



The Radio Distortion Handbook

*Tired of Big Radio's static? Tune into the
truth...*

For more information about the musicFIRST coalition and the
Performance Rights Act, please visit www.musicFIRSTcoalition.org



The Radio Distortion Handbook contains the many lies and mistruths to date used by the radio industry in a disingenuous campaign against the Performance Rights Act—a bill that will bring fairness to artists, fairness to other radio platforms and fairness to radio.

The Performance Rights Act (S. 379) and (H.R. 848) would close a loophole in copyright law that allows music radio stations to earn billions every year without compensating the artists and musicians who bring music to life and listeners' ears to the radio dial. The bipartisan legislation was introduced in February. The House version of the Performance Rights Act (H.R. 848) passed the House Judiciary Committee in May by a 21-9 bipartisan vote.

The Performance Rights Act would bring the U.S. in line with almost every other nation in the world. Only a few countries do not provide a fair performance right on radio, including Iran, North Korea and China. And because the U.S. doesn't have a performance right, foreign radio stations do not have to pay American artists when their music is played on stations around the globe – an inequity that costs American artists \$100 million or more each year.

For months, radio stations have taken to the use of the of public airwaves, running ads and commentary that unfairly prey on the public's fears by calling the Performance Rights Act a tax— which it's not, saying all the money is going to foreign companies, which it's not, and intimating that this is a racial issue by claiming that there is no black representation in the process and that it will "murder black radio" – again not true.

Earlier this month, the Federal Communications Commission (FCC) announced it is seeking comments on the petition filed by musicFIRST. The petition details how radio stations across the country refuse to air musicFIRST ads, threaten artists who support the effort to create a fair performance right on radio and continue to run misleading ads produced by the National Association of Broadcasters – all in an effort to further their own private commercial interests at the expense of their public interest obligations.

The following pages are a compilation of radio's most egregious distortions to date:



From an open letter by Cathy Hughes, founder and chairperson of RadioOne:

“...There has been only one hearing on the [Performance Rights Act] and that hearing did not have any black ownership representation.”

THEFACTS: Charles Warfield, an African American who is President of ICBC Broadcast Holdings, testified at the House Judiciary Committee’s July 2007 hearing on “Updating the Performance Right and Platform Parity for the 21st Century.” At the time he was the National Association of Broadcaster’s Radio Board Second Vice Chair and told the Committee that ICBC served, “primarily African American communities in New York City, San Francisco, Columbia, South Carolina and Jackson, Mississippi.”

The Senate Judiciary Committee subsequently held two additional hearings on the subject matter – one on November 13, 2007 and one on July 29, 2008.



From GospelMusicChannel.com, May 27, 2009, "Performance Rights...Or Wrongs" By Lou Carlozo:

"The [musicFIRST Coalition] claims that 45 percent [of the royalties] would go to featured artists," [NAB's Dennis Wharton] says. "But if you know anything about how record labels have abused artists in the past, you have to question whether they'd actually get any of this money."

THE FACTS: Both the House and Senate Performance Rights legislation require all royalties paid by AM and FM radio stations to go directly to SoundExchange ("SX"). Based on the detailed play list information SX receives from services that monitor AM and FM airplay, SX would distribute 50% of the royalties to artists and 50% to the Sound Recording Copyright Owner. Specifically, by legislation and under existing law, SX would distribute the royalties as follows:

- 50 percent - Sound recording copyright owner (while often a record label, some artists own the copyright for their master recordings)
- 45 percent - Featured artist
- 2.5 percent - non-featured artist (for example: background vocals) [AFTRA]
- 2.5 percent - non-featured musicians [AFM]



From *The Tennessean*, May 28, 2009, “Performers Will See Little Benefit From Royalty Legislation,” by Bayard Walters:

“Writers' royalties now paid through ASCAP/BMI/SESAC will inevitably decline.”

THE FACTS: Section 5 of the House legislation – H.R. 848 – is entitled, “NO HARMFUL EFFECTS ON SONGWRITERS.”

