



Statement of

Michael Huppe
President & CEO
SoundExchange, Inc.

before the

United States House of Representatives
Committee on the Judiciary
Subcommittee on Courts, Intellectual Property and the Internet

Hearing on

“Music Licensing Under Title 17, Part Two”

June 25, 2014

Chairman Goodlatte, Chairman Coble, Ranking Member Conyers, Ranking Member Nadler, and Members of the Subcommittee, I appreciate the opportunity to appear before you for Part Two of your discussion of Music Licensing Under Title 17.

My name is Michael Huppe, and I am the President and CEO of SoundExchange, Inc. SoundExchange administers the statutory license Congress created in the late 1990s for digital radio, a true legislative success story that has produced an explosion in dynamic new radio services that are fundamentally reshaping how we experience music. Today, SoundExchange administers the royalties paid by more than 2,500 digital music services – services that reach well over 100 million people.¹ We collect and distribute royalties to over 100,000 featured artists, background singers and vocalists, and record companies – big and small. SoundExchange – and the statutory license that underpins our work – have helped make all of this possible.

My testimony today will cover a number of topics all of which relate to a single core principle that I believe must guide any discussion of the music licensing landscape: all creators should receive fair pay, on all platforms and technologies, whenever their music is used. First, I will describe SoundExchange and our work. Second, I will briefly describe some of the key changes unfolding in the music business and suggest first principles to guide the Committee’s review of music licensing laws. Third, I will describe several critical areas where reform is especially important, including (i) the refusal of digital services to pay royalties for pre-1972 sound recordings, (ii) the fundamental injustice of the continued lack of an AM/FM/HD radio performance right for sound recordings, and (iii) the need to harmonize royalty standards across platforms. Fourth, I will offer brief comments on the continued value and importance of the statutory license structure this Committee created nearly two decades ago. And finally, I will share my thoughts on some forward-looking investments needed to ensure a healthy future for the music ecosystem.

¹ Edison Research/Triton Digital, “The Infinite Dial 2014,” available at <http://www.edisonresearch.com/wp-content/uploads/2014/03/The-Infinite-Dial-2014-from-Edison-Research-and-Triton-Digital.pdf>.

I. SoundExchange – Making Digital Radio Work

SoundExchange is a non-profit organization designated by the Copyright Royalty Board to administer the federal statutory licenses for digital radio.² These licenses allow anybody – from the largest Internet company to a single entrepreneur – to stream every federally protected sound recording ever commercially released, merely by filing a short document and meeting a few procedural requirements. Digital radio services then file reports on the recordings they stream and pay the required royalties in one lump sum to us, which we distribute to the artists and copyright owners whose music was used. This “one stop shop” for access to virtually all recorded music is the foundation of the modern digital radio business – ensuring that services can access whatever music they need without engaging in extensive negotiations or hunting for rights owners around the world.

We are efficient and relentless in our work. Nearly 90% of the money we collect from the 2,500+ services we work with goes out the door within 75 days of receipt. We are more efficient at this than anyone else in the world, with an administrative rate in 2013 of 4.5%. Since our founding in 2003, we have paid out more than \$2 billion in royalties.

SoundExchange is overseen by a board of directors made up of artists, their representatives, and major and independent record companies and organizations that represent them and is thus one of the unique organizations representing both artists and labels together. In the same way, we are both a technology company and a music company, with a unique ability to appreciate the business and platform challenges faced by music services, as well as the economic and artistic perspective of music creators. In fundamental ways, we sit at the center of the music ecosystem today – interfacing with and supporting virtually all the other stakeholders sitting at the witness table today.



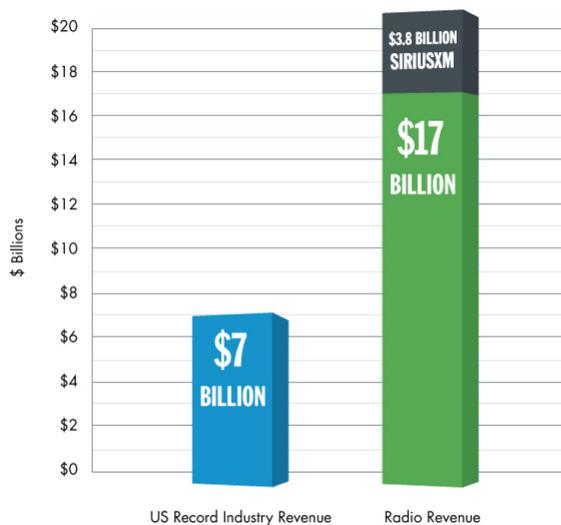
² 17 U.S.C. §§ 112(e), 114; 37 C.F.R. Parts 370, 380.

