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## Client Alert

### Congress Considers New Bill Seeking Performance Royalties for Performing Artists and Record Labels

by Cydney A. Tune and Marley Degner

**On December 18, members of the House and Senate Judiciary Committees introduced bipartisan, bicameral legislation to require terrestrial or conventional radio stations to compensate performing artists and their record labels when they broadcast their work.**

The Performance Rights Act of 2007 was introduced in the House by Representative Howard Berman (D-Calif.), who is the Chairman of the House Judiciary Subcommittee on Courts, and Darrell Issa (R-Calif.), a member of the Internet and Intellectual Property and House Judiciary Committees. Judiciary Committee Chairman Patrick Leahy (D-Vt.) and Senator Orrin Hatch (R-Utah) introduced the legislation in the Senate. Representative John Conyers (D-Mich.), the Chairman of the House Judiciary Committee, and Senate Judiciary Committee member Dianne Feinstein (D-Calif.) co-sponsored the respective bills.

Under current law, terrestrial radio stations pay performance royalties to songwriters (or the holders of the music composition copyrights) but not to performing artists or to the record labels that own the sound recording copyrights. The sound recording copyright to a song is distinct from the musical composition copyright. Terrestrial radio stations have never been required to pay royalties to the artists and record labels who own sound recording copyrights because the artists and record labels receive a promotional benefit from radio airplay of their songs. However, some performing artists are contending that terrestrial radio stations profit directly from the recordings and thus should be required to pay for them. Under the Digital Performance Royalty in Sound Recordings Act of 1995, those who **digitally** broadcast copyrighted songs, such as Internet radio, cable radio, and satellite radio, must compensate the sound recording copyright owners.

The bill would operate by amending Sections 106 and 114 of the Copyright Act. It provides a flat rate for broadcast stations meeting the definition of "small commercial broadcasters" and non-commercial broadcasters, and also for sound recordings used only incidentally or in a religious service. Small commercial

broadcasters, defined as those whose gross revenues are less than \$1,250,000 in any given year, would pay \$5,000 per year for a blanket license. Noncommercial broadcasters, defined as stations that are public, educational, or religious, would only pay \$1,000 per year. These lump payments would not be due until the Copyright Royalty Board determined the rates for large commercial broadcasters. The rights of songwriters to royalties would be unaffected by the proposed legislation.

The Senate and House Judiciary Committees are expected to consider the bills next year. It is anticipated that the proposed legislation will be hard fought on all sides of the issue.

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