August 2025

Antenna™

An update on broadcasting law & issues from Donald E. Martin

Court Affirms Foreign Government Sponsorship Rule

The U.S. Court of Appeals for the D.C. Circuit has affirmed the FCC's requirement for broadcasters to disclose if programming has been sponsored by a foreign government entity, and to take certain steps to discover the ultimate source of sponsorship. The court rejected a Petition for Review of the FCC's *Second Report and Order* (FCC 24-61) in Docket 20-299 filed by the National Association of Broadcasters ("NAB").

In 2021, the FCC adopted a rule requiring broadcasters to disclose the foreign government sponsorship of programming aired during leased airtime, supplementing the already-existing sponsorship identification regulations in Section 73.1212 of the agency's rules. The Commission stated that this requirement was not meant to pertain to traditional short-form spot advertising. Because the underlying identity

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ETRS Form One Due October 3

The FCC's Public Safety and Homeland Security Bureau has directed all EAS participants to submit their 2025 annual Form One filings in the Emergency Alert System Test Reporting System ("ETRS") by October 3. The Bureau announced instructions for this exercise in a Public Notice (DA 25-688).

The Federal Emergency Management Agency and the FCC periodically conduct nationwide tests of the EAS. All EAS participants are required to contribute to the test by submitting Forms One, Two, and Three to report on their participation in and their observations about the test. In years such as 2025, when no test is planned, participants are required to submit only Form One.

The Form One is to be filed or updated every year, whether or not there is a nationwide test. Data to be furnished on the Form One include identifying and background information, EAS designation, EAS monitoring assignments,

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Biennial Ownership Reports Waived

The FCC's Media Bureau has released a Public Notice (DA 25-671) to announce that it is waiving the requirement to file biennial ownership reports for all broadcast stations until the earlier of June 1, 2027, or further notice. The Commission's rules mandate that the licensees of all full power television, Class A television, low power television, and AM and FM radio stations submit reports about their ownership in the autumn of odd-numbered years. The reports are required even if there has been no change in the ownership since the previous report. The next filing window for such reports would have been October 2 to December 1, 2025.

The Bureau states that the Commission has received multiple comments in the "Delete, Delete, Delete" proceeding urging it to revisit the ownership report rules. Commenters suggested that the burden of preparing and filing these reports is not offset by any sufficient public benefit. This waiver is issued in the light of those comments. For the time being, the reprieve is only a temporary waiver of the rules.

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FCC Studies EAS Modernization

The FCC has launched a rulemaking proceeding to consider whether and/or how the Emergency Alert System ("EAS") and Wireless Emergency Alerts ("WEA") could be updated to reflect changes in technology and consumers' use of media. This action comes in the form a *Notice of Proposed Rulemaking* (FCC 25-50) adopted in Docket 25-224.

EAS participants are required to distribute National Alerts sent by the President or the President's authorized designee, or by the Administrator of the Federal Emergency Management Agency ("FEMA"). Transmission of emergency alerts for state or local emergencies, which include alerts sent by the National Weather Service, is discretionary. EAS messages are distributed either (1) through a broadcast-based hierarchical distribution system (sometimes called a daisy-chain), or (2) over the internet from the Integrated Public Alert and Warning System ("IPAWS").

WEA enables authorities to send alerts to mobile devices that are capable of receiving a WEA message and that are connected to the network of a Commercial Mobile Service provider that has chosen to participate in WEA. IPAWS delivers the alerts to WEA participants for retransmission to the public.

According to the Commission, since 2012, more than 1,800 federal, state, local, Tribal, and territorial alerting authorities have used IPAWS 4.86 million times to alert the public about dangerous weather, missing persons, and other critical situations.