The Performance Rights Act includes protections for songwriters and performance rights organizations (PROs). Section 5 (c), “Preservation of Royalties on Underlying Works,” clearly states that, “...under no circumstances shall the rates... for the public performance of sound recordings... reduce or adversely affect the license fees payable to copyright owners of musical works [*that’s songwriters*] or their representatives for the public performance of their works by terrestrial broadcast stations [*that’s PROs*], and such license fees for the public performance of musical works shall be independent of license fees paid for the public performance of sound recordings.”

You can look it up: <http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.848>:



From a May 12, 2009, open letter by Radio One, Inc. Chairperson and Founder Cathy Hughes:

“The bill...is the brain child of the foreign owned record industry...” (5/12/09)

THE FACTS: American artists and musicians have been pursuing the performance right for over 70 years. Over those seven decades right up to the present, the National Association of Broadcasters (NAB) has spent millions of dollars on ad campaigns and lobbying to kill any efforts by Congress to enact a performance right.

The original coalition in support of a performance right was the “brain child” of bandleader Fred Waring who, in 1935, organized 700 performers (including Bing Crosby) as the National Association of Performing Artists (NAPA). Since then, singers and musicians from Frank Sinatra to Gladys Knight to Bruce Springsteen have spoken out in support of this basic act of economic fairness.

For more background go to:

<http://musicfirstcoalition.org/background/>



From the May 12, 2009, open letter from Radio One, Inc.
Chairperson Cathy Hughes:

“In the midst of this economic depression, black radio stations simply do not have that financial ability.”

THE FACTS: Cathy Hughes conveniently ignores the economic damage done to the thousands of minority artists, who in these tough economic times need the income they should be receiving from the broadcasters’ use of their music. The Performance Rights Act balances the interests of all parties to ensure that the performers and broadcasters can weather the recession together. The bill provides broadcasters with a 3 year delay (1 year for stations with revenue in excess of \$5 million) before they have to begin paying.

Meanwhile, for all of Cathy Hughes’ talk of economic hardship, Radio One promotes itself as “the urban radio specialist...one of the fastest growing radio companies in the country, with 53 stations in 16 cities.” <http://www.radio-one.com/about/>. While crying poor, according to SEC filings Radio One is paying CEO (Cathy Hughes’ son) Alfred Liggins III \$7.26 million + \$2.95 million in deferred compensation <http://investing.businessweek.com/research/stocks/people/person.asp?personId=231897&ric=ROIA.O&previousCapId=33574&previousTitle=Radio%20One%20Inc> — roughly equal to the amount paid to songwriters and music publishers. Surely they can afford to pay the performers for the music that generates Radio One’s income!



During an interview with radio host Russ Parr on May 18, 2009, Radio One, Inc. Chairperson Cathy Hughes stated:

“In 2007 the recording industry reported that the airplay of radio stations accounted for \$10.4 billion worth of record sales and now they want us to pay to play music.”

THE FACTS: The recording industry has never reported record sales based on radio airplay. The ENTIRE value of the record industry in 2007 was estimated at \$10.4 billion (<http://www.riaa.com/keystatistics.php>). Is Ms. Hughes suggesting that every last CD and digital download sold is due to radio airplay? While we agree that radio may offer some promotional value, music sales result from hundreds of new music outlets for dedicated music fans. In addition, while the retail value of the music industry declined by more than 40 percent from 1999 to 2008, the radio industry grew 10 percent, largely from advertising on music stations. So one has to ask: who’s promoting who?



From a radio ad recorded by Radio One, Inc. Chairperson Cathy Hughes, which ran on some of the company's 54 radio stations:

"Within 72 hours of the [House Judiciary Committee vote on the Performance Rights Act], three black owned stations in Pittsburgh had been sold to the Catholic Church. WAMO, W-A-M-O, black heritage radio for 61 years gave notice that Saint Joseph's would be the new owner."

THE FACTS: The sale had nothing to do with the Performance Rights Act as the letters of intent to sell these stations (asset purchase agreements) were signed on February 26, 2009, almost three months before the May 13, 2009 House Judiciary Committee vote on the bill.

