§ 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)—

(I) EXEMPT TRANSMISSIONS AND RETRANSMISSIONS.—The performance of a sound recording publicly by means of a digital 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 retransmission of a 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 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 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 terrestrial broadcast retransmission; or

(C) 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. 552(12)), of a transmission by a retransmitter licensed to publicly perform the sound recording as a part of that transmission, if the retransmission is si-
multaneous 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 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 use by 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—
§ 114  TITLE 17—COPYRIGHTS

(aa) more than 3 times in any 2-week period that have been publicly announced in advance, 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 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 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 of the phonorecord or 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;

(vii) 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, 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

(viii) 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 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

(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 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

(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 exceed 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 licensor 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 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, 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:
§ 114

MISSIONS

(f) To become operational, for the purpose of de-
sound recordings are performed is or is about
right owner or any transmitting entity indi-
petition filed by any sound recording copy-
and (B) shall also be initiated pursuant to a

parties may agree. The parties to each pro-

as the case may be, or such other period as the

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

the sound recording—

(1) The Copyright Royalty Judges shall, subject to paragraph (2), be bind-
ing on all copyright owners of sound record-
ings and entities performing sound recordings
affected by this paragraph 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

the Copyright Royalty Judges—

(i) shall base their decision on economic,

whether use of the service may sub-
stitute 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 rev-

(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 rel-

(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 copy-
right owner or any transmitting entity indic-
ating that a new type of service on which
sound recordings are performed is or is about
to become operational, for the purpose of de-
termining reasonable terms and rates of roy-
alty payments with respect to such new type
of service for the period beginning with the in-
corporation 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 sub-
scription services and preexisting satellite dig-
tal 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.

(2) License agreements voluntarily nego-
tiated at any time between 1 or more copy-
right owners of sound recordings and 1 or more
entities performing sound recordings shall be
given effect in lieu of any decision by the Li-

The notification 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 promul-
gated by the Copyright Royalty Judges. If new regulations are promul-
gated under this subparagraph, the Copyright Royalty Judges shall take into account the

(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.

(A) Notwithstanding section 112(e) and the
other provisions of this subsection, the receiv-
ing agent may enter into agreements for the
reproduction and performance of sound record-
ings under section 112(e) and this section by
any 1 or more commercial webcasters or non-
commercial webcasters for a period of not
more than 11 years beginning on January 1, 2005,
that, once published in the Federal Reg-
ister pursuant to subparagraph (B), shall be
binding on all copyright owners of sound re-
cordings 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—
(1) 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;
(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 audio transmission.
§ 114

(B) 2 1/2 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 vocalists (whether or not members of the American Federation of Musicians) who have performed on sound recordings.

(C) 2 1/2 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 musicians (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, 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) 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) 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, 1965, 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 from royalties otherwise 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) 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, 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...

(8) 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.

(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 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.


HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94–176

Subsection (a) of Section 114 specified that the exclusive rights of the owner of copyright in a sound recording are limited to the rights to reproduce the sound recording in copies or phonorecords, to prepare derivative works based on the copyrighted sound recording, and to distribute copies or phonorecords of the sound recording to the public. Subsection (a) states explicitly that the owner’s rights “do not include any right of performance under section 106(4).” The Committee considered at length the arguments in favor of establishing a limited performance right, in the form of a compulsory license, for copyrighted sound recordings, but concluded that the problem requires further study. It therefore added a new subsection (d) to the bill requiring the Register of Copyrights to submit to Congress, on January 3, 1978, “a report setting forth recommendations as to whether this section should be amended to provide for performers and copyright owners * * * any performance rights” in copyrighted sound recordings. Under the new subsection, the report “should describe the status of such rights in foreign countries, the views of major interested parties, and specific legislative or other recommendations, if any.”

Subsection (b) of section 114 makes clear that statutory protection for sound recordings extends only to the particular sounds of which the recording consists, and would not prevent a separate recording of another performance in which those sounds are imitated. Thus, infringement takes place whenever all or any substantial portion of the actual sounds that go to make up a copyrighted sound recording are reproduced in phonorecords by repressing, transcribing, recapturing off the air, or any other method, or by reproducing them in the soundtrack or audio portion of a motion picture or other audiovisual work. Mere imitation of a recorded performance would not constitute a copyright infringement even where each performer deliberately sets out to simulate another’s performance as exactly as possible.

