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Senate Judiciary Subcommittee Briefing: Scope of Music Rights within the DMCA
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Thank you Chairman Tillis. And thanks as well to your Senate colleagues and the Subcommittee's professional staff for holding this briefing. While the subject of "the scope of exclusive rights in sound recordings" may seem far from the minds of Americans during this time of a pandemic, I assure you the issue is timely, especially as our fellow citizens turn to music to get through this crisis.

As the Chair and interim CEO of the Recording Academy, as well as a record producer and songwriter myself, I feel qualified to tell you about the state of recording artists in the wake of COVID-19. American musicians are struggling right now; among the first to feel the brunt of closures and cancellations, we will certainly be among the last to return to normalcy—if that is even possible. The situation is similar for artists all over the world, with one glaring and inexcusable exception.

Let's pick any developed country and gauge the artist's plight. In the U.K, artist income has been drastically reduced as social distancing has shuttered venues and canceled performances. But people can still listen to music on the radio and thus British artists get paid for that airplay. In Canada too, live music is canceled, but artists still can earn some income from their music on the radio. In Germany, France, Mexico, Japan....every country in the world with a developed economy pays performers when their work is played on the radio. This income is not charity; it is paid to them as a fair economic transaction.

Which brings me back to that glaring and inexcusable exception, the United States of America: the one country in the world that should be a leader in free market transactions, a leader in protecting intellectual property, and a leader in assuring fair pay for one's work. Yet sadly, we are the one country that does not recognize a performance right for sound recordings.

Not only are we out of step with the rest of the world, we're out of step with our own values.

Radio is the only business in America that can use someone else's intellectual property without permission or compensation. Fixing this copyright anomaly should be a priority of the Senate Judiciary Committee.

For years, we have worked with the National Association of Broadcasters to try to resolve this historic injustice. We have passed legislation out of committees in the House and Senate, we have engaged in years-long negotiations, and we have had business-to-business conversations. We want to treat radio as partners, just as we partner with every other music platform. Ultimately, the NAB has opposed every effort.

But the game changed this Congress with the introduction of the Ask Musicians for Music Act, or the AM-FM Act.

Previous efforts to resolve this issue focused on bringing radio into the same legislative regime as internet and satellite radio—including a compulsory license that allows them to play any recording for a fee determined by a rate court— but faced persistent objections from the broadcasters. So Senator Marsha Blackburn and Representative Jerry Nadler introduced the AM-FM Act to address these objections. The bipartisan, bicameral bill simply allows the marketplace to find the solution.

The NAB objected to previous legislation because they said radio was promotional. OK, the AM-FM Act allows musicians to give their music to radio for free if they want.

The NAB objected to previous legislation because they said it was a “tax.” OK, the AM-FM Act dismisses this absurd argument as any fee paid would be a private transaction.

The NAB objected to previous legislation because they said it would put small stations out of business. OK, the AM-FM Act caps music royalties for small stations at less than one dollar and fifty cents a day.

With all of the NAB objections addressed, you might think they would support the legislation and be willing to let go of their historic anti-free market loophole.

On the contrary, instead of meeting artists halfway, particularly in our greatest time of need, they oppose the AM-FM Act. They turn to Congress not to seek mutually beneficial solutions, but to seek new unfair advantages—asking Congress for access to small business loans for some of the largest media companies in the country and having government advertising directed to their companies over their competitors.

Any future relief package should get people back to work, not give industries unfair advantages. Unfortunately, musicians will not be able to get back to live performances soon, so the next stimulus should ensure they get paid fairly for their music that has been a lifeline for our fellow citizens. As the Section 512 study showed last week, there are many ways Congress can do more to help the music community, such as including the AM-FM Act in the next COVID-19 bill.

Certainly, fairness and economic logic dictate that no “giveaways” for broadcasters should be included in the next stimulus bill unless their historic injustice to artists is ended once and for all. The radio industry is celebrating its 100 anniversary this year. Can we all agree that a century is long enough for radio to join every other platform and every other country in paying fairly for the music that drives their business?

Just two weeks ago the NAB CEO, Gordon Smith, told his members: “We don’t know how long this pandemic will last, or what the lasting effects of it might be on our economy. But there is one thing I do know... broadcasters endure.”

I wish I could tell our members the same thing.

In this crisis, many workers are sadly not getting paid because their work is not needed at this time. But on radio, musicians are not getting paid *while their work is needed more than ever*. The current crisis has shone a bright spotlight on this injustice. And the time to fix it is now.

Thank you.