

Digital Streaming Digest



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Reed Bunzel, President/CEO



SoundExchange Offers “Small Webcaster” Royalty Rate

SoundExchange seems to have blinked, at least a bit.

Last month the organization made an offer to extend the rates and terms of the Small Webcaster Settlement Act of 2002 (SWSA) to smaller Internet radio companies through 2010. While SoundExchange claimed that this would allow the smallest of Internet radio companies to continue streaming, many industry analysts said that it suggests that even the recording industry realizes that the Copyright Royalty Board went too far when it released its per-performance fees last March.

As noted in Kurt Hanson’s *Radio And Internet Newsletter*, SoundExchange says its offer—which would include some modifications to the SWSA—comes as “a direct response to a request from the House Judiciary Subcommittee on Courts, the Internet, and Intellectual Property. to ‘initiate good faith private negotiations with small commercial and noncommercial webcasters with the shared goal of ensuring their continued operations and viability.’” Ironically (but not necessarily coincidentally), the letter sent by Subcommittee Chairman Howard Berman (D-CA) and Ranking Minority Member Howard Coble (R-NC) pressing for the SWSA compromise was heavily layered with SoundExchange’s own defense of the CRB decision.

Politically, the letter is an attempt to peel small webcasters away from the coalition of streaming companies’ that are fighting the CRB’s decision, and thereby blunt support for HR 2060/S1353 by, at least temporarily, addressing the concerns of small webcasters who might otherwise be bankrupted by the decision. The Digital Music Association (DiMA), which does not support the offer, has pointed out that the next CRB Internet radio ratemaking begins in 2009 and therefore does not solve the core problems with the CRB process.

If the SoundExchange offer is accepted, small webcasters would pay royalty fees totaling 10 percent of all

gross revenue up to \$250,000, and 12 percent for all gross revenue above that amount—up to \$1.2 million. If revenue exceeds that amount, it is anticipated that the company no longer would be considered a small webcaster and therefore would not fall under the provisions of the Small Webcaster rate structure.

Noncommercial Webcasters Also Granted Reprieve

SoundExchange also has made a settlement offer to noncommercial webcasters, allowing them to continue operating under the 2002 SWSA rate structure. Specifically, noncommercial education entities (NEEs) with fewer than 10,000 enrolled students would pay \$250 monthly; those with more than 10,000 students would pay \$500. Other noncommercial webcasters streaming news, talk, sports, or business would pay \$250 per channel, while those that streamed a music/mixed format would pay \$500 per channel. Multichannel noncommercial webcasters would pay \$500 per channel, and all webcasters would be required to pay a \$25 record-keeping fee.

The per-performance fee for noncommercial webcasters whose monthly aggregate tuning hours exceed 146,000 is \$0.0002176 per song, plus either \$0.0002 per aggregate tuning hour for all news/talk/sports/business stations, or \$00251 for music/mixed streamers.

NAB Radio Board Opposes CRB Fees

By a unanimous vote, the National Association of Broadcasters Radio Board last month adopted a resolution stating that the Copyright Royalty Board’s Internet streaming fee structure is dangerous to the health of the Internet Radio industry. “The radio board of the National Association of Broadcasters recognizes that the new streaming rates established by the Copyright Royalty Board (CRB) will cause significant harm to broadcasters that stream over the Internet,” the organization said in its resolution. “The radio board supports a comprehensive approach to addressing the CRB rate determination, including legislation that vacates the CRB decision and establishes an interim royalty rate structure.”



Small Webcasters Respond To SoundExchange Proposal

Responding to a May 21st proposal offered by SoundExchange that would allow small commercial webcasters to pay a rate greatly lower than that charged by most other commercial Internet radio companies, a coalition of these small webcasters sent the following letter to the Judiciary Committee of the U.S. House of Representatives:



Chairman Berman and Congressman Coble:

Thank you for your attention to the mounting threat increased sound recording royalty rates pose to our industry. Unfortunately, the “small” commercial webcaster solution proposed by SoundExchange at your request would be a temporary fix affecting only a small portion of the Internet radio industry.

The hope of virtually every webcaster is to someday build a sustainable business, just as the hope of virtually every musician is to receive radio airplay, tour promotion, and to make a living playing music. Unfortunately, any likelihood of small commercial webcasters realizing our hopes would be crushed by SoundExchange’s proposed offer.

