

Radio Broadcasters Should Stand Together: Oppose Any New Performance Tax

MusicFirst – the big record labels’ DC front-group – is sending emails to small radio stations across the country asking them to support paying a performance tax for the first time as proposed by the recently introduced “Fair Play Fair Pay Act of 2015” (H.R. 1733). This solicitation is little more than a press stunt and attempt by the big record labels to divide and conquer local radio stations.

Like previous performance tax legislation, the Fair Play Fair Pay Act and its backers attempt to diffuse political opposition to a performance tax by offering an “exemption” to small radio stations (defined as earning less than \$1 million in revenues annually) that would cap their fees under the new performance tax regime at \$500 per year.

Just as previous failed iterations of this legislation also included such transparent political carve-outs, all local radio broadcasters – small and large – should remain steadfast in their opposition. Make no mistake, any imposition of new performance taxes threatens the continued viability of free, local radio stations.

The record labels and the performance royalty supporters argue that as a moral matter, broadcasters should pay for the music they play over the air, despite the tremendous promotional value that accrues to the record labels and artists from the free exposure to 244 million weekly radio listeners across the country. So why should we trust them that they won’t continue to lobby for lower revenue thresholds and higher annual caps, year after year?

The reality is that the record labels want as much as they can get, from wherever they can get it. Proposals like the Fair Play Fair Pay Act put small broadcasters at risk of sliding down the slippery slope to the same oppressive royalty regime this bill would subject others too.

While perhaps making a nice talking point, the Fair Play Fair Pay Act arbitrarily draws a line between “small” and “not-small” broadcasters at \$1 million in annual revenues. Ironically, while fashioned as small-radio friendly, the bill would provide a perverse disincentive for these stations to grow and earn annual revenues that would trigger higher performance taxes.

The bill also treats similarly-situated broadcasters in a patently unfair manner: a radio station earning \$999,999 per year in revenues would owe simply the statutory cap, while a similar and potentially competing station earning just \$1 more would be subject to a far more burdensome performance tax regime. Those stations with annual revenues over \$1 million will be beholden to paying a royalty rate set by the Copyright Royalty Board, a group that has consistently set rates so high that Congress has had to intervene to fix them.

For stations near the annual revenue threshold, they will likely have to expend resources on administration and record keeping to comply with the new fee regime even if they do not exceed the \$1 million threshold in the end.

Local radio broadcasters should stand united in their opposition to the imposition of any new performance tax and continue to support the free play for free promotion model that Congress has explicitly embraced and that has created a U.S. music and free radio system that is the envy of the world.

Local radio stations should continue to support the Local Radio Freedom Act (H. Con. Res. 17, S. Con. Res. 4), opposing any new performance tax on free, over-the-air radio, which already has over 200 bipartisan cosponsors in the House and Senate.