MARKUP OF H.R. 5038, THE FARM WORKFORCE MODERNIZATION ACT OF 2019;
H.R. 5140, THE SATELLITE TELEVISION COMMUNITY PROTECTION AND PROMOTION ACT OF 2019;
H.R. 3991, THE AFFORDABLE PRESCRIPTIONS FOR PATIENTS THROUGH IMPROVEMENTS TO PATENT LITIGATION ACT OF 2019; AND
H.R. 5133, THE AFFORDABLE PRESCRIPTIONS FOR PATIENTS THROUGH PROMOTING COMPETITION ACT OF 2019
Thursday, November 21, 2019
House of Representatives
Committee on the Judiciary
Washington, D.C.

The committee met, pursuant to call, at 9:17 a.m., in Room 2141, Rayburn Office Building, Hon. Jerrold Nadler [chairman of the committee] presiding.

Staff present: David Greengrass, Senior Counsel; John Doty, Senior Advisor; Madeline Strasser, Chief Clerk; Moh Sharma, Member Services and Outreach Advisor; Julian Gerson, Professional Staff Member; Amanda Lewis, Counsel, Antitrust, Commercial, and Administrative Law Subcommittee; Slade Bond, Chief Counsel, Antitrust, Commercial, and Administrative Law Subcommittee; Jamie Simpson, Chief Counsel, Courts, Intellectual Property, and the Internet Subcommittee; Danielle Johnson, Counsel, Courts, Intellectual Property, and the Internet Subcommittee; Rosalind Jackson, Professional Staff Member, Courts, Intellectual Property, and the Internet Subcommittee; Ben Hernandez, Counsel, Crime, Terrorism, and Homeland Security Subcommittee; Joe Graupensperger, Chief Counsel, Crime, Terrorism, and Homeland Security Subcommittee; Milagros Cisneros, Detailee, Crime, Terrorism, and Homeland Security Subcommittee; Veronica Eligan, Professional Staff Member, Crime, Terrorism, and Homeland Security Subcommittee; Betsy Lawrence, Counsel, Immigration
and Citizenship Subcommittee; David Shahoulian, Chief Counsel, Immigration and Citizenship Subcommittee; Joshua Breisblatt, Counsel, Immigration and Citizenship Subcommittee; Rachel Calanni, Profession Staff Member, Immigration and Citizenship Subcommittee; Ami Shah, Counsel, Immigration and Citizenship Subcommittee; Brendan Belair, Minority Staff Director; Bobby Parmiter, Minority Deputy Staff Director/Chief Counsel; Jon Ferro, Minority Parliamentarian/General Counsel; Jason Cervenak, Minority Chief Counsel, Crime, Terrorism, and Homeland Security Subcommittee; Andrea Loving, Chief Counsel, Immigration and Citizenship Subcommittee; Ryan Breitenbach, Minority Chief Counsel, National Security; Tom Stoll, Minority Chief Counsel, Courts, Intellectual Property, and the Internet Subcommittee; Daniel Flores, Minority Chief Counsel, Antitrust, Commercial, and Administrative Law Subcommittee; Erica Barker, Minority Chief Legislative Clerk; Andrea Woodard, Minority Professional Staff Member; and James Rust, Minority Counsel.
Chairman Nadler. [Presiding.] The committee will come to order.
The committee yesterday postponed further proceedings on the recorded vote to favorably report the bill, H.R. 5038, the Farm Workforce Modernization Act of 2019, and we will now resume those proceedings. Before we recessed last night, the committee approved the bill by a voice vote. A roll call was asked for.

The clerk will call the roll.

Ms. Strasser. Mr. Nadler?

Chairman Nadler. Aye.

Ms. Strasser. Mr. Nadler votes aye.

Ms. Lofgren?

Ms. Lofgren. Aye.

Ms. Strasser. Ms. Lofgren votes aye.

Ms. Jackson Lee?

Mr. Cohen?

Mr. Johnson of Georgia?

Mr. Johnson of Georgia. Aye.

Ms. Strasser. Mr. Johnson of Georgia votes aye.

Mr. Deutch?

Ms. Bass?


