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February 5, 2009

To: All Members, U.S. House of Representatives
RE: Performance Right for Sound Recording

Legislation being considered in the House and Senate seeks to amend the "Digital Performance Royalty in Sound Recording Act of 1995," which required digital radio, such as satellite radio, cable radio channels, and Internet web casts to compensate songwriters and recording artists for the use of their music. Currently, broadcasters are by law exempt from paying royalties to owners of sound recording copyrights. Proposed amendments in the House and Senate to the 1995 Act would eliminate the exemption for broadcast radio, thus requiring them to pay royalties to the owner of the sound recording. As with digital broadcasters, AM/FM broadcasters would acquire a license and make one payment annually under a government set rate for all the music they play.

The debate currently being waged is whether radio broadcasters should be allowed to use copyrighted intellectual property without compensation because of the perceived promotional benefit to the owner of the creative work. The fact that broadcast radio is the only exemption to granting compensation for performance rights makes the promotional value argument invalid. Where radio may once have been the only medium for a recording artist to promote their work, in today's digital world there are countless mediums from satellite radio to internet radio to MySpace that allow consumers to enjoy the creative works of recording artists. All of these mediums pay for the use of music despite offering a potentially greater promotional value. In fact, much of the music played over the airwaves only reaches that medium after they have found success in these new arenas.

In the realm of property rights, the exemption for radio broadcasters from paying royalties to the owners of sound recordings represents nothing more than a taking under the semblance of offering free promotion for recording artists. A similar taking occurred in the *Kelo v. the City of New London* Supreme Court decision. In that case, the Court ruled that the government may use the power of eminent domain to expropriate property for private to private transfer under the ambiguous title of "economic development." The public outcry in response to the decision demonstrates opposition by a majority of Americans to takings that abuse protected private property regardless of economic benefit.

Property owners in America are not just proprietors of the land and homes where they live, or creators who have a vested interest in their intellectual property. Whether they are ranchers or writers, Americans work in a society where individual freedom, economic expansion and job creation depend on securing property rights. Economic growth only occurs when property, in all forms, is respected AND protected.

Sincerely,

A handwritten signature in black ink that reads "Kelsey Zahourek". The signature is written in a cursive, flowing style.

Kelsey Zahourek
Executive Director