

Testimony of
Mr. Billy Straus

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Chairman Leahy, Senator Hatch, and members of the Committee, thank you very much for inviting me to appear before you today. I am truly honored to be here as a citizen of Vermont, Senator Leahy's great home state.

I come before you today as the president of Websound, a small webcaster based in Brattleboro, Vermont. My passion has always been for music of all styles and genres, and though my role at Websound is that of a businessman, I am first and foremost a musician. As a composer, producer, and musical director, I have been nominated for two Emmy Awards for my work with Nickelodeon and Disney Television. I was nominated for a Grammy Award this year as producer of The Full Monty Broadway Cast Album, which was mixed in our Putney, Vermont studios. As a songwriter I own numerous copyrights, which I license through ASCAP and the Harry Fox Agency. My music has appeared in movies, television, on records, and on-line. I have performed with the legendary Chuck Berry and was fortunate enough in 1981 to tour with a young Irish band called U2. My recording credits span artists as diverse as Bruce Springsteen, DC's own a cappella group Sweet Honey in the Rock, and jazz legend Miles Davis. Since childhood, music has played a primary role in my personal and professional pursuits. In the context of this hearing, I hope that perhaps my perspective as both an artist and entrepreneur may be useful to the committee.

In 1995 I founded Rock River Communications, a company that produces branded, private-label compilation CDs sold through many "lifestyle" retailers such as Old Navy, Banana Republic, Eddie Bauer, and the like. For example, the CDs you may have seen for sale at the counter in Pottery Barn stores have all been produced by Rock River.

The inspiration for Rock River grew out of my frustration following the release of a CD I co-produced in the early 90's for the PBS television series *Where in the World Is Carmen Sandiego?* The program, for which I earned an Emmy Award, educated kids about geography, and the CD brought together artists such as Tito Puente and His Orchestra and street-corner, doo-wop innovators the Persuasions, as well as a host of others embodying the geographical diversity of the show. Unfortunately, the CD, still one of my works of which I am most proud, was completely lost in the mainstream music-distribution pipeline, and it never got to its intended audience. Realizing that there had to be a better way to reach those listeners, I contemplated bypassing the major music-distribution channels entirely and going instead to non-music retailers frequented by the audience I was seeking.

Seven years later Rock River has sold hundreds of thousands of CDs through these nontraditional channels, creating new revenue streams for independent as well as major record labels and valuable exposure for emerging talent desperate to have their voices heard. And having just released our fortieth Pottery Barn CD, I can assuredly confirm my original hypothesis

that a large potential audience is not being well served by the mainstream, hit-oriented record industry.

In our compilation business, we work primarily with content licensed from a range of large and small record labels. Our expertise lies in knowing our audience, programming great music concepts, licensing the content, and helping clients merchandise and market the CDs in their stores. Leveraging many of the same skill sets and relationships, my partner, Jeff Daniel, and I decided in 1999 to launch Websound for the purpose of putting great music programming up on our clients' then brand-new websites. As we had helped them transition into the idea of selling music in their brick-and-mortar stores, we would now help them make the same transition on-line, and in the process we would help evolve the Internet from a silent, two-dimensional medium into a fully three-dimensional experience.

The idea fit perfectly with our existing CD business, and in late 2000 we launched EB Radio at Eddie Bauer's website. We subsequently provided on-line webcasts to consumers via the websites of other commercial clients, which include brands such as Volkswagen, Polo/Ralph Lauren, and Pottery Barn. Websound's business originated in my barn in Putney, Vermont, and is now based in the Marlboro College Technology Center in nearby Brattleboro.

I would like to make 3 main points today in my testimony pursuant to the issues at hand:

Firstly, artists must be fairly compensated for the use of their work in webcasts. It is simply not just to build an industry around the proceeds of artistic endeavor without fair compensation to the creators. To do otherwise provides a short term shot in the arm at the expense of a long term liability.

Secondly, we need to create a tiered system of royalty rates in order to encourage innovation and creativity among fledgling and non-commercial webcasters. This will insure that we avoid a perilous situation where the record labels are the only ones who can afford to stream music on the internet

Thirdly, detailed reporting is not only possible, but is a key component in putting an effective tiered royalty system into effect. This can be accomplished without undue burden on either the webcaster or copyright owner, and without running afoul of privacy issues.

Websound is a small webcaster that produces and streams music to our client sites on a "fee for service" basis under a license executed with the RIAA in September 2000. Pursuant to the license, Websound has reported its use of music and remitted royalty payments to RIAA on a monthly basis. We have developed a new technology called "RadLog," designed to streamline our tracking of the sound recordings used in our webcasts. As we announced at the Copyright Office Roundtable last Friday, we plan to make this technology available industry-wide to help address the significant concerns mounting over webcast reporting for statutory licensees.

For webcasters large and small the last several years have been extremely challenging. The 1998 passage of the DMCA, with its statutory webcasting provision, provided an exciting open door for entrepreneurs, creative music programmers, and anyone else so inspired to set up a web server and begin streaming music to the world. But unfortunately the "gold-rush" euphoria surrounding many commercial, music-oriented Internet start-ups hatched a plethora of untenable business models based on inflated projections of

e-commerce revenues, ad revenues, and the ubiquitous dream of a public offering.