An extension of the terms of prior Small Webcasters Settlement Act agreements would limit the revenue we could earn to \$1.2 million and penalize success, forcing us to pay hundreds of thousands of dollars in retroactive royalties if we earned a single dollar more than the cap.

Frankly, this proposal is not a solution; it is a temporary delay of a problem that requires an immediate and lasting solution, as offered by the Internet Radio Equality Act. The next CRB review begins in 2009, and without a substantial legislated change in the underlying CRB legal standard, it may very well lead to a similar unworkable outcome.

It is, however, encouraging that SoundExchange has publicly acknowledged that the recording royalty rates set by the CRB on March 2nd are, in fact, too high for most webcasters to stay in business, grow and succeed. I hope you will explore this issue further through a committee hearing, and that you will soon appreciate that the CRB rates are too high for virtually any webcaster to survive.

David Oxenford: What The SoundExchange “Offer” Really Means

The [SoundExchange] offer is to extend the SWSA with some ‘tweaks’ that are yet to be negotiated. An SWSA extension would limit small webcasters to \$1.2 million in revenue, and once they earned a dollar more, all their performances back to the beginning of the year in which they exceed the cap would be subject to the CRB per-performance royalties, effectively exceeding their revenues by many multiples.

While the \$1.2 million cap was fine in 2002 when it was used in the SWSA negotiations, it doesn’t work in 2007. This would effectively limit the independent webcaster’s growth and investment opportunities, as who would invest in an entity with an absolute cap on their financial growth?

While [smaller webcasters] are pleased that SoundExchange has finally made us a proposal—after we have



been requesting one for the past two years—their offer is simply to extend the SWSA with some modifications that they want. We are studying these proposed modifications. The independent webcasters have suggested modifications of our own to the SWSA, modifications which were not addressed in the SoundExchange proposal.

We welcome this proposal as what it is: the first step in a negotiation process which we hope to be able to conduct in a business-like fashion in the coming weeks, rather than one negotiated through press releases.

David Oxenford, an attorney with Davis Wright Tremaine in Washington, DC, is leading the legal fight to overturn the CRB’s performance rights fees.

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Internet Radio Equality Act Tops 100 Sponsors

The Internet Radio Equality Act—the legislative initiative designed to overturn the “per-performance” fee structure imposed earlier this year by the Copyright Royalty Board—now has more than 100 sponsors (105 as of Friday, June 1). Introduced by Representatives Jay Inslee (D-WA) and Donald Manzullo (R-IL), the Internet Radio Equality Act (H.R. 2060) would vacate the CRB decision that increased the royalty rates by 300-1200 percent over the next five years.

“Members of Congress are hearing loudly and clearly the passionate voices of webcasters, music fans and artists who have marched on Capitol Hill,” observed Jake Ward, a spokesperson for SaveNetRadio. “Reaching 100 cosponsors in three legislative weeks is extraordinary, and is a major milestone for tens of thousands of webcasters, millions of Internet Radio listeners, and thousands of artists invested in the future of Internet radio.”

Essentially, H.R. 2060 and a companion bill in the Senate, S. 1353, would set a 2006-2010 royalty rate at the same level currently paid by satellite radio services (7.5 percent of revenue.) The bill also would change the royalty rate-setting standard used in royalty arbitrations, so that the standard applied to webcasters would align with that applied to satellite radio.

Webcasters Appeal CRB Decision, Ask For Emergency Stay

Last week (May 30) the Digital Media Association (DiMA), National Public Radio (NPR), and a group of small commercial webcasters filed a motion with the U.S. Court of Appeals for the D.C. Circuit to appeal the Copyright Royalty Board’s decision to substantially hike Internet royalty fees paid to artists and the recording industry. The group also asked the appeals court for an emergency stay of the decision while the case is under appeal. Without intervention by the courts or Congress, the new rates become effective July 15.

“We are hopeful that ultimately the Court will rule in our favor and overturn the CRB’s decision, but unless a stay is granted, many webcasters will shut down July 15 when the new royalty rates go into effect,” DiMA Executive Director Jonathan Potter said in a statement. “While our appeal moves through the legal process, we implore the Court to grant a stay and prevent unnecessary industry carnage. A July 15 shutdown of Internet radio services would cause these companies, consumers and artists irreparable harm, and the CRB decision so obviously needs the court’s scrutiny. Accordingly, we have asked the D.C. Circuit to hear this appeal before the CRB’s judgment silences the Internet.”

