

**Testimony of
Jimmy Jam
Chair Emeritus, Board of Trustees
The Recording Academy
and
Record Producer, Songwriter, Recording Artist**

**Before the U.S. House of Representatives
Committee on the Judiciary
Subcommittee on Intellectual Property, Competition, and the Internet
Washington, DC**

**"Music Licensing Part One: Legislation in the 112th Congress"
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Chairman Goodlatte, Ranking Member Watt, and members of the Subcommittee: My name is Jimmy Jam. I'm a record producer, recording artist, songwriter, and small business owner. I am also Chair Emeritus of the Board of The Recording Academy. Known for producing the GRAMMY Awards, The Recording Academy is the trade association that represents the individual performers, songwriters and studio professionals who create the music enjoyed around the country and around the world. I am also a member of the American Federation of Musicians, SAG-AFTRA and ASCAP. I am honored and grateful for the opportunity to present the music creator's viewpoint at this important hearing.

As a record producer, I've had the privilege of working with some of the finest recording artists, including Usher, Mariah Carey, The Isley Brothers, Sting and Yolanda Adams. And while their names are well known, if you came to my studio on any given day, you would see dozens of people you've never heard of employed as session musicians, background singers, songwriters, engineers and others professionals who derive their income from creating music.

The majority of Recording Academy members are middle class artists. Music is not just their lives, but their livelihoods.

As a small business owner, I know first-hand that bringing music to the American public takes investment, time, and the talents and passion of many remarkable individuals.

But while music is our passion, it's also our job. And as with any job, we hope to be paid fairly for our work.

So let's compare two ways creators get paid in the digital era.

If a consumer downloads a song from Amazon's mp3 store for 99 cents, Amazon pays the rights holders and creators about 70 cents. If a consumer streams that same song on Pandora radio, Pandora pays SoundExchange about one tenth of one penny. Or put another way, the listener would have to hear that song on Pandora every single day for nearly two years to equal the payments earned from that one download.

So when Pandora tells you it's paying too much to the creators who are the backbone of its business, think about that tenth of a penny—and remember that small amount is shared by copyright owners, featured artists, session musicians, singers, and producers. We're talking about very little money per play.

That's why the Recording Academy opposes H.R. 6480, which would lower these already small payments by as much as 85 percent.

It's also important to note that while Pandora is trying to lower the earnings of artists through legislation, it is simultaneously seeking to lower its payments to songwriters in rate court. As an organization that represents both artists and songwriters, The Recording Academy opposes both the Internet Radio Fairness Act as well as any attempts to lower payments to songwriters.

The Internet Radio Fairness Act is ironically named. First, it's hardly fair to ask the very people who enable Pandora's business to work for below-market payments. But perhaps even worse, it neglects to mention the most unfair aspect of all in the music royalty debate. So while we discuss these digital platforms, we must also address an important inequity in the analog world.

If I told you – the Congressional leaders responsible for I.P. policy – that one business in America is allowed to take and use another's intellectual property without permission or compensation, I think you would find that patently unjust. Well, one such business does exist – the radio broadcast industry. Through an inexplicable exemption in the law, terrestrial radio is allowed to take – and profit from – any sound recording without paying a single penny to those who created the track. This is the only industry in America allowed such a taking, and the United States is the only developed country in the world that provides such an exemption to its broadcasters.

The NAB will tell you, on the basis of a few deals with independent record labels, that the marketplace will solve this problem. But we need Congress to provide an industry-wide solution that covers all broadcasters and all artists. And if you don't believe me, take it from the architect of the first of these private market deals. Scott Borchetta, the CEO of Big Machine Records who made the first private deal that includes a terrestrial royalty, sent a letter to Congress noting the reasons why private deals are not a substitute for legislation. And I would ask that his letter be submitted into the record.

Private deals between a few labels and broadcasters cannot create a performance right – only Congress can. And until this important right is established in law, the United States will continue to lose tens of millions of dollars each year as money is collected for American music played in foreign countries – revenue rightly belonging to American creators and businesses – but not shared with us because we lack a performance right.

We believe that before there can be any discussion of rates or rate standards, Congress should address this anomaly in the law and close the corporate radio loophole. I want to thank the members of this Committee who have supported and favorably reported the Performance Rights Act, and also thank Mr. Nadler for his draft legislation, the Interim FIRST Act, which ensures a level playing field for all participants.

Chairman Goodlatte, the Internet Radio Fairness Act is anything but fair. But by all means, it's time to have a *real* conversation about fairness.

Is it fair for Pandora – which already enjoys the benefits of a compulsory license – to also enjoy a government-imposed below-market rate so it can increase its profit margins at the expense of artists? Is it fair for songwriters, who provide the very DNA of the music industry, to be asked to fight to maintain their already meager payments from Pandora? And finally, is it fair for terrestrial broadcasters to pay nothing for using sound recordings because they – not we – have decided it's good for us?

The answer to all of these questions is clearly no.

Those of us who make music are happy to share our gifts with the world, and we only ask that we be paid a fair wage in return. Members of the subcommittee, if you agree that music creators should be paid fairly for their work, then I ask that you oppose H.R. 6480 and that we work together to support fair-market royalties paid by *all* who use music as the foundation of their business.

Thank you.