



AMERICAN
CONSTITUTION
SOCIETY FOR
LAW AND POLICY

**Statement of
The Honorable Mike Doyle
Future of Music Coalition Policy Day
May 2, 2007**

Thank you. It's a pleasure to be here with you today.

I want to tell you a little story about a Congressman who gave a speech about mashups and mixtapes.

I never thought when I gave that speech in a House committee hearing a month or so ago that anyone would pick up on it, but a lot of folks did – folks who care a lot about issues like the future of music, radio, and the Internet.

I took a lot of ribbing from my colleagues about the speech, and I got a little grief at home about it, too.

My son emailed me asking me how I'd found out about Girl Talk.

I've got some Girl Talk on my Ipod, but I listen to a lot more of Steely Dan, Earth Wind and Fire, and the Doobie Brothers.

That being said, I'm a strong supporter of what's going on in the music scene today.

I know how important music's been to me throughout my life, and I don't want to see government and industry choke off independent music creators and deny the listening public the opportunity to hear their work and support the music they want to listen to.

The phonograph and the radio revolutionized the way music was heard in this country 100 years ago.

The Internet and computer technology are having a comparable impact today.

Since government has obligations under the Constitution to set and administer copyright law to the benefit of creators and the public, it's involvement in this issue is inevitable.

Similarly, the federal government's been involved in setting telecommunications policy since shortly after the first radio stations went on the air.

And, of course, government got involved in regulating the local telephone monopolies soon after they were established 'way back when as well.

In short, there's no way to get government out of the music and telecom industries, even if it wanted to.

The question for policymakers in Congress and the Administration today is, what goals should we be setting and what policies would get us there?

That's a pretty tall order, so I'm going to focus my remarks today on the aspects of that question that affect musicians and music consumers.

To state the obvious, the future of music is linked to the future of musicians, but as you well know, it's also dependent on the relationship between musicians and the companies that control the production, transmission, and marketing of their music.

Technology today has done a lot to enable musicians to follow their muse and make the music they want.

Pretty much anybody with a computer and a microphone can put out their own CD.

That's something that was unimaginable a couple of years ago.

Similarly, it's possible today for anyone to put their music up on the Internet where it's available, in theory at least, to anyone around the world.

That should give musicians tremendous power.

But as we all know, there are limitations to how far you can get going that route.

Moreover, there's a flip-side risk that other folks can easily reproduce, sell, or distribute an artist's work, depriving that artist of the compensation they're due.

Congress has been struggling to deal with the intellectual property rights issues raised by this rapidly changing technology.

In 1995, it passed the Digital Performing Right and Sound Records Act to protect copyrighted works transmitted over the internet.

Congress took another stab at this issue in 1998 with the Digital Millennium Copyright Act.

Both times, we attempted to reconcile the property rights of songwriters who want to write songs, and artists who want to sing songs, with the needs of industry who wants to play or sell songs and consumers who want to listen to songs.

Clearly, that is an ongoing process that needs constant re-evaluation and revision.

I mean, the way musicians get their music on the store shelf has changed.

The format of the music has changed.

Store shelves themselves have changed!

The way people learn about new music has changed as well.

It goes without saying that independent artists get a lot of exposure on line and thru online radio stations.

But independent artists are making inroads on our culture through traditional media like television and advertisements as well.

The one place they're not getting any exposure is on mainstream radio stations.

The music we hear on the radio isn't what we hear during, say, an episode of Grays anatomy.

Independent label music makes up only 10 percent of the songs played on broadcast radio, compared to, say, nearly 40 percent of the music played on internet radio.

So when we talk about the future of music in this country, we have to talk about how we make sure that innovative and aspiring musicians have the potential to earn a living from their art and how we ensure that music consumers get the opportunity to hear something other than the latest hit in heavy rotation.

As you well know, a number of issues currently before Congress and the FCC could have a big impact on that process – like media consolidation, net neutrality, and Internet royalty rates.

One disturbing product of the Telecom Act of 1996 has been the rapid consolidation of the ownership of television and radio stations across the country.

This is disturbing on a number of levels.

There's obvious concern that a radio station programmed out of Denver won't provide much timely local news for residents of, say, Pittsburgh.

That can, at worst, have serious public safety implications, as many have pointed out.

But even on a more mundane level, this process squeezes out all but the most mainstream voices in communities large and small.

I ask you: Could WKRP's commitment to local news and Jonny Fever's musical vision have survived in today's consolidated media market?

On a more commercial and artistic level, there's real concern – which I share – about the homogenization of the content that these broadcasters provide.

It's clear that the media consolidation we've experienced over the last 10 years has reduced the diversity and independence of TV and radio broadcasts dramatically.

Much has been said about the XM/Sirius merger, and I don't need to add to it.

Except to wonder if both are at full capacity right now, what artists and what music is going to be cut to make room for Howard Stern on XM and baseball on Sirius. Now I'm a baseball fan, as you already know, but it's a question that musicians and artists should be asking.

That said, I can still hear Steely Dan and the Doobies on the generic oldies stations that clutter up the dial, but I believe that this stifling of new and different music frustrates many American listeners and prevents many up-and-coming artists from getting the exposure they deserve.

Consequently, despite the strong possibility that I would hear less Earth Wind and Fire on my FM radio, I recently urged the FCC to carefully consider this issue before deciding to loosen existing media ownership rules.

I'm interested in the ways that local broadcasters are creating second and third digital channels that can expand the types of programming available on the radio dials.

Our public jazz station in Pittsburgh, WDUQ, has a digital blues channel.

In DC, they do bluegrass.

