

this debate we must remember that copyright owners cannot negotiate a fair market price for their works in the marketplace for digital radio, and cannot withhold access to their works as leverage in the marketplace to negotiate for necessary content protection on digital radio.

Cable, satellite, and Internet radio services are granted a compulsory license to broadcast (perform) music as long as they pay the statutorily defined fee (or another negotiated rate) and abide by the terms and conditions of the government license.

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 certain features of the new devices turn radio, or performance services, into distribution services. This increased functionality may cause the unintended consequence of bypassing the typical marketplace distribution channels by allowing the consumer to turn broadcasts into downloads. This utility enables consumers to create an unlicensed music library without paying the artist.

However, just as consumers have certain expectations when it comes to radio usage, copyright owners have a reasonable expectation to be compensated for both the performance right (where a copy is listened to but not kept by the consumer such as a broadcast or concert) and the copying of their works into a library (such as a download or reproduction). This bill seeks the appropriate balance between promoting the creativity of music and fostering the innovation of technology.

Some say the legislation is unnecessary because they assert that current business models are technically legal. While I myself refrain from statutory interpretation, the question for Congress now is how to formulate the right policy to ensure that creators receive adequate compensation for their work and that fair rules apply evenly across all platforms of music that deliver similar services to consumers. Some say this legislation is lacking because it does not provide parity across all broadcasting platforms. While I believe there should be a full performance right for all digital transmissions, across all broadcasting platforms, the bill provides a step in the right direction.

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

In order to level the playing field for those technologies currently covered by Section 114, this bill establishes parity in the rules and regulations covering service platforms (satellite, webcasters, cable) by ensuring that satellite, webcasters, and cable operators are required to operate under the same rate standard and content protection rules. Under the bill, the performance license will only be available for behavior that constitutes a performance, and will require a radio service that wants to engage in a distribution business model to get a distribution license in the free marketplace like its competitors.

For services coupled with new and proposed devices that permit subscribers to search for and keep permanent copies of songs included in the broadcaster's program-

ming without ever listening to the program and where subscribers simply scroll through a list of songs and pick those they want to keep without ever buying the song or paying additional subscription fees a service will not be able to take advantage of the 114 license unless they get a necessary distribution license in the marketplace.

The ability to enable automatic, organized copying and storage of individual songs that replace the sale of downloads or subscriptions by competitive distribution services such as Napster, Rhapsody, and iTunes should not be allowed without similar rules and compensation requirements. If listeners are able to instantly make a free copy of the song they are listening to, they will have little reason to purchase it. The use of a performance license should not be a shield against providing the requisite payment for the reproduction or distribution.

Section 1 provides parity in the rate standard for the technologies currently covered under the section 114 license. All licenses under section 112 and 114 will have their rates set under the same standard, a fair market value standard, that would more closely replicate aggregate deals in the marketplace. Fair Market Value is a standard that is used hundreds of times in the laws of the United States and is one that replicates to the closest extent possible to free marketplace. Currently, the rate for satellite and cable music services are set under factors contained in Section 801(b) of the Copyright Act. The rate for Internet services is a "willing buyer, willing seller" standard that approximates what a particular willing buyer would pay a particular willing seller in the marketplace. The bill sets the standard at "fair market value" to provide broad-based market-influenced compensation to creators across all platforms.

Section 2 provides that the technologies which broadcast sound recordings provide adequate protection to the content. These provisions ensure that all licensees under section 114 have similar content protection requirements, which respond to marketplace developments but include recording for legitimate time shifting purposes.

The bill also requires that licensees use reasonably available technology to prevent copying of the transmission to prevent against third party "stream-ripping"—the use of tools created by third parties that captures the stream, and then disaggregates the songs for storage in a manner that substitutes for a sale. However, any content protection system must allow for reasonable recording. Most notably the bill allows for all manual consumer recording to the extent such recording is consistent with fair use under Section 107 of the Copyright Act.

Section 3 provides a placeholder for the Copyright Office to convene a meeting with interested stakeholders to discuss creation of a category of new interactive services. Currently, one of the most contested issues in the license is the definition of interactivity. The question is "how much consumer influence is allowed before the experience has transitioned from a purely listening service to an interactive service?". The definition of interactivity itself impacts whether one can take advantage of the compulsory license, and the share of the royalty to the artists, musicians and other vocalists. I am hopeful that the Copyright Office will be able to provide some guidance and recommendations for Congress.