II. “Listening” is What Matters -- First Principles for Music Licensing Review

The members of this Committee know better than anyone how completely the music ecosystem has changed in recent years. While the foundation of the recording industry was once album sales and personal ownership of music, the rise of streaming and digital access is fundamentally challenging that idea, and the legal and economic structure that has been built upon it.³ As more and more of the public enjoys music through fleeting delivery – via digital streams or other broadcasts – the key economic moment in the life of a recording is shifting from “buying a copy” to “listening.” This is appropriate: Music has value when it is played and heard. The power of music to draw an audience and shape our moods and feelings has economic value that goes far beyond its ability to sell albums, downloads, or subscription access to services that provide music on-demand. Music captures the attention of people in their cars and offices, and is the reason we listen to radio – and sit through advertisements. Music “draws a crowd” better than anything else, and technology is bringing it to more places and spaces virtually every day.

This is why I believe our industry’s standard measure for assessing revenue grossly undervalues the role of music in the economy. The RIAA this year reported record industry revenues of \$7 billion for 2013.⁴ Most of the revenues in that number are *retail* figures – in other words, those figures include the revenue generated by Apple for selling downloads, by Spotify for selling subscriptions, and by other distributors for selling music.

A Lost Opportunity from Radio



³ IFPI, “Music Subscription Revenues Help Drive Growth In Most Major Markets,” March 18, 2014, available at <http://www.ifpi.org/news/music-subscription-revenues-help-drive-growth-in-most-major-markets>.

⁴ RIAA, “News and Notes Regarding 2013 RIAA Music Industry Shipment and Revenue Statistics,” available at <http://76.74.24.142/2463566A-FF96-E0CA-2766-72779A364D01.pdf>.

What's not included in those figures? The \$17 billion that radio made from selling advertising in 2013, mostly by playing ads in between songs,⁵ and the \$3.8 billion earned by SiriusXM,⁶ mostly because people like having access to music in the car.⁷ Our friends at the NAB claim radio stations are not in the business of distributing music,⁸ but that is simply wrong. Of course they distribute music, in exactly the same way that television stations distribute network television programs. Indeed, the business of radio is, for the most part, playing music to tens of millions of people for free and collecting billions of dollars in advertising in return. If they aren't in the business of distributing music, I don't know who is.

We need rules for music licensing that reflect the value that music generates for radio and other platforms. But the obsolete and inconsistent rules that have piled up in the Copyright Act over time simply do not do that.

Again, if there is a principle that should guide Congress as it considers the music licensing landscape, it is this: all creators should receive fair pay, on all platforms and technologies, whenever their music is used. Period. Everyone who has a hand in the creation of music deserves fair market value for their work – songwriters and publishers, producers and engineers, the artists who give compositions life, and the record companies who help artists fulfill their creative vision and connect the music to an audience. This is a matter of justice and fairness fundamental to the core purpose of the Copyright Act. That approach would also be good for digital radio services – who would then compete on a level playing field based on the public appeal and economic value of their services, rather than on the strength of the legal loopholes that apply to them.

⁵ Radio Advertising Bureau, "Network, Digital, Off-Air Shine as Radio Ends 2013 in the Black," available at http://www.rab.com/public/pr/revenue_detail.cfm?id=132.

⁶ SiriusXM, "SiriusXM SiriusXM Reports Fourth Quarter and Full-Year 2013 Results," available at <http://investor.siriusxm.com/releasedetail.cfm?ReleaseID=823023>.

⁷ The numbers reported by the RIAA include the amounts distributed by SoundExchange, and some portion of those revenues do come from SiriusXM and from radio broadcasters for their webcasting. However, the royalties paid to SoundExchange are but a small portion of the total value that those services – as well as other users of music – generate.

⁸ The Comments of the National Association of Broadcasters, *In the Matter of Music Licensing Study: Notice and Request for Public Comment*, Docket No. 2014-03 (hereinafter "Music Licensing Study"), p. 26, available at http://www.copyright.gov/docs/musiclicensingstudy/comments/Docket2014_3/National_Association_of_Broadcasters_MLS_2014.pdf.

