

STATEMENT OF CONCERN

FAIR COMPENSATION FOR MUSIC CREATORS

We urge Members of Congress not to cosponsor the misleading “Local Radio Freedom Act” resolution.

The Local Radio Freedom Act (LRFA) attempts to preemptively undercut ongoing negotiations between the broadcast industry and the music community. The resolution unknowingly puts members of Congress on the record against the many talented and hard-working artists and creators in their districts and against intellectual property. Despite its name, LRFA has little to do with local radio and more to do with ensuring that big radio broadcasters can continue to generate billions in annual revenues without compensating performers.

- Terrestrial radio (AM/FM stations) profits without paying a single cent to the musicians, vocalists, and recording artists whose works they exploit.
- AM/FM radio is the only industry in America that can take and use another’s intellectual property without permission or compensation.
- This loophole for AM/FM radio gives broadcasters a competitive advantage over other platforms (i.e. Internet and satellite radio, streaming services) that do compensate performers.
- The U.S. is the only developed nation that doesn’t recognize a performance right, resulting in a loss of \$200 million annually in royalties from overseas earned by American performers whose work is broadcast internationally. Those royalties are collected but never paid because the U.S. does not reciprocate.

Performers are entitled to be compensated for their work. Such royalty payments are standard abroad, are not a form of taxation, and are not a financial burden on large broadcasters. And with an appropriate carve-out for non-commercial broadcasters, paying compensation to performers won’t interfere with true local radio broadcasters such as college, community, and public stations.

BACKGROUND

Although royalties are paid to songwriters and publishers whenever their work is used by terrestrial radio, this public performance right does not extend to the performers or the sound recording copyright owner. So, when you hear Patsy Cline singing “Crazy” on the radio, songwriter Willie Nelson and his publisher are compensated appropriately, but the estate of Patsy Cline receives no pay for the performance. Neither do the studio musicians, backing vocalists, or the record label.

Because of the Digital Performance in Sound Recording Act of 1995 (DPRA), digital radio broadcasters—webcasters, satellite radio, cable subscriber channels—all pay royalties to the performers. SoundExchange—the performance rights organization established by the DPRA—distributes the royalty payments directly to performers (45 percent) and to the sound recording copyright owner (50 percent). Non-featured performers receive 5 percent of the royalties, via a royalty pool managed by American Federation of Musicians (AFM) and Screen Actors Guild and the American Federation of Television and Radio Artists (SAG/AFTRA). This means that terrestrial radio is the only medium that broadcasts music but does not compensate artists or labels for the performance. LRFA helps further entrench this outdated loophole.

During the 115th Congress, House Judiciary Ranking Member Jerry Nadler (D-NY) introduced legislation to establish a terrestrial performance right and encouraged industry leaders to negotiate a private market deal. Due to the ongoing negotiations, the performance right was not included in the comprehensive Music Modernization Act signed into law in October 2018, with negotiations slated to continue this year.