

112TH CONGRESS
2D SESSION

S. 3609

To adopt fair standards and procedures by which determinations of Copyright Royalty Judges are made with respect to webcasting, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 21, 2012

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To adopt fair standards and procedures by which determinations of Copyright Royalty Judges are made with respect to webcasting, 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 “Internet Radio Fair-
5 ness Act of 2012”.

6 **SEC. 2. APPOINTMENT OF COPYRIGHT ROYALTY JUDGES**
7 **AND QUALIFICATIONS.**

8 Chapter 8 of title 17, United States Code, is amend-
9 ed—

10 (1) in section 801(a)—

1 (A) in the first sentence, by striking “Li-
2 brarian of Congress” and inserting “President
3 of the United States, by and with the advice
4 and consent of the Senate,”; and

5 (B) by striking the second sentence; and
6 (2) in section 802—

7 (A) in subsection (a)(1), by striking
8 “Each” and all that follows through “econom-
9 ics.” and inserting the following: “Each Copy-
10 right Royalty Judge shall be an attorney who
11 has not fewer than 10 years of legal experience
12 and has significant experience in adjudicating
13 arbitrations or court trials. The Chief Copyright
14 Royalty Judge shall have not fewer than 7
15 years of experience in adjudicating court trials
16 in civil cases.”; and

17 (B) in subsection (d)—

18 (i) in paragraph (1), in the first sen-
19 tence, by striking “Librarian” and all that
20 follows through “section.” and inserting
21 “President of the United States shall act
22 expeditiously to fill the vacancy.”; and

23 (ii) in paragraph (2), by striking “Li-
24 brarian of Congress” and inserting “Presi-

1 dent of the United States, by and with the
2 advise and consent of the Senate,”.

3 **SEC. 3. COMPUTATION OF ROYALTY FEES FOR INTERNET**
4 **RADIO SERVICES OFFERING DIGITAL PER-**
5 **FORMANCES OF SOUND RECORDINGS AND**
6 **REPORTING OBLIGATIONS.**

7 (a) STANDARD FOR DETERMINING RATES AND
8 TERMS; BURDEN OF PROOF.—

9 (1) EPHEMERAL RECORDINGS.—Section 112(e)
10 of title 17, United States Code, is amended—

11 (A) in paragraph (3), by striking the sec-
12 ond sentence and inserting the following: “Such
13 rates may include a minimum annual fee for
14 each type of service offered by the transmitting
15 organization.”;

16 (B) in paragraph (4), by striking “Such
17 rates shall” and all that follows through “para-
18 graphs (2) and (3).” and insert the following:
19 “In establishing rates and terms under this
20 paragraph, the Copyright Royalty Judges shall
21 apply the objectives set forth in section
22 801(b)(1), in accordance with subparagraphs
23 (C) and (D) of section 114(f)(1). In any pro-
24 ceeding under this paragraph, the burden of
25 proof shall be on the copyright owners of sound

1 recordings to establish that the fees and terms
 2 that they seek satisfy the requirements of this
 3 paragraph, and do not exceed the fees to which
 4 most copyright owners and users would agree
 5 under competitive market circumstances. To the
 6 extent the Copyright Royalty Judges consider
 7 marketplace benchmarks to be relevant, they
 8 shall limit those benchmarks to benchmarks re-
 9 flecting the rates and terms that have been
 10 agreed under competitive market circumstances
 11 by most copyright users.”; and

12 (C) in paragraph (5), by striking “in lieu
 13 of any” and all that follows and inserting the
 14 following: “and be binding upon the parties to
 15 any such agreements in lieu of any determina-
 16 tion by the Copyright Royalty Judges.”.

17 (2) DIGITAL SOUND RECORDING PERFORM-
 18 ANCES.—Section 114(f) of title 17, United States
 19 Code, is amended—

20 (A) in paragraph (1)—

21 (i) in subparagraph (A)—

22 (I) in the first sentence—

23 (aa) by striking “subscrip-
 24 tion transmissions by preexisting
 25 subscription services and trans-

1 missions by preexisting satellite
2 digital audio radio”; and

3 (bb) by striking “, except in
4 the case of a different transi-
5 tional period provided under sec-
6 tion 6(b)(3) of the Copyright
7 Royalty and Distribution Reform
8 Act of 2004,”; and

