

Guest column: Legislation could hurt songwriters, listeners

By William L. Gibbons Jr., Special to The Commercial Appeal

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Music lovers enjoy easy access to the tunes they want to hear, especially in Memphis where rock and roll is part of our history and the blues is embedded in our souls.

But a bill under consideration in Congress, sponsored by U.S. Rep. Marsha Blackburn and Sens. Lamar Alexander and Bob Corker, could alter our easy listening, perhaps dramatically, since it could increase the cost of albums, downloads and Internet radio services. The easy access to which we've grown accustomed could all but disappear.

The Songwriter Equity Act seeks to increase the compensation — or royalties — paid to songwriters. Here's how the proposed legislation would work.

The bill would change two types of royalties — mechanical royalties and performance royalties. Songwriters' mechanical royalties come from album purchases or legal downloads of music online. Performance royalties come from live performances of their songs and plays on AM/FM radio, satellite radio outlets such as SiriusXM and Internet radio streaming services such as Spotify.

Currently, the rates of compensation for mechanical royalties are determined by the Copyright Royalty Board, a special panel of judges that operates as part of the Library of Congress. Recently, the Copyright Royalty Board set mechanical rates at a minimum of 9.1 cents per each unit of music sold. The proposed legislation would change the rate standard for mechanical royalties to one that would take into account fair market value — the amount that would have been negotiated in the marketplace between a willing buyer and a willing seller.

When it comes to performance royalties, a special federal rate court determines the percentage of revenue that entities providing AM/FM, satellite radio and Internet radio must pay in royalties. While evidential data such as satellite radio plays, television plays and Internet radio plays have been prohibited from consideration under current law, the Songwriter Equity Act would allow the rate court to use all relevant evidence to determine songwriter performance royalties.

Although it addresses a complex area of the law, the Songwriter Equity Act's purpose is simple: to increase the share of music sales revenue that songwriters receive. That goal should be commended, since the majority of even the most successful songwriters do not receive earnings comparable to those who perform the songs —

unless they are among the few songwriters who write and perform their own songs, thus receiving two royalty payments instead of one.

Nevertheless, there are challenges associated with the bill. The first is that the fair market value standard likely would be tough to apply. It's uncertain whether judges, or anyone else, can accurately decide what the fair market value of music would be.

Second, because of the economics of supply and demand, the proposed legislation would not necessarily net greater earnings for songwriters. Higher costs could mean that music providers, ranging from record labels to legal downloading services such as iTunes and Internet radio providers such as Pandora, would either provide less music or charge more for it.

These effects could be substantial for Internet radio, which is typically free. Since providers such as Spotify and Pandora already pay 50 percent to 75 percent of their revenue in various royalties, they argue that their business model would be at risk under the Songwriter Equity Act. Additional royalties could result in requiring listeners to pay for these services, leading to fewer listeners overall. With fewer listeners, songwriters would get fewer plays despite receiving more compensation per play. Combined with possible reductions in album sales and legal downloads, the math may not work out in the songwriters' favor.

Regardless of what happens with the Songwriter Equity Act, we can expect to see more copyright issues in the national debate in the future. In fact, some predict the proposed legislation won't be voted on by Congress this year, despite support in both parties. The impact of this legislation may be to set the stage for more comprehensive reform in the future.

Let's hope that's the case, although crafting reforms will take careful balance due to the competing interests involved. Let's hope our U.S. representatives and senators from Tennessee come up with a plan that incentivizes musical creativity while also making music widely available for listeners. And let's hope they find that balance before music lovers feel the consequences in the form of fewer songwriters, fewer performances and fewer opportunities to enjoy the music they love regardless how they access it.

Memphis attorney William L. Gibbons Jr. is a member of the Intellectual Property Protection and Litigation Service Team at Wyatt Tarrant & Combs LLP.



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