Mr. Chairman, Mr. Berman and Members of the Subcommittee:

My name is Michael Bracy. As a founder and the Policy Director of the Future of Music Coalition, I appreciate the opportunity to speak with you today.

FMC was founded on the belief that the terrestrial music industry is fundamentally broken. By that we mean that the structures that dominate the marketplace underserve the majority of creators and music fans. We did not form FMC simply to complain, but to effect substantive change in the music community by injecting the critical voices of artists and creators in the midst of this transition from analog to digital. By including these often absent voices at this critical juncture, we work to build more equitable and responsive models. By that we mean:

1. Whenever possible, artists must maintain control over copyright and career decisions.
2. Artists must be able to compete fairly in the marketplace, meaning they must be able to receive compensation for their work and have access to consumers.
3. Artists must be seen by the policymaking community as valued stakeholders in policy debates

The music community is in the midst of a necessary and welcome transition to a digital business model. Major labels and commercial radio stations have became integrated into huge corporations focused not on music and culture but on maximizing revenues. The fundamental basics of the major label structure -- the need for huge capital investment and scarcity of promotion and retail outlets -- have been overrun by technological innovation.
This innovation has reshaped the way that music is recorded, manufactured, promoted and distributed. Digital studios and software programs dramatically reduce production costs. The Internet vastly increases promotional and sales opportunities. The marketplace for independent music has exploded, as indie labels proliferate to serve the expanding artist community. While much of this music is simply not aimed at the kinds of mass audiences of interest to major labels or commercial radio, there clearly is a market for this music, and alternate and Internet-based economies have begun to take shape.

As these digital models take flight, many musicians are embracing new business models that allow greater independence, direct contact with their fans and more control over their careers. Others point out the uncertainty of these times, and express skepticism that legitimate digital distribution structures can be monetized at a level that would replicate their revenue streams they are used to receiving from previous models.

In this context, the results of a recent study performed by FMC and the Pew Internet and American Life Project should not be surprising, or controversial. This study found that musicians fully embrace the Internet to promote and sell their work but remain deeply divided over the question of file-sharing.

To a large degree, Pew found that these results could be tracked according to demographic factors – emerging artists were more likely to embrace file sharing services as a way to promote and distribute their work, while established artists who made a majority of their income from being a musician or songwriter raised more concerns.

From our standpoint, it is important to recognize that we are still in the early days of a significant marketplace transition. While peer-to-peer remains extraordinarily popular, a legitimate digital marketplace is emerging. Consumers are exploring new, licensed ways of accessing and enjoying music, including satellite radio, digital subscription services like Rhapsody, Emusic and Napster, music blogs and ezines, the growth of Internet radio, webcasting, podcasting and digital download stores like iTunes. This trend demonstrates consumers’ willingness to adopt legitimate digital services, and reinforces the critical notion that the combination of technical innovation, access to the underlying delivery mechanisms and reasonable licensing terms can create a revitalized industry that serves both musicians and music fans.

The point is not that this industry is now perfect, or that we even can see the “solution”. Rather, we all should acknowledge that the digital transition is complicated. It includes multiple competing markets, dependent on evolving technological innovation and regulatory policy decisions. The future music marketplace will be driven by consumer adoption of broadband to the home, an area full of regulatory and technological uncertainty of its own. Spectrum policy and the transition to digital terrestrial radio will play a significant role in determining how consumers are able to access digital content, and how performers will be compensated in the future.

Vigilant Congressional oversight of the transition of the music marketplace has played a critical role in its success to date. At the same time FMC sees a number of potential
opportunities for action today. Will Congress listen to the concerns of the music community by addressing consolidation of the commercial radio industry and accusations of structural payola that limit the songs that appear on the public airwaves? Will the FCC be permitted by Congress to expand the wildly popular non-commercial Low Power Radio licenses to urban markets? Will Digital Audio Broadcasting be implemented in a way that addresses the fundamental concerns about localism, competition and diversity in the radio marketplace? And will digital radio be brought in line with other non-interactive digital transmission platforms that are required to pay a royalty for the performance of music?

Most importantly, will Congress be able to defend the ability of musicians and songwriters to compete in the marketplace by ensuring access to high speed networks? As independent entrepreneurs, musicians and songwriters require that the fundamental open structures of the Internet remain in place and that innovation is allowed to continue.

Over the past five years, the Future of Music Coalition has been fortunate to collaborate with dozens of organizations, representing hundreds of thousands of musicians, songwriters, retailers, promoters, community broadcasters and fans. The transition to a digital economy represents real threats and real opportunities to these communities. That being said, there are core themes that cut across all aspects of the music community. These shared values of artists’ control over their copyright and careers decision, ability to compete in the marketplace by receiving compensation for their work and accessing consumers, and being active participants in the policy process can serve us going forward.

Thank you again for the opportunity to participate in this hearing, and I look forward to answering your questions.