

Testimony of

John Simson

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STATEMENT OF JOHN SIMSON

BEFORE THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

MUSIC AND RADIO IN THE 21ST CENTURY:

ENSURING FAIR RATES AND RULES ACROSS PLATFORMS

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Madam Chairwoman, Senator Brownback, and Members of the committee, thank you for inviting me to appear before you today to speak about fair rates for music, a subject - as a former performer, artist manager, music attorney and now executive director of SoundExchange - with which I am very familiar.

Shortly after Congress granted the right for artists and labels to be paid fair royalties from digital services, one of the great saxophonists in American music, Art Porter, Jr. of Little Rock Arkansas, tragically died in a boating accident while on tour in Thailand. A few years later, his wife died of cancer. Their two sons are being raised by their grandparents and will soon receive a check from SoundExchange. Most recently, SoundExchange tracked down the widow of Joe Jones, who sang, "You talk too much, you worry me to death." And there's the day we tracked down the widow of Ernie K-Doe, a New Orleans R&B singer who recorded the Allen Toussaint song "Mother-in-Law." When she heard we had a couple thousand dollars for her from her late husband's recordings she replied "Child, you just put the Thanksgiving turkey on the table." These are just some of the many artists and their families who are benefiting from the performance right in digital radio that Congress granted.

We hear many heartfelt stories - from widows and widowers whose spouses created valuable recordings; artists living on social security; from young artists just starting out, or one hit wonders, or

members of orchestras. The creators of music are getting paid from digital radio services because Congress created the performance right. And that is what is fair, people being paid for their work product - a basic principle of intellectual property rights. In fact, just last week, when the Enforcement of Intellectual Property Act of 2008 was introduced - and we thank you Madam Chairwoman for cosponsoring - Senator Leahy noted that, "The protection of intellectual property is vital to our economy." It is also vital to the livelihood of those who create intellectual property like sound recordings.

Music is undergoing a transformation. In the new landscape of the 21st century, people are accessing music through listening, not through purchasing. But the basic principle of fair pay cannot change - the people who create music must be paid.

Over the past 17 months SoundExchange has addressed genuine business concerns of webcasters because we see them as partners. We want them to succeed and continue paying royalties to the 31,000 artists and 3,500 labels we represent. But we also want fairness for our artists and labels who should benefit from the sacrifices they are being asked to make.

In every instance we try to consider the whole picture, including the vibrant business activity generated in webcasting with its 50+ million listeners. Just last August, Bridge Ratings projected that Internet radio advertising revenue is expected to reach \$20 billion by 2020. There are lots of examples, but let me share with you the most recent. Just last week we learned that the hottest ticket on the new iPhone belongs to my fellow witness, Joe Kennedy of Pandora radio. That news alone is enough to send chills down the spines of satellite radio and AM/FM radio operators.

So, why, with all this activity, the constant refrains of doom and gloom - which we've heard for over ten years now - when, in fact, webcasting is the place everyone wants to be? The simple answer is webcasters want to pay less so they can make more. The problem is that they want to pay less than what is fair, and what has been judged fair by impartial judges.

For some reason, there are those who treat music as something they should have for free or below its real value. Ignored in all of this is the hard work of the performers - the endless practice sessions, the second jobs, the lessons, the road trips - or about the thousands of people who work in the recording industry promoting, investing, marketing, developing, producing all those recordings. Frankly, the attitude that music should be free or devalued is inherently wrong.

Just a few weeks ago, several of your colleagues in the House from both parties suggested to the recording industry and the National Association of Broadcasters that we get together and negotiate a fair rate to pay for music broadcast on AM/FM radio which shamefully and unfairly now pays zero. The

very next day at a radio conference we made that offer to the NAB, and, what did their leader say? That he'd rather cut his throat than negotiate. His words.

Unlike the NAB webcasters believe in paying and are paying, but they are going to great lengths, including lobbying Congress, in trying to devalue our music for their own financial gain.

Webcasters are currently advancing an argument they call parity but that we more accurately call a subsidy. To us parity means every radio-like service must pay including AM/FM radio. It doesn't mean artists and owners must subsidize every Internet business model good, bad or exploitive which is what they are asking for. The fact is, webcasters were given a huge concession by Congress in the form of the statutory license. It lets them use any sound recording without permission in exchange for a fair royalty. Little paperwork, no finding recording artists, no need to negotiate with thousands of independent labels - that's what SoundExchange does. All they have to do is play the music and pay a fair rate.

To establish a fair rate, and recognizing the complexity of such an endeavor, Congress set up the CRB process, and it is working. Businesses are growing. The Internet is the place to be, as exemplified by the President of CBS Digital who exclaimed about Internet radio, "[it] is an incredible business - we gotta own this!" The fact is, the system is not broken and it does not need fixing. If anything Congress should be commended for the very fair process it established.

Madam Chairwoman, music is like magnets and glue. People are attracted by and stick around for the music. Music is what makes these services have any value at all. All we are asking, is for our fair share.

Thank you.