Under section 114, the exclusive right of owner of copyright in a sound recording to prepare derivative works based on the copyrighted sound recording is recognized. However, in view of the expressed intention not to give exclusive rights against imitative or simulated performances and recordings, the Committee adopted an amendment to make clear the scope of rights under section 106(2) in this context. Section 114(b) provides that 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.”

Another amendment deals with the use of copyrighted sound recordings “included in educational televisions and radio programs * * * distributed or transmitted by or through public broadcasting entities.” This use of recordings is permissible without authorization from the owner of copyright in the sound recording, as long as “copies or phonorecords of said programs are not commercially distributed by or through public broadcasting entities to the general public.”

During the 1975 hearings, the Register of Copyrights expressed some concern that an inseparable segment of this country’s musical heritage—in the form of sound recordings—had become inaccessible to musicologists and to others for scholarly purposes. Several of the major recording companies have responded to the Register’s concern by granting blanket licenses to the Library of Congress to permit it to make single copy duplicate applications of sound recordings maintained in the Library’s archives for research purposes. Moreover, steps are being taken to determine the feasibility of additional licensing arrangements as a means of satisfying the needs of key regional music libraries across the country. The Register has agreed to report to Congress if further legislative consideration should be undertaken.

Section 114(c) states explicitly that nothing in the provisions of section 114 should be construed to “limit or impair the exclusive right to perform publicly, by means of a phonorecord, any of the works specified by section 106(4).” This principle is already implicit in the bill, but it is restated to avoid the danger of confusion between rights in a sound recording and rights in the musical composition or other work embodied in the recording.

Editorial Notes

REFERENCES IN TEXT

Section 602(12) of the Communications Act of 1934, referred to in subsec. (d)(1)(C)(ii), was subsequently amended, and section 602(12) no longer defines “multi-channel video programming distributor.” However, such term is defined elsewhere in that section.

The date of enactment of the Digital Millennium Copyright Act, referred to in subsec. (d)(2)(C)(i), is the date of enactment of Pub. L. 105–304, which was approved Oct. 28, 1998.

The date of enactment of the Digital Performance Right in Sound Recordings Act of 1995, referred to in subsec. (d)(4)(B)(iii), (C), is the date of enactment of Pub. L. 104–39, which was approved Nov. 1, 1996.

The effective date of the Copyright Royalty and Distribution Reform Act of 2004, referred to in subsec. (f)(5)(A), is the effective date of Pub. L. 108–419, which is 6 months after Nov. 30, 2004, subject to transition provisions, see section 6 of Pub. L. 108–419, set out as an Effective Date; Transition Provisions note under section 801 of this title.


For complete classification of this Act to the Code, see Short Title of 2008 Amendment note set out under section 101 of this title and Tables.

For complete classification of this Act to the Code, see Short Title of 2009 Amendment note set out under section 101 of this title and Tables.


**AMENDMENTS**

2018—Subsec. (f)(1). Pub. L. 115–264, § 103(a)(1), added par. (1) and struck out former par. (1) which related to the determination of reasonable rates and terms of royalty payments for certain subscription and satellite digital audio radio transmissions.

Subsec. (f)(2) to (5). Pub. L. 115–264, § 103(a)(1), redesignated pars. (3) to (5) as (2) to (4), respectively, and struck out former par. (2) which related to the determination of reasonable rates and terms of royalty payments for certain types of public performances of sound recordings.

Subsec. (f)(4)(C). Pub. L. 115–264, § 103(g)(1), substituted “under paragraph (3)” for “under paragraph (4)”.

Subsec. (g)(2). Pub. L. 115–264, § 302(c)(1), substituted “Except as provided for in paragraph (6), a nonprofit collective designated by the Copyright Royalty Judges” for “An agent designated” in introductory provisions.

Subsec. (g)(3). Pub. L. 115–264, § 302(c)(2), in introductory provisions, substituted “nonprofit collective designated by the Copyright Royalty Judges” for “nonprofit agent designated”, “another designated nonprofit collective” for “another designated agent”, “such nonprofit collective” for “such nonprofit agent”, and “of such collective” for “of such agent”.

Subsec. (g)(4). Pub. L. 115–264, § 302(c)(3), substituted “nonprofit collective” for “designated agent” and substituted “such collective” for “such agent, in two places.

Subsec. (g)(5). Pub. L. 115–264, § 302(a), added par. (5).


