March 10, 2009

Honorable Patrick Leahy
Chairman of the Committee on the Judiciary
433 Russell Senate Office Building
Washington, D.C. 20510

Ranking Member Arlen Specter
Ranking Member of the
Committee on the Judiciary
711 Hart Senate Office Building
Washington, D.C. 20515

Dear Chairman Leahy and Ranking Member Specter:

We are keenly aware of your deep appreciation of the central role that has been played by intellectual property in driving the U.S. economy; that the creation of American music has spread American culture to the far corners of the globe, and at the same time earned significant amounts for the U.S. in our increasingly globalized economy. In fact, America's music remains one of the bright spots in our balance of payments.

We thank you for all of your past support on behalf of the over 750,000 songwriters, composers and copyright owners who are concerned about the continued economic viability of songwriting and composing in America. Your legislative actions consistently have shown a commitment to a strong copyright regime conducive to continuation of our success in this creative part of the world economy. We know, too, that you are committed to fairness as legislation is considered in the area of copyright. We suggest that the concern for fairness also should apply to providing America's music creators with rights equivalent to those enjoyed by their counterparts in other countries with strong copyright regimes.

To that end, we respectfully present for your consideration the following description of two of our legislative priorities in the 111th Congress.

While there are two priorities listed below that reflect the urgent needs and concerns of songwriters, composers and music publishers, the most important of the following priorities is the Performing Right in Audio-Visual Downloads.

- **Performing Right for Musical Works in Audio-Visual Downloads**:

  "Public performance" and "distribution of copies" are two distinct rights granted to copyright owners, providing two separate revenue streams on which they depend for their livelihoods. Technological changes, however, have blurred the differences inherent in the methods of delivery of copyrighted entertainment programming, including audiovisual entertainment, to consumers. Songwriters and composers now receive public performing right royalties for their musical works when they are transmitted as part of audiovisual broadcast and cable programming. However, as delivery of such content shifts to online platforms, and often in the form of transmissions via digital downloads, these music creators are concerned that they will not receive compensation for the performances of their works as they would

from broadcast, satellite and cable distribution. The mere choice by a consumer to view his or her favorite movie or television show in a non-linear, time- or space-shifted fashion, whether "streamed" online or from a downloaded digital file accessed while commuting or viewing in a coffee shop, should not determine whether a songwriter or composer of the music accompanying such programming receives public performing right royalties. This is a critical issue because public performing right royalties comprise the largest source of compensation for most of our professional songwriters and composers of musical works. And, it is an especially serious matter with respect to television programs and movies, because songwriters and composers do not receive "mechanical" royalties when audiovisual works containing their music are distributed. If a public performing right is not recognized in the digital delivery of such program files, songwriters and composers may receive no royalties at all.

There is no question that copyright should be technology neutral. Technology should not be used to strip rights from songwriters, composers and music publishers. The choice of certain audiovisual delivery systems or methods over others should not result in a diminution of creators' rights or royalties. A federal trial court recently held, however, that there is no copyright protection for the public performance right when a work containing music is digitally transmitted for future playing or viewing. It has been and continues to be our position that all transmissions implicate the public performing right, and we are optimistic that this right will be vindicated on appeal and the original intentions of the 1976 Copyright Act be fulfilled.[1] However, the ruling presently poses grave risks of unintended consequences to the livelihoods of songwriters and composers of the musical works embodied in or accompanying audiovisual works.

Accordingly, a clarification to the copyright law that articulates that the public performing right is implicated in digital downloads of motion pictures or other audiovisual works embodying a musical composition is necessary to ensure compensation for songwriters and publishers of such works, and to promote "platform parity" between the various competing services. We believe Congress intended the current law to be platform neutral. The conflicting interpretations demand clarification, for without it, performing right income of songwriters,

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[1] In particular, the legislative history sets forth the intended definition of a public performance via a transmission. As stated in the House Report: "[T]he definition of 'publicly' in section 101 makes clear that the concepts of public performance and public display include not only performances and displays that occur initially in a public place, but also acts that transmit or otherwise communicate a performance or display of the work to the public by means of any device or process. The definition of 'transmit' – to communicate a performance or display 'by any device or process whereby images or sound are received beyond the place from which they are sent' – is broad enough to include all conceivable forms and combinations of wired or wireless communications media, including but by no means limited to radio and television broadcasting as we know them. Each and every method by which the images or sounds comprising a performances or display are picked up and conveyed is a 'transmission,' and if the transmission reaches the public in [any] form, the case comes within the scope of clauses (4) and (5) of section 106." H. R. Rep. No. 94-1476, 94th Cong., 2d Sess. 64 (1976), reprinted in 1976 U.S.C.C.A.N. 5659.

composers and publishers is seriously threatened, as is the incentive that has placed America's music at the pinnacle of world popularity. Moreover, the clarification would ensure that U.S. copyright law moves closer to harmonization with foreign laws and treaty obligations – which overwhelmingly provide copyright protection for this right. If U.S. law does not provide this copyright protection, foreign performing right organizations may very well claim that they are not required to pay U.S. songwriters and composers, since their creators are not paid when their works are performed in the U.S. It is important to note that the RIAA has informed Congress by letter of May 14, 2008 (copy attached) that, in the interests of supporting harmonization of U.S. law with international practices, it would not oppose such legislation if it were to be proposed.

