

The Performance Rights Act - Stifling Growth and Risking Jobs

On February 4, 2009, legislation was introduced in both the House and the Senate (H.R. 848 & S. 379 respectively – the “Performance Rights Act”) that would impose a performance royalty on terrestrial radio broadcasters. The bill passed out of the respective House and Senate committees and could be voted on anytime.

- **The legislation would require stations with revenues of less than \$1.25 million per year to pay a flat fee of up to \$5,000 to the recording industry.** Both bills contain a sliding scale of what these small stations would pay, based upon each station’s gross revenues. The lowest tier in the House version is \$500 and the lowest tier in the Senate version is \$100.
- **Stations with revenues greater than \$1.25 million would pay a royalty rate to be determined by the Copyright Royalty Board (CRB).** The CRB consists of three Copyright Judges and is a division of the Library of Congress.

Opposing the Performance Rights Act

- Radio stations operate on tight margins, so even the lowest level of performance royalties would compel broadcasters to make difficult operating decisions in terms of staffing levels and programming investments (local news and information, entertainment and emergency services) as they’d face added costs from new administrative expenses and record-keeping requirements.
- Any level of additional fees will have a negative impact on small broadcasters’ ability to succeed, may disproportionately impact their ability to engage in their communities, and may mean the difference between being on the air and not. This could lead to a decrease in radio stations for listeners to enjoy, for businesses to advertise on, for communities to utilize to share information, and for non-profits to use to promote their good work. As stations shut down, it’s a safe bet that there are not new owners waiting in the wings to fill this void. The FCC acknowledges that “the substitution of a new station operator to provide that public service would not be easily and expeditiously attained, possibly prolonging the loss of service to the community.”
- Broadcasters run their businesses today on the entrepreneurial premise in which they provide a service, reach consumers, and charge advertisers for access to those consumers. But under the proposed legislation, as a station grows, it would face unknown and certainly enormous royalty payments. Consequently, small broadcasters—including most minority broadcasters—may face barriers to capital access since obtaining it is premised on growing a business.
- Passage of the Performance Rights Act will put jobs at risk in a down economy when job creation needs to be the top priority. It will also undermine the important role that radio has and continues to play in our communities.
- To top it all off, radio is just the canary in the coal mine. If the recording industry goes after nightclubs, fitness centers, and restaurants—which is what it’s doing internationally—even more jobs would be at risk.

An Alternative - Local Radio Freedom Act

Broadcasters and their supporters are promoting legislation that opposes any attempt by Congress to enact a performance royalty – “Local Radio Freedom Act” (H. Con. Res. 49 & S. Con. Res. 14). The resolution states that Congress should not impose any new performance royalty upon broadcasters. Currently, the legislation has bipartisan support in the House and Senate. The House resolution currently has over 260 supporters (well over a majority of the House), and the Senate has 27 bi-partisan supporters as of the beginning of May 2010.