

Testimony of

Sen. Ron Wyden

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Chairman Leahy, Senator Specter, and Members of the Committee:

I want to thank you for inviting me to testify before the Committee on this important issue: the fair treatment of Internet radio. I appear on behalf of myself and Senator Brownback, the co-sponsor of S.1353, the Internet Radio Equality Act. But I also speak for tens of thousands of musicians and other artists who want to use this new medium and the millions of Americans who would be their audience.

The core problem facing the committee today is a one that applies across the board when dealing with new technologies. Internet radio is a fledgling industry that has unlimited potential. It has less in common with old AM radio than a Model T has in common with the latest hybrid car. But Congress is approaching this new industry using the same tools that it used on player pianos and AM Radio. Just as the Internet continues to revolutionize countless other industries, changing the way we live, work, and learn, it has changed the idea of radio beyond the imagination of any member here, myself included. Using old tools on new technologies could be like the sledgehammer that smashes this new industry to pieces.

When regulators don't fully understand a technology they produce bad decisions and worse outcomes. One good example of this is the Minimum Fee section of the Copyright Royalty Board (CRB) decision. The CRB originally imposed a fee of \$500 per channel on all commercial webcasters, which they stated was needed to cover administrative costs. There was no justification for this decision other than it was what the old industry, the folks the CRB was familiar with, asked for. This regulation was made despite the fact that if applied to just one of the well known webcasters of the time it would have cost over \$500 Million dollars - for administrative fees... This particular part of the decision was so divorced from reality that the rights holders have already agreed to limit it, regardless of the outcome of our efforts here.

This sort of fundamental misunderstanding is unavoidable when we apply old rules to new technology, and that's why the Senate has to insure that ignorance does not trump innovation in our new economy. S.1353, The Internet Radio Equality Act, nullifies that unfortunate royalty decision and brings an understanding of new technologies to the process. It's precisely the freedom to reach listeners wherever and with whatever content they can that is the strength of this new medium. Let's not get in its way.

Net Radio has brought every American an almost infinite choice of stations. It can even allow folks to create a station, or a number of stations, designed specifically for a listener's unique needs and tastes. NetRadio takes control of radio programming out of the hands of a few powerful conglomerates, and puts it in the hands of consumers. Radio programming can address the unique perspectives of a Professor in Corvallis, Oregon or a musician in Topeka, Kansas. Almost anyone can launch a NetRadio station. Lowering the barriers to entry for this industry means the epicenter of American music doesn't have to be stuck in the commercial capitals of New York and Los Angeles. It could shift back to the decentralized creative centers of Memphis, New Orleans, Detroit, Minneapolis or Portland. The newest NetRadio powerhouse could come out of your own home.

Today, I can, as an individual, listen to the exact same music, at the same level of quality, with the same level of impermanence on three different types of technology: traditional radio, satellite radio, and internet radio. The problem is that the cost to the broadcaster will be different depending on the technology. In fact, the cost will be higher as the level of innovation increases. We are allowing the royalty process to serve as a tax on technology, and that is discrimination against innovation.

Essentially what the committee is asked to address today is this discrimination - and it's something I've been fighting against for many years. What typically happens when new technologies emerge is that government steps in thinking that litigation, regulation and taxation will put this new technology into a box that will manage and limit change. That strategy tends to strangle new technologies in their infancy and preserve a status quo that's stuck in the past. It's been a constant battle from fight the taxation of Internet access and services to keep revolving rounds of court battles from destroying free and open Internet access. But so far, so good. My attitude is that it's critical to treat new technologies with fairness that is based on neutrality, which can be tough when old technologies have loud voices in the debate.

It's never clear when a new technology emerges how far it will take us. NetRadio could be used someday for educational purposes, for communications in a disaster, or for a hundred things we can't imagine today. If we are to truly serve our constituents, we have to encourage new technologies and their potential, not stifle them.

I'm not suggesting that artists not be compensated for their work. To the contrary, as the son of an author I'm excited about the possibility that these new technologies could bring greater attention to artists and their work. My father would relish the fact that his books can now be downloaded onto new technologies like Amazon's Kindle and read by anyone with a library card while they commute to and from work. His audience would expand beyond his wildest dreams.

It's up to us to recognize the ways in which innovations bring audiences and creators together. We have to insure that all parts of government promote and advance new technologies and their potential to serve society rather than creating barriers that separate us from the benefits they can bring us.