FULL COMMITTEE HEARING ON ASSESSING THE IMPACT OF THE COPYRIGHT ROYALTY RATES ON RECORDING ARTISTS AND WEBCASTERS

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FULL COMITTEE HEARING ASSESSING THE IMPACT OF THE COPYRIGHT ROYALTY BOARD DECISION TO INCREASE RATES ON RECORDING ARTISTS AND WEBCASTERS

THURSDAY, JUNE 28, 2007

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Committee met, pursuant to call, at 10:00 a.m., inRoom 2360, Rayburn House Office Building, Hon. Nydia M. Velázquez [chair of the Committee] Presiding.

Present: Representatives Velázquez , Clarke, Johnson, Chabot, Akin and Heller.

Also present: Representative Van Hollen.

OPENING STATEMENT OF CHAIRWOMAN VELÁZQUEZ

ChairwomanVELÁZQUEZ . I call this hearing to order.

This morning the committee will examine a recent decision by the Copyright Royalty Board that will increase the fees that Internet radio broadcasters pay to play music. In advance of these new fees taking effect on July 15, it is important to consider a challenge of providing fair compensation for artists and record labels while maintaining a business-friendly environment for Webcasters.

In May of this year, the Copyright Royalty Board set new rates at which commercial and noncommercial Webcasters will compensate copyright owners. The CRB hopes to establish an annual minimal fee that these entities must pay for each channel provided by the service. In response to the CRB decision, Internet radio providers have raised concerns about whether the new rates and minimum fees will put small Internet radio broadcasters out of business. Artists and record companies, however, have praised the CRB decision as one that fairly compensates them for their music. This has prompted an important debate about copyright royalties that will continue beyond July 15 when these new rates go into effect. As a result, today's hearing will review the impact of this ruling on small Internet radio broadcasters, independent artists and record labels.

At the heart of the copyright royalties issue it is the fact that the Internet is changing the way consumers access and enjoy music. Music used to be distributed primarily via records, tapes, CDs and traditional AM-FM radio. Now an increasing amount of music is

now distributed via audio files, network downloads, ringtones, satellite radio, HD radio and Internet radio.

Data from 2006 confirms that a market shift is occurring in the music industry. Sales of CDs continued to fall last year, while subscriptions to digital music services, digital downloads of phones, albums and ringtones, all increased. At the same time, the number of subscribers to satellite radio and the number of people listening to Internet radio has risen dramatically.

Through the Internet, radio broadcasters of all sizes offer Webcasts. Many of the leading providers are small companies employing fewer than 50 employees. Given the consolidation of media ownership that we have seen in recent years, the growing popularity of a broad array of small and independent Webcasters is a promising sign. Listeners want greater choice with respect to music content, and Internet radio services of all sizes are providing just that.

As popular as these services are today, new technologies are expected to make them even more popular in the future. When universal broadband access is realized, consumers will be able to access an even wider variety of entertainment than they are today. In order for this future to become a reality, there must be a business environment that allows new technologies to prosper and grow while preserving incentives for artistic creativity. It is through this balance that we will best be able to promote innovation and ensure that America remains a leader in these emerging high-technology sectors.

The hearing today continues the committee's active role in addressing small-business-related technology issues. These issues are indicative of the crucial and critical role that technology plays in the economy and in advancing U.S. competitiveness. I look forward to the testimony today. And I want to thank all the witnesses for traveling to Washington, D.C., today.

And I also want to thank Ranking Member Mr. Chabot for suggesting this hearing.

ChairwomanVELÁZQUEZ . And now I recognize Mr. Chabot for his opening statement.

OPENING STATEMENT OF MR. CHABOT

Mr.CHABOT. Thank you very much, Madam Chairwoman, and thank you very much for holding this hearing.

As you know, time is of the essence for all the parties involved in this discussion, and I appreciate your willingness to consider this issue before July 15, which, of, course is the deadline.

Let me also thank our witnesses, as you did, for being here today. I want to particularly thank a couple that are from my area, Mr. Bryan Miller, who is the general manager of WOXY.com in Cincinnati; and Mr. Eiswerth, president and general manager and CEO of Cincinnati Public Radio, located also in the Cincinnati area, for making this trip. I appreciate, I know we both do, all of the witnesses' willingness to appear here today on such short notice to share with us your experiences.

The issue—and the Chairwoman, I have to say, has set it out very, very well here this morning in her statement— the issue be-

fore us today implicates some of our Nation's most important rights and protections. As I indicated in my opening statement, during this committee's examination of patent reform a few months back, we don't have to look any further than the Constitution to understand the importance of innovation and creativity to our Nation's economic development. In particular, the question we are struggling with today is how do we best protect and encourage creativity, while at the same time adequately promote and protect the use of the most advanced technology innovations, particularly as it benefits consumers?

For the music industry, artists and consumers of music, the Internet has been for the most part an asset. With its more than 1.3 billion users, the Internet has fostered and nurtured the visibility of artists, as well as enabled a new type of small business to take hold, the small Webcaster. Indeed over the last 5 years, the number of Internet radio listeners has increased from 20 million to 29 million, with audience levels expected to double by 2010. By 2020, industry experts predict that more than 200 million people will listen to Internet radio.

Similarly, the growth of Internet radio continues to benefit songwriters and recording artists. The exposure and audience reach that artists have experienced because of the Internet is beyond compare, providing opportunities for a diverse range of artists and labels who never thought it possible.

Royalty fees have played a significant role in this growth on both ends, contributing to the increased number of diverse recording artists as well as the increased number of specialized Webcasters. However, the recent decision by the Copyright Royalty Board to increase royalty fees may jeopardize the mutually beneficial relationship. The decision and the outcry that has resulted on both sides raises questions and concerns about what is needed to fairly and adequately compensate recording artists and labels, many of which are small businesses, yet ensure that Webcasters, particularly small ones, can absorb these increased costs in order to remain viable.

Ironically, this dilemma is not new. Indeed, in 2002, the same parties were here in Congress raising similar concerns. Fortunately, the dispute resulted in the Small Webcaster Settlement Act, which codified the voluntary agreement reached by the parties.

As with any private dispute, I believe the parties to the conflict are best suited to devise a remedy that is workable and equitable for all involved. However, I must admit that I find it somewhat troubling that we are here revisiting these issues yet again just 5 years later. This leads me to question the effectiveness and flexibility of section 112 and 114 of the Copyright Act and the ability of these provisions to promote and encourage creativity, encourage the use of the most advanced delivery mechanisms to benefit consumers and copyright holders, and ensure fair compensation for those who have created works protected by the Copyright Act.

I look forward to hearing from all of our witnesses here this morning, and it is my hope that this hearing serves the purpose for which it was intended. That intent is to get those who are parties to this conflict to take a step back and look for common ground

so that July 15 is just another day that listeners of Internet radio can hear their favorite artists.

I yield back the balance of my time, Madam Chair.

ChairwomanVELÁZQUEZ . Thank you.

ChairwomanVELÁZQUEZ . Given the number of witnesses that we have, I would ask that please make your remarks for 5 minutes. We are going to have the clock there. It will be ticking. Without objection, your entire statement will be included into the Congressional Record.

And now I would recognize Mr. Chabot for the purpose of introducing the first witness.

Mr.CHABOT. Thank you, Madam Chair. And I would first would like to introduce Mr. Bryan Miller. Mr. Miller is currently the general manager, as I mentioned before, of WOXY.com, a small four-employee Webcasting station that currently operates out of Cincinnati, Ohio. WOXY.com, like many Internet radio services, started out as WOXY-FM, a terrestrial FM station that broadcasted a unique rock and roll format. Under the leadership of Mr. Miller, WOXY-FM made the transition from an analog radio station to WOXY.com, an Internet-only broadcast station in 2004, and is now one of the leading indie-rock Internet radio outlets.

Mr. Miller hold both a B.S. and B.A. From Miami University, a fine university located right outside Cincinnati up in Oxford, Ohio, and currently resides in San Francisco.

Thank you again for coming all the way to share your experience, Mr. Miller. You have 5 minutes.

STATEMENT OF BRYAN MILLER, WOXY.COM, GENERAL MANAGER, CINCINNATI, OH

Mr.MILLER. Good morning. My name is Bryan J. Miller, and I am the general manager for WOXY.com, an Internet broadcaster based in Cincinnati, Ohio. Thank you, Chairwoman Velázquez and Congressman Chabot, for holding this important hearing.

I have had the unique experience of making the transition from a terrestrial FM radio station to an Internet-only Webcaster, and I hope I am able to convey to this committee today the lessons I have learned over the course of my career and my reasons for opposing the recent increase in recording royalty rates for Webcasters like myself.

First let me state unequivocally that whatever you hear and believe about big Webcasters being able to pay higher royalties, the truth is that smaller independent Webcasters are struggling to get by in this very exciting, but still very young industry. There is a tremendous challenge to deliver the value and innovation listeners demand while maintaining a viable business.

From my personal experience the economics of running a standalone Internet radio operation are daunting at best. Between bandwidth costs, hosting, music royalties and rent, a small Webcaster would be doing quite well to simply cover his or her costs let alone have anything left over for payroll. And, in fact, the revenues we have been able to generate in operating WOXY.com over the past several years have at best only covered half of our monthly expenses.

In all the conversations I have had with my peers, their situation isn't much better. Most draw on a salary and are lucky to cover just their operating costs.

The Copyright Royalty Board's decision is grossly out of sync with the economic reality of small Webcasters. Even before the recent rate hike, financial hardship forced WOXY.com off the air and out of business last September. We were lucky enough to have been acquired by a larger company, who has thus far been willing to subsidize our operation. Unfortunately, most Webcasters facing these increased royalty rates don't have that luxury. I can guarantee that if WOXY.com had not been acquired and was still a stand-alone entity, the new royalties would have been the end of the road for us at that point.

So why should you care about Webcasters who are a hair's breath from going under even before they face the higher royalty rates? I would argue that we deliver something so unique to artists and music fans that our existence should be supported and encouraged and not hindered during the early years of our industry.

Musicians stand to lose valuable exposure provided by Internet radio outlets. I believe that one of the reasons millions of people tune into Internet radio every month is that they are looking for something new. In the past 15 years, rampant consolidation amongst AM and FM broadcasters has led to a general homogenization of radio programming. Narrowing playlists and fewer artists are being exposed. Consumers are now turning to Internet radio to discover new artists and find something that they are not going to get via their local AM or FM radio station. Countless artists have told us that listeners have approached them at concerts around the country, and they told them how they first discovered the band's music when they first heard it on WOXY.com. Today we are playing more than 400 songs from new artists, and in a given year we probably play about 10 times the number of songs as your average terrestrial radio station, and including five times as many independent artists who would otherwise never be heard on traditional radio.

The musicians hurt most by this radio increase, I think, are the ones who today benefit the most from Internet radio, and that would be new and emerging independent artists. Webcasters going out of business is a lose-lose for artists.

Consumers will also lose if there is a mass extinction of independent Internet radio stations. The growing audience of Internet radio proves that there is a hunger for alternatives to mainstream media. With consumers' tastes becoming increasingly niched, Internet radio has the ability to serve an unlimited number of channels of programming uniquely suited to fulfill this need. For example, stations dedicated to genres like honky-tonk or even children's music could never exist on FM broadcast radio. But confined by geography and limited by space on the dial, traditional radio could never offer this type of programming. But on line these formats have found a worldwide audience, and they are thriving today.

Unfortunately, the shortsighted $500-per-channel minimum fee in the CRB's decision would make serving thousands of channels of custom programming financially impossible. I fear that the future of Internet radio under the new performance royalty rates will

look wildly different from the thousand of small vibrant, eclectic stations that you see today. A select few, mostly larger corporate Webcasters, may be able to pay the increased royalties by subsidizing their Internet broadcasting operations with non-Webcast revenues, in effect using Internet radio as a loss leader for their other products. But I truly believe that NetRadio, as we know it, and the opportunities it offers will be a thing of the past if Copyright Royalty Board's decision is not overturned. Thousands of established and budding small businesses will vanish, and although I believe Internet broadcasting has the potential to grow into a thriving, profitable industry, currently the revenue structure is simply not there to support the additional royalties.

Thank you for taking the time this morning to consider this matter and speak with representatives from all facets of the industry. I ask you to consider the importance of NetRadio, co sponsor the Internet Radio Equality Act and help keep Internet radio alive. Thank you.

ChairwomanVELÁZQUEZ . Thank you, Mr. Miller.

[The statement of Mr. Miller may be found on page 48 of the Appendix.]

ChairwomanVELÁZQUEZ . Our next witness is Mr. Tom Silverman. Mr. Silverman is the founder of Tommy Boy Records. Based in New York City, Tommy Boy Records is one of the world's premier independent labels. Tommy Boy has earned gold, platinum and multi-platinum albums by such artists as Everlast, Queen Latifah, De La Soul and Naughty by Nature. In 2006, Tommy Boy records marked its 25th anniversary.

Sir, welcome.

STATEMENT OF THOMAS SILVERMAN, CHAIRMAN, TOMMY BOY RECORDS, NEW YORK, NEW YORK

Mr.SILVERMAN. Good morning. Thank you, Madam Chairwoman and members of the committee. My name is Tom Silverman, but I am also known as Tommy Boy, and the owner and CEO of Tommy Boy Entertainment. I do appreciate this opportunity to testify before you today.

I come from the world of hip-hop and gold and platinum records, from the world of Planet Rock by Afrika Bambaataa and the Soul Sonic Force, the world of Queen Latifah and Naughty by Nature. But I also come from a world very familiar to members of this committee, the world of business, of meeting payrolls, paying taxes, and although we only have 11 employees, we have hundreds of people depending on the viability of this business enterprise, from performers, writers, manufacturers, managers, promotion people and so on down the line.

And it is as a businessman that I appear before you today. It is the business of music, a vast industry that, in step with the extraordinary changes in technology, is itself changing dramatically. Long gone are the days of vinyl records that were prevalent when I started out with a $5,000 loan from my father in my cramped New York City apartment in 1981, with two other guys. Today there are many ways in which people get their music, including Internet radio, satellite radio and other digital formats. Almost

every day new technology and business arrangements are appearing and continue to dramatically alter people's music listening habits and preferences.

On balance I think it is all good. It is broadening people's access and exposure to all kinds of music, and it is opening up new opportunities for artists in small businesses like Tommy Boy. But even in this new world of jaw-dropping new technology, I have the old-fashioned challenges and responsibilities of any business owner: making a profit; identifying, hiring and nurturing employees; investing in new artists and new products.

I sometimes sign a new musical artist, and they do well and flourish, and my record label makes a profit, but no one bats a thousand. More often I sign new musical artists, and they don't so well, sales languish, and I lose money. In the old days, one winner paid for five losers. Today one winner doesn't even pay for one loser. These days we are becoming increasingly dependent on the royalties due us from the flourishing business of Internet Webcasting and satellite radio. These are businesses totally dependent on our work product, the creativity and high-risk investment of the record label, and the creativity, passion and hard work of the recording artists. Without us, these businesses would not and could not exist.

Yet what we continue to hear from the Webcasting business, one where more than 90 percent of the Webcasting royalties are paid by only 20 large Webcasters, is that they want to pay less, not more, and I think it is only fair that these large businesses, whose very existence is totally dependent on the work product of record companies, independent labels like Tommy Boy and musical artists, should fairly compensate those whose work they Webcast.

As to the fairness of the rates, they were determined by three impartial judges specifically selected for their knowledge and understanding of this industry in a hearing process that ran for more than 18 months. It was a fair decision. And what irks me as a small business owner is the attitude expressed by a few small Webcasters who became engaged in a grassroots campaign primarily financed by large Webcasters. They got people's attention, including some Members of Congress, by claiming small businesses would be hurt. Okay. But what bothers me is in all their rhetoric, I never hear anything positive about artists, who themselves are small businesses, or about the challenges facing independent labels.

There are 2,000 independent labels in America. It is all about cutting the rates. Congress asked Sound Exchange to give small Webcasters below-market royalties, to provide them with a significant discount from fair market rates set by the copyright royalty judges, to allow them a chance for their businesses to gain more steam. And as I understand it, Sound Exchange is doing just that. And if Sound Exchange tells me it is okay to give this discount and it might help some of these small operators, then it is okay with me because I know that Sound Exchange is looking out for our performance rates.

So while I continue to pay for electricity and employees and all of my other costs that rise with the market, even as my traditional sales and margins continue to decline, continuing this discount for

a limited time, it seems fair. But that discount offer does not seem to have stopped the push to cut our royalties. I know what that is about. It is about Big NetRadio. And, Madam Chairwoman, with all due respect, it is not right.

I was asked to come before you today as an independent record label owner and entrepreneur who has had some success in the industry, but I want to be clear that I fully realize this success was not preordained, certainly not inevitable. Yes, I worked hard, but so do a lot of people in the industry. I have tried to assist small businessmen and women over the years. In the 1980s, I created the New Music Seminar, which was the music business' largest conference that tried to educate new entrepreneurs and lawyers, agents, managers and artists on how to best navigate the difficult music business.

I even distribute other small labels smaller than my own. Over the years I have been lucky to discover influential groups like De La Soul and Queen Latifah. I invested in new sounds. But so do a lot of others. I constantly reinvested my money to try to build my business. So do others. Many in my industry have failed. No small business is guaranteed success. I happened to strike on some successes, but many of us do not make it big in this competitive business. Many scrimp and save and sacrifice to make ends meet, devote their life to this business that they love, making music that others enjoy.

And I do hope that you consider the situation; as you consider it, you will keep in mind the many hundreds of thousands of musical artists and the thousands of record label owners who are small business people, sometimes extremely small.

I serve on the board and was a founding member of the American Association for Independent Music, a new association who represents many of America's leading independent labels. Of our 130 members, 90 have a market share of less than 2/10ths of 1 percent, which means they gross $1.4 million or less, gross $1.4 million or less, from the sales of their products. From this gross one must deduct artist royalties; publishing royalties, which we have to pay; the cost of physical goods, if in physical form and not a digital download; and many other costs, like marketing, advertising, artist advances and more. Our businesses are very different from Webcasters, some of whom simply pay a service fee, monthly service fee, and plug in their computers and stream.

The income for artists and copyright owners from music royalties being paid for the use of their products, is a critically important factor in whether they can afford to keep going and bring us the music that so very many of us enjoy and love. It is all about fairness and being paid for the work that we do.

ChairwomanVELÁZQUEZ . Mr. Silverman.

Mr.SILVERMAN. Thank you very much.

ChairwomanVELÁZQUEZ . Your time is up, but if you need an extra 30 seconds to summarize.

Mr.SILVERMAN. Thank you.

[The statement of Mr. Silverman may be found on page 51 of the Appendix.]

ChairwomanVELÁZQUEZ . Our next witness is Joey Allcorn. Mr. Allcorn is a country music recording artist from Columbus, Georgia. Mr. Allcorn's debut album, entitled 50 Years Too Late, was released in 2006, and currently working on his second full-length album for release in 2008. Mr. Allcorn was recently a True Country delegate through the Roots Music Association. Welcome.

STATEMENT OF JOEY ALLCORN, ARTIST, COLUMBUS, GEORGIA

Mr.ALLCORN. Thank you, Chairwoman.

Good morning Chairwoman Velázquez , and Congressman Chabot and members of the committee. My name is Joey Allcorn. I am from Columbus, Georgia, and I want to thank you for inviting me here to speak about this issue today. I speak to you as a professional songwriter, recording artist and a performer.

As I will explain, Internet radio is one of the greatest opportunities for the 21st century recording artist. It helps fans find new music, it helps artists find new fans, and leads to new and unexpected performance and touring opportunities, and yet still pays royalties. What a great combination. But if the Copyright Royalty Board royalties are implemented and Webcasters go silent permanently, as they did Tuesday for their day of silence demonstration, then all these benefits will be lost.

The higher royalty rates from fewer Webcasters will benefit only a few big artists, just as broadcast radio benefits a few, but leaves most independent artists like me high and dry.

But let me go back and tell you a little bit about me and my music. As the title track of my album says, I was probably born 50 years too late. I have been playing music for what seems like every day since I was about 14 years old. It was then I discovered Hank Williams, Senior, and that changed what I was doing forever. All those old stories of heartbreak, heaven and hell, and American history got into my blood, and I started writing songs myself. These aren't mainstream country songs like you hear on FM radio today. My songs pay tribute to what they now call plastic country, which is artists like Hank Williams, Johnny Cash, Farin Young and even old guys like Muddy Waters and Lead Belly. I tell my stories with steel guitars and fiddles, hillbilly wine and a yodel.

I do okay for a young guy playing traditional country music. I make a living, enjoy some success and have a good and growing following. I have shared the stage with some of the legends, members of Hank Williams' Drifting Cowboys band, Ernest Tubbs' Texas Troubadours, and Waylon Jennings' Waymore Blues band. Hank Williams, III, who is Hank, Senior's, grandson, even performed on a song with me for my debut record.

But none of my success comes from mainstream FM radio or happens in Nashville where the major studios are based. My business begins with my guitar, a pen and paper, and a local recording studio, and it grows and thrives on the Internet. Traditional terrestrial radio promotion was never in my business plan because they just don't play this kind of music anymore until Internet radio changed my business and expanded my opportunities a thousandfold.

Joey Allcorn and many artists just like me have found a home on Internet radio where we can reach people who appreciate the kind of music we do. Last year we made the Ram Radio top 10 list of 2006, and people would come up to me at shows and say, I bought your album on the Internet, heard your music on Last FM or Pandora or any of these services, and that changed my world.

It is incredibly easy to buy music with Internet radio. All the stations have buy buttons that connect listeners to Amazon.com, iTunes, CD Baby, or the station's own virtual store, so I have been able to sell a lot of albums that way.

Compare this to the frustration of broadcast radio. We played a concert in my hometown in 2005, and they set up for a local interview for me to promote the show, and the station couldn't even play my music because it didn't fit their format. It is ironic that Internet radio is helping me make my career, and it is one of the best places for me and those like me and my fans to discover one another, but these royalties might completely shut this opportunity down.

Even beyond radio, the Internet is a huge opportunity for independent artists. It has decentralized the music industry so all artists have a shot. I don't need a major record label or major studio support to make music, find an audience, distribute my music and make a decent living. Instead, I can go direct to music fans, or they can find me using Internet radio or a simple Yahoo search on classic country music, and that is okay for the major labels because they would never sign us anyway. My band doesn't sell enough albums to pay their electric bills. But with low barriers to entry into Internet radio, I can build my audience one listener at a time, one city at a time with the music that I love. In a way I guess you could call Internet radio the greatest grassroots music movement ever.

All this opportunity makes these drastic new royalties even more bizarre to me. Here is a new radio outlet that has broken the industry wide open for independent artists and small labels. It pays royalties to artists who don't get paid on broadcast radio and is the only medium with a buy button next to the song titles. Yet three judges from somewhere I have never heard of decide to raise Webcasters' royalty rates so they will go out of business, and if that happens, my career, my small business and my fans will suffer.

I have heard that Sound Exchange on behalf of its artist members is claiming this royalty fight is about big Webcasters ripping off artists. That is really unfair, and I don't understand it. Artists benefit equally from small and large Webcasters. These new royalties will kill the small Webcasters first, but then one by one as time goes on, they will kill the larger ones as well. If that happens, the opportunities lost for independent artists will be painfully real. In fact, I just met a guy last week whose band was heard on Pandora by one music director, and the following week he was playing before 15,000 in Kansas.

I will stop here. I think you get the point. But finally, please understand this isn't about greed or pointing fingers at some big radio or big label conspiracy. The beauty of Internet radio is that it supports so many artists and genres, many of them whom corporate radio and major labels would never be interested in anyway. I hope

you agree and that you cosponsor the Internet Radio Equality Act and help keep Internet radio alive.

ChairwomanVELÁZQUEZ . Thank you, Mr. Allcorn.

[The statement of Mr. Allcorn may be found on page 54 of the Appendix.]

ChairwomanVELÁZQUEZ . And now I recognize our distinguished colleague, Congressman Chris Van Hollen, for the purpose of introducing Ms. Cathy Fink.

STATEMENT OF MR. VAN HOLLEN

Mr.VAN HOLLEN. Thank you very much, Madam Chairwoman and members of the committee. I just have the honor of introducing to you one of my constituents, one of my neighbors and a friend, Cathy Fink, and am really pleased that you invited her to testify here today. She has had a very distinguish career in the area of music, particularly children's music, and together with her partner Marcy Marxer, they won the best musical album category for children's music. They have been nominated 11 times for Grammies and won twice. They have been honored by the Washington Area Music Association, the Parents Choice Foundation, the Oppenheimer Toy Portfolio and the American Library Association.

And I just want to thank them for all they have done, not just for adding to the sort of musical richness of the country, but for their focus on children's music. And they have brought together many families and have been a joy to many families, not just in the Washington area, but around the country. If you haven't heard their tapes, and you have young children or grandchildren, I urge you to get ahold of them because they are really a joy to listen to.

It is great to have you here.

Thank you, Madam Chairwoman and members of the committee.

STATEMENT OF CATHY FINK, ARTIST, WASHINGTON, D.C.

Ms.FINK. Thank you very much. It is a pleasure to see all of you.

As you know, my name is Cathy Fink, and I am a musician, recording artist, songwriter, music producer, teacher, author, artist, member of Sound Exchange, a trustee of the Recording Academy, and a long-time member of the American Federation of Musicians. My partner and I have performed, recorded, produced a wide range of music, including folk, old-time country, swing, bluegrass. And as Congressman Van Hollen mentioned, we have a great focus on children's and family music. And I actually brought you a copy of one of our Grammy-winning CDs called Bon Appetit, about health and nutrition for kids. If you want to talk about a small business, this is the very first Grammy winner in the children's music category won by an artist who is not a licensed character or a television personality. It is the real people doing the real thing.

I would like to share with the committee the economics of our small business related to our art and our profession. The creation of a sound recording takes a huge investment of time, talent and energy, and, like other entrepreneurs, we are making financial investments. In my case there is our home studio. Ours is not elaborate, but it is not cheap to maintain. I estimate that we invested about $40,000 in our home studio. That is cash from our earnings.

All of our recording projects require us to also rent time in commercial studios at about $100 an hour and to pay engineers to do the studio work. And when we hire musicians to work on an album, we pay them well, the fundamental principle being that when people do the work, they should be paid for it.

Like any other small business, we endure organizational and administrative tasks as well, the paperwork associated with hiring musicians, paying taxes, booking tour engagements, handling mail orders, public relations for concerts and more. In the last 10 years, we have freed up creative time by hiring a full-time office manager. We pay her a salary, we provide health benefits, we pay rent on office space and an office phone, fax, computer, high-speed Internet, furniture, et cetera.

And then, of course, there are the expenses of our instruments, which are an investment. In our case we play so many different instruments, almost 50, on our recordings that we have a large collection, and many of them are expensive. But you may not know that a good acoustic guitar can cost from $2,000 to $10,000.

We have made our way by pursuing a wide range of professional activities, live performances, anywhere from 75 to 250 shows a year. Many of them involve travel and other costs, but they all involve an opportunity to connect with live audiences, which Mr. Van Hollen referred to—we love that part—and to sell our CDs in person. But selling CDs alone is not enough to support us. And, frankly, it can take several years to recoup the costs of each project.

The royalties we receive from Sound Exchange have been very welcome and valuable to us. To date these payments have been fairly modest, but they make a real difference to a small business. For example, the amount we receive from Sound Exchange this year can cover a major expense such as the annual cost of ensuring our equipment and instruments.

We are indeed a small business and encourage you to see us that way. And it is a very creative business, one about which we are extremely passionate. Our music is a valuable creation. It is the core of that business, and, like any other product, deserves fair compensation.

