

Copyright Futures for Broadcast: A Songwriter's Story of Change

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MIT CFP All-Members' Meeting

November 15-16, 2012

My Background

- Published songwriter
 - 200+ royalty-earning uses from copyrights licensed for TV broadcast
 - TV started to use music from independent songwriters in the mid-'90's, helping to create a “middle class” of artists
- Music publisher
 - Started American Music Partners West in 2010 with first royalty-earning copyrights in 2011
- Serial digital entrepreneur
 - eMusic 1998- Established digital rights licensing model- first paid download site- “\$.99 download”
 - TuneCore 2005- Established open distribution model- independent artist access to iTunes and other stores
 - CPA training (PricewaterhouseCoopers)

Two Primary Ways to Consume Recorded Music: Sale and Broadcast

- Sale includes download and permanent ownership of recorded music
 - Record labels
 - Distribution of physical & digital files
 - Piracy & related issues
- **Broadcast includes “public performance” of recorded music**
 - **Conventional & new broadcasters**
 - **Transmission of music to “public”**
 - **Defining & quantifying broadcast & “public”**

The Challenge

- As broadcast moves from a licensed, regulated and finite universe to the unlicensed, unregulated and (virtually) infinite online universe, how do songwriters get paid fairly?

Music Copyright Law

- Six inherent rights:
 1. Reproduction (“Mechanical” royalties)
 2. Derivatives (Translations & samples)
 3. Public display (Lyrics, artwork)
 4. **Public performance (Live or radio/TV broadcast, Muzak, interactive streaming, e.g., Rhapsody, YouTube – collected by ASCAP, BMI, SESAC)**
 5. Distribution (Downloads, CD’s, film/TV)
 6. Digital transmission (non-interactive streaming – collected by SoundExchange) (New since 1990’s)

