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**World IP Day 2023:
Strengthen Copyrights for American Music Recordings**

by

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April 26 is World Intellectual Property Day. Copyrights are more important to the U.S. economy today than in any previous era. It's a testament to the foresight of America's Founders that they placed copyright protections in the U.S. Constitution. But ensuring that Americans' creative works are strongly protected in the digital age is an ongoing challenge, and there are shortcomings in current copyright law that Congress should fix.

One flaw in U.S. copyright law is that it deprives the owners of music recordings of compensation that should be due to them when AM/FM radio stations play their songs. Congress should rectify that wrong – and secure America's global leadership on copyrights – by acting on its constitutional duty and advancing the American Music Fairness Act.

The Constitution's Article I, Section 8 Copyright Clause confers on Congress the power "to promote the Progress of Science and useful Arts, by securing for limited Times to Authors... the exclusive right to their respective Writings." The inclusion of copyright protection in the Constitution was no anomaly. The American Founders' understanding of copyrights fit hand-in-glove with the political philosophy of natural rights that motivated the Declaration of Independence, early State Constitutions, and the Constitution of 1787. According to the

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Founders, individuals have natural property rights in things that they labor to produce. And the Founders viewed copyrights as property rights grounded in individuals' intellectual labors that ought to be legally protected from infringement and piracy.

The First Congress took seriously its constitutional obligation to legally secure copyright protections and promote a nationwide commercial market for Americans' creative works. It passed the Copyright Act of 1790, which secured the exclusive rights of authors and other creators to make and sell copies of their works. A century later, Congress promoted worldwide market opportunities for American copyright owners by passing the International Copyright Act of 1891. Under the 1891 Act, the U.S. recognized the copyrights of artists from foreign nations if those nations also provided protections for the copyrights of Americans. These copyright-protective legislature measures, along with several others, discouraged infringements, curbed piracy, and boosted financial incentives for creators in diverse forms of media to invest the time and expense needed to produce new works and bring them to market.

The economic benefits enabled by copyright protections are reflected in "[Copyright Industries in the U.S. Economy: The 2022 Report](#)," published in December of last year by the International Intellectual Property Association (IIPA). According to IIPA's report, "core copyright industries" – whose primary purpose is to create, produce, distribute, or exhibit copyrighted materials – added over \$1.8 trillion in value to the U.S. gross domestic product in 2021, amounting to 7.76% of the U.S. economy. That same year, core copyright industries employed 9.6 million workers, comprising 5.53% of total private U.S. employment. Also, core copyright industries accounted for 52.26% of the U.S. digital economy in 2021. And sales of U.S. copyright products in recorded music, movies, TV, video, software publishing, and non-software publications such as newspapers and books totaled \$230.3 billion in 2021.

Despite these instructive data points, U.S. copyright law has its share of flaws, and targeted reforms are needed to better protect American creators' exclusive rights in their creative works. For instance, current law fails to secure full public performance rights for owners of copyrighted sound recordings. The law exempts for-profit terrestrial AM/FM radio stations that broadcast copyrighted music from paying royalties to music recording owners. This denies music recording artists millions of dollars in royalties each year when terrestrial AM/FM stations make commercial use of their copyrighted music to attract an audience and spur ad revenues. Terrestrial AM/FM station revenues totaled \$14.8 billion in 2021, according to S&P Global.

Moreover, the special exemption for terrestrial AM/FM radio stations prevents American copyright owners from receiving royalties from radio stations in other countries. Nearly every foreign country in the industrialized world recognizes public performance rights in terrestrial radio broadcasts of copyrighted music recordings. But so long as U.S. copyright law refuses to reciprocate, radio stations in foreign nations have no obligation to compensate American owners for commercial use of their music recordings.

Legislation introduced in the 118th Congress called the American Music Fairness Act – [S. 253](#) and [H.R. 791](#) – would provide a long overdue fix to the law concerning copyrighted music recordings. Under the Act, terrestrial AM/FM radio stations would receive a statutory license to broadcast copyrighted sound recordings in return for paying royalties based on rates that are designed to approximate market values. For smaller commercial stations as well as

public broadcast stations, the Act provides low, flat-rate annual royalty payments of only \$10, \$100, or (at most) \$500, depending on the station's annual revenue totals. And by aligning the U.S. with other countries that secure full public performance rights, the Act would make American copyright owners eligible to receive royalties from foreign radio stations.

On World IP Day, Congress should redouble its efforts to promote economic opportunities for American creators by strengthening copyright protections here at home and increasing respect for copyrights overseas. Those efforts should include securing full public performance rights in music recordings.

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Further Readings

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