Last year I was personally proud to testify before the Copyright Royalty Board about Internet royalty rates. I thought it was incredibly important that the judges understand the investments of time and money that we performers make in our work. These were thorough and comprehensive hearings, and I believe that the royalty fees that were ultimately set by the board reflected the value of the recordings that are at the heart of the Webcasting and simulcasting business models the judges examine so carefully.

Under the CRB decision, at 2007 rates, recording artists and labels will be paid 65 cents in royalties for supplying Webcasters with a month's worth of music for an average listener who streams 40 hours of music a month. These were rates that the copyright royalty judges determined were fair after reviewing testimony from all participants, including proprietary financial information to which no one else had access.

And I want to say it loudly and clearly. The Copyright Royalty Board was an impartial panel set up by Congress that conducted a fair and painstaking proceeding. There truly is no valid com-

plaint about process. It really comes down to money. Big Webcasters want to pay us less than what the judges determined was fair.

Now, imagine if in my small business I played by the rules that the Webcasters are using today. Next time I need to purchase a new guitar, I might decide that the fair market rate is simply more than I want to pay. Would I start a campaign to ask the manufacturer to reduce his price? Would I ask you and Congress to pass a bill to make guitars less expensive? Would I silence my music to get my fans to write their Congressman? No. Because I understand that we all need to be compensated at market value.

But the big Webcasters are taking such a tactic, and they want me to take less so they can profit more. As for the small Webcasters, you know, recording artists and labels have already at the request of Congress offered a rate discount to help them grow their businesses. This discount which comes out of the pockets of people like me will essentially freeze the rates small Webcasters pay through 2010 at the same subsidy levels they have enjoyed since 1998.

There is a bottom line here. Without the talent, hard work and sacrifice of recording artists, there would be no music to play, no music to build the assets of the Webcasters' businesses. It embraces a simple principle I have always stood for: We deserve to be paid for our work.

If I may, I would like to make one more point. A couple of weeks ago I happened to read in the newspaper that Last.fm was purchased by CBS Corporation for $280 million. I asked Sound Exchange about that, and I found out that Last.fm got a discounted rate as a small Webcaster and paid less than $5,000 in royalty rates last year. I then asked Sound Exchange how much of that $280 million will be shared with those of us who create the music that helped build Last.fm into such a desirable company? And as you might have guessed, the answer is zero.

Madam Chairwoman, members of the committee, we have had a long, successful career in this business. I am very lucky. I work very hard. Just as you want to be paid for your work, I want to be paid for my work. I am in a very small business. With your help, I hope, and the help of Congress, that is going to continue for a long time. And I appreciate your support and your time. Thank you very much.

ChairwomanVELÁZQUEZ . Thank you, Ms. Fink, for your passionate presentation.

[The statement of Ms. Fink may be found on page 58 of the Appendix.]

ChairwomanVELÁZQUEZ . Our next witness is Mr. Kieran Kelly. Mr. Kelly is co-owner and head of a promotion for Stunning Models on Display Records based in Astoria, New York. Founded in 2005, Stunning Models on Display have released four albums by artists including Summer Long, Will Stratton, the Receiver and Paul Michael. Mr. Kelly lives in New York City, where he also owns and operates the Body Project Recording Studio. Mr. Kelly is a member of the Recording Academy.

Welcome, sir.

STATEMENT OF KIERAN KELLY, CO-OWNER, STUNNING MODELS ON DISPLAY RECORDS, ASTORIA, NEW YORK

Mr.KELLY. Thank you.

I want to say, Ms. Fink, I really appreciate your testimony, and I think it will help us all to make much, much better choices with this particular act.

I guess I will go back on point here. Good morning. As Chairman Velázquez said, I am Kieran Kelly. I am the co-owner and head of A&R for Stunning Models on Display. We do currently represent six artists and bands. And I would like to thank both of you, Chairman Velázquez and also Congressman Chabot,for making this hearing possible.

If I leave with one message today, it should be that Internet radio is critically important for the development, growth and success of independent labels, as well as emerging artists, who derive no promotional benefit from terrestrial radio and only marginally more from satellite radio. If we fail to preserve the future of Internet radio, we are failing future independent artists as well as future labels.

I have worked in the music industry for more than 15 years wearing many different hats. My livelihood is rooted in the success of the artists I represent and the general success of our industry as a whole. That is why I am here today, to explain why I believe that dramatic royalty increases will do tremendous damage to Internet radio broadcasters, record labels like mine, and ultimately the artists that this royalty rate is intended to benefit.

The music industry has dramatically changed over the past 10 years, and more and more the driving force for discovery is Internet radio. Internet radio stations are portals for listeners and fans to visit and hear new music, download the latest track, and, more importantly, purchase music.

For decades fewer than 200 songs monopolized radio airplay, making it nearly impossible for a new song, a new artist or a new sound to be heard. As an independent label owner, it is nearly impossible to place a song on terrestrial radio. Today that opportunity exists on NetRadio. The doors opened by Internet radio to diversity has revolutionized and enriched the ways in which music enters people's lives and the way artists and labels are able to make a living. These new royalty rates, if allowed to take effect, would restore the walls that once separated artists from new fans and listeners from new sounds, and close the doors that the Internet has opened.

For my part, there is no more obvious anecdotal evidence of the power of Internet radio than of the four records my label has released in the past 2 years. Despite charting higher among traditional radio stations, albums released by The Receiver and Paul Michaels were outsold by albums released by Summer Long and Will Stratton, which receive significantly more NetRadio play. The undeniable truth is that NetRadio promoters, music sales, Internet radio and the click-to-buy button accomplishes its benefits, and it benefits everyone, artists, labels and listeners.

What seems to be lost during this debate is the unique options inherent to NetRadio. The flexibility and diversity it gives listeners is both the reason it is so popular and the underlying cause of this

looming crisis. Proponents of this rate increase believe there is more money to be made through NetRadio. How could there not be with more than 50 million Americans listening monthly? This reality, however, is that those 50 million listeners are drawn to NetRadio because it offers a better listening experience than traditional radio, fewer advertisements and minimal interruptions, coupled with dramatically more diverse playlists.

Webcasters must choose between giving listeners what they demand and monetizing the product they are offering. The competition between Webcasters is unprecedented in broadcasting. Thousands of Webcasters vying for a listening audience unconfined by geography or cost and subject only to the quality of the product makes for a very thin bottom line.

This evolution of the industry and the collaborative relationship between broadcasters, labels and artists is producing more and better music. This is especially true with small Webcasters that have been able to attract and maintain loyal fan bases of smaller independent artists. As the owner of a label whose bottom line depends on my ability to promote artists I represent, these Webcasters are priceless and provide an invaluable tool.

All of us in the music business have had to adapt to the digital age and the impact it has had on this industry. We all, producers, labels and artists, are faced with a choice: Embrace this evolution as an opportunity, or resist it at our own peril. Those that choose to embrace it will ultimately enjoy the fruits of this new age that values quality over size.

This committee is set up to protect the interest of small business, the backbone of the American economy. The excessive royalty rate increase is not in the best interest of our industry as a whole, but it is especially not in the best interest of small Webcasters, small bands, independent artists or independent labels. We are all at the risk of losing an invaluable tool and a golden opportunity.

Thank you again for taking this morning, and deeply consider cosponsoring the Internet Radio Equality Act, which will help to prosper independent music. Thank you.

ChairwomanVELÁZQUEZ . Thank you, Mr. Kelly.

[The statement of Mr. Kelly may be found on page 61 of the Appendix.]

ChairwomanVELÁZQUEZ . Our next witness is Mr. Thomas Lee. Mr. Lee is international president of the American Federation of Musicians of United States and Canada. Mr. Lee has served as an officer of AFM since 1991 and was recently reelected to his third term as AFM's president. Prior to his retirement, Mr. Lee was a member of the United States Marine Band for 24 years. As the pianist for the President's Own Marine Band, he worked closely with six Presidents, provided musical support several times weekly for state dinners, receptions and other official occasions. Welcome.

STATEMENT OF THOMAS F. LEE, PRESIDENT, AMERICAN FEDERATION OF MUSICIANS, NEW YORK, NEW YORK

Mr.LEE. Thank you, Madam Chair, Ranking Member Chabot and other members of the committee. I thank you very much for calling

this hearing for us to have an opportunity to state our feelings about the issue.

As you said, I am a professional musician, international president of the American Federation of Musicians of the United States and Canada, representing more than 90,000 professional musicians. And I am pleased to have this opportunity to speak with you today about musicians and singers.

The AFM is very supportive of the Webcasting industry, especially small, noncommercial Webcasters. And the AFM was very supportive when the Webcasters requested that a CRB be created which, in fact, would give everyone a fair and equal opportunity to place their issues before the CRB. And I believe the Webcasters did suggest that this would be an equitable way for everyone to come to a conclusion upon what a proper royalty would be.

But it is important to realize that Webcasters are not the only small businesses affected by royalty rates set by the Copyright Royalty Board last March. Recording musicians and vocalists are themselves entrepreneurs and small business people who rely on small income streams, including performance royalties, in order to make ends meet.

I have submitted my written testimony, and that describes my background as well, but I do want to say for Mr. Chabot, you also have another person from Cincinnati sitting here. I went to the College-Conservatory of Music in the University of Cincinnati. I am a small-town St. Paris, Ohio, boy, so we got another Buckeye in the room.

The digital performance rights has worked in the way that my folks and my musicians envisioned in the early 1990s. It has created a small but important new income stream for thousands of musicians and vocalists who count on the accumulation of many such modest revenue streams in order to survive and continue to make music.

Some think of recording performers as a small and select group of rich celebrities living a glamorous life, and whose concerns have nothing in common with those ordinary citizens. And I wish music was all wealth and glamour, but it is not. Sure, some musicians become megastars and platinum sellers. That is great, and I wish that kind of success were possible for every talented musician, but world fame and vast fortune are very much the exception rather than the rule.

The fact is that all but a minuscule percentage of musicians earn only very modest sums for their creative work. The Bureau of Labor Statistics reports that in 2004, the median hourly earnings of musicians and vocalists was $17.85. No annual earning figures are available, according to the Bureau, because, as it reports, it is extremely rare for musicians and vocalists to have guaranteed employment that exceeds 3 to 6 months. In fact, within the profession we consider a performer to be a great success if he or she can earn a living from music without keeping a day job. And I am going to come back to that day job.

Most successful recording artists never become household names. They record terrific performances, they make a living at music, and they have loyal fans, but they never become rich. And they must work incredibly hard to combine incomes from live performances,

recording sales, licensed recordings to TV and movies, merchandising, songwriting, session recording, producing other artists, and any business opportunity they can muster in order to earn a living. I am honored to be on this panel before you today with exactly such an ordinary, and I use that term advisedly, artist who was Cathy Fink, a very hard-working artist.

There are other recording artists whose names mostly remain unknown, but who are vital to the creative success of countless sound recordings. Session performers contributes critical interpretive elements, intros, fills, cords changes, solos, tempo and rhythm, that bring the notes and the lyric on a page to life in a unique recorded performance. A songwriter can write the song and put the notes on the page, but until you put the drummer, the guitar player, the keyboard player and the bass player together, you will not have a piece of music that somebody will want to listen to.

The AFM is fortunate to have as its vice president Harold Bradley, the most recorded guitarist in history, a Country Music Hall of Fame inductee, and one of the legendary Nashville A team session musicians. You may never have heard of Harold's name, but you definitely heard him play bass on Patsy Cline's recording of Crazy, Roy Orbison's recording of Oh Pretty Women and Crying, and Johnny Horton's the Battle of New Orleans, and 30,000 other songs that he has been performing on.

It is no exaggeration to say Internet radio and other music services broadcast great performances by tens of thousands of session musicians and vocalists. In testimony before the CRB, Harold explained how session players contribute to recordings, using examples of that session that recorded Patsy Cline's Crazy. I have submitted Harold's testimony for your review because I think it is critical to understanding the exact process of recording.

It would be great if a little talent or a lot were enough to enable musicians to make this kind of contribution, but it isn't. As the Bureau of Labor Statistics have said, musicians need extensive and prolonged training and practice to acquire the necessary skills, knowledge and ability to interpret music at a professional level.

As AFM president, I am extremely proud of all the work that has been done in support of my 90,000 members to improve the economic life of recording musicians. Recordings made under the AFM sound recording labor agreement pay decent scale and pension. In addition, they result in further payments based on industry sales. Finally, musicians receive additional payments when their recordings get used in movies or other media. This is a good system, but it does not result in riches, only in modest middle-class income for musicians who work under it regularly.

It is important to note that practically no session musician actually has a regular job from which he or she can count on receiving an annual income. Session work, like most musicians' employment, is intermittent even at the best of times. When hard times hit, the record industry total wage scale and pension earnings decrease simply because there are few sessions. The Bureau of Labor Statistics notes that due to the limited employment in the music industry, few musicians and vocalists have the kind of benefits other Americans take for granted, like unemployment compensation, and paid vacations and sick leave.

And I see that I am just about out of time, so I would like to conclude just with one closing remark. One of the most disturbing things I have read in the Bureau of Labor Statistics report is the following statement: Talent alone is no guarantee of success. Many people start out to become musicians or singers, but leave the profession because they find work difficult, the discipline demanding, and the long periods of intermittent employment unendurable. And I would have to say that we probably have, if I may be so bold to say, Congressman Paul Hodes and Congressman Collin Peterson, who are very well-known musicians in our own industry, who have bands here and play on Capitol Hill, and would it not be that they couldn't make a decent living, they probably wouldn't have to be moonlighting as Members of Congress.

I will say this. We understand the plight of the small Webcasters, and I think Sound Exchange is working very hard to deal with the matters that small Webcasters have brought to us. And I think that can be worked out if we are given the proper amount of time. Thank you.

ChairwomanVELÁZQUEZ . Thank you.

[The statement of Mr. Lee may be found on page 65 of the Appendix.]

ChairwomanVELÁZQUEZ . And before I recognize Mr. Chabot for the purpose of introducing Mr. Eiswerth, I would like to ask Ms. Fink and Mr. Allcorn, are you sure you don't have any relationship, any root in New York, since three out of seven witnesses are from Ohio?

Yes, Mr. Chabot.

Mr.CHABOT. Thank you very much, Madam Chair. I would like to introduce our final witness here this morning, Mr. Eiswerth, and he is the president and CEO and general manager of Cincinnati Public Radio, Inc., the entity holding licenses for both 90.9 WGUC and 91.7 WVXU, which serve the greater Cincinnati area. As president, CEO and general manager, Mr. Eiswerth is responsible for leading the station's 41 employees in all aspects of programming, engineering, development, corporate sales and marketing. Some of his successes while at Cincinnati Public Radio include increasing WGUC's membership by almost 50 percent and its corporate sponsorship by 20 percent, and successfully negotiating the purchase in 2005 and subsequent increase in membership of WVXU.

Prior to joining Cincinnati Public Radio, Mr. Eiswerth held positions with WMNF-FM in Tampa, Florida; Corporation for Public Broadcasting; National Public Radio; and WCNY-TV and FM in New York.

We welcome you here, Mr. Eiswerth, and we certainly do appreciate your input on this very important issue. Thank you.

STATEMENT OF RICHARD EISWERTH, PRESIDENT, GENERAL MANAGER AND CEO, CINCINNATI PUBLIC RADIO, CINCINNATI, OHIO, ON BEHALF OF NATIONAL PUBLIC RADIO

Mr.EIWSWERTH. Thank you, sir.

Madam Chair, Ranking Republican Member Chabot and members of the Small Business Committee, WGUC Cincinnati's classical public radio was founded in 1960 by a group of citizens who

saw the need for a radio station devoted to cultural and public affairs programming to the region. WGUC's live signal can be heard over the Internet at WGUC.org. Cincinnati Public Radio broadcasts and Webcasts every concert of the Cincinnati Symphony Orchestra, the Cincinnati Opera and the May Festival, which is the oldest choral festival in the U.S. We also operate classicsforkids.com, which is a Webcentric classical music education resource used by more than 2,600 teachers and 329 parents in Cincinnati alone, as well as listeners in all 50 States and more than 47 foreign countries. More than 650 schools in greater Cincinnati serving 50,000 students have also been served through the Classics for Kids Website and educational materials.

I recite these initiatives and statistics to illustrate to the committee that Cincinnati Public Radio is more than a radio broadcaster. We, like many of our fellow public radio stations, are utilizing Web-Based distribution systems to ensure that the reception of our programming content adapts to the changing habits of our listeners.

I want to thank you for the opportunity to comment on the misguided decision by the Copyright Royalty Board and its implications for America's public radio stations. The fundamental flaw of the CRB decision is its treatment of public radio stations as commercial entities. If unchanged by the Congress or the courts, the board's decision will degrade the public radio system through complex reporting requirements and dramatic and inappropriate increases in royalty fees. Application of commercial rates and complex calculations to compute those rates will drain scarce financial resources and distract stations from their public service missions.

The more Americans who listen to our stations' music Webstreams, the more we owe in royalties. In other words, as we seek to fulfill our congressional mission of reaching the broadest possible audience, we are financially punished. The rate structure in the CRB decision imposes additional fees for listeners or songs in excess of an arbitrary number. This concept is nearly identical to the CRB's treatment of commercial Webcasters. When faced with the double demands of increased costs and complex rate calculations and recordkeeping, many stations will no doubt be forced to place artificial limits on their Webcast visitors. Some stations will cease their Webstreaming public service activities altogether.

Forcing a cap on usage by public radio Webcasters is antithetical to the very purpose of public radio. There is no cap on public radio listening. Why should there be one on Internet listening? And the comparison by the CRB of public radio music Webcasts with commercial entities is similar to comparing the public library with Barnes & Noble. Placing limits on public Webcasters, music offerings or on-line users makes about as many sense as placing limits on the number of books a public library may have or the number of visitors to have access to those books or the number of books that may be read by that library patron.

The variable nature of the CRB's proposed fee arrangement, which requires complicated listening calculations of public radio stations to track how many people are listening to specific music tracks at specific times, prevents significant problems. Royalty fees for public radio stations have been paid traditionally by the Cor-

poration for Public Broadcasting through funds appropriated annually by Congress. And Congress has directed CPB to set aside 6 percent of certain appropriated funds to pay for key elements of the public broadcasting system including, quoting here, the payment of programming royalties and other fees.

But out of this same pool of money, Congress has directed CPB also to pay for capital costs of telecommunication satellites, interconnection facilities, grants for programs in languages other than English, training for public broadcast employees and other projects that enhance public broadcasting. Each dollar taken from this pool of funds to pay for the unreasonable licensing fee is a dollar not available for another project to enhance public broadcasting for the ultimate benefit of American listeners and viewers.

Madam Chair, unless corrected by Congress, this decision will have profoundly negative effects for the future of public radio music Webcasting. We need you and your colleagues to support and pass Congressman Inslee and Manzullo's legislation, H.R. 2060, the Internet Radio Equality Act. This legislation deals appropriately with royalties for sound recordings by recognizing the public service mission of public radio. It offers all parties the necessary long-term solutions that are now essential because of the CRB decision. It brings the royalty proceedings for determining sound recording fees in line with the proceedings used to determine royalty for music awards. And with the July 15 deadline for payment of new royalties looming, there is growing urgency that Congress take action to address this situation immediately.

Madam Chair and Congressman Chabot, we in public radio take seriously and fully embrace the obligations of the Public Broadcasting Act's charge that we reach the broadest possible audience. We are committed to a course of action that upholds the high standards for public broadcasting envisioned by the Congress and practiced by public radio stations for the past four decades. We ask that you recognize our unique status and dedication to public service and assist us in our pursuit of these important civic responsibilities by acting promptly on H.R. 2060.

Thank you.

ChairwomanVELÁZQUEZ . Thank you, Mr. Eiswerth.

[The statement of Mr. Eiswerth may be found on page 94 of the Appendix.]

ChairmanVELÁZQUEZ . I would like to ask my first question to Mr. Miller.

Mr. Miller, I know that Tuesday, June 26, was a day of silence when many Webcasters went quiet as a protest against the new royalty rates. With July 15 approaching, are Webcasters and copyright owners meeting to try to develop a marketplace solution to this issue?

Mr.MILLER. We specifically have not been meeting, but I do know that—and Sound Exchange has not specifically contacted us directly. It seems like thus far most of the negotiation has been through press releases and kind of in a public light. But, no, we specifically are not meeting with Sound Exchange.

ChairwomanVELÁZQUEZ . July 15 is around the corner, and I hope that—the same way that you did back in 2002—that the two

parties on this issue come together and find a compromise, a solution to this issue. I really don't think that Congress should be the best vehicle to resolve this type of issue.

In any case I would like to ask Mr. Silverman, do you believe it will be fair to set differing royalty rates for small independent Webcasters than for large diversified media companies?

Mr.SILVERMAN. It would be fair.

ChairwomanVELÁZQUEZ . Do you have any recommendations about how the size of the Internet radio provider should be measured? Should it be based on the number of employees, listeners or on an annual revenue?

Mr.SILVERMAN. Maybe a combination of the reach, which means the amount of listeners, and the amount of time spent listening and the revenue. But there already is, I believe, a compromise on the table in the Senate and some suggestions, I am not sure exactly what those are, as to what your last question was. So I think they are actively trying to pursue a solution.

ChairwomanVELÁZQUEZ . Mr. Lee, AFM has represented musicians for more than 100 years. According to your members, is it more challenging now than it was 10 years ago to earn a living as a full-time musician?

Mr.LEE. Yes, ma'am, it absolutely is. It is very difficult to earn a living. If I were starting out today, I don't know how I could encourage my children or anybody else's children to look to make a living in music.

But I would like to speak a bit to your previous question if that is in order.

ChairwomanVELÁZQUEZ . Sure.

Mr.LEE. We recognize the difficulty that small Webcasters and National Public Radio may have with this decision. We did support the Webcasters when they chose to encourage a CRB, and we absolutely support the fact that they had access to that as the CRB had access to a myriad of financial information. We also recognize that 95 percent of the income is going to come from the big broadcasters, not the small Webcasters. And to the extent that the small Webcasters play our members' music and play some of our independent, we encourage that.

And we are actively working to resolve those differences between our members. And I can't tell you that any independent musician has the right to allow their music to be played for free on any Webcasting station. We are just saying don't give away everybody else's right to be compensated when that happens.

ChairwomanVELÁZQUEZ . Thank you.

Mr. Allcorn, how will the CRB ruling affect the Webcaster's ability to provide content that is appealing to listeners who have taste in music that is out of the mainstream?

Mr.ALLCORN. Well, for artists like myself who are independent, we don't have the support of major labels or major radio stations, Clear Channel, be it whatever. To us it is very important that our music be on these stations, like Last.fm, Pandora, Yahoo, AOL, et cetera, et cetera, because it reaches such a broad audience. And if these royalties are implemented, these companies are gone. That avenue for people like me to have my music out there is nonexistent. And it goes back to the days of calling radio stations and

peddling it, which in my case is pointless because they won't play it anyway. It doesn't fit their format.

ChairwomanVELÁZQUEZ . Mr. Miller, Sound Exchange has extended an offer to Webcasters with annual revenue under $1.2 million. The offer would allow a small Webcaster to pay reduced royalty rates until 2010. Assuming your company is eligible, does WOXY.com plan to accept the offer from Sound Exchange, and if not, why?

Mr.MILLER. We currently would not qualify. As we were acquired by a larger company, we would not qualify for that small Webcaster rate.

With that said, the issue is that we would be in this exact same situation 4 years from now when a new royalty panel would come around with set rates, and then we would have to make another small broadcaster provision. So that is a really uncertain place to—it is a really uncertain realm to operate a business, knowing that is going to come around every 4 years. But I think the problem really is with the way that the CRB actually—the dictum that they were given to set the rates.

ChairwomanVELÁZQUEZ . Let me ask you, do you believe that a proposal containing a higher revenue cap is likely to be a more compelling offer for small independent Webcasters?

Mr.MILLER. It could be. The really—what you have to look at isn't necessarily the cap, but what the chasm would be to jump from the small Webcaster provision into paying the full statutory rates. And obviously $1.2 million, I think, is quite low; $6 million may be workable. But really that is the most difficult piece of that.

ChairwomanVELÁZQUEZ . Thank you.

And now I recognize Mr. Chabot.

Mr.CHABOT. Thank you very much, Madam Chair.

First of all, I have to say that this has been a very good panel. I think all the members of this panel have represented their point of view very well. And obviously there is a variety of opinions here, but I think they have all done a very good job at it and helped us in trying to decide what the appropriate action is for us to take or not take.

My first question, if I could ask the two artists that are here, Mr. Allcorn and Ms. Fink, if you could, we are also attempting to determine if there is any common ground here relative to the Royalty Board's decision short of Congress stepping in and doing something. And again, as I mentioned in my opening statement, our preference would be that the parties come together and do what they think is best without the government necessarily stepping in and oftentimes messing things up even more than they already are. So is there any—being the two artists, is there any common ground that you are aware of? Do you see any logical resolution or solution to the dilemma that we find ourselves in right now?

Mr.ALLCORN. I think the common ground between the artist, if you will agree with me, is that Internet radio is a viable promotional tool for people like us. And as far as an actual agreement, that will come between Sound Exchange and the broadcasters. I am speaking to the committee as an artist, and as an artist I am here to tell you that it is an important tool for me, for my business, my small publishing company and my touring and everything else

I do, for my music to be heard. And if these royalties are implemented, that is gone, that is taken away.

I want to get royalty payments, I enjoy getting royalty payments, I depend on them just as every other artist here does. But is it worth shutting down the whole industry to get that money when there is many other avenues? We make money performing, selling records, et cetera, et cetera. But is it really worth attacking these Webcasters and putting them out of business with these extreme royalty rates for that cut? Is the promotion value worth more than the royalties? In my case I say yes because I am not a mainstream artist, and it is more important for me to have my music heard because I perform for the love of the music. I love Hank Williams, I love Johnny Cash. I am trying to keep that music alive, where broadcast radio has no interest in keeping that music going.

Mr.CHABOT. Thank you.

Ms. Fink.

Ms.FINK. Well, from my point of view, the common ground was established when the Webcaster suggested the Copyright Royalty Board take this on. And a year and a half of effort, energy, time, money, testimony, people like myself who put probably a week and a half of work into providing the testimony they asked for showing up, I thought that was the common ground, and I thought that was the procedure.

And so I find us in a very awkward place that once a decision was made through a process that everyone agreed on, we are still discussing. And I think it is generous of Sound Exchange at that point to yet be open to hearing more information and offer a compromise that is insanely fair.

I think that—I agree with you. Congress really shouldn't be doing this right now because I think it has been done, and I think they have come to the table, and I think they have made a fair offer.

Mr.CHABOT. Thank you.

Mr. Miller, if I could turn to you at this point. You had mentioned in your testimony about the, you termed it, homogenization of radio out there, a more limited type of listening that the listenership can hear other than perhaps, as you mentioned, in the new Webcast. Could you discuss that in a little bit more detail?

Mr.MILLER. As far as—

Mr.CHABOT. The role that you all play in that, in fighting that reality.

Mr.MILLER. Broadcast radio is confined by limited space on the dial, so there can only be so many FM radio stations in any one market. So you are therefore going to be limited by the programming you can put on those channels. The Internet opens it up to an unlimited number of channels. You can have as many channels as you want. And, in fact, some Internet radio services actually serve a customized channel for each and every listener.

I mentioned earlier the $500-per-channel minimum, which is a really difficult provision of the CRB ruling. That would definitely be difficult. But I think the great thing about the Internet is it opens up so much for everyone. There are so many different kinds of musicians that can thrive by finding a home on the Internet that

they never otherwise could, and obviously those artists should be compensated.

We paid over $32,000 in royalties to Sound Exchange in 2005, so I think we all agree that artists should be compensated. Under this, WOXY.com would have been out of business under the new rates.

