CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

July 7, 2009

H.R. 848
Performance Rights Act

As ordered reported by the House Committee on the Judiciary on May 13, 2009

SUMMARY

H.R. 848 would expand the protections of certain copyright holders with respect to sound recordings broadcast by analog radio stations. Under current law, those copyright protections are extended to digital transmissions only. This expansion of copyright protections would allow performers to seek and collect royalties from radio stations that broadcast their work. H.R. 848 would require the Copyright Office to set rates and terms for royalty payments, with specific limits set for certain types of radio stations.

Based on information from the Copyright Office, CBO expects that the new requirement for Copyright Royalty Judges to set royalty rates and terms would be accomplished through its regular rate-setting procedures. Therefore, CBO estimates that implementing H.R. 848 would not have a significant effect on spending subject to appropriation.

Royalties for sound recordings are administered by SoundExchange, the private entity designated by the Copyright Office to perform the service. Because the amounts collected and spent by SoundExchange are not recorded on the federal budget, CBO estimates that enacting H.R. 848 would have no effect on federal revenues or direct spending. (Under current law, royalties for cable and satellite broadcast transmissions are administered by the Copyright Office and are recorded on the budget as federal revenues and direct spending.)

H.R. 848 would impose an intergovernmental and private-sector mandate, as defined in the Unfunded Mandates Reform Act (UMRA), on over-the-air radio broadcasters by requiring them to pay new royalty fees to copyright holders of sound recordings. Based on information from industry sources, CBO estimates that the cost of complying with the mandate for public entities would be small and would fall well below the annual threshold for intergovernmental mandates ($69 million in 2009, adjusted annually for inflation). Because the royalty rates for some broadcasters would be established after

enactment, CBO cannot determine whether the aggregate cost of complying with the mandate would exceed the annual threshold for private-sector mandates ($139 million in 2009, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

CBO estimates that enacting H.R. 848 would have no significant impact on the federal budget.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 848 would impose an intergovernmental and private-sector mandate, as defined in UMRA, on over-the-air radio broadcasters by requiring them to pay royalty fees to holders of copyrights on sound recordings. Based on information from industry sources, CBO estimates that the cost of complying with the mandate would be small and would fall well below the annual threshold for intergovernmental mandates ($69 million in 2009, adjusted annually for inflation). However, because the rate of royalty fees for some broadcasters would have to be established by the Copyright Royalty Judges, CBO cannot determine whether the aggregate cost of complying with the mandate would exceed the annual threshold for private-sector mandates ($139 million in 2009, adjusted annually for inflation).

Under current law, over-the-air radio broadcasters only pay royalties to songwriters for the performance of their musical compositions. The bill would require those radio broadcasters to also pay royalties to holders of the copyrights on recordings (which may include performers and record companies). Under the bill, small, publicly owned, and religious stations would pay lower royalty fees than large and commercial stations. Those broadcasters could elect to pay a flat annual rate set by the bill and based on their annual revenues. However, royalty rates for stations that have gross revenues of $1.25 million per year or more would be established by the Copyright Royalty Judges if broadcasters and performers are unable to negotiate rates on their own.

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.

Data on the amount of royalty fees currently paid by cable stations, satellite operators, Internet broadcasters, and other digital media suggest that the total cost of new performance royalties for commercial radio broadcasters affected by the bill could be substantial. Information from industry sources indicates that about 1,800 over-the-air radio broadcasters currently have gross revenues in any year of $1.25 million or more. However, because royalty fees have not been established for such broadcasters and because such fees could cause some broadcasters to shift their programming from music to other formats, CBO cannot determine whether the aggregate cost of complying with the mandate would exceed the annual threshold for private-sector mandates.

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