III. Reforming Music Licensing – Making the Copyright Act Work for All Music Creators and All Forms of Radio

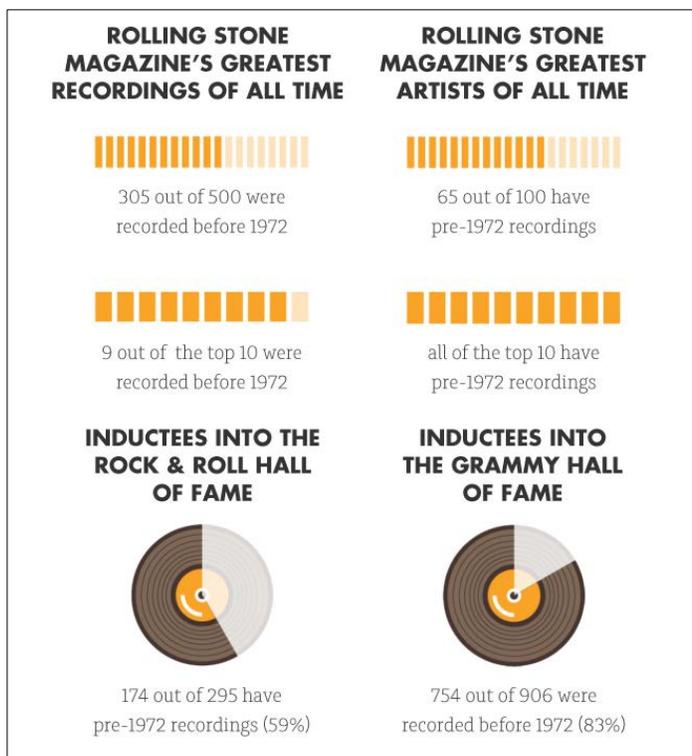
I applaud Chairman Goodlatte for launching the current review of our copyright laws. As Copyright Register Pallante testified last year, music licensing issues are in particular need of reform – and thanks to the diligent work of this Committee, are uniquely ripe for resolution and legislative action now.⁹ Today I would like to focus on three key reforms that should be part of any revision to our copyright laws, and which I urge the Committee to take up as soon as possible. Some of these ideas are already reflected in pending legislation, such as the RESPECT Act (H.R. 4772) recently introduced by Congressman Holding and Ranking Member Conyers. And they are entirely consistent with the comprehensive legislation Ranking Member Nadler described at part one of this hearing. I am grateful to all the many members of this subcommittee who have supported legislation to improve the music ecosystem and protect the rights of performing artists, songwriters and all creators.

A. RESPECTING All Performers – Fair Pay for Pre-1972 Recordings

There is one fundamental change that demands immediate attention: the Committee should act as soon as possible on closing the loophole that some digital radio services rely on when they refuse to pay royalties to older artists for recordings fixed prior to February 15, 1972. I thank Congressman Holding and Ranking Member Conyers for introducing the RESPECT Act (H.R. 4772) to cure this problem, as well as Chairman Coble, and Subcommittee Members Chu, Deutch, Gohmert and Jeffries for supporting this effort.

⁹ Testimony of Maria Pallante, Register of Copyrights, in a Hearing Before the Committee on the Judiciary of the House of Representatives' Subcommittee on Courts, Intellectual Property, and the Internet (March 20, 2013), p. 42, available at http://judiciary.house.gov/files/hearings/printers/113th/113-20_80067.PDF (stating that the public performance for sound recordings is “ripe” for review).

Pre-1972 sound recordings are the foundation of the music industry and remain both vital and commercially significant. According to *Rolling Stone Magazine*, 305 out of the top 500 tracks of all time were recorded before 1972;¹⁰ 65 out of the greatest 100 artists of all time have pre-1972 recordings in their catalog – including all of the top 10 on the list.¹¹ 175 members of the Rock and Roll Hall of Fame (out of 304) have pre-1972 releases¹² and 754 recordings in the GRAMMYs Hall of Fame (out of 906) were recorded prior to 1972.¹³



Yet, some digital radio services, two of whom are represented on the panel at this hearing, are operating under an interpretation of state and federal copyright laws that they believe allows them to use pre-1972 sound recordings without a license and without compensating either the artists or the rights owners at all. Some of the services who won't pay pre-1972 artists have entire channels dedicated to their work. They market these stations in selling subscriptions, and their playlists are awash in these great recordings. Pre-1972 sound recordings represent between 5 and 15% of all the music played by their services. The result is that legacy artists, many of whom are now in their 70s and 80s, are being excluded from this modern revenue stream for no sound policy reason. SoundExchange estimates that in 2013 alone this cost artists and rights owners \$60 million in royalties. In 2014, we expect that number to be closer to \$80 million, and the total will keep climbing.

Withholding royalties from pre-1972 artists is a slight to the musical legacy of our nation – and declaring these recordings worthless is surely not the outcome that Congress intended when it created the statutory licenses for digital radio. All recording artists and copyright owners deserve to be paid for

¹⁰ <http://www.rollingstone.com/music/lists/the-500-greatest-songs-of-all-time-20110407>.

