

RESOLUTION OF THE
FIFTY STATE BROADCASTERS ASSOCIATIONS, INCLUDING THE
DISTRICT OF COLUMBIA AND THE COMMONWEALTH OF PUERTO RICO,
IN OPPOSITION TO A NEW “PERFORMANCE TAX”

WHEREAS, the recording industry wants Congress to mandate, for the first time ever, a public performance obligation for the over-the-air broadcast of recorded music delivered, free of charge, to the listening public by our Nation’s local radio stations so that the recording industry can extract from such stations billions of dollars on top of the wealth already enjoyed by the record labels and their performers;

WHEREAS, this proposed, public performance obligation is regarded by local radio stations as the equivalent of a Congressionally mandated “performance tax” proposed for the sole benefit of the recording industry;

WHEREAS, local radio stations already contribute more than \$2.4 billion in value annually to the record labels and their performers by promoting their recorded music, concerts, merchandise and careers to an average of 235 million listeners per week;

WHEREAS, the “performance tax” will (i) undermine radio broadcasting’s first-responder, lifeline, alerting and informational role in every community in America, and (ii) frustrate the goal of increasing program diversity and minority and female ownership in broadcasting by:

a. Hitting the broadcast industry at the worst possible time when it is being weakened due to a worsening economic and advertising environment and due to audience fragmentation by alternative audio and video program technologies (235 radio stations are now dark, a 68% increase over a year ago and the shares of many publicly traded

broadcast companies are now at “penny stock” levels);

b. Creating an additional and unbudgeted operating cost that could place many broadcasters in breach of their financing covenants and thus in default under their loans;

c. Forcing local radio stations that have already cut their operating expenses to the bone either to change from a music to a talk format, or face foreclosure and go dark;

d. Forcing local radio stations that must remain music-based to survive, to reduce news departments, eliminate jobs, reduce hours of operation or air less costly syndicated programming in lieu more expensive locally originated programming; and

e. Forcing local radio stations to abandon niche music formats in favor of formats that appeal to the largest audiences with the greatest revenue generating potential thereby reducing program diversity;

WHEREAS, the record labels and performers possess no *equitable* justifications for placing at such substantial risk the commitment to competition and diversity in broadcasting and our Nation’s local radio stations:

a. The record labels and performers have repeatedly admitted how critical local radio stations are to the welfare of the recording industry and their performers:

"If a song's not on the radio, it'll never sell." -- Mark Wright, Senior Vice President, MCA Records, 2001

“It is clearly the number one way that we’re getting our music exposed. Nothing else affects retail sales the way terrestrial radio does.” -- Tom Biery, Senior Vice President for Promotion, Warner Bros. Records, 2005.

See Attachment A hereto for more testimonials confirming the extraordinary value contributed by local radio stations to the recording industry;

b. Congress has looked at the issue of performance fees at least three times before (1971, 1976 and 1995) and concluded that such fees would jeopardize “the mutually

beneficial economic relationship between the recording and traditional broadcast industries” (House Report 104-274, 1995); and

c. The record labels and their performers do not need a government “bailout” at the expense of local radio stations. In fact, the U.S. recording industry, with no “performance tax” is larger than that of the United Kingdom, France, Germany, Canada, Australia, Italy, Spain and Mexico combined, all of which have “performance tax” regimes;

WHEREAS, there are no *public policy* justifications that would support placing at such substantial risk our Nation’s commitment to competition and diversity in broadcasting and our Nation’s local radio stations:

a. The music license fees paid to ASCAP, BMI and SESAC by local radio stations do not justify a “performance tax” for the recording industry because the composers are generally not promoted whereas local radio stations routinely promote performers by name, as well as their songs, concerts, and merchandise to the great advantage of the performers;

b. The fees paid by subscription-based technologies, such as satellite and Internet radio, to the record labels and performers do not justify a “performance tax” on local radio stations because (i) as Congress has itself found Internet and satellite radio providers threaten the sales of recorded music whereas local radio stations enhance such sales, and (ii) subscribers actually pay those providers for the recorded music delivered into their homes, offices and vehicles; in contrast, local radio stations air the music for free; and

c. The fact that some foreign countries acknowledge a performance right in the over-the-air broadcast of recorded music does not justify a new “performance tax” on local radio stations in the United States because (i) performance fees in foreign countries actually benefit government-owned stations to the detriment of privately owned stations (the former enjoy increasing government subsidies while the latter do not enjoy any subsidies) and have resulted in fewer radio stations (less outlet diversity) and fewer distinct formats (less content diversity); (ii) “performance tax” revenues from radio stations in foreign countries are disproportionately allocated to record labels and highly-successful artists; and (iii) the subject of performance rights cannot be properly evaluated without taking into account other related issues, e.g., durations of copyright protections (95 years in the U.S. and only 50 years in Canada and many European and Asian countries) and piracy enforcement; and

WHEREAS, targeting local radio stations with a “performance tax” would violate principles of fundamental fairness without (i) including the numerous other businesses which use recorded music for their customers and (ii) taking into account the one-half billion dollars paid annually by local radio stations to composers (and an increasing number of performers) through ASCAP, BMI and SESAC:

a. The recording industry is using a divide and conquer approach for its legislative strategy that leaves out other businesses which, under the recording industry’s own logic, should contribute their share to any “performance tax” pool sought by the recording industry;

b. Without all potential contributors included, it would be impossible to determine the reasonableness of the “performance tax” pool sought by the recording industry or a fair allocation of liability among contributors; and

c. Since the value of the work of a performer is inextricably intertwined with the value of the work of the composer whose work is being performed, logically their relative worth in relation to a performance should be examined with the effect that compensation under music licenses should be re-examined in connection with any compensation that would flow from a “performance tax” if such tax were imposed.

