Oral Testimony
of Gigi B. Sohn
President & CEO, Public Knowledge

“The Universal Music Group/EMI Merger and the Future of Online Music”

Chairman Kohl, Ranking Member Lee, members of the Subcommittee, thank you for the opportunity to discuss the significant consumer harms the Universal Music Group and EMI Music merger would cause, if allowed. I’m speaking today on behalf of Public Knowledge and Consumer Federation of America.

Online music and the digital platforms they ride on hold tremendous promise for consumers and artists. Gone are the days when music fans could only listen to the latest album if they traveled to a physical record store, bought the album, and brought it back home to play on a home stereo system. Technology now allows consumers to buy music at the click of a button and listen to that music on any number of personal devices. Artists have also been more empowered and capable to retain their independence by utilizing digital distribution platforms rather than going through a label.
Now imagine that it is last year, and you are in the business of starting a digital music service in the United States.

[Gesture to reveal chart complete] This chart represents the Billboard Hot 100 songs for 2011 as measured by sales and streaming activity. If you wanted to attract the consumers who are the most active music listeners, these 100 songs would have been the essential package. Without them, any avid music fan would see your service as incomplete and you would not be able to attract the critical mass of subscribers necessary to make a profit. By the way, every single one of these artists is signed with one of the four major record labels.

Now imagine a world where UMG and EMI had already merged and they decided that they will withhold their songs from your digital music service. If that was the case (gesture to reveal chart 2), then this is what your digital music service library would look like.

The playlist suddenly looks very sparse. After all, you would not have 6 of the top 10 songs for 2011. You wouldn’t even have a majority of the top 100 songs -- a combined UMG and EMI would own 51 of
them. The fact is, you just would not have a viable digital music service and as a result, you will be beholden to the merged entity.

That’s the harm this merger presents to consumers. Despite all of the improvements in technology and reduced costs of distribution, the music business is not immune to the exertion of market power. As more consumers demand their music through the Internet, the merged entity – a “super label” -- has the inherent incentive and ability to maintain dominance by exerting its market power over this nascent market. That’s why we believe this merger should be blocked. If it is not, you will see less competition and choice in distribution, stifled innovation, and higher prices.

Already the music industry has gone through breath taking consolidation as six major record labels have become four. Already innovative online music companies are challenged to enter the US market. For example Deezer, a music streaming service similar to Spotify, has enjoyed success in 81 countries around the world, but has not been able to enter the U.S.
EMI Music has gone against this trend. They were the first label to sell a digital download. They were the first to remove DRM from their MP3s on iTunes allowing consumers to listen to their music on any device. And they are the only label that actively works as a liaison between application developers and artists through their Open EMI project.

If this merger is allowed, consumers and artists will be the losers. Removing a maverick competitor like EMI from the market will ensure that the remaining three players obtain more control over the future of online music. I ask that members of this subcommittee take a hard look at this merger and its impact on consumers and artists. Thank you.