

IN TRIBUTE TO THE MEMORY OF
VESTER EUGENE SHULER

HON. MARILYN N. MUSGRAVE

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, December 18, 2007

Mrs. MUSGRAVE. Madam Speaker, I rise to pay tribute to the memory of Vester Eugene Shuler whose warm heart and love of music touched many lives in Colorado. Gene was born in Choestoe, GA, and first came to Colorado when he was 13 years old to work in the sugar beet fields in Weld County. He traveled back and forth between Georgia and Colorado frequently in his early years and later raised his family in North Park Colorado.

Gene spent summers working in Colorado while attending school in Georgia. He proudly served in the United States Army and was sent to Germany in 1945. During his tour of duty he was a mechanic who supervised a garage. He returned home to Georgia to marry his sweetheart Loujine Young on July 17, 1948.

The young couple soon headed west and spent time working and living with Gene's brother Grady and his wife Ethel. They later moved to North Park where Gene worked as a welder and mechanic with Ozark Mahoney. A labor strike closed the mine and sent the young family to California to spend some time with relatives. They soon returned to North Park, living in Coudrey, Pine Springs and finally Walden. Gene worked for the Wilford Garage, Cooper Motors and the Sigma Coal Mines.

Music played a large part of Gene's life. As a young boy Gene stuttered. He began playing music at a young age; it gave him a way to say things he couldn't make out in words. He realized that he could do with music what he couldn't do with words. He knew when it was time to start the music and what music everyone loved to hear. If you knew him at all, then he knew your favorite song. He truly loved the time he shared with the people he cared about.

Gene and Loujine raised 2 children, Carl Shuler and Gwen Hanson. They were blessed with 5 grandchildren and 6 great-grandchildren. They enjoyed traveling and visited Georgia, Florida, Texas, California, Wyoming, Arizona and many places in between.

Gene's life was a lesson in how to enjoy life, honor God, care for others, face difficulties with courage, and make a positive impact on the world. I am proud to honor Gene, a precious veteran, who is the embodiment of all the values that have molded America into the great Nation it is today. May God bless his family, may God bless our veterans, and may God bless America.

RECOGNIZING JUSTIN COLBY
SCHULTZ FOR ACHIEVING THE
RANK OF EAGLE SCOUT

HON. SAM GRAVES

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Tuesday, December 18, 2007

Mr. GRAVES. Madam Speaker, I proudly pause to recognize Justin Colby Schultz, a very special young man who has exemplified

the finest qualities of citizenship and leadership by taking an active part in the Boy Scouts of America, and in earning the most prestigious award of Eagle Scout.

Justin has been very active with his troop, participating in many Scout activities. Over the many years Justin has been involved with Scouting, he has not only earned numerous merit badges, but also the respect of his family, peers, and community.

Madam Speaker, I proudly ask you to join me in commending Justin Schultz for his accomplishments with the Boy Scouts of America and for his efforts put forth in achieving the highest distinction of Eagle Scout.

CONGRATULATING THE COLORADO
ROCKIES ON WINNING THE NA-
TIONAL LEAGUE CHAMPIONSHIP

SPEECH OF

HON. MARK UDALL

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Monday, December 17, 2007

Mr. UDALL of Colorado. Mr. Speaker, I rise today in support of this resolution congratulating the Colorado Rockies on their National League Championship and first-ever franchise appearance in the World Series.

The entire Colorado delegation joined me in introducing the resolution, and it is now co-sponsored by more than 50 other Members of Congress. I greatly appreciate their support.

The Rockies defied the odds this year by making it to the World Series, capturing the best hopes of Coloradans and giving us all a reason to cheer for their success. Despite a tough loss to a great team in the Boston Red Sox, we remain proud of the Rockies' efforts and astonished at their historic rise to the top of the National League.

Toward the close of the season, the Rockies were the underdogs in the National League pennant race. The challenge of making the playoffs seemed as large and daunting as the mountain range for which the Rockies were named, but the team maintained an optimism and competitive spirit that kept them alive long after commentators had written them off. Winning 21 of their last 22 games prior to the World Series—an unprecedented feat in baseball history—the Rockies rolled over expectations and swept the Arizona Diamondbacks in the NLCS.

The World Series proved to be a bigger challenge than the Rockies could surmount, and they lost in four games to a very talented Red Sox team. Despite the losses, the Rockies carried themselves with dignity and true sportsmanship, giving Coloradans something to be proud of.

As the father of two young athletes I can say that the way the Rockies carried themselves is a tremendous example for our young people. We would have loved to have seen the Rockies bring home a victory this year, but, as Red Sox outfielder Manny Ramirez said during the ALCS, there's always next year. I know I am not alone in looking forward to watching some great Rockies baseball in the future.

I urge all our colleagues to join me in congratulating the Colorado Rockies on a great season and in thanking them for serving as great examples of professional athletes practicing sportsmanship.

