117TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
117–693

AMERICAN MUSIC FAIRNESS ACT OF 2022

DECEMBER 30, 2022.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. NADLER, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 4130]

The Committee on the Judiciary, to whom was referred the bill (H.R. 4130) 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, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "American Music Fairness Act of 2022".

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

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

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

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

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

(1) in the matter preceding subparagraph (A), by striking "a digital" and inserting "an";

(2) by striking subparagraph (A);

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

(4) in subparagraph (A), as redesignated by paragraph (3), by striking "nonsubscription" each place such term appears and inserting "licensed nonsubscription".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) DEFINITION.—Section 101 of title 17, United States Code, is amended by inserting after the definition of "architectural work" the following:

"An "audio transmission" is a transmission of a sound recording, whether in a digital, analog, or other format. This term does not include the transmission of any audiovisual work.".

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

(A) in section 112(e)(8), by striking "a digital audio transmission" and inserting "an audio transmission";

(B) in section 114—

(i) in subsection (d)—

(I) in paragraph (2)—

(aa) in the matter preceding subparagraph (A), by striking "subscription digital" and inserting "subscription"; and

(bb) in subparagraph (C)(viii), by striking "digital signal" and inserting "signal"; and

(II) in paragraph (4)—

(aa) in subparagraph (A), by striking "a digital audio transmission" and inserting "an audio transmission"; and

(bb) in subparagraph (B)(i), by striking "a digital audio transmission" and inserting "an audio transmission";

(ii) in subsection (g)(2)(A), by striking "a digital" and inserting "an"; and

(iii) in subsection (j)—

(I) in paragraph (6)—

(aa) by striking "digital"; and

(bb) by striking "retransmissions of broadcast transmissions" and inserting "broadcast transmissions and retransmissions of broadcast transmissions"; and

(II) in paragraph (8), by striking "subscription digital" and inserting "subscription"; and

(C) in section 1401—

(i) in subsection (b), by striking "a digital audio" and inserting "an audio"; and

(ii) in subsection (d)—

(I) in paragraph (1), by striking "a digital audio" and inserting "an audio";

(II) in paragraph (2)(A), by striking "a digital audio" and inserting "an audio"; and

(III) in paragraph (4)(A), by striking "a digital audio" and inserting "an audio".

SEC. 3. TIMING OF PROCEEDINGS UNDER SECTIONS 112(e) AND 114(f).

Paragraph (3) of section 804(b) of title 17, United States Code, is amended by adding at the end the following new subparagraph:

"(D) A proceeding under this chapter shall be commenced as soon as practicable after the date of the enactment of this subparagraph to determine royalty rates and terms for nonsubscription broadcast transmissions, to be effective for the period beginning on such date of enactment, and ending on

December 31, 2028. Any payment due under section 114(f)(1)(D) shall not be due until the due date of the first royalty payments for nonsubscription broadcast transmissions that are determined, after the date of the enactment of this subparagraph, by the Copyright Royalty Judges. Thereafter, such proceeding shall be repeated in each subsequent fifth calendar year.".

SEC. 4. SPECIAL PROTECTION FOR SMALL BROADCASTERS.

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

"(D)(i) Notwithstanding the provisions of subparagraphs (A) through (C), the royalty rate shall be as follows for nonsubscription broadcast transmissions by each individual terrestrial broadcast station licensed as such by the Federal Communications Commission that satisfies the conditions in clause (ii)—

"(I) $10 per calendar year, in the case of nonsubscription broadcast transmissions by a broadcast station that generated revenue in the immediately preceding calendar year of less than $100,000;

"(II) $100 per calendar year, in the case of nonsubscription broadcast transmissions by a broadcast station that is a public broadcasting entity as defined in section 118(f) and generated revenue in the immediately preceding calendar year of $100,000 or more, but less than $1,500,000; and

"(III) $500 per calendar year, in the case of nonsubscription broadcast transmissions by a broadcast station that is not a public broadcasting entity as defined in section 118(f) and generated revenue in the immediately preceding calendar year of $100,000 or more, but less than $1,500,000.

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

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

"(II) the aggregate revenue of the owner and operator of the broadcast station and any person directly or indirectly controlling, controlled by, or under common control with such owner or operator, from any source, was less than $10,000,000 during the immediately preceding calendar year; and

"(III) the owner or operator of the broadcast station provides to the nonprofit collective designated by the Copyright Royalty Judges to distribute receipts from the licensing of transmissions in accordance with subsection (f), by no later than January 31 of the relevant calendar year, a written and signed certification of the station's eligibility under this clause and the applicable subclause of clause (i), in accordance with requirements the Copyright Royalty Judges shall prescribe by regulation.

"(iii) For purposes of clauses (i) and (ii)—

"(I) revenue shall be calculated in accordance with generally accepted accounting principles;

"(II) revenue generated by a terrestrial broadcast station shall include all revenue from the operation of the station, from any source; and

"(III) in the case of affiliated broadcast stations, revenue shall be allocated reasonably to individual stations associated with the revenue.

"(iv) The royalty rates specified in clause (i) shall not be admissible as evidence or otherwise taken into account in determining royalty rates in a proceeding under chapter 8, or in any other administrative, judicial, or other Federal Government proceeding involving the setting or adjustment of the royalties payable for the public performance or reproduction in ephemeral phonorecords or copies of sound recordings, the determination of terms or conditions related thereto, or the establishment of notice or recordkeeping requirements.".

(b) TECHNICAL CORRECTION.—Section 118(f) of title 17, United States Code, is amended by striking "section 397 of title 47" and inserting "section 397 of the Communications Act of 1934 (47 U.S.C. 397)".

SEC. 5. DISTRIBUTION OF CERTAIN ROYALTIES.

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

(1) in paragraph (1), by inserting "or in the case of a transmission to which paragraph (5) applies" after "this section";

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

(3) by inserting after paragraph (4) the following new paragraph:

"(5) Notwithstanding paragraph (1), to the extent that a license granted by the copyright owner of a sound recording to a transmitting entity eligible for a statutory license under subsection (d)(2) extends to such entity's transmissions otherwise licensable under a statutory license in accordance with subsection (f), such entity shall pay to the collective designated to distribute statutory licensing receipts from the licensing of transmissions in accordance with subsection (f), 50 percent of the total royalties that such entity is required, pursuant to the applicable license agreement, to pay for such transmissions otherwise licensable under a statutory license in accordance with subsection (f). That collective shall distribute such payments in proportion to the distributions provided in subparagraphs (B) through (D) of paragraph (2), and such payments shall be the only payments to which featured and nonfeatured artists are entitled by virtue of such transmissions under the direct license with such entity.".

SEC. 6. NO HARMFUL EFFECTS ON SONGWRITERS.

Nothing in this Act, or the amendments made by this Act, shall adversely affect in any respect the public performance rights of or royalties payable to songwriters or copyright owners of musical works.

SEC. 7. VALUE OF PROMOTION TAKEN INTO ACCOUNT.

Pursuant to section 114(f)(1)(B) of title 17, United States Code, in determining rates and terms for terrestrial broadcast radio stations under this Act, and the amendments made by this Act, the Copyright Royalty Judges shall base their decision on economic, competitive, and programming information presented by the parties, including whether use of the station's service may substitute for or may promote the sales of phonorecords or otherwise may interfere with or may enhance the sound recording copyright owner's other streams of revenue from the copyright owner's sound recordings.

Purpose and Summary

H.R. 4130, the "American Music Fairness Act," is a bipartisan bill that would expand the scope of public performance rights in sound recordings to include terrestrial broadcast (AM/FM radio) performances. Specifically, the bill requires terrestrial radio stations that broadcast copyright-protected sound recordings over AM/FM radio to pay a public performance royalty to the copyright owners of, and artists who performed, the sound recordings.

A "sound recording" is a recording of a particular performance of a musical work.[1] Typically, the copyright owners of a sound recording are the artists who performed the musical work (e.g., musicians and vocalists), and the producer who captured, manipulated, and/or edited the work's sounds, who may assign their rights to others, such as record labels. Under current federal law, when a terrestrial radio station broadcasts a copyright-protected sound recording, it is not required to pay a public performance royalty to these copyright owners.[2] This contrasts with digital broadcast platforms (e.g., cable, satellite, or the internet), which are required by federal law to pay public performance royalties to the performing artists, musicians, and other copyright owners of the sound recordings.[3] As a

[1] Specifically, the Copyright Act defines "sound recordings" as "works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects, such as disks, tapes, or other phonorecords, in which they are embodied." 17 U.S.C. § 101. The Copyright Act does not define a "musical work," but for registration purposes, the Copyright Office defines "musical works" as "original works of authorship consisting of music and any accompanying words." COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES, 3rd ed. § 802.01.

[2] *See* 17 U.S.C. § 114(d)(1). Instead, the station pays a public performance royalty only to the copyright owners of the underlying musical work—usually the composer/songwriter or music publisher who has a public performance right to that work. 17 U.S.C. § 106.

[3] Like analog broadcasts, the digital broadcast by means of "high-definition radio" (HD-radio) technology by a terrestrial radio station is exempt under current law from paying a public per-

result, satellite radio and digital streaming services are at a competitive disadvantage to terrestrial radio stations. Additionally, American singers, musicians, and producers fail to receive millions of dollars in pay when terrestrial radio stations broadcast their creative works without compensation.

H.R. 4130 corrects this unfairness by establishing that a copyright owner's public performance right to a sound recording encompasses an "audio transmission"—rather than merely a "digital audio transmission," as currently worded. The bill defines an "audio transmission" as "a transmission of a sound recording, whether in digital, analog, or other format." By expanding the scope of existing public performance rights in sound recordings to all audio transmissions, the bill requires terrestrial radio stations—like digital broadcast platforms—to secure a license to publicly broadcast a copyright-protected sound recording.

Under the bill, terrestrial radio stations will use the same royalty payment system that satellite radio and digital streaming services already use—i.e., an existing non-profit licensing collective that is required to split the public performance royalty among the copyright owners. The Copyright Royalty Board sets, and periodically resets, the royalty rate. H.R. 4130 specifies that, when determining the royalty rate, the Board must base its decision on economic, competitive, and programming information presented by the parties, including whether the radio station's service in broadcasting the sound recording enhances the copyright owners' other streams of revenue.

The bill also protects certain small terrestrial radio stations (and the owners of those stations) by excluding radio stations that fall beneath certain revenue thresholds from the Board-established royalty rate. These excluded terrestrial radio stations will instead pay yearly small flat fees for a license to publicly perform copyright-protected sound recordings. Specifically, the bill establishes an affordable, predictable annual fee that allows these small terrestrial radio stations to play unlimited music: $10/year for stations earning less than $100,000/year, $100/year for public broadcast stations earning $100,000 to $1,500,000, and $500/year for other broadcast stations earning $100,000 to $1,500,000, unless they are owned by a parent company making over $10 million/year.

Representatives Ted Deutch (D–FL) and Darrell E. Issa (R–CA) introduced H.R. 4130 on June 24, 2021, with Chairman Jerrold Nadler (D–NY), Rep. Tom McClintock (R–CA), Rep. Karen Bass (D–CA), Rep. Diana Harshbarger (R–TN), and Rep. Judy Chu (D–CA) as original cosponsors. Following Rep. Deutch's departure from the House, Chairman Nadler assumed first sponsorship of H.R. 4130 on November 16, 2022, via unanimous consent.

Background and Need for the Legislation

1. History of public performance rights

Article I, Section 8 of the Constitution grants Congress the power "[t]o promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to

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formance royalty to sound recording owners. When "simulcasting" terrestrial radio signals via the internet though, terrestrial radio stations are subject to the payment of public performance royalties to sound recording owners under 17 U.S.C. § 114.

their respective writings and discoveries."[4] Congress first established copyright protection in sound recordings in 1971 when it granted the owners of such copyrights the right to control the reproduction, distribution, and adaptation of their works.[5] Congress did not grant copyright owners the right to control the "public performance"[6] of their sound recordings at the time, because it believed that possession of the three aforementioned rights would adequately compensate sound recording copyright owners.[7]

Controversy has always existed over whether the "bundle of rights" to a sound recording should include a public performance right. In a 1978 report, the Register of Copyrights recommended that Congress add a sound recording performance right. The Register predicted that new "technological developments could well cause substantial changes in existing systems for public delivery of sound recordings . . . . [and] [i]n that event, it [would be] . . . possible that a performance right would become the major source of income from, and incentive to, the creation of such works."[8]

2. Creation of the digital public performance right for sound recordings

As the Register predicted, the growing popularity of the internet created an environment where the public performance of copyright-protected sound recordings became an important new source of both revenue and potential piracy. Congress responded to the introduction of "[s]atellite and digital technologies [that made] possible the celestial jukebox, music on demand, and pay-per-listen services"[9] on the internet by amending the Copyright Act to create a public performance right for digital audio transmissions in the Digital Performance Right in Sound Recordings Act of 1995.

Specifically, Congress amended Section 106 of the Copyright Act to provide an exclusive right to perform copyrighted sound recordings publicly by means of a "digital audio transmission."[10] The Act exempted "nonsubscription" transmissions and retransmissions of sound recordings such as television, radio, and business establishment broadcasts, so as not to upset the current balance in the industry.[11] For "subscription transmissions," the 1995 Act created a statutory licensing scheme under 17 U.S.C. § 114 that mandated the transmitter pay a royalty and comply with other require-

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[4] US CONST. art I, § 8, cl. 8.

[5] For a comprehensive discussion of the history of public performance rights, see DANA A. SCHERER, CONG. RSCH. SERV. R43984, MONEY FOR SOMETHING: MUSIC LICENSING IN THE 21ST CENTURY 24–31 (2021) [hereinafter MONEY FOR SOMETHING].

[6] "To perform or display a work 'publicly' means—(1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or (2) to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times." 17 U.S.C. § 101.

[7] *See* CONG. RSCH. SERV., COPYRIGHT LICENSING IN MUSIC DISTRIBUTION, REPRODUCTION, AND PUBLIC PERFORMANCE 9 (2015).

[8] Register of Copyrights, *Report on Performance Right in Sound Recordings*, H.R. Doc. No. 15, 95th Cong. (2d Sess. 1978).

[9] S. Rep. No. 104–128 (1995).

[10] A digital audio transmission is a "transmission in whole or in part in a digital or other non-analog format." 17 U.S.C. § 101.

