



Future of Music Coalition

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House Committee on Small Business
2361 Rayburn House Office Building
Washington, D.C. 20515

June 27, 2007

Dear Chairwoman Velázquez:

Future of Music Coalition respectfully submits this written testimony for consideration in advance of the committee's June 28 hearing on "Assessing the Impact of the Copyright Royalty Board Decision to Increase Royalty Rates on Recording Artists and Webcasters".

Future of Music Coalition is a national non-profit education, research and advocacy organization that identifies, examines and translates the challenging issues at the intersection of music, law, technology and policy. FMC achieves this through continuous interaction with its primary constituency – musicians – and in collaboration with other creator/citizen groups.

FMC has been involved in the digital performance royalty debates since our founding in 2000. One of our first successful advocacy campaigns in 2001 ensured the direct payment of recording artists' 45% percent share of digital performance royalties, regardless of whether they have recouped with their respective record labels. We also fought hard to ensure that recording artists and labels each control an equal number of elected seats on SoundExchange's board. FMC's general counsel continues to serve on the SoundExchange board as an artist representative.

www.futureofmusic.org

FMC has also participated in the majority of the prior webcasting rate and reporting requirement proceedings¹ and we have been actively following the most recent rate setting debates.

FMC fully supports the digital performance royalty, but it's important for us to articulate why it's crucially important to implement the royalty structures in a manner that strikes a fair balance between the needs of webcasters and the music community:

1. Terrestrial Radio's Weakness is Internet Radio's Strength

Radio has been important to the music industry. In the traditional music business model, radio was seen as the best – and possibly only – way to "break" a record. Except in some rare cases, breaking a record on commercial radio was a prerequisite to the sale of the hundreds of thousands of copies needed for major labels to recoup costs.

Despite its importance to broadcasters, advertisers, musicians, labels and the listening public, there is mounting evidence that the traditional commercial radio model is broken. As we have documented in two substantial reports,² the consolidation of radio station ownership that has occurred since the 1996 Telecommunications Act has had a dramatic effect on the state of radio for musicians and the American public.

According to our December 2006 study:

- Just fifteen formats make up three-quarters of all commercial programming. Moreover, radio formats with different names can overlap up to 80% in terms of the songs played on them.
- Niche musical formats like Classical, Jazz, Americana, Bluegrass, New Rock, and Folk, where they exist, are provided almost exclusively by smaller station groups and noncommercial broadcasters.

The Telecom Act unleashed an unprecedented wave of radio mergers that left a highly consolidated national radio market and extremely consolidated local radio markets. Radio programming from the largest station groups remains focused on just a few formats—many of which overlap with each other, enhancing the homogenization of the airwaves.

2. Internet radio is an incredibly valuable music platform for musicians, fans and labels

The Internet has already created new ways for artists to promote and distribute their music, to connect directly with music fans, and build communities outside of the constraints of commercial business models. FMC believes that webcasting plays a vital and growing role in this area, both as a new mode of promotion that encourages music sales and builds fan bases, and as a new source for public performance royalties, 45% which go directly to the performer and 50% directly to the sound recording copyright owner (usually the label). As a demonstration of the royalties that digital performances represent, to date, SoundExchange has paid out over \$53 million to thousands of artists and record labels, with payments increasing each year.

FMC supports the continued growth of internet radio. It has the unparalleled ability to develop loyal, worldwide audiences for niche musical genres – from ‘60s rock to contemporary classical to southern blues – something that is incredibly valuable for all the artists and labels that work outside the “mainstream” formats. Small and noncommercial webcasters in particular have proven to be valuable promoters of both independent music and genres that are routinely ignored by commercial broadcasters.

3. Performers and labels should be paid.

We have and always will support the digital performance royalty, and we cannot understate how important these this royalty will become in the future. FMC believes that the music industry’s business model is moving away from “music as a product” and towards “music as a service”. In other words, as internet-based technologies, portable players and cellphones continue to evolve, and as we achieve nearly

ubiquitous wireless access (including wireless access in cars), it's highly likely that consumers will trend away from purchasing music in a tangible form, whether on a CD or via a digital download. Instead, they will pay for *access* to music, whether through a subscription service like Rhapsody or Napster, or via XM or Sirius, or by listening to the myriad of webcasting stations available worldwide.