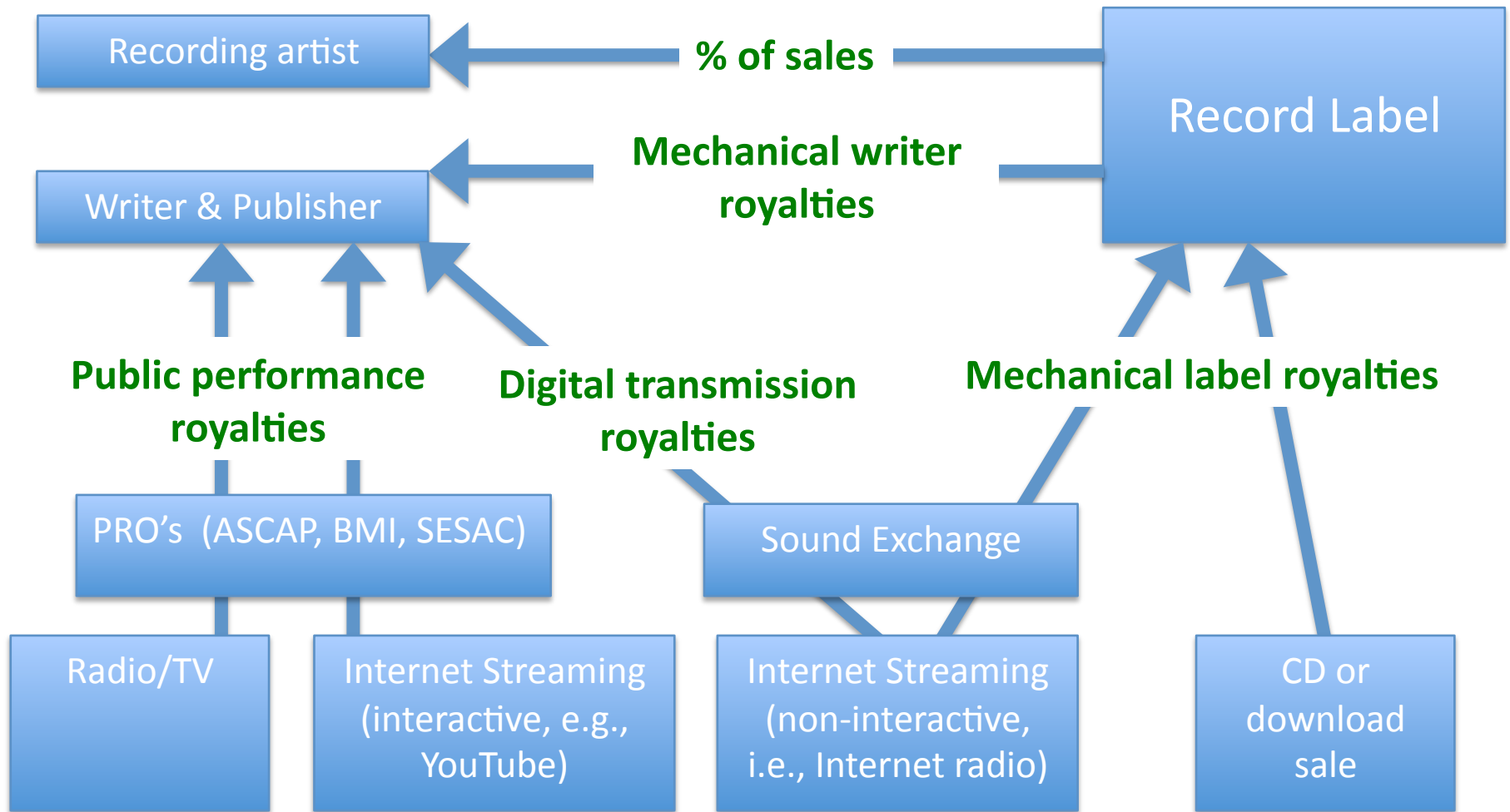
Perspective

- The “broadcast” challenge is not about piracy, it’s about the capture and fair monetization of existing and future activity

How Broadcast Royalties Work

- The broadcast royalty system is based on the transmission of music from fixed transmission points
