

AMERICAN BAR ASSOCIATION

Section of Intellectual Property Law

321 North Clark Street
Chicago, IL 60654-7598
(312) 988-5598

FAX: (312) 988-6800

E-mail: iplaw@abanet.org

www.abanet.org/intelprop

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Communications / Publications

Hayden W. Gregory
Legislative Consultant
Washington, D.C.
gregoryh@staff.abanet.org

December 14, 2009

The Honorable Harry Reid
Majority Leader
United States Senate
Washington, D.C. 20510

Dear Majority Leader Reid:

I am writing on behalf of the Section of Intellectual Property Law of the American Bar Association to express support for the enactment of S. 379, the "Performance Rights Act." These views have not been submitted to the House of Delegates or Board of Governors of the ABA, and should not be construed as representing policy of the Association.

S. 379, which was favorably reported by the Judiciary Committee on October 15, would amend the Copyright Act to provide performance rights in terrestrial radio broadcasting to right holders in sound recordings. The Section of Intellectual Property believes that such an extension of performance rights is long overdue, and supports the enactment of S. 379.

Sound recordings were first granted federal copyright protection in 1972. Unlike other copyrighted works, however, they were not granted a right of public performance. Thus, for example, when radio broadcasters play copyright-protected music, they are required to get a license for the performance of the musical composition, but have no obligation with respect to the performance of the sound recording embodying the particular rendition of that composition.

Congress first provided a public performance right in sound recordings in the Digital Performance Rights Act of 1995. That right, however, was limited to the right "to perform the work publicly by means of a digital audio transmission," and subject to certain exemptions.

In December 2000 the Copyright Office issued a rule concluding that AM/FM webcasting, i.e., the simultaneous Internet streaming by radio broadcasters of their AM/FM radio broadcast programs, is not exempt from the sound recording performance right.

In introducing S. 379, Judiciary Committee Chairman Leahy emphasized the need for provision of fair compensation to artists. He noted that terrestrial broadcast radio is the only platform that still does not pay for use of sound recordings, and that the historical justification for this distinction "has been overtaken by technological change."

We are in complete agreement with Chairman Leahy, and we urge the prompt consideration and approval of S. 379 in the Senate.

Sincerely,



Don W. Martens
Chair, ABA Section of Intellectual Property Law