

Testimony from:

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*Respecting Artists with the American Music Fairness Act*

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***Chairman Nadler, Ranking Member Jordan, Chairman Johnson, Ranking Member Issa, and Members of the Committee,***

Thank you for inviting me to testify today about the need to pass the [American Music Fairness Act \(AMFA\) and its importance to working musicians](#). My name is Dave Pomeroy and I am a professional bass player. I am speaking to you today from Nashville, TN, also known as Music City, USA. Over the past 30+ years, I have played on more than 500 albums by artists such as Trisha Yearwood, Willie Nelson, Elton John, Emmylou Harris, Peter Frampton, The Chieftains, Chet Atkins, Alison Krauss, Earl Scruggs, and Guy Clark. Since 2008, I have served as the President of the Nashville chapter of the American Federation of Musicians (AFM), and since 2010 as an International Executive Officer of the AFM. In both roles, I have fought tirelessly to secure respect for our 80,000 members, and the intellectual property they create. I am honored to represent the finest musicians in the world, and now more than ever, we are working together in harmony to move forward toward a positive future for all musicians and creators.

I have advocated for musicians' rights in front of city councils, state legislatures, in Beijing at the World Intellectual Property Organization's (WIPO) Diplomatic Convention on the Protection of Audiovisual Performances in 2012, and numerous times in Washington D.C. on the issues that matter to musicians and creators of intellectual property. Today, I come to this Committee on behalf of all music creators, seeking fairness in resolving this long-time inequity that has existed for artists and musicians since the day recorded music began playing on the radio. This injustice needs to be addressed and the American Music Fairness Act is the right solution.

Unlike AM/FM radio, when satellite or internet radio stations broadcast any of the thousands of songs that I have had the privilege of playing on, they do pay a sound recording performance royalty to the featured artist, backup singers, and the session musicians, including me. When television shows or movies incorporate those songs, they pay us a new use fee and a royalty. Yet terrestrial radio broadcasters do not pay a single artist, musician, or singer even a tiny fraction of the many billions of dollars they earn from selling ads—a business model fueled by our sound recordings.

Last August, the great Trisha Yearwood was recognized at the Grand Ole Opry by Billboard magazine for having the most played country song on terrestrial radio over the past 30 years by a female artist. "She's In Love With The Boy" was her very first single. It went to number one for multiple weeks when it was first released in 1991 and has since been a radio favorite for over 30 years. Sadly, Trisha has never been paid one cent by any terrestrial broadcaster for that record being played millions of times on radio stations. I am proud to say that I played bass on that record as part of an excellent group of seven Nashville recording musicians. The creative process that goes into making a hit record involves a team effort by all

musicians and singers, who in many if not most cases, are composing their own parts on the fly under extreme pressure. Like Trisha, we have never received any compensation for any of those millions of plays over AM/FM airwaves, and neither have the background vocalists.

Incredibly, the United States is the only industrialized nation besides North Korea and Iran that does not pay a broadcast performance royalty for sound recordings. That means we not only fail to get paid by U.S. broadcasters, but adding insult to injury, foreign nations refuse to pay us the estimated \$200 million plus dollars they collect each year from playing American music. They will continue to withhold that money until U.S. broadcasters start paying foreign recording artists the much smaller amounts they are due. This huge trade imbalance needs to finally be addressed so this systemic injustice can finally come to an end.

This harsh reality has caused great financial harm to me and my brother and sister musicians for many decades. Sadly, these past two years during the pandemic have really spotlighted just how much of a difference this revenue stream could have made. Musicians and independent artists who rely on touring have seen their income grind to a halt, but the terrestrial radio industry continues to rake in increasing advertising revenue while musicians whose work they exploit are suffering.

Thankfully, the royalties coming in from satellite/digital radio through the AFM-SAG/AFTRA Fund, which paid out more than \$60 million to backup singers and musicians in 2021, has helped musicians all over the country survive. We can only imagine how much these same musicians could have benefited if terrestrial radio was also paying its fair share. This unfair practice cannot continue.

The National Association of Broadcasters (NAB) argues that recording artists don't need a broadcast performance royalty because recording artists are getting valuable promotion that

will lead to increased album and concert sales. Promotion, also known as “exposure,” is a very difficult, if not impossible, thing to monetize. During this pandemic, touring—the primary income for many musicians—has all but dried up as a means for making sure our music reaches our fans. Times have changed and very few people rush down to the corner record store to buy an album after hearing a song on the radio.

We believe that all content creators deserve to be paid fairly for their work. Ironically, the NAB also seems to think they should be too—but only when it comes to their content. When online platforms disseminate broadcaster-owned content over the internet, doesn't that similarly promote the broadcaster? In that case, why is the NAB is fighting for the Journalism Competition and Preservation Act to help them collect for the content they provide to the high-tech companies? If the value of promotion alone is not enough compensation for broadcasters, why should it be enough for us? It's a double standard.

Moreover, even the NAB acknowledges that the promotional value of radio is not what it once was. In fact, the NAB is asking the FCC to lift the broadcast radio ownership caps because they say broadcast radio has lost massive audience share to internet services, even while their revenue grows.

As I mentioned earlier, internet radio services pay for the use of sound recordings, including when the internet services are advertising supported, even though they also arguably promote the music. There's no reason terrestrial broadcast radio should be treated differently. They have benefitted from this loophole in the law and profited from our intellectual property without payment for more than 70 years. Enough is enough.