Mr. Richmond?
90 Mr. Jeffries?
91 Mr. Cicilline?
92 Mr. Cicilline. Aye.
93 Ms. Strasser. Mr. Cicilline votes aye.
94 Mr. Swalwell?
95 Mr. Lieu?
96 Mr. Lieu. Aye.
97 Ms. Strasser. Mr. Lieu votes aye.
98 Mr. Raskin?
99 Mr. Raskin. Aye.
100 Ms. Strasser. Mr. Raskin votes aye.
101 Ms. Jayapal?
103 Ms. Strasser. Ms. Jayapal votes aye.
104 Mrs. Demings?
105 Mrs. Demings. Aye.
106 Ms. Strasser. Mrs. Demings votes aye.
107 Mr. Correa?
108 Mr. Correa. Aye.
109 Ms. Strasser. Mr. Correa votes aye.
110 Ms. Scanlon?
111 Ms. Garcia?
112 Ms. Garcia. Aye.
113 Ms. Strasser. Ms. Garcia votes aye.
114 Mr. Neguse?
Mr. Neguse. Aye.

Ms. Strasser. Mr. Neguse votes aye.

Mrs. McBath?

Mrs. McBath. Aye.

Ms. Strasser. Mrs. McBath votes aye.

Mr. Stanton?

Mr. Stanton. Aye.

Ms. Strasser. Mr. Stanton votes aye.

Ms. Dean?

Ms. Dean. Aye.

Ms. Strasser. Ms. Dean votes aye.

Ms. Mucarsel-Powell?

Ms. Mucarsel-Powell. Aye.

Ms. Strasser. Ms. Mucarsel-Powell votes aye.

Ms. Escobar?

Ms. Escobar. Aye.

Ms. Strasser. Ms. Escobar votes aye.

Mr. Collins?

Mr. Collins. No.

Ms. Strasser. Mr. Collins votes no.

Mr. Sensenbrenner?

Mr. Chabot?

Mr. Chabot. No.

Ms. Strasser. Mr. Chabot votes no.

Mr. Gohmert?
Mr. Gohmert. No.
Ms. Strasser. Mr. Gohmert votes no.
Mr. Jordan?
Mr. Buck?
Mr. Buck. No.
Ms. Strasser. Mr. Buck votes no.
Mr. Ratcliffe?
Mrs. Roby?
Mrs. Roby. No.
Ms. Strasser. Mrs. Roby votes no.
Mr. Gaetz?
Mr. Johnson of Louisiana?
Mr. Johnson of Louisiana. No.
Ms. Strasser. Mr. Johnson of Louisiana votes no.
Mr. Biggs?
Mr. Biggs. No.
Ms. Strasser. Mr. Biggs votes no.
Mr. McClintock?
Mr. McClintock. No.
Ms. Strasser. Mr. McClintock votes no.
Mrs. Lesko?
Mrs. Lesko. No.
Ms. Strasser. Mrs. Lesko votes no.
Mr. Reschenthaler?
Mr. Cline?
Mr. Cline. No.

Ms. Strasser. Mr. Cline votes no.

Mr. Armstrong?

Mr. Armstrong. No.

Ms. Strasser. Mr. Armstrong votes no.

Mr. Steube?

Mr. Steube. No.

Ms. Strasser. Mr. Steube votes no.

Chairman Nadler. The gentleman from Florida?

Mr. Deutch. Mr. Deutch votes aye.

Chairman Nadler. Has every member who wishes to vote voted?

[No response.]

Chairman Nadler. The clerk will report.

Ms. Strasser. Mr. Chairman, there are 18 ayes and 12 noes.

Chairman Nadler. The ayes have it. The bill, as amended, is ordered reported favorably to the House.

Members will have 2 days to submit views.

[The information follows:]
Chairman Nadler. The bill will be reported as a single amendment in the nature of a substitute incorporating all adopted amendments.

Without objection, staff is authorized to make technical and conforming changes.

Pursuant to notice, I now call up H.R. 5140, the Satellite Television Community Protection and Promotion Act of 2019, for purposes of markup, and move that the committee report the bill favorably to the House.

The clerk will report the bill.

Ms. Strasser. H.R. 5140, to amend Title 17, United States Code, to narrow the category of households eligible to receive signals --

Chairman Nadler. Without objection, the bill is considered as read and open for amendment at any point.

[The bill follows:]
Chairman Nadler. I will begin by recognizing myself for an opening statement.

