration of market power for the enlarged entities. That in turn amplifies the potential for monopolistic behavior. A central target of major labels over the past ten years has been the compulsory licensing system. The existence of a robust compulsory licensing system has been a central driver of innovation in the digital music industry. It has been the absolute cornerstone of internet radio, and numerous other new categories that have clearly met a strong consumer need, while also providing tremendous value and opportunity for working artists.

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115

Majority (202) 225–2927
Minority (202) 225–3641

August 14, 2012

Mr. Christopher Guttman-McCabe
Vice President, Regulatory Affairs
CTIA – The Wireless Association
1400 16th Street, N.W., Suite 600
Washington, D.C. 20036

Dear Mr. Guttman-McCabe:

Thank you for appearing at the Subcommittee on Communications and Technology hearing entitled "The Future of Audio" on June 6, 2012.

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for 10 business days to permit Members to submit additional questions to witnesses, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please e-mail your responses, in Word or PDF format, to Charlotte.Savercool@mail.house.gov by the close of business on Tuesday, August 28, 2012.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: The Honorable Anna Eshoo, Ranking Member,
Subcommittee on Communications and Technology

Attachment

Questions from the Hon. Anna Eshoo

1. **Record label consolidation has been a continuing trend in the industry – from six major labels in 1998 to three if the Universal Music Group/EMI merger is approved by the Federal Trade Commission. What do you see as the impact of this merger on the future of audio?**

CTIA is generally not authorized by its Board of Directors to comment on mergers. Consistent with this policy, CTIA does not have a view of how, or if, the UMG/EMI transaction might impact the future of audio.

2. **As you're well aware, consumer demand for innovative, data-intensive audio and video applications like Netflix, Spotify Premium, and Hulu continues to grow, while at the same time wireless carriers are moving away from unlimited data plans. How do we ensure that future innovation is not curtailed by the use of data caps?**

While some carriers are shifting away from unlimited data plans, developments in mobile network technologies are increasingly giving customers the tools to manage their usage in ways that best fits their needs, and combined with new business models across the entire wireless ecosystem, these innovations are creating more ways for consumers to access the applications and services they want within their budgets. There is synergy between the concurrent innovation cycles in the areas of applications, networking technologies, and wireless business models that combine to continually improve consumers' mobile broadband experiences – and sustained innovation in each of these portions of the wireless ecosystem is vital to the continued evolution of mobile broadband as a whole. For example, technologies and business models that allow consumers to temporarily bump up their speeds or shift their viewing time could enable a user on a more economical monthly data plan to still enjoy high quality video, while new shared data plans allow consumers to more efficiently use their data on the devices of their choice. Additionally, some carriers and content providers may experiment with two-sided pricing models that could permit the delivery of the content while minimizing the impact on customer's data plan.

Finally, as CTIA has noted repeatedly before the Subcommittee, the best way to avoid the potential negative consequences associated with the spectrum crunch is for policymakers to act expeditiously to make a substantial tranche of spectrum below 3 gigahertz available for commercial use. We greatly appreciate enactment of the spectrum and wireless infrastructure deployment provisions in the Middle Class Tax Relief and Job Creation Act and are encouraged that the Federal Spectrum Working Group has begun discussions regarding the possible reallocation of bands currently occupied by government users for commercial use. Expanding the total amount of spectrum available for licensed commercial use, removing barriers to the deployment of new wireless facilities (including not only antennae but also fiber for backhaul), and increasing the deployment of Wi-Fi hotspots to facilitate additional off-loading of wireless traffic to high-capacity wireline networks should combine to provide end-users with robust service that enables them to use the sorts of audio and video applications consumers increasingly desire.

CEA®

Consumer Electronics Association
1919 South Eads Street
Arlington, VA
22202 USA
866-858-1555 toll free
703-907-7600 main
703-907-7601 fax
CE.org

August 28, 2012

The Honorable Greg Walden
Chairman
Subcommittee, Communications and Technology
2123 Rayburn House Office Building
Washington, DC 20515

The Honorable Anna Eshoo
Ranking Member
Subcommittee, Communications and Technology
2123 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Walden and Ranking Member Eshoo,

On behalf of the Consumer Electronics Association (CEA), thank you the opportunity to testify before the Subcommittee on the future of audio. Below please find our response to questions for the record.

Questions from Ranking Member Anna Eshoo

Record label consolidation has been a continuing trend in the industry – from six major labels in 1998 to three if the Universal Music Group/EMI merger is approved by the Federal Trade Commission. What do you see as the impact of this merger on the future of audio?

We do not object to consolidation, and understand that the record labels must be allowed to enter business arrangements in response to new economic and technological factors. However, irrespective of consolidation, we believe that the most effective approach by the labels is to aggressively and transparently license their music while supporting new delivery services.

Such an approach would help create a dynamic ecosystem for digital music while benefitting musicians, music fans, and the major labels. Innovation and a commitment to offering an array of legal and compelling music experiences – new services, higher quality digital files, etc. - is the best response to unauthorized downloading and other challenges facing the music industry.

One positive development has been the recent mass-market emergence of Internet radio. Companies like Pandora have built a loyal fan base of millions of listeners while paying royalties to artists and creators. However, Internet radio is clearly a category where federal policy has hampered innovation. Currently, Internet radio streamers are required to pay significantly more in royalties than their competitor music services such as cable, satellite and broadcast radio. This disproportionate royalty burden and the resulting marketplace disadvantage have understandably slowed the growth of this medium. A more equitable royalty standard would drive greater competition and greater investment in innovation that would ultimately benefit consumers, musical artists, and the consumer electronics industry.

Your member companies are developing products that give consumers increasing choice when it comes to how and where they listen to their favorite audio. On such advancement is the ability to access their personally-owned music across multiple devices. Do you see any barriers to further innovation in this space?

Over the last ten years, advances in technology have dramatically changed the way we enjoy music. Today, more people have access to music in more places than ever before, thanks in large part to millions of Internet-enabled devices that deliver music to consumers everywhere.

The resulting ability to enjoy content over a range of playback devices is helpful for both content and hardware manufacturers. When consumers can enjoy content at any time of the day - at home, at their desk, or on the go - appetite for new devices and content increases.

In the past, innovation across multiple devices and platforms has been limited by digital rights management (DRM) technology which limited playback to a subset of devices. Thankfully, content and service providers are slowly moving away from restrictive DRM as they recognize that enabling cross-platform use increases the desirability (and sales) of content.

While Americans are increasingly able to enjoy their digital music over a variety of devices, some legacy industries urge that this dynamic ecosystem be constrained by design requirements or mandates (for example, a requirement that digital smart phones include analog radio receivers). We urge Congress to reject these ill-considered requests.

Instead, Congress should simply let innovation move forward. The result will be more new content, more innovative devices and a continuation of America's leadership in the music and technology sectors.

Thank you for your time and consideration. Please let me know if you have any further questions.

Sincerely,

Gary Shapiro
President & CEO
Consumer Electronics Association

cc: Members, Subcommittee on Communications and Technology