

Testimony of
Jeffery Harleston

July 29, 2008

STATEMENT OF JEFFREY HARLESTON

EXECUTIVE VICE PRESIDENT AND GENERAL MANAGER, GEFFEN RECORDS

ON BEHALF OF THE RECORDING INDUSTRY ASSOCIATION OF AMERICA BEFORE THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE ON MUSIC AND RADIO IN THE 21ST CENTURY:

ENSURING FAIR RATES AND RULES ACROSS PLATFORMS

July 29, 2008

Chairman Leahy, Ranking Member Specter, Senator Feinstein, Senator Brownback, and members of the Committee. My name is Jeffrey Harleston and I am Executive Vice President and General Manager of Geffen Records, located in Los Angeles, California. Geffen is home to legendary artists such as B.B. King, Nirvana and The Who - and contemporary stars like Mary J. Blige and Nelly Furtado. In addition to the artists, I have the good fortune to work with an exceptional array of managers, producers, marketers and executives who dedicate their talent and experience to delivering great music to fans in the 21st century.

Although our industry is facing some major challenges, we have plenty to be excited about. An increasingly active part of what we do as a major record label is the licensing of our music, often to those that are perfecting the last great idea - and those who have a vision of the next one. Today's music marketplace is nothing like the music marketplace of ten - or even five years ago. While the sales of CDs have fallen off considerably, we have witnessed a substantial shift in the ways consumers use music. They want their music to be portable. They want it instantly. They want it on Facebook and MySpace pages, on cell phones, Blackberrys and iPods. But this growing digital marketplace can only survive if we ensure that everyone plays by the same rules, that creators are compensated fairly and that our valuable music is protected.

That's why I'm pleased to support the PERFORM Act introduced by Senators Feinstein and Graham. The PERFORM Act establishes "platform parity" among digital music radio services. Right now, the law is a patchwork of rules written at different times for different emerging radio technologies. Now that these technologies have matured into sophisticated businesses that compete with each other to offer

consumers multiple services, it's time to update the law to ensure that the playing field upon which they compete is as level and fair as possible.

The PERFORM Act accomplishes this by applying the same compensation and protection standards to all radio services that benefit from the government license.

Let's start with the rules regarding the compensation standard. Under the government license, radio services pay a government-set rate for the music they perform. They don't have to ask the creator for permission to use their music. They don't have to negotiate with hundreds of different record labels. They just pay the set royalty, follow the regulations, and they're good to go.

Today, the rules used to determine what the compensation (i.e. royalty rate) should be for each radio platform are very different. It is inappropriate - and detrimental in the long run - to provide any platform with a competitive economic advantage over another. To achieve "platform parity" the compensation paid by all platforms should be determined according to the same standard.

Applying the same standard across different radio platforms does NOT mean everyone should pay the same price or even have the same price structure. For example, at Geffen records we license the use of our recordings to hundreds of companies, from Amazon.com, MTV, MySpace and Verizon, to television programs like "Greys Anatomy" to retail outlets like Wal-Mart, to video games, toys, toothbrushes and greeting cards. What is important is that the negotiation of the license in each instance takes into account the market considerations. For example, a license of a recording for a toothbrush will have a different fee than the license of the same recording when it is selected on demand and downloaded to an iPod. Thus, the actual price each licensor pays can be

very different.

Yet, the same standard is used to determine the fair cost in each of these instances: the free market.

Similarly, the standard applied by the government to all radio platforms should also estimate and reflect what the market price would be for the use of that music. The government took away the free marketplace when they enacted the radio licenses - and gave these platforms phenomenal efficiency and ease of use. The very least the government can do is ensure that if they are going to set the price for our property, it ought to be based on a set of rules that leads to a result the marketplace would yield.

The other parity issue addressed in the PERFORM Act is the rule that all radio platforms should make sure they are safe and secure, and that all uses of the music they deliver are compensated. Satellite radio services XM and Sirius already prevent, through encrypted delivery, the taking by others of the music they broadcast. They also have reached agreements with record companies to make sure all uses of the music they deliver are compensated, and we commend them for their partnership. Current law prevents Internet radio stations from making multiple uses of music without paying for those uses, but

unfortunately, to date, many Internet radio stations are not secured to prevent the uncompensated taking of our music by others.

How does this happen? Here is a real world example of a software program called "Radio Tracker," one of the hundreds of applications known as "stream-ripping" software. Radio Tracker is published by a German company that charges \$30 to download their software program. Once installed, the program simply asks you to enter any artists or songs you wish to copy on a "wish list."

Without the user ever listening, the software searches 2,425 Internet radio stations at the same time looking for the broadcast of those artists or songs. When it finds them, it copies every one individually and collects them in a permanent library that can be moved easily to your iPod, along with the song lyrics. It even fills in any missing pieces that may be lost at the beginning or end of a song to make sure the copy is perfect. Basically, you get a digitally perfect copy of any song you want. The German stream-ripping company gets \$30 - none of which is used to compensate artists or labels. The user never has to buy another song. It's as simple as that.

This is obviously unfair to the creator and to legitimate stores such as iTunes. If we want to enable a thriving marketplace for music on multiple platforms we must ensure that all platforms take appropriate and equal precautions to protect the content they carry from this type of abuse.

I would like to thank the Committee for its focus on this important issue, and especially Senator Feinstein for her leadership in crafting the PERFORM Act. Your legislation goes a long way towards establishing a level playing field where all parties and platforms operate under the same rules, providing consumers with the music and experiences they desire, while ensuring that creators are appropriately rewarded for their valuable work.