H.R. 5140, the Satellite Television Community Protection and Promotion Act, amends the satellite television distant signal license contained in Section 119 of the Copyright Act. The license is currently set to expire at the end of this year. Under Section 119, satellite carriers can import an out-of-state broadcast network's programming to subscribers in certain types of households. These include households that do not receive sufficiently strong over-the-air signals, recreational vehicles and commercial trucks, households that receive a waiver from a local network affiliate to receive a distant signal, households that are in a market where local service is available, but who have been grandfathered into eligibility, and households in short markets where one or more of the local networks is not available at all.

When satellite carriers use this license, they pay government-set royalty rates for the distant out-of-State programming and need not negotiate with individual copyright owners. Households that receive programming under the license do not get to see their local news, local weather, or local emergency alerts. Instead, they get news, weather, and emergency alerts from distant markets, like New York or Los Angeles. Congress originally created this Section 119 license in 1988 when the satellite industry was in its
infancy. The license was enacted as a temporary measure with the goal of ensuring that the newer satellite industry could effectively compete with cable. The Congress of 1988 would consider this mission accomplished.

More than 30 years have passed the section's enactment, during which the satellite industry has matured into two major players with nationwide subscribership. Technology has likewise advanced, making it feasible for satellite carriers to re-transmit local stations into these households of distant out-of-state signals. One satellite carrier provides its local service in all 210 medium markets. Another provides local service in 198 of those markets. The separate license's Section 122 of the Copyright Act governs this type of service. Indeed, many of the households receiving distant programming under the license have local broadcast stations that serve their area and that carry news and other information relevant and important to them.

H.R. 5140 accounts for this changing landscape and prioritizes the provision of local programming by letting most of the license expire and conditioning the use of the remaining part of the license on the satellite carrier's provision of local service in all 210 media markets. This legislation also acknowledges that some households might run the risk of losing access to these stations in a purely market-based system. These include households in short
markets where at least one of the four networks is missing, and RVs and commercial trucks which are not in fixed locations. The license is made permanent for these two groups.

Under H.R. 5140, most of the license expires as Congress intended 30 years ago, while the statute is made permanent for some of the most vulnerable subscribers. And in that process, H.R. 5140 helps bring local television into these communities.

I want to thank a few of my colleagues for working with me to address concerns that this bill might be disruptive for certain subscribers. We will consider an amendment momentarily from the gentlelady from California which seeks both to provide additional safeguards to ensure that subscribers do not lose access during the bill's transition period, and that the timing of the transition period is structured so that a satellite carrier who is not in compliance has adequate flexibility in meeting the bill's requirements. I thank the gentlelady for working in good faith with me and my staff to arrive at a transition provision that should work to the benefit of everyone. I also thank the gentleman from Georgia, Mr. Johnson, the ranking member of the Committee on Courts, Intellectual Property, and the Internet -- the chairman I should say -- the Subcommittee on Courts, Intellectual Property, and the
Internet, who has been a strong advocate for consumers throughout this process, and who, likewise, has been instrumental in shaping this legislation. I urge my colleagues to support H.R. 5140.

I now recognize the ranking member, the gentleman from Georgia, Mr. Collins, for his opening statement.

Mr. Collins. Thank you, Mr. Chairman. And as someone on this panel and as a few of us on here, if there are any issues that come up in the intellectual property sphere, and especially when it deals with whether from music, to the CASE Act, to the CLOUD Act, to trade secrets and others, it comes through. And we have been very active in this for 7 years. This is the very thing that this year has bothered me the most.

This bill had to come up because of the expiration, but we have waited now until just weeks before it is supposed to expire to draft a bill that we didn't even have a bill on before Monday. And now it comes up, and we have another amendment. And at a certain point in time, it is not that it is not going to get solved. It is not that it is not going to have something happen. It is not that stakeholders have been freaking out and calling our phones and blowing up our offices for the last 48 hours over this bill. It is also very interesting that some on this bill have one very different opinion of consent decrees on one hand, and a very
different opinion on this bill on the other hand. I recognize that.

But the interesting part here is why didn't we have a markup on this in the sense of having a hearing on it? An overgeneralized copyright hearing was not what was needed here. You know, we said that we are giving a space to let this wind down. Twenty years is long enough to wind down and somebody get to the negotiating table. Now we are just going to add 60 more days or so on to this process, and we are going to pass this along, and hopefully finally come to a determination point on much of the stuff that should have terminated a long time ago.