(http://fjallfoss.fcc.gov/prod/cdbs/forms/prod/getattachment_ex.cgi?exhibit_id=761967&formid=314&q_num=5030). It seems Ms. Hughes and Big Radio think that they can hide the facts and distort the truth as long as it is in *their* financial interest.



From Radio One, Inc. Chairperson Cathy Hughes' May 12, 2009, open letter:

“This bill is not in the interest of Black people!”

THE FACTS: The bill may not be in the financial interest of millionaire radio executives like Hughes and her son Alfred Liggins III who have made their fortunes broadcasting the music of African-American artists they've never compensated. But R&B legend Sam Moore told the Senate Judiciary Committee that it was in the best interest of all artists when he testified before Congress on November 13, 2007. So did Herbie Hancock, Will.i.am and Dionne Warwick when they met with members of Congress in support of the Performance Rights Act in February 2009. So did the Supremes' Mary Wilson, Martha Reeves, Duke Fakir of the Four Tops, Teddy Pendergrass, George Clinton and Gary "US" Bonds. If the Performance Rights Act is "not in the interest of Black people," then why does the bill have the support of the NAACP, the A. Philip Randolph Institute and The Leadership Conference on Civil Rights?



In a May 29th letter to the editor of *The Tennessean*, NAB Executive Vice President for Media Relations Dennis Wharton asked:

“If this legislation is aimed at “helping artists,” why does it direct half of the money to giant record label companies based out of the country?”

THE FACTS: NOWHERE does the Performance Rights Act refer to “record label companies” (giant, foreign, or otherwise). The PRA would send 50 percent of the royalties directly to artists and musicians and 50 percent directly to the sound recording copyright owner. And since many artists are also the sound recording copyright owners of their music (such as Billy Corgan of The Smashing Pumpkins who recently testified before Congress in favor of a performance right http://judiciary.house.gov/hearings/printers/111th/111-8_47922.PDF), artists would actually get more than record labels. That is the definition of “helping artists.”



In a June 18th article, Radio Business Report falsely stated that:

[record] “labels have shifted their rhetorical leverage, first seeking royalties from satellite and internet platforms since they are different than radio, and now seeking royalties from radio to level the playing field. RIAA can’t have it both ways.”

<http://www.rbr.com/radio/15253.html>

THE FACTS: At a March 9, 1995 Senate Judiciary Committee hearing on “The Performance Rights in Sound Recordings Act of 1995,” RIAA CEO Jay Berman said:

“We began this process, Mr. Chairman, over 23 years ago when we sought the same right enjoyed by all other copyright owners, a full performance right. Last Congress, this effort was limited to digital transmissions. Today, we are seeking an even more constricted bill that applies only to digital subscription and interactive services. It specifically excludes radio broadcasting.... If this is the price of gaining a minimum level of protection for the future, we are willing to pay it...”

There has been no shift in rhetoric or goal. In 1995, the music industry grudgingly acquiesced to the broadcasters’ legislative carve out in the interest of getting a “minimum level of protection” for digital broadcasts of music. The record is clear. And try as they might, Big Radio can’t rewrite historical facts to strengthen their case.



Over at HelpSaveRadio.org, Big Radio makes this interesting claim:

“We have never charged artists for airing their music.”

<http://helpsaveradio.org/>

THE FACTS: Nice try guys. Under current law (without a performance right), broadcasters can legally take music without the consent of the performers for free. **How could radio charge for something they take and use for free?** The truth is that they know that not having to pay for music is a windfall that generates billions of dollars in advertising revenue every year. That’s why Big Radio has refused to even negotiate for more than 70 years. Steven Newberry, President and CEO of Commonwealth Broadcasting Corporation, said it all when asked at a hearing in the House Judiciary Committee whether he was willing to sit down and negotiate a performance right: *“No sir. We remain opposed to this legislation. To negotiate on that we think is counter to the interests of our industry...”* — the interests of Big Radio making billions of dollars in profits on the backs of performers who get nothing for the use of their music.

