

# Competition and Consumer Protection in the 21<sup>st</sup> Century

## Project Number P181201

### Future of Music Coalition Letter of Public Comment to the Federal Trade Commission

Future of Music Coalition ("FMC") appreciates the opportunity to share our views in connection with the upcoming hearings on "Competition and Consumer Protection in the 21<sup>st</sup> Century."

FMC is a nonprofit organization working to advance the interests of musicians on the full range of 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 put artists first in any industry that uses music for its business.

Most conventional narratives about the music industry since the 1995 Pitofsky Hearings tell a story of profound technological change and disruptive innovation, and a linear shift away from physical media sales through an era of widespread copyright infringement and now to a new range of digital options. However, focusing on technological change and consumer format shifts can obscure more fundamental questions of power and the ways that heavy concentration of market power can impede musicians' ability to access audiences and obtain fair compensation for their creative work.

While business models vary widely depending on factors specific to individual careers, musicians and composers typically work with a variety of commercial partners to bring their work to listeners. Since 1995, musicians have experienced ownership consolidation in nearly every part of the business and in adjacent businesses, both online and offline. In the face of these changes, musicians, composers and smaller music businesses have often felt unprotected. Indeed, rather than defending the interests of working musicians and music fans in ensuring an open and healthy marketplace characterized by fair competition, we have too often seen federal regulators decline to get involved.

When the Telecommunications Act of 1996 unleashed waves of consolidation in commercial AM/FM broadcasting. FMC observed correlations between consolidation and loss of jobs,<sup>1</sup> less local content on the airwaves, less genre diversity,<sup>2</sup> and more homogenous playlists.<sup>3</sup> We also anticipated that such consolidation would not necessarily work to the long-term benefit of broadcast companies themselves, a prediction that was validated by the recent bankruptcies of

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<sup>1</sup> Peter DiCola, *Employment and Wage Effect of Radio Consolidation*, FUTURE OF MUSIC COALITION (Aug. 9,

<sup>2</sup> Peter DiCola, *False Premises, False Promises: A Quantitative History of Ownership Consolidation in the Radio Industry*, FUTURE OF MUSIC COALITION (Dec. 13, 2006), <https://futureofmusic.org/article/research/false-premises-false-promises>.

<sup>3</sup> Kristin Thomson, *Same Old Song: An Analysis of Radio Playlists in a Post FCC-Consent Decree World*, FUTURE OF MUSIC COALITION (Apr. 29, 2009), <https://futureofmusic.org/article/research/same-old-song>.

Cumulus and I Heart Media (formerly Clear Channel). Nonetheless, radio companies continue to push the FCC to raise existing caps on how many stations they can own in a single market.<sup>4</sup>

In 1995, many musicians and independent labels were concerned about the gatekeeper power held by six major record labels. Today we have only three: Sony, Warner, and Universal. Similar consolidation of ownership has taken place among music publishers. In many geographical markets, two companies—Live Nation and AEG—constitute an effective duopoly in live event venues and promotion. Ownership consolidation in print and online media has impacted musicians as well, particularly independent musicians who have historically relied on coverage in such outlets to reach potential audiences. Both traditional newspapers and alternative newsweeklies have scaled back their music coverage or face economic incentives to focus their coverage on superstars that generate traffic and clicks. Multiple factors drive these changes, including the domination of a few firms in advertising technology, platform gatekeeper power, and media ownership consolidation itself.

Musicians and independent labels have also expressed concerns about gatekeeper power exercised by broadband and wireless Internet access providers and were early and consistently vocal supporters of strong net neutrality protections at the FCC.<sup>5</sup>

One key difference between 1995 and today is the tremendous shift in power toward large technology firms. The recorded music industry is smaller than it once was, and while gross industry revenues now indicate an upward trajectory, this does not tell us much about how diverse artists are faring; indeed, current industry trends point to past winner-take-all dynamics becoming even more pronounced.<sup>6</sup> Early Internet idealists were driven by a belief that decentralized communications technology would usher in an age where diverse artists could thrive, unimpeded by corporate intermediaries. While many musicians enjoy the new possibilities provided by digital technology, the problems of consolidated power remain acutely felt. As writer and filmmaker Astra Taylor has noted, “traditional gatekeepers have been joined by new online gateways, [a] means of accessing information that cannot be avoided.”<sup>7</sup> FMC has seen several challenges facing the music industry as a result of the rise of centralized platform companies. These platforms lie at the heart of key issues facing independent artists and small and medium sized enterprises in music today. Such issues include the power of these platforms in their respective markets, copyright abuses, and unfair dealings, all to the overall detriment of the music industry, which by one estimate contributed \$143 billion to the U.S. economy in 2016.<sup>8</sup>

