

**WRITTEN SUBMISSION
BEFORE THE SENATE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON ANTITRUST, COMPETITION POLICY AND
CONSUMER RIGHTS**

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Thank you Mr. Chairman, Members of the Subcommittee:

I am Roger Faxon, Chief Executive of the EMI Group. I am pleased to have this opportunity to speak before you today in regard to Universal Music Group's proposed acquisition of the recorded music division of EMI.

To appreciate the competitive implications of the transaction we are discussing today, it is important to place it in the context of the market for recorded music as it is today, and not as it may have been in the past. In the nearly twenty years I have been in this industry I can say without a doubt that the music landscape has changed beyond all recognition.

When I joined EMI in 1994, U.S. retail sales of recorded music were in excess of \$12 billion. At its peak a few years later, that figure was almost \$15 billion. Today they are less than half that – just \$7 billion - and that includes not just revenue from the sale of CDs, but digital revenues as well. The forces that have produced this decline have fundamentally and permanently changed the dynamics of the music industry. It is my view that those changes have contributed to a substantial shift in the impact of record company consolidation, on both

consumers and the wider music business. I would like to take the next few minutes to walk you through why I believe that to be the case.

Much has been said about the effects of the digital revolution on our industry. Technology, and most especially, *internet* technology has engendered fundamental change in consumer behavior. Simply put, the digital revolution has empowered consumers. They are in control. If consumers cannot access what they want, when they want it, the way they want it, at the price they want it through existing legal channels, then many consumers will do so through illegitimate channels. And in the early part of the last decade, they did so in unfathomable numbers. This wreaked havoc on the physical market for music, and changed for all time the position of all record companies - and most particularly for this discussion, the major record companies.

One of the most direct effects of the digital revolution was a precipitous drop in sales of the CD. The backbone of the recorded music industry had always been the specialist music retailer, offering fans a full range of music in every mall and main street in America. Today, those retailers are all but extinct. One of the most direct effects of the digital revolution was a precipitous drop in sales of the CD. The backbone of the recorded music industry had always been the specialist music retailer, offering fans a full range of music in every mall and main street in America. Today, those retailers are all but extinct.

The retail market for music has consolidated and changed out of all recognition. Led by three giant retailers, for the vast majority of these retailers music is not central to their offering. But they are central to record companies and the careers of their artists. To put a point to it, for our top three retail customers in the US, music represents less than half of one per cent of their combined domestic turnover. So it is not hard to understand that it is they – not the record companies – that control the dynamic of the relationship.

In this consolidated retail environment, an album's presence in Walmart or Best Buy or Target can significantly impact the success of an individual project – and therefore an artist's entire career. With an ever-shrinking shelf space being dedicated to music, it is the retailers that decide which albums that they will stock, and it is they who can dictate the commercial terms. The evidence on that point is pretty clear. In EMI's case, we have seen a steady and unrelenting decline in our average wholesale price for CD's, and I suspect that is not very different for others.

Retail concentration is even more pronounced on digital platforms. Apple's iTunes is by far the leading digital retailer, by some accounts representing around 80% of download sales. Add in Amazon, the next largest digital service, and you have two players accounting for 90% of sales, and 80% of total digital revenues. In this environment, pricing again does not sit within the gift of the record companies, regardless of size or market position.

What also needs to be understood about the digital environment is that where once access was limited by shelf space in stores, now there is infinite access to consumers through digital services. There is no limit to the amount of music that can be stocked, and so any band, budding artist or independent label can have their music distributed on digital platforms. Major record companies, if they ever were, are no longer the gatekeepers.

In essence, digital distribution has created a music meritocracy. Nowhere is that more amply demonstrated than with the streaming platforms such as Spotify, where consumers decide on every track they play and every creator gets paid broadly the same for every click. Good music quickly rises to the top. The skill is in *finding* that music, and helping to connect it with an audience - and that skill is not confined to one company or group of companies.

The internet not only has democratized distribution and access; it also has democratized the promotion of that music. The explosion in social media over recent years has taken promotional power from the hands of a few magazine editors and radio station program directors, and put it firmly in the hands of the music fan themselves. Facebook, Twitter, MySpace, YouTube and a myriad of other websites and services are essential in building a buzz about an artist, and play a significant role in their ultimate success. The people writing and interacting about music on these platforms don't have the slightest interest in the market position of

an artist's record company – they care about the music, and whether it's any good or not. Radio remains a vital medium in the promotion of artists, but as media has fragmented, so radio stations have become much more focused on playing only the music that their extensive callout research tells them will connect with the highest possible audience. Again, it's the music that matters, not the source of that music.

