Performance Tax: Myths vs. Facts

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Big record labels are asking the government to impose a new performance fee, essentially a tax, on local radio stations. This is in addition to the billions of dollars in free promotion provided by the radio industry to labels and artists each year. For more than a century, the relationship between radio and performers has thrived to the benefit of listeners, emerging artists, record labels and stations. Despite the record labels' rhetoric, there is no reason for the government to intercede now. Let's set the record straight.

Myths	Facts
Streaming services also offer promotional value, but they pay a performance fee.	Broadcast radio continues to eclipse every other source for new music discovery. A 2020 Nielsen U.S. Music 360 study found that seven in 10 music listeners use radio to discover new music, exceeding all other audio and video streaming sources combined. More than 85% of Americans listen to radio each week – dwarfing satellite and streaming's reach. And local radio's unique broadcast architecture makes it an unparalleled medium to communities – it's free to everyone. You can listen to radio without an internet connection or cell phone – no data or subscription necessary. The promotional value from local radio is also unrivaled and estimated to be worth billions to the recording industry annually. Many artists and record company executives agree that radio is an essential promotional tool: *"Radio is a massive sales driver. Massive."* – Christian Greene, general manager of Onto Entertainment (management company for The Lumineers) *"Radio's influence on the tastes of the masses is almost unmatched in reach and effect, primarily because of the ease and comfort afforded its listeners. And no matter how much current artists embrace new technology and platforms to spread their music, if you ask any one of them, they will still tell you that their biggest kick came from hearing their song on the radio for the first time."* – Stevie Wonder *"If you're not on country radio, you don't exist."* – Gary Overton, former CEO of Sony Music Nashville *"Radio is still a big discovery vehicle. It's a big win for us when we get into the top 20. That's when we start making money."* – John Esposito, chairman and CEO of Warner Music Nashville *"A huge amount of my audience still listens to radio. That's where they get a lot of my music."* – Keith Urban

Myths	Facts
Local radio doesn't pay a performance fee because of a "special interest loophole" that Congress needs to close.	This claim is false – Congress knows what it's doing. Over two decades ago, Congress established a new, narrowly crafted sound recording performance right to govern music played over digital platforms, such as satellite and internet. This new right was established because these services are highly substitutable for music sales. Local radio, on the other hand, is purely promotional. Local radio remains the most powerful – and free – way for record labels to promote their music and generate sales, especially for new and up-and-coming artists – more than any other music service. Congress recognizes the balanced and mutually beneficial economic and public policy benefits of the current system and has repeatedly rejected attempts by the record labels to impose such a fee on local radio. The facts haven't changed, and unable to produce any policy justification for imposing a massive new fee on local radio, the big record labels simply resort to misleading rhetoric such as "loophole."
Imposing a performance royalty on local radio creates a "free market" for sound recording rights.	Exactly the opposite is true. Performance tax bills like the American Music Fairness Act, being pushed by the recording industry, would be a massive expansion of government into the music licensing space. The bill would establish a statutory license for all radio stations, with fees set by the federal government. The big record labels are advocating for government intervention, not a free market. Without the overhang of a statutory license and government-imposed fees, a number of broadcasters and record labels have negotiated dozens of private agreements (including in some cases a fee for broadcast airplay in exchange for a more reasonable digital rate). That is how the free market is supposed to work. Were Congress to do the record labels' bidding here, it would eliminate any chance of such market-based deals going forward. Additionally, the market for sound recording rights has been labeled by the Copyright Royalty Board (CRB) as an oligopoly, dominated by the three major record labels, because licensees such as radio have no choice but to play music from those three companies.

