statements to nearly all executive branch agencies. Unfortunately, this bill provides no funds to pay for those audits. The result is that the money spent to pay for these audits would otherwise be used by the Inspectors General to investigate waste, fraud and abuse. I believe strongly that Congress should fund what it authorizes.

Mr. Speaker, I have been pleased to work with the gentleman from California (Mr. HORN) on this and other financial management activities in the Committee on Government Reform. We share a belief that sound financial management gives us greater freedom to fund the many programs designed to help the public and that shoddy financial management directly impacts every taxpayer in this country and particularly harms the most vulnerable of our citizens.

Bad financial management is a double crime. First, it is wrong to disregard the value of taxpayer funds by wasting them through mismanagement. Second, it denies taxpayers the services for which they have paid their taxes. Unfortunately, the bill we have on the floor today is not the bill we have passed out of our subcommittee. The bill we have passed included a section that required the agencies covered under this bill to conform to the accounting standards set out in the Federal Financial Management Improvement Act of 1996. The administration insisted that those provisions be stripped from the bill, or it would block the bill from coming before the House today. I find this turn of events disappointing.

I am disappointed because we are passing a weaker bill than should be passed and because we are acquiescing to an unreasonable demand by the Bush administration. Our actions send a signal to the public that Congress is not serious enough about accounting standards. If there is any time in our history that we should be demanding greater accountability from government agencies, it is today.

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Requiring agencies to follow the standards of the Federal Financial Management Improvement Act is not new. In fact, every year, as part of its financial review of the executive branch, the General Accounting Office reports to Congress on whether each agency is conforming within the provisions of this Act. The Act requires agencies to put in place policies and systems that lead to sound financial management on a day-to-day basis. Frankly, I am puzzled that the Bush administration opposes this kind of sound financial management.

This administration talks a lot about its management initiatives and improving accountability in the government. However, it is very careful to make sure that it is the Office of Management and Budget that sets the rules by which agencies are graded. I am afraid that the administration's opposition to the accounting standards that were in this bill is just one more attempt to make sure that OMB, and not Congress, sets the standards by which agencies are judged. It is very easy to claim success when you define what success is.

The bill before us today is not just about accounting standards. The title is the Accountability for Tax Dollars Act, and I would like to speak to that topic.

The chart in the well shows the Federal deficit in surpluses for the years 1980 to 2001 and projections of the deficit through 2010. As my colleagues can see, after a few years of surplus at the end of the Clinton administration, we are back to the deficit spending of the Reagan and Bush, Senior, administrations.

I believe that it is important for the American public to understand just who is accountable in this situation. The administration would like the public to believe that the recession and the attacks of last September are responsible for these deficits, but that is not true.

The second chart, based on data from the Congressional Budget Office, shows that the single biggest cause of the deficits in this year and into the future is the Bush tax cut.

When President Clinton signaled to the world that he was serious about balancing the budget, it had an important effect. International investment began to flow into the U.S. economy and was one of the engines of the expansion of the 1990s. These deficits will have the opposite effect, holding back the economy and taking a toll on everyone.

We have already seen that happening. Last week, the Department of Commerce announced that the poverty rate was up and household income was down. The last time we saw poverty go up and income go down was during the recession in 1991.

Mr. Speaker, I support the bill before us today. However, it is unfortunate that we are not also considering a bill that I introduced, the First Things First Act. My bill truly addresses the problem of accountability for tax dollars by preventing further implementation of the Bush tax cuts, provisions that overwhelmingly benefit the rich and are fueling the Bush recession.

My bill puts further implementation of the tax cuts for the top bracket on hold until we can pay for the needs created by the terrorist attack last year, until we can ensure the solvency of Social Security and Medicare trust funds, until we can provide a comprehensive prescription drug benefit under Medicare, until we can ensure Federal funding for school modernization and hiring 100,000 teachers, and until we reduce the number of people who face homelessness and substandard housing.

Mr. Speaker, I ask that my colleagues pass the bill before us today, and I ask my colleagues to be truly accountable to the American public for their tax dollars. It is our patriotic duty to ensure that every tax dollar is accounted for and that agencies like the Department of Defense, which cannot account for over $1 trillion in transactions, clean up their books and their acts.

I would like to take a personal note, Mr. Speaker, to just thank the Chairman of the Subcommittee of Government Efficiency, Financial Management and Intergovernmental Relations. I want to commend him and thank the gentleman not only for the many courtesies that he has shown to me, as the ranking Democrat on that committee, and not only for the many, many things I learned from him on how to carry out the role of chairman with integrity and fairness, but I want to thank him for his service to the American people.

