

Testimony of Damian Kulash
Hearing on Net Neutrality
House Judiciary Anti-Trust Task Force
Tuesday, March 11, 2008

Thank you Mr. Chairman and Mr. Ranking Member, members of the task force – thank you all for this opportunity to testify before you today on an issue so critical to the future of this country, the issue of Net Neutrality. I’m a rock singer, so I have some experience getting in front of people and speaking my mind, but to be honest, you guys aren’t really the demographic I’m used to dealing with. So this is very exciting for me.

My name is Damian Kulash my band is called OK Go. We’ve been around for nearly 10 years, during which time we’ve sold over a half a million records, won a Grammy, played over 1200 shows in 45 States and on 5 continents, and most important to us here today, had the good fortune to be one of the first bands to become truly successful via the internet, where we’ve had tens of millions – maybe hundreds of millions – of streams, downloads, and website hits. We are among the tiny percentage of the world’s musicians lucky enough to earn a living doing what we love, and we owe our livelihood in large part to our online success, a type of success that couldn’t have been imagined just a decade ago. I’m here to ask you to protect the principles that have made the internet great, and that have made it a place where a band like mine can succeed.

Mr. Chairman, the music business is experiencing a profound transformation right now – one that could mean either the dawn of a new era for American art and commerce, or its continued consolidation, coming at the expense of not just artists and musicians, but all Americans.

Since the dawn of recorded music early last century, the industry that emerged around it has been based on the natural bottleneck that existed between musicians and the music listening public. Musicians needed a way to reach all those people, and people needed a way to get all that music, and a complicated and profitable system emerged to connect the dots.

The mechanics of making and distributing records were formidable: professional recording studios were expensive to maintain and operate, manufacturing and packaging records was costly and complicated, and getting those records onto the turntables of America required a vast and complex network of warehouses, shippers, distributors, and retailers.

On top of that there was the question of exposing and promoting music to the public. Commercial radio has long been the only medium for reaching most people, and a handful of radio programmers effectively choose what music the country would hear. Naturally, there is intense and expensive competition for their attention. Later came MTV, where once again a few people pick a few songs for the whole country.

As I'm sure you're well aware, the extreme bottlenecks of this system encouraged pretty ethically challenged behavior at times. Some songs succeeded primarily on the merits of the drugs and Superbowl tickets that were delivered to radio stations with them. But I'm not here today to question or condemn how business was done, but rather to simply recognize that the architecture of the industry, the system of powerful gatekeepers, had a profound influence on what music got made and listened to in America, and under what conditions. Gatekeepers, of course, sometimes used their power to compel artists to enter onerous contracts.

Today, that system has been turned on its head. Digital technologies have begun to remove the bottlenecks, and the industry founded on them faces a crisis, even as music itself enters a new golden age. Making, distributing, and listening to music is easier now than ever before. Anyone with access to a decent computer now has recording tools that the professionals of my parents' generation couldn't have dreamt of – making high quality recordings is now nearly as easy as word processing. With a few clicks of a mouse, recordings can be distributed to pretty much any place on the globe, and listened to practically anywhere. If you've been on the Metro recently, you've no doubt noticed that the entire commuting community has headphones on – they're all listening to digital music players. I'd bet that more music is being listened to now than ever before in

history. Musical ideas are spreading and combining and growing, even as the rigid structure of the traditional music business is crumbling. All sorts of exciting new things are possible. It's an exhilarating time.

It certainly has been for my band. Let me give you a quick overview of how we got where we are. OK Go started in 1999 and followed a pretty well-worn path for the first few years. We developed a following at local clubs in our hometown of Chicago, spent as much time on the road as we could afford to, eventually landed ourselves a record deal with a major label, and then played the promotional game as it is generally played in the majors: a ton of no-profit touring, a lot of free shows for radio stations, as many interviews as we could get, and the occasional music video, where the cost is advanced by our label and deducted from our royalties. Our first record, which came out in 2002, did decently well: on the Modern Rock radio charts we just barely broke into the top 20, and on Billboard's sales charts we made it to about 100. We were in the middle of the pack: successful enough to keep going, but struggling for every fan we could find.

In 2005 we released a second album and that's when our story takes a turn pertinent to the subject at hand today. When the record came out, we did all the standard promotion that our label advised, but we also decided to launch our own online campaign with simple, absurd videos we made ourselves.

With the help of my sister, we choreographed a parodic dance routine and shot a single-take home video of us performing it in my back yard. If you include the Starbucks run, the total budget for the video was about \$20. We posted the clip online, and it caught on like wildfire. We watched, astonished, as the video racked up hundreds of thousands, then millions, then tens of millions of hits at online video sites. Before long, we were getting offers to play to thousands in countries where our record had never even been released.

And something even wilder started happening: fans started posting their own versions of the video. Thrilled by the direct connection with our fans, we launched a dance contest, and received homemade remakes of our video from all over the world. We got hundreds

of entries, videos of the dance at weddings, in churches, at high school talent shows, in firehouses, and even a version performed by animated legos. This is a whole new phenomenon, a feedback loop of creativity that allows us to be more than just a commercial product to our fans – we are the center of an active, creative community.

