



January 22, 2008

National

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Christian

Communicators

Impacting

the World

The Honorable Sam Brownback  
United States Senate  
303 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Brownback:

I write today to express my deep reservations and concerns over the proposed Performance Rights Act (S. 2500 & H.R. 4789). In my view, this effort to burden terrestrial radio with a whole new regime of performance fees is unwise, unfair and borders on the irresponsible.

### Unwise

First among the unwise aspects of this proposed legislation is that this question of a new performance entitlement has been reviewed by Congress many times, most recently in 1971, 1976, and 1995. In each case the Congress refused to impose a new music performance fee structure, being convinced that such fees would materially disrupt "the mutually beneficial economic relationship between the recording and traditional broadcasting industries." Both the Senate and the House reached similar conclusions after multiple and careful reviews.

This proposal is also unwise because government intervention with a marketplace in transition will likely miss the intended mark. It is clearly evident that the way consumers purchase their music has markedly changed – witness the hundreds of millions of music downloads that did not exist just a few short years ago. What this market landscape will ultimately look like in the long run is not knowable. For Congress to intervene at this point with a new performance fee, that could excessively burden one industry while not really solving the marketplace problems of another industry, is imprudent at best.

### Unfair

Conceptually, this proposed new entitlement is fundamentally unfair in that it completely ignores the promotional value of radio airplay received by music artists and labels. In the last two years, I have personally purchased at least two dozen music CDs of artists that I heard on the radio. How else would I have heard of a new artist (or at least one new to me) without radio? This radio airplay has been the backbone of artist promotion from the earliest days of radio. Music industry executives have always

acknowledged the promotional value of radio airplay, but now suddenly, they argue that this value is non-existent.

Second, this proposal is unfair through its unequal treatment of market participants. For example, NPR stations (already receiving some government support) would pay a flat yearly fee of \$1,000 based on their FCC status as non-commercial entities (NCEs). Yet, hundreds of religious broadcasters who are also non-profits could pay up to \$5,000 per year, simply because they are not designated as NCEs by the FCC.

Third, this legislation would place an undue burden on the smallest broadcasters because of its unfair fee structure. Any entity with \$1.25 million of revenues or less could pay up to \$5,000 per year. Need I point out the differential impact on a station with annual revenues of only \$125,000? For many small stations (of which we have scores in the NRB), that \$5,000 could be the difference between survival and dissolution.

Furthermore this proposal is unfair in that it completely ignores the distinction between commercial and non-profit stations. Commercial stations obtain their revenue through advertising sales to other for-profit entities. Non-profit entities (even large ones) are completely dependant on donor support. This is especially true of religious broadcasters. Any new performance fee structure would disproportionately burden religious non-profits radio stations, ignoring the important contribution they make to our nation's cultural dialogue.

### *Irresponsible?*

In our day, the terrestrial radio industry is under enormous duress. It has seen a significant erosion of its potential listening audience as younger people have migrated to alternate music and information sources, including the Internet. Radio stations have attempted to adapt by making significant investments in Internet technologies, allowing them to stream their station's content over the Internet. However, just recently the Copyright Royalty Board has authorized substantial increases in the royalties that radio stations must pay for streaming content over the Internet, making continued Internet streaming problematic for all but the largest station groups. Until the financial impact of these new, higher webcasting royalties is fully known, it would be exceedingly injudicious to levy a whole new set of performance fees on terrestrial radio.

Lastly, this is a topic that cries out for empirical data to support the contentions being advanced by the recording industry. The relationship between terrestrial radio and the recording industry has always been characterized by a mutual exchange of benefits. Today, the vast promotional value that artists and record labels receive through radio

airplay is said to be of little or no value. Yet, the recording industry has no empirical evidence to support this assertion. They point to declining sales of music CDs but cannot establish a cause and effect relationship. Common sense argues that if the amount of radio airplay was unchanged during the period of decline in music CD sales (if anything, radio airplay actually increased during that period), then that decline is likely attributable to other factors.

Having said all this, I urge the Congress to oppose the imposition of this new performance fee on the grounds of fairness, equity and informed marketplace restraint. Furthermore, this matter should not be brought back for reconsideration until independently acquired empirical evidence can be offered that supports what today looks like an unwise, unfair, and possibly irresponsible approach to this issue.

As always, I commend the Senator for his service to our nation and offer these views with the utmost respect.

Sincerely,

A handwritten signature in blue ink, appearing to read "Frank Wright", with a stylized flourish extending to the right.

Frank Wright, Ph.D.  
President & CEO