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<sup>4</sup> *NAB Proposal: Up to 10 FMs in a Market & No AM Caps*, INSIDE RADIO (Jun. 18, 2018), [http://www.insideradio.com/free/nab-proposal-up-to-fms-in-a-market-no-am/article\\_12a99d46-72c7-11e8-888e-9f94e387369c.html](http://www.insideradio.com/free/nab-proposal-up-to-fms-in-a-market-no-am/article_12a99d46-72c7-11e8-888e-9f94e387369c.html).

<sup>5</sup> *Dear FCC Chairman Ajit Pai*, MUSIC FOR A HEALTHY INTERNET, <http://musicforahealthyinternet.org/> (last visited Aug. 20, 2018).

<sup>6</sup> Elberse, Anita. *Blockbusters: Hit-making, Risk-taking, and the Big Business of Entertainment* New York: Henry Holt and Company (2013).

<sup>7</sup> Taylor, Astra. *The People’s Platform: Taking Back Power and Culture in the digital age*, New York: Henry Holt and Company (2014).

<sup>8</sup> Siwek, Stephen, *The U.S. Music Industry: Jobs & Benefits* (Apr. 2018) pg. 5, 7, <http://www.riaa.com/wp-content/uploads/2018/04/US-Music-Industries-Jobs-Benefits-Siwiek-Economists-Inc-April-2018-1-2.pdf>.

## The Consumer Welfare Standard

FMC respectfully asks the FTC, in evaluating whether and how to mold competition policy to the effects of new technology, to consider an evolution of its historical view of the "consumer welfare" standard. A narrow focus on this standard makes understanding and regulating markets and entities that provide "free" products to listeners tremendously difficult, and may have contributed to a failure to anticipate or effectively remedy harms to musicians and listeners resulting from vertical and horizontal mergers.

In the case of the 2012 merger of record labels EMI and UMG, some opponents of the merger argued that the new merged label would be able to compel an increase in the price that listeners would pay for music.<sup>9</sup> While this argument was well-tailored to the consumer welfare standard, it was also dubious in a context where music was trending toward "free-to-consumer," and ultimately the argument was unsuccessful. The consumer welfare standard left little room for the concerns of some independent musicians and labels about greater concentration actually facilitating a *decline* in the consumer-facing price of music, a business approach that is potentially workable for larger entities operating at mass-media scale, but which could undercut the business models of SMEs serving niche genres at a much smaller scale. In the end, the conditions placed on the merger were prompted by European regulators, who required divestiture of several subsidiary record labels. If US regulators had not narrowly focused on short-term price impacts to consumers but had instead been able to consider creative workers' ability to bring their work to market on their own terms and on sustainable business models to make a diversity of voices and perspectives available to listeners, we would not have needed to rely on EU regulators to defend competition and consumers.

Ticketmaster's merger with Live Nation was finalized in 2010. At the time, DOJ officials promised "vigorous enforcement" of behavioral conditions. Media reports in April 2018 indicate that the DOJ is finally examining reports of anticompetitive behavior<sup>10</sup>, but many of the fears expressed by critics of this merger appear to have come true. An approach addressing structural concerns at the outset might have met with a different result.

Since Google's acquisition of YouTube in 2006, YouTube has engaged in a variety of anticompetitive and unfair and deceptive practices. If a broader range of potential harms had been considered by DOJ and FTC in its examination of this merger, some of the challenges currently faced by musicians could have been avoided, and a more genuinely competitive online video marketplace that preserves all that is good about YouTube but better serves the needs of diverse creators and audiences might have emerged.