[11] 17 U.S.C. § 114(d)(1). *See, e.g.,* S. REP. NO. 104–128, at 15 (1995) explaining, "The sale of many sound recordings and the careers of many performers have benefitted from . . . free over-the-air broadcasting. [. . .] This legislation should do nothing to change or jeopardize the mutually beneficial economic relationship between the recording and traditional broadcast industries."

ments.[12] For "interactive" transmissions, the 1995 Act did not include a statutory licensing mechanism and instead required "interactive" transmission services to directly contract with the sound recording copyright owners, thus leaving that licensing largely to the free market.[13]

The Digital Millennium Copyright Act of 1998 (DMCA) amended the types of transmissions included in the sound recording public performance right to include noninteractive, nonsubscription internet radio broadcasters, but continued to exclude nonsubscription terrestrial radio broadcasts (AM/FM radio).[14] While the Music Modernization Act of 2018 (MMA) modernized many aspects of the music licensing processes, it left untouched the sound recording public performance right for terrestrial radio broadcasts.[15]

3. Effect of disparate public performance rights on artist compensation

The music industry has continued to evolve since the passage of the MMA. The popularity of digital downloads has now declined dramatically, especially since the introduction of subscription-based music streaming services.[16] Consumers today increasingly choose to stream music; webcasting, digital subscription radio services, and music-streaming services constituted 82% of consumer spending in the recording industry in 2019, up from just 12% in 2011.[17]

That streaming services are available over the same devices as terrestrial radio broadcasts, however, raises concerns about the disparate treatment of artists when their works are broadcast over terrestrial radio versus satellite and internet radio.[18] This is especially true when, for example, a consumer listening to music in a car may perceive little difference between these types of platforms.[19] Recording artists argue that they are entitled to compensation from terrestrial radio stations in the same way they receive compensation from streaming services.[20] Artists and record labels calculate that they lose approximately $200 million yearly, even though large broadcasting corporations take in billions of dollars an annual advertising revenues.[21]

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[12] "A 'new subscription service' is a service that performs sound recordings by means of noninteractive subscription digital audio transmissions and that is not a preexisting subscription service or a preexisting satellite digital audio radio service." Subscribers pay for subscription services. 17 U.S.C. § 114(j)(8). These "other requirements" included: (1) not playing too many songs by one artist in close proximity, (2) not publishing a program schedule in advance, (3) not causing a listener's receiver equipment to switch from one channel to another in order to listen to more than one artist's songs in a row, and (4) including copyright management information for the music broadcast. 17 U.S.C. § 114(d)(2)(C).

[13] "An 'interactive service' is one that enables a member of the public to receive a transmission of a program specially created for the recipient, or on request, a transmission of a particular sound recording, whether or not as part of a program, which is selected by or on behalf of the recipient." 17 U.S.C. § 114(j)(7).

[14] *See* Matthew S. DelNero, *Long Overdue? An Exploration of the Status and Merit of a General Public Performance Right in Sound Recordings*, 51 J. COPYRIGHT SOC'Y U.S.A. 473, 487 (2004).

[15] MONEY FOR SOMETHING 10.

[16] *Id.* at 2.

[17] *Id.* at 3.

[18] UNITED STATES COPYRIGHT OFFICE, COPYRIGHT AND THE MUSIC MARKETPLACE, 87–88 (2015) [hereinafter COPYRIGHT AND THE MUSIC MARKETPLACE].

[19] *Id.* at 88 (noting information that automobile in-dash receivers are capable of receiving digital and analog transmissions of the same sound recording).

[20] *Id.* at 87–88.

[21] *Id.* at 88; *see also* Dianlyn Cenidoza, *The Clash Between Terrestrial and Digital Radio: Pinned by the Music Modernization Act*, 43 SEATTLE U. L. REV. 841, 855 (2020).

Moreover, because the Copyright Act does not provide a public performance right to terrestrial radio broadcasts, American recording artists do not receive public performance royalties when their sound recordings are played over the radio in foreign countries, even though virtually all other industrialized nations recognize some form of public performance right for sound recordings.[22] Indeed, the United States is among only a handful of nations (including Iran and North Korea) that do not recognize a performer's right to be paid for the broadcast of his or her music over the radio.[23] Recording artists in other industrialized countries receive royalties for their sound recordings played on the radio, but due to the lack of reciprocity, American recording artists do not have to be compensated for the terrestrial radio broadcast of their music abroad.[24] Given the popularity of American music world-wide, the amount of lost revenue is large. According to one estimate, American recording artists lose out on $70 100 million in royalties for performances of their copyrighted works abroad.[25]

Broadcasters have disputed this amount and point out that some countries send public performance royalties voluntarily.[26] But a new amendment to European law[27] currently being considered in the European Union would forbid EU countries that have voluntarily been sending American artists royalties from doing so going forward. The European Commission recently completed a "call for evidence" on the remuneration of music performers and record producers from non-EU countries for recorded music played in the EU from various stakeholders,[28] and is considering amending EU law to expressly mandate reciprocity—meaning that any amount currently sent to the United States would evaporate.[29]

Hearings

For the purposes of clause 3(c)(6)(A) of House rule XIII, the following hearing was used to consider H.R. 4130: On February 2, 2022, the Committee held a legislative hearing entitled, "Respecting Artists with the American Music Fairness Act," to examine both the benefits and drawbacks of extending the public performance right to all audio sound transmissions. The hearing included witnesses representing recording artists, musicians, producers, and

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[22] COPYRIGHT AND THE MUSIC MARKETPLACE, 89 (2015).

[23] *Id.* at 89.

[24] *Id.; see also* John R. Kettle III, *Dancing to the Beat of a Different Drummer: Global Harmonization—And the Need for Congress To Get in Step with a Full Public Performance Right for Sound Recordings*, 12 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 1041, 1075 (2002) ("The foreign countries that collect public performance royalties under their laws only make such royalties available to nationals of member countries that provide an equivalent right. Since the United States does not provide a full public performance right for sound recordings, American recording artists and record labels are not entitled to receive the millions of dollars in foreign royalties collected that would otherwise be payable.").

[25] COPYRIGHT AND THE MUSIC MARKETPLACE, 89 (2015).

[26] *Id.* at 90.

[27] In the European Union, Article 8(2) of the Rental and Lending Right Directive (2006/115/EC) governs the remuneration right for performers and record producers when their sound recordings are broadcast to the public and played in public places.

[28] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13530-Remuneration-of-music-performers-and-record-producers-from-third-non-EU-countries-for-recorded-music-played-in-the-EU_en.

[29] One European advocacy group, the Independent Music Companies Association (IMPALA), estimates that "125m euros per annum are at stake"—the amount the group expects to the transferred from Europe to American artists should the amendment pass. *See European Performance Income & US Repertoire*, available at: https://www.impalamusic.org/european-performance-income-us-repertoire/.

broadcasters.[30] The witnesses were: (1) Gloria Estefan, Singer, Songwriter, Musician, and Recording Artist; (2) Barry Massarsky, Partner, Co-Leader, Music Economics and Valuation Services Practice, Citrin Cooperman Advisors LLC; (3) Lawrence "Boo" Mitchell, Engineer, Producer, Musician, and Owner, Royal Studios; (4) Curtis LeGeyt, President and CEO, National Association of Broadcasters; and (5) Dave Pomeroy, Bassist, Writer, and Producer; President, Nashville Musicians Association, AFM Local 257; International Executive Officer, American Federation of Musicians.

Committee Consideration

On December 7, 2022, the Committee met in open session and ordered the bill, H.R. 4130, favorably reported, as amended, by a voice vote, a quorum being present.

Committee Votes

In compliance with clause 3(b) of House rule XIII, no rollcall votes occurred during the Committee's consideration of H.R. 4130.

Committee Oversight Findings

In compliance with clause 3(c)(1) of House rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of House rule X, are incorporated in the descriptive portions of this report.

Committee Estimate of Budgetary Effects

Pursuant to clause 3(d)(1) of House rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

New Budget Authority and Congressional Budget Office Cost Estimate

Pursuant to clause 3(c)(2) of House rule XIII and section 308(a) of the Congressional Budget Act of 1974, and pursuant to clause (3)(c)(3) of House rule XIII and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received from the Director of the Congressional Budget Office a budgetary analysis and a cost estimate of this bill.

Duplication of Federal Programs

Pursuant to clause 3(c)(5) of House rule XIII, no provision of H.R. 4130 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of House rule XIII, H.R. 4130 would amend the Copyright Act of 1976 (17

[30] *Respecting Artists with the American Music Fairness Act: Hearing on H.R. 4130 Before the U.S. House of Representatives Judiciary Committee*, 117th Cong. (2022), available at https://judiciary.house.gov/calendar/eventsingle.aspx?EventID=4835.

U.S.C.) to establish a terrestrial broadcast performance right for sound recordings.

Advisory on Earmarks

In accordance with clause 9 of House rule XXI, H.R. 4130 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of House rule XXI.

Section-by-Section Analysis

The following discussion describes the bill as reported by the Committee.

Section 1. Short Title; Table of Contents

Section 1 establishes a short title and table of contents.

Section 2. Equitable Treatment for Terrestrial Broadcasts and Internet Services

Section 2(a) establishes that there is an exclusive right for the audio transmission of sound recordings by removing the current limitation to "digital" audio transmission in 17 U.S.C. § 106(6).

Section 2(b) makes changes to allow for the licensing of this expanded exclusive right under the same statutory license established in 17 U.S.C. § 114 that is currently used by internet and satellite radio and makes conforming amendments throughout the rest of title 17. (Under § 114, the collected royalties are distributed so that 50% goes to the copyright owner, 45% goes to the featured artist, and 2.5% goes to each of two entities, one representing nonfeatured musicians and one representing nonfeatured vocalists.)

Section 3. Timing of Proceedings Under Sections 112(e) and 114(f)

Section 3 provides that the Copyright Royalty Board shall begin proceedings immediately to establish the appropriate public performance royalty rate for terrestrial radio, and that that rate shall apply to transmissions made between the date of enactment and December 31, 2028, though payment is not due until the royalty rate is established. New proceedings shall occur every five years.

Section 4. Special Protection for Small Broadcasters

Section 4 establishes separate yearly rates for certain smaller radio stations. For broadcast stations that generated less than $100,000 in revenue in the proceeding calendar year, the yearly fee is $10. For public broadcast stations that generated between $100,000 to $1,500,000 in the proceeding calendar year, the yearly fee is $100. For all other broadcast stations that generated between $100,000 to $1,500,000 in the proceeding calendar year, the yearly fee is $500. These exceptions do not apply to any station controlled or owned by another entity whose revenue, combined with that station's revenue, exceeds $10,000,000. These yearly royalty rates are not admissible as evidence or to be taken into account in any royalty rate proceeding for the public performance of sound recordings.

Section 5. Distribution of Certain Royalties

Section 5 establishes that if a copyright holder directly contracts with broadcast stations to license terrestrial performance rights (rather than the broadcast station relying on the statutory license of § 114), the broadcast station must still pay 50% of the direct license payment to the entity administering the § 114 royalty to be distributed to artists (where it is split as it would be under the § 114 license so that the featured artist receives 45% and entities representing nonfeatured musicians and nonfeatured vocalists each receive 2.5%).

Section 6. No Harmful Effects on Songwriters

Section 6 provides that nothing in this Act shall adversely affect the public performance rights or royalties to be paid to songwriters or owners of musical works copyrights.

Section 7. Value of Promotion Taken into Account

Section 7 provides that in determining the royalty rate for terrestrial broadcast public performance of sound recordings, the Copyright Royalty Board may consider the promotional value conferred by the broadcast station's playing of the sound recording.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

TITLE 17, UNITED STATES CODE

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CHAPTER 1—SUBJECT MATTER AND SCOPE OF COPYRIGHT

§ 101. Definitions

Except as otherwise provided in this title, as used in this title, the following terms and their variant forms mean the following:

An "anonymous work" is a work on the copies or phonorecords of which no natural person is identified as author.

An "architectural work" is the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design, but does not include individual standard features.

An "audio transmission" is a transmission of a sound recording, whether in a digital, analog, or other format. This term does not include the transmission of any audiovisual work.

"Audiovisual works" are works that consist of a series of related images which are intrinsically intended to be shown by the use of machines, or devices such as projectors, viewers, or

electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied.

The "Berne Convention" is the Convention for the Protection of Literary and Artistic Works, signed at Berne, Switzerland, on September 9, 1886, and all acts, protocols, and revisions thereto.

The "best edition" of a work is the edition, published in the United States at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes.

A person's "children" are that person's immediate offspring, whether legitimate or not, and any children legally adopted by that person.

A "collective work" is a work, such as a periodical issue, anthology, or encyclopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole.

A "compilation" is a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. The term "compilation" includes collective works.

A "computer program" is a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result.

"Copies" are material objects, other than phonorecords, in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term "copies" includes the material object, other than a phonorecord, in which the work is first fixed.

"Copyright owner", with respect to any one of the exclusive rights comprised in a copyright, refers to the owner of that particular right.

A "Copyright Royalty Judge" is a Copyright Royalty Judge appointed under section 802 of this title, and includes any individual serving as an interim Copyright Royalty Judge under such section.

A work is "created" when it is fixed in a copy or phonorecord for the first time; where a work is prepared over a period of time, the portion of it that has been fixed at any particular time constitutes the work as of that time, and where the work has been prepared in different versions, each version constitutes a separate work.

A "derivative work" is a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a "derivative work".

A "device", "machine", or "process" is one now known or later developed.

A "digital transmission" is a transmission in whole or in part in a digital or other non-analog format.

To "display" a work means to show a copy of it, either directly or by means of a film, slide, television image, or any other device or process or, in the case of a motion picture or other audiovisual work, to show individual images nonsequentially.

An "establishment" is a store, shop, or any similar place of business open to the general public for the primary purpose of selling goods or services in which the majority of the gross square feet of space that is nonresidential is used for that purpose, and in which nondramatic musical works are performed publicly.

The term "financial gain" includes receipt, or expectation of receipt, of anything of value, including the receipt of other copyrighted works.

A work is "fixed" in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. A work consisting of sounds, images, or both, that are being transmitted, is "fixed" for purposes of this title if a fixation of the work is being made simultaneously with its transmission.

A "food service or drinking establishment" is a restaurant, inn, bar, tavern, or any other similar place of business in which the public or patrons assemble for the primary purpose of being served food or drink, in which the majority of the gross square feet of space that is nonresidential is used for that purpose, and in which nondramatic musical works are performed publicly.

The "Geneva Phonograms Convention" is the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, concluded at Geneva, Switzerland, on October 29, 1971.

The "gross square feet of space" of an establishment means the entire interior space of that establishment, and any adjoining outdoor space used to serve patrons, whether on a seasonal basis or otherwise.

The terms "including" and "such as" are illustrative and not limitative.

An "international agreement" is—

(1) the Universal Copyright Convention;

(2) the Geneva Phonograms Convention;

(3) the Berne Convention;

(4) the WTO Agreement;

(5) the WIPO Copyright Treaty;

(6) the WIPO Performances and Phonograms Treaty; and

(7) any other copyright treaty to which the United States is a party.

A "joint work" is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.

"Literary works" are works, other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, film, tapes, disks, or cards, in which they are embodied.

The term "motion picture exhibition facility" means a movie theater, screening room, or other venue that is being used primarily for the exhibition of a copyrighted motion picture, if such exhibition is open to the public or is made to an assembled group of viewers outside of a normal circle of a family and its social acquaintances.

"Motion pictures" are audiovisual works consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

To "perform" a work means to recite, render, play, dance, or act it, either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it audible.

A "performing rights society" is an association, corporation, or other entity that licenses the public performance of nondramatic musical works on behalf of copyright owners of such works, such as the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc.

"Phonorecords" are material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term "phonorecords" includes the material object in which the sounds are first fixed.

"Pictorial, graphic, and sculptural works" include two-dimensional and three-dimensional works of fine, graphic, and applied art, photographs, prints and art reproductions, maps, globes, charts, diagrams, models, and technical drawings, including architectural plans. Such works shall include works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned; the design of a useful article, as defined in this section, shall be considered a pictorial, graphic, or sculptural work only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.