SoundExchange spokesman Richard Ades indicated that the appeal was expected and SoundExchange would respond when it sees a copy.

What Others Are Saying About The CRB Decision:

From the *San Jose Mercury News*:

“For Internet radio, July 15 will be the day the music dies.”

“That’s when exorbitant new royalty rates, retroactive to 2006, are supposed to kick in. The fees to artists and labels are so high they will wipe out many web radio broadcasters, including industry leaders like Live 365 in Foster City and Pandora in Oakland...”

“Keeping Internet radio solvent is vital to preserving a diversity of listening choices and giving exposure to new musicians. About 72 million people tune in to ‘Net radio to hear everything from Bollywood show tunes to Celtic Christian classics.

“The U.S. Court of Appeals must grant the industry a stay of execution to allow web radio companies more time to negotiate a deal with the music industry.

“If they can’t come to an agreement on their own, Congress must step in and set fair rates. Bills in the House and Senate, co-sponsored by local lawmakers like Reps. Anna Eshoo, D-Palo Alto, and Mike Honda, D-Campbell, are already pending.

“In March, the obscure Copyright Royalty Board ruled that web stations should pay fees to performers and music labels based on how many listeners hear each song. The new system would raise the fees as much as 1,200 percent, bankrupting many web broadcasters...”

“The federal legislation would set royalties at about 7.5 percent of revenue—about the same rate that satellite radio broadcasters Sirius and XM Radio pay for broadcast rights.

“No matter what, lawmakers can’t let the sounds of Internet radio fade away into the ether.”

San Jose Mercury News



Steve Jobs: iPhone Will Offer “Real Internet”

When Apple Inc. announced that it would be rolling out its new iPhone in June, analysts and tech-watchers have speculated whether the device will function more like a cell phone or an iPod—or, as many folks in the Microsoft camp are anticipating, nothing more than an over-hyped hi-tech yawn.

Now that the launch date is growing near, Apple CEO Steve Jobs insists that the iPhone’s strongest selling point will be its advanced Internet capabilities. Speaking to a gathering of tech industry executives at



Apple CEO Steve Jobs

the “All Things Digital” conference in California last week, Jobs genuinely sounded excited about the device’s ability to download and play audio and videos from the web. Noting that the iPhone comes equipped with “real versions” of Apple’s operating system and the Safari Web browser, Jobs said the iPhone will deliver “the Internet in your pocket.” Observing that cell-phone providers have invested billions of dollars in developing sophisticated networks for mobile access to the Web, he noted that “you still can’t do a lot with them... You get the ‘baby Internet.’ But people want to get the ‘real Internet’ on their phone.”

According to MarketWatch, Apple’s move into the handset market may hinge on how well the iPhone can navigate the straits between the cell phone and portable media player markets that within a few years will likely become one. With a \$500 price tag, very few consumers will buy the device just for its handset capabilities, and

if the iPhone ends up cannibalizing sales of high-end iPods, other portable media device manufacturers like Nokia and Sony Ericsson might be able to capture market share. But Jobs apparently believes he can change the reason that many people buy cell phones, much the same way that Apple changed the way people buy and listen to music.

The iPhone’s biggest perceived drawback is the absence of a keyboard, and Jobs acknowledges that it will take time for people to grow comfortable with the unit’s touch screen.

“It takes about a week; you have to learn how to trust it,” he explained, insisting that it provides “incredible versatility” because it offer different interfaces for the iPhone’s different applications.”

Besides, “the iPhone has the best iPod that Apple has ever made,” Jobs claims.

Look for iPhones to hit the shelves at the end of this month.



Apple’s new iPhone is expected to hit shelves at the end of this month

Madison Avenue Heading Into Digital Intersection

Don’t look now, but the advertising game on Madison Avenue is changing dramatically.

In a cross-platform world that’s trying to make sense of the convergence of traditional and new media, a number of media and advertising services are striving to remain relevant by buying their way into the digital space, either acquiring or being acquired by other such services that have specific digital media plans in place.

