Testimony of

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Before the Senate Judiciary Committee
Subcommittee on Intellectual Property

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Good afternoon, Chairman Hatch, Senator Leahy and Members of the Subcommittee. I am Irwin Robinson, Chairman and Chief Executive Officer of Famous Music Publishing. I thank you for allowing me to submit written testimony about music licensing reform.

I also serve as Chairman of the Board of the National Music Publishers' Association ("NMPA"), the principal trade association representing the interests of music publishers and their songwriter partners in the United States. For more than eighty years, NMPA has served as the leading voice of the American music publishing industry -- from large publishing businesses to self-published songwriters -- before Congress, the administration and in the courts. The approximately 600 music publisher members of NMPA, along with their subsidiaries and affiliates, own or administer the great majority of the musical compositions licensed for manufacture and distribution as phonorecords in the United States. It is important to distinguish the copyright in these musical compositions, which form the foundation of today's music industry, from the copyright in the sound recording of an artist's rendering of those compositions. Both ingredients -- the "musical work" and the "sound recording" -- are essential to make music available as the public knows it.

The Role of Music Publishers in the Music Industry

A music publisher is a company or, in many instances, an individual, that represents the interests of songwriters by promoting their songs and by licensing the use of their songs for reproduction and distribution in CD's, on the Internet, through public performances, and exercising the other rights available under the copyright law. The role of the music publisher is to represent the interests of the songwriter.

Music publishers play an integral role in both the business and creative side of the music industry. Music publishers are often involved at the very beginning of a writer's career. After signing songwriters to a publishing deal, publishers will do everything from helping writers find co-writers to securing artists to record writers' songs. Often when a songwriter retains a publisher, the publisher will advance desperately needed money to the songwriter to help him or her survive so that the writer can focus on what he or she does best - write music.

Primarily, music publishers administer copyrights, license songs to record companies, digital media companies, television companies, and any other users, and collect royalties on behalf of the songwriter. These administrative duties are made easier by the Harry Fox Agency ("HFA"). Founded in 1927, HFA, a wholly owned subsidiary of the NMPA, provides an information source, clearinghouse and monitoring service for licensing musical copyrights, and acts as licensing agent for more than 27,000 music publishers, which in turn represent the interests of more than 160,000 songwriters. Since its founding, HFA has provided efficient and convenient services for publishers, licensees, and a broad spectrum of music users. With its current level of publisher representation, HFA licenses the largest percentage of the mechanical and digital uses of music in the United States on CD's, digital services, records, tapes, and imported phonorecords.

Online Music Licensing Reform

I thank the Subcommittee for holding a hearing on online music licensing reform. Music publishers have taken great strides in helping digital media companies launch new services to compete with illegal file sharing companies, and we will continue to facilitate the legal sale of music in the digital world. NMPA has been in negotiations regarding the licensing by online subscription services of on demand streams and limited downloads in an effort to formulate solutions that will ensure the availability of all songs for licensing by subscription services and guarantee a level playing field for the determination of rates. Recently, the Copyright Office drafted a legislative proposal, which would abolish the mechanical compulsory license of Section 115 of the Copyright Act and create new Music Rights Organizations ("MROs") to license collectively performance and mechanical rights. As a music publisher, I am very concerned with the Copyright Office proposal and believe it is fatally flawed. Conversely, NMPA, the American Society of Composers, Authors, and Publishers ("ASCAP"), and Broadcast Music, Inc. ("BMI") have proposed a solution, which better respects property rights, protects creators, and addresses the needs of licensing reform for the digital age. Our proposal, called a "unilicense" would truly create one stop shopping where online subscription services could obtain a blanket license covering performing and mechanical rights through a Super Agency administered by NMPA and the Performing Rights Organizations ("PROs"). Songwriters and music publishers believe the unilicense proposal is a superior proposal that would appropriately balance the needs of the marketplace with the interests of copyright owners. The unilicense proposal also enjoys the support of Nashville Songwriters Association International ("NSAI") and the Songwriters Guild of America ("SGA").

Today the emergence of new technologies is set to change the music industry forever. Through my work in the music publishing industry for nearly 48 years, I have experienced first hand the evolution of the music industry into the digital world. Although illegal "peer-to-peer" services continue to dominate Internet delivery of music, the success of several lawful online music services has finally begun to fulfill the promise that the Internet offers as a legitimate marketplace for music. Additionally, I am hopeful that the Supreme Court ruling in the MGM v. Grokster decision will be the boost that legal online music services need to triumph over illegal music services.

Nearly four years ago, in order to combat the theft of music and ensure the lawful availability of musical works online, through NMPA/HFA, publishers, including my company Famous Music Publishing, made the historical decision to empower legitimate subscription services by entering into a "use now, pay later" licensing system. In the fall of 2001, NMPA and HFA entered into an agreement with the Recording Industry Association of America ("RIAA") to assist the launch of

new subscription services by creating a framework for mechanical licensing of such services to offer limited, or tethered, downloads and on-demand streams despite the fact that agreement had yet to be reached as to the applicable royalty rates. In that agreement, the parties agreed to make licenses available immediately on a bulk basis with the understanding that licensees will pay royalties at a future date when rates are determined, either by agreement or arbitration. The parties further agreed to clarify the scope of rights licensed in order to avoid disputes -- and potential litigation -- in favor of jump-starting new businesses. All parties to the agreement stipulated that on-demand streams and limited downloads involve a mechanical right, and that pure "radio-style" streaming does not involve a mechanical right. In the wake of that historic agreement, HFA on behalf of publishers entered into similar agreements with independent subscription services on essentially the same terms. These agreements paved the way for the launch of a wide array of subscription services offering a broad repertoire of music to online subscribers.

