To nullify the determinations of the Copyright Royalty Judges with respect
to webcasting, to modify the basis for making such a determination,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 10, 2007

Mr. WYDEN (for himself and Mr. BROWNBACK) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To nullify the determinations of the Copyright Royalty Judges with respect to webcasting, to modify the basis for making such a determination, 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 “Internet Radio Equality Act of 2007”.

SEC. 2. NULLIFICATION OF DECISION OF COPYRIGHT ROYALTY JUDGES.

The March 2, 2007, Determination of Rates and Terms of the United States Copyright Royalty Judges re-
garding rates and terms for the digital performance of sound recordings and ephemeral recordings, including that determination as modified by the April 17, 2007, Order Denying Motions for Rehearing and any subsequent modification to that determination by the Copyright Royalty Judges that is published in the Federal Register and the April 23, 2007, Final Determination of Rates and Terms of the United States Copyright Royalty Judges regarding rates and terms for the digital performance of sound recordings and ephemeral recordings and any subsequent modification to that determination by the Copyright Royalty Judges that is published in the Federal Register, are not effective, and shall be deemed never to have been effective.

SEC. 3. COMPUTATION OF ROYALTY FEES FOR COMMERCIAL INTERNET RADIO SERVICES OFFERING DIGITAL PERFORMANCES OF SOUND RECORDINGS.

(a) STANDARD FOR DETERMINING RATES AND TERMS.—Section 114(f)(2)(B) of title 17, United States Code, is amended by striking “Such rates and terms shall distinguish” and all that follows through the end of clause (ii) and inserting the following: “The Copyright Royalty Judges shall establish rates and terms in accordance with the objectives set forth in section 801(b)(1). Such rates
and terms may include a minimum annual royalty of not more than $500 for each provider of services that are subject to such rates and terms, which shall be the only minimum royalty fee and shall be assessed only once annually to that provider.”.

(b) TRANSITION RULE.—Except for services covered by section 118 of title 17, United States Code, each provider of digital audio transmissions that otherwise would have been subject to the rates and terms of the determination of the Copyright Royalty Judges made ineffective by section 2 of this Act shall instead pay royalties for each year of the 5-year period beginning on January 1, 2006, at 1 of the following rates, as selected by the provider for that year:

(1) 0.33 cents per hour of sound recordings transmitted to a single listener.

(2) 7.5 percent of the revenues received by the provider during that year that are directly related to the provider’s digital transmissions of sound recordings.
SEC. 4. COMPUTATION OF ROYALTY FEES FOR NON-COMMERCIAL STATIONS OFFERING DIGITAL PERFORMANCES OF SOUND RECORDINGS.

(a) Amendments to Section 118 of Title 17, United States Code.—Section 118 of title 17, United States Code, is amended—

(1) in subsection (b), in the matter preceding paragraph (1), by striking “and published pictorial” and inserting “, sound recordings, and published pictorial”;

(2) in subsection (c)—

(A) in the matter preceding paragraph (1), by striking “and published pictorial” and inserting “, sound recordings, and published pictorial”; and

(B) in paragraph (1), by inserting “or non-profit institution or organization” after “broadcast station”; and

(3) in subsection (f), by striking “paragraph (2)” and inserting “paragraph (1) or (2)’’.

(b) Transition Rules.—

(1) In general.—Except as provided under paragraph (2), for each calendar year (or portion thereof) beginning after December 31, 2004, until an applicable voluntary license agreement is filed with the Copyright Royalty Judges under section
118 of title 17, United States Code (as amended by subsection (a) of this section), or an applicable determination is issued by the Copyright Royalty Judges under section 118 of such title (as so amended) —

(A) except as provided under subparagraphs (B) and (C), the annual royalty that a public broadcast entity shall pay to owners of copyrights in sound recordings for the uses provided under section 118(c) of such title (as so amended) shall be an amount equal to 1.05 times the amount paid by that entity (or in the case of a group of related entities, the fees paid by such group) under section 114(f)(2) of title 17, United States Code, for such uses during the calendar year ending December 31, 2004;

(B) the annual royalty that a public broadcasting entity that is a noncommercial webcaster and did not owe royalties under section 114(f)(2) of title 17, United States Code, during the calendar year ending December 31, 2004, shall pay to owners of copyrights in sound recordings for the uses provided under section 118(c) of such title (as so amended) shall be the amount that would have been owed
under the agreement entered into under section
114(f)(5) of that title for such uses applicable
to noncommercial webcasters as in effect during
calendar year 2004; and

(C) the annual royalty that public broad-
casting entities constituting National Public
Radio, Inc., its member stations and public
radio stations qualified to receive funding from
the Corporation for Public Broadcasting, shall
collectively pay to owners of copyrights in sound
recordings for the uses provided under section
118(c) of such title (as so amended) shall be an
amount equal to 1.05 times the amount paid on
the behalf of these entities under section
114(f)(2) of title 17, United States Code, for
such uses during the calendar year ending De-

(2) LIMITATION.—No entity shall be required
under paragraph (1)(A) or (B) to pay more than
$5,000 for any calendar year.

SEC. 5. CREDIT OF ROYALTY FEES.

Any royalties received under the March 2, 2007, De-
termination of Rates and Terms of the United States
Copyright Royalty Judges regarding rates and terms for
the digital performance of sound recordings and ephem-
eral recordings, including that determination as modified by the April 17, 2007, Order Denying Motions for Rehearing and any subsequent modification to that determination by the Copyright Royalty Judges that is published in the Federal Register and the April 23, 2007, Final Determination of Rates and Terms of the United States Copyright Royalty Judges regarding rates and terms for the digital performance of sound recordings and ephemeral recordings and any subsequent modification to that determination by the Copyright Royalty Judges that is published in the Federal Register shall be credited against royalties required to be paid under section 3 or 4 of this Act.