The Commission is taking what it calls a "novel" approach in this proceeding to identify what goals the nation's alert and warning systems should be designed to serve. The Commission seeks to determine the objectives that an effective national alerting system should advance, how alerting systems should be designed to ensure that they serve the needs of alerting authorities, what kinds of alerting information systems should deliver, how that information can be conveyed most effectively to the public, and public expectations for receiving that information. The agency solicits comment about the following goals for the alerting system:

(1) alerting systems should provide authorities with the ability to rapidly notify the public of emergencies that may put the public at risk;

(2) alerting systems should be capable to delivering instructions that facilitate the protection of life and property;

(3) alerting systems should provide a mechanism for government officials to provide additional authoritative communications with the public before, during, and after an emergency.

The FCC believes that the nation's alerting system should be designed to allow the President to send the public an immediate warning to take protective action and later to provide additional information and reassurance. The Commission asks whether it would be beneficial for the President to provide messages that include video. If so, what would be the impact of such productions on the infrastructure of IPAWS and the delivery systems?

The Commission also suggests that other governmental authorities at all levels should continue to provide alerts relevant to their geographic area and/or specialty topic. The agency goes on to query whether the authority to initiate alerts should also be delegated to non-governmental entities, such as utility companies that may be capable of delivering alerts more quickly for such incidents as downed power lines, gas leaks, or water contamination. The Commission also suggests that it might be useful for EAS and WEA to support machine-to-machine alerting. That could be a scenario for triggering automated protective actions, such as slowing or stopping trains, or closing water valves.

The FCC invites comment about the levels of capability and resilience that should be expected for a national alert system. Is it possible or practical to design the alert system to deliver alerts regardless of chaotic emergency conditions on the ground? Or should the system be designed for merely "best-effort" attempts to deliver alerts?

It is appropriate to target delivery of alerts to the geographic area affected. The Commission requests comment about the degree of precision and accuracy that should be expected in that targeting. How should targeting best be accomplished for emergencies that move, such as tornadoes or wild fires?

Maintaining security for alert systems is essential to both national security and the nation's alerting objectives. To address those needs, the Commission asks whether there are specific authentication, validation, or other security measures that should be incorporated into EAS and WEA. Would a visual indicator help to identify a message as authoritative and trustworthy?

Current rules mandate that the WEA alert message includes five elements: (1) the type of hazard event; (2) the geographic area affected; (3) a recommended protective action; (4) the expiration time of the alert; and (5) the identity of the sending agency. The Commission asks whether all alert and warning systems should be designed to support the transmission of each of these elements in an alert message to the public.

The FCC acknowledges that the public increasingly engages with content through media other than broadcast radio and television, cable and wireless video services, and mobile devices. Other options now include personal computers, tablets without mobile service, wearable technologies, gaming consoles, streaming services, and social media. The Commission asks whether alert systems could and should be designed with greater focus on the capabilities of these alternate end-user devices.

More generally, the Commission seeks comment on the public's experience with emergency alerts. What frustrations do consumers have? What can the agency do to address those frustrations? Are there features favored by consumers or authorities that should be implemented?

Comments on these issues will be due to be filed with the FCC by 30 days after publication in the Federal Register. The deadline for reply comments will be 45 days after publication.

EEO Audits Evolve

The FCC's Enforcement Bureau has initiated its annual audit of broadcasters' EEO policies and practices with a request for specific EEO-related data sent to 300 randomly selected stations. There will likely be additional such letters in the months to come as the Commission's objective is to audit a randomly selected five percent of all stations on an annual basis. Respondent stations must provide answers to the audit questions for the entire "employment unit" in which the station operates. The FCC considers all of the stations under common ownership in the same market to be an employment unit. Employment units with fewer than five full-time employees are excused from responding to most, but not all, of the questions.

In the past, these audits have been focused on recruiting practices and the status and resolution of the employment-related complaints before governmental agencies or courts. The 2025 version of the audit letter includes the questions that appeared in previous editions. However, it also poses requests for information and documents that appear to be directed toward discovering practices and policies pursued by broadcasters that may be antithetical to the FCC's current effort to discourage the promotion of so-called DEI, or diversity, equity, and inclusion. New items in the current audit letter include the following.