We followed that video up with another that we shot at my sister's home in Orlando. It was a single take again, and we were dancing again, but this time on eight moving treadmills. To my knowledge, this routine has only been repeated four times (once in Japan, once in Mexico, and twice in the US), and for the record we assume no liability for those dumb enough to try it. In the first two days after we posted the clip on YouTube, it was viewed a million times. In the month after it went online, our album sales increased nearly 4000%. We won a Grammy for the video, beating out much bigger acts with exponentially bigger budgets and promotional campaigns. Now we get stopped in Times Square by people old enough to be our grandparents. To date, it's been viewed over 30 million times on YouTube alone.

Whether you think our videos are brilliant or gimmicky—I'd be the first to say they're a little of both—they've done more to promote our music to an audience around the world than anything else we or our label has produced. For seven years we barely covered our bills, and since our internet success, we've become a very successful operation. We believe the videos were so loved because they came directly from us. There was no one telling us what we could or couldn't do, no middlemen or marketers, and we didn't have to sell a committee of gatekeepers on our idea before we could take it to our fans. Our success couldn't have happened in the pay-to-play music industry of ten years ago, or in a world without an open, unbiased, and unfettered internet.

Of course, like most bands, we use the internet for everything today; it's not just a medium for our videos. We connect with fans through our website, our online forums, and through social networking sites like MySpace and Facebook. We alert our online fans to concerts and television and radio appearances, and we promote those appearances to new fans. We sell our merchandise and CDs, and book our tours online. We broadcast some concerts online, and have done many performances solely for an online

audience. Today, as I speak to you, some dedicated portion of our fans is listening to this testimony, online. (Hi guys). Basically, the internet stops just short of writing our music for us, but it takes care of just about everything else.

This part of our story is common to every band working today. We've joined with over eight hundred other bands in the Future of Music Coalition's Rock The Net campaign, and each of them – and I'd venture to say pretty much every working musician out there today – will tell you how vital an open an neutral internet is to their business.

Mr. Chairman, let me be very clear here, though: with the big opportunities and big changes that digital technologies have brought to the music world, there are great unknowns for musicians. My peers and I run small businesses, and like all entrepreneurs, we want to ensure that our work is valued, that we can earn livings, and that our good ideas can make us good money. I am no fan of piracy. You will not find a songwriter or musician out there who doesn't want to get paid, but piracy issues must be addressed by innovations that build on an open internet, not shut it down.

We believe people are willing to pay for good music in their lives. That hasn't changed, and the smart folk who build new systems capitalizing on the strengths of the internet will reap big wards. Net neutrality is necessary for the growth of new businesses and business models, and creating a new legitimate digital music business is critical to artists and the music industry. To put it simply, without net neutrality, I would not be sitting here today. If companies think they are going to protect their profits by erecting artificial bottlenecks, artists and their fans will lose. The new system that's emerging in the music world cannot return to a gatekeeper system – a system where the success of our ideas was determined solely by the middlemen who delivered them.

This principle extends beyond the realm of music, it applies to everything on the internet: we cannot allow a system of gatekeepers to be built into the network as a whole. We must protect the basic equality that has made the internet so great, and make sure the few existing broadband providers can't use their market power to erect new bottlenecks for music or any other industry. The failure to enact strong net neutrality legislation would

mean an internet with gatekeepers; an internet that exists for the profit of a few, rather than the good of the many; a society where value comes not from the quality of information, but from the control of access to it.

Creativity and innovation are the lifeblood of any successful endeavor, whether artistic, commercial, or political. There are only two guitar companies who make the majority of guitars sold in America, but luckily they don't control what we play on those guitars. Whether we use Macs or a PC doesn't govern what our minds can bring to life with our computers. The telephone company doesn't get to decide what we discuss over our phone lines. Similarly, the companies who deal with the nuts and bolts of the internet should not determine what we can do, or make, or access, or dream up while we're using it. The Internet has always been a place for freedom of speech, art, and commerce. We should keep it that way.

Until now, the internet has fostered an explosion of creativity, innovation, and progress not in spite of its level playing field – but precisely *because* it is a level playing field. It's as close to a genuine meritocracy as we've ever seen. It's a place where my band's \$20 video found a wider audience than the industry's million-dollar productions, because ours was simply better. Legislation to protect this level playing field is essential not just for the music community, but for all of us. The world of tomorrow must be built on our society's best ideas, not just those ideas that align with interests of a few powerful gatekeepers.

We'll do our part. We'll keep making the best songs, the best videos, and the best ideas we can. And on behalf of millions of Americans, musicians and artists, both aspiring and established, I am asking today that the Congress do its part, too. Make sure there is always a fertile place for all of our good ideas to flourish. Do not allow the few existing broadband providers build new bottlenecks. Enshrine the internet's level playing field in law.

Thank you.