¹¹ <http://www.rollingstone.com/music/lists/100-greatest-artists-of-all-time-19691231>.

¹² <http://rockhall.com/inductees/>.

¹³ <http://www.grammy.org/recording-academy/awards/hall-of-fame>.

the use of their works, whether they were recorded in the 1960s or just last month. And legacy artists, just like current ones, should participate in the success of the services building businesses on their recordings. Indeed, the artists who created pre-1972 recordings are especially dependent on digital revenue streams, because they are often less likely than more current artists to be able to generate significant income from touring, product sales, and other sources.

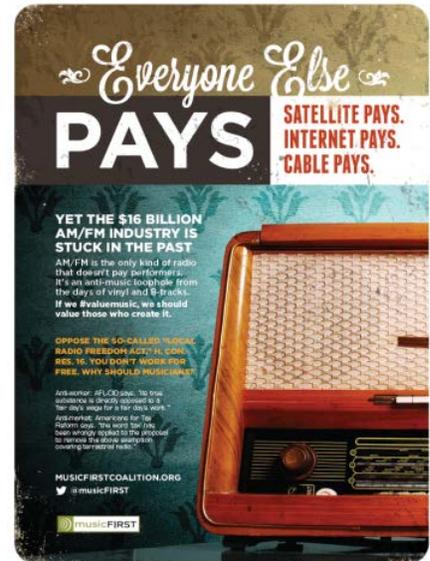
This is not *just* a matter of fairness; it is also a matter of rationalizing the current regime governing the licensing of pre-1972 sound recordings. Digital radio clearly implicates state law rights, and copyright owners have begun to take legal action to enforce their rights against services operating under the statutory licenses that are refusing to license and pay for pre-1972 recordings.¹⁴ Although the litigation addresses the fundamental unfairness of the present situation, it will not lead to a sensible regime for licensing of services operating within the scope of the statutory licenses. Having 50 separate sets of rules for pre-1972 recordings across the U.S. does not provide the simplicity and efficiency that Congress contemplated when enacting the statutory licenses. The point of the statutory licenses is to provide a one-stop-shop for services that want to operate within its four corners. Nobody wants a statutory license that covers 90% of usage but requires individualized negotiations for the last 10% – and, we respectfully submit, that is not the regime that Congress had in mind when it created the Section 114 license in 1995.

Congress can easily bring pre-1972 recordings within the scope of the statutory licenses in a way that does not disturb any other aspect of the Copyright Act, and that in effect codifies the practices of many services that operate under the statutory license today. That is what the RESPECT Act (H.R. 4772) would do – it requires digital services that enjoy the benefits of the statutory license to pay for all of the music they play, regardless of the date the recording was made. This approach would not involve any of the complications raised by broader “federalization” of pre-1972 recordings, but it also would not preclude future consideration of so-called “full federalization.” The solution is both simple and essential, and there is no reason Congress shouldn’t act.

¹⁴ Flo & Eddie, of the classic rock band The Turtles, have filed class action lawsuits in three states on behalf of copyright owners of pre-1972 sound recordings whose works are played by SiriusXM. Capitol Records, Warner Music Group, Sony Music Entertainment, UMG Recordings, and ABKCO Music & Records have likewise filed a lawsuit against SiriusXM in a California state court. Most recently, a group of record companies filed a case against Pandora in a New York state court. See Billboardbiz, “SiriusXM Hit With Fourth \$100 Million Lawsuit In Past Month,” available at <http://www.billboard.com/biz/articles/news/5680147/siriusxm-hit-with-fourth-100-million-lawsuit-in-past-month>; Billboardbiz, “Record Labels Sue Pandora Over Pre-1972 Recordings,” available at <http://www.billboard.com/biz/articles/news/legal-and-management/6062401/record-labels-sue-pandora-over-pre-1972-recordings>.

B. Closing the AM/FM Loophole Once and For All

The loophole that allows terrestrial radio (*i.e.*, over-the-air broadcast channels on AM/FM/HD) to use copyrighted sound recordings without paying continues to be the most glaring inequity in music today. Terrestrial radio remains a very significant way that consumers listen to music; according to Nielson, radio reaches 242 million people each week.¹⁵ The NPD Group has reported that, even for young Americans who are moving most rapidly to digital platforms, 24% of all music listening is through AM/FM radio.¹⁶ Radio makes \$17 billion a year selling advertisements¹⁷ – primarily for its music radio stations.¹⁸ And yet radio pays nothing to the performers that brought the music to life and the copyright owners who helped shape those recordings and bring them to the world. Terrestrial radio should pay royalties to artists and copyright owners for the same reason that other radio platforms pay: all creators should receive fair pay, on all platforms and technologies, whenever their music is used.