For purposes of section 513, a "proprietor" is an individual, corporation, partnership, or other entity, as the case may be, that owns an establishment or a food service or drinking establishment, except that no owner or operator of a radio or television station licensed by the Federal Communications Commission, cable system or satellite carrier, cable or satellite carrier service or programmer, provider of online services or network access or the operator of facilities therefor, telecommunications company, or any other such audio or audiovisual serv-

ice or programmer now known or as may be developed in the future, commercial subscription music service, or owner or operator of any other transmission service, shall under any circumstances be deemed to be a proprietor.

A "pseudonymous work" is a work on the copies or phonorecords of which the author is identified under a fictitious name.

"Publication" is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication. A public performance or display of a work does not of itself constitute publication.

To perform or display a work "publicly" means—

(1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or

(2) to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.

"Registration", for purposes of sections 205(c)(2), 405, 406, 410(d), 411, 412, and 506(e), means a registration of a claim in the original or the renewed and extended term of copyright.

"Sound recordings" are works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects, such as disks, tapes, or other phonorecords, in which they are embodied.

"State" includes the District of Columbia and the Commonwealth of Puerto Rico, and any territories to which this title is made applicable by an Act of Congress.

A "transfer of copyright ownership" is an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect, but not including a nonexclusive license.

A "transmission program" is a body of material that, as an aggregate, has been produced for the sole purpose of transmission to the public in sequence and as a unit.

To "transmit" a performance or display is to communicate it by any device or process whereby images or sounds are received beyond the place from which they are sent.

A "treaty party" is a country or intergovernmental organization other than the United States that is a party to an international agreement.

The "United States", when used in a geographical sense, comprises the several States, the District of Columbia and the Commonwealth of Puerto Rico, and the organized territories under the jurisdiction of the United States Government.

For purposes of section 411, a work is a "United States work" only if—

(1) in the case of a published work, the work is first published—

(A) in the United States;

(B) simultaneously in the United States and another treaty party or parties, whose law grants a term of copyright protection that is the same as or longer than the term provided in the United States;

(C) simultaneously in the United States and a foreign nation that is not a treaty party; or

(D) in a foreign nation that is not a treaty party, and all of the authors of the work are nationals, domiciliaries, or habitual residents of, or in the case of an audiovisual work legal entities with headquarters in, the United States;

(2) in the case of an unpublished work, all the authors of the work are nationals, domiciliaries, or habitual residents of the United States, or, in the case of an unpublished audiovisual work, all the authors are legal entities with headquarters in the United States; or

(3) in the case of a pictorial, graphic, or sculptural work incorporated in a building or structure, the building or structure is located in the United States.

A "useful article" is an article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information. An article that is normally a part of a useful article is considered a "useful article".

The author's "widow" or "widower" is the author's surviving spouse under the law of the author's domicile at the time of his or her death, whether or not the spouse has later remarried.

The "WIPO Copyright Treaty" is the WIPO Copyright Treaty concluded at Geneva, Switzerland, on December 20, 1996.

The "WIPO Performances and Phonograms Treaty" is the WIPO Performances and Phonograms Treaty concluded at Geneva, Switzerland, on December 20, 1996.

A "work of visual art" is—

(1) a painting, drawing, print, or sculpture, existing in a single copy, in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author, or, in the case of a sculpture, in multiple cast, carved, or fabricated sculptures of 200 or fewer that are consecutively numbered by the author and bear the signature or other identifying mark of the author; or

(2) a still photographic image produced for exhibition purposes only, existing in a single copy that is signed by the author, or in a limited edition of 200 copies or fewer that are signed and consecutively numbered by the author.

A work of visual art does not include—

(A)(i) any poster, map, globe, chart, technical drawing, diagram, model, applied art, motion picture or other audiovisual work, book, magazine, newspaper, periodical, data base, electronic information service, electronic publication, or similar publication;

(ii) any merchandising item or advertising, promotional, descriptive, covering, or packaging material or container;

(iii) any portion or part of any item described in clause (i) or (ii);

(B) any work made for hire; or

(C) any work not subject to copyright protection under this title.

A "work of the United States Government" is a work prepared by an officer or employee of the United States Government as part of that person's official duties.

A "work made for hire" is—

(1) a work prepared by an employee within the scope of his or her employment; or

(2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. For the purpose of the foregoing sentence, a "supplementary work" is a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes, and an "instructional text" is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.

In determining whether any work is eligible to be considered a work made for hire under paragraph (2), neither the amendment contained in section 1011(d) of the Intellectual Property and Communications Omnibus Reform Act of 1999, as enacted by section 1000(a)(9) of Public Law 106–113, nor the deletion of the words added by that amendment—

(A) shall be considered or otherwise given any legal significance, or

(B) shall be interpreted to indicate congressional approval or disapproval of, or acquiescence in, any judicial determination,

by the courts or the Copyright Office. Paragraph (2) shall be interpreted as if both section 2(a)(1) of the Work Made For Hire and Copyright Corrections Act of 2000 and section 1011(d) of the Intellectual Property and Communications Omnibus Reform Act of 1999, as enacted by section 1000(a)(9) of Public Law 106–113, were never enacted, and without regard to any inaction or awareness by the Congress at any time of any judicial determinations.

The terms "WTO Agreement" and "WTO member country" have the meanings given those terms in paragraphs (9) and (10), respectively, of section 2 of the Uruguay Round Agreements Act.

* * * * * * *

§ 106. Exclusive rights in copyrighted works

Subject to sections 107 through 122, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

(1) to reproduce the copyrighted work in copies or phonorecords;

(2) to prepare derivative works based upon the copyrighted work;

(3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

(4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;

(5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and

[(6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.**]**

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

* * * * * * *

§ 112. Limitations on exclusive rights: Ephemeral recordings

(a)(1) Notwithstanding the provisions of section 106, and except in the case of a motion picture or other audiovisual work, it is not an infringement of copyright for a transmitting organization entitled to transmit to the public a performance or display of a work, under a license, including a statutory license under section 114(f), or transfer of the copyright or under the limitations on exclusive rights in sound recordings specified by section 114(a), or for a transmitting organization that is a broadcast radio or television station licensed as such by the Federal Communications Commission and that makes a broadcast transmission of a performance of a sound recording in a digital format on a nonsubscription basis, to make no more than one copy or phonorecord of a particular transmission program embodying the performance or display, if—

(A) the copy or phonorecord is retained and used solely by the transmitting organization that made it, and no further copies or phonorecords are reproduced from it; and

(B) the copy or phonorecord is used solely for the transmitting organization's own transmissions within its local service area, or for purposes of archival preservation or security; and

(C) unless preserved exclusively for archival purposes, the copy or phonorecord is destroyed within six months from the date the transmission program was first transmitted to the public.

(2) In a case in which a transmitting organization entitled to make a copy or phonorecord under paragraph (1) in connection with the transmission to the public of a performance or display of a work is prevented from making such copy or phonorecord by rea-

son of the application by the copyright owner of technical measures that prevent the reproduction of the work, the copyright owner shall make available to the transmitting organization the necessary means for permitting the making of such copy or phonorecord as permitted under that paragraph, if it is technologically feasible and economically reasonable for the copyright owner to do so. If the copyright owner fails to do so in a timely manner in light of the transmitting organization's reasonable business requirements, the transmitting organization shall not be liable for a violation of section 1201(a)(1) of this title for engaging in such activities as are necessary to make such copies or phonorecords as permitted under paragraph (1) of this subsection.

(b) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a governmental body or other nonprofit organization entitled to transmit a performance or display of a work, under section 110(2) or under the limitations on exclusive rights in sound recordings specified by section 114(a), to make no more than thirty copies or phonorecords of a particular transmission program embodying the performance or display, if—

(1) no further copies or phonorecords are reproduced from the copies or phonorecords made under this clause; and

(2) except for one copy or phonorecord that may be preserved exclusively for archival purposes, the copies or phonorecords are destroyed within seven years from the date the transmission program was first transmitted to the public.

(c) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a governmental body or other nonprofit organization to make for distribution no more than one copy or phonorecord, for each transmitting organization specified in clause (2) of this subsection, of a particular transmission program embodying a performance of a nondramatic musical work of a religious nature, or of a sound recording of such a musical work, if—

(1) there is no direct or indirect charge for making or distributing any such copies or phonorecords; and

(2) none of such copies or phonorecords is used for any performance other than a single transmission to the public by a transmitting organization entitled to transmit to the public a performance of the work under a license or transfer of the copyright; and

(3) except for one copy or phonorecord that may be preserved exclusively for archival purposes, the copies or phonorecords are all destroyed within one year from the date the transmission program was first transmitted to the public.

(d) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a governmental body or other nonprofit organization entitled to transmit a performance of a work under section 110(8) to make no more than ten copies or phonorecords embodying the performance, or to permit the use of any such copy or phonorecord by any governmental body or nonprofit organization entitled to transmit a performance of a work under section 110(8), if—

(1) any such copy or phonorecord is retained and used solely by the organization that made it, or by a governmental body or nonprofit organization entitled to transmit a performance of

a work under section 110(8), and no further copies or phonorecords are reproduced from it; and

(2) any such copy or phonorecord is used solely for transmissions authorized under section 110(8), or for purposes of archival preservation or security; and

(3) the governmental body or nonprofit organization permitting any use of any such copy or phonorecord by any governmental body or nonprofit organization under this subsection does not make any charge for such use.

(e) STATUTORY LICENSE.—(1) A transmitting organization entitled to transmit to the public a performance of a sound recording under the limitation on exclusive rights specified by section 114(d)(1)(C)(iv) or under a statutory license in accordance with section 114(f) is entitled to a statutory license, under the conditions specified by this subsection, to make no more than 1 phonorecord of the sound recording (unless the terms and conditions of the statutory license allow for more), if the following conditions are satisfied:

(A) The phonorecord is retained and used solely by the transmitting organization that made it, and no further phonorecords are reproduced from it.

(B) The phonorecord is used solely for the transmitting organization's own transmissions originating in the United States under a statutory license in accordance with section 114(f) or the limitation on exclusive rights specified by section 114(d)(1)(C)(iv).

(C) Unless preserved exclusively for purposes of archival preservation, the phonorecord is destroyed within 6 months from the date the sound recording was first transmitted to the public using the phonorecord.

(D) Phonorecords of the sound recording have been distributed to the public under the authority of the copyright owner or the copyright owner authorizes the transmitting entity to transmit the sound recording, and the transmitting entity makes the phonorecord under this subsection from a phonorecord lawfully made and acquired under the authority of the copyright owner.

(2) Notwithstanding any provision of the antitrust laws, any copyright owners of sound recordings and any transmitting organizations entitled to a statutory license under this subsection may negotiate and agree upon royalty rates and license terms and conditions for making phonorecords of such sound recordings under this section and the proportionate division of fees paid among copyright owners, and may designate common agents to negotiate, agree to, pay, or receive such royalty payments.

(3) Proceedings under chapter 8 shall determine reasonable rates and terms of royalty payments for the activities specified by paragraph (1) during the 5-year period beginning on January 1 of the second year following the year in which the proceedings are to be commenced, or such other period as the parties may agree. Such rates shall include a minimum fee for each type of service offered by transmitting organizations. Any copyright owners of sound recordings or any transmitting organizations entitled to a statutory license under this subsection may submit to the Copyright Royalty Judges licenses covering such activities with respect to such sound

recordings. The parties to each proceeding shall bear their own costs.

(4) The schedule of reasonable rates and terms determined by the Copyright Royalty Judges shall, subject to paragraph (5), be binding on all copyright owners of sound recordings and transmitting organizations entitled to a statutory license under this subsection during the 5-year period specified in paragraph (3), or such other period as the parties may agree. Such rates shall include a minimum fee for each type of service offered by transmitting organizations. The Copyright Royalty Judges shall establish rates that most clearly represent the fees that would have been negotiated in the marketplace between a willing buyer and a willing seller. In determining such rates and terms, the Copyright Royalty Judges shall base their decision on economic, competitive, and programming information presented by the parties, including—

(A) whether use of the service may substitute for or may promote the sales of phonorecords or otherwise interferes with or enhances the copyright owner's traditional streams of revenue; and

(B) the relative roles of the copyright owner and the transmitting organization in the copyrighted work and the service made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, and risk.

In establishing such rates and terms, the Copyright Royalty Judges may consider the rates and terms under voluntary license agreements described in paragraphs (2) and (3). The Copyright Royalty Judges shall also establish requirements by which copyright owners may receive reasonable notice of the use of their sound recordings under this section, and under which records of such use shall be kept and made available by transmitting organizations entitled to obtain a statutory license under this subsection.

(5) License agreements voluntarily negotiated at any time between 1 or more copyright owners of sound recordings and 1 or more transmitting organizations entitled to obtain a statutory license under this subsection shall be given effect in lieu of any decision by the Librarian of Congress or determination by the Copyright Royalty Judges.

(6)(A) Any person who wishes to make a phonorecord of a sound recording under a statutory license in accordance with this subsection may do so without infringing the exclusive right of the copyright owner of the sound recording under section 106(1)—

(i) by complying with such notice requirements as the Copyright Royalty Judges shall prescribe by regulation and by paying royalty fees in accordance with this subsection; or

(ii) if such royalty fees have not been set, by agreeing to pay such royalty fees as shall be determined in accordance with this subsection.

(B) Any royalty payments in arrears shall be made on or before the 20th day of the month next succeeding the month in which the royalty fees are set.

(7) If a transmitting organization entitled to make a phonorecord under this subsection is prevented from making such phonorecord by reason of the application by the copyright owner of technical measures that prevent the reproduction of the sound recording, the

copyright owner shall make available to the transmitting organization the necessary means for permitting the making of such phonorecord as permitted under this subsection, if it is technologically feasible and economically reasonable for the copyright owner to do so. If the copyright owner fails to do so in a timely manner in light of the transmitting organization's reasonable business requirements, the transmitting organization shall not be liable for a violation of section 1201(a)(1) of this title for engaging in such activities as are necessary to make such phonorecords as permitted under this subsection.

(8) Nothing in this subsection annuls, limits, impairs, or otherwise affects in any way the existence or value of any of the exclusive rights of the copyright owners in a sound recording, except as otherwise provided in this subsection, or in a musical work, including the exclusive rights to reproduce and distribute a sound recording or musical work, including by means of a digital phonorecord delivery, under sections 106(1), 106(3), and 115, and the right to perform publicly a sound recording or musical work, including by means of ⟦a digital audio transmission⟧ *an audio transmission*, under sections 106(4) and 106(6).

(f)(1) Notwithstanding the provisions of section 106, and without limiting the application of subsection (b), it is not an infringement of copyright for a governmental body or other nonprofit educational institution entitled under section 110(2) to transmit a performance or display to make copies or phonorecords of a work that is in digital form and, solely to the extent permitted in paragraph (2), of a work that is in analog form, embodying the performance or display to be used for making transmissions authorized under section 110(2), if—

(A) such copies or phonorecords are retained and used solely by the body or institution that made them, and no further copies or phonorecords are reproduced from them, except as authorized under section 110(2); and

(B) such copies or phonorecords are used solely for transmissions authorized under section 110(2).

(2) This subsection does not authorize the conversion of print or other analog versions of works into digital formats, except that such conversion is permitted hereunder, only with respect to the amount of such works authorized to be performed or displayed under section 110(2), if—

(A) no digital version of the work is available to the institution; or

(B) the digital version of the work that is available to the institution is subject to technological protection measures that prevent its use for section 110(2).

