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2 MEETING TO: APPROVE SUBCOMMITTEE VACANCIES;
3 AND TO CONSIDER: A RESOLUTION EXPANDING THE
4 RESPONSIBILITIES OF THE IMPEACHMENT TASK FORCE
5 TO CONDUCT AN INQUIRY INTO WHETHER U.S. DISTRICT
6 JUDGE SAMUEL B. KENT SHOULD BE IMPEACHED;
7 AND MARKUP OF: H.R. 848, THE "PERFORMANCE
8 RIGHTS ACT";
9 H.R. 2344, THE WEBCASTER SETTLEMENT ACT OF
10 2009";
11 H.R. 1741, THE "WITNESS SECURITY AND
12 PROTECTION GRANT PROGRAM ACT OF 2009";
13 AND H.R. 2247, THE "CONGRESSIONAL REVIEW ACT"
14 Wednesday, May 13, 2009
15 House of Representatives,
16 Committee on the Judiciary,
17 Washington, D.C.

18 The committee met, pursuant to call, at 10:26 a.m., in Room
19 2141, Rayburn House Office Building, Hon. John Conyers
20 [chairman of the committee] presiding.

21 Present: Representatives Conyers, Berman, Nadler,
22 Scott, Watt, Lofgren, Jackson Lee, Waters, Delahunt, Wexler,
23 Cohen, Johnson, Quigley, Gutierrez, Sherman, Baldwin,
24 Gonzalez, Weiner, Schiff, Wasserman Schultz, Maffei, Smith,
25 Sensenbrenner, Coble, Gallegly, Goodlatte, Lungren, Issa,
26 Forbes, King, Franks, Gohmert, Jordan, Poe, Chaffetz, Rooney,
27 and Harper.

28 Also present: Representative Blackburn.

29 Staff present: Perry Apelbaum, Staff Director/Chief
30 Counsel; Ted Kalo, General Counsel/Deputy Staff Director;
31 George Slover, Legislative Counsel/Parliamentarian; Sean
32 McLaughlin, Minority Chief of Staff/General Counsel; Allison
33 Halataei, Minority Deputy Chief of Staff/Parliamentarian; and
34 Anita L. Johnson, Clerk.

35 Chairman Conyers. [Presiding.] Good morning. The
36 committee will come to order.

37 We begin by welcoming our newest member of Congress,
38 Mike Quigley from Chicago, Illinois, to the Committee on the
39 Judiciary. He was elected on April 7th to the seat that our
40 former colleague, Rahm Emanuel, vacated when he became
41 President Obama's chief of staff.

42 I am trying to get in good with Rahm Emanuel.

43 He has lived in Chicago area for almost 30 years. He
44 began his political career as a community activist—gosh, that
45 is a popular job description these days—in the suburb of
46 Lakeview. Later, he worked for Chicago Alderman Bernie
47 Hanson in the 1980s. He also earned a law degree from
48 Loyola, where he has more recently been an adjunct professor
49 in the political science department as well as a master's in
50 the public policy from the University of Chicago.

51 In the 1990s, he was a criminal defense attorney, trying
52 over 200 cases. For the last 10 years, he was the Cook
53 County commissioner, representing communities mostly along
54 the North Shore of Lake Michigan, most of which are in his
55 new congressional district.

56 He established a record on the commission as "The
57 greenest elected official in Chicago," in the words of his
58 local newspaper, by not only supporting pro-environment
59 policies, but walking the walk, regularly going out

60 personally on cleanup projects in the state's forest
61 preserves.

62 He is a champion for civil rights as well as fiscal
63 responsibility and open government. He claims to be an
64 accomplished ice hockey player, and I understand he has
65 gotten several stitches over the course of his ice hockey
66 career. We don't get that rough in the Judiciary Committee.
67 We are a non-violent group.

68 But I am glad to know that we have such a determined
69 player in our midst who will not be intimidated by some of
70 the things that go on in our full committee. He has been
71 assigned to the Subcommittee on Crime, the Subcommittee on
72 Courts and Competitive. I yield to Lamar Smith if he wanted
73 to add to this welcome.

74 Mr. Smith. Thank you, Mr. Chairman. I, too, would like
75 to welcome Mike Quigley to the Judiciary Committee. And
76 Mike, I checked your Web site and saw how you identified
77 yourself. And it came to my attention that you identify
78 yourself first as independent and fiscally responsibility
79 before you identify yourself as a community activist.

80 And so I am going to choose to emphasize the former and
81 de-emphasize the latter. In any case, we are glad you are
82 here.

83 And I also notice you were, as the chairman just
84 mentioned, a county commissioner. That makes three of us in

85 Congress, by my count, so I appreciate the experience you
86 have had in that capacity, as well.

87 Welcome to the—

88 Chairman Conyers. Welcome, Mike Quigley. And if you
89 would like to make a comment, you may.

90 Mr. Quigley. Well, thank you, Mr. Chairman and members
91 of the committee. I do want to recognize that Congressman
92 Danny Davis was also a member of the Cook County Board prior
93 to my being there.

94 And I served with Commissioner Jerry "Iceman" Butler, so
95 I am not sure that will tip up how I am going to vote today
96 or not, but he is a very good man, and I am glad to be here.
97 I look forward to working with all of you.

98 Thank you.

99 Chairman Conyers. Welcome aboard, sir.

100 We now turn to the resolution expanding the
101 responsibilities of our Judicial Impeachment Task Force to
102 also include an inquiry into whether the United States
103 district judge Samuel B. Kent, the Southern District of
104 Texas, should be impeached. Pursuant to notice, I call up
105 the resolution for purposes of markup. Members all have a
106 copy of the resolution. Without objection, the resolution is
107 considered as read and opened for consideration or amendment
108 at any point.

109 [The resolution follows:]

110 ***** INSERT *****

111 Chairman Conyers. Judge Kent was sentenced on Monday of
112 this week to 33 months in prison, having pled guilty to
113 obstruction of justice for lying during the investigation
114 into his sexual misconduct. As part of his plea agreement,
115 five separate counts for sexual assaults and misconduct
116 against both a secretary in his office and a case manager
117 were dropped, but he admitted on the record that the sexual
118 contact had been against both womens' will.

119 Although Judge Kent is headed to prison, he remains a
120 federal judge and will continue to collect a salary unless he
121 resigns or is impeached. Pursuant to House Resolution 424,
122 which passed the House only last night by unanimous consent,
123 we were given, this committee, the same authority to conduct
124 an inquiry into whether Judge Kent should be impeached as we
125 previously had with respect to Judge Porteus.

126 The resolution before us simply amends the resolution we
127 adopted in the committee in January for the Judge Porteus
128 inquiry to also include the Judge Kent inquiry and the task
129 force responsibility. The authorities that apply to the task
130 force inquiry regarding Judge Porteus will obviously also
131 apply to the new inquiry regarding Judge Kent, and the
132 membership will remain the same.

133 I would like to turn now to Lamar Smith, our ranking
134 member, for any comments.

135 Mr. Smith. Thank you, Mr. Chairman.

136 Mr. Chairman, I am glad we were able to work together to
137 address this troubling situation. You have already covered
138 the facts, so I will ask unanimous consent that my opening
139 statement be made a part of the record.

140 Chairman Conyers. Without objection, so ordered.

141 [The statement of Mr. Smith follows:]

142 ***** COMMITTEE INSERT *****

143 Mr. Smith. And with that, I will yield back.

144 Mr. Sensenbrenner. Chairman?

145 Chairman Conyers. Yes? Who seeks recognition?

146 Mr. Sensenbrenner. Chairman.

147 Chairman Conyers. Chairman Emeritus Sensenbrenner.

148 Mr. Sensenbrenner. As Chairman, I move to strike the
149 last word.

150 Chairman Conyers. Gentleman is recognized.

151 Mr. Sensenbrenner. Mr. Chairman, yesterday I introduced
152 a resolution of impeachment against Judge Kent. I did so
153 after giving him 24 hours after the—to contemplate the fact
154 that, when he goes to jail, he will enjoying the full
155 judicial salary and performing no judicial functions as a
156 convicted felon, and that the time has come for him to
157 resign.

158 Evidently, he is not going to resign. He is going to
159 try to be allowed to "retire out of disability." It puzzles
160 me how pleading guilty to a crime involving obstruction of
161 justice relating to sexual harassment and potential sexual
162 assault, criminal charges against his employees is a
163 disability that would allow one to retire on full salary.

164 All of that being said, I am glad that the chair and the
165 ranking member have introduced this resolution, which I
166 enthusiastically support. I would submit, however, that
167 given the fact that Judge Kent will be incarcerated beginning

168 next month, that dealing with the Kent situation is a matter
169 of urgency because, if we delay, he will be able to get away
170 with drawing a full judicial salary while sitting in prison.

171 And this is different than the Judge Porteus situation
172 in that Judge Kent has pleaded guilty, has thus been
173 convicted, and has been sentenced to his term in prison. And
174 that is why I think that the issue is one that is clear. It
175 is one that is easier for this committee to decide to do the
176 right thing, whereas the Porteus situation is much more
177 complicated and requires more investigation.

178 So in supporting this resolution, let me strongly
179 admonish the chair and other members of the committee that we
180 ought to deal with the Judge Kent situation expeditiously in
181 a way that behooves the committee to discharge its
182 responsibility and eliminates the need for the House to deal
183 with the privilege resolution should Judge Kent go to prison
184 without having resigned.

185 I yield back the balance of my time.

186 Mr. Gallegly. Would the gentleman yield?

187 Ms. Lofgren. Mr. Chairman?

188 Mr. Sensenbrenner. I yield to the gentleman from
189 California, Mr. Gallegly.

190 Mr. Gallegly. Just for a 10-second question.

191 Jim, are you aware of what—or maybe someone else on the
192 committee would know, the time pending before he is

193 incarcerated, the 30 days or 45 days, however many days it
194 is, is he allowed to continue to sit on the bench and—does
195 anyone know?

196 Mr. Sensenbrenner. Well, the answer is, is that the
197 chief judge of the Fifth Circuit, Judge Edith Jones, took him
198 out of hearing criminal cases when he was indicted. He was
199 hearing civil cases, but Judge Jones either can or already
200 has prohibited him from hearing any cases whatsoever.

201 But he remains a federal district judge because the
202 Constitution gives him tenure for life for good behavior. I
203 would submit that having pleaded guilty to something that is
204 obviously not good behavior means that, if he won't resign,
205 we have to act, and we ought to act expeditiously.

206 Mr. Gallegly. That was my point.

207 Thank you, Mr. Chairman.

208 Ms. Lofgren. Mr. Chairman?

209 Chairman Conyers. —thank you.

210 Mr. Sensenbrenner. I still have the time. I yield to
211 the gentlewoman from California.

212 Ms. Lofgren. Thank you, Mr. Sensenbrenner.

213 I am not on the task force, but I hope—I don't know
214 anything other than what I read in the newspaper about this.
215 Obviously what he was convicted of is terrible. He should go
216 to prison. He shouldn't hear any cases. I don't think there
217 is any dispute on that.

218 I did read, however, that—and I don't know if this is
219 even true—that the individual suffers from bipolar disease,
220 and that is—mental illness is a real disease, and I hope that
221 the task force will consider and weigh whether or not that in
222 fact was the case if there is a disability claim.

223 And I would yield back to the gentleman.

224 Mr. Sensenbrenner. Yes.

225 Well, reclaiming my time, the fact is is that the judge
226 did plead guilty to one count of obstruction of justice and
227 dismissal of the other five counts against him. Bipolar
228 disease is a disease, but I don't think it allows someone who
229 should be held to a higher standard, meaning a federal
230 district judge with a lifetime appointment, to be able to
231 commit crimes and basically continue drawing a salary while
232 he is in prison.

233 Ms. Lofgren. Would the gentleman yield?

234 Mr. Sensenbrenner. I am glad to yield to the
235 gentlewoman from California.

236 Ms. Lofgren. I agree with you. The fact that he—if in
237 fact he is mentally ill, it does not excuse criminal
238 behavior, and he has, in fact, been convicted of that. The
239 question I am raising is whether his mental illness is
240 grounds for disability retirement. And I don't know the
241 answer to that, but I just hope that it is one of the issues
242 that task force will—

243 Mr. Sensenbrenner. Well, reclaiming my time, that
244 decision will be made by Judge Jones as the chief judge of
245 the Fifth Circuit. It will not be made by us. The question
246 is is whether he has forfeited the ability to be a federal
247 judge because he is no longer in good behavior. And I think
248 the answer to that is obvious.

249 Mr. Nadler. Would the gentleman yield?

250 Mr. Sensenbrenner. I am happy to yield—

251 Chairman Conyers. I yield 1 additional minute to Mr.
252 Sensenbrenner.

253 Mr. Nadler. Now I am thoroughly confused. I had
254 thought that an impeachment would eliminate any disability
255 pension. Is that correct?

256 Mr. Sensenbrenner. Reclaiming my time. The answer is
257 yes.

258 Mr. Nadler. Whereas his conviction did not do that?

259 Mr. Sensenbrenner. Reclaiming my time. The answer is
260 no. And we did impeach, and the Senate removed 20 years ago,
261 Judge Walter Nixon of Mississippi, who was drawing a full
262 salary while sitting in prison.

263 Mr. Nadler. All right, but the question I have is I was
264 listening to the dialogue between the gentlelady from
265 California and Mr. Sensenbrenner, and I gathered from that
266 that you thought that the task force should make a
267 determination as to the equity, given his mental illness, of

268 his collecting a disability pension. And now, I hear that
269 the impeachment, if we were to go forward with that, would
270 eliminate that, and so that would eliminate their ability to
271 make that determination.

272 Chairman Conyers. The question is on adopting the
273 resolution. All in favor—

274 Mr. Gohmert. Mr. Chairman?

275 Chairman Conyers. Who seeks recognition? For how long?

276 Mr. Gohmert. One minute.

277 Chairman Conyers. All right. The gentleman is granted.

278 Mr. Gohmert. Well, Mr. Chairman, it is reprehensible
279 for a judge to take advantage of female employees and grope
280 them, and I don't think somebody like that ought to be on the
281 bench. But in view of recent events in here, I am concerned,
282 if it turns out that is how he is oriented sexually, are we
283 moving toward a hate crime here in this body?

284 I yield back.

285 Chairman Conyers. All right. Then I will give
286 Congressman Schiff a minute.

287 Mr. Schiff. Thank you, Mr. Chairman. I won't even take
288 a minute, just to say I support the resolution. And Mr.
289 Goodlatte and I have been working very well together in a
290 bipartisan manner. We will explore all the relevant issues
291 and work as expeditiously as possible.

292 And I yield back the balance of my time.

293 Chairman Conyers. The question is on adopting the
294 resolution. All in favor, say aye.

295 [A chorus of ayes.]

296 All opposed, say no. The ayes have it, and the
297 resolution is adopted. Pursuant to notice, I call up H.R.
298 848, the Performance Rights Act, and ask the clerk to report
299 the bill.

300 The Clerk. H.R. 848, a bill to provide parity in radio
301 performance rights under Title 17, United States Code, and
302 for other purposes.

303 [The bill follows:]

304 ***** INSERT *****

305 Chairman Conyers. Without objection, the amendment will
306 be considered as read and open for amendment at any point.

307 Could I begin this by suggesting that the time has
308 approached for finally establishing some form of equity for
309 recording artists, allowing them to be paid fair compensation
310 for their creativity. This is not a revolutionary concept.
311 Everybody gets paid for their creativity and their work. In
312 my offices in Washington and Detroit, I am being flooded with
313 calls by people who have some mis-impression of House
314 Resolution 848 that I hope that we can clear up in the course
315 of this discussion.

316 And I am equally concerned about the economic impact
317 that the measure before us may have on broadcasters,
318 particularly smaller broadcasters, particularly minority
319 smaller broadcasters. As difficult as times are, it is
320 certainly not the intention or goal of this legislation, nor
321 of this committee, to make economic opportunity more
322 difficult for anybody, particularly bankrupt broadcasters who
323 may be in a difficult circumstance as it already is, even
324 before the global fiscal crisis has engulfed us.

325 And that is why I, and I can speak for a number of
326 members of the committee that have talked with me about this,
327 we are committed to finding some middle ground on this issue.
328 I believe we can accomplish both, keeping smaller
329 broadcasters in business and bring some equity to performers

330 for the first time in terms of terrestrial radio that they
331 have ever had.

332 Now, along with my colleagues, we will be offering a
333 manager's amendment, that glorious legislative product that
334 addresses several of the concerns that have been raised at
335 our hearings, and the subsequent many meetings that we have
336 held, including last night, this morning, and all during the
337 last few weeks prior. This manager's amendment provides a
338 number of accommodations, including delaying the bill's
339 effective date, reducing the royalty payments due, and
340 ensuring that the needs of small minority, religious, gospel,
341 non-music broadcasters are taken into account.

342 Now, today's markup is not the end of the legislative
343 process. I, Lamar Smith and others remain ready and willing
344 to work with all interested parties in developing any
345 necessary accommodations that may be required. The only
346 thing we ask is that you are working with us in good faith.

347 And I am also requesting, along with Ranking Member
348 Smith and our dear colleague from Texas, Sheila Jackson Lee,
349 Judge Gonzalez, Mr. Chaffetz, Lungren and others, a GAO study
350 to analyze the economic factors for radio broadcasters, as
351 well as performing artists and copyright owners related to
352 this act.

353 This doesn't mean that we do not have enough information
354 to move the bill forward, but that, as we move forward, we

355 can and should supplement the information available to the
356 rate-making authority. I plan to remain diligent in ensuring
357 the vibrancy and the competition available in the broadcast
358 and other relevant markets.

359 The last thing any of us want to do is preside over a
360 broadcast market that becomes more concentrated and less
361 diverse. We want de-concentration and more diversity.

362 And so I will be working with subcommittee chairman Hank
363 Johnson, Ranking Member Lamar Smith, Subcommittee Ranking
364 Member Howard Coble and others that are as deeply interested
365 in this as I am in planning a hearing on this subject in the
366 very near future. It is an important, an emotional issue for
367 many. It is an economic issue for many.

368 Creative rights go to the core of our cultural health,
369 our intellectual prowess and as a society. And broadcasters
370 are a vital cog in our local communities and in our political
371 debates.

372 So, with that, I will submit the rest of my statement
373 and invite Lamar Smith to make any comments that he may want
374 to, as soon as he finishes talking with Mr. Sensenbrenner.

375 Mr. Smith. Thank you, Mr. Chairman.

376 The constant tension in copyright law is to balance the
377 recording artists' interest in being compensated for their
378 works with the benefits derived from being provided with
379 greater public access by broadcasters. The bill before us

380 today, H.R. 848, represents a historic change in copyright
381 law.

382 It proposes to alter the relationship between performing
383 artists who benefit from having their sound recordings
384 performed over the air and local radio stations that have
385 always benefited from broadcasting such popular works. The
386 bill amends sections 106 and 114 of the Copyright Act and
387 eliminates the exemption from paying recording artists that
388 AM and FM radio stations have enjoyed since the development
389 of broadcast radio.

