

**Testimony of  
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**Before the  
House Committee of the Judiciary  
SUBCOMMITTEE ON COURTS, THE INTERNET,  
AND INTELLECTUAL PROPERTY  
“Hearing on H.R. 4789, the ‘Performance Rights Act’”**

**June 11, 2008**

Good afternoon, Chairman Berman, Ranking Member Coble, Chairman Conyers, Ranking Member Smith and Members of the Subcommittee. My name is Tom Lee. I am the International President of the American Federation of Musicians. On behalf of over 90,000 AFM members, in over 230 affiliated Locals across the country, I thank you for your attention and your leadership on the issue of performance rights.

I am also honored to speak to you today on behalf of the AFM’s fellow performer organizations, the American Federation of Television and Radio Artists, the Music Managers Forum, the National Academy of Recording Arts and Sciences, the Recording Artists’ Coalition, the Rhythm & Blues Foundation, the Society of Singers and the Vocal Group Hall of Fame. Together we represent tens of thousands of performers.

Dozens of our members have traveled to Washington to tell their stories to you and your colleagues today. I’d like to recognize and thank the performers in the hearing room. Many others are busy visiting their Members of Congress even as we speak.

I am privileged to appear with Nancy Sinatra. She is being modest about her own career, and speaking eloquently about her father. But she is a great performer in her own right. I would bet *any* money that *every* person in this room has been guilty of singing her hits in the shower – trying to imitate her sound in recordings like “These Boots Are Made For Walking,” or “Somethin’ Stupid,” or “You Only Live Twice.”

Of course, it is a great pleasure to honor Nancy’s father, the incomparable Frank Sinatra. He loved musicians, and I know they loved him. He was a member of our union for over fifty years. Many of our members were his biggest fans. Many had the good fortune to be his colleagues. He played with all the great musicians in the legendary big bands like those under Harry James, Tommy Dorsey and Benny Goodman.

No matter how big Frank Sinatra got, he never forgot the musicians who helped him. He called Frank Mane one day in 1939, and asked, as a favor, to sing with the Frank Mane Band. Mane said, “Sure, why not” – and that’s what led to Sinatra’s first recording. Frank Mane played a mellow sax in New York and New Jersey for decades, while Sinatra went on to Hollywood and high celebrity. Decades later, Sinatra always treated Mane as a VIP. One of Sinatra’s biographers quotes him as saying that he liked to be around bands and have a part in their glamour. Of course, in the end, his was the most glamorous career. But he never forgot the artistic partnership between musicians who play an instrument, and musicians whose instrument is their voice.

There is a tremendous amount of talent in our business, but not really that much glamour. Fame and fortune are very much the exception, not the rule. A successful performer is not necessarily one with a household name. Successful performers are the ones who can quit their “day” jobs. Their music may be classical or grunge, jazz or

country, rock or Tejano, banda or blues or folk. They may be established mid-tier artists or just starting out. They make artistically successful recordings aimed at loyal fans. Those fans follow their careers avidly even though they are not front-page news.

Or they may be session performers who contribute to the professionalism and creativity of recordings. I'm thinking, for example, of the AFM's International Vice President, Harold Bradley. You may never have heard his name before today, but you absolutely have heard his guitar. He's a critical part of great recordings like Patsy Cline's "Crazy," Brenda Lee's "I'm Sorry," Roy Orbison's "Only the Lonely," Roger Miller's "King of the Road" and Tammy Wynette's "Stand By Your Man," among countless others.

But all these varied performers have a few things in common.

*First* – They have tremendous talent. They take a song – whether their own or someone else's – and transform it from notes on paper into a new, unique, living and breathing work of art.

*Second* – They are incredibly hardworking. It would be great if a little talent – or a lot – were enough, but it isn't. Performers labor long and hard to develop their musical skills and their business opportunities.

*Third* – They may do it for love, but they also have to eat. They must provide for their families just like other working people. And although some of the younger performers may not believe it yet, some day they will want to retire – or their health may force them to.

*Fourth* – They don't get a weekly or a monthly paycheck. They are entrepreneurs – businesspeople – who patch together many different income streams to earn their

living. Royalties, concert fees, t-shirt sales, and the panoply of union payments like session fees, pension and health – any and every kind of payment is important to them.

Like Frank Sinatra, the AFM started fighting for a performance right in sound recordings decades ago. We are all still fighting today. It is not because we are greedy. It is not because we don't care about radio. It is a question of justice, and business, and art.

The truth is that the art we make has a business value. Radio is not the only industry that uses recorded music to make money. But it is the only one with a free pass to pay performers nothing. That's unfair, any way you cut it.

It's even more unfair, given that radio's competitors pay us. And it hurts the American economy, because it causes us to lose foreign radio payments. The U.S. is the only developed country without a performance right in sound recordings, and the U.S. repertoire played by foreign radio is huge. But none of that money flows to the U.S., because we don't have a reciprocal right. Artists around the world see this as unfair, and a few months ago, more than 6,000 of them expressed support for a performance right in the United States. I am pleased to announce that an additional 1,500 additional artists have stepped forward since then to add their voices to our cause, including such celebrated artists as Paul McCartney, Eric Clapton, PJ Harvey and Ozzie Osbourne.

Today, the sound recording is the second class citizen of copyright law. Every other performable work enjoys a performance right. For example, radio pays songwriters for the use of their underlying songs. That is right and fair, and H.R. 4789 includes language to protect songwriters' interests. Performers are just asking for the same fair treatment.

H.R. 4789 contains special provisions to benefit small and nonprofit radio stations. Their royalty obligations will be small and predictable. But performers are the classic small business. They are always taking risks. Their rewards are generally modest and never predictable. They need help.

Radio may help to spread culture. But make no mistake, performers *create* culture. *Every* business that benefits from their work should contribute to their livelihood. That's fair. That's American. And that's what will keep the art and business of music strong in this country.

Thank you for your attention, and for your help.