

Written Testimony of Nancy Sinatra

June 11, 2008

House Judiciary Committee

Subcommittee on Courts, the Internet, and Intellectual Property

Hearing on H.R. 4789 “The Performance Rights Act”

Chairman Berman, Ranking Member Coble, and Members of the Subcommittee. Thank you for inviting me to appear before you today to speak on the issue of a performance right. I am here on behalf of musicFIRST, a coalition of over 13 music industry groups, with more than 160 founding members and growing weekly. My bio is included in the written materials submitted so I will not be talking about my 24 chart hits or anything else about my 40 –plus year career.

When most people are asked, “How much do you think artists are paid when they’re music is played on the radio?” they usually say a few cents. Mr. Chairman, over the years you’ve come to know that this is not true, that we are paid zero. I want to thank you for the leadership you’ve taken on this issue on behalf of all recording artists – from the bass players, horn players, string players, drummers and vocalists, whose names are rarely known by the public, to those who are fortunate enough to be the headliner on a marquee, on a CD cover or an iTunes download. In my written testimony you will find a long and winding road about why performers in this country don’t receive a performance right, unlike those in virtually every other free market democratic country.

Mr. Chairman, this wasn’t and isn’t about the less than one half of one percent of recording artists who become stars. My father championed the cause of all recording artists, the vast middle class of singers and musicians some of whom are sitting behind me today. It was, for him, not only a matter of principle or decency, but of simple logic that all artists need to earn a living if they are to carry on. The fact that the United States remains the only developed country in the world that does not compensate performers when their music is played on the air, keeping company in this regard with North Korea, Iran and China probably says it all right there.

The truth is few who undertake a career in music achieve mega-star status. Some are like me, a couple of dozen hits, some touring opportunities and, if you get a big enough name, radio will play your songs but only if they believed it would help them sell advertising. Some have a megahit – the one hit wonders – but don’t achieve the level of success people might think. Radio uses that hit every day to go to the bank. Imagine the recording artist who recorded but didn’t write that hit, knowing that radio profits from that recording but he or she does not.

Most recording artists are of the middle class variety – they work hard, make a living and expect to be appropriately paid. Some are forced to tour until they die, if they can still sell tickets. And of course, widows and widowers can’t tour at all. Lacking a pension, many live out their old age hearing their songs on the radio knowing that radio is making money while they are living in a home somewhere unable to make ends meet.

This struggle has been going on for a long time. Thirty years ago, in 1978, a report of the Register of Copyrights stated:

“Sound recordings fully warrant a right of public performance. Such rights are entirely consonant with the basic principles of copyright law generally, and with those of the 1976 Copyright Act specifically. Recognition of these rights would eliminate a major gap

in this recently enacted general revision legislation by bringing sound recordings into parity with other categories of copyrightable subject matter. A performance right would not only have a salutary effect on the symmetry of the law, but also would assure performing artists of at least some share of the return realized from the commercial exploitation of their recorded performances.”

But the struggle began long before that, in the 1930s when recording artists were kicked out of radio stations and replaced with their own recordings. Radio operators reasoned, “Why pay performers to come into the studio and perform live, when we could play their records for free?” Because copyright law was written before sound recordings existed, the courts ruled that radio could get away with this. And when performers went to Congress to get sound recordings included in copyright law, they met and keep meeting the fierce, well-funded and powerful resistance of big radio. Three times this issue came before Congress – in 1975, 1979 and 1981 -- and three times recording artists were denied.

In 1995 recording artists were granted the performance right only for digital radio such as satellite and the Internet. Now we have a situation where one format – AM/FM radio – has a competitive advantage over another – digital radio. This isn’t any more fair to digital radio than it is to artists.

The job of a recording artist is to take a composition and bring it to life – to infuse it with their own love, sadness, anger, hope and longing and have the listener share in the experience. It takes a lot of talent, hard work, and sheer persistence.

Imagine struggling in your job, perhaps for years, to make the best product you can – a product made of your blood, sweat and tears. Now imagine people taking that product to use to build their own hugely successful businesses. Just taking it – no permission, no payment, and no consequence. Imagine those people telling you they’re doing you a favor by taking your product without your consent because some more people might come to know about you and your product. Imagine those people now telling you to shoo and go find compensation from those other people. Oh, and by the way, make some more of that product so we can take that, too.

Why is this scenario so outrageous in the abstract, yet perfectly acceptable in the reality of broadcasting? Why is the broadcasters’ exemption allowed to rob us of our hard-earned income, including the millions from broadcasters overseas who don’t have to pay us because our own country doesn’t? Why is the broadcasters’ exemption allowed to disadvantage every other radio platform that does correctly pay us? In what other business is the chance of some promotion justification for taking another’s property?

Let me be clear: We love radio. All of us want to see it prosper and continue to grow – why shouldn’t we? But it shouldn’t be at our sole expense. Performers value whatever benefit broadcasters MAY provide. But we respectfully request that broadcasters similarly value the benefit we DO provide them. It is OUR music that attracts their listeners. It is OUR music that creates their hugely valuable ad space. It is OUR music that attracts listeners and drives the multi-billion dollar radio industry. Mr. Chairman, Members of the committee, the radio industry earns \$16 billion dollars a year from

advertisers just for playing our music and pays the people who create the recordings absolutely nothing. I don't know of any business in America where people who do the work aren't paid for the products they produce.

Again, we are in no way seeking to harm broadcasters, just to be paid our fair share. That is why I am pleased to see that the introduced legislation not only seeks fair royalties for recording artists, but it protects songwriters and gives an important break to religious, educational, non-commercial and small radio stations; the ones, who, like the middle class artists we are talking about today, are working hard to make ends meet. In fact the musicFIRST coalition sent a letter to all radio stations across the country, reaching out and explaining the fair reasoning that went into this legislation. I would like to submit that letter for the record.

This search for justice is not about me. It is not about my father. But we both add our voices to a growing choir. Certainly, Dad wasn't fighting for this because he needed more money. His fight – carried on by us all – is one of simple fairness. It is about the thousands of performers, some of whom attended the hearing, who scratch out a living with their music. Why have these talented performers spanning generations and genres had the courage to speak out? Because we are in search of fairness, for us and for the thousands of performers and others who work so hard to make the music that you love.

Imagine, if you will, that the ability to record music had not been discovered until today. And imagine that radio stations are all talk all the time. And imagine that the ability to make sound recordings is finally discovered by a company like Microsoft or Apple. Now can you imagine how much the big radio conglomerates would then have to pay for sound recordings? Far, far more than they would have to pay under the proposed legislation. Why? Because the music is valuable, and big radio can't take advantage of Bill Gates or Steve Jobs the way they do recording artists. In a free market with an even playing field the radio stations would gladly pay for the recorded music because they know it's the heart and soul of their businesses. The fact is radio has got an incredibly good deal. They get the airwaves for free without having to pay the taxpayers a dime. And they get to use any music they want, any time they want, without having to seek permission of the copyright owners or the artists. For that, our hard working performers ask for a small royalty commensurate with the rest of the free world.

Our power lies in communicating our situation and feelings. We can sing about injustice and our instruments can express our frustration and yearning. But your power lies in actually making change. I hope you will finally correct this glaring inequity in our law that my father and so many others have fought against. We hope you will support the Performance Rights Act. Thank you.