390 There clearly is a symbiotic relationship between radio
391 stations, record labels and recording artists. The intended
392 parties should recognize that they depend on each other and
393 begin to work toward a resolution of their longstanding
394 disagreement.

395 While I don't expect the parties to begin negotiating on
396 a rate, the parties did publicly agree to cooperate on
397 negotiating the scope of an objective study. This study was
398 intended to be completed in the next few months so that it
399 would help members of this committee make adjustments to this
400 legislation.

401 Today, the chairman and I and several other members of
402 the Judiciary Committee are sending a letter to the
403 Government Accounting Office that requests an expedited
404 review of the economic implications of various proposals

405 involving performance rights. That letter is also signed by
406 Charlie Gonzalez, Dan Lungren, Sheila Jackson Lee, and Jason
407 Chaffetz.

408 And Mr. Chairman, may I ask unanimous consent that a
409 copy of that letter be made a part of the record?

410 Chairman Conyers. Without objection, so ordered.

411 [The information follows:]

412 ***** INSERT *****

413 Mr. Smith. Despite the fact that this issue has been
414 around for many years, the sad truth is that there is an
415 absence of credible and objective economic information that
416 can inform the members of this committee about the likely
417 effect of enacting this legislation. For example, it isn't
418 clear whether older artists are likely to be net
419 beneficiaries of such a royalty or whether instead radio
420 stations will drop them from their playlist in favor of newer
421 and more popular artists who are still under active recording
422 contracts.

423 It would be a tragic result if a bill that is intended
424 to improve the lives of some artists actually resulted in
425 less public exposure and, therefore, a lower quality of life
426 for those who have brought much joy to so many.

427 I understand the desire to advance this legislation, but
428 remain convinced that haste may lead to unintended
429 consequences. But I do appreciate the steps the chairman has
430 made to improve this legislation. However, I urge my
431 colleagues to recognize that there is still much that we need
432 to know and other improvements that might be made to this
433 bill if we gather evidence and better inform ourselves about
434 its likely consequences before we consider it on the House
435 floor.

436 Because I do not think we have sufficient information
437 regarding the effect of this legislation to justify such a

438 dramatic change in the law now, I am unable to support the
439 bill.

440 With that, I yield back the balance of my time.

441 Chairman Conyers. Thank you, Lamar.

442 We now turn to amendments. I ask the clerk to report
443 the manager's amendment.

444 The Clerk. Amendment to H.R. 848 offered by Mr. Conyers
445 of Michigan, Mr. Issa of California, Ms. Jackson Lee of
446 Texas, Mr. Johnson of Georgia, Mr. Watt and Mr. Rooney of
447 Florida.

448 [The amendment by Chairman Conyers, Mr. Issa, Ms.
449 Jackson Lee, Mr. Johnson, Mr. Watt and Mr. Rooney follows:]

450 ***** INSERT *****

451 Chairman Conyers. Without objection, the amendment will
452 be considered as read, and I will begin the discussion by
453 pointing out that these five of my colleagues on both sides
454 of the aisle have offered this manager's amendment as a good
455 faith, sincere attempt to address specific concerns that have
456 been raised by broadcasters, members, civil rights
457 communities, radio listeners, in an effort to reach middle
458 ground. The amendment goes a long way to help small
459 broadcasters especially.

460 In addition to the accommodations for the small
461 broadcasters in the underlying bill, the manager's amendment,
462 the measure before us, goes even further. Now, stations
463 making under \$100,000 a year will only have to pay \$500 a
464 year. This accommodation will cover 90 percent of the
465 minority-owned stations and 77 percent of all stations.

466 To account for the difficult economy we find ourselves
467 in, the manager's amendment also delays the effect of the
468 bill for 3 years for stations grossing under \$5 million a
469 year and delays it for 1 year for stations grossing \$5
470 million or more a year.

471 The manager's amendment also directs the copyright
472 royalty judges in making determinations about the rates, to
473 consider the effect on religious stations, noncommercial
474 stations, minority-owned stations, female-owned broadcasters,
475 all of whom should be given very careful attention as we deal

476 with this very sensitive matter.

477 My particular thanks goes out to the gentlelady from
478 Texas, Sheila Jackson Lee, a distinguished member of this
479 committee, for working with us on this important provision.
480 It also directs the copyright royalty judges to look at the
481 effects of non-music programming and its importance.

482 We will be calling on the GAO to conduct a study on how
483 this bill will affect minority-owned stations, female-owned
484 stations, religious stations, gospel music, minority royalty
485 recipients and religious royalty recipients, among other
486 things.

487 There are significant concessions that have been brought
488 along, been brought to gain the support from the leadership
489 conference on civil rights, the labor community, unions
490 across the spectrum, AFL, SEIU, CWA, Steel Workers, American
491 Federation of Teachers, AFSCME and others, artists such as—
492 that are supporting us, such as Harry Belafonte, Duke Fakir,
493 Jerry Butler, Dionne Farris, Dionne Warwick, Sam Moore,
494 Crystal Waters, Jon Secada, Martha Reeves—Duke Fakir, he is
495 in the audience. And we hope that this amendment will be
496 carefully considered as the managers have worked on it
497 equally as carefully.

498 I recognize now Lamar Smith, our ranking member.

499 Mr. Smith. Thank you, Mr. Chairman.

500 The manager's amendment contains a number of

501 improvements that are intended to address some of the
502 concerns that have been expressed by representatives from the
503 broadcast community, in particular the tiered rate structure
504 tied to station revenue and the delayed effective date for
505 the payment of royalties for a period of 1 to 3 years will
506 provide additional flexibility and an adjustment period for
507 any station affected by this legislation.

508 However, these new provisions are another reason why the
509 bill would benefit from negotiations before it reaches the
510 House floor. I welcome the chairman's commitment to make
511 further improvements and look forward to the results of the
512 GAO study that we requested today.

513 While I intend to support the manager's amendment since
514 it improves the bill, I still cannot support the underlying
515 legislation, given that we do not know enough about the
516 bill's potential impact.

517 With that, Mr. Chairman, I will yield back.

518 Chairman Conyers. Thank you very much.

519 The chair recognizes Mr. Howard Berman, chairman—who
520 seeks recognition? Mel Watts, the Subcommittee Chairman on
521 Finance, senior member of the Judiciary Committee is
522 recognized.

523 Mr. Watt. Thank you, Mr. Chairman. I move to strike
524 the last word and rise in support of the manager's amendment.
525 The members may note that my name was added as a co-sponsor

526 of the manager's amendment at the last minute, and in fact,
527 it is written in as a co-sponsor of the manager's amendment
528 because I have been evaluating how to move this bill in the
529 direction that protects broadcasters more, particularly small
530 broadcasters.

531 And while I am not certain that the manager's amendment
532 goes all the way in that direction as far as it might be
533 necessary to get to the right balance, it certainly moves the
534 bill in an appropriate direction that addresses a lot of the
535 concerns that were, either rightly or wrongly, being raised
536 by those in the broadcast community.

537 So I am certainly strongly in support of the manager's
538 amendment, and would join the chair and other members who
539 expressed an interest in continuing to listen to all parties
540 to make sure the balance that we are getting to, and have
541 gotten to in the manager's amendment, if it is not the
542 appropriate balance, we continue to work on it and find a
543 resolution that is the appropriate balance.

544 With that, Mr. Chairman, I thank the chairman for his
545 hard work on the manager's amendment. I think it
546 substantially improves the bill and addresses a number of the
547 concerns that I had about the bill, or at least substantially
548 addresses those concerns.

549 And with that, I yield back the balance of my time.

550 Chairman Conyers. I thank the gentleman.

551 Chair recognizes the former chairman of the Agriculture
552 Committee, senior member of Judiciary Committee, Bob
553 Goodlatte of Virginia.

554 Mr. Goodlatte. Well, thank you, Mr. Chairman. I want
555 to thank you for working with me and others about some of the
556 concerns that we have with this bill. And while I still do
557 not believe that the bill is yet finished, I am pleased that
558 the manager's amendment moves in the right direction, and I
559 will support it.

560 The manager's amendment further reduces the statutory
561 rates that small broadcasters will be required to pay.
562 Specifically, it sets lower statutory rates in tiers based
563 upon the station's revenues. The amendment also starts the
564 process of ensuring parity in the treatment of royalty rates
565 among various technologies, including Internet, satellite and
566 terrestrial radio.

567 I am particularly pleased about two provisions that I
568 worked with Chairman Conyers to get into the manager's
569 amendment. The first is the extension of the effective date
570 for stations that make \$5 million or less in annual revenues.
571 Under the amendment, no such station will be required to pay
572 royalties for 3 years. This will give broadcast stations
573 much-needed time to attempt to prepare for these royalty
574 payment obligations.

575 In addition, the manager's amendment contains my

576 provision to require the copyright royalty judges, when
577 determining royalty rates for public performances of sound
578 recordings, to consider the effects on non-music programming,
579 including local news and information programming among
580 clusters of stations within a local DMA.

581 I have, and continue to be, very concerned about
582 maintaining local radio programming. Local radio programming
583 is one of the best and least expensive ways that citizens
584 gain access to news and emergency information in their
585 communities. At a time when consolidation seems to be the
586 norm, I believe it is important to do what we can to
587 encourage radio stations to continue to provide local news
588 and information, which often is done at cost or at a loss to
589 the radio station.

590 In addition, many local radio markets have local owners
591 who own and operate multiple radio stations. These clusters
592 may contain some stations that bring in large revenues, as
593 well as some stations that bring in no revenues, such as
594 local stations dedicated to news and information. It would
595 be a shame if this legislation were the last straw that
596 caused station owners like these to make the decision to
597 close their shops, sell out, or cut their provision of robust
598 local news and information coverage.

599 The inclusion of this local programming provision in the
600 manager's amendment will ensure that the copyright royalty

601 judges take into consideration the effects on local
602 programming when they determine royalty rates. This is a
603 good first step in our attempt to ensure that local
604 programming remains robust even after stations are required
605 to make royalty payments for the performance rights in sound
606 recordings. I thank the chairman for its inclusion.

607 And in closing, I still have some concerns about this
608 bill, and I hope we can continue to work on it after today to
609 make sure it sufficiently protects small broadcast stations
610 and local programming.

611 Thank you, Mr. Chairman.

612 Chairman Conyers. Thank you, Mr. Goodlatte.

613 Chair recognizes the chairwoman of the Subcommittee on
614 Immigration, Zoe Lofgren of California.

615 Ms. Lofgren. Thank you, Mr. Chairman. I move to strike
616 the last word.

617 Chairman Conyers. Without objection, the gentlelady is
618 recognized.

619 Ms. Lofgren. As I have stressed throughout our hearings
620 on performance rights and this legislation, establishing
621 platform parity and the underlying purposes of copyright
622 should be the guiding principles when addressing this issue.
623 And I am grateful to the chairman, as well as Mr. Berman, for
624 including language in the manager's amendment that moves
625 towards these principles.

626 Currently, there are four different types of radio
627 operating in the United States—terrestrial, cable, satellite
628 and Internet radio. And of the four different platforms, the
629 latter three all compensate singers and performers for the
630 use of their music. The Copyright Royalty Board is the
631 government entity responsible for determining the rates the
632 cable, satellite and Internet radio will have to pay, and
633 they use a four-factor test outlined in section 801 of Title
634 17 to establish the rates for cable and satellite.

635 But for recording rates for Internet radio, there is a
636 different test, a more rigorous, a higher threshold, commonly
637 referred to as willing buyer, willing seller. Under the 801B
638 standard, satellite and cable radio pay around 6 to 8 percent
639 of annual gross revenue, but under the willing buyer, willing
640 seller standard, Internet radio pays at least 47 percent of
641 their gross revenue in the form—royalties. And in some
642 cases, that figure has exceeded 80 percent.

643 In the year 2008, Pandora's sound recording obligation
644 totaled 70 percent of their gross revenues. I think that
645 this is really a quirk in the federal law at the time that
646 Internet radio was in its infancy.

647 Now, I am grateful that section 801B has been included
648 in this model as a standard for parity. I think it is a
649 fundamentally balanced one that appropriately reflects the
650 purpose of copyright to encourage the production of creative

651 works for the use and enjoyment of the public.

652 That being said, I would have preserved the last factor
653 in 801B, which examines the effects of royalty rates on
654 different industries, and I would also have drafted the text
655 to ensure that small webcasters enjoy the same solicitude
656 that the bill shows for small terrestrial broadcasters.

657 I really can't think of a reason why we would—and I
658 understand and support the limit of \$5,000 for small
659 webcasters. But at the same time—I mean small broadcasters,
660 but at the same time, small webcasters could pay up to
661 \$150,000.

662 So I understand this language moves us forward. I
663 support the language in the manager's amendment. I am
664 appreciative of the work that Mr. Berman and Mr. Conyers have
665 done with me to move us forward. I am hopeful that, as we
666 proceed further, we can have additional discussions on why
667 there would be a cap for terrestrial and not for webcasters.
668 I think there is plenty of opportunity to have those
669 discussions.

670 And as I have told Mr. Berman, I look forward to
671 continuing to work with him so that artists are treated
672 fairly, but also all platforms, and most importantly the
673 public, is treated fairly, I know a goal that you share as
674 well.

675 And I would yield to the gentleman.

676 Mr. Berman. Well, I thank the gentlelady for yielding,
677 and I want to just make a couple of points that follow up on
678 what you said.

679 Number one, I think you are absolutely right. Platform
680 parity between webcasters, between Internet radios, satellite
681 radio and terrestrial radio should be our goal.

682 Secondly, I mean, the biggest mistake I made in my
683 effort to try and achieve platform parity in the Perform Act
684 was not including terrestrial radio. And I am sure the
685 gentlelady would agree that the greatest distortion of the
686 principle of platform parity is the total exemption that
687 over-the-air terrestrial radio now has, where it is the only
688 one does not pay for the performance right.

689 But on the issue of the small broadcasters and small
690 webcasters, the next bill we consider will allow the
691 agreement between the music folks and sound exchange and the
692 small webcasters to supplant the Board decision which charges
693 the rates that you made some reference to in your earlier
694 comments. So on that issue, we will be addressing that, in
695 effect, right after we finish this bill.

696 Ms. Lofgren. If I may reclaim my time, I am a co-
697 sponsor of that bill, and I look forward to it being adopted.
698 But I would note—I would ask unanimous consent for an
699 additional minute.

700 Chairman Conyers. The gentlelady is accorded 2

701 additional minutes.

702 Ms. Lofgren. I would note that, even though I support
703 that measure, it doesn't provide the kind of statutory
704 protection to small webcasters that we are providing to small
705 broadcasters today. And I think that that is something that
706 we should think about doing here.

707 Mr. Berman. If I may just add, you are right, but what
708 it does do is allow a negotiated agreement between the small
709 webcasters and sound exchange to supplant a decision that
710 some felt was very onerous on small webcasters. I think we
711 continue to work together to strive for the kind of platform
712 parity where you have a compulsory license.

713 Ms. Lofgren. Reclaiming my time, I would just note that
714 we could say the same thing for terrestrial broadcasters, let
715 them work out the deal. The problem is that the small guys
716 inherently end up with less bargaining power, and that is why
717 we put in-

718 Chairman Conyers. Gentlelady is given 2 additional
719 minutes.

720 Ms. Lofgren. That is why we put in the limit for the
721 small broadcasters, which I support. And I think that we
722 ought to consider, and I want to continue talking to you and
723 the chairman, about a similar measure for webcasters to
724 protect them just as we are protecting the small
725 broadcasters.

726 And I do agree with you that—and the reason why I am
727 willing to proceed supporting the measure at least today, is
728 that it hasn't been fair to the others, if there is platform
729 parity and one entity pays nothing, that is not reasonable.
730 But this is the time to be fair to all, which is something I
731 am sort of a broken record on this, but this is our
732 opportunity to make this equitable across the board.

733 Chairman Conyers. Gentlelady's time has expired.

734 Ms. Lofgren. And I yield back.

735 Chairman Conyers. Chair recognizes Howard Coble, the
736 senior member of the committee from North Carolina.

737 Mr. Coble. Thank you, Mr. Chairman, colleagues.

738 As we all know, this bill would eliminate the
739 longstanding exemption for over-the-air broadcasters from
740 paying a copyright royalty to performers. Last session, Mr.
741 Chairman, I worked very closely with the distinguished
742 gentleman from California, and Mr. Smith, and I voted in
743 favor of the bill, which addressed the performers being
744 "short-changed."

745 I believe the performers have the better equitable
746 argument. Fast-forward to today. The dismal economic
747 climate bothers me now. And in some of these, particularly
748 the small stations, it would be a negative impact. And with
749 that in mind, Mr. Chairman, I commend you for the manager's
750 amendment.

751 Ms. Lofgren. Would the gentleman yield?

752 Mr. Coble. I will just a minute.

753 Mr. Chairman, I want to—as we say down home, "You done
754 good" and crafted this, obviously a better improvement. I
755 talked to a performer yesterday known to most of you in this
756 room. And he knew I voted for the performers last year. And
757 I told him, I said, "In view of the economic downturn, this
758 year I am leaning more toward the broadcasters because of the
759 negative impact that they would suffer. That has been
760 assuaged somewhat by your manager's amendment.

761 And then, he said to me, he said, "Regardless of how you
762 vote, I am still your friend." Mr. Chairman, I almost fell
763 out of my chair, because most of the responses have been,
764 "Well, by golly, you better vote for this bill," or, "You
765 better vote against this bill or you will regret it." Here
766 is a guy who came forward, "Use your judgment." That is what
767 I am going to try to do.

768 I want to associate myself with a comment made by the
769 distinguished gentleman from Texas in that I think we need
770 more data. I think the time to pass it, today perhaps might
771 be premature.

772 Having said all that, we will strike that. Not unlike
773 many of you, I have sweethearts on both sides. The
774 broadcasters I love. The performers I love. So we will see
775 what happens. But Mr. Issa from California asked first, so I

776 would yield—well, he is already gone. I will yield to the
777 gentlelady from California.

778 Ms. Lofgren. Well, thank you.

779 I just wanted to introduce a note of celebration to
780 this, because, 2 hours ago, our colleague on the committee,
781 Linda Sanchez, brought into the world a baby boy, Joachim
782 Sanchez Sullivan. And so we are very happy for her. He is
783 very healthy. She is happy, and our love goes to her and to
784 Jim.

785 Mr. Coble. Well, let me reclaim my time.

786 Mr. Chairman, this is a very significant piece of
787 legislation. I am told that the process has continued. The
788 negotiation continues. I am furthermore told that—and I
789 don't know this for a fact—but that the performers have been
790 more accommodating in the negotiation process than have my
791 radio station friends or the spokesman therefore.

792 I don't want to penalize the owner of the small station
793 in Michigan or in North Carolina for the failure of some
794 folks up here who refuse to negotiate if in fact they did
795 refuse to negotiate. The process continues. I hope we see
796 the rainbow at the end of the—the light at the end of the
797 tunnel, Mr. Chairman. I hope it won't be another train
798 coming our way.