Examples: Microsoft’s \$6 billion acquisition last month of aQuantive, Google’s \$3.1 billion purchase of DoubleClick, and WPP’s \$649 million merger with 24/7 Real Media.

As *Media Daily News* columnist Joe Mandese observes, “The reality is that with the exception of certain tightly controlled traditional media, such as network TV and big consumer magazines, big agency holding companies have only a minority share of the world’s advertising marketplace, suggesting Madison Avenue always has been a long-tail industry, and is getting longer with every minute into the digital age... Now, with even bigger players buying their way in, the role of traditional agency companies could get even smaller. Especially if either (or both) Microsoft and Google decide to ‘roll up’ their position in the advertising marketplace, and begin buying other advertising services companies—possibly one or more of the ‘Big 6.’”



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HD Radio Update

Sony Introduces Two HD Radio Receivers

Sony Corp. late last month announced it would roll out its first HD radio receivers in July, launching both a table top model and a mobile unit designed for interfacing with existing car radios.

“Sony is one of the first leading consumer electronics companies to offer quality HD Radio-enabled devices,” Steve Haber, Sony’s senior vice president of marketing for the Digital Imaging and Audio Division, commented in a corporate state-



Sony’s XDR-S3HD Tabletop radio

ment. “We’re adding it to a long list of technologies that support digital music trends.” As described in a news release distributed by iBiquity Corp., the AM/FM/HD table radio (model XDR-S3HD) features a large back-lit blue LCD display set in a mesh-covered front panel and cabinet with cherry wood finish. The receiver is equipped with stereo speakers with a simulated surround sound function, a built-in AM/FM/HD digital tuner, and separate bass and treble controls. An auxiliary input jack allows listeners to connect an external music device, and the XDR-S3HD radio lets listeners play MP3 files from their digital music player. The XDR-S3HD radio has 20 AM and 20 FM presets that can be used to store favorite stations for quick ac-

cess; additional features include a wireless remote control and a built-in clock with sleep timer and alarm.

The mobile HD Radio tuner (model XT-100HD) is a hideaway module that connects through the Sony head unit’s bus interface. It feeds rich information, including artist names and song titles, to the car stereo’s display. Additionally, it can display radio station names and genres, where available. The mobile tuner works with most Sony head units to provide additional support for digital music habits. Many of Sony’s car stereos come with



Sony’s XT-100HD in-car HD Radio receiver

front aux-in and USB inputs, play MP3 CDs, and are iPod and satellite radio-ready.

“Digital terrestrial radio is the last frontier in audio,” observed Andrew Sivori, a senior product marketing manager at Sony’s personal audio division. “And it’s coming to price points that are becoming more reasonable for consumers.”

Both models will be available sometime next month.

Samsung Developing Low-Power Chipset For HD Radio Receivers

Samsung Electro Mechanics last month announced that it is introducing a new chipset for use in portable and home HD Radio receivers.

The low-power, high-performance chip will be capable of supporting all current and planned HD Radio technology features. It is being designed and manufactured using advanced technology and features a System-in-Package (SIP) module and a CMOS, mixed-signal single-chip tuner. Target HD Radio applications include mobile phones, portable media players, portable navigation devices, table radios, and home audio-video components.

“The HD Radio receiver market has begun to take off, driving important production volume today and indicating tremendous potential in the HD Radio chip market in the future,” Jungsuk Han, a Samsung spokesperson, observed in a company statement. “We believe the combination of the chip’s low cost and high performance capabilities will enable us to make a profound impact on the marketplace for HD Radio products. Additionally, the low power and small footprint of our solution will help bring HD Radio technology to mobile phones and portable media players.”

