




A ROYAL PAIN

HOUSE RESOLUTION 848
PERFORMING
RIGHTS ACT
IS LOOKING OUT
FOR THE ARTIST.
BUT DOES IT HAVE
THE POTENTIAL TO
SHUT DOWN
THE AIRWAVES?
THIS IS THE
STORY OF
RADIO'S FIGHT
FOR SURVIVAL

BY SARAH A.
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Sitting in an office surrounded by gold and platinum RIAA Sales Awards, thanking radio for selling millions and millions of recordings of artists, Kevin Steele, program manager for Athens radio station Magic 102.1 sends an e-mail explaining why he thinks the current actions of those same record companies and their artists who once showed gratitude are now threatening the radio industry – an industry with a dynamic history full of ups and downs.

Nearly one-hundred years since the first U.S. licensed commercial broadcasting station hit the airwaves, proposed legislation that calls for radio stations to pay performing artists could change the face of the industry once again.

“Now that we’re in the digital age, all those years of support from radio stations don’t seem to matter anymore,” Steele said of the players on the other side of the line who support what he calls the “potentially detrimental legislation.”

In February, Representative John Conyers, (D-MI) introduced HR 848 Performance Rights Act into Congress, which would require radio stations to pay artists when they play their music.

According to opencongress.org, the Performance Rights Act and the similar S. 379 in the Senate, would amend federal copyright law to grant performers of sound recordings equal rights to compensation from terrestrial broadcasters. For broadcast stations with gross revenues of less than \$1.25 million and for noncommercial, public broadcast stations such as University of Georgia’s WUOG, the act would establish a flat annual fee in lieu of payment of royalties. An exemption from royalty payments would be granted for broadcasts of religious services and for incidental uses of musical sound recordings. Although the act has been considered by committee and recommended to be considered by the House, it has not yet been put to a vote. If the bill does eventually get passed, some say it could have serious effects on radio stations throughout the country, which is causing a lot of controversy and pitting people like Steele against many organizations and famous recording artists.

Backing the proposed legislation are several organizations, politicians and recording artists including the Recording Industry Association of America, the American Federation of Television and Radio Artists, the American Association of Independent Music, The Recording Academy, Georgia representative Hank Johnson and the musicFIRST coalition supported by a wide range of performers such as Bruce Springsteen, Dave Matthews Band, Jay-Z, Andrea Bocelli and Amy Grant.

In a press release, Rep. Johnson, like many supporters of the performance royalties, said it is merely an act of fairness. Radio stations currently pay writers of songs royalties, but not performers. “This bill is not an attack on broadcasters. The reality is that artists get paid for the use of their music on all other platforms, such as the Internet, satellite, and cable, but they do not get any compensation when their work is played over AM and FM radio stations,” Johnson says.

In the same sense, the musicFIRST (Fairness in Radio Starting Today) coalition says on its website it is “committed to making sure everyone, from up-and-coming artists to our favorites from years-ago, is guaranteed Fair Pay for Air Play.”

In committee hearings before the 111th Congress, Billy Corgan of The Smashing Pumpkins testified on behalf of musicFIRST and said, “I am a big fan of radio, and am very interested in its continued health and well-being. Terrestrial radio has helped me to discover many of the artists that became influential to my life and artistic pursuits. I by no means see them as the bad guy. The change to the law we are here to discuss only redresses an outmoded, unfair practice that favors one participant’s needs over another. This legislation is simply a form of restoration to artists long overdue.” Corgan went on to explain how many performers on hit songs may not be big name artists who can profit from tours and the sale of merchandise and they deserve compensation in the form of royalties.

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KEVIN STEELE SITS IN HIS OFFICE AT COX RADIO. PHOTO: WES ELKIN

On the other hand, those opposed to the Performance Rights Act, including outspoken organization Cox Media Group that owns Magic 102.1, say that it threatens the industry and claim it is not fair compensation but actually a tax for airing free music.

Many people in the radio industry refute the argument that it is only fair to pay for the use of songs the artists perform because the airplay received is beneficial to the artists. Some radio supporters recall the infamous Payola scandals, saying record companies depend on airplay so much they once reportedly bribed and paid disc jockeys to broadcast the songs of their artists to promote the music. National Association of Broadcasters Executive Vice President Dennis Wharton touted airplay of songs in a press release when he wrote, "Every week, radio airplay reaches 235

million Americans, promoting both new and legacy artists and generating more than a billion dollars in CD and download sales for record labels annually."