Finally, while not included in the bill, I do believe at some point soon, Congress needs to take another look at the Audio Home Recording Act. I don't believe that the royalties provided by the AHRA were ever intended to substitute for the marketplace licenses afforded end-to-end transmission and distribution services. The AHRA was intended to protect music creators from serial copying using off-the-shelf consumer electronics devices, not to enable transmission services to transform themselves into distribution services that provide an unlicensed download that substitutes for record sales. The time has come to re-evaluate the act in light of new technologies and changing business models.

I do not want to suggest that this bill is a "perfect" solution. Thus, 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 continuing to support new innovative technologies. My goal is to preserve the legitimate marketplace by reserving downloading capability for those services that appropriately pay for it. 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.

OPENING OF THE MOTHER HALE LEARNING CENTER

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, May 12, 2006

Mr. RANGEL. Mr. Speaker, I rise today to recognize the significance of the Mother Hale Learning Center by entering into the record an article from the New York CaribNews that celebrates the official opening of the MHLC in Harlem, New York.

Clara Hale, best known as "Mother Hale," was a prominent philanthropist, social activist and child care worker who founded Hale House in New York City and created a sanctuary for drug-addicted and AIDS-infected infants and their mothers.

As a foster care parent in 1940, Mother Hale provided a home to over 40 children of all ethnic and religious backgrounds over the next 25 years. As problems associated with drug abuse exploded in Harlem, Mother Hale expanded her home for infants addicted before birth. It was the first—and only known program—in the U.S. designed to deal with infants born addicted to illegal drugs.

Clara Hale was a rare individual who devoted her life to caring for over 800 unwanted children. She left her loving imprint on the lives of thousands. When Mother Hale passed away in December, 1992, her daughter, Lorraine Hale carried on her mother's mission.

The Mother Hale Learning Center is an expansion of the work Hale House does through its residential programs. It also allows for affordable childcare to the Harlem community.

This dedication of the Mother Hale Learning Center, as detailed in the attached article, is recognized as the perfect present to honor the legacy of Mother Clara Hale.

Mr. Speaker: I congratulate everyone associated with this notable community resource

expansion known as the Mother Hale Learning Center. This center is truly a testament to the life work of Clara Hale.

DEPUTY MAYOR & CHILDREN'S CHARACTER
CLIFFORD THE BIG RED DOG JOIN IN OPEN-
ING MOTHER HALE LEARNING CENTER

NEW YORK, NY.—Dennis Walcott, Deputy Mayor for Education and Community Development and beloved children's character Clifford The Big Red Dog, recently joined Zachary Carter, Hale House Chairman of the Board, and Randolph McLaughlin, Executive Director of Hale House, civic leaders, parents and children to officially open the Mother Hale Learning Center (MHLC), located at 300 Manhattan Avenue in Harlem.

"The opening of the Mother Hale Learning Center is a natural expansion of the work Hale House does through its residential programs and gives us the opportunity to provide educational and affordable childcare to the community-at-large," said Mr. McLaughlin. "It also is the perfect present to honor the legacy of Mother Hale, who would have been 101 on April 1st."

Following the opening ceremony, attendees were led on a tour of the facilities and Deputy Mayor Walcott and Clifford The Big Red Dog greeted the excited children.

MHLC offers high-quality, yet affordable educational childcare for infants, toddlers and preschoolers of families in the community. Classes are led by the Center's experienced and highly trained childcare staff, who create an atmosphere that is caring, nurturing and supportive to each child's educational needs. Adhering to the standards of excellence set forth by the National Association for the Education of Young Children, the curriculum is designed to foster the growth of each child by focusing on social, emotional, physical and cognitive development.

