



## **Frequently Asked Questions About The Free Market Royalty Act**

### **1. What Does This Bill Do?**

Most importantly, the Free Market Royalty Act creates an AM/FM performance right for sound recordings – the biggest step forward in music creators’ rights in a generation.

It also repeals the current compulsory license system that facilitates licensing of music to digital broadcasters, like Pandora, while preserving key benefits of that system that make music efficiently and affordably available to services large and small. Under current law, Internet broadcasters have access to all recorded works under a price established by the Copyright Royalty Board. In its place, the bill creates a one stop free market licensing negotiation for AM/FM, satellite and Internet radio, with SoundExchange acting as the negotiator for copyright owners and performers.

Following that negotiation, all entities are free to work out individual deals with each other under whatever terms they agree upon.

The digital broadcasters have claimed the current system is “broken” and have criticized the current “willing buyer/willing seller” royalty standard as unfair, and not indicative of a free market. They have also complained that other platforms, like satellite radio, have an arbitrarily different royalty standard. The bill would resolve any question about whether a rate is a free market one and whether rates are arbitrarily different, by having all rates negotiated in the free market.

The FMRA addresses the stated concerns of AM/FM broadcasters. AM/FM broadcasters have argued that marketplace “private negotiations” are the sole solution to the lack of a terrestrial right. But what they really want is to preserve the current rigged market, where creators don’t have the right to negotiate or reject a deal they find unfair. And where the government mandates a “taking” of musical performances by AM/FM radio without any compensation to performers for their work.

In this current system, there is no market for performance rights on AM/FM radio. The handful of deals between broadcasters and record labels that have been done can only be understood as a renegotiation of the webcasting rates since creators do not have any AM/FM performance rights to negotiate. By recognizing a performance property right, the bill gives the broadcasters the negotiated rates they favor, but also creates a real two-sided market in which both sides are empowered to deal – or not – and ends the arbitrary status quo where music creators get paid for their work on satellite or Internet radio, but not on AM/FM.

## **2. Does the Bill Protect Artists?**

Just as under current law, the bill would ensure that SoundExchange distributes artists' pay directly to them, not through a record label or radio company, and continues the requirement that backup singers and session musicians receive compensation of their own. It maintains the current 50/50 royalty split between copyright owners and performers. And it extends these crucial protections to the new AM/FM performance right.

The bill also gives both sides the opportunity to deal – or not. If copyright owners are not offered a fair day's pay for a fair day's work, they can hold out for a better deal.

## **3. Why Should Congress Recognize an AM/FM Performance Right?**

While the law requires Internet radio, satellite and cable radio to pay for the performances it uses, it has left AM/FM radio exempt for decades. That exemption has made little sense, and makes even less sense now, when the value of performances has been recognized and paid on all other platforms and the terrestrial radio market books some \$17 billion a year in advertising revenue while paying nothing for the musical content it broadcasts.

In addition, every industrialized country except the United States has a performance right. That means when American-made music is played overseas, other countries collect royalties for American artists, but these royalties are never paid out because we don't collect for overseas artists here. The bill establishes a reciprocal right that would allow U.S. artists to collect from overseas.

Most importantly, as seven prominent conservative groups recently noted, "the Constitution protects private property rights and specifically delegates to Congress authority to protect creative works." The AM/FM exemption is a government mandated transfer of performers' property to radio stations. To have a true, free market all property rights must be recognized.

#### **4. Doesn't AM/FM Radio Promote Music? Why Should it Pay for Music?**

How much promotional value AM/FM radio provides is the subject of debate. A 2010 Government Accountability Office Report commissioned by a broad, bipartisan group of performance rights advocates and opponents "found the relationship between radio airplay and sales to be unclear."

Meanwhile, the terrestrial radio market books some \$17 billion a year in advertising revenue while paying nothing for the musical performances it broadcasts. At the same time, the National Association of Broadcasters has repeatedly and recently lobbied Congress for compensation for the content its members create, television programming. Why should CBS Television be paid for the content it creates when CBS Radio refuses to pay for the content it broadcasts?

Whatever one's view of the promotional value of AM/FM radio, the relative value of radio's promotion to music creators and the value of music to radio will be weighed in free market negotiations in this bill. If it is true that creators need promotion more than radio needs music, rights-holders will agree with broadcasters that music should continue to be played on terrestrial radio without payment.

#### **5. Isn't this a Performance "Tax"?**

No, because a performance royalty is paying someone for their work, while a tax is a payment to the government. As seven anti-tax groups recently stated: "[t]he definition of a tax is the transfer of wealth from a household or business to the government. Royalties go to rights holders, not to the government. It is completely within the rights of broadcasters to decide not to pay for the use of a performer's song by not using the song. Paying a private citizen or business for the use of their property is clearly not a tax."

Furthermore, if death and taxes are the only certain things in life, this is surely not a tax because the broadcasters do not have to pay it under this legislation. If broadcasters do not want to pay performers a free market rate for their performances, they can choose not to, but they also cannot broadcast performances without permission.

#### **6. Aren't Radio Broadcasters Unable to Afford These Payments?**

No. The terrestrial radio market books some \$17 billion a year. Internet radio, satellite radio and cable radio all have been making these payments for years. And AM/FM radio would only have to pay prices that they themselves negotiated and agreed to.

**7. Aren't There Already Performance Rights Private Deals with Clear Channel? Doesn't that Show that the Market is Taking Care of this Problem?**

No. There is no performance right recognized in law, and private deals can't create such a right. Only Congress can. In addition, every industrialized country except the United States has a performance right. That means when American-made music is played overseas, other countries collect over \$100 million in royalties for American artists, they don't pay them because we don't collect for their artists here. Private deals can't change that, only a legally recognized performance right can.

Because there is no legally recognized performance right, there is no market for performance rights. The handful of deals between broadcasters and record labels that have been done can only be understood as a renegotiation of the webcasting rates.