He has been relentless in his pursuit of government efficiency and financial management. He has had over a dozen hearings around the country on our capacity to deal with some of the threats of the terrorist attacks, and this decent and dedicated leader of our country will be deeply missed as he retires. He deserves all of our thanks.

Mr. Speaker, I yield back the balance of my time.

Mr. HORN. Mr. Speaker, I yield myself such time as I may consume.

I thank the fine speech of the gentlewoman from Illinois (Ms. SHAKOWSKY). She has worked in our committee on good government matters; and, of course, she comes from Chicago, so she knows where there needs a little work up there, but I thank her.

Mr. Speaker, I have no other requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. CANTOR). The question is on the motion offered by the gentleman from California (Mr. HORN) that the House suspend the rules and pass the bill, H.R. 4685, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

SMALL WEBCASTER AMENDMENTS ACT OF 2002

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5469) to suspend for a period of 6 months the determination of the Librarian of Congress of July 8, 2002, relating to rates and terms for the digital performance of sound recordings and ephemeral recordings, as amended.

The Clerk read as follows:

H.R. 5469

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION. 1. SHORT TITLE.

This Act may be cited as the ''Small Webcaster Amendments Act of 2002''.

SEC. 2. EPHEMERAL ROYALTY RATES FOR ELIGIBLE SMALL WEBCASTERS.

Section 112(e) of title 17, United States Code, is amended—

(1) in paragraph (4), by inserting immediately before the period at the end of the first sentence the following: '', except that the royalty payable under this section for any reproduction of a phonorecord made during the period beginning on October 28, 1998, and ending on December 31, 2004, and used solely by an eligible small webcaster to facilitate transmissions for which it pays royalties as and when provided in section 114(f)(2)(D) shall be deemed to be included within such royalty payments''; and

(2) in paragraph (6), by adding at the end the following: ''Notwithstanding the preceding provisions of this paragraph, the royalty payable under this section for any reproduction of a phonorecord made during the period beginning on October 28, 1998, and ending on December 31, 2004, and used solely by an eligible small webcaster to facilitate transmissions for which it pays royalties as and when provided in section 114(f)(2)(D) shall be deemed to be included within such royalty payments.''

SEC. 3. ROYALTY RATES AND NOTICE AND RECORDKEEPING FOR ELIGIBLE SMALL WEBCASTERS.

(a) PROVISION FOR CERTAIN RATES.—Section 114(f)(2) of title 17, United States Code, is amended—

(1) in subparagraph (B), by inserting immediately before the period at the end of the first sentence the following: '', except that the royalty rates for certain public performances of sound recordings shall be as provided in subparagraph (D)''; and

(2) in subparagraph (C), by adding after clause (iii) the following:

''(iv) Notwithstanding the preceding provisions of this subparagraph, the royalty rates and terms for certain public performances of sound recordings by certain entities shall be as provided in subparagraph (D).''.

(b) RATES FOR ELIGIBLE SMALL WEBCASTERS.—Section 114(f)(2) of title 17, United States Code, is amended by adding after subparagraph (C) the following:

''(D)(i) Subject to clause (iii) and paragraph (3), but notwithstanding any other provision of this paragraph, an eligible small webcaster may, as provided in clause (ii)(VII), for the period beginning on October 28, 1998, and ending on December 31, 2002, or one or both of calendar years 2003 and 2004, elect the royalty rates specified in this clause in lieu of any other applicable royalty rates:

''(I) For eligible nonsubscription transmissions made by an eligible small webcaster during the period beginning on October 28, 1998, and ending on December 31, 2002, the royalty rate shall be 8 percent of the webcaster's gross revenues during such period, or 5 percent of the webcaster's expenses during such period, whichever is greater, except that an eligible small webcaster that is a natural person shall exclude from expenses those expenses not incurred in connection with the operation of a service that makes eligible nonsubscription transmissions, and an eligible small webcaster that is a natural person shall exclude from gross revenues his or her income during such period, other than income derived from—

''(aa) a media or entertainment related business that provides audio or other entertainment programming, or

''(bb) a business that primarily operates an Internet or wireless service,

that is in either case directly or indirectly controlled by such natural person, or of which such natural person beneficially owns 5 percent or more of the outstanding voting or non-voting stock.

''(II) For eligible nonsubscription transmissions made by an eligible small webcaster during 2003 or 2004, the royalty rate shall be 10 percent of the eligible small webcaster's first $250,000 in gross revenues and 12 percent of any gross revenues in excess of $250,000 during the applicable year, or 7 percent of the webcaster's expenses during the applicable year, whichever is greater.