THE "PERFORMANCE RIGHTS ACT"
OF 2007

HON. HOWARD L. BERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, December 18, 2007

Mr. BERMAN. Madam Speaker, today, I join my colleagues in both the House and the Senate in introducing "The Performance Rights Act" of 2007. This legislation is a first step at ensuring that all radio platforms are treated in a similar manner and that those who perform music are paid for their work.

This narrowly tailored bill amends a glaring inequity in America's copyright law—the provision in section 114 that exempts over-the-air broadcasters from paying those who perform the music that we listen to on AM and FM radio. For as long as I have been working on the intellectual property subcommittee, I have been troubled by this policy that sets America apart from every other developed country in the world. The purpose of the bill is to take a necessary step towards platform parity so that any service that plays music pays those who create and own the recordings—just as satellite, cable, and internet radio stations currently do.

I understand that this legislation raises some difficult political issues. Several people have expressed some very legitimate concerns—like the need to accommodate small broadcasters, the possibility of jeopardizing the revenues earned by songwriters and music publishers, or expanding the scope of the law governing music played in restaurants and other public venues. So let me begin by clarifying how we have narrowly tailored this legislation—

(1) The bill repeals the current broadcaster exemption—but it does not apply to bars, restaurants and other venues, or expand copyright protection in any other way.

(2) The bill provides an accommodation of protection for small and non-commercial broadcasters by setting a low flat annual fee with no negotiation, litigation or arbitration expenses. Nearly 77 percent of existing broadcasting stations in this country—including college stations and public broadcasters—will pay only a nominal flat fee, rather than having to pay a percentage of their revenues as royalties.

(3) The bill extends copyright protection to artists, musicians, and the sound recording labels—it does not harm or adversely affect the revenues rightfully paid to songwriters and other existing copyright owners.

For over 20 years I have been convinced that fairness mandates that all those in the creative chain from the artist, musicians and others who bring the recording to life—get compensated for the way they enrich our lives. The U.S. is the only developed country in the world that does not require privately owned over-the-air radio stations to compensate those performers who create the music that broadcasters use to attract the audience that generate their ad revenues. Because of music, radio is able to profit. Not compensating those who create the music is unfair and ultimately harmful to music creation that benefits everyone—including the broadcasters. Furthermore, the law requires all other platforms in the U.S., including satellite and Internet radio, to compensate the copyright owner.

Songwriters and music publishers rightly do get paid when their song is played on the radio, but the artist whose voice or musical talent brings in the ad revenue for the station never receives a penny from the station. That means that under existing law, when you hear "White Christmas" on the radio this holiday season, the estate of Irving Berlin will get paid for the words and music that he wrote. But the estate of Bing Crosby will not—even though it is the tone and texture of his voice that symbolizes Christmas for so many. This disparity makes no sense. Therefore, in an effort to begin the journey towards parity among platforms and fairness to artists, the bill as introduced will affect three areas where there is currently disparate treatment:

Platform parity—Never in the past have there been more engaging technological platforms which offer music to consumers at almost any time, in any format. Especially with the roll-out of HD, "hybrid digital," radio which will provide greater choice, it becomes harder to justify an exemption for any one platform. Both the radio station, regardless of the platform, and the performer benefit from the playing of music over the air. But only one party, the station, gets to keep the revenue it generates. While stations use music to get their ad revenue, they gladly leave others to pay the artist for another use of the music. It is certainly true that on all platforms there are differing degrees of promotion that may benefit the artist. That is why the Copyright Royalty Board takes into consideration any promotional element and adjusts the compensation to the artist appropriately.

While calling the performance right a "tax" might make for good rhetoric, it is also good rhetoric to call it "corporate welfare" when the U.S. Code compels copyright owners, artists, and musicians to give broadcasters their music for free. It is simply time to eliminate this anachronistic and unjustified subsidy.

International parity—During a recent meeting in Nashville President Bush was asked about this issue. When he was told that broadcasters in every country in the world except for China, Iran, North Korea, and Rwanda pay a performance right, he rightfully observed, "it sounds like we're keeping interesting company."

Because America does not have an adequate performance right, our own artists and musicians cannot receive royalties when their music is played on radio stations outside the U.S. In many countries between 20–50 percent of the music played abroad is "American-made" and because of the lack of reciprocity, we are denying our performers millions of dollars in revenue.

Rights parity—Songwriters have long been compensated for the songs that are played on the radio—as they should be. However, just as there would be nothing for musicians to play without notes, and nothing for the artist to sing without the words, there is also nothing for a DJ to play without a recorded song.

Our kids know the song "Breakaway" because Kelly Clarkson recorded it—but few know that it was written by Avril Lavigne. Does it make sense for Lavigne to get paid but for Clarkson not to get paid? The fact that Patsy Clines' estate is not compensated for over-the-air performances of her singing "Crazy" seems crazy. Shouldn't performers be paid as well?

