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**STATEMENT OF THE SONGWRITERS GUILD OF AMERICA
ON BROADBAND NETWORK MANAGEMENT PRACTICES**

**NETWORK MANAGEMENT AND CONSUMER EXPECTATIONS
STANFORD UNIVERSITY
April 17, 2008**

Chairman Martin and members of the Commission, thank you for this opportunity to testify regarding Network Management and Consumer Expectations. In summary, I believe the current proposals to regulate the Internet are more likely to harm than to help the fight against music piracy, which will only lead to greater consumer frustration, and therefore I suggest you proceed with great caution.

My name is Rick Carnes and I am President of The Songwriters Guild of America (SGA). I am a working songwriter and have lived in Nashville since 1978. While I have been fortunate to have had a modicum of success in my career -- including co-writing number one songs for Reba McEntire ("I Can't Even Get the Blues") and Garth Brooks ("Longneck Bottle") along with songs for Steve Wariner, Alabama, Pam Tillis, Conway Twitty, and Dean Martin among others -- I am reminded constantly of the perilous economic existence that all of us who have chosen songwriting as a profession labor under daily.

SGA represents over five thousand of America's best known and most well respected music creators and their heirs. Established in 1931, SGA is the oldest and largest organization in the United States run exclusively by and for songwriters. SGA is an unincorporated voluntary association headquartered in Nashville, with offices in New York and Los Angeles. It provides royalty collection and audit services for its members, as well as music licensing.

Historically, SGA has been extremely active in representing the rights and interests of music creators throughout the country, and frequently appears before Congress, the Copyright Office, Federal Agencies, and in the courts and administrative proceedings in the course of its efforts to protect and advocate on behalf of the American songwriter community.

On behalf of SGA, I am here to emphasize the importance of allowing responsible Internet Service Providers (ISPs) to monitor and manage the content that flows on their networks, to detect *illegal content* and to help eradicate the plague of copyright piracy, which threatens the very existence of the songwriting profession and compromises the quality of content that all consumers will have available to them.

The Opportunity of the Internet and the Scourge of Piracy

As a forward looking organization committed to preserving not only the great canon of American music, but also the ability of songwriters and composers to continue to earn a living at their craft in the twenty-first century, SGA is convinced that digital commerce—and particularly the digital consumption of music—is the key to a successful future for American music creators. And from the consumer standpoint, there can be no doubt that the Internet has expanded exponentially the access and opportunity of the listening public to enjoy the *legitimate* consumption of music.

Unfortunately, however, there is another side to this story. The reality of the current situation in the digital world is that online piracy of music is rampant. Sources like IFPI suggest that songs downloaded illegally may outnumber songs downloaded legally by a factor of some 20 to one worldwide. Network experts have indicated that up to 70% of the volume of traffic on broadband networks is Peer-to-Peer, or P2P traffic relating to 5% of the users, and easily 90% of such traffic is unlawful.¹ Since stolen music provides no compensation to songwriters, this online piracy has deeply and materially affected the creative community. To cite just one example of the devastation caused by the loss of songwriter revenue to piracy, over half of the songwriter positions that existed at music publishing houses across the country as recently as five to ten years ago have simply vanished. Some companies appear to have eliminated the practice of hiring staff songwriters entirely. Piracy, in other words, is destroying our community by eliminating songwriting as a viable livelihood. A vital and iconic piece of American culture (and a valuable source of American revenue and positive trade balance) is in danger of extinction.

Obviously, it is not only songwriters who will suffer if our profession is decimated. The American music consumer will have fewer options and far lower quality of new and available music in the future. And please do not believe that songwriters will continue to create because we do so out of love for our craft. We do love what we do, but we need to

¹ See Comments of NBC Universal, Inc., *In the Matter of Broadband Industry Practices*, FCC WC Docket No. 07-52, Feb. 13, 2008 at 2 (citing various sources).

get paid for our creative efforts. Like all other Americans, we have mortgages, car payments, bills for the education of our children, medical expenses and everyday costs for food, gas, medicine and other necessities. If we cannot earn a living for our families writing songs we will have to turn to something else.

Moreover, the consumer will be affected in other, more indirect ways. As noted, a vibrant music business is one of the great engines of the American economy. It has been said many times that the whole world loves American music; if that music is not protected it will cost jobs, spending power and tax revenue. In addition, unprotected content means lower quality content and a smaller amount of content for consumers. The existence of Internet piracy is a lose-lose situation for creators and consumers alike.

The Positive Anti-Piracy Role of Internet Service Providers

Beyond the effect of piracy on songwriters and consumers, piracy is also one of the main contributors to the current network congestion problem. Thus, SGA believes that ISPs must be allowed the flexibility to manage traffic on their networks in a manner that: (1) permits, protects and encourages *legitimate* online commerce such as licensed music services to thrive, and (2) deters *illegitimate* conduct such as music piracy (including piracy of video content with embedded music), which will have the added benefit of reducing network congestion in the long term. Although as yet there may be no definitive technological solution to online piracy, it is critical that ISPs and content owners are allowed to develop technologies and take action to deter piracy, which would have the important added benefit of reducing network congestion as well.