9 (II) by striking “Such terms and
10 rates” and all that follows and insert-
11 ing the following: “Such terms and
12 rates shall distinguish among the dif-
13 ferent types of digital audio trans-
14 mission services then in operation and
15 may take into account the different
16 characteristics of such services, and
17 may include a minimum annual fee of
18 not more than \$500 for each provider
19 of services that is subject to such
20 rates and terms, which may be the
21 only minimum fee for such provider
22 and may be assessed only once annu-
23 ally to that provider. Any copyright
24 owners of sound recordings or any en-
25 tities performing sound recordings af-

1 fected by this paragraph may submit
2 to the Copyright Royalty Judges for
3 consideration in such rate-setting pro-
4 ceedings licenses covering such non-
5 interactive sound recording perform-
6 ances. The parties to each proceeding
7 shall bear their own costs.”;

8 (ii) in subparagraph (B)—

9 (I) in the first sentence—

10 (aa) by striking “paragraph
11 (3)” and inserting “paragraph
12 (2)”;

13 (bb) by striking “, a transi-
14 tional period provided under sec-
15 tion 6(b)(3) of the Copyright
16 Royalty and Distribution Reform
17 Act of 2004,”; and

18 (II) by striking the second sen-
19 tence and inserting the following: “In
20 establishing rates and terms under
21 this paragraph, the Copyright Royalty
22 Judges shall apply the objectives set
23 forth in section 801(b)(1) and may
24 also consider the rates and terms for
25 noninteractive digital audio trans-

1 mission services under voluntary li-
2 cense agreements described in sub-
3 paragraph (A) that were entered into
4 under competitive market cir-
5 cumstances. In any proceeding under
6 this subsection, the burden of proof
7 shall be on the copyright owners of
8 sound recordings to establish that the
9 fees and terms that they seek satisfy
10 the requirements of this subsection,
11 and do not exceed the fees to which
12 most copyright owners and users
13 would agree under competitive market
14 circumstances.”;

15 (iii) by redesignating subparagraph
16 (C) as subparagraph (E);

17 (iv) by inserting after subparagraph
18 (B) the following:

19 “(C)(i) In construing the objectives set
20 forth in section 801(b)(1), the Copyright Roy-
21 alty Judges shall take into consideration—

22 “(I) the public’s interest in both the
23 creation of new sound recordings of musi-
24 cal works and in fostering online and other

1 digital performances of sound recordings;
2 and

3 “(II) the income necessary to provide
4 a reasonable return on all relevant invest-
5 ments, including investments in prior peri-
6 ods for which returns have not been
7 earned.

8 “(ii) To the extent the Copyright Royalty
9 Judges consider marketplace benchmarks to be
10 relevant, the Copyright Royalty Judges shall
11 limit those benchmarks to benchmarks reflect-
12 ing the rates and terms that have been agreed
13 under competitive market circumstances by
14 most copyright users.

15 “(D) In applying the objectives set forth in
16 section 801(b)(1), the Copyright Royalty
17 Judges—

18 “(i) shall not disfavor percentage of
19 revenue-based fees;

20 “(ii) shall establish license fee struc-
21 tures that foster competition among the
22 licensors of sound recording performances
23 and between sound recording performances
24 and other programming, including per-use
25 or per-program fees, or percentage of rev-

1 enue or other fees that include carve-outs
2 on a pro-rata basis for sound recordings
3 the performance of which have been li-
4 censed either directly with the copyright
5 owner or at the source, or for which a li-
6 cense is not necessary;

7 “(iii) shall give full consideration for
8 the value of any promotional benefit or
9 other non-monetary benefit conferred on
10 the copyright owner by the performance;

11 “(iv) shall give full consideration to
12 the contributions made by the digital audio
13 transmission service to the content and
14 value of its programming; and

15 “(v) shall not take into account either
16 the rates and terms provided in licenses for
17 interactive services or the determinations
18 rendered by the Copyright Royalty Judges
19 prior to the enactment of the Internet
20 Radio Fairness Act of 2012.”; and

21 (v) by amending subparagraph (E), as
22 so redesignated, to read as follows:

23 “(E) The procedures under subparagraph
24 (A) may also be initiated pursuant to a petition
25 filed by any copyright owners of sound record-

