Testimony of

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Mr. Chairman, members of the committee, thank you for the opportunity to be here this morning. My name is Ali Aydar, and I am the Chief Operating Officer of SNOCAP. SNOCAP is a one-stop solution and technology platform for digital licensing and copyright management, designed to bring more music to more people through more channels, including authorized peer-to-peer networks that respect copyright.

Almost ten years ago, I met a teenaged computer programmer named Shawn Fanning, and six years ago, I joined him at an unknown music file sharing service called Napster. The lessons we learned at Napster shaped our vision of a flourishing digital music marketplace that we're working to enable today, one that meets the needs of copyright owners, online retailers and consumers. I appreciate this chance to share some of our thoughts with the Committee.

Lessons Learned from the Past

Napster was created by Shawn Fanning in 1999. These were the days when, for the most part, only universities and large corporations had broadband Internet access and the digital music "market" consisted of searching for links to mp3 files to download. Search engines at the time were far less advanced than they are today, and many of the links were "dead." Shawn wrote a piece of software that created a real-time list of files available to be downloaded, and sent it to a few friends. Before we knew it, the application had been downloaded by thousands of people -- and the rest is history.

At the time (and likely still today), Napster was the fastest growing Internet application of all-time. At its peak, the company had 85 million registered users and 2 million simultaneous users around the world. People everywhere loved Napster, and it wasn't just because Napster enabled free access to millions of music files. It was because Napster reconnected people with long lost music and memories, and created communities of like-minded listeners.

Aside from the individual benefits experienced by Napster users, broadband growth exploded, millions of PCs were sold with expanded hard-drives, and a struggling computer company named Apple released a pocket-sized device called the iPod on which consumers could store thousands of songs. Related to Napster or not, the growth in these areas occurred concurrently with a slump in the record industry.

Napster came a few years before its time. While consumers were clearly ready to obtain their music digitally, the recording industry and music publishers were not yet

ready to embrace the digital channel. Despite Napster's best efforts to transition to an authorized business model, the company was forced to file for bankruptcy after nearly two years of litigation. From its ashes sprang hundreds of new P2Ps, designed specifically to skirt the law that was established in the Napster case. I'll speak more about those later.

We learned many things from our experience at Napster that stay with us to this day and inform our efforts at SNOCAP. Allow me to share a few of the things I learned.

First, as I mentioned, we learned that consumers were ready for digital music long before the recording industry was ready or even able to provide it. By the late 1990s, the Internet had become a central part of our lives, and consumers were ready to get their music through the Internet

Second, we learned that it wasn't about free, it was about having every song or symphony or speech you ever heard, no matter how exotic or obscure, at your fingertips. It was about being able to hear that music however and wherever you wanted: at your computer, in your car, on your stereo, at the beach -- an unlimited jukebox to satisfy everyone's musical tastes that couldn't be fulfilled through traditional retail channels.

Until the Internet came along, the economics of retailing and the physical space involved made it impossible to carry an unlimited inventory of less popular music. Most record store inventory was centered on the "hits" -- content that would sell more than just a few copies. In industry terms, this is known as the active catalog. The active catalog includes not only popular new content, but also older content from artists that are still popular (e.g. the Beatles, Johnny Cash, Pink Floyd, Jimi Hendrix, Barbara Streisand, Elvis Presley, and others). That left out the thousands of releases that sell only a few copies a year. In the past, labels usually removed albums that did not sell 2000 copies a year from their catalogues. While labels retain ownership of these less popular albums in most circumstances, they do not actively manufacture, distribute or promote. There are tens or hundreds of thousands of albums in this category.

Finally, we learned of the tremendous meaning music has in many people's lives. Whether it's the music you heard your parents listening to when you were a child, the first song you danced to, the hits of your high school years, your first concert, or your most recent one, music connects to our emotions, and no one other than you can decide what music is meaningful and how.

Overview of Today's Digital Music Market

Fast forward five years to today. There are hundreds of authorized outlets for digital music, and sales are growing. Around 2 million songs are now available on authorized digital retailers, and according to a study by the NPD Group in June, 2.8% of US households have downloaded paid music over the Internet. However, with more than 100 million people using unauthorized P2P services, most digital music users have come to expect access they don't get from authorized services. Over 25 million tracks are

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available on the hundreds of unauthorized networks that sprang up to skirt the case law that Napster established. For the most part, these services operate with no centralized architecture, meaning there is no switch to flip to stop them from proliferating. Additionally, subsequent generations of P2P services have gone further underground (these services are sometimes referred to as darknets).

