

November 27, 2012

The Honorable Bob Goodlatte
Chairman
House Committee on the Judiciary
Subcommittee on Intellectual Property,
Competition, and the Internet
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Ben Quayle
Vice Chairman
House Committee on the Judiciary
Subcommittee on Intellectual Property,
Competition, and the Internet
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative,

The best economic outcomes result from private negotiations in the marketplace, free from government distortions and certainly free from government price controls. This is among the most fundamental principles of free markets. That's why believers in free markets seek to reduce, rather than increase, the government's role in markets and price-setting whenever possible.

Accordingly, on behalf of the undersigned organizations, we respectfully write to express our grave concerns about H.R. 6480, the misnamed "Internet Radio Fairness Act of 2012." This potentially disastrous bill would overturn existing voluntary "willing buyer/willing seller" agreements between webcasters such as Pandora and the music industry to establish royalty rates through 2015. Those agreements have provided the foundation for the successful Internet radio marketplace, which has witnessed exponential growth in services and audiences. In the past five years alone, the number of Internet radio services has blossomed from 855 to nearly 2,000, and their annual revenues have exploded as well.

In economic terms, H.R. 6480 would provide a government subsidy to a private interest in the form of a below-market royalty price distortion created by government. And it would be doing so largely for the benefit of Pandora, a company that raised \$235 million in an IPO and is currently valued around \$1.72 billion.

We congratulate Pandora and their competitors for their market success. This is not, however, by any means an industry in need of a "bailout."

Today, we are witnessing a proliferation of new business models for the distribution of digital content. Various players are attempting many varieties of business models in order to determine what works for consumers. This is an exciting demonstration of the vitality of free-markets at work, and it's too soon to even guess what the outcomes will be.

Some business models incorporate greater degrees of reliance upon advertising, while others rely more heavily upon subscription fees and other sources of revenue. No two business models are alike, and we don't want them to be—we want wide experimentation with differing business models, so consumers and the marketplace will be the beneficiaries.

Because these differing business models vary to such a wide degree, it is inappropriate to compare royalty rates freely negotiated by differing business models to argue for inequity. Indeed, the differing details of the various business models is a strong argument for private negotiation and against government price and rate setting.

Yet Pandora is doing exactly that—using an over simplistic comparison between widely divergent business models to argue that they are paying too much, and they are demanding legislative relief in the form of H.R. 6480 from their freely negotiated royalty arrangements.

Pandora is free to choose which business model it pursues, and to adapt and modify its business model as the market dictates. But it should not be able to turn to Congress to intervene and reduce its cost structure in order to enhance or salvage a struggling business model.

Further, a bill designed to benefit a single company would seem to be not only an example of corporate welfare, but also a form of crony capitalism.

Proponents of H.R. 6480 claim that three cable and satellite radio companies that existed in 1995 were unfairly granted a “grandfather clause” below-market rate by Congressional legislation. While we do not necessarily agree with that assertion, a fair resolution would be to address the mandatory below-market rate granted to those entities in 1995, rather than create new price controls for the thousands of companies created in an open market since that date.

H.R. 6480 would represent an unwarranted governmental intrusion into a fledgling and thriving digital radio market, weakening of property rights, imposition of price controls, abrogation of existing and freely-negotiated contracts between independent parties, and rent-seeking by companies that are growing and thriving without the help of government distortion.

There are, of course, other offenses caused by H.R. 6480, not the least of which is fewer royalties being paid to the original musicians and creators of the raw material upon which Pandora is building its business.

And a comprehensive solution to this problem would have to address the most glaring inequity

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in the copyright royalty universe, the fact that terrestrial radio pays zero royalties to the artists whose music it plays.

Thank you very much for your attention to this important issue.

Sincerely,

Timothy Lee
Center for Individual Freedom

Eli Gold
The Harbour League

Mario Lopez
Hispanic Leadership Fund

Andrew Langer
Institute for Liberty

Tom Giovanetti
Institute for Policy Innovation

Judson Phillips
Tea Party Nation

cc: House Judiciary Committee Subcommittee on Intellectual Property, Competition, and the Internet