- This is the only way songwriters get paid for the public's "use and enjoyment" of their works under copyright law
- The transmission of music has changed but the royalty system has not

How US Music Royalties Work



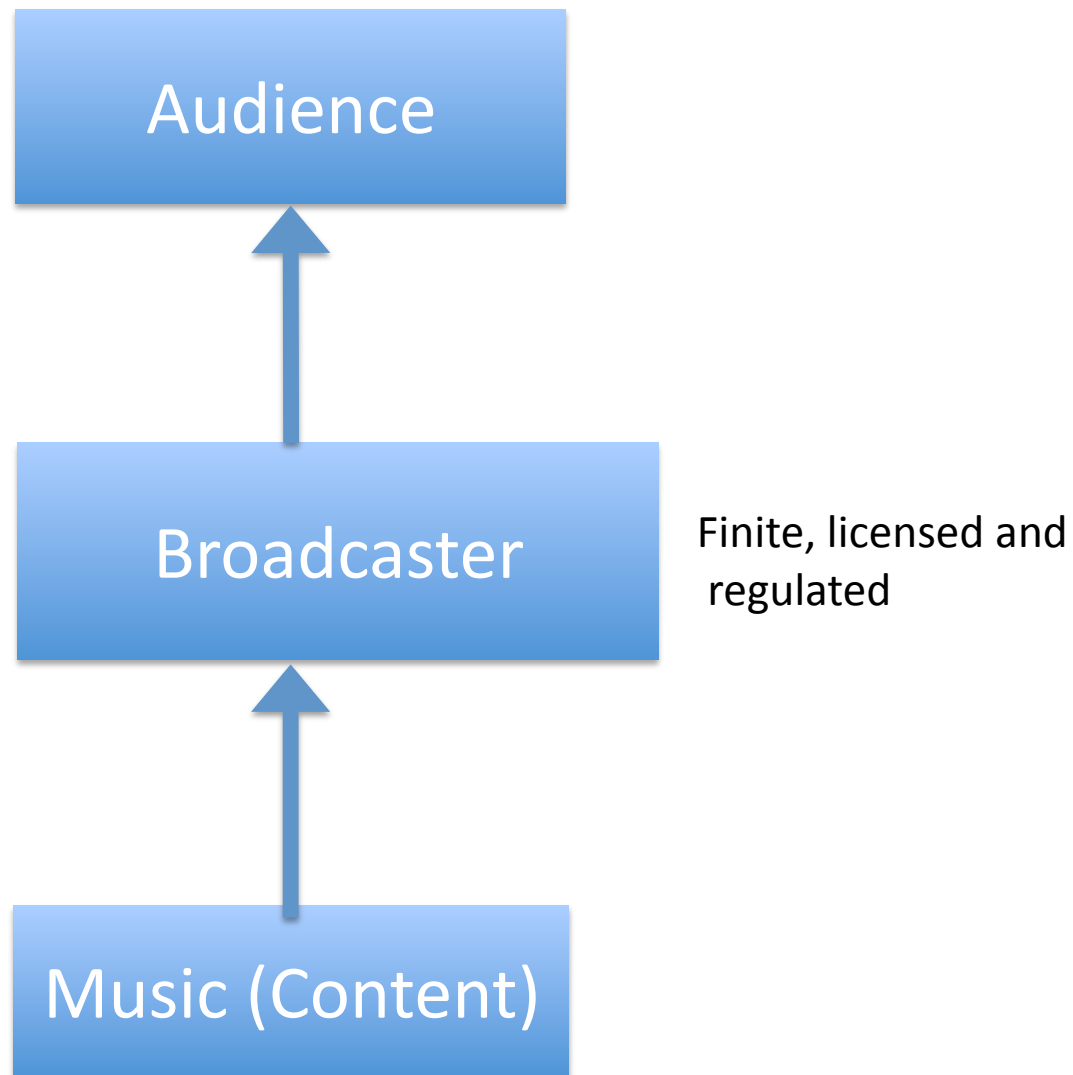
What is Broadcast?

