

Statement of Marian Leighton-Levy
Rounder Records
Before the Committee on the Judiciary
United States Senate
on
"The Performance Rights Act and Platform Parity"
August 4, 2009

Senator Feinstein, Ranking Member Sessions, Chairman Leahy, and members of the Committee, I am pleased to be here today to speak on behalf of so many talented and hard working people in the music industry, and to voice the support of thousands of us who have waited so long for fair treatment embodied in the Performance Rights Act. My name is Marian Leighton-Levy, and 39 years ago, two university friends and I founded Rounder Records, one of America's largest independent labels.

We at Rounder are extremely proud of the breadth and reach of our releases because so many are part of America's cultural and spiritual fabric: our work with the Lomax Family to release Alan Lomax's seminal field recordings from the 1930's, our work with the Library of Congress, our Jellyroll Morton set highlighting the work of another American icon and our recent support of a PBS Great Performance special "Three Pickers" featuring the stellar work of Doc Watson, Earl Scruggs and Ricky Skaggs. Many of these releases will never sit at the top of the Billboard Charts but they are still important recordings, and some will also receive significant airplay on many radio stations here and in other countries which revere American music and culture.

Perhaps Rounder's approach gives us a unique perspective and view: many of our artists are largely middle class, hard working singers and musicians

trying to make a living doing what they, and their fans, love. That is why the Performance Rights Act has the tremendous support of labor groups across the country. (With your permission, I would ask that letters signed by the American Federation of Teachers; the Communication Workers of America; the Service Employee International Union; the American Federation of State, County and Municipal Employees, the United Steelworkers; and the International Association of Fire Fighters be made a part of the record.) This is not just about superstars and big name acts. While many of you are familiar with one of our most successful artists, Alison Krauss, you may not know the many talented musicians who work with her and help make her distinguished sound. The band, Union Station, is world-renowned and they, too, will benefit from this legislation, sharing in the royalties that they all deserve.

This legislation will provide significant revenue to many of the bluegrass artists, singer-songwriters and folk musicians that we release. Many have seen significant checks from satellite, cable, and Internet radio play and they will benefit from overseas royalties as well as royalties generated by specialty shows in the U.S. and from public and non-commercial radio play too.

You have undoubtedly heard broadcasters' primary rationale for not paying: that they promote our music. While this excuse may have had more significance 80 years ago when they first used it, it is so much less meaningful now. Today, radio is just one way – admittedly an important way – but just one way listeners get their music. There are dozens of new platforms and businesses that reach consumers. They also claim to promote music – but they

do pay. Only broadcast radio gets this free pass. Even using their own numbers, the value proposition offered by the broadcasters doesn't add up. Mr. Newberry has testified that they provide \$1.5 - \$2.4 billion in promotional value to performers. Meanwhile, they generated \$14 billion from the use of our music last year. Does that sound like equal value to you?

Anyway, the truth of the matter is, as an independent label focused on Americana, bluegrass, folk and similar genres, we probably get less airplay here in the U.S. than others who release recordings in more popular genres. But our music fills the airwaves overseas. American music accounts for 30-50% of all music broadcast on foreign stations, and the appetite for our artists there is significant. Yet, given our current law, because our stations don't pay a performance right, those foreign stations do not have to pay us either. There are tens of millions of dollars being left on the table – millions of dollars for compensation and for further investment that will flow to artists, musicians, and recording owners when the Performance Rights Act finally becomes law. Denying American creators money they deserve from overseas so that broadcasters can receive a subsidy in the form of our property is fundamentally unfair.

A striking example of this inequity can be found in the case of the recent Robert Plant/Alison Krauss record we released here in the U.S. Just last year it won a Grammy for Album of the Year while receiving almost NO commercial radio play. Since Robert Plant is a UK native, he will be eligible to receive

payment for his work on the recording when it is played around the world, but Alison will not be paid because she is a U.S. native.

As I have become more involved in the fight for a performance right, I am continuously amazed at the broadcasters' misinformation campaign on the Performance Rights Act. They state that this legislation is the evil brainchild of the record companies, when in fact the fight for a performance right was started by performers with the National Association of Performing Artists (NAPA) in 1936. They say that we are just looking for a bailout from our failed business model in the digital age, when they have fought this right for more than seven decades, through up and down cycles, before anyone knew what the word "digital" was. They say they can't afford to pay right now, when they are paying multi-million dollar bonuses to their CEOs. We are willing to negotiate with the broadcasters to accommodate valid economic concerns. They will not come to the table.

They warn that more than half of the royalties are directed to record labels, when neither the word "record" nor "label" appears anywhere in the bill. In reality, the legislation directs royalties to be split down the middle: 50% directly to artists and musicians, and 50% to the property owner. And since many artists own their own master recordings, artists and musicians will actually get more than 50% of the payments. (There are currently 1,200 artist-owned independent labels signed up with SoundExchange, which collects and distributes the royalties.) But this is and has been broadcasters' mission: to obfuscate and divide, stall and scare. In truth, record labels discover, nurture, and risk our own

capital on the art of music. We are investors and, like any investor, we try to make a profit. Without that opportunity to make a profit, there is no incentive to invest. As we move into a performance-based world, if we cannot be compensated for performances, we will not be able to invest in the new art that drives everyone in the music business, including radio. That's bad for us, that's bad for our artists, that's bad for the public, and that's bad for the broadcasters. This is not an easy business. The vast majority of artists do not make it. It is the rare success that not only covers the losses from those that fail, but also funds our search for, and support of, new talent. Frankly, it also funds our ability to release recordings that are important culturally and historically. Sometimes these recordings influence a younger generation who "re-discover" the Blues or writers and poets who discover the lyrics of great American artists from years past.

Imagine working hard in such a tough industry. Imagine investing as we do in an unpredictable market. Now imagine someone taking your product without consent and using it to profit his or her own business without so much as a penny in return. Unfair is not the word. It's unconscionable.

But that's the scenario of our current law. And that's the reality for all of us in the recording industry – labels, producers, managers, performers, and musicians. Today we stand united in seeking a right that should have been afforded to us decades ago.

In the end, harming broadcasters is the last thing we want to do. They should be our partners in the music business. All we are asking for is fair

compensation for use of our work. The Performance Rights Act provides us with the framework to secure that compensation and sets in place the proper balance of interests between creators and broadcasters. We sincerely look forward to working with broadcasters in the future – as lovers of music, as supporters of musicians, and as true partners in business and art.