

Statement of

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Before the United States Copyright Office and
The National Telecommunications and Information Administration

Mr. _____, on behalf of the over 200 employees of LAUNCH Media, thank you for inviting me to testify today at this important hearing. I am David Goldberg, Chief Executive Officer and co-founder of Launch Media, a publicly traded California-based company that for six years has developed innovative and compelling ways to help consumers discover new music through interactive media, in particular, the Internet, where we operate our music destination at www.launch.com. Since we first launched our Website, we have attracted approximately 5 million registered users by providing music fans with a wide selection of streaming audio and music videos, exclusive artist features and music news covering substantially all genres of music.

Let me say at the outset that, notwithstanding the public image of Internet music content providers in the wake of the MP3.com and Napster lawsuits, we at LAUNCH have worked very closely with major record companies to ensure that all of our audio and video content is appropriately licensed and that copyright holders are appropriately compensated. We have the Web's largest collection of legally licensed music videos available for streaming, including videos licensed from such major labels as EMI and Warner Music Group. Having spent over two years in a senior management position at Capitol Records, I have a thorough understanding of the rights issues from the content owners' perspective. Indeed, I should point out that LAUNCH has already agreed to pay the record companies more than traditional broadcasters pay for public performance rights in connection with streaming of audio and video music content.

We do believe, however, that sound policy objectives dictate the need to amend Section 117 of the Copyright Act to provide explicitly that it is not copyright infringement to make temporary digital copies of works (for example, temporary buffer copies created during the streaming of digital media) that are incidental to the operation of a device in the course of a lawful use of a work. By advocating this legislative amendment, we are not trying to circumvent the legitimate rights of content owners. Rather, we are trying to ensure that the copyright laws are not used to unfairly burden digital transmissions of content by clarifying that webcasting would not be subject to “double dipping” by content owners in what would essentially amount to an unnecessary tax on Internet streaming activities.

The proposed exemption is further justified in light of the impact that such an exemption would have on content creation and distribution and on growth of electronic commerce and Internet activity generally. We at LAUNCH, like many other webcasters, have come to appreciate the power of the Internet from the content delivery perspective – both in terms of the geographic reach of the Internet for distribution purposes, as well as the sheer volume of content that can be delivered over the Internet. The proposed exemption would ensure that the Internet would remain a highly efficient distribution mechanism for digital content of every description by clarifying that the creation of temporary copies which are inherent to the process of digital distribution does not implicate copyrights. So long as the Internet remains an efficient distribution mechanism for digital content, businesses like LAUNCH will continue to expand their online operations to take advantage of the medium. Commercial activity related to such content distribution, for example, online advertising, merchandise sales, and content syndication, will continue to expand as well.

It is also worth noting that the proposed exemption would apply not only to services which are currently available – for example, LAUNCH’s webcasting activities under the statutory license created by the

Digital Millennium Copyright Act – but also to new services that might become available in the future, for example streaming subscription products.

Absent the proposed amendment, online content distribution, the development of new content distribution services, and related commercial activities might shrink considerably due to a number of factors, chief among them uncertainty pending a resolution to the conflict between copyright owners and content distributors. While we at Launch believe that the creation of “buffer” copies of a work during “streaming” of such work does not constitute copyright infringement under current law, we continue to run our business under a cloud of uncertainty as long as copyright owners continue to insist that these temporary copies are, in fact, infringing. This uncertainty is an unnecessary restraint on our business, as well as a deterrent to others who, but for this uncertainty, might choose to enter our industry. As a young growth company, we find the prospect of having to litigate or arbitrate this matter in order to reach resolution truly daunting.

That having been said, it is in the interest of society as a whole – not just webcasters and content owners – that this matter be resolved. All of society benefits from the widespread distribution of knowledge and information; likewise, all of society stands to lose if digital transmission of content is discouraged while this question remains undecided. This is not just a music industry issue.

Mr. _____, I am sure that it is not in anyone’s interest to resolve this issue through litigation, which would inevitably be costly and time-consuming for all of the parties involved. In my opinion, there has already been too much reliance on the courts to clarify ambiguities in the copyright law. The issue that we address here has broad ramifications, extending beyond the streaming of audio and video music content and touching all transmissions of digital media. This is a clear example of an

instance in which Congress, as guardian of the public interest, can and should act to resolve any uncertainty so as to encourage dissemination of content and information.

Thank you.