<http://judiciary.house.gov/hearings/pdf/Newberry090310.pdf>



From Doug Abernathy, Regional Vice President, Radio One:

"I-tunes, cable television, etc – have a completely different business model than what happens at a radio station – those guys charge you a subscription fee"

<http://www.39online.com/news/local/kiah-radio-bill-story,0,7293016.story?track=rss>

THE FACTS: iTunes does not, in fact, charge a subscription fee. It is a *store* – not a *station* – which renders it irrelevant to Mr. Abernathy's argument. But notice that he left out Internet radio (webcasts). Many, if not most, are free to listeners (and similarly work off an ad-based model). And they pay artists. In fact, when Mr. Abernathy's stations are simulcast on the Internet (for free to listeners, without a subscription), they pay artists. The distinction is fabricated. As noted in a recent piece by the contributing editor in radio publication *Radio World*: "Doesn't airplay on [Internet and satellite radio] generate record sales, too? And does it make sense that the only currently profitable sector of the industry [broadcast radio] is exempted from these royalties, while the emerging components [Internet, satellite, and cable] are not? Arguments that the technologies are different enough to warrant separate compensation schemes have been lost on many legislators."

<http://www.radioworld.com/usercontrol/article/83340>



From an open letter by Cathy Hughes, founder and chairperson of Radio One:

“...There has been only one hearing on the bill and that hearing did not have any black ownership representation. Black radio owners and community leaders including Rev. Jesse Jackson, Rev. Al Sharpton, Dick Gregory, Tom Joyner, and myself have all begged Conyers to at least allow us the opportunity for a hearing. He has flatly refused.”

THE FACTS: Wrong. Charles Warfield, an African American who is President of ICBC Broadcast Holdings, testified at the House Judiciary Committee’s July 2007 hearing on “Updating the Performance Right and Platform Parity for the 21st Century.”

In addition, in March of this year, House Judiciary Chairman Conyers invited the National Association of Broadcasters to provide two witnesses for a hearing, preferably minority representatives. Instead, NAB provided – with Radio One CEO Alfred Liggins’ blessing – Mr. Steven Newberry (Chairman of NAB’s Radio Board) and Mr. W. Lawrence Patrick (President of Patrick Communications, a media broker). In response to Radio One’s further complaints, Chairman Conyers held another hearing on minority issues and invited several witnesses, including Mr. Liggins, his mother and Radio One Chairman Cathy Hughes, Al Sharpton, Jesse Jackson, Tom Joyner and others. All refused to testify.

Last time we checked, an invitation is still an opportunity, even if you decide not to take it.



In response to questions on why he refused to show up to the July 9, 2009 House Judiciary Committee hearing on minority radio to which he was invited, Radio One CEO Alfred Liggins stated:

"I'm not going to sit there and get beat up"

(http://www.nationaljournal.com/congressdaily/cdp_20090709_6296.php)

THE FACTS: What Mr. Liggins means is that he can't defend his position against the opposition. Had Mr. Liggins shown up, he would undoubtedly have had to explain why Radio One claims it is under financial threat when he received a \$10 million bonus and a 69.3 percent salary increase. He also would have had to explain why he can receive this kind of payment when he refuses to compensate the performers whose work is responsible for generating these good fortunes. Congressional hearings provide an opportunity for the public and its representatives to hear all sides of an argument. They also provide witnesses the opportunity to state their case in person.

Refusing to testify is even more hypocritical given the fact that Radio One founder Cathy Hughes has inaccurately complained (see page 14 [referencing 2007 testimony of ICBC President Charles Warfield before House Judiciary Committee](#)): *"...There has been only one hearing on the bill and that hearing did not have any black ownership representation. Black radio owners and community leaders including Rev. Jesse Jackson, Rev. Al Sharpton, Dick Gregory, Tom Joyner, and myself have all begged Conyers to at least allow us the opportunity for a hearing. He has flatly refused."*

Complaining inaccurately that broadcasters have had no opportunity to testify, then refusing an offer to testify because you'd have to defend your position? That's radio distortion at its best.