Unfortunately, the industry now finds itself struggling to come to grips with the hard realities of "the morning after." For many commercial webcasters fortunate enough to remain in business, we face very difficult decisions in attempting to balance a creative vision and a passion for music with the realities of the marketplace. For those webcasters who have deferred payment of any royalties for several years in anticipation of the CARP determination, the prospect of having to make retroactive payments is painful to say the least. This was very evident at the roundtable on Friday.

Further complicating the situation has been the widespread subjective perception that music on the Internet can or should be available free. Though this situation was most visibly manifested in the Napster controversy, there is no single culprit here. For Websound, one of the biggest hurdles we faced was the devaluation of music by venture-funded competitors who were compelled to give away streamed music for free to commercial clients who would, and should, otherwise be willing to pay. Many such webcasters were operating loosely, if not recklessly, under the statutory license. A number of those competitors have gone out of business, leaving the rest of us to begin the process of trying to build a viable structure out of the rubble.

Smaller webcasters, including Websound, often point to the promotional value that their programs offer to emerging labels and artists. It is important to note that while I believe there is some truth to this claim, nothing contemplated in the DMCA prevents any emerging artist or label from creating its own, royalty-free program as a way of promoting its music if it so chooses. The point is that promotional consideration may not, simply by definition, relieve webcasters from an ethical and/or legal obligation to compensate artists for their work. To use a "real world" analogy, virtually every run of CDs we produce and put into the hands of Pottery Barn consumers provides unquestionably valuable promotional benefit for the artists represented, but we never ask those artists to waive their royalty payment. The business reason is simple: we believe it is crucial to maintain the value in the underlying work, since in the end this is what makes the whole proposition viable. Unfortunately, the Internet has tended to have the opposite effect and the industry is now reeling, in part, from the unintended effects of turning recorded music into a commodity.

The issue of fair compensation for copyright owners must, however, be separated to some degree from the current state of the webcasting business, as difficult as this may be. In my mind there can be no doubt that artists must be compensated for providing the content upon which every single webcaster constructs an offering.

It is also abundantly clear, however, that one size will not fit all. Websound executed its license with RIAA based on a carefully considered set of business parameters, which make sense in the context of our fee-for-service model. The terms of our license, therefore, cannot necessarily be held up as a stand-alone model for other webcasters. It is crucial that we do not force all of the wonderfully diverse sources of music programming out of the system by creating an untenable set of royalty provisions across the board. To do so is surely to sound the death knell for one undeniable promise offered by the Internet: global access to an infinitely broad range of musical expression. To this end, it is surely not fair to subject a small, noncommercial webcaster such as

San Francisco's "soma-fm.com" to the same royalty requirements as a large commercial webcaster like Yahoo, or for that matter a smaller commercial webcaster such as Websound. To respect the rights of copyright holders while not overburdening the small webcaster, we should institute a multi-tiered approach. The thresholds can be tied, in part, to a maximum number of simultaneous listeners, or to a total monthly volume of "performances," for example. Accurate reporting can and will help facilitate these distinctions, and we believe that a reporting technology such as RadLog will form a part of the big-picture solution.

The issue of reporting under the statutory license is very contentious. To the extent that reporting is needed in order to fairly compensate artists, webcasters can and should report on their use of sound recordings. Websound has been doing this successfully for about eighteen months with a total office staff of two people; you can't get much leaner than that. Our experience proves that the reporting can be accomplished, and the minimal monthly expense for a service such as RadLog will ensure that the reporting requirements will not drive the many small webcasters out of business. There is no question that an initial cost will be incurred in setting up a system that serves the industry well and does not overburden either the webcasters or the copyright owners. Specifically, it is crucial that the record labels take the lead in constructing a database that can be made available to the industry for the purpose of streamlining reporting, encouraging compliance with the license, and providing the specific data they require to properly process the royalties collected. The record labels, as the copyright owners, are the logical source of this raw data. I wish to emphasize the importance of creating this centralized database of song information as we look to create a fully functional reporting scenario for the industry.

Terrestrial broadcasters wishing to transmit their programs over the Internet present a separate set of issues. Using the perspective of an industry where promotional consideration is the accepted currency when it comes to sound recordings, it will logically be very difficult to craft a royalty-payment scenario that will be initially viable for many conventional broadcasters. There is no shortcut around this fact, and we must consider the idea that the Internet is better suited to webcasting models focused on the realities of this new medium--the opportunities as well as the costs--than it is to conventional broadcasters looking to "plug in" to a new pipeline.

Websound has survived thus far by leveraging our strengths, staying focused, and keeping our expectations realistic in through unstable times. As an industry, we must recognize that certain entities will undoubtedly cease doing business as a result of the costs and challenges, just as others come into the marketplace with new innovations. We must provide an environment where innovation and creativity are encouraged, but we cannot hope to save every webcasting business. We must also value the artists whose music is central to the industry, but not at the expense of creating a scenario where the only companies able to afford streaming music online are the record labels who own the copyrights.

It is my belief that a viable, flourishing webcasting industry made up of a range of participants from the smallest noncommercial entities to the largest commercial outlets is feasible under a tiered license that provides opportunity based on realistic concessions from both the webcasting community and the copyright owners.

Thank You.