



Statement of

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Committee on the Judiciary
Subcommittee on Intellectual Property

Hearing on

*Balancing the Interests of Local Radio, Songwriters, and
Performers in the Digital Age.*

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Chairman Tillis, Ranking Member Schiff, and Members of the Subcommittee, it is my honor to testify today in support of S. 326, the “*American Music Fairness Act (AMFA)*.”

The title of this hearing – “Balancing the Interests of Local Radio, Songwriters, and Performers in the Digital Age – is apt because that is exactly what the American Music Fairness Act seeks to achieve.

Before starting my testimony, I would like to thank Senator Blackburn for her unwavering support for recording artists and Senators Tillis, Schiff, Hagerty, Padilla and Booker for cosponsoring this long overdue legislation. With your leadership, I’m confident we can get AMFA signed into law during the 119th Congress to create a fair balance for the music industry.

SoundExchange and Intellectual Property Rights

SoundExchange is a non-profit that was created in 2003 by the music industry, and repeatedly designated by the U.S. government, to ensure that recording artists and labels are paid performance royalties when their music is played on certain digital streaming services. Our company delivers over \$1 billion in royalties annually to our community of 800,000-plus creators.

When SoundExchange was created, it embraced a simple principle: Artists and other music creators deserve to be paid for their work, whenever and wherever it is used -- period. It’s not complicated. It’s something every American intuitively understands because we all have the right to benefit from our own creativity, hard work, and labor.

When a song is played on the radio, it helps radio stations generate tens-of-billions of dollars in advertising revenues. The songwriter is compensated. DJs and radio executives are compensated. Yet, the people behind the performance – singers, musicians, studio producers, engineers, labels, and others – are not. Everyone here – save the corporate broadcasters – knows that is unfair. Yet, we have allowed this inequity to continue for decades.

It is so unfair that the United States, at least on this issue, is counted among the most notorious abusers of property rights – joining North Korea, Cuba, and Iran – in our failure to secure the rights of artists. All other developed nations respect artists by providing such a right. Even China amended its laws in 2021 to provide a performance right for terrestrial radio play. That makes China more protective of artist and label rights than the U.S. But today, you will hear from our broadcaster friends that this shouldn’t happen in America. Of course that’s their position, because who wouldn’t want access to the primary input of their business for free?

Our nation’s radio stations generate nearly \$14 billion in revenue every year playing nearly a billion songs. Yet, they don’t believe that the performing artists and others who make those songs, and their advertising revenue, possibly deserve a share. They are wrong. Artists deserve to be compensated for their creativity and hard work, and the radio industry should not be allowed to appropriate these works for their own use without just compensation.

Congressional and Administration History

Every few years Congress has a hearing on this issue and urges the broadcasters and performers to “work out deal” but the broadcasters refuse to come to the table or to make an offer that doesn’t involved taking money away from somewhere else. Last year, IP Subcommittee Chairman Darryl Issa (R-CA) during a hearing on AMFA in the House urged the broadcasters to make some offer to the performers (a net increase in revenue) and they refused.

Which is why Congress needs to act. It’s a problem with the law, which only Congress can fix.

This hearing talks of balancing interests. But the only interests that have been consistently protected have been broadcasters. Corporate radio’s lobbyists top priority each new Congress is to continue to deny artists payment for their work. They spend tens of millions of dollars on this effort through lobbying and in political contributions.

Look at the track record.

The last time the Senate held a hearing on this issue was in 2009 when Chairman Patrick Leahy (D-VT) led the Judiciary Committee and was the lead sponsor of this bill, which was named the Performance Rights Act. Chairman Leahy was joined by colleagues on both sides of the aisle in supporting the creation of a performance right for terrestrial radio including the late Senator Orin Hatch (R-UT), late Senator Diane Feinstein (D-CA), former Senator Lamar Alexandar (R-TN), and today’s Ranking Member of the Judiciary Committee Senator Dick Durbin (D-IL).

At the 2009 hearing, Chairman Leahy said “it appears they (broadcasters) are using someone else’s property without compensation. That might be okay in other countries, but it’s not consistent with American property laws.”

“The Queen of Country Music” Dolly Parton explained in a letter to Congress that year,

“[f]or more than half a century, radio has been blessed by the music of countless performers and musicians who bring songs to life. I wrote the song “I Will Always Love You” and recorded it as part of a movie soundtrack. But no one can deny that when Whitney Houston performed that song, she brought a life to it all her own. The performer deserves respect and equitable treatment when it comes to his or her indispensable contribution.”