Resolved this 4th day of February, 2009, by the fifty (50) State Broadcasters Associations named below, including the District of Columbia and the Commonwealth of Puerto Rico, That Congress should not impose any new performance fee, tax, royalty, or other charge relating to the public performance of sound recordings on a local radio station for broadcasting sound recordings over-the-air, or on any business for such public performance of sound recordings.

Alabama Broadcasters Association, Alaska Broadcasters Association, Arizona Broadcasters Association, Arkansas Broadcasters Association, California Broadcasters Association, Colorado Broadcasters Association, Connecticut Broadcasters Association, Florida Association of Broadcasters, Georgia Association of Broadcasters, Hawaii Association of Broadcasters, Idaho State Broadcasters Association, Illinois Broadcasters Association, Indiana Broadcasters Association, Iowa Broadcasters Association, Kansas Association of Broadcasters, Kentucky Broadcasters Association, Louisiana Association of Broadcasters, Maine Association of Broadcasters, MD/DC/DE Broadcasters Association, Massachusetts Broadcasters Association, Michigan Association of

Broadcasters, Minnesota Broadcasters Association, Mississippi Association of Broadcasters, Missouri Broadcasters Association, Montana Broadcasters Association, Nebraska Broadcasters Association, Nevada Broadcasters Association, New Hampshire Association of Broadcasters, New Jersey Broadcasters Association, New Mexico Broadcasters Association, The New York State Broadcasters Association, Inc., North Carolina Association of Broadcasters, North Dakota Broadcasters Association, Ohio Association of Broadcasters, Oklahoma Association of Broadcasters, Oregon Association of Broadcasters, Pennsylvania Association of Broadcasters, Radio Broadcasters Association of Puerto Rico, Rhode Island Broadcasters Association, South Carolina Broadcasters Association, South Dakota Broadcasters Association, Tennessee Association of Broadcasters, Texas Association of Broadcasters, Utah Broadcasters Association, Vermont Association of Broadcasters, Virginia Association of Broadcasters, Washington State Association of Broadcasters, West Virginia Broadcasters Association, Wisconsin Broadcasters Association, and Wyoming Association of Broadcasters.

Attachment A to State Broadcasters Associations Resolution

Recording Industry "Testimonials" That Demonstrate Local Radio's Indispensable Role and Substantial Contribution to the Success of the Record Labels and their Performers

"I love a strong radio hit. All of us. That's what our job is, to have a radio hit. Without radio, we couldn't do what we do, but the job is to have a radio hit that sounds unique, and like you."

-- Jewel, Grammy-nominated recording artist, 'Nashville Star,' July 2008

"Alright, let's talk about the nuts and bolts. If you win 'Nashville Star', you have to get on 200 major market radio stations. You have to."

-- John Rich, *Big and Rich*, 'Nashville Star,' July 2008

"I have to thank... every DJ, every radio guy, every promotions guy, everybody who ever put up a poster for me and spread the word."

-- Alicia Keys, recording artist and Grammy winner, 2008 Grammy Awards, February 2008

"[R]adio remains the best way to get new music into the listeners' lives."

-- Sony BMG Executive VP Butch Waugh as quoted in *Radio & Records*, January 11, 2008

"[R]adio is the conduit to the people, the voice of the format and the lifestyle's soundtrack."

-- Sony BMG Nashville VP of Marketing Tom Baldrica, as quoted in *Radio & Records*, January 11, 2009

"Obviously, radio is probably the most important thing for a new rock band coming out. If you don't get yourself on the radio, then you won't draw bodies at the clubs and you won't sell records."

-- 'Another Animal' drummer Shannon Larkin, *Drum Magazine*, 2008

"Country radio, thank you so much for being our mouthpiece. You know what we do means nothing if it never gets played, and no one gets to hear it."

-- 'Rascal Flatts,' Vocal Group of the Year, Country Music Awards, 2007

"I can't even believe that this is real... I want to thank country radio. I'll never forget the chance you took on me."

-- Taylor Swift, Horizon Award (for best new artist), Country Music Awards, 2007

"I have yet to see the big reaction you want to see to a hit until it goes on the radio. I'm a big, big fan of radio."

--Richard Palmese, Executive Vice President of Promotion, RCA, 2007

"Radio has proven itself time and time again to be the biggest vehicle to expose new music."

-- Ken Lane, Senior Vice President for Promotion, Island Def Jam Music Group, 2005

"It is clearly the number one way that we're getting our music exposed. Nothing else affects retail sales the way terrestrial radio does."

--Tom Biery, Senior Vice President for Promotion, Warner Bros. Records, 2005

"That's the most important thing for a label, getting your records played."

-- Eddie Daye, recording artist, 2003

"Radio helped me a lot. That's the audience. I can't see them, but I know they're there. I can't reach out and touch them with my hand, but I know they're there."

-- B.B. King, recording artist, 2002

"If a song's not on the radio, it'll never sell."

-- Mark Wright, Senior Vice President, MCA Records, 2001

"Air play is king. They play the record, it sells. If they don't, it's dead in the water."

-- Jim Mazza, President, Dreamcatcher Entertainment, 1999

"I am so grateful to radio. Their support has truly changed my life, and I hope they know how appreciative I am for that."

-- Jo Dee Messina, recording artist, 1999