(g) The transmission program embodied in a copy or phonorecord made under this section is not subject to protection as a derivative work under this title except with the express consent of the owners of copyright in the preexisting works employed in the program.

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§ 114. Scope of exclusive rights in sound recordings

(a) The exclusive rights of the owner of copyright in a sound recording are limited to the rights specified by clauses (1), (2), (3) and

(6) of section 106, and do not include any right of performance under section 106(4).

(b) The exclusive right of the owner of copyright in a sound recording under clause (1) of section 106 is limited to the right to duplicate the sound recording in the form of phonorecords or copies that directly or indirectly recapture the actual sounds fixed in the recording. The exclusive right of the owner of copyright in a sound recording under clause (2) of section 106 is limited to the right to prepare a derivative work in which the actual sounds fixed in the sound recording are rearranged, remixed, or otherwise altered in sequence or quality. The exclusive rights of the owner of copyright in a sound recording under clauses (1) and (2) of section 106 do not extend to the making or duplication of another sound recording that consists entirely of an independent fixation of other sounds, even though such sounds imitate or simulate those in the copyrighted sound recording. The exclusive rights of the owner of copyright in a sound recording under clauses (1), (2), and (3) of section 106 do not apply to sound recordings included in educational television and radio programs (as defined in section 397 of title 47) distributed or transmitted by or through public broadcasting entities (as defined by section 118(f)): *Provided*, That copies or phonorecords of said programs are not commercially distributed by or through public broadcasting entities to the general public.

(c) This section does not limit or impair the exclusive right to perform publicly, by means of a phonorecord, any of the works specified by section 106(4).

(d) LIMITATIONS ON EXCLUSIVE RIGHT.—Notwithstanding the provisions of section 106(6)—

(1) EXEMPT TRANSMISSIONS AND RETRANSMISSIONS.—The performance of a sound recording publicly by means of [a digital] *an* audio transmission, other than as a part of an interactive service, is not an infringement of section 106(6) if the performance is part of—

[(A) a nonsubscription broadcast transmission;]

[(B)] *(A)* a retransmission of a [nonsubscription] *licensed nonsubscription* broadcast transmission: *Provided*, That, in the case of a retransmission of a radio station's broadcast transmission—

(i) the radio station's broadcast transmission is not willfully or repeatedly retransmitted more than a radius of 150 miles from the site of the radio broadcast transmitter, however—

(I) the 150 mile limitation under this clause shall not apply when a [nonsubscription] *licensed nonsubscription* broadcast transmission by a radio station licensed by the Federal Communications Commission is retransmitted on a nonsubscription basis by a terrestrial broadcast station, terrestrial translator, or terrestrial repeater licensed by the Federal Communications Commission; and

(II) in the case of a subscription retransmission of a [nonsubscription] *licensed nonsubscription* broadcast retransmission covered by subclause (I), the 150 mile radius shall be measured from the transmitter site of such broadcast retransmitter;

(ii) the retransmission is of radio station broadcast transmissions that are—

(I) obtained by the retransmitter over the air;

(II) not electronically processed by the retransmitter to deliver separate and discrete signals; and

(III) retransmitted only within the local communities served by the retransmitter;

(iii) the radio station's broadcast transmission was being retransmitted to cable systems (as defined in section 111(f)) by a satellite carrier on January 1, 1995, and that retransmission was being retransmitted by cable systems as a separate and discrete signal, and the satellite carrier obtains the radio station's broadcast transmission in an analog format: *Provided*, That the broadcast transmission being retransmitted may embody the programming of no more than one radio station; or

(iv) the radio station's broadcast transmission is made by a noncommercial educational broadcast station funded on or after January 1, 1995, under section 396(k) of the Communications Act of 1934 (47 U.S.C. 396(k)), consists solely of noncommercial educational and cultural radio programs, and the retransmission, whether or not simultaneous, is a ⟦nonsubscription⟧ *licensed nonsubscription* terrestrial broadcast retransmission; or

⟦(C)⟧ *(B)* a transmission that comes within any of the following categories—

(i) a prior or simultaneous transmission incidental to an exempt transmission, such as a feed received by and then retransmitted by an exempt transmitter: *Provided*, That such incidental transmissions do not include any subscription transmission directly for reception by members of the public;

(ii) a transmission within a business establishment, confined to its premises or the immediately surrounding vicinity;

(iii) a retransmission by any retransmitter, including a multichannel video programming distributor as defined in section 602(12) of the Communications Act of 1934 (47 U.S.C. 522(12)), of a transmission by a transmitter licensed to publicly perform the sound recording as a part of that transmission, if the retransmission is simultaneous with the licensed transmission and authorized by the transmitter; or

(iv) a transmission to a business establishment for use in the ordinary course of its business: *Provided*, That the business recipient does not retransmit the transmission outside of its premises or the immediately surrounding vicinity, and that the transmission does not exceed the sound recording performance complement. Nothing in this clause shall limit the scope of the exemption in clause (ii).

(2) STATUTORY LICENSING OF CERTAIN TRANSMISSIONS.—The performance of a sound recording publicly by means of a [subscription digital] *subscription* audio transmission not exempt under paragraph (1), an eligible nonsubscription transmission, or a transmission not exempt under paragraph (1) that is made by a preexisting satellite digital audio radio service shall be subject to statutory licensing, in accordance with subsection (f) if—

(A)(i) the transmission is not part of an interactive service;

(ii) except in the case of a transmission to a business establishment, the transmitting entity does not automatically and intentionally cause any device receiving the transmission to switch from one program channel to another; and

(iii) except as provided in section 1002(e), the transmission of the sound recording is accompanied, if technically feasible, by the information encoded in that sound recording, if any, by or under the authority of the copyright owner of that sound recording, that identifies the title of the sound recording, the featured recording artist who performs on the sound recording, and related information, including information concerning the underlying musical work and its writer;

(B) in the case of a subscription transmission not exempt under paragraph (1) that is made by a preexisting subscription service in the same transmission medium used by such service on July 31, 1998, or in the case of a transmission not exempt under paragraph (1) that is made by a preexisting satellite digital audio radio service—

(i) the transmission does not exceed the sound recording performance complement; and

(ii) the transmitting entity does not cause to be published by means of an advance program schedule or prior announcement the titles of the specific sound recordings or phonorecords embodying such sound recordings to be transmitted; and

(C) in the case of an eligible nonsubscription transmission or a subscription transmission not exempt under paragraph (1) that is made by a new subscription service or by a preexisting subscription service other than in the same transmission medium used by such service on July 31, 1998—

(i) the transmission does not exceed the sound recording performance complement, except that this requirement shall not apply in the case of a retransmission of a broadcast transmission if the retransmission is made by a transmitting entity that does not have the right or ability to control the programming of the broadcast station making the broadcast transmission, unless—

(I) the broadcast station makes broadcast transmissions—

(aa) in digital format that regularly exceed the sound recording performance complement; or

(bb) in analog format, a substantial portion of which, on a weekly basis, exceed the sound recording performance complement; and

(II) the sound recording copyright owner or its representative has notified the transmitting entity in writing that broadcast transmissions of the copyright owner's sound recordings exceed the sound recording performance complement as provided in this clause;

(ii) the transmitting entity does not cause to be published, or induce or facilitate the publication, by means of an advance program schedule or prior announcement, the titles of the specific sound recordings to be transmitted, the phonorecords embodying such sound recordings, or, other than for illustrative purposes, the names of the featured recording artists, except that this clause does not disqualify a transmitting entity that makes a prior announcement that a particular artist will be featured within an unspecified future time period, and in the case of a retransmission of a broadcast transmission by a transmitting entity that does not have the right or ability to control the programming of the broadcast transmission, the requirement of this clause shall not apply to a prior oral announcement by the broadcast station, or to an advance program schedule published, induced, or facilitated by the broadcast station, if the transmitting entity does not have actual knowledge and has not received written notice from the copyright owner or its representative that the broadcast station publishes or induces or facilitates the publication of such advance program schedule, or if such advance program schedule is a schedule of classical music programming published by the broadcast station in the same manner as published by that broadcast station on or before September 30, 1998;

(iii) the transmission—

(I) is not part of an archived program of less than 5 hours duration;

(II) is not part of an archived program of 5 hours or greater in duration that is made available for a period exceeding 2 weeks;

(III) is not part of a continuous program which is of less than 3 hours duration; or

(IV) is not part of an identifiable program in which performances of sound recordings are rendered in a predetermined order, other than an archived or continuous program, that is transmitted at—

(aa) more than 3 times in any 2-week period that have been publicly announced in ad-

vance, in the case of a program of less than 1 hour in duration, or

(bb) more than 4 times in any 2-week period that have been publicly announced in advance, in the case of a program of 1 hour or more in duration,

except that the requirement of this subclause shall not apply in the case of a retransmission of a broadcast transmission by a transmitting entity that does not have the right or ability to control the programming of the broadcast transmission, unless the transmitting entity is given notice in writing by the copyright owner of the sound recording that the broadcast station makes broadcast transmissions that regularly violate such requirement;

(iv) the transmitting entity does not knowingly perform the sound recording, as part of a service that offers transmissions of visual images contemporaneously with transmissions of sound recordings, in a manner that is likely to cause confusion, to cause mistake, or to deceive, as to the affiliation, connection, or association of the copyright owner or featured recording artist with the transmitting entity or a particular product or service advertised by the transmitting entity, or as to the origin, sponsorship, or approval by the copyright owner or featured recording artist of the activities of the transmitting entity other than the performance of the sound recording itself;

(v) the transmitting entity cooperates to prevent, to the extent feasible without imposing substantial costs or burdens, a transmission recipient or any other person or entity from automatically scanning the transmitting entity's transmissions alone or together with transmissions by other transmitting entities in order to select a particular sound recording to be transmitted to the transmission recipient, except that the requirement of this clause shall not apply to a satellite digital audio service that is in operation, or that is licensed by the Federal Communications Commission, on or before July 31, 1998;

(vi) the transmitting entity takes no affirmative steps to cause or induce the making of a phonorecord by the transmission recipient, and if the technology used by the transmitting entity enables the transmitting entity to limit the making by the transmission recipient of phonorecords of the transmission directly in a digital format, the transmitting entity sets such technology to limit such making of phonorecords to the extent permitted by such technology;

(vii) phonorecords of the sound recording have been distributed to the public under the authority of the copyright owner or the copyright owner authorizes the transmitting entity to transmit the sound recording, and the transmitting entity makes the transmission from a phonorecord lawfully made under the authority

of the copyright owner, except that the requirement of this clause shall not apply to a retransmission of a broadcast transmission by a transmitting entity that does not have the right or ability to control the programming of the broadcast transmission, unless the transmitting entity is given notice in writing by the copyright owner of the sound recording that the broadcast station makes broadcast transmissions that regularly violate such requirement;

(viii) the transmitting entity accommodates and does not interfere with the transmission of technical measures that are widely used by sound recording copyright owners to identify or protect copyrighted works, and that are technically feasible of being transmitted by the transmitting entity without imposing substantial costs on the transmitting entity or resulting in perceptible aural or visual degradation of the **[**digital signal**]** *signal*, except that the requirement of this clause shall not apply to a satellite digital audio service that is in operation, or that is licensed under the authority of the Federal Communications Commission, on or before July 31, 1998, to the extent that such service has designed, developed, or made commitments to procure equipment or technology that is not compatible with such technical measures before such technical measures are widely adopted by sound recording copyright owners; and

(ix) the transmitting entity identifies in textual data the sound recording during, but not before, the time it is performed, including the title of the sound recording, the title of the phonorecord embodying such sound recording, if any, and the featured recording artist, in a manner to permit it to be displayed to the transmission recipient by the device or technology intended for receiving the service provided by the transmitting entity, except that the obligation in this clause shall not take effect until 1 year after the date of the enactment of the Digital Millennium Copyright Act and shall not apply in the case of a retransmission of a broadcast transmission by a transmitting entity that does not have the right or ability to control the programming of the broadcast transmission, or in the case in which devices or technology intended for receiving the service provided by the transmitting entity that have the capability to display such textual data are not common in the marketplace.

(3) LICENSES FOR TRANSMISSIONS BY INTERACTIVE SERVICES.—

(A) No interactive service shall be granted an exclusive license under section 106(6) for the performance of a sound recording publicly by means of digital audio transmission for a period in excess of 12 months, except that with respect to an exclusive license granted to an interactive service by a licensor that holds the copyright to 1,000 or fewer sound recordings, the period of such license shall not ex-

ceed 24 months: *Provided, however*, That the grantee of such exclusive license shall be ineligible to receive another exclusive license for the performance of that sound recording for a period of 13 months from the expiration of the prior exclusive license.

(B) The limitation set forth in subparagraph (A) of this paragraph shall not apply if—

(i) the licensor has granted and there remain in effect licenses under section 106(6) for the public performance of sound recordings by means of digital audio transmission by at least 5 different interactive services: *Provided, however*, That each such license must be for a minimum of 10 percent of the copyrighted sound recordings owned by the licensor that have been licensed to interactive services, but in no event less than 50 sound recordings; or

(ii) the exclusive license is granted to perform publicly up to 45 seconds of a sound recording and the sole purpose of the performance is to promote the distribution or performance of that sound recording.

(C) Notwithstanding the grant of an exclusive or nonexclusive license of the right of public performance under section 106(6), an interactive service may not publicly perform a sound recording unless a license has been granted for the public performance of any copyrighted musical work contained in the sound recording: *Provided*, That such license to publicly perform the copyrighted musical work may be granted either by a performing rights society representing the copyright owner or by the copyright owner.

(D) The performance of a sound recording by means of a retransmission of a digital audio transmission is not an infringement of section 106(6) if—

(i) the retransmission is of a transmission by an interactive service licensed to publicly perform the sound recording to a particular member of the public as part of that transmission; and

(ii) the retransmission is simultaneous with the licensed transmission, authorized by the transmitter, and limited to that particular member of the public intended by the interactive service to be the recipient of the transmission.

(E) For the purposes of this paragraph—

(i) a "licensor" shall include the licensing entity and any other entity under any material degree of common ownership, management, or control that owns copyrights in sound recordings; and

(ii) a "performing rights society" is an association or corporation that licenses the public performance of nondramatic musical works on behalf of the copyright owner, such as the American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc.

(4) RIGHTS NOT OTHERWISE LIMITED.—

(A) Except as expressly provided in this section, this section does not limit or impair the exclusive right to perform a sound recording publicly by means of [a digital audio transmission] *an audio transmission* under section 106(6).

(B) Nothing in this section annuls or limits in any way—

(i) the exclusive right to publicly perform a musical work, including by means of [a digital audio transmission] *an audio transmission*, under section 106(4);

(ii) the exclusive rights in a sound recording or the musical work embodied therein under sections 106(1), 106(2) and 106(3); or

(iii) any other rights under any other clause of section 106, or remedies available under this title, as such rights or remedies exist either before or after the date of enactment of the Digital Performance Right in Sound Recordings Act of 1995.

