

Summary of Intended Testimony of David Goldberg:

My name is David Goldberg and I am co-founder and Chief Executive Officer of Launch Media, Inc. (“LAUNCH”), a digital media company dedicated to creating the premier Internet music site, www.launch.com, by providing music fans with a wide selection of streaming audio, one of the Web's largest collections of music videos, exclusive artist features and music news covering substantially all genres of music.

In my testimony, I would focus on the policy justifications for amendment of Section 117 of the Copyright Act, 17 United States Code 117, to provide explicitly that it is not copyright infringement to make temporary digital copies of works that are incidental to the operation of a device in the course of a lawful use of a work (e.g. temporary “buffer” copies created during “streaming” of digital media). I would discuss three policy arguments in particular, namely that the proposed amendment (1) addresses legitimate concerns of content users without depriving copyright owners of any rights which Congress intended for them to have, (2) encourages the creation and broad distribution of content, and (3) would further electronic commerce and Internet growth. In light of my experience as an Internet webcaster, I would emphasize points 2 and 3 above – the impact of such an amendment on content creation and distribution, and on growth of electronic commerce and Internet activity.

We at LAUNCH 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 do not implicate copyrights. The proposed exemption would not obviate the need for companies like LAUNCH to respect the rights of content owners. Indeed, LAUNCH has already agreed to pay content owners, the record labels in this instance, more than traditional broadcasters pay for public performance rights in connection with streaming of audio and video music content. Rather, the proposed exemption would clarify that webcasting would not be subject to “double dipping” by the content owners in what would essentially amount to an unnecessary tax on Internet streaming activities.

So long as the Internet remains an efficient distribution mechanism for digital content, businesses like ours will continue to expand their online operations to take advantage of the medium. Whether digital content is offered free of charge or otherwise, commercial activity related to such content distribution, e.g. online advertising, merchandise sales, and content syndication, will continue to expand as well.

Absent the proposed amendment, online content distribution and the 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 – like that created by the charge that our LAUNCHcast service constitutes interactive, rather than non-interactive, radio – 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. It is not in anyone’s interest – webcasters or content owners – to resolve any perceived ambiguity in the copyright laws through litigation. Rather, this is a clear example of an instance in which legislative action could effectively resolve any uncertainty.