

Even OTA Radio Doesn't Buy Its Claims Against Fair Pay for Music

[DigitalFrontiers Advocacy](#)



Sisacorn/shutterstock.com

Neil Fried

For an advocacy organization to take a dubious position is one thing. To simultaneously make two contradictory arguments before federal policymakers is quite another.

Yet that's what the National Association of Broadcasters is doing, as [SoundExchange](#) and other members of the [musicFIRST Coalition](#) explain today in an [FCC filing on the broadcast radio ownership rules](#).

Content Creators Deserve to Be Paid ... Until They Don't

The hypocrisy is laid plain in two pieces of testimony the NAB delivered to the Senate and House Judiciary Committees within a seven-hour period last month.

As SoundExchange CEO Michael Huppe [has already noted](#), the NAB told the Senate the afternoon of Feb. 2 that online platforms are not adequately paying broadcasters for the content the platforms use to generate advertising revenue. The platforms “simply take [broadcaster] coverage and profit from it, and virtually nothing comes back,” [said over-the-air radio executive Joel Oxley](#) on behalf of the NAB.

The solution, according to Oxley, is for Congress to pass the [Journalism Competition and Preservation Act](#). That legislation would give broadcasters and other news organizations an antitrust exemption to negotiate collectively for fair compensation from platforms.

The morning of Oxley's testimony, however, NAB CEO Curtis LeGeyt was before the House opposing the [American Music Fairness Act](#). That legislation would require radio broadcasters to pay musicians fairly for the sound recordings they use to generate millions of advertising dollars. Radio broadcasters don't pay recording artists anything today.

Sorry You Can't Pay for Your Meds But Junior Needs to Learn

to Sail

Under the legislation, large stations—those making at least \$1.5 million per year or that are owned by a conglomerate making at least \$10 million per year—would pay a per-song royalty. The royalty would be determined by a panel of copyright royalty judges that must consider economic, competitive, and programming information presented by all the relevant parties.

Smaller stations are subject to a low, flat royalty. For example, a commercial broadcaster with less than \$1.5 million in annual revenue would pay \$500 per year for unlimited use of music. A station with less than \$100,000 per year in revenue would pay \$10 annually.

Incredibly, LeGeyst claimed that even such modest fees were too much. Why? Because some station owners [might not be able to send their children to camp](#). To which Nashville Musicians Association President Dave Pomeroy replied that recording artists just want to keep a roof over their heads, food on their plates, and medicine in their cabinets.

If a Song Plays on Radio and No One Hears It, Does It Really Make a Sound?

In an attempt to explain itself, the NAB continues to claim that radio broadcasters don't need to pay recording artists because the “promotional value” of airplay is compensation enough. (Perhaps

tellingly, [copyright pirates make the same argument](#) to justify their theft of content.)

The promotion argument has never been a valid excuse for refusing to pay musicians. Such a rationale could swallow all of copyright, as any use of content can be called “promotional.”

But the NAB undercuts its own argument even further.

As we speak, it is telling the FCC to [loosen limits on how many radio stations a broadcaster can own](#) in a local market, to compensate for the significant audience share broadcast radio has lost. If radio broadcasters have lost so much audience that they need government intervention, the promotional value they say they provide cannot be adequate compensation.

It's Only Promotion When We Do It

Heck, even the NAB doesn't believe the promotion claim. Another of its arguments for relaxed ownership rules is a need to offset the inadequate compensation they say the platforms pay. Yet under the NAB's own theory, the FCC should take into consideration the “promotional” value of online distribution.

Moreover, remember how Oxley testified that “*virtually* nothing comes back” to broadcasters when platforms use their content? That's because platforms *are* paying broadcasters something.

Google and Facebook often don't pay broadcasters when users

view content on the online services without clicking through to the broadcasters' web sites, according to an NAB-commissioned study. The same study also notes, however, that in certain situations Apple, Facebook, and Google do [pay between 30 and 85 percent](#) of the revenues the platforms collect in connection with content.

If online “promotion” plus the 30 to 85 percent of revenues platforms do pay broadcasters is inadequate for stations, how can alleged promotion of a similar nature and *zero percent* of revenue be adequate for recording artists?

Compensation for One, Compensation for All

Congress and the FCC shouldn't listen to what the NAB is telling them out of one side of its mouth when it is saying the opposite out the other. If recording artists don't deserve a fair return on their content, neither do radio broadcasters.

DigitalFrontiersAdvocacy.com

© 2022 DigitalFrontiers Advocacy® PLLC