

September 13, 2006

The Honorable James Sensenbrenner  
Chairman  
Committee on the Judiciary  
U.S. House of Representatives  
2449 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Sensenbrenner:

The undersigned companies and associations, representing the interests of American consumers, information technology and telecommunications companies, consumer electronics companies, broadcasters (including terrestrial radio, satellite radio and webcast services) and educational institutions, write to reiterate our strong concerns with H.R. 5553, the Section 115 Reform Act of 2006 ("SIRA").

We support and appreciate your desire to move legislation that will reform section 115 in order to create an effective mechanism that will give the public broad access to legitimate downloads of music. We believe that this goal is achievable and that it can be accomplished simply and in a way that does not have any of the adverse consequences of the current draft.

We understand your desire to only move legislation with a broad consensus. Unfortunately, the most recent version of SIRA that we have seen is not consensus legislation, but continues to include provisions that adversely affect the undersigned.

We understand that certain interested parties have been discussing amendments to the bill. We, however, have been largely excluded from those discussions. As a result, the bill continues to include extraneous provisions that threaten the development of innovative technologies and services that deliver all forms of content; while rejecting the well-founded recommendations of the Copyright Office.

The bill would constitute an extraordinary expansion of the rights of music publishers, imposing additional costs and burdens on the public, and would encroach in unprecedented ways upon long-held consumer rights to make private, noncommercial and personal uses of copyrighted works.

The new draft does little to address the concerns expressed in our letter of June 6. Our primary concerns, amplified in the attached fact sheet, are the following:

- The bill would establish, for the first time, that every incidental network, cache and buffer copy made in digital transmission systems, digital networks, computers and personal consumer equipment is subject to the control of copyright owners and must be licensed (or subject to a specific exemption). The requirement that such fair uses be licensed sets a dangerous precedent for all fair uses of

information, news and entertainment, regardless of whether in print, audio, or video.

- The bill is a back-handed technology mandate that will stifle innovation. It would discriminate against services that “enable, authorize, cause or induce” consumers to make perfectly lawful private home copies of transmitted performances.
- The bill would grant music publishers a second, double-dip payment for licensed interactive performances, against the recommendations of the Copyright Office and despite the fact that they already receive fair market value, or more, from ASCAP, BMI and SESAC.

By diminishing long held rights of fair use, providing duplicative payments beyond “fair market value,” and undermining technological innovation, this bill in its current form will inflict significant harm on sound copyright policy, technological development, and the public interest.

We emphasize that these adverse consequences are not necessary for the reform of the music licensing process. Unfortunately, given the continued inclusion of these provisions, we are forced to oppose the bill in its current form.

On behalf of the organizations and constituencies we represent, we strongly urge the Committee to reject the bill in its current form and to seek input on the proposed legislation from ALL parties that may be affected. Music licensing reform that (i) fosters downloads, (ii) does not penalize lawful home recording or impose technology mandates, (iii) preserves basic principles of fair use, and (iv) prevents double dipping by music publishers, is attainable.

We would appreciate the opportunity to meet with you to discuss our concerns in greater detail. We look forward to working with you on this important issue.

Respectfully submitted,

ATI Technologies  
Consumer Electronics Association  
Consumer Electronics Retailers Coalition  
Electronic Frontier Foundation  
Entercom Communications Corp  
Home Recording Rights Coalition  
National Association of Broadcasters  
Neuros Technology  
Public Knowledge  
RadioShack Corporation  
Salem Communications Corp.  
Sirius Satellite Radio Inc.  
XM Satellite Radio Inc.