As a result, I would argue that competition between music companies – even in the light of some consolidation in the last twenty years – is fiercer than ever when it comes to signing artists that have the ability to connect with an audience. Technology has significantly reduced the cost of entry for new music companies, and more and more people are making use of the internet to create a direct path to market for themselves. You may, for instance, have heard of the musician Amanda Palmer who last month raised almost \$1.2 million direct from fans via the crowd-funding site Kickstarter, to self release her new album. More and more businesses are dipping their toes into the music representation and distribution business, and I would say that the music market is more crowded and fragmented than it has ever been. You do not have to be big to enter the market and reach consumers – you just have to have the ability to find great music, and to reach through the clutter to excite fans with it.

So, record companies can't control consumer pricing, don't control access to consumers, can't exert control over promotional platforms or the myriad of music

discovery tools that fans use today, and they're having to compete with the vastly increased number of alternative paths to market for budding or even established artists. If there ever were antitrust issues implicated by label consolidation, it seems to me that on this basis, they are not present today.

Truly over the last decade and a half the music industry has been transformed. Our focus has returned to where it ought to be – on helping artist develop the most compelling music and working with them to ignite passion for it in their fans. And I think we are doing a very good job of that.

But we have another major job and that is to assure that the creators of that music are properly rewarded for their contribution. And sadly, I would say we are not doing as well as we should be in that area. For me, that is because of the erosion of the protection that creators have for their works and what seems to be the promulgation of an ethic that puts individual creators at the bottom of the cultural food chain.

The ambiguity and unenforceability of our intellectual property laws is clearly failing our creators. Individual rights holders are no longer able to protect their music, ISPs are not held responsible for their actions, and safe harbor provisions designed to encourage innovation are instead being used as a shield by bad actors seeking to build their business without appropriately compensating the artists and writers whose music underpins it.

Artists need to be professionals if they are to be successful. Chart-topping songs rarely are created by amateurs in their bedrooms. Hit tracks invariably come from people who have worked at their art for years. These creators need to be paid to do what they do. And that is vastly more difficult with industry revenues down by more than 50% over a little more than a decade, Songwriters, performing artists and those who help them create their music, studio engineers, session musicians, graphic designers and many, many more – have all been significantly impacted by piracy and copyright erosion over these last years.

Technological innovation and musical innovation are not mutually exclusive. Content created by great artists and songwriters can drive consumers towards new ventures, and exciting new platforms and products can enable the opening up of a wider market for the work of creators. But our institutions have allowed the balance to shift too far in favor of big technology.

The impact on our creative community has been devastating, and will only get worse if the scales continue to tip unchecked.

Music is at the beating heart of this nation. This is the country that gave birth to the blues, jazz, rock'n'roll, country, soul, and hip-hop; that produced Miles Davis, Frank Sinatra, Elvis Presley, Bob Dylan, Joni Mitchell, Marvin Gaye, Aretha Franklin, Prince, Beyonce and Kanye West. It's the country whose music inspires countless young people to pick up an instrument and play, or to open their

mouths and sing. America's musical contribution to the world is without parallel, and is something that every one of us can be proud of.

But with that legacy comes responsibility. We have to support our creators, and give individual artists the ability to protect their works in the way that they see fit – whether that's selling CDs at the back of 300 gigs a year, or working with a major label, or giving away their works on the internet. I don't mind which route an artist takes – I just believe that they should be afforded the right to choose what they do with the music they work so hard to create. Right now, that choice is too often being taken away from them.

For those of us who work with artists whether we are labels both large and small or managers and advisors we have a responsibility to insure that each of those artists has the greatest possible opportunity to succeed. . That has to be our overriding goal. To do otherwise strikes at the very foundation of our industry. Universal has an enviable track record in delivering success for its artists, and I am confident that it will be as ardent an advocate for the artists that we at EMI are so privileged to represent.

But delivering success requires more than just selling records. Creativity – and especially music – touches people in a way that nothing else can, and after all this time in the industry, it still remains for me personally, an absolute privilege to be able to represent some of the greatest artists that this world has ever seen. Yet

without a solid framework of intellectual property rights to underpin that creativity, we don't just threaten labels or jobs, but the ability of this country to nurture the next Jay-Z, the next Beach Boys, the next Norah Jones. That won't be the fault of any merger or acquisition – it will be the fault of our own inertia, and an unwillingness to stand up to protect one of the greatest cultural strengths this country has to offer and the economic contribution it makes.

Thank you.