''(ii) Notwithstanding paragraph (4)(C), payment of the amounts specified in clause (i) shall be made as follows:

''(I) Except as provided in clause (iii)(I) and (IV), the amounts specified in clause (i)(I) for eligible nonsubscription transmissions made by an eligible small webcaster during the period beginning on October 28, 1998, and ending on September 30, 2002, shall be paid in three equal installments, with the first due by November 30, 2002, the second due by May 31, 2003, and the third due by October 31, 2003.

''(II) The amounts specified in clause (i) for eligible nonsubscription transmissions made by an eligible small webcaster during October 2002 or any month thereafter shall be paid on or before the twentieth day of the month next succeeding such month.

''(III) If the gross revenues, plus the third party participation revenues and revenues from the operation of new subscription services, of a transmitting entity and its affiliates have not exceeded $1,250,000 in any year, and the transmitting entity expects to be an eligible small webcaster in 2003 or 2004, the transmitting entity may make payments for 2003 or 2004, as the case may be, on the assumption that it will be an eligible small webcaster for that year for so long as that assumption is reasonable.

''(IV) In making payments under clause (i)(II), the webcaster shall, at the time a payment is due, calculate its gross revenues and expenses for the year through the end of the applicable month, and for the applicable month pay the applicable percentage of gross revenues or expenses, as the case may be, for the year through the end of the applicable month, less any amounts previously paid for such year.

''(V) If a transmitting entity has made payments under clause (i)(II) for 2003 or 2004 based on the assumption that it will qualify as an eligible small webcaster, as provided in subclause (IV), but the actual gross revenues in 2003, or the actual gross revenues, third party participation revenues, and revenues from the operation of new subscription services in 2004, of the eligible small webcaster and its affiliates, exceed the maximum amounts provided in clause (vi)(II), then the transmitting entity shall immediately commence to pay monthly royalties based on the royalty rates otherwise applicable under this subsection, and on the third payment date after the month in which such maximum amounts are exceeded, it shall pay an amount of royalties based on such otherwise applicable rates for the whole year through the end of the immediately preceding month, less any amounts previously paid under clause (i) for such year.

''(VI) Payments of all amounts specified in clause (i) shall be made to the entity designated by the Copyright Office to receive royalty payments under this section and shall under no circumstances be refundable, but if an eligible small webcaster makes overpayments during a year, it shall be entitled to a credit in the amount of its overpayment, and such credit shall be applicable to its payments in subsequent years.

''(VII) An eligible small webcaster that wishes to elect the royalty rates specified in clause (i) in lieu of any other royalty rates that otherwise might apply under this subsection for the period beginning on October 28, 1998, and ending on December 31, 2002, or one or both of calendar years 2003 and 2004, shall file an election with the Copyright Office and serve it on each entity designated by the Copyright Office to distribute royalty payments under this section to copyright owners and performers entitled to receive royalties under subsection (d)(2) by no later than the first date on which the webcaster is obligated under this clause to make a royalty payment for such period. An eligible small webcaster that fails to make a timely election shall pay royalties as otherwise provided under this section. As a condition of such election, an eligible small webcaster shall—

''(aa) make available to the entity designated to receive royalties under this section, on request at any time during the 3 years following the applicable period, sufficient evidence to support its eligibility as an eligible small webcaster; and

''(bb) provide to such entity, by not later than January 31 of the year following the applicable period, an accounting of its third party participation revenues.

The entity designated to receive royalties under this section may share with individual copyright owners the accounting provided by an eligible small webcaster under division (bb) if such entity does so in such a way that the eligible small webcaster cannot readily be identified.

''(iii) Notwithstanding clause (i), eligible small webcasters that elect the royalty rates specified in clause (i) shall pay a minimum fee for the periods specified in this clause, as follows:

''(I) For eligible nonsubscription transmissions made by an eligible small webcaster during the period beginning on October 28, 1998, and ending on December 31, 1998, the minimum fee for the year shall be $500.

''(II) For eligible nonsubscription transmissions made by an eligible small webcaster in any part of calendar years 1999 through 2002, the minimum fee for each year in which such transmissions are made shall be $2,000.

''(III) For eligible nonsubscription transmissions made by an eligible small webcaster in any part of calendar years 2003 and 2004, the minimum fee for each year in which such transmissions are made shall be $2,000 if the eligible small webcaster had gross revenues during the immediately preceding year of not more than $50,000 and expects to have gross revenues during the applicable year of not more than $50,000.

''(IV) For eligible nonsubscription transmissions made by an eligible small webcaster in any part of calendar years 2003 and 2004, the minimum fee for each year in which such transmissions are made shall be $5,000 if the eligible small webcaster had gross revenues during the immediately preceding year of more than $50,000 or expects to have gross revenues during the applicable year of more than $50,000.