- [R]eport any employee complaints filed internally with the Unit or its parent company or externally with any body having competent jurisdiction . . . about any bias, sensitivity or any other matters related to race, color, religion, national origin or sex involving the Unit made during the Unit's current license term(s) (or since acquisition of the Unit (if during that period)). Provide copies of all complaints and the Unit's responses to the complaints, and state the Unit's formal or informal policies in addressing such complaints. If any changes were implemented in response to a complaint, provide all related documentation.
- State whether any Unit employee(s) has been reprimanded, reclassified, repositioned, demoted, dismissed or otherwise sanctioned for failing to comply with or affirm policies or programs regarding race, color, religion, national origin or sex. If the answer is "yes," list any such employee(s) by title/position, sanctions imposed and the detailed reason(s) for such sanctions.
- [Provide] a copy of any formal or informal agreement, contract, policy, practice, or other document that impose[s] requirements or goals (aspirational or otherwise) regarding race, color, religion, national origin or sex on the Unit, contractors, employees or any third parties providing services on behalf of the Unit. Also state whether any Unit employees, its contractors or third parties acting on behalf of the Unit are or can be selected, promoted or terminated as a result of such agreements, contracts, policies or practices.
- List and describe any use by the Unit of race-based hiring databases, and specify the position(s) for which they are used.

Respondents are directed to post their responses on their online public inspection files by September 22.

Direct Final Rule Activates the Delete Button

The FCC has released a *Direct Final Rule* (FCC 25-51) to delete certain regulations it has found to be facially obsolete in Part 2 and Part 73 of the Commission's rules. Part 73 contains most of the regulations governing broadcasting (although rules for TV and FM translators and boosters are found in Part 74). This action is part of the Commission's "Delete, Delete, Delete" deregulatory proceeding. The agency says that it is identifying certain rules for repeal that are "outdated, obsolete, unlawful, anticompetitive, or otherwise no longer in the public interest."

Proposals to amend the FCC's rules are typically acted upon after a notice-and-comment process prescribed by the Administrative Procedure Act. However, the Commission has found that there is good cause to use the direct-final-rule approach and forgo that lengthier process when it is "impracticable, unnecessary, or contrary to the public interest." In this case, the rules identified below will be listed for repeal in a notice to be published in the Federal Register. In the absence of "significant adverse comments" being received within 20 days of the Federal Register publication, the direct final rule will become effective 60 days after publication, and the provisions will be repealed.

The Commission will evaluate any comments received to determine whether they are significant adverse comments that warrant further procedures. To be considered a significant adverse comment, the commenter must explain why (a) the direct final rule would be inappropriate, including challenges to the final rule's underlying premise or approach; or (b) the direct final rule would be ineffective or unacceptable without a change.

If the Commission concludes that significant adverse comments have been filed, the Media Bureau will publish a withdrawal notice in the Federal Register so that the deletion of the rule does not become effective until any appropriate additional procedures have been followed. If comments are received that the Commission does not consider to be significant adverse comments, the Media Bureau will issue a public notice, where warranted, to explain why the comments were not deemed to be significant adverse comments.

The Commission has yet to act on most of the suggestions offered in comments from the public in the "Delete, Delete, Delete" proceeding.

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DEADLINES TO WATCH

License Renewal, FCC Reports & Public Inspection Files

August 1 — Deadline to place EEO Public File Report in Public Inspection File and on station's internet website for all nonexempt radio and television stations in **California, Illinois, North Carolina, South Carolina,** and **Wisconsin.**

August 1 — Deadline for all broadcast licensees and permittees of stations in **California, Illinois, North Carolina, South Carolina,** and **Wisconsin** file annual report on all adverse findings and final actions taken by any court or governmental administrative agency involving misconduct of the licensee, permittee, or any person or entity having an attributable interest in the station(s).