Indeed, music publishers have every economic incentive to issue as many licenses to new, legitimate Internet music services as possible. It is only through such license agreements that music publishers and songwriters are compensated. For this reason, the songwriting and music publishing communities have consistently worked with new businesses to promote broad public access to their works on fair and reasonable terms. Time and again, when called upon to help jump-start new distribution channels for their music, songwriters and music publishers have risen to the challenge.

While the influx of new online music companies that want to offer immediately every song ever written has put an enormous strain on the music publishing industry in licensing mechanical rights, music owners have made a Herculean effort to satisfy that demand. As of today, HFA's publisher clients have issued almost 3 million licenses to at least 385 different licensees for digital delivery of musical works. These licenses represent the vast majority of musical works for which there is any meaningful level of consumer demand.

Despite the continued assistance music publishers have provided to online music distribution, I recognize the need to reform Section 115 of the Copyright Act. NMPA has been engaged in ongoing discussions with the Digital Media Association ("DiMA"), the RIAA, the Recording Artists' Coalition ("RAC"), National Association of Recording Merchandisers ("NARM"), NSAI, SGA, ASCAP, BMI, SESAC, Inc. and the U.S. Copyright Office for several months trying to find a solution that would ensure the availability of all songs for licensing by subscription services and guarantee a level playing field for the determination of rates.

On June 21, 2005, the Register of Copyrights presented a legislative proposal to the House Judiciary Subcommittee on Courts, the Internet, and Intellectual Property. As The Copyright Office proposal would repeal the current mechanical compulsory license provision of the Copyright Act (Section 115), and replace it with an entirely new structure. This proposal would mandate that current PROs become MROs, which would be required to license both performance and mechanical rights. The new MROs would offer blanket licenses to digital music services that combine both the public performing right and the mechanical rights needed for making the various kinds of digital audio transmissions of music to consumers.

As I stated before, I find the Copyright Office proposal severely flawed. First, I believe the Copyright Office proposal would impose more government control over the music industry and would not result in a free marketplace system. By mandating that PROs become MROs and tasking these new MROs with administering both performance and mechanical rights, the Copyright Office proposal may subject mechanical rights to the same rate courts under consent

decrees, which govern some PROs. The Copyright Office proposal does not clearly address whether the rate courts that currently govern some performing rights organizations would apply to mechanical rates. More than likely, mechanical rate negotiations would be subjected to these same rate courts, resulting in more government control over negotiations rather than less. Merging mechanical and performance rights into one rate proceeding would also reduce the small amount of bargaining power that songwriters have. Record companies currently do not have a rate court imposed on them, so they are free to negotiate in a free market without government regulation. This proposal does nothing to level the playing field.

Second, the Copyright Office proposal would have severe economic ramifications and would be very harmful to the music publishers and songwriters. The Copyright Office proposal would put the Harry Fox Agency, the primary mechanical licensing agency, at a severe competitive disadvantage since it would take away a substantial section of its business, administering mechanical royalties in the digital world, and forcibly give it to PROs by statute. The most likely result of the Copyright Office proposal is that HFA will be left with only licensing mechanical rights in the physical world, threatening its viability all together. Additionally, the Copyright Office proposal would force PROs to build a mechanical rights licensing, collection and distribution infrastructure, which would involve a large capital cost and additional operational overhead, thereby reducing royalty payments to writers and publishers. There are many other complications, such as splits that can differ between performance and mechanical royalties. The proposal also devalues mechanical rights by combining them with performance rights, thereby reducing royalty payments to writers and publishers.

Third, the Copyright Office proposal would create more confusion than the current system. It was the Copyright Office's intent to create one (or three) stop shopping for the digital media companies who sell the property of songwriters and artists. However, it is entirely conceivable that several MROs could emerge and complicate things even more. The publishers, especially large multinational publishers, may decide it is more economical to create their own MROs and license directly.

I believe our unilicense proposal is a superior solution to the Copyright Office proposal. The unilicense would balance the needs of the marketplace with the interests of copyright owners. The goal sought by the Copyright Office -- to have one place to obtain the performance and mechanical rights needed for a single price - is achieved in the unilicense proposal. The unilicense would create a Super Agency, which would issue to digital subscription companies a blanket license covering both performing and mechanical rights in exchange for a percentage of the digital media company's revenue. Under the uniliense proposal, a designated mechanical agent and designated performance agents would administer royalties and distribute them to the appropriate writers/publishers. The unilicense proposal addresses the areas of most critical need raised by digital media providers - access. It maintains existing licensing structures, thus eliminating any additional administrative expenses, while reaping the benefits of many decades of licensing experience and expertise.

I am hopeful that the market place can address many of these concerns without government intervention, and there has been much progress in recent months. However if Congress chooses to make changes to the music licensing process, I believe any Congressional action should move toward a free market and respect property rights. In that vein, NMPA supports eliminating Section 115 of the Copyright Act and truly allowing the marketplace to govern the music industry. NMPA also supports eliminating the government's control over rates at which songwriters are compensated. If Congress acts, I respectfully request it act consistently with free

market principles and deference to property rights.

Again, I appreciate the opportunity to submit testimony to the Subcommittee. I believe a level playing field is essential in order to ensure the availability of all songs for licensing by subscription services, and to guarantee that songwriters and music publishers obtain fair rates for their creative works.