



September 28, 2022

The Honorable Dick Durbin
Chairman
Senate Committee on the Judiciary
United States Senate
711 Hart Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Senate Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, DC 20510

The Honorable Jerrold Nadler
Chairman
House Committee on the Judiciary
U.S. House of Representatives
2132 Rayburn House Office Building
Washington, DC 20515

The Honorable Jim Jordan
Ranking Member
House Committee on the Judiciary
U.S. House of Representatives
2056 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Durbin, Ranking Member Grassley, Chairman Nadler, and Ranking Member Jordan:

We write to express the support of the United States Patent and Trademark Office (USPTO) and the United States Copyright Office for amending the Copyright Act to require radio stations to provide fair compensation to copyright owners and performers when their sound recordings are broadcast “over the air.” Our offices have long endorsed such a change, which would benefit U.S. creative industries both domestically and internationally.¹

Adding a public performance right for the broadcasting of sound recordings would remedy an anomaly under U.S. copyright law that harms American performers and record companies. These creators do not benefit from the protection afforded to such broadcasts in most other countries because of the lack of a reciprocal right in U.S. copyright law. The United States stands alone

¹ For the details of previous support, see our offices’ January 19, 2021, letter to The Honorable Lindsey Graham, Chairman, and The Honorable Dianne Feinstein, Ranking Member, Committee on the Judiciary, United States Senate; and The Honorable Jerrold Nadler, Chairman, and The Honorable Jim Jordan, Ranking Member, Committee on the Judiciary, United States House of Representatives, available at www.copyright.gov/laws/hearings/performance-rights-letter.pdf.

among industrialized nations in not recognizing such a right. As a result, SoundExchange estimates that American performers and record companies lose approximately \$200 million per year in foreign royalties.²

At the domestic level, a public performance right for over-the-air broadcasts of sound recordings would rectify the inequities caused by the longstanding omission of this right from copyright law. Most notably, performers and record companies currently receive no royalties when their sound recordings are broadcast over the air, despite the revenue those recordings can generate for broadcasters. Amending section 106 of the Copyright Act would ensure that these creators receive fair compensation for the use of their works, just as the law requires for other types of copyrighted works. This would further the goal of U.S. copyright law, as set forth under the Constitution, to incentivize the creation and dissemination of new works for the benefit of the public.³ In addition, it would bring the treatment of broadcast radio stations into alignment with satellite, cable, and internet streaming services, all of which pay performance royalties when they play sound recordings.

In sum, our offices share the view of multiple prior administrations that the Copyright Act should be amended to provide a public performance right for over-the-air broadcasts of sound recordings.

The USPTO has been advised by the Office of Management and Budget that the Administration has no objection to the submission of this letter. If you have any questions, please feel free to contact us.

Sincerely,



Kathi Vidal
Under Secretary of Commerce for Intellectual
Property and Director of the United States
Patent and Trademark Office



Shira Perlmutter
Register of Copyrights and Director of the
United States Copyright Office

² See SoundExchange, “AM/FM Radio Royalty Loophole,” www.soundexchange.com/advocacy/closing-the-amfm-radio-royalty-loophole/ (“[B]ecause U.S. radio broadcasters refuse to pay artists when they use their recordings on the air, American artists and record labels are denied the estimated \$200 million in performance royalties annually that would be paid to them in nearly every other nation.”). SoundExchange is the organization designated to collect and distribute royalties pursuant to the statutory license under 17 U.S.C. § 114 for digital transmissions of sound recordings.

³ See U.S. Const. art. I, § 8, cl. 8 (authorizing Congress “[t]o promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries”).