



DELMARVA BROADCASTING COMPANY

March 14, 2011

Ted Schroeder  
Sen. Chris Coons Office  
383 Russell Senate Office Building  
Washington, DC 20510

Dear Ted:

Thank you for taking time to meet with us on March 2 to discuss radio in Delaware and the effort to impose a Performance Tax on American broadcasters. We appreciated the opportunity to speak for all radio stations in the First State who oppose the objectives of MusicFirst to prop up record company profits on the backs of local radio.

Amazingly, just days after our meeting one record company executive, Gary Overton, the CEO of Sony Music Nashville, summed it up this way: *"The record business is built on [just] one revenue stream. That revenue stream is dying a horrible death." Trying to get a performance royalty out of radio is "a survival tactic, to be honest." He admits that "the horse is out of the barn and it's very difficult to go back."* We couldn't have said it any better.

In our discussion you asked about foreign stations paying a performance royalty and why the American radio market was different. The largest difference between us and the rest of the world is that the U.S. is the most significant exporter of music and the largest territory for recorded music sales. Operating without a sound recording performance fee on the over-the-air broadcasting, the U.S. recording industry is larger than that of the U.K., France, Germany, Canada, Australia, Italy, Spain and Mexico *combined*, all of which have performance fee regimes. Free play for free promotion continues to sell more music, concert tickets and merchandise here than anywhere else.

Some of the finer details on the differences between the United States and other markets are:

1. Other countries provide less copyright protection for sound recordings.
  - a. Under U.S. copyright law, a sound recording is generally protected for 95 years. Canada and many other countries in Europe and Asia provide only 50 years of protection. Recordings of artists such as Elvis Presley, Buddy Holly and others either are or soon will be, no longer protected in these countries.
  - b. Many countries that have adopted performance fees for sound recordings provide few or no anti-circumvention measures for copyright protection or copyright

management information. This is protection that the U.S. provides. As a result, many countries that have adopted performance rights for sound recordings have done little or nothing to protect sound recordings against illegal copying and other forms of piracy. *The toll this piracy takes on the record industry no doubt far exceeds whatever is earned in performance royalties.*

2. Most foreign broadcasting systems are or were government subsidized.
  - a. The American radio industry was built by private commercial entrepreneurs who did not receive a subsidy from the government or the listening public. In the U.K., when performance fees were adopted, the BBC was the sole broadcaster on the air and the only entity paying the fee. The same was the case in Germany, France and many other countries. While many stations have now been privatized, government funding of public radio in these countries far exceeds that of the U.S. on a per capita basis. In 2005 the United States invested \$1.70 per person compared to the U.K. at \$83, Japan at \$49 and Germany at \$85.
3. Foreign governments exercise control over content and airplay.
  - a. Our content is marketplace driven, not quota-driven. What gets played is based upon what American listeners want to hear not government mandated playlists. Can you imagine the outcry if Congress compelled radio stations to play a minimum of 35% American music? Yet that is what happens in Canada, France, Poland, Mexico and other countries. This formula guarantees royalty payments stay within the country.
4. The performance royalty in foreign countries is imposed broadly, not just to radio.
  - a. The legislation that has been introduced by RIAA and MusicFirst in America targets only *radio* for a performance fee. In other countries, any venue where music is aired is subject to a performance royalty fee. From restaurants to hotels to taxi cabs and retail establishments, the cost of the hundreds of millions of dollars these businesses pay is passed directly on to the consumer in the form of higher prices. Why hasn't this tax on all music 'users' been proposed in the U.S.? We would argue that the promotional value an artist receives being played in a bar pales in comparison to that received on radio and they should not only be included in the discussion but should pay a substantially higher rate should any tax ever make it into law.

Thank you for taking the time to review our position on this Ted. I updated every radio broadcaster in Delaware on our meeting with you and the Senator. We are hopeful that he will be able to sponsor S. Con. Res. 7, the Local Radio Freedom Act. Please let me know if you need any additional information.

Thank you again,

Michael Reath  
General Manager