August 1 — Mid-Term EEO review begins for certain radio stations in California, and certain television stations in **Illinois** and **Wisconsin.**

October 1 — Deadline to place EEO Public File Report in Public Inspection File and on station's internet website for all nonexempt radio and television stations in **Alaska, American Samoa, Florida, Guam, Hawaii, Iowa, the Mariana Islands, Missouri, Puerto Rico, Oregon, the Virgin Islands,** and **Washington.**

October 1 — Deadline for all broadcast licensees and permittees of stations in **Alaska, American Samoa, Florida, Guam, Hawaii, Iowa, the Mariana Islands, Missouri, Puerto Rico, Oregon, the Virgin Islands,** and **Washington** to file annual report on all adverse findings and final actions taken by any court or governmental administrative agency involving misconduct of the licensee, permittee, or any person or entity having an attributable interest in the station(s).

October 1 — Mid-Term EEO review begins for certain radio stations in **Alaska, American Samoa, Guam, Hawaii, the Mariana Islands, Oregon,** and **Washington,** and certain television stations in **Iowa** and **Missouri.**

October 10 — Deadline to place quarterly Issues/Programs List in Public Inspection File for all full service radio and televisions stations and Class A TV stations.

October 10 — Deadline for all noncommercial stations to place reports about third-party fundraising in Public Inspection File.

October 10 — Deadline for all Class A TV stations to place quarterly statement of Class A qualifications in Public Inspection File.

Deadlines for Comments in FCC and Other Proceedings

DOCKET	COMMENTS	REPLY COMMENTS
(All proceedings are before the FCC unless otherwise noted.)		
Docket 25-149; NPRM (FCC 25-26) Foreign ownership policies		Aug. 22
Docket 17-318; Public Notice (DA 25-530) Television multiple ownership cap		Aug. 25
Federal Aviation Administration Docket RIN 1652-AA80; NPRM (90 Fed.Reg. 38212) Drones beyond line of sight	Oct. 6	N/A
Docket 21-346, etc; 3rd NPRM (FCC 25-45) Disaster information reporting service	FR+30	FR+60
Docket 25-133; Direct Final Rule (FCC 25-51) Deletion of 71 rule provisions	FR+20	N/A
Docket 25-217; NPRM (FCC 25-47) Modernizing NEPA rules	FR+30	FR+45
Docket 25-224; NPRM (FCC 25-50) Modernizing EAS	FR+30	FR+45

FR+N means the filing deadline is N days after publication of notice of the proceeding in the Federal Register.

DEADLINES TO WATCH

Paperwork Reduction Act Proceedings

The FCC is required by the Paperwork Reduction Act to periodically collect public information on the paperwork burdens imposed by its record-keeping requirements in connection with certain rules, policies, applications, and forms. Public comment has been invited about this aspect of the following matters by the filing deadlines indicated.

TOPIC	COMMENT DEADLINE
Application for equipment authorization, Form 731	Sep. 4
Channel sharing notice for MVPDs, Section 73.3800	Sep. 22
AM broadcast license application, Form 302-AM	Sep. 23
Availability of contracts, Section 73.3613	Oct. 6
Digital TV transmission and PSIP protocol, Section 73.682(d)	Oct. 14

Proposed Amendments to the Television Table of Allotments

The FCC is considering a request to amend the television Table of Allotments by changing the channels allotted as identified below. The deadlines for submitting comments and reply comments are shown.

COMMUNITY	STATION	PRESENT CHANNEL	PROPOSED CHANNEL	COMMENTS	REPLY COMMENTS
Jacksonville, OR	New	*4	*24		Sep. 2
Fort Bragg, CA	KQSL	8	---	FR+30	FR+45
Cloverdale, CA	KQSL	---	8	FR+30	FR+45
West Point, MS	WLOV-V	16	26	FR+30	FR+45

FR+N means the filing deadline is N days after publication of notice of the proceeding in the Federal Register.
** Means the channel has been reserved exclusively for noncommercial broadcasting.*

Proposed Amendment to the FM Table of Allotments

The FCC is considering an amendment to the FM Table of Allotments by adding the channel to the community identified below. The deadlines for submitting comments and reply comments are shown.

COMMUNITY	PRESENT CHANNEL	PROPOSED CHANNEL	COMMENTS	REPLY COMMENTS
Enterprise, UT	---	226C3	Oct. 6	Oct. 21

DEADLINE TO FILE ETRS FORM ONE

OCTOBER 3, 2025

Direct Final Rule Activates the Delete Button *continued from page 3*

The following rules pertaining to domestic broadcasting will be deleted unless significant adverse comments are filed within 20 days of Federal Register publication.