Subsec. (i). Pub. L. 115–264, § 103(b), struck out subsec. (1). Text read as follows: “License fees payable for the public performance of sound recordings under section 106(6) shall not be taken into account in any administrative, judicial, or other governmental proceeding to set or adjust the royalties payable to copyright owners of musical works for the public performance of their works. It is the intent of Congress that royalties payable to copyright owners of musical works for the public performance of their works shall not be diminished in any respect as a result of the rights granted by section 106(6).”

2010—Subsec. (b). Pub. L. 111–295, § 6(f)(1), substituted “118(f)” for “118(g)”.

Subsec. (b)(2). Pub. L. 111–295, § 6(b), substituted “Judges shall base their decision” for “Judges shall base its decision” in introductory provisions.

Subsec. (b)(3). Pub. L. 111–295, § 6(c), substituted “eligible nonsubscription services and new subscription services” for “preexisting subscription digital audio transmission services or preexisting satellite digital audio radio services”.


2008—Subsec. (f)(5)(A). Pub. L. 110–435, § 2(1), substituted “commercial” for “small commercial” wherever appearing, in first sentence substituted “for a period of not more than 11 years beginning on January 1, 2005” for “during the period beginning on October 28, 1998, and ending on December 31, 2004” and “the Copyright Royalty Judges” for “a copyright arbitration royalty panel or decision by the Librarian of Congress”, and in second sentence substituted “webcasters may include” for “webcasters shall include”.


Subsec. (f)(5)(C). Pub. L. 110–435, § 2(3), substituted “Copyright Royalty Judges” for “Librarian of Congress” and “and webcasters” for “small webcasters” and inserted at end “This subparagraph shall not apply to the extent that the receiving agent and a webcaster that is a party to an agreement entered into pursuant to subparagraph (A) expressly authorize the submission of the agreement in a proceeding under this subsection.”


Pub. L. 110–435, § 2(4)(A), which directed substitution of “the Webcaster Settlement Act of 2008” for “the Small Webcasters Settlement Act of 2002”, was executed by making the substitution for “the Small Webcaster Settlement Act of 2002”, to reflect the probable intent of Congress.


2006—Subsec. (f)(1)(A). Pub. L. 109–303, § 6(b)(1), substituted “except in the case of a different transitional period provided under section 6(b)(4) of the Copyright Royalty and Distribution Reform Act of 2004, or such other period as the parties may agree.” for “except where a different transitional period is provided under section 6(b)(3) of the Copyright Royalty and Distribution Reform Act of 2004 or such other period.”


2004—Subsec. (f)(1)(A). Pub. L. 108–419, § 6(c)(1)(A), substituted first sentence for former first sentence which read: “No later than 30 days after the enactment of the Digital Performance Right in Sound Recordings Act of 1995, the Librarian of Congress shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining reasonable terms and rates of royalty payments for subscription transmissions by preexisting subscription services and transmission by preexisting satellite digital audio radio services specified by subsection (d)(2) of this section during the period beginning on the effective date of such Act and ending on December 31, 2001, or, if a copyright arbitration royalty panel is convened, ending 30 days after the Librarian issues and publishes in the Federal Register an order adopting the determination of the copyright arbitration royalty panel or an order setting the terms and rates (if the Librarian rejects the panel’s determination),” substituted “Copyright Royalty Judges for Librarian of Congress” in third sentence, and struck out “negotiation” before “proceeding” in fourth sentence.

Subsec. (f)(1)(B). Pub. L. 108–419, § 6(c)(1)(B), substituted first sentence for former first sentence which read: “In the absence of license agreements negotiated under subparagraph (A), during the 60-day period commencing 6 months after publication of the notice specified in subparagraph (A), and upon the filing of a petition in accordance with section 869(a)(1), the Librarian of Congress shall, pursuant to chapter 8, convene a copyright arbitration royalty panel to determine and publish in the Federal Register a schedule of rates and terms which, subject to paragraph (9), shall be binding on all copyright owners of sound recordings and entities performing sound recordings affected by this para-
extent practicable, avoid significant disruption of the Copyright Royalty Judges shall take into account 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.”

2002—Subsec. (1)(B). Pub. L. 107–321, § 4, added par. (5). Subsec. (g)(12). Pub. L. 107–321, § 5(c), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “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 audio transmission shall, pursuant to chapter 8, convene a copyright arbitration royalty panel to determine and publish in the Federal Register a schedule of rates and terms for arbitration royalty fees.’’