A recent report by Citigroup predicts more mergers to come across the music industry, both vertical and horizontal, potentially involving music services, large rightsholders, venues,

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<sup>9</sup> See, e.g., Testimony of Gigi Sohn. *Testimony of Gigi B. Sohn*, PUBLIC KNOWLEDGE (June. 21, 2012), <https://www.publicknowledge.org/files/Gigi%20Sohn%20Testimony%20-%20UMG-EMI%206-21-12.pdf>

<sup>10</sup> Ben Sisario & Graham Bowley, *Live Nation Rules Music Ticketing, Some Say with Threats*, NEW YORK TIMES (Apr. 1, 2018), <https://www.nytimes.com/2018/04/01/arts/music/live-nation-ticketmaster.html>.

promoters, and management companies.<sup>11</sup> While this report was criticized by many industry stakeholders<sup>12</sup>, including FMC, for methodological problems and faulty assumptions, it raises the alarming prospect of even more consolidation of market power in the music industries. If such mergers come to fruition, we would encourage the FTC to use its regulatory authority to examine a broader range of factors than might have been considered in the past. What we have learned about the digitally-mediated world of today and tomorrow necessitates a change in perspective. The FTC must assess the competitive effects of business conduct beyond its immediate or direct consequences. In the context of dynamic markets—including those involving platform businesses—the FTC must now evaluate the collateral effects of that conduct in both implicated markets and adjacent markets, paying special attention to the impacts on small- and medium-sized enterprises in the music marketplace, as well as the music fans and communities who enjoy their work.

### Opacity in Business Dealings

FMC is particularly concerned by the anticompetitive and unfair and deceptive actions by YouTube—which highlight issues facing musicians and their conflicted relationship with platform companies generally and across markets. While many view YouTube as a video streaming site, it is in fact the most popular *music* streaming platform in the world, with over 1.8 billion logged-in users each month,<sup>13</sup> which is approximately ten times as many users as Spotify.<sup>14</sup> When measured by music play-time, YouTube accounts for 46% of all on-demand music streaming in the United States.<sup>15</sup> This offers tremendous potential for innovation and connection with potential audiences, but also tremendous opportunity for abuse.

Independent musicians may enjoy the ability to connect to potential audiences but may also be harmed by some of YouTube's practices, including opacity in its dealings that stem in part from YouTube's position as a monopsony. YouTube holds a monopsony in the market for artists who wish to monetize their music in music video form, as 84% of global music video streaming is

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<sup>11</sup> *Putting the Band Back Together: Remastering the World of Music*, CITI GPS (Aug. 2018), <https://ir.citi.com/QnhL09FARMDbvMhnCWFtjkqYOIPmgXqWS5Wrjts%2B6usU7suR9o7uUEFwZNjmUfyrAn10iZxCkYc%3D>.

<sup>12</sup> Cherie Hu, *Music Biz Slams Citi Report on Industry & Artist Revenue as 'Inconsistent,' 'Inaccurate': Analysis*, BILLBOARD (Aug. 10, 2018), <https://www.billboard.com/articles/business/8469666/citi-report-music-biz-industry-artist-revenue-inconsistent-analysis>.

<sup>13</sup> Adi Robertson, *YouTube Has 1.8 Billion Logged-In Viewers Each Month*, THE VERGE (May 3, 2018), <https://www.theverge.com/2018/5/3/17317274/youtube-1-8-billion-logged-in-monthly-users-brandcast-2018>.

<sup>14</sup> Amy X. Wang, *Spotify Hits 180 Million Users – and Loses Even More Money*, ROLLING STONE, <https://www.rollingstone.com/music/music-news/spotify-hits-180-million-users-and-loses-even-more-money-703781/> (last visited Aug. 20, 2018).

<sup>15</sup> *Global Music Report 2018: Annual State of the Industry*, IFPI, 28 (2018), available at <http://www.ifpi.org/downloads/GMR2018.pdf>.

through the YouTube platform.<sup>16</sup> Due to YouTube's market position, artists may feel they have no choice but to place their content on this platform to effectively reach listening audiences.

YouTube is not like other streaming services, which generally offer more transparent and consistent terms of payment to artists and rightsholders for the use of music. Instead, YouTube's business relationships with artists and labels are frequently characterized by opaque dealings. For example, while a single stream of a song on Spotify typically generates the same amount of revenue as any other song based on a pro-rata/per-play basis, YouTube uses a non-transparent and apparently dynamic payment structure, which calculates revenues differently for a stream of a song based on factors that could include the time of day, geo-location of the listener, ad revenues derived from the stream, and/or who controls the rights to the song. An artist receiving payment from YouTube may only see the final sum without a breakdown of the details of YouTube's calculation of the payment.

YouTube's lack of transparency in its calculation of payments to creators makes it especially difficult to forecast revenues and negotiate fair terms. Indeed, YouTube has a history of engaging in a "take-it-or-leave-it" approach to licensing deals<sup>17</sup>, which independent artists and labels may be unable to reject. This evidences YouTube's market power in this industry.