- What it Was:
 - Conventional radio and television
 - Licensed, regulated and *finite*
- What it Is:
 - Conventional radio and television, *and*
 - Online (internet) **streaming** *unlicensed, unregulated and (virtually) infinite*
- Where it's Going:
 - All online

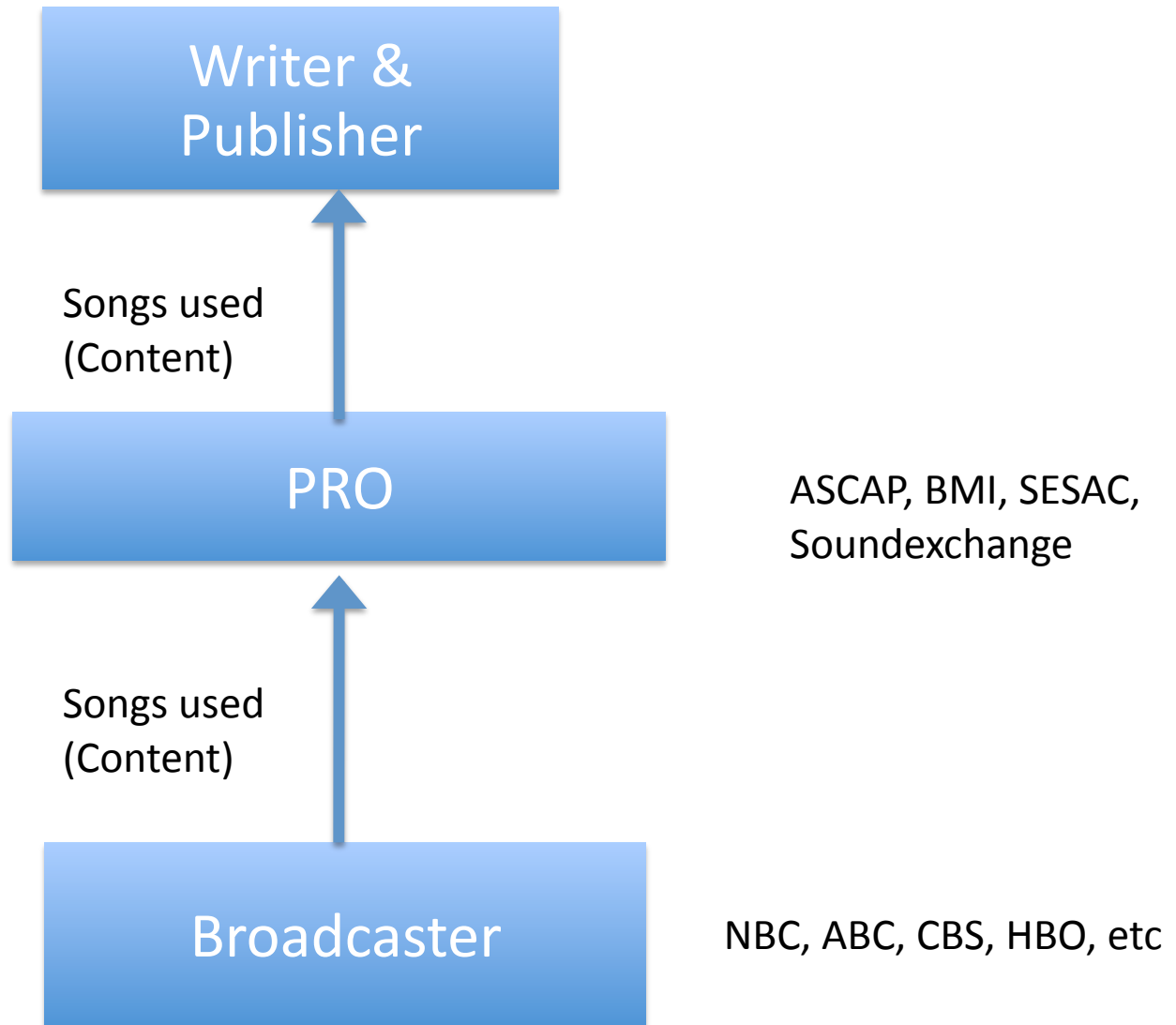
How US Music Broadcast Royalties Work

- Conventional:
 - Licensed and regulated broadcasters (radio & television) pay statutory rates to Performing Rights Organizations (PRO's) determined by rate court judges
 - Radio and television report “airplay” PROs using “cue sheets”
- New Media:
 - Conventional broadcasters continue while...
 - (Unlicensed and unregulated) internet radio (***non-interactive***) reports to SoundExchange using *DMCA rates* and
 - (Unlicensed and unregulated) ***Interactive*** services (YouTube, MySpace, etc) pay *negotiated* rates to PROs
 - What about everyone else not reporting (FaceBook), and what about “sharing”?

