



***THE DETRIMENTAL IMPACT OF “PERFORMANCE RIGHTS” PROPOSALS  
ON CHRISTIAN RADIO:***

**Responses of the National Religious Broadcasters (NRB) to questions  
from the Government Accountability Office (GAO)**

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The Office of General Counsel, NRB

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and

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**Introduction**

On July 23, 2009 a presentation was made to the GAO by Craig Parshall, Senior Vice-President & General Counsel of the National Religious Broadcasters (NRB) and Bob Powers, NRB’s Vice-President of Government Relations regarding the impact that the “Performance Rights Act” (H.R. 848), along with salient amendments (i.e. the Amendment offered by Rep. John Conyers) would have on religious broadcasters. In sum, we believe that such an expansion of current copyright law as envisioned in those proposals would have a devastating impact on the economic viability of Christian radio. This report will summarize our comments delivered verbally during that presentation. We limited our comments solely to those aspects of the GAO questions that referred, directly or by implication, to “religious” radio stations. We did not comment on the potential impact of “performance rights” legislation on minority or female-owned radio stations or programs for two reasons: (1) We believe there are other organizations and sources that could provide a much more accurate response regarding minority or female broadcasters, and (2) the particular category that is the focus of NRB’s representation is that of Christian broadcasting.

The NRB presentation relied in part on, and drew conclusions from, a 2005 study of Christian radio generated by NRB. That study (“Christian Radio Station Survey 2005: The Published Results”) analyzed the results of a survey from 200 respondents. Those respondents were all Christian radio stations within the United States. The survey had been sent to virtually every known Christian station in America (approximately 2000 in all). The results reflected data that was current as of 2004/2005. While that information is slightly dated, we believe that it is still reliable data in assessing the financial realities of Christian radio and the impact that a new music

copyright royalty entitlement (supposedly for music “performers”) would have on that part of the broadcasting market. Our references to that survey will be designated in this fashion: “Survey, pg. \_\_\_\_). Copies of those cited pages, and certain other documents in support of our presentation are also attached. Documents attached to this report are identified as exhibits with the designation Ex. \_\_\_\_ .

The dramatic impact that this proposed music royalty will have on Christian radio cannot be overstated. 83% of Christian radio stations play music as their primary format, airing songs at least 8 hours a day. Survey, page 13, Ex 1.

### **Questions and Responses**

The following are the written questions propounded by the GAO to NRB for the interview, and a written re-creation of our responses.

1. What are the challenges facing the broadcasting industry, including the challenges facing broadcast stations owned by minorities and/or females or those delivering religious programming?
  - Some stations are going off the air as a result of economic hardship. See: “Are More Stations Going Silent,” *Radio World*, March 19, 2009, Ex. 2, recounting that two Christian stations in Alabama “which went dark” because of financial conditions.
  - The Congressional Budget Office (CBO) has recently rendered an opinion on the “price tag” that accompanies this new performance royalty concept. The CBO states: “Based on data from industry sources regarding the number of over-the-air radio broadcasters, CBO estimates that the cost of complying with the mandate for publicly owned stations would be about \$500,000 a year. Also, based on those data, CBO estimates that commercial broadcasters that have gross revenues of less than \$1.25 million in any calendar year would pay a total of about \$16 million annually in royalty fees.” Congressional Budget Office, “Cost Estimate, July 7, 2009 – H.R. 848 – Performance Rights Act.” <http://www.cbo.gov/ftpdocs/104xx/doc10439/hr848.pdf>
  - There is doubt that the Federal Communications Commission (FCC) will be able to ease the economic challenges for radio. Several state broadcaster associations have asked the FCC to adjust fees for radio because of the difficult economic times, but the Commission has resisted taking any favorable action. *Inside Radio*, “FCC says no fee break for radio,” August 3, 2009.
  - Existing music royalties (apart from proposed “performance” royalties) have increased substantially. NRB’s Music License Committee (Non-Commercial Radio division) has reported, as a result of finalized negotiations with the music agencies, that “fees will roughly double” for years 2008-2012 for non-com stations covering populations between 250,000 and 500,000. Ex. 3 (letter of January 22, 2007). 64% of Christian stations are non-commercial, Survey, page 8, Ex. 4. Approximately half of all of those stations cover markets with populations in excess of 300,000 (Survey page 9, Ex. 5) thus subjecting them to

this double increase. The “primary format” of Christian radio is overwhelmingly musical, with several variations of Christian music ranking high among all formats, both music and non-music: “contemporary” music is the most popular of all formats representing 28% of all stations, with “inspirational” music second, with 20% of all stations, and “Southern Gospel” music fourth out of all formats at 10% of all stations, and “praise and worship” music ranks fifth among all formats, with 8% of all stations. Survey page 13, Ex. 6.