Problems with opacity are compounded by the practical difficulties encountered by copyright owners who may wish to reject a platform's terms and withhold their content from use by the platform. This creates an environment ripe for unfair and deceptive conduct.

For example, YouTube pays rightsholders unusually low rates of compensation to stream their recordings, which is an abuse of its monopsony power. Although per-stream royalty rates on large streaming platforms are generally quite low, YouTube pays significantly less than its interactive streaming competitors. As one independent musician recently said, just because "YouTube pays more than nothing...doesn't make it fair."<sup>18</sup> Fully licensed streaming platform Apple Music pays artists nearly ten times YouTube's rate per stream.<sup>19</sup>

Unlike fully-licensed content platforms like Spotify or Apple Music, YouTube can pay rightsholders the lowest rates of any interactive service. One reason for this is that YouTube is protected by the Digital Millennium Copyright Act ("DMCA"), which provides a copyright safe harbor for Internet service providers at 17 U.S.C. 512. As with other services that host user

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<sup>16</sup> Data extrapolated from a comparison of YouTube's market share and the proportion of music video screening. *Global Music Report 2018: Annual State of the Industry*, IFPI (2018), available at <http://www.ifpi.org/downloads/GMR2018.pdf>.

<sup>17</sup> Joes Miller, *YouTube to Block Indie Labels as Subscription Service Launches* BBC NEWS (Jun. 17, 2014), <https://www.bbc.com/news/technology-27891883>.

<sup>18</sup> Nelly Furtado, *Nelly Furtado: 'YouTube Pays More Than Nothing. That Doesn't Make It Fair'*, THE GUARDIAN (May 2, 2016), <https://www.theguardian.com/music/musicblog/2016/may/02/nelly-furtado-youtube-artist-royalties-fair-pay>.

<sup>19</sup> See, e.g., *2017 Streaming Price Bible! Spotify per Stream Rates Drop 9%, Apple Music Gains Marketshare of Both Plays and Overall Revenue*, The Trichordist (Jan. 15, 2018), <https://thetrichordist.com/2018/01/15/2017-streaming-price-bible-spotify-per-stream-rates-drop-9-apple-music-gains-marketshare-of-both-plays-and-overall-revenue/> (showing a chart created by one mid-sized independent label).

uploaded content, YouTube is able to enjoy the protections of section 512, which provides limited liability to service providers if they adhere to certain conditions, including the requirement to remove copyright-infringing content expeditiously upon notification by the copyright owner (commonly referred to as "notice and takedown").

YouTube has minimal incentive to pay licensing fees to artists on the front end because it is already protected from liability under the DMCA. Most of the content—including copyrighted content—uploaded to YouTube's platform is from individual users. As long as YouTube follows the safe harbor provisions in the DMCA, it is able to avoid any liability for the presence of copyrighted material on its platform. Many competing services, by contrast, upload copyrighted material themselves and therefore must negotiate licenses in advance. As one economist notes, "[t]he willingness to pay for copyright permission when the product will be available for sale anyway (as is the case for UUC ["user-uploaded-content"] sites) will always be lower than the willingness to pay when the alternative is the complete absence of the availability of the product to sell [e.g., on fully-licensed content platforms]."<sup>20</sup> YouTube thus is less incentivized to pay for a license, because its users will likely upload this material regardless of permission, and notice and takedown is an imperfect and inefficient policing method to remove this content. While YouTube does not run revenue-generating advertisements against unlicensed content, it still benefits from the presence of unlicensed material on its service because this content grows the user base.

Companies that misuse the DMCA to lower their licensing obligations ultimately harm the end consumers of music. By using these provisions to pay less, they may imperil the sustainability of musicians in their creation of new recorded music for listeners' enjoyment. The resulting downward pressure on pricing also presents a barrier to entry to any would-be competitor businesses.

To be clear, FMC values the presence of the safe harbor provisions in the DMCA. These provisions have allowed the flourishing of a wide variety of digital services and platforms, large and small, that musicians now rely on to connect with listeners and fans and to facilitate commerce and expression. The problem stems in part from the failure to fully implement Section 512(i) of the DMCA, which requires service providers who wish to take advantage of the safe harbor to use "standard technical measures" to identify or protect copyrighted works and to make them "available on reasonable and nondiscriminatory terms." Congress's expectation was that a standards body would emerge to create a system to "identify or protect copyrighted works." This system must be made "available...on reasonable and nondiscriminatory terms" and also "not impose substantial costs...or substantial burdens."<sup>21</sup> Unfortunately, no progress has been made in establishing such standards. In comments submitted for the US Copyright Office's study of section 512, FMC recommended finally implementing this section of the statute.<sup>22</sup> Here we would add that implementation of section 512(i) with good faith multilateral oversight would

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<sup>20</sup> Stan J. Liebowitz, *Economic Analysis of Safe Harbor Provisions*, CISAC, 21 (Feb. 27, 2018), available at <https://www.akm.at/wp-content/uploads/2018/03/Study-Stan-Liebowitz.pdf>.