Currently these stations are only available with expensive digital radios, but more and more devices with these tuners are being sold every day.

On the other hand, community groups, schools and churches are trying to expand the opportunities to create low power stations in crowded urban markets.

These stations can be heard on the same FM radios – but they're non commercial and their signals don't transmit as far as the big full-power stations do.

I know that this issue has been before Congress in the past, and the limitations enacted in 2000 prevented the FCC from giving a low power license to groups in my district like Penn State's Greater Allegheny McKeesport Branch who wanted to take their internet station – WMKP, "the Roar" – and put it on the FM dial, rather than just on the internet.

WMKP is the largest and most active club on campus, but they won't be able to find room in the crowded Pittsburgh dial unless Congress tweaks the Radio Broadcast Preservation Act of 2000.

The Senate has been very active on this issue, and while Senators McCain and Cantwell got a strong vote out of the Senate Commerce Committee to expand LPFM in their Telecom bill last year, the House hasn't seen as much action.

An LPFM bill hasn't been introduced yet in this Congress, but I am looking at the issue and wonder why – if a full-power broadcaster can have digital stations that don't interfere with their main channel, even if the two are right next to each other on the dial – a low-power broadcaster will interfere with a full-power station that's 3 channels away.

Speaking of webcasters like WMKP, that brings me to another issue that will have a big impact on musicians and music in the future.

Song writers, musical artists, and their recording companies receive royalties from digital broadcast platforms like webcasting, satellite radio, and cable music channels.

The Copyright Royalty Board at the Library of Congress sets those rates.

The rate update that the Library of Congress' Copyright Royalty Board approved on March 2, 2007, would change the rates webcasters pay from a percentage of a webcaster's revenue to a uniform rate that applies to all webcasters retroactively to 2006.

These royalty rates are paid by the webcaster, not the public, and the increases might cause some webcasters to turn off their music stream--which would hurt the ability of new and undiscovered artists to be heard by interested listeners.

While I strongly support musicians' efforts to be paid for their work, I am concerned that the new rate changes may go too far.

Shutting down the majority of small or non-commercial webcasters by putting the royalty rates too high would in the long run hurt most musicians, including some in my district who have shared their concerns about this with me.

I believe Congress needs to ensure that musicians receive fair compensation for their work without killing the goose that lays the gold records.

I'm going to be closely monitoring this situation to see what, if any, Congressional action is called for.

In a related note, net neutrality certainly ranks at the top of the list in terms of issues affecting musicians and webcasters.

Without net neutrality, smaller content providers face the prospect of prohibitive costs or service quality so poor it discourages consumers from accessing their content.

Today thousands of people are calling and writing Congress – demanding that we preserve an open and free Internet.

Not a free Internet like a free lunch.

But a free Internet like the first amendment guarantees free speech.

A free Internet on which no matter who you are, what you have to say can be heard loud and clear by whoever wants to hear it.

Without a net neutrality fix, a researcher at Pitt—or kids in a dorm room at Carnegie Mellon might not get venture capitalist approval for their big idea.

Not when the first line of their business plan reads -- “Get approval from the telephone and cable company.”

Congress and the courts are currently grappling with this issue.

There are a number of ways in which the federal government could define net neutrality.

The recent ATT/Bell South decision defines net neutrality in a way that appears to be acceptable to internet innovators as well as the largest last-mile Internet provider in the country, for example.

In my opinion, the net neutrality advocates are on the side of the angels in this debate.

But as in so many public policy fights, the angels and the devils are in the details.

I’ll be working in the coming months and years to ensure that however Congress defines net neutrality, that definition benefits consumers – and not just the ISPs.

Finally, I want to talk about the oldest music medium of them all – the live performance.

I suspect people have some kind of fundamental need for music, and I think that live music fills that need in a very special way.

From a more pragmatic perspective, it’s a fact of life that most people who want to make a living as musicians start out performing in front of live audiences.

Concerts and merchandise are major sources of income for most artists, not just the folks starting out.

They also help musicians polish their craft and develop a devoted following.

Finally, live music benefits the communities and culture where it takes place.

Live music venues generate a lot of revenues for local governments, for sure, but they’re also great community builders that improve the quality of life for the residents who get to see those artists.

Last, and certainly not least, it also leads to a lot of really great music.

I’ve been thinking a lot about what, if anything, the federal government could do to encourage the creation of new and different music.

I think the most important thing we could do is find some way to make a career in music more viable economically.

The NEA has done a great job of promoting classical music and providing much-needed financial support for classical and jazz musicians.

I think our country ought to look at doing something similar for modern music forms.

A lot of DJs and musicians need day jobs today to pay the bills.

Even small amounts of money could allow many artists to take time from their day jobs and tour the country, building a fan base, spreading new music across the country and entertaining more people.

Canada has created a program to promote and develop modern music.

The program's been a big success – creating a vibrant cultural renaissance in Montreal and taking music magazines by storm.

At a more macro level, it's created a cultural center that's driving new investment and new jobs.

I want to explore such concepts, and I'd welcome feedback from you and people listening on the internet as to the best way to encourage new artists and new music.

With that, let me just close with the comment that the federal government faces a tough challenge in reconciling a lot of conflicting goals and interests when it comes to recorded music.

I know I've only touched on a couple of these issues in my remarks, but it's my understanding that the panelists who are going to address you in the course of the day will touch on them all in much greater detail.

I think the Future of Music Coalition's put together a thoughtful, balanced program of presenters on these issues.

I'm honored to have been asked to help kick off this event.

I'm sure you're going to hear some interesting and thought-provoking comments today.

Thank you.