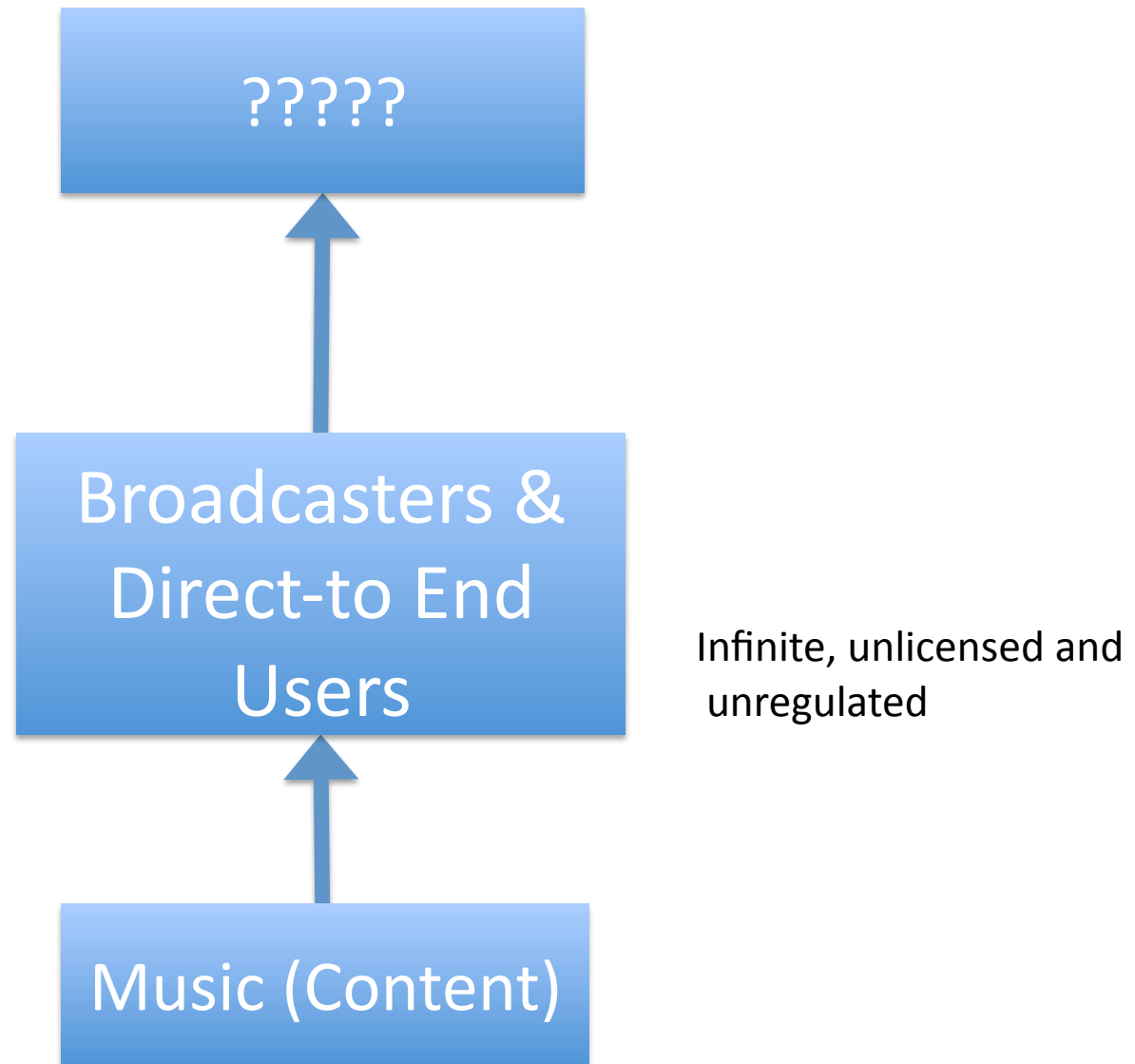
Conventional Broadcast Content Flow



Current Broadcast Royalty Reporting System



“New Media” Broadcast Content Flow



Royalty Reporting

- The “old” copyright “**reporting scheme**” is being applied to an environment where the broadcast and re-broadcast is unknown and the audience indeterminate
- Old rate-setting metrics- finite broadcasters serving relatively easy-to-estimate audience sizes- no longer apply
- A new approach is essential for a healthy creative economy

Music Industry Statistics (2011)