799 But I thank you, and I yield back.

800 Ms. Jackson Lee. Mr. Chairman? Mr. Chairman?

801 Chairman Conyers. The gentleman expresses many of our
802 sentiments in the quest to seek equity on both sides. And I
803 must say that I was talking to Linda Sanchez late yesterday
804 evening on the floor, and she said, "Any day now, John," but
805 I had no idea how correct she was, nor did she.

806 Chair recognizes Sheila Jackson Lee, the distinguished
807 gentlelady from Texas.

808 Ms. Jackson Lee. Thank you very much, Mr. Chairman.

809 And you just offered the words to a song, "Any Day Now,"
810 so I am glad to be the lead for that. Congratulations to
811 Linda Sanchez.

812 I like what my colleagues have said, and I like my good
813 friend from North Carolina, Mr. Coble. We have friends
814 everywhere. In fact, I am looking into the audience, and I
815 am seeing friends that I have respect for that are advocating
816 both positions.

817 In the midst of this discussion and debate, my cell
818 phone is joining my office phones and being blown up by those
819 are hearing that it is represented that I am destroying small
820 and minority-owned businesses by engaging in this
821 legislation. And so I think it is important, first, Mr.
822 Chairman, and thank you for your leadership and the
823 leadership of the gentleman from California and others.

824 And I have been delighted to work with you because I
825 think this committee is about fairness and equity and

826 justice. And that is all we are asking for today. And if
827 there is anyone capturing any of our remarks, let it be know
828 that the records of many of us, and most of us, could not be
829 challenged as it relates to protecting minority, women and
830 small businesses.

831 Check our records. Our love and affection for our radio
832 stations, the National Broadcast Association, is also
833 impeccable. We are supporters of their ability to achieve
834 the right to use the First Amendment.

835 But I think we have got something going here. And in my
836 discussions that I have had, I am glad that there is always a
837 light at the end of the tunnel. And the light is that we are
838 operating under a framework that started in 1909.

839 We are now in a new century. And all this bill does, as
840 I have come to have it digested, is it puts a framework
841 forward. And I like my friends. I know there are good
842 people in Iran and China and North Korea, but I would like to
843 get out of that camp.

844 I would like to be able to come into the camp of the
845 rest of the world that believes in the performer's rights.
846 Iran, China and North Korea are the only other countries that
847 do not allow or pay for performers' rights. That is not the
848 company right now that I want to associate myself with.

849 So what does the manager's amendment do that makes me
850 feel that we are on the right track? And frankly, I believe

851 that we can do better. And I think the chairman has been
852 very generous in trying to work with individuals. But I know
853 that I have been glued to late-night TV looking at the
854 Rockets handle themselves with L.A., and we are going to do
855 it.

856 And I know that, as I look at it, somebody is being paid
857 for showing that game. Somebody is being paid right now if
858 there is a baseball game on, because that adds to the
859 viability of that product that the radio station is
860 producing.

861 So all we are doing today is asking that the people that
862 inspire us, that cause us to take a stand for the person we
863 believe in as it relates to faith, that gives us comfort as
864 we drive to work, or maybe we are disturbed at work and we
865 turn on the radio of any kind, terrestrial, cable, satellite,
866 Internet and regular broadcast, that we can provide for those
867 individuals.

868 So in the name of Archie Bell and the Drells that came
869 from-Texas, the Winans that spent a lot of time in Houston,
870 particularly at New Light Christian Church, of which I am
871 always a frequent visitor, Yolanda Adams, who sung at the
872 Sojourn of Truth event, Kirk Franklin, who is-Yolanda, a dear
873 friend of mine, the Clark sisters, Herbie Hancock, of which
874 we have all grown up on listening to his music, the Miracles,
875 of which had a sweet sound that we enjoyed. You never could

876 top Jerry Butler and Harry Belafonte, Kool & The Gang, Martha
877 Reeves, of course, and with Martha and the Vandellas. And as
878 I told Duke of the Four Tops, we always could understand what
879 they wee saying.

880 I would say to you, Mr. Chairman, that I have had, as
881 they say, some interesting calls over the last couple of
882 days, and all the folks that have called, I love them dearly.
883 I listen to the morning talk shows. I pay tribute to Tom
884 Joyner and my good friend Al Sharpton. I pay tribute to
885 them. But I want them to know that we can do much sitting
886 around the table of negotiation.

887 And so it is important to note that my KTSU, with Texas
888 Southern University, University of Houston public radio, are
889 all in the realm of paying a set fee. And this manager's
890 amendment allows them to pay \$500 annual fee for all stations
891 under \$100,000, \$1,000 for annual fee for religious stations,
892 publicly supported, making more than \$100,000, and 2,500 for
893 those over that amount, \$5,000 for the commercial stations.

894 But I am very glad, Mr. Chairman, that you understood
895 that we really don't—

896 Chairman Conyers. Gentlelady Is given an additional
897 minute.

898 Ms. Jackson Lee. I thank the chairman—which we don't'
899 really know how much this is going to cost. And these are
900 the questions that I raised, kept asking for the numbers, but

901 we really don't know what it is going to be because I think
902 the point should be made that it is going to be negotiated.
903 The copyright judges are going to work to negotiate,
904 copyright royalty judges, what the fee is going to be.

905 So we have signed a letter with my colleagues, Lamar
906 Smith, myself and Chairman Conyers, and have the language in
907 the manager's amendment that says that the copyright Board
908 will take into account the idea or the issues facing
909 minority-owned, female-owned and religious stations. Radio
910 One, which is so popular in Houston as it is elsewhere, Magic
911 102 that is promoting the idea that we are killing small
912 businesses, Praised that is promoting the idea will be
913 protected under this language.

914 So, Mr. Chairman, let me conclude by simply saying that
915 I want to get out of the bad, bad neighborhood and get in the
916 good neighborhood, work with the performers, work with the
917 broadcasters, and do the right thing. The Constitution says
918 that the First Amendment should be protected. And I look
919 forward to doing so in the balance of protecting our small
920 and minority owned businesses.

921 I yield back, Mr. Chairman.

922 Chairman Conyers. I thank you.

923 We have time to recognize the Lisa distinguished
924 gentleman from California, Darrel Issa, before we go to vote.

925 Mr. Issa. Thank you, Mr. Chairman. And I want to thank

926 you today, as a co-sponsor of the bill and a co-sponsor of
927 the manager's amendment, for the kind of work you have done.
928 It is very unusual here in Congress for one side to negotiate
929 with itself so many fine compromises. I guess some people in
930 the audience know it was a one-sided negotiation. And it is
931 very hard to do that, to try to be fair to concerns that are
932 brought up, even though no matter what the—

933 Mr. Berman. Would the gentleman yield just on that
934 comment?

935 Mr. Issa. Of course I yield to the California member.

936 Mr. Berman. Was it a one-sided negotiation because the
937 proponents of the bill wouldn't talk to the other side?

938 Mr. Issa. No, not at all.

939 Mr. Berman. Or was it vice-versa?

940 Mr. Issa. And in fact, that has been the frustration,
941 as my colleague from California points out, that those of us
942 who believe that the right answer can never be automatically
943 zero have not had a partner to negotiate with.

944 But notwithstanding that, Mr. Chairman, you have done a
945 fine job of listening to all of us try to find things which
946 we believe will improve this bill, bring it to what should be
947 the willing buyer, willing seller negotiation if the
948 broadcasters would simply—terrestrial broadcasters would meet
949 with us.

950 And particularly with platform parity, bringing in the

951 interests of people who today pay royalties, who believe that
952 they should be allowed to have similar royalties to those who
953 today pay nothing, but are not asking for nothing. They are
954 just asking for parity.

955 And so the efforts taken in this amendment I believe is
956 something that should cause those who have been absent to
957 realize that we have done, I believe, Mr. Chairman, as far as
958 we can go on a one-sided basis, and perhaps as far as we
959 should go even if we had that other partner at the table with
960 us.

961 So, Mr. Chairman, I won't take any more time because I
962 know our time is short, but very few people ever will get the
963 credit they deserve as chairman. Hopefully today, we all
964 appreciate that you have done something that I haven't seen a
965 chairman do in my tenure here. And I commend you for it, and
966 I look forward to working with you for the completion of this
967 bill and the signing ceremony.

968 Ms. Waters. Mr. Chairman?

969 Chairman Conyers. Yes?

970 Ms. Waters. Will I have an opportunity—

971 Mr. Issa. And I would yield to the lady from

972 California.

973 Ms. Waters. Will I have an opportunity to speak when we
974 return before we take a—

975 Chairman Conyers. Well, I think we can do it now if you

976 would like.

977 Ms. Waters. I would like to, Mr. Chairman.

978 Chairman Conyers. Chair, with great pleasure,
979 recognizes the distinguished gentlelady from Los Angeles,
980 California, Maxine Waters.

981 Ms. Waters. Thank you very much, Mr. Chairman.

982 Today's markup of the Performance Rights Act of 2009,
983 H.R. 848, represents a tremendous amount of hard work by you
984 and my California colleagues, Mr. Berman and Mr. Issa, to
985 resolve an issue that has remained unsolved for a number of
986 years. Technological advancements that have brought us into
987 a new digital age have highlighted the fact that our
988 copyright laws must be updated to reflect the reality on the
989 ground and in cyberspace.

990 This committee has the responsibility to update the
991 copyright laws to reflect the fact that musical performances
992 are shared today in ways that were never envisioned when the
993 copyright laws were last updated.

994 Over the years in my congressional district in Los
995 Angeles, I have spoken with many performance artists and
996 broadcasters about their concerns regarding the need to find
997 a fair way to compensate everyone for their work. Let me be
998 clear: I do believe performers should be paid for their
999 work.

1000 But in modernizing the statutes, we must be very careful

1001 to avoid actions that would diminish the voice of minority
1002 broadcasters. Corporate mergers have already had a
1003 devastating impact on small to medium size minority radio
1004 broadcasters. I don't want to make that problem worse with a
1005 burdensome new law. I believe we can come up with a solution
1006 that doesn't hurt small or minority broadcasters, including
1007 religious broadcasters.

1008 Mr. Chairman, I certainly commend you for your efforts
1009 to bring this bipartisan proposal before the committee today.
1010 No bill is a perfect bill, and rarely is a bill enacted
1011 exactly as it is introduced. But H.R. 848 provides us with a
1012 good starting point, and I am looking forward to working with
1013 you, and would like to work with you and my colleagues to
1014 improve this bill in a way that will provide fair payments to
1015 performers and impose the least burden on broadcasters.

1016 That is why, Mr. Chairman, I am a little bit
1017 disappointed that we are taking this bill up and marking it
1018 up today. This manager's amendment certainly is a reflection
1019 of hard work that has gone into trying to reach a practical
1020 compromise to a complicated issue.

1021 The topic of performance rights pits some of our
1022 nation's most prominent industries against one another and
1023 the impact that these various industries have on our
1024 country's economy with regard to creativity. The
1025 dissemination of arts and entertainment and innovation is

1026 tremendous.

1027 The changes embodied in the manager's amendment go a
1028 long way towards striking an appropriate balance between the
1029 competing interests of the key stockholders on this issue.
1030 However, while representing a vast improvement to the
1031 underlying bill, additional changes are still warranted.

1032 Mr. Chairman, in spite of all the changes that have been
1033 made to improve the manager's amendment, I am concerned that
1034 our good intentions will have unintended but devastating
1035 consequences on minority and local broadcasters. Late last
1036 night, I heard from a station that broadcasts in my district,
1037 KKLA-FM, KRLA-AM. I would like to enter their letter into
1038 the record today, but I would also like to share two key
1039 points that they raised.

1040 First, the pointed out, even stations with revenues
1041 under \$1.25 million will suffer greatly with the minimum tax
1042 of \$5,000 as the rate is determined not as a percentage of
1043 profits but on revenues. In these tough times, profit
1044 margins are shrinking to evaporating.

1045 "Even with a 15 percent staff layoff," he said, "we were
1046 forced to implement last year. We already pay over \$265,000
1047 per year for music license fees." And of course, he says,
1048 "Please don't increase our burden more."

1049 My local broadcaster made another point that was raised
1050 during our hearing earlier this year, and I would like to

1051 quote him. He said, "Why should foreign-owned record
1052 companies who control 75 percent of all record sales benefit
1053 at the expense of locally owned and operated businesses?"

1054 Radio stations are struggling to survive, as are most
1055 businesses in the U.S. right now. This massive wealth
1056 transfer out of the U.S. economy to these foreign-owned
1057 record companies will destroy many local radio stations,
1058 costing jobs and revenue in our local economy.

1059 I would have liked to have time to explore more the
1060 percentage of these fees that will go to the record company
1061 as being stated by this broadcasters. But let me just
1062 conclude by saying this: one of the reasons I want more time
1063 is I certainly want to be able to compensate the performers.

1064 But let me remind you that as an African-American woman,
1065 as a minority in the Congress of the United States who needs
1066 to communicate with her constituents, as many of you do,
1067 coming from small towns, coming from minority communities,
1068 you don't have access to the big corporate media. You are
1069 not on the Sunday shows. They recycle about five or six
1070 people on the House side and five or six people on the Senate
1071 side every Sunday morning on these corporate television shows
1072 and these big radio shows.

1073 My opportunity to educate my constituents and to
1074 communicate with them lies with these small broadcasters,
1075 these minority broadcasters, these little religious stations,

1076 and I am not willing to sacrifice that at this time. The
1077 reason that I am here is to do the will of all of the people.
1078 And if my constituents don't have an opportunity to talk with
1079 me because the big corporate media doesn't care what I am
1080 saying—and maybe what you are saying either, Mr. Chairman—I
1081 think we need to back up and take a look at this.

1082 I yield back the balance of my time.

1083 Chairman Conyers. I thank the gentlelady, and could not
1084 concur with her more.

1085 We find that we have turned the clock back. We now have
1086 enough time to recognize Steve King for the final comments.

1087 Mr. King. Thank you, Mr. Chairman, and I will compress
1088 this. And I appreciate being recognized at this moment.

1089 I agree with the gentlelady from California. I would
1090 like to have more time to work on this, too, for many of
1091 those same reasons.

1092 And I wanted to make a couple of points here that I
1093 would ask the committee to consider, and that is we are
1094 addressing a situation that has been argued that the radio
1095 stations aren't required to pay for the—actually the
1096 programming that comes, and the artists are not being able to
1097 collect for that. That is the center of this argument.

1098 There is another side of this argument, which is that
1099 the performers and their record labels get free promotion
1100 from the radio stations. So when you balance this on either

1101 side of the equity scale, there is an argument for each side
1102 of this. This bill seeks to correct just one marginal free-
1103 market flaw that exists, but it does not address the other
1104 free-market flaw, which is to allow the terrestrial radio
1105 stations to collect for the promotional value when they play
1106 the product.

1107 And so this is the kind of situation that once—if this
1108 legislation would pass—and I support the manager's amendment.
1109 It is an improvement.

1110 But if this legislation would pass into law, then we
1111 would be setting up a new principle without correcting the
1112 free-market wrong that exists, and that is the de facto
1113 prohibition for radio stations to receive payment for their
1114 promotional value. I think we need to provide equity on both
1115 sides of the scale before we move forward. I would urge
1116 consideration to delay this and ask for more time, again
1117 reiterating—

1118 Ms. Jackson Lee. Gentleman yield?

1119 Mr. King. The gentlelady from California. And then, I
1120 wanted to also make a point that, if we will do a hearing on
1121 black radio stations, I hope we can bring in some other radio
1122 stations to be heard from rather than identifying it on
1123 minorities.

1124 And I will yield back to the Chairman—

1125 Ms. Jackson Lee. Would the gentleman yield?

1126 Mr. King. -yield to the lady from Texas. But I would
1127 yield back in the interest of time. Thank you, Mr. Chairman.

1128 Chairman Conyers. He said he would yield back after you
1129 were yielded to.

1130 Ms. Jackson Lee. Well, and I thank the gentleman.

1131 I just want to emphasize, this is a work in progress.

1132 This is a work in progress. You have made some valid points.

1133 We are all thinking in the same ways. The chairman has been
1134 enormously generous about this work in progress.

1135 And I truly believe that this does impact all radio
1136 stations. We made great strides. But we cannot allow an
1137 inequity in a copyright law to imbalance our work for our
1138 broadcasters. Our broadcasters will be heard, and we will
1139 work with them.

1140 I yield back.

1141 Chairman Conyers. The committee will stand in recess
1142 until the three votes have concluded, and then we will
1143 immediately resume.

1144 [Recess.]

1145 Mr. Berman. [Presiding.] We are on the manager's
1146 amendment. Does anyone else seek recognition? I think I owe
1147 the other side—the gentleman from Utah is recognized.

1148 Mr. Chaffetz. Thank you, Mr. Chairman. I will be
1149 brief.

1150 I just wanted to say briefly that I want to make clear

1151 from the outset that I favor intellectual property right
1152 protection for recording artists. And my concern with the
1153 legislation is merely the means that the bill uses to
1154 compensate the artists and the recording label. I appreciate
1155 the improvements made in the manager's amendment but can't
1156 support a one-directional protection of the value of goods—
1157 the songs—over the services—the broadcast air play—between
1158 the parties.

1159 The Constitution empowers the United States Congress "to
1160 promote the progress of science and useful arts by securing,
1161 for a limited time to authors and inventors the exclusive
1162 right to their respective writings and discoveries." Under
1163 the provisions of the Performance Rights Act, the Copyright
1164 Royalty Board may take into account the promotional value
1165 provided by the broadcasters to reduce the rate broadcasters
1166 must pay.

1167 But this presumes that the value of the songs to the
1168 broadcasters for advertising revenue is greater than the
1169 value to the artist and label, the copyright holders, of the
1170 promotion provided by the broadcasts. We do not know which
1171 value is greater and need an independent credible third-party
1172 study. A delay of implementation of the royalty provisions
1173 may permit us to obtain such a study in the meantime.

1174 But to legislate in advance of receiving this
1175 information is premature. While perhaps the failure to grant

1176 performance right 80 years ago is a regrettable anomaly, we
1177 cannot go back to see how the relationship of radio and
1178 record labels would have evolved if the right had been
1179 granted. An historical relationship of the last 80 years,
1180 though, is one of the mutual reinforcement. It is doubtful,
1181 at best, to suggest "The music industry built radio into what
1182 it is today," significantly more than "Radio built the music
1183 industry into what it is today."

1184 As such, a settlement or legislation that favors only
1185 one of the parties at the expense of the other disregards too
1186 quickly the mutual beneficial nature of the historical
1187 relationship even if that relationship has changed
1188 significantly in the digital age.

1189 Thank you, Mr. Chairman. I yield back the balance of my
1190 time.

1191 Mr. Berman. The time of the gentleman has expired. And
1192 based on seniority on the committee, the gentleman from
1193 Tennessee, who thinks he will only need a minute and a half
1194 of his 5 minutes, is recognized.

1195 Mr. Cohen. Thank you, Mr. Chairman.

1196 This issue has been before us, and I have heard the
1197 comments. I believe that this is a balanced amendment that
1198 has been offered, that gives the broadcasters much of what
1199 they have asked for.