The NAB says the proposed broadcast sound recording performance royalty is a tax. It is absolutely not. It's *compensation* for the billions of advertising dollars that radio broadcasters

make from airing recording artists' music. It's not a tax to pay someone fairly for their creative work. We don't call it a tax when freelance writers ask to be paid for their stories that the newspapers sell ads around or when a film company pays to use a previously recorded song into a movie. This is no different.

The NAB says that radio stations were already having a hard time competing even before the pandemic and can't afford to pay the royalty. In reality, the conglomerates have put many of independent stations out of business over the past two decades. Radio stations did not take the kind of financial hit that many other businesses that rely on person to person interaction did. In addition, this bill is expressly written to ensure that the rates are extremely reasonable for smaller stations.

In any event, this isn't about small stations. It's about rich broadcasting corporations that are making billions of advertising dollars off the backs of recording artists. For example, in just the third quarter of 2021, iHeart's net revenues were [\\$928 million](#), up 25 percent from the prior year and exceeding prior guidance by approximately 20 percent. Audacy's third-quarter net revenues were [\\$329.4 million](#), up 23 percent from the prior year. Cumulus's net revenues that quarter were [\\$238 million](#), up 21 percent from the prior year. Townsquare Media's net revenues that quarter were [\\$111 million](#), up 17 percent from the prior year. This is more than \$1.6 Billion in revenue in just three months from just five companies. It is worth noting that none of these companies are here today to defend themselves. Under AMFA, these companies would be required to pay a modest royalty, the amount of which would be determined by a panel of copyright royalty judges. As with other such royalties, these judges must consider market factors and information provided by broadcasters. Backup singers and session musicians like me would get a portion of those royalties in the downstream revenues for as long as these perennial hits are

played. This would finally give us the recognition and compensation from AM/FM radio that we have in the digital music world which has been a life saver for many of us. I have a friend who is a successful songwriter and independent artist in the bluegrass field. He told me that when touring stopped he would have lost his house without the money he received for his satellite radio play. There are thousands of these stories of working-class musicians who deserve to be paid fairly for the use of their music like they are in every other portion of our business. Passing AMFA will have a positive financial impact, yes, but it will also make an important statement about the value of American music both here and around the world. I have heard my bass on the radio thousands of times, and never to have had anything to “show” for it. If listeners can enjoy the music they love year after year after year, then it is fair and right to compensate those who made it possible.

As I mentioned earlier, this bill will not put any radio broadcaster out of business with an undue financial burden. Smaller stations not owned by a company that makes at least \$10 million per year pay only a small, flat, annual royalty for as much music as they want to play. Commercial and public stations that make less than \$100,000 a year pay only \$10. Public stations that make between \$100,000 and \$1.5 million a year—such as through fund drives—pay only \$100. Commercial stations that make between \$100,000 and \$1.5 million per year pay only \$500. Importantly, under AMFA, these critical stations would have *certainty* about their royalty payments as they move into the digital space to stay relevant and local during a time of media consolidation.

The NAB argues that broadcast radio is a free, local service subject to special public interest regulations, and therefore should be exempt from any song recording performance royalty. But broadcast radio’s public interest obligations are part of the deal for receiving billions

of dollars' worth of free spectrum. If in return, broadcasters are supposed to support the public interest, that should include supporting the creative artists whose music they monetize. Investing in the music industry for the future is in *everyone's* interest if we are to remain the leader in exporting our music to the world.

Despite the unfounded claims about this bill harming small stations there are some internet radio stations that are also advertising-supported, free to the user, and serve local markets, yet they are somehow paying a sound recording royalty. Ironically, radio broadcasters themselves are now simulcasting their signals on the internet and pay a performance royalty when they do. There's no reason why they should pay in one situation but not the other.

The NAB argues that broadcast radio stations already pay a royalty to the songwriter and shouldn't pay twice. But these royalties are for different things. When a radio station plays a recording of the White Stripes performing the song "Jolene," written by Dolly Parton, both the White Stripes and Dolly Parton should be compensated. We don't say that a radio station should pay its news writers but not its newscasters. It's no different here.

The NAB says that if broadcast radio stations need to start paying a performance royalty for sound recordings, they will play only the most popular songs to maximize their advertising revenue—hurting new, diverse, and niche artists. But the truth is that the bulk of music played on the radio are the songs from years ago that we know by heart. Trisha's "She's In Love With The Boy" is a perfect example of a classic track that draws listeners ears for decades.

Look. I get it. It's Mr. LeGeyt's job to minimize costs for his radio station members so they can pocket more money. But that money they are putting in their pockets is coming out of my pockets and the pockets of many musicians like me. This has gone on for too long, and now it's a matter of survival. Music is one America's greatest exports and terrestrial radio has created

a huge trade imbalance that must be corrected. If not, then there will come a day when no one can afford to be a professional musician.

If you haven't seen documentaries like "20 Feet from Stardom" and "The Wrecking Crew!," which are about backup singers and session musicians, I encourage you to do so. You will see the talent, creativity, and hard work by non-featured artists that goes into song recordings. You will realize that without the skills that we bring to the table, the songs we all love would be unrecognizable. Singers and musicians have a hard enough time making a living. We don't earn the big bucks from record sales or concerts. The least the terrestrial radio industry can do is pay us for our work, which earns radio broadcasters billions of advertising dollars every year.

Thank you for inviting me to testify today. I look forward to answering your questions and working with you to pass this essential legislation.