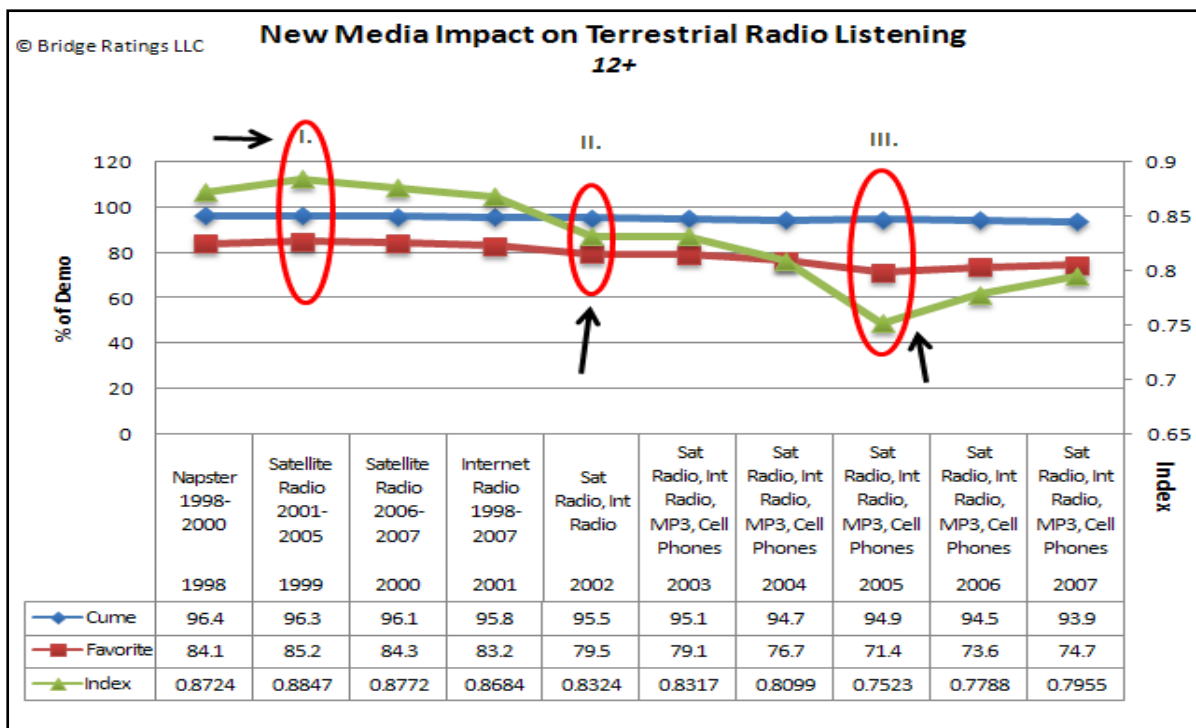
Samsung said that a sample of the chipset will be available before the end of the 2007, with production anticipated for the first quarter of 2008.

Bridge Ratings: Station “Favoriteness/Loyalty” Slips As New Media Options Increase

In the nine years since Napster was introduced into the consumer consciousness in 1998, traditional radio has been met with severe new competitive considerations. That’s the conclusion of a new Bridge Ratings study, which shows that increasing new media competition—including that from satellite radio, the Internet, and music downloads—has led to a decrease in radio station “favoriteness,” which is the term Bridge uses to gauge listener loyalty to a radio station. In the following chart, the blue line indicates the trending of the percentage of 12+ audience that had a favorite radio station; over the past nine years, “favoriteness/station loyalty” has diminished due to increasing choices of new media.

The chart shows another tipping point in 2005 when Bridge Ratings’ favoriteness measurement fell to 71.4 percent, while cume was continuing its slide—creeping under 95 percent of the U.S. population. The Index or relationship between cume and favoriteness fell too, and now is down to 75 percent, indicating that radio listener loyalty among all Americans had shifted down significantly.

The message here is that, while radio “loyalness” has slipped, listenership as whole to terrestrial and online radio is still strong. Broadcasters who successfully merge these two platforms by streaming their signal (and additional programming) will maintain their audience for years to come.



Online Car As \$\$\$ To Pass All But Broadcast TV By 2010

A new report from Borrell Associates projects that automotive ad spending will reach \$31 billion by the end of 2007, with online spending accounting for \$2.8 billion of that, representing 7.6 percent of all automotive advertising, and an annual growth of 13 percent. Meanwhile, total ad dollars are expected to grow only 1.7 percent through 2012, less than half of the annual growth rate of 3.7 percent over the past five years.

According to the Borrell report, online car marketing will reach \$4 billion by 2010, and will become the second most-used medium for automotive advertisers, surpassing newspapers, cable, radio and direct mail (and trailing only broadcast TV). Additionally, the Center for Media Research reports that online advertising will become the top marketing channel for used-car marketers this year at the local ad level, surpassing newspapers for the first time. Used-car dealers are allocating 20 percent of their spending to the online channel, compared to 7.6 percent of the industry’s total online ad budget.