During a May 18, 2009 appearance on the Russ Parr show, Radio One, Inc. Chairperson and Founder Cathy Hughes put an interesting spin on the free market system:

“Allow us to participate in the capitalistic system and not tie our hands behind us or put us out of business.”

THE FACTS: If you create something of value, you have a right to be fairly compensated for the use of your work. That’s “Capitalism 101.” However, under the current system, performers are forced to allow broadcasters to use their music for free with no legal right to compensation. That may be what Ms. Hughes considers a “capitalistic system” she wants to participate in, but it certainly isn’t capitalism.

Radio broadcasters are compensated by advertisers who choose to use radio’s airwaves. The Performance Rights Act simply establishes that performers should have a right to be compensated by broadcasters who choose to use performers’ music in order to make billions of dollars from those advertisers who know that people love to listen to music and don’t mind the occasional commercial interruption.

Capitalist or not, certainly Ms. Hughes can see the logic in that.



A case of fuzzy math... According to Atlantic Broadcasting CEO Brett Denafó:

"A lot of these local stations in all markets all over the country will probably end up going dark, it would kill them, something like for us here at Atlantic Broadcasting, you're talking about \$300,000 a year in a tax that would devastate Atlantic Broadcasting."

http://www.nbc40.net/view_story.php?id=9903

THE FACTS: Must be the new math... Atlantic Broadcasting's three music stations make less than \$1.25 million. The Performance Rights Act has specific accommodations for these smaller stations. By law, Mr. Denafó's three music stations would only have to pay a maximum of \$5,000 each per year – \$15,000 total for all the music they can play – a far cry from the \$300,000 he seemingly pulled out of thin air. Stations just like Atlantic Broadcasting's are covered by the PRA's accommodations:

- Stations with revenue less than \$100,000 per year pay only \$500 per year
- Stations with revenue between \$100,000 and \$500,000 / year pay only \$2500 per year
- Stations with revenue between \$500,000 and \$1.25 million per year pay only \$5000 per year
- Noncommercial stations with gross receipts less than \$100,000 / year pay only \$500 (other noncoms pay only \$1000)

These small but fair payments for all the music that stations can play won't "kill" local radio stations, as Big Radio claims. The Performance Rights Act will simply compensate performers for their hard work.



HelpSaveRadio.org, aka Big Radio's online effort to deny performers fair compensation, makes this interesting claim about the Performance Rights Act:

"This is how they [the music industry] intend to cover the decline in revenue caused by falling CD sales." <http://helpsaveradio.org/>

THE FACTS: CDs have only been around for 25 years. The fight for a performance right by artists and musicians has gone on for more than seventy years.

In the past seven decades, there have been dozens of new technologies and, like most industries, the music industry has seen periods of growth and decline. The "decline in revenue" argument is bogus; broadcasters have refused to pay even in good times. As NAB stated 16 years ago, the "recording industry continues to be very successful and, frankly, we believe has no demanding need for more broadcaster money." (Testimony of Edward O. Fritts, President and CEO of NAB, during House Judiciary Subcommittee on Intellectual Property and Judicial Administration, March 25, 1993.)

A performance right has never been about sales of CDs, LPs, cassettes or 8-track tapes. This is not about good times or bad times in the market. A performance right has always been a matter of fairness and justice – the right to be fairly compensated for your hard work.



This whopper is audacious even by Big Radio's standards:

"...the music itself is not a source of revenue for the stations. The entity that is the station is what attracts listeners (who pay nothing to hear the content) and advertisers (who pay for access to our intellectual properties)." <http://helpsaveradio.org/>

THE FACTS: Why do **YOU** tune into a particular music station? Is it for "the entity that is the station" (whatever that means), or is it for the music? Advertisers pay for access to the audience who tunes in because they want to hear music creators' intellectual property. Simply put, no music = no audience = no advertising dollars = no music station. The music is in fact **THE** source of revenue for music stations.

Other than Big Radio, can you think of another industry that gets to use for free the very product that keeps it in business?

For more information about the musicFIRST coalition and the Performance Rights Act, please visit www.musicFIRSTcoalition.org