



April 5, 2021



To Republican Members of the U.S. House of Representatives:

As organizations supporting intellectual property rights, we write to reiterate our opposition to any reincarnation of the so-called Local Radio Freedom Act (LRFA) and urge you to refrain from co-sponsoring such legislation.



The Constitution protects intellectual property rights and specifically delegates to Congress authority to protect creative works. Artists who produce music therefore have the right to protect their intellectual property, including both the writer and performer of a given recording. When a given work is transmitted, common sense and basic fairness dictate that the medium of transmission should not affect the existence of these rights. Yet, under the current regime, a performer does not hold effective or enforceable rights to his or her product when it is distributed through terrestrial radio.



The LRFA endorses this failure to provide meaningful intellectual property rights to music performers for transmission over terrestrial radio. By maintaining the status quo, the LRFA fails to protect the rights of all music producers in all media.



The LRFA also prevents the consideration of a forward-thinking process that would protect these intellectual property rights, resolving that terrestrial radio should never pay performance royalties on music broadcasted by their stations and used for raising advertising revenue. This inequitable treatment for certain music artists should not be allowed to continue.



Supporters of the LRFA have argued that requiring terrestrial broadcast stations to pay a performance royalty is akin to a performance tax. A tax is the transfer of wealth from a household or business to the government. A performance royalty is a payment to the holder of intellectual property rights, the value of which is determined in a free market. Paying a royalty should only be avoided when a broadcaster decides not to transmit the recording. Otherwise, there should be fair compensation.

LRFA supporters also claim that the promotional value artists derive from having their music played on the radio exceeds the compensation which would be due under a royalty. This may have been a valid argument when terrestrial radio was the only way to transmit a recording. But cable, satellite, and internet platforms all pay a royalty for sound performances. The 2018 Music Modernization Act further ensured equitable compensation by updating the royalty standard paid by these platforms. Yet, once again, platform parity was thwarted by terrestrial broadcasters' continued exemption from any payment to performers at all.

In a free market, some copyright holders might decide to forego royalty payments in return for having their music on the radio. These decisions should not be made by the government with Congress precluding such an approach to royalty payments.

We urge you to refrain from cosponsoring or otherwise supporting the LRFA or similar legislation, and instead support a free-market solution to protect the rights of both music writers and performers.

Sincerely,

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Seton Motley
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