1200 If you are a small broadcaster, you are exempted. And

1201 if you are at another level, the implementation is put off 3
1202 years, and even 1 year for all others. To me, that has gone
1203 a long, long way.

1204 Nobody wants to do harm to the broadcasters, and true,
1205 what happened 80 years ago happened 80 years ago, but that is
1206 why we pass legislation. That is why they have what are
1207 called annotated laws. You change laws and you make your
1208 laws reflect the societal values of today.

1209 If you looked at everything and said, "We did something
1210 80 years ago, we weren't going to do it today," women
1211 wouldn't be voting and African Americans wouldn't have any
1212 kind of civil rights whatsoever because, 80 years ago, we
1213 didn't have them, and we could say, "We can't change."

1214 But you do change as society changes. The fact is, you
1215 don't sell as many CDs and records today, and what possibly
1216 performers got out of the radio 80 years ago, or 40 years ago
1217 or whatever, they don't get today, and that can be adjusted.
1218 The broadcast industry can and will accommodate this, and
1219 should.

1220 And when you think about the monies that are languishing
1221 in Europe that could go to our performers here in America but
1222 are not allowed to because we, in actions that are only
1223 paralleled by Korea-North Korea, that is-China and Iran don't
1224 allow for performers to get payment rights. That is wrong.
1225 And maybe of those people are people who live in my district.

1226 I went to the Blues Awards program in Memphis last
1227 Thursday, and Bobby Blue Bland's wife came up to me. They
1228 don't get any rights. Bobby Blue Bland performs to this day.
1229 I know he loves it, but he has to. And many of the
1230 performers in my district who are performers at Stacks, and
1231 even from Sunday's, aren't being compensated.

1232 Last week, there was a program on the Hill that was a
1233 really nice program. It was wonderful. The songwriters had
1234 it for some of us over in the Library of Congress, and there
1235 were about a dozen songwriters who sang their songs.
1236 Brilliant individuals, mostly men, white males who sang their
1237 great creations. But when you listen to them, you realize
1238 how important the performers are, because several of them
1239 couldn't sing worth a hoot. So we need to reward those
1240 people that make those songs what we want to listen to.

1241 Thank you, Mr. Chairman.

1242 Mr. Berman. Time of the gentleman is expired.

1243 The gentleman from California, Mr. Lungren.

1244 Mr. Lungren. Thank you very much, Mr. Chairman, and one
1245 of the delights—

1246 Mr. Berman. Recognized for 5 minutes.

1247 Mr. Lungren. One of the delights of being on this
1248 committee is, after a number of years, you do get to see
1249 performers come whenever we have these bills come up. It is
1250 very interesting.

1251 Mr. Chairman, I want to say that I believe that the
1252 manager's amendment is a vast improvement over the basic
1253 bill. I think it moves in the right direction because there
1254 are equities on both sides of this argument.

1255 The problem I—and I would probably vote for the
1256 manager's amendment as an improvement over the base bill.
1257 The problem I have is this: so often here in the Congress,
1258 we pass laws, and then we find they have unintended
1259 consequences. And I am not just talking about in the area of
1260 Judiciary, but so many other things.

1261 And one of the reasons that occurs is that we don't have
1262 all the facts available to us. And I have suggested, and I
1263 know the chairman believes that we ought to request a study,
1264 but my point is shouldn't we do a study before we have a vote
1265 on the guts of the bill?

1266 And so I do have an amendment that I intend to offer at
1267 some point that will give us that opportunity to pursue that.
1268 It would request the GAO do a report in a timely fashion to
1269 give us an economic impact probability study on all of the
1270 stakeholders involved, and it would also attempt to give us
1271 some sense of the value of promotion in the recording
1272 industry. Because as I listen to everybody, we talk about
1273 these things as givens, but there is no quantification of
1274 what it is we are talking about, and how we establish that
1275 balance, to me, is a serious matter.

1276 I have a number of radio stations in my district who are
1277 in real economic difficulty right now. I mean, there is no
1278 kidding about that.

1279 When we had the panel here, I did ask one representative
1280 of the performers, a member of Smashing Pumpkins, about
1281 whether he could give me a quantification of the negative
1282 impact on creativity as a result of the failure of the
1283 payments suggested in this bill. And other than saying that
1284 we would have fewer stars, he couldn't give me that.

1285 Now, yesterday I had some representatives of the
1286 industry in, and they started to give me some statistics that
1287 they would use in terms of a loss of the number of new acts
1288 and so forth. That is information I never had before. I
1289 never saw that before.

1290 And if that came to me just yesterday, I wonder, am I
1291 prepared to vote on a bill that has a very carefully
1292 calculated tiered system, but I am not sure that is the
1293 proper tier. I am not sure it does what is necessary to
1294 protect the smaller radio stations and the African American
1295 radio stations, the Hispanic radio stations that we have
1296 throughout California.

1297 And so I would just ask members to consider the fact
1298 that I will be in a position to offer an amendment that would
1299 at least allow us not to delay this unnecessarily, but to
1300 give us 6 months to have some semblance of a study so that we

1301 might be able to act on facts and opinion, rather than just
1302 opinion, in the absence of facts.

1303 And so I thank the chairman for the time, and I yield
1304 back the balance of my time.

1305 Mr. Berman. I thank the gentleman.

1306 I am going to recognize myself for a couple of minutes,
1307 because the gentleman sort of raises issues, which I think,
1308 as one who has been very interested in this bill, sponsored
1309 in the last Congress and has thought about doing this for 25
1310 years, there are two separate issues.

1311 One is the right. If the law was silent, the
1312 broadcasters could go out and try and negotiate with the
1313 owner of each sound recording for the right to perform that
1314 sound recording, or they could take advantage of a compulsory
1315 license.

1316 This alone, among anything, is treated as if there is no
1317 property right, and they are allowed to use this for free.
1318 So our first objective here is to establish the principle
1319 that there is a right.

1320 And you could have studies about economic implications,
1321 and we have heard references, both to a GAO study that has
1322 already been requested and one that is in this bill, to
1323 understand the implications economically. But if the focus
1324 of this is on the economic condition of the radio broadcast
1325 industry, you have to match that with the words of the leader

1326 of the National Association of Broadcasters, who said he
1327 would rather slit his throat than pay one penny.

1328 That wasn't an economic distress argument. That was
1329 something a little bit different.

1330 Secondly, we could talk about, as you made reference to,
1331 economic distress from the people who own the copyrights.
1332 Given the incredible level, the billions of unlawful
1333 downloads and file swapping that occur every single year, and
1334 the plunge in CD sales, there are all kinds of economic
1335 arguments.

1336 But no one is suggesting, for instance, that we cap what
1337 a radio station has to pay to broadcast a sports event. And
1338 by the way, the radio broadcasters can say rightfully, when
1339 we play the New York Yankees on our radio, "We are
1340 encouraging fans to be more interested. We are encouraging
1341 fans to go to the game."

1342 We are encouraging fans to get attracted to different
1343 stars and buy the jerseys and all the concessions that that
1344 baseball team owns, but we don't deny the right of the
1345 baseball team and the owner of that team to get compensated
1346 for allowing the radio station to broadcast his thing.

1347 When we hear different luminaries in radio who are
1348 getting paid, in many cases very substantial salaries to do
1349 talk radio and other kinds of commentary on the radio, no one
1350 is suggesting that we cap what they can get paid for the

1351 economic thing, for the economic value of their work.

1352 We want to establish a right here. We have been very
1353 flexible on how it is paid. For most of the radio stations
1354 in this country, there will be no rate required for 3 years;
1355 for the very largest ones, no rate required for a year.
1356 There will be plenty of time to get a GAO study.

1357 The question is where do you want to start? Do you want
1358 to start by establishing the right and then understanding the
1359 full economic consequences of all the industry affected, not
1360 only the impact on minority broadcasters but the impact on
1361 minority recording artists and minority musicians and
1362 minority backup singers. How do you want to start this?

1363 And so I would argue it is right to start this with
1364 establishing the right, making very, very special allowances
1365 for smaller broadcasters, religious broadcasters,
1366 noncommercial broadcasters, and then taking a look at these
1367 studies.

1368 And if we have to retool this thing based on what we
1369 find, because we are certainly interested in the survival of
1370 radio broadcasting, then we can do that. But I don't think
1371 we should delay what should have been done many years ago, the
1372 establishment of the right.

1373 Mr. Lungren. Would the gentleman yield?

1374 Mr. Berman. And I would be happy to.

1375 Mr. Lungren. My issue is this: does that not beg the

1376 question as to whether or not the value of the property right
1377 exceeds the value of the promotional benefit from playing the
1378 music?

1379 I am old enough to remember the scandals of payola, the
1380 pay for play. We are almost in a reverse situation now. The
1381 idea there was it was worth a lot to a performer to have his
1382 or her recording on free radio. And I say "free" meaning
1383 obviously it is not charged to the recipient of the radio
1384 wave. And that is what I am hung up on. I don't know the
1385 answer to that question.

1386 Mr. Berman. Could I reclaim my time just—

1387 Mr. Lungren. Of course.

1388 Mr. Berman. That is a fair point. What is the
1389 promotional value to the copyright owner and to the artist
1390 from being played? And that should be one of the factors
1391 determined as the bill provides for in determining the rate.

1392 And that is the whole thing. We are not trying to turn
1393 out any appropriate consideration from the Rate Board. We
1394 say whether the use of the service may substitute for or may
1395 promote the sales of phono records or otherwise may interfere
1396 with or may enhance the sound recording copyright owners,
1397 other streams of revenue.

1398 That is something that that Board should look at in
1399 deciding the rate. I fully agree with you.

1400 Mr. Lungren. Could I ask the gentleman to yield once

1401 more?

1402 Mr. Berman. I will give myself an additional minute,
1403 and I will yield it to the gentleman.

1404 Mr. Lungren. Would that preclude that Board from making
1405 the determination that the value of the promotion to the
1406 record industry and the artist from the free air play of
1407 their sound recordings, that that value should be, in fact,
1408 greater than the property value? In other words—

1409 Mr. Berman. The answer is yes. That Rate Board would
1410 have the ability to say, even for the small ones that we cap,
1411 it isn't a floor. It is a cap.

1412 If the fair market value of that is determined
1413 considering all these factors, to be zero, that they are
1414 getting so much revenues because it is being played, that
1415 there is no market value to that piece of property, it is an
1416 unusual kind of conclusion because those radio stations
1417 aren't doing this as a charity work.

1418 Mr. Lungren. But Mr. Chairman, if no one hears my
1419 music, I have never been a performer before, I am in my
1420 garage, I am recording, it is kind of difficult for people to
1421 then have an idea that they want to purchase anything that is
1422 related to me.

1423 However, if they hear it on the radio station, I have
1424 had an opportunity to broadcast my product so that people
1425 might be encouraged either—and I know we are moving to the

1426 digital age where people are saying—but the ancillary
1427 articles want to identify with that particular artist.

1428 I guess I just wonder, if by passing it before we know
1429 what the value is, or at least an approximation of the value,
1430 we are making an assumption that there has to be a positive
1431 value. Therefore, we are telling them to make a finding that
1432 this amount—at least something ought to be there. And I
1433 don't know what that is relative, again, to the value of the
1434 promotion from the free—

1435 Mr. Berman. Well, except it doesn't seem to me fair to
1436 start out with the assumption. The value to the broadcaster
1437 is zero, and therefore he doesn't have to pay for it. And
1438 the value to the performer and the owner of the copyright is
1439 great, and therefore he doesn't need to get paid.

1440 Mr. Lungren. No, what I mean by—

1441 Mr. Berman. But under the present situation, that is
1442 what we have said.

1443 Mr. Lungren. No. You might have two values, and one is
1444 worth more than the other. And the overall value of the
1445 promotion is greater than the value of the product in its
1446 first—

1447 Mr. Berman. And that is why you create, when you deal
1448 with these compulsory licenses, you create a Board that gets
1449 evidence and makes a determination.

1450 I am here to tell you, I don't care what the GAO is

1451 going to do. They are not going to have the process or the
1452 background to come to as clear a conclusion about values as a
1453 quasi-judicial entity that we have already created that makes
1454 these determinations where the parties haven't been able to
1455 negotiate in webcasting and satellite radio and in a whole
1456 bunch of other areas.

1457 Mr. Lungren. I thank the chairman.

1458 Mr. Berman. Okay.

1459 My time has more than expired.

1460 The ranking member from Texas.

1461 Mr. Smith. Mr. Chairman, just briefly, I want to
1462 recognize the presence of the gentlewoman from Tennessee,
1463 Marsha Blackburn, a former member of this committee who has
1464 rejoined us, at least for a few minutes, because of her
1465 longstanding interest in this subject.

1466 Mr. Berman. The gentleman from Georgia, Mr. Johnson, is
1467 recognized for—

1468 Mr. Johnson. Thank you, Mr. Chairman. Move to strike
1469 the last word.

1470 Ladies and gentlemen, my grandmother, who died when she
1471 was 106 years old about 10 years ago and whom I spent a
1472 pretty good amount of time with as a young man, used to have
1473 some just common sense maxims that I remember her for.

1474 One of them is that, "If you see somebody who needs
1475 help, help them." I mean, that is bottom line. And another

1476 thing she said, "If it is not fair, then it is not right."

1477 And so that is why I speak out today in support of the
1478 manager's amendment to H.R. 848, the Performance Rights Act,
1479 a bill that would finally allow performers to be compensated
1480 for their hard work, which has always been exploited by
1481 others to make money. And as a former musician myself, I
1482 understand the importance of artists being paid for their
1483 work.

1484 On every other platform except broadcast radio, artists
1485 receive compensation for the playing on radio of a song they
1486 may not necessarily own, but they performed on that tune.
1487 And it is only right that they get paid for what they do,
1488 just like we do in every civilized society, of which we are
1489 supposed to be the number one.

1490 So it is unfortunate that we have so many people that
1491 are spreading misinformation on this issue. This legislation
1492 ensures that broadcasters would pay for the use of someone
1493 else's music the same way they have to pay for other
1494 services. And we can assure fair and affordable compensation
1495 so that radio broadcasters are certainly able to survive and
1496 continue to thrive.

1497 But many are rightly concerned, especially minority
1498 broadcasters, for having to pay for what they use. We have
1499 an obligation to protect both the ability of minority
1500 broadcasters to conduct their business and, at the same time,

1501 to compensate the minority or artist, as well as majority and
1502 anyone else artists that are left out in the cold.

1503 This manager's amendment will ensure that minority
1504 stations are not in any way harmed by this legislation, and
1505 it requires that copyright royalty judges consider the
1506 effects on religious, minority and female-owned stations and
1507 religious, minority and female royalty recipients. It
1508 protects small, rural, nonprofit, minority, religious and
1509 educational broadcasters by providing that any station that
1510 makes less than \$100,000 annually will pay only \$500 annually
1511 for limited use of music.

1512 Now, unfortunately, there are some minority-owned
1513 stations—let's take, for instance, Radio One, Cathy Hughes
1514 and her very—her son is a very able advocate, almost an angry
1515 advocate for what they believe is right, which is this bill
1516 should not pass. And they have been using their 60 stations
1517 minimum that they own, that Cathy Hughes owns, they have been
1518 using those to promote this misinformation.

1519 Tom Joyner, a bunch of other highly paid talk show hosts
1520 have been employed to spread hysteria on this issue, and they
1521 are flat out dead wrong. I want everyone to know that.

1522 Certainly we agree on some things, but we are not going
1523 to agree on everything. And when you come at us publicly, we
1524 have an obligation, or at least I feel an obligation, if you
1525 are calling names, I will call—

1526 Mr. Berman. Does the gentleman wish an additional
1527 minute?

1528 Mr. Johnson. Yes, I would

1529 Mr. Berman. Then I give it to you.

1530 Mr. Johnson. Thank you.

1531 Mr. Berman. With unanimous consent.

1532 Mr. Johnson. Yes.

1533 In consideration of our current economic climate for big
1534 stations or big broadcasters, including the minority
1535 broadcasters, they will only be required to pay after 3
1536 years—they have got 3 years to prepare for this—and \$5
1537 million annually is what they will pay. Break that down,
1538 \$1.3 million a year. How many sponsors do you need in order
1539 to subsidize this? I would submit probably one, and that
1540 would more than cover this expense.

1541 And so this won't harm the broadcasters at all. It will
1542 help the performers. And I will yield back.

1543 Mr. Berman. The time of the gentleman has expired.

1544 The gentleman from Illinois, Mr. Quigley, is recognized
1545 for 5 minutes.

1546 Mr. Quigley. Thank you.

1547 I want to thank Chairman Conyers for his leadership on
1548 H.R. 848 and the amendment. I strongly support both
1549 measures.

1550 I believe the amendment creates an important balance

1551 that has been talked about this morning on this matter. He
1552 was kind enough to introduce me as someone who had gone to
1553 law school. And when you go to law school, you read a lot of
1554 textbooks.

1555 What is interesting to me is that which strikes me the
1556 most, even to this day, is a history book I read called
1557 Triple Justice, which traced the evolution of the civil
1558 rights in courts up until Brown v. Board of Education.

1559 But it is that thought today which strikes home most of
1560 all, and that is simple justice. People should be paid for
1561 the work they do, plain and simple, and performers and
1562 artists are absolutely no different.

1563 Performers and artists do something very, very unique.
1564 For all the jobs that are out there in the world, performers
1565 and artists are a fraction of 1 percent that create from
1566 nothing art. And that has a value that is hard to put a
1567 price on, but I guarantee you it is worth more than nothing.

1568 And for too long, the argument was held that
1569 broadcasters are promoting the music they play, and that
1570 should be payment enough. I disagree. While promotional
1571 value is important, we have to remember that there would be
1572 no music at all to promote if it wasn't for the musicians.

1573 In fact, a solid argument can be made that radio play
1574 does not have the positive impact on record sales normally
1575 attributed to it. Instead, it appears to have a negative

1576 important impact, implying that overall radio listening is
1577 more of a substitute for the purchase of sound recordings
1578 than it is a complement.

1579 It was also mentioned in the introduction that I served
1580 for 10 years with Jerry "The Iceman" Butler in Cook County
1581 Board. I could not go home if I didn't mention him and what
1582 he has been through.

1583 He spent decades as a soul singer and songwriter and was
1584 inducted in the Rock 'n Roll Hall of Fame. Despite his
1585 decades of work as a successful performer, Jerry continues,
1586 at age 70, to work every day. He has always said to me that
1587 there was a big difference between being famous and being
1588 well off. Today, I began to appreciate what he has told me.

1589 Jerry and other hardworking performers like him deserve
1590 to be paid when their performances are played on the radio.
1591 That is why I will be supporting H.R. 848 and Chairman
1592 Conyers' manager's amendment.

1593 Thank you. I yield back.

1594 Mr. Berman. The time of the gentleman has expired.

1595 The gentleman from California, Mr. Sherman.

1596 Mr. Sherman. Thank you, Mr. Chairman, and I think it is
1597 time we passed the manager's amendment and passed the bill.