Ending the terrestrial exemption is critical to leveling the playing field for digital services as well. Right now, digital radio sits alongside terrestrial radio in cars, boats, and homes – yet those modern innovators pay for the music recordings they use while AM/FM broadcasters pay nothing even when their broadcasts are played through the same speakers to the same audience. The government should not be picking winners and losers in this way or propping up particular technologies or business models.

It is sometimes argued that the broadcaster exemption is justified because radio airplay promotes record sales. However, that does not describe most radio use of music today – if it ever did. Indeed, classic artists like The Beach Boys, The Temptations, Led Zeppelin and Billy Joel do not need radio to promote them, yet radio stations play their music all the time. And, over the last fifteen years,

¹⁵ Nielson, State of the Media: Audio Today 2014, available at <http://www.nielsen.com/us/en/reports/2014/state-of-the-media-audio-today-2014.html>.

¹⁶ NPD Group, Streaming Music is Gaining on Traditional Radio Among Younger Music Listeners, available at <https://www.npd.com/wps/portal/npd/us/news/press-releases/streaming-music-is-gaining-on-traditional-radio-among-younger-music-listeners/>.

¹⁷ Radio Advertising Bureau, "Network, Digital, Off-Air Shine as Radio Ends 2013 in the Black," available at http://www.rab.com/public/pr/revenue_detail.cfm?id=132.

¹⁸ Inside Radio, "Changes Among Radio's Top-Billing Formats," available at <http://www.insideradio.com/article.asp?id=2710554&spid=32060#.U6OAYfldVHV>.

even as the radio industry has grown, retail music sales in the U.S. have dropped by about 53%.¹⁹ If radio play was as promotional as claimed, sales should be rising, not falling.

And even to the extent FM radio may be promotional, that does not justify an uncompensated “taking” of musicians’ property. A movie may promote an underlying book upon which the movie is based, and television may promote a local football team by broadcasting games on their station. Yet nobody would dare suggest that the book author or the NFL should surrender those rights for free under the mantra of “promotion.” Why should music be any different?

Some of our critics suggest that we don’t appreciate the value of radio as an outlet, and as a mass medium. Nothing could be further from the truth. I fully recognize that FM radio is a place for hit recordings, and radio can help determine how the shrinking recording industry pie gets divided. Indeed, when an artist has a hit on FM radio, that can be a sign the artist has made it to the major leagues. But that is what is so upside down about the law as it exists today. When a baseball player makes it to the major leagues, he is not suddenly expected to play for free. Instead, he is rewarded for his success and the value he brings to the franchise. When it comes to music, however, a recording artist that has major success meets the exact opposite fate: radio plays her recording for free, to tens of millions of people, while making billions of dollars off of the fans who have tuned in to hear her music. The system makes no sense at all.

The free ride given to terrestrial radio also makes the U.S. an outlier internationally, because we are the only western industrialized nation that does not have a sound recording performance right.²⁰ This places the U.S. in the company of countries like North Korea, China, and Iran that likewise fail to provide fair compensation for performers. The international landscape is especially significant because the lack of a performance right in the U.S. has prevented U.S. artists and copyright owners from collecting performance royalties earned overseas. American music is heard all over the world, yet our artists earn nothing for that airplay because we refuse to pay for airplay here at home.

When she testified before this Committee last year, Register of Copyrights Maria Pallante

¹⁹ RIAA, “Scope of the Problem [of Piracy],” available at http://www.riaa.com/physicalpiracy.php?content_selector=piracy-online-scope-of-the-problem.

²⁰ Milom Horsnell Crow Rose Kelley PLC, “Terrestrial Radio Performance Royalties for Labels and Artists: Wait for It or Go for It?” available at <http://milomlaw.com/articles/terrestrial-radio-performance-royalties-for-labels-and-artists-wait-for-it-or-go-for-it>.

called the lack of an AM/FM performance right “indefensible.”²¹ She noted that the time to recognize a more expansive performance right in sound recordings was “long overdue” and that a failure to act “prolongs a longstanding inequity.”²² The list of supporters for a terrestrial performance right is a virtual who’s who of the Arts, technology, and politics, including the last six Administrations of both parties, digital services like Pandora and SiriusXM, and artists from Frank Sinatra to Flea. Mr. Chairman, the time to rectify this “long overdue” injustice has come.