(C) Any limitations in this section on the exclusive right under section 106(6) apply only to the exclusive right under section 106(6) and not to any other exclusive rights under section 106. Nothing in this section shall be construed to annul, limit, impair or otherwise affect in any way the ability of the owner of a copyright in a sound recording to exercise the rights under sections 106(1), 106(2) and 106(3), or to obtain the remedies available under this title pursuant to such rights, as such rights and remedies exist either before or after the date of enactment of the Digital Performance Right in Sound Recordings Act of 1995.

(e) AUTHORITY FOR NEGOTIATIONS.—

(1) Notwithstanding any provision of the antitrust laws, in negotiating statutory licenses in accordance with subsection (f), any copyright owners of sound recordings and any entities performing sound recordings affected by this section may negotiate and agree upon the royalty rates and license terms and conditions for the performance of such sound recordings and the proportionate division of fees paid among copyright owners, and may designate common agents on a nonexclusive basis to negotiate, agree to, pay, or receive payments.

(2) For licenses granted under section 106(6), other than statutory licenses, such as for performances by interactive services or performances that exceed the sound recording performance complement—

(A) copyright owners of sound recordings affected by this section may designate common agents to act on their behalf to grant licenses and receive and remit royalty payments: *Provided*, That each copyright owner shall establish the royalty rates and material license terms and conditions unilaterally, that is, not in agreement, combination, or concert with other copyright owners of sound recordings; and

(B) entities performing sound recordings affected by this section may designate common agents to act on their behalf to obtain licenses and collect and pay royalty fees: *Provided*, That each entity performing sound recordings shall determine the royalty rates and material license

terms and conditions unilaterally, that is, not in agreement, combination, or concert with other entities performing sound recordings.

(f) LICENSES FOR CERTAIN NONEXEMPT TRANSMISSIONS.—

(1)(A) Proceedings under chapter 8 shall determine reasonable rates and terms of royalty payments for transmissions subject to statutory licensing under subsection (d)(2) during the 5-year period beginning on January 1 of the second year following the year in which the proceedings are to be commenced pursuant to subparagraph (A) or (B) of section 804(b)(3), as the case may be, or such other period as the parties may agree. The parties to each proceeding shall bear their own costs.

(B) The schedule of reasonable rates and terms determined by the Copyright Royalty Judges shall, subject to paragraph (2), be binding on all copyright owners of sound recordings and entities performing sound recordings affected by this paragraph during the 5-year period specified in subparagraph (A), or such other period as the parties may agree. Such rates and terms shall distinguish among the different types of services then in operation and shall include a minimum fee for each such type of service, such differences to be based on criteria including the quantity and nature of the use of sound recordings and the degree to which use of the service may substitute for or may promote the purchase of phonorecords by consumers. The Copyright Royalty Judges shall establish rates and terms that most clearly represent the rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller. In determining such rates and terms, the Copyright Royalty Judges—

(i) shall base their decision on economic, competitive, and programming information presented by the parties, including—

(I) whether use of the service may substitute for or may promote the sales of phonorecords or otherwise may interfere with or may enhance the sound recording copyright owner's other streams of revenue from the copyright owner's sound recordings; and

(II) the relative roles of the copyright owner and the transmitting entity in the copyrighted work and the service made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, and risk; and

(ii) may consider the rates and terms for comparable types of audio transmission services and comparable circumstances under voluntary license agreements.

(C) The procedures under subparagraphs (A) and (B) shall also be initiated pursuant to a petition filed by any sound recording copyright owner 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 eligible

nonsubscription services and new subscription services, or preexisting subscription services and preexisting satellite digital audio radio 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.

(D)(i) Notwithstanding the provisions of subparagraphs (A) through (C), the royalty rate shall be as follows for nonsubscription broadcast transmissions by each individual terrestrial broadcast station licensed as such by the Federal Communications Commission that satisfies the conditions in clause (ii)—

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

(II) $100 per calendar year, in the case of nonsubscription broadcast transmissions by a broadcast station that is a public broadcasting entity as defined in section 118(f) and generated revenue in the immediately preceding calendar year of $100,000 or more, but less than $1,500,000; and

(III) $500 per calendar year, in the case of nonsubscription broadcast transmissions by a broadcast station that is not a public broadcasting entity as defined in section 118(f) and generated revenue in the immediately preceding calendar year of $100,000 or more, but less than $1,500,000.

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

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

(II) the aggregate revenue of the owner and operator of the broadcast station and any person directly or indirectly controlling, controlled by, or under common control with such owner or operator, from any source, was less than $10,000,000 during the immediately preceding calendar year; and

(III) the owner or operator of the broadcast station provides to the nonprofit collective designated by the Copyright Royalty Judges to distribute receipts from the licensing of transmissions in accordance with subsection (f), by no later than January 31 of the relevant calendar year, a written and signed certification of the station's eligibility under this clause and the applicable subclause of clause (i), in accordance with requirements the Copyright Royalty Judges shall prescribe by regulation.

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

(I) revenue shall be calculated in accordance with generally accepted accounting principles;

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

(III) in the case of affiliated broadcast stations, revenue shall be allocated reasonably to individual stations associated with the revenue.

(iv) The royalty rates specified in clause (i) shall not be admissible as evidence or otherwise taken into account in determining royalty rates in a proceeding under chapter 8, or in any other administrative, judicial, or other Federal Government proceeding involving the setting or adjustment of the royalties payable for the public performance or reproduction in ephemeral phonorecords or copies of sound recordings, the determination of terms or conditions related thereto, or the establishment of notice or recordkeeping requirements.

(2) License agreements voluntarily negotiated at any time between 1 or more copyright owners of sound recordings and 1 or more entities performing sound recordings shall be given effect in lieu of any decision by the Librarian of Congress or determination by the Copyright Royalty Judges.

(3)(A) The Copyright Royalty Judges shall also establish requirements by which copyright owners may receive reasonable notice of the use of their sound recordings under this section, and under which records of such use shall be kept and made available by entities performing sound recordings. The notice and recordkeeping rules in effect on the day before the effective date of the Copyright Royalty and Distribution Reform Act of 2004 shall remain in effect unless and until new regulations are promulgated by the Copyright Royalty Judges. If new regulations are promulgated under this subparagraph, the Copyright Royalty Judges shall take into account the substance and effect of the rules in effect on the day before the effective date of the Copyright Royalty and Distribution Reform Act of 2004 and shall, to the extent practicable, avoid significant disruption of the functions of any designated agent authorized to collect and distribute royalty fees.

(B) Any person who wishes to perform a sound recording publicly by means of a transmission eligible for statutory licensing under this subsection may do so without infringing the exclusive right of the copyright owner of the sound recording—

(i) by complying with such notice requirements as the Copyright Royalty Judges shall prescribe by regulation and by paying royalty fees in accordance with this subsection; or

(ii) if such royalty fees have not been set, by agreeing to pay such royalty fees as shall be determined in accordance with this subsection.

(C) Any royalty payments in arrears shall be made on or before the twentieth day of the month next succeeding the month in which the royalty fees are set.

(4)(A) Notwithstanding section 112(e) and the other provisions of this subsection, the receiving agent may enter into agreements for the reproduction and performance of sound recordings under section 112(e) and this section by any 1 or more commercial webcasters or noncommercial webcasters for a period of not more than 11 years beginning on January 1, 2005, that, once published in the Federal Register pursuant to sub-

paragraph (B), shall be binding on all copyright owners of sound recordings and other persons entitled to payment under this section, in lieu of any determination by the Copyright Royalty Judges. Any such agreement for commercial webcasters may include provisions for payment of royalties on the basis of a percentage of revenue or expenses, or both, and include a minimum fee. Any such agreement may include other terms and conditions, including requirements by which copyright owners may receive notice of the use of their sound recordings and under which records of such use shall be kept and made available by commercial webcasters or noncommercial webcasters. The receiving agent shall be under no obligation to negotiate any such agreement. The receiving agent shall have no obligation to any copyright owner of sound recordings or any other person entitled to payment under this section in negotiating any such agreement, and no liability to any copyright owner of sound recordings or any other person entitled to payment under this section for having entered into such agreement.

(B) The Copyright Office shall cause to be published in the Federal Register any agreement entered into pursuant to subparagraph (A). Such publication shall include a statement containing the substance of subparagraph (C). Such agreements shall not be included in the Code of Federal Regulations. Thereafter, the terms of such agreement shall be available, as an option, to any commercial webcaster or noncommercial webcaster meeting the eligibility conditions of such agreement.

(C) Neither subparagraph (A) nor any provisions of any agreement entered into pursuant to subparagraph (A), including any rate structure, fees, terms, conditions, or notice and recordkeeping requirements set forth therein, shall be admissible as evidence or otherwise taken into account in any administrative, judicial, or other government proceeding involving the setting or adjustment of the royalties payable for the public performance or reproduction in ephemeral phonorecords or copies of sound recordings, the determination of terms or conditions related thereto, or the establishment of notice or recordkeeping requirements by the Copyright Royalty Judges under paragraph (3) or section 112(e)(4). It is the intent of Congress that any royalty rates, rate structure, definitions, terms, conditions, or notice and recordkeeping requirements, included in such agreements shall be considered as a compromise motivated by the unique business, economic and political circumstances of webcasters, copyright owners, and performers rather than as matters that would have been negotiated in the marketplace between a willing buyer and a willing seller, or otherwise meet the objectives set forth in section 801(b). This subparagraph shall not apply to the extent that the receiving agent and a webcaster that is party to an agreement entered into pursuant to subparagraph (A) expressly authorize the submission of the agreement in a proceeding under this subsection.

(D) Nothing in the Webcaster Settlement Act of 2008, the Webcaster Settlement Act of 2009, or any agreement entered into pursuant to subparagraph (A) shall be taken into account

by the United States Court of Appeals for the District of Columbia Circuit in its review of the determination by the Copyright Royalty Judges of May 1, 2007, of rates and terms for the digital performance of sound recordings and ephemeral recordings, pursuant to sections 112 and 114.

(E) As used in this paragraph—

(i) the term "noncommercial webcaster" means a webcaster that—

(I) is exempt from taxation under section 501 of the Internal Revenue Code of 1986 (26 U.S.C. 501);

(II) has applied in good faith to the Internal Revenue Service for exemption from taxation under section 501 of the Internal Revenue Code and has a commercially reasonable expectation that such exemption shall be granted; or

(III) is operated by a State or possession or any governmental entity or subordinate thereof, or by the United States or District of Columbia, for exclusively public purposes;

(ii) the term "receiving agent" shall have the meaning given that term in section 261.2 of title 37, Code of Federal Regulations, as published in the Federal Register on July 8, 2002; and

(iii) the term "webcaster" means a person or entity that has obtained a compulsory license under section 112 or 114 and the implementing regulations therefor.

(F) The authority to make settlements pursuant to subparagraph (A) shall expire at 11:59 p.m. Eastern time on the 30th day after the date of the enactment of the Webcaster Settlement Act of 2009.

(g) PROCEEDS FROM LICENSING OF TRANSMISSIONS.—

(1) Except in the case of a transmission licensed under a statutory license in accordance with subsection (f) of this section *or in the case of a transmission to which paragraph (5) applies*—

(A) a featured recording artist who performs on a sound recording that has been licensed for a transmission shall be entitled to receive payments from the copyright owner of the sound recording in accordance with the terms of the artist's contract; and

(B) a nonfeatured recording artist who performs on a sound recording that has been licensed for a transmission shall be entitled to receive payments from the copyright owner of the sound recording in accordance with the terms of the nonfeatured recording artist's applicable contract or other applicable agreement.

(2) Except as provided for in paragraph (6), a nonprofit collective designated by the Copyright Royalty Judges to distribute receipts from the licensing of transmissions in accordance with subsection (f) shall distribute such receipts as follows:

(A) 50 percent of the receipts shall be paid to the copyright owner of the exclusive right under section 106(6) of this title to publicly perform a sound recording by means of ⟦a digital⟧ *an* audio transmission.

(B) 21/2 percent of the receipts shall be deposited in an escrow account managed by an independent administrator jointly appointed by copyright owners of sound recordings and the American Federation of Musicians (or any successor entity) to be distributed to nonfeatured musicians (whether or not members of the American Federation of Musicians) who have performed on sound recordings.

(C) 21/2 percent of the receipts shall be deposited in an escrow account managed by an independent administrator jointly appointed by copyright owners of sound recordings and the American Federation of Television and Radio Artists (or any successor entity) to be distributed to nonfeatured vocalists (whether or not members of the American Federation of Television and Radio Artists) who have performed on sound recordings.

(D) 45 percent of the receipts shall be paid, on a per sound recording basis, to the recording artist or artists featured on such sound recording (or the persons conveying rights in the artists' performance in the sound recordings).

(3) A nonprofit collective designated by the Copyright Royalty Judges to distribute receipts from the licensing of transmissions in accordance with subsection (f) may deduct from any of its receipts, prior to the distribution of such receipts to any person or entity entitled thereto other than copyright owners and performers who have elected to receive royalties from another designated nonprofit collective and have notified such nonprofit collective in writing of such election, the reasonable costs of such collective incurred after November 1, 1995, in—

(A) the administration of the collection, distribution, and calculation of the royalties;

(B) the settlement of disputes relating to the collection and calculation of the royalties; and

(C) the licensing and enforcement of rights with respect to the making of ephemeral recordings and performances subject to licensing under section 112 and this section, including those incurred in participating in negotiations or arbitration proceedings under section 112 and this section, except that all costs incurred relating to the section 112 ephemeral recordings right may only be deducted from the royalties received pursuant to section 112.

(4) Notwithstanding paragraph (3), any nonprofit collective designated to distribute receipts from the licensing of transmissions in accordance with subsection (f) may deduct from any of its receipts, prior to the distribution of such receipts, the reasonable costs identified in paragraph (3) of such collective incurred after November 1, 1995, with respect to such copyright owners and performers who have entered with such collective a contractual relationship that specifies that such costs may be deducted from such royalty receipts.

(5) Notwithstanding paragraph (1), to the extent that a license granted by the copyright owner of a sound recording to a transmitting entity eligible for a statutory license under subsection (d)(2) extends to such entity's transmissions otherwise licensable under a statutory license in accordance with subsection (f), such entity shall pay to the collective designated to

distribute statutory licensing receipts from the licensing of transmissions in accordance with subsection (f), 50 percent of the total royalties that such entity is required, pursuant to the applicable license agreement, to pay for such transmissions otherwise licensable under a statutory license in accordance with subsection (f). That collective shall distribute such payments in proportion to the distributions provided in subparagraphs (B) through (D) of paragraph (2), and such payments shall be the only payments to which featured and nonfeatured artists are entitled by virtue of such transmissions under the direct license with such entity.

[(5)] *(6)* LETTER OF DIRECTION.—

(A) IN GENERAL.—A nonprofit collective designated by the Copyright Royalty Judges to distribute receipts from the licensing of transmissions in accordance with subsection (f) shall adopt and reasonably implement a policy that provides, in circumstances determined by the collective to be appropriate, for acceptance of instructions from a payee identified under subparagraph (A) or (D) of paragraph (2) to distribute, to a producer, mixer, or sound engineer who was part of the creative process that created a sound recording, a portion of the payments to which the payee would otherwise be entitled from the licensing of transmissions of the sound recording. In this section, such instructions shall be referred to as a "letter of direction".