Prior to amendment, par. (2) read as follows: “(A) 2½ 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.

“(B) 2½ 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.

“(C) 45 percent of the receipts shall be allocated, 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).”

Prior to amendment, text read as follows: “In the case of a subscription transmission not exempt under subsection (d)(1), the performance of a sound recording publicly by means of a digital audio transmission shall be subject to statutory licensing, in accordance with subsection (f) of this section:

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

“(B) the transmission does not exceed the sound recording performance compliment;

“(C) 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;

“(D) except in the case of 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

“(E) except as provided in section 1002(e) of this title, the transmission of the sound recording is accompanied 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 federal recording artist who performs on the sound recording, and related information, including information concerning the underlying musical work and its writer.”

Prior to amendment, heading and text of par. (2) generally. Prior to amendment, text read as follows: “In the case of a subscription transmission not exempt under subsection (d)(1), the performance of a sound recording publicly by means of a digital audio transmission shall be subject to statutory licensing, in accordance with subsection (f) of this section:

“(A) 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.”

§ 114

Subsec. (f)(1)(A). Pub. L. 105–304, § 405(a)(2)(B), designated existing provisions as subpar. (A), in first sentence, substituted “subscription transmissions by preempted (subscription) services and transmissions by preexisting satellite digital audio radio services” for “the activities” and “2001” for “2000”, and amended third sentence generally. Prior to amendment, third sentence read as follows: “Any copyright owners of sound recordings or any entities performing sound recordings affected by this section may submit to the Librarian of Congress licenses covering such activities with respect to such sound recordings.”

Subsec. (f)(2) to (5). Pub. L. 105–304, § 405(a)(2)(C), added pars. (2) to (4) and struck out former pars. (2) to (5), which provided: in par. (2) that Librarian of Congress would convene a copyright arbitration royalty panel to determine schedule of rates and terms, that panel could consider rates and terms for comparable types of services under voluntary license agreements, and that requirements would be established by which copyright owners would receive notice of use of their recordings; in par. (3) that voluntarily negotiated license agreements would be given effect in lieu of determination by panel or decision by Librarian; in par. (4) that publication of notice of negotiations would be required no later than 30 days after petition was filed, in the first week of January, 2000, and at 5-year intervals thereafter, and that par. (2) procedures would be repeated upon filing of petition during a 60-day period commencing six months after publication of notice or on July 1, 2000 and at 5-year intervals thereafter; and in par. (5) that performance by non-exempt subscription transmission without infringing copyright was permissible by compliance with notice requirements and payment of royalty fees or agreement to pay such fees.


Subsec. (j)(2), (3). Pub. L. 105–304, § 405(a)(4)(A), (B), added par. (2) and redesignated former par. (2) as (3).

Subsec. (j)(3). Pub. L. 105–304, § 405(a)(4)(A), (C), added par. (4) and struck out former par. (4) which read as follows: “A ‘transmission’ includes not only interactive ‘transmissions’ and a retransmission.”

Subsec. (j)(4). Pub. L. 105–304, § 405(a)(4)(A), (D), added par. (6) to (8). Former par. (6) to (8) redesignated (12) to (14), respectively.

Subsec. (j)(9). Pub. L. 105–304, § 405(a)(4)(A), redesignated par. (5) as (9) and struck out former par. (9) which read as follows: “A ‘transmission’ includes both an initial transmission and a retransmission.”


Subsec. (j)(12) to (14). Pub. L. 105–304, § 405(a)(4)(A), redesignated pars. (6) to (8) as (12) to (14), respectively.


1995—Subsec. (a). Pub. L. 104–39, § 3(1), substituted “(3) and (6) of section 106” for “(3) and (5) of section 106”.

Subsec. (b). Pub. L. 104–39, § 3(2), substituted “phonorecords or copies” for “phonorecords, or of copies of motion pictures and other audiovisual works,” in first sentence.

Subsec. (d). Pub. L. 104–39, § 3(3), added subsec. (d), and struck out former subsec. (d), which read as follows: “On January 3, 1978, the Register of Copyrights, after consulting with representatives of owners of copyrighted materials, shall submit to the Congress a report setting forth recommendations as to whether this section should be amended to provide for performers and copyright owners of copyrighted material any performance rights in such material. The report should describe the status of such rights in foreign countries, the views of major interested parties, and specific legislative or other recommendations, if any.