''(V) The minimum fees specified in subclauses (I) and (II) shall be paid within 30 days after the date of the enactment of the Small Webcaster Amendments Act of 2002, except in the case of an eligible small webcaster with gross revenues during the period beginning on October 28, 1998, and ending on December 31, 2002, of not more than $100,000, which may pay such minimum fees in three equal installments at the times specified in clause (ii)(I). The minimum fees specified in subclauses (III) and (IV) shall be paid in two equal installments, with the first due by January 31 of the applicable year and the second due by June 30 of the applicable year.

''(VI) Payments of all amounts specified in this clause shall be made to the entity designated by the Copyright Office to receive royalty payments under this section and shall under no circumstances be refundable.

''(VII) All amounts paid under this clause shall be fully creditable toward amounts due under clauses (i) and (ii) for the same year.

''(iv) Subject to paragraph (3), but notwithstanding any other provision of this paragraph, a noncommercial, non-FCC webcaster may, for the period beginning on October 28, 1998, and ending on December 31, 2002, or one or both of calendar years 2003 and 2004, elect the royalty rates specified in this clause in lieu of any other royalty rates that otherwise might apply under this section. The royalty rate shall be .02 cents per performance. For the purpose of this clause, the term 'performance' has 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. Such royalties shall be payable at the times specified in clause (ii)(I) and (II). Noncommercial, non-FCC webcasters shall pay a minimum fee, for any part of calendar years 1998 through 2004, of $500 for each year in which such performances are made. Such minimum fee shall be fully creditable toward royalties due for the same year. For performances made during the period beginning on October 28, 1998, and ending on December 31, 2002, such minimum fee shall be paid within 30 days after the date of the enactment of the Small Webcaster Amendments Act of 2002. The minimum fee for a subsequent year shall be paid by January 31 of that year. All payments specified in this clause shall be made to the entity designated by the Copyright Office to receive royalty payments under this section and shall under no circumstances be refundable.

''(v) Any otherwise applicable terms determined in accordance with this paragraph and applicable to payments under this paragraph shall apply to payments under this subparagraph except to the extent inconsistent with this subparagraph.

''(vi) The rates and terms set forth in this subparagraph shall not constitute evidence of rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller or that meet the objectives set forth in section 801(b)(1).

''(E) As used in subparagraph (D), the following terms have the following meanings:

''(i) An 'affiliate' of a transmitting entity is a person or entity that directly, or indirectly through one or more intermediaries —

''(I) has securities or other ownership interests representing more than 50 percent of such person's or entity's voting interests beneficially owned by—

''(aa) such transmitting entity; or

''(bb) a person or entity beneficially owning securities or other ownership interests representing more than 50 percent of the voting interests of the transmitting entity;

''(II) beneficially owns securities or other ownership interests representing more than 50 percent of the voting interests of the transmitting entity; or

''(III) otherwise controls, is controlled by, or is under common control with the transmitting entity.

''(ii) A 'beneficial owner' of a security or other ownership interest is any person or entity who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, has or shares voting power with respect to such security or other ownership interest.

''(iii) The term 'control' means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise.

''(iv)(I) Subject to subclause (II), an 'eligible small webcaster' is a webcaster (as defined in section 261.2 of title 37, Code of Federal Regulations, as published in the Federal Register on July 8, 2002) that—

''(aa) for the period beginning on October 28, 1998, and ending on December 31, 2002, has gross revenues during the period beginning on November 1, 1998, and ending on June 30, 2002, of not more than $1,000,000;

''(bb) for 2003, together with its affiliates, has gross revenues during 2003 of not more than $500,000; and

''(cc) for 2004, together with its affiliates, has gross revenues, third party participation revenues, and revenues from the operation of new subscription services during 2004 of not more than $1,250,000.

''(II) In determining qualification under subclauses (I)(bb) and (cc), a transmitting entity shall exclude—

''(aa) income of an affiliate that is a natural person, other than income such natural person derives from another affiliate of such natural person that is either a media or entertainment related business that provides audio or other entertainment programming, or a business that primarily operates an Internet or wireless service; and

''(bb) gross revenues of any affiliate that is not engaged in a media or entertainment related business that provides audio or other entertainment programming, and is not engaged in a business that primarily operates an Internet or wireless service, if the only reason such affiliate is affiliated with the transmitting entity is that it is under common control of the same natural person or both are beneficially owned by the same natural person.

