

111TH CONGRESS
1ST SESSION

H. R. 848

To provide parity in radio performance rights under title 17, United States Code, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 4, 2009

Mr. CONYERS (for himself, Mr. ISSA, Mr. BERMAN, Mrs. BLACKBURN, Mr. HODES, Ms. WASSERMAN SCHULTZ, Mr. WEINER, Mr. COHEN, Mr. NADLER of New York, Mr. WEXLER, Mr. PETERSON, Mr. JOHNSON of Georgia, Mr. SCHIFF, Mr. SHERMAN, Mr. SHADEGG, Ms. JACKSON-LEE of Texas, Ms. LINDA T. SÁNCHEZ of California, Ms. HARMAN, and Mr. WAXMAN) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide parity in radio performance rights under title 17, United States Code, 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.**

4 This Act may be cited as the “Performance Rights
5 Act”.

1 **SEC. 2. EQUITABLE TREATMENT FOR TERRESTRIAL**
2 **BROADCASTS.**

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

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

9 (b) INCLUSION OF TERRESTRIAL BROADCASTS IN
10 EXISTING PERFORMANCE RIGHT.—Section 114(d)(1) of
11 title 17, United States Code, is amended—

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

14 (2) by striking subparagraph (A).

15 (c) INCLUSION OF TERRESTRIAL BROADCASTS IN
16 EXISTING STATUTORY LICENSE SYSTEM.—Section
17 114(j)(6) of title 17, United States Code, is amended by
18 striking “digital”.

19 **SEC. 3. SPECIAL TREATMENT FOR SMALL, NONCOMMER-**
20 **CIAL, EDUCATIONAL, AND RELIGIOUS STA-**
21 **TIONS AND CERTAIN USES.**

22 (a) SMALL, NONCOMMERCIAL, EDUCATIONAL, AND
23 RELIGIOUS RADIO STATIONS.—

24 (1) IN GENERAL.—Section 114(f)(2) of title 17,
25 United States Code, is amended by adding at the
26 end the following:

1 “(D) Notwithstanding the provisions of sub-
2 paragraphs (A) through (C), each individual terres-
3 trial broadcast station that has gross revenues in
4 any calendar year of less than \$1,250,000 may elect
5 to pay for its over-the-air nonsubscription broadcast
6 transmissions a royalty fee of \$5,000 per year, in
7 lieu of the amount such station would otherwise be
8 required to pay under this paragraph. Such royalty
9 fee shall not be taken into account in determining
10 royalty rates in a proceeding under chapter 8, or in
11 any other administrative, judicial, or other Federal
12 Government proceeding.

13 “(E) Notwithstanding the provisions of sub-
14 paragraphs (A) through (C), each individual terres-
15 trial broadcast station that is a public broadcasting
16 entity as defined in section 118(f) may elect to pay
17 for its over-the-air nonsubscription broadcast trans-
18 missions a royalty fee of \$1,000 per year, in lieu of
19 the amount such station would otherwise be required
20 to pay under this paragraph. Such royalty fee shall
21 not be taken into account in determining royalty
22 rates in a proceeding under chapter 8, or in any
23 other administrative, judicial, or other Federal Gov-
24 ernment proceeding.”.

1 (2) PAYMENT DATE.—A payment under sub-
2 paragraph (D) or (E) of section 114(f)(2) of title
3 17, United States Code, as added by paragraph (1),
4 shall not be due until the due date of the first roy-
5 alty payments for nonsubscription broadcast trans-
6 missions that are determined, after the date of the
7 enactment of this Act, under such section 114(f)(2)
8 by reason of the amendment made by section 2(b)(2)
9 of this Act.

10 (b) TRANSMISSION OF RELIGIOUS SERVICES; INCI-
11 DENTAL USES OF MUSIC.—Section 114(d)(1) of title 17,
12 United States Code, as amended by section 2(b), is further
13 amended by inserting the following before subparagraph
14 (B):

15 “(A) an eligible nonsubscription trans-
16 mission of—

17 “(i) services at a place of worship or
18 other religious assembly; and

19 “(ii) an incidental use of a musical
20 sound recording;”.