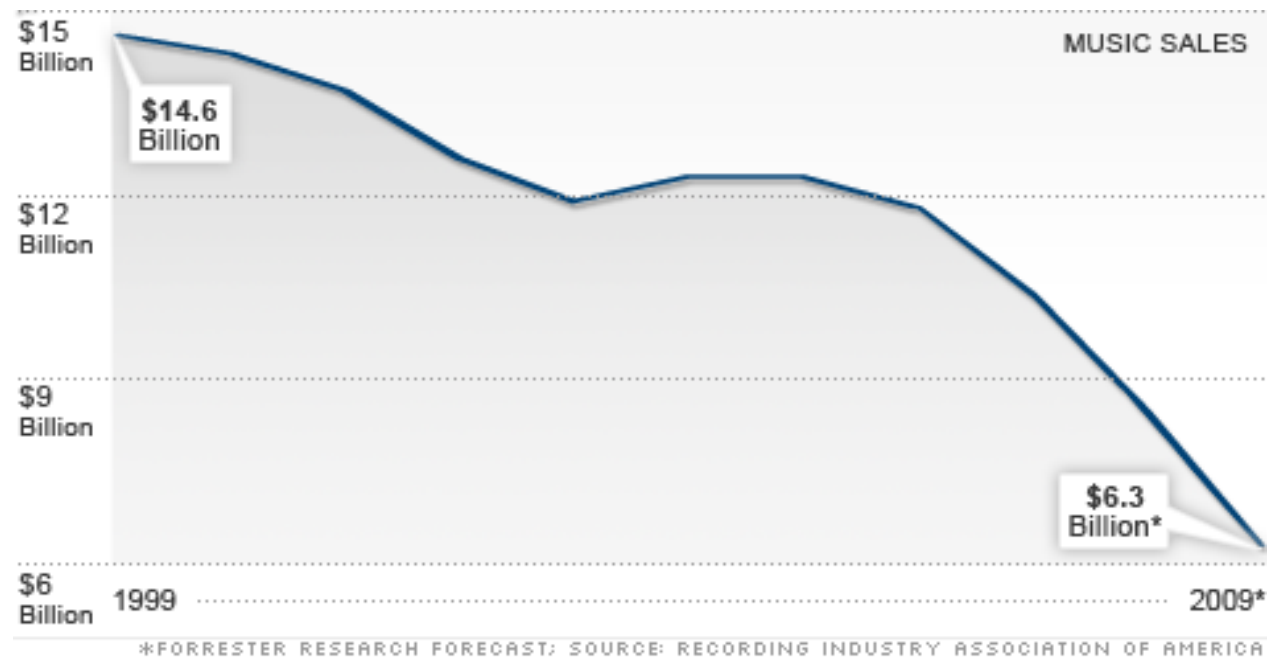
- \$100B world wide (Nielsen, RIAA, other)
 - **\$9B conventional publishing (includes broadcast)**
 - \$9B streaming
 - \$15B digital
 - \$20B physical
 - \$7B mobile
 - \$40B live, sponsorships & other
- **\$2B Broadcast revenue (AIMP) + \$9B streaming = \$11B “old + new” broadcast**