(B) ACCEPTANCE OF LETTER.—To the extent that a collective described in subparagraph (A) accepts a letter of direction under that subparagraph, the person entitled to payment pursuant to the letter of direction shall, during the period in which the letter of direction is in effect and carried out by the collective, be treated for all purposes as the owner of the right to receive such payment, and the payee providing the letter of direction to the collective shall be treated as having no interest in such payment.

(C) AUTHORITY OF COLLECTIVE.—This paragraph shall not be construed in such a manner so that the collective is not authorized to accept or act upon payment instructions in circumstances other than those to which this paragraph applies.

[(6)] *(7)* SOUND RECORDINGS FIXED BEFORE NOVEMBER 1, 1995.—

(A) PAYMENT ABSENT LETTER OF DIRECTION.—A nonprofit collective designated by the Copyright Royalty Judges to distribute receipts from the licensing of transmissions in accordance with subsection (f) (in this paragraph referred to as the "collective") shall adopt and reasonably implement a policy that provides, in circumstances determined by the collective to be appropriate, for the deduction of 2 percent of all the receipts that are collected from the licensing of transmissions of a sound recording fixed before November 1, 1995, but which is withdrawn from the amount otherwise payable under paragraph (2)(D) to the recording artist or artists featured on the sound recording (or the persons conveying rights in the artists' performance in the sound recording), and the distribution of such

amount to 1 or more persons described in subparagraph (B) of this paragraph, after deduction of costs described in paragraph (3) or (4), as applicable, if each of the following requirements is met:

(i) CERTIFICATION OF ATTEMPT TO OBTAIN A LETTER OF DIRECTION.—The person described in subparagraph (B) who is to receive the distribution has certified to the collective, under penalty of perjury, that—

(I) for a period of not less than 120 days, that person made reasonable efforts to contact the artist payee for such sound recording to request and obtain a letter of direction instructing the collective to pay to that person a portion of the royalties payable to the featured recording artist or artists; and

(II) during the period beginning on the date on which that person began the reasonable efforts described in subclause (I) and ending on the date of that person's certification to the collective, the artist payee did not affirm or deny in writing the request for a letter of direction.

(ii) COLLECTIVE ATTEMPT TO CONTACT ARTIST.—After receipt of the certification described in clause (i) and for a period of not less than 120 days before the first distribution by the collective to the person described in subparagraph (B), the collective attempts, in a reasonable manner as determined by the collective, to notify the artist payee of the certification made by the person described in subparagraph (B).

(iii) NO OBJECTION RECEIVED.—The artist payee does not, as of the date that was 10 business days before the date on which the first distribution is made, submit to the collective in writing an objection to the distribution.

(B) ELIGIBILITY FOR PAYMENT.—A person shall be eligible for payment under subparagraph (A) if the person—

(i) is a producer, mixer, or sound engineer of the sound recording;

(ii) has entered into a written contract with a record company involved in the creation or lawful exploitation of the sound recording, or with the recording artist or artists featured on the sound recording (or the persons conveying rights in the artists' performance in the sound recording), under which the person seeking payment is entitled to participate in royalty payments that are based on the exploitation of the sound recording and are payable from royalties otherwise payable to the recording artist or artists featured on the sound recording (or the persons conveying rights in the artists' performance in the sound recording);

(iii) made a creative contribution to the creation of the sound recording; and

(iv) submits to the collective—

(I) a written certification stating, under penalty of perjury, that the person meets the requirements in clauses (i) through (iii); and

(II) a true copy of the contract described in clause (ii).

(C) MULTIPLE CERTIFICATIONS.—Subject to subparagraph (D), in a case in which more than 1 person described in subparagraph (B) has met the requirements for a distribution under subparagraph (A) with respect to a sound recording as of the date that is 10 business days before the date on which the distribution is made, the collective shall divide the 2 percent distribution equally among all such persons.

(D) OBJECTION TO PAYMENT.—Not later than 10 business days after the date on which the collective receives from the artist payee a written objection to a distribution made pursuant to subparagraph (A), the collective shall cease making any further payment relating to such distribution. In any case in which the collective has made 1 or more distributions pursuant to subparagraph (A) to a person described in subparagraph (B) before the date that is 10 business days after the date on which the collective receives from the artist payee an objection to such distribution, the objection shall not affect that person's entitlement to any distribution made before the collective ceases such distribution under this subparagraph.

(E) OWNERSHIP OF THE RIGHT TO RECEIVE PAYMENTS.—To the extent that the collective determines that a distribution will be made under subparagraph (A) to a person described in subparagraph (B), such person shall, during the period covered by such distribution, be treated for all purposes as the owner of the right to receive such payments, and the artist payee to whom such payments would otherwise be payable shall be treated as having no interest in such payments.

(F) ARTIST PAYEE DEFINED.—In this paragraph, the term "artist payee" means a person, other than a person described in subparagraph (B), who owns the right to receive all or part of the receipts payable under paragraph (2)(D) with respect to a sound recording. In a case in which there are multiple artist payees with respect to a sound recording, an objection by 1 such payee shall apply only to that payee's share of the receipts payable under paragraph (2)(D), and shall not preclude payment under subparagraph (A) from the share of an artist payee that does not so object.

[(7)**]** *(8)* PREEMPTION OF STATE PROPERTY LAWS.—The holding and distribution of receipts under section 112 and this section by a nonprofit collective designated by the Copyright Royalty Judges in accordance with this subsection and regulations adopted by the Copyright Royalty Judges, or by an independent administrator pursuant to subparagraphs (B) and (C) of section 114(g)(2), shall supersede and preempt any State law (including common law) concerning escheatment or abandoned

property, or any analogous provision, that might otherwise apply.

(h) LICENSING TO AFFILIATES.—

(1) If the copyright owner of a sound recording licenses an affiliated entity the right to publicly perform a sound recording by means of a digital audio transmission under section 106(6), the copyright owner shall make the licensed sound recording available under section 106(6) on no less favorable terms and conditions to all bona fide entities that offer similar services, except that, if there are material differences in the scope of the requested license with respect to the type of service, the particular sound recordings licensed, the frequency of use, the number of subscribers served, or the duration, then the copyright owner may establish different terms and conditions for such other services.

(2) The limitation set forth in paragraph (1) of this subsection shall not apply in the case where the copyright owner of a sound recording licenses—

(A) an interactive service; or

(B) an entity to perform publicly up to 45 seconds of the sound recording and the sole purpose of the performance is to promote the distribution or performance of that sound recording.

(j) DEFINITIONS.—As used in this section, the following terms have the following meanings:

(1) An "affiliated entity" is an entity engaging in digital audio transmissions covered by section 106(6), other than an interactive service, in which the licensor has any direct or indirect partnership or any ownership interest amounting to 5 percent or more of the outstanding voting or non-voting stock.

(2) An "archived program" is a predetermined program that is available repeatedly on the demand of the transmission recipient and that is performed in the same order from the beginning, except that an archived program shall not include a recorded event or broadcast transmission that makes no more than an incidental use of sound recordings, as long as such recorded event or broadcast transmission does not contain an entire sound recording or feature a particular sound recording.

(3) A "broadcast" transmission is a transmission made by a terrestrial broadcast station licensed as such by the Federal Communications Commission.

(4) A "continuous program" is a predetermined program that is continuously performed in the same order and that is accessed at a point in the program that is beyond the control of the transmission recipient.

(5) A "digital audio transmission" is a digital transmission as defined in section 101, that embodies the transmission of a sound recording. This term does not include the transmission of any audiovisual work.

(6) An "eligible nonsubscription transmission" is a noninteractive nonsubscription [digital] audio transmission not exempt under subsection (d)(1) that is made as part of a service that provides audio programming consisting, in whole or in part, of performances of sound recordings, including [retransmissions of broadcast transmissions] *broadcast transmissions and re-*

transmissions of broadcast transmissions, if the primary purpose of the service is to provide to the public such audio or other entertainment programming, and the primary purpose of the service is not to sell, advertise, or promote particular products or services other than sound recordings, live concerts, or other music-related events.

(7) An "interactive service" is one that enables a member of the public to receive a transmission of a program specially created for the recipient, or on request, a transmission of a particular sound recording, whether or not as part of a program, which is selected by or on behalf of the recipient. The ability of individuals to request that particular sound recordings be performed for reception by the public at large, or in the case of a subscription service, by all subscribers of the service, does not make a service interactive, if the programming on each channel of the service does not substantially consist of sound recordings that are performed within 1 hour of the request or at a time designated by either the transmitting entity or the individual making such request. If an entity offers both interactive and noninteractive services (either concurrently or at different times), the noninteractive component shall not be treated as part of an interactive service.

(8) A "new subscription service" is a service that performs sound recordings by means of noninteractive ⟦subscription digital⟧ *subscription* audio transmissions and that is not a preexisting subscription service or a preexisting satellite digital audio radio service.

(9) A "nonsubscription" transmission is any transmission that is not a subscription transmission.

(10) A "preexisting satellite digital audio radio service" is a subscription satellite digital audio radio service provided pursuant to a satellite digital audio radio service license issued by the Federal Communications Commission on or before July 31, 1998, and any renewal of such license to the extent of the scope of the original license, and may include a limited number of sample channels representative of the subscription service that are made available on a nonsubscription basis in order to promote the subscription service.

(11) A "preexisting subscription service" is a service that performs sound recordings by means of noninteractive audio-only subscription digital audio transmissions, which was in existence and was making such transmissions to the public for a fee on or before July 31, 1998, and may include a limited number of sample channels representative of the subscription service that are made available on a nonsubscription basis in order to promote the subscription service.

(12) A "retransmission" is a further transmission of an initial transmission, and includes any further retransmission of the same transmission. Except as provided in this section, a transmission qualifies as a "retransmission" only if it is simultaneous with the initial transmission. Nothing in this definition shall be construed to exempt a transmission that fails to satisfy a separate element required to qualify for an exemption under section 114(d)(1).

(13) The "sound recording performance complement" is the transmission during any 3-hour period, on a particular channel used by a transmitting entity, of no more than—

(A) 3 different selections of sound recordings from any one phonorecord lawfully distributed for public performance or sale in the United States, if no more than 2 such selections are transmitted consecutively; or

(B) 4 different selections of sound recordings—

(i) by the same featured recording artist; or

(ii) from any set or compilation of phonorecords lawfully distributed together as a unit for public performance or sale in the United States,

if no more than three such selections are transmitted consecutively:

Provided, That the transmission of selections in excess of the numerical limits provided for in clauses (A) and (B) from multiple phonorecords shall nonetheless qualify as a sound recording performance complement if the programming of the multiple phonorecords was not willfully intended to avoid the numerical limitations prescribed in such clauses.

(14) A "subscription" transmission is a transmission that is controlled and limited to particular recipients, and for which consideration is required to be paid or otherwise given by or on behalf of the recipient to receive the transmission or a package of transmissions including the transmission.

(15) A "transmission" is either an initial transmission or a retransmission.

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§ 118. Scope of exclusive rights: Use of certain works in connection with noncommercial broadcasting

(a) The exclusive rights provided by section 106 shall, with respect to the works specified by subsection (b) and the activities specified by subsection (d), be subject to the conditions and limitations prescribed by this section.

(b) Notwithstanding any provision of the antitrust laws, any owners of copyright in published nondramatic musical works and published pictorial, graphic, and sculptural works and any public broadcasting entities, respectively, may negotiate and agree upon the terms and rates of royalty payments and the proportionate division of fees paid among various copyright owners, and may designate common agents to negotiate, agree to, pay, or receive payments.

(1) Any owner of copyright in a work specified in this subsection or any public broadcasting entity may submit to the Copyright Royalty Judges proposed licenses covering such activities with respect to such works.

(2) License agreements voluntarily negotiated at any time between one or more copyright owners and one or more public broadcasting entities shall be given effect in lieu of any determination by the Librarian of Congress or the Copyright Royalty Judges, if copies of such agreements are filed with the Copyright Royalty Judges within 30 days of execution in accordance with regulations that the Copyright Royalty Judges shall issue.

(3) Voluntary negotiation proceedings initiated pursuant to a petition filed under section 804(a) for the purpose of determining a schedule of terms and rates of royalty payments by public broadcasting entities to owners of copyright in works specified by this subsection and the proportionate division of fees paid among various copyright owners shall cover the 5-year period beginning on January 1 of the second year following the year in which the petition is filed. The parties to each negotiation proceeding shall bear their own costs.

(4) In the absence of license agreements negotiated under paragraph (2) or (3), the Copyright Royalty Judges shall, pursuant to chapter 8, conduct a proceeding to determine and publish in the Federal Register a schedule of rates and terms which, subject to paragraph (2), shall be binding on all owners of copyright in works specified by this subsection and public broadcasting entities, regardless of whether such copyright owners have submitted proposals to the Copyright Royalty Judges. In establishing such rates and terms the Copyright Royalty Judges may consider the rates for comparable circumstances under voluntary license agreements negotiated as provided in paragraph (2) or (3). The Copyright Royalty Judges shall also establish requirements by which copyright owners may receive reasonable notice of the use of their works under this section, and under which records of such use shall be kept by public broadcasting entities.

(c) Subject to the terms of any voluntary license agreements that have been negotiated as provided by subsection (b)(2) or (3), a public broadcasting entity may, upon compliance with the provisions of this section, including the rates and terms established by the Copyright Royalty Judges under subsection (b)(4), engage in the following activities with respect to published nondramatic musical works and published pictorial, graphic, and sculptural works:

(1) performance or display of a work by or in the course of a transmission made by a noncommercial educational broadcast station referred to in subsection (f); and

(2) production of a transmission program, reproduction of copies or phonorecords of such a transmission program, and distribution of such copies or phonorecords, where such production, reproduction, or distribution is made by a nonprofit institution or organization solely for the purpose of transmissions specified in paragraph (1); and

(3) the making of reproductions by a governmental body or a nonprofit institution of a transmission program simultaneously with its transmission as specified in paragraph (1), and the performance or display of the contents of such program under the conditions specified by paragraph (1) of section 110, but only if the reproductions are used for performances or displays for a period of no more than seven days from the date of the transmission specified in paragraph (1), and are destroyed before or at the end of such period. No person supplying, in accordance with paragraph (2), a reproduction of a transmission program to governmental bodies or nonprofit institutions under this paragraph shall have any liability as a result of failure of such body or institution to destroy such reproduction: *Provided*, That it shall have notified such body or in-

stitution of the requirement for such destruction pursuant to this paragraph: *And provided further*, That if such body or institution itself fails to destroy such reproduction it shall be deemed to have infringed.

(d) Except as expressly provided in this subsection, this section shall have no applicability to works other than those specified in subsection (b). Owners of copyright in nondramatic literary works and public broadcasting entities may, during the course of voluntary negotiations, agree among themselves, respectively, as to the terms and rates of royalty payments without liability under the antitrust laws. Any such terms and rates of royalty payments shall be effective upon filing with the Copyright Royalty Judges, in accordance with regulations that the Copyright Royalty Judges shall prescribe as provided in section 803(b)(6).

(e) Nothing in this section shall be construed to permit, beyond the limits of fair use as provided by section 107, the unauthorized dramatization of a nondramatic musical work, the production of a transmission program drawn to any substantial extent from a published compilation of pictorial, graphic, or sculptural works, or the unauthorized use of any portion of an audiovisual work.