''(v) The term 'expenses'—

''(I) means all costs incurred (whether actually paid or not) by an eligible small webcaster, except that capital costs shall be treated as expenses allocable to a period only to the extent of charges for amortization or depreciation of such costs during such period as are properly allocated to such period in accordance with United States generally accepted accounting principles (GAAP);

''(II) includes the fair market value of all goods, services, or other non-cash consideration (including real, personal, tangible, and intangible property) provided by an eligible small webcaster to any third party in lieu of a cash payment and the fair market value of any goods or services purchased for or provided to an eligible small webcaster by an affiliate of such webcaster; and

''(III) shall not include—

''(aa) the imputed value of personal services rendered by up to 5 natural persons who are, directly or indirectly, owners of the eligible small webcaster, and for which no compensation has been paid;

''(bb) the imputed value of occupancy of residential property for which no Federal income tax deduction is claimed as a business expense; or

''(cc) costs of purchasing phonorecords of sound recordings used in the eligible small webcaster's service.

''(vi) The term 'gross revenues'—

''(I) means all revenue of any kind earned by a person or entity, less —

''(aa) revenue from sales of phonorecords and digital phonorecord deliveries of sound recordings;

''(bb) the person or entity's actual cost of other products and services actually sold through a service that makes eligible nonsubscription transmissions, and related sales and use taxes imposed on such transactions, costs of shipping such products, allowance for bad debts, and credit card and similar fees paid to unrelated third parties;

''(cc) revenue from the operation of a new subscription service for which royalties are paid in accordance with provisions of this section other than this subparagraph; and

''(dd) revenue from the sale of assets in connection with the sale of all or substantially all of the assets of such person's or entity's business, or from the sale of capital assets; and

''(II) includes—

''(aa) all cash or cash equivalents;

''(bb) the fair market value of goods, services, or other non-cash consideration (including real, personal, tangible, and intangible property); and

''(cc) amounts earned by such person or entity but paid to an affiliate of such person or entity in lieu of payment to such person or entity.

Gross revenues shall be calculated in accordance with United States generally accepted accounting principles (GAAP), except that a transmitting entity that computes Federal taxable income on the basis of the cash receipts and disbursements method of accounting for any taxable year may compute its gross receipts for any period included in such taxable year on the same basis.

''(vii) A 'noncommercial, non-FCC webcaster' is a webcaster as defined in section 261.2 of title 37, Code of Federal Regulations, as published in the Federal Register on July 8, 2002, that is exempt from taxation under section 501 of the Internal Revenue Code of 1986 (26 U.S.C. 501).

''(viii) The 'third party participation revenues' of a transmitting entity are revenues of any kind earned by a person or entity, other than the transmitting entity, including those identified in divisions (aa), (bb), and (cc) of clause (vi)(II)—

''(I) that relate to the public performance of sound recordings and are subject to an economic arrangement in which the transmitting entity receives anything of value; or

''(II) that are earned by such person or entity from the sale of advertising of any kind in connection with the transmitting entity's eligible nonsubscription transmissions.''.

(c) NOTICE AND RECORDKEEPING.—Section 114(f)(4)(A) of title 17, United States Code, is amended—

(1) by striking ''(A) The'' and inserting ''(A)(i) Subject to clauses (ii) and (iii), the''; and

(2) by adding at the end the following:

''(ii) For either or both of calendar years 2003 and 2004, an eligible small webcaster that makes an election pursuant to paragraph (2)(D)(ii)(VII) for any year shall, for that year, keep records, and make available to copyright owners of sound recordings reports of use, covering the following on a channel by channel basis:

''(I) The featured recording artist, group or orchestra.

''(II) The sound recording title.

''(III) The title of the retail album or other product (or, in the case of compilation albums created for commercial purposes, the name of the retail album identified by the eligible small webcaster for purchase of the sound recording).

''(IV) The marketing label of the commercially available album or other product on which the sound recording is found—

''(aa) for all albums or other products commercially released after 2002; and

''(bb) in the case of albums or other products commercially released before 2003, for 67 percent of the eligible small webcaster's digital audio transmissions of such pre-2003 releases during 2003 and all of the eligible small webcaster's digital audio transmissions during 2004.

''(V) The International Standard Recording Code (ISRC) embedded in the sound recording, if available—

''(aa) for all albums or other products commercially released after 2002; and

''(bb) in the case of albums or other products commercially released before 2003, for 50 percent of the eligible small webcaster's digital audio transmissions of such pre-2003 releases during 2003, and for 75 percent of the eligible small webcaster's digital audio transmissions of such pre-2003 releases during 2004, to the extent that such information concerning such pre-2003 releases can be provided using commercially reasonable efforts.

''(VI) The copyright owner information provided in the copyright notice on the retail album or other product (e.g., following the symbol (P) (the letter P in a circle) or, in the case of compilation albums created for commercial purposes, in the copyright notice for the individual track)—

''(aa) for all albums or other products commercially released after 2002; and

''(bb) in the case of albums or other products commercially released before 2003, for 50 percent of an eligible small webcaster's digital audio transmissions of such pre-2003 releases during 2003, and for 75 percent of an eligible small webcaster's digital audio transmissions of such pre-2003 releases during 2004, to the extent that such information concerning such pre-2003 releases can be provided using commercially reasonable efforts.

