

TO: Federal Communications Commission
FR: Franz Nicolay
RE: Comment on Net Neutrality/Preserving the Open Internet NPRM (09-191)
DT: January 10, 2010

My name is Franz Nicolay; I am 32 years old, and I've been a professional performing musician and recording artist for about a decade and a resident of New York City for fifteen years. I hold a degree in jazz improvisation and classical composition from New York University, and I am founder and president of the non-profit composer-performer chamber music collective Anti-Social Music, now ten years old. I have toured and recorded with many bands, including cabaret-punk group World/Inferno Friendship Society and the acclaimed indie-rock band The Hold Steady. I tour 250-300 days a year, and have appeared as a bandleader, member, or session player on dozens of releases.

In the course of my career, I've had 42 releases as a bandleader or primary bandmember, more than 30 as a session player and have over 100 songwriting credits. I've appeared on almost every major late-night television show, including "Late Night With David Letterman," "Jimmy Fallon," "Conan O'Brien," "Later with Jools Holland," "Jimmy Kimmel" and "Craig Ferguson." I have also been featured on NPR and the BBC. I've played or recorded with musicians from Bruce Springsteen and Counting Crows to punk legends the Subhumans. The Hold Steady, of which I am a member, has been called as "the best band in America" by *Rolling Stone* and has released the #2 record of the decade according to popular digital music service eMusic. The *Philadelphia Inquirer* called my solo record, *Major General*, "the first great record of 2009." The same year, I toured Europe, the UK, the US (including Alaska), Canada, Ukraine, and Australia.

Like all musicians, especially those of us who remember the music world before the internet, I find it impossible to overstate how much it has changed our business. Though I do have a website of my own, I can maintain presences on MySpace and Facebook, and engage in real-time promotion and conversation with fans and potential fans worldwide. Through these channels, I am able to sell music directly, and let the public know about my activities and creative efforts. I remember vividly the expense and frustration that came with booking shows and tours in the pre-internet age: Xeroxing one-sheets, dubbing cassettes, shooting and duplicating press photos, and packing and mailing hundreds of padded envelopes — at costs in total of well over \$5 per package — which often piled up in club offices while we spent hundreds of dollars on long-distance calls trying to convince agents to listen to a band they may never have heard of. These days, it's a painless process of emailing a MySpace link, and the virtually cost-free matter of sending emails. For all the revenue lost in physical sales due to filesharing technology, we are saving hundreds and thousands of dollars in promotion and postage.

It's no secret that the internet has revolutionized how musicians conduct their careers, from the intangible connections with far-flung fans to the grittily prosaic details of a touring life. Here's one example: my band The Hold Steady had two critically-acclaimed albums and three years of touring under our belts before we went to the UK for the first

time. Neither of our records had been released there, so we had no idea whether people would come to the shows. But the first night of the tour in Manchester was sold out, with hundreds of people who knew all the words to not even the album B-sides. All of this came from word-of-mouth generated by blogs and Internet MP3 sales. That sort of thing is the visible, more glamorous side of affairs. The more mundane, but also more useful, side has to do with the practical details of touring: booking shows via email and MySpace sites, getting driving directions from Google Maps, finding cheap hotels on Travelocity, keeping on track with phone GPS, finding couches and floors to sleep on through Facebook pleas and couch-surfing networks. And, most importantly, maintaining continuity in our personal lives by keeping up with email correspondence, day jobs and freelance work on club and hotel WiFi networks and talking to significant others and children via Skype from across the country or around the world.

Of course, there is the issue of filesharing. One of the bands I have been in has a fan messageboard with a thread of discussion devoted entirely to uploading and sharing albums. There is, of course, great debate about the merits and morality of free digital filesharing, but on a gut level it's crushing to see an anonymous poster asking for — and receiving — the entire recorded discography of one of my bands, or those of people I know. Because of reliable and legal music download services like Amazon, iTunes, and CD Baby, it is relatively simple, instant, and inexpensive to purchase high-quality versions of almost any album in print. Unfortunately, illegal filesharing has exerted a tremendous downward pressure on the pricing of albums and individual songs, from the \$17.98 high point of CD pricing in the 1990s to the very common \$6.99 or so for a full-album download on Amazon. While the prevalence of this sort of filesharing has undeniable positive effects — the average teenager has a diversity of exposure to music from Afrobeat to hardcore to Bartok string quartets — the cost of making records has not dropped relative to the plunge in record revenue. It still costs money for studio time, it still costs to pay musicians, it still costs to master, make artwork and all the other things that make recorded music a tangible and emotionally meaningful artifact.

My views as a copyright owner over and my feelings as a music fan and consumer are not incompatible. I have no problem with extending a policing responsibility to ISPs in dealing with potentially infringing users. It seems clear that there are many levels of "reasonable actions" that can be taken to shut down obvious nexuses of infringement, the same way that infringements on personal property are handled in "the real world." Yet any attempt to address concerns over unauthorized filesharing must not come at the expense of creators' ability to compete in a legitimate digital marketplace alongside the biggest companies.

For all the disruptive effects of the internet on the music industry, its leveling effect on the barriers to entry into the business is far more valuable. Everyone — amateurs, neophytes, late starters, or simply isolated or unconnected artists — now have a way to get their music to a wide audience at virtually no cost. Every other advance in mass communication since the printing press, including radio and television, has involved a substantial investment in equipment and distribution costs that relatively few can afford, thus leaving the portals to mass communication controlled by those few and powerful

guards. It would be a tragedy for democratic and artistic expression if similar bottlenecks were placed on the internet.

I also believe that the broadband marketplace should be more competitive. At home in Brooklyn, NY I have only one option for home wireless access: Time Warner Cable. Thankfully, New York is a city with hundreds of ways to get online. And on tour, wireless access for touring bands is slowly but surely becoming an expected part of club hospitality, but it is far from ubiquitous and local standards vary greatly. This makes it difficult to maintain a standard of essential productivity on the road.

Musicians are, quite literally, traveling small businesses: businesses whose continuity of operation depends on access to local broadband and wireless. In a strange town, often at clubs and hotels far from the center of the city, if the internet is unreliable or unavailable for any reason, we are cut off from our business for the day. The more broadband is affordable and available, especially in the more isolated areas of the country, the easier it is for us to conduct our day-to-day business of booking hotels, ordering merchandise, paying car rentals, and the minutiae of other activities that are crucial to our day-to-day lives.

In a music world with vastly shrunken resources, free and equal access to high-speed internet is a crucial element in the continued growth of art and culture in the modern world. With CD sales and record company revenues down, the artists depend on touring revenue and cheap, mass distribution to remain viable — neither of which are practical without widespread broadband access and the platform the open internet provides.

I want to thank the FCC for considering this issue and allowing me to express the concerns of this small but vital part of the artistic and small business economy.