Just two months after the 2009 hearing, the Senate Judiciary Committee passed the Performance Rights Act out of Committee, but the bill never made it to the floor because the broadcasters launched a national ad campaign to kill the bill calling it a “performance tax.”

When Congress took strides to reform music laws with the 2018 passage of the landmark Music Modernization Act, an AM/FM performance royalty was omitted from the bill because of pressure from the broadcasters.

The House has had several hearings over the years on this issue, with the most recent last summer. I had the honor of testifying with country music icon Randy Travis.

In December 2022, the House Judiciary Committee approved AMFA out of committee by voice-vote without any amendments. Unfortunately, the bill never made it to the House floor for a vote before the end of that Congress.

Any time we have made progress on this issue; the broadcasters have ramped up their lobbying efforts and put pressure on Congress to maintain the status quo.

Broadcaster lobbying is built on greed and competitive advantage. They want to continue playing a billion songs each year without paying for the use of the sound recordings. And they want to maintain an advantage over streaming competitors. All music platforms except radio pay a market rate for the music that is at the heart of those businesses. Pandora, Spotify, Apple Music, SiriusXM, Amazon, YouTube Music and even TikTok pay royalties for sound recordings. But radio does not.

There is broad, bipartisan consensus to end this disparity.

In a 2021 letter to Congress, the Trump Administration argued that

a public performance right in sound recordings furthers the goals of U.S. copyright law and the Constitution to incentivize authors to create and disseminate new works. As the Supreme Court has observed, the “encouragement of individual effort by personal gain is the best way to advance public welfare through the talents of authors and inventors . . .” This rationale for copyright supports assuring fair compensation to America's performers and record companies through a broad public performance right in sound recordings.¹

A year later, the Biden Administration expressed its support for a performance royalty for AM/FM radio plays, writing in 2022 to Congress,

Adding a public performance right for the broadcasting of sound recordings would remedy an anomaly under U.S. copyright law that harms American performers and record companies . . . Amending section 106 of the Copyright Act would ensure that these creators receive fair compensation for the use of their works, just as the law requires for other types of copyrighted works.

¹ Letter from Andrei Iancu, Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office and Shira Perlmutter, Register of Copyrights and Director of the United States Copyright Office, to the Honorable Lindsey Graham, Jerrold Nadler, Dianne Feinstein, and Jim Jordan (Jan. 19, 2021) (footnotes omitted).

And it isn't just the past two administrations that have expressed these views. In fact, every U.S. presidential administration since Jimmy Carter has supported enacting this property right and bringing the United States into the same standard as the rest of the developed world.

Even some within the broadcaster community have had the courage to recognize the fact that this inequity needs addressing. The Alliance for Community Media, Common Frequency, Media Alliance, the National Federation of Community Broadcasters, Prometheus Radio Project, and REC Networks — representing a broad coalition of community stations—all believe performing artists deserve to be paid for their work and support the passage of this bill.

Thousands of artists, representing every genre of music believe in this effort. Well-known performers such as Gene Simmons, Randy Travis, Gloria Estefan, Dionne Warwick, Common, Sammy Hagar, David Byrne, Roseanne Cash, Master P and hundreds of others have voiced support for AMFA. In February 2025, over three hundred major recording artists sent a letter to House and Senate leadership urging them to pass AMFA into law. The letter stated:

For decades now, corporate broadcasters have unjustly exploited an antiquated loophole in the law to profit from advertising generated from unlimited use of free music. Each year, AM/FM radio stations play nearly a billion songs. And each year, giant radio corporations rake in billions in advertising dollars while refusing to pay a single cent to the artists behind the music that attracts their advertisers in the first place and makes their entire business model possible.

While this inequity has impacted some of the biggest artists of all time, it has also affected thousands of background singers, session musicians, and local artists. They are your family, friends, and neighbors. They are looking to you to go to bat for them.

This broad spectrum of support demonstrates that AMFA is a common-sense approach. The varied set of supporters, from entities across the political spectrum and in different parts of the music system (including broadcasters), lends support the undeniable fairness of this bill.

The reason is clear: the lack of an AM/FM performance royalty harms American creators both at home and abroad.