1 ings, or any entity performing sound recordings
2 affected by this paragraph, indicating that a
3 new type of digital audio transmission service
4 engaged in the public performance of sound re-
5 cordings is or is about to become operational,
6 for the purpose of determining reasonable terms
7 and rates of royalty payments with respect to
8 such new type of transmission service for the
9 period beginning with the inception of such new
10 type of service and ending on the date on which
11 the royalty rates and terms for the most com-
12 parable digital audio transmission services most
13 recently determined under subparagraph (A)
14 and chapter 8 expire, or such other period as
15 the parties may agree.”;

16 (B) by striking paragraph (2);

17 (C) by redesignating paragraphs (3), (4),
18 and (5) as paragraphs (2), (3), and (4), respec-
19 tively; and

20 (D) in paragraph (2), as so redesignated—

21 (i) by inserting “or their authorized
22 representatives” after “owners of sound re-
23 cordings”; and

24 (ii) by striking “in lieu of any” and
25 all that follows and inserting the following:

1 “and be binding upon the parties to any
2 such agreements in lieu of any determina-
3 tion by the Copyright Royalty Judges.”.

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

6 (A) by redesignating paragraphs (4)
7 through (15) as paragraphs (5) through (16),
8 respectively; and

9 (B) by inserting after paragraph (3) the
10 following:

11 “(4) ‘Competitive market circumstances’ are
12 circumstances in which a licensee enters into a li-
13 cense for the noninteractive performance of sound
14 recordings with a licensor that does not possess mar-
15 ket power resulting from the aggregation of copy-
16 rights, either by a licensing collective or individual
17 copyright owners.”.

18 (b) PRECEDENTIAL VALUE OF SETTLEMENTS.—Sec-
19 tion 114(f)(4) of title 17, United States Code, as so redes-
20 ignated by subsection (a)(2), is amended—

21 (1) in subparagraph (B), by striking the second
22 sentence;

23 (2) by striking subparagraphs (C) and (F);

24 (3) by redesignating subparagraphs (D) and
25 (E) as subparagraphs (C) and (D), respectively; and

1 (4) by adding at the end the following:

2 “(E) The rates and terms of any settle-
3 ments made pursuant to the amendments made
4 by the Webcaster Settlement Act of 2009 (Pub-
5 lic Law 111–36; 123 Stat. 1926) that were to
6 expire before December 31, 2015, shall be ex-
7 tended through December 31, 2015, according
8 to the rates and terms applicable to 2014.”.

9 (c) TECHNICAL AND CONFORMING AMENDMENTS.—
10 Chapter 8 of title 17, United States Code, is amended—

11 (1) in section 801(b)(7)(B), by striking
12 “114(f)(3)” and inserting “114(f)(2)”;

13 (2) in section 803(e)(2)(E)(i)(II)—

14 (A) by striking “section 114(f)(1)(C) or
15 114(f)(2)(C)” and inserting “section
16 114(f)(1)(E)”; and

17 (B) by striking “section 114(f)(4)(B)” and
18 inserting “section 114(f)(3)(B)”; and

19 (3) in section 804(b)(3)(C)—

20 (A) in clause (i), by striking “section
21 114(f)(1)(C) and 114(f)(2)(C)” and inserting
22 “section 114(f)(1)(E)”;

23 (B) in clause (iii)(II), by striking “section
24 114(f)(4)(B)(ii) and (C)” and inserting “sub-

1 paragraphs (B)(ii) and (C) of section
2 114(f)(3)”; and

3 (C) in clause (iv), by striking “section
4 114(f)(1)(C) or 114(f)(2)(C)” and inserting
5 “section 114(f)(1)(E)”.

6 **SEC. 4. MODERNIZATION OF CONDITIONS GOVERNING**
7 **EPHEMERAL RECORDING EXEMPTION AND**
8 **STATUTORY LICENSES.**

9 (a) EPHEMERAL RECORDING EXEMPTION.—Section
10 112(a)(1) of title 17, United States Code, is amended by
11 striking “no more than” and all that follows and inserting
12 the following: “1 or more copies or phonorecords embody-
13 ing the performance or display, if—

14 “(A) the copies or phonorecords are re-
15 tained and used solely by the transmitting orga-
16 nization that made them, and no further copies
17 or phonorecords are reproduced from them, ex-
18 cept as may be incidental to the operation of
19 the transmission technology used by the trans-
20 mitting organization; and

21 “(B) the copies or phonorecords are used
22 solely for the transmitting organization’s own
23 transmissions originating in the United States,
24 or for purposes of archival preservation or secu-
25 rity.”.