Mr.CHABOT. Mr. Eiswerth, let me turn to you if I can. Would you elaborate on what role WVXU and WGUC play in a community like ours, Cincinnati, which is probably not unlike the role that some of the other stations of that type play in their communities around the country, and what this decision—how this Royalty board's decision impacts the role that WGUC and WVXU play in our community?

Mr.EIWSWERTH. Thank you, sir. WVXU and WGUC in Cincinnati play the typical role that public radio stations do in other markets in that we provide services that the mainstream commercial media tend to overlook. WVXU is primarily a news and public information resource. A member of National Public Radio, we broadcast national news programming and local news programming. We have one of the largest local news staffs in operation in the media in Cincinnati.

WGUC is one of a disturbingly shrinking cadre of stations that devotes full time to classical music. As you may know, commercial and noncommercial classical music stations in this country have been taking the role or the path of the dinosaur of late. It is because owners or operators have found more lucrative ways to make money with other formats. What we are using the Internet for is to fill in those gaps where classical radio, specifically regarding WGUC, is no longer available or in markets where there may be some classical music, but not enough to provide any variety.

We have a great relationship with our local AFFM, AFFM number 1. And we provide and pay fees for broadcasts of, as I mentioned, local classical performances throughout the year.

The important significant difference that we are trying to stress here that is true not only for WGUC, but also through public radio stations in big cities and small rural communities across the country and Indian reservations, is that we have first and foremost a public service mission. We are not in this business to make money. We are not beholden to stockholders. We don't have to work on creating a positive bottom line that we can dole out in benefits or increased revenues to our shareholders.

That is not to say that the commercial broadcasters don't do their job. They do. But our reason for being is dramatically different. They are in the business to make money; we are in the business to provide a public service.

The fact is that the CRB did not include everybody at the table. They completely overlooked the basic mission difference between commercial broadcasters and public broadcasters. They have tried to include us in league with the commercial broadcast mission and finance mechanism, and it is trying to unfortunately fit a round peg in a square hole.

Public radio exists to serve unserved audiences. We support musicians, and, indeed, as with Internet radio, a lot of musicians who would find no other home in commercial radio find their homes on

public radio. The CRB decision offers a tremendous threat to the future of our Internet activities and long term, we think, to the ability public radio has to serve the interests and needs, congressionally mandated, of the citizens of this country.

Mr.CHABOT. Thank you very much.

Mr. Chairman, I yield back the balance of my time.

Mr.JOHNSON. [Presiding.] Thank you, Mr. Chabot.

The Chair has asked me to chair in her absence. I believe I was next with my questions. I want to ask Mr. Allcorn, your music gets played by a lot of Webcasters, correct?

Mr.ALLCORN. Right.

Mr.JOHNSON. And I guess many of the biggest Webcasters play your music.

Mr.ALLCORN. Right.

Mr.JOHNSON. AOL, Clear Channel, On-Line, i365, RL Select, and Yahoo Music and LAUNCHcast among others, correct?

Mr.ALLCORN. Correct, right.

Mr.JOHNSON. And of course you get played by some of the smaller Webcasters as well.

Mr.ALLCORN. We get a lot more play on the small Webcasters because they cater to a niche market.

Mr.JOHNSON. When you say you get a lot more play, you get a lot more spins of the music?

Mr.ALLCORN. Yes, correct.

Mr.JOHNSON. But yet the audience that a smaller Webcaster would reach would probably not be as large as one of the larger Webcasters, correct?

Mr.ALLCORN. It would depend. Probably not. It just depends how many people are looking for that specific type of music.

Mr.JOHNSON. Perhaps even some of the smaller Webcasters may have picked up your work by demand from some of the larger Webcasters.

Mr.ALLCORN. It could be.

Mr.JOHNSON. And so really you would have to say that your popularity would be due to large and small Webcasters.

Mr.ALLCORN. Yes, I would give credit to both. There is like Ram Radio, which is specifically targeted to traditional and alternative underground country of today. And their slogan is they play yesterday's legends with today's up-and-coming artists. And you have stations on Yahoo and AOL that do the same thing, but they are not specifically targeted as the smaller ones.

Mr.JOHNSON. Certainly.

Well, I guess probably the point that I would want to make on that is that artists such as yourself benefit from exposure by the large—or, say, those who pay 95 percent of the royalties would be in part responsible for your success. And you are here to say that there should not be—you are here to look after the interest of that other 5 percent, the small Webcasters?

Mr.ALLCORN. I am here for the interest of an artist. It doesn't matter in they are on a large Webcast or a small Webcast.

Mr.JOHNSON. All right. Point well made.

Mr. Miller, your Web station was just purchased.

Mr.MILLER. Last October, yes.

Mr.JOHNSON. Who was the purchaser, by the way?

Mr.MILLER. La La Media.

Mr.JOHNSON. La La Media.

And now I guess I am looking at it like this. Today is a hot day, and we all like lemonade. And lemonade and a hot day goes well together. And I could put the lemonade in this cup here, or I could put it in this fancy-looking bottle here, and I could sip it from each one, or I could have a straw. The straw could be long or short, different colors. But the bottom line is I am getting the substance of that lemonade through some different medium, but it is the lemonade that is most important on a hot day. It is the music that people are being able to obtain through listening to either Webcast or AM/FM radio or satellite radio.

Why shouldn't the lemonade, the person who produced the lemonade, get paid as opposed to just simply the persons who put together the packaging that the lemonade happens to be served up in? Anybody want to respond to that? Even though it may be a small business that is producing the packaging, shouldn't that lemonade developer get paid for the lemonade? Why should they be exempt for paying for that lemonade? I will let Ms. Fink go first.

Ms.FINK. Well, I agree with you. I am an advocate for the rights of artists and the fact that we deserve to be paid. And I do want to repeat a point that Mr. Lee made, which is that any artist, including Mr. Allcorn, is free to make his own independent deals with independent Webcasters to say, you don't have to pay me, but I don't want that to affect whether or not I get paid for the lemonade that I made. If he wants to give his lemonade away for free, that is his right. We live in a great country to be able to make that kind of deal. I want to get paid for my lemonade, it cost me something, and I put my work in it.

Mr.ALLCORN. If you want your lemonade in this cup, if you put the people that make this cup out of business, what are you going to put it in?

Ms.FINK. They don't have a business if we haven't made lemonade.

Mr.JOHNSON. That is an excellent point. They are both good points, they are both good points. It is the lemonade, though, that gives rise to the packaging. I mean, just lemonade laying out on a table is just going to run off the table.

Mr.ALLCORN. It is no good to you.

Ms.FINK. That is right.

Mr.ALLCORN. In the aspect of Internet radio, you have to have those people to deliver the music, and if you want your lemonade, you have to have the people making the cup. Whether it is the big cup or the little cup, however you choose to get it, like you said, you have to have a delivery method.

Mr.JOHNSON. But every small business or every business has business costs.

Mr.ALLCORN. Right.

Mr.JOHNSON. It costs to go into business. You got to pay for the supplies, you got to pay for the lemons, you got to pay for the sugar, you got to pay for the ice.

Mr.ALLCORN. But what if the cup costs more than the lemonade?

Ms.FINK. Then you have to find a different manufacturer.

ChairwomanVELÁZQUEZ . Well, then come out with a bottle like this that looks so good that you spend about $4 or $5 for the lemonade.

Ms.FINK. Well, I would like to say, you know, there is a cost of doing business. And in all businesses, not just the music industry, in all businesses, not all businesses succeed. Not all small artists can make a living doing this; therefore, they go out and get the day jobs that Tom Lee was talking about. Not all Internet radio companies are going to survive, but that is true with every business. Not every bicycle company survives. Not every inventor creates an invention that survives the marketplace. And I think that there is a long-term opportunity for everyone to create the best business plan they can so they can work within a system that exists.

Mr.JOHNSON. Maybe Mr. Silverman's dad has another $5,000 or $10,000 to invest in the operations of a Webcam.

Mr. Silverman, I am going to yield the floor to the next questioner.

Mr.SILVERMAN. May I quickly? I may have to go back to my dad because I am running out myself. My revenues have been cut in half by illegal file sharing and CD copying at Tommy Boy. Combined with commercial terrestrial radio's consolidation forcing title play lists, it is harder for me to get my music exposed on the radio than it was in the 1980s and early 1990s. But I still have to pay artists and writers, and I still have to pay all my other expenses which are going up. I have to find new ways to modify new business and keep it alive.

Internet radio can and will find ways to prosper, and they will have to pay fair rates for the music that they depend on, just as we do. I don't think it is fair they should get a break when we don't get a break. I have to pay my artists; they should have to pay them as well.

Mr.JOHNSON. Thank you.

Mr. Heller is next.

Mr.HELLER. Thank you, Mr. Chairman. I am going to stay away from lemonade here a little bit.

Ms.FINK. I am thinking of starting a lemonade business.

Mr.HELLER. My 11-year-old daughter would help you out with that one.

Is everybody here from Chabot's district? Is anybody here from Nevada? Because that is where I come from. Anyway, any artists that want to come down to Las Vegas, I think Celine Dion's contract is running out, so I wish you the best.

Ms.FINK. If they offer it to me, I will take it.

Mr.HELLER. The day of silence, actually it was mentioned to me a couple of days in my office. I didn't think much of it until I got a couple of phone calls yesterday from individuals that wanted to know what was going on, one, of course, being my brother. And I asked him why he listened to Webcast music, and he says because the regular stations don't play the music that he wants to listen to. So your point is well made on why Webcast has played an important part in this business.

I guess my question is this. I come from a State or a district that is 110,000 square miles, and you get outside of Las Vegas in perhaps the Reno, Lake Tahoe area, and you get into some very rural

areas. We still have some very small mining towns. Outside I guess Sirius radio or XM radio, their only access in many of these small mining towns is the Webcast.

I guess my question is that is my concern, is access, access to music and access to the kind of music that these people want to listen to. If anybody on this panel has any remarks or comments of what we are going to do if these royalty fees are such that we do turn off some of these Webcast stations and do cause a concern on these rural stations, what is going to be the alternative for them?

Ms.FINK. I personally think it is unrealistic to portray this as if every small Webcaster is going to go down the drain because of this. And I think that the publicity around this has made it sound like that. And I don't really think that is a fair portrayal of what is going to happen.

Since we are talking about small business, those small Webcasters who are in business and create a business plan that provides viability for them, that includes this compromise royalty rate that Sound Exchange has offered, are going to survive. And I don't really think it is fair to say they are all going to disappear and all the music is going to disappear.

Mr.KELLY. You do have three people here that believe that actually will be the case. There are actually three of us here who believe that will be the case specifically for the small Webcasters.

Mr.MILLER. And several large.

Mr.KELLY. And several large as well, yes. But I think you and I definitely think—like particularly this subgenre, a very small market of music, like one that I was just introduced to called gothic country, which I had never heard of before, a combination of Marilyn Manson with traditional country music. But nevertheless, those listeners deserve to have access to that music and the ability to explore the deepest of subgenres of music, and particularly, like you mentioned, in these areas that are quite remote, whereas it used to be urban settings were the only places people were exposed to, say, the more counterculture forms of music or things that were very, very, very niche-oriented. And I think both Joey and I—I want to make sure that stuff is preserved as the ability of people to be exposed to that and how it will enrich culture at large.

And you mentioned about deeper classical artists as well. I think in the same way this isn't just a matter of country or rock or hip-hop or something like that, but classical music and more elaborate musical art forms will have the same benefits as well that can, in fact, elevate and refine society as well. So that is my 2 cents on that.

Mr.HELLER. I am interested in how the digital divide is actually getting smaller in these rural towns where they are actually, via satellite to their PC, getting Webcasts that way, and that is their preference.

Mr. Lee, you had a comment.

Mr.LEE. Thank you, Congressman, I do. I want to make sure that everybody understands that 95 percent of the money that comes in will be from the large Webcasters. We are talking about a very specific group of folks who have a significant problem with the rates that the larger Webcasters would have to pay. We have

been talking with them, Sound Exchange has been talking with them. In fact, I believe the $500 that was referenced by Mr. Miller, which he quite rightly has observed would cost millions of dollars, I believe that we have offered—or not we, but Sound Exchange has offered to put a $2,500 cap on that.

So we applaud every one of the smaller Webcasters that want to play the niche music, want to play the independent artist music. Seventy-five percent of the music, we understand, is crossover, but we want our independent artists to be able to be heard. And we want the small communities that you are talking about, sir, to have access to those.

We negotiate with National Public Radio, we negotiate with the record industry. I believe that a process is in place that will allow the recognition of the specific problems of the small Webcasters to be resolved. And I do agree with Mr. Chabot that this is not the place for that resolution to take place for the very reason the good Congressman stated.

Ms.FINK. I want lots of stuff to be free, but it isn't. I have to pay for gas, I have to pay for a plane, I have to pay for an airline, and I can't call them up and say, you know, I don't really feel like paying for it, why don't you just give it to me. As a small business with three people in my business, I am heading towards a day when my health insurance for two people is going to be larger than my mortgage. And I am a small business, I am working 18-hour days, and every income stream is meaningful to me. And I am willing to fight hard to try and make sure that some of the younger musicians who don't really see that down the line they are going to be paying these expenses or living without health insurance and lots of other great benefits get the income streams that they deserve, because if we don't give it to them now, it is not like we are going to negotiate up from somewhere.

And I think it is really important to educate people about the many different, be they small, income streams. For me, paying $1,200 a month on health insurance for two people, it is significant to me when I get a check from an income stream from Internet radio.

Mr.HELLER. Mr. Miller.

Mr.MILLER. I would like to clarify. We are not talking about free. We are not asking for anything for free. In fact, we think that all artists should be compensated for the work. That only makes sense.

And I would also like to clarify we are small business as well. We have rent, we have expenses, we are four people strong. A lot of small independent Webcasters are one person. And it can be misleading, but even apparently larger Webcasters, for example AOL radio, has a staff of approximately four people. So even though they are part of that larger entity, if you were to strip away the rest of AOL and say, AOL radio, you stand on your own, it would never happen.

And I would actually argue that when we talk about large Webcasters, if you stripped away the larger business from the Webcasting piece of that business, it would never stand on its own. We are a perfect example of that. We were tied to an FM radio station for several years, and then when we went Internet only, we

went out of business twice trying to make it work. And you could argue that for other noncommercial Webcasters as well as large companies. They are tied to larger companies, but I think we are looking about building a healthy industry and Internet radio that can stand on its own.

Mr.HELLER. My time is running low, but I just want to thank everybody for being here today. This is an incredible group of people that have assembled here today, and I yield back the balance of my time, Mr. Chairman.

Mr.JOHNSON. Thank you.

Ms. Clarke.

Ms.CLARKE. Thank you very much, Mr. Chairman, and thank you, Ranking Member Chabot.

We are holding a hearing on a very critical issue that affects so many people, particularly with this evolving and emerging industry. I am just sitting here, and I am saying we are really at the advent of a 21st century issue that is going to continue to be an issue, and so the concern here is where is the categorical compromise. I sit here, and I have listened to compelling testimony from public radio, which has a totally different mandate. And I am not hearing anything except from public radio that carves that out; listening to artists who were saying, you know, I have a business here, I need help, but I am not here where the win-win is.

And certainly, Mr. Miller, what is happening with your company and companies like yours—Mr. Silverman—each of you have a very unique component to what has become our world of music essentially, and we are trying to find a catchall for that. It does not exist. If we can start from that premise, then perhaps coming to the table with categorical solutions will be the way that we actually get to the solution.

Has anyone there thought about what their particular component to the solution must be for the survival of your businesses and the interests of your particular businesses? And I would like to hear from folks at the table about that.

Mr.ALLCORN. Well, I honestly think that what would be fair would just be a flat rate based on revenue, and that way it would be fair for everyone, because XM and Sirius are locked in at a 7.5 percent rate of their revenue, so why are you going to go after Internet radio and try to make them pay more than satellite radio? That is the issue. It is not fair across the board.

Mr.KELLY. And, of course, traditional broadcast terrestrial radio and television, it doesn't exist at all, which are the highest revenue-generating components for music in general. So it does seem—it seems very lopsided as far as the way that the revenues are. I would agree, and I think Mr. Silverman presented a good idea, which would be maybe a combination of revenues with listenership and size of a company. So if a company or a small Webcaster, say, of a single-man operation one day all of a sudden finds there is 14 million listeners on his podcast or whatever that morning, that all of a sudden he owes an exorbitant amount of money with very, very little revenue coming in, that there would be contingency plans placed in line with that to address that as well, because you could essentially have a Webcaster go from five people listening to a million theoretically overnight. And the idea

of a per stream, you could literally bankrupt someone just like that.

And we all know—I think SaveNet Radio had 14 million hits 3 days ago. The day before they had 350,000. So like use those sort of numbers of how quickly something can change in viewership or listenership. That does need to be addressed.

And I think all of us here want to see artists be paid, and we would love to grow the royalty rates as far as the overall stream of things without constricting the Webcasters to a point where it becomes fewer and fewer players as opposed to more and more players. I mean, the long tail theory of content is becoming aggressively more the case where people want more and more and more variety in the Internet. The Internet is going to allow that, where it seems from our position that this would kind of bring us back 10 years, which I think is not going to help us at all. We need to be forward-thinking. And a combination of revenue, a combination of considering revenue, listenership, would be a much, much better way with some sort of contingency plan as far as listenership to address it as opposed to a flat per-stream cost.

Ms.CLARKE. Ms. Fink, did you have any thinking around this?

Ms.FINK. As I think I mentioned before, I feel like the compromises to a large extent have been made. And I do believe that Sound Exchange would be willing to sit down and have more conversations. I completely don't understand why we went through this for a year and a half to have a bill come up saying let us forget that it happened. And I would urge the small Webcasters to sit down and talk more with Sound Exchange, because I believe that there is a dialogue that has been offered that should be more fully discussed.

Ms.CLARKE. Mr. Eiswerth.

Mr.EIWSWERTH. Yes, thank you very much.

To beat a metaphor to death, on a nice hot day when everybody else wants lemonade—I am from Cincinnati so I have to say this—some people want beer. And the point of—this is stretching beyond credulity, but the whole point of public broadcasting, you got to remember, is mandated by Congress, is to provide service to underserved audiences. We are here to look at those people and to serve those people who mainstream media, Internet, broadcast, satellite, whatever, tend to overlook. Were it not for public radio, there would not be local stations in many communities. Were it not for public radio, there wouldn't be news, local news. Were it not for public radio, a lot of communities wouldn't have access to jazz or classic radio, whether it is over the broadcast or over the Internet.

Congress recognized the value of having a wide variety of cultural entertainment and education available, and that is why public radio and public broadcasting was formed. We have from our institution, from the inauguration of service, always as an industry been on the side of artists and performers, have mandated and have pursued interests and contracts to make sure that they are paid. The people who created the program are paid and recognized, because without them, as been pointed out, we don't have a business.

We have a partnership with performers, we want to see that partnership continue; however, at the same time we have got to re-

mind this committee and we have to remind the audience that our core mission is that. It is service. And we need to be looked at differently than the commercial marketplace.

We are more than willing and have in the past paid our own way in terms of music rights and royalties. We certainly would entertain and be willing to discuss a proposal where stations would be charged a flat fee. But the idea that there would be a moving target or a cap initially with negotiations further down the line does nothing but to confuse, obfuscate and make more difficult our budgetary planning, because every dollar we use to pay for a fee to Sound Exchange or someone else has to come out of another public service initiative, whether it is our news efforts or the broadcast operation of our transmitters, or education that stations that are financially strapped to begin with have to sacrifice. And we are simply asking that while this discussion may continue, and while it may progress in the commercial marketplace, public broadcasting, by nature of our mission, by nature of our very being, needs to be considered separately because we have a unique service and a unique set of problems. That is all we are asking.

Mr.SILVERMAN. And it is considered separately.

Ms.CLARKE. In closing, Mr. Lee, would you add your comments?

Mr.LEE. Thank you. It is important to understand that a CRP, which was prior to a CRB, was way too expensive. And folks sitting here at this table couldn't afford the cost to become and be part of a CRP, so everyone felt that a CRB would be more equitable; I think probably everybody at this table, because that cost would not be incurred by the participants. There were 13,000 pages of testimony. The CRB had access to financial information that we don't have. They had access to that.

But I just want to make sure that there is a clear understanding that Sound Exchange is attempting to resolve the differences with the 5 percent, those that would be paying 5 percent of the revenue, because we understand that perhaps in the CRB procedure there may have been a flaw, and that flaw needs to be corrected. Just for example, 80 percent of the public radio stations will pay $500 annually and nothing more. Sound Exchange has offered the noncommercial Webcasters, that is college, radio, community broadcasting, religious broadcasting, the same rate that was set in 2003. No increase whatsoever. The same rate.

If there are other discussions that need to take place, they are ongoing here, this is probably not the place for us to be negotiating back and forth. But I just want everybody to understand, as a member of Sound Exchange, the AFM would do everything to encourage Sound Exchange, and I think the other artists, to ensure that small Webcasters are able to continue in business—it is a win-win for all of us, as far as I am concerned—and to ensure that whatever rate is agreed upon, that it will be recognition of the value that musicians bring to this event, and I think that is a win-win as well. I don't think anybody on this panel would disagree with that. I believe that the 5 percent of the revenue that will be coming in from the small Webcasters can be resolved, and if we throw out the whole thing, we will be throwing out the baby with the bathwater.

Mr.EIWSWERTH. If I might add just one thing. He is absolutely correct. I don't know the percentage of the number of public radio stations that would be paying the $500 per stream; however, as we understand it, and as the Sound Exchange maintains, that is a floor, that is the basic. What it does is sets the floor that will discourage stations from growing their service, because anything they grow beyond the arbitrary limit, Sound Exchange has said we will have to pay a greater fee. In other words, we are penalized for successful public service, and that is what we are concerned about.

Ms.CLARKE. Thank you very much, Madam Chair.

ChairwomanVELÁZQUEZ . Mr. Chabot.

Mr.CHABOT. Thank you very much, Madam Chair.

First, Ms. Fink, you had mentioned briefly about health care being a big problem for small businesses. Let me just say, I know when I go to a small business around my community, that is one of the top, if not the top, concern they have, the high cost. And it has been escalating so much. And to the Chairwoman's credit, we have had hearings on that in this committee trying to find ways to deal with that problem, things like association health plans allowing small business folks to pool their resources together so they can negotiate with the insurance companies who otherwise have much more power, and trying to do away with some of the frivolous medical malpractice lawsuits, for example. And we have introduced a bill for the Healthcare Affordability Act, which will allow small businesses, for example, to fully deduct all their premiums, and individuals to do the same.

But in any event I agree with you. That is a problem, and we are trying to deal with it to some degree.

But let me ask a question that is totally unrelated to that. Is there a dynamic here that is more or less a competition or the challenge between established artists, more established artists like yourself—you are a Grammy winner, and well known in the industry—versus the newer upcoming folks who may not be as well known, with maybe a little bit more niche, and their audience may be as well, Mr. Allcorn and maybe some other folks? Is that one of the issues that in reality that we are dealing with here? And I would ask Mr. Allcorn and Ms. Fink.

Ms.FINK. Well, I think it is portrayed as one of the issues, but I was that person 30 years ago. And I appreciate the recognition that you all have given me, but probably most of you never heard of Cathy Fink and Marcy Marxer before Congressman Van Hollen introduced us, which is just a significant fact that we are hard-working musicians making a living, winning Grammies, being nominated for Grammies, and still living under the radar when it comes to the world of music and big bucks.

And so in some ways I still put myself in the same category as those people. I am both an advocate and a mentor to many, many, many new artists. As a volunteer I spend an average of 4 to 5 hours a week on the phone as a mentor to new artists. And amongst the things that I advise them in their new venture is trying to make a living doing what they are doing; not make it big, which is obviously not something I have a lot of experience with, but just how to make a living, how to build a solid business or being involved with organizations like the American Federation of

Musicians that I belonged to since 1974, Sound Exchange I belonged to since it started, all these different organizations that are set up to help them figure out how to best take advantage of the variety of income streams that are available to them. And I honestly feel that in many ways I am in the same boat as they are, just with more experience how to make the system work.

Mr.CHABOT. Thank you.

Mr. Allcorn.

Mr.ALLCORN. I think that if you are a mainstream artist, and you have avenues—if you are for Curb Records or if you are on Capital Records or Sony, or whoever it may be, you are in a much better place than someone like me who is completely independent. And I rely on the Internet radio, satellite radio and those types of avenues for my exposure. I will not be on your FM dial. And I have songs that, say, you will not find my music on country radio. And if that avenue is gone, then where am I? What do I do?

And on a separate note with what Ms. Clarke was saying, another reason that I do the music that I do is it is preservation of history. When I am out there, I talk about—I mentioned Hank Williams 100 times already and Cash and Farin Young. And you can go to Elvis Presley or Little Richard or B.B. King. None of these guys are on broadcast radio today. You can find them all over Internet radio. And that is where these niche markets are coming from. You have people who are going back finding artists that they like to listen to, and here is this station providing this where you don't have it on a broadcast station.

And I think that—and to borrow from what Mr. Eiswerth was saying about a library, this is going to become a library of American music in the future. This will be a place where you can go. And when I was 14 years old, I got a Hank Williams CD, and that is how I found him. Twenty years from now they are not going to be making CDs. So what avenue will artists in the future that are just little kids now have to find this music if all you have left is your broadcast mainstream radio?

Mr.CHABOT. Thank you.

Madam Chair, if I still have the time, one thing I thought might be helpful is to kind of clarify more or less procedurally where we are at this point. And correct me if I am wrong, but it is my understanding that the Copyright Royalty Board's decision came out back in—was it May? Is that correct?

Mr.LEE. March.

Mr.CHABOT. And it goes into effect as of July 15. Suit apparently has been filed. At this point it is in the District Court of Appeals here in D.C. Asking for a stay on the board's decision. If the Court doesn't act within that time—and here is my question: As of July 15, if they don't act, these rates do go in effect, and is there any agreement or does somebody have a pretty good idea what is likely to happen at that time?

Now, if the stay is granted, of course, then we stay with the current rates that we are in right now until the court would ultimately make a decision. These rates are also retroactive back to the beginning of 2006 as well, is my understanding. But in the event—what is the sentiment here on what would happen on July 15 if the court does not issue a stay and these rates go into effect?

Mr.MILLER. I think you are going to see a lot of Internet radio stations go off the air, and it will be a calculated risk. Some may stay on the air and technically be in violation of the copyright law if they do stay on the air, because they will not have paid their back royalties, again, hoping that all this works out. But I think you are going to see a lot of people who just shut the doors and go home. And maybe this gets resolved at some point in a way that they can come back and the industry can kind of thrive again. I think you are going to see large Webcasters go away, too. How many? I don't know. But I guarantee you are going to see some of them go away.

Mr.CHABOT. Does anybody else want to weigh in? You don't have to.

Mr.SILVERMAN. There may be a reduction. I don't know if it will happen right on July 15, but there will be some. And some of it will be a protest like a day of silence. But I think Internet radio, we will see a lot of Web radio continuing. I think it is really important that it does continue. And I think that Sound Exchange is working on a compromise for everyone. They are working on a compromise for public radio, noncommercial, Web radio, the smaller Webcasters, and they are in dialogue on that. They are doing the right thing.

The hard thing for me to understand is how the Webcasters have called for an impartial board to make a decision. They made a decision, and now they are saying they want a do-over. I don't really understand how that works. And so they are trying to raise a bill to overturn this or go in another direction when it was them who asked for this decision, and then they didn't agree with the decision. And yet Sound Exchange has come and said, all right, the decision has been made, let us find a way to make it work.

We are all in a business that is really difficult. It is in transition. Music companies are in the worse position. Internet radio is in a crazy position, too, but it is a new business. There was no Internet radio 5 years ago. I am 26 years old in the business here, and my business is threatened.

