

- In 1999, the recorded music industry had \$14.6 billion in sales – all from physical sales. By 2007, sales dropped to \$10.4 billion, of which only \$8 billion were from physical sales and \$2.4 billion of this were from digital sales.
- During the past three years, music acquisition has jumped 28 percent. During the same three-year period, the share of legal acquisition of music has plummeted from 55 percent to 42 percent. Now less than half of recorded music is acquired legally.
- In 2000, the ten top-selling albums in the United States sold a total of 60 million units. Last year, they totaled just 25 million, less than half of the 2000 sales. In the first half of 2008, only three albums had sold more than 1 million copies.
- At any given moment, over 10 million users are online offering well over 1 billion files for copying through various peer-to-peer (p2p) networks or other online sources.

Because of this, it is vitally important that as new distribution channels proliferate, the FCC and other regulators ensure that artists and copyright owners are fairly compensated for their works and that new distribution channels do not become new channels for further piracy. Without this regulation, the public interest in having diverse music available to them will likely suffer, as record companies will not be able to fund continued investment in new artists. These two tenets, fair compensation and content protection, are discussed in more detail below.

Fair compensation. As noted above, as new distribution channels proliferate, it is critical that (i) artists and record companies be fairly compensated for their sound recordings so that the public can continue to enjoy the diverse and valuable art and entertainment that the music industry presently offers and (ii) no distribution channel receive an unfair advantage over another distribution channel. Obligating satellite digital audio radio services (SDARS) receivers to contain chips and other technology necessary to support HD Radio or other technologies capable of providing audio entertainment services does not support these goals. Rather, it unfairly harms artists and record companies, and provides unfair advantages to HD Radio.

This is because SDARS pay artists and copyright owners for the use of sound recordings, while neither HD Radio nor analog radio pays artists or copyright owners. HD Radio and analog radio already receive free spectrum and do not pay sound recording owners or artists for such radio's use of music. In fact, the United States is an anomaly in this regard – it is the only OECD nation that does not require HD Radio or analog radio to compensate artists and copyright owners for use of sound recordings. It is unfair to give HD Radio and other technologies capable of providing audio entertainment services a further advantage by obligating that these services be included in SDARS devices. Unless HD Radio or these other technologies fairly compensate artists and record companies for their use of sound recordings, this coupling requirement would end up significantly harming artists and record companies as they would lose out on considerable performance royalties. This loss would in turn lead to lower funding for the artistic creation that underlies all sound recordings, and ultimately, be a net detriment for the public.

Therefore, we believe that on balance, the public interest is best served by permitting SDARS receivers to be stand-alone receivers and by permitting HD radio and other technologies capable of providing audio entertainment services to compete via separate devices. This serves

the public interest by not unfairly harming the performance royalty pool base for artists and copyright owners, thus permitting them to continue to fund artistic development. HD radio and analog radio already have an unfair government subsidy in their free use of sound recordings. They should not receive an additional government benefit in terms of a coupling requirement.

Content Protection and Substitution. The FCC should also consider in its public interest calculus what each of the audio entertainment services do in the form of content protection, and the extent to which it can be unfairly used as a substitute for legitimate music purchases. Content protection is critical to ensuring fair compensation for artists and record companies.

The Commission should make clear that the use of any digital audio service technology must include protection of sound recordings from unlawful infringement by the service provider or its users. For example, webcasters have certain content protection obligations by statute. To ensure fair competition among digital audio services and other music distribution channels, all digital audio services should be obligated to incorporate anti-piracy technology and/or other forms of content protection to ensure that broadcasts or streams of music are not unfairly converted to downloads without appropriate compensation to artists and copyright owners. Therefore we urge the Commission to insist, as a policy matter, that copyrights be respected by encouraging all digital audio services to implement reasonable content protection technologies in connection with their services.

Respectfully submitted,



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