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Thank you for the opportunity to speak with you today about copyright in the digital age.

My name is Barry Coburn – I am Co-President of our family owned music publishing company Ten Ten Music Group formed 26 years ago in Nashville, TN. Our company controls the rights of about 12,000 songs and we have 19 songs that have been broadcast over one million times each.

We operate our company on a business model that mostly has us paying advance dollars each week to the songwriters for them to live on and then we work to activate the songs and recover our money from the royalties we receive for sales and performances of their works.

We have funded and developed many great songwriters including Alan Jackson and Keith Urban and helped them rise from being unknown to the household names they are today.

However our ability to provide the nurturing and support for new songwriters is being severely reduced by the changes that have taken in the music business.

We are living in an era where ‘free’ is decimating the music industry and is starting to do the same to film, television and books – yet for the world’s Internet Service Providers bloated by years of broadband growth “free music” has been a multi-billion dollar bonanza.

I can only hope that your study can move toward putting it right.

1. Defining the Issues

- What is the underlying constitutional purpose of copyright law? Patent law promotes innovation. Copyright law promotes creativity and authorship.

.The digital era has brought to the world changes of staggering proportions.

- Transmissions at the speed of light.
- Technologies of perfect copying.
- User empowerment.
- Globalization.
- Authors can market works directly to the public.
- Various elements of the copyright law are showing stresses and strains.
- The safe harbors in the Digital Millennium Copyright Act (DMCA) are broken.
- Recent judicial decisions have distorted copyright law regarding subscription streaming and a download/performance loophole.

2. My perspective is that of a music publisher who has worked daily for 40 years with songwriters and composers and I am here today to speak on behalf of those hundreds of thousands of songwriters and publishers who are members of ASCAP and BMI – most of whom are small businesses.
3. Copyrights are a major form of American commerce that must be protected
 - Copyrights protect cultural expression.
 - The United States is part of a global economy -- we cannot afford to undervalue downloads/performances/transmissions on the Internet.
 - Music is now the most popular commodity on the Internet. Anglo-America music is the most popular in the world. It all begins with a song!
4. Technology and copyright are not inherent adversaries
 - Technology improves the access and quality of musical works.
 - Copyright policy reflects technological changes that have occurred throughout history.
 - The U.S. copyright system has survived and fostered a dramatic evolution in how content is transmitted and received.
 - Copyright law defines a public performance as a transmission to the public whereby images or sounds are received beyond the place from which they are sent.
 - The Internet, and personal computers, represent the same functionality of transmission and reception as the broadcast model.
 - With experience in the valuation and tracking of music use, PROs (like BMI and ASCAP) are well-suited to playing an important role in Internet rights clearance to the continuing benefit of songwriters, composers and music publishers.
5. Summary Points for your consideration
 - The balance between users and creators in the copyright system has shifted dramatically over the past two decades, but contrary to the assertions of copyright critics, the balance has shifted AGAINST copyright creators, not in their favor. Digital technology enables uses of copyrighted works never before contemplated, with ease never before experienced, in volumes previously unimagined. People are making more uses - fair and otherwise - of copyrighted works than ever before. At the same time, digital technology has significantly reduced the practical ability of rights holders to control the use of their works. In short,

today's users can do far more with copyrighted works than ever before, and today's rights holders have far less control.

- For the nearly 1 million members of the American songwriting community, digital technology, and in particular the rise of the Internet as a music distribution and listening medium, currently poses more of a challenge than an opportunity. While a staggering volume of copyrighted music is being distributed, copied, and streamed through the Internet, the creators of that music - America's songwriters - receive very little compensation from it.

Digital piracy is not the only reason American songwriters do not receive commensurate benefit from Internet uses of their works. Songwriters are also being denied their fair share by Internet services that take advantage of the unique legal structure surrounding the licensing of musical performances. Unlike all other copyright holders, songwriters cannot demand that services negotiate with them prior to performing their works.

Because of the consent decree, administered by a federal court, under which the songwriters' performing rights organizations (PROs) operate, songwriters are required to license anyone who requests a license. The court then is supposed to determine the appropriate rate. This has caused the PRO's to spend millions of dollars in legal fees to enforce their member's rights. No other business has to work that way – This Will Have To Change !

For over a century, performance royalties have comprised a key part of American songwriters' livelihoods. As new technologies emerged, from radio to broadcast TV, cable, and satellite, the rate court recognized the significant contribution musical performances made to the success of these new technologies, and established performance royalties at an appropriate rate.

However, there is growing evidence that songwriters may not appropriately benefit from performances of their music on the Internet.

Many Internet services are "fly-by-night" operations: poorly capitalized, with little or no revenue, and risky-at-best business models. By the time the rate court sets appropriate royalty rates, which in some cases has taken years, many of these operations will have shuttered their servers without paying songwriters a penny. These services will have paid upfront for rent, employee salaries, broadband access, furniture, and computer equipment. Why should only America's songwriters be required to provide their services for free?

- Those Internet services that do have significant revenue have demonstrated exceptional, if underhanded ingenuity by designing their services and legal arguments to minimize performance royalties. For example, some services place advertisements on separate pages from the musical performances their users

want, while others design their systems so a "user", rather than the service itself, initiates the performance: all in an effort to escape performance royalties.

To date, Internet services provide only a tiny percentage of performance royalties earned by songwriters. If this story continues even as the Internet becomes the predominant medium for musical performances, America's professional songwriters - the source of the great American Songbook - will be turned into part-time hobbyists. Surely, this result does not benefit American culture, the economy, or Internet innovation itself.

6. Barry – Personal Notes

- Nashville had 4,000 songwriters are down to 100 from 12 years ago. Hall of Fame songwriter members cannot make rent.
- The ISP's are in the content delivery business, they should not devalue it, they should join with the music industry to create value for the content they are distributing.
- In the words of The Governor of Tennessee, Phil Bredesen in a Copyright Forum held in Nashville recently with The Secretary of Commerce Gary Locke – “It is not digital piracy, it is digital theft”
- The users argue that they do not earn any money.
We have a young rock songwriter who we have been working with for over 4 years and have a significant investment in - Alaina Beaton – her My Space plays are over 10 million and thus far we have received \$38.76 in royalties

We cannot defend ourselves, we must give a license for use of our music but then have to fight to be paid.

Music is being used as a loss leader to attract people to internet sites, with no payment
The building blocks of MySpace and You Tube and other services have been provided by the songwriters of this country.

This is not a sustainable business model for the creators of American Music. Creativity is our greatest asset

It is an economic necessity for US Intellectual Property that we create a new structure to pay our creators.

Thank you for your attention.