Myths	Facts
With the advent of new technologies and new ways to listen to music, new legislation needs to be considered.	In 2018, after a thorough review of the music marketplace, new technologies and listening habits, Congress passed the most sweeping music licensing bill in decades – the Music Modernization Act (MMA). During consideration of the MMA, a bipartisan majority once again rightly agreed that no new licensing fees should be imposed on local radio stations. Changing the laws that have molded the radio industry for decades, principally to benefit the three major record labels – two of which are foreign-owned – that have a vast majority of the market share of recorded music in the U.S. would not only harm the status quo, it would inhibit innovation that benefits listeners as well.
There should be "platform parity" so that all forms of audio entertainment play by the same rules and pay for the music that they use.	The notion of creating any type of "platform parity" falls apart upon even cursory comparison of local radio and other music platforms. Unlike other platforms, in addition to being local, free to the public and licensed to serve the public interest, local broadcast radio is highly regulated by the federal government. Local radio stations abide by dozens of costly regulations that don't apply to other platforms: • Detailed reporting requirements (e.g., political ads) • Decency standards • Payola laws (which prohibit undisclosed acceptance of compensation for music play and promotion) • Ownership restrictions • Public service obligations • Emergency alerting requirements If "platform parity" is the goal, then all music platforms, including satellite and internet streaming services, should be required to abide by the same countless – and costly – regulatory obligations as local radio stations. But even then, there wouldn't be true parity. Local radio serves communities in ways streaming and satellite services never will. Radio stations are dedicated to local service. That includes providing local news, weather, traffic and emergency information; sponsorship of local events and festivals; support for food, clothing and blood drives and relationships with local businesses and promotion of charities that help neighbors in need. Local is radio's calling card. Other platforms such as streaming services are no substitute.

Myths	Facts
Local radio stations earn advertising revenue without paying for the intellectual property of artists.	While radio stations earn advertising dollars, which pay for local news, employees, local emergency operations and supporting local events, based upon the number of listeners radio brings in, performers and record labels reap billions of dollars' worth of free promotion each year from radio airplay. A song must be heard to generate revenue for the artist and label. Radio advertises music (free of charge) to hundreds of millions of potential music customers each week – promotional value that translates to as much as $2.4 billion annually in revenue for record labels and artists. There are very few instances of songs achieving considerable commercial success without receiving radio airplay. Unlike other audio services that are far less promotional and that do pay an actual fee to the record labels, local radio stations are prohibited by law from charging the music industry for promoting their artists and their songs (without a disclosure of that payment when the song is played). The law prohibits such payments precisely because there is such incentive for the record labels to secure the unparalleled promotion of radio airplay. No other business enjoys this free promotional benefit by government decree. If record labels want cash compensation for radio airplay, then perhaps radio stations should be able to charge record labels for their airtime as well.
The "Local Radio Freedom Act" is about protecting corporate radio.	As of the second half of 2021, the six largest radio broadcasters own just 12% of all stations in the United States and have a combined market cap of less than $5 billion. In contrast, three record labels (Sony Music, Universal Music Group and Warner Music Group) – each a multinational conglomerate and two foreign-owned – account for 70% of all recorded music revenue and have a combined market cap of more than $155 billion. The recording industry calling radio "corporate" is like Amazon claiming a local hardware store has too much market power. Even prior to the COVID-19 pandemic, the devastating financial impact of which most radio stations will not recover from for some time, advertising pressures from large tech conglomerates like Google and Facebook took a significant toll on the radio industry. A performance tax would impose a devastating new financial burden on ALL local stations, resulting in the reduction or elimination of: • More than 1 million jobs associated with the radio industry • Billions of dollars in public service generated annually for local charities, disaster relief efforts and social issues • Radio's ability to serve as a lifeline during times of crisis and natural disaster • The variety and availability of music on the radio

