



Virginia Association of Broadcasters Legal Review



Brooks, Pierce, McLendon, Humphrey & Leonard, LLP
Counsel to VAB • (919) 839-0300

250 West Main Street, Suite 100
Charlottesville, VA 22902 • (434) 977-3716

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July 27, 2015
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TV STATION COPYRIGHT ROYALTY CLAIMS DUE JULY 31, 2015

Don't leave money sitting on the table. When a television station's copyrighted programming is retransmitted by cable or satellite as a "distant" signal, the station may be entitled to receive payment of copyright royalties. TV station copyright royalty claims for 2014 must be filed no later than 5:00 p.m. on July 31, 2015. Meeting the deadline is serious business: A copyright owner lost \$10 million in copyright fees when a federal court upheld the denial by the Copyright Office of a claim for copyright royalties which was filed late.

The United States Copyright Royalty Board collects copyright royalties from cable systems and satellite carriers and then distributes them to the copyright holders. A television station is considered the copyright owner of its locally produced programming, such as news and public affairs coverage. Copyright law generally defines "distant" carriage as follows:

Cable Systems: With respect to cable systems, a station's programming is considered "distant" if it is carried on a system that is (1) outside of the station's DMA, (2) at least 35 miles from the station's community of license, (3) outside the station's predicted Grade B (now digital noise limited service) contour, **and** (4) in a community where the station is not "significantly viewed."

Satellite Carriers: With respect to satellite carriers, a station is considered "distant" if it is provided by the satellite carrier to subscribers located outside of the station's DMA.

To claim copyright royalties, a station's locally produced programming must satisfy at least one of the above definitions. In order for television stations to receive their 2014 copyright royalties for distant carriage, stations must [file a claim](#) with the Copyright Royalty Board of the Library of Congress. If a station can claim both [cable](#) and [satellite](#) royalties, the station must file a [separate](#) claim for each type of distant carriage.

Stations may wish to confer with their communications counsel for information about how to timely complete and file their claims.

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FREE RADIO ALLIANCE’S REBUTTAL TO RADIO PERFORMANCE TAX

Attached is a letter all radio broadcasters will wish to review in connection with the continuing efforts by record companies and artists to persuade Congress to enact a performance tax.

The letter is from the Free Radio Alliance (a radio station organization that opposes the performance tax), and it skillfully rebuts the arguments being made by musicFirst—the record company and artist lobbying group that favors and is actively advocating for a performance tax. The letter is self-explanatory and contains excellent arguments you may wish to use when you talk to your members of Congress about the performance tax issue.

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If you have any questions concerning the information discussed in this memorandum, please contact your communications counsel or any of the undersigned.

Stephen Hartzell, Editor

**BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.**

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Dear Free Radio Alliance Member:

You may have received a letter from an organization called musicFIRST downplaying the impact of a performance tax on small radio stations. This letter is nothing more than record label propaganda, and aims to mislead you into supporting legislation that will devastate the free-and-local broadcast business model for all stations. Don't fall victim to its hollow arguments.

In an effort to divide the broadcast industry and make the so-called Fair Play Fair Pay Act politically palatable, the music labels are playing sleazy bait-and-switch politics. The labels calculate that capping the fees on radio stations with less than one million dollars in annual revenue is politically smart. For now. Just as their current legislation does not include establishments that play music like retail stores, restaurants and bars. For now. musicFIRST's simplistic letter doesn't tell the whole story by a long stretch, and we think a little context might be helpful.

First, musicFIRST implies a perpetual cap on payments for radio stations under the million dollar mark. In addition to being a disincentive to growth, that assurance comes with a cautionary tale. When a performance tax was imposed on the satellite and streaming industries twenty years ago, the record labels – and Congress – made clear that the new fee would NOT apply to terrestrial radio broadcasters. But, once the battle to establish a limited performance tax in US copyright law was won, the record labels wasted little time in seeking to expand the fee to broadcasters and, for over a decade now, broadcasters have been fighting the labels' efforts. There is no reason to believe the same won't happen again. For the labels, the first step is to impose performance fees on larger broadcasters and get a foot in the door with small broadcasters. The next step is to increase the fee on all broadcasters and expand it to cover other establishments that play recorded music.

Next, musicFIRST fails to mention the significant new recordkeeping burden that a performance tax would impose on radio stations. If music streaming royalties are any guide, the vast majority of stations that stream are required to provide a song-by-song accounting of artists played and the size of the audience to which they are played – a much more intrusive and expensive reporting requirement than broadcasters' current copyright payment system. Revenues of less than one million would not necessarily exempt most broadcasters from these massive new reporting requirements.

Finally, the Fair Play Fair Pay Act gives the Copyright Royalty Board complete decision-making power to determine a fair royalty rate for radio stations. This is the same rate-setting board that set streaming rates at such a high rates that Congress needed to step in to provide relief. Applying this same system to over-the-air broadcasters only exacerbates the problem.

The advent of digital music was a blow to the business models of the big record labels. Now, they are pushing back with a performance tax on broadcasting and pressure on music streamers to eliminate ad-supported, free-to-consumer tiers. In a world moving rapidly to pay models, radio stands out as the one industry whose business model is to give listeners the best in music, all for free. We think that's a point worth highlighting to members of Congress. New performance fees mean less money to provide listeners the free music, news, sports, weather and local information they expect and deserve.

We ask you to dismiss the empty promises of musicFIRST. Urge your legislators to oppose a performance tax and co-sponsor the Local Radio Freedom Act (LRFA). It's easy to thank your members of Congress who are opposing a performance tax or ask them to support local radio by visiting the Free Radio Alliance website at <http://www.freeradioalliance.org/>

Sincerely,
Peggy Binzel
Spokesperson, Free Radio Alliance