(f) As used in this section, the term "public broadcasting entity" means a noncommercial educational broadcast station as defined in ⟦section 397 of title 47⟧ *section 397 of the Communications Act of 1934 (47 U.S.C. 397)* and any nonprofit institution or organization engaged in the activities described in paragraph (2) of subsection (c).

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CHAPTER 8—PROCEEDINGS BY COPYRIGHT ROYALTY JUDGES

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§ 804. Institution of proceedings

(a) FILING OF PETITION.—With respect to proceedings referred to in paragraphs (1) and (2) of section 801(b) concerning the determination or adjustment of royalty rates as provided in sections 111, 112, 114, 115, 116, 118, 119, and 1004, during the calendar years specified in the schedule set forth in subsection (b), any owner or user of a copyrighted work whose royalty rates are specified by this title, or are established under this chapter before or after the enactment of the Copyright Royalty and Distribution Reform Act of 2004, may file a petition with the Copyright Royalty Judges declaring that the petitioner requests a determination or adjustment of the rate. The Copyright Royalty Judges shall make a determination as to whether the petitioner has such a significant interest in the royalty rate in which a determination or adjustment is requested. If the Copyright Royalty Judges determine that the petitioner has such a significant interest, the Copyright Royalty Judges shall cause notice of this determination, with the reasons for such determination, to be published in the Federal Register, together with the notice of commencement of proceedings under this chapter. With respect to proceedings under paragraph (1) of section 801(b) concerning the determination or adjustment of royalty rates as provided in sections 112 and 114, during the calendar years specified

in the schedule set forth in subsection (b), the Copyright Royalty Judges shall cause notice of commencement of proceedings under this chapter to be published in the Federal Register as provided in section 803(b)(1)(A).

(b) TIMING OF PROCEEDINGS.—

(1) SECTION 111 PROCEEDINGS.—(A) A petition described in subsection (a) to initiate proceedings under section 801(b)(2) concerning the adjustment of royalty rates under section 111 to which subparagraph (A) or (D) of section 801(b)(2) applies may be filed during the year 2015 and in each subsequent fifth calendar year.

(B) In order to initiate proceedings under section 801(b)(2) concerning the adjustment of royalty rates under section 111 to which subparagraph (B) or (C) of section 801(b)(2) applies, within 12 months after an event described in either of those subsections, any owner or user of a copyrighted work whose royalty rates are specified by section 111, or by a rate established under this chapter before or after the enactment of the Copyright Royalty and Distribution Reform Act of 2004, may file a petition with the Copyright Royalty Judges declaring that the petitioner requests an adjustment of the rate. The Copyright Royalty Judges shall then proceed as set forth in subsection (a) of this section. Any change in royalty rates made under this chapter pursuant to this subparagraph may be reconsidered in the year 2015, and each fifth calendar year thereafter, in accordance with the provisions in section 801(b)(2)(B) or (C), as the case may be. A petition for adjustment of rates established by section 111(d)(1)(B) as a result of a change in the rules and regulations of the Federal Communications Commission shall set forth the change on which the petition is based.

(C) Any adjustment of royalty rates under section 111 shall take effect as of the first accounting period commencing after the publication of the determination of the Copyright Royalty Judges in the Federal Register, or on such other date as is specified in that determination.

(2) CERTAIN SECTION 112 PROCEEDINGS.—Proceedings under this chapter shall be commenced in the year 2007 to determine reasonable terms and rates of royalty payments for the activities described in section 112(e)(1) relating to the limitation on exclusive rights specified by section 114(d)(1)(C)(iv), to become effective on January 1, 2009. Such proceedings shall be repeated in each subsequent fifth calendar year.

(3) SECTION 114 AND CORRESPONDING 112 PROCEEDINGS.—

(A) FOR ELIGIBLE NONSUBSCRIPTION SERVICES AND NEW SUBSCRIPTION SERVICES.—Proceedings under this chapter shall be commenced as soon as practicable after the date of enactment of the Copyright Royalty and Distribution Reform Act of 2004 to determine reasonable terms and rates of royalty payments under sections 114 and 112 for the activities of eligible nonsubscription transmission services and new subscription services, to be effective for the period beginning on January 1, 2006, and ending on December 31, 2010. Such proceedings shall next be commenced in January 2009 to determine reasonable terms

and rates of royalty payments, to become effective on January 1, 2011. Thereafter, such proceedings shall be repeated in each subsequent fifth calendar year.

(B) FOR PREEXISTING SUBSCRIPTION AND SATELLITE DIGITAL AUDIO RADIO SERVICES.—Proceedings under this chapter shall be commenced in January 2006 to determine reasonable terms and rates of royalty payments under sections 114 and 112 for the activities of preexisting subscription services, to be effective during the period beginning on January 1, 2008, and ending on December 31, 2012, and preexisting satellite digital audio radio services, to be effective during the period beginning on January 1, 2007, and ending on December 31, 2012. Such proceedings shall next be commenced in 2011 to determine reasonable terms and rates of royalty payments, to become effective on January 1, 2013. Thereafter, such proceedings shall be repeated in each subsequent fifth calendar year, except that—(i) with respect to preexisting subscription services, the terms and rates finally determined for the rate period ending on December 31, 2022, shall remain in effect through December 31, 2027, and there shall be no proceeding to determine terms and rates for preexisting subscription services for the period beginning on January 1, 2023, and ending on December 31, 2027; and" " (ii) with respect to pre-existing satellite digital audio radio services, the terms and rates set forth by the Copyright Royalty Judges on December 14, 2017, in their initial determination for the rate period ending on December 31, 2022, shall be in effect through December 31, 2027, without any change based on a rehearing under section 803(c)(2) and without the possibility of appeal under section 803(d), and there shall be no proceeding to determine terms and rates for preexisting satellite digital audio radio services for the period beginning on January 1, 2023, and ending on December 31, 2027.

(C)(i) Notwithstanding any other provision of this chapter, this subparagraph shall govern proceedings commenced pursuant to section 114(f)(1)(C) concerning new types of services.

(ii) Not later than 30 days after a petition to determine rates and terms for a new type of service is filed by any copyright owner of sound recordings, or such new type of service, indicating that such new type of service is or is about to become operational, the Copyright Royalty Judges shall issue a notice for a proceeding to determine rates and terms for such service.

(iii) The proceeding shall follow the schedule set forth in subsections (b), (c), and (d) of section 803, except that—

(I) the determination shall be issued by not later than 24 months after the publication of the notice under clause (ii); and

(II) the decision shall take effect as provided in subsections (c)(2) and (d)(2) of section 803 and section 114(f)(3)(B)(ii) and (C).

(iv) The rates and terms shall remain in effect for the period set forth in section 114(f)(1)(C).

(D) A proceeding under this chapter shall be commenced as soon as practicable after the date of the enactment of this subparagraph to determine royalty rates and terms for nonsubscription broadcast transmissions, to be effective for the period beginning on such date of enactment, and ending on December 31, 2028. Any payment due under section 114(f)(1)(D) shall not be due until the due date of the first royalty payments for nonsubscription broadcast transmissions that are determined, after the date of the enactment of this subparagraph, by the Copyright Royalty Judges. Thereafter, such proceeding shall be repeated in each subsequent fifth calendar year.

(4) SECTION 115 PROCEEDINGS.—A petition described in subsection (a) to initiate proceedings under section 801(b)(1) concerning the adjustment or determination of royalty rates as provided in section 115 may be filed in the year 2006 and in each subsequent fifth calendar year, or at such other times as the parties have agreed under section 115(c)(3)(B) and (C).

(5) SECTION 116 PROCEEDINGS.—(A) A petition described in subsection (a) to initiate proceedings under section 801(b) concerning the determination of royalty rates and terms as provided in section 116 may be filed at any time within 1 year after negotiated licenses authorized by section 116 are terminated or expire and are not replaced by subsequent agreements.

(B) If a negotiated license authorized by section 116 is terminated or expires and is not replaced by another such license agreement which provides permission to use a quantity of musical works not substantially smaller than the quantity of such works performed on coin-operated phonorecord players during the 1-year period ending March 1, 1989, the Copyright Royalty Judges shall, upon petition filed under paragraph (1) within 1 year after such termination or expiration, commence a proceeding to promptly establish an interim royalty rate or rates for the public performance by means of a coin-operated phonorecord player of nondramatic musical works embodied in phonorecords which had been subject to the terminated or expired negotiated license agreement. Such rate or rates shall be the same as the last such rate or rates and shall remain in force until the conclusion of proceedings by the Copyright Royalty Judges, in accordance with section 803, to adjust the royalty rates applicable to such works, or until superseded by a new negotiated license agreement, as provided in section 116(b).

(6) SECTION 118 PROCEEDINGS.—A petition described in subsection (a) to initiate proceedings under section 801(b)(1) concerning the determination of reasonable terms and rates of royalty payments as provided in section 118 may be filed in the year 2006 and in each subsequent fifth calendar year.

(7) SECTION 1004 PROCEEDINGS.—A petition described in subsection (a) to initiate proceedings under section 801(b)(1) concerning the adjustment of reasonable royalty rates under section 1004 may be filed as provided in section 1004(a)(3).

(8) PROCEEDINGS CONCERNING DISTRIBUTION OF ROYALTY FEES.—With respect to proceedings under section 801(b)(3) concerning the distribution of royalty fees in certain circumstances under section 111, 119, or 1007, the Copyright Royalty Judges shall, upon a determination that a controversy exists concerning such distribution, cause to be published in the Federal Register notice of commencement of proceedings under this chapter.

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CHAPTER 14—UNAUTHORIZED USE OF PRE-1972 SOUND RECORDINGS

§ 1401. Unauthorized use of pre-1972 sound recordings

(a) IN GENERAL.—

(1) UNAUTHORIZED ACTS.—Anyone who, on or before the last day of the applicable transition period under paragraph (2), and without the consent of the rights owner, engages in covered activity with respect to a sound recording fixed before February 15, 1972, shall be subject to the remedies provided in sections 502 through 505 and 1203 to the same extent as an infringer of copyright or a person that engages in unauthorized activity under chapter 12.

(2) TERM OF PROHIBITION.—

(A) IN GENERAL.—The prohibition under paragraph (1)—

(i) subject to clause (ii), shall apply to a sound recording described in that paragraph—

(I) through December 31 of the year that is 95 years after the year of first publication; and

(II) for a further transition period as prescribed under subparagraph (B) of this paragraph; and

(ii) shall not apply to any sound recording after February 15, 2067.

(B) TRANSITION PERIODS.—

(i) PRE-1923 RECORDINGS.—In the case of a sound recording first published before January 1, 1923, the transition period described in subparagraph (A)(i)(II) shall end on December 31 of the year that is 3 years after the date of enactment of this section.

(ii) 1923–1946 RECORDINGS.—In the case of a sound recording first published during the period beginning on January 1, 1923, and ending on December 31, 1946, the transition period described in subparagraph (A)(i)(II) shall end on the date that is 5 years after the last day of the period described in subparagraph (A)(i)(I).

(iii) 1947–1956 RECORDINGS.—In the case of a sound recording first published during the period beginning on January 1, 1947, and ending on December 31, 1956, the transition period described in subparagraph (A)(i)(II) shall end on the date that is 15 years after the last day of the period described in subparagraph (A)(i)(I).

(iv) POST-1956 RECORDINGS.—In the case of a sound recording fixed before February 15, 1972, that is not

described in clause (i), (ii), or (iii), the transition period described in subparagraph (A)(i)(II) shall end on February 15, 2067.

(3) RULE OF CONSTRUCTION.—For the purposes of this subsection, the term "anyone" includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in the official capacity of the officer or employee, as applicable.

(b) CERTAIN AUTHORIZED TRANSMISSIONS AND REPRODUCTIONS.—A public performance by means of [a digital audio] *an audio* transmission of a sound recording fixed before February 15, 1972, or a reproduction in an ephemeral phonorecord or copy of a sound recording fixed before February 15, 1972, shall, for purposes of subsection (a), be considered to be authorized and made with the consent of the rights owner if—

(1) the transmission or reproduction would satisfy the requirements for statutory licensing under section 112(e)(1) or section 114(d)(2), or would be exempt under section 114(d)(1), as the case may be, if the sound recording were fixed on or after February 15, 1972; and

(2) the transmitting entity pays the statutory royalty for the transmission or reproduction pursuant to the rates and terms adopted under sections 112(e) and 114(f), and complies with other obligations, in the same manner as required by regulations adopted by the Copyright Royalty Judges under sections 112(e) and 114(f) for sound recordings that are fixed on or after February 15, 1972, except in the case of a transmission that would be exempt under section 114(d)(1).

(c) CERTAIN NONCOMMERCIAL USES OF SOUND RECORDINGS THAT ARE NOT BEING COMMERCIALLY EXPLOITED.—

(1) IN GENERAL.—Noncommercial use of a sound recording fixed before February 15, 1972, that is not being commercially exploited by or under the authority of the rights owner shall not violate subsection (a) if—

(A) the person engaging in the noncommercial use, in order to determine whether the sound recording is being commercially exploited by or under the authority of the rights owner, makes a good faith, reasonable search for, but does not find, the sound recording—

(i) in the records of schedules filed in the Copyright Office as described in subsection (f)(5)(A); and

(ii) on services offering a comprehensive set of sound recordings for sale or streaming;

(B) the person engaging in the noncommercial use files a notice identifying the sound recording and the nature of the use in the Copyright Office in accordance with the regulations issued under paragraph (3)(B); and

(C) during the 90-day period beginning on the date on which the notice described in subparagraph (B) is indexed into the public records of the Copyright Office, the rights owner of the sound recording does not, in its discretion, opt out of the noncommercial use by filing notice thereof in the Copyright Office in accordance with the regulations issued under paragraph (5).

(2) RULES OF CONSTRUCTION.—For purposes of this subsection—

(A) merely recovering costs of production and distribution of a sound recording resulting from a use otherwise permitted under this subsection does not itself necessarily constitute a commercial use of the sound recording;

(B) the fact that a person engaging in the use of a sound recording also engages in commercial activities does not itself necessarily render the use commercial; and

(C) the fact that a person files notice of a noncommercial use of a sound recording in accordance with the regulations issued under paragraph (3)(B) does not itself affect any limitation on the exclusive rights of a copyright owner described in section 107, 108, 109, 110, or 112(f) as applied to a claim under subsection (a) of this section pursuant to subsection (f)(1)(A) of this section.

(3) NOTICE OF COVERED ACTIVITY.—Not later than 180 days after the date of enactment of this section, the Register of Copyrights shall issue regulations that—

(A) provide specific, reasonable steps that, if taken by a filer, are sufficient to constitute a good faith, reasonable search under paragraph (1)(A) to determine whether a recording is being commercially exploited, including the services that satisfy the good faith, reasonable search requirement under paragraph (1)(A) for purposes of the safe harbor described in paragraph (4)(A); and

(B) establish the form, content, and procedures for the filing of notices under paragraph (1)(B).

(4) SAFE HARBOR.—

(A) IN GENERAL.—A person engaging in a noncommercial use of a sound recording otherwise permitted under this subsection who establishes that the person made a good faith, reasonable search under paragraph (1)(A) without finding commercial exploitation of the sound recording by or under the authority of the rights owner shall not be found to be in violation of subsection (a).