<sup>21</sup> Gallo Lauren G., *The (Im)possibility of "Standard Technical Measures" for UGC Websites*, COLUMBIA ACADEMIC COMMONS (2011), <https://academiccommons.columbia.edu/doi/10.7916/D8GT5XTG>

<sup>22</sup> Future of Music Coalition – First Round Comments, REGULATIONS.GOV, <https://www.regulations.gov/document?D=COLC-2015-0013-90370> (last visited Aug. 20, 2018).

help limit the ability of dominant firms to use the safe harbor protections for anticompetitive ends.

YouTube does market an automated anti-infringement tool, Content ID. Content ID searches for potential copyright infringement using fingerprinting technology and provides response options to copyright holders, such as pulling down the infringing content or allowing it to stay so as to receive a portion of ad revenues from that content. Google asserts that over 98% of material found to infringe copyright on YouTube is discovered by Content ID.<sup>23</sup>

Content ID is not made available, however, “on reasonable and nondiscriminatory terms.” Content ID is largely inaccessible to many independent musicians and record labels, as YouTube maintains strict (and opaque) baseline requirements on access to this tool. While larger rightsholders, digital distributors, and some aggregators receive access to Content ID, most independent musicians do not meet the requirements and so do not have any automated tool to address unauthorized uploads. They thus must rely on the burdensome and inefficient manual notice and takedown process to protect against even obvious copyright infringement.<sup>24</sup> This process itself constitutes an additional category of uncompensated labor that artists or rightsholders are now expected to perform. Third party “Content ID Partner” services may offer inclusion in the Content ID database, but they are not required to offer artists or rightsholders the full range of enforcement tools, including the ability to take down infringing videos.

While YouTube deserves credit for developing a robust rights management tool to address rights issues in user uploaded content, we hear persistent, troubling accounts of access to Content ID being conditioned on the acceptance of licensing terms at low royalty rates. Creators and small independent record labels have reported that YouTube does not allow them to be part of Content ID unless they agreed to these terms.

Enforcement of copyright and licensing of content should be two separate functions, and no platform should condition the application of rights management measures on the licensing of artists' catalog. The FTC should investigate this issue and encourage clear and transparent standards.

YouTube's parent Alphabet<sup>25</sup> profits in additional and significant ways from its YouTube business—specifically, through the vast amount of data collected from its 17 billion users. YouTube shares this data across Alphabet's holdings, and Alphabet monetizes it in the form of digital advertising across various digital advertising streams, including Google's search

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<sup>23</sup> Katherine Oyama, *Continuing to create value while fighting piracy: an update*, GOOGLE BLOG (Jul. 13, 2016), <https://blog.google/outreach-initiatives/public-policy/continuing-to-create-value-while/> (noting that the remaining 2% is handled by manual notice and takedown by artists and rightsholders).

<sup>24</sup> *Joint Supplemental Comments of the American Association of Independent Music and Future of Music Coalition in Response to Request for Empirical Research, In the Matter of: Section 512 Study: Notice and Request for Public Comment*, Future of Music Coalition, available at <https://futureofmusic.org/sites/default/files/Section512study.pdf> (showing that “independent labels face significant practical challenges in using the notice and takedown system to exercise meaningful control over where and how their sound recordings are used.”).

<sup>25</sup> Alphabet, Inc. is the parent corporation to YouTube, Google, Inc., and numerous other subsidiaries.

advertising and display advertising units. These business streams capture nearly \$90 billion in revenue per year.<sup>26</sup>

Thus, Alphabet does not need its business activity in the music marketplace to be net revenue positive if the presence of music on YouTube helps it maintain its dominant position in other markets. Its services are therefore not incentivized to pursue business models that preserve the market value of recorded music, unlike traditional music retailers. In this, YouTube is not alone. Other large technology companies such as Amazon may even elect to use music as a loss-leader, sometimes selling downloads or offering streams at less than the cost of licensing.<sup>27</sup> One of the outcomes of this strategy is that it creates a barrier to entry for any potential standalone music service competitor that isn't using music to advance a more lucrative business, like data surveillance, high-margin hardware sales, or general e-commerce dominance. Then, if standalone digital music services are unprofitable or unsustainable, "greedy" artists and rightsholders can be blamed for the lack of a healthy competitive marketplace. Again, this points to the need to reconsider the consumer welfare standard in the current marketplace.

