



Public Performance Right for Sound Recordings

In the United States, royalties for public performances are paid to songwriters, composers and publishers. But what about the person who performs the song?

Consider this. When you hear John Coltrane's recording of 'My Favorite Things' on the radio in the US, the estates of Richard Rodgers and Oscar Hammerstein – the composers of 'My Favorite Things' – are compensated through ASCAP. But the estate of John Coltrane receives nothing for this performance.

However, if you hear the same performance on XM or Sirius, or via a webcast, or on a cable music station – even on that terrestrial radio station's webcast — both Rodgers and Hammerstein's estates AND John Coltrane's estate are compensated.

Why the difference? US terrestrial broadcasters are exempt from paying a public performance right for sound recordings.

Royalties for Songwriters and Composers in US

Royalties are generated when a copyrighted song is performed publicly — whether on a radio station, at a sports event, or on a jukebox. In the US, these royalties are collected by ASCAP, BMI and SESAC and distributed to the member songwriters and publishers. As an indication of the significance of this revenue stream, ASCAP reported distributing over \$680 million to its members in 2006.

No Royalties to Performers for Terrestrial Radio Play

Although royalties are distributed to songwriters and publishers for public performances for terrestrial radio play, this right does not extend to the performers or the sound recording copyright owner (usually the record label). So, when you hear Patsy Cline singing "Crazy" on the radio, songwriter Willie Nelson and his publisher are compensated through BMI, but the estate of Patsy Cline receives no pay for the performance. Neither do the studio musicians, backing vocalists, or the record label.

This arrangement is the result of a long-standing argument made by terrestrial broadcasters that performers and labels benefit from the free promotion received through radio play. Broadcasters contend that airplay increases album sales, which leads to compensation for performers and record labels. As a result, broadcasters have, for decades, convinced Congress that they should be exempt from paying the public performance royalty for sound recordings. But the broadcasters' argument is steadily losing relevance, and their exempt status becomes more questionable when compared to other countries' broad requirements for performance royalties.



Exemption in US Leaves Artists' Money on the Table

The US is one of the few industrialized countries — if not the only one — that does not have a terrestrial broadcast performance right for sound recordings. At least 75 nations, including most European Union member states, do have a performance right. This means that foreign broadcasters pay royalties to songwriters/composers and performers. But since there is no reciprocal right in the US, foreign performance rights societies cannot distribute these royalties to American performers. This leaves tens of millions of dollars of royalties on the table annually rather than in the pockets of American artists.

Digital Performances Mean Broader Compensation

Terrestrial radio's lopsided exemption is even more obvious when viewed alongside new media platforms. Broadcasters of digital performances — webcasters, satellite radio, cable subscriber channels — obtain licenses from ASCAP, BMI and SESAC which compensate the songwriters and publishers of the music they play. But because of the Digital Performance in Sound Recording Act of 1995 (DPR), they also pay royalties to the performers. SoundExchange — the performance rights organization established by the DPR — distributes the royalty payments directly to performers (4) percent and to the sound recording copyright owner, most often the record label (50 percent). Non-featured performers receive 5 percent of the royalties, via a royalty pool managed by AFM and AFTRA. This means that terrestrial radio is the only medium that broadcasts music but does not compensate artists or labels for the performance.

Time for Harmonization

There are two clear reasons why it's important for artists and artist advocates to support the expansion of the public performance royalty. First, as the consumption of music moves further away from the purchase of CDs and towards "listens" via digital streaming, satellite radio and webcasting, the likelihood of performers being compensated based on traditional/retail sales continues to decline, while revenue from performances continues to increase. Second, the US exemption penalizes US stakeholders in the international arena and results in losses of as much as \$100 million annually for US musicians and labels. This also hurts the US economy and limits international growth of one of our more profitable industries. As the music marketplace goes global, the need for a broad-based performance royalty is more important than ever.

Legislative Action in the 110th and 111th Congress

Recording artist groups including FMC, AFTRA, AFM, Recording Artists' Coalition and the Recording Academy have continuously advocated for the public performance royalty for sound recordings. In 2007, the campaign ramped up considerably with the creation of the musicFIRST Coalition, as well as repeated congressional attention on digital music services, webcasting rates, radio, media ownership and copyright. In 2009, Rep. Conyers and Sen. Leahy introduced HR 848/S 379, the Performance Rights Act, which would remove the performance royalty exemption for terrestrial broadcasters.



Future of Music Coalition on **Public Performance Right for Sound Recordings**

In May 2009, the House Judiciary Committee passed the Performance Rights Act in a 21-9 vote. On Oct 15, 2009, the Senate Judiciary Committee passed its version of the bill, which ultimately did not come to a full vote in either chamber.

In 2010 saw negotiations between the National Association of Broadcasters (NAB), and musicFIRST. Although these negotiations did produce rudimentary terms to be passed along to Congress, they were not without controversy, as the NAB included a provision that would compel cell phone manufacturers to include an FM radio chip in all such devices. This was not well received among the tech community. Negotiations subsequently stalled over claims that each side was not advocating for the agreed upon terms.

There is a strong expectation that the bill will be reintroduced in the current Congressional session.

What Musicians Can Do

Educate yourself about the issue. FMC and other organizations have written a number of pieces about the need for a broad performance right, including:

[FMC's site tags on the public performance right](#)

[http://futureofmusic.org/search/node/public performance right](http://futureofmusic.org/search/node/public%20performance%20right)

[MusicFIRST Coalition](#)

<http://www.musicfirstcoalition.com>

Updated 1.6.2011



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