Subsec. (f)(2). Pub. L. 103–346, § 405(a)(2)(C), added par. (6) and redesignated former par. (6) as (8).

Subsec. (f)(3). Pub. L. 103–346, § 405(a)(2)(D), added par. (7) and redesignated former par. (7) as (9).


Subsec. (f)(5). Pub. L. 103–346, § 405(a)(2)(F), added par. (9) and redesignated former par. (9) as (11).


The full text of the U.S. Copyright Act is the primary source of legal information concerning copyright. It is a comprehensive and detailed document that outlines the rights and obligations of copyright owners, the processes for obtaining and enforcing those rights, and the procedures for administering the Copyright Royalty Tribunal. The Act is amended periodically to reflect changes in technology, societal norms, and legal precedents. The amendments are reflected in the public record through legislative histories, which detail the reasoning behind the changes and the context in which they were made.
except as otherwise provided, see section 407 of Pub. L. 105–304, set out as a note under section 108 of this title.

Pub. L. 105–304, title IV, § 405(a)(1), Oct. 28, 1998, 112 Stat. 2899, provided that: "The amendment made by paragraph (2) of section 114(f) of this title to have been made for the period beginning on the effective date of that Act and ending on December 1, 2001."

**EFFECTIVE DATE OF 1995 AMENDMENT**

Amendment by Pub. L. 104–39 effective 3 months after Nov. 1, 1995, except that provisions of subsections (e) and (f) of this section effective Nov. 1, 1995, see section 6 of Pub. L. 104–39, set out as a note under section 101 of this title.

**SEVERABILITY**

Pub. L. 115–264, title IV, § 401, Oct. 11, 2018, 132 Stat. 3724, provided that: "If any provision of this Act [see Short Title of 2018 Amendment note set out under this section] shall be deemed to have been enacted as part of the Digital Performance Right in Sound Recordings Act of 1995 [Pub. L. 104–39], and the application of such provision or amendment to any person or circumstance, is held to be unconstitutional, the remainder of the provisions of this Act and the amendments made by this Act, and the application of the provision or amendment to any other person or circumstance, shall not be affected."

**CONSTRUCTION OF 2018 AMENDMENT**

Pub. L. 115–264, title I, § 103(e), Oct. 11, 2018, 132 Stat. 3724, provided that: "In any proceeding to set or adjust the rates and fees payable for the use of sound recordings under section 112(e) or 114(f) of such title that is pending on, or commenced on or after, the date of enactment of this Act [Oct. 11, 2018]."

Pub. L. 115–264, title I, § 103(f), Oct. 11, 2018, 132 Stat. 3725, provided that: "The repeal of section 114(i) of title 17, United States Code, by subsection (b) shall not have any effect upon the decisions, or the precedents established or relied upon, in any proceeding to set or adjust the rates and fees payable for the use of sound recordings under section 112(e) or 114(f) of such title that is pending on, or commenced on or after, the date of enactment of this Act [Oct. 11, 2018]."

**CONSTRUCTION OF 1998 AMENDMENT**

Pub. L. 105–304, title IV, § 405(a)(6), Oct. 28, 1998, 112 Stat. 2899, provided that: "The amendments made by this subsection [amending this section] do not annul, limit, or otherwise impair the rights that are preserved by section 114 of title 17, United States Code, including the rights preserved by subsections (c), (d), (4), and (i) of such section."

**USE IN MUSICAL WORK PROCEDINGS; NO EFFECT ON INTERPRETATION**

Pub. L. 115–264, title I, § 103(e), (d), Oct. 11, 2018, 132 Stat. 3724, provided that: "(c) USE IN MUSICAL WORK PROCEDINGS.—

"(1) In general.—License fees payable for the public performance of sound recordings under section 110(6) of title 17, United States Code, shall not be taken into account in any administrative, judicial, or other governmental proceeding to set or adjust the royalties payable to musical work copyright owners for the public performance of their works except in such a proceeding to set or adjust royalties for the public performance of musical works by means of a digital audio transmission by a broadcaster, and may be taken into account only with respect to such digital audio transmission.

