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musicFIRST blasts NAB ad campaign

Tells Congress broadcasters' shroud truth in "fog of misinformation"

Washington, D.C. – The musicFIRST Coalition today said broadcasters are using their control of the public airwaves to run advocacy ads that hide the truth about the Performance Rights Act in a "fog of misinformation."

"If policy is determined by which side can win the prize for the most audacious nonsense, we won't win. Give that medal to the broadcasters," musicFIRST writes in a letter to members of Congress.

The advocacy ads were produced and distributed by the National Association of Broadcasters (NAB) and are being aired by radio and television broadcasters across the country.

"We don't control the airwaves. We don't have free access to spectrum," musicFIRST says. But the music community believes Congress will see through the broadcasters' ad campaign. "Many of you have faced outlandish attacks in your own campaigns, so we are confident that seeing through the fog of misinformation and getting the policy right is still the mission."

The letter signed by members of the musicFIRST Coalition dismantles the ads point-by-point.

The ads repeat the widely discredited claim that a radio performance right is a tax, it's not. The NAB's own witness rejected the tax claim at a hearing before the Senate Judiciary Committee.

The ads say airplay has promotional value and radio, therefore, should not have to pay; but the promotional value of radio airplay has declined dramatically, other radio platforms that have some promotional value pay a performance royalty, and promotion will be considered when a royalty rate is set.

The ads claim artists and musicians have always supported current law when the truth is that artists and musicians have been fighting for a radio performance right since a 1939 federal court decision denied them the fundamental right to be paid for their work.

The ads also include the broadcasters' xenophobic wedge rhetoric. They try to make this about foreign-owned companies; it's not. It's about American jobs and American creativity.

The musicFIRST letter asks members of Congress if there is “any legitimate reason why broadcasters should be able to build a business using our music without our being paid or at least having the right to say no thanks?”

The answer, of course, is no.

The letter concludes that “by passing the performance rights bill, Congress will give meaning to real property rights, will stimulate the remarkable creativity that is uniquely American, will liberate as much as \$100 million a year to come back to our country that is now locked away because we don’t have this right in the U.S., and will allow lots of families who derive their living from music a fair chance to support themselves.”

NAB’s ad campaign is being waged as musicFIRST and NAB continue to meet privately at the request of members of Congress to create a radio performance right. musicFIRST remains hopeful that we can find common ground.

The full text of the musicFIRST letter follows:

We write you today to set the record straight about the bipartisan Performance Rights Act that passed out of the Judiciary Committees in both chambers last year.

Where We Stand

After reporting the bills from committee in both Houses, the Committee chairs and Leadership asked the parties to work in good faith to reach a resolution that would allow both radio and creators to grow together, and to act as partners. Music creators have always been willing to come to a resolution that is good for listeners and fair to both sides, and we remain eagerly engaged in the process requested by Congress. We are optimistic that broadcasters will continue to participate in these discussions, even as they use their power over the public airwaves to disseminate false and misleading messages designed to influence Members and listeners.

You’ve no doubt noticed the blizzard of advertising from the National Association of Broadcasters. They clearly don’t like the bill. Of course, this is not the first time there’s been a policy dispute in Congress that’s been played out over the airwaves (though, notably, one side of this debate conveniently controls those airwaves). What is unique this time, however, is the volume and astonishing distortion of the broadcaster media campaign. More on their distortions in just a bit.

We don’t control the airwaves. We don’t have free access to spectrum. And we have far less money to wage our campaign. But we’re consoled in this mismatch of resources that the whole Congress, like the committees of jurisdiction, is smart and disciplined enough to examine this issue beyond the fallacies that one side can throw into a thirty or sixty second ad. Many of you have faced outlandish attacks in your own campaigns, so we are confident that seeing through the fog of misinformation and getting the policy right is still the mission.

If policy is determined by which side can win the prize for the most audacious nonsense, we won't win. Give that medal to the broadcasters. What we seek instead is the serious, thoughtful, deliberative process that should be the hallmark of lawmaking in any event.