- 93% of all Christian stations have websites, while 56% simulcast on the web. Survey page 12, Ex. 7. However, new web-streaming music rates have now been set by the Copyright Royalty Board and are an added burden on music-play stations.
- Ad revenue is on the decline for commercial Christian stations nation-wide. The Southern California Broadcasters Association indicates that radio ad revenues have declined in that state by 30%. See comments by Southern California Broadcasters Association, where they have concluded that the proposed legislation will cost California radio over \$200 million. Ex. 8.
- Donations to non-commercial, non-profit Christian radio stations are on the decline. Among our own non-profit organizational members, most have had to cut back on budgets, lay-off employees, and reduce wages.
- Christian radio (like all over-the air broadcasters) does not charge listeners, and therefore cannot pass rising costs onto the end “users” of the music they play. However they are competing against satellite radio and music down-load services (e.g. *iTunes*) which both charge the “user” directly, either by a subscription fee or a “per download” charge.

2. How do stations benefit from broadcasting sound recordings over the air?

- Stations do not necessarily benefit from a single song, or even from a series of songs from a single popular artist. The benefit they have received, during the decades-long relationship of mutual-benefit with musical artists (where the station is not charged, but the artist gets free promotion through air-play) is a branding of their station as playing a certain music genre. This is critical to Christian stations. See: *supra*, Ex. 6.

3. How do musicians, performers and record labels benefit from having their sound recordings broadcast over the air?

- Musicians and artists, and their record labels, have gained public attention to their songs, and have generated sales to the public primarily by first exposure over the radio.
- In radio, some programming is “pay for place,” i.e. the third-party program producer pays the station to play/place their program on the air, and the radio stations thus receives that revenue. That demonstrates the value of air time.

Approximately 90% of Christian stations receive annually up to \$850,000 in sales of air time to programmers. Survey, page 30, Ex. 9. Yet when music is played on the radio, that station, by not charging either the artist or music company for airtime, has delivered a valuable commodity to them without compensation.

- In countries like Sweden, where NRB is now trying to develop a Christian radio presence for the first time, Dr. Ron Harris, our Vice-President who heads up NRB's international development, notes that in that country there is virtually no Christian music "industry" because Christian radio has not been there to play and therefore to promote the music of those artists. Craig Parshall, Senior Vice-President and General Counsel noted the same phenomena in The Netherlands during his nation-wide tour there in 2008.
4. Which group benefits more from this relationship, or is it an equal relationship? What data, facts, studies, and research support this view?
    - The artists and music companies have benefited much more than the stations. Compare: response to questions 2. and 3. above.
  5. What is your organization's view of the proposed Performance Rights Act (PRA)?
    - We strongly oppose it.
  6. Would the enactment of a royalty change music broadcast radio, particularly the number of music radio stations, the amount of music played, the genres of music heard, and the amount of new music played? How might it affect sales?
    - It would radically change the nature, and format of Christian radio, much of which has music as a primary format. Stations would either sell off, or substantially change their format. The artists would not primarily benefit, because the music companies will garner at least 50% of those fees. See: comments of Steve Newberry, NAB board member, reported in FMQB, "Broadcasters Testify on Performance Rights Act," March 10, 2009. Ex. 10. Bear, Stearns & Co. Inc. notes the estimates from trade reports that 60% of such fees will end up going to the music companies. Broadcasting-Radio – U.S. Equity Report, March 19, 2007. Ex. 11. Because of disparate bargaining power between new artists and the music labels, we can expect that their royalty contracts with the music companies will effectually transfer most of these "performance fees" to the labels either directly, or indirectly. Eventually, however, both artists and music labels will suffer a lack of music sales as a result of declining radio-air play of music caused by a new copyright entitlement for "performers."
  7. Will stations begin to seek compensation for promotional value of airplay provided to musicians and performers?
    - Radio stations will have to adjust dramatically if the Performance Rights Act passes. They will likely consider the possibility of charging performers and music labels to play their music, assuming it can be reconciled with current FCC regulations on "plugola" and "payola." See also, the comments to question 3.

above regarding the value of airtime evidenced by “pay for place” programming in radio.