C. Leveling the Playing Field for All Forms of Radio

When Pandora came to this Committee last Congress seeking to reduce the royalties it pays, the Committee was understandably resistant to a “solution” that would drastically slash pay for music creators. But Pandora did have one point – it faces an unfair and unlevel playing field where it must compete against AM/FM radio, which pays nothing for the sound recordings it uses, and against SiriusXM, which pays a below market rate for its music. While these exceptions and grandfathered rules may theoretically have some historical roots – none of them make sense today. All creators should receive fair pay, on all platforms and technologies, whenever their music is used.

Fair pay means “fair market value” and all statutory licenses should be governed by the principle that creators should receive fair market value for their work. But this is not the case in existing law. While the statutory licenses that we administer achieve this by applying the “willing buyer/willing seller” rate standard to most users of the Section 112/114 licenses, only three of the 2500+ services that we administer – SiriusXM, Music Choice and Muzak (the services offering “grandfathered” satellite and cable radio) – benefit from below-market rates set under the Section 801(b)(1) standard. Almost 20 years after the creation of the statutory licenses, and more than 15 years after the willing buyer/willing seller standard was introduced for other licensees, these services neither need nor deserve to have their rates subsidized by artists and record companies, and they should no longer enjoy an unfair competitive advantage over other services. Whatever rationale may have once existed for the grandfathering of these services, it no longer exists; and it is time that SiriusXM, Music Choice and Muzak pay a fair market rate for the music that they use.

²¹ Testimony of Maria Pallante, Register of Copyrights, in a Hearing Before the Committee on the Judiciary of the House of Representatives’ Subcommittee on Courts, Intellectual Property, and the Internet (March 20, 2013), p. 40, March 20, 2013, available at http://judiciary.house.gov/files/hearings/printers/113th/113-20_80067.PDF.

²² Id. at 3.

IV. The Statutory License Administered by SoundExchange Works

As the Subcommittee considers specific proposals, it is important to remember that the statutory licenses set forth in Sections 112(e) and 114 largely work just as Congress intended, but for the few improvements I described above. While all of the stakeholders appear to be unsatisfied with the system for licensing musical compositions under Section 115 and the consent decrees that govern ASCAP and BMI, the statutory license that we administer under Section 114 presents a completely different picture. Those who rely on the statutory license in Section 114 obviously believe it needs to be preserved (even as they seek tweaks). These services like having a one-stop shop that they can go to.²³ But creators, too, believe that the basic structure works, as is apparent from the comments filed by SAG-AFTRA and AFM,²⁴ A2IM,²⁵ RIAA,²⁶ and the Recording Academy,²⁷ all of which make it clear that artists and labels alike support the work of SoundExchange and the basic outlines of the statutory license.

²³ Comments of the National Association of Broadcasters, Music Licensing Study, p. 2, available at http://www.copyright.gov/docs/musiclicensingstudy/comments/Docket2014_3/National_Association_of_Broadcasters_MLS_2014.pdf (“[t]he statutory sound recording licenses and exemptions are critical to music licensing”);

Comments of the Digital Media Association (“DiMA”), Music Licensing Study, p. 33, available at http://www.copyright.gov/docs/musiclicensingstudy/comments/Docket2014_3/Digital_Media_Association_MLS_2014.pdf (“[the statutory] licenses promote efficiency and reduce transaction costs by making a vast body of sound recordings subject to license coverage immediately upon the service of a single notice”);

Comments of SiriusXM Radio Inc., Music Licensing Study, p. 11, available at http://www.copyright.gov/docs/musiclicensingstudy/comments/Docket2014_3/Sirius_XM_%20Radio_Inc_MLS_2014.pdf (“the statutory licenses are a necessity for national services using thousands...of sound recordings”).

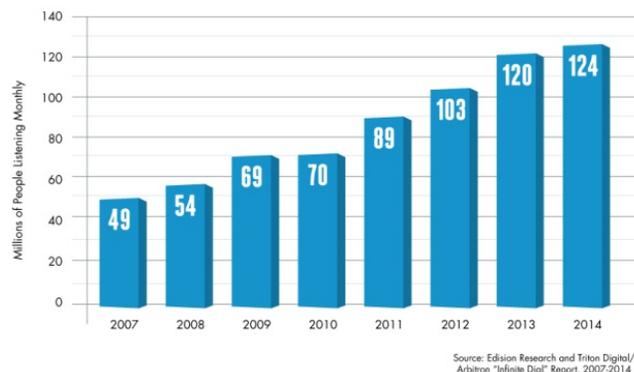
²⁴ Comments of Screen Actors Guild – American Federation of Television and Radio Artists and American Federation of Musicians of the United States and Canada, Music Licensing Study, p. 2, available at http://www.copyright.gov/docs/musiclicensingstudy/comments/Docket2014_3/SAG_AFTRA_AFM_MLS_2014.pdf (“the Section 114 statutory license has delivered extraordinary benefits to music creators, music investors, digital music services and music listening”).

