

Testimony of the Honorable Theodore E. Deutch
October 21, 2021
Member Day Hearing
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

Thank you for allowing me this opportunity to speak about the American Music Fairness Act – a bill I and Congressman Issa from California have introduced.

Under the American Music Fairness Act, performing artists would see a small piece of the massive profits made by big radio stations for their creative work.

Of course, the ridiculous part is that this is not already happening. No other business in the world claims they should make a profit without paying for the raw materials they use – grocery stores pay for produce, builders pay for lumber, and corporate radio should pay for music.

The business model of AM-FM radio is pretty simple. It makes a profit by selling advertising around the music and other content it airs. You tune in to sing along with your favorite songs or catch up on local sports teams and you also hear ads for car dealerships or furniture stores in your area. But, because of a loophole in our copyright laws, AM-FM radio doesn't pay a cent to the performers who made the songs they play. The musicians, vocalists, recording artists, and labels whose hard work and creativity attract listeners and generate massive revenues for AM-FM radio stations get absolutely nothing -- while the AM-FM radio stations make billions each year.

For me, the system we have now is just so clearly stacked against performers there is no possible way of saying that it is fair to American artists. AM-FM radio pays their talk radio hosts for the entertainment and commentary; and, by selling ads during those shows, AM-FM radio can afford to pay these hosts quite well. AM-FM radio has long been required to pay songwriters, but they pay absolutely nothing to the artists who bring recordings to life – unequal treatment that simply makes no sense. And AM-FM radio pays the DJs who introduce the songs they play. So, if you are listening to music over AM-FM radio, the person who wrote the song is getting paid, the person telling you the name of the song is getting paid, but the person singing it is not.

It is only in America that we have this problem. Every industrialized country except the United States has a performance right. In fact, other countries actually collect royalties for American artists, but those royalties are never actually paid because we refuse to collect royalties for international artists here. So, because the US does not have this right in our laws, American artists are not eligible to collect royalties for their music when it is played on the radio overseas. This discriminatory treatment costs American artists an estimated \$200 million every year in royalties outside the US. Establishing an AM-FM performance right would change that at last. The American Music Fairness Act would ensure that US artists get paid for the domestic radio

play of their music and having a performance right in US law will also allow US artists to finally collect their international royalties as well.

Even in the US, it is only AM-FM radio that does not pay performers. Satellite radio and digital music services are required to pay both performers and songwriters. So, the American Fairness Act would require that AM-FM radio broadcasters pay for the music they play just like everyone else does.

This problem has existed for decades, rationalized by the dubious claim that artists got free publicity when their music was played on the radio. However, anyone who listens knows that most mainstream radio mainly plays a small rotation of hits rather than breaking a wide range of new or indie artists. With the rise of internet and satellite radio – which do pay artists and have broader, deeper playlists that feature many more upcoming stars – the claim that promotion is a substitute for fair play is even more specious. For older, legacy artists, the ‘promotion’ argument falls even flatter. Legacy artists don’t need AM-FM radio to promote them. They need a system not rigged against them. They need for someone who profits from using their work to pay for it.

And as we sit in this hybrid remote hearing, we are all reminded that we are in a very different world than we were two years ago. For a significant part of the past year and a half, our beloved local venues were shuttered. There was no one touring in a pandemic. And no performers were able to make money from touring. But as we stayed closer to home, we still got to enjoy the music we could not go out to hear live. We streamed all those artists, and we listened to the radio –internet, satellite, and AM-FM. But for the music played on AM-FM radio, our favorite artists got nothing.

Establishing the performance right has a bipartisan history that predates my time in Congress. My co-lead Rep. Issa was here during the 111th Congress, when bills establishing a terrestrial performance right passed the House and Senate Judiciary Committees by large bipartisan majorities.

Sometimes I hear that my bill is a threat to local radio. But this debate has never been about local radio. Small local radio stations would not be harmed by the American Music Fairness Act. I value my community broadcasters and want to ensure that they are free to continue to be a thriving part of local communities across the country, but I refuse to dress up an unfair subsidy for all AM-FM radio in the guise of supporting the local radio we all love.

The American Music Fairness Act would exempt out small local radio stations – as have prior versions of performance rights bills. So, small, local radio would be free to continue their businesses unharmed by the changes. Specifically, Under the American Music Fairness Act, local AM/FM stations with annual revenue below \$1.5 million and whose parent companies’ annual revenue is below \$10 million would only pay \$500 a year, covering all the music they play for a little more than a dollar a day. Public, college, and other noncommercial stations would pay only \$100 a year. And the smallest stations, those most in need of protection with revenue under \$100,000 annually, would pay just \$10 a year. The small payments will acknowledge there is value to every song on the radio, without creating significant burden.

The broadcasters have become experts in muddying the waters of this issue, but the core question has not changed: is the current system fair to performers. Congressman Issa and I are taking that very simple question to our colleagues. And the only fair answer to that question is clearly – no, it is not.

I hope that the American Music Fairness Act will finally allow us to fix this unfair treatment.

I will close just by saying that the American Music Fairness Act will finally ensure that artists are justly paid. It will help the thousands of musicians who are struggling to make ends meet – whether their songs were hits many years ago or they are just starting out today. Fixing this deeply unfair system is the least we can do for the recording artists who have given us all so much.