

# **Testimony of**

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on Technology in Government  
Hearing on Net Neutrality**

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**Future of Music Coalition**  
Education, Research and Advocacy for Musicians

Members of the Committee and fellow speakers, it's a privilege to appear here today to talk about net neutrality, which is an issue that has enormous bearing on those in the creative community.

My name is Jean Cook. I'm a musician, and also the Interim Executive Director of Future of Music Coalition, a national non-profit education, research and advocacy organization for musicians. FMC works to ensure that artists are able to develop audiences through platforms like radio and the internet. We also care deeply about developing appropriate compensation structures for artists as we continue this rocky transition to a largely digital environment for music.

When the original Napster appeared nearly a decade ago, the traditional music industry was confronted with a troublesome new reality: reproduction and distribution was no longer something exclusive to the big labels and their industry partners — it was now in the hands of the masses. Clearly, this had major implications for copyright and intellectual property, but as FMC said at the time, the only viable alternative to an illegal Napster is a legal one. Since then, we've advocated for a legitimate digital music marketplace that fairly compensates artists and allows for innovative ways for discovering music.

In the remainder of the decade we've seen remarkable examples of using the open internet to connect with audiences and advance their careers on their own terms. Musicians are collaborating, selling merchandise, booking tours and building fanbases via the web. OK Go's homemade YouTube video became an international sensation and led to the band winning a Grammy for best short video. Erin McKeown holds "virtual concerts" around her house that her fans can watch live online from all over the world. Even though she lives in a remote island off the coast of Washington State, composer Alex Shapiro makes a living off of commissions from her myspace page. Meanwhile, there are now countless legal services such as Rhapsody, Pandora, iTunes, eMusic, MOG and Lala that make it incredibly easy for listeners to seek out music. And niche music discovery sites such as Kalabash or Arkiv Music make it possible to delve deep into

catalogues of music from around the world, and classical music is now on the same playing field as the most mainstream services.

These successes are models for a new industry, and they would not have been possible without open internet structures. Net neutrality gives essentially everyone a license to innovate, and we see the results from the artists whose creativity is fueling “music 2.0” as well as the technologists who are designing amazing new ways to experience music.

In the emerging digital marketplace, there are far fewer middlemen or gatekeepers that are holding artists back or imposing conditions on them in exchange for access to listeners. As the digital music marketplace matures, we are keenly aware of the dangers facing the independent and niche music communities if new gatekeepers such as the telecommunications companies were to be given control over what you can experience on the internet.

Although artists have thus far had the benefit of open internet structures that gives them access to the same essential technology as the best-funded companies, there have been troubling instances where telecommunications companies have behaved in a manner that raises serious concerns for artists’ ability to not only reach potential audiences, but also enjoy their right to expression.

One example of the latter came in 2007, when the band Pearl Jam performed at Lollapalooza. AT&T had the exclusive right to the online broadcast of the concert, and during an improvised segment, singer Eddie Vedder made statements critical about then-president George W. Bush. AT&T censored this portion of the broadcast, leaving viewers at home wondering what he was saying. Although this isn’t necessarily a perfect example of non-net neutrality, it does illustrate what can happen when one ISP has sole control over the distribution of content and is allowed to make its own calls about what is or isn’t “acceptable” speech.

Another telling incident also occurred in 2007 when Comcast was discovered to be interfering with the delivery of internet data using the BitTorrent protocol. While there are clearly those who use torrent technology to illegally share copyrighted material, the technology itself is perfectly legal, and is in fact used by fully licensed audio-visual companies like Vuze (as well as other mainstream providers) as an efficient way to deliver content. An AP reporter attempted to send a copy of the King James Bible – which is in the public domain – via BitTorrent, but Comcast interrupted the transfer, thereby confirming the ISP’s “throttling” of BitTorrent traffic. Ultimately, the FCC ruled that Comcast had violated its net neutrality principles, but the order has been appealed by Comcast and is awaiting judgment.

With new FCC Commissioners in place it finally appears that expanded net neutrality principles will become part of the “rules of the road” for the internet. The transparent process the Commission launched with its October 22 Notice of Proposed Rulemaking rightfully recognizes that there are a great number of stakeholders, including creators and the public, whose voices must be considered as the FCC goes about crafting net neutrality policies. We’re also pleased to see two new principles added to the Commission’s draft rules — one that would not allow ISPs to prevent their customers from using legal devices, applications and services of their choosing, and a “non-discrimination” principle that would keep ISPs from unnecessary blocking or throttling of data, and would compel them to publicly disclose their network management techniques.

It is important to remember that these proposed rules apply only to lawful content, sites and services, which leaves room for discussion about ways to prevent the unlawful sharing of content. This is an important distinction. Ensuring compensation for rightsholders is hardly incompatible with net neutrality. There are currently conversations about possible technological solutions to the illegal transfer of copyrighted content, but such discussions need not compromise the goal of establishing clear and transparent rules for net neutrality. In fact, net neutrality is critical to continue to nurture and support innovation and legal, licensed services as an alternative to piracy. In our quest to ensure proper compensation for creators and rightsholders, we must be careful not to

compromise what makes the internet such an incredible platform for innovation, expression and entrepreneurship.

On behalf of Future of Music Coalition, I am pleased that the Committee is giving this matter the attention it deserves as the FCC undertakes a thorough and open process that will hopefully ensure that the internet remains an unprecedented space for creativity, commerce and the exchange of ideas. Thank you.