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# Guest Post: William Velez's Open Letter to the Music Industry on Radio Performance Rights

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With respect to the proposed sound recording performance right, one can sense that things are heating up once again and, frankly, "attention must be paid" (to quote Arthur Miller) to a bit of intellectual honesty.

In the interest of disclosure, I am aligned with the Radio Music License Committee that represents the interests of terrestrial radio with respect to ASCAP and BMI music licensing matters. However, I have also had the privilege of championing songwriter causes for the better part of my career (at ASCAP, BMI and SESAC) and do not take a back seat to music industry advocates in terms of my admiration for the songwriter. We tend to gloss over the fact that a relatively small number of songwriters are able to make a full time living from their craft. The rest continue to persevere at their second jobs, hoping for the day that one of their songs gets recorded and, yes, experiences airplay so that he or she can look forward to receiving an ASCAP, BMI or SESAC royalty check, courtesy of those terrestrial radio bandits.

Turning to the recording artist, or song interpreter, it is a shame that the controlled composition clause in U.S. recording contracts and nefarious record label accounting practices have contributed to the current scenario where disenfranchised artists have apparently bought into the feeding frenzy created by the recording industry aimed at literally biting the radio hand that feeds. These record label practices are reminiscent of the Hollywood of the '80's, when high grossing movies failed to book profits thanks to studio shenanigans that entailed unfair charge-backs and questionable accounting.

Yet, these record labels that have had to weather lawsuits brought by their own artists have the hut spur to tell the radio industry that, by virtue of its existing performance right exemption, radio is not living up to its moral obligation to pay recording artists. This ignores the fact that, for many decades now, the radio industry has contributed to the livelihoods of the true progenitors of the recorded

musical creation - the songwriters. As my former ASCAP boss, Hal David , was fond of saying , "it all starts with the song."

In the course of the recording industry's attempt to make their case by orchestrating a parade of sympathetic artist "victims" before Congress, we seem to pay short shrift to the reality that the labels themselves stand to be the biggest winner in the performance right battle. They are lobbying for access to a lucrative, new revenue stream. If history holds true, their earmarked portion of 50% will translate to considerably more once the funds have to negotiate the gauntlet of the labels' notorious accounting filter. If recording artists are truly deprived of their fair share of royalty dollars, perhaps those should be achieved from retention of better representation that can negotiate label contracts that secure an equitable share of existing dollars. (Note: Canada eliminated the controlled comp clause years ago.)

On more than one occasion, representatives in Congress have eluded to "the mutually beneficial economic relationship between the recording and traditional broadcast industries" that justifies terrestrial radio's current exemption from the sound recording performance right burden. Yet, the recording industry takes the position that "free radio" does not offer promotional value worthy of such a carve-out. I suppose this explains why the record labels have been exposed for payola practices aimed at securing "adds" to terrestrial radio playlists. This same recording industry now takes the pious position that it "will support the new broadcast services like satellite and Internet radio that actually pay creators for their work (emphasis added)."

When the sound recording performance right legislation was introduced on the floor of the House several years ago, some of the reasons given for imposing this burden upon free radio were:

- the international reciprocity argument;
- the "all progressive countries already pay this artist royalty" argument; and
- the broadcast platform parity argument.

Take your pick of the music industry's arguments in support of the performance right. While space constraints do not allow for a detailed rebuttal, the bottom line is that they all constitute red herrings that mask the true intent of the proposed legislation -- the creation of an offset to compensate for the recording industry's failure to develop a successful digital media strategy to combat revenue losses wrought by file sharing and decreasing brick and mortar sales.

Surely, the terrestrial radio industry can empathize with the recording industry in terms of enduring tough economic times. The difference is that the radio industry

has owned its pain and has not sought to create a bailout for itself on the back of another industry.

Despite the plethora of new gadgets and social networks, there is no disputing that terrestrial radio's 270 million listeners per week remain an exceptional value for the music industry. This is evidenced by the parade of artists who, while receiving industry kudos at various award shows, go out of their way to thank radio for its contribution to their success. In fact, the NAB (National Association of Broadcasters) touts a study that benchmarks the promotional value of terrestrial radio at between \$1 .5 and \$2.4 billion annually.

While some, for whatever motive, appear to be bent upon devaluing terrestrial radio's promotional value, I appeal to my music industry colleagues (and particularly recording artists and indie labels) to reconsider biting the radio hand that feeds.

William Velez is the Executive Director of the Radio Music License Committee (RMLC), a non-profit that represents the terrestrial radio industry in music licensing matters with performance right agencies such as ASCAP and BMI. The RMLC Board of Directors consists of some 25 members, who serve voluntarily and with no compensation.

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