One of America's greatest treasures is its intellectual property. In cities and towns across

the Nation and in countries around the world, American music is heard throughout the streets. People are consuming more music than ever. Yet the music industry is in crisis. The total value for the music industry at retail declined from \$14.5 billion in 1999 to \$11.5 billion in 2006. So, any claim that radio should get a free ride because so-called "free airplay" contributes to record sales just isn't true. Record sales have fallen 18 percent since 2000.

In 1995 Congress took a step forward and established a limited performance right for digital sound recordings. Yet, the performance right Congress created with one hand was taken away with other, by exempting all terrestrial broadcasts.

Cable, satellite, and Internet radio services are granted a statutory license to broadcast music as long as they pay the defined fee determined by the Copyright Royalty Board. This bill extends the statutory licensing requirement to terrestrial broadcasters to avoid an unfair advantage. I do note however, that as we discuss reform of the section 114 license—other issues will likely arise such as, the standard to be used in determining royalty rates, the sound recording complement, and treatment of ephemeral copies.

We are fortunate that with the evolution of new technologies there are many legal music distribution services currently available. Cable, Internet, and satellite platform providers all compete to provide consumers their choice of music, anytime, in any place, in any format. While I am encouraged by the many options, I am concerned that the government seems to be giving preference to one platform over the others by exempting over-the-air broadcasters from compensating owners of the music which they use to grow their business. This bill seeks the appropriate balance between promoting the creativity of music and fostering innovation. Following is a section-by-section summary of the legislation:

Section 1. Short title

This Act may be cited as the "Performance Rights Act."

Section 2. Equitable treatment for terrestrial broadcasts

This section repeals the exemption for terrestrial broadcasters and makes conforming changes by deleting references to the word "digital" from the types of audio transmissions that are subject to a performance right. With these changes, all terrestrial (over-the-air) broadcast transmissions, including analog audio transmissions, would be subject to sound recording performance rights thereby providing parity for the technologies currently covered under the section 114 license.

Section 3. Special treatment for small and non-commercial Public Broadcasting stations; and religious stations and certain uses

This section would create an accommodation for certain qualifying broadcasters from the negotiation and arbitrated rate-setting. Instead, such broadcasters would pay a prescribed flat fee or would retain their current exemption.

For small broadcasters who make revenue less than \$1.25 million and therefore are concerned about the uncertainty of the rate and the impact on the growth and viability of their business—this section sets a flat annual royalty fee of \$5,000 per year for any individual station (even those part of a larger radio network) with no litigation, negotiation, arbitration, royalty board proceeding or licensing costs.

Furthermore, for non-commercial/public broadcast stations (irrespective of size) the rate is capped at \$1,000 per year per station.

Finally, for those stations that broadcast religious services or make "incidental use of musical sound recordings" such as brief musical transitions in and out of commercials or program segments, or brief performances during news, talk and sports programming there is an outright exemption.

Section 4. Availability of per program license

This section allows terrestrial radio stations to obtain program licenses for sound recordings (at separately set rates), in lieu of blanket licenses. In some cases, a radio station may not make many featured uses of music, for example a mixed-format station. In such cases, rather than requiring a station to pay a general blanket license fee in the same amount paid by a station that primarily makes featured uses of music, this section requires the Copyright Royalty Board to establish a "per program license" so that such stations can choose only to pay for the music they use, which may be less costly than the general blanket license. This parallels the licenses offered by the performance rights organizations for performing the underlying musical copyright.

Section 5. No harmful effects on songwriters

Finally, this section protects the songwriters from the impact of providing this new performance right. In the first instance, the bill adopts the songwriters' suggestion to remove the prefatory language which merely expressed "the intent of Congress" not to diminish the royalties of the songwriters. Furthermore, it includes the express indication that nothing in the Act shall adversely affect the royalties to songwriters.

I do not want to suggest that this bill is a "perfect" solution. But it is an appropriate starting place. I know there are other parts of section 114 that need to be reformed as well, and therefore will begin to examine additional provisions in the coming months. Furthermore, I remain open to suggestions for amending the language to improve its efficacy or rectify any unintended consequences.

This bill attempts to strike a balance between providing adequate protection to our musicians and artists and continuing to support new innovative technologies. My goal is to preserve the legitimate marketplace by providing a technology neutral structure or at least one with parity for all services that appropriately pay for the music. I hope the parties can work together to reach further consensus on how to achieve parity between technologies and provide rightful compensation to our artists and musicians.

We hope that with introduction of this companion bill in the House to the Performance Rights Act in the Senate, Congress will act quickly to level the playing field between technologies and ensure rightful compensation to performers.

HONORING THE LIFE OF GRACE
CARLTON ALLEN

HON. KATHY CASTOR

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, December 18, 2007

Ms. CASTOR. Madam Speaker, I rise today to honor the life and legacy of Grace Carlton Allen, and to commend her contributions to the University of South Florida.