Interestingly, prospective car buyers increasingly are going directly to manufacturers’ websites and doing their initial tire-kicking online.



[Editorial]

Stop The Nonsense And Help Us Pass H.R. 2060!

It is clear from the political maneuvers made by SoundExchange in recent weeks that the record industry is intent on wringing as much money as possible from the Internet radio industry, at virtually any cost. It also is abundantly clear that exacting a performance fee from digital streamers is only the first salvo in a fight to derive the same sort of fee from terrestrial radio.

Almost 100 years ago—1909, to be exact—Congress granted copyright protection to composers and publishers of music. At the time the record business was still in its infancy and commercial radio industry was more than a decade away from being born, so actual music recordings—and the airplay of such—were not covered in this copyright legislation. As a result, the radio and recording industries for decades have enjoyed a mutually productive symbiotic relationship. Music that is produced by the labels is played by radio stations and that airplay, in return, has helped sell billions of dollars worth of records. As long as this relationship has existed, both “sides” have understood and enjoyed the *quid pro quo* realities of the marketplace, and have lived side-by-side as partners in the production, performance, and promotion of recorded music.

In the 1970s Congress extended some copyright protection to musical performances by setting limits on the copying of records and tapes, and artists and record labels have tried several times since then to convince the House and Senate that the law needs to be changed—thus far to no avail.

Why is this? Maybe it’s because, as music industry attorney Chris Castle recently told the *Los Angeles Times*, “Broadcasters don’t pay a performance royalty because there’s a radio station in every congressional district and a record company in only three.”

More likely, however, is that members of Congress certainly understand that many consumers of music (a.k.a. voters) have a less-than-stellar perception of the recording industry. In fact, it could be said that you reap what you sow. Twenty years ago the record label bean-counters were salivating over all the new dollars that were pouring in as music lovers—and that meant almost all of us—were going out and replacing our scratched vinyl libraries with “indestructible” CDs that were rumored to have near-perfect digital audio. Record industry executives never dreamed that one day it would be possible for consumers to make copies of CDs—or specific tracks—right on their laptops, because even laptops didn’t exist.

Napster came along and changed all that. Certainly, as a professional writer, I firmly believe in the intrinsic value of intellectual property rights and have never condoned the illegal acquisition of music or any other type of copyrighted material. But the ease with which consumers of a different frame of mind were able to swap music files, thus bypassing the record store, was breathtaking—and clearly caught the music industry by sur-

prise. Major litigation ensued and, while the labels were successful in shutting down these “freeloader” sites, the horse was already out of the barn.

The point of this condensed history lesson is to point out that the record business today is living in a fiscal quagmire of its own making. As CD sales slump and consumers are bypassing traditional retail avenues to obtain music, the industry’s leaders are exploring every way they can to squeeze as many dollars as possible out of the existing paradigm rather than shift to a new model. One way to do this is to levy a heavy fee on those partners who for decades had “brung them to the dance”—the thousands of terrestrial broadcasters and Internet radio streamers who, combined, have done more than any other industry to promote and sell records.

The National Association of Broadcasters sees this issue for what it is: an attempt to implement a performance tax that undoubtedly would destroy the symbiosis that has existed between the radio and recording industries for the greater part of a century. As NAB President David Rehr recently observed, “The existing system actually provides the epitome of fairness for all parties: free music for free promotion.” And NAB spokesperson Dennis Wharton has noted that, “Congress has always recognized that broadcasters generate enormous sums of revenue to record companies and artists in terms of airplay.”

Since March 2, when the Copyright Royalty Board issued its egregious performance fee structure, a strong coalition of Internet radio streamers has formed to overturn that decision, and to convince Congress to pass legislation that’s fair and equitable to all parties involved: artists, labels, and radio broadcasters. American Media Services-Internet has taken an active role in ensuring that the provisions in H.R. 2060 and S 1353 (as previously mentioned in this newsletter) are enacted and signed into law. This week (June 5-6) we’re in Washington asking members of Congress to support this legislation, and we’re working with anyone and everyone who will listen to help put a stop to the recording industry’s unbridled greed.

Please let me know if you want to join this fight.

Reed Bunzel
President/CEO
American Media Services-Internet
843-972-2200
rbunzel@ams.fm