Myths	Facts
A performance tax wouldn't hurt radio or local communities.	False on all counts. An additional performance fee would be devastating to local radio stations and the critical services they provide to communities. If the station is even able to absorb the costs at all (and many will not), it will be forced to commensurately reduce expenses somewhere else. As a heavily regulated industry, radio stations have significant – and fixed – compliance costs. The remaining cost centers – journalism and news production, local emergency preparedness and response, payroll and, most ironically, music promotion – would suffer. News reporting and coverage is extremely costly. Some broadcasters spend up to a quarter of their budget on news costs, with the average radio station airing 90 minutes of local news each day. In many communities, broadcasters serve as the last bastion of local and investigative journalism. If local radio is forced to pay a performance tax, local newsrooms may have to downsize significantly, robbing the community of a critical service and voice. Additionally, radio saves lives. Local radio is our country's most resilient communications network, which is why it serves as the backbone of the Federal Emergency Management Agency's (FEMA) nationwide emergency communications network. Whether it's it a hurricane, wildfire, flood, earthquake or civil unrest, local radio is "critical infrastructure" before, during and after an emergency. When cell towers and the internet are down, or the power is out, Americans turn to local radio. But this resiliency requires resources. If those resources are depleted due to a performance fee, radio's role as the last standing source of vital, local and lifesaving information is jeopardized and lives are put at risk.
A broadcast performance fee would help up-and-coming artists.	Most perversely, a performance fee would hurt the recording industry, especially new and up-and-coming artists, who rely disproportionately on radio airplay for widespread exposure to listeners. Stations pressured to significantly cut costs due to a new performance fee will understandably direct their resources toward more established artists, expend less on artists' promotional activities generally or even switch to a non-music format like sports or talk.

Myths	Facts
Broadcasters pay a performance fee to songwriters; performers deserve the same.	The fee radio pays songwriters was established by a law written a decade before radios became commercially available. In fact, the same law and resulting fees apply to any business where music is played. Would those who claim the need to create parity between songwriters and performers suggest that legislation imposing a new performance fee on radio, such as the American Music Fairness Act, be broadened to apply to every restaurant, retail store, hotel and business on Main Street? Moreover, the performance value of radio for performers doesn't translate as well for songwriters. Generally speaking, unless a songwriter is also well known as a performer, most listeners never know who the songwriter is. Therefore, payment to them for playing their songs makes sense, unlike performers who receive the great benefit of radio promotion and parlay their stardom into additional revenue streams.
Performance fees would ensure that artists are justly paid.	To the extent artists are not being adequately paid for their work, the fault lies with the record labels, not local radio broadcasters. The history of the recording industry is littered with stories of mistreatment of artists by labels through contract violations or questionable revenue calculations. In recent years, class action lawsuits have questioned how labels should treat digital downloads and streaming revenue and how much of that revenue – the primary revenue sources for the recording industry – should go to artists. As streaming services have grown in popularity, labels also take equity stakes and payment advances that they do not share with recording artists. If artists are not being fairly paid for the use of their work on increasingly popular digital services, perhaps the solution is to look at their label treatment rather than harming local radio stations and the critical service they provide through the unjustified imposition of a performance fee.

Myths	Facts
Other countries provide far more copyright protection for musicians than the United States.	Multinational, mostly foreign-owned record labels have long been collecting foreign royalties through subsidiaries around the world. Contrary to their claims, when American music is played abroad, their foreign-based subsidiaries do collect royalties. Whether they share those foreign royalties with their artists is a separate question (and one worth asking). The U.S. leads the world in music licensing fees, and American artists are getting paid. More sound recording performance royalty dollars are collected in the U.S. on a yearly basis than any other country in the world. Many of the most lucrative foreign music markets have already begun the process of making royalties available to American artists. American radio is unlike the rest of the world, and thankfully so. The U.S. has over 15,000 radio stations, whereas European countries have mere hundredths of this number. Additionally, in the other countries that proponents of a performance tax point to, radio is government-run at the national level. Contrast that with American stations, which are privately owned and entirely local, with stations embedded in the communities they serve, providing local news, entertainment and lifesaving information.

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To get the real facts on the performance tax, visit **NoPerformanceTax.org**.

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