(B) STEPS SUFFICIENT BUT NOT NECESSARY.—Taking the specific, reasonable steps identified by the Register of Copyrights in the regulations issued under paragraph (3)(A) shall be sufficient, but not necessary, for a filer to satisfy the requirement to conduct a good faith, reasonable search under paragraph (1)(A) for purposes of subparagraph (A) of this paragraph.

(5) OPTING OUT OF COVERED ACTIVITY.—

(A) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Register of Copyrights shall issue regulations establishing the form, content, and procedures for the rights owner of a sound recording that is the subject of a notice under paragraph (1)(B) to, in its discretion, file notice opting out of the covered activity described in the notice under paragraph (1)(B) during the 90-day period beginning on the date on which the notice under paragraph (1)(B) is indexed into the public records of the Copyright Office.

(B) RULE OF CONSTRUCTION.—The fact that a rights holder opts out of a noncommercial use of a sound recording by filing notice thereof in the Copyright Office in accordance with the regulations issued under subparagraph (A) does not itself enlarge or diminish any limitation on the exclusive rights of a copyright owner described in section 107, 108, 109, 110, or 112(f) as applied to a claim under subsection (a) of this section pursuant to subsection (f)(1)(A) of this section.

(6) CIVIL PENALTIES FOR CERTAIN ACTS.—

(A) FILING OF NOTICES OF NONCOMMERCIAL USE.—Any person who willfully engages in a pattern or practice of filing a notice of noncommercial use of a sound recording as described in paragraph (1)(B) fraudulently describing the use proposed, or knowing that the use proposed is not permitted under this subsection, shall be assessed a civil penalty in an amount that is not less than $250, and not more than $1000, for each such notice, in addition to any other remedies that may be available under this title based on the actual use made.

(B) FILING OF OPT-OUT NOTICES.—

(i) IN GENERAL.—Any person who files an opt-out notice as described in paragraph (1)(C), knowing that the person is not the rights owner or authorized to act on behalf of the rights owner of the sound recording to which the notice pertains, shall be assessed a civil penalty in an amount not less than $250, and not more than $1,000, for each such notice.

(ii) PATTERN OR PRACTICE.—Any person who engages in a pattern or practice of making filings as described in clause (i) shall be assessed a civil penalty in an amount not less than $10,000 for each such filing.

(C) DEFINITION.—For purposes of this paragraph, the term "knowing"—

(i) does not require specific intent to defraud; and

(ii) with respect to information about ownership of the sound recording in question, means that the person—

(I) has actual knowledge of the information;

(II) acts in deliberate ignorance of the truth or falsity of the information; or

(III) acts in grossly negligent disregard of the truth or falsity of the information.

(d) PAYMENT OF ROYALTIES FOR TRANSMISSIONS OF PERFORMANCES BY DIRECT LICENSING OF STATUTORY SERVICES.—

(1) IN GENERAL.—A public performance by means of [a digital audio] *an audio* transmission of a sound recording fixed before February 15, 1972, shall, for purposes of subsection (a), be considered to be authorized and made with the consent of the rights owner if the transmission is made pursuant to a license agreement voluntarily negotiated at any time between the rights owner and the entity performing the sound recording.

(2) PAYMENT OF ROYALTIES TO NONPROFIT COLLECTIVE UNDER CERTAIN LICENSE AGREEMENTS.—

(A) LICENSES ENTERED INTO ON OR AFTER DATE OF ENACTMENT.—To the extent that a license agreement described in paragraph (1) entered into on or after the date of enactment of this section extends to a public performance by means of ⟦a digital audio⟧ *an audio* transmission of a sound recording fixed before February 15, 1972, that meets the conditions of subsection (b)—

(i) the licensee shall, with respect to such transmission, pay to the collective designated to distribute receipts from the licensing of transmissions in accordance with section 114(f), 50 percent of the performance royalties for that transmission due under the license; and

(ii) the royalties paid under clause (i) shall be fully credited as payments due under the license.

(B) CERTAIN AGREEMENTS ENTERED INTO BEFORE ENACTMENT.—To the extent that a license agreement described in paragraph (1), entered into during the period beginning on January 1 of the year in which this section is enacted and ending on the day before the date of enactment of this section, or a settlement agreement with a preexisting satellite digital audio radio service (as defined in section 114(j)) entered into during the period beginning on January 1, 2015, and ending on the day before the date of enactment of this section, extends to a public performance by means of a digital audio transmission of a sound recording fixed before February 15, 1972, that meets the conditions of subsection (b)—

(i) the rights owner shall, with respect to such transmission, pay to the collective designated to distribute receipts from the licensing of transmissions in accordance with section 114(f) an amount that is equal to the difference between—

(I) 50 percent of the difference between—

(aa) the rights owner's total gross performance royalty fee receipts or settlement monies received for all such transmissions covered under the license or settlement agreement, as applicable; and

(bb) the rights owner's total payments for outside legal expenses, including any payments of third-party claims, that are directly attributable to the license or settlement agreement, as applicable; and

(II) the amount of any royalty receipts or settlement monies under the agreement that are distributed by the rights owner to featured and nonfeatured artists before the date of enactment of this section; and

(ii) the royalties paid under clause (i) shall be fully credited as payments due under the license or settlement agreement, as applicable.

(3) DISTRIBUTION OF ROYALTIES AND SETTLEMENT MONIES BY COLLECTIVE.—The collective described in paragraph (2) shall, in accordance with subparagraphs (B) through (D) of section

114(g)(2), and paragraphs (5) and (6) of section 114(g), distribute the royalties or settlement monies received under paragraph (2) under a license or settlement described in paragraph (2), which shall be the only payments to which featured and nonfeatured artists are entitled by virtue of the transmissions described in paragraph (2), except for settlement monies described in paragraph (2) that are distributed by the rights owner to featured and nonfeatured artists before the date of enactment of this section.

(4) PAYMENT OF ROYALTIES UNDER LICENSE AGREEMENTS ENTERED BEFORE ENACTMENT OR NOT OTHERWISE DESCRIBED IN PARAGRAPH (2).—

(A) IN GENERAL.—To the extent that a license agreement described in paragraph (1) entered into before the date of enactment of this section, or any other license agreement not as described in paragraph (2), extends to a public performance by means of [a digital audio] *an audio* transmission of a sound recording fixed before February 15, 1972, that meets the conditions of subsection (b), the payments made by the licensee pursuant to the license shall be made in accordance with the agreement.

(B) ADDITIONAL PAYMENTS NOT REQUIRED.—To the extent that a licensee has made, or will make in the future, payments pursuant to a license as described in subparagraph (A), the provisions of paragraphs (2) and (3) shall not require any additional payments from, or additional financial obligations on the part of, the licensee.

(C) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed to prohibit the collective designated to distribute receipts from the licensing of transmissions in accordance with section 114(f) from administering royalty payments under any license not described in paragraph (2).

(e) PREEMPTION WITH RESPECT TO CERTAIN PAST ACTS.—

(1) IN GENERAL.—This section preempts any claim of common law copyright or equivalent right under the laws of any State arising from a digital audio transmission or reproduction that is made before the date of enactment of this section of a sound recording fixed before February 15, 1972, if—

(A) the digital audio transmission would have satisfied the requirements for statutory licensing under section 114(d)(2) or been exempt under section 114(d)(1), or the reproduction would have satisfied the requirements of section 112(e)(1), as the case may be, if the sound recording were fixed on or after February 15, 1972; and

(B) either—

(i) except in the case of a transmission that would have been exempt under section 114(d)(1), not later than 270 days after the date of enactment of this section, the transmitting entity pays statutory royalties and provides notice of the use of the relevant sound recordings in the same manner as required by regulations adopted by the Copyright Royalty Judges for sound recordings that are fixed on or after February 15, 1972, for all the digital audio transmissions and

reproductions satisfying the requirements for statutory licensing under sections 112(e)(1) and 114(d)(2) during the 3 years before that date of enactment; or

(ii) an agreement voluntarily negotiated between the rights owner and the entity performing the sound recording (including a litigation settlement agreement entered into before the date of enactment of this section) authorizes or waives liability for any such transmission or reproduction and the transmitting entity has paid for and reported such digital audio transmission under that agreement.

(2) RULE OF CONSTRUCTION FOR COMMON LAW COPYRIGHT.—For purposes of paragraph (1), a claim of common law copyright or equivalent right under the laws of any State includes a claim that characterizes conduct subject to that paragraph as an unlawful distribution, act of record piracy, or similar violation.

(3) RULE OF CONSTRUCTION FOR PUBLIC PERFORMANCE RIGHTS.—Nothing in this section may be construed to recognize or negate the existence of public performance rights in sound recordings under the laws of any State.

(f) LIMITATIONS ON REMEDIES.—

(1) FAIR USE; USES BY LIBRARIES, ARCHIVES, AND EDUCATIONAL INSTITUTIONS.—

(A) IN GENERAL.—The limitations on the exclusive rights of a copyright owner described in sections 107, 108, 109, 110, and 112(f) shall apply to a claim under subsection (a) with respect to a sound recording fixed before February 15, 1972.

(B) RULE OF CONSTRUCTION FOR SECTION 108(H).—With respect to the application of section 108(h) to a claim under subsection (a) with respect to a sound recording fixed before February 15, 1972, the phrase "during the last 20 years of any term of copyright of a published work" in such section 108(h) shall be construed to mean at any time after the date of enactment of this section.

(2) ACTIONS.—The limitations on actions described in section 507 shall apply to a claim under subsection (a) with respect to a sound recording fixed before February 15, 1972.

(3) MATERIAL ONLINE.—Section 512 shall apply to a claim under subsection (a) with respect to a sound recording fixed before February 15, 1972.

(4) PRINCIPLES OF EQUITY.—Principles of equity apply to remedies for a violation of this section to the same extent as such principles apply to remedies for infringement of copyright.

(5) FILING REQUIREMENT FOR STATUTORY DAMAGES AND ATTORNEYS' FEES.—

(A) FILING OF INFORMATION ON SOUND RECORDINGS.—

(i) FILING REQUIREMENT.—Except in the case of a transmitting entity that has filed contact information for that transmitting entity under subparagraph (B), in any action under this section, an award of statutory damages or of attorneys' fees under section 504 or 505 may be made with respect to an unauthorized use of a sound recording under subsection (a) only if—

(I) the rights owner has filed with the Copyright Office a schedule that specifies the title, artist, and rights owner of the sound recording and contains such other information, as practicable, as the Register of Copyrights prescribes by regulation; and

(II) the use occurs after the end of the 90-day period beginning on the date on which the information described in subclause (I) is indexed into the public records of the Copyright Office.

(ii) REGULATIONS.—Not later than 180 days after the date of enactment of this section, the Register of Copyrights shall issue regulations that—

(I) establish the form, content, and procedures for the filing of schedules under clause (i);

(II) provide that a person may request that the person receive timely notification of a filing described in subclause (I); and

(III) set forth the manner in which a person may make a request under subclause (II).

(B) FILING OF CONTACT INFORMATION FOR TRANSMITTING ENTITIES.—

(i) FILING REQUIREMENT.—Not later than 30 days after the date of enactment of this section, the Register of Copyrights shall issue regulations establishing the form, content, and procedures for the filing of contact information by any entity that, as of the date of enactment of this section, performs a sound recording fixed before February 15, 1972, by means of a digital audio transmission.

(ii) TIME LIMIT ON FILINGS.—The Register of Copyrights may accept filings under clause (i) only until the 180th day after the date of enactment of this section.

(iii) LIMITATION ON STATUTORY DAMAGES AND ATTORNEYS' FEES.—

(I) LIMITATION.—An award of statutory damages or of attorneys' fees under section 504 or 505 may not be made against an entity that has filed contact information for that entity under clause (i) with respect to an unauthorized use by that entity of a sound recording under subsection (a) if the use occurs before the end of the 90-day period beginning on the date on which the entity receives a notice that—

(aa) is sent by or on behalf of the rights owner of the sound recording;

(bb) states that the entity is not legally authorized to use that sound recording under subsection (a); and

(cc) identifies the sound recording in a schedule conforming to the requirements prescribed by the regulations issued under subparagraph (A)(ii).

(II) UNDELIVERABLE NOTICES.—In any case in which a notice under subclause (I) is sent to an entity by mail or courier service and the notice is returned to the sender because the entity either is no longer located at the address provided in the contact information filed under clause (i) or has refused to accept delivery, or the notice is sent by electronic mail and is undeliverable, the 90-day period under subclause (I) shall begin on the date of the attempted delivery.

(C) SECTION 412.—Section 412 shall not limit an award of statutory damages under section 504(c) or attorneys' fees under section 505 with respect to a covered activity in violation of subsection (a).

(6) APPLICABILITY OF OTHER PROVISIONS.—

(A) IN GENERAL.—Subject to subparagraph (B), no provision of this title shall apply to or limit the remedies available under this section except as otherwise provided in this section.

(B) APPLICABILITY OF DEFINITIONS.—Any term used in this section that is defined in section 101 shall have the meaning given that term in section 101.

(g) APPLICATION OF SECTION 230 SAFE HARBOR.—For purposes of section 230 of the Communications Act of 1934 (47 U.S.C. 230), subsection (a) shall be considered to be a "law pertaining to intellectual property" under subsection (e)(2) of such section 230.

(h) APPLICATION TO RIGHTS OWNERS.—

(1) TRANSFERS.—With respect to a rights owner described in subsection (*l*)(2)(B)—

(A) subsections (d) and (e) of section 201 and section 204 shall apply to a transfer described in subsection (*l*)(2)(B) to the same extent as with respect to a transfer of copyright ownership; and

(B) notwithstanding section 411, that rights owner may institute an action with respect to a violation of this section to the same extent as the owner of an exclusive right under a copyright may institute an action under section 501(b).

(2) APPLICATION OF OTHER PROVISIONS.—The following provisions shall apply to a rights owner under this section to the same extent as any copyright owner:

(A) Section 112(e)(2).

(B) Section 112(e)(7).

(C) Section 114(e).

(D) Section 114(h).

(i) EPHEMERAL RECORDINGS.—An authorized reproduction made under this section shall be subject to section 112(g) to the same extent as a reproduction of a sound recording fixed on or after February 15, 1972.

(j) RULE OF CONSTRUCTION.—A rights owner of, or featured recording artist who performs on, a sound recording under this chapter shall be deemed to be an interested copyright party, as defined in section 1001, to the same extent as a copyright owner or featured recording artist under chapter 10.

(k) TREATMENT OF STATES AND STATE INSTRUMENTALITIES, OFFICERS, AND EMPLOYEES.—Any State, and any instrumentality, officer, or employee described in subsection (a)(3), shall be subject to the provisions of this section in the same manner and to the same extent as any nongovernmental entity.

(l) DEFINITIONS.—In this section:

(1) COVERED ACTIVITY.—The term "covered activity" means any activity that the copyright owner of a sound recording would have the exclusive right to do or authorize under section 106 or 602, or that would violate section 1201 or 1202, if the sound recording were fixed on or after February 15, 1972.

(2) RIGHTS OWNER.—The term "rights owner" means—

(A) the person that has the exclusive right to reproduce a sound recording under the laws of any State, as of the day before the date of enactment of this section; or

(B) any person to which a right to enforce a violation of this section may be transferred, in whole or in part, after the date of enactment of this section, under—

(i) subsections (d) and (e) of section 201; and

(ii) section 204.

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