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[The Performance Rights Act of 2009: Royalties for Performers & Sound Recording Copyright Holders for Music Played on Terrestrial Radio](#) ^[1]

By Dwight Worden

The Performance Rights Act of 2009 (?PRA?) would require, for the first time, traditional terrestrial radio stations (AM or FM) to pay a royalty when a song is played to the copyright holder of the sound recording for that song and to the performers of the song. Under current U.S. law both terrestrial (traditional) radio and digital broadcasts (satellite radio, webcasts and cable) must pay royalties to the holders of the copyright for the song and to the songwriter, but only digital broadcasts must also pay a royalty to the holder of the copyright in the sound recording and to the performers of that recording.

As an example, consider what happens under current law when a radio station plays ?Marbletown,? a Blue Highway recording written by Mark Knopfler and published by Almo Music Corp., with the sound recording copyright held by Rounder Records. If the broadcast is on satellite radio, web radio, cable or another digital broadcast, all of the following are paid a royalty: Blue Highway as the recording artist, Rounder Records as the owner of the sound recording copyright, Mark Knopfler as the songwriter, and Almo Music Corp. as the publisher. However, if the broadcast is on a terrestrial radio station, only Knopfler and Almo Music Corp are entitled to a royalty under current law.

The PRA of 2009, which would eliminate terrestrial radio?s exemption from paying public performance royalties, was introduced in the U.S. Senate by Senator Patrick Leahy as S. 379. It was introduced in the House of Representatives as H.R. 848 by Member of Congress John Conyers. It is currently pending in both Houses of Congress. The full text of the House and Senate bills is at: <http://www.copyright.gov/legislation/> ^[2].

The PRA would:

1. Include terrestrial radio broadcasts in the existing statutory license system, i.e., require that royalties be paid to performers and holders of copyrights in sound recordings.
2. Remove certain regulatory burdens from terrestrial radio.
3. Create special provisions allowing small broadcasters with gross calendar year revenues of \$1,250,000 or less the option to pay a flat \$5,000 per year instead of the royalties otherwise due.

5. Create special provisions allowing public radio stations to pay a flat fee of \$1,000 per year instead of the royalties otherwise due.
6. Create certain exemptions for religious and incidental use of music.
7. Create a per program license option for stations doing only occasional music broadcasts.
8. Confirm that nothing in the PRA is to harm the rights of songwriters or publishers of musical works.

THE POSITIONS OF THE STAKEHOLDERS

Here are some of the key arguments made by proponents of the PRA [To read the arguments of Member of Congress John Conyers in introducing the bill in the U.S. House of Representatives, go to: <http://judiciary.house.gov/news/090204.html> ^[3]]:

1. Performers and sound recording copyright holders who produce a recorded work that is played on terrestrial radio should be compensated just as they are for digital air play. Anything else is unfair to the performers and to digital broadcasting.
2. The music played on terrestrial radio is the "product" that radio uses to sell advertising from which radio receives substantial compensation. It is only fair that the creators of this music be paid a royalty.
3. The rest of the developed world pays royalties to performers and sound recording copyright holders when their music is broadcast on terrestrial radio, and the PRA would appropriately bring the U.S into conformance. The PRA would also allow for U.S. performers to receive royalties when their music is played outside the U.S., which is not the case now. Because of this lack of reciprocity, an estimated 70-100 million dollars which would otherwise be coming to artists and copyright holders in the U .S. is not collected. Along with the U.S., the only countries in the world who do not pay broadcast royalties to holders of recording copyrights and performers are China, Iran and North Korea.
4. The PRA has appropriate special provisions to protect public radio, small stations, religious broadcasts and the incidental or occasional music broadcast that avoid the imposition of hardship on such broadcasts.

