

Singers tell Congress: Money (That's What I Want)

May 4 2009, By RYAN NAKASHIMA , AP Business Writer

Jack Ely, the singer whose 1963 version of "Louie Louie" still makes the rounds on oldies radio, lives with his wife in a mobile home on a horse ranch in Oregon. Ely says they share \$30,000 a year from her teacher's pension and his Social Security checks. They are paying down a mortgage.

So sometimes it bothers Ely, 65, when he hears his voice singing "Louie Louie" on the [radio](#) or in sports arenas, knowing he's not getting paid.

"It gets played twice a day by every oldies radio station everywhere in the world. And I get nothing," said Ely, who recorded the song with The Kingsmen before getting drafted by the Army and leaving the band. "I got one check for \$5,000. That's all I ever saw from the sale of 'Louie Louie.'"

Since the advent of radio in the 1920s, songwriters have made a little money every time their tunes are played on stations in most industrialized countries. The six children of "Louie Louie" songwriter Richard Berry today share more than \$100,000 in royalties every year.

But performers like Ely don't get a dime.

A bill moving through Congress aims to change that. It would let performers and the recording labels get a share of the ad revenue that radio stations collect from playing their songs. This pool of royalties could be hundreds of millions a year - which would be crucial for the

record industry, as compact disc sales plummet and digital song sales aren't making up the difference.

It could also unlock an estimated \$70 million to \$100 million per year that is collected by radio stations abroad for U.S. artists, but never paid out because U.S. stations don't pay foreign artists in return. France, for example, takes the U.S. artists' portion and puts it into French cultural funds.

There have been more than half a dozen attempts since the 1970s to enact a performers' royalty on Capitol Hill. All have faltered to a powerful radio station lobby headed by the National Association of Broadcasters. The association says performers and record labels are already compensated - they sell songs and concert tickets because of the radio airplay they get. The NAB says the long history of record labels paying disc jockeys for extra rotations helps prove the point.

This time, however, the music industry thinks it can win. In the last two decades, recording companies have secured royalties from other formats: Internet radio, satellite radio and music channels on cable TV services. Mitch Bainwol, the chairman of the Recording Industry Association of America, says he's prepared for a "multiyear" fight.

The bill has the support of the Judiciary Committee Chairman, Rep. John Conyers, D-Mich., and is set for final revisions this month before possibly being sent to the House floor for debate.

Radio stations say the renewed push couldn't have come at a worse time.

The recession has pushed ad revenue at radio stations down by double-digit percentages from a year ago, and thousands of jobs have been lost.

Randy Gravley, the co-owner of five small radio stations in northern

Georgia, says he can't afford even the special rate of \$5,000 per station per year allowed under the bill for stations with less than \$1.25 million in annual revenue.

His 20 employees cover everything from high school basketball and football to the student of the week in the towns of Hiawassee, Jasper and Ellijay. Salespeople set up equipment in the field and some reporters double as live commentators at games.

Gravley says a \$25,000 hit would mean one of three reporters would have to be let go or his stations would start to lose money. While more than half of his stations' air time is devoted to music - oldies, classic hits and southern gospel - he says can't afford to pay the performers who recorded the songs, at least not now.

"We're not trying to take away from anybody, but we're trying to stay in business," Gravley said.

He argues that unlike songwriters and their sales and collection agents, the publishers - whom his stations pay about \$32,000 a year - performers can sell albums and go on tours to raise money. Without radio airplay, he said, performers would never have that ability at all.

It's unclear how much radio airplay entices listeners to buy music. But if the "payola" scandals from the 1950s to this decade are any indication, major recording labels have long valued radio airplay, and sometimes paid cash for it. Some regulators have considered such payments bribes, and the federal government in the 1960s forced radio stations to disclose when they are paid for song play. Several years ago, then-New York Attorney General Eliot Spitzer forced three major labels into multimillion-dollar settlements for having independent promoters act as payola intermediaries.

Yet economists disagree on the promotional benefit of music on the radio.

The NAB commissioned a study by Rand Corp. economist James Dertouzos, who concluded last June that radio airplay helps boost music sales by \$1.5 billion to \$2.4 billion annually. NAB-made radio ad spots running now accuse the "fat cat" recording industry of "biting the hand that feeds him."

In its defense, the recording industry found its own expert, University of Texas economist Stan Liebowitz, who told the House Judiciary Committee in March that airplay may boost individual song sales, but doesn't increase music sales overall. "Is radio making the pie bigger or not? The evidence is that it's not," he said.

It's also unclear how much performers might make if the bill passes. Many lawmakers have pressed the radio and recording industries to negotiate. But NAB president David Rehr has said he would rather "cut my throat than negotiate on this," according to trade magazine Radio & Records. It's a comment he has never denied making.

Without negotiations, if the bill passes, the final royalty rate would likely be set by the federal Copyright Royalty Board.

As a benchmark for what performers might demand, two of the three U.S. bodies that collect fees for songwriters and publishers took in a combined \$473 million from [radio stations](#) in fiscal 2008. (The third group is private.) Experts peg the total sum at about 3 percent of music U.S. radio station revenues.

The bill prevents songwriting and publishing royalties from being reduced to make room for the new fees. On a given song, half the new fee would go to the copyright holder of the master recording, typically

the record label; 45 percent would go to featured performers; and 5 percent would go to background performers and backup singers.

The recording labels have already made inroads. In the late 1990s, they won the right to collect royalties for performers when songs are played on satellite, Internet and cable radio. A body called SoundExchange collected \$151 million for performers from those formats in 2008.

"All the other platforms in the U.S. make payments," said Bainwol, the head of the Recording Industry Association. Traditional radio, he said, "sticks out like a sore thumb."

Ely met songwriter Berry for the first time in 1983, at a 63-hour "Louie Louie" marathon at a college radio station in California where more than 800 versions of the song were played or performed.

Ely borrowed money to make the trip. Berry, having long before sold the song rights for \$750 to buy a wedding ring, was on welfare, said Eric Predoehl, a student who helped organize the gathering and is now making a documentary about "Louie Louie." Ely later urged Berry to regain his rights to the music, and he did so, with the help of Chuck Rubin, the president of Artist Rights Enforcement Corp.

Later that decade, the publishing rights sold for millions of dollars, of which Berry got half, Rubin said. Berry died in 1997, but his heirs will continue to collect the [royalties](#) until the copyright expires 75 years after his death.

Although he died in the house where he grew up, in south central Los Angeles, Berry managed to cash in. He bought a sport utility vehicle, took trips, helped pay off his mother's mortgage and sent money to his

children. He took his family out for lavish dinners.

Ely doesn't begrudge Berry's wealth, but rues what might have been for himself. He admits to squandering the money he made in the short period he toured after his version of "Louie Louie" became a hit. He said a performer's royalty would have made a big difference.

"I would have had a nice bank account when I got out of the Army," he said. "As it was I ended up being a musician playing in bars for 35 years."

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