



July 18, 2007

Mr. Jonathan Potter, Executive Director  
Digital Media Association  
1029 Vermont Ave, NW  
Suite 850  
Washington, DC 20005

Dear Jon,

I have reviewed your press release of this morning and I am compelled to respond to the Digital Media Association's (DiMA) pattern of misinformation, mischaracterization and political maneuvering at a time when we should all be focused on negotiating, as several Members of Congress have urged. Your comments over the weekend and this morning are, at best, disingenuous.

SoundExchange is not "backtracking" on its offer from the roundtable. Rather, you are intentionally mischaracterizing our proposal. Your claim that you didn't understand our request for census reporting strains credulity. You could not have really believed that SoundExchange was simply asking that DiMA's members do no more than follow their current obligations for sample reporting? It would have been pointless to make "following the law" a condition of our offer, as we presume (perhaps incorrectly) that DiMA's members would honor the Copyright Royalty Judges' existing rules regardless of our negotiations. Everyone at the table – including you – agreed wholeheartedly that all artists whose works are used should be fairly compensated, and that comprehensive reporting is therefore reasonable and justified. It appears that DiMA is really the one "backtracking" from its commitments during the roundtable.

Your pattern of failing to deliver is becoming a major obstacle to having productive discussions. When you asked me to put together a group of my Board members to meet with some of your members in New York, I did so on short notice. At that meeting you promised deliverables. We are still waiting. The pattern is clear:

- First promise: March 9th: You will put together a proposal. Status: Unfulfilled
- Second promise: June 8th: You will provide us approvals to view important proprietary company materials. Status: Unfulfilled
- Third promise: Date ongoing: You will get us a proposal. Status: Unfulfilled

You broke each of those promises. And, with each broken promise, more time passes, and these issues remaining unresolved to the detriment of all parties with an interest in these issues. The pattern here is clear, Jon. Rather than do as you've promised, you keep running to the press and to the Hill instead of sitting down and negotiating.

We have made ourselves available and have had many fruitful meetings with other constituents, and, contrary to your press release from this morning, you know full well that we have already offered a specific date and time to meet with you next week.

We noted yesterday our distaste for the way you handled your supposed "acceptance" of our cap offer. Namely, late on Friday night you sent me a self-serving letter which did not accurately portray the offer we made at the Roundtable. You then accepted your own offer and released that to the press before I even had a chance to read it, much less respond to it, And now you accuse us of backtracking when you clearly know that is not the case.

If you spent half as much time attempting to construct a business solution to your problems as you do constructing "spin" for the press and engaging in political maneuvering, then perhaps we would be further along on our negotiations. We regret that you feel the need to conduct business this way, and suggest that perhaps we could have more productive discussions if we started dealing directly with your members, instead of with you.

Sincerely,

A handwritten signature in black ink, appearing to read "John Simson", with a long, sweeping horizontal line extending to the right.

John Simson  
Executive Director