Here are some of the key arguments of the opponents of the PRA. [Read the full text of a Resolution of Opposition adopted by broadcasters at: http://www.nab.org/xert/corpcomm/pressrel/releases/020409_SBA_PTax.pdf ^[4]]:

1. The PRA will impose a significant new fee on radio at a time when radio can ill afford more expenses.
2. Terrestrial radio already pays substantial royalties to songwriters and publishers, contributing billions in value to artists and record labels by promoting their music over the air, which obviates the need to pay royalties to performers and holders of copyrights in sound recordings.
3. Increasing the costs for terrestrial radio by requiring the payment of more royalties will force more stations to turn to talk radio and other non-music formats to avoid these increased costs,

thereby reducing the amount of music played over the radio.

4. Small broadcasters, like many bluegrass radio programs, are most vulnerable to increasing costs and are the most likely to suffer or be forced off the air.

IMPACT TO THE BLUEGRASS COMMUNITY

Artists and Record Labels. Bluegrass performers and holders of copyrights in sound recordings (e.g. record labels) whose music is played over terrestrial radio will benefit from the PRA by, for the first time, receiving royalties when their music is played. If the PRA passes, for the first time performers will receive royalties from both digital and terrestrial broadcasts, and as the reciprocity bar to receiving royalties for broadcasts outside the U.S. would fall, performers and sound recording copyright holders for the first time would receive royalties for airplay in other countries.

Songwriters and Publishers. Bluegrass songwriters and publishers owning the copyright to songs would not have their rights changed by the PRA. They would continue to receive the royalties they currently receive.

Bluegrass Radio Stations. Bluegrass radio stations and broadcasters would have to incur additional expenses to pay these new royalties to performers, but small broadcasters, public radio stations and religious broadcasters could take advantage of the special provisions outlined above reducing or eliminating the financial impacts.

Bluegrass Fans and Consumers. For the bluegrass fans and consumers of music, the upside would be that their favorite artists will have a new revenue stream assisting them in continuing to make bluegrass music. The downside might be that the amount of bluegrass on terrestrial radio could decline if some programs are forced off the air due to increased expenses.

RESOURCES FOR MORE INFORMATION

If you want to learn more about the PRA or the positions of the stakeholders, here are some references:

You can read the text of the bills and follow their progress in Congress at the U.S. Copyright Office website: www.copyright.gov/legislation/ [2]

You can follow the House Judiciary Committee hearings at:

<http://judiciary.house.gov/hearings/calendar.html> [5]

You can read about some of the activities and arguments of the proponents at the following links:

Music First Coalition: www.musicfirstcoalition.org [6]

[AFL-CIO](http://blog.afclcio.org/2009/03/04/performers-call-for-fairness-in-radio/) [6] Now Blog: <http://blog.afclcio.org/2009/03/04/performers-call-for-fairness-in-radio/> [7]

You can follow the activities and arguments of the opponents at The National Association of Broadcasters: www.nab.org [8]

The Common Law Blog: www.commlawblog.com/tags/performance-rights-act/ [9]

Read about the opponents counter measure pending in congress, the Local Radio Freedom Act, at

www.nab.org/xert/CorpComm/PressRel/Releases/103107_Local_Radio_Freedom_Act.pdf

[10]

Read a summary of the first day of testimony about the PRA at www.coolfer.com/blog/archives/2009/03/notes_on_the_ho.php [11]

EXPRESSING YOUR OPINION

You can express your opinion by writing, emailing or calling your Congress representative and/or Senator. They each have a website that will accommodate your input. Contact info may be found at: <http://www.usa.gov/Contact/Elected.shtml> [12]

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[6] <http://www.musicfirstcoalition.org/AFL-CIO>

[7] <http://blog.aficio.org/2009/03/04/performers-call-for-fairness-in-radio/>

[8] <http://www.nab.org>

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[13] <https://ibma.org/tags/pr>

[14] <https://ibma.org/tags/performing-rights-act-2009>

[15] <https://ibma.org/tags/terrestrial-radio-royalties>

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