- Section 73.58: Indicator instruments at AM stations.
- Section 73.258: Indicator instruments at FM stations.
- Section 73.297: FM stereo broadcasting.
- Section 73.558: Indicator instruments at noncommercial FM stations.
- Section 73.597: Noncommercial FM stereo broadcasting.
- Section 73.688: Indicator instruments at TV stations.
- Section 73.1695: Petitions for changes in transmission standards.
- Section 73.1710: Definition of unlimited time operation.
- Sections 73.4000 through 73.4280: References to policy statements and rulings.

Court Affirms Foreign Government Sponsorship Rule *continued from page 1*

of a sponsor may not always be obvious from its name, the FCC required broadcasters to conduct due diligence research to determine the ultimate source of program sponsorship, including consulting U.S. government databases of known foreign government entities. The NAB successfully challenged part of those rules at the Court of Appeals.

Subsequently in 2024, the FCC clarified that the rule pertains to programming in blocks of leased air time and also to traditionally shorter advertising spots unless exempted. The Commission excluded from that exemption paid public service announcements ("PSAs") and issue advertisements. The Commission readopted the requirement for the broadcaster to be reasonably diligent in determining whether a sponsor qualified as a foreign government entity. Consulting government databases was no longer required. However, the Commission still expected the broadcaster to exercise some due diligence about identifying the sponsor, and it offered two choices for doing so. One method was to provide a written certification that it had complied with the rule and to request written certification from the sponsor as to whether it was or was not a foreign government entity (as defined in the rule). In the alternative, the broadcaster could ask the program provider to search its own name in the U.S. government databases of foreign agents and to provide a screenshot of the results. Under both options, the broadcaster fulfills its obligation simply by asking the sponsor for the requisite information. The rule does not oblige the sponsor to respond.

The NAB appealed the FCC's adoption of the 2024 version of the rule asserting that (1) the FCC had failed to comply with the notice-and-comment requirements of the Administrative Procedure Act ("APA"); (2) the rule was arbitrary and capricious; (3) the rule violates the First Amendment; and (4) the FCC exceeded its statutory authority. The court rejected each of these arguments.

In most circumstances under the APA, when an agency proposes to adopt or amend rules, it must give public notice of the proposal and allow time for the public to comment. The 2021 version of the rule covered leased time programming, but not typical spot advertisements. The 2024 version of the rule covered leased time programming and included regular spot advertisements except those categories the Commission exempted – such as political candidate ads and spots covered under the commercial ad exemption (where it is obvious who is sponsoring an ad for a clearly identified product or service). Categories not exempt were PSAs and issue ads. The NAB claimed that there had been inadequate notice of the change to include short-form advertising under the rule when it had been excluded previously. The court said that the Commission had merely inverted the prior rule and that such an inversion was a logical outgrowth of the proposals and deliberations in the rulemaking proceeding, which served as adequate notice to the public.

An administrative agency's rulings may be found to be arbitrary and capricious if there is not a rational connection between the facts found and the decision made. NAB argued that PSAs and issue ads should not be covered under the rule because there is no evidence that any foreign government entity ever paid for PSAs or issue ads. The court retorted that it could not take the absence of evidence as evidence of absence. The Commission need not wait for a risk to materialize before regulating.

NAB claimed that the FCC's criteria for policing the lease-advertisement divide violates the freedom of speech provisions of the First Amendment. The court noted that from its inception, the regulation of broadcasting has featured many restrictions on speech that are constitutionally unacceptable in other media. There are two important factors that account for this: the public ownership of the airwaves and the scarcity of broadcast spectrum. After a lengthy discussion of the right level of scrutiny that should be brought to bear on this rule, the court concluded that "exacting scrutiny" is appropriate. Further, under that level of scrutiny, the rule passes muster because the FCC has a bona fide and substantial interest in combating foreign government obfuscation, and because the rule is narrowly tailored for that purpose.

