

Testimony of

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On

**“The Universal Music Group/EMI Merger
and the Future of Online Music”**

Hearing

**Senate Subcommittee on Antitrust, Competition
Policy and Consumer Rights**

June 21, 2012

Chairman Kohl, Senator Lee and members of the committee, it is an honor to submit the following testimony for the record in such an important hearing.

My name is Casey Rae, and I am the Deputy Director for Future of Music Coalition (FMC), a national research, education and advocacy organization for musicians. I am also a recording artist, producer and small label owner. Each of these roles has provided me with valuable insight into how the independent music sector functions on a practical level, as well as how technology has impacted artists and songwriters in positive and less-than-positive ways.

The organization that I represent, Future of Music Coalition, works to ensure a diverse musical culture where artists flourish, are compensated fairly for their work, and where fans can find the music they want. For more than a decade, FMC has helped musicians and independent labels navigate a complex and evolving marketplace for music.

This testimony was compelled by concerns over the proposed acquisition of EMI Music by Universal Music Group (UMG). A majority of these concerns can be extended to a deal in which Sony/ATV aims to acquire EMI Music's publishing assets. If approved, these acquisitions would provide UMG with more than 40 percent market share in recorded music in the U.S., and would make Sony the biggest music publishing company in the world. Effectively, two major record labels would have tremendous influence over crucial online access points, with the power and incentive to curb the very kind of innovations that drive the new music economy.

As a staunch advocate for musicians, I am concerned with how a more powerful UMG could affect the playing field for creators, especially online. It is common knowledge that the internet is an extraordinary tool for the exchange of information and ideas. It is also a powerful engine of creative expression and commerce. New digital music services, for example, offer consumers access to a wide range of repertoire at relatively modest costs. Artists, once restricted from the broader marketplace by gatekeepers and middlemen, now have unprecedented access to audiences. It is

encouraging that there are more legal, licensed online music services than at any time in the past. Yet the compensation structures and feature sets of these services vary, in part due to the influence the major label system wields over the music marketplace. Should this acquisition go through, we could see a vibrant ecosystem of creative expression and innovation compromised by just a couple of companies with tremendous leverage over which platforms are allowed to exist and how they function.

The current environment for music conglomerates is hardly the epitome of competition, but it can at least be said that no single major record label or publisher dominates the market. The biggest players hold approximately similar market shares, which helps maintain a competitive balance. In turn, this encourages transparency and broader dissemination of music as companies compete to make more of their content available across digital platforms. Absent sufficient competition, UMG may be tempted to recreate scarcity and withhold catalog — through direct refusal to license, or by making the burden of lawful acquisition too great for the majority of market entrants. In a cruel irony, such behavior would ultimately fuel the scourge of unauthorized distribution that so many of us seek to eliminate.

Musicians are consumers. Many of us are also entrepreneurs who run small businesses that are seeking a foothold in a complex and evolving marketplace. The artists, managers and independent labels with whom Future of Music Coalition engage believe that the new marketplace must be built on not only the development of innovative platforms, but also direct access for creators and mutually-rewarding licensing terms.. Our extensive documentation of the effects of consolidation in other sectors, such as commercial radio and ticketing, does not indicate an increase in artist access or leverage. In fact our research has quantitatively shown the opposite. This leads us to conclude that, to achieve a robust and legitimate digital music marketplace, there must be active participation by a diverse array of players, as well as a high level of competition rather than market concentration.

We understand that musician and performer unions such as the American Federation of Musicians (AFM) and the American Federation of Television and Radio Artists (AFTRA) have shown support for the merger. Both of these groups do incredible work on behalf of musicians and performers, and have long histories in advancing and protecting the rights of American creators. However, it is difficult to see how this proposed merger would benefit musicians, songwriters and composers.

Conversely, a recent letter to the committee from the International Federation of Musicians (IFM) echoes many of the points outlined in this testimony. As the letter states, “The problems that artists have been facing in the traditional market for many years are even worsening in the digital world, from which they usually receive insignificant incomes. Should the merger be authorized, artists would lose one of the remaining four alternative routes to access the mass market... According to our members’ experience of similar mergers in the past, the new duopoly would also mean less investment, lower quality, fewer jobs, narrowed consumer choice as well as reduced cultural diversity.”

The question of competition is important and germane to the regulatory review of the proposed merger(s). Likewise, the impact on consumers must be taken into account. However, as previously mentioned, musicians are also consumers, and more than ever before, they must be viewed as stakeholders in such an examination. More crucially, because of the nature of today’s marketplace, independent and unaffiliated artists will be affected by whether these mergers are approved. Therefore, the independent sector must be factored into any appraisal of the overall health of the music marketplace.

There is still much to be done to identify and nurture business models that make sense for both creators and consumers. The persistent issues around licensing may be outside the scope of antitrust review, but their resolution is nonetheless central to the growth of the legitimate digital music marketplace. If the history of digital music is any indication, greater market concentration may mean we never see tomorrow’s amazing innovation. Worse, we may not be able to achieve the kinds of structural reforms that could help

more creators get paid more often, while eliminating the incentive to piracy. In other words, preserving a level playing field for musicians and innovators built on competition and access necessitates a rejection of these proposed mergers.

Putting too much power in the hands of massive players would marginalize competition and artistic expression. First, there is the fundamental matter of promoting diversity in musical culture, with clear onramps to potential audiences. Second, there is the need to ensure that musicians and songwriters receive monies owed, and under equitable terms. Even today, the major labels are able to dictate compensation structures on emerging platforms and tilt the balance in their favor through a range of demands on digital music services. Independent and unaffiliated artists simply do not have the leverage to compete, but we experience the downstream effects of such deals. More market power in the hands of fewer companies means that any influence we have — however slight — would be further diminished.

Growing the legitimate digital music marketplace is in the best interests of the entire music community. This goal is not advanced, however, by further concentration in the recorded music industry. We thank the committee for its attention to these issues, and advise that your evaluation take into account the experiences of the independent artists and labels that power so much of today's music marketplace.

Thank you for the opportunity to offer my perspective on these matters.

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