

**Future of Music Coalition response to
National Telecommunications and Information Administration
Notice of Inquiry re: International Internet Policy Priorities**

Docket No. 180124068-8068-01
Submitted via email to iipp2018@ntia.doc.gov

Future of Music Coalition (FMC) appreciates the opportunity to share our views and perspectives regarding the issues raised by NTIA's notice of inquiry on International internet policy priorities.

FMC is a non-profit organization working to ensure that musicians have a voice in the issues that impact their lives and livelihoods. FMC works with musicians, composers and industry stakeholders to identify solutions to shared challenges. We promote strategies, policies, technologies and educational initiatives that always put artists first while recognizing the role music fans play in shaping the future. FMC works to ensure that diversity, equality and creativity drives artist engagement with the global music community, and that these values are reflected in laws, licenses, and policies that govern any industry that uses music as raw material for its business.

FMC has a deep familiarity with the diverse range of business models and employed by working musicians, and the commercial partners musicians and composers rely on to bring their work to audiences.

Many of the debates about digital policy focus on the needs and actions of large corporate entities, including technology companies, internet service providers, media companies or other commercial stakeholders. There is also a robust tradition of groups representing internet users, particularly in the role of consumer, participating and informing in policy discussions domestically and internationally. Less well-represented are the interests of smaller-scale commercial entities and creators, particularly SMEs working in cultural industries. Despite their widespread cultural impact and important role in driving commerce, the highly decentralized and specialized nature of this sector can present challenges for effective policy engagement. Researchers struggle with these questions too; the diversity of business models, modes of organization, and cultural factors mean the full economic value of this part of the sector can be difficult to capture, both in terms of direct economic outputs and indirect impacts.

Nonetheless, American music, in all its diverse traditions and constant innovations, is one of the United States' most important contributions to the world. It's generally acknowledged that few industries have felt the transformative power of the internet as acutely as the music industry, but less well understood that music has transformed the internet. Musicians are a driving force in internet research and development. In order to reach their fans, artists and their industry partners push online communication and commerce forward. Similarly, consumers are often introduced to new Internet platforms and technologies by way of their favorite artists. Music has driven the adoption of technologies that have brought so many Americans into our current technological age. When evaluating Internet policies and priorities, governments should take care to consider the needs of the full diversity of the musician population.

It is increasingly common to see internet policy issues presented within a human rights framework. This is, on the whole, a heartening trend, as it offers opportunities to align commercial goals with humanitarian concerns with a global perspective. Unfortunately, it's less common to see creators' rights included in the suite of human rights under consideration. Article 13 of The United Nations declaration of Human Rights states:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 27 continues:

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author

Echoing the framework of the United Nations Declaration of Human Rights enumeration of both expressive rights and rights of remuneration, we sometimes describe musicians' needs in two broad themes: access to audiences, and fair compensation. For most working musicians today, the internet is indispensable for both.

I. The Free Flow of Information and Jurisdiction

International human rights watchdog organizations like Freemuse¹ have documented the alarming ways that governments have attempted to silence the expression of musicians and other creative artists. This is unsurprising as musicians have historically been targeted by oppressive regimes as they are uniquely equipped to voice dissent, challenge prevailing power structures, and elevate community concerns. Limiting Internet access is routinely used by as a means of suppressing free expression. Likewise, we have witnessed attempts to censor creative expression through direct censorship at the hosting, edge provider, or DNS levels.

Care must be taken to distinguish between censorship and legitimate actions taken to halt illegal conduct online. We have seen some copyright protection proposals fail to fully reckon with the potential for abuse, or that could unduly restrain freedom of expression. At the same time, some commercial actors have used concern about freedom of expression as cover for their economic interest in reducing the value of copyrighted sound recordings and musical works, or their economic interest in enabling the unlawful use of others' creative expression. Consultation with working artists is often helpful in distinguishing one from the other.

To the extent that NTIA participates in international discussion of copyright policy, we would encourage the agency to adopt a balanced perspective that does not presume that all copyright enforcement attempts or intermediary liability obligations threaten freedom of expression, while also taking seriously the responsibility to avoid undermining users' rights. The inability to obtain a fair market value for one's creative work and the resulting choice to leave the marketplace can amount to a kind of soft, invisible censorship, and a lost opportunity for commerce and expression.

Freedom of expression can also be threatened by ownership consolidation, when the lack of competition in a particular part of the communications marketplace can create a gatekeeper dynamic that allows a small range of commercial actors the ability to charge for access to audiences. Principles of openness and non-discrimination regarding lawful content at the internet service provider level are a key priority, for example.