1598 Mr. Berman. Okay.

1599 Mr. Sherman. But only after these wise and concise
1600 remarks.

1601 We are told that these are tough economic times, but
1602 that is no reason to ignore intellectual property rights.
1603 The auto companies face tough times, but they have not
1604 suggested that they suspend royalty payments to those who own
1605 patents.

1606 Newspapers face tough times. They have not suggested
1607 that they be able to publish copywritten material without
1608 paying for it. And radio stations face tough times, yet they
1609 have not come here and said, "Let us suspend the payments
1610 that we are making to songwriters."

1611 The fact is that tough times really hit the artists,
1612 many of whom can't pay health insurance, dental bills, and
1613 even rent. We are told that we should have more study
1614 because there are unintended consequences.

1615 That is an argument I always make against any bill that
1616 I oppose but can't vocalize a reason to oppose. The fact is
1617 there are unintended consequences in leaving in force the
1618 unfair bill and leaving in force the unintended consequences
1619 of decisions made 80 years ago. And we should recognize
1620 that, if we have a study, then there will be no reason for
1621 one side to compromise with the other, something that we have
1622 sought to achieve.

1623 We are told about economic fairness. I think the wise
1624 though new gentleman from Illinois points out that any one
1625 artist would benefit if they were the only artist played on

1626 radio and every other artist was excluded from radio. They
1627 might even listen to me sing if that was the only thing they
1628 had ever heard on radio,

1629 Mr. Berman. And God, that would be a terrible—

1630 Mr. Sherman. No, they wouldn't. Okay.

1631 But if you look at artists as a whole, they lose
1632 tremendously because songs are played on radio for free. The
1633 proof of this is my wife and I were going to take an
1634 automobile trip to places where radio stations, especially
1635 music radio stations, wouldn't come in clearly.

1636 What is the first thing we did? We bought some CDs.
1637 And in fact, if you can't get radio, that is one of the
1638 reasons to buy music that you are otherwise listening to for
1639 free.

1640 We are told that there is a promotional value. But as
1641 the chairman points out, there is a promotional value to
1642 sports teams. They still get paid for their rights. And of
1643 course, there is a promotional value to songwriters. They
1644 still get paid for their rights.

1645 The best way to deal with the promotional value argument
1646 is to have the Rate Board take it into consideration. And I
1647 would point out, if there are garage bands that want to, they
1648 could just announce that their music can be played by radio
1649 for free. You could have whole radio stations that play
1650 nothing but free garage band music and let them succeed and

1651 capture a market, if they can.

1652 And finally, of course, much of the performance right is
1653 going to go to artists who are no longer touring, and the
1654 only way they will benefit from their songs is through this
1655 performance right.

1656 So I look forward to passing this bill, and I yield
1657 back.

1658 Mr. Berman. The time of the gentleman has expired.

1659 The gentleman from Virginia, Mr. Scott, going in
1660 seniority order.

1661 Mr. Scott. Mr. Chairman, I yield to the gentlelady from
1662 Texas.

1663 Ms. Jackson Lee. I thank the gentleman.

1664 Mr. Berman. Gentlelady is recognized for 5 minutes.

1665 Ms. Jackson Lee. I thank the gentleman for yielding.

1666 It is always good to be in a markup where there is a
1667 vigorous discussion. And to Chairman Conyers, this has been
1668 a very positive discussion. I want to reflect positively on
1669 our new member's comments, which I appreciated very much,
1670 when he emphasized the term "Justice."

1671 And I would like to associate myself with Congressman
1672 Sherman's remarks. I don't know how many people, even though
1673 I call the role of those who may not now be performing, that
1674 has been one of the issues, is that individuals already
1675 performing and they are already benefiting, but there is a

1676 whole legacy of individuals who are no longer performing.

1677 And one of the more striking sad cases that many of us
1678 know—he had a beautiful songbird-type voice—was Jackie
1679 Wilson. And many of us know the conditions in which he
1680 ultimately lived.

1681 Thinking about that and thinking about trying to
1682 balance, I had two amendments that I will explain, but I am
1683 going to hold in abeyance because I believe that we are still
1684 talking.

1685 And I also believe that the amendment that offered that
1686 is now the manager's amendment, that I understand was spoken
1687 to by Mr. Lungren asking for an early assessment, but I think
1688 we will have the appropriate time to really take a look at
1689 how this particular framework—again, I believe this is a
1690 framework that speaks to the 1909 Copyright bill—how it will
1691 work and how it may financially impact minority, women-owned
1692 and small stations.

1693 And I would highlight KCOH, which again I am getting
1694 BlackBerry messages from, and of course the prominent Radio
1695 One station in Houston, The Box, Magic, and Praise. And of
1696 course, you see I know that my name, as my good friend,
1697 Congressman Waters indicated, they are very much our friend.

1698 So in thinking about this, I wanted to find the right
1699 and appropriate balance to be of help. I am going to work
1700 with our colleagues.

1701 One of the amendments was to raise the \$5 million limit
1702 to \$10 million to take into account the growth of these
1703 stations and to try to be responsive to them. I am going to
1704 hold in abeyance so that we can look at the numbers and the
1705 impact and how many stations are being impacted. But I think
1706 it is a viable amendment, particularly in this economy.

1707 And I heard Congressman Coble make the point about the
1708 economy. So we know that the manager's amendment gives a 1-
1709 year extension, a 1-year enactment, 1 year out enactment for
1710 our large stations, and a 3-year enactment for our smaller
1711 stations. I think it is a very fair statement.

1712 And then, something that I think Congress needs to do
1713 more often is to have provisions dealing with sunset. I am
1714 going to hold that in abeyance as well, because I think that
1715 we can always come back and reassess the impact, good, bad or
1716 indifferent, so that we can be fair to the performers and
1717 fair to the radio stations.

1718 The information, as my good friend from Georgia
1719 indicated, that is being disseminated that speaks to the
1720 closing of black businesses in particular, and I imagine it
1721 might be Hispanic businesses if Hispanic stations are owned,
1722 or Asian or women or small businesses. Really, I hope that
1723 they will listen to this discussion and see, as I said in my
1724 early remarks, a light at the end of the tunnel, because that
1725 is what we are working to do.

1726 And my amendments were to, in essence, be an extension
1727 of good faith that, if we are too low on the amount of
1728 revenue, because you have grown but yet you are small, then
1729 that is something we should look at. If we are making whole
1730 performers by 5 years in terms of a sunset provision, then we
1731 should look at it. But I think the manager's amendment is a
1732 very fair compromise that has helped us move this bill
1733 forward.

1734 And with that, I am going to, again, hold in abeyance
1735 and not—

1736 Chairman Conyers. Would the gentlelady yield?

1737 Ms. Jackson Lee. I would be happy to yield to the
1738 chairman.

1739 Chairman Conyers. Yes. Thanks, Mr. Scott.

1740 Mr. Berman. Time is Mr. Scott's.

1741 Ms. Jackson Lee. Oh, it is Mr. Scott's time.

1742 Chairman Conyers. All I wanted to do was thank the
1743 gentlelady for her thoughtfulness. Everyone here has agreed
1744 this morning and afternoon that this is a work in progress.
1745 There isn't anyone striking a tone of finality toward
1746 whatever happens here today.

1747 And I think the gentlelady from Houston, Texas, who like
1748 many other of us in the Congress, are beneficiaries of the
1749 stations that feel that they may be harmed by any work
1750 product that we put out. We want to assure everybody, the

1751 manager's amendment is explicitly written to make sure that
1752 they don't get cut out. We didn't want them to get cut out
1753 before there wasn't a manager's amendment.

1754 So this is very, very critical. And Detroit, WCHB, my
1755 friend Mildred Gaddis is on, Tom Polk was blasting away all
1756 the time, hopefully not at me but with us. And these are all
1757 friends of ours.

1758 This is a unique division of support, because many of
1759 the friends that are upset, they haven't seen the bill that
1760 is before us. They didn't even know about the manager's
1761 amendment because it was only introduced 2 hours ago.

1762 And we think that and changing the time limits and some
1763 of the money amounts is going to open us up to being able to
1764 sit down and take this to a point where all parties will be
1765 in reasonable harmony.

1766 Ms. Waters. Will the gentleman yield?

1767 Mr. Scott. I yield.

1768 Mr. Berman. The gentleman from Virginia—

1769 Chairman Conyers. I ask unanimous consent that the
1770 gentleman gets 2 additional minutes.

1771 Ms. Waters. Thank you very much, Mr. Chairman.

1772 Can you tell me, Mr. Chairman, when this bill would go
1773 in effect if it was successful?

1774 Chairman Conyers. Yes, ma'am. It has been postponed.
1775 It will not go into effect—were it to pass the House, the

1776 Senate, signed by the president, it will not go into effect—
1777 for some, it will be 1 year, but for the others, the smaller
1778 ones, it will be 3 years.

1779 Ms. Waters. Thank you. And that is what I thought the
1780 wording basically said.

1781 I am wondering, Mr. Chairman, if in fact it is not going
1782 to go into effect until 1 year, in some cases 3 years, and
1783 why not have a study?

1784 Mr. Scott. I yield.

1785 Chairman Conyers. You are quite right. We should have
1786 a study.

1787 Ms. Waters. Why not then substitute a study for the
1788 bill until such time as we get the information back? And
1789 still, you could be on track for your 1-year or your 3-year,
1790 but we would at least have additional information, as
1791 described by Mr. Lungren, so that we could do a better job of
1792 acting in the interest of both of the parties that are
1793 involved.

1794 Mr. Berman. The time of the gentleman of Virginia has
1795 expired.

1796 Chairman Conyers. I ask unanimous consent that the
1797 gentleman get 2 additional minutes.

1798 Mr. Berman. The gentleman is accorded two additional
1799 minutes.

1800 Chairman Conyers. Would the gentleman yield?

1801 Mr. Scott. (OFF MIKE)

1802 Chairman Conyers. That is very kind of you.

1803 Ms. Waters. He is so kind.

1804 Chairman Conyers. You didn't have to yield to me, but I
1805 appreciate it.

1806 The reason that we want to move forward on this is that
1807 the study and moving this bill forward are not dependent on
1808 one another. And what we are hoping is that, in this interim
1809 time, the parties will be able to come together, Maxine.
1810 This is an incredible situation. We have never met with the
1811 parties to see if anything can be worked out.

1812 And that is the only reason we are doing it both at the
1813 same time.

1814 Ms. Waters. Would the gentleman yield?

1815 Mr. Berman. Gentlelady from California.

1816 Ms. Waters. Yes. Thank you very much. And I
1817 appreciate that, Mr. Chairman.

1818 Let me just say that I have listened to both sides talk
1819 about the non-negotiations, or the partial negotiations.
1820 Some of us were not really involved in those negotiations.
1821 And the more we sit here and we talk about how much we regret
1822 that we have to take sides, I think that we deserve an
1823 opportunity to be involved in negotiations where we think we
1824 may have some impact.

1825 Would the gentleman yield?

1826 Mr. Scott. I yield.

1827 Mr. Berman. Since really 2 years ago, we have invited
1828 the National Association of Broadcasters to come in and work
1829 through any of these issues that they would be willing to do.
1830 It isn't that they aren't interested in the bill. We are
1831 hearing from just the comments today, they have been working
1832 very hard against the bill. But they have, as a matter of
1833 policy, refused to come in and talk to us.

1834 Ms. Waters. Will the gentleman yield?

1835 Mr. Scott. Yes.

1836 Ms. Waters. Thank you very much.

1837 Mr. Berman, with all due respect, you are absolutely
1838 right. And I think perhaps there has been a perception that
1839 they didn't stand a chance because they thought that too many
1840 people were operating on behalf of the entertainment industry
1841 and that they would not stand a chance at negotiations.

1842 Now, I think that is not true. And just because there
1843 are so many of us on this committee from California who
1844 interact with the entertainment industry, we should not leave
1845 them with that impression.

1846 Mr. Berman. Would the gentleman yield?

1847 Mr. Scott. Well, I want to reserve 10 seconds so I can
1848 close my time.

1849 Mr. Berman. Well, then I will give you a minute and 10
1850 seconds, unanimous consent.

1851 Mr. Scott. I will yield.

1852 Mr. Berman. I would suggest that I have a different
1853 interpretation. It is not that they thought that they
1854 couldn't work something out. It is that they believe
1855 fervently that they didn't need to work anything out, that
1856 they could stop this bill in the subcommittee or in the full
1857 committee or on the floor or in the Senate. And it was that
1858 that motivated the decision, not the fear that—we kept
1859 inviting them to come in over and over again at every
1860 hearing, and we still do, starting the day after the bill
1861 passes.

1862 Ms. Waters. Mr. Chairman, may I get unanimous consent
1863 to yield to the gentleman from Virginia 2 more minutes to
1864 engage in this very useful discussion?

1865 Mr. Berman. Yes. In about 20 of them, I will be gone.

1866 Ms. Waters. We just need 2 more minutes, Mr. Chairman.
1867 This is the gentleman from Virginia's time.

1868 Mr. Berman. In that case, the gentleman from Virginia
1869 is, with unanimous consent, 2 more minutes.

1870 Mr. Scott. I yield.

1871 Ms. Waters. Will the gentleman yield? Thank you very
1872 much.

1873 Mr. Berman, your interpretation of the intent of the
1874 broadcasters is one that you certainly have a right to
1875 advance. However, in my most recent discussion with the

1876 broadcasters, that is not the interpretation that I am left
1877 with. I am left with, again, what I attempted to describe,
1878 where they thought that they did not have a legitimate
1879 opportunity or chance to really advance their cause because
1880 they thought there was a tilt in the negotiations in those
1881 who were negotiating.

1882 I don't hold that opinion because I don't know. I was
1883 not involved. But I suppose what I am asking at this time is
1884 that more people on this committee who would like to get
1885 involved in trying to bring these two sides together should
1886 have the opportunity to do that.

1887 I think that is not too much to ask. And I yield back
1888 to the gentleman from Virginia.

1889 Mr. Scott. Thank you, Mr. Chairman. I think it is
1890 appropriate that, based on the issue and the fact that some
1891 people may have been offended that the views expressed on my
1892 time do not necessarily reflect—

1893 Ms. Jackson Lee. Before the gentleman yields back—

1894 Mr. Scott. —my views on this issue.

1895 Ms. Jackson Lee. Before the gentleman yields back, I
1896 think you still have some more time.

1897 Mr. Scott. I yield the balance of my time to the
1898 gentlelady from Texas.

1899 Ms. Jackson Lee. I thank you.

1900 I think this was a vigorous and important discussion. I

1901 think that the more we have engaged in the discussion, we
1902 will, in essence, get to the solution we would like.

1903 For these reasons, Mr. Chairman, for these reasons, I am
1904 holding in abeyance the \$10 million increase, or the \$5
1905 million increase. I think it is a valuable amendment, and
1906 the idea of a sunset I think is valuable, and would encourage
1907 the broadcasters and all of us to be at the table. This is
1908 the right thing to do.

1909 And I yield back.

1910 Mr. Berman. Time of the gentleman has expired.

1911 Anyone else wish to speak? Mr. Gonzalez?

1912 Mr. Gonzalez. Thank you very much, Mr. Chairman. I am
1913 going to attempt to be really brief.

1914 I would like to remark on a couple of points. We have
1915 covered everything under the universe, and we still have so
1916 many questions out there. And I think that is what troubles
1917 many of the members on this committee.

1918 When it comes to promotional value, first of all, no one
1919 is going to argue with the concept and the principle that
1920 everyone should be compensated for their labor. And there is
1921 no one on this committee, whether you are a Republican or
1922 Democrat. That is really not the issue.

1923 And I will attempt to explain why I believe we are all
1924 in agreement with that. It is a matter of how we go forward
1925 in recognizing that compensation. There are many lawyers on

1926 this committee. And if I recall, there are different forms
1927 of payment. And that is why promotional value comes into
1928 play in the debate on what is the best relief to be provided,
1929 or the remedy.

1930 In lieu of, how many of us, when we were lawyers or
1931 judges, heard so often "in lieu of?" There wasn't just one
1932 form of payment. It is an open question whether there really
1933 is promotional value that balances out the consideration to
1934 compensate that particular artist. That is first and
1935 foremost.

1936 Secondly, if we all agree that it has been flawed, I
1937 will tell you what has been established on a flawed
1938 principle, a promotional value in lieu of other type of
1939 compensation. And that is a radio station business model,
1940 and that is the reality.

1941 And times have changed. Right now, economic times are
1942 bad. You have decreased revenues on advertising, because
1943 that is the only way they stay in business. So we say,
1944 "Well, let's just not have an effective date," which is an
1945 acknowledgement that we don't know the economic impact and
1946 consequences of what we are doing.

1947 There is something else happening out there. The world
1948 has changed, and there are different platforms by which
1949 artists are promoted and music is played, listened to and
1950 purchased. And many of those platforms, many of those

1951 competitive of your traditional radio stations don't even
1952 have the added cost of providing for that platform
1953 infrastructure.

1954 Now, we can say, "Well, there are a lot of unanswered
1955 questions." This will simply acknowledge the copyright, the
1956 proprietary right, but it really does more than that. And
1957 let me explain why.

1958 These businesses still have to operate in the real world
1959 of capital markets. How do you value your business when this
1960 is hanging over your head and it is an unknown? You want to
1961 buy a station? You want to sell a station? You want to go
1962 to your banker? How do you explain what your exposure is
1963 going to be?

1964 You don't think bankers are going to be looking as what
1965 is the potential exposure? The truth is, we don't have the
1966 answers at this point in time. I want everyone that goes
1967 into making a song a song, a recording a recording, to be
1968 compensated. The question is, which is the best way to do
1969 it?

1970 Now, I have joined other colleagues in a letter to the
1971 GAO, and we have eight or nine questions. And I think that
1972 Ms. Waters is pointing out a very important point, as well as
1973 my colleague from Utah.

1974 Without those answers, should we be moving forward,
1975 because I think this is more than something that is just

1976 symbolic and recognizing a legal right. It places something
1977 in motion. And these business models that are out there
1978 attempting to operate in most difficult times and in a new
1979 competitive environment are at a tremendous disadvantage.

1980 I am going to end it with what appeared in my local
1981 newspaper yesterday. And these are the big boys. I am not
1982 talking about some little operation. Advertising revenues
1983 have fallen for both companies in making reference.

1984 Both companies were hit with costs associated with
1985 layoffs, this year totaling 12 percent of their workforce.
1986 In January 2009, the Company eliminated 1,850 jobs. In late
1987 April, another 590 people in the radio unit were laid off,
1988 mostly in the engineering, information, technology and
1989 programming areas.

1990 That is the reality. And for us to simply say that this
1991 is just acknowledging the principle is, I think, inaccurate.

1992 And I think there are tremendous unintended
1993 consequences, but they are not unintended. I think they can
1994 be anticipated. That which can be anticipated is not
1995 unintended.