1 (b) EPHEMERAL RECORDING STATUTORY LI-
2 CENSE.—Section 112(e)(1) of title 17, United States
3 Code, is amended—

4 (1) in the matter preceding subparagraph (A)—

5 (A) by striking “or under a statutory li-
6 cense in accordance with section 114(f)”; and

7 (B) by striking “ if the following condi-
8 tions are satisfied:” and inserting “if—”;

9 (2) in subparagraph (A)—

10 (A) by striking “The” and inserting “the”;

11 and

12 (B) by striking the period at the end and
13 inserting “, except as may be incidental to the
14 operation of the transmission technology used
15 by the transmitting organization;”;

16 (3) in subparagraph (B)—

17 (A) by striking “The” and inserting “the”;

18 (B) by striking “a statutory license in ac-
19 cordance with section 114(f) or”; and

20 (C) by striking the period at the end and
21 inserting “, or for purposes of archival preser-
22 vation or security; and”;

23 (4) by striking subparagraph (C);

24 (5) by redesignating subparagraph (D) as sub-
25 paragraph (C); and

1 (6) in subparagraph (C), as so redesignated, by
2 striking “Phonorecords” and inserting
3 “phonorecords”.

4 (c) SOUND RECORDING PERFORMANCE STATUTORY
5 LICENSE.—Section 114(d)(2)(C) of title 17, United
6 States Code, is amended—

7 (1) in clause (i), by striking “of a broadcast
8 transmission” and all that follows and inserting the
9 following: “or simultaneous transmission of a broad-
10 cast transmission in any medium, which may include
11 programming substituted for programming con-
12 tained in the broadcast transmission with respect to
13 which the transmitting entity lacks the requisite li-
14 censes or clearances to make the transmission in the
15 medium, or for advertisements contained in the
16 broadcast transmission, or the transmission of any
17 programming previously included in a broadcast
18 transmission as an archived program in conformance
19 with clause (iii);”;

20 (2) by striking clause (ii) and inserting the fol-
21 lowing:

22 “(ii) the transmitting entity
23 does not cause to be published in
24 writing by means of an advance
25 program schedule the titles of the

1 specific sound recordings or
2 phonorecords embodying such
3 sound recordings to be trans-
4 mitted at particular times, except
5 that this clause does not dis-
6 qualify a transmitting entity that
7 publishes in writing—

8 “(AA) such a program
9 schedule that identifies
10 sound recordings,
11 phonorecords or artists that
12 will be featured within a pe-
13 riod of time greater than 3
14 hours or within an unspec-
15 ified future time period; or

16 “(BB) an advance pro-
17 gram schedule that is that is
18 a schedule of classical music
19 programming to be per-
20 formed as part of a retrans-
21 mission or simultaneous
22 transmission of a broadcast
23 transmission, which may in-
24 clude programming sub-
25 stituted for programming

1 contained in the broadcast
2 transmission with respect to
3 which the transmitting enti-
4 ty lacks the requisite li-
5 censes or clearances to make
6 the transmission in the me-
7 dium, or for advertisements
8 contained in the broadcast
9 transmission;”;

10 (3) in clause (iii)—

11 (A) in subclause (II), by adding “or” at
12 the end; and

13 (B) beginning in subclause (III), by strik-
14 ing “or” and all that follows through “require-
15 ment;”

16 (4) in clause (vii)—

17 (A) by striking “and the transmitting enti-
18 ty” through “of the copyright owner;” and

19 (B) by striking “of a broadcast trans-
20 mission” and all that follows and inserting “or
21 simultaneous transmission of a broadcast trans-
22 mission, which may include programming sub-
23 stituted for programming contained in the
24 broadcast transmission with respect to which
25 the transmitting entity lacks the requisite li-

1 censes or clearances to make the transmission
 2 in the medium, or for advertisements contained
 3 in the broadcast transmission;” and

4 (5) by amending clause (ix) to read as follows:

5 “(ix) the transmitting entity identifies
 6 in textual data the sound recording during,
 7 but not before, the time it is performed, in-
 8 cluding the title of the sound recording
 9 and the featured recording artist, in a
 10 manner to permit it to be displayed to the
 11 transmission recipient by the device or
 12 technology intended for receiving the serv-
 13 ice provided by the transmitting entity, ex-
 14 cept that the obligation in this clause shall
 15 not apply to the extent that the transmit-
 16 ting entity does not have the technology or
 17 information necessary to provide such tex-
 18 tual data.”.

