
**Before the
Department of Commerce
National Telecommunications and Information Administration
Washington, D.C. 20230**

In the Matter of)
)
Information Privacy and Innovation in the) Docket No. 100402174-0238-02
Internet Economy)

**Recommendations of the
American Federation of Musicians
of the United States and Canada, AFL-CIO**

The American Federation of Musicians of the United States and Canada, AFL-CIO (“AFM”), submits these comments in response to the National Telecommunications and Information Administration’s (NTIA) request published in the Federal Register on April 23, 2010. These comments address privacy concerns and their relationship to piracy. A balanced approach to fighting piracy must be implemented. While AFM agrees that no ISP should be allowed to unreasonably invade users’ privacy, there must be enough flexibility in the regulations to allow ISPs to root out illegal conduct, such as copyright infringement, on the Internet.

The AFM is an international labor organization composed of over 230 Locals across the United States and Canada, with over 90,000 professional musician members. AFM members perform live music of every genre – from symphonic and opera to Broadway musicals, and from jazz, country, folk and rock to Latin, hip-hop, blues and pop – and in every size and type of venue from major concert halls to the smallest bars and lounges. AFM members record music pursuant to industry-wide agreements negotiated by the AFM with the recording, motion picture, television, radio and commercial announcement industries, so that their work is an integral part of the sound recordings, movies and television programs that make up so much of America’s culture and America’s economy. AFM members include studio musicians who record film scores and appear as “background” performers on sound recordings. They also include featured artists of every type, from the glamorous and successful, to the mid-tier artists with solid careers and loyal fan bases, to the emerging artists who are struggling to succeed in the business.

The Internet is crucially important to AFM members. Members use it and are affected by it in a multitude of different ways, including ways that affect their live performance opportunities and ways that affect their ability to market their recorded work. The AFM and its members have struggled to preserve and enhance the role of live music performance in America’s culture and economy for most of the AFM’s one-hundred-year-plus existence, and the Internet now plays a

very significant role in that important mission. AFM Locals use the Internet not only to communicate with AFM members, but also to reach out to their local communities, educating them on the desirability and availability of live music, and providing referral services that serve the twin goals of leading local community members to choose live music and providing gigs to musicians.

For individual musicians and groups, the Internet provides a means not only to advertise and expand their live performances, but also to sell their recordings on sites like iTunes and CD Baby, or on their own websites, or to reach audiences via streaming services like Pandora or Slacker. Indeed, the Internet has become a means to promote all facets of their careers by communicating directly to the public and building relationships with fans and potential fans. This is true for virtually all musicians, but particularly for the many musicians who record with small or intermediate-size independent labels, or who form their own labels and are building careers with little or no outside investment. It is also true for large and small arts associations like symphony, opera and ballet orchestras, who increasingly rely on the Internet as a means of growing their relationships with and support from the public as well as a means of promoting their live performance seasons and distributing recordings of their music.

However, the Internet is a double-edged sword: it creates unprecedented opportunities for musicians to sell their work, but it also allows piracy and theft to proliferate. Musicians must be able to take full advantage of the Internet, while being confident that their work is safe. And in order to have a serious discussion about curbing Internet piracy, Internet users' privacy rights must be addressed.

Throughout the debate regarding curbing Internet piracy, many methods for protecting copyrighted content have been suggested, some more invasive than others. One of the most invasive methods is Deep Packet Inspection (DPI). DPI software, once deployed over the Internet, will open and examine the packets of information traversing the network, no matter if it is an illegal file transfer or a personal e-mail. If the software finds copyrighted content contained in those information packets the software will deal with it accordingly. While this may be an effective method for rooting out illegal piracy, the invasive nature of DPI makes it unsuitable for wide deployment. DPI can indiscriminately look at any packet of information traversing the Internet; therefore it can conceivably examine non-suspicious, personal Internet traffic. Thus, DPI serves as a prime example of an anti-piracy method that is not suitable for implementation on a widespread basis because of privacy concerns.

If DPI lies on one end of the spectrum – the most invasive – then there are other technologies that lie on the other – less invasive – end. For example, software can be installed in the network that examines links contained in websites for copyrighted works. If the software finds that the links contain copyrighted content, then the software can alert the ISP, copyright holder or third party. At no point will the software open private packets of information; it merely follows publicly available links.

Mentioning these two particular methods for curbing Internet piracy is to demonstrate that, contrary to some rumblings from activists, curbing Internet piracy does not automatically equal an invasion of users' privacy. It all depends on the method used, and the rules for the use of the method. Thus, it is important that the NTIA work with other government agencies, lawmakers and outside organizations to implement methods for curbing Internet piracy that do not allow

ISPs or other businesses to unduly invade users' privacy. Ideally, the NTIA will recommend to the President specific methods that are acceptable for curbing Internet piracy. NTIA's recommendations should not represent an exhaustive list, but merely the "best practices" for combating piracy in a way that respect users' privacy.

Publishing a list of best practices for piracy protection is recommended for a number of reasons, namely it will show ISPs, businesses or other organizations what methods are acceptable for curbing Internet piracy. Furthermore, publishing a best practices list instead of implementing specific methods or dictating what may and may not be deployed, allows for new methods to be experimented with without fear of burdensome regulations.

In order to properly develop and publish the "Best Practices List," NTIA should solicit the advice of experts in the field, other governmental agencies, labor unions, businesses, members of the public and advocacy groups for their opinions. Each method should then be studied and examined in order to make sure its implementation does not unreasonably violate users' privacy. It is important to recognize that the goal of anti-piracy methods is to root out illegal activity (which copyright infringement is), thus a certain invasion of users' privacy must be tolerated (if a transfer is suspected to contain illegal content). The key is that there is not an undue invasion of users' privacy rights.

In conclusion, AFM understands that requiring ISPs to curb piracy opens the door to increased invasion of users' privacy. However, AFM believes that technologies do exist that will allow for effectively combating piracy while respecting users' privacy. AFM asks NTIA to study the methods that exist for curbing piracy, determine which methods will not unduly invade users' privacy and then publish a list of acceptable methods.

Respectfully submitted,

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