1996 And I yield back.

1997 Chairman Conyers. Mr. Chairman?

1998 Mr. Sherman. Will the gentleman yield?

1999 Mr. Berman. Mr. Chairman?

2000 Chairman Conyers. Could I yield to Brad Sherman,

2001 because I know why he wants to respond a little bit to Judge
2002 Gonzalez, because he made a point or two that was relevant to
2003 what he was saying?

2004 Mr. Sherman. I would just say, if we are going to wait
2005 for them time when the future can be known and businesses can
2006 be accurately valued, in order to pass legislation, then
2007 Congress ought to save the country a lot of money and just go
2008 out of business.

2009 The fact is, to value a radio station, you would have to
2010 know, or you would have to deal with uncertainties like what
2011 is the future of the economy going to be? What are
2012 advertisers going to do? How is iPod and satellite radio
2013 going to affect what people decide to listen to in their
2014 cars?

2015 And there is no way that we can wait until these huge
2016 uncertainties in valuing a radio station are dealt with, let
2017 alone the more modest uncertainty created by this bill.

2018 Chairman Conyers. Thanks, Brad Sherman.

2019 Now, I would like to invite our dearest friend and
2020 sister, Maxine Waters, to lead up among the members the
2021 Negotiating Committee that will be sitting down with all of
2022 these various parties. And nobody on this committee will be
2023 excluded.

2024 The other point that should be made clear in all this
2025 discussion is that this bill is about the right of

2026 compensation. Judge Gonzalez said everybody agrees on that.
2027 If everybody agreed on it, we wouldn't here. We wouldn't
2028 need a bill.

2029 Everybody does not agree that there should be fair
2030 compensation because, historically, there never has been.
2031 Now, the study that keeps being referred to is about the
2032 rate.

2033 It isn't about the compensation. It is about the rate
2034 of compensation. Those are two very clearly distinct issues,
2035 and I hope that this discussion, led so ably by our dear
2036 friend in the chair now will help us move this forward on all
2037 the rails that its on—a study, a bill that establishes the
2038 right, and the initial negotiations, which ironically we have
2039 never had.

2040 Ms. Waters. Mr. Chairman? Will you yield?

2041 Chairman Conyers. Of course.

2042 Ms. Waters. Thank you very much.

2043 I certainly would accept that challenge. I wonder if,
2044 along with that challenge, means that, of course, what I
2045 asked was that we do not take a vote on this bill today, and
2046 that we delay it for further discussions and a study. So
2047 does that come with the challenge for me to head up
2048 negotiations as we continue?

2049 Mr. Berman. Are you asking me?

2050 Ms. Waters. I am asking the chairman.

2051 Chairman Conyers. Which chairman are you referring to?

2052 Ms. Waters. There is only one chairman of this

2053 committee, Mr. Conyers.

2054 Chairman Conyers. Well, let's have a vote on whether we

2055 should do that or not, because if you want to hold up the

2056 vote, a person that would want to do that wouldn't vote in

2057 the affirmative.

2058 Ms. Waters. Would you like me to shape some wording?

2059 Would that be appropriate to advance that and place a motion

2060 at this time, or would that be inappropriate?

2061 Chairman Conyers. No. Maxine, nothing you do is

2062 inappropriate.

2063 Ms. Waters. That is not true. Most of what I do people

2064 say is inappropriate.

2065 Chairman Conyers. Well, nothing that I would ever say

2066 in public would be described as inappropriate.

2067 So now, all I want to do is we have this bill on the

2068 schedule, the agenda. I can't imagine what kind of language

2069 could be put on a piece of paper, 8-1/2 by 11 inches in size,

2070 that would allow us to delay this vote.

2071 Mr. Berman. Well, I want to thank the minority for, as

2072 they say on that Saturday Night Live skit, "Letting us talk

2073 among ourselves." And at this point, we have two more

2074 members on our side, I believe, who seek recognition.

2075 Gentleman from California, Mr. Schiff.

2076 Mr. Schiff. Thank you, Mr. Chairman.

2077 And I will be very brief because, as you know, one of
2078 our committee members, Linda Sanchez, had a baby this
2079 morning. And not that the hearing has gone on a long time,
2080 but the baby has now learned to walk and play the banjo.

2081 So if I go over 60 seconds, please cut me off with the
2082 gavel.

2083 Mr. Berman. And the baby has a right to be compensated.

2084 Mr. Schiff. Yes, absolutely. The baby is with us, Mr.
2085 Chairman.

2086 I think the fact that we don't compensate performers and
2087 the owners of copyright for sound recordings in terrestrial
2088 broadcasts is an anachronism. Not only is it inconsistent
2089 with how we treat digital transmissions, but it is
2090 inconsistent with how terrestrial broadcast is treated by the
2091 rest of the world.

2092 The fact that it is an anachronism hasn't made it any
2093 easier to correct. But in the interest of equity, in the
2094 interest of harmonizing our laws with those around the world,
2095 it makes a great deal of sense.

2096 There have been some concerns raised with the bill, and
2097 I want to compliment both Chairman Conyers and Chairman
2098 Berman for addressing many of them in the manager's
2099 amendment.

2100 I would also like to thank both chairmen for including

2101 language in the base bill that clarifies that license fees
2102 payable for public performance of sound recordings can't be
2103 cited or taken into account or otherwise used to set or
2104 adjust the license fees to be paid for public performance
2105 rights earned by others. This is very important to
2106 songwriters, among others, and I appreciate the work that
2107 went into that provision.

2108 Thank you, Mr. Chairman, for raising the issue and
2109 moving it forward. I support the measure and urge that we
2110 take it up for a vote.

2111 I yield back.

2112 Mr. Berman. Thank the gentleman. The time of the
2113 gentleman has expired.

2114 Are there any amendments to the amendment into the
2115 nature of—

2116 (OFF MIKE)

2117 Mr. Berman. Oh, all right. So then, we will—question
2118 occurs on the manager's amendment. All those in favor, say
2119 aye.

2120 [A chorus of ayes.]

2121 Mr. Berman. All opposed? The ayes have it. The
2122 manager's amendment is adopted.

2123 Mr. Lungren. Mr. Chairman, I—

2124 Mr. Berman. Are there any further amendments?

2125 Mr. Lungren. I have an amendment, Mr. Chairman.

2126 Mr. Berman. The gentleman from California.

2127 Mr. Lungren. Mr. Chairman, I have an amendment at the
2128 desk.

2129 Mr. Berman. The gentleman is recognized. Clerk will
2130 read.

2131 The Clerk. Amendment to H.R. 848 offered by Mr. Daniel
2132 E. Lungren of California.

2133 [The amendment by Mr. Lungren follows:]

2134 ***** INSERT *****

2135 Mr. Nadler. Mr. Chairman, I reserve a point of order.

2136 Mr. Berman. Oh, my goodness.

2137 The gentleman is recognized on his amendment.

2138 Mr. Lungren. Thank you very much, Mr. Chairman.

2139 First of all, both to you and to the chairman of the
2140 committee, let me take this opportunity to acknowledge the
2141 extent to which you have sought to accommodate many of the
2142 concerns expressed about the base bill during and after the
2143 hearing on the legislation. So I don't want my amendment in
2144 any way to be interpreted as disregarding that good-faith
2145 effort.

2146 At the same time as has been displayed here, questions
2147 remain as to the ultimate impact of the bill before us this
2148 morning. The manager's amendment just adopted creates a
2149 tiered system based on gross revenue. Without greater
2150 knowledge concerning the variable and fixed costs associated
2151 with the broadcasting business, I have serious questions
2152 about the impact this approach on large and small stations
2153 alike.

2154 I also have some difficulty in determining the basis for
2155 charging a small broadcaster with gross receipts of \$500,000
2156 per year, a fee of \$5,000—\$500,000 per year, a fee of \$5,000,
2157 whereas a public station with a multiple of that revenue
2158 level would pay only \$1,000 in its annual fee. Surely, I
2159 would hope we would have more evidence before writing such a

2160 distinction into the law.

2161 Not having any opportunity in the business end of radio
2162 broadcasting, I am not in a position to judge how many
2163 stations in the U.S. would be required to pay royalties, nor
2164 do I know how they would be impacted.

2165 Would they convert to other formats, such as talk radio?
2166 Would come cease to operate entirely? What would a possible
2167 decline in the number of music stations mean for up and
2168 coming artists? Will those artists be able to negotiate
2169 freely with broadcasters? And of course, the most basic
2170 question for our discussion today, how should we measure the
2171 true value of broadcasters and performers alike?

2172 Judge Gonzalez was very much on point when he talked
2173 about in lieu. That is, is there a payment already being
2174 made that is expressed in the value of the broadcast? All of
2175 us, as members of Congress, when we run for election or
2176 reelection, are charged for the broadcast of our commercials.
2177 Presumably, we pay that because there is some value in that
2178 broadcast. That is, in a very real sense, a measure of that
2179 value.

2180 A fundamental question for us today, which I don't think
2181 we can answer, is whether or not we can always assume that
2182 the value of playing a song on a radio station will always be
2183 worth less than the value of the song. This is the
2184 assumption built into the legislation which may or may not be

2185 valid in every case.

2186 And there has been the suggestion this bill doesn't go
2187 into effect for several years. In fact, it goes into effect
2188 when the president signs it because that establishes the
2189 right, that establishes the presumption that, in every case,
2190 the value of playing the song on the radio station is worth
2191 less than the value of the song.

2192 I am concerned that we may not be capturing the whole
2193 picture here today. And I would say this with the greatest
2194 respect for our performing artists. And, in fact, because of
2195 that respect, we need to be careful we don't kill the
2196 proverbial goose.

2197 Bobby Colomby of Blood Sweat and Tears, perhaps captured
2198 this concern best with his observation. In answer to the
2199 question how important is radio to you, well, that is it.
2200 What you are doing is you are advertising. So he saw a
2201 definite value in the broadcast of his performances.

2202 Another element of concern to me came up during our
2203 hearing when I had the opportunity to ask Billy Corrigan
2204 about the impact of this legislation on up-and-coming
2205 performers. And although Smashing Pumpkins may not be my
2206 favorite flavor of music, there is clearly a popular and
2207 successful group with a following. So maybe they should be
2208 compensated for the playing of their music.

2209 However, there are a lot of real no-name bands out there

2210 that may be good, may be talented that need a chance to have
2211 their music played on the radio. That is a make-or-break
2212 moment for them. But if we are now going to require stations
2213 to pay for performances, is it less likely or more likely
2214 that up-and-coming untested artists will be played? Or will
2215 the already-established artists be the ones more likely to be
2216 paid because you are actually then purchasing, if you will,
2217 an already-known quantity?

2218 So while I am fairly certain the Smashing Pumpkins will
2219 make out okay, I don't know when the impact would be on the
2220 up-and-coming artists. Given the legislation raises almost
2221 as many questions as it resolves, it just seems to me it
2222 would make sense that we try and have more information before
2223 we vote on it. If, in fact, it is not going to go into
2224 effect in 3 years, why not adopt my amendment, which
2225 basically says we have the report. It must come back to us
2226 in 6 months. At that point in time, we can take up this bill
2227 in its entirety with the information that is requested.

2228 My amendment would instruct GAO to conduct a study to
2229 determine the impact of the proposed legislation on local
2230 communities, on radio broadcasters and their stations, and on
2231 artists in the recording industry. It requires that there be
2232 a finding of what the value of the performance—to the
2233 performer of the broadcast so that we might have some
2234 comparison of the balancing values.

2235 The study would have to be completed within 6 months.

2236 Then we could make an objective and, I think, better-informed

2237 and equitable decision regarding the—

2238 Ms. Waters. Will the gentleman yield?

2239 Mr. Lungren. I would be happy to yield to the

2240 gentlelady.

2241 Ms. Waters. Thank you very much.

2242 Would it be too much to ask that you ask unanimous

2243 consent to add to the study the impact on minority-owned

2244 radio stations, also?

2245 Mr. Lungren. I thought that was—

2246 Ms. Waters. I didn't hear that in your description.

2247 Mr. Lungren. I thought that would be implicit but, yes,

2248 I would ask unanimous consent that we include on page—or line

2249 nine, radio broadcasters and their stations, including the

2250 specific impact on minority-owned stations.

2251 Mr. Berman. Without objection, the suggested amendment

2252 is incorporated into—

2253 [The information follows:]

2254 ***** COMMITTEE INSERT *****

2255 Mr. Nadler. Mr. Chairman, can I withdraw my reservation
2256 of point of order?

2257 Mr. Berman. Yes.

2258 Mr. Nadler. Thank you.

2259 Mr. Berman. Yes.

2260 Mr. Lungren. I thank the gentleman for doing that. And
2261 I would just ask that we not put the cart before the horse.
2262 I would hope that we could be more informed. I know some
2263 would say, well, what you are trying to do is to stop this
2264 bill or to delay in unnecessarily. That is not my intent.
2265 That is why I have a 6-month requirement that the GAO come
2266 back and report to us.

2267 I would—I would feel much better being on better ground
2268 with better facts, be able to compare the arguments that have
2269 been made to me—and I think there are valid arguments on both
2270 sides. And so I would ask for support of this amendment.

2271 Mr. Berman. The time of the gentleman has expired. I
2272 will recognize myself for a very short response.

2273 I urge a no vote on this amendment. By striking
2274 everything else in the bill and leaving this GAO study—a
2275 study which the chairman of the committee and a number of
2276 other members, a bipartisan group of members, have already
2277 requested of the GAO. There is no other interpretation that
2278 this amendment, in effect, kills the substance of this bill,
2279 if not the number of this bill.

2280 Perhaps, somebody can introduce a bill sometime later
2281 that deals with the substance. I would argue the gentleman
2282 is operating from a zero-sum gain model that doesn't apply
2283 anywhere else in the world, and that is if something values
2284 the performer, other people—the use of it—other people,
2285 people who want to use it don't have to pay for it even if it
2286 does value them. That is the logic of assuming that there is
2287 a zero rate which may be appropriate.

2288 The right of compensation is what is critical here. I
2289 am totally prepared under the gentlelady from California's
2290 auspices or any other auspices to work with—and I think the
2291 chairman of the committee is also—to work regarding rate
2292 determinations and factors in determining the rate.

2293 Why—why the owners of sound recordings and the recording
2294 artists and the back-up singers and the musicians should be
2295 the only single group of people whose creativity is titled to
2296 be exempted from any compensation just defies, to me, any
2297 sense of justice or fairness. And I urge a no-vote on this.

2298 Ms. Waters. On the amendment—

2299 Ms. Jackson Lee. Will the gentleman yield?

2300 Mr. Berman. Well, I have given up my time, and the
2301 gentleman from Texas is recognized.

2302 Mr. Smith. Thank you, Mr. Chairman.

2303 Mr. Chairman, I support this amendment. I think that
2304 Congress should not act on this bill until we have relevant

2305 information of its likely impact on all those that it would
2306 potentially affect. I do think we have an obligation to take
2307 the time necessary to gather the facts before we act too
2308 hastily.

2309 And, Mr. Chairman, I would also think that this is a
2310 good precedent. This would be applicable to all legislation.
2311 We certainly have seen in recent months where this committee
2312 has acted, and we have run into the law's unintended
2313 consequences. I think we do know—need to know the value of
2314 various components of this legislation. So I agree with the
2315 amendment that has been offered by the gentleman from
2316 California.

2317 And I will yield the balance of my time to the gentleman
2318 from California.

2319 Mr. Lungren. I thank the gentleman for yielding. And I
2320 would just like to respond to my friend from California, this
2321 is not an attempt by me to kill this bill. If—look, I am not
2322 in the majority. I am in the minority. I can't—I can't
2323 determine when bills are brought up. But, as a gesture of
2324 good will, I will happily put my name as a co-sponsor to the
2325 about to help get it up after the 6 months if that is what it
2326 takes to show that I am specifically interested in not
2327 killing the bill but allowing us to make a determination.

2328 Now, I may make a decision based on the information that
2329 is brought forward by the report that this is not a bill to

2330 support, but I will do whatever the gentleman would ask me to
2331 do to ensure that we bring this back up for immediate
2332 consideration upon the receipt of the report. It is not my
2333 intent to kill the legislation. It is my intent to have
2334 information so that we can make a more informed judgment as
2335 to whether this is the appropriate legislation.

2336 And so I understand the earnestness with which the
2337 gentleman has pursued this particular bill, but I hope he
2338 does not mischaracterize my interest. I believe there are
2339 viable, meritorious arguments on both sides, and I think it
2340 is our obligation to try and find the best way out of this
2341 with the facts presented to us.

2342 Chairman Conyers. Would the ranking member yield to me?

2343 Mr. Smith. Yes, I would be happy to yield, Mr.

2344 Chairman.

2345 Chairman Conyers. This is a unique circumstance that we
2346 are confronted with. The gentleman introduces a bill—I won't
2347 say got—I am not going to use that term. But it removes
2348 everything from the bill except a study that hasn't been
2349 enacted, and he says if circumstances are right, if the moon
2350 is in the right alliance with the stars, he may join us on
2351 introducing another bill.

2352 Isn't that what I heard you say?

2353 Mr. Lungren. Well, I used prose. The gentleman used
2354 poetry.

2355 [Laughter.]

2356 But what I was trying to suggest is my—look, I am not
2357 the majority. I don't control what you bring up. You can
2358 bring up whatever you want to, as you know. My point is, my
2359 effort is not to, in any way, stymie the majority from
2360 bringing it up. My point is that both the majority and
2361 minority members here who engaged in a vigorous discussion
2362 would have a better basis upon which we would complete this
2363 bill.

2364 And if, in fact, under the terms of the bill is it now
2365 stands, I have been told it won't go into effect for most
2366 parties until—for 3 years and, for some, for 1 year. What is
2367 the problem with waiting for 6 months to get information upon
2368 which we can make a better-informed judgment?

2369 Chairman Conyers. Mr. Smith, if you will yield.

2370 Because the people who are the beneficiaries of this
2371 bill have been waiting for 60 years that is why I don't want
2372 to wait for 6 months.

2373 Mr. Smith. I will yield back.

2374 Ms. Waters. Mr. Chairman, on the amendment.

2375 Chairman Conyers. Yes, the gentlelady from California,
2376 Maxine Waters?

2377 Ms. Waters. I find myself in a most unusual position
2378 agreeing with the gentleman from California which I don't
2379 think I have ever done before. And I support—

2380 Mr. Lungren. You might get used to it.

2381 Ms. Waters. I don't think so.

2382 [Laughter.]

2383 I support the amendment because, as you know, I focus a
2384 lot of my work on trying to preserve minority institutions.
2385 It is not simply radio stations, but it is banks, on and on
2386 and on. And what we find in this industry is that minority
2387 radio stations are being bought up because the revenue that
2388 many of our owners are able to achieve are just not there
2389 increasingly.

2390 And I do not wish—I do not wish for us to be in a
2391 position where our actions will further undermine minority
2392 stations and put them out of business. And I want you to
2393 know when there are these mergers and these buy-outs that the
2394 formats change anyway. And the formats change in ways that
2395 do not protect, particularly, our older performers or those
2396 who, if they were heard, perhaps, others would go out and
2397 remember and buy those records or they could pass down, you
2398 know, that art form, that work, et cetera.