Music Streaming Alone- 2012

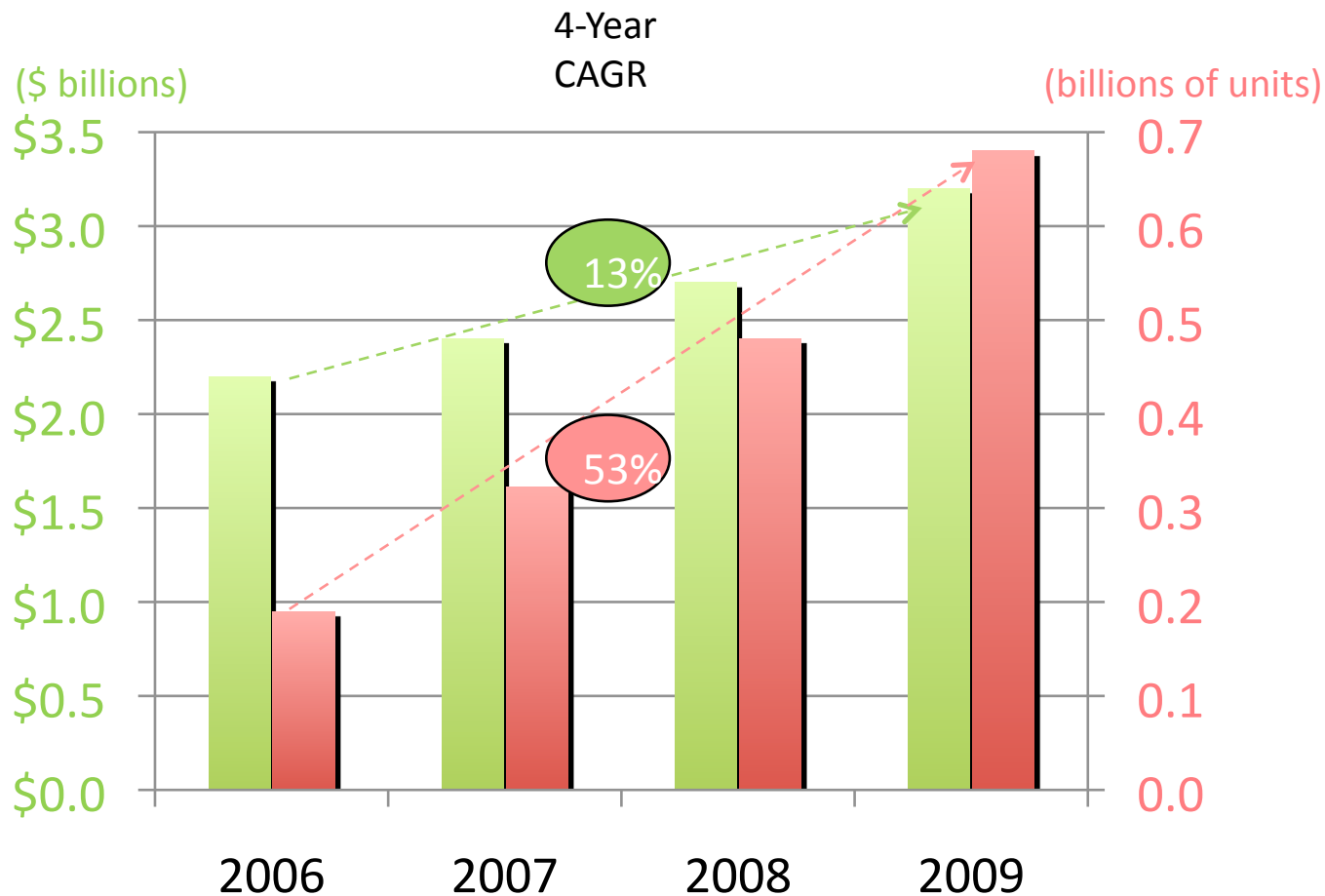
- 2+ trillion songs streamed in 2011
- Using a combination of commercial site traffic data (Digital Music News)
 - **\$17B annual business (~\$2B net to PRO)**
- Using CISCO “Music Service” data (May 2012 press release)
 - **\$25-\$52B annual business (~\$3-5B net to PRO)**
- This DOES NOT include music embedded in non-music content (TV)
- Real activity metrics are not being “captured”

Money & Music

US Recorded music sales down 50% 1999-2009
(RIAA)



Revenue from Digital Sales trails Unit Growth



Source: RIAA Year End Shipment Statistics

What Does a Revenue Decline Mean?

- Increased competition for smaller & adjunct pools (broadcast/streaming)
 - Case Study- Disappearance of “middle class” for TV use of music due to competition
 - Case Study- ASCAP’s rate re-allocation
- Royalty rate/price pressure
 - Case Study- YouTube payment = **1/10** of conventional broadcast payment for *same number of viewers*
- Is it a consumption decline or is activity not captured?

The Big Broadcast Differences

- Carriers (transmission infrastructure) decoupled from content
- Content is “free to move about the country” - “audience” size unknown
- Counting online transmissions and estimating audience size near impossible
- By some estimates there were 2+ trillion songs streamed in 2011

The Problem

The old broadcast reporting system
doesn't fit the new broadcast
environment.

An Opportunity for ISPs?

- Measuring consumption would be a better method of understanding activity – **Can ISP's measure? What is involved? (NOT a “policing” activity)**
 - Video and its associated rights are not far behind- the scheme and challenge is the same
- Converting the current *reporting* system to a *usage-based system* – **What would the infrastructure look like?**
- Become the PRO – Collection of copyright revenue associated with online “consumption” – **What are the economic challenges and regulatory hurdles?**

Some Related Issues

- Carriers and copyright owners both bearing costs without conventional benefits (channel exclusivity and control of content)
 - Carriers provide transmission without stake in content
 - Copyright owners relinquish control
- Enhancing value of transmission services
- Fair pay for commercial content
- Bit identification & privacy
- Keeping free “content” free