As business models shift towards "music as a service", Congress must ensure that artists, songwriters, publishers and labels can continue to be compensated for the performances of their work. This means that royalties accrued through performances – whether on internet radio, subscription services, satellite radio, cable TV or terrestrial radio – should be relatively equivalent across different platforms, and continue to be paid directly to performers and labels.

4. Rates should be proportionate to the size of the webcasters.

However, we also believe that the "one size fits all" approach that was part of the March 2007 rate setting decision would be harmful to the small and non-commercial webcasters, and that this would – in turn – harm the artist community. Clearly there's a vast difference between the staffing and revenue generated by a volunteer-run internet radio station and an AOL or Clear Channel. These differences in resources and revenue – not to mention motivation for running a station – makes a tiered system the most sensible solution: charge the big broadcasters a higher rate, and the small webcasters, hobbyists and noncommercial webcasters lower rates that match their revenues and resources. This is consistent with the graded license structure for terrestrial radio where noncommercial radio stations pay a different – and lower – rate than commercial stations, and commercial stations with lower gross revenues pay less than commercial stations with higher gross revenues. A tiered model applied to internet radio ensures artists get paid and small webcasters stay online.

5. Streamline the reporting process.

FMC continues to believe that it's important to develop a reporting process that ensures that even the smallest webcaster can file timely and accurate playlists with

SoundExchange. For years we have urged the development of an authentication database, managed by a neutral third party, through which copyright ownership and performer information would be verified. Such a database would reduce filling time and errors on playlists, thus making sure more money flows directly to artists.

To summarize, FMC believes that large commercial webcasters should pay rates that use their audience size and associated revenue as a means to measure their royalty rates. We also urge the other parties to adopt reasonable rates and reporting requirements for clearly-defined categories of small, noncommercial, college and hobbyist webcasters that will ensure the future development of this medium.

Barring a legitimate middle ground position between the webcasters and SoundExchange, we are very concerned that some webcasters, when threatened with going out of business, will encourage artists to sign away their performance rights as a condition of airplay. FMC has heard of webcasters that have encouraged artists to submit their music to stations for consideration for airplay “royalty-free”. FMC thinks this sets up a terrible precedent in both communities. Artists need small webcasters. Small webcasters need music. And artists deserve royalties. We urge Congress to create a royalty rate structure that doesn’t damage both in the process.

We urge all the parties to work together to strike a balance that recognizes the value of webcasting to creators and listeners, but also properly compensates performers and labels for uses of their work.

Respectfully submitted,

_____/s/_____

Future of Music Coalition

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Kristin Thomson, Deputy Director

Brian Zisk, Technologies Director, and former webcaster

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¹ In April 2002, FMC filed comments in the US Copyright Office's Notice of Proposed Rulemaking on reporting requirements:
<http://www.futureofmusic.org/news/CARPreordingreqs.cfm>

We also filed reply comments in this proceeding, underscoring the undue burden that many proposed reporting requirements would have on small webcasters and questioning the feasibility of the proposed "listener logs". <http://www.futureofmusic.org/news/CARPreplycomments.cfm>

In the same month, responding to widespread confusion about the rulemaking process, FMC published an easy-to-read CARP Fact Sheet that described the webcast license proceedings, as well as royalty and reporting requirements. <http://www.futureofmusic.org/CARPfactsheet.cfm>

In May 2002, FMC's Executive Director Jenny Toomey and Technologies Director Brian Zisk participated in the Copyright Office Roundtable. FMC's testimony underscored the need for multiple licensing levels that recognized the difference between large commercial, small commercial, noncommercial, and hobbyist webcasters. We also called for reasonable reporting requirements and the automation of the reporting process, and we urged the Copyright Office to drop the use of ephemeral copy logs and the threat of perjury for non reporting. <http://www.futureofmusic.org/news/CARPrroundtable.cfm>

FMC expanded on this notion and filed testimony in the Senate Commerce Committee May 15 hearing, "Copyright Royalties: Where is the Right Spot On The Dial For Webcasting?" <http://www.futureofmusic.org/news/senatejudiciarywebcasting.cfm>

In March 2007, FMC issued a statement on the most recent webcasting rates debate, which is available at <http://www.futureofmusic.org/news/webcastingrates07.cfm>

² [Radio Deregulation: Has It Served Citizens and Musicians?](#) (November 2002) and [False Premises, False Promises: A Quantitative Study of Ownership Consolidation in the Radio Industry](#) (December 2006).