The Issue

In the United States economy, there is only one property that a business can use to make money without compensating the owner and creator of that property. That property is a sound recording of our music. Imagine: broadcasters can freely use the creativity of a brilliant sound recording, but we don't get paid, and we can't stop them by saying no.

We want to be paid for our work. It's that simple. The broadcasters call that payment a "tax." Now we all know why they say that – the politics is clear. But to call a payment from one private party for the use of the property of another private party a "tax" is ludicrous. Payment for property is not a "tax"; on the contrary, using property without payment is a taking. In fact, a tax is what U.S. citizens have paid for decades to provide their airwaves to the commercial broadcasters for free.

The broadcasters like to say that this is a new issue. Hardly. Artists have asked the Congress to fix this inequity since at least the 20's and 30's when Bing Crosby organized artists to obtain this right. Frank Sinatra carried on that campaign in the 80's. Performers' unions have fought for the right for decades. In the 70's, after a meticulous Congressionally-mandated multi-year review, the U.S. Copyright Office called for the passage of a performance right. The Congress itself passed laws in the mid 90's to provide royalties for sound recordings broadcast on Internet and satellite radio. Administrations of both parties have supported the performance right for terrestrial radio as well – making the observation that there is no policy or legal rationale for this taking to occur, and that payment for property – in this case, creativity – results in more of it. For fans, that's literally music to their ears.

Broadcasters' Tactics

The broadcasters like to say that artists and musicians and rights owners get the full value of their property compensated in the form of promotion. That argument is flawed too. First, in the digital age, as consumption of music moves from acquisition of units to listening models, sales have fallen by more than half (2/3 in physical) in just the last decade. Second, to the extent promotion is relevant, it should not be imposed on the creator but rather be a point of negotiation. And, third, promotional value does not negate the need for compensation in any other broadcasting platform (simulcast, Internet, satellite radio) or in any parallel circumstance. NFL and MLB games are broadcast on radio. That's promotional, but the teams are paid. Some authors are fortunate when their books become movies. That's promotional, but converting a book into a screenplay requires payment. When NAB members own content such as TV programs, they insist upon payment from cable operators, but when someone else owns the content, such as music, NAB members refuse to pay for it (ironic, huh). That's some double-standard.

The broadcasters also like to engage in xenophobic wedge rhetoric. They try to make this about foreign-owned companies; it's not. It's about American jobs and American creativity. They allege that artists and

musicians won't be paid. Absurd. Under statute, just as is the case with the performance royalties music now receives from satellite, cable and the web, 50% of the payment goes to the performers and 50% goes to the copyright owners. And since artists sometimes own their master recordings, more than half of the payments will go directly to the creators themselves.

And the broadcasters like to trash the rich (never mind the multi-billion dollar, overly-consolidated corporate entities that dominate the radio industry). This isn't about superstars making a little more money. Instead, this goes to the heart of new creativity, supporting thousands including the independent artists who create new music and the independent music labels across the country who are investing in that creativity. Will there be money to invest in new artists seeking professional support? And will the less-celebrated but vital working musicians have a chance to earn a fair living from their craft? For a healthy music sector, and to sustain investment in new art, the sound recording must be compensated.

The Simple Ask

In the end, this policy question is straightforward. No amount of paid distortions – all designed to make this look complicated – changes this basic fact. The question is this: Is there any legitimate reason why broadcasters should be able to build a business using our music without our being paid or at least having the right to say no thanks?

The answer, of course, is no.

By passing the performance rights bill, the Congress will give meaning to real property rights, will stimulate the remarkable creativity that is uniquely American, will liberate as much as \$100 million a year to come back to our country that is now locked away because we don't have this right in the U.S., and will allow lots of families who derive their living from music a fair chance to support themselves.

Please do the right thing by American creators. Support the Performance Rights Act and decline to sign the Broadcasters' Resolution (cleverly titled the Local Radio Freedom Act).

Many thanks for your thoughtful consideration.

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