



Virginia Association of Broadcasters Legal Review



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SPECIAL REPORT

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UPDATE ON PERFORMANCE TAX—TERMS OF A CONCEPT BEING DISCUSSED BY NAB AND THE MUSIC INDUSTRY

Late last week, the National Association of Broadcasters released a summary of a concept being discussed with MusicFirst, the advocacy group that represents recording artists and record companies, for settlement of the performance tax issue. NAB has emphasized that it *has not endorsed this or any other proposal*, nor has it entered into any agreement with any party on this issue. Rather, discussion has been undertaken in response to specific requests of influential Congressional leaders that NAB’s leadership, at least, discuss the possibility of settlement of this issue with MusicFirst.

The concept being discussed calls for a tiered performance royalty rate that would be set by legislation for commercial and noncommercial “music” stations with a qualified exception or carve out for news, talk, and sports stations that only play music on an “incidental” basis.

Bills pending in the House and Senate, and which are sponsored by the Democratic Chairmen of the House and Senate Judiciary Committees, would require stations to pay a performance royalty fee. Broadcasters everywhere, including Virginia, have vigorously—and so far successfully—fought the legislation in the House and Senate.

Nonetheless, certain Congressional leaders have signaled their intent to move forward with performance tax legislation in one form (with input from broadcasters) or another (with no input from broadcasters). Thus, for that reason, NAB has agreed to meet with the music industry to discuss the issue.

Although the precise terms of the proposal have not been established, the framework of the concept released last week by NAB includes the following terms:

- * *Tiered Royalty Rate For Commercial Radio Broadcasters.* The proposal sets a tiered royalty rate for commercial “music” radio stations for music played over the air based on “net” revenues, i.e., gross revenues less agency commissions:
 - A station with net revenues of less than \$50,000 per year would pay the lesser of \$100 or one percent (1%) of net revenue each year.
 - A station with net revenues from \$50,000 to \$100,000 per year would pay a royalty fee of \$500 per year.
 - A station with net revenues from \$100,000 to \$500,000 per year would pay the lesser of \$2,500 or one percent (1%) of net revenue each year.
 - A station with net revenues from \$500,000 to \$1,250,000 per year would pay \$5,000 each year.
 - A station with net revenues of more than \$1,250,000 per year would pay one percent (1%) of net revenue each year.

- * *Tiered Royalty Rate For Noncommercial Radio Broadcasters.* The proposal sets the following tiered royalty rate for noncommercial “music” radio stations for music played over the air:
 - A noncommercial station with net revenues of less than \$50,000 per year would pay the lesser of \$100 or one percent (1%) of net revenue each year. (This is the same as the structure for commercial stations.)
 - A noncommercial station with net revenues from \$50,000 to \$100,000 per year would pay a royalty fee of \$500 per year. (This is the same as the structure for commercial stations.)
 - A noncommercial station with net revenues of more than \$100,000 each year would pay a royalty fee of \$1,000 each year.

The rates described above could only be changed by *legislation*, i.e., an act of Congress, or by mutual agreement between NAB and MusicFirst.

Other terms of the settlement concept that are being discussed include the following:

- * Royalties would not be paid by news, talk, and sports stations for “incidental” music played or for music contained in the broadcast of religious “services,” but religious music played otherwise would be subject to the performance royalty.
- * Current web streaming performance royalty rates would be reduced by 10 percent and those rates would be set, not as now by the Copyright Royalty Board, but rather by “arbitration.”
- * AFTRA issues related to ads that “air” on webcasts would be resolved. (An “extra” fee is currently charged for web streaming of AFTRA-produced ads.)
- * And, as part of the overall “package,” a new law would be enacted to require all mobile phones shipped in interstate commerce to contain a “chip” to enable reception of local FM (but not AM) stations.

The terms outlined above clearly leave a number of details to be addressed. And, as noted earlier, neither NAB nor MusicFirst has agreed to these provisions. If an agreement between NAB and MusicFirst should be reached, the agreement would be incorporated into legislation and presumably supported on a bi-partisan basis by the Congressional leadership.

VAB will continue to monitor this important issue closely, coordinate with NAB, and keep you advised of developments.

The VAB Board, as does the NAB, solicits your views and your good advice on this very important issue.

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

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