8. In what ways, if any, would individual broadcast stations restructure their playlists?
  - 79% of Christian stations maintain playlists of at least 200-300 songs in rotation, and 47% have 300-1000 in rotation. Survey, page 14, Ex. 11. If the Performance Rights Act passes, for those stations that do not cease playing music entirely, they will inevitably be forced to reduce their playlists dramatically.
9. What additional work (administrative or otherwise) would the enactment of a royalty impose on broadcasters? What cost(s) would be associated with this work?
  - The current trend in the FCC is toward a staggering increase in administrative record-keeping for the average station. Most Christian radio stations accomplish a staggering amount of work with a relatively small number of full time staff workers compared to their general market radio counterparts. 52% of all Christian stations (commercial and non-com) have full time staff consisting of 5 or less employees. Survey, page 39, Ex. 12. The administrative burdens of a new music royalty fee will multiply the record-keeping duties of Christian stations that are already overburdened.
10. Would certain broadcast stations feel the effects of a royalty more than others? Which types of stations, if any, are less-prepared to adapt to the proposed legislation? If so, how would the effects be different? What are some potential options for these stations?
  - All Christian stations will be detrimentally impacted. The small stations lack the financial flexibility and staffing to respond to this new royalty. The medium size stations will have to consider changing their format to decrease music and increase other formats. The larger stations with large playlists will face a dilemma of maintaining their music “branding” among their listening audience in a highly competitive market while being forced to pay a new music royalty that they cannot afford.
11. What are some potential consequences of the enactment of a royalty with respect to the sustainability of these stations?
  - Christian stations that decide to retain a music format will have to reduce staffing, reduce salaries and benefits, cut the amount of music they play, and forestall capital investments in equipment or soft wear upgrades. Another less visible consequence may be a forced reduction in the amount of community charity work accomplished by radio stations, as they are increasingly pressured to monetize all air time. Broadcasters devote a large amount of airtime to disaster relief. It has been estimated that in 2005 in the state of Virginia alone, radio broadcasters donated a total of \$127 million through airtime, disaster relief and hard contributions for public causes. National Report on Broadcasters Community Service, <http://www.broadcastingpublicservice.org>.

12. What effects have royalties for the sound recording enacted in Europe and Canada had on broadcasters in those markets, including stations owned by minorities and/or females or those delivering religious programming? Have there been any effects on music sales, music production, and/or the amount of music available to the public via terrestrial radio?
- NRB has no hard data on the impact of copyright fees on religious radio stations in Europe and Canada. However, we would note that the Christian radio market in those areas is drastically smaller than that in the United States, and therefore is not an appropriate paradigm for measurement. We would also note that as a result this accounts for the fact that a “Christian music industry” is almost totally lacking overseas, because Christian radio was not there to promote the music of Christian artists. See our reply to question 3. above (3<sup>rd</sup> bullet point).
13. How has the existence of a performance right for the digital performance of a sound recording affected stations, including stations owned by minorities and/or females or those delivering religious programming, who offer both terrestrial and digital (sometimes referred to as “hybrid”) transmissions? Have these stations mostly dropped their digital transmissions; changed format; taken other actions to remain competitive; gone off the air completely? What are some examples or sources we could consult for such information?
- See our responses to question 1. above, 5<sup>th</sup> bullet point. A moderate sized NRB radio broadcaster has recently announced the decision to cease web-streaming of music because of these escalating rates. We would be happy to assist in setting up an interview between the GAO and that member, or other members in the same dilemma.
14. Is it correct to treat music that is broadcast using digital technology (satellite and webcasting) differently from that which is broadcast over terrestrial radio? What factors impacted the decision to treat the digital transmission different than the analog broadcast transmission?
- From our perspective it is unfair to disregard the essential differences between over-the-air broadcasting and newer digital platforms for music transmission (i.e. satellite, and web-based models). (1) Traditional radio broadcasting stations do not and cannot charge end users (i.e. listeners) for the music they play, unlike satellite radio which charges customers a subscription fee, or music down-loading services which charge fees over the Internet. (2) The traditional “broadcast” industry is already burdened by a high degree of regulation by the FCC. By contrast, content delivery over satellite or the Internet are only incidentally and minimally regulated by the Commission.
15. If a royalty is NOT established, what are some potential changes that could improve the working relationship that occurs between broadcasters and the musicians, performers, and record labels that provide the sound recordings used by broadcasters?
- NRB would welcome a more coordinated collaboration with Christian music artists in order to both preserve Christian radio and to promote the music of those artists. Each year at the NRB annual convention (most recently held in Nashville) we engage well-known Christian musicians and entertainers and promote them, both in our general and special sessions, and on our exhibition floor.

- The FCC would be well-advised to rethink “payola” and “plugola” restrictions currently in effect, and dedicate itself to reducing, rather than increasing, the administrative, financial, and regulatory burdens on radio. NRB has proposed new rules that would loosen the current rigid restrictions against non-commercial, non-profit stations from using airtime to promote other non-profit causes. So far the FCC has neglected to act on that proposal. With a change in such rules, musical artists could be promoted during radio campaigns designed to benefit other non-profit, 501(c)(3) organizations and causes.

16. What, if any, other key points or issues related to the Performance Rights Act have we not discussed?

- In the event that we discover additional issues we will convey them to the appropriate investigators at the GAO.

3. What other stakeholders and experts should we be speaking with about this issue?

- Christian radio stations that will be negatively impacted by the Performance Rights Act. We would be glad to facilitate those consultations.

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