''(VII) The aggregate tuning hours, on a monthly basis, for each channel provided by the eligible small webcaster as computed by a recognized industry ratings service or as computed by the eligible small webcaster from its server logs. For the purpose of this subclause, the term 'aggregate tuning hours' has 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.

''(VIII) The channel for each transmission of each sound recording.

''(IX) The start date and time of each transmission of each sound recording.

''(iii) Reports of use described in clause (ii) shall be provided, at the same time royalty payments are due under paragraph (2)(D)(ii)(II), to the entity designated by the Copyright Office to distribute royalty payments under this section.

''(iv) For calendar years 2003 and 2004, details of the means by which copyright owners may receive notice of the use of their sound recordings, and details of the requirements under which reports of use concerning the matters identified in clause (ii) shall be made available, shall be as provided in regulations issued by the Librarian of Congress under clause (i).''.

SEC. 4. DEDUCTIBILITY OF COSTS AND EXPENSES OF AGENTS AND DIRECT PAYMENT TO ARTISTS OF ROYALTIES FOR DIGITAL PERFORMANCES OF SOUND RECORDINGS.

(a) FINDINGS.—The Congress finds that—

(1) in the case of royalty payments from the licensing of digital transmissions of sound recordings under subsection (f) of section 114 of title 17, United States Code, the parties have voluntarily negotiated arrangements under which payments shall be made directly to featured recording artists and the administrators of the accounts provided in subsection (g)(2) of that section;

(2) such voluntarily-negotiated payment arrangements have been codified in regulations issued by the Librarian of Congress, currently found in section 261.4 of title 37, Code of Federal Regulations, as published in the Federal Register on July 8, 2002;

(3) other regulations issued by the Librarian of Congress were inconsistent with the voluntarily-negotiated arrangements by such parties concerning the deductibility of certain costs incurred for licensing and arbitration, and the Congress is therefore restoring those terms as originally negotiated among the parties; and

(4) in light of the special circumstances described in this subsection, the uncertainty created by the regulations issued by the Librarian of Congress, and the fact that all of the interested parties have reached agreement, the voluntarily-negotiated arrangements agreed to among the parties are being codified.

(b) DEDUCTIBILITY.—Section 114(g) of title 17, United States Code, is amended by adding after paragraph (2) the following:

''(3) A nonprofit agent 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 to any person or entity entitled thereto, the reasonable costs of such agent 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.''.

(c) DIRECT PAYMENT TO ARTISTS.—Section 114(g)(2) of title 17, United States Code, is amended to read:

''(2) An agent designated 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.

''(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 musicians (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 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).''.

SEC. 5. REPORT TO CONGRESS.

(a) FINDINGS.—The Congress finds that—

(1) eligible small webcasters have economic arrangements with third parties, as a result of which third parties, many of them large businesses, realize a significant portion of the revenues generated from the use of sound recordings in the services operated by eligible small webcasters; and

(2) as a result of these arrangements, any royalty based on revenues realized by an eligible small webcaster may result in recording artists and sound recording copyright owners receiving a royalty based on revenues that are a fraction of the total revenues generated from the use of the sound recordings under statutory license.

(b) REPORT TO CONGRESS.—By not later than June 1, 2004, the Register of Copyrights and the Comptroller General of the Untied States shall prepare and submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a joint report concerning—

(1) the economic arrangements among eligible small webcasters and third parties and their consequences for the ability of recording artists and sound recording copyright owners to be compensated appropriately on a percentage of revenue basis; and

(2) the economic incentives that percentage of revenue statutory rates create for structuring economic arrangements among eligible small webcasters and third parties that may be to the detriment of recording artists and sound recording copyright owners.

(c) DEFINITION.—In this section, the term ''eligible small webcaster'' has the meaning given that term in section 114(f)(2)(E) of title 17, United States Code, as added by section 3 of this Act.

SEC. 6. EFFECTIVE DATE.

The amendments made by this Act shall take effect on the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from California (Mr. BERMAN) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 5469, the bill currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the 1995 Digital Performance Right and Sound Recording Act that created a performance right in sound recordings for digital transmissions did not specifically address the issue of webcasting or Internet radio broadcasts. As a result, the 1998 Digital Millennium Copyright Act contains provisions that authorize eligible webcasters to accept a compulsory license, thereby enabling them to operate over the Internet without negotiating licenses in the marketplace. A compulsory license essential allows an individual or entity to use copyrighted works like music and movies at an industry-negotiated or government-mandated rate.