"(2) Definitions.—In this subsection:

"(A) Transmission by a broadcaster.—The term 'transmission by a broadcaster' means a non-subscription digital transmission by a terrestrial broadcast station on its own behalf, or on the behalf of a terrestrial broadcast station under common ownership or control, that is not part of an interactive service or a music-intensive service comprising the transmission of sound recordings customized for or customizable by recipients or service users.

"(B) Terrestrial broadcast station.—The term 'terrestrial broadcast station' means a terrestrial, over-the-air radio or television broadcast station, including an FM translator (as defined in section 74.1201 of title 47, Code of Federal Regulations, and licensed as such by the Federal Communications Commission) whose primary business activities are comprised of, and whose revenues are generated through, terrestrial, over-the-air broadcast transmissions, or the simultaneous or substantially-simultaneous digital retransmission by the terrestrial, over-the-air broadcast station of its over-the-air broadcast transmissions.

"(d) Rule of construction.—Subsection (c)(2) shall not be given effect in interpreting provisions of title 17, United States Code.

**FINDINGS RELATING TO PUB. L. 107–321**

Pub. L. 115–264, title I, § 103(c), (d), Oct. 11, 2018, 132 Stat. 3724, provided that: "(1) Some small webcasters who did not participate in the copyright arbitration royalty panel proceeding leading to the July 8, 2002 order of the Librarian of Congress establishing rates and terms for certain digital performances and ephemeral reproductions of sound recordings, as provided in part 261 of the Code of Federal Regulations (published in the Federal Register on July 8, 2002) (referred to in this section as 'small webcasters'), have expressed reservations about the fee structure set forth in such order, and have expressed their desire for a fee based on a percentage of revenue.

"(2) Congress has strongly encouraged representatives of copyright owners of sound recordings and representatives of the small webcasters to engage in negotiations to arrive at an agreement that would include a fee based on a percentage of revenue.

"(3) The representatives have arrived at an agreement that they can accept in the extraordinary and unique circumstances of the marketplace between a willing buyer and a willing seller.

"(4) The representatives have indicated that they do not believe the agreement provides for or in any way approximates fair or reasonable royalties and terms, or rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller.

"(5) Congress has made no determination as to whether the agreement provides for or in any way approximates fair or reasonable fees and terms, or rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller.

"(6) Congress likewise has made no determination as to whether the July 8 order is reasonable or arbitrary, and nothing in this Act [amending this section and enacting provisions set out as notes under this section and section 101 of this title] shall be taken into account by the United States Court of Appeals for the District of Columbia Circuit in its review of such order.

"(7) It is, nevertheless, in the public interest for the parties to be able to enter into such an agreement without fear of liability for deviating from the fees
§ 115. Scope of exclusive rights in nondramatic musical works: Compulsory license for making and distributing phonorecords

In the case of nondramatic musical works, the exclusive rights provided by clauses (1) and (3) of section 106, to make and distribute phonorecords of such works, are subject to compulsory licensing under the conditions specified by this section.

(a) Availability and scope of compulsory license in general.—

(1) Eligibility for compulsory license.—

(A) Conditions for compulsory license.—A person may by complying with the provisions of this section obtain a compulsory license to make and distribute phonorecords of a nondramatic musical work, including by means of digital phonorecord delivery. A person may obtain a compulsory license only if the primary purpose in making phonorecords of the musical work is to distribute them to the public for private use, including by means of digital phonorecord delivery, and—

(i) phonorecords of such musical work have previously been distributed to the public in the United States under the authority of the copyright owner of the work, including by means of digital phonorecord delivery;

(ii) in the case of a digital music provider seeking to make and distribute digital phonorecord deliveries of a sound recording embodying a musical work under a compulsory license for which clause (i) does not apply—

(I) the first fixation of such sound recording was made under the authority of the musical work copyright owner, and the sound recording copyright owner has the authority of the musical work copyright owner to make and distribute digital phonorecord deliveries embodying such work to the public in the United States; and

(II) the sound recording copyright owner, or the authorized distributor of the sound recording copyright owner, has authorized the digital music provider to make and distribute digital phonorecord deliveries of the sound recording to the public in the United States.

(B) Duplication of sound recording.—A person may not obtain a compulsory license for the use of the work in the making of phonorecords duplicating a sound recording fixed by another, including by means of digital phonorecord delivery, unless—

(i) such sound recording was fixed lawfully; and

(ii) the making of the phonorecords was authorized by the owner of the copyright...