

118TH CONGRESS
1ST SESSION

S. 253

To amend title 17, United States Code, to provide fair treatment of radio stations and artists for the use of sound recordings, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 2, 2023

Mr. PADILLA (for himself, Mrs. BLACKBURN, Mr. TILLIS, and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 17, United States Code, to provide fair treatment of radio stations and artists for the use of sound recordings, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “American Music Fairness Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Equitable treatment for terrestrial broadcasts and internet services.
- Sec. 3. Timing of proceedings under sections 112(e) and 114(f).
- Sec. 4. Special protection for small broadcasters.

Sec. 5. Distribution of certain royalties.
 Sec. 6. No harmful effects on songwriters.
 Sec. 7. Value of promotion taken into account.

1 **SEC. 2. EQUITABLE TREATMENT FOR TERRESTRIAL**
 2 **BROADCASTS AND INTERNET SERVICES.**

3 (a) PERFORMANCE RIGHT APPLICABLE TO AUDIO
 4 TRANSMISSIONS GENERALLY.—Paragraph (6) of section
 5 106 of title 17, United States Code, is amended to read
 6 as follows:

7 “(6) in the case of sound recordings, to perform
 8 the copyrighted work publicly by means of an audio
 9 transmission.”.

10 (b) INCLUSION OF TERRESTRIAL BROADCASTS IN
 11 EXISTING PERFORMANCE RIGHT AND STATUTORY LI-
 12 CENSE.—Section 114(d)(1) of title 17, United States
 13 Code, is amended—

14 (1) in the matter preceding subparagraph (A),
 15 by striking “a digital” and inserting “an”;

16 (2) by striking subparagraph (A);

17 (3) by redesignating subparagraphs (B) and
 18 (C) as subparagraphs (A) and (B), respectively; and

19 (4) in subparagraph (A), as redesignated by
 20 paragraph (3), by striking “nonsubscription” and in-
 21 serting “licensed nonsubscription”.

22 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

1 (1) DEFINITION.—Section 101 of title 17,
2 United States Code, is amended by inserting after
3 the definition of “architectural work” the following:
4 “An ‘audio transmission’ is a transmission of a sound
5 recording, whether in a digital, analog, or other format.
6 This term does not include the transmission of any audio-
7 visual work.”.

8 (2) CONFORMING REMOVAL OF DIGITAL.—Title
9 17, United States Code, is amended—

10 (A) in section 112(e)(8), by striking “a
11 digital audio transmission” and inserting “an
12 audio transmission”;

13 (B) in section 114—

14 (i) in subsection (d)—

15 (I) in paragraph (2)—

16 (aa) in the matter preceding
17 subparagraph (A), by striking
18 “subscription digital” and insert-
19 ing “subscription”; and

20 (bb) in subparagraph
21 (C)(viii), by striking “digital sig-
22 nal” and inserting “signal”; and

23 (II) in paragraph (4)—

24 (aa) in subparagraph (A),
25 by striking “a digital audio

1 transmission” and inserting “an
2 audio transmission”; and

3 (bb) in subparagraph (B)(i),
4 by striking “a digital audio
5 transmission” and inserting “an
6 audio transmission”;

7 (ii) in subsection (g)(2)(A), by strik-
8 ing “a digital” and inserting “an”; and

9 (iii) in subsection (j)—

10 (I) in paragraph (6)—

11 (aa) by striking “digital”;
12 and

13 (bb) by striking “retrans-
14 missions of broadcast trans-
15 missions” and inserting “broad-
16 cast transmissions and retrans-
17 missions of broadcast trans-
18 missions”; and

19 (II) in paragraph (8), by striking
20 “subscription digital” and inserting
21 “subscription”; and

22 (C) in section 1401—

23 (i) in subsection (b), by striking “a
24 digital audio” and inserting “an audio”;
25 and

1 (ii) in subsection (d)—

2 (I) in paragraph (1), by striking
3 “a digital audio” and inserting “an
4 audio”;

5 (II) in paragraph (2)(A), by
6 striking “a digital audio” and insert-
7 ing “an audio”; and

8 (III) in paragraph (4)(A), by
9 striking “a digital audio” and insert-
10 ing “an audio”.

11 **SEC. 3. TIMING OF PROCEEDINGS UNDER SECTIONS 112(E)**
12 **AND 114(F).**

13 Paragraph (3) of section 804(b) of title 17, United
14 States Code, is amended by adding at the end the fol-
15 lowing new subparagraph:

16 “(D) A proceeding under this chapter shall
17 be commenced as soon as practicable after the
18 date of the enactment of this subparagraph to
19 determine royalty rates and terms for non-
20 subscription broadcast transmissions, to be ef-
21 fective for the period beginning on such date of
22 enactment, and ending on December 31, 2028.
23 Any payment due under section 114(f)(1)(D)
24 shall not be due until the due date of the first
25 royalty payments for nonsubscription broadcast

1 transmissions that are determined, after the
2 date of the enactment of this subparagraph, by
3 the Copyright Royalty Judges. Thereafter, such
4 proceeding shall be repeated in each subsequent
5 fifth calendar year.”.