International Reciprocity

I mentioned earlier that all other industrialized nations pay a performance royalty for radio plays. But there are nations, such as France, that use our failure to pay a performance royalty as an excuse to deny royalties to American artists. France collects royalties on behalf of our artists — then diverts them to their own cultural fund. They are robbing Peter to pay Pierre.

Passing AMFA will repatriate hundreds of millions of dollars in overseas royalties to American performers. Again, the Trump Administration was eloquent in explaining this point:

At the international level, such legislation would remedy a long-standing omission in U.S. copyright law that has harmed American

performers and record companies. The United States stands alone among industrialized nations in not recognizing a public performance right for the broadcasting of sound recordings. American performers and producers do not benefit from the protection afforded to such broadcasts in most other countries because of the lack of a reciprocal right in U.S. copyright law. As a result, substantial royalties due for the public performance of U.S. sound recordings abroad (estimated at approximately \$200 million per year) are not paid to American performers and record companies. Correcting this omission in our law would better allow the United States to lead by example in the international copyright community.²

Broadcaster Red Herrings

I urge you not to be distracted by the broadcasters' smoke and mirrors – all designed to get through another Congress without legislation that requires them to finally pay music creators for their work. They have tried calling a performance royalty a “tax.” It is not. If it was, the Americans for Tax Reform (ATR) would have called it out as such. Instead, the organization debunked the NAB's spin that a performance royalty is a tax, writing to Congress, “charging for content is not a tax. Specifically, a performance right is not a tax.”

ATR understands that royalties provide just compensation for the use of others' artistry and content. Requiring broadcast radio to pay a fair fee for its primary input (and coincidentally bringing the U.S. in line with the rest of the world) is the farthest thing from a tax.

Broadcasters also argue that radio “promotes” artists' work and as such artists should just be thankful for airplay. That is a specious argument when 84% of music revenue is generated by streaming services such as Spotify and Apple Music and music discovery happens on social media platforms such as TikTok and YouTube. I doubt broadcasters even believe it – 72% of the music they play on the radio is not current and therefore not promoting new music at all.

And even assuming, for purposes of argument, that there is still any real “promotional” value to FM radio play, AMFA effectively addresses this concern. The legislation directs the Copyright Royalty Board to consider the value of promotion when setting royalty rates (more promotion would argue in favor of a lower royalty rate.) If there is some slight promotional benefit from AM/FM radio, this does not justify a wholesale, un-permissioned taking of another's property. As the former Register of Copyrights, who testified in front of the Senate in 2009 said, “promotional value never justifies free use.”

When a movie studio produces a movie based on a book, the movie is clearly promoting the book. Yet nobody would question the need to properly license rights to the book. Similarly, when a TV station broadcasts a local baseball team, it clearly promotes the baseball team and raises franchise value. Yet it is beyond question that the station requires a license from Major League Baseball. These activities are “promotional,” and yes still require permission and

² *Id.* (footnotes omitted).

licensing. The degree of promotion is simply one of the factors that would be considered when setting the price of the license. Even assuming some promotional value, there is no justifiable reason why music on AM/FM Radio should be treated any differently.

With tax and promotion arguments debunked, broadcasters will argue that stations might trim investments in the emergency broadcast system if AMFA is passed. But somehow, the emergency broadcast systems in other countries remain operational despite recognition and payment of performance royalties. Moreover, talk format radio invests in emergency broadcast systems and they are paid a market rate. Building on these frivolous claims, they'll go as far as to argue the law will result in reduced charitable giving from stations. Implicit in this argument is that performers—not broadcasters—are responsible for the broadcasters' "generosity." Since when in America are a company's charitable donations borne by others?

Finally, the broadcasters will claim they simply cannot afford to pay a performance royalty. Yet, while maintaining this claim, the big radio conglomerates simultaneously can and do pay their radio personalities and executives. They pay talk radio hosts on talk formatted radio which, like music formats, is supported by advertising. They also pay for music when they – the same broadcasters opposing AMFA - webcast their programming. And while the broadcasting business may not be expanding in the same way it did previously, many of the biggest broadcasters are operating with margins that would thrill most businesses.

After each broadcaster red herring is dispensed with, the bottom line is that big corporate broadcasters want the primary input into their business for free – contrary to the basic tenets of commercial dealings and contrary to how the rest of the industrialized world (and every other platform in the U.S.) operates. Congress should end this outrageous sweetheart deal and pass AMFA to ensure the interests of all are protected.