19 **SEC. 5. PROMOTION OF A COMPETITIVE MARKETPLACE.**

20 (a) **LIMITATION OF ANTITRUST EXEMPTIONS.—**

21 (1) **EPHEMERAL RECORDINGS.—**Section
 22 112(e)(2) of title 17, United States Code, is amend-
 23 ed—

24 (A) by inserting “, on a nonexclusive
 25 basis,” after “common agents”; and

1 (B) by adding at the end the following:
2 “Nothing in this paragraph shall be construed
3 to permit any copyright owners of sound re-
4 cordings acting jointly, or any common agent or
5 collective representing such copyright owners, to
6 take any action that would prohibit, interfere
7 with, or impede direct licensing by copyright
8 owners of sound recordings in competition with
9 licensing by any common agent or collective,
10 and any such action that affects interstate com-
11 merce shall be deemed a contract, combination
12 or conspiracy in restraint of trade in violation
13 of section 1 of the Sherman Act (15 U.S.C.
14 1).”.

15 (2) DIGITAL SOUND RECORDING PERFORM-
16 ANCES.—Section 114(e) of title 17, United States
17 Code, is amended by adding at the end the fol-
18 lowing:

19 “(3) Nothing in this subsection shall be con-
20 strued to permit any copyright owners of sound re-
21 cordings acting jointly, or any common agent or col-
22 lective representing such copyright owners, to take
23 any action that would prohibit, interfere with, or im-
24 pede direct licensing by copyright owners of sound
25 recordings in competition with licensing by any com-

1 mon agent or collective, and any such action that af-
2 fects interstate commerce shall be deemed a con-
3 tract, combination or conspiracy in restraint of trade
4 in violation of section 1 of the Sherman Act (15
5 U.S.C. 1).

6 “(4) In order to obtain the benefits of para-
7 graph (1), a common agent or collective representing
8 copyright owners of sound recordings must make
9 available at no charge through publicly accessible
10 computer access through the Internet the most cur-
11 rent available list of sound recording copyright own-
12 ers represented by the organization and the most
13 current list of sound recordings licensed by the orga-
14 nization.”.

15 **SEC. 6. PROCEEDINGS OF THE COPYRIGHT ROYALTY**
16 **JUDGES AND JUDICIAL REVIEW.**

17 (a) PROCEEDINGS AND PRECEDENTIAL VALUE.—
18 Section 803(a)(1) of title 17, United States Code, is
19 amended—

20 (1) by striking the first sentence and inserting
21 the following: “‘In carrying out the purposes set
22 forth in section 801, all proceedings of the Copyright
23 Royalty Judges shall be conducted in accordance
24 with this title and, unless contrary to a procedure
25 set forth in subsection (b), according to the Federal

1 Rules of Civil Procedure and the Federal Rules of
2 Evidence.”; and

3 (2) by adding at the end the following: “Not-
4 withstanding the preceding sentence, in any rate-set-
5 ting proceeding under section 112(e)(4) or section
6 114(f)(2)(B), the Copyright Royalty Judges may
7 only consider as precedent and act in accordance
8 with determinations and interpretations that are
9 made under the objectives set forth in section 801(b)
10 for the statutory licenses under sections 112(e) and
11 114(d)(2).”.

12 (b) REGULATIONS.—Section 803(b)(6) of title 17,
13 United States Code, is amended—

14 (1) in subparagraph (C), by striking “RE-
15 QUIREMENTS.—Regulations” and inserting “RE-
16 QUIREMENTS IN CASES NOT INVOLVING DIGITAL
17 PERFORMANCES OF SOUND RECORDINGS.—In pro-
18 ceedings other than proceedings to determine terms
19 and rates of royalty payments under section 112 or
20 114, regulations”; and

21 (2) by adding at the end the following:

22 “(D) REQUIREMENTS IN PROCEEDINGS IN-
23 VOLVING DIGITAL PERFORMANCES OF SOUND
24 RECORDINGS.—In proceedings to determine

1 terms and rates of royalty payments under sec-
2 tion 112 or 114, the following shall apply:

