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Press Release

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NEW PHOENIX CENTER ECONOMIC STUDY DEMONSTRATES THAT ALLEGED PROMOTIONAL EFFECT PROVIDES NO BASIS FOR FEDERAL LAW TO MANDATE THE FREE USE OF MUSIC BY THE TERRESTRIAL RADIO BROADCAST INDUSTRY

Any Promotional Effect is Fully Internalized in a Marketplace Bargain Between the Music and Radio Industries

WASHINGTON, D.C. – When a terrestrial radio station plays a song during its over-the-air broadcast, the artists and their record labels receive no compensation for the sound recording right. Yet radio's digital competitors—including streaming services and satellite radio—do pay performance royalties to performers and their labels for the sound recording. Terrestrial radio's cost-advantage is not the result of marketplace deals or competitive forces, but from a statutory preference granted to radio broadcasters. Legislation aimed at leveling the playing field has been strongly resisted by broadcasters based on the claim that radio provides a promotional effect, or free advertising, for record labels and performers.

In a new economic analysis released today entitled *Promotional Effects and the Determination of Royalty Rates for Music*, the Phoenix Center demonstrates that any promotional effect is fully internalized in a marketplace bargain between the music and radio industries. As such, the Phoenix Center finds that any alleged promotional effect provides no basis for federal law to mandate the free use of music by the terrestrial radio broadcast industry.

"If the promotional effect is large enough to justify a zero royalty rate, then the music industry will voluntary accept a zero rate in a negotiation with broadcasters," explains study co-author and Phoenix Center Senior Fellow Professor T. Randolph Beard. "If not, then a positive royalty rate will be established."

"Promotion provides no basis for federal law to mandate the free use of music by the radio broadcast industry," said study co-author and Phoenix Center Chief Economist Dr. George S. Ford. "Promotional effects, even if present and strong, are not a type of market failure requiring a legislative or regulatory fix."

"Our analysis shows that a market-negotiated royalty rate balances the income derived by commercial users of music and any promotional effect those users provide, revealing that any promotional effect is fully internalized by the parties," said study co-author and Phoenix Center Senior Fellow Professor Michael Stern. "In layman's terms, this means that if you use music to make a profit, then you should have to negotiate with the rightholders for the right to do so."

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A full copy of PHOENIX CENTER POLICY BULLETIN NO. 39, *Promotional Effects and the Determination of Royalty Rates for Music,* may be downloaded free from the Phoenix Center's web page at: http://www.phoenix-center.org/PolicyBulletin/PCPB39Final.pdf.

The Phoenix Center is a non-profit 501(c)(3) organization that studies broad public-policy issues related to governance, social and economic conditions, with a particular emphasis on the law and economics of the digital age.