So we all have to work it out. No one knows what is going to come tomorrow, and we can't expect we are going to come up with a solution that is going to work forever. In 3 years or 4 years, we are going to have to go back and say this didn't work, let us tune it, let us fix it, but we are really working toward a solution. Musicians need Web radio, Tommy Boy needs Web radio, and we want to have Web radio, but we also need a fair payment to musicians and to labels as well. So we are trying to find that common ground. And as you can see, we are all here doing it. So there really doesn't need to be an act of Congress right now. We are in the process of doing the right thing.

Mr.CHABOT. Let me go to Mr. Lee and then Mr. Allcorn.

Mr.LEE. Thank you, Congressman.

I just want to be clear, Sound Exchange has offered to the college radio stations, community broadcasting, religious broadcasters and noncommercials to continue at the very same rate that we had in 2003 up through 2010. You may say, well, why not continue that through 2020? I think because none of us know what the industry is going to look like 3 years from now or 4 years from now.

Also, with my good friend from Cincinnati here, NPR has not paid anything at this point since 2004, I believe it is, because we are still trying to negotiate a way or a deal for NPR to become involved in this. And the contract ran out or the legislation ran out, I believe, in 2004. So we are not attempting to do a huge takeover. We are attempting to meet the concerns that have been raised to us.

Mr.CHABOT. Mr. Allcorn.

Mr.ALLCORN. I want to just say that everyone keeps saying I don't know why Congress is involved in this. I think it is important for Congress to be involved in this, because as we move forward in the 21st century, these types of issues will keep coming up as stuff becomes more and accessible, free of piracy, or whatever it may be. But Congress needs to come in now before this stuff gets way out of hand and make sure that there are some guidelines. Sure, you will have to work around them before 2010, 2020, but there needs to be a base guideline for what this business will look like, and it needs to be fair to all parties involved.

Mr.CHABOT. Mr. Eiswerth.

Mr.EIWSWERTH. I thank my colleague from the AFM. We won't negotiate in public, as he assured me, so we won't do that. But speaking just for myself as an individual, if the dire consequences that have been suggested here come to play, I think what I see happening after the 15th of next month or shortly thereafter, we have to keep in mind that the Internet knows no boundaries. This may very well be the ultimate outsourcing. If there is a vacuum created because of the departure of small or intermediate or large Webcasters in this country, there is nothing to prevent a Webcaster from overseas, Canada, Mexico, Europe, to fill that gap. And I am not sure that is something we, as domestic broadcasters, people in the music and entertainment business, want to see happen.

Mr.CHABOT. Mr. Kelly.

Mr.KELLY. I just wanted to say in total agreement that I think that is a major concern for all of us of that happening with it, being outsourced, and essentially losing their listenership, and their listenership never returning, so subsequently never having the revenue streams of the royalties ever coming back because that stuff has been sourced out of the United States. So, therefore, they are not subject to paying royalties. We all know how fickle the Internet is.

Mr.SILVERMAN. They still would be subject. Foreign broadcasters here would be collected by Sound Exchange as well, and they are right now.

Mr.CHABOT. Thank you.

I yield back the balance of my time, Madam Chair.

ChairwomanVELÁZQUEZ . Thank you.

This has been a fascinating hearing and incredible. I am sorry, we have another Member here present who would like to ask questions, so I will recognize Mr. Akin.

Mr.AKIN. Madam Chair, I probably couldn't really ask the question I really want to ask, because I guess it was some 30 years ago I found an old Tom T. Hall record in some back of a drugstore out in the country, and it had Chattanooga Dog on it. And I thought

maybe Mr. Allcorn could give me a couple of pointers, but I didn't bring my guitar over, or Ms. Fink.

But I guess the concern is that because you have a very, very dynamic situation going on, are the regulations really something that we can live with, or is it going to be really destroying something that is providing a good part of culture in America?

So I guess my question to Mr. Allcorn, or anybody else who wants to answer, a lot of the songs you are playing may not have a major market appeal to the mainstream radio. You seem to found a broad audience appeal on the Internet radio. Have you created a larger fan base due to Internet radio? Do you have any examples of how far your music has actually reached around the globe?

Mr.ALLCORN. I would say Internet radio, My Space, of course, all forms of Internet publicity have helped me big time. When my record came out, one of the first things to go out was a box of 100 of them to the Netherlands. And overseas the traditional country music is a big thing. And here in the States, Internet radio, we play on a radio show WDBX in Knoxville on tour, the Blueplate Special, and we actually shut their server down, because before I went on, I got on My Space and put on a thing, we are fixing to be on this radio show. And in the course of us being on there for an hour, the thing shut down, and people couldn't get us. So I think it definitely plays a big part.

And I would also like to touch on another aspect that was just mentioned, too, about the border station-type idea with the stuff being played overseas. That already happened in the 1920s when you had stations that refused to play black artists and refused to play Jimmy Rogers' hillbilly music at the time. These border stations created those artists that we call legends today. Elvis Presley was a little boy in Tupelo, Mississippi, listening to border stations. Johnny Cash was picking cotton in Dyess, Arkansas, listening to stuff that he could not get on American radio.

Mr.AKIN. Thank you very much.

Thank you also, Madam Chair.

ChairwomanVELÁZQUEZ . Let me take this opportunity to thank all the witnesses. If there is one thing that I have learned throughout this hearing this morning, and we are going to move to the second panel, but that is that there are small businesses on both sides in terms of this issue. And, yes, indeed, it is true that our role here is not to facilitate negotiations between the two parties, but I would like to strongly suggest that you need to continue talking to each other. What I learned today is that there are new ideas and new information that was shared here today that one side or the other side will not know unless you continue to talk to each other.

I don't know if the best solution is for Congress to act every 5 years. Like in 2002, you came here, we had our hearing, you came together, there was a compromise. And now 5 years later we find ourselves in this predicament. And I don't know if when Congress gets involved that we might create unintended consequences to both sides on this issue.

So with that, again, I want to thank you, and the witnesses are excused.

ChairwomanVELÁZQUEZ . It is a great pleasure to welcome Congressman Jay Inslee, who was elected to represent Washington

State for his congressional district in 1999, serving a district that includes some of our country's foremost technology companies. Representative Inslee has taken a leadership role with respect to a number of present technology policy issues. Representative Inslee is a member of the Committee on Energy and Commerce and the Committee on National Resources.

Mr. Inslee, thank you for joining us today.

STATEMENT OF THE HON. JAY INSLEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mr.INSLEE. Thank you. And thanks for the Chair's courtesy to be talking about this important subject. It has already been fascinating listening to the previous panel. Frankly, I had not heard of the gothic western genre before, and it shows you can learn things when you come to these hearings. And we want to keep that genre availablein Internet radio, and unfortunately, that and others are at risk right now.

And I have one revelation, if I can share with the committee, that may stun some, and that is the government is capable of making mistakes. And I think, unfortunately, we have had an agency that has made a mistake, not all their responsibility. Perhaps the legislation that created it was imperfect. But, in fact, we have come down the tracks a perfect train wreck that we really need to resolve in some fashion.

The day before yesterday we had the day of silence of Internet broadcasters in protest of this potentially sword of Damocles hanging over their heads on July 15. They went silent. And it harkened back to the Miss American Pie song. Do you remember that line, the day the music died? I don't want to be in Congress the day the music died on Internet radio. And I think that is what we are looking at for a lot of the particular systems and genres that are now enjoyed by people. Seventy million Americans are enjoying this with their morning coffee now, so this is very important to many, many people. It is not to just the businesses involved.

I just want to tell you one local experience. I have a company in my district, a little group, it is called Big R Radio, and they now have 15,000 listeners enjoying their work over the Internet, but according to this new rule, they will have to pay rates that exceed their entire business' revenue by 150 percent just for the premium you are paying for the music. Obviously that is a totally unsustainable situation, and they are facing bankruptcy, or they may have to consider going overseas. And unfortunately, Big R Radio is typical of hundreds, if not thousands, of small businesses across the country today.

And I want to point out what I think are three fundamental failures of CRB's decision that we need to resolve in some fashion. One, they dramatically raised the per-song fee, which starts out in 2007 as seemingly a modest 5 percent increase, but gets to 149 percent increase by 2010, and that is fatal to many of these companies.

Second, the group curiously adopted the per-station minimum fee, but dropped the per-service cap. Now, this is the sort of secret little nuclear weapon of this decision. Now every Webcaster will be assessed a $500-a-day charge on each and every streaming station

they offer, and many Webcasters literally have thousands of stations representing every imaginable genre in the music mix, and they do it because this is a tremendous eclectic selection for these 70 million Americans. And that is why Americans are loving this service. They are getting every conceivable thing from gothic western to, you know, you name it.

Well, that is going to end because the minimum fees for 2006 for just three Webcasters, Real Networks, Pandora and Yahoo, will be over $1.15 billion under this particular structure. These new rates will dwarf the radio-related revenues by substantially more than a billion dollars.

So it is not just the small guys who are going to end their services, it is some of the larger ones as well, because when you have a business structure where you have to pay just for the premium, not including your overhead, your salary, your electricity and everything else, just for the premium, one of your overhead costs, a billion dollars more than the entire revenue of these stations for these multiple stations, it is not just the little guys who are going to go black here.

And that is why, although I appreciated Sound Exchange's willingness to discuss this issue with some of the smaller businesses, that is productive, but for the 90 percent of the rest of the music, Americans are going to lose that, too, in substantial part. So we need to deal with that. The rate of 64 times the total royalties collected by Sound Exchange in 2006, it is a 10-—and I checked this number, apparently it is accurate—a 10 million percent over the minimum fee of $2,500 per license.

Finally, CRB eliminated the percentage of revenue fee that many small Webcasters use to determine their performance royalty, and that moved from a percentage revenue to a per-song rate. As you have heard, it hits the Webcasters hardest.

So it is abundantly clear that artists need fair compensation. These businesses live in a symbiotic relationship. Neither can live without the other. I come from a district where the payment of intellectual property is extremely important. Now, it is not so much music. We don't get country music so much, however, in Washington, but we do sell some software, and so we understand the importance of compensating intellectual property. The fundamental precious asset of America is intellectual property.

Artists have to be fairly compensated. They are geniuses, and we don't have music without them, but they don't have distribution without these Internet folks either. And I know that is in serious jeopardy. And somehow what the government wrote with this CRB decision the government is going to have to fix, and so I have been active in that regard, and we hope that there is some resolution amongst the players. The government has to be prepared to act in this regard.

Madam Chair, there has been a bill introduced to deal with—I don't know if you would like me to describe that. I am happy to describe a bill I have introduced to deal with this or not. Would you like me to describe that, or is that of interest to the committee? I will leave that to you.

[The statement of Mr. Inslee may be found on page 98 of the Appendix.]

ChairwomanVELÁZQUEZ . That is not part of the scope of this hearing, but I do have some questions to you in terms of July 15 is approaching, and the essence of your legislation is to stop this raise from going into effect. So given the fact that July 15 is approaching, do you think that the parties involved can come to an agreement before July 15? How can we approach that? And do you feel that the fact that you introduced legislation, but July 15 is around the corner, how can we reconcile?

Mr.INSLEE. Well, first off, having this hearing is helpful to the parties hopefully moving forward to some resolution, so very much appreciate this hearing being held to have the parties exchange their views, and to the public, frankly, to learn what is at risk here. Not everybody knows that their radios are going to go dark here, the Internet radio. So having this hearing is very helpful.

Second, there is over, I think, 122 cosponsors of this bill now, so that there is—obviously Members are hearing from thousands of their constituents, and there is obviously a strong movement in Congress to encourage the parties to resolve that. I think that is helpful.

I think that the stumbling block here—I am not one of the negotiators, so perhaps I can give an outside review of this—I think the stumbling block is the—I think that the lack of perception the larger percentage of the broadcasters, 90 or 95 percent of the music actually comes from some of the larger Webcasters who have these multiple channels. They might have thousands of channels. And for each one of these channels now they get hit for this fee per channel. That particular part of this ruling is really what is going to deprive the lion's share of the music Americans now listen to on the radio, and I think that the parties need to address that issue, because if they don't, we are going to lose the lion's share of music over the Internet.

I would encourage, obviously, Sound Exchange to take a hard look at the business model. The business model is not sustainable even for larger players here. And we appreciate that they have made an offer to the smaller Webcasters to have some relief from this, but the 90 percent of people listening to the radio, they are going to want a radio, too, and unless there is some change to that, I don't see a business model that will allow that to continue.

So I guess what I would say is perhaps all of us can encourage people to really look at what the economics allow for all broadcasters small and large, and I hope that they will be successful in that regard.

ChairwomanVELÁZQUEZ . Thank you.

Mr. Chabot, do you have any questions?

Mr.CHABOT. I will be very brief, Madam Chair. But I, first of all, would like to commend you, Mr. Inslee, for weighing into this and putting together a proposal which many Members agree with, obviously. Our role here, if it has been what I think you indicated there, is to try to be helpful to shed some light on this, to try to get the parties to get together without negotiating for them or telling them you want to do this and you want to do that, to get them so that they resolve this short of Congress having to do it.

We don't know how it is all going to play out at this point; but also to let the public know through the coverage of this how serious

this is as far as some of the music literally ending for a period of time if this isn't resolved.

So I want to again commend you and again commend the Chairwoman for holding this hearing today. My only question would be, getting back again with the Chairwoman's question, and ask it maybe a little different way, the July 15 date which is coming up, obviously it is not very likely that your bill would get floor action, and passed into law and then go to the Senate, and there would be a conference committee, get to the President's desk, and he sign it. The odds of that happening by July 15 are slim to none. So what do you anticipate will happen if the court doesn't issue a stay? And again, maybe I will even ask you, do you have any information relative to what the attorneys think, whether the court will issue a stay; and if they don't, what do you think will happen?

Mr.INSLEE. I don't have any sort of inside scoop on that to share. Here is my thinking. There is a mind-set here that we have got 20 seconds left on the game clock, and then when the buzzer goes off, we are done, and we are just done. And so people could run the clock out, so to speak, on July 15, and then we are done.

That is not the case. July 15 is not the end. It is not the beginning of the end. It might be the end of the beginning. And if we don't reach a resolution of this by July 15 by the parties, this effort in Congress will continue and swell dramatically, because when those decisions are made to shut off Internet radio, whatever Congressmen and women have heard to date, you are going to hear 5 or 10 times as much after July 15, and our efforts to have some legislative resolution of this will not just continue, they will increase dramatically.

So July 15 is not the end of the game. It is maybe the beginning of the real congressional action on this. So that is why I think it is important for all the parties to realize that there is no sort of four corners offense here. In North Carolina you used to run—you would have four corners, you pass the ball, and the game runs out. You know, we are going to continue this effort. We are not going to let the music die. Americans enjoy it too much.

Mr.CHABOT. Thank you very much.

I yield back, Madam Chair.

ChairwomanVELÁZQUEZ . Mr. Johnson.

Mr.JOHNSON. Thank you, Madam Chair.

Some Americans may feel that AOL and Clear Channel, On-Line, Yahoo Music and LAUNCHcast may be the principals behind this effort to contain royalty rates at the expense of the musicians and people who play the music. Did AOL and Clear Channel, On-Line and Yahoo Music—were they some of the participants in this day when all of the music went dead on the Webcast?

Mr.INSLEE. I don't know. To be honest with you, I should know, because I was at a rally with some of the smaller bands out here last week. I don't know if any of the larger folks do that or not. I don't know the answer to that.

Mr.JOHNSON. What will happen July 15 when a new royalty rate goes into effect? Nothing happens between now and then, nothing happens in the courts, nothing happens in Congress, the rate goes into effect. What will happen to the Webcasters who continue to broadcast on the Web, but don't pay the escalating royalty rates or

don't pay any royalty rates? What happens to them under the current state of the law now?

Mr.INSLEE. Well, they would be legally obligated. There would be a legal obligation to pay this. And, of course, we always, as a Member of Congress, suggest that citizens follow the law.

Mr.JOHNSON. They wouldn't be off to jail or anything like that.

Mr.INSLEE. No. I don't believe there is a criminal penalty associated with this.

Mr.JOHNSON. They would have to actually hire one of those despicable lawyers to perhaps defend them if someone decided to sue them to get the money.

Mr.INSLEE. That may be true. But I would suggest that what I think would happen is that some will make a decision they can't face the risk of continued business and close their businesses down. Some will continue without necessarily making the payment in a timely fashion in the hopes that pressure will build on Congress, and either Congress will act, or the parties will finally reach a resolution. The larger parties may continue in the hopes that negotiations continue.

But I guess the one thing I would share with you, and I have spent some time talking to people associated with this, I think the demand in America for this service, it is so engrained in people's lives now, it is like coffee in the morning and Internet radio during the day, that there will be a movement by Congress ultimately if there is not some resolution of this ultimately. And so I hope the parties are successful in moving forward in this regard.

Mr.JOHNSON. I guess the point I was trying to get to is the lights are not going to go out on July 15 because new royalty rates are applicable thereafter, will they?

Mr.INSLEE. Well, I think some will. I think, talking to some of the Webcasters that I have talked to, some of them are unwilling to take the financial risk that there would not be a settlement, and they may shut down their doors at that period of time. I think that the longer it goes, the more shut down their businesses. I can't tell you percentages, but I think there is a real, real risk that will happen.

There is another risk, too, I will just share with you. I was in a meeting here in D.C., and I ran into this guy who is a software developer, and he is also a musician, and he sells his music. And we started talking about this issue. And I kind of thought he might not like my legislation because he sells music, he gets a premium for copyright for his music. And he said, I am totally for your bill. And I said, how come? He said, this is the only way I get my music to Americans is through this Internet radio, and there is no way that I am going to be able to do that under this current structure.

So it is not just the broadcasters that have something at stake July 15. We have to make sure songwriters are fairly compensated. They deserve it. We need their music. It is necessary, and it is the law. But we have the guys like I talked to who are not going to be able to distribute their music. The guys who have the gothic western, you are not going to hear those on top 40 songs, with all due respect to the genre. And so they have a stake in this as well for somehow we reach a resolution of this.

Mr.JOHNSON. I guess there is a lot of small Webcasters who seek to become large broadcasters because they want to sell advertising over the Webcast. They want to perhaps simply charge people for subscribing to the Website. There is also some money involved somewhere. And my hope is that we won't help one segment of our population at the expense of another. And I think fairness is really important here, and I am concerned that we have taken, what, 18,000 pages of testimony, or something like that, and just a careful analysis of all of the market factors, and the Copyright Royalty Board came up with a decision based on input of so many different interests and stakeholders, and now 5 years later there is a push now to just change everything.

Something doesn't feel right about it, in my estimation, and I do want to see further justification. But I am open.

Mr.INSLEE. If I can comment on that. I think that is a very important precept that Congress shouldn't be changing the rules in the game willy-nilly after you make a decision. I think that is important. But I look at this as sort of like we spend 18,000 hours developing the shuttle, and it crashed, you know, one of the first models, and we fixed it. And I think that we are heading for a crash here on something that the economics will not allow Americans to enjoy their music. And so I think it is of that order of magnitude, and I am hoping the parties will move forward so we don't have to; but if otherwise, I hope Congress will act. Thank you.

ChairwomanVELÁZQUEZ . Thank you, Mr. Inslee, for your testimony and your work on this issue.

Members have 5 legislative days to submit materials and statements for the hearing record.

The hearing is now adjourned.

[Whereupon, at 12:30 p.m., the committee was adjourned.]

STATEMENT
of the
Honorable Nydia M. Velázquez, Chair
Committee on Small Business
Full Committee Hearing on Assessing the Impact of the Copyright Royalty Board Decision to Increase Royalty Rates on Recording Artists and Webcasters
Thursday, June 28, 2007

I call this hearing to order. This morning the Committee will examine a recent decision by the Copyright Royalty Board that will increase the fees that Internet radio broadcasters pay to play music. In advance of these new fees taking affect on July 15th, it is important to consider the challenge of providing fair compensation for artists and record labels while maintaining a business-friendly environment for webcasters.

In May of this year, the Copyright Royalty Board set new rates at which commercial and non-commercial webcasters will compensate copyright owners. The CRB also established an annual minimum fee that these entities must pay for each "channel" provided by the service.
In response to the CRB decision, Internet radio providers have raised concerns about whether the new rates and minimum fees will put small Internet radio broadcasters out of business. Artists and record companies, however, have praised the CRB decision as one that fairly compensates them for their music, which they believe drives the growing popularity of Internet radio services.

This prompted an important debate about copyright royalties that will continue beyond the July 15th, when these new rates go into effect. As a result, today's hearing will review the impact of this ruling on small Internet radio broadcasters, independent artists, and record labels. We must ensure that these perspectives are included in the dialogue on establishing reasonable royalty rates for webcasters.

At the heart of the copyright royalties issue is the fact that the Internet is changing the way consumers access and enjoy music. Most Committee members will remember that music used to be distributed primarily via records, tapes, CDs and traditional AM/FM radio. In the 21st century, an increasing amount of music is now distributed via audio files, network downloads, ringtones, satellite radio, HD radio and Internet radio.

Data from 2006 confirms that a market shift is occurring in the music industry. Sales of CDs continued to fall last year, while subscriptions to digital music services, digital downloads of songs, albums and ringtones all increased. At the same time, the number of subscribers to satellite radio and the number of people listening to Internet radio has risen dramatically.

Though Internet radio broadcasters of all sizes offer webcasts, many of the leading providers are small companies employing fewer than 50 people. These services are, for the most part, independently owned and operated. Given the consolidation of media ownership that we have seen in recent years, the growing popularity of a broad array of small and independent webcasters is a promising sign. Listeners want greater choice with respect to music content and Internet radio services of all sizes are providing just that.

As popular as these services are today, new technologies are expected to make them even more popular in the future. When universal broadband access is realized, consumers will be able to access an even wider variety of entertainment that they are today.

In order for this future to become a reality, there must be a business-environment that allows new technologies to prosper and grow, while preserving incentives for artistic creativity. It is through this careful balance that we will best be able to promote innovation and ensure that America remains a leader in these emerging high-technology sectors.

The hearing today continues the Committee's active role in addressing small business related technology issues. These issues are indicative of the critical role that technology plays in the economy and in advancing U.S. competitiveness. I look forward to the testimony today and want to thank all of the witnesses for traveling to Washington, DC today.

I now recognize Mr. Chabot for his opening statement.

Representative Steve Chabot
Ranking Member

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Opening Statement

Hearing Name	Assessing the Impact of the Copyright Royalty Board Decision to Increase Royalty Rates on Recording Artists and Webcasters
Committee	Full Committee
Date	6/28/2007

Opening Statement of Ranking Member Chabot

Thank you Madame Chairwoman for holding this important hearing - as you know, time is of the essence for all parties involved in this discussion, and I appreciate your willingness to consider this issue before the July 15, 2007 deadline. Let me also thank our witnesses who are here with us today. I particularly want to thank Mr. Bryan Miller, General Manager of WOXY.COM in Cincinnati and Mr. Richard Eisworth, President, General Manager & CEO of Cincinnati Public Radio located in my district for making the trip. I appreciate all of the witnesses' willingness to appear before us today, on such short notice, to share their experiences.

The issue before us today implicates some of our nation's most important rights and protections. As I indicated in my opening statement during this Committee's examination of patent reform a few months ago, we don't have to look any farther than the Constitution to understand the importance of innovation and creativity to our nation's economic development. In particular, the question we are struggling today is how do we best protect and encourage creativity, while at the same time, adequately promote and protect the use of the most advanced t echnology and innovations, particularly as it benefits consumers.

For the music industry, artists, and consumers of music, the Internet has been - for the most part - an asset. With its more than 1.3 billion users, the Internet has fostered and nurtured the visibility of artists as well as enabled a new type of small business to take hold - the small webcaster. Indeed, over the last five years, the number of internet radio listeners has increased from 20 million to 29 million, with audience levels expected to double by 2010. By 2020, industry experts predict that more than 200 million people will listen to internet radio.

Similarly, the growth of internet radio continues to benefit songwriters and recording artists. The exposure and audience reach that artists have experienced because of the Internet is beyond compare -- providing opportunities for a diverse range of artists and labels who never thought it possible. Royalty fees have played a significant role in this growth on both ends - contributing to the increased number of diverse recording artists as well as the increased number of specialized webcasters.

However, the recent decision by the Copyright Royalty Board to increase royalty fees may jeopardize this mutually beneficial relationship. The decision, and the outcry that has resulted on both sides, raises questions and concerns about what is needed to fairly and adequately compensate recording artists and labels, many of which are small businesses, yet ensure that webcasters, particularly small ones, can absorb these increased costs in order to remain viable.

Ironically, this dilemma is not new. Indeed, in 2002, the same parties were here in Congress raising similar concerns. Fortunately, the dispute resulted in the Small Webcaster Settlement Act, which codified the voluntary agreement reached by the parties.

As with any private dispute, I believe the parties to the conflict are best suited to devise a remedy that is workable and equitable for all involved. However, I must admit that I find it troubling that we are revisiting these issues, yet again, five years later. This leads me to question the effectiveness and flexibility of Section 112 and 114 of the Copyright Act and the ability of these provisions to: promote and encourage creativity; encourage the use of the most advanced delivery mechanisms to benefit consumers and copyright holders; and ensure fair compensation for those who have created works protected by the Copyright Act.

I look forward to hearing from our witnesses. It is my hope that this hearing serves the purpose for which it was intended. That intent is to get those who are party to this conflict to take a step back and look for common ground so that July 15th is just another day that listeners of internet radio can hear their favorite artists.

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Testimony of

Bryan Miller
General Manager, WOXY.com
Before the Committee on Small Business
United States House of Representatives
June 28, 2007

Good morning, my name is Bryan Jay Miller, and I am with WOXY.com, an Internet broadcaster based in Cincinnati, Ohio. I have had the unique experience of making the transition from a terrestrial FM radio station to an Internet-only webcaster, and hope that I am able to convey to this committee today the lessons I have learned over the course of my career and my reasons for opposing the recent increase of recording royalty rates for webcasters like myself.

Officially I'm the General Manager for WOXY.com, but that simple title is a little misleading. Being a small business with only 4 full-time employees, we all wear many hats. Personally I handle technical duties such as web design and development, networking, streaming media, server administration and management duties such as marketing, strategy, promotion, business development, and advertising sales. After starting out as an intern and spending the past 15 years growing with WOXY, I've managed to tackle every job under the roof at some point or another.

I believed the increased royalty rates as set by the Copyright Royalty Board will have a devastating impact on small webcasters, new and emerging musicians and music consumers.

First, the effect of these increased royalties upon webcasters, both large and small, will be crippling. From my personal experience, the economics of running a standalone Internet radio operation are daunting at best. Between bandwidth costs, hosting, music royalties, and rent, a small webcaster would be doing quite well to simply cover his or her costs let alone have anything left over for payroll. In fact, the revenues we've been able to generate in operating WOXY.com have at best covered only half of our monthly expenses. In all the conversations I've had with my peers, their situation isn't much better – most draw no salary and are lucky to

cover their costs. The Copyright Royalty Board's decision is grossly out of sync with the economic reality of small webcasters.

Specifically for WOXY.com, after going out of business and off-the-air for a second time last October, we were lucky enough to have been acquired by a larger company who thus far has been willing to subsidize our operation. Unfortunately, most webcasters facing these increased royalty rates do not have that luxury. I can guarantee that if WOXY.com had not been acquired and was still a standalone entity, the new royalties unequivocally would have been the end of road for our operation.

