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CONCERNING THE AGE OF DIGITAL MUSIC

● Mr. D'AMATO. Mr. President, I rise today to address an issue that will profoundly affect one of America's great creative contributions to the entire world. During the 20th century America's musicmaking community—its composers, songwriters, musicians, and vocalists—have given the world the music which helped to define our age, and which binds diverse peoples together. Go anywhere on this planet today, turn on a radio, and chances are you will hear an American song.

Indeed, in an era where America's production and export ability is often in question, our music creating community continues to make and sell beautiful music the whole world loves. Perhaps no single element of American culture so influences the perception of America abroad. Our unrestrained creative energy, our ethnic and racial diversity, and yes, our often intense debate with ourselves, all come through in our music. From the timeless strains of the Russian immigrant Irving Berlin to the straining chords of the American song-poet Bruce Springsteen, American music cries freedom to a world that longs to hear it.

The issue that concerns me, Mr. President and my colleagues, is the worldwide rush toward digitalization of music recording and transmission that could—if not properly managed—destroy our domestic music industry. That would have a particularly devastating economic effect in my home State of New York, but it would also diminish our entire Nation. Let me say right at the outset that neither I nor any of the people I have talked with in the music industry oppose the new digital age in music. Anyone who has heard a compact disc knows they are a wonderful improvement in sound.

That is not the issue. The problem comes when this pristine source of music is copied in violation of our copyright laws. And Mr. President, make no mistake about it, one of the fundamental reasons for the great success of America as center of creative and inventive genius over the years has been our copyright protections, which the founding fathers had the vision to enshrine in the Constitution. They could not have conceived in their wildest dreams that 200 years later we would be dealing with the potential to make unlimited exact copies of digitally recorded music, but the same principle that nurtured and protected generations of authors, composers, and inventors still applies: The creative product of the mind is a form of intellectual property that deserves just as much protection as our personal and real property. Indeed, in this information age, much of what is invented and created is intellectual property. From computer programs to music recordings, intellectual property is basic to our national economic and social well-being. It is no mere coincidence that one of the first things the newly freed nations of Eastern Europe are trying to establish is a system of protection of intellectual property that communism so ruthlessly denied.

Recently, Mr. President, we have witnessed what many consider to be the first shot in a war for the future of American music in the digital age. Through the marvels of technology—technology, I might add, that is itself protected by American patents—we now have digital audio tape machines, or DAT as its called, that can make an exact replication of a digital recording. The copy is a digital clone, with absolutely no degradation in sound quality. Imagine for a moment, Mr. President, that someone had invented a supermachine that could make an exact replica of, let us say, a compact disc player, without paying for patents or production licensing. Why the hardware manufacturers would be running to the courts and the Congress screaming for relief. And they would be right to holler, because no one should steal another's property or work. But what we face today is a potential for pilfering of intellectual property that is no less severe in its impact on its victims. These new DAT machines make it possible to make unlimited perfect copies of recordings that are protected works under our copyright law.

The people who make the music possible—the composers, songwriters, publishers, and recording manufacturers, would see their intellectual property lifted right before their very eyes and ears. That is just not right. And it is not fair. Maybe that is why at a hearing chaired early this summer by my distinguished friend, Mr. INOUYE, the American music-creating community presented such a convincing case against imposing a questionable technological fix to prevent unauthorized digital taping of prerecorded music. Some of the leading lights of American music made a stirring defense of the right of our musicmakers to be protected in their work from the potential heavy losses to DAT copying. The Senate has wisely heeded their complaint and not unilaterally imposed an unwanted technical solution to the enormous copyright questions raised by DAT.

Now there is new urgency to the plea for relief from digital copying given the dizzying pace of other changes that are literally on the horizon for digital music. Within the past few months several major communications companies have filed petitions with the FCC to begin digital transmission of music from satellites. These are not pie in the sky schemes. This summer the Canadian Broadcasting Co. conducted a pilot test for a national digital satellite music system that could be in place in just a few years. Imagine, compact disc quality music from the sky. And imagine too the potential for receiving and taping digital music directly from satellite to DAT. And just down the road are a new generation of recordable/erasable compact disc machines and even computer driven music systems that will make music copying easier still. Are we to wait until the American music industry is destroyed, or until our local record stores and radio broadcasters are driven from the marketplace, before we act to manage this monumental change?

In the last analysis, Mr. President and my colleagues, this issue—like so many others—comes down to a question of fundamental fairness and the willingness of Congress to take the hard steps to do what is right. There is one simple and straightforward way to deal with digital highjacking of music. That way is not in my estimation to deny the American consumer the benefits of DAT, but to ask him or her to pay a fair share to copy digital music. And let us not stand for those who try to deter us from doing what is right here by intoning the incendiary tax bugaboo. We should not ask consumers to pay one more cent in taxes to the Government to own a DAT machine, or buy a DAT tape.

But it is not unreasonable to ask consumers to pay for the music they use and enjoy. When we buy a book, we do not balk at the royalty paid the author. When we go to a movie, we do not jump the turnstile to get a free look. When we visit a park or go fishing we do not argue with the rangers about paying the price of admission to share in the beauty and bounty of our land and its resources. Why then, when we buy a blank tape for the express purpose of copying a protected work of musical art, should anyone denounce the idea of a portion of the purchase price going to pay a royalty to the people who gave us the music we think enough of to want to copy it in the first place.

Mr. President, many other progressive nations around the globe have recognized the legitimate claim of the creators of music to fair compensation for the use of their prerecorded works for unauthorized copying. Much of Europe already requires the payment of royalties to music creators out of the proceeds from the sale of blank audio cassettes, including analog as well as digital tapes. Now the entire European Economic Community is considering extending this protection communitywide as an element of the impending economic integration of Europe. Our American music creators are not even asking for that much relief. They have practically conceded the considerable losses from analog recording and seek only to obtain protection from the newly introduced digital copying systems. Why then, when our American musicmakers have asked for such reasonable assurance against future losses, should we be so loathe to extend protection that our European counterparts are already providing. Pardon the pun, my colleagues, but that is a heck of a way to harmonize our trade policies as they relate to the music world.

Instead let American get in tune with the worldwide trend toward protecting musicmakers. Let us have the whole world singing from the same sheet of music when it comes to encouraging those who give us the music that lightens and inspires our lives. And finally, to paraphrase the old adage, let us not balk when it is time to pay the piper.●