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S. 2644

To harmonize rate setting standards for copyright licenses under sections 112 and 114 of title 17, United States Code, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 25, 2006

Mrs. FEINSTEIN (for herself, Mr. GRAHAM, and Mr. FRIST) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To harmonize rate setting standards for copyright licenses under sections 112 and 114 of title 17, United States Code, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Platform Equality and Remedies for Rights Holders in Music Act of 2006'' or the ''Perform Act of 2006''.

SEC. 2. RATE SETTING STANDARDS.

(a) SECTION 112 LICENSES.—Section 112(e)(4) of title 17, United States Code, is amended in the third sen-

tence by striking ''fees that would have been negotiated in the marketplace between a willing buyer and a willing seller'' and inserting ''the fair market value of the rights licensed under this subsection''.

(b) SECTION 114 LICENSES.—Section 114(f) of title 17, United States Code, is amended—

(1) by striking paragraph (1);

(2) by redesignating paragraphs (2), (3), (4), and (5) as paragraphs (1), (2), (3), and (4), respectively; and

(3) in paragraph (1) (as redesignated under this subsection)—

(A) in subparagraph (A), by striking all after ''Proceedings'' and inserting ''under chapter 8 shall determine reasonable rates and terms of royalty payments for transmissions during 5-year periods beginning on January 1 of the second year following the year in which the proceedings are to be commenced, except where a different transitional period is provided under section 6(b)(3) of the Copyright Royalty and Distribution Reform Act of 2004, or such other period as the parties may agree.'';

(B) in subparagraph (B)—

(i) in the first sentence, by striking ''affected by this paragraph'' and inserting ''under this section'';

(ii) in the second sentence, by striking ''eligible nonsubscription transmission''; and

(iii) in the third sentence—

(I) by striking ''eligible nonsubscription services and new subscription''; and

(II) by striking ''rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller'' and inserting ''the fair market value of the rights licensed under this section'';

(iv) in the fourth sentence, by striking ''base its'' and inserting ''base their'';

(v) in clause (i), by striking ''and'' after the semicolon;

(vi) in clause (ii), by striking the period and inserting ''; and'';

(vii) by inserting after clause (ii) the following:

''(iii) the degree to which reasonable recording affects the potential market for sound recordings, and the additional fees that are required to be paid by services for compensation.''; and

(viii) in the matter following clause (ii), by striking ''described in subparagraph (A)''; and

(C) by striking subparagraph (C) and inserting the following:

''(C) The procedures under subparagraphs (A) and (B) shall also be initiated pursuant to a petition filed by any copyright owners of sound recordings or any transmitting entity indicating that a new type of service on which sound recordings are performed is or is about to become operational, for the purpose of determining reasonable terms and rates of royalty payments with respect to such new type of service for the period beginning with the inception of such new type of service and ending on the date on which the royalty rates and terms for preexisting subscription digital audio transmission services, eligible nonsubscription services, or new subscription services, as the case

may be, most recently determined under subparagraph (A) or (B) and chapter 8 expire, or such other period as the parties may agree.''.

(c) CONTENT PROTECTION.—Section 114(d)(2) of title 17, United States Code, is amended—

(1) in subparagraph (A)—

(A) in clause (ii), by striking ''and'' after the semicolon;

(B) in clause (iii), by adding ''and'' after the semicolon; and

(C) by adding after clause (iii) the following:

''(iv) the transmitting entity takes no affirmative steps to authorize, enable, cause or induce the making of a copy or phonorecord by or for the transmission recipient and uses technology that is reasonably available, technologically feasible, and economically reasonable to prevent the making of copies or phonorecords embodying the transmission in whole or in part, except for reasonable recording as defined in this subsection;'';

(2) in subparagraph (C)—

(A) by striking clause (vi); and

(B) by redesignating clauses (vii) through (ix) as clauses (vi) through (viii), respectively; and

(3) by adding at the end the following:

''For purposes of subparagraph (A)(iv), the mere offering of a transmission and accompanying metadata does not in itself authorize, enable, cause, or induce the making of a phonorecord. Nothing shall preclude or prevent a performing rights society or a mechanical rights organization, or any entity owned in whole or in part by, or acting on behalf of, such organizations or entities, from monitoring public performances or other uses of copyrighted works contained in such transmissions. Any such organization or entity shall be granted a license on either a gratuitous basis or for a de minimus fee to cover only the reasonable costs to the licensor of providing the license, and on reasonable, nondiscriminatory terms, to access and retransmit as necessary any content contained in such transmissions protected by content protection or similar technologies, if such licenses are for purposes of carrying out the activities of such organizations or entities in monitoring the public performance or other uses of copyrighted works, and such organizations or entities employ reasonable methods to protect any such content accessed from further distribution.''.

(d) DEFINITION.—Section 114(j) of title 17, United States Code, is amended—

(1) by redesignating paragraphs (10) through (15) as paragraphs (11) through (16), respectively; and

(2) by inserting after paragraph (9) the following:

''(10)(A) A 'reasonable recording' means the making of a phonorecord embodying all or part of a performance licensed under this section for private, noncommercial use where technological measures used by the transmitting entity, and which are incorporated into a recording device—

''(i) permit automated recording or playback based on specific programs, time periods, or channels as selected by or for the user;

''(ii) do not permit automated recording or playback based on specific sound recordings, albums, or artists;

''(iii) do not permit the separation of component segments of the copyrighted material contained in the transmission program which results in the playback of a manipulated sequence; and

''(iv) do not permit the redistribution, retransmission or other exporting of a phonorecord embodying all or part of a performance licensed under this section from the device by digital outputs or removable media, unless the destination device is part of a secure in-home network that also complies with each of the requirements prescribed in this paragraph.

''(B) Nothing in this paragraph shall prevent a consumer from engaging in non-automated manual recording and playback in a manner that is not an infringement of copyright.''.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) SECTION 114.—Section 114(f) of title 17, United States Code (as amended by subsection (b) of this section), is further amended—

(A) in paragraph (1)(B), in the first sentence, by striking ''paragraph (3)'' and inserting ''paragraph (2)''; and

(B) in paragraph (4)(C), by striking ''under paragraph (4)'' and inserting ''under paragraph (3)''.

(2) SECTION 804.—Section 804(b)(3)(C) of title 17, United States Code, is amended—

(A) in clause (i), by striking ''and 114(f)(2)(C)''; and

(B) in clause (iv), by striking ''or 114(f)(2)(C), as the case may be''.

SEC. 3. REGISTER OF COPYRIGHTS MEETING AND REPORT.

(a) MEETING.—Not later than 60 days after the Copyright Royalty Board's final determination in Docket No. 2005–1 CRB DTRA, the Register of Copyrights shall convene a meeting among affected parties to discuss whether to recommend creating a new category of limited interactive services, including an appropriate premium rate for such services, within the statutory license contained in section 114 of title 17, United States Code.

(b) REPORT.—Not later than 90 days after the convening of the meeting under subsection (a), the Register of Copyrights shall submit a report on the discussions at that meeting to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

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