

Testimony of

# The Honorable Orrin Hatch

May 15, 2002

"Mr. Chairman, thank you for holding this hearing today. I think it is important to continue our ongoing conversation about digital entertainment in general, and about Internet distribution of music specifically.

"I believe our discussion today needs to be viewed in a larger context of ongoing developments in the online music sector that we have been monitoring for the past couple of years. For about two years now, Mr. Chairman, we have been encouraging the exploitation of technology like the Internet to deliver the wide range of music that listeners want in a user-friendly way. We have encouraged online experimentation and broad licensing of popular content to foster the growth of this medium. We have hoped for the harnessing of technology and the creativity of intermediaries to create synergies that allow artists and their audiences a new and closer experience. For the better part of six or seven years, since creating a digital performance right in sound recordings in the copyright law with the Digital Performance Right Act of 1996, I have repeatedly expressed hope that we were on the verge of a well-stocked, ubiquitous, and user-friendly "celestial jukebox" that not only would allow music fans easy access to music they love, but provide artists greater freedom to interact with their fans and increased income from the exploitation of their works.

"Let me suggest, with some substantial understatement, that we are not there yet. Indeed, over the past two years of litigation and some licensing activity, piracy over peer-to-peer networks has gotten worse, and the online music market has gotten more consolidated. This is the wrong direction. Consequently, Mr. Chairman, I have sent you a letter outlining my concerns and suggesting legislative items for us to develop that can help the online music market grow for music fans and help to ensure that more of the benefits of online opportunities accrue to the artists. I would ask that my letter to you be included as part of the record of this hearing. Among the topics I think we should discuss are the following: First, artists ought to be able to exploit or benefit from works that are not being exploited by the labels that currently hold the copyright, such as out of print works. Second, artists ought be paid their online revenues directly and those

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revenues should not be unfairly discounted because of traditional, but inapplicable, offsets. Third, artists should be able to keep their own online identifiers, their domain names, so they can more directly control their relationship with their fans online. Fourth, we need to explore how to make copyright ownership information available through the Copyright Office more accessible and usable through the Internet. Fifth, we must help ensure that market power in content is not unfairly aggregated to the detriment of other legitimate distributors of online music who seek fair licensing opportunities.

"Finally, Mr. Chairman, I am glad that we have an artist's viewpoint represented at this hearing. Mr. Navarro represents many, many artists who are also the smallest of small business people who hope to enjoy some of the benefits digital distribution offers. To round out the input of artists in this process, Mr. Chairman, in addition to Mr. Navarro's testimony here today, I received a letter from Mr. Don Henley, on behalf of the Recording Artists Coalition, submitting written testimony for this hearing and also outlining briefly some broader issues that we should consider as we continue our look at this industry. I would ask that this letter and statement be included in the record of this hearing. Without these artists - both famous and not so famous - there would be no music to distribute online, and no businesses to distribute it. Our lives are richer because of their work, and whatever we do, we need to ensure that they continue to have the incentives necessary to create great music and to share their music with us, irrespective of the medium that brings it to us.

"With that, Mr. Chairman, I look forward to our continued conversation on these issues."

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