2399 So my interest in supporting this delay is to see what I
2400 can do, since you have given me the challenge, to see what I
2401 can do to get involved in this discussion in order to honor
2402 the performers and also preserve these minority stations and
2403 not look up a year or two from now with fewer minority
2404 stations who cannot support talk radio because they don't

2405 have ownership anymore.

2406 So that is what I wanted to put on the record.

2407 Thank you very much. I yield back the balance of my
2408 time.

2409 Mr. Chaffetz. Will the gentleman yield or gentlewoman
2410 yield?

2411 Ms. Waters. Yes, I would yield. Yes.

2412 Mr. Chaffetz. I want to thank you for your comments and
2413 your boldness in standing up for this.

2414 I truly do believe in my heart of hearts, Mr. Chairman,
2415 that the performers have a right to own their product. I
2416 really do believe that. I think they should be in control of
2417 their destiny and they ought to be compensated for that. But
2418 as we are changing the significant model, we understand that
2419 the performers offer a value, but the broadcasters also offer
2420 a value.

2421 But I don't believe—I don't believe any of us understand
2422 what the value of each party brings to the table. And while
2423 we have waited for so long, I do think it is prudent to
2424 understand the value that each party brings to the table.

2425 I would hope that they could just work it out, but they
2426 have been unable to do that. But I think this body helping
2427 it push us in that direction, I would support this amendment,
2428 and I would support Ms. Waters in her quest. And I
2429 appreciate the opportunity and yield back the balance of my

2430 time.

2431 Mr. Weiner. Will the gentlelady yield?

2432 Ms. Waters. Well, I just want to make—I think the
2433 gentleman makes a good point except he forgets something
2434 that, frankly, if the marketplace was going to decide the
2435 value of this thing, like when the New York Mets want to
2436 negotiate whether to have their thing broadcast, it helps
2437 them because it promotes their product. It allows them to
2438 advertise for other things at the stadium. They are
2439 empowered to enter into a negotiation.

2440 No one would imagine the idea of saying that a
2441 broadcaster can just show up at Shea Stadium and just start
2442 broadcasting and that—that is just tough luck. The problem
2443 is that, theoretically, any piece of legislation ever passed
2444 by Congress, you can wave this amendment and say, hey, let us
2445 just wait and study a little more.

2446 I have to tell you I am opposed to it for another
2447 reason. We have outsourced so much around here. The CBO
2448 gets to stop things from coming to the floor if they score it
2449 a certain way. We—you know, we—we have to start—after a
2450 while, you have hearings, you debate it, you talk about it,
2451 you mark up the bill, and in this case, you wait 60 years,
2452 and then you act.

2453 I think, frankly, you know, I think we have pretty much
2454 gone through that cycle pretty well—6 years and 6 months, I

2455 don't think really adds all that much value.

2456 Ms. Waters. Reclaiming my time.

2457 I yield back, Mr. Chairman.

2458 Chairman Conyers. The question occurs—

2459 Ms. Jackson Lee. Mr. Chairman—

2460 Chairman Conyers. Who said that?

2461 Ms. Jackson Lee. I am down here at the end. I am on
2462 this side.

2463 Chairman Conyers. Oh. Oh, okay.

2464 The gentlemen—for what purpose does he seek recognition?

2465 Ms. Jackson Lee. No, it is me.

2466 Chairman Conyers. Oh, the gentlelady from Texas. Oh,
2467 okay.

2468 Ms. Jackson Lee. Thank you, Mr. Chairman.

2469 Chairman Conyers. Sheila Jackson Lee is recognized.

2470 Ms. Jackson Lee. This very same amendment was discussed
2471 previously and, in fact, we had an amendment that would track
2472 this language. But I think it is important to note that the
2473 letter that is being sent to the GAO gives the gentleman from
2474 California the information that he asks for. And I would
2475 hope that we don't dismiss the letter. And I would ask
2476 unanimous consent to submit the letter to the United States
2477 Government Accountability Office into the record which will
2478 give a long list of questions of financial viability about
2479 these stations and ask for its immediate response or

2480 immediate response from the GAO.

2481 I think the gentleman from New York's point is well
2482 taken. We seem to always ask others to give us answers but I
2483 think, in this instance, it is very important. And I would
2484 ask—

2485 Chairman Conyers. Would the gentlelady yield to me,
2486 please?

2487 Ms. Jackson Lee. I would be happy to yield.

2488 Chairman Conyers. Ladies and gentlemen, there are three
2489 points to consider as we close the debate. Number one, if
2490 you don't want a bill that establishes the right—I haven't
2491 heard anybody say yet that artists don't have a right to be
2492 compensated. But I have heard a number of people say they
2493 don't want a bill yet that establishes that right.

2494 The second point you must consider is that the study
2495 deals only with the rate. The study does not deal with the
2496 right.

2497 And point number three is that the gentlelady from
2498 California has accepted the role of bringing the parties
2499 together and allowing all members of the committee who may
2500 have thought, for some reason, they were excluded. The only
2501 reason they were excluded is that there was nothing to
2502 negotiate. Now, hopefully, we will have something to
2503 negotiate.

2504 And, finally, let me say this. If you really want to

2505 gut the bill, vote for the amendment. It is quite simple.
2506 If you really want to move the ball down the court—we have
2507 got a lot of time. The Senate, the other body, do you know—
2508 anybody know what they are going to do with this bill yet? I
2509 don't.

2510 We have got to go to the Rules Committee. We will have
2511 plenty of time to negotiate with the parties, amongst
2512 ourselves and get any real or imagined details that you may
2513 need to justify your decision.

2514 Ms. Waters. Mr. Chairman, if I may, if you will yield
2515 for clarification.

2516 Ms. Jackson Lee. I will yield.

2517 Ms. Waters. Thank you very much.

2518 The gentlelady from California accepted the challenge.

2519 Chairman Conyers. Yes.

2520 Ms. Waters. However, it was not a challenge instead of.
2521 This was a challenge that would be based on not moving this
2522 bill today. I am perfectly willing to work on it, but my
2523 number one priority is to slow this train down and to give us
2524 an opportunity to deal with the study so that we will know
2525 these impacts that have been articulated by the gentleman
2526 from California.

2527 So I just want to make that clarification. I yield back
2528 to the—

2529 Chairman Conyers. Ms. Jackson Lee, I have to get a

2530 point of clarification.

2531 Ms. Jackson Lee. I yield to the gentleman.

2532 Chairman Conyers. If the gentlelady is saying she will
2533 take the leadership on negotiation only if we vote this bill
2534 down, I will accept her resignation from the committee.

2535 Ms. Waters. The gentleman—the chairman, with all due
2536 respect, cannot accept a resignation—

2537 Ms. Jackson Lee. I yield to the gentlelady.

2538 Ms. Waters. —when there has been—

2539 Chairman Conyers. The negotiating committee.

2540 Ms. Waters. Mr. Chairman, I want to be clear that my
2541 involvement is not a substitute for a study that has been
2542 offered by the gentleman from California. I appreciate the
2543 challenge, but I don't want the chairman to assign to me
2544 anything that would appear to be a substitute for this study.

2545 Now, of course, I may engage after this but, yes, my
2546 leadership and involvement in negotiation is conditioned on
2547 slowing down the train today.

2548 Ms. Jackson Lee. Reclaiming my time.

2549 Let me, if I might, add to the clarification. This is a
2550 work in progress. The passage or non-passage of the bill
2551 will depend on the members here in this room. But the idea
2552 of moving forward, get all parties to the table, I would hope
2553 that all of us were part of those negotiations. I would hope
2554 that the record would show that we are not for closing any

2555 business, minority, women-owned, African-American, Hispanic,
2556 Asian, or the world.

2557 But we are for is giving credibility to the talent, the
2558 sweat, the blood, the tears, those who have died not getting
2559 the right in terms of their just compensation for the essence
2560 of their talent, their spirit. I think it is valuable. The
2561 gentleman's amendment was just like mine that we have now put
2562 in a letter.

2563 I also have language in the amendment that deal
2564 specifically with minority and women-owned businesses. And
2565 believe me, we are getting hit hard. I don't know how long
2566 they are going to be on our radio stations and elsewhere.
2567 Why don't we try an opportunity for meeting together because
2568 this bill is not on the floor of the House tomorrow, probably
2569 not on next week? And we can work with the Senate and work
2570 with those who are interested in coming to the wonderful
2571 compromise of keeping our businesses' doors open, which they
2572 will, and respecting those with talent and art we have.

2573 I yield back, Mr. Chairman.

2574 Chairman Conyers. The vote will now occur on the
2575 Lungren Amendment. All those that are in support of it,
2576 indicate by saying "aye."

2577 [A chorus of ayes.]

2578 Chairman Conyers. All those who are opposed to it,
2579 indicate by saying "no."

2580 [A chorus of noes.]

2581 Chairman Conyers. All right. A recorded vote is
2582 ordered, and the clerk will call the role, please.

2583 The Clerk. Mr. Conyers?

2584 Chairman Conyers. No.

2585 The Clerk. Mr. Conyers votes no.

2586 Mr. Berman?

2587 [No response.]

2588 Mr. Boucher?

2589 [No response.]

2590 Mr. Nadler?

2591 [No response.]

2592 Mr. Scott?

2593 [No response.]

2594 Mr. Watt?

2595 [No response.]

2596 Ms. Lofgren?

2597 Ms. Lofgren. No.

2598 The Clerk. Ms. Lofgren votes no.

2599 Ms. Jackson Lee?

2600 Ms. Jackson Lee. Ms. Jackson Lee votes no.

2601 The Clerk. Ms. Waters?

2602 Ms. Waters. Aye.

2603 The Clerk. Ms. Waters votes aye.

2604 Mr. Delahunt?

2605 Mr. Delahunt. No.

2606 The Clerk. Mr. Delahunt votes no.

2607 Mr. Wexler?

2608 [No response.]

2609 Mr. Cohen?

2610 Mr. Cohen. No.

2611 The Clerk. Mr. Cohen votes no.

2612 Mr. Johnson?

2613 [No response.]

2614 Mr. Pierluisi?

2615 [No response.]

2616 Mr. Quigley?

2617 Mr. Quigley. No.

2618 The Clerk. Mr. Quigley votes no.

2619 Mr. Gutierrez?

2620 [No response.]

2621 Mr. Sherman?

2622 Mr. Sherman. No.

2623 The Clerk. Mr. Sherman votes no.

2624 Ms. Baldwin?

2625 [No response.]

2626 Mr. Gonzalez?

2627 [No response.]

2628 Mr. Weiner?

2629 [No response.]

2630 Mr. Schiff?

2631 Mr. Schiff. No.

2632 The Clerk. Mr. Schiff votes no.

2633 Ms. Sanchez?

2634 [No response.]

2635 Ms. Wasserman Schultz?

2636 Ms. Wasserman Schultz. No.

2637 The Clerk. Ms. Wasserman Schultz votes no.

2638 Mr. Maffei?

2639 Mr. Maffei. No.

2640 The Clerk. Mr. Maffei votes no.

2641 Mr. Smith?

2642 Mr. Smith. Aye.

2643 The Clerk. Mr. Smith votes aye.

2644 Mr. Goodlatte?

2645 Mr. Goodlatte. No.

2646 The Clerk. Mr. Goodlatte votes no.

2647 Mr. Sensenbrenner?

2648 Mr. Sensenbrenner. No.

2649 The Clerk. Mr. Sensenbrenner votes no.

2650 Mr. Coble?

2651 Mr. Coble. Aye.

2652 The Clerk. Mr. Coble votes aye.

2653 Mr. Lungren?

2654 Mr. Lungren. Aye.

2655 The Clerk. Mr. Lungren votes aye.
2656 Mr. Issa?
2657 Mr. Issa. No.
2658 The Clerk. Mr. Issa votes no.
2659 Mr. Forbes?
2660 Mr. Forbes. No.
2661 The Clerk. Mr. Forbes votes no.
2662 Mr. King?
2663 [No response.]
2664 Mr. Franks?
2665 Mr. Franks. No.
2666 The Clerk. Mr. Franks votes no.
2667 Mr. Gohmert?
2668 Mr. Gohmert. Aye.
2669 The Clerk. Mr. Gohmert votes aye.
2670 Mr. Jordan?
2671 Mr. Jordan. Yes.
2672 The Clerk. Mr. Jordan votes yes.
2673 Mr. Poe?
2674 Mr. Poe. Aye.
2675 The Clerk. Mr. Poe votes aye.
2676 Mr. Chaffetz?
2677 Mr. Chaffetz. Aye.
2678 The Clerk. Mr. Chaffetz votes aye.
2679 Mr. Rooney?

2680 Mr. Rooney. No.

2681 The Clerk. Mr. Rooney votes no.

2682 Mr. Harper?

2683 Mr. Harper. Aye.

2684 The Clerk. Mr. Harper votes aye.

2685 Chairman Conyers. Mr. Weiner, Mr. Nadler—

2686 The Clerk. Mr. Weiner votes no. Mr. Nadler votes no.

2687 Chairman Conyers. Mr. Scott?

2688 The Clerk. Mr. Scott votes no.

2689 Chairman Conyers. Mr. Berman?

2690 The Clerk. Mr. Berman votes no.

2691 Chairman Conyers. Are there any members that choose to

2692 cast a ballot?

2693 (OFF MIKE)

2694 The Clerk. Mr. Franks votes aye.

2695 Chairman Conyers. The clerk will report.

2696 The Clerk. Mr. Chairman, ten members voted aye, 19

2697 members voted no.

2698 Chairman Conyers. The gentleman—wait a minute. Mr.

2699 Wexler?

2700 (OFF MIKE)

2701 Chairman Conyers. The clerk will re-report.

2702 The Clerk. Mr. Chairman, ten members voted aye, 20

2703 members voted nay.

2704 Chairman Conyers. The amendment is unsuccessful.

2705 The gentleman from Texas, Mr. Poe?

2706 Mr. Poe. Thank you, Mr. Chairman. I have an amendment.

2707 Chairman Conyers. The clerk will report the amendment.

2708 The Clerk. Amendment to H.R. 848 offered by Mr. Poe of
2709 Texas.

2710 Chairman Conyers. Without objection, the amendment is
2711 considered as read, and the distinguished gentleman is
2712 recognized in support of his amendment.

2713 [The amendment by Mr. Poe follows:]

2714 ***** INSERT *****

2715 Mr. Poe. Thank you, Mr. Chairman.

2716 We have been talking about who gets paid and who doesn't
2717 get paid. And there has been a lot of discussion about that
2718 today. It reminds me sort of like when I was a judge in
2719 court and some lawyers, obviously, should be paying the jury
2720 to have to listen to them, and they were getting paid, of
2721 course, by their clients.

2722 But be that as it may, I serve in an area that we have
2723 small radio stations that are struggling. I also represent
2724 some folks in the artist industry, Tracy Byrd and Clay Walker
2725 and Willie Nelson is a friend of mine. Those are probably
2726 not performers that you hear up in Detroit very much, Mr.
2727 Chairman, but they are very popular in my area.

2728 It seems to me that the one group we haven't talked
2729 about that is getting paid no matter what happens on this
2730 bill are the record label—the record label industry. There
2731 are four record label companies that exist. Three of those
2732 are foreign companies—Universal, which is a French record
2733 label, Sony BMG is Japanese and German, and EMI which is
2734 British. The only American one is Warner that is left in the
2735 industry.

2736 So this amendment takes the record industry, record
2737 label out of the—out of the legislation and turns that money
2738 over to the performers. The non-featured performers will get
2739 10 percent of the revenue, and the performing artist will get

2740 90 percent of the revenue. The record label industry will
2741 not get a cut because it should go—if the plan is that this
2742 bill help performers, then it should go to the performers and
2743 not the record label corporations.

2744 With that, I would urge the adoption of this amendment
2745 to restructure it so that performers receive the 50 percent
2746 that now will go to the record labels. And with that, I will
2747 yield back.

2748 Mr. Gohmert. Would the gentleman yield?

2749 Mr. Poe. I will yield.

2750 Mr. Gohmert. I appreciate the gentleman's amendment,
2751 but since we have an original member of the Four Tops, what
2752 you are saying to performers and reach out and I will be
2753 there. Right?

2754 [Laughter.]

2755 Mr. Poe. I yield back, Mr. Chairman.

2756 Chairman Conyers. The gentleman from Florida, Mr.
2757 Wexler, is recognized.

2758 Mr. Wexler. Thank you, Mr. Chairman.

2759 I just wanted to respectfully strike the last word and
2760 speak—

2761 Chairman Conyers. The gentleman is recognized.

2762 Mr. Wexler. —speak in opposition to Mr. Poe's
2763 amendment. And I just want to make it clear, and I think it
2764 applies to both myself and to most, if not all, members of

2765 the committee. We very much support the efforts of the
2766 performers. Those are the very eloquent words that many of
2767 my colleagues talked about in terms of the managers amendment
2768 were addressed for the purpose of ensuring that performers,
2769 in fact, are compensated for their—for their efforts, for
2770 their professional efforts.

2771 If I understand Mr. Poe's amendment properly, if it were
2772 adopted, it would require that all of the royalties paid
2773 under the bill go straight to the performers and not to the
2774 record labels. That might be attractive to some, however,
2775 the truth is it is the record labels who are the actual
2776 owners of the rights. And it would be illogical to pass a
2777 bill that would suggest that those who own the rights would
2778 not receive compensation at all.

2779 The bill, as we are now considering it, divides the
2780 royalties to ensure for compensation, fair compensation. But
2781 to deny the owners of the rights any compensation whatsoever,
2782 I don't think, is a principle that this committee should
2783 embrace, not under any circumstances.

2784 If there is an analogy, I think the apt analogy with
2785 respect to Mr. Poe's amendment would be that DJs receive all
2786 of the royalties paid in the context of a radio station and a
2787 radio station not receive any of it. That, I don't think,
2788 would be a particularly fair solution, and nor is the
2789 solution fair that is proposed by this amendment.

2790 So on the grounds that, while we all support the
2791 performers and that we do, and I certainly have for many,
2792 many years. The idea that we would pass an amendment that
2793 would ensure that all of the royalties would go to performers
2794 rather than recognizing the legitimate ownership rights that
2795 record labels have and at the same time recognizing that the
2796 owners of those rights have the responsibility to divide the
2797 compensation fairly, that is what the bill does.

2798 But this amendment would change that calculation
2799 dramatically, and that is why I oppose it.

2800 Thank you, Mr. Chairman.

2801 Chairman Conyers. Thank you. The question is on the
2802 Poe amendment, those members that are supportive indicate by
2803 saying "aye."

2804 [A chorus of ayes.]

2805 Chairman Conyers. And those members that are opposed,
2806 indicate by saying "no."

2807 [A chorus of noes.]

2808 Chairman Conyers. The amendment is unsuccessful. We
2809 now move to report the bill H.R. 848, a reporting quorum
2810 being present. The question is on reporting the bill as
2811 amended favorable to the House, those in favor say "aye."

2812 [A chorus of ayes.]