21 **SEC. 4. AVAILABILITY OF PER PROGRAM LICENSE.**

22 Section 114(f)(2)(B) of title 17, United States Code,
23 is amended by inserting after the second sentence the fol-
24 lowing new sentence: “Such rates and terms shall include

1 a per program license option for terrestrial broadcast sta-
2 tions that make limited feature uses of sound recordings.”

3 **SEC. 5. NO HARMFUL EFFECTS ON SONGWRITERS.**

4 (a) NO ADVERSE AFFECT ON LICENSE FEES FOR
5 UNDERLYING MUSICAL WORKS; NECESSITY FOR OTHER
6 LICENSES.—

7 (1) IN GENERAL.—Section 114(i) of title 17,
8 United States Code, is amended to read as follows:

9 “(i) NO ADVERSE AFFECT ON LICENSE FEES FOR
10 UNDERLYING MUSICAL WORKS; NECESSITY FOR OTHER
11 LICENSES.—

12 “(1) NO ADVERSE AFFECT ON LICENSE FEES
13 FOR UNDERLYING MUSICAL WORKS.—License fees
14 payable for the public performance of sound record-
15 ings under section 106(6) shall not be cited, taken
16 into account, or otherwise used in any administra-
17 tive, judicial, or other governmental forum or pro-
18 ceeding, or otherwise, to set or adjust the license
19 fees payable to copyright owners of musical works or
20 their representatives for the public performance of
21 their works, for the purpose of reducing or adversely
22 affecting such license fees. License fees payable to
23 copyright owners for the public performance of their
24 musical works shall not be reduced or adversely af-

1 fected in any respect as a result of the rights grant-
2 ed by section 106(6).

3 “(2) NECESSITY FOR OTHER LICENSES.—Not-
4 withstanding the grant by an owner of copyright in
5 a sound recording of an exclusive or nonexclusive li-
6 cense of the right under section 106(6) to perform
7 the work publicly, a licensee of that sound recording
8 may not publicly perform such sound recording un-
9 less a license has been granted for the public per-
10 formance of any copyrighted musical work contained
11 in the sound recording. Such license to publicly per-
12 form the copyrighted musical work may be granted
13 either by a performing rights society representing
14 the copyright owner or by the copyright owner.”.

15 (2) CONFORMING AMENDMENT.—Section
16 114(d)(3)(C) of title 17, United States Code, is
17 hereby repealed.

18 (b) PUBLIC PERFORMANCE RIGHTS AND ROYAL-
19 TIES.—Nothing in this Act or the amendments made by
20 this Act shall adversely affect in any respect the public
21 performance rights of or royalties payable to songwriters
22 or copyright owners of musical works.

23 (c) PRESERVATION OF ROYALTIES ON UNDERLYING
24 WORKS PUBLICLY PERFORMED BY TERRESTRIAL BROAD-
25 CAST STATIONS.—Section 114(f) of title 17, United States

1 Code, is amended by adding at the end the following new
2 paragraph:

3 “(6) Notwithstanding any other provision of
4 this section, under no circumstances shall the rates
5 established by the Copyright Royalty Judges for the
6 public performance of sound recordings be cited,
7 taken into account, or otherwise used in any admin-
8 istrative, judicial, or other governmental forum or
9 proceeding, or otherwise, to reduce or adversely af-
10 fect the license fees payable to copyright owners of
11 musical works or their representatives for the public
12 performance of their works by terrestrial broadcast
13 stations, and such license fees for the public per-
14 formance of musical works shall be independent of
15 license fees paid for the public performance of sound
16 recordings.”.

