



Senators Feinstein, Graham Introduce Legislation to Require Cable, Internet, Satellite Music Broadcasters to Protect Digital Music, Allow Consumers to Continue to Record, Replay Programming

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Washington, DC – U.S. Senators Dianne Feinstein (D-Calif.) and Lindsey Graham (R-S.C.) introduced legislation today to require cable, satellite and Internet music providers to protect music they broadcast while at the same time allowing consumers to continue to record and replay programming.

The Feinstein-Graham “PERFORM Act” or the “Platform Equality and Remedies for Rights Holders in Music Act of 2006” would require satellite, cable and Internet broadcasters to pay fair market value for the performance of digital music. Additionally, the bill would require the use of readily available and cost-effective technological means to prevent music theft.

As such, the PERFORM Act would help strike a balance between the promotion of technological advances in digital music delivery systems and the protection of and fair compensation for the intellectual property of musicians.

“The birth of the digital music place has been a boon for businesses and consumers. However, these new technologies and business models have become so advanced that the clear lines between a listening service and a distribution service have been blurred,” Senator Feinstein said. **“I believe that the PERFORM Act would help strike a balance between fostering the development of new technologies and ensuring that songwriters and performers continue to be fairly compensated for their works. This legislation is a good first step forward in addressing a real problem that is occurring in the music industry.”**

“I believe this bill does a good job of balancing innovation and technology for consumers, with fair rules for creators,” said Senator Graham. **“I want new services to continue to be made available on different platforms. But the rules need to be fair for everyone – for the creators of the music who deserve to get paid when someone keeps a song, for the platform providers who deliver the music to the consumer regardless of whether it is Internet radio, satellite radio, or traditional radio, and especially for the consumer.”**

A hearing on the future of the digital radio industry will be held by the Senate Judiciary Committee on Wednesday, April 26 at 9:30 A.M. Senators Feinstein and Graham are members of the Committee.

Background

Historically, a radio service simply allowed music to be performed and listened to by an audience. However, with the advent of new music services, the line between passive listening performances and reproduction and distribution has been blurred.

Recently, some services that offer digital transmissions have been exploring new technologies that would allow consumers to record, manipulate, and collect personalized music play-lists off their radio-like services instead of buying a CD or a downloaded song.

Senators Feinstein and Graham believe that these new forms of music delivery systems are beneficial for the consumer and should be promoted. They also believe, however, that as these new systems are developed, artists and songwriters must also be fairly compensated for their works.

The Feinstein-Graham PERFORM Act would:

- **Create Rate Parity** – all cable, satellite, and internet companies should be subject to the same rates (these companies, covered by the government license created in Section 114 of the Copyright Act, would be required to pay a “fair market value” for the reproduction and copying of digital music.)
- **Establish Content Protection** – distinguishing between the right to perform and the right to distribute (all companies would be required to use reasonably available and economically feasible technology to prevent music theft. In addition, a company may not provide a recording device to a customer that would allow him or her to record and reproduce music without paying a reproduction royalty.)

For example, if a listener chooses to automatically record a news station every morning at 9:00; a jazz station every afternoon at 2:00; a blues station every Friday at 3:00; and a talk radio show every Saturday at 4:00; that would be allowable. In addition, that listener could then use their recording device to move these programs so that each program of the same genre are back to back.

What a listener cannot do is set a recording device to find all the Frank Sinatra songs being played on the radio-service and only record those songs. By making these distinctions, this bill supports new business models and technologies without harming the songwriters and performers in the process. The bill also contains language to make sure that consumers’ current recording habits are not inhibited. Therefore, any recording the consumer chooses to do manually will still be allowed.

However, the PERFORM Act **would not**:

- **Apply to Over the Air Broadcasting** – the only application to broadcasters would be if they were to act as webcasters and simulcast their programs over the Internet, in which case they would be treated the same as all other Internet radio providers.
- **Inhibit Technological Advances** – the bill would require cable, Internet and satellite providers to use reasonably available technology to protect the music, IF they want to enjoy the benefit of a government license. If, however, a company wants to use new technologies beyond the scope of a government license then they must go to the record companies directly to negotiate a licensing agreement through the market.
- **Be Discriminatory** – under current law some businesses are required to pay higher licensing rates than others even though they provide essentially the same services. In addition, if a new satellite company were to be formed today they would be required to pay a higher rate than the current two companies in the market – that is not fair. Instead this bill would establish the same rates for all companies.

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