Broadcaster Hypocrisy

Broadcasters should also be held to the same standards that they advocate for themselves. They are big believers in property rights when it is *their* property and content at issue. Since the early 1990's, the National Association of Broadcasters (NAB) has asked Congress to enact a so-called "retransmission consent" legislation that requires cable operators and other multichannel video programming distributors to obtain permission from commercial broadcasters before carrying their programming. What a novel concept.

Yet, the broadcasters have fought for decades *against* seeking an artist's consent to play and profit from the artists' programming, i.e., their music upon which the entire broadcast model is based.

Similarly, the NAB has also lobbied recently to pass legislation which would afford broadcasters greater bargaining power in negotiations with technology companies such as YouTube. They argue these technology platforms fail to provide broadcasters their "fair share" of the advertising revenue attributable to the content that the broadcasters produce. They insist on getting compensated when *their* content is used by third party platform but refuse to pay when artists' content is used on the broadcasters' own platform. (Of note -- at least the broadcasters currently

get *some* share of advertising from these tech platforms. Performers get *absolutely no share* of the advertising revenue derived from the music played on the radio.)

Broadcasters have also testified about the threat of AI models using their news content without compensation. For the broadcasters, its “property rights for me, but not for thee.” It is hard to take seriously their arguments opposing compensating artists when they repeatedly petition Congress for laws that ensure they are appropriately compensated for their own content.

An Uneven Playing Field

Big radio conglomerates like iHeart Radio, which owns 850 stations in the U.S., have been making money hand-over-fist by not having to pay artists for their music while other music services do. In the last year, iHeart took in \$2.3 billion in revenue from their AM/FM stations. iHeart Radio Bob Pittman told stock analysts last month that radio is having a “renaissance.” So, iHeart crows to Wall Street about a bright future while its lobbyists claim it can’t afford to pay the music creators responsible for their advertising revenues.

Corporate radio giants like iHeart have also used their royalty-free radio play to subsidize their high growth business of podcasting. That is fundamentally unfair, not just to performers but also to iHeart’s podcasting competitors. According to iHeart Chairman and CEO Bob Pittman, podcasting competes directly with streaming music services which pay a performance royalty. Broadcasters use the money they make from terrestrial radio to fund their podcasting business, which puts other music tech platforms at even greater competitive disadvantage.

AMFA Accommodates Small Radio Broadcasters

Many of you may be worried about the impact of AMFA on small radio stations. The music industry agrees with those concerns. That is why AMFA does not apply a one size fits all approach. In fact, AMFA would exempt nearly two-thirds of small radio stations from the standard royalty structure, and the sponsors of the bill were careful to provide special accommodations for truly small radio stations. Small stations with less than \$1.5 million in annual revenue (and whose parent companies make less than \$10 million in annual revenue overall) will only pay \$500 annually for unlimited music. Public, college, and other noncommercial stations will only pay \$100 a year, and stations with revenue under \$100,000 annually will pay just \$10 a year. For those who are concerned about truly small radio, AMFA addresses these concerns – and codifies it in U.S. law.

AMFA Protects Songwriters

Another popular tactic used by the broadcasters is to try and divide the music industry by pitting performers against the songwriters. They spread a false narrative that any gains made by performers will necessarily come out of the current “songwriter bucket.” In fact, nothing could be further from the truth. Those of us who represent music performers realize the essential role songwriters play in the process of creating music. They are colleagues in this craft and have just as much right to fair compensation as performers. AMFA goes out of its way to protect songwriters by making sure that the bill protects existing royalties for songwriters and

publishers, making clear that any new AM/FM performance royalty for performers will leave songwriter royalties unaffected.

Conclusion

This legislation reinforces the principles of compensating artists for their work, ensuring a technology-neutral framework that does not benefit one platform over another, and eradicating special favors for the largest radio conglomerates. Truly small and independent broadcasters are accommodated with reasonable flat fee rates of \$10-\$500 that permit them to use all available recordings for a year. In addition, enacting AMFA would free up hundreds of millions of dollars in payments from other countries, repatriating that money to the U.S. in taxable income for artists. This legislation is good for artists and good for our tax base.

Mr. Chairman, I want to take a second to thank you and Senator Blackburn for your leadership on this issue over the years. For those of us in the music community, we will miss your commitment to fairness and protecting the property rights of artists. I'm hoping that we can work together to markup up this bill quickly just as the Senate Judiciary Committee did in 2009 and pass the bill into law before you and Senator Blackburn leave the Senate at the end of next year.