17 **SEC. 6. PAYMENT OF CERTAIN ROYALTIES.**

18 Section 114(g) of title 17, United States Code, is
19 amended—

20 (1) by amending paragraph (1) to read as fol-
21 lows:

22 “(1) Except in the case of a transmission to
23 which paragraph (5) applies or a transmission li-
24 censed under a statutory license in accordance with

1 subsection (f) of this section, the following shall
2 apply:

3 “(A) A featured recording artist who per-
4 forms on a sound recording that has been li-
5 censed for public performance by means of a
6 digital audio transmission shall be entitled to
7 receive payments from the copyright owner of
8 the sound recording in accordance with the
9 terms of the artist’s contract.

10 “(B)(i) In a case in which the copyright
11 owner of a sound recording has licensed the
12 sound recording for the public performance of
13 the sound recording by means of a digital audio
14 transmission, the copyright owner shall deposit
15 1 percent of the receipts from the license with
16 the American Federation of Musicians and
17 American Federation of Television and Radio
18 Artists Intellectual Property Rights Distribu-
19 tion Fund (or any successor entity) (in this
20 subparagraph referred to as the ‘Fund’) to be
21 distributed to nonfeatured performers who have
22 performed on sound recordings. The sound re-
23 cording copyright owner shall make such depos-
24 its for receipts received during the first half of
25 a calendar year by August 15 and for receipts

1 received during the second half of a calendar
2 year by February 15 of the following calendar
3 year.

4 “(ii) A sound recording copyright owner
5 shall include with deposits under clause (i) in-
6 formation regarding the amount of such depos-
7 its attributable to each licensee and, subject to
8 obtaining consent, if necessary, from such li-
9 censee, for each sound recording performed by
10 means of a digital audio transmission by such
11 licensee during the applicable time period, and
12 to the extent included in the accounting reports
13 provided by the licensee to the sound recording
14 copyright owner—

15 “(I) the identity of the artist;

16 “(II) the International Standard Re-
17 cording Code of the sound recording;

18 “(III) the title of the sound recording;

19 “(IV) the number of times the sound
20 recording was transmitted; and

21 “(V) the total amount of receipts col-
22 lected from that licensee.

23 “(iii) The Fund shall make the distribu-
24 tions described in clause (i) as follows: 50 per-
25 cent shall be paid to nonfeatured musicians

1 (whether or not members of the American Fed-
2 eration of Musicians) and 50 percent shall be
3 paid to nonfeatured vocalists (whether or not
4 members of the American Federation of Tele-
5 vision and Radio Artists). The Fund may, prior
6 to making such distributions, deduct the rea-
7 sonable costs related to making such distribu-
8 tions.

9 “(iv) The sound recording copyright owner
10 shall not be required to provide any additional
11 information to the Fund other than what is re-
12 quired under this subparagraph. Sound record-
13 ing copyright owners shall use reasonable good
14 faith efforts to include in all relevant licenses a
15 requirement to report the information identified
16 in subclauses (I) through (V) of clause (ii).
17 Amounts required under clause (i) that are not
18 paid by the date specified in such clause shall
19 be subject to interest at the rate of 6 percent
20 per annum for each day of nonpayment after
21 the date the payment was due.”; and

22 (2) by adding at the end the following new
23 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 terrestrial broadcast sta-
2 tion extends to such station's nonsubscription broad-
3 cast transmissions otherwise licensable under a stat-
4 utory license in accordance with subsection (f), the
5 station shall pay to the agent designated to dis-
6 tribute statutory licensing receipts from the licensing
7 of transmissions in accordance with subsection (f),
8 50 percent of the total royalties that the station is
9 required to pay for such transmissions under the ap-
10 plicable license agreement. That agent shall dis-
11 tribute such payments in proportion to the distribu-
12 tions provided in subparagraphs (B) through (D) of
13 paragraph (2), and such payments shall be the sole
14 payments to which featured and nonfeatured artists
15 are entitled by virtue of such transmissions under
16 the direct license with that station.”.

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