In my opinion, increased "access" is the key to allowing the legitimate marketplace to reach its potential. The challenge is to figure out how to get more content through more channels so that music fans can legally obtain access to the same variety of music that is available to them on

P2P services, while ensuring that the legitimate interests of copyright holders are protected. Even today, significant barriers to this kind of access remain in place.

Record labels are burdened by the needs both to digitize and obtain copyright clearances for their vast back catalogs, and to develop and maintain relationships with the hundreds of retail outlets that want to sell their content online. This is a drastic change from the way business is done in the physical world, where labels have historically only dealt with a few distributors for their national and global needs.

Smaller labels and artists, which have gained some ground due to the creation of independent content aggregators, often have a difficult time getting the attention they need.

Would-be retailers of digital music face a parallel set of challenges. First and foremost, they can't offer their consumers a selection comparable to what is available on the P2P services. To do so would require the enormous effort of locating and negotiating deals with tens of thousands of copyright owners, or more.

It is inaccurate to say this is the fault of the record labels or the retailers. Today, there are literally hundreds of thousands of living copyright owners. Each on-line retailer would have to strike an enormous number of direct deals to match the number of tracks the existing P2Ps provide -- a legal, economic, and practical impossibility. This difficulty narrows consumer choice: your favorite local garage band or gospel choir is not likely to get picked up by the existing authorized services.

Without the broad selection of the unauthorized P2Ps, sales volume remains relatively low for the authorized P2Ps, which means these retailers have a difficult time sustaining their businesses. This challenge, coupled with the fact that retailers have but a few digital music business models from which to choose, make it difficult for the market to flourish.

So, fans are stuck between the limited selection of today's authorized services, and the poor user experience offered by the unauthorized P2Ps - adware, spyware, viruses, spoofed files, pornography... not to mention the fact that copyrights are not respected and users risk being sued.

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The SNOCAP Solution
SNOCAP is our effort to solve these challenges. SNOCAP is a business-to business service which fills that gap in a way that respects copyrights, vastly expands listeners' access to music, and simplifies distribution for both the rights holder and the on-line retailer.

SNOCAP is a media registry and technology platform that is open to all rightsholders, provides a mechanism for them to identify and take control of all the content they own on P2P networks, and enables a robust market that offers consumers more music through more channels.

SNOCAP acts as an honest broker in a complicated business, a one-stop clearinghouse. Copyright owners register their content with SNOCAP and set the terms of distribution, including price and format. They can make their content available for sale or block it. Retailers - including authorized P2P networks -- can then access content through SNOCAP rather than negotiating hundreds or thousands of separate deals, and offer the registered content to consumers.

In addition, SNOCAP uses proprietary technology to identify unregistered tracks, works being traded on P2P networks whose copyright owners are not readily apparent. SNOCAP offers rights holders the ability to register additional content they own and providing a mechanism for bringing most, if not all, of the over 25 million tracks available on P2Ps to the paid marketplace -- giving consumers the depth they're looking for and allowing profitable, legal P2P distribution

in the post-Grokster world.

Because SNOCAP simplifies access to authorized music and the management of its distribution online, rights holders can focus on making music, assured that their rights are protected; existing retailers can decrease their operational burdens and better compete with "free"; new retailers can enter the market with innovative ideas without major barriers; and consumers enjoy a vibrant market with the broad selection they have become accustomed to, available from a variety of business models, included legitimate, authorized P2P services.

We believe it's a dramatic step forward and it's just the beginning.

As a neutral player in a dynamic market, SNOCAP can become a registry and clearinghouse for other digital content -- film, television, books, recipes, and medical information, to name but a few - that brings content creators and consumers together wherever they are. Creative people can focus on their craft, make their art available to a broad audience on whatever terms they choose, and protect their rights.

As the convergence of media and technology matures, SNOCAP will enable rights holders to efficiently move beyond the PC to new and as yet untapped channels. It allows the Internet to finally realize its most fundamental promise - a medium where the

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world's information, knowledge, art and science can be shared universally, immediately and legally.

Mr. Chairman, members of the Committee, I have been focused on these issues for the past six years. Measured against the history of the other profound issues you deal with on your committee, six years is only a blip on the radar. But in the music industry, six years is an eternity. For anyone who follows this space, it is obvious that all distribution of media is moving away from the physical and into the digital realm. Before this can happen, however, the gap between consumer demand and the authorized services available to them must be bridged. We have worked to help ensure that SNOCAP is that bridge.

Thank you for the opportunity to present our views.