



April 1, 2010

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510-6275

Dear Mr. Chairman:

I am writing to express the strong support of the Department of Commerce ("the Department") for granting copyright owners and performers a public performance right when their sound recordings are transmitted by over-the-air broadcast stations, the important goal of your bill, S. 379, the "Performance Rights Act."

The Department has long endorsed amending the U.S. copyright law to provide for an exclusive right in the public performance of sound recordings. In 1978, for example, the Department testified that establishing a public performance right in sound recordings was in the long-range economic interests of all parties, including U.S. recording companies and broadcast stations.¹ In 1995, the Working Group on Intellectual Property Rights, in its report on Intellectual Property and the National Information Infrastructure, characterized the lack of a performance right in sound recordings as "an historical anomaly that does not have a strong policy justification -- and certainly not a legal one."²

In 1995, the Department again supported the efforts of Congress to bring protection for performers and producers of sound recordings into line with the protection afforded to the creators of other works by endorsing the establishment of a limited public performance right when sound recordings are transmitted by digital means, but only as a step in the direction of providing a full public performance right in sound recordings.³ Most recently, in 2008, the Department urged Congress to expand the scope of the public performance right to cover both analog and digital transmissions under the statutory license codified in section 114 of the Copyright Act.

At the national level, establishing a public performance right in sound recordings and eliminating the exemption for terrestrial broadcasters follows principles of U.S. copyright law.

¹ Subcomm. on Courts, Civil Liberties & the Admin. of Justice, House Comm. on the Judiciary, 95th Cong., 2d Sess. (1978), *Performance Rights in Sound Recordings* at 179.

² Information Infrastructure Task Force, *Intellectual Property and the National Information Infrastructure, The Report of the Working Group on Intellectual Property Rights* (September 1995) at 222. The Information Infrastructure Task Force was chaired by Secretary of Commerce Ronald H. Brown.

³ Subcomm. on Courts & Intellectual Property, House Comm. on the Judiciary, 104th Cong., 1st Sess. (1995) *Digital Performance Rights & Sound Recordings: Hearings on H.R. 1506*.

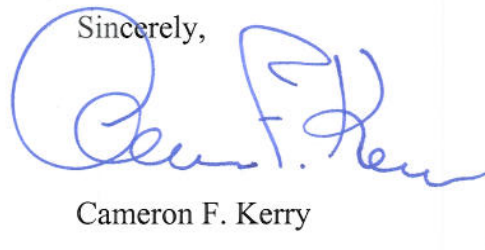
In the words of the Supreme Court, “the encouragement of individual effort by personal gain is the best way to advance public welfare through the talents of authors and inventors”⁴ Consistent with this historic rationale for copyright, providing fair compensation to America’s performers and record companies through a broad public performance right in sound recordings is a matter of fundamental fairness to performers. It would also provide a level playing field for all broadcasters to compete in the current environment of rapid technological change, including the Internet, satellite and terrestrial broadcasters. In today’s digital music marketplace, where U.S. performers and record labels are facing both unprecedented challenges and opportunities, the Department believes that providing such incentives for America’s performing artists and recording companies is more important than ever.

At the international level, the Performance Rights Act addresses a long-standing omission in U.S. copyright law that may have harmed American performers and record companies. Today, the United States stands alone among industrialized nations in not recognizing a public performance right in sound recordings. Most of these other countries are parties to international treaties that require protection for performers and producers of sound recordings. All too often, however, American performers and producers have not benefited from such protection because of the lack of reciprocal protection under U.S. copyright law. As a result, substantial royalties for the public performance of U.S. sound recordings abroad are either not collected at all or not distributed to American performers and record companies.

We commend you and your colleagues for introducing the Performance Rights Act. If enacted, the bill would advance public welfare by compensating American performers and the record companies that produce and distribute their creative works. We look forward to working with you as the bill progresses through the legislative process.

We have been advised by the Office of Management and Budget that there is no objection to the submission of this letter from the viewpoint of the Administration’s program.

Sincerely,

A handwritten signature in blue ink, appearing to read "Cameron F. Kerry". The signature is stylized and cursive.

Cameron F. Kerry

cc: The Honorable Jeff Sessions
Ranking Member

⁴ Mazer v. Stein, 347 U.S. 201 (1954).