

Statement of  
**The Honorable Patrick Leahy**

United States Senator  
Vermont  
October 15, 2009

Statement Of Senator Patrick Leahy (D-Vt.),  
Chairman, Senate Judiciary Committee,  
Executive Business Meeting  
October 15, 2009

Today we are considering the Performance Rights Act, which Senator Hatch and I reintroduced in February. This is a bipartisan, bicameral bill that is cosponsored by Senator Corker, Senator Feinstein, Senator Alexander, Senator Boxer, and Senator Schumer. In the House, the companion legislation was introduced by Chairman Conyers, and cosponsored by Mr. Issa, Ms. Blackburn, Mr. Wamp and Mr. Shadegg. The House Judiciary Committee reported its bill in May. I hope we will do so today.

This legislation will end a glaring inequity in our intellectual property law that disadvantages American artists around the world, as well as here at home.

When we listen to music, we are enjoying the intellectual property of two creative artists - the songwriter and the performer. The success, and the artistic quality, of any recorded song depends on both.

When Internet radio or satellite radio play a song, both the songwriter and the performer are compensated. But when over-the-air stations play music, the performer is not compensated. The radio station sells advertisement time and makes money off the performer's sound recording, but the artist does not get compensated. That is wrong and our bill corrects this injustice.

Radio play surely has promotional value to the artists, no one is denying that. But there is a property right in the sound recording, and those that create the content should be fairly compensated for their work.

The United States is behind the times in this regard. Ours is the only Nation that is a member of the Organization for Economic Cooperation and Development but still does not compensate recording artists. The result of the lack of performance rights in the United States is that American artists are not compensated when their recordings are played in Europe or anywhere else around the world. Their royalties are collected but go unclaimed because we have no reciprocal performance rights here in the United States. That amounts to between \$70 million and \$100 million a year that are unreceived by American recording artists, who are among the most popular in the world.

The previous two administrations have recommended a performance right for sound recordings, and the Register of Copyrights submitted testimony again this year in support of correcting this anomaly in our laws.

I hope we will be able to report this bill today. We will still have a lot of work to do on it, and I strongly encourage the National Association of Broadcasters to end their stonewalling, and to work with us, work with the artists and the music industry, and help us reach an agreement that protects broadcasters while ensuring that artists are compensated fairly.

When we begin our consideration of the bill, I will offer a Leahy-Hatch amendment that makes important changes in four areas. Most importantly, it makes additional accommodations for smaller broadcasters. I have heard from small broadcasters concerned about how paying for the content they use may affect their stations. I said at our hearing in August that I wanted to address their concerns. With this amendment I think we have. Our amendment provides further accommodations for smaller broadcasters, including tiered payment levels. I thank Senator Franken and others for their suggestions on this issue to protect small broadcasters. Broadcasters making less than \$50,000 can elect to pay a flat, annual fee of only \$100 to play all the music they want. All stations making under \$1.25 million will have a flat fee option, which in many cases is less than their trade association dues spent lobbying against this bill.

Second, the amendment includes language to address an issue raised by Senator Feinstein that the rate standard used to set royalties should be the same across platforms. I know Senator Feinstein would still like to do more work on this issue and, as I said when we introduced this bill together, I value her leadership on music issues and encourage her to continue that work. This amendment is a good step in the right direction.

Third, the amendment contains protection for songwriters that are likewise contained in the House bill. I want to be sure that as we establish a performance right for sound recording artists, we make sure that nothing in the bill harms songwriters. That is not our intention and should not be the effect.

Finally, the amendment will ensure that the sound recording artists actually receive their share of royalties when their music is played. Record labels often hold the property right in the sound recording, and they deserve to be compensated, but we all want to ensure that the artists receive their compensation, too. I commend the recording industry for working with us on this issue to protect the artists whose music we all love to hear.

I encourage the broadcasters to end their holdout and show that same willingness to work with us to reach an equitable solution to this problem.

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Statement Of Senator Patrick Leahy (D-Vt.),  
Chairman, Senate Judiciary Committee,  
On Judicial Nominations  
Executive Business Meeting  
October 15, 2009

All four of the nominees on the agenda today are superbly qualified for lifetime appointments to the Federal bench. All four come with strong endorsements from Senator Feinstein and Senator Boxer, who each recommended them.

This is an historic day. This is the first time that three Asian Pacific American nominees have been considered by the Committee at the same time. In fact, three Asian Pacific American judicial nominees have never been confirmed in the same year. The progress we make today is long overdue. Of the approximately 875 judges on the Federal bench, only eight are Asian Pacific American. That is less than one percent.

President Obama is following through on his commitment to nominate men and women to the Federal bench who reflect the diversity of America. Diversity on the bench helps ensure that the words "equal justice under law," inscribed in Vermont marble over the entrance to the Supreme Court, are a reality, and that justice is rendered fairly and impartially. Today is an important milestone not only for the Asian Pacific American community, but for all Americans.

I protected the right of the Ranking Member and the Republican Senators on the Committee to delay action on these nominations for one week. But we should not further delay making progress in reporting all four nominations to the full Senate, especially in light of the excessive obstruction of nominees on the Executive Calendar that we have seen.

There are currently seven judicial nominations, as well as eight nominations for key positions in the executive branch that have been reported by this Committee, that are stalled in the Senate. The stalling has reached unprecedented proportions.

This is the first year of the President's term, when the President is traditionally accorded deference and is able to appoint people to help administer the executive branch. Yet nominees to be Assistant Attorneys General in charge of four of the 11 Divisions at the Justice Department still await Senate action, three of them from before August recess.

With respect to judicial nominees, the story is even worse. We have confirmed only one circuit court and one district court nomination all year. President Obama made his first judicial nomination, that of David Hamilton to the Seventh Circuit, in March, and it has been stalled on the Executive Calendar since early June, despite the support of the senior Republican in the Senate, Senator Lugar. By this point in President Bush's first term with a Democratic majority, the Senate had already confirmed eight of his judicial nominations, including four circuit court nominations, even though President Bush did not make his first nomination until May.

The delays in considering judicial nominations pose a serious problem in light of the alarming spike in judicial vacancies on our Federal courts. There are now 96 vacancies on Federal circuit and district courts and another 24 future vacancies already announced--that is 120 vacancies total. Vacancies now near record levels. Justice should be neither delayed nor denied to any American because of over-burdened courts. We can do better. The American people deserve better.

I hope that Senators from both sides of the aisle will join me in supporting all four non-controversial well-qualified nominees on our agenda today.

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