There are classrooms for each age group, each with a daily curriculum and activities specifically designed for that particular group, including: Infants (6 weeks to 1 year old) curriculum which utilizes tactile toys and stimulating activities to help infants gain awareness of their senses; Young Toddlers (1 to 2 years old) and Older Toddlers (2 to 3 years old) curriculum which focuses on building language, creativity, motor skills and social interaction to help children process the new and exciting things they discover each day; and Preschoolers (3 years old to their 5th birthday) curriculum which provides hands-on learning experiences that foster independent thinking and self-expression, and daily group activities that help enhance cognitive and social skills to prepare children for kindergarten.

As one of the few educational programs in Harlem that works with both infants and toddlers, the fully secured facility can ac-

commodate up to 38 children and is open Monday through Friday, 7:30 a.m. to 6:30 p.m. It also features a computer room with three child-friendly computer stations—donated by I.B.M. and United Way—a sleep room for the infants, as well as an outdoor recreation courtyard. The Center will also provide parent workshops, a resource library and referrals to other appropriate services.

HONORING DAMU SMITH

HON. BARBARA LEE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, May 12, 2006

Ms. LEE. Mr. Speaker, I rise today with a heavy heart to join my colleagues here in the Congressional Black Caucus, throughout the United States and across the globe in commemorating and honoring the extraordinary life of Damu Smith. A leader in the ongoing struggles for civil rights as well as social and environmental justice for more than 30 years, Damu is known worldwide for his lifelong commitment to advancing equality, human rights and nonviolence. Damu passed away on May 5, 2006 after a courageous battle with cancer.

Born in 1952 in St. Louis, Missouri to Sylvester and Vernice Smith, Damu was raised with his three brothers and sisters in the Carr Square Village housing project. A working-class family, they often struggled to make ends meet, sometimes receiving welfare or other government assistance. Damu has said that having this experience growing up developed in him a great sensitivity to the plight of low-income communities, and played a central role in shaping his views as an adult and as an activist.

As a high school student, Damu had the chance to attend some of the Black Solidarity Day rallies in Cairo, Illinois, where he listened to speeches by Amiri Baraka, Nina Simone and Jesse Jackson, and toured black neighborhoods where white supremacists had sprayed houses with gunfire, a sight that changed his life. As a freshman at St. John's University in Minnesota, and president of the Organization of Afro-American Students, Damu led a protest and takeover of the school's administrative offices to demand a Black studies program. It was during that time that he changed his name to Damu Amiri Imara Smith, the first three words meaning "blood," "leadership," and "strength" in Swahili, respectively. In 1973, he moved to Wash-

ington D.C., where he began the next chapter in his lifelong mission of advocating for social justice in the United States and abroad.

Over the next thirty years, Damu's activism included vigilance in the fight against Apartheid in South Africa as Executive Director of the Washington Office on Africa and co-founder of Artists for a Free South Africa. Additionally, Damu focused his energy and attention on broad-based efforts to expose gun violence and police brutality, and was also active in peace and nuclear weapons freeze campaigns, working as the Associate Director of the Washington Office of the American Friends Service Committee.

Furthermore, Damu was known for his pioneering leadership in the environmental justice movement, working as the first environmental justice coordinator for the Southern Organizing Committee for Economic and Social Justice. After touring cities severely impacted by chemical pollution and seeing the devastating impacts of these practices on low income and African American communities, he organized Toxic Tours in the South for Greenpeace. In 1999, he coordinated the largest environmental justice conference ever held, an event which led to the formation of the National Black Environmental Justice Network, which was the first ever network of Black environmental justice activists, and of which he served as the Executive Director.

Throughout his historic and far-reaching career of activism and advocacy, Damu was widely respected and viewed as a leading voice for social justice and progressive change in the United States and abroad. Revered by his colleagues and all who knew him as not just a leader but a true visionary in the fight for justice, peace and equality, Damu's contributions to the effort to affect genuinely democratic reforms in the United States and around the world are truly immeasurable.

My life was personally touched by Damu. I met him many years ago and his intellect, heart and soul brought joy and clarity to my life. Like all who knew and loved him, I will deeply miss his presence on this earth.

Though his death is a great loss to our country and to our entire global family, the legacy of his work will continue to improve countless lives for generations to come. My thoughts and prayers are with Damu's family, as well as the numerous friends, colleagues and other individuals that he inspired during his lifetime as we mourn the loss of this exemplary leader.