²⁵ Comments by the American Association of Independent Music (“A2IM”), Music Licensing Study, p. 3, available at http://www.copyright.gov/docs/musiclicensingstudy/comments/Docket2014_3/American_Association_of_Independent_Music_MLS_2014.pdf (“[t]he non-interactive compulsory statutory licensing regime ensures equity and fairness for all copyright owners and allows greater music service marketplace access resulting in greater consumer choice”).

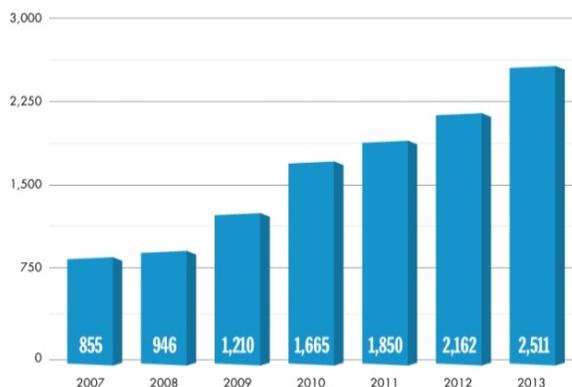
²⁶ Comments of the Recording Industry Association of America, Music Licensing Study, p. 35, May 23, 2014, available at http://www.copyright.gov/docs/musiclicensingstudy/comments/Docket2014_3/Recording_Industry_Association_of_America_MLS_2014.pdf (“the statutory licenses have proven to provide an efficient mechanism for administering licensing and payment for the large number of services providing radio-like programming”).

²⁷ Comments of the National Academy of Recording Arts & Sciences, Music Licensing Study, p. 4, available at http://www.copyright.gov/docs/musiclicensingstudy/comments/Docket2014_3/National_Academy_of_Recording_Arts_and_Sciences_MLS_2014.pdf (“The Recording Academy supports the statutory license under Section 114, which is beneficial for performers and efficient for licensees....the 50-50 split of revenue and direct payment to artists have provided a financial lifeline to many performers.”).

The reason why everyone is in basic agreement is apparent: services have flourished under the statutory system, and revenues have grown. The audience for digital radio has grown from 49 million to 124 million over the past 7 years, the average time spent listening to digital radio has doubled in the past 5 years to more than 13 hours a week today,²⁸ and advertising and subscription revenue continues to flood into the space of non-interactive services.²⁹ Since 2012, when I last testified before Congress, the number of statutory licensees has grown from 2,000+ to more than 2,500 today, and major players continue to be interested in digital radio.³⁰



**Digital Radio Audience Growth
(Millions of people listening monthly)**



Digital Radio Services Using Statutory License

²⁸ Edison Research/Triton Digital, "The Infinite Dial 2014," available at <http://www.edisonresearch.com/wp-content/uploads/2014/03/The-Infinite-Dial-2014-from-Edison-Research-and-Triton-Digital.pdf>.

²⁹ For example, SiriusXM's subscriber and advertising revenue has grown 34% for the first quarter of 2014. See <http://files.shareholder.com/downloads/SIRI/3111449874x0xS908937-14-9/908937/filing.pdf>. Pandora's revenue has increased even more dramatically, growing 69% year over year during the first quarter of 2014. See <http://investor.pandora.com/phoenix.zhtml?c=227956&p=quarterlyearnings>.

³⁰ For example, Apple launched its iTunes Radio service. See <http://www.billboard.com/biz/articles/news/digital-and-mobile/5763260/business-matters-itunes-radio-starting-strong-but-not>. Google's Play Music All Access also has a digital radio option. See <http://www.theverge.com/2013/9/11/4718750/google-play-music-all-access-adds-genre-radio-stations>.

As digital radio has exploded, payments from SoundExchange to the industry have also continued to grow. Last year, we distributed \$590 million to artists and labels, an increase of 28% over the 2012 distributions. Our distributions are now 8.4% of recording industry revenue.³¹ And most critically, the featured artist royalties we distribute are paid *directly* to those artists – meaning that artists are participating directly and immediately in this new revenue stream. The license also makes available valuable new royalties for background and non-featured artists.