2813 Chairman Conyers. Those opposed say "no."

2814 [A chorus of noes.]

2815 Chairman Conyers. The ayes have it. The bill, as
2816 amended is order reported favorably.

2817 Yes, Mr. Sensenbrenner?

2818 A recorded voted is demanded. The clerk will call—
2819 The Clerk. Mr. Conyers?

2820 Chairman Conyers. Aye.

2821 The Clerk. Mr. Conyers votes aye.

2822 Mr. Berman?

2823 [No response.]

2824 Mr. Boucher?

2825 [No response.]

2826 Mr. Nadler?

2827 Mr. Nadler. Aye.

2828 The Clerk. Mr. Nadler votes aye.

2829 Mr. Scott?

2830 Mr. Scott. Aye.

2831 The Clerk. Mr. Scott votes aye.

2832 Mr. Watt?

2833 Mr. Watt. Aye.

2834 The Clerk. Mr. Watt votes aye.

2835 Ms. Lofgren?

2836 Ms. Lofgren. Aye.

2837 The Clerk. Ms. Lofgren votes aye.

2838 Ms. Jackson Lee?

2839 Ms. Jackson Lee. Aye.

2840 The Clerk. Ms. Jackson Lee votes aye.
2841 Ms. Waters?
2842 Ms. Waters. No.
2843 The Clerk. Ms. Waters votes no.
2844 Mr. Delahunt?
2845 Mr. Delahunt. Aye.
2846 The Clerk. Mr. Delahunt votes aye.
2847 Mr. Wexler?
2848 Mr. Wexler. Aye.
2849 The Clerk. Mr. Wexler votes aye.
2850 Mr. Cohen?
2851 Mr. Cohen. Aye.
2852 The Clerk. Mr. Cohen votes aye.
2853 Mr. Johnson?
2854 Mr. Johnson. Yes.
2855 The Clerk. Mr. Johnson votes yes.
2856 Mr. Pierluisi?
2857 [No response.]
2858 Mr. Quigley?
2859 Mr. Quigley. Aye.
2860 The Clerk. Mr. Quigley votes aye.
2861 Mr. Gutierrez?
2862 Mr. Sherman?
2863 [No response.]
2864 Ms. Baldwin?

2865 [No response.]

2866 Mr. Sherman. Aye.

2867 The Clerk. Mr. Sherman votes aye.

2868 Ms. Baldwin?

2869 [No response.]

2870 Mr. Gonzalez?

2871 [No response.]

2872 Mr. Weiner?

2873 [No response.]

2874 Mr. Schiff?

2875 Mr. Schiff. Aye.

2876 The Clerk. Mr. Schiff votes aye.

2877 Ms. Sanchez?

2878 [No response.]

2879 Ms. Wasserman Schultz?

2880 Ms. Wasserman Schultz. Aye.

2881 The Clerk. Ms. Wasserman Schultz votes aye.

2882 Mr. Maffei?

2883 [No response.]

2884 Mr. Smith?

2885 Mr. Smith. No.

2886 The Clerk. Mr. Smith votes no.

2887 Mr. Goodlatte?

2888 [No response.]

2889 Mr. Sensenbrenner?

2890 Mr. Sensenbrenner. Aye.

2891 The Clerk. Mr. Sensenbrenner votes aye.

2892 Mr. Coble?

2893 Mr. Coble. No.

2894 The Clerk. Mr. Coble votes no.

2895 Mr. Gallegly?

2896 [No response.]

2897 Mr. Lungren?

2898 Mr. Lungren. No.

2899 The Clerk. Mr. Lungren votes no.

2900 Mr. Issa?

2901 Mr. Issa. Yes.

2902 The Clerk. Mr. Issa votes yes.

2903 Mr. Forbes?

2904 [No response.]

2905 Mr. King?

2906 [No response.]

2907 Mr. Franks?

2908 [No response.]

2909 Mr. Gohmert?

2910 Mr. Gohmert. Aye.

2911 The Clerk. Mr. Gohmert votes aye.

2912 Mr. Jordan—Mr. Gohmert votes no.

2913 Mr. Jordan?

2914 Mr. Jordan. No.

2915 The Clerk. Mr. Jordan votes no.
2916 Mr. Poe?
2917 Mr. Poe. No.
2918 The Clerk. Mr. Poe votes no.
2919 Mr. Chaffetz?
2920 Mr. Chaffetz. No.
2921 The Clerk. Mr. Chaffetz votes no.
2922 Mr. Rooney?
2923 Mr. Rooney. Yes.
2924 The Clerk. Mr. Rooney votes yes.
2925 Mr. Harper?
2926 Mr. Harper. No.
2927 The Clerk. Mr. Harper votes no.
2928 Chairman Conyers. Are there other members present?
2929 Mr. Weiner?
2930 The Clerk. Mr. Weiner votes aye.
2931 Chairman Conyers. Mr. Berman?
2932 The Clerk. Mr. Berman votes aye.
2933 Chairman Conyers. Mr. Forbes?
2934 The Clerk. Mr. Forbes votes aye.
2935 Chairman Conyers. Mr. Goodlatte?
2936 The Clerk. Mr. Goodlatte votes aye.
2937 Chairman Conyers. The clerk will report.
2938 The Clerk. Mr. Chairman, 21 members voted aye, nine
2939 members voted nay.

2940 Chairman Conyers. The bill is agreed to, and without
2941 objection, the bill will be reported as a single amendment
2942 and the nature of a substitute incorporating amendments
2943 adopted.

2944 [Applause.]

2945 And the staff is authorized to make technical and
2946 conforming changes. Members will have 2 days to submit both.
2947 We have two quick measures.

2948 The clerk will call up pursuant to notice H.R. 2344 and
2949 report the bill.

2950 The Clerk. H.R. 2344, a bill to amend Section 114 of
2951 the Title 17, United States Code, to provide for agreements
2952 for the reproduction and performance of sound recordings by
2953 webcast.

2954 [The bill follows:]

2955 ***** INSERT *****

2956 Chairman Conyers. Without objection, the bill is
2957 considered as read. My opening statement will be put in the
2958 record. The bill—without objection.

2959 The bill allows the recording industry and the providers
2960 of Internet radio, known as webcasters, to negotiate
2961 reasonable royalty rates for the streaming of sound and
2962 recording—for sound recordings on the Internet.

2963 I yield to Lamar Smith.

2964 Mr. Smith. Mr. Chairman, I support this bill and ask
2965 unanimous consent that my statement be made a part of the
2966 record.

2967 Chairman Conyers. Without objection, so ordered.

2968 [The statement of Mr. Smith follows:]

2969 ***** INSERT *****

2970 Chairman Conyers. Are there any amendments? If not,
2971 all those—reporting quorum being present, all those favorably
2972 disposed to reporting the bill will say "aye."

2973 [A chorus of ayes.]

2974 Chairman Conyers. All those opposed will say "no."

2975 The bill is agreed to favorably, and without objection,
2976 will—the members will have 2 days to submit their additional
2977 views.

2978 The clerk is instructed, pursuant to notice, to call up
2979 1741, the Witness Security and Protection Grant Program.

2980 The Clerk. H.R. 1741, a bill to require the attorney
2981 general to make competitive grants to eligible state, tribal,
2982 and local prosecutors to establish and maintain certain
2983 protections and witness assistance programs.

2984 [The bill follows:]

2985 ***** INSERT *****

2986 Chairman Conyers. The chair will recognize Subcommittee
2987 Chairman Scott of Virginia to make the initial statement in
2988 support of the amendment.

2989 Mr. Scott. Thank you, Mr. Chairman.

2990 Mr. Chairman, H.R. 1741, the Witness Security and
2991 Protection Act of 2007, was introduced by the gentleman from
2992 Maryland, Mr. Cumming. It authorizes the attorney general to
2993 award grants to state and local prosecutors for establishing
2994 and improving short-term witness protection programs for
2995 witnesses that are involved in state or local trials
2996 involving homicide, serious felony, or serious drug offense.

2997 Mr. Chairman, at the appropriate time, I have an
2998 amendment to change the recipients to local and state
2999 governments rather than the prosecutors because they can
3000 better handle the grants.

3001 I yield back the balance of my time.

3002 Chairman Conyers. Thank you very much.

3003 The chair recognizes Lamar Smith.

3004 Mr. Smith. Mr. Chairman, I support this legislation. I
3005 ask unanimous consent that my statement be made a part of the
3006 record, but I also have to raise a point that I am not sure
3007 we have a reporting quorum. And could you check on that,
3008 Mr. Chairman?

3009 (OFF MIKE)

3010 Chairman Conyers. The chair recognizes Mr. Scott for an

3011 amendment.

3012 Mr. Scott. Mr. Chairman, I have an amendment to that.

3013 Chairman Conyers. The clerk will report the amendment.

3014 The Clerk. Amendment in the nature of a substitute to

3015 H.R. 1741 offered by Mr. Scott of Virginia.

3016 [The amendment by Mr. Scott follows:]

3017 ***** INSERT *****

3018 Chairman Conyers. Without objection, the bill will be
3019 considered as read. And the gentleman from Virginia is
3020 recognized in support of his amendment.

3021 Mr. Scott. Mr. Chairman, this is the amendment I
3022 referred to in my opening remarks. I would—hopefully, we
3023 would adopt the amendment to change the recipient of the
3024 grants to state and local governments who can better
3025 administer the grants than local prosecutors who probably
3026 would not be as able.

3027 I yield back.

3028 Chairman Conyers. Does any—Mr. Smith, do you have any
3029 view about this amendment?

3030 Mr. Smith. Mr. Chairman, I support the amendment and
3031 yield back.

3032 Chairman Conyers. Are there any other discussion on the
3033 amendment? If not, those in favor of the Scott Amendment,
3034 indicate by saying "aye."

3035 [A chorus of ayes.]

3036 Chairman Conyers. Those opposed say "no."

3037 The amendment is successful, and if—are there any
3038 further amendments? If not, we will have a record vote to
3039 determine the presence of a quorum so that we can report the
3040 bill.

3041 The clerk will call the role.

3042 The Clerk. Mr. Conyers?

3043 Chairman Conyers. Present.

3044 The Clerk. Mr. Conyers present.

3045 Mr. Berman?

3046 Mr. Scott. Parliamentary inquiry, Mr. Chairman. Is
3047 this a recorded vote on—

3048 Chairman Conyers. No. It is a quorum call to determine
3049 the presence of a quorum so we can have a vote.

3050 Mr. Scott. Parliamentary inquiry. Could we just—

3051 (OFF MIKE)

3052 Chairman Conyers. Okay. We can go straight to a
3053 recorded vote. I ask unanimous consent to withdraw the
3054 request for reporting a quorum, and we will call—have a
3055 record vote on final passage and determine a quorum at the
3056 same time.

3057 The Clerk. Mr. Conyers?

3058 Chairman Conyers. Aye.

3059 The Clerk. Mr. Conyers votes aye.

3060 Mr. Berman?

3061 [No response.]

3062 Mr. Boucher?

3063 [No response.]

3064 Mr. Nadler?

3065 Mr. Nadler. Aye.

3066 The Clerk. Mr. Nadler votes aye.

3067 Mr. Scott?

3068 Mr. Scott. Aye.

3069 The Clerk. Mr. Scott votes aye.

3070 Mr. Watt?

3071 [No response.]

3072 Ms. Lofgren?

3073 Ms. Lofgren. Aye.

3074 The Clerk. Ms. Lofgren votes aye.

3075 Ms. Jackson Lee?

3076 Ms. Jackson Lee. Aye.

3077 The Clerk. Ms. Jackson Lee votes aye.

3078 Ms. Waters?

3079 Ms. Waters. Aye.

3080 The Clerk. Ms. Waters votes aye.

3081 Mr. Delahunt?

3082 [No response.]

3083 Mr. Wexler?

3084 [No response.]

3085 Mr. Cohen?

3086 Mr. Cohen. Aye.

3087 The Clerk. Mr. Cohen votes aye.

3088 Mr. Johnson?

3089 [No response.]

3090 Mr. Pierluisi?

3091 [No response.]

3092 Mr. Quigley?

3093 Mr. Quigley. Aye.

3094 The Clerk. Mr. Quigley votes aye.

3095 Mr. Gutierrez?

3096 [No response.]

3097 Mr. Sherman?

3098 [No response.]

3099 Ms. Baldwin?

3100 [No response.]

3101 Mr. Gonzalez?

3102 [No response.]

3103 Mr. Weiner?

3104 [No response.]

3105 Mr. Schiff?

3106 [No response.]

3107 Ms. Sanchez?

3108 [No response.]

3109 Ms. Wasserman Schultz?

3110 [No response.]

3111 Mr. Maffei?

3112 Mr. Maffei. Aye.

3113 The Clerk. Mr. Maffei votes aye.

3114 Mr. Smith?

3115 Mr. Smith. Aye.

3116 The Clerk. Mr. Smith votes aye.

3117 Mr. Goodlatte?

3118 [No response.]

3119 Mr. Sensenbrenner?

3120 Mr. Sensenbrenner. No.

3121 The Clerk. Mr. Sensenbrenner votes no.

3122 Mr. Coble?

3123 [No response.]

3124 Mr. Gallegly?

3125 [No response.]

3126 Mr. Lungren?

3127 Mr. Lungren. Aye.

3128 The Clerk. Mr. Lungren votes aye.

3129 Mr. Issa?

3130 [No response.]

3131 Mr. Forbes?

3132 [No response.]

3133 Mr. King?

3134 [No response.]

3135 Mr. Franks?

3136 [No response.]

3137 Mr. Gohmert?

3138 Mr. Gohmert. Aye.

3139 The Clerk. Mr. Gohmert votes aye.

3140 Mr. Jordan?

3141 [No response.]

3142 Mr. Poe?

3143 Mr. Poe. Aye.

3144 The Clerk. Mr. Poe votes aye.

3145 Mr. Chaffetz?

3146 Mr. Chaffetz. Aye.

3147 The Clerk. Mr. Chaffetz votes aye.

3148 Mr. Rooney?

3149 [No response.]

3150 Mr. Harper?

3151 Mr. Harper. Aye.

3152 The Clerk. Mr. Harper votes aye.

3153 Chairman Conyers. Mr. Weiner?

3154 The Clerk. Mr. Weiner votes aye.

3155 Chairman Conyers. Mr. Delahunt?

3156 The Clerk. Mr. Delahunt votes aye.

3157 Chairman Conyers. Mr. Sherman?

3158 The Clerk. Mr. Sherman votes aye.

3159 Chairman Conyers. Mr. Poe?

3160 (OFF MIKE)

3161 Chairman Conyers. Under these circumstances, we will

3162 suspend the vote and have it called later.

3163 In the meantime, I ask the clerk, pursuant to notice, to

3164 call up H.R. 2247, the Congressional Review Act—Review

3165 Improvement Act for purposes of markup.

3166 The clerk will report the bill.

3167 The Clerk. H.R. 2247, a bill to amend Title 5, United

3168 States Code, to make technical amendments to certain
3169 provisions of Title 5, United States Code, enacted by the
3170 Congressional Review Act.

3171 [The bill follows:]

3172 ***** INSERT *****

3173 Chairman Conyers. Without objection, the bill will be
3174 considered as read. And I would like the chair of the
3175 Commercial and Administrative Law Subcommittee, Steve Cohen
3176 of Tennessee, to make the opening statement.

3177 The gentleman is recognized.

3178 Mr. Cohen. Thank you, Mr. Chairman.

3179 The Congressional Review Act was an attempt by Congress
3180 to reassert some control over the agency rulemaking process.
3181 While the CRA efficacy with respect to that goal is
3182 debatable, we can be certain that implementing its review
3183 process has been particularly burdensome on the House and
3184 Senate parliamentarians.

3185 The CRA current requires all agencies promulgating a
3186 rule to submit to both houses of Congress and the comptroller
3187 general of the Government Accountability Office a report that
3188 contains a copy of the rule, a concise general statement
3189 describing the rule, and the proposed effective date of the
3190 rule. Thus, including a copy kept at the originating agency,
3191 current law declares that some—the same material be
3192 submitted, housed, and printed at four different government
3193 agencies. Trees are suffering, and Congress comes together
3194 rescue.

3195 H.R. 2247, the Congressional Review Act—Improvement Act
3196 would cut government waste by reducing duplicate paperwork
3197 and relieving some of the administrative burdens current

3198 mandated by the CRA. H.R. 2247 would eliminate the
3199 requirement that agencies submit rules that are published in
3200 the Federal Register at each house of Congress. Instead of
3201 receiving the full submission of each individual rule, the
3202 House and Senate will receive a weekly list of all rules from
3203 the GAO's comptroller general.

3204 The House and Senate would then enter that list in the
3205 Congressional Record with a statement of referral for each
3206 rule. Under these provisions, the agency would still be
3207 required to submit rules and reports to each house of
3208 Congress that are not printed in the Federal Register, and
3209 Congress would still employ the procedures of the CRA to
3210 disapprove agency rules.

3211 Last year, this committee favorably reported a bill
3212 identical to H.R. 2247 to the full house by voice vote with
3213 no amendments offered. The House then passed this about on
3214 suspension by voice vote.

3215 I urge my colleagues to, once again, support these
3216 common-sense modifications of the Congressional Review Act
3217 and make all the gnomes happy. And I want to specifically
3218 thank Chairman Conyers, Ranking Member Smith, and the
3219 subcommittee ranking member, Mr. Franks, for their co-
3220 sponsorship of this legislation.

3221 Chairman Conyers. We thank Chair Steve Cohen for his
3222 environmental concerns. Deeply appreciated.

3223 The chair recognizes Lamar Smith.

3224 Mr. Smith. Mr. Chairman, I support the bill and ask
3225 unanimous consent that my statement be made a part of the
3226 record.

3227 Chairman Conyers. Are there any other comments or any
3228 amendments?

3229 (OFF MIKE)

3230 Chairman Conyers. In the absence of a working quorum or
3231 a reporting quorum, the committee has no other alternative
3232 but to stand adjourned and thank the—

3233 Mr. Scott. Mr. Chairman?

3234 Chairman Conyers. Mr. Scott?

3235 Mr. Scott. Is the previous vote still open?

3236 Chairman Conyers. Yes, it is still open, sir.

3237 Mr. Scott. Okay. Has anybody come in that did not—had
3238 not already voted?

3239 Chairman Conyers. No.

3240 Mr. Scott. Okay.

3241 Chairman Conyers. Unfortunately. I want to thank all
3242 of the members—

3243 Ms. Lofgren. Parliamentary inquiry. I wonder if, at
3244 the next vote, the committee might briefly convene in the
3245 Rayburn Room and cast our votes there on these two—

3246 Chairman Conyers. It never worked effectively in my
3247 whole career.

3248 Ms. Lofgren. All right. I have done it, but only at a
3249 subcommittee level.

3250 Chairman Conyers. Well, you have more power over your
3251 subcommittee than I have over my full committee.

3252 [Laughter.]

3253 The committee stands adjourned.

3254 [Whereupon, at 2:03 p.m., the committee was adjourned.]