Second, musicians stand to lose the valuable exposure provided by Internet radio outlets. I believe one of the reasons millions of people tune into Internet radio every month is that they are looking for something new. In the past 15 years, rampant consolidation amongst AM and FM broadcasters has led to general homogenization of radio programming, narrowing playlists and fewer artists being exposed. Consumers are now turning to Internet radio to discover new artists and find something that they're not going to get via their local AM or FM radio station. Countless artists have told us that listeners have approached them at concerts around the country, telling stories of how they first discovered the band's music on WOXY.com. The musicians most hurt would be the ones who benefit most from Internet radio – new and emerging independent artists. In addition, if thousands of small webcasters go silent, artists also lose out on the performance royalties that would have been paid by those stations. Webcasters going out of business is a lose-lose for artists.

Finally, consumers will lose if there is a mass extinction of independent Internet radio stations. The growing audience of Internet radio proves that there is a hunger for alternatives to the mainstream media. With consumer's tastes becoming increasingly niched, Internet radio's ability to serve an unlimited number of channels of programming is uniquely suited to fulfill this need. Unfortunately the shortsighted $500 per channel minimum fee in the Copyright Royalty Board's decision would make serving thousands of channels of custom programming financially impossible.

I fear that the future of Internet radio under the new performance royalty rates will look wildly different from thousands of small, vibrant, eclectic stations you see today. A select few, mostly larger corporate webcasters, may be able to pay the increased royalties by subsidizing their

Internet broadcasting operations with other non-webcast revenues, in effect using Internet radio as a loss-leader for their other products. But I truly believe that the independent small webcaster will be a thing of the past if the Copyright Royalty Board's decision is not overturned. Thousands of established and budding small businesses will vanish. Although I believe Internet broadcasting has the potential to grow into a thriving profitable industry, currently the revenue structure is simply not there to support the additional royalties.

After putting my heart and soul into WOXY.com for the past 15 years, like so many others have put into their respective Internet radio operations, it's disheartening to consider that all the hard work might be wiped away by the recent decision to drastically increase performance royalties. Having this industry snuffed out while still in its infancy would be a travesty to musicians, listeners and all the webcasters who have put so much time into making it work.

Thank you for taking the time this morning to consider this matter and to speak with representatives from all facets of the industry. Now, if you would like, I can answer any questions you might have.

TESTIMONY OF
THOMAS SILVERMAN
Tommy Boy Entertainment

Hearing

of the

HOUSE COMMITTEE ON SMALL BUSINESS

"Assessing the Impact of the Copyright Royalty Board Decision to Increase Royalty Rates on Recording Artists and Webcasters"

June 28, 2007

Good morning. Thank you, Madam Chairman and members of the committee.
My name is Tom Silverman, but I am also known as "Tommy Boy" and the owner and CEO of Tommy Boy Entertainment. I do appreciate this opportunity to testify before you today.

I come from the world of hip-hop, the world of gold and platinum records, the world of Planet Rock by Afrika Bambaataa and the Soul Sonic Force, the world of Queen Latifah, and Naughty by Nature.

But I also come from a world very familiar to members of this committee – the world of business – of meeting payrolls, paying taxes and having hundreds of people dependent on the viability of my business enterprises.

And it is as a businessman that I appear before you today.

It is the business of music – a vast industry that, in step with extraordinary changes in technology, is itself changing dramatically. Long gone are the days of vinyl records that were prevalent when I started out with a $5,000 loan from my father in my cramped New York City apartment.

Today there are many ways in which people get their music, including Internet radio, satellite radio and other digital formats. Almost by the day, new technology and business arrangements are appearing that continue to dramatically alter people's music-listening habits and preferences. On balance, I think this is all good. Access and exposure to all kinds of music are being broadened, and new opportunities are opening up for artists and small businesses like Tommy Boy Entertainment.

But, even in this new world of jaw-dropping new technology I have the old-fashioned challenges and responsibilities of any business owner: making a profit; identifying, hiring and nurturing employees; and investing in new artists and new products.

I sometimes sign a new musical artist who does well and flourishes, and my record label makes a profit. I sometimes sign a new musical artist, and they don't do so well. As a result, sales languish, and I lose money.

These days we are increasingly dependent on the royalties due us from the flourishing business of Internet webcasting and satellite radio. These are businesses totally dependent on our work product – the creativity and investment of the record label and the creativity, passion and hard work of recording artists. Without us, these business would not, and could not, exist.

Yet, what we continue to hear from the webcasting business – one where more than 80 percent of the webcasting royalties are paid by 20 large webcasters – is that they want to pay less, not more. I think it is only fair that these large businesses – whose very existence is totally dependent on the work product of record companies, independent labels like Tommy Boy Entertainment, and musical artists – should fairly compensate those whose work they webcast.

As to the fairness of the rates, they were determined by three impartial judges, specifically selected for their knowledge and understanding of this industry, in a hearing process that ran more than 18 months.

It was a fair decision. What irks me as a small business owner, is the attitude expressed by a few small webcasters who became engaged in a grassroots campaign primarily financed by large webcasters. They got people's attention, including some Members of Congress, by claiming small businesses would be hurt. Okay. But what bothers me is that, in all their rhetoric, I never hear anything positive about artists, who themselves are small businesses – or about the challenges facing independent labels. It's all about cutting the rates.

Congress asked SoundExchange to give small webcasters below market royalties – to provide them with a significant discount from the fair market rates set by the Copyright Royalty Judges, to allow their businesses a chance to gain more "steam". As I understand it, SoundExchange is doing just that. And if SoundExchange tells me it's okay to give this discount and it might help some of these small operators, then that's okay with me because I know that SoundExchange is looking out for our performance rights.

So, while I continue to pay for electricity and employees and all of my other costs at rates that are set by the market, continuing this discount for a limited time seems fair to me. But, that discount offer does not seem to have stopped the push to cut our royalties. I know what that's about. It's about Big Net Radio. Madam Chairman, with all due respect, that's not right.

I was asked to come before you today as a record label owner and entrepreneur with previous successes in the recorded music industry. But I want to be clear that these successes were not pre-ordained and certainly not inevitable. Yes, I worked hard -- but so do a lot of other people in the industry. I have tried to assist other small businessmen and

women over the years. In the 1980's, I created the New Music Seminar which was the leading conference of its time that tried to educate new entrepreneurs, lawyers, agents, managers and artists on how to best navigate this difficult business.

Over the years I have been lucky to "discover" influential groups like De La Soul and Queen Latifah. I invest in new sounds, but so do a lot of others. I constantly re-invest my money to try to build my business. So do others. Many in my industry have failed. No small business is guaranteed success.

I happened to strike on some successes, but many of us do not make it big in this highly competitive industry. Many scrimp and save and sacrifice to make ends meet as they devote their lives to this business they love: making music that others enjoy. And I do hope that as you consider this situation that you will keep in mind the many hundreds of thousands of musical artists, and the thousands of record label owners, who are small business people – sometimes extremely small. I serve on the Board and was a founding member of A2IM, a new association that represents many of America's leading independent labels. Of our 130 members, 90 have market share of less than two tenths of one percent, which mean they gross $1.4 Million dollars or less from the sales of their product. From this gross, one must deduct artist royalties, publishing royalties, the cost of physical goods (if in physical form and not a digital download), and many other costs – marketing, advertising, artist advances and more. Our businesses are very different from webcasters, some of which simply pay a service a small fee per month, plug in their computer and stream.

The income for artists and copyright owners from music royalties – being paid for the use of their products – is a critically important factor in whether we can afford to keep going and create the music that so very many of us enjoy and love. It's all about fairness, and being paid for the work we do.

Thank you very much, and I look forward to your questions.

# # #

Testimony of

Joey Allcorn

Professional Singer, Songwriter, Small Business Owner

Before the Committee on Small Business

United States House of Representatives

June 28, 2007

Good morning Chairwoman Velazquez, Congressman Chabot, and members of the Committee. I am Joey Allcorn of Columbus, Georgia. Thank you for inviting me to talk about the importance of Internet radio to my career and my small business – as a professional songwriter, recording artist and performer.

As I will explain, Internet radio is one of the greatest opportunities for 21st century recording artists. It helps fans find new music, helps artists find new fans, leads to new and unexpected performance and touring opportunities, and pays royalties. What a great combination.

But if the Copyright Royalty Board royalties are implemented and webcasters go silent permanently – as they did yesterday for their Day of Silence demonstration – then all these benefits will be lost. Higher royalty rates from fewer webcasters will benefit only a few big artists, just as broadcast radio benefits a few but leaves most artists high and dry.

But let me backtrack and tell you a little bit about me, and my music.

As the title track of last album says, I was probably born fifty years too late. I've been playing music for what seems like every day of my life, and when I discovered Hank Williams Sr., my music changed forever. All those old stories of heartbreak, heaven, hell and American history got into my blood and I started writing songs. These aren't

"mainstream country" songs like you hear on FM radio. My songs pay tribute to what I call "classic country" – Hank Williams, Johnny Cash, Ernest Tubbs and Waylon Jennings – and even Muddy Waters. I tell stories with steel guitars and fiddles, with a good hillbilly twang and a yodel or two.

I do okay for a young guy playing old time country. I make a living, enjoy some success, and have a good and growing following. I've shared a stage with some of the masters – with members of Hank Williams' Drifting Cowboys, Ernest Tubbs' Texas Troubadours, and Waylon Jennings' Waymore Blues Band. Hank III (Hank Williams' grandson) and Lonesome Wyatt even sang on one of my records. That was pretty cool.

None of my success comes from mainstream radio, or happens in Nashville where the major record labels live. My business begins with my guitar and a local recording studio, and it grows and thrives on the Internet. Traditional, terrestrial radio promotion was never in my business plan because that kind of radio doesn't play my kind of country music – until Internet radio changed my business and expanded my opportunities a thousandfold.

Joey Allcorn and the Hillbilly Band has found a home on Internet radio. When we made the Ram Radio (http://www.ramradio.net) Top 10 list, people told me "I heard you on the Internet and bought your album". That changed my world. It's incredibly easy to buy music with Internet radio - all the stations have "buy" buttons that connect listeners to Amazon.com, iTunes, CD Baby or the station's own virtual store, so I've been able to sell a lot of albums.

Compare this to the frustration of broadcast radio. We played a concert in my hometown a while back and the local radio station interviewed me, but they were not allowed to play my music because it didn't fit their format. That's messed up. It is ironic that Internet radio is helping to make my career, and it is one of the best places for me and my fans to discover one another, but these royalties might shut this opportunity right down.

Even beyond radio, the Internet is a huge opportunity for independent artists. It has decentralized the music industry so that all artists have a shot. I don't need a major

record label or major radio support to make music, find an audience, distribute my music and earn a decent living. Instead I can go direct to music fans or they can find me, using Internet radio, MySpace or just a simple Yahoo! search for classic country music.

And that's okay for the major labels because they would never sign us anyway; my band doesn't sell enough albums to pay their electric bills. But with low barriers to entry for Internet radio and MySpace, I can build my audience one listener at a time, one city at a time, with the music I love. In a way, I guess you could call Internet radio the greatest grassroots music movement ever.

All this opportunity makes these drastic new royalty rates even more bizarre to me. Here's a new radio outlet that has broken the industry open for independent artists and our small labels. It pays royalties to artists who don't get paid on broadcast radio, and is the only radio medium with a "buy" button next to the song title. Yet, three judges from somewhere I've never heard of decided to raise webcasters' royalty rates so they will go out of business. And if that happens, my career – my small business – will be hurt badly.

I've heard that SoundExchange, on behalf of its artist members, is claiming that this royalty fight is about big webcasters ripping off artists. This is really unfair, and I don't understand it. Artists benefit equally from small and large webcasters. In fact, the Roots Music Association, a group I belong to that seeks to advance genre-based music like ours, actually wrote in to BusinessWeek when they read about this (see Attachment A). Of course the new royalties will kill small webcasters first, they wrote. But then one by one it will take out the bigger webcasters or force them to cut costs by cutting small genre programmers, and I'll be back to emailing songs and begging for audiences with major labels and radio station program directors. If that happens, the opportunities lost for independent artists will be painfully real. In fact, I just met a guy last week whose band was heard on Pandora by one music director, and the following week he was playing before 15,000 people at a huge music festival. Now I'm not sure how big Pandora is among webcasters, but any band would take that kind of promotion whether it came from being heard on Live365, WOXY right here with me today, or AOL Radio.

I do not mean to confuse you today. I'm an artist. I like getting paid and I like royalty payments. But if the only radio that plays my music goes bankrupt, they won't be playing my music or paying me royalties. If the magic words of "I heard you on the Internet and bought your music" disappear, then SoundExchange will still be around to collect big money from big webcasters to pay big labels, but I may lose my career. And the country legends I try to keep alive, may be lost with me. There may be a 15 year old like me out there right now with a passion for the old greats, but if he can't hear them, that passion may never be realized. He won't find those great American stories told with steel guitars and fiddles on regular broadcast radio. That history is gone. But listening to me here today I hope you now know that classic country music is still alive, in large part because of Internet radio.

I'll stop here. I think you get the point. But finally, please understand that this isn't about greed, or pointing fingers or some big radio or big label conspiracy. The beauty of Internet radio is that it supports so many artists and genres, many of them whom corporate radio and major labels would never be interested in anyway. I believe that all forms of radio can, and should coexist – Internet radio, satellite radio, cable radio, broadcast radio and whatever's next that still hasn't been invented. I hope you agree, and that you cosponsor the Internet Radio Equality Act and help keep Internet radio alive.

Thank you.

June 28, 2007

TESTIMONY OF
CATHY FINK
Recording and Performing Artist

Thank you, Madam Chairman, for inviting me to this important hearing. My name is Cathy Fink. I am a musician, recording artist, songwriter, music producer, teacher, author, artist member of SoundExchange, and long-time member of the American Federation of Musicians.

My partner, Marcy Marxer, and I have performed, recorded and produced a wide range of music – including folk, old time country, swing, bluegrass and children's music that exemplifies all these styles and more – as a duo for the past twenty years. We have been Grammy finalists ten times and won the Grammy award for Best Musical Album for Children in 2004 and 2005.

I would like to share with the Committee the economics of our art and our profession. The creation of a sound recording takes a huge investment of time, talent and energy. Like any other entrepreneurs, we are making financial investments. In my case, there is our home studio. Ours is not elaborate, but is not cheap to create or maintain. I estimate that we've invested about $40,000 in our home studio.

All of our recording projects also require us to rent time in commercial studios – at about $100 per hour – and to pay engineers who do the studio work. And when we hire musicians to work on an album, we must pay them as well – the fundamental principle being that when people do the work, they should be paid for it.

Like any other small business, we also endure organizational and administrative tasks as well – the paperwork associated with hiring musicians, paying taxes, booking tour engagements, handling mail orders, public relations for concerts and more. For the last ten years, in fact, we have freed up creative time by hiring a full-time office manager. We pay her salary and provide health benefits. We also pay rent on the office space she occupies – an office with phone, fax, computer, high-speed Internet, furniture and the like.

And then there are our instruments. They, too, are investments. In our own case we play so many different instruments on our albums that we have a large collection, many of which are expensive. For example, a well-made acoustic guitar can cost from $2,000 to $10,000.

We have made our way by pursuing a wide range of professional activities. Live performances are an important part of our income as well as of our art. We perform anywhere from 75 to 250 shows per year. Many of them involve travel, and all involve

certain costs – but they all involve an opportunity to connect with live audiences and to sell our CDs in person. But selling CDs alone is not enough to support us. Frankly, it can take several years to recoup the costs of each project.

The royalties we receive from SoundExchange have been very welcome and valuable to us. To date, these payments have been fairly modest, but they are making a real difference to us. For example, the amount we've received from SoundExchange this year can cover a major expense, such as the annual cost of insuring our equipment and instruments.

We think of ourselves as a small business, and would encourage you to see us that way. It is of course a very creative business, and one about which we are extremely passionate. Our music is a valuable creation, and it is the core of that business. Like any other product, it deserves fair compensation.

Last year I was proud to testify before the Copyright Royalty Board about Internet royalty rates. I thought it was incredibly important that the judges understand the investments of time and money that we performers make in our work. These were very thorough and comprehensive hearings. I believe the royalty fees that were ultimately set by the Board reflected the value of the recordings that are at the heart of the webcasting and simulcasting business models the judges examined so carefully.

Under the CRB decision, at 2007 rates, recording artists and record labels will be paid 65 cents in royalties for supplying webcasters with a month's worth of music for an average listener who streams 40 hours of music a month. These were rates that the Copyright Royalty Judges determined were fair after reviewing testimony from all participants, including proprietary financial information to which no one else had access. I want to say it loudly and clearly, the Copyright Royalty Board was an impartial panel, set up by Congress, that conducted a fair and painstaking proceeding. There truly is no valid complaint about process. It really comes down to money: Big webcasters want to pay us less than what the judges determined was fair, 65 cents a month.

As you know, recording artists and labels have already, at the request of Congress, offered a discount rate to small webcasters to help them grow their businesses. This discount rate, which comes out of the pockets of people like me, will essentially freeze the rates small webcasters pay through 2010 at the same subsidy levels they have enjoyed since 1998. There's a bottom line here: Without the talent, hard work and sacrifice of recording artists, there would be no music to play, and no music to build the assets of webcasters' businesses. It embraces a simple principle – that we deserve to be paid for our work.

If I may, I would like to make one more point. A couple of weeks ago I happened to read in the newspaper that last.fm was purchased by CBS Corporation for $280 million. I asked SoundExchange about that. I found out that Lastfm got a discounted rate as a small webcaster and paid less than $5,000 in royalty rates last year. I then asked SoundExchange how much of that $280 million will be shared with those of us who

create the music that helped build Last.fm into such a desirable company. As you might have guessed, the answer is zero.

Madam Chairman, Members of the Committee, we've had a long and successful career in this business. We hope that, with your help, and with the help of this Congress, it will continue for many years to come. Thank you.

# # #

Testimony of

Kieran Kelly

Co-Owner, Stunning Models on Display
Astoria, Queens

Before the Committee on Small Business
United States House of Representatives
June 28, 2007

My Name is Kieran Kelly, I am the Co-Owner and head of A&R for the independent record label Stunning Models on Display, which currently represents six artists and bands. First, I would like to thank the committee for taking time this morning to consider the important issue and the impact it may have on our industry. I would also like to specifically thank Chairwoman Velasquez and Congressman Chabot for your leadership in making this hearing possible.

I have worked in the music industry for more than 15 years. Though I have worn many different hats and served in many roles during my career, the one constant has always been my belief that artists are the key to the work we do and the music we enjoy. My livelihood is rooted in the success of the artists I represent and the general success of the industry. For that reason I am here today on behalf of myself and the label I own along with my partners, to explain why we believe that dramatic royalty increases paid by internet radio stations will do tremendous damage to broadcasters, record labels like mine and ultimately, it will have an unintended consequence of harming artists.

Today, thanks largely to innovation in digital technologies, music is enjoyed more than ever by more people throughout the world. For the first time, there are options for the

composition, production, and distribution of music that are not confined by physical limitations or geographic borders. Nowhere is that evolution more obvious than in the incredible diversity of music available online. Freed from the constraints of traditional radio and free to give listeners what they want to hear, webcasters have enabled and empowered their "consumers" to seek out new sounds and new artists. In return they have empowered artists to reach new audiences and build fan bases. As every artist and everyone in the industry recognizes, there is a promotional value associated with having your music broadcast whether online, on satellite radio, or through traditional radio. I believe artists should be paid for the music they make and that royalty payments are important, but I also believe that the proposed rates are cost prohibitive and will take far too many webcasters off the air – and when they go off the air so will go the artists whose music they play. We are on the verge of a new golden age for music and musicians, this rate increase threats to plunge us back into the dark ages of limited access to music, limited options for artists, and limited success for all.

The Music industry has changed so dramatically over the past 10 years and more and more the driving force for "discovery" is internet radio. Webcasters, social network sites, and individual artist homepages have become distribution centers for artists around the country. Portals for listeners and fans to visit and hear new music, download the latest track, and more importantly, purchase CD's and songs. The internet, as we all know has changed the way we learn, shop, communicate, and live. It has also revolutionized the way in which music, one of the great cornerstones of society since the dawn of time, enters peoples' lives. These new rates, if allowed to take effect, would restore the walls

that once separated artists from new fans and listeners from new sounds. They would restore the limitations that once existed and close the doors the Internet has opened.

What seems to be lost during this debate is the unique options inherent to NetRadio. The flexibility and diversity it gives listeners is both the reason it is so popular and the underlying cause of this looming crisis. Proponents of this rate increase believe there is more money to be made through netradio – how could there not be with more than 50 million Americans listening monthly. The reality however is that those 50 million listeners are drawn to netradio because it is a better listening experience. Fewer advertisements, minimal disruptions, and less interruptions coupled with more diverse playlists and platforms than traditional radiomakes for a delicate balancing act for webcasters, as they choose between givinglisteners what they demand and monetizing the product they are offering. The competition between webcasters is unprecedented in broadcasting. Thousands of webcasters vying for a listening audience unconfined by geography or cost, and subject only to the quality of the product makes for a very thin bottom line.

Yes, the bottom line is a little thicker for large corporations and conglomerates that have ventured into webcasting, and a reversal of these increased rates will be in their favor. But reversing these rates also favorsevery small webcater who is hoping to someday become bigger and more profitable. No one benefits from these increased rates. Not the webcasters who can't pay them, the listeners who won't be able to find the music they

want anymore, or the artists who will not only receive less money after the industry is decimated, but will also receive less air time.

This evolution of the industry and the collaborative relationship between broadcasters, labels and artists is producing more and better music. This is especially true with the small webcsaters that have been able to attract and maintain the loyal fan bases of smaller independent artists. As the owner of a label whose bottom line depends on my ability to promote the artists I represent, these webcasters are priceless and provide invaluable tool.

We have all had to adapt to the digital age and the impact it has had on the industry. We – all of us from producers and labels to artists – are faced with a choice, embrace it as an opportunity or resist it at our own peril. Those that chose to embrace it will ultimately enjoy the fruits of a new age that does not discriminate on size, only quality. This Committee is set up to protect the interest of small business – the backbone of the American economy. The excessive royalty rate increase is not in the best interest of the industry as a whole, but it is also not in the best interest of small webcasters, small bands, independent artists, and independent labels. We are all at risk of losing an invaluable tool and a golden opportunity.

Thank you again for your time this morning. Now, I would like to answer any questions you might have at this time.

Testimony

of

THOMAS F. LEE

International President
American Federation of Musicians

Hearing

of the

HOUSE COMMITTEE ON SMALL BUSINESS

"Assessing the Impact of the Copyright Royalty Board Decision to Increase Royalty Rates on Recording Artists and Webcasters"

June 28, 2007

Good morning, Chairwoman Velazquez and Members of the Committee. My name is Tom Lee. I am a professional musician and the International President of the American Federation of Musicians of the United States and Canada, AFL-CIO ("AFM"). On behalf of the AFM, I want to thank you for your attention and continued work on behalf of small businesses in the U.S.

I am particularly pleased to have the opportunity to speak with you today about musicians and singers. The AFM is very supportive of the webcasting industry, especially small and noncommercial webcasters that can add diversity to the music offerings made available to the public. But it is important to realize that small and noncommercial webcasters are not the only small businesses affected by the royalty rates set by the Copyright Royalty Board ("CRB") last March. Most recording musicians and singers are themselves entrepreneurs and small business people who rely on many small income streams, including performance royalties, in order to survive. Any analysis of the

effect of the CRB decision on small businesses must take into account the need of performers, as small businesses, to be paid for their creative work.

I. Background and Qualifications

I am a keyboard player. I served for twenty-four years on active military duty as a pianist with the United States Marine Band, from 1966 until I retired in 1990. The Marine Band is also known as "The President's Own" and has had a close association with the White House since 1801. I had the great pleasure and honor of playing the piano at the White House at least three days a week for receptions, state dinners and all manner of official functions during the terms of Presidents Johnson, Nixon, Ford, Carter, Reagan and George H.W. Bush. During my off-duty hours I also worked extensively as a free-lance pianist in the Washington, D.C. area.

I have been an elected officer of the AFM since 1991, and have served as its International President since 2001. Just last week, I was re-elected for a new three-year term. In my capacity as an AFM Executive Officer and most recently as AFM International President, I have participated in or led negotiations of numerous AFM industry-wide agreements, worked on legislative issues of importance to musicians, and gained familiarity with the issues that face professional musicians in these increasingly difficult times.

The AFM is an international labor organization with over 100,000 professional musician members in approximately 250 Locals throughout the United States and Canada. AFM members record music for sound recordings, film scores, radio, television and commercial announcements, as well as perform music of every genre in every sort of venue from small jazz clubs to symphony orchestra halls to Broadway and local theaters.

The AFM negotiates industry-wide agreements such as the Sound Recording Labor Agreement ("SRLA"), which sets standard working conditions for all musicians who record under it. All the major recording companies and hundreds of small and mid-size recording companies sign the SRLA. Our recording musician members include featured recording artists who are well-known celebrities, as well as non-featured artists who work as session musicians in the recording industry.

Although the traditional area of activity for labor organizations is collective bargaining, the AFM has long recognized the need to advocate for musicians' interests in other ways as well. The AFM has been a strong proponent of copyright protection for U.S. performers since at least the 1970's. The AFM and its sister union, the American Federation of Television and Radio Artists ("AFTRA"), were key advocates for the enactment of the Digital Performance Right in Sound Recordings Act in 1995 (the "DPRA") and the Digital Millenium Copyright Act of 1998 (the "DMCA"). These two statutes together created the digital performance right in sound recordings and applied it to transmissions by webcasters and simulcasters.

In fact, the AFM and AFTRA were responsible for significant elements in the structure of the DPRA and DMCA. The unions made it clear in 1993 and 1994 – that is, early in the legislative initiative that led to the DPRA – that they would not support the legislation unless it ensured that performers would share directly in the benefit of the new digital performance right. The unions negotiated the current structure of the compulsory license for digital performances, pursuant to which 50% of the compulsory license revenue is allocated to performers (with 45% going to featured artists, and 5% going to non-featured musicians and singers), and 50% to sound recording copyright owners.

Later, the unions worked with other organizations like the Music Managers' Forum, the Recording Academy, the Recording Artists' Coalition and the Future of Music Coalition to ensure that the performers' share of digital performance right revenue would be paid to them directly, rather than through their record labels.

The digital performance right has worked in the way that the unions envisioned in the early 1990's. It has created a small but important new income stream for thousands of musicians who count on the accumulation of many such modest revenue streams in order to survive and continue to make music.

II. Recording Artists and Session Musicians Are Small Businesses

It is easy to think of recording performers as a small and select group of rich celebrities, who inhabit a glamorous world, and whose concerns have nothing in common with those of "ordinary" citizens. I wish music was all wealth and glamour, but it certainly is not.

Sure, some musicians become mega-stars and platinum-sellers. That's great, and I wish that kind of success were possible for every talented musician. But world-fame and vast fortune are very much the exception rather than the rule, even for the most talented and hardworking of musicians. I know from my own experience as a musician, and from over twenty years of services as an AFM International Officer and an officer of my home Local here in Washington, D.C., that all but a miniscule percentage of professional musicians earn only very modest sums from their creative work. The Bureau of Labor Statistics confirms my anecdotal knowledge: it reports that in 2004 (the most recent number available), the median hourly earnings of musicians and singers were $17.85. No annual earnings figures are available, according to the Bureau, because, as it

reports, "it is extremely rare for musicians and singers to have guaranteed employment that exceeds 3 to 6 months."[1]

In fact, within the profession we consider a performer to be a great success if he or she can earn a living from music and ditch their "day job." The names of most successful recording artists never become household words. Nevertheless, these artists succeed artistically – they record terrific performances. They succeed economically – which is to say, they make a living at music and don't need a day job. And they have loyal fans who follow their careers avidly even if they aren't regular front-page news. But they never become rich and they must work incredibly hard to combine incomes from live performances, recording sales, licensing sound recordings to television or movies, merchandising, songwriting, session recording, producing other artists, and any business opportunities they can muster, in order to earn a middle-class living and fund their recording and other artistic projects. I am honored to be on this panel before you today with exactly such an "ordinary" successful artist, AFM member Cathy Fink, a ten-time Grammy nominee and two-time Grammy winner for Best Musical Album for Children. Cathy can explain exactly what the working life of such "ordinary" recording artists is like.