I wish, I plead, I ask, let's get back to taking up bills and having hearings so that we don't have to wait a crammed-in week of markup in which we get a bill which everybody who wants to have an opinion on gives their opinion, and we end up writing an amendment the night before to come back to the committee to say this is how we are going to solve it. The industry sitting in the audience and not in the audience watching on their computers right now, hear me clearly. You know me well. I know you well. This is not the way we need to do this. Fix it. Quit arguing. We have done this before.

And for my friends across the aisle, all I will say is a markup of this category should have had a hearing with it.
It should have had something discussed about it and had the players in front of us to answer the questions of why they hadn't fixed it, why they hadn't negotiated it. But instead, we simply have a markup; thus, the entire portrait of the Judiciary Committee for 2019. We only do it when we have to do it, and even then it is rushed. With that, I yield back.

Chairman Nadler. Without objection, all other opening statements will be included in the record.

[The information follows:]
Chairman Nadler. Are there any amendments to H.R. 5140?

For what purpose does the gentlelady from California seek recognition?

Ms. Lofgren. I have an amendment at the desk.

Chairman Nadler. The clerk will report the amendment.

Ms. Strasser. Amendment to H.R. 5140, offered by Ms. Lofgren, page 2, line 9, strike "and" --

Ms. Lofgren. I ask unanimous consent that the amendment be considered as read.

Chairman Nadler. Without objection, the amendment will be considered as read.

[The amendment of Ms. Lofgren follows:]
Chairman Nadler. The gentlelady is recognized.

Ms. Lofgren. This amendment does two things. First, it clarifies that a contract dispute or blackout won't prevent satellite TV providers from using this Section 119 license. As the bill is drafted, there is an ambiguity on the requirement for being able to use Section 119. As written, it could be interpreted as a requirement that a satellite company be currently providing local channels in all 210 markets to use the 119 license. And if it is not, regardless of the reason, including a contract dispute, then it can't use the license. This ambiguity could be used to extort satellite TV providers during retransmission negotiations. To clear up this ambiguity, my amendment makes it clear that failure to reach a retransmission agreement does not prevent the use of 119 license.

The second part of this amendment deals with how long satellite TV providers have to comply with this new regime. Currently, the bill requires compliance no later than 120 days. However, I do not feel that we have a strong enough committee record or sufficient evidence to support this timeline. So instead of 120 days, my amendment proposes giving satellite TV companies an initial window of six months to comply.

Additionally, after the first six months, a satellite TV provider can avail itself of an essentially unlimited number
of 90-day extensions, but only so long as it files a notice
with the Copyright Office that it has acted reasonably and in
good faith to provide local channels in all 210 markets, and
will continue to make good faith efforts to accomplish it;
intends to use the license despite not providing local
channels in all markets and provided a list of markets where
it does not provide local channels; and provided a summary of
actions taken to provide local channels to all market.

Now, I want to note that the Copyright Office doesn't
actually make any determinations here, but instead makes the
filing available for auditing and verification by interested
parties. So the extension is essentially automatic, but
there is actual accountability because instead of
verification of the satellite provider's filings, by giving
the broadcasters in currently unserved markets a civil right
of action in district court to challenge the satellite
company's assertions that it is making reasonable efforts to
provide services to all markets.

Given the limited evidence we have as to how long it
will actually take to comply with this new law, I am inclined
to be cautious so as not to cause unintended consequences. I
actually think, and I am glad to say this, I think this is
the last time we will have this issue before the committee.
I think that with this amendment, all parties will comply.
And I remember in the 1990s, Rick Boucher, then a member of
the committee, opining, "When we will no longer have this
before us? I didn't think it would take this long." But I
think with the adoption of this amendment and this bill, we
will have resolved this issue happily for the country and
never see it again in the committee.

And with that, I yield back, Mr. Chairman.

Chairman Nadler. I recognize myself to speak on the
amendment. I thank the gentlelady from California for
offering her amendment. We all share the goal that
subscribers to satellite television should not have their
service disrupted, and also the goal of ensuring that all
subscribers receive their local network broadcasts where such
broadcasts are available. That is why I was pleased to work
with Ms. Lofgren to build in additional safeguards to ensure
that the transition period that H.R. 5140 creates is flexible
eight to allow enough time for satellite carriers to meet
the bill's requirement of providing local broadcast service
in all markets if they do not do so already.