3 “(i) INITIAL DISCLOSURES.—Not later
4 than 30 days after the date on which the
5 voluntary negotiation period is initiated
6 pursuant to paragraph (3)(A)(i), each par-
7 ticipant shall make an initial disclosure to
8 the other participants by providing cop-
9 ies—

10 “(I) of all license agreements en-
11 tered into by that participant, its
12 members, or any licensor or licensee
13 represented in the proceeding by that
14 participant during the applicable 5-
15 year period or covering any portion of
16 the period for which the rates are to
17 be set, relating to—

18 “(aa) in a proceeding under
19 section 112, the making of
20 ephemeral recordings; or

21 “(bb) in a proceeding under
22 section 114, the public perform-
23 ance of musical works, sound re-
24 cordings, or audiovisual works in-

1 corporating recorded musical
2 works; or

3 “(II) of any other license agree-
4 ment or document upon which the
5 participant intends to rely, in whole or
6 in part, in its ratemaking proposal, as
7 well as all license agreements entered
8 into by the participant, its members,
9 or any licensor or licensee represented
10 in the proceeding by that participant
11 for the same or similar rights during
12 the applicable 5-year period or cov-
13 ering any portion of the period for
14 which the rates are to be set.

15 “(ii) PROTECTIVE ORDER; SANC-
16 TIONS.—Disclosures under clause (i) and
17 other confidential information produced by
18 a participant or third party during dis-
19 covery, or used during the proceeding,
20 shall be subject to a protective order, en-
21 tered by the Copyright Royalty Judges in
22 the proceeding, that prohibits use of the
23 disclosures and the confidential informa-
24 tion for any purpose other than the pro-
25 ceeding and that prohibits disclosure of the

1 licenses or other documents included in the
2 disclosure or of other confidential informa-
3 tion to any person that is not counsel of
4 record in the proceeding. The Copyright
5 Royalty Judges may impose appropriate
6 sanctions for failure to comply in a timely
7 manner with the matters required to be
8 disclosed under clause (i).

9 “(iii) STATEMENTS OF THE CASE.—

10 Statements of the case shall be filed by a
11 date specified by the Copyright Royalty
12 Judges, which for licensor participants
13 shall be no earlier than the end of the 90-
14 day period beginning on the date on which
15 the voluntary negotiation period concludes,
16 and for licensee participants shall be no
17 earlier than the end of the 60-day period
18 beginning on the date on which the state-
19 ments of the case are required to be sub-
20 mitted by licensor participants.

21 “(iv) SUBPOENA POWER.—The Copy-

22 right Royalty Judges shall have the power
23 to issue subpoenas at the request of a par-
24 ticipant to non-participants, subject to the
25 Federal Rules of Civil Procedure. Orders

1 by the Copyright Royalty Judges to en-
2 force such subpoenas may be enforced by
3 the requesting participant in an action in
4 the district court in which the subpoenaed
5 party resides.

6 “(v) SCHEDULING CONFERENCE.—

7 The Copyright Royalty Judges shall order
8 a scheduling conference no sooner than 45
9 days following the submission to the Copy-
10 right Royalty Judges of the statement of
11 the case of the licensee participants. Par-
12 ticipants shall submit jointly a proposed
13 discovery plan no later than 21 days before
14 the conference. Following the conference,
15 the Copyright Royalty Judges shall issue
16 an initial scheduling order governing pre-
17 trial procedures, and permitting discovery
18 that is reasonable and sufficient, giving
19 due consideration to the proposals of the
20 participants and the magnitude of the po-
21 tential royalty payments at issue during
22 the license period covered by the pro-
23 ceeding. The period to conduct discovery
24 shall be no shorter than 90 days, plus the
25 time needed to complete discovery ordered

1 by the Copyright Royalty Judges in con-
2 nection with the resolution of motions, or-
3 ders, and disputes pending at the end of
4 such period.

5 “(vi) SETTLEMENT CONFERENCE.—
6 The Copyright Royalty Judges shall order
7 a settlement conference among the partici-
8 pants in the proceeding to facilitate the
9 presentation of offers of settlement among
10 the participants. The settlement conference
11 shall be held during the 21-day period be-
12 ginning on the day after the last day of the
13 discovery period ordered pursuant to clause
14 (iv) and shall take place outside the pres-
15 ence of the Copyright Royalty Judges.

