



Senator Feinstein Calls for Changes 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 – At a hearing of the Senate Judiciary Committee on the future of the music industry in the digital radio revolution, U.S. Senator Dianne Feinstein (D-Calif.) today urged that the Senate support legislation 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.

Yesterday, Senator Feinstein joined with Senator Lindsey Graham (R-S.C.) and Senate Majority Leader Bill Frist (R-Tenn.) to introduce “PERFORM Act” or the “Platform Equality and Remedies for Rights Holders in Music Act of 2006.” This bill 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 PERFORM Act has received the support of various music industry groups, including: the Recording Industry Association of America, the National Music Publishers’ Association, the American Federation of Musicians, the American Federation of Television of Radio Artists, the Recording Academy, and the Recording Artists’ Coalition.

The following is the statement Senator Feinstein delivered during the Committee hearing:

“Thank you very much, Mr. Chairman, and thank you for holding this hearing today.

I am pleased that yesterday I, along with Senators Graham and Frist, introduced the Platform Equality and Remedies for Rights-holders in Music, or PERFORM, Act.

This bill is designed to address two problems that have recently been brought to my attention.

First – although we have a statute creating a compulsory license for “new” forms of radio, this license actually treats Internet, cable and satellite service providers differently – even though as technology advances their services have become increasingly similar.

And second, some businesses that are granted a performance right under this compulsory license are exploring new technologies that would turn a performance into a distribution – and avoid paying the separate royalty rate.

While I strongly support advancements in technology and believe it is important that these new service providers succeed and grow, I believe our laws must strike the proper balance between fostering new businesses and technology and protecting the property rights of the artists whose music is being played.

As the modes of distribution change and the technologies change, so must our laws.

The PERFORM Act does two things:

1. It creates rate parity for all service providers under the compulsory license. Any company covered by this compulsory license will be treated the same. This means that Internet, cable, and satellite will all be subject to the same rate standards; and
2. It requires that Internet, cable and satellite providers employ technology that will prevent downloading, manipulation and sorting of the music that they play to prevent individuals from creating their own personalized play-lists.

I also want to be clear about what this bill does not do – it does not deal with traditional over-the-air radio broadcasting.

I understand the Commerce Committee is examining those issues, and that private negotiations are under way at the same time.

Finally, let me say, I believe this is the beginning of the legislative process; and while there may be disagreements over how to strike the proper balance on these difficult issues, we are certainly open to a robust dialogue.

We have tried over a six month period now to negotiate between the parties. These were the two points about which there was the clearest agreement.

I know that there were people who did not want me to introduce this bill at this time. But I believe that I should introduce it. I believe that the two points that are made in the bill are essentially unassailable. I also agree that there are other things that can be added to the bill if there's agreement.

I'd like to say that, though, that it was very difficult to achieve that agreement. We have done the best that we possibly could over the past six months to at least reach this agreement.

Thank you, Mr. Chairman.”

Background on the Feinstein-Graham PERFORM Act:

- **Creating 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.)
- **Establishing 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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