NAB asserted that the rule's due diligence obligations laid on broadcasters and third-party purchasers of airtime exceed the FCC's authority. The court disagreed, citing Section 317(c) of the Communications Act which requires a broadcaster to "exercise reasonable diligence to obtain . . . information to enable" it to make the required disclosures about sponsorship identification. Although NAB claimed the required due diligence is burdensome, the court found it to be reasonable. A broadcaster must complete a one-page certification and ask the sponsor to do the same, or ask the sponsor to search its name on a website. The court characterized this kind of compliance as "unusually simple."

NAB also argued that the FCC has no jurisdiction to compel the third-party sponsors to provide the information requested of them. The court did not disagree with this assertion. It reiterated that the rule only governs what the broadcaster does, i.e., ask the sponsor to complete a certification or provide evidence of a website search. The broadcaster's obligation and the FCC's authority ends at that point. The sponsor is not compelled to respond.

The rule directs broadcasters to inquire of providers of the covered programming whether they know of any foreign government entity that has provided inducement for and been involved in the production or distribution of the programming. NAB challenged this provision as well. The court declined to consider this argument because it was offered too late. This provision was in the 2021 version of the rule, and copied root-and-branch into the 2024 rule. The court said that a complaint about it should have been raised within the 60-day limit for appealing the 2021 rule. The court said that it is precluded by statute from adjudicating such a late petition for review.

The decision is entitled *National Association of*

Broadcasters v. Federal Communications Commission, 2025 U.S. App. LEXIS 19381.

The following is a brief recap of the FCC's rules affirmed by this court ruling and presently in effect.

Specific on-air disclosure of sponsorship by a foreign government entity must be provided in connection with leased-time programming, paid PSAs, and issue spots. The definition of "leased-time programming" includes content provided under time brokerage agreements, local marketing agreements, and any other similar arrangement. For all such programming, the broadcaster is obligated to inquire of the program provider if its programming has been provided or sponsored by a foreign government entity, and then to provide certification that it has made this inquiry. The FCC has provided a template for this certification in Appendix C to the *Second Report and Order* (FCC 24-61), linked here: https://docs.fcc.gov/public/attachments/FCC-24-61A1.docx. That is followed by Appendix D containing a template for the program provider to certify.

Broadcasters are permitted to develop their own certification forms if they do not wish to use the template. A broadcaster's certification should confirm that the broadcaster did the following:

(1) informed the program provider of the foreign sponsorship disclosure requirement;

(2) asked the program provider whether it falls into any of the categories that would qualify it as a "foreign governmental entity;"

(3) asked the program provider whether it knows if any individual/entity further back in the chain of producing and/or distributing the programming to be aired qualifies as a foreign governmental entity and has provided some type of inducement to air the programming;

(4) sought a written certification in response from the program provider;

(5) obtained the necessary information for a disclosure if one is required.

The term "foreign government entity" includes foreign governments, foreign political parties, agents of foreign principals, and U.S.-based foreign media outlets.

The program provider can respond with its own certification as to whether it is or is not a foreign government entity. In the alternative, it can provide a screenshot of its website search for its own name on the FCC's database of foreign media outlets at https://www.fcc.gov/united-states-based-foreign-media-outlets. If the program provider fails to respond, the broadcaster has no obligation to pursue the matter further.

In situations where programming is aired from the same provider periodically over a longer stretch of time, certification just once annually will suffice.

The certifications must be maintained in the station's records for the longer of the remaining term of the station's current license or one year.

ETRS Form One Due October 3 *continued from page 1*

facility location, equipment type, and contact information.

EAS participants that are required to register and file in ETRS include full service television and radio stations, Low Power TV stations, Low Power FM stations, Class D noncommercial stations, and program-originating FM booster stations. EAS participants that are silent under a Special Temporary Authority are required to register and file.