- **Protections for Copyright in any Government Effort to Expand Broadband Service:**

Much attention is being paid by both the government and private interests to the need for "building out" the Internet to accommodate new broadband services. While a robust and widely available broadband Internet is a laudable and important goal, we must not ignore that an unintended and highly negative by-product of providing faster and greater connectivity could well lead to a significant increase in already rampant Internet piracy. As Congress addresses the issue of broadband expansion, we strongly urge that proper intellectual property and technological protection for songwriters and music publishers be incorporated into any such legislation.

We look forward to working with you and your staff on these important issues and on other legislation when necessary to protect the interest of the songwriters, composers and music publishers.

Sincerely,

Songwriter and Publishing Groups:

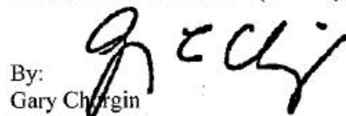
ASSOCIATION OF INDEPENDENT MUSIC PUBLISHERS ("AIMP")

By:
Cathy Meranda

BROADCAST MUSIC, INC. ("BMI")

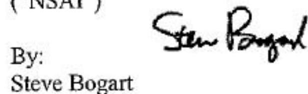
By:
Del Bryant

HARRY FOX AGENCY ("HFA")



By:
Gary Churgin

NASHVILLE SONGWRITERS ASSOCIATION INTERNATIONAL ("NSAI")



By:
Steve Bogart

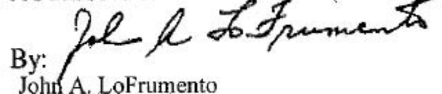
SONGWRITERS GUILD OF AMERICA ("SGA")

By:
Rick Carnes

SOCIETY OF LYRICISTS AND COMPOSERS ("SCL")

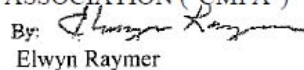
By:
Dan Folart

AMERICAN SOCIETY OF COMPOSERS, AUTHORS & PUBLISHERS ("ASCAP")



By:
John A. LoFrumento

CHURCH MUSIC PUBLISHERS ASSOCIATION ("CMPA")

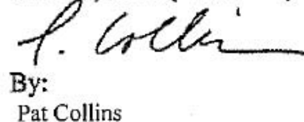


By:
Elwyn Raymer

NATIONAL MUSIC PUBLISHERS ASSOCIATION ("NMPA")

By:
David Israelite

SESAC, INC. ("SESAC")



By:
Pat Collins

MUSIC MANAGERS FORUM - US ("MMF-US")

By:
Barry Bergman

MITCH BAINWOL
CHAIRMAN AND CEO

May 14, 2008

Honorable Howard L. Berman
Chairman of the Subcommittee on Courts, the Internet, and Intellectual Property
Committee on the Judiciary
2221 Rayburn House Office Building
Washington, D.C. 20515

Honorable Patrick Leahy
Chairman of the Senate Judiciary Committee
433 Russell Senate Office Building
Washington, D.C. 20510

Dear Chairmen:

This letter is to advise you that the Recording Industry of Association of America (the "RIAA") does not oppose a clarification and recognition of a public performing right under the United States Copyright Law in copyrighted musical compositions that accompany, and are embodied in, digital transmissions of copyrighted audiovisual works (no matter the method of delivery, now known or hereafter developed, including streaming, and wireless), without regard to whether such digital audiovisual transmissions are delivered, by way of illustration, and not limitation, for: (1) temporary use by the recipient, expiring within a particular time frame or contingent on maintenance of a subscription service, (2) use of the file tied to a particular device or subscription service, via digital rights management ("DRM") technology or other conditions or restrictions limiting use, or (3) use free of DRM or any other conditions or restrictions.

The RIAA takes this position because it supports recognition of the concept of harmonization, that is, bringing the law of the United States into closer alignment with international practices and further, because RIAA recognizes that songwriters, composers, lyricists and music publishers should be fairly compensated for such copyrighted works.

Very truly yours,

Mitch Bainwol

cc: The National Music Publishers' Association
The Harry Fox Agency, Inc.
American Society of Composers, Authors and Publishers
Broadcast Music, Inc.
SESAC, Inc.
Songwriters Guild of America
Nashville Songwriters Association International