Though recording companies and many performers say that while it is still important, traditional radio broadcasts of their music is not as significant as it once was. During his testimony, Corgan said, "If the performance of a song has value to a particular terrestrial radio station in its airing, I believe it is only right to compensate those performers who have created this work. If a station plays a song, both the author and the performer should be paid. These particular performances must have value to the stations or they wouldn't be playing them."

However, Steele says the royalties would put many stations in danger. "All radio stations pay publishing companies

millions of dollars each year in royalty fees; monies that are distributed to the songwriters and owners of the music. The performance tax would be an added fee that many broadcasters can't afford to pay," he said. "Therefore, many music formatted stations will either go to syndicated talk formats or just go dark."

Some supporters say the fees won't force any stations to close, but Steele disagrees. "These added fees will no doubt bring many independent broadcasters to their knees, virtually shutting down many local and community oriented radio stations," he said.

While Magic is a larger station, Steele said he did believe if the legislation passes, many of the community services provided by the Cox stations would be greatly affected by the added cost.

Tony Kidd, vice president/market

manager of programming at 95.5 "The Beat," another Cox Radio station in the Atlanta/Athens market, agreed that the bill could cause changes. "In the case of 95.5 The Beat, it's difficult to tell the exact effect because we don't know what the fees would be. However, some adjustment would need to be made including playing less music during some time periods. In some cases for smaller stations in smaller markets, I have heard from several owners and operators that any increase in expenses would put them out of business," Kidd said.

When asked to give the perspective of a non-commercial, independent station, Rock 100.7 FM General Manager Xavier Elkins said further fees would obviously be taxing on any organization like 100.7 particularly because it is already non-profit. Steele supported the claim saying, "Even though the House amended the legislation to protect smaller, non-commercial broadcasters by creating a sliding scale fee, many of these stations will still not be able to afford any increase in royalty fees."

While many debate the fairness of the issue, Elkins brought into question the relevancy of royalties. "The notion of an artist-oriented royalty fee seems a bit outdated given that the economic engine of the music industry has shifted gears. In music's heyday, artists toured to promote

composers of music to get their fair share since they cannot earn with performing or promoting, which is how the system currently works today.

Others opposed to the performance royalties include the Free Radio Alliance, Greater Media, Inc., National Association of Broadcasters, College Broadcasters, Inc. and a few state broadcasting associations. Georgia congressman Paul Broun, who represents the 10th district that includes Athens, also opposes the proposed legislation. According to govtrack.us Broun joined more than 240 politicians who co-sponsored the Supporting the Local Radio Freedom Act that opposes the Performance Rights Act, but he could not be reached for response.

While the outcome of this proposal could cause drastic changes to radio, it's not the first time controversy, technology and culture have altered the medium.

Commercial radio first hit the scene in the 1920s when it became licensed and picked up advertisers and sponsors along with original content.

From the 1920s until the 1950s radio had its heyday. During this Golden Age of Radio stations produced a variety of broadcasts including

During this Golden Age, non-musical shows were more popular than live and recorded music. Most families would gather around the radio and tune into to their favorite programs from one of the first radio comedy series "Amos 'n Andy" to the CBS drama "Suspense" to the old-time radio detective show "The New Adventures of Sherlock Holmes." Some faithfully listened to the big soap operas, which are now synonymous with daytime television but actually began as serial broadcast on radio with soap manufacturers as sponsors and producers. One of the most famous of these soaps is "Guiding Light," which launched on radio in 1937, but eventually moved to television in 1952 — a sign of the changing times and upcoming trouble for radio.

With the advent of television, and later cable, people began watching shows instead of listening to shows, and radio had to devise a plan to stay relevant.