There is another kind of recording artist whose names mostly remain unknown, but who are vital to the creative success of countless sound recordings. Session musicians and vocalists contribute critical interpretive elements – intros, fills, chord changes, solos, tempo and rhythms – that bring the notes and lyrics on a page to life in a unique recorded performance. The AFM is fortunate to have as its International Vice

[1] Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook, 2006-2007 Edition, Musicians, Singers, and Related Workers, on the Internet at http://www.bls.gov/oco/ocos095.htm .

President Harold Ray Bradley, the most recorded guitarist in history, a Country Music Hall of Fame inductee, and one of the legendary Nashville "A" team session musicians. You may never have heard Harold's name, but you've definitely heard him play bass on Patsy Cline's recording of "Crazy," Roy Orbison's recordings of "Oh Pretty Woman" and "Crying," Tammy Wynette's recording of "Stand By Your Man," Roger Miller's recording of "King of the Road," and numerous other hit recordings by Elvis Presley, Jimmy Dean, Loretta Lynn, Ray Anthony and others. Many other AFM members, past and present, also have illustrious careers making famous (and not-so-famous) recordings into wonderful works of art, without becoming known to the public outside of a few aficionados.

It is no exaggeration to say that the body of recorded works broadcast by internet radio and other music services includes wonderful performances by tens of thousands of session musicians and vocalists. I point especially to Harold Bradley, though, because Harold has done so much to explain the inner workings of a recording session from the point of view of the musicians. In testimony before the CRB, Harold explained how session players contribute to recordings, using the example of the session that recorded Patsy Cline's "Crazy." That recording became the number one jukebox hit of all time in part due to the "tic-tac" bass sound that Harold developed and played with the legendary Bob Moore, Floyd Cramer's blues element on piano, Walter Haynes' tremolo sound on the pedal steel, Buddy Harman's percussion, and the inimitable background vocals of the Jordanaires. With your permission, I have attached Harold Bradley's testimony before the CRB so that you can read his own words about his experiences. (Appendix A)

As the AFM's President, I am extremely proud of all our union has done to improve the economic life of session musicians and recording artists. Recordings made under the AFM's SRLA result in three distinct forms of compensation to the musicians. They are paid for their time in the studio, including the current minimum scale payment of $361.72 for a three-hour session to record 15 minutes of music, plus a 10% pension contribution and a health & welfare payment of $19.00. In addition, musicians share in the sales revenue generated by SRLA recordings through a negotiated fund called the Special Payments Fund ("SPF"). Signatory employers contribute to the SPF in accordance with a negotiated formula based on sales, and the SPF conducts an annual distribution of those sums as deferred wages to musicians who have worked under the SRLA during the preceding five years. Finally, musicians receive additional payments, called "new use" payments, if their recordings are used in new media such as motion pictures. But as good as this compensation system is, it does not result in riches – only in a relatively modest middle-class income for musicians who work under it regularly.

And it must be remembered that practically no session musician actually has a regular "job" from which he or she can count on receiving an annual income. Session work, like most musician employment, is intermittent even in the best of times. When hard times hit the recording industry, as they have for the past several years, the amount of union recording decreases, and total scale wage and pension earnings decrease simply because there are fewer sessions. Similarly, reduced industry sales drive down SPF income, which has declined overall since 2001. And although the AFM has negotiated special low-budget recording rates for projects that cannot afford full union scale, there are always non-union recording dates for which musicians – often aspiring young

performers – do not receive anything like a union rate, pension contribution, or SPF payment. The Bureau of Labor Statistics noted in particular that due to the intermittent employment in the music industry, few musicians and vocalists have the kind of benefits other Americans take for granted, like unemployment compensation, paid vacations and sick leave.

As a result, session musicians and vocalists, like recording artists, must operate like entrepreneurs and make their living by combining many different income streams. They will work as many sessions as they can. They count on their SPF distribution payments. They also seek out live performance opportunities, either at home or on tour. Many of them, especially in Nashville, write songs and earn some income that way. They produce recordings, start their own small labels, and create business opportunities for themselves however they can.

Whatever types of music they play, whatever their level of fame, and whatever audiences they try to cultivate, my experience is that recording musicians of all types have the following important things in common.

First -- They have tremendous talent. They take a song – whether their own or someone else's – and transform it from notes on paper into a new, unique, living and breathing work of art.

Second -- They are incredibly hardworking. It would be great if a little talent – or a lot – were enough, but it isn't. Musicians and vocalists labor long and hard to develop their musical skills and their business opportunities. As the Bureau of Labor Statistics has said, "Musicians need extensive and prolonged training and practice to acquire the necessary skills, knowledge, and ability to interpret music at a professional level."

Third -- They may do it for love, but they also have to eat. Sometimes they have children, and those children have to eat, too. And although some of the younger performers may not believe it yet, some day they will want to retire – or their health may force them to.

III. Conclusion

One of the most disturbing things I read in the Bureau of Labor Statistics report is the following statement: "Talent alone is no guarantee of success: many people start out to become musicians or singers but leave the profession because they find the work difficult, the discipline demanding, and the long periods of intermittent unemployment unendurable."

That statement is disturbing to me because I know it is all too true. Many talented musicians do, in fact, find the life unendurable. They start out full of hope, and many are willing to go hungry, or even to pay for the privilege of being heard. But in the long run that is too hard a way to live, and they are forced to give up. When they stop making music, we are all poorer. Professional musicians – the ones who survive in the business – know just how dangerous it is to believe that all music should be available for free, or practically for free. In the long run, there must be compensation systems in place that are sufficient to support musicians, if we really want to foster music in our culture.

The reason the AFM was such a strong supporter of the digital performance right fifteen-odd years ago was because we believe that performers should benefit *whenever* others make use of their work to build their own businesses. That is why we worked to ensure that the new law would require performers to get 50% of the revenue stream generated by the new compulsory license. That revenue stream is important to

musicians, and becomes more and more important as the way in which fans enjoy music shifts from purchasing CDs to listening to recordings on all the new and exciting music services. Everyone knows that CD sales have decreased, but few people realize that not only recording companies are hurt. Musicians are hurt, too, when session work decreases and when SPF distributions musicians decrease as sales decrease. Every source of income matters to musicians; the digital performance royalties are a new but increasingly important part of recording musicians' economic picture.

That does not mean that we do not support the truly small and noncommercial webcasters, to the extent that they are attempting to bring greater diversity to consumers, and to provide new outlets for terrific musicians who are outside of the mainstream. The AFM supports SoundExchange's efforts to reach an appropriate business accommodation with such services that will allow them to develop working business models while still making payments to performers.

But I think all of the publicity that has surrounded the issue of the CRB decision has completely missed a critical truth: that the forgotten small businesses that are most affected by the CRB rates are the thousands of recording artists, session musicians and background vocalists that are struggling to make a living. Their needs should not be forgotten, because if the difficulties they face make life as a creator unendurable, there won't be any music for the new music services to bring to the public, or to build their own small businesses around.

Thank you.

APPENDIX A:

American Federation of Musicians International Vice President Harold Bradley's testimony before the Copyright Royalty Board

October, 2005

Before the
COPYRIGHT ROYALTY BOARD
LIBRARY OF CONGRESS
Washington, D.C.

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In the Matter of 1
DIGITAL PERFORMANCE RIGHT IN
1
1 Docket No. 2005-1 CRB DTRA
SOUND RECORDINGS AND EPHEMERAL 1
RECORDINGS 1

TESTIMONY OF

HAROLD RAY BRADLEY

Vice President of the American Federation
of Musicians of the United States and Canada

October 2005

I. Introduction

My name is Harold Ray Bradley. I am the Vice President of the American Federation of Musicians of the United States and Canada, a labor organization that represents over 100,000 professional musicians who work as featured recording artists, non-featured session musicians in the recording industry, and live performers in every sort of venue from symphonic orchestras to theaters around the country to hotel lounges, nightclubs and private parties. For the past fifteen years I have also been the President of the Nashville Association of Musicians, Local 257 of the AFM. I am a member of the Board of Governors of the National Academy of Recording Arts and Sciences, and I was the first President of NARAS's Nashville Chapter.

I am very pleased and honored to appear here today before the Copyright Royalty Judges to talk to you about the creative process in making hit records. I will begin by describing my own background and experience in the music industry. I will then describe in some detail how musicians make unique creative contributions in the recording studio. Finally, I will describe how musicians are compensated for their efforts, and explain why the income from the compulsory license at issue in this case will be so important to musicians.

II. Background and Experience

I am, first and foremost, a recording musician with over fifty-eight years of experience in the industry. I have been blessed with a long and successful career as a studio musician, and I still occasionally perform in recording sessions. Some people say that I am the most recorded guitar player in history, and that may well be true because I have been an active studio musician since 1946. I have recorded all kinds of music -country, rock and roll, jazz, gospel and pop. I have been privileged to record with some of the best names in the music business, including -in no particular order -Patsy Cline, Willie Nelson, Roy Orbison, Elvis Presley, Joan Baez, Buddy Holly, Hank Williams, Henry Mancini, Connie Francis, Leon Russell, the Everly Brothers, Perry

Como, Ivory Joe Hunter, Pee Wee King, Alan Jackson, Conway Twitty and many others.

You may never have heard my name, but you are likely to have heard my music on a hit recording such as Patsy Cline's recording of "Crazy," Roy Orbison's recording of "Crying," Tammy Wynette's recording of "Stand By Your Man," Jimmy Dean's recording of "Big Bad John," Loretta Lynn's recording of "Coal Miner's Daughter," Brenda Lee's recording of "I'm Sorry," Roger Miller's recording of "King of the Road," Jeannie C. Riley's recording of "Harper Valley

* PTA," or Ray Anthony's recordings of "The Bunny Hop" and "Hokey Pokey," to name some examples. I am proud to say that my work as a session musician has been honored by the industry. I received the NARAS "Superpicker" Award from 1974 through 1979. I am one of twelve musicians honored at RCA's Studio B in Nashville, now a museum operated by the Country Music Foundation. In 1999, I was inducted into the North America Country Music Association, International Hall of Fame.

I have also performed on numerous motion picture soundtracks. Some of these include "Kissin' Cousins," "Clambake," "Stay Away, Joe," "Fastest Guitar Alive," "Sugarland Express," "A Walk in the Spring Rain," "Tick, Tick, Tick," "Breathless," "Smokey & the Bandit 11," "Coal Miner's Daughter," "Six-Pack," "Missing," and "Sweet Dreams." I also appeared briefly in Robert Altman's award-winning movie, "Nashville."

I have played other roles in the music industry as well. Before I graduated from high school I was traveling and performing live in Ernest Tubb's band. In 1955, my brother, Owen Bradley, and I opened the first recording studio on what later became Music Row in Nashville. Owen and I also co-produced 39 television variety shows titled "Country Style USA." In the mid- 1960's, I recorded three albums of my own as a featured artist under contract with Columbia Records. And I have represented or produced other i artists, including Byron and Slim Whitman, Billy Chinnock, Eddy Arnold and,

most recently, Mandy Barnett. My biography is attached as Exhibit 242 DP. I know from my own experience that it takes many kinds of contributions _ to make a sound recording. The creative inspiration of the songwriter forms a beginning. But, as I hope to show you in more detail, the recording as an artistic product does not exist until after that first song idea has been brought to life by the creative contributions, skill and hard work of musicians, singers, producers, engineers and others. In this proceeding, you will hear evidence from the record companies that explains the varied roles they play in the creation of sound recordings. I intend to explain to you the roles played by the musicians who perform the music.

III. The Creative Contributions of Musicians in the Recording Studio

"It all starts with a song" -I often quote those words of Maggie Cavender, a great songwriter and songwriter advocate, who founded the Nashville Songwriters Association. But, as true as Maggie's words are, I always must add to them, "But it doesn't end there."

Even before the first regular recording session, the song must be given some musical life. Usually that is a performance on a demonstration record - called a demo -although sometimes it simply may be a musician coming to the recording session or to a home recording studio and playing the song on a guitar or piano. That first demo often will suggest a style, and good ideas in the demo may well be adopted in the final recording. But the song is not fully realized until the performance in the recording session, and it may be completely transformed in that artistic process.

A good example of this is Willie Nelson's demo of his song, "Crazy," and Patsy Cline's timeless recording of "Crazy." My brother Owen was the producer for Patsy Cline's recording. I was one of seven studio musicians called for the recording session. At the session we listened to the demo. To tell the truth, everyone on the demo was playing the wrong chords, and it didn't really sound like much. Right at the recording session, Owen -with the help of us musicians -developed the perfect musical arrangement for "Crazy." That

recording went on to become both a country and pop hit, and, in 1997, it was honored by the Amusement and Music Operators Association as the #1 jukebox hit of all time. You can see how the recording session transformed the song by listening to Exhibit 505 DP, a CD that contains both the Willie Nelson demo and the final Patsy Cline recording of "Crazy."

It is in the regular recording session that a song is transformed into a recorded performance -an artistic work with its own style, personality, artistry and voice. And that transformation comes about through the musical skill and the creative inspiration and talent of the performing artists assembled, including the session musicians, the background vocalists, the featured performer and the producer and recording technicians.

I've known musicians to suggest changes to lyrics, and I certainly have known producers such as Chet Atkins and my brother Owen to urge and obtain changes in lyrics, and then put their chords to the song during the recording session. But more importantly than any one word or note, the musicians in the recording session "style" the song with intros, fills, chord changes, solos, tempo and rhythms. There cannot be any doubt that the same underlying song can give rise to radically different recordings when the performance is given in a country style, or a pop style, or a rock and roll style.

More subtle changes can transform a song too. I remember performing on Ray Price's recording of the Kris Kristofferson song, "Help Me Make It Through the Night." Ray Price recorded a lot of Kris Kristofferson material, and he recorded this particular song in a Frank Sinatra, two-beat style. As popular as Ray Price was, this particular recording was not a hit. Then Sarnmi Smith recorded the song in 1970. Her recording reached #1 on the country charts and #8 on the pop charts. It made her a star and won her a Gramrny and a gold record. I remember listening to Sammi Smith's recording to see what we had done wrong. Of course, there was her seductive voice. But I can't help thinking that part of the success of her recording was in the musicians' slowing the song down, and putting it in a straight 8th'~rhythm so she could put a lot of feeling

into the lyrics. Exhibit 506 DP is a CD containing both the Ray Price and the Sammi Smith versions of "Help Me Make It Through the Night."

Of course, these creative choices can come from the featured artist, and they can come from a good producer like my brother, who was one of the best. But people often do not realize the extent to which they come from studio musicians in the recording session. As I will explain in more detail below, they often record without ever seeing any written music or arrangements. They listen to a demo, and then create the music behind the featured artist. They are, of course, expected to enhance the featured artist's performance. But they are also expected to create a sound and style. And it is the synergy and energy between the featured artist and the studio musicians, and between the studio musicians themselves, that can make a recording truly great.

I can give you an example from my own recording experience. In Nashville in the 1950's, we often used to record with one electric guitar and one rhythm guitar. When we added a second rhythm guitar, one would tend to cancel the other out. The Nashville musicians created a new tuning on the rhythm guitar called a Hi-Third, or Nashville tuning. Around 1958, a new instrument was invented called a G-string bass guitar, later called the "tic tac bass." I developed a new technique for this instrument. I put my hand over the bridge, which had the result of muting the strings while letting a "click come through. Using that technique, we were able to play more notes and record with more intensity.

I used this technique on my Danelectro electric 6-string bass guitar while recording with Patsy Cline. One song I used it on was "Crazy," which I have discussed already. I also used it on "She's Got You" and "Walking After Midnight" and nine other songs that, together with "Crazy," were re-released in 1988as "Patsy Cline: 12 Greatest Hits." That album remained on the Billboard Top Country Catalog Album chart for over thirteen years. It has been certified as 9 times platinum by the RIAA, as you can see from Exhibit 243 DP.

Bob Moore is a great and legendary bass player. He played acoustic bass on these Patsy Cline recordings, and, as I said, I played electric G-string bass guitar. Our work together on these songs has been described as "some kind of apex" of country bass. Bass Player magazine ranked "Patsy Cline: 12 Greatest Hits" as one of the "30Essential Bass Albums You Must Own," and described the effect of our "tic-tac" sound like this:

> Moore's stately lines and buoyant rhythms form, on their own, a near-complete study in tasteful country cornping. But once Harold started doubling 'em with his Dano, the whole rhythm section achieved an airy lift and a delicate sense of motion few bands have matched since. From the rolling click of "Walkin' After Midnight" to the sweet and relaxed bounce of "She's Got You" to Harold's elemental embellishments of Moore's line on "Crazy," this dynamic duo wrote the book that's still required reading for all Opryland wannabes.

The full article is included as Exhibit 244 DP.

Believe me, I don't speak to you of my own playing and Bob Moore's great bass playing out of vanity. And I certainly never could and never would try to suggest that Patsy Cline's great success was not due to her great voice, soul and artistry. But the double bass combination that we developed was also an important contribution, and my brother Owen used it in recordings until he died in 1998. I think it is important to shed light on the importance and value of the creative as well as the technical contributions of session musicians.

The extent to which a sound recording is a unique product of many talents and contributors simply cannot be overstated. To return for a moment to "Crazy," Willie Nelson wrote it and indeed it was a terrific song. But it has been said that his original conception was to write it as a narration. The tremendously successful recording of "Crazy" had an entirely different conception. Owen and Patsy Cline turned it into a classic ballad. And the

session musicians created a unique accompaniment that was perfect for the song. Back in 1990, the Nashville Monitor printed a story on the recording session for "Crazy" that gives a good description of how the session musicians contributed to make an artistically pleasing and commercially successful record. That article, which is Exhibit 245 DP, describes the "tic tac" sound I have already discussed. It also describes how Walter Haynes, who played pedal steel, added a tremolo sound that was "ethereal, hanging over the song like little halos of sound," how Owen added a similar texture on the organ, and how Floyd Cramer added a blues element on the piano.

Of course, "Crazy" is only one example. I can think of many more examples of the creative contributions of studio musicians that enhanced the total artistic quality of a sound recording -that helped make it unique. The 1950's Red Foley's recording of "Chattanooga Shoe Shine Boy" was a great hit. It included the sound of a shoe shine boy's rag popping -in reality, the sound of the drummer, Farris Coursey, slapping his thigh. In Jirnrnie Dean's "Big Bad John," Floyd Cramer, a top session pianist and a country star in his own right, added a hammer to create the sound of a coal miner's pick. I played the tire chains on Freddie Hart's "The Chain Gang." There can be magic in the recording studio. Of course, it isn't really magic. It is the product of the readiness, talent and hard work of all of the artists involved.

In fact, I must, at this point, highlight the "hard work aspect of the musicians' creativity in the music business. People outside of the recording business may be quite unaware of the high level of special skills that studio musicians bring to a recording session. A studio musician is expected to arrive at a session without ever having seen, much less rehearsed, the music he or she will perform -and then to perform it flawlessly on the first take. For example, the other musicians and I walked in "cold turkey" to a recording session with Henry Mancini. He put up the charts, and we performed. When we recorded "Crazy" with Patsy Cline, there were no charts. As I said, we listened to the demo, and that was all the preparation we had. In both these

ituations, we were expected to perform the music perfectly on the first take and ever
ake in a three-hour recording session, because time is money in the studio. These
xamples are typical situations, not unusual ones.

A person can be a fine musician, but not have the special skills it takes
o succeed in a recording studio. Somebody asked Chet Atkins if he could read
nusic. He said, "Not enough to hurt my playing!" It requires discipline and
ard work as well as taste to be a successful recording musician. Back porch
ickers seem to fit into Nashville recording sessions better than classical or jazz
layers. For years, I drove only Chevrolets, because they had the biggest
runks of all. I needed a big trunk, because I drove to session after session
arrying my bass guitar, my Martin guitar, my high third guitar, my classical
uitar (we call them "gut string" guitars in Nashville), my banjo, my mandolin,
ny ukulele and two electric guitars -not to mention an amplifier. I had to be
eady for anything.

V. How Musicians are Compensated

have described for you some of my history as a creative artist. Now I
vould like to describe how the compensation system works for musicians in
he recording industry. For many years, the AFM has negotiated a collective
argaining agreement with all of the major record companies. Hundreds of
nid-size and smaller companies sign that agreement as well. The current
greement, called the Sound Recording Labor Agreement ("SRLA"),was
xtended for one year and covers the period from February 1, 2002 through
anuary 31, 2006. Negotiations for its successor agreement are scheduled for
arly November 2005. The SFUA sets standard working conditions that apply to all
nusicians -featured and non-featured -who record under it. And, it
stablishes a compensation system that, although it applies to all musicians, is
f the highest importance for studio musicians who do not also have royalty
greements with the record company. The SRLA, and the Digital Distribution
Memorandum of Agreement which, among other things, extended the SRLA
ntil January 31, 2006, are attached as Exhibit 246 DP.
The compensation system that has developed in the SLRA has three

distinct facets. The first is "scale" -the wages and benefits paid for time spent in the recording studio. The second is the "Special Payments Fund" -a system of delayed compensation for recording musicians based on record sales. The third is "new use" -a system of compensation for the use of a recording in a new medium. I will explain each of them briefly.

Scale Wages and Benefits. The SLRA limits a master recording session to three hours, during which no more than fifteen minutes of music is recorded. Longer sessions require overtime, and premium payments are required for sessions held on designated holidays, The current scale for a regular recording session is $345.98. On every regular session, the musician receives a $19.00 health and welfare payment, made directly to that musician's Local Union health and welfare plan if there is one, or, if not, directly to the musician. And, of prime importance, on each recording session the signatory company makes a contribution of 10% of scale wages on each participating musician's behalf to the American Federation of Musicians and Employers Pension Fund.

Musicians like me, who have spent many years working in union recording sessions, have accumulated meaningful pensions from the AFMEP Fund. The SRLA contains many special provisions, including the possibility of lower scale payments for low-budget projects. The low budget provisions are an important innovation, through which we aim to expand the benefits of union recording -in particular pension benefits -to musicians working on smaller projects.

Special Payments Fund. In addition to scale wages, recording musicians receive a delayed compensation through which they benefit from the success of record sales. This is not a royalty payment, but it is an integral part of the compensation system negotiated by the AFM and the industry. It works in the following way.

Each record company that signs the SRLA also must sign the Sound Recording Special Payments Fund Agreement. It thereby undertakes the

obligation to make payments to the Fund based on a formula tied to its CD sales. The company reports 100% of its sales, and then, under the formula, receives various allowances. For example, the company is not required to make Fund payments on the first 25,000 units sold, or on certain record club sales and the like. Once the allowances are calculated, the recording company makes contributions to the Fund on the remaining sales. Those contributions are also based on a formula, and will be between .522% and .54% of the manufacturer's suggested retail price up to a stated maximum.

In 2004, the AFM negotiated a groundbreaking Digital Distribution Memorandum of Agreement that ensured that recordings sold via permanent digital downloads also would generate Fund contributions. The formula for those contributions was adjusted to reflect the realities of the digital market. Signatory companies do not have to make contributions on the first 10,000 downloads of a recording. Thereafter, the record company must contribute a sum equal to 1/3 of 1% of the wholesale price of the download (without deductions) for each download in 2004, and 1/2 of 1% of the wholesale price of the download (without deductions) for each download in 2005.

Each year, the Fund distributes the musicians' share of the Fund to musicians -whether or not union members -who have worked on recording projects under the SRLA during the last five years. These payments are a form of wages, so the Fund makes all the social security tax, unemployment insurance and worker's compensation premium payments required by state or federal law. It also, of course, pays its own operational costs. All the remaining funds accumulated annually are paid to musicians. It is a peculiarity of the Fund that a musician does not receive payments tied to the particular success (or lack of it) of his or her own recordings. Rather, the benefits of the Fund are spread out among all musicians who have been active in the industry within the past five years, in accordance with a negotiated formula.

I cannot overstate the importance of the Special Payments Fund. Fund

payments form a significant part of the income of an active recording musician. If overall sales diminish, so do contributions to the Fund, and therefore so does the income of recording musicians.

New Use. The SLRA also provides a mechanism designed to compensate recording musicians when a recording made under the Agreement is exploited in a different medium, such as a movie sound track or a television commercial. In order to make such a use, a company must notify the AFM, and make all the payments to the recording musicians that would be required under the collective bargaining agreement that would govern if the music were recorded again for the new use. For example, the recording session for "Crazy" took place under the predecessor to the SRLA, the Phonograph Record Labor Agreement, in 196 1. In 1991, that recording was used on the soundtrack of the movie "Doc Hollywood," and in 1994 it was used on the soundtrack of the movie "Nell." For each of those two new uses, the AFM collected a new use fee and distributed it to the musicians who performed in the 1961 "Crazy" recording session. In essence, we got paid in 1991, and again in 1994, as if we had performed in a new recording session under the Theatrical and Motion Picture Agreement, which is the collective bargaining agreement that applies to musicians in the motion picture industry.

V. The Importance of the Compulsory Licenses to Musicians

As you can see, the payment structure on union recordings is composed of several pieces. It is designed to compensate musicians for the time they spend in the studio, and to also share with them to some extent the profits from CD sales, and finally to compensate them when their work is exploited in a new medium.

What has historically been missing from this structure is, of course, any compensation for the broadcast of sound recordings over the radio. Because historically there was no performance right in sound recordings, the broadcast industry was able to use our creative product without any compensation to us. Every time "Crazy" was broadcast over the radio, Willie Nelson received a

songwriter's royalty. But Patsy Cline got nothing, and neither did Decca Records, or my brother Owen, or Bob Moore, or Floyd Crarner, or Walter Haynes or Buddy Hannan or the other studio musicians whose combined magic made that recording.

The AFM always viewed that state of affairs as a great injustice, and was active in every effort over the years to persuade Congress to amend the Copyright Act to include a performance right in sound recordings.

A. The AFM's Critical Role in Obtaining a Digital Performance Right That Compensates Musicians

In the face of the dawn of the digital age, the AFM, like the record industry, invested enormous energy into the effort that finally led to the passage of the Digital Performance Rights in Sound Recordings Act of 1995. Our International President and the president of our internal union conference of recording musicians, the Recording Musicians Association, testified before Congress. I came to Washington along with other recording musicians to meet with individual Congressmen about the importance of the Act. Although the union and its recording company employers don't always agree, in this effort we worked together. It was crucial to the well-being of recording artists, and the survival of their art, that they be compensated for the exploitation of their work in the new digital media, especially since the new media were likely to reduce the sales upon which so much of their income depends.

Thus, a condition of the AFM's support of the Act was that the income streams generated by this new right be shared with performing artists. And indeed, as you know, that is the structure of the Act as it was passed. Of particular relevance to this proceeding, the Act requires that 45%of the proceeds from the compulsory license be allocated to featured performing artists, that 2 %% shall be allocated to non-featured musicians and that 2 L/2 % shall be allocated to non-featured vocalists.

