



Statement of

Michael J. Huppe

President & Chief Executive Officer of Sound Exchange

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Hearing on

**“Radio, Music, and Copyrights:
100 Years of Inequity for Recording Artists”**

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Mr. Chairman, Ranking Member Johnson, and Members of the Subcommittee, it is my honor to testify today alongside Randy and Mary Travis in support of H.R. 791, the “*American Music Fairness Act (AMFA)*.” I would like to particularly thank Chairman Issa and Ranking Member Nadler for your unwavering support of artists’ rights and your efforts to make the United States a world leader in the protection of intellectual property.

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 streaming services. Our company delivers over \$1 billion in royalties annually to our community of 700,000+ 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.

We are here today because the United States is unfortunately in bad company on this critical copyright issue. Because the U.S. does not provide a performance right for sound recordings played over AM/FM radio, we are 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. But today, you will hear from our broadcaster friends that this shouldn’t happen in America. Of course, who wouldn’t want access to the primary input of their business for free?

Our nation’s radio stations generate \$15 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 possible deserve a share. They are wrong. Randy Travis and artists like him 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.

Ten years ago yesterday, on June 25, 2014, I testified before this subcommittee about issues that adversely affected artists. A few years later, Congress addressed some of those issues with the passage of the Music Modernization Act (MMA), like extending copyright protection to pre-1972 sound recordings. For that, our industry is appreciative, and this progress should be commended.

During my testimony in 2014, I argued for the long overdue need to establish a performance right for terrestrial radio play. What I said then still applies today:

All creators should receive fair pay on all platforms whenever their music is used; period. Everyone who has a hand in the creation of music deserves fair market value for their work. And I mean everyone, Mr. Chairman; songwriters, publishers, studio producers, and engineers. The artists who give compositions life and record companies who help artists fill their creative vision.

Fair pay would ensure justice for creators, whose contributions form the soul of these services; fair pay would level the playing field for radio services; and fair pay would ensure a healthy vibrant ecosystem for listeners and fans.

In 2009, Dolly Parton explained in a letter to Congress that,

“[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.”

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. Music is the foundation for the entire radio business model. Without music, there would be no music format radio. Yet big radio is unwilling to share any of its success with the performers who attract the advertisers that pay their salaries. Just as homebuilders don’t get their bricks for free, radio shouldn’t get the very foundation of their business for free either.

In a 2021 letter to Congress, the Trump Administration argued—and I agree—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

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).

these creators receive fair compensation for the use of their works, just as the law requires for other types of copyrighted works.

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.

International Reciprocity

Passing AMFA will also ensure that American artists are paid when their music is played overseas. I mentioned earlier that all other Democratic 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

Widespread Support

AMFA has widespread support across the music ecosystem.

Broadcasters, such as 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—believe performing artists deserve to be paid for their work.

Thousands of artists, representing every genre of music believe in this effort. Well-known performers from Gloria Estefan to Dionne Warwick to Common to Sammy Hagar to David Byrne to the Temptations to Roseanne Cash to Master P have voiced support for AMFA. And

² *Id.* (footnotes omitted).

there are thousands of local artists who have signed on to back this cause. They are your family, friends, and neighbors. They are looking to you to go to bat for them.

The music community has also massed to end what this committee has called “100 years of inequity for recording artists.” Diverse organizations such as the:

- Recording Academy
- Recording Industry Association of America
- Christian Music Trade Association
- The Latin Recording Academy
- Society of Singers
- Music Managers Forum-US
- American Association of Independent Music
- SAG-AFTRA
- Rhythm & Blues Foundation
- The Vocal Group
- American Federation of Musicians
- Artists Rights Alliance
- Featured Artists Coalition
- SoundExchange
- AFL-CIO
- Public Knowledge
- National Music Publishers’ Association
- Consumer Technology Association
- Copyright Alliance

The legislation has also earned the support of many property rights groups on the basis that AMFA “provides a fair solution to protecting the copyright ownership of creative performers whose works are played by terrestrial radio.” These groups include:

- Citizens Against Government Waste
- Taxpayers Protection Alliance
- Center of Individual Freedom
- American Commitment
- The American Conservative Union
- Consumer Action for a Stronger Economy

And notably, the Americans for Tax Reform has debunked the NAB’s efforts to label performance royalties a tax, writing to Congress, “charging for content is not a tax. Specifically, a performance right is not a tax.”

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.

Broadcaster Red Herrings

Today, I urge you not to be distracted by the Broadcasters' smoke and mirrors. They will call it a "tax." It is not. If it was, the Americans for Tax Reform would have called it out as such. 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 argue that radio "promotes" artists' work and as such artists should just be thankful for airplay. However, the law and the bill before you both consider promotional value is assessing the value of the content. Furthermore, 72 percent of music played on the radio is not current and therefore not promoting new music at all. And even if there is some slight promotional benefit from AM/FM radio, this does not justify a wholesale, un-permissioned taking of another's property. 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 licensing. The degree of promotion is simply 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.

The Broadcasters will also 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?

All in all, the broadcasters will intimate 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.

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. Congress should end this outrageous sweetheart deal and pass AMFA.

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 this Congress to pass legislation which would afford broadcasters greater bargaining power in negotiations with technology companies such as YouTube. They argue these technology platforms do not provide broadcasters their "fair share" of the advertising revenue attributable to the content they 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. The broadcaster's number one priority this Congress is a bill mandating that car companies put AM radio in every new car. More than 240 million songs are played on AM radio every year. Passing the AM in Every Car Act without passing AMFA at the same time would not only condone the practice of not paying artists for their work, but it would be enshrined in law. I urge Congress to not pass the AM in Every Car Act without simultaneously passing AMFA.

An Unlevel 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 2023, iHeart took in \$1.8 billion in revenue from their AM/FM stations. Since 2017, iHeart has had an average adjusted EBITDA margin of nearly 24 percent.

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 iHeart's podcasting competitors. According to iHeart Chairman and CEO Bob Pittman, podcasting competes directly with streaming music services which pay a performance royalty.

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. The sponsors 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. Qualified 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.

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, Randy Travis has been entertaining millions for years. Due to his health, he can't do that in the same way anymore. This means his income is no longer derived from touring and performing, and—except for his newest AI-generated song—he has been unable to create new music. However, we estimate that his songs are played about 306,000 times per year on AM/FM radio. In the eleven years since losing his ability to sing, this amounts to 3,336,000 times that radio stations have played Randy's songs without sharing a dime of the advertising revenue derived from his and others' music.

It is time for Congress to stand up for all performers, background vocalists and session musicians by creating a performance right for terrestrial radio play and enacting the American Music Fairness Act.