16 “(vii) JOINT PRETRIAL ORDER.—If
17 the conference required in clause (v) does
18 not result in a settlement among all par-
19 ties, not later than 60 days after the last
20 day of the settlement conference, the re-
21 maining participants shall propose a joint
22 pretrial order—

23 “(I) stating the rates and terms
24 proposed by each participant and set-

1 ting forth, in detail, the grounds for
2 such proposals;

3 “(II) setting forth admissions
4 and stipulations about facts and docu-
5 ments;

6 “(III) avoiding unnecessary proof
7 and cumulative evidence and limiting
8 the use of testimony under rule 702 of
9 the Federal Rules of Evidence;

10 “(IV) identifying the witnesses to
11 be offered by each party, and attach-
12 ing all witness statements, testimony,
13 and exhibits to be presented in the
14 proceeding and such other information
15 that is necessary to establish terms
16 and rates;

17 “(V) listing the evidence to be of-
18 fered by each party, and identifying
19 any objections to any such evidence;

20 “(VI) identifying any pending
21 motions, including motions in limine
22 and attaching any such motions that
23 have not yet been filed;

1 “(VII) proposing a reasonable
2 limit on the time allowed to present
3 evidence; and

4 “(VIII) proposing other ways to
5 facilitate the just, speedy, and inex-
6 pensive disposition of the proceeding.

7 “(viii) PRETRIAL ORDER.—The Copy-
8 right Royalty Judges shall hold a pre-
9 hearing conference to address the issues
10 set forth in the proposed joint pretrial
11 order, and shall issue an order reciting the
12 action taken. The order shall allocate to
13 the licensor participants and licensee par-
14 ticipants sufficient, reasonable, and equal
15 time in which to present their respective
16 cases, and shall afford each set of partici-
17 pants an opportunity for rebuttal. The
18 order issued by the Copyright Royalty
19 Judges under this clause shall control the
20 course of the action unless the Judges
21 modify it.

22 “(ix) DEFINITIONS.—In this subpara-
23 graph:

1 “(I) APPLICABLE 5-YEAR PE-
2 RIOD.—The term ‘applicable 5-year
3 period’ means—

4 “(aa) the period of 5 cal-
5 endar years preceding the year in
6 which the applicable voluntary
7 negotiation period begins; and

8 “(bb) the period of the cur-
9 rent calendar year through the
10 date on which the initial disclo-
11 sure under clause (i) is made.

12 “(II) LICENSEE.—The term ‘li-
13 censee’ means a person or entity that
14 exercises rights under a statutory li-
15 cense under section 112 or 114.

16 “(III) LICENSEE PARTICIPANT.—
17 The term ‘licensee participant’ means
18 a participant that is, or is an author-
19 ized representative of, a licensee.

20 “(IV) LICENSOR.—The term ‘li-
21 censor’ means a person or entity enti-
22 tled to receive royalty payments under
23 section 112 or 114.

24 “(V) LICENSOR PARTICIPANT.—
25 The term ‘licensor participant’ means

1 a participant that is, or that is an au-
2 thORIZED representative of, a licensor.

3 “(VI) STATEMENT OF THE
4 CASE.—The term ‘statement of the
5 case’ means a short and plain state-
6 ment that—

7 “(aa) identifies all partici-
8 pants and licensors or licensees
9 on whose behalf the statement is
10 being submitted;

11 “(bb) states the proposed
12 rate or rates and terms of the
13 participants for each right at
14 issue in the proceeding and sets
15 forth in detail the basis of each
16 such proposed rate and term;

17 “(cc) identifies each witness
18 that the participant intends to
19 call in support of its rate and
20 terms proposal and summarizes
21 the anticipated testimony of each
22 witness; and

23 “(dd) includes any reports,
24 including expert reports, and any

1 documents upon which the par-
2 ticipant relies.”.

3 (c) **TIMING OF DETERMINATION.**—Section 803(c)(1)
4 of title 17, United States Code, is amended by striking
5 “subsection (b)(6)(C)(x)” and inserting “subparagraph
6 (C)(x) or (D)(v) of subsection (b)(6) (as the case may
7 be)”.

8 (d) **JUDICIAL REVIEW.**—Section 803(d)(3) of title
9 17, United States Code, is amended by striking the first
10 sentence and inserting the following: “Conclusions of law,
11 and determinations of rates in which the Copyright Roy-
12 alty Judges are required to apply the facts of record to
13 the objectives set forth in section 801(b) shall be subject
14 to de novo review. Findings of fact by the Copyright Roy-
15 alty Judges shall be subject to review for clear error. All
16 other actions by the Copyright Royalty Judges shall be
17 subject to review for abuse of discretion.”.

