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PANEL #2: COPYRIGHT-1

"Digital Rights Management, Fair Use and
Compulsory Licensing or Where is Copyright Headed
in the Post-Napster World: Legal or Market Solutions?"

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P R O C E E D I N G S

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MR. GLAZIER: There are so many issues and there are so many people in the room who spent a good four years of their life working on the Digital Millennium Copyright Act. It's sort of interesting now to look back and see what people thought at the time that the Act was being debated and the evolution in the business world since its enactment. It has really been a fascinating evolution for the music industry, who was sort of lucky and unlucky to be the very first major type of intellectual property available in the ether, and to watch the evolution of how the music companies have embraced, over several years' time, new business models, to try to figure out exactly what the consumer will want, how their content will be protected, how to work with technology companies, AND how to make sure that when technology is licensed, versus content being licensed, they work in an interdependent way.

One thing that I think everyone learned during the policy debate was exactly how interdependent technology delivery systems and content are in this new world. We ran into a lot of

very difficult legal questions even after hacking rights were figured out in the DMCA, including what does a reproduction mean now, what does a distribution mean now, and how in the world are we going to negotiate with not just technology companies but other content owners, with music publishers who own the composition in the sound recording, with performance rights organizations who represent songwriters who are entitled to a royalty from the performance. And with all of the marketing and business deals, together with the legal changes, I think we are now at a crucial point where digital rights management systems, the evolution of legitimate peer-to-peer services, on-demand digital music subscription services, interactive radio, non-interactive radio, and regular downloads that retailers sell, are all coming together either in sort of compilation services or in separate services.

There is only one huge question: Nobody knows what the consumer will want, what will succeed, or how this will work. Nobody knows yet, until the market is launched, whether or not the protection systems that people think will work at least fairly effectively for mainstream consumers -- we acknowledge that there is always a normal amount, and the software folks can tell you, there is always a normal amount of piracy that is expected -- but an effective system for mainstream consumers that also gives the consumer a very easy and convenient experience.

There have been a lot of companies that have tried to establish legitimate commercial marketplaces on the Web over the past five years. And while some of them have had phenomenal advertising campaigns, sock puppets and lots of other great things, they don't last. They are finding that the consumer base in the Net world is a very, very fickle population. And so when you do launch, you have to make sure that it's something that is easy, convenient, desirable and, of course, from our standpoint, it has to sound great. It has to be something that is representative of the creators that we represent.

And so we started out with the easy part. We started out, after negotiating with the music publishers, with a rate for downloads, which is the same as what the rate would be for a track on a CD in a record store, licensing retailers who offered downloads on their sites. And I think the price started at \$3, and came down to 99 cents basically. It had mixed reviews. Some consumers thought it was okay; not a huge marketplace. Retailers didn't find that it overtook their physical market sales. Some shut down. Some continue to have them. But regular downloads kept on the consumers' hard drive, to access later, especially given the modem speed at the time a lot of these were first licensed, ended up being a marketplace that didn't grow too much but for which there is still some hope in the future.

Webcasting, a statutory license was negotiated in 1995, updated in 1998, where there is a system established to allow non-interactive radio services to get online -- also an explosion. Half of them did not make it. Some of them are still making it. Some legal questions still remained about whether or not simulcasting radio, for example, would or would not be included in the license, and the courts have just come out with the solutions to some of those questions. So those were the earliest forms of legitimate online licensing, because the legal and marketing worlds were a little bit clearer on those particular types of services.

Interactive radio required licensing agreements that had to be negotiated. Now they're starting to work and come on board. ClickRadio, Listen.com's Rhapsody, Music Choice's Backstage Pass -- there are a plethora of them -- but interactive radio services that people keep, and maybe you've seen them, where they have a bar and they ask you if you like the song or you don't like the song, and you sort of create your own radio station based on your own tastes, those sorts of interactive services are now coming on board.

The final point in the evolution up to date is the advent of the on-demand digital music subscription services. Everything that we learned that didn't work in regular downloads or in non-interactive radio or in interactive services seem to be

the consumer's desire to get the song or the artist that they want when they want, either streamed or downloaded or partially downloaded, and available to them in a manner that was convenient and simple and looked great. And there was a really great test market for this kind of service; it just happened to be illegal. Napster sort of blew open the world of peer-to-peer services because it organized it. It created a software program that made an easy-to-use, efficient way for consumers to be able to get whatever music they wanted whenever they wanted it.

The problem was no licensing agreements were sought, no musicians were compensated, and so a lawsuit was brought, where the court started to figure out some of the rules of the road for how both the DMCA and regular copyright principles would apply to these types of services. The aftermath of that suit left a lot of questions, and the publishing issues, compensation for publishers, left a lot of questions. Now we have an answer somewhat from the lawsuit, although it is still proceeding.

There has since been a deal with the publishers as to how people will treat streaming services, on-demand services. There are still some questions with downloads. But in the aftermath of some of the marketing and some of the legal questions being figured out to a point, we now see the launch date of several new competing subscription services -- Echo, Full Audio, which will be available on 25 Clear Channel radio stations

in five U.S. markets, Music, Music, Music, MusicNet, PressPlay, StreamWaves, Web Audio Net, all of these services, these on-demand services, that will launch and compete with each other, in addition to proposed services from CenterSpan Scour service and other folks who are in negotiation right now -- I think there are about 26 when you count all of them together -- will present the next wave in both legal and marketing questions for how this evolution will continue to come about.

But we know that there is one clear constant, and that is the consumer. Only the consumer will be able to determine whether or not these services survive and whether or not it is worth putting in the investment from both the distribution and the content side to make it happen. All of it requires a respect for intellectual property. No one is going to take their content and either allow it to go unlicensed or receive zero compensation for what goes out. And everybody has to know that there is a secure system for protecting their shareholders' investments and their artists' creations as it goes out onto the Internet.

But we are getting to a point technologically, from a business model point of view, from a legal point of view, where we are starting to see a road ahead. And I was telling Robin Gross right before we came on, in a way, a lot of the other content industries -- the motion picture industry, the software industry, the book industry -- will be able to benefit from the

transformation that we have gone through over the past five years.

It has been incredibly difficult, but I think we have learned a lot. I think that the companies that we now work with every day have learned a lot. And at the end of the day, I think that consumers will be pretty happy with a lot of great competing services that are out there, trying to offer them the best content for the lowest price. And may the best one win.

I know that there are a lot of issues that will be addressed, and I am happy to answer questions afterwards.

(Applause.)

(End of Mr. Glazier's remarks.)