

Testimony of

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STATEMENT OF LYLE LOVETT
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

on
"Exploring the Scope of Public Performance Rights"

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Good morning, Chairman Leahy, Ranking Member Specter, and Members of the Committee. I am proud to be here today on behalf of the MusicFIRST Coalition, and to speak on behalf of its 150 Founding Artist members and the thousands of recording artists, musicians and singers who belong to its member organizations.

I am a songwriter, guitar player, singer, recording artist, and sometimes an actor. I am a member of the American Federation of Musicians, the American Federation of Television and Radio Artists, the Recording Academy and SoundExchange, all of whom are working together within MusicFIRST. I am incredibly lucky to be able to make my living creating art for others to enjoy. Performers like me don't spend our days thinking about the Copyright Act, but we know that we depend on the law to help preserve the value of our art. Thank you for all the work you do to protect creators, and for holding this hearing on performance rights today.

One of my first public performances was at the age of seven, singing "Long Tall Texan" in a school talent show. I grew up in Texas and I still live there in my grandfather's house. My life and music are forever linked to Texas, but I also play with musicians and singers from Nashville and all over the country. We draw our music from many American traditions, including country, folk, rock, jazz, blues and swing. The issue you are considering today matters to performers all across the U.S., recording all kinds of music.

Making a living in music is difficult and risky. Over the years I've seen how many talented and hardworking creators struggle in this hard business. You have to spend years learning your craft, honing your skills, and developing the ability to do instinctively whatever is needed to communicate musically with your fellow performers and your audience.

Songwriters and performers are both entrepreneurs and small businesses, relying on lots of different income streams in order to survive. But in this patchwork of income streams, there has always been one incomprehensible anomaly: when a recording is played on over-the-air radio, the songwriter who wrote the words and music receives a performance royalty, as he or she should. The performer, however, receives nothing.

Of course, the songwriter who created the song deserves to be compensated when that work generates value for another business, as it does for radio. I'm proud to be an ASCAP member, and grateful for the performance royalties that have helped me to earn my living as a songwriter. But the musicians and singers who perform the song are also creators and deserve to be compensated as well.

When radio plays these recorded works, they generate profit for themselves because they attract listeners and advertising dollars. Yet radio has never compensated performers for the value their creative work brings to the radio industry, because the Copyright Act does not protect sound recordings in the same way it protects the underlying songs. This has been the status quo for many years.

But the more I think about the inherent value that recording performers bring to radio, the more I believe that it has always been unfair for recording performers, and sound recordings alone, to be singled out as ineligible for compensation.

The radio industry says that radio airplay benefits performers by "promoting" a song - the idea that someone else (conveniently not the radio station) may pay for another use of it later - like a listener buying a CD or a concert ticket after they hear a song on the radio. Of course, the radio station benefits under this model because it does not pay for its own use - the use that allows it to draw listeners and get ad revenue.

Let's face it. No one tunes into a radio station to hear the commercials. The fact that someone else might pay for another use of music doesn't excuse radio from paying for its own use. Especially when radio is making money by using music.

Dan Brown sold a whole lot more copies of his book *The DaVinci Code* after the movie came out, but no one would suggest that the motion picture studio could make his book into a movie without paying him for the privilege, just because he got some promotional benefit. In fact, I can't think of any other copyrighted work that has a "promotional benefit exemption." And, as I said, radio pays songwriters when they broadcast their tunes, even though they also get a promotional benefit.

Don't get me wrong. I love radio, and I appreciate the support I've gotten from radio over the years. But business is business, and fair is fair - and they shouldn't get to profit off the music we create without compensating us.

Radio calls paying for the music it uses a "tax." Artists don't deserve the indignity of calling appropriate compensation for their hard work a "tax." Paying me for the use of my property is not a tax. It's compensation.

It also would be extremely helpful to performers, and to the U.S. balance of trade, to bring our music industry into line with the rest of the developed world. Foreign radio stations often broadcast a high percentage of American music, but we don't get our share of the royalties due to our lack of a right in the U.S. This is amazing. We're responsible for 30-50% of music played on stations around the world, and we don't have a performance right? I can understand why China, North Korea, and Iran might not. But the United States?

I've talked a fair amount about myself today, but this issue is not about me. It is about the thousands of performers across the country who work so hard to earn livings that are very modest in relation to their talent. It is also about the future of American culture and its ability to support the creators we need. I am honored to have been given an opportunity to speak for them. I realize that you are at the very beginning of a legislative process, and that there will be many issues to consider and resolve, including how to protect the rights of songwriters while creating new rights for performers. But I'm sure we can get this done so it's fair and square for everyone involved.

Thank you for giving me your time today, and for all your efforts on behalf of creators as you work on this issue.