18 **SEC. 7. GLOBAL MUSIC RIGHTS DATABASE.**

19 For purposes of facilitating compensation to artists
20 of musical works and combating copyright infringement,
21 not later than 180 days after the date of enactment of
22 this Act, the Librarian of Congress, in consultation with
23 the Intellectual Property Enforcement Coordinate and the
24 United States Patent and Trademark Office, shall submit
25 to Congress a report that provides a set of recommenda-

1 tions about how the Federal Government can facilitate,
2 and possibly establish, a global music registry that is
3 sustainably financed and consistent with World Intellec-
4 tual Property Organization obligations. Such registry
5 should, to the extent practicable, include all known or
6 copyrighted musical works, the writers of the work, the
7 owners of the rights, the entity on behalf of those owners
8 who can license such rights on a territory-by-territory
9 basis, and all known sound recording data.

10 **SEC. 8. EFFECTIVE DATE AND TRANSITIONAL RULES.**

11 (a) IN GENERAL.—Except as provided in subsection
12 (c), the amendments made by this Act shall take effect
13 on the date of enactment of this Act and shall apply to
14 any proceeding that is pending on, or that begins on or
15 after the date of enactment. The Copyright Royalty
16 Judges in office as of the date of enactment shall have
17 only such continuing authority as is provided in para-
18 graphs (1) and (2) of subsection (c).

19 (b) REGULATIONS.—Not later than 60 days after the
20 date on which not less than 2 Copyright Royalty Judges
21 are appointed and confirmed pursuant to section 2, the
22 Copyright Royalty Judges shall propose regulations imple-
23 menting the amendments set forth in section 6(b), by no-
24 tice in the Federal Register, providing 30 days for com-
25 ments and 15 days for reply comments. Not later than

1 45 days after date on which the 15-day period for reply
2 comments ends, the Copyright Royalty Judges shall pro-
3 mulgate final regulations.

4 (c) APPLICABILITY TO PENDING PROCEEDINGS.—

5 (1) PROCEEDINGS IN WHICH THE HEARING ON
6 THE MERITS HAS CONCLUDED.—The Copyright Roy-
7 alty Judges sitting on the date of enactment shall
8 have authority to decide any pending proceeding in
9 which the hearing on the merits has concluded,
10 under the standards, procedures, and regulations in
11 effect prior to the enactment of this Act. This au-
12 thority shall include the authority to decide any mo-
13 tion for rehearing under section 803(c)(2) of title
14 17, United States Code, in any such proceeding.

15 (2) PROCEEDINGS IN WHICH THE HEARING ON
16 THE MERITS HAS COMMENCED BUT NOT CON-
17 CLUDED.—The Copyright Royalty Judges sitting on
18 the date of enactment shall have authority to decide
19 any pending proceeding in which the hearing on the
20 merits has commenced but not concluded, under the
21 standards, procedures, and regulations in effect
22 prior to the enactment of this Act, except that this
23 authority may only be exercised with the consent of
24 all participants in any proceeding to determine
25 terms and rates of royalty payments under section

1 112 or 114 of title 17, United States Code. This au-
2 thority shall include the authority to decide any mo-
3 tion for rehearing under section 803(c)(2) of title
4 17, United States Code, in any such proceeding.

5 (3) ALL OTHER PENDING PROCEEDINGS.—The
6 Copyright Royalty Judges appointed pursuant to
7 section 2 shall assume authority over any pending
8 proceeding in which the hearing on the merits has
9 not commenced. The Copyright Royalty Judges shall
10 recommence any pending proceeding to determine
11 terms and rates of royalty payments under section
12 112 or 114 of title 17, United States Code, under
13 the procedures, standards and regulations set forth
14 in this Act, and the requirement set forth in section
15 803(c)(1) of title 17, United States Code, that the
16 proceeding be concluded no later than 15 days be-
17 fore the expiration of the then current statutory
18 rates and terms, shall not apply. The Copyright
19 Royalty Judges shall set a reasonable schedule for
20 the continuation of any pending proceeding other
21 than a proceeding to determine the terms and rates
22 of royalty payments under section 112 or 114 of
23 title 17, United States Code.

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