6 **SEC. 4. SPECIAL PROTECTION FOR SMALL BROADCASTERS.**

7 (a) SPECIFIED ROYALTY FEES.—Section 114(f)(1)
8 of title 17, United States Code, is amended by inserting
9 at the end the following new subparagraph:

10 “(D)(i) Notwithstanding the provisions of sub-
11 paragraphs (A) through (C), the royalty rate shall
12 be as follows for nonsubscription broadcast trans-
13 missions by each individual terrestrial broadcast sta-
14 tion licensed as such by the Federal Communica-
15 tions Commission that satisfies the conditions in
16 clause (ii)—

17 “(I) \$10 per calendar year, in the case of
18 nonsubscription broadcast transmissions by a
19 broadcast station that generated revenue in the
20 immediately preceding calendar year of less
21 than \$100,000;

22 “(II) \$100 per calendar year, in the case
23 of nonsubscription broadcast transmissions by a
24 broadcast station that is a public broadcasting
25 entity as defined in section 118(f) and gen-

1 erated revenue in the immediately preceding
2 calendar year of \$100,000 or more, but less
3 than \$1,500,000; and

4 “(III) \$500 per calendar year, in the case
5 of nonsubscription broadcast transmissions by a
6 broadcast station that is not a public broad-
7 casting entity as defined in section 118(f) and
8 generated revenue in the immediately preceding
9 calendar year of \$100,000 or more, but less
10 than \$1,500,000.

11 “(ii) An individual terrestrial broadcast station
12 licensed as such by the Federal Communications
13 Commission is eligible for a royalty rate set forth in
14 clause (i) if—

15 “(I) the revenue from the operation of that
16 individual station was less than \$1,500,000
17 during the immediately preceding calendar year;

18 “(II) the aggregate revenue of the owner
19 and operator of the broadcast station and any
20 person directly or indirectly controlling, con-
21 trolled by, or under common control with such
22 owner or operator, from any source, was less
23 than \$10,000,000 during the immediately pre-
24 ceding calendar year; and

1 “(III) the owner or operator of the broad-
2 cast station provides to the nonprofit collective
3 designated by the Copyright Royalty Judges to
4 distribute receipts from the licensing of trans-
5 missions in accordance with subsection (f), by
6 no later than January 31 of the relevant cal-
7 endar year, a written and signed certification of
8 the station’s eligibility under this clause and the
9 applicable subclause of clause (i), in accordance
10 with requirements the Copyright Royalty
11 Judges shall prescribe by regulation.

12 “(iii) For purposes of clauses (i) and (ii)—

13 “(I) revenue shall be calculated in accord-
14 ance with generally accepted accounting prin-
15 ciples;

16 “(II) revenue generated by a terrestrial
17 broadcast station shall include all revenue from
18 the operation of the station, from any source;
19 and

20 “(III) in the case of affiliated broadcast
21 stations, revenue shall be allocated reasonably
22 to individual stations associated with the rev-
23 enue.

24 “(iv) The royalty rates specified in clause (i)
25 shall not be admissible as evidence or otherwise

1 taken into account in determining royalty rates in a
2 proceeding under chapter 8, or in any other adminis-
3 trative, judicial, or other Federal Government pro-
4 ceeding involving the setting or adjustment of the
5 royalties payable for the public performance or re-
6 production in ephemeral phonorecords or copies of
7 sound recordings, the determination of terms or con-
8 ditions related thereto, or the establishment of notice
9 or recordkeeping requirements.”.

10 (b) TECHNICAL CORRECTION.—Section 118(f) of
11 title 17, United States Code, is amended by striking “sec-
12 tion 397 of title 47” and inserting “section 397 of the
13 Communications Act of 1934 (47 U.S.C. 397)”.

14 **SEC. 5. DISTRIBUTION OF CERTAIN ROYALTIES.**

15 Section 114(g) of title 17, United States Code, is
16 amended—

17 (1) in paragraph (1), by inserting “or in the
18 case of a transmission to which paragraph (5) ap-
19 plies” after “this section”;

20 (2) by redesignating paragraphs (5), (6), and
21 (7) as paragraphs (6), (7), and (8), respectively; and

22 (3) by inserting after paragraph (4) the fol-
23 lowing new paragraph:

24 “(5) Notwithstanding paragraph (1), to the ex-
25 tent that a license granted by the copyright owner

1 of a sound recording to a transmitting entity eligible
2 for a statutory license under subsection (d)(2) ex-
3 tends to such entity's transmissions otherwise licens-
4 able under a statutory license in accordance with
5 subsection (f), such entity shall pay to the collective
6 designated to distribute statutory licensing receipts
7 from the licensing of transmissions in accordance
8 with subsection (f), 50 percent of the total royalties
9 that such entity is required, pursuant to the applica-
10 ble license agreement, to pay for such transmissions
11 otherwise licensable under a statutory license in ac-
12 cordance with subsection (f). That collective shall
13 distribute such payments in proportion to the dis-
14 tributions provided in subparagraphs (B) through
15 (D) of paragraph (2), and such payments shall be
16 the only payments to which featured and nonfea-
17 tured artists are entitled by virtue of such trans-
18 missions under the direct license with such entity.''.
19

19 SEC. 6. NO HARMFUL EFFECTS ON SONGWRITERS.

20 Nothing in this Act, or the amendments made by this
21 Act, shall adversely affect in any respect the public per-
22 formance rights of or royalties payable to songwriters or
23 copyright owners of musical works.

1 **SEC. 7. VALUE OF PROMOTION TAKEN INTO ACCOUNT.**

2 Pursuant to section 114(f)(1)(B) of title 17, United
3 States Code, in determining rates and terms for terrestrial
4 broadcast radio stations under this Act, and the amend-
5 ments made by this Act, the Copyright Royalty Judges
6 shall base their decision on economic, competitive, and
7 programming information presented by the parties, includ-
8 ing whether use of the station's service may substitute for
9 or may promote the sales of phonorecords or otherwise
10 may interfere with or may enhance the sound recording
11 copyright owner's other streams of revenue from the copy-
12 right owner's sound recordings.

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