With this amendment, after an initial grace period of
180 days instead of 120 days, satellite carriers will also
have a mechanism for seeking an extension of time, provided
they can demonstrate they are seeking to comply with this new
requirement in good faith. There are also checks to ensure
that the satellite carrier cannot rely on this extension
process forever. There is an ability to challenge the
sufficiency of the carrier's good faith efforts if and when a carrier seeks an extension. This creates a good balance between providing some flexibility and the time to comply with incentives to comply quickly in order to avoid any such challenges.

Most importantly, this should ensure a smooth transition period so that no subscribers lose access to their satellite service, while also ensuring that subscribers also get their local broadcast stations as soon as possible in the cases where they currently do not. The amendment also makes a technical change in how to construe a statutory definition in order to ensure that minor interruptions in service because of payment disputes between broadcast and satellite carriers do not imperil a carrier's ability to provide service more broadly. I urge my colleagues to vote for this amendment.

Does anyone else seek recognition on the amendment?

Mr. Collins. I do.

Chairman Nadler. The gentleman from Georgia?

Mr. Collins. I move to strike the last word, Mr.

Chairman.

Chairman Nadler. Without objection.

Mr. Collins. Thank you.

Chairman Nadler. The gentleman is recognized.

Mr. Collins. Thank you. Again, I understand, and, Chairwoman Lofgren, as I said, we have discussed many things.
But she actually laid it out completely very well in her statement and said we don't have a committee record to actually make recommendations. This is the problem we have here because we have nobody sitting in front of this committee who sat there from these satellite companies, from the other components from broadcasters, and everybody else to sit here and talk about how this has lasted so long, why it has lasted so long.

Others who actually follow this know why it has lasted so long, but let's put out in the record. We don't have a committee record of in this Congress. And I think this is the concern, you know, for many of us that we just finally just get to where you just throw up your hands and know that long-term legislation. I wish I shared the gentlelady's optimism that we would never see this again. I don't because there is a lot of still left-out issues here that will continue on that could have been discussed in a hearing that we didn't have, and now we are having to do it in markup.

I am still concerned about the extension of time. I am still concerned about what could happen in the rubberstamp from the Copyright Office, the broadcasters being able to sue. I mean, there are a lot of extra issues out here when it comes to satellite transmission, broadcast transmission for those of us who have dealt with it from, you know, not just this issue, from orphan county issues, and to everywhere
else, which I wish that some would stop challenging orphan county issues as they have.

But this is the kind of thing that needed to have been discussed. So if this is the best we can do, this is the best we can do. I think at a certain point in time, I will go back to the gentleman from, you know, almost 20 years ago. Let it end. Let it end. Just like consent decrees on the other side. The only reason that I am supporting this at this second is at times after we have messed it up for so long in Congress, you don't need to just sometimes have a hard break. So the only reason I am saying this, because I say it about consent decrees. I am consistent. Consent decrees don't just need to go away. There needs to be a pathway out of, and this probably needs a short pathway out, although the pathway for this should have been solved a long time ago, and there have been sides that just simply did not want to negotiate.

We never had the chance to sit them, again, down here and say let's fix this or you are not going to get a chance. I am tired of my staff's time having to deal with an issue which we didn't even know what was actually going to happen until last minute. I want to see this done. This is the only reason I am supporting this. I think this could have been handled many different ways, but we have Republicans and Democrats, majorities and minorities. But this one is an
area that is sad because this committee is the most bipartisan committee when it comes to intellectual property when we put our minds to it. The problem on this one, we just didn't put our minds to it. So with that, I yield back.

Chairman Nadler. The gentleman yields back. For what purpose does the gentleman from Georgia seek recognition?

Mr. Johnson of Georgia. I move to strike the last word.

Chairman Nadler. The gentleman is recognized.

Mr. Johnson of Georgia. Mr. Chairman, I rise in support of this amendment, and I would like to thank you and also Representative Lofgren for your hard work on this legislation. And I appreciate your willingness to engage in dialogue with me throughout this process. This has been a process of elephants fighting, and when elephants fight, the grass takes a beating. And in this situation, the grass are the consumers.