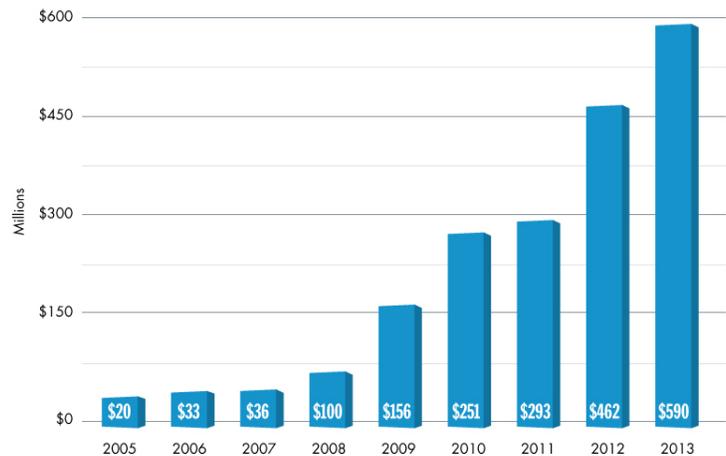
In other words, the system works, and needs only a few important and fundamental changes to be a foundation

for further growth. While the reforms I have described earlier in my testimony are critical, Congress got the fundamentals right when it laid down the rules of the road for digital radio nearly two decades ago – a particularly impressive feat given how new and different the Internet and satellite broadcast technologies were and how entrenched the old models had become. Every American who loves the digital music world that has grown up in the past twenty years owes this Committee our thanks.

V. The Next Generation of Reforms – Industry Infrastructure and a Strengthened Copyright Office

As the music industry changes and grows, our back office systems and infrastructure must keep up. SoundExchange is leading the way. We are constantly improving our distribution infrastructure, with a goal toward getting the right royalties into the right hands as quickly as possible. Beginning this year, we distribute royalties monthly, where many of our peers distribute annually. We are also building a comprehensive repertoire database and repository of International Standard Recording Code numbers, designed to rationalize and collect the metadata that we need for our business, and that can

Digital Performance Royalties Paid to Artists & Labels



(Payments up 28 percent from 2012 to 2013)

³¹ RIAA, “News and Notes Regarding 2013 RIAA Music Industry Shipment and Revenue Statistics,” available at <http://76.74.24.142/2463566A-FF96-E0CA-2766-72779A364D01.pdf>.

also be a foundation for other uses as well.

We are also developing our systems to be a resource for the industry, and to work toward a world in which “who owns what” is clear and easily known. We don’t believe that informational advantage and disparities should determine the winners and losers in the music business. Music creators should be rewarded based on their contributions to the fabric of our culture and the value they bring to the moment. Music should rise or fall based on its artistic power and creativity – not the happenstance of its metadata or the lack of transparency in the process through which the royalties flow.

I would also urge the Committee to support Register of Copyrights Maria Pallante in her efforts to invest in the next generation Copyright Office, including interoperable services and platforms and public-private partnerships. Her call for amendments that will make copyright work better, administrative flexibility to help the office make the best use of its resources, and administrative and budgetary support for this critical piece of our nation’s copyright infrastructure is an important one.

VI. What Does Success Look Like?

The music ecosystem today is pushed and pulled in too many conflicting directions based on grandfathered loopholes, unjustified exemptions, and a confusing network of laws. Musicians feel like they can never get ahead, and even if they do break through and find artistic success, they still struggle to pay the bills. Songwriters struggle beneath the weight of decades-old consent decrees. Competitors on all sides spend far too much on litigators and negotiators that could be going to creators.

As I mentioned above, SoundExchange is governed by the principle that all creators should receive fair pay, on all platforms and technologies, whenever their music is used. In our daily business, and in our planning for the future, that means designing, operating, and always improving an infrastructure that will maximize the transparent and efficient payment of royalties to creators. Success for SoundExchange is a world in which the systems that facilitate fair payment to creators operate silently and transparently in the background, so that artists, songwriters, producers, and those larger organizations that help all of them succeed can focus on making and promoting great music.

For Congress, I believe success is a world in which the government does not pick winners and

losers, and in which all creators are entitled by the law to receive a fair market value for their contributions. Most urgently and immediately, that means (i) ensuring that legacy artists are protected when their music is played on digital radio, (ii) eliminating the unfair and distorting loophole that requires artists to subsidize AM/FM/HD radio, and (iii) ensuring that all radio platforms are subject to a fair market value for all creators' contributions.

I look forward to working with the Committee as well as all stakeholders in the creative, technology, and broadcast communities to bring about real reforms that achieve our one central goal: ensuring that all creators receive fair pay, on all platforms and technologies, for all of their music.