



American Association
of Independent Music

October 1, 2012

The Honorable Bob Goodlatte, Chair
Subcommittee on Intellectual Property, Competition, and the Internet
House Committee on the Judiciary
B-352 Rayburn House Office Building
Washington, DC 20515

The Honorable Mel Watt, Ranking Member
Subcommittee on Intellectual Property, Competition, and the Internet
House Committee on the Judiciary
B-351 Rayburn House Office Building
Washington, DC 20515

The Honorable Patrick Leahy, Chair
224 Dirksen Senate Office Building
Senate Committee on the Judiciary
Washington, DC 20515

The Honorable Chuck Grassley, Ranking Member
152 Dirksen House Office Building
Senate Committee on the Judiciary
Washington, DC 20515

RE: H.R. 6480/S. 3609 ("The Internet Radio Fairness Bill")

I am writing on behalf of the American Association of Independent Music ("A2IM") to express our thoughts regarding H.R. 6480/S. 3609 ("The Internet Radio Fairness Bill") and the potential effects on independent music labels and their artists.

Independent labels and artists care deeply about the growth of Internet radio. Pandora and services like it have enabled many independent labels and artists to obtain radio airplay, build their audience and receive crucial compensation. At broadcast (FM/AM) radio, independent music is approximately 10% to 12% of overall radio spins/ratings versus Internet radio where approximately one-third of music streamed is independent music. As a result, you cannot find stronger supporters of Internet radio broadcasters than they have in the independent community. It is important to independents that Internet radio continues to grow and become a larger and sustainable part of the radio landscape to provide access to all creators.

Simultaneously, we are concerned about some of the provisions in H.R. 6480/S. 3609 and we feel strongly that this bill does not represent an appropriate solution. At the outset, the bill purports to create fairness and parity in compensation rate standards among platforms, yet fails to address a glaring inequity in current law: the singular exemption of over-the-air broadcast terrestrial radio from paying a

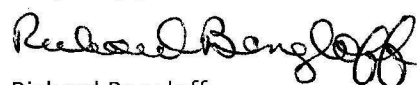
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performance right to performers and music labels for playing their songs, while digital radio does compensate the creators of sound recordings. This disparity not only deprives music creators of fair compensation but also creates an unlevel playing field between music platforms. Any bill that aspires to create fairness and parity must create an FM/AM broadcast radio terrestrial performance right royalty to be paid to artists and labels. The current level of disparity between the royalty rates paid by Internet radio at one end of the spectrum and over-the-air broadcast terrestrial radio—which pays nothing to performing artists and labels—at the other end of the spectrum is an obvious problem and correcting that inequity should be the first legislative step towards creating “radio fairness”.

In addition to this important omission, instead of creating fairness for Internet platforms, the bill starts a race to the bottom by drastically reducing the rate paid for many Internet radio payments to artists and record labels to below the government mandated rate. Under current law, Internet radio broadcasters compensate labels and artists under the “willing buyer, willing seller” rate standard. As the term suggests, it is intended to approximate a fair market rate and is decided via input presented at the Copyright Royalty Board by all sides and then decided upon by this three judge panel insuring that individual negotiated direct licenses need not be negotiated between service and copyright owner (a situation that would enrich attorneys and favor major labels and superstar artists to the detriment of independent creators wishing to be fairly compensated for their contributions). The proposed legislation would change the standard to a far below market rate and would require music labels and artists to take less than their work is worth, in order to subsidize Internet radio companies. We encourage Congress to work with all of the affected parties to develop a solution that enables Internet radio to grow and become a larger and sustainable part of the radio landscape while also assuring that labels and musicians are fairly compensated for their extraordinary creative efforts whenever their music is performed on the radio.

Music labels and artists have taken some hard hits in the last decade as we’ve had to adjust to a business model based largely upon performance royalty revenues as consumer behaviors shift to consuming music via Internet radio and other means in place of music purchasing. It should not be mistaken, however, that these revenue hits and consumer changes indicate a diminished importance in the power of music as a driver for services including radio and Internet radio. Fair compensation should be the common sense rule whereas it applies to any service performing music to attract fans. H.R. 6480/S. 3609 would add further to the financial harm of musical Intellectual Property creators trying to make a living. We urge you to reject misleading titles of “fairness” and claims of “parity” and oppose this bill. Please do not hesitate to contact us with any questions you may have about our position.

Very truly yours,



Richard Bengloff

President

American Association of Independent Music (“A2IM”)

cc: Members, House and Senate Judiciary Committees