The principles that the Commission delineated in its Internet Policy Statement relate only to *lawful content*. Therefore, the FCC should not only allow, but encourage, ISPs to help identify and discriminate against all pirated, illegitimate content, just as ISPs currently identify and attempt to prevent spyware, malware, and other harmful traffic from adversely impacting their customers. I think the greatest risk of an anti-competitive result comes from current regulatory proposals to prohibit or limit responsible ISPs from managing their networks. At the moment, the free market is the best weapon we have to combat Internet piracy. Technology created the illegal file sharing monster, but more technology can detect and deter those practices that are illegal. In other words, we must fight technology with technology. Unfortunately, a number of pending regulatory proposals would prevent the nascent technological counter-attack against Internet piracy.

In keeping with the spirit of the Commission's policy statement, actions by the ISPs to deter piracy should be applied evenly over all types of pirated content (whether movies, music, etc.) to the extent technologically feasible. This is particularly important where the choice to deter certain types of piracy but not others would raise competitive concerns. While SGA is primarily concerned with the sharing of illegal music files, it is not only our livelihoods that is at risk. An unmanaged Internet allows for the sharing of unlawful materials including child pornography, a problem that was well-described by Representative Debbie Wasserman Schultz (D-FL) during the recent House Judiciary

Committee Task Force on Competition Policy and Antitrust Laws hearing on "Net Neutrality and Free Speech on the Internet".

How Competition Among Broadband Networks to Address Piracy Would Help Songwriters and Consumers

Some network operators, such as AT&T, are researching whether there might be a technological means to identify and/or filter unlawful content transmitted over the Internet. In my view, this would make good economic sense, because lawful owners of copyrighted content would be anxious to make their works available on those networks that incorporated such technology – given the lower risk of digital theft of their works. Assuming that the free market is working the way it should, then those networks might risk alienating some consumers because of the filtering, but would stand to gain significantly from having more robust content to offer to a wider audience. And that is what the free market is all about: creating a distinctive product and challenging competitors with an inferior product.

In a market free of undue or unwise regulation, the economic winners and losers would be chosen by consumers who have a wide range of choices about what type of Internet service to purchase and what kind of material might be distributed over those networks. I can tell you as a songwriter and as a copyright owner that my choice would be to have my works distributed by someone who invested in trying to stop digital theft of my and my colleagues' creations. And I believe that competition—and concomitant consumer benefits—would be enhanced if broadband network operators were free to decide to manage their networks in such a manner. The Commission's actions in this regard must be careful to avoid a result that would have anti-copyright owner, and therefore anti-consumer, effects.

It is in the consumer's direct interest to choose a network provider with the fastest and safest connection. It is fair to say that consumers have a reasonable expectation that they will get the high speed access to the Internet that each is paying for. As a matter of public policy, however, there cannot be a legitimate public expectation that unlicensed copyrighted works will be available on an unfiltered peer to peer basis. There is a clear correlation between unregulated peer to peer file sharing – the majority of which is illegal – and slower Internet connections. Most consumers will favor the services of ISPs who limit illegal file sharing. Despite the common misperception that such regulation would prevent watching YouTube videos or allow ISPs to filter e-mails, this is not the case. The ISPs have absolutely no interest in limiting the consumer's access to any legitimate materials and if they were to do so, consumers would simply change providers. There is no slippery slope when allowing for ISPs to regulate P2P file sharing, as the consumers can serve as a check on any inappropriate limitations. On the other hand, imposing a regulatory regime where broadband network operators are prohibited from managing congestion or filtering for unlawful content would simply be irrational, for not only would creators and copyright owners suffer, but so would consumers as well.

If a broadband network operator is considering taking technological steps to stop piracy, SGA would say, “more power to you.” And, “the sooner, the better.” And finally, “how can we help?”

Conclusion

My final thoughts about regulating network management practices are as follows. It strikes me as odd that the problem of broadband network congestion caused largely by illegal file sharing has been addressed so far by proposing that ISPs be denied the ability to manage such congestion. If regulation is to be considered, then the heart of the problem should be at the top of the agenda – **illegal file sharing and piracy generally**. The current proposals seem to have it all backwards. I am comfortable letting the market reward those ISPs that behave responsibly and letting current law apply to those who misbehave. But if regulation (or legislation at some point) is the course chosen, but one that I would not recommend, then the first order of business is to detect and stop illegal file sharing and digital piracy.

At bottom, there must be respect for the rule of property rights and law over the Internet, especially in regard to the Constitutional imperative to protect and encourage the advancement of science and the arts. This respect can be facilitated by allowing ISPs to manage their networks in furtherance of *legitimate* commerce. Such a result would clearly be in the public interest because it would allow legitimate businesses to flourish, protect the songwriting profession and similar artistic endeavors from outright theft, and benefit American consumers by assuring that they would have access to the best creative efforts on the fastest and safest networks anywhere in the world.

Thank you for this opportunity to present my views.