

The Internet Radio Fairness Act of 2012

Introduced by Senator Ron Wyden

The Internet Radio Fairness Act (IRFA) addresses laws that were imposed to directly disadvantage Internet radio compared to other broadcasters of digital music. History is replete with examples of how these discriminatory provisions for Internet music broadcasters have discouraged the establishment, expansion, and maturation of the digital music market. It is no wonder that, despite all the advancements in Internet technology over the past 15 years, there are few significant Internet radio providers.

The purpose of the IRFA is to remove the barriers to innovation in digital broadcasting, enable new webcasters to start up and create jobs and increase competition in the music marketplace. IRFA intends to expand the broadcast digital market so that artists can obtain broader exposure and more compensation for their music. This proposal will promote more ways for consumers to hear and buy diverse music choices. Here's how:

1. Under current law, Internet Radio royalty rates are the result of a special process unique to online radio. Early on, Internet radio fell prey to well-funded interests and legacy business models which stifled upstart competition. The royalty rates prescribed for Internet radio are established based on what a panel of special copyright judges determines to be the market rate for musical licenses. But there is no functioning market for these licenses and these judges are left with very little information to make reasonable conclusions. That's why Congress routinely intervenes to correct their work. The current method these judges use to establish royalty rates for Internet Radio has led to webcasters paying five times the amount of royalties – as a percentage of revenue – as other digital music broadcasters like satellite and cable. The long-established method that copyright judges use to determine royalty rates for satellite and cable providers enables a broader set of factors to be considered.

The IRFA would end discrimination against the Internet and Internet Radio in the digital marketplace. It would treat Internet Radio, for purposes of establishing royalty rates, in the same way that satellite and cable radio are treated. It will give copyright judges the ability to establish royalty rates based on factors they have long used for other those broadcasters.

2. Under current law, the major record labels were able to ensure that digital backups of music legally purchased are generally illegal. Internet radio broadcasters are particularly vulnerable to major label litigation for simply backing up their catalogue on their own servers. IRFA would allow webcasters to make digital copies of music they've already purchased legally as long as they are used solely for facilitating webcasting.

3. The royalty rates that Internet radio pays are established by special copyright judges sitting on the Copyright Royalty Board (CRB). Each judge is appointed by the Librarian of Congress. The procedures the CRB use to set royalty rates are considered by some regulators to be unique leaving many to question the competence of the judges and the fairness of the process they established. IRFA would require that CRB judges have a minimum level of experience that pertains to their duties, and that they be nominated by the President and confirmed by the Senate. Furthermore, the IRFA would require that the CRB follow the same procedures that other courts follow and would mandate that the CRB follow the Federal Rules of Civil Procedures and the Federal Rules of Evidence.

4. The current process used to establish royalty rates for satellite and cable radio is designed to assign rates that, to a certain degree, reflect the market value of the license to use copyrighted musical works. Unfortunately, this market is opaque. It is difficult for the CRB to establish reasonable rates or for rightsholders and users to negotiate fair rates. IRFA would take steps to shine a light on what types of royalty rates are negotiated in private contracts so that rightsholders, the CRB, and copyright users all have the same market information needed to make prudent decisions.

5. For purposes of facilitating compensation to artists of musical works and combating copyright infringement, IRFA would take steps to establish a global music rights database that will include information related to all musical works, including: who owns the copyright, who can license it and who wrote the work. This database would more easily enable those that want to broadcast music to obtain the rights to do so, and for artists and rightsholders to hold broadcasters accountable for their compensation.