

Hearing on
The Future of Audio

Before the
House Committee on Energy and Commerce
Subcommittee on Communications and Technology

Testimony of
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Good morning Chairman Walden, Ranking Member Eshoo and members of the Subcommittee. My name is Ben Allison, I am a musician, composer and producer based in New York. I am also a board member of the New York Chapter of The Recording Academy. Outside the beltway, The Recording Academy is best known for producing the GRAMMY Awards. But here in DC, the Academy is the trade association representing music creators — more than 20,000 performers, songwriters and studio professionals. I want to thank the members for the privilege of being able to share my perspective as an artist, and to represent The Academy.

In less than 24 hours, I'll be traveling the Bonnoroo Music Festival in Tennessee to perform with my band. But the music created at Bonnoroo will not be confined to the 80,000 people attending the concerts. Like many festivals, Bonnoroo will offer live streaming of performances, while internet radio services like Pandora will offer Bonnoroo-themed stations. This is just one example of why I'm excited about the Future of Audio. New technologies will allow us to connect to more fans in new and innovative ways.

Internet and satellite radio are growing exponentially as a source for fans to access music. I'd like to focus on three issues regarding these new technologies: discovery, audio quality and compensation.

Discovery

As for discovery, the infinite possibilities of stations on Internet radio and the niche genres available on satellite have given more artists a chance to be heard that would never be played on AM or FM radio. The beauty of Internet radio services like Pandora is that song selection is blind to popularity and is simply based on matching tracks to the consumers' tastes. So artists without large promotional budgets will be played if the music suits the listener's ear, and a new fan may be born.

As a board Member of the Recording Academy's New York Chapter and a working musician on the New York music scene, I meet many young and emerging artists who are using these new services to connect to fans. And a number of niche styles of music that never get played on AM or FM radio are finding homes on Internet radio. And these platforms don't only provide promotion, they provide compensation—to artists and songwriters.

Audio quality

Early on, the transition to a digital marketplace had led to the use of inferior listening formats and resulted in there being less of an emphasis on sound quality. One of the results of this is a "disposable" attitude toward consuming music—there is less perceived value in the music itself. When people actually hear higher quality sound the difference can be very apparent—like going from black and white to color.

As an acoustic musician, the quality of the sound delivered is of the utmost importance to me. I've chosen my instrument, an 1840 American-made bass, for its pure and nuanced sound. So I want my listeners to hear a recording that sounds as close to the original performance as possible.

The Recording Academy's Producers and Engineer Wing has been very active on the issue of sound quality, working with labels, technology companies and consumers to raise the level of quality.

And now, consumers are waking up. There is a renewed interest in higher quality audio, as evidenced by the desire for premium headphones and higher resolution downloads. Increased bandwidth will make it easier for consumers to access higher quality audio and to make listening to it commonplace again.

Compensation

Noninteractive Internet and Satellite radio services primarily pay performers through a compulsory license, allowing the services to play any song they choose, as long as they pay the rate established by the Copyright Royalty Board set up by Congress. The payments are processed by SoundExchange, a nonprofit entity with oversight that includes artist representatives. SoundExchange ensures that 50% of all payments go directly to performers, and in the past five years, payments to artists through SoundExchange have increased by 400%. The ease of payment to one entity has allowed new businesses to emerge without the burden of multiple licensing deals. And because of this ease of payment to SoundExchange, services have almost exclusively taken advantage of the compulsory license. However, one concern for artists is that services may in the future choose to license directly with record labels. Such a scenario could mean lower payments to artists, which is why performers generally prefer their payment be made through SoundExchange.

Another concern has to do with interactive, or "on demand" services. Unlike Internet radio, the consumer can choose to listen to a particular track whenever they want. Streaming services such as Spotify are currently paying a very low royalty rate—a fraction of a penny per spin. These arrangements are negotiated in the marketplace by the services and copyright owners. As artists, we are told the rates will grow. I hope that's true. We're also told that we are benefitting from the promotion, but promotion should never replace compensation. If on-demand services replace downloads, then that reduces the compensation for creators—and this is a great concern.

The Future of Audio—and the Past

But, ironically, one of the most pressing issues for performers is not about the *future* of audio, but its past. And the concern is not caused by a *new* technology—but rather by one that has been around for more than a century: traditional, over-the-air radio.

Terrestrial broadcasters have an inexplicable “free ride” when it comes to performance royalties. They are exempt from paying performers any royalties when they use our recordings to fuel their multi-billion dollar industry. This makes corporate radio the only business in America that can legally use another’s intellectual property without permission or compensation.

All of the other broadcast platforms—Internet, satellite and cable—pay a performance royalty for sound recordings, regardless of promotion. Every other country in the developed world has such a right. But in the U.S., over-the-air broadcasters are required to pay songwriters—as they should—but not performers.

The previous Congress made great progress in addressing this issue, which led to private negotiations. And in fact, after a year of negotiations, the National Association of Broadcasters and the musicFIRST Coalition (representing artists and labels) agreed on a settlement that would have created a terrestrial performance royalty in exchange for specific rate reductions on simulcasting. Unfortunately, when the NAB Board voted on the deal, they changed the agreed-upon numbers, making it a net loss for the music side, and the deal collapsed.

To add insult to injury, terrestrial broadcasters are now asking for another legislative perk—a mandate to include FM receivers in smart phones. They already exploit one anomaly in the law—they do not pay performers while new audio technologies do. Now they want a second legislative anomaly—to have a free ride—quite literally—on the backs of new devices.

Artists believe Congress should address the first anomaly before there can be any discussion about the second.

One last word on this point—just yesterday Clear Channel announced a deal to pay performance royalties to one record label. With the largest radio broadcaster agreeing that a terrestrial performance right should exist, there is no longer any legitimate argument for the NAB to oppose the right. Congress should resolve this issue once and for all and remove the corporate radio loophole.

Democratization of Music

Finally, I’d like to close by discussing the lower barriers to entry for music creators, often referred to as “the democratization of music.” With new platforms for audio allowing nearly every musician to be in the virtual record store, there’s an ongoing debate about how much music is too much for the consumer to absorb.

I’m a professional musician. I started taking music lessons at the age of nine, went to a performing arts high school, and graduated from NYU with a degree in music performance. I played my first gig at 16. This is my life and my livelihood.

That said, I am delighted that those for whom music is a part-time pursuit can have access to the digital marketplace. And some of those part-timers may be great musicians who might just find

a fan base on Pandora or Sirius Satellite radio and be able to become full-time musicians. More music is always a good thing and quality will always find its place in the market.

But while it's fine for the market to welcome non-professional musicians, we must not allow the market to make music a non-profession. Recently, John McCrea, the lead singer of the band Cake, stated, "Can you put food on the table with music? Probably not. I see everybody I know, some of them really important artists, studying how to do other jobs."

Each one of my fellow panelists here has a role in connecting the music creator to the fan. But they'll have no business if there's no great music. Without the songwriter putting that first note on paper...without the musicians performing that song in ways that move us...without the producer and engineer capturing that performance...there would be no iPods, no Pandoras, no labels, no publishers.

We do not want the next generation of great artists studying how to do other jobs. Music must be respected, content protected online, and all creators compensated.

So let me close by stating one constant in the music industry. In this regard, the future of audio is the same as the past: it is dependent on the creator. And we, distinguished members of the subcommittee, are dependent on you to protect our rights.

Thank you.