



## Senators Feinstein, Graham, Biden, Alexander Continue Effort to Protect Copyrighted Materials

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**Washington, DC** – U.S. Senator Dianne Feinstein (D-Calif.), Lindsey Graham (R-S.C.), Joseph Biden (D-Del.), and Lamar Alexander (R-Tenn.) today reintroduced legislation to protect copyrighted materials distributed by cable, satellite and Internet radio services, while encouraging the use of new technologies and services.

**“The PERFORM Act 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 technology to prevent music theft,”** Senator Feinstein said. **“I believe this legislation is a good step forward in addressing a real problem that is occurring in the music industry, and I encourage discussion to ensure that this law will fully serve the needs of our emerging technologies.”**

Senator Feinstein continued, **“New radio services are allowing users to do more than simply listen to music. What was once a passive listening experience has turned into a forum where users can record, manipulate, collect and create personalized music libraries. As the modes of distribution change and the technologies change, so must our laws change.”**

**“Unfortunately, the PERFORM Act stalled in the last Congress. However, I am hopeful that the Judiciary Committee under Senator Leahy’s leadership will make time to examine this and other important intellectual property issues. This legislation is too important for it to languish for another Congress.”**

The PERFORM Act, or the “Platform Equality and Remedies for Rights Holders in Music Act,” is designed to provide equity and parity among the “new” platforms that provide “radio-like” services – cable, satellite, and Internet. Currently, different rates standards are paid by these different companies, different conditions are applied to their performances, and the content protections have been outdated by on-going technological advances.

### **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.

The Senators 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 PERFORM Act would:**

- **Create Rate Parity** – All cable, satellite, and internet companies – covered by the government license created in Section 114 of the Copyright Act – would be required to pay a “fair market value” for use of music libraries rather than having different rate standards applied based on what medium is being used to transmit the music.
- **Establish Content Protection** – All companies would be required to use reasonably available and economically reasonable technology to prevent music theft.

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. In addition, if the device allows the consumer to manipulate music by program, channel, or time period that would still be permitted under the statutory license.

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 all programs 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.

**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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