At all times, I have been concerned about the 870,000 Americans who will receive their signal through distant signal licensing. This compromise amendment ensures that satellite TV providers have time to change to a Section 122 license by giving an initial 6 months, and then an unlimited number of 90-day good faith extensions. This ensures that those hundreds of thousands of Americans, including as many as 27,000 Georgians, who, by the way, don't live in my district, which is in Metropolitan Atlanta. They live in
rural Georgia, those 27,000 Georgians. And we are ensuring with this amendment that they won't ever have a moment where they turn on their television set, only to see a blank screen.

This amendment is a responsible way to phase out the Section 119 license. One hundred and twenty days is too brief to ensure that no consumers are left in the dark, the victims of ideological battles in Washington. I intend to vote in favor of this amendment, and I encourage my colleagues to do so. And with that, I will yield back.

Chairman Nadler. The gentleman from Texas?

Mr. Gohmert. Thank you, Mr. Chairman, and I appreciate the work that has been done on this. We have gotten so much conflicting in the way of views from different people, different entities, and, of course, I guess sometimes personal life bleeds over. I have grown suspicious of DirecTV and AT&T and some of the things they have said. We don't have DirecTV. We dropped it this year.

But, you know, it is not the opening statements that can sometimes be monotone, but it is the fact that when we have a legislative hearing, people come in, but it gives a reason for us to do more research and to look into all these things before the hearing ever starts. And, you know, for everybody on both sides of the aisle that I am aware of, I mean, our lives are so jammed up. There are so many issues we deal
with day in and day out. By having a legislative hearing, it brings it into focus, a particular issue, particular legislation that may need work. And it is so much easier to get language right if we get widespread input before we actually draft the language instead of, here it is. It is not great, but, you know, it is better than it could have been. That is really no way to do legislation. But my local folks are in favor, reluctantly, of this, so I will be voting for it.

Mr. Collins. Will the gentleman yield?

Mr. Gohmert. Yes, I certainly will.

Mr. Collins. I thank you. I thank the gentleman for that. I need to make a clarification on something. I am for the underlying bill. I am not in favor of this amendment. There is no way I can go along with 90-day continuous extensions, continuous extensions, continuous extensions, and then force an organization to have to go to district court to stop it. So I am in favor of the underlying bill. I am not in favor of this amendment. I need to make that clarification.

Mr. Gohmert. Certainly. I appreciate that clarification. So I hope this will be the end of this type of approach, just running in because the issue has been around for 20 years. We are just going to pass something and hope we never deal with it again. But when you don't have
more time in the full committee on such an issue, then it pretty well assures it is coming back. It will be back. And I would be willing to bet that is exactly what is going to happen, and there will be more issues come back we are going to have to deal with. And when that happens, I hope if we are still in the minority, the current majority will give us a full hearing with lots of witnesses so that we can get the best input from different sources. And with that, I yield back.

Chairman Nadler. The gentleman yields back.

The question occurs on the amendment.

Those in favor, say aye.

Opposed, nay.

In the opinion of the chair, the ayes have it. The amendment is agreed to.

Are there any further amendments to H.R. 5140?

Mr. Deutch. Mr. Chairman?

Chairman Nadler. For what purpose does the gentleman seek recognition?

Mr. Deutch. Mr. Chairman, I have an amendment at the desk.

Chairman Nadler. The clerk will report the amendment.

Ms. Strasser. Amendment to H.R. 5140, offered by Mr. Deutch of Florida. Add at the end of the bill the following.

Mr. Deutch. Mr. Chairman, I ask unanimous consent to
Chairman Nadler. Without objection, the amendment will be considered as read.

[The amendment of Mr. Deutch follows:]
Chairman Nadler. The gentleman is recognized.

Mr. Deutch. Mr. Chairman, the bill before us today, H.R. 5140, is focused on whether satellite TV carriers should have to negotiate market rates for broadcast TV content when they want to retransmit on their platforms. Many of the members of this committee believe that TV broadcasters deserve the right to negotiate rates for the use of their content. My amendment applies that same basic belief that American creators deserve the right to control and get fair market value for the use of their work, work that they own.