Because webcasters and members of the recording industry could not agree to a rate, a statutorily authorized arbitration panel, called a CARP, was convened at the U.S. Copyright Office to determine what the rate would be. The arbitrators issued a decision on February 20, 2002. The copyright holders in the recording industry thought that the rate was too low, and the webcasters thought that the rate was too high.

Pursuant to his authority under the Copyright Act, the Librarian of Congress, based upon a recommendation by the Register of Copyrights, decided on June 8 to reject the suggestions of the webcasting CARP. On June 20, he issued a final decision which lowered the rate further. Some webcasters believe that the rate is still excessive. The copyright holders maintain that this lower rate is even less reflective of a fair market standard. That decision is now on appeal to the United States Court of Appeals for the District of Columbia circuit.

Although a resolution to this dispute is legally in play, implementation of the decision by the Librarian takes effect on October 20 and is retroactive to 1998. Unless Congress acts, some webcasters will shut down. This explains the point of H.R. 5469 as originally drafted: to suspend the implementation of the Librarian's decision for 6 months, effective October 20. This delay would ensure that all parties would receive all of the judicial process to which they are entitled under the law before the rate took effect.

I am happy to report that introduction of this bill placed a burr under the saddle of both the copyright holders and the small webcasters to conclude negotiations on these matters that began last summer. Since last week, the parties have negotiated around the clock. They have now arrived at a deal that sets new rates and payment terms that will obviate the need for further legal and administrative intervention. The manager's amendment simply codifies the terms of that deal.

Mr. Speaker, this solution is fair to both sides, the small webcasters as well as the copyright holders. It dovetails with the purpose of the Copyright Act in these cases, that is, to encourage parties to develop their own agreements governing rates and terms. I am happy to report that the parties have agreed today, as evidenced by the manager's amendment. I urge my colleagues to support the bill.

Mr. Speaker, I reserve the balance of my time.

Mr. BERMAN. Mr. Speaker, I yield myself such time as I may consume.

I rise in support of the manager's amendment to H.R. 5469.

Last week, the Chairman introduced a bill which was scheduled for the suspension file, which I reacted initially to, assumed was a rather ham-handed effort to force the copyright owners, the recording artists, the backup musicians and vocalists to wait at least another 6 months before they receive the royalties they were entitled to under the performance right we legislated in 1995, as amended by the compulsory license in the Digital Millennium Copyright Act.

I was wrong. The Chairman had a method to the ham-handedness, and the result of his legislative effort was to pull the parties together, the webcasters, recording industry and the other affected parties, and put together an excellent proposal which, as adjusted by a few matters just today, I think builds a broad base of support for this proposal.

The manager's amendment will greatly benefit small webcasters. Under this legislation, small webcasters will receive a huge discount on the webcasting royalties they are required to pay pursuant to a July decision by the Librarian of Congress.

From the small webcasters' perspective, this legislation is particularly beneficial because it allows them to pay royalties as a percentage of revenue. Small webcasters vehemently objected to the Librarian's decision because it required them to pay royalties on a per song per listener basis.

The terms of the deal are somewhat complicated, but the basic provisions are this. Small webcasters pay webcasting royalties that equal 8 percent of their gross revenues for the years 1998 through 2002, or a statutory minimum, whichever is greater. In 2003 and 2004, small webcasters will pay the greater of 10 percent of their gross revenues under $250,000 and 12 percent of their gross revenues over $250,000, or 7 percent of expenses.

The criteria for eligibility as a small webcaster are reasonable and allow such webcasters to grow and yet still obtain the royalty discount provided by the legislation. A webcaster will be eligible for the discounted royalty rate for the past 4 years if it had less than $1 million in gross revenues over those four years. A webcaster will be eligible in the year 2003 if it has gross revenues under $500,000 for that calendar year and in 2004 if it has gross revenues under $1.25 million.

While it drastically cuts the royalties to be paid copyright owners and artists, this legislation has the support of the recording industry. The legislation also requires that artists get direct payment of webcasting royalties and thus gives them something that they stated was necessary to garner their support; and it is a result of that that the American Federation of Radio and Television Artists, the American Federation of Musicians, the Screen Actor's Guild and the AFL–CIO are supportive of this legislation.

The recording industry and small webcasters are to be commended for working so hard to agree on terms, and the Chairman is to be commended for driving them to this agreement.

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The recording industry and small webcasters are to be commended for working so hard to agree on terms, and the chairman is to be commended for driving them to this agreement.

In sum, this legislation provides small webcasters with much better terms than the webcasting rates set by the Librarian of Congress. As such, it addresses the concerns that the Librarian's rate might drive many small webcasters out of business.

Mr. Speaker, I was wondering if I might engage with the chairman of the committee in a colloquy.

Mr. SENSENBRENNER. Mr. Speaker, will the gentleman yield?