¹ Freemuse, "The State of <https://freemuse.org/resources/item/state-artistic-freedom-2018/>

II. Multistakeholder Approach to Internet Governance

FMC's only direct experience with the multistakeholder approach to policymaking has been in domestic contexts dealing with copyright issues. Nonetheless, we would propose that some useful, if general, lessons could be drawn from this limited experience with potential applicability for international work.

Our experience has been mixed. As we understand it, the multistakeholder approach emerges from a genuine idealism and posits that the best policy solutions come from having "everyone at the table." How it plays out in practice varies. Multistakeholder processes can also reflect and replicate the same kinds of power imbalances as in the broader marketplace.

We would encourage participants in the multistakeholder processes to be intentional and proactive about ensuring that SME creators are included, equipped, and empowered to be full participants, whatever the forum.

III. Privacy and security

A healthier internet would allow internet users to have greater choice over how and where their personal data is collected, and for what purpose, whether in the role of users or consumers.

Better security practices represent an important piece of the puzzle. Greater choice between competitive services would incentivize companies to better serve musicians and listeners' needs for personal privacy and more robust security regimes. When one firm dominates a marketplace, there isn't much incentive to improve its practices or policies. The United States lags behind the EU in some aspects of competition policy, but should resist any urge to intervene on behalf of large US firms facing new antitrust scrutiny abroad.

Some stakeholders have called for leaner data practices, generally, with less personal data logged and shared. We would welcome this outcome in many cases. While musicians can find it useful to have access to data about their fans for such reasons as tour routing, merchandise sales, and simply better understanding fan demographics, the granting of such access to personal data should be transparent, consensual, and fully optional.

At its best, the relationship between musicians and listeners is characterized by trust and mutual benefit. Currently, some digital music platforms essentially force artists to turn their listeners over to third parties for data collection as a condition of their inclusion on the platform. Opting out means losing out on any opportunity for revenue or exposure. While the popular concern about corporate data surveillance has mostly been focused on social media and ad tech, digital music services themselves may be subjected to increased scrutiny in the future.

It's important to understand that the trend toward surveillance-based advertising business models correlates with the imperiled profitability of traditional revenue models for recorded music. Encouraging business models that make it easier for creators to earn money for their music (rather than their music being used to attract eyeballs to targeted personalized advertising) would help make data-surveillance business less central. Reasonable copyright protection that allows creators to have a greater degree of control over where their work appears and under what conditions could help to facilitate the flourishing of a broader array of innovative business models.

NTIA, the Department, and the U.S. Government may feel a degree of pressure to resist attempts by EU regulators to apply new privacy protections, but these changes can actually

benefit US consumers. In the meantime, the adoption of some federal data privacy protections in the United States would be welcome. Such protections can be drafted in a balanced way that fundamentally encourages rather than inhibits commerce. NTIA's support of such a measure—particularly one that aligns with developing international standards—would be welcome.

IV: Emerging Technologies and Trends

US Musicians benefit from access to new markets, as well as access to the cultural contributions, mutual inspiration, and collaborative opportunities that arise when the internet facilitates connections across geographic and cultural divides. In addition to the range of public benefits, efforts to drive global broadband adoption are good for music; they open up new opportunities and new markets for lawful and licensed content.

The growth in popularity of “internet of things” products and devices continues to raise new issues. Musicians have encountered this issue specifically in the context of smart speakers. A concern here is that development of “walled gardens” could restrict interoperability. When companies restrict interoperability and a single company can control the speaker device, the application, the streaming service, the cloud server, etc, the outcomes for consumers and creators alike fall far short of the potential of this technology. NTIA should encourage interoperable standards and open platforms to encourage speaker manufacturers to ensure compatibility with the full range of legal licensed music services.

More generally, care should be taken to ensure that technologies are deployed in ways that empower communities—both music communities and geographical communities-- rather than extract value from these communities.

Conclusion

Thank you for the opportunity to contribute to this inquiry. While these comments are brief and high-level, we would be happy to continue to be a resource for the agency in its work on these issues at any time in the future and can provide more detailed thoughts at your request.

As the philosopher L.M. Sacasas has written:

Innovation entails risk, of course, and a life driven solely by the avoidance of risk is not a healthy life. [...]. That said, there is a difference between the voluntary assumption of risk, and a involuntary imposition of risk on others, particularly when the negative fallout would disproportionately come to those upon whom risk was imposed and who stood to benefit the least from the potentially positive outcomes. This is part of the ethical challenge as I see it. The nature of our technologies (connected, global, networked, etc.) are such that risk may be unjustly distributed.²

Our hope is that in future internet policy discussions, all stakeholders will look for ways to ensure that the stakeholders upon whom the most risk has been imposed always be granted a place a the table.

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²Source: <https://thefrailestthing.com/2014/04/04/a-reply-to-adam-thierer/>