

October 2, 2012

Dear Representative,

On behalf of the tens-of-thousands of recording artists and copyright owners that SoundExchange represents, I am writing to request that you OPPOSE the so-called “Internet Radio Fairness Act” (IRFA), (H.R. 6480/S. 3609). Despite its name, the IRFA is simply *not fair* to the creators of music whose work make up the main component of Internet radio. This bill seeks to transfer money from the pockets of musicians into the hands of those who profit from their work.

SoundExchange is the industry-wide organization selected under federal law to administer the statutory license used by more than 1,800 digital radio services - like Pandora, iHeartRadio, and Sirius XM. We collect performance royalties from these digital services for the use of sound recordings, along with immense amounts of usage data, and distribute these royalties quarterly to our over 70,000 performer accounts and 24,000 rights owner accounts. It’s our mission to protect the people we represent, and help promote a vibrant future for the digital music industry.

At its core, the IRFA is an attempt by webcasters to reduce the royalty fees that recording artists and record labels are paid for the privilege of using their sound recordings on digital radio. Right now, the law requires the webcasting rates to be set by the Copyright Royalty Board (CRB) under a “willing buyer, willing seller” standard – that is, the fair market value of a recording. This bill, however, seeks a change in the law to revert an older standard that was set more than 15 years ago, and currently used by only three “grandfathered” services. This means that the rate could be set at less than fair market value, potentially much less. In other words, of the more than 1,800 services paying SoundExchange every month for the use of sound recordings, all but three of them are paying at the “willing buyer, willing seller” standard.

The main goal of the IRFA is to lower the rate standard for all services down to the antiquated below-market rate, rather than requiring that all services pay at the more reasonable fair market rate. Nothing could be further from “fair” – particularly when you consider that the law allows digital radio services to build their businesses off any commercially available work without music creators’ having the ability to withhold. At the very least, the law should require that those creators are compensated at a fair market rate.

Most surprisingly, this bill seeking supposed “parity” utterly fails to address the biggest inequity of all when it comes to radio: the fact that terrestrial (i.e. over-the-air) radio pays absolutely nothing for the sound recordings on which their multi-billion dollar business is based. It is futile to even begin discussing “parity” in radio while ignoring the most egregious inequity of the system.

Ultimately, the IRFA would give a subsidy to Internet radio in the form of a below market royalty rates. But Internet radio does not need a government subsidy. Internet radio has seen explosive growth in both usage and revenues in the last few years – a sign of a rapidly growing market. As one very recent and very public example, Pandora had a successful IPO that raised \$235 million, and is currently valued at \$1.72 billion. In addition, many Internet radio services – like many popular online services – are focused on building their audience, and laying the foundation for explosive and disruptive revenue growth in the future. That strategy is a fine one to pursue; however the law should not force artists to subsidize it.

We agree that the current royalty setting situation is not fair. Terrestrial radio does not pay artists one cent for the music it plays. We believe *everyone* should pay for the use of creators' music, and we believe everyone should pay according to the same rate standard. But that standard should result in a market rate. Only then will true "fairness" be served.

We ask that you join us and fight for true fairness and for the value and future of music.

Sincerely,



Michael Huppe
President
SoundExchange