TV broadcasters have told Congress that, and I quote, "The time has come to stop subsidizing billion-dollar satellite TV companies," with the Section 119 compulsory license. I believe the time has also come to stop subsidizing AM/FM radio broadcasters as well. For too long, AM/FM radio has retained the right to play songs without paying the performers, though they do pay the songwriters. In contrast, other platforms have evolved into the 21st century. Both satellite radio and digital musical services are required to pay both performers and songwriters.

Mr. Chairman, FM radio is the largest music service in the world hands down, 200-plus million listeners, $17 billion in annual revenue, most of which is generated by advertising sold against an audience drawn to those stations by music.

For the last decade, we have learned that denying
performers their rights on AM/FM radio discourages small- and medium-sized radio stations from leaping to digital platforms, and it leads to further consolidation in radio. This consolidation leads to consolidated playlists and less diverse music market on radio. Last year when we passed the Music Modernization Act, we equalized the rate standards used to set royalties for digital music platforms. Because of the MMA, the standard across the board is fair market value.

Mr. Chairman, fixing this issue of AM/FM radio performance is the unfinished business of the MMA. America stands almost alone in the entire world in not giving recording artists a performance right for broadcast radio air play. Nearly every country in the world collects royalties from radio broadcasters for the use of sound recordings. In fact, every industrialized country, except the United States, has a performance right. American artists and copyright owners lose close to $200 million every year in royalties that they have rightly earned for their work. They can't collect these royalties because we don't have a reciprocal performance right here in the United States. That is taxable income that would be coming into the United States if American radio broadcasters were held simply to the same standard as every other music service in America, and actually paid for the product that is the lifeblood of their business.
Music creators deserve the same right to retransmission consent as TV content creators. And while I understand that the performance right is a different statutory license than the statutory license being amended by H.R. 5140, the time to fix this has come. Now, I know, Mr. Chairman, that you and the ranking member are both champions for music, and I hope that you can commit to moving a performance rights bill through this committee this Congress, and that is why I will withdraw this amendment today. But I hope that this committee can come together in a bipartisan way to correct this injustice for music creators that has continued for far too long. And I yield.

Mr. Collins. Will the gentleman yield?

Mr. Deutch. I will yield.

Mr. Collins. Thank you. You and I see this very similarly, and I think last year, one of the great things that came out of the multiyear discussions on MMA was the discussion of getting both players in the room. And I see some of the players in the room to discuss this. My hope is, I am not sure where, because we have had massively other things going on in this committee. I would hope those discussions are still going on. I would hope that we would actually take this, for the gentleman from Florida, we bring this to the committee, get an update on where this is at, because at the end of the day, you and I both know that this
was that large piece that needs to be addressed, but also has probably one of the more dramatic stories to be told or horror stories, if you would, to be told on the dramatic effect of this.

So it needs to be actually discussed, but I think there is a solution. I agree with you on this, and I appreciate you at least bringing it up. This is definitely not the place to do it here, but I do appreciate it coming up, because I think it does highlight a contradiction today as we go forward. I appreciate it. I yield back.

Mr. Deutch. And I yield back the balance of my time.

Chairman Nadler. I will recognize myself. It is the place to bring it up here, but not on this bill.

Mr. Collins. Non-germane.

The Chairman: Yes.

Mr. Collins. Thank you.

Chairman Nadler. But not on this bill. I thank the gentleman from Florida for offering his amendment. As most people know, I have long believed that all services and platforms that play music should be subject to the same rules. There is no reason that broadcast radio shouldn't pay royalties to artists just like satellite radio and internet radio. The artist whose music is played should be paid fairly by broadcast radio just as they are by all the other platforms.
The change is long overdue. I am hopeful that I can work together with the gentleman from Florida, with the ranking member, and with others on the committee to fix this longstanding problem in this Congress. In fact, I plan to reintroduce a bill on this issue in the near future. I thank the gentleman again for offering and withdrawing the amendment.

A reporting quorum being present, the question is on the motion to report the bill, H.R. 5140, as amended, favorably to the House.

Those in favor, say aye.

Opposed, no.

The ayes have it, and the bill is reported favorably to the House.

Members will have 2 days to submit views.
Chairman Nadler. This concludes our business for today.

Thanks to all of our members for attending and for attending the follow-up to our meeting yesterday.

Without objection, the markup is adjourned.

[Whereupon, at 9:49 a.m., the committee was adjourned.]