

Dear Congressman John Conyers,

My name is Frederick Livingston and I'm in my last year of Law School at Wayne State University. I have decided that once I finish Law School I would like to pursue a career in Entertainment and specifically Music Law. I have followed the developments concerning H.R.848 - Performance Rights Act and the Local Radio Freedom Act. I am considering participating in an independent study and writing an article on the progress of the legislation, opposing views, and including a resolution of my own. I would like to ask you for a few moments of your time just to tell me if my solution is in any way plausible to resolve the conflict. The goal in my resolution is to produce an increase in revenue to the record Industry without the broadcast industry paying any more fees than they currently do. My goal is anchored by the relationship the two industries have enjoyed for over 80 years, they are truly co-dependent on one another. A law favoring one over the other, hurts the industry as a whole, if radio stations have to pay a performance tax whether it be a \$1000 fee, \$5000 fee, or an percentage of revenue, it will be more money than they are paying now. The terrestrial radio stations already have to pay ASCAP and BMI licenses which some radio stations estimate to be 6% of their gross revenue and provide massive free promotion for record companies and performing artist which has been estimated to be worth 2.4 billion. These new fees could adversely affect the day to day operations of many radio stations, in addition to diminishing the availability of new artists, that have not broken into the mainstream. Conversely, the artists deserve to be compensated for their works, it is unfair that American artists that my hold the number one record in a foreign country which may produce considerably revenue for that artist cannot receive those funds because American stations do not pay foreign performance royalties. One analyst suggested that the money lost to American performers may 70 million dollars per year. It is absolutely necessary that artists are allowed to collect the money that is due to them from their foreign airplay. My solution would likely encounter various hurdles through the legislative process and would depend on the ability of the record companies and the radio stations settling on a mutually beneficial solution.

I propose that;

- 1.) All figures used in royalty calculations be done by an independent accounting firm that will conduct an analysis to determine the most accurate estimate for all figures used in the royalty calculations.
- 2.) Determine the amount of money that would be paid to American performers by foreign organizations that are withholding payments due to the American policy of nonpayment. One analyst estimated that American performers may be due 70 million per year.
- 3.) Establish a performance tax rate that would be equal to 50% of the amount that American performers would be due from foreign radio companies. So in this hypothetical the rate charged to the entire broadcast radio industry would be 35 million dollars per year.
- 4.) Next, the radio industry and the record companies would have to agree that all revenue collected from foreign companies be diverted into an independent account, at the end of each accounting period half of the revenue would be remitted to the performing artist and the other half to the radio companies.
- 5.) The radio companies would then take their share of the money that should be an amount that is approximately the same as the royalty rate they are charged. Then the radio companies could pay their performance royalties with their share of the fund.

The result of this proposition would be that radio companies would not have to pay more money than they already do, which will allow their industry to continue working efficiently and not cause any substantial hardship. Also, the artist would receive more money than they are receiving currently, however there are also many drawbacks and flaws in my proposal.

1.) Some experts have suggested that a fair performance tax would amount to about 2 billion dollars per year that would be paid to artists. My solution would result in a royalty payment that would be less than 5% of that estimate which would infuriate the performance tax advocates. However, a performance tax of 2 billion dollars would be a windfall for the international conglomerates which we know as record companies. While at the same time causing a severe hardship on the radio companies that would lead to layoffs and bankrupt stations. Destroying one American industry for the advantage of international companies is against this country's best interest.

2.) The record companies may not agree to settle for far less than they feel they are entitled. Also, it would be difficult, if not impossible for legislation to be passed because it would be viewed as an unconstitutional taking of private property and redistribution. However, if legislators simply did nothing and did not pass any legislation then they would be forced to sit down at the table with the radio industry if they wish to obtain more revenue than they are currently receiving.

3.) There may be issues of what party should be liable for the cost of accounting and paying the royalties from the International Performance Royalty Fund. Also, international performers that have hit songs in America, that generate substantial revenue may oppose receiving what would be perceived as a discounted royalty rate. However, the performance tax advocates would still be benefitting greatly in my solution. They will be able to receive a royalty payment they never have before, which would increase over time and change as new technology-driven business models are embraced.

This solution would not generate the revenue that was anticipated but the record companies would receive more than they have been receiving which is \$0, and the radio companies would be spared substantial hardship.

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