B. The Importance of the Digital Performance Compulsory

License to Royalty Artists and Session Musicians

I think that a few comparisons will demonstrate for you how important this new income stream will be to working musicians. As I have said, I was blessed with a very successful music career, and I am proud and grateful to have benefited from decent union conditions, scale wages, Special Payrnent Fund payments that were considerable in the heyday of my career, and especially, now, a meaningful pension. But as I look back at my old records, I see that for the recording session that created "Crazy" I received scale wages of $89.16, based on the then-current negotiated scales. Exhibit 247 DP is a copy of my calendar for the week of August 21, 1961,which shows the "Crazy" session on that date and notes my wages and withholding for the session. The pension plan was relatively new at that time, and I believe that the pension contribution made on my behalf would have been 5.5 % of my scale wages for the session. The Special Payments Fund was not created until 1964, so I would not have received that form of compensation in 196 1. Of course, the success of "Crazy" and the later sales of "Greatest Hits" album ultimately resulted in increases in the Fund that benefited all recording musicians, including me. But I think it is interesting to realize how modest this compensation is in relation to the extraordinary success of the single "Crazy" track -the #1 jukebox hit -not to mention the success of the "Greatest Hits" album on which it was later re-released.

Not only are the traditional forms of compensation for musicians very modest in relation to their great talent and level of skill and creativity, but even those modest forms of compensation are threatened in the new digital age. Musicians in my own home town and home Local of Nashville have suffered as a result of the retrenchment of the recording industry in the wake of reduced CD sales. In 1999, the total SRLA scale wages paid to musicians in Nashville topped $15.5 million. Those wages also generated pension contributions and resulted in Fund payments. In 2003 and 2004, Nashville SRLA scale wages amounted to only $12 million annually, and we desperately hope that this represents a leveling-off and that there will not be further declines. The loss of $3 million in annual wages, and the attendant loss in pension contributions

and lowered Fund payments, is a huge misfortune for us, and, we think, for everyone. It not only means that there was less work and reduced living standards for our brother and sister musicians, but also that there was less music and less art in Nashville, which hurts the whole country. We believe that the decline in sales is caused in large measure by unauthorized file-sharing and the insidious notion that our work and art should be free for the taking. We know that the downturn in the industry has resulted in record company mergers that lead to reduced artist rosters and fewer of the recording sessions that form our life's work and put bread on our tables.

Along with reduced wages, recent years have brought us reduced Fund payments as the recording company contributions to the Fund, which are based on their sales, have declined. Pre-audit contributions made by signatory recording companies to the Fund in 2001 totaled $18,377,532. They were down to $16,548,558 in 2002 and to $12,805,481 in 2003. Although pre-audit i contributions increased in 2004 to $15,779,996 -which is consistent with the generally-reported recovery in the industry in that year -they certainly did not increase to 2001 levels. And, the recovery does not appear to have maintained -itself in 2005. I understand that Fund contributions for 2005 are running at lower levels than in 2004.

Now the new digital music services are poised to build businesses and make profits based upon the product created by our skills, talent and hard work. I hope that this Panel will establish a fair market rate of payment for the use of our creations -one that will not require musicians to subsidize these new businesses but instead will provide a meaningful income stream for musicians who work so hard. I hope this in particular for the benefit of other, younger artists than myself.

I urge you to set a fair license rate so that featured artists, who so often see little or no profit from their projects because their royalties go to recoup the costs of recording -will see a better return on their creative work, I mentioned at the outset that I recorded three of my own albums on Columbia Records. Those albums were artistically very satisfying. They certainly were a lot of work. I spent months -while still working practically daily as a studio musician -developing the material I recorded on those albums. They still have some success. But they did not sell enough copies for me to see any royalty returns on my record contract. This is a very typical reality for royalty artists in our hit-driven music industry. And the situation is even harder for the young artists today, whose careers are often so short.

But the potential to receive royalties for the continued use of our recordings on digital music services like the webcasts and simulcasts covered by this proceeding means that we can continue to receive some benefit when the world enjoys our work. Although I never received any royalty payments based on the sales of my three solo CDs, those CDs do get transmitted by digital services under the compulsory license, and I was incredibly pleased to learn that I will be eligible to receive a check from SoundExchange as a result. The same is true for many other young and old performers.

And I also urge you to set a fair license rate that will enable all the young and upcoming session musicians to receive fair compensation from the transmission of their work on the Internet. This will provide a valuable and much-deserved income stream for them. I have participated in union negotiations in this industry for the last fifteen years, and I am proud of all that the union has accomplished to improve wages, benefits and working conditions for recording musicians. But the union also fought for the new income stream made possible by the Digital Performance Rights in Sound Recordings Act and the Digital Millennium Copyright Act. Although that was a fight that occurred on Capitol Hill instead of across the bargaining table, it was

an important part of our representation of musicians. For musicians with the good fortune to be recording under AFM's SRLA, the compulsory license income will be a valuable addition to their income. It will be even more important to all the young musicians who are recording, sadly, without the benefit of union conditions, wages and pension.

Finally, I urge you to designate SoundExchange as the sole collective to receive the compulsory license fees paid by the senices. SoundExchange is a non-profit entity. It is experienced in collecting and distributing digital performance license fees to artists and copyright owners. And, most importantly, its governing board is composed equally of copyright owner and artist representatives, including the AFM. We believe that SoundExchange is the only appropriate agent to collect and distribute the royalties that are at issue in this proceeding.

I thank you very much for your kind attention.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Harold Ray Bradley

Exhibits Sponsored by Harold Ray Bradley

EX. NO. DESCRIPTION RESTRICTIONS

242 DP Biography of Harold Bradley None

243 DP Billboard chart dated April 26, 2003 with sales data for "Patsy Cline: 12 Greatest Hits"

None

Bass Player Magazine article, "30Essential Bass Albums You Must Own"

None

Nashville Monitor article about the recording session for "Crazy"

None

Sound Recording Labor Agreement ("SRLA") and the Digital Distribution Memorandum of Agreement

None

Harold Bradley calendar for week of August 2 1, 1961

None

CD containing Willie Nelson's demo of "Crazy" and Patsy Cline's final recording of "Crazy"

None

CD containing Ray Price's version and Sarnrni Smith's version of "Help Me Make it Through the Night"

None

Statement of Richard Eiswerth
President, General Manager and CEO
Cincinnati Public Radio
1223 Central Parkway
Cincinnati, Ohio 45241

June 28, 1007

Testimony before the House Small Business Committee
Impact of March 2, 2007 Copyright Royalty Board Decision

Madam Chair, Ranking Republican Chabot and Members of the Small Business Committee, my name is Rich Eiswerth and I am the President, General Manager and CEO of Cincinnati Public Radio, which is the broadcast license holder for 90.9 WGUC and 91.7 WVXU, serving the Greater Cincinnati community with the finest in classical music, news, information, and entertainment programming. I'm testifying today on behalf of NPR - National Public Radio - its member stations and non-member public radio stations eligible to receive funding from the Corporation for Public Broadcasting (CPB).

WGUC, Cincinnati's Classical Public Radio, was founded in 1960 by a group of citizens who saw the need for a radio station devoted to cultural and public affairs programming in the region. Favorites from classical music's masters as well as less widely known treasures from the repertoire combine to provide a rich and enlightening musical journey for WGUC's listeners. In addition, many of Cincinnati's superb musical performing arts organizations can be heard on WGUC. The station is committed to making these live performances more widely available to everyone in the community. WGUC's live signal can be heard over the Internet at **www.wguc.org**. Here WGUC has established a dynamic resource for its online community of classical music lovers and fans of public radio.

Cincinnati Public Radio broadcasts and webcasts every concert by the Cincinnati Symphony Orchestra, the Cincinnati Opera, and the May Festival, which is the oldest choral festival in the US. We also operate www.classicsforkids.com which is a web-centric classical music educational resource used by more than 2600 teachers and 329 parents in all 50 states and more than 25 foreign countries. More than 650 schools in the Greater Cincinnati area, serving 50,000 students, have also been served through the Classics for Kids website and educational materials. Additionally, 5,600 individuals, primarily teachers and parents, from across the country receive *Of Note,* Classics for Kids' e-mail newsletter and educational materials.

I want to thank you for the opportunity to comment on the misguided decision by the Copyright Royalty Board (CRB) and its implications for America's public radio stations. The fundamental flaw of the CRB decision is its treatment of public radio stations as commercial entities. If unchanged by the Congress, or the Courts, the Board's decision will degrade the public radio system through dizzyingly complex reporting requirements and dramatic and inappropriate increases in royalty fees from public radio stations.

Although each of our Nation's 850 public radio stations operates as a non-commercial, not-for-profit entity, there are similarities between our stations and the country's many small businesses. A typical public radio station has between 10 and 14 employees and operates with an annual budget of $890,000. Again, on average, public radio stations receive between 11 and 13 percent of their annual budgets from funds appropriated by the Congress to the Corporation for Public Broadcasting (CPB) in the form of community service grants. The remaining funds are sourced this way: 33 percent come through contributions from listeners and supporters in our communities; roughly 20 percent from local businesses; and the remaining operational funds come from our licensees, state and local governments, and foundations and non-profit associations.

Madam Chair, National Public Radio, Inc. (NPR), with the support of the Corporation for Public Broadcasting, participated in the Copyright Royalty Board proceeding on behalf of its member stations and non-Member stations eligible to receive funding from CPB. These stations vary enormously in size and audiences served, but every one of them is dedicated to the public service mission set out in the Public Broadcasting Act: expanding the diversity of programming; providing programming that involves creative risks and addresses the needs of unserved and under-served audiences; and reaching the broadest audiences possible. Or put another way, our stations exist to "constitute an expression of diversity and excellence, and which will constitute a source of alternative telecommunications services for the citizens of the Nation."

The CRB's decision creates impossible barriers for public radio stations to achieve our public service mission. Application of commercial rates and complex calculations to compute those rates will drain scarce financial resources and distract stations from their public service missions. The more Americans who listen to our stations' music webstreams, the more we owe in royalties. In other words, as we seek to fulfill our congressional mandate of reaching the broadest audience possible, we are financially punished.

The rate structure in the CRB decision imposes additional fees for listeners or songs in excess of an arbitrary number. This concept is nearly identical to the CRB's treatment of commercial webcasters. When faced with the double demands of increased costs and complex rate calculations and record keeping, many stations will no doubt be forced to place artificial limits on their website visitors. Forcing a cap on usage by public radio webcasters is antithetical to the very purpose of public radio. There is no cap on public radio listening. Why should there be one on Internet listening? And the comparison by the CRB of public radio music webcasters with commercial entities is similar to comparing the public library with Barnes & Noble. Placing limits on public webcasters' music offerings or online users makes as much sense as placing limits on the number of books a public library may have or the number of visitors who have access to those books or the number of books that may be read by that library patron.

The variable nature of the CRB's proposed fee arrangement, which requires complicated listening calculations of public radio stations to track how many people are listening to specific music tracks at specific times, presents significant problems. Royalty fees for public radio stations have been paid by the Corporation for Public Broadcasting (CPB) through funds appropriated annually by Congress. And Congress has directed CPB to set aside 6% of certain appropriated funds to pay for key elements of the public broadcasting system including "the payment of programming royalties and other fees."

But out of this same pool of money, Congress has directed CPB also to pay for capital costs of telecommunications satellites, interconnection facilities, grants for programs in languages other than English, training for public broadcast employees and other projects that enhance public broadcasting. Each dollar taken from this pool of funds to pay for unreasonable licensing fees is a dollar not available for another project to enhance public broadcasting for the ultimate benefit of American listeners and viewers.

It is impossible for CPB to control or project the growth of public radio music webcasting from year to year, and consequently, how much, if any, annual royalty payments will increase during the license term. CPB would be forced to reserve sufficient funds on its books to guarantee that it could satisfy the ultimate payment obligation, whatever that may be. The nature of the legal obligation to pay these fees would necessitate that CPB reserve the greatest amount that could conceivably be owed, which would, in turn, make it difficult or even impossible to properly commit those funds in excess of the ultimately-determined payment obligation to other deserving projects. For this reason, a fixed fee approach to stream music that can fairly compensate artists and labels and allow public broadcasters to continue to serve the American public is the right outcome.

It is important to put the fee structure sought by public broadcasters in its proper historical context. Enacted in 1976, Section 118 of the Copyright Act established a compulsory license for the transmission of musical compositions by public broadcasters. A Copyright Royalty Tribune proceeding followed and a flat fee approach, below commercial rates and in line with the public service obligations of public radio, were set. Public Broadcasters and the respective performing rights organizations, (PRO's) which are ASCAP, BMI, SESAC and Harry Fox Agency, negotiated agreements within this structure for nearly two decades thereafter. In 1998, because the parties could not agree during negotiation, a Copyright Royalty Arbitration Panel determined the applicable rate. It set a single flat fee for public radio and television which recognized the significant differences between noncommercial and commercial broadcasters. Since that time, the PROs and public broadcasters have successfully negotiated flat fees for two additional five-year license terms. Flat fee agreements have been negotiated multiple times with the same parties to stream musical compositions over the Internet. In 2001, RIAA signed a flat fee agreement with public radio enabling us to stream sound recordings from 1998 through 2004.

The flat fee concept and payment structure, not the punitive, variable scheme of the CRB, serves the public well by enabling public radio music webcasters to bring unmatched diversity to online listeners. Properly adjusted for inflationary impact, it also offers artists and musicians just compensation for their efforts and talents.

Madam Chair, unless corrected by Congress, this decision will have profoundly negative effects for the future of public radio music webcasting, effects that will be felt by our listeners and by the artists and musicians whose musical works often get first exposure on our stations. The programming diversity and new music discovery that is at the heart of public radio's programming can only be hurt by the CRB's treatment of us as commercial entities. We need you and your colleagues to support and pass Congressmen Inslee and Manzullo's legislation, H.R. 2060, the Internet Radio Equality Act.

This legislation deals appropriately with royalties for sound recordings by recognizing the public service mission of public radio. It offers all parties the necessary long-term solutions that are now essential because of the CRB decision. It brings the royalty proceedings for determining sound recording fees in line with the proceedings used to determine royalties for musical works. And with the July 15th deadline for payment of new royalties looming, there is a growing urgency that Congress take action to address this situation.

It is worth noting that President Lyndon B. Johnson, in signing the Public Broadcasting Act of 1967 stated "I believe the time has come to stake another claim in the name of all the people, stake a claim based upon the combined resources of communications. I believe the time has come to enlist the *computer* and the satellite as well as television and radio, and to enlist them in the cause of education…so I think we must consider new ways to build a great network for knowledge – not just a broadcast system but one that employs every means of sending and storing information that the individual can use" (emphasis added).

Madam Chair and Congressman Chabot, we in public radio take seriously and fully embrace the obligations of the Public Broadcasting Act's charge that we reach the broadest possible audience. We are committed to a course of action that upholds the high standards for public broadcasting envisioned by the Congress and practiced by public radio stations for the past four decades. We ask that you recognize our unique stature and dedication to public service and assist us in our pursuit of these important civic responsibilities by acting promptly on H.R. 2060.

Testimony of
Representative Jay Inslee
Before the Committee on Small Business
June 28, 2007

Chairwoman Velazquez and Ranking Member Chabot thank you for inviting me to testify before your committee today. Thank you also for holding this important hearing. My hope is that this hearing will highlight the inequity of the Copyright Royalty Board (CRB) decision.

On March 2, 2007, the CRB, a three member panel affiliated with the Library of Congress, issued a decision that changed royalty expenses for commercial and noncommercial webcasters and will likely end Internet radio as we know it today. According to the decision, which is retroactive beginning January 1, 2006 and commences through December 31, 2010, commercial and noncommercial webcasters would be subject to an increase in royalty rates from .08 cents in 2006 per performance to .19 cents per performance in 2010. The new royalty rates amount to a 300% increase for the biggest webcasters and up to 1200% for small webcasters. For most webcasters the royalties will exceed their gross revenues and bankrupt them. The CRB has refused to reconsider its decision so the higher royalties – including retroactive royalties back to January 2006 – are due July 15, 2007. My fear is that these new rates will decimate Internet radio and 70 million Americans that listen to Internet radio every month will no longer have access to this music service.

Like many members of Congress I have several small webcasters that will likely go out of business if the CRB decision is not overturned. Big R Radio is a constituent webcaster that estimates that this rate increase will exceed their revenue by 150%. They have over 15,000

listeners and provide a whole host of genres for their listeners to stream. Big R Radio earns its revenue through audio advertisements that play every 20 minutes. Like many webcasters faced with bankruptcy, this webcaster is considering moving overseas in order to survive. Unfortunately Big R Radio is not uniquely situated.

The CRB's decision included three detrimental rulings. First, they dramatically raised the per-song fee which starts out in 2007 as only a 5% increase but balloons 149% increase by 2010. Second, the CRB curiously adopted the per-station minimum fee but dropped the per-service cap. Now every webcaster will be assessed a $500 charge on each streaming station they offer. Many webcasters literally have thousands of stations representing every imaginable genre and music mix. For instance the "minimum" fees for 2006 for just three webcasters (RealNetworks, Pandora, and Yahoo!) would be over $1.15 billion! Those new rates will dwarf their radio-related revenues by substantially more than a billion dollars. They would be more than 64 times the total royalties collected by SoundExchange in 2006 and an increase of more than 10 million percent over the minimum fee of $2,500 per licensee. Finally, the CRB eliminated the percentage of revenue fee that many small webcasters used to determine their performance royalty. The move from a percentage of revenue to a per-song rate hits small webcasters hardest.

This past Tuesday webcasters across the country silenced their streams to protest this horrendous decision. The silence that many of our constituents heard is just a mere foreshadowing of the blistering silence of Internet radio if the courts, the Congress, or the parties themselves do not resolve. Thank you for having this hearing and inviting me to testify.

June 27, 2007

The Honorable Nydia Velazquez
Chair, Committee on Small Business
2361 Russell House Office Building
Washington, DC 20515

The Honorable Steve Chabot
Ranking Member, Committee on Small Business
B-363 Russell House Office Building
Washington, DC 20515

Dear Reps. Velazquez and Chabot,

I am writing on behalf of the owners and employees of American Media Services, a leading radio brokerage and developmental engineering firm with clients nationwide. AMS is headquartered in Charleston, South Carolina. We recently launched a new Internet affiliate company, AMS-I, that provides radio broadcasters with expertise in such areas as streaming onto the Internet and creating Internet radio sites that offer high-quality audio. AMS-I is one of the hundreds of Internet streaming companies that risk being put out of business by the recent actions of the Copyright Royalty Board (CRB or Board).

We understand that your Committee will be holding a hearing on the Board's recent decision to raise royalty rates for audio content played over the Internet. We respectfully request that you enter this letter into the Hearing Record.

As you know, on March 2, 2007 the CRB issued a decision to significantly increase the fees imposed on companies that stream audio content over the Internet. Our initial calculations strongly suggest that these fees are so egregious that no company of our size will be able to afford to remain in business.

AMS formed its new Internet affiliate December 2006. After engaging in considerable research, it found that no one was helping station owners capitalize on all of the Internet technologies available. The AMS-I business plan calls for hosting 200-1000 stations. However, under the new CRB fee structure, AMS-I must pay a $500 administrative fee per station (which will equal $100,000 - $500,000) and an estimated average $67,525 in

royalty fees for each station. This is $23,725 more than each station is predicted to earn in revenue.

It is doubtful that more than a dozen or so stations will sign with AMS-I if the fees remain. We've already encountered dozens of broadcasters who are delaying or stopping their streaming plans until the situation is resolved. We will not be able to provide our programming and ad sales services to stations because they won't able to pay the CRB fees.

Our business model calls for hiring several dozen programmers, computer engineers, administrative assistants, and sales personnel over the next 18 months. These jobs will not be filled if the CRB decision is permitted to stand. In addition, radio stations have just begun to program online radio stations and sell advertising to local and regional advertisers. These programming and sales jobs would disappear. Our business model calls for us to generate significant national advertising revenue from New York-based agencies and advertisers, which would mean a major sales presence there.

Our business model also calls for other entities, such as newspapers, automobile dealers, and certain retailers, to stream audio content online. This will not happen under the CRB's new regime. There is a trickle-down effect here, as well, in that if audio streaming is restricted, the development, sales and manufacturing of new media devices designed to stream audio will be hampered by the CRB decision.

We urge Congress to apply copyright fees in a manner that encourages – not annihilates – nascent distribution methods. For this reason we support the Internet Radio Equality Act of 2007 (H.R. 2060). I am sure that neither you nor your constituents want to see technological progress suppressed by a handful of highly consolidated music recording industry "labels." The growth of media in the U.S. and globally depends on the innovation of forward-thinking entrepreneurs such as AMS-I. The disproportionate impacts on fledgling businesses must be overturned in order to encourage continued development of our new media capabilities.

Thank you for your kind attention to this issue.

Sincerely,

Reed Bunzel
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The Honorable Nydia Velázquez
Chair, House Committee on Small Business
2361 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Steve Chabot
Ranking Member, House Committee on Small Business
129 Cannon House Office Building
Washington, D.C. 20515

"Assessing the Impact of the Copyright Royalty Board Decision to Increase Royalty Rates on Recording Artists and Webcasters"

Submitted to the U.S. House of Representatives

Small Business Committee to be entered into the record

Artist Testimonials Calling on Congress to Correct the CRB Decision.

20 MINUTE LOOP - Indie/RockAlternative - San Francisco, CA
As an independent artist, 20 Minute Loop relies on Internet radio for exposure and distribution. Internet radio affords our band an opportunity to be heard by a community thirsty for new and innovative music. It allows more discerning listeners to find their niche, and access music that is regularly ignored by big business radio. As a listener of a wide variety of music, I rely on Internet radio to stay up-to-date with the latest news, music and features. Why should Internet radio be penalized with high royalty fees when other more lucrative forms of distribution are paying far less?

IRON HORSE - Metal/ Rock/Southern Rock/Country - Columbus, OH
Internet radio has allowed IronHorse to bring its music to the public. We do not have a label and therefore our chances to get on regular radio are nil. We have increased CD sales and have acquired a European following. There is so much good music out there that is never heard. Internet radio gives people opportunities they would not have otherwise.

TODD BLANCHARD - Songwriter - Bainbridge Island, WA (FICTION)
I was a full time writer and performer in the mid 80's who is working on new material for a career relaunch. I dismissed the music business as untenable when presented with my first 'industry standard' contract. The rise of new distribution channels gives

me hope that my material will get heard and than I will be able to make a living from it. Keep the web distribution channels open. Don't screw this up.

JEK POPULOUS - Rap - Brooklyn, NY
I'll keep it short and simple. I get about 70% of my rotation on internet radio. I have my first real album dropping on 9-20-07 and I already have dozens of internet radio stations (including finetune, Pandora, and lastfm) willing to showcase my album. This is how I generate fans. Without internet radio...I'm fighting an up hill battle. If people like my music, they should be able to listen to it.

JENECE GERBER - Classical Music Composer/Mezzo-Soprano - Buffalo, NY
Internet radio is the voice of the under-represented and funded cutting edge musician. Internet radio offers opportunities for listeners to explore new music and new musical genres, all of which lead to enhanced record sales. And these aren't only generated from the very large, commercial sites--but from small struggling sites who provide opportunities and a voice for obscure artists! The internet is the haven of free speech and democracy and I, as a composer and performer, thoroughly denounce the CRB's rate inflation. My livelihood and art will be crippled by this appalling development.

ALEXIS HARTE - The Alexis Harte Band - Berkeley, CA
If the goal is to help musicians earn a decent living, raising the internet royalty rates will likely have an adverse effect, as ironic as that sounds. I am an independent musician who has never had a record deal, or other real commercial support. I sell my own CDs on line and via shows. Internet radio outlets like Pandora are an absolutely vital way for me to reach new audiences. It is far more beneficial to musicians like myself to forgo any increase in the internet royalty rate (which frankly will never really amount to much even under the new rates) in favor of the likely CD sales that will ensue from many people being exposed to my music on-line. Quite simply, because of Pandora, I have sold many CDs (reaping roughly a full $6 dollars per unit) that never would have been sold otherwise. Raising the royalty rates, while only incrementally helping each musician (and we are talking pennies now), will prove unaffordable for small sites like Pandora. They and others will be forced to shut their doors, ending a vital source of exposure for Independent and even major label artists. I respectfully as that you reconsider your decision to raise royalty rates. I know you have our best interests in mind, and so let's let internet radio stations provide their valuable service without placing undue financial burden on them.

LIKE SUMMER - Rock/Alternative/Indie - Pittsburgh, PA
I am the Bass player for the indie rock band, Like Summer. Like Summer has received internet radio play which has helped us to reach a wider audience. This legislation would cause most of the stations in which we've been played to go out of business. Please reverse this legislation!

CODY REMAKLUS - Sol'Jibe - Reno, NV
We believe that music is universal and as artists, we want to share our music with as many people as possible. The Internet, more specifically Internet radio, has helped make us who we are today. We've become successful because of our grassroots following of avid, loyal fans. We could not have done this without Internet radio and we do not want to see it destroyed.

It's virtually impossible to break into broadcast radio, especially with a distinct sound like ours. The new Internet radio royalty rates have jeopardized the future of Internet radio, and could squelch one of the ways we keep we're able to share our music.

Internet radio gives us the ability to reach music fans nationwide and globally.we'd hate to see it destroyed since it's a huge part of our livelihood, as well as a great way for people to enjoy all kinds of music.

THE NEW GUINEA PIGS - Beverly Hills, CA
The New Guinea Pigs write and perform songs of peace, love, and positivity for all humanity - no, not exactly what you'd hear if "majors" were unilaterally responsible for creating play lists. We have a small but loyal following created nearly entirely from small webcasters kind enough to play us. Save internet radio since it gives unsigned acts a venue and music consumers a choice.

302 - Pop Rock - Atlanta, GA
Although I play "pop rock" of a style that's very popular today, I could never possibly obtain exposure through the traditional channels of large record companies and radio conglomerates. At 41 years old, I'm way beyond what they consider to be their marketable age range (30 is over the hill!). Internet radio has offered me an opportunity to reach my audience in a way that would be impossible if internet radio were wiped out. And I'm sure there are thousands of other artists out there with the same story as me. Please, on behalf of all of us, I beg you to create a legal climate that will allow internet radio to flourish, rather than wither and die.

June 26, 2007

The Honorable Nydia Velázquez
Chair, House Committee on Small Business
2361 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Steve Chabot
Ranking Member, House Committee on Small Business
129 Cannon House Office Building
Washington, D.C. 20515

"Assessing the Impact of the Copyright Royalty Board Decision to Increase Royalty Rates on Recording Artists and Webcasters"

Submitted to the Small Business Committee to be entered into the record

U.S. House of Representatives

Dear Chairwoman Nydia Velázquez, Ranking Member Steve Chabot, and Committee Members:

We are writing to request your leadership and urge your support to help save diversity and music on the Internet. As supporters of the artists, labels and small businesses that are greatly benefited by Internet radio, we are extremely concerned that the recent decision by the Copyright Royalty Board (CRB) will mean the death of this diverse and innovative medium. If Internet radio dies, hundreds of thousands of musicians will see a decrease in air time and their global fan base, millions of listeners will no longer be able to hear the music they want to hear, and thousands of small businesses will be forced into bankruptcy. Please don't let this happen.

As independent labels, we are extremely concerned that the recent decision by the Copyright Royalty Board (CRB) will take us one step closer to hindering the development of artists. Internet radio is a beacon for "non-mainstream" music; in fact, 37% of music broadcast on the Internet is from independent artists and labels, as opposed to less then 5% on traditional broadcast radio. We need Internet radio, and yet, the CRB just increased sound recording royalty rates for Internet radio by 300 to 1200 percent, and this causes us great distress. For most of these webcasters, the new royalty rates will exceed their revenues and they will have no choice but to let the music die.

We respectfully request that Congress take action to prevent the demise of Internet radio. The new royalties go into effect July 15th so there is very little time; we hope you will help.