"As audiences shifted to television, radio had to really change its format," said Ann Hollifield, Ph.D., Head of the Department of Telecommunications at the University

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albums (the music was the product). Now, artists distribute music in order to drive demand for their tours (the live performance is the product). It won't be long before most music is free, or nearly free anyway," Elkins said. Large touring acts will still make the big bucks, which makes the idea of royalties seem disconnected and trivial by comparison, according to Elkins. He said he sees fees as a method for

music programs, serial soap operas, mysteries, dramas, comedy shows and news. Although music was not the primary product in early radio, some record companies reportedly feared the medium at the onset as competition providing a free product while others saw it as a means for promotion of music. A court ruling eventually granted copyright owners compensation and the American Society of Composers, Authors and Publishers (ASCAP) began collecting licensing fees.

of Georgia. In the beginning, most stations went to a strictly music format, with some news and sports talk programs, but there was a lot of overlap as more and more stations came on the scene, according to Hollifield. "As TV became a more powerful competitor, radio really reinvented itself in the late 1960s and early 70s to a format-type in very narrow niches such as top 40, classical and jazz stations as opposed to just general mixes of music," Hollifield said. She said when cable TV entered the game and there was

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even more competition for audiences and advertises, radio moved into micro-niches where listeners could choose from country rock or classic country instead of just a general country music station.

Not only is the content of current radio different than when it began, but so is the business model.

"When radio was first started it was an intensely local media before regulation really came on board," Hollifield said. Regulation brought order to what was chaos resulting from overcrowded airwaves. According to Hollifield, radio began to expand and changed from a local model to a new layout with radio networks providing national programming to local affiliates. Eventually the Federal Radio Commission was created to control and regulate commercial radio, which was replaced by the FCC in 1934.

Hollifield said one of the biggest changes in radio came at the hands of the Telecommunications Act of 1996. "While it was ostensibly designed to allow for competition for telephone and cable, it had the most impact on the radio industry," she said. One provision in the act lifted a previous ownership cap on the number of stations companies could own nationally. One of the major and most immediate impacts was to set off an incredible wave of mergers and acquisitions that resulted in radio industry becoming one of the most consolidated industries in the country. While many people were worried that radio would be controlled by these companies, Hollifield said the consolidations were "the saving grace of radios because in 1996 a large percentage of stations were in financial trouble." Once again radio prevailed and the industry was really strong in the 1990s and in the early part of this decade.

Now, she says radio is facing financial challenges again, and some blame it on a host of emerging technologies. While technological advances in the early history of radio like moving from AM to FM improved the industry in the late 1930s, technological advances in this century have proven to be less beneficial. The Internet, ipods, music downloads and satellite radio provide music lovers more options — some say better options. With the launch of satellite radio, terrestrial radio proved it still had more fight. Using its local appeal and touting its free broadcasts, it has been able to fend off threats. While many terrestrial station managers, including both Steele and Kidd, say satellite radio has not really had a major impact, Hollifield said it would be hard to argue that radio has not lost audience.

"If you look across all media, with the

additional competition from all the new players in the market, every media outlet has suffered a decline in its particular share of the audience," she said. "I think radio is facing the same kind of hurdles that all legacy media are facing - audiences are being fragmented."

An ever-growing number of content choices now provide what academics call gratification opportunities (to consume media where and when you want), according to Hollifield. Traditionally, radio has always been a much more mobile media, but now ipods and other forms of technology provide more mobile music.

She said people's patterns of media consumption appear to be undergoing some changes, but not as much as some people think. The difference between radio and other media is that radio's market share compared to other media has dropped significantly, and radio's advertising share nationally has been surpassed by online sales.

"The radio industry is really struggling financially. The revenue is dropping at a really rapid rate and no industry can sustain that for long," Hollifield said. Given the incredible financial challenges that radio faces right now, the Performance Rights Act could be dangerous for the industry. Hollifield said she could not take a stance on the proposed act without more information.

Hollifield said executives constantly look for new business models like all competing media, but is not sure what the future holds. She said despite what happens with the Performance Rights Act, major markets will be around for a while, but where stations have been and will be most vulnerable are local, small markets.

The fact is, radio is tightly woven into the lives of Americans. Although it may be fading, the love affair with radio is forever etched in American culture from Eric Carmen singing "Turn The Radio Up," to Kenny Chesney's "Road And The Radio" pairing to Regina Spektor hearing Guns-n-Roses "On the Radio." Just as Corgan testified that radio broadcasts cultivated his musical life, all types of people throughout the country have an appreciation for the medium.

While the death of radio has been predicted many times before and some say the current tech-savvy culture renders the medium archaic, it has survived and still offers a much-needed service to music lovers throughout the country. As the debate continues over whether or not it's fair to offer that service without paying performers, the question remains if many stations will prevail over dwindling revenue income and this possible new legislation. And if it does prevail, will it be the same radio loyal listeners are used to, or could this be another opportunity for radio to adapt to the perpetually changing world of music?