The following stations are exempt from ETRS filing requirements: LPTV stations that operate as TV translator stations, TV translator stations, FM translator stations, and FM booster stations that entirely rebroadcast the programming of other stations; and radio and television stations that operate as satellites or repeaters of a hub station or common control point and rebroadcast 100 percent of the programming of the hub station or common control point. However, the hub station or control point station is required to register and file in ETRS.

ETRS can be accessed on the FCC's website at http://www.fcc.gov/eas-test-reporting-system.

Biennial Ownership Reports Waived *continued from page 1*

The Bureau clarified that this waiver does not apply to the obligations of licensees and permittees to file non-biennial reports which are required upon the granting a construction permit for a new station, upon the filing of a license application for a new station, and after consummation of authorized assignments or transfers of control of licenses or construction permits.

SoundExchange Collections Suit Against SiriusXM Dismissed

The United States District Court in New York City has dismissed SoundExchange's lawsuit against SiriusXM for $10 million in past-due copyright royalty fees. SoundExchange initiated this action in its role as the designated "collective" for copyright license fees for certain performances of sound recordings by broadcasters under Section 114 of the Copyright Act. The court ruled that while SoundExchange has certain rights and responsibilities under Section 114, launching a lawsuit in court is not one of them. The court found that SoundExchange had no private right of action to bring this suit, and therefore dismissed it.

SoundExchange is an independent nonprofit organization designated by the Copyright Royalty Board to serve as the statutory collective to administer the copyright licensing regime for sound recordings. It has the responsibility to collect royalties from entities that perform the sound recordings pursuant to the statutory license created by Section 114, and to distribute the royalties generated thereunder to the copyright owners.

Although Section 114 charges the collective with the task of collecting royalties, the law contains no express authorization for the collective to initiate litigation to enhance that role. This lack of express authorization was fatal to SoundExchange's suit. The court confirmed this, relying on Supreme Court precedent which was explicit:

> [P]rivate rights of action to enforce federal law must be created by Congress. The judicial task is to interpret the statute Congress has passed to determine whether it displays an intent to create not a just a private right of action but also a private remedy. Statutory intent on this point is determinative. Without it, a cause of action does not exist and courts may not create one, no matter how desirable that might be as a policy matter, or how compatible with the statute. *Alexander v. Sandoval*, 532 U.S. 275, 286-287 (2001).

The court went on to explain that a right of action for SoundExchange to begin a suit could not be inferred nor assumed on the basis that perhaps Congress inadvertently overlooked mentioning it. The court must presume that the omission by Congress was deliberate. This conclusion is bolstered by the observation that Section 115 specifically authorizes a similar entity, the Mechanical Licensing Collective, to undertake lawsuits if necessary. The fact that litigation authority is expressly mentioned in Section 115, but is absent in Section 114, is strong evidence that Congress deliberately intended to omit it from Section 114.

Section 114 authorizes the collective to deduct from its receipts (before distributing funds to copyright holders) the reasonable costs for matters such as "the settlement of disputes relating to the collection and calculation of the royalties" and "the licensing and enforcement of rights." SoundExchange claimed that its authorization to "enforce" rights must necessarily include the right to pursue enforcement in the courts. The court rejected this assertion noting that the language in the statute referenced "negotiations or arbitration proceedings" as the means of enforcement. The court also noted that in contracts, arbitration is often listed as the exclusive alternative to litigation as the means for resolving disputes. The reference to arbitration in Section 114 supports the conclusion that litigation was intentionally omitted.

SoundExchange argued that as a matter of policy, it would be nonsensical for the collective to have no power to sue recalcitrant users of sound recordings. It predicted that a finding that it had no private right of action would lead to an unwieldly unworkable regulatory regime that would have absurd results. The court responded that regardless of the merits of a policy argument, it is not the province of the courts to rewrite a statute for policy reasons. That is the task of Congress.

Accordingly, SoundExchange's lawsuit was dismissed for the lack of a private right of action. It should be noted that this decision did not address the substantive issue of whether SiriusXM is actually liable for the copyright fees in question. That matter will have to be resolved some other way.

The decision is *SoundExchange, Inc. v. SiriusXM Radio, Inc.*, 2025 U.S.Dist. LESIX 152546.