Sincerely,

Dave Ehrlich (Relapse Records)

Hank Stoddard (Yep-Roc Records)

Tim Foiset (Razor and Tie)

Terry Irons (Disappear Records)

Bekah Zietz (Suicide Squeeze)

Stephen Christian (Warp Records)

Van Riker (Barsuk Records)

Sonny Kay (Gold Standard Labs (GSL))

Robb Nansel (Saddle Creek Records)

Kelly Easter (American Garage Records)

Kelly Glover (Compass Records)

Terry Gonda (What Key? Music)

BROADCASTING
5700 West Oaks Boulevard
Rocklin, California 95765
916-251-1600

June 26, 2007

The Honorable Nydia Velazquez
Chair of the House Small Business Committee
United States House of Representatives
Washington, DC 20515

Dear Madam Chairwoman

I am writing to you on behalf of Educational Media Foundation (EMF) in connection with your hearing on Internet Radio, and the impact of the new royalties on small businesses. EMF is a non-profit, tax-exempt organization which operates family-friendly radio stations throughout the country that feature contemporary Christian music and news of importance to families. Our stations are much more than an entertainment outlets. They also feature services and programs that families can access to enrich their daily lives.

In addition, EMF also assists its listeners with counselors on staff to help listeners who are going through difficult times in their personal lives such as depression/suicide and family/marriage counseling.

In less than 15 years, EMF has grown from a single radio station in California, to a network of over 234 radio stations in 45 states, as listeners have embraced the programming we provide.

EMF's purpose as a public benefit corporation is not to make a profit, but instead to broaden its service to the public while reaching as many people as possible with its unique programming. Thus, all of the money received from listener donations is plowed back into the serving our listening audience more effectively and reaching into new communities.

Streaming our programming on the Internet has been very popular, as we can reach many people who live in remote areas, or those who cannot get our service from one of our over-the-air broadcast stations. It should be noted, that as the broadcast media has consolidated over the last ten years, and prices of broadcast properties have escalated, it is almost impossible for a small non-profit company like ours to expand into larger

markets, and to reach into some cities. Thus, the Internet provides a way of reaching those listeners who do not have on-air access to our services.

As our Internet audience has grown, the royalties that we have been forced to pay to SoundExchange have escalated to the point where they will soon exceed the revenue we receive in donations from our Internet listeners. And since EMF does not sell advertising, our ability to pay these escalating fees is limited to the donations we receive. The new royalties adopted by the Copyright Royalty Board more than triple the royalties that we will be paying. retro-active to January 1, 2006. In addition, these royalty rates will continue to grow so fast that by 2010, we will be paying almost ten times the rate we were paying, just before the new rates were adopted. Such a vast increase in royalties will force us to reevaluate our ability to continue to stream to over a million listeners a week. While we want our message to be heard, at the newly established royalty rates, it may not be cost-effective for us to channel our energies into Internet streaming, thereby leaving many current Internet radio listeners disenfranchised.

The CRB decision stems from the fact that non-profit stations were (and are) lumped together with commercial stations (who sell advertising) in a single hearing, and the Board is forced to make a decision on a "willing buyer, willing seller standard," which does not take into account the public interest provided by non-profit organizations such as ours. Purely economic considerations are not an appropriate standard when looking at not-for-profit organizations that do not have economic motivations in their operational mandate. Forcing non-profits to pay at commercial rates would force a fundamental change in our programming and services, perhaps coercing us to become more commercial in nature merely to exist. The Internet Radio Equality Act would resolve that issue, by treating these royalties in the same manner and by the same standards used for determining our broadcast royalties for ASCAP, BMI and SESAC – under the standards of Section 118 of the Copyright Act.

We believe that something must be done to set fair and fixed royalties for non-profit organizations and to resolve the immediate crisis that faces Internet Radio. We ask for your assistance.

If I can provide you with any additional information, please let me know.

Respectfully,

Richard Jenkins, President
Educational Media Foundation

God listens.®
89.3 FM KSBJ
Contemporary Christian Music

June 25, 2007

The Honorable Nydia Velazquez
Chair of the House Small Business Committee
United States House of Representatives
Washington, DC 20515
Fax #202-226-0327

RE: Copyright Royalty Rates for Webcasting

Dear Madam Chairwoman:

We are a non-commercial, non-profit radio ministry who has been providing webcasting of our programming since 1998. We have been listener supported since our inception in 1982. Banner ads have not been used on our website to generate revenue attributed to our webcasting. We pay in excess of $100,000 for all the costs to provide an alternative option to our listeners, many of whom listen in office buildings who otherwise could not receive our signal. In our annual fundraiser, we request financial support from our listeners for areas including the webcasting.

With the new webcasting royalty rates and reporting requirements set by the Copyright Royalty Board, we are directly and negatively affected by these changes. Webcasting represents another ministry outreach for us. The new rates and reporting requirements are not only burdensome to us as a radio ministry but they may cause us to discontinue webcasting because of these unreasonable rates. We request your immediate intervention on our behalf in this matter. We do not believe the rates and reporting requirements should be the same for commercial and non-commercial stations, because neither the revenue base nor the staff size of commercial and non-commercial stations are comparable.

Daily we hear from listeners across our nation and around the world telling us how they have been impacted by the music and ministry of KSBJ via webcasting. We currently have listeners in nearly every state in the U.S. and without webcasting, we will lose them as listeners and supporters. We request your help in this important matter. Thank you for your attention and assistance in this matter.

Sincerely,

Tim McDermott
President/General Manager

Tamara Harrod
Vice President of Business Affairs

P.O. Box 187 • Humble, Texas 77347-0187 • 281-446-5725 • Fax: 281-540-2198

David K. Rehr
President & CEO
1771 N Street, NW Washington, DC 20036-2800

June 27, 2007

The Honorable Nydia Velazquez
Chairwoman
House Small Business Committee
2361 Rayburn House Office Building
Washington, DC 20515

The Honorable Steve Chabot
Ranking Member
House Small Business Committee
B-363 Rayburn House Office Building
Washington, DC 20515

Dear Chairwoman Velazquez and Ranking Member Chabot:

I am writing with regard to the June 28, 2007 Small Business Committee hearing titled, "Assessing the Impact of the Copyright Royalty Board Decision to Increase Royalty Rates on Recording Artists and Webcasters." I ask that my correspondence, which outlines the National Association of Broadcasters' (NAB) concerns with the new rates, be made part of the hearing record.

The CRB determination covers years 2006 through 2010 and establishes new royalty rates for music streamed over the Internet. The first year rate is retroactive to January 2006 with this payment due on July 15. Overall, these new rates are a tremendous increase over existing rates and will become increasingly higher over the course of the five-year period - anywhere from 300 percent to 1200 percent.

The new CRB rates will have a significant impact on local broadcasters currently streaming their programming over the Internet. They face a significant financial challenge by July 15 due to the impact of the 2006 retroactive rate payment. Additionally, as the costs of streaming rise drastically over the five-year rate period, broadcasters will experience a steep cost increase each year for five years and some will decide it is financially infeasible to continue streaming over the Internet.

Equally important are broadcasters that currently do not stream. Many broadcasters, particularly medium to small market broadcasters, look to the Internet as a way to broaden their community reach in the future. Streaming will allow them to reach a greater audience with public service information in areas where they may be limited with their over-the-air signal by power restrictions or interference. Simply, the new CRB rates are so high that they are essentially a barrier to entry for these broadcasters and over the five-year rate period will deny them the opportunity to offer valuable programming over the Internet.

Local broadcasters are proud of their service to communities, take their responsibility as lifeline providers very seriously, and are among the first to step up in times of emergency and need. Broadcasters raise billions of dollars annually to the benefit of local communities and the charitable organizations that serve them. These same local broadcasters, however, will experience financial harm from the new CRB rates, as it would take away resources from their continued efforts to serve the public in addition to preventing others from participating in this platform.

On behalf of the 8,300 members of NAB, please know of our concerns with the new CRB rates as outlined above. We add our voice to those of the small webcasters, Internet radio companies, non-commercial stations and others expressing alarm over the rates and seeking a new rate structure.

Thank you for your leadership in holding the hearing and allowing us an opportunity to offer our perspective.

Sincerely,

David K. Rehr

cc: Members, House Small Business Committee

NORTHWESTERN COLLEGE RADIO NETWORK

June 28, 2007

SkyLight Network
Radio Group

KTIS AM/FM
Minneapolis/Saint Paul, MN

KNWS AM/FM
Waterloo, IA

KFNW AM/FM
Fargo, ND

KNWC AM/FM
Sioux Falls, SD

WNWC AM/FM
Madison, WI

KDNW FM / KDNI FM
Duluth, MN

WSMR FM
Sarasota, FL

KNWI FM / KNWM FM
Des Moines, IA

3003 Snelling Avenue North
Saint Paul, Minnesota 55113-1598

VOICE: 651.631.5000
FAX: 651.631.5086
WEB: www.nwc.edu/radio

The Honorable Nydia Velazquez
Chair of the House Small Business Committee
United States House of Representatives
Washington, DC 20515

Dear Madam Chairwoman,

Northwestern College in St. Paul, Minnesota owns 16 noncommercial radio stations in eight markets, primarily in the Upper Midwest.

When the Copyright Royalty Board (CRB) set new royalty rates for Internet streaming by radio broadcasters on March 2, 2007, this action sent shock-waves throughout our organization.

To avoid having to pay substantially—and in our opinion, exorbitantly—higher Internet streaming fees for radio programming, we have found it necessary to limit the amount of bandwidth for one of our stations in the Minneapolis-St. Paul, Minnesota market. On the average, only 218 people can listen concurrently. Compare that very small number to the more than 300,000+ listeners that tune in to our station over the air each week. We regularly hear from listeners who complain they cannot tune in on-line. This has led listeners to question our ability to serve "the public interest."

We have also been planning to introduce new radio formats designed to meet the needs of minority groups in the communities that we serve. The threat of paying substantially higher Internet streaming rates has caused us to put such planning on hold pending the outcome of legislation before the U. S. House of Representatives. In a phrase, the new Internet streaming rates have had a "chilling effect" on our plans to serve listeners in our markets.

Noncommercial broadcasters appear to have been given special rates ($500 per channel per year) by the CRB. But the fact is that once one of our stations exceeds what we believe to be a very low maximum amount of listening for each channel (the average listening of only 218 concurrent listeners), we then begin to pay rates that are equivalent to what the commercial broadcasters pay. We estimate that for every 10 additional listeners, we would pay $2,000 per year.

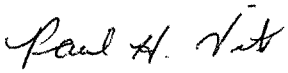
The Honorable Nydia Velazquez
Page 2
June 27, 2007

As noncommercial broadcasters, we do not have sufficient revenues to cover these new costs.

We ask you to vote in favor of HR 2060 which would roll back the Internet streaming rates to the levels prior to March 2, 2007.

Thank you for your consideration.

Sincerely,



Paul H. Virts
Senior Vice President for Media
Northwestern College & Radio

National
Religious
Broadcasters

9510 Technology Drive
Manassas, Virginia 20110
Phone: 703-330-7000
Fax: 703-330-7100

Capitol Hill Office:
201 Maryland Ave., NE
Washington, DC 20002
Phone: 202-543-0073

www.nrb.org
info@nrb.org

Christian
Communicators
Impacting
the World

June 27, 2007

The Honorable Nydia Velazquez
Chair of the House Small Business Committee
United States House of Representatives
Washington, DC 20515
Fax #202-226-0327

The Honorable Steve Chabot
Ranking Member of the House Small Business Committee
United States House of Representatives
Washington, DC 20515

Dear Madam and Sir:

For the last several weeks NRB, along with a coalition of others, have been meeting with numerous members of the House of Representatives asking for their urgent support on an issue that we feel vital to the future of our Christian broadcasters that stream music on the internet. I am of course referring to the Copyright Royalty Board (CRB) decision made earlier this year that increased rates our Webcasters must pay on a per song, per person basis. In certain instances, the new over inflated rates are more than 150% of what our members have paid in the past. The fact that the fees are retro-active makes this an even greater injustice.

Simply put if these outlandish fees remain intact most of our broadcasters will be forced off the web, some perhaps into great financial turmoil with retro-active payments due. Three of our members have provided letters for the record for your review and the review of the full committee. These letters reveal how the new rates will affect their online streaming. This includes: K-LOVE/AIR1 Radio, KSBJ-FM, and Northwest College Radio.

On behalf of our association of more than 1400 Evangelical broadcasters, the great majority of whom are non-profits or small business commercial operators, I would like to thank you for holding this important hearing: *Assessing the Impact of the Copyright Royalty Board Decision to Increase Royalty Rates on Recording Artist and Webcasters*. I would also like to request your help, as July 15 is fast approaching and payments will soon be due. We need a lasting and fair solution for all of our Christian Webcasters streaming music, no matter how large or small.

Sincerely,

Frank Wright, Ph.D.
President/CEO

June 26, 2007

Written testimony of Family Junction

13 Sparhawk Street, Suite 1

Brighton, Massachusetts 02135

Submitted to the Small Business Committee to be entered into the record

U.S. House of Representatives

Hearing on "Assessing the Impact of the Copyright Royalty Board Decision to Increase Royalty Rates on Recording Artists and Webcasters."

Chairwoman Nydia Velázquez, Ranking Member Steve Chabot, and Committee Members:

Thank you for holding the hearing entitled "Assessing the Impact of the Copyright Royalty Board Decision to Increase Royalty Rates on Recording Artists and Webcasters" to examine a recent decision by the Copyright Royalty Board (CRB) that increases the royalty rates that Internet broadcasters pay to compensate copyright owners for digital transmissions of their sound recordings.

Our band, Family Junction, is the product of five American dreamers – childhood friends who had fun making music together and who, one day, decided to use that entrepreneurial spirit to turn it into more than a hobby. Making that decision and making it in the music industry, however, are two completely different things.

It was inspiring to see some many artists care as much as we do about this issue come down to Washington, DC, to lobby our respective elected Representatives on Monday and Tuesday of June 18th and 19th. As independent artists we are constantly fighting the uphill battle that everyone self employed has to go through of doing self promotion and marketing. In the case of the music industry, it is extremely easy to become disillusion when large external forces constantly act against us and restrict our markets. However, it was refreshing to be able to play a concert with the Capital Building as the backdrop, and to and speak with Congressman Jay Inslee and Congressman Don Manzullo, who introduced Internet Radio Equality Act (H.R. 2060).

Internet radio has helped us find our niche – on college radio (which is mostly web-only) and on genre-specific stations. Even after only a few songs had been recorded, we were able to find an audience of thousands. As you probably understand, without Internet radio, that would have been nearly impossible.

We are artists, and we are realistic. We know royalties are important and mean a lot to so many artists scraping to get by. But we also know that our biggest asset is not the royalty check we get in the mail, but the air time we get on the radio. If the royalty rate

hike takes effect on July 15, it will put a lot of online stations out of business -- and eliminate both sources of artist gain.

Please help the smaller artists thrive by stepping in to save Internet radio by supporting the Internet Radio Equality Act (H.R. 2060). Without your help and the help of your colleagues, that dream that our band shared -- and that has started to turn into a reality -- would most likely be wiped away. Thank you for doing what you can to help.

Sincerely,

Family Junction

Alan Cohen
Dan Levine
Seth Kroll
Ryan Pressman
Matt Ross

DATE: **June 26, 2007**

TO: **House of Representatives Committee on Small Business**

RE: **Hearing on "Assessing the Impact of the Copyright Royalty Board Decision to Increase Royalty Rates on Recording Artists and Webcasters."**

FROM: **Written Testimony from Mother Jones Band, Los Angeles, CA to be submitted into the record.**

Chairwoman Nydia Velázquez, Ranking Member Steve Chabot, and Committee Members:

We would like to share our thoughts and views on the Copyright Royalty Board's decision to increase the royalty rate and what that will mean to an independent band like ourselves. Mother Jones Band is a dynamic six-piece, multi-genre jam band from Los Angeles, CA. Our most recent album, 'UNION', which we released on our own label, Rising Sun Records, has been listed in the top 20 on the Jam Radio Chart at Jambands.com for the past three months, and the songs "Lay Me Down" and "In Your Lies" have been voted in as "Top 10" favorites at "Ear Candy For The Mind" at Live365.com for several weeks in a row. We have spent years at our craft and now we are beginning to see the fruit of our efforts. Many doors have begun to open for us. We are playing in more cities, better clubs and selling more music than ever before. The mainstream radio stations don't provide enough diversity or support to include many genres of music, such as Jam Rock (which really includes everything from Rock, Funk, Jazz and Bluegrass to Reggae and Folk), and most don't have room for songs like ours that last over 3 minutes. Internet radio is the perfect home for genre specific bands like ours. We are concerned that all of this great promotion could go away on July 15th when the new royalty rate will go in effect. We have already heard from several radio stations that have been airing us that they have stopped their "live stream" to Internet radio, due to the impending insurmountable costs they could be facing on July 15th. This means we have already lost airplay to tens of thousands, if not hundreds of thousands of listeners and potential fans.

Last week we left behind work, family and immediate responsibilities to come to Washington DC to discuss this urgent issue with Congressional staff members. We were part of a large group of performers and recording artists who are currently benefiting from the freedom and diversity that Internet radio offers to artists such as ourselves who, like Mother Jones, have struggled to find a medium to reach fans and listeners. Finally, with Internet radio, we are able to carve out a niche for our individual genres of music, without being dependent on major labels, or media corporations to support us. We are able to generate a worldwide following, enabling us to actually begin to earn a living with our craft. While we were in DC we also met the co-sponsors of the Internet Radio Equality Act, and performed outside the Capitol, on the Senate grounds at a concert supporting the effort to save Internet radio along with several of the other artists who are part of the SaveNetRadio coalition. During the concert so many people stopped by to listen and give support to all of us that were there. It was an amazing experience to meet and hear so many other artists that are benefiting from Internet radio airplay, and to be a part of something that is so important and crucial to maintaining this medium of musical and creative diversity.

As artists trying to make a living we know royalties are important. But, as artists trying to build an audience, we know these royalty rates must be fair. If royalty rates are so high that webcasters go out of business, the artists receive no benefit at all. The CRB royalty increases have clearly crossed the line. For many, the higher royalties will exceed their revenues and force bankruptcy.

Effectively the CRB decision will devastate our ability to reach the broadest audience possible, preventing us from the ability to promote our music, create new opportunities for touring and gain new fans.

Page Two

Please help artists like us continue to build our audience through Internet radio by supporting the Internet Radio Equality Act H.R. 2060. Without the help of Congress, the new royalties will go into effect July 15th and so much about what makes Internet radio great for listeners and up-and-coming artists like Mother Jones Band will be lost.

Thank you again for your consideration.

Sincerely,

Mother Jones Band
Son Vo
Halina Janusz
Marshall Thompson
Steve Janowski
Ted Kraut
Chris Kirshbaum

June 26, 2007

House of Representatives Committee on Small Business

Hearing on "Assessing the Impact of the Copyright Royalty Board Decision to Increase Royalty Rates on Recording Artists and Webcasters."

Written Testimony from Nate Query, The Decemberists to be submitted into the record

Chairwoman Nydia Velázquez, Ranking Member Steve Chabot, and Committee Members:

I have been a professional musician all my adult life. My current band, The Decemberists, is one of the lucky ones. Thanks in part to Internet radio, we've grown over the last six years from five musicians with day jobs to a small business selling hundreds of thousands of records, selling out large venues across the country, and employing anywhere from 5 to more than a dozen employees at a given time.

One resource that the Decemberists have depended on is Internet radio. The growth of this valuable medium has made it more possible for small, aspiring bands; or just musicians outside the mainstream (which most are) to find their audience across the United States and all over the world.

I like royalty checks. I'll be honest. But I didn't see one until I was a fairly successful musician, and the idea that many webcasters could go out of business or stop streaming due to the March decision by the Copyright Review Board is frightening. Internet radio should not be subject to such outrageously high royalties, especially in comparison to satellite and terrestrial radio. These royalties not only threaten current internet radio stations, but will severely limit growth in an area that so clearly has so much potential. Mainstream media outlets like TV and terrestrial radio are essentially impenetrable to all but less than 1% of artists.

Encouraging Internet radio to flourish will have positive benefits not just to musicians like myself looking to connect with new listeners, but to music fans and entrepreneurs as well.

Last week, I spent two days in Washington, D.C. visiting staffers (and in some cases, their bosses) to talk about how Internet radio has had a positive impact on my career and my prospects. This issue isn't just important to webcasters, it's important to musicians.

Please support the Internet Radio Equality Act (H.R. 2060) and keep the world of Internet radio thriving. Thank you for your consideration.

Sincerely,

Nate Query,
The Decemberists

Radial Angel, LLC
6957 NW Expressway, #179
Oklahoma City, OK 73132
405.722.7587

www.radialangel.com

June 26, 2007

Submitted to the House of Representatives Committee on Small Business to be entered into the record

Hearing on "Assessing the Impact of the Copyright Royalty Board Decision to Increase Royalty Rates on Recording Artists and Webcasters."

Chairwoman Nydia Velázquez, Ranking Member Steve Chabot, and Committee Members:

Surviving in today's music environment is far from easy for Christian artists like my band Radial Angel. The mainstream radio stations don't have much room for independent music of our kind. But Internet radio has attracted Christian music followers by the tens of thousands, allowing fans to find my band. Radial Angel has sold thousands of CDs online and have even been able to tour consistently throughout the country. Without Internet radio, being able to do this and survive as an independent band would become even more difficult.

As an artist trying to make a living I know royalties are important. But, as an artist trying to build an audience, I know these royalty rates must be fair. If royalty rates are so high that webcasters go out of business, the artists receive no benefit at all. The CRB royalty increases have clearly crossed the line. For many, the higher royalties will exceed their revenues and force bankruptcy. Effectively the CRB decision will devastate our ability to reach the broadest audience possible with our music and make our survival as a small business very difficult.

Recently, I was able to visit Washington, D.C., to participate in the Artist Hill Walk. While on Capitol Hill I met with House and Senate staff members about the recent ruling and the impact it would have on my band and the music industry. I also participated in a Senate and House briefing about the CRB royalty decision. Joining my band were musicians from across the country that shared my concerns about the ruling. On Monday, June 18 a concert was held in Upper Senate Park to educate the public on the CRB decision.

Please help artists like me continue to build our audience through Internet radio by supporting the Internet Radio Equality Act H.R. 2060. Without the help of Congress, the new royalties will go into effect July 15th and so much about what makes Internet radio great will be wiped out.

Thank you again for your consideration.

Sincerely,

RADIAL ANGEL
Eddie Jones
Jared Taber
Josh Evans
Josh Barnett

Randall E. Krause
Small Webcaster Community Initiative
108 W Green St, Ste 110
Champaign, Illinois 61820

Written Testimony of Small Webcaster Community Initiative

"Assessing the Impact of the Copyright Royalty Board Decision to Increase Royalty Rates on Recording Artists and Webcasters"

Submitted to the Small Business Committee to be entered into the record
U.S. House of Representatives

June 26, 2007

Chairwoman Nydia Velázquez, Ranking Member Steve Chabot, and Committee Members:

Thank you for this opportunity to testify about the impact that the 2006-2010 statutory royalty rates and terms will have on small commercial Webcasters in the United States.

I speak to you both as the founder and executive director of Small Webcaster Community Initiative as well as an independent online broadcaster and a professional nightclub disc jockey. I am passionate about music, and I appreciate the many opportunities that music continues to provide for my career in entertainment.

It is from this deep-rooted interest, that I formed Small Webcaster Community Initiative in 2003. Our organization aims to promote and protect independent online music radio, both from entrepreneurs to enthusiasts, through grassroots civic campaigns, including political action and educational outreach.

As you may already know, the widespread availability of broadband both in the home and the workplace has opened the doors for virtually any entrepreneur to realize his dream of operating a music radio station. This, combined with the low barrier to entry, makes it possible for individuals with nothing more than a computer, some free software, and an Internet connection to become the next "radio superstar."

However the royalty rates and terms mandated by the Copyright Royalty Board on March 2, 2007 threaten to undermine the very industry that the statutory license was intended to foster. Instead of making it more economical for small businesses to clear the necessary digital performance rights in sound recordings and effectively cater to the growing demand for digital music services, it blatantly excludes them.

Minimum Annual Fee per Channel

Online radio is not limited by spectrum capacity in the same fashion as terrestrial radio. However, despite this important distinction, the Copyright Royalty Board established a $500 minimum annual fee per channel. This artificial "cap" now threatens to shutdown Internet radio networks such as Live365, which currently serves as a home base for over 10,000 hobbyist Webcasters nationwide.

Per-Performance Fee

Small Webcasters previously paid royalties based on percentage of revenue and expenses. However, the Copyright Royalty Board chose to implement a per-performance fee of upwards of $0.0008 exclusively -- which typically results in a 300% or greater increase in royalty payments due. Small businesses, without any means to transition to these new rates, will have no choice but to shut down.

Entrepreneurs should not be punished for their success by undue financial burdens. But at the same time, recording artists and record labels deserve to be compensated for the their artistic labor. Most online broadcasters recognize the intrinsic value of recorded music and accept that royalties are merely a cost of doing business responsibly.

But why should these royalty obligations alone drive small Webcasters out of business?

The rates and terms of the statutory license should encourage competition, and allow the marketplace to flourish. A thriving Webcasting industry, benefits recording artists and record labels, online broadcaster, and the public at large.

Small Webcasters offer a wide expanse of music programming simply not available through terrestrial and satellite radio. In addition, they provide unparalleled exposure for lesser established and independent artists.

However, if these statutory rates and terms are not overturned prior to July 15, 2007, the net result instead will be

1. less diversity in online music programming;
2. fewer consumer choices in online broadcasting services;
3. fewer promotional outlets for unsigned artists and indie labels; and
4. more in-stream advertising per broadcast hour.

It is therefore vital that these issues be closely re-examined, particularly in the context of the still nascent Webcasting industry. The ultimate goal of our constituents is to build a sustainable business and to protect their very livelihood. But that is simply not possible if these royalty obligations phase them out of existence prematurely.

Small Webcaster Community Initiative would again like to applaud the Small Business Committee for organizing today's hearing, and for recognizing the urgency of these matters with respect to small commercial Webcasters.

Respectfully submitted,

Randall E. Krause
Executive Director
(217) 352-2103

June 26, 2007

Written Testimony from Tangleweed, Chicago, Illinois

Submitted to the House of Representatives Committee on Small Business to be entered into the record

Hearing on "Assessing the Impact of the Copyright Royalty Board Decision to Increase Royalty Rates on Recording Artists and Webcasters."

Chairwoman Nydia Velázquez, Ranking Member Steve Chabot, and Committee Members:

I play in a Chicago-based Americana band called Tangleweed. Last week, I joined other artists in Washington, D.C., to talk about the opportunities Internet radio has engendered for independent artists. It has become an essential tool for us to reach listeners all over the world. It was through Internet radio that my band recently got a major opportunity.

It has become increasingly hard for an artist to be "discovered" in this music environment. For every band signed to a major record label there are thousands who are still struggling to get by. With the help of Internet radio, my band found that "getting discovered" could happen to us. A music festival booker came across one of our songs on Pandora.com and liked what he heard – so much so that he tracked us down and booked us for an appearance at a major festival. It was, by far, the biggest break of our music career. With 7 million online radio listeners daily, these breaks are far more possible.

The royalty rate hike, though, threatens to put a lot of those stations – including Pandora – out of business. As an artist, I know the value of royalties. But, for many independent artists, Internet radio has an even greater value: it gives us exposure to new audiences worldwide. And with those new audiences come new opportunities—opportunities to perform, and opportunities to sell our recordings. A single performance may be worth several years of royalties for some performers. Fewer outlets for our work means fewer chances for us to reach new listeners, and no increase in royalty rates can make up for that.

I'm writing to ask you to please support the Internet Radio Equality Act (H.R. 2060) and help make sure that Internet royalty rates make sense – for artists and for webcasters.

Thank you for your consideration.

Sincerely,

Kenneth Rainey,
Tangleweed
Chicago, Illinois
312.593.4832

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