As Justice Louis Brandeis once wrote:

*Americans should be under no illusions as to the value or effect of price-cutting. It has been the most potent weapon of monopoly—a means of killing the small rival to which the great trusts have resorted most frequently. It is so simple, so effective. Far-seeing organized capital secures by this means the co-operation of the short-sighted unorganized consumer to his own undoing.*<sup>28</sup>

FMC respectfully asks the FTC to investigate remedies to correct the distortions in this market.

### **Harmonizing Payola Regulation in the Digital Music Industry**

We also ask that the FTC supplement its Guides on Endorsement and Testimonials in Advertising (16 C.F.R. 255) to address the issue of "payola" in the digital music industry. Payola is the payment to a broadcaster in exchange for playing music on its platform without disclosing that there was an inducement.<sup>29</sup> The FCC prohibits payola in AM/FM broadcasting

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<sup>26</sup> Alphabet Inc., Annual Report (Form 10-K) (Feb. 5, 2018).

<sup>27</sup> Lina M. Khan, *Amazon's Antitrust Paradox*, The Yale Law Journal (Jan. 2017), <https://www.yalelawjournal.org/note/amazons-antitrust-paradox>.

<sup>28</sup> *Business – A Profession Chapter 15: Competition That Kills*, LOUIS. D. BRANDEIS SCHOOL OF LAW LIBRARY, <https://louisville.edu/law/library/special-collections/the-louis-d.-brandeis-collection/business-a-profession-chapter-15> (last visited Aug. 20, 2018).

<sup>29</sup> Gregory Sidak and David E. Kronemyer, *The 'New Payola' and the American Record Industry: Transaction Costs and Precautionary Ignorance in Contracts for Illicit Services*, Harvard Journal of Law and Public Policy, Vol. 10, No. 3, 1981, 521-572, available at <http://ssrn.com/abstract=310606> or DOI: 10.2139/ssrn.310606 (noting that payola is "the practice of making *undisclosed* payments or other inducements to ... broadcast personnel for the inclusion of material in ... programming.").

under the Telecommunications Act and is authorized to impose heavy penalties for violations.<sup>30</sup> However, the FCC does not have the FTC's jurisdiction to regulate payola in the digital space.

In the absence of regulation, consumers have no way of knowing if the music being presented to them appears as a result of a human curatorial choice, an algorithm, or a business deal offering placement in exchange for some form of compensation or preferential treatment. Just as the FTC has held that undisclosed endorsements in advertising violates Section 5 of the FTC Act,<sup>31</sup> undisclosed payola on digital platforms should also be regulated. The FTC should require the same level of transparency and the same disclosure standards for digital broadcasters as the FCC requires of terrestrial broadcasters. Only by imposing these disclosure standards will consumers be made aware that musical artists or rightsholders with deep pockets have struck an agreement with a digital service to prioritize their music, which will allow consumers to make informed choices concerning their listening preferences, reducing the barrier to listener access faced by independent artists, and creating regulatory parity across different modes of music listening.

## **Conclusion**

In calling for stepped up enforcement, greater scrutiny of the current marketplace and potential future mergers, regulation of digital payola and a reexamination of the consumer welfare standard, we do not suggest that musicians cannot benefit from the tools and resources provided by the various businesses and services that they partner with, both on and offline. Musicians' career paths and opinions on market developments vary widely, but there seems to be consensus on this issue: musicians want the companies they do business with to be successful, but in a manner of transparency, accountability, and fairness in all their dealings with artists and music listeners. This can best be achieved in an environment where companies compete fairly and openly to be the best partners, rather than monopolizing markets and leveraging their ability to stand between artists and their audiences.

In spite of the challenges musicians currently face, there is good reason to be optimistic. With appropriate regulatory oversight, we believe that we can unlock the potential for a music ecosystem where diverse creators--embodying diverse traditions and serving diverse listener communities--can thrive. We welcome the assistance of the Federal Trade Commission in achieving that future, and we thank you for the opportunity to share our perspectives.

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<sup>30</sup> 47 U.S.C. 508.

<sup>31</sup> 16 C.F.R. 255.