Mr. BERMAN. I yield to the gentleman from Wisconsin.

Mr. SENSENBRENNER. Mr. Speaker, I am happy to engage in a colloquy with the gentleman.

Mr. BERMAN. Mr. Speaker, section 4 of this bill requires that agents directed by the copyright office to distribute webcasting royalties must make direct payment of those royalties to featured and nonfeatured recording artists and musicians. Section 4 also allows such agents to deduct their administrative and other reasonable expenses from the royalties they distribute. These provisions are somewhat unusual, so I want to confirm my understanding of their import with the distinguished chairman. It is my understanding that both provisions simply codify what is the current practice in the marketplace. Copyright office regulations require direct payment of royalties for the years 1998 to 2002, and the only distributing agent currently designated by the copyright office has contracted to make direct payments. Further, royalty recipients have agreed to allow that distributing agent to deduct its expenses from royalties. Is it the chairman's understanding that these provisions simply codify those current practices?

Mr. SENSENBRENNER. Yes, that is my understanding.

Mr. BERMAN. Mr. Speaker, I would like to make one other point. It is my understanding that these two provisions in no way interfere with the longstanding U.S. legal doctrine that parties can voluntarily assign, transfer, or allocate through contracts and other marketplace arrangements the rights provided them under U.S. copyright law.

Mr. SENSENBRENNER. If the gentleman will yield further, that is also my understanding.

Mr. BERMAN. I thank the gentleman for confirming my understanding.

Mr. CONYERS. Mr. Speaker, I rise in support of the manager's amendment to H.R. 5469. This legislation reflects a compromise between vocalists, recording artists, background musicians, record labels, and small webcasters.

This bill has several provisions that will make it easier for music to be performed online and for the creators to be compensated. First, it incorporates an agreement that was reached between the content owners and the small webcasters on royalty rates for Internet broadcasts from 1998 through 2004.

I am especially pleased that the final legislation includes a statutory direct payment provision. This provision ensures the musicians, vocalists, and artists receive their royalties from digital music directly from the collection agent instead of through other intermediaries.

Ms. MCCARTHY of Missouri. Mr. Speaker, I rise in support of H.R. 5469, the Small Webcaster Amendments Act of 2002. This bill codifies a compromise between webcasters, recording artists, and record companies to determine royalty payments for Internet radio broadcasts. I opposed the bill in its original

form last week when it delayed the payments to copyright holders for six months. The measure allows webcasters to broadcast diverse programming to consumers, artists will be paid the royalty fees they need to continue creating and performing the music we want to hear, and record companies will deduct the administrative fees for royalty collection.

This compromise bill benefits all parties involved. After deductions, record companies will receive 50 percent of the royalty, artists will receive 45 percent of the direct royalty payments, and the rest is distributed to nonfeatured musicians and vocalists. This is a vast improvement from past versions of this bill which left the recording artists out of the equation. Even though webcasters have not begun to make payments, future royalty rights are protected in H.R. 5469. Small webcasters benefit from a reduced royalty fee, which will keep many webcasters from declaring bankruptcy due to excessively high costs. This lower payment schedule will ensure that Internet radio continues to offer consumers a nearly endless number of listening choices including Latin, classical, and even native African music that may not be available over terrestrial stations. In addition, record companies can deduct the administrative costs associated with royalty collection for digital recordings so that their past and future expenses are reimbursed.

Paying copyright owners for the use of their creative work is not a new concept. In 1909, Congress passed a law to ensure that manufacturers of piano rolls had to pay for the songs they were reproducing. The license protects the composer's right to control reproductions of the work, but permits the recording of a song by a third party on ''mechanical'' media like a piano roll or record. This statute was later expanded to protect digital media, and thus it applies to Internet radio. The Copyright Arbitration Panel (CARP) first met in 1998 to determine royalty fees, but they were unable to come to an agreement between the interested parties. The last piece of the puzzle came in the form of the Librarian of Congress implementing rates for the statutory license on June 20, 2002, with the assumption that Internet radio companies would begin paying royalties on October 20, 2002. The private sector compromise codifies the Librarian's recommendations, and webcasters now have a defined schedule to pay artists for the use of copyrighted works.

I thank my colleagues for their support of H.R. 5469. I am very grateful to the organizations whose negotiations helped craft this important legislation. Due to this agreement, consumers will benefit from a myriad of choices for their listening pleasure.

Mr. BERMAN. Mr. Speaker, I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. CANTOR). The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the bill, H.R. 5469, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title of the bill was amended so as to read: ''A bill to amend title 17, United States Code, with respect to the statutory license for webcasting, and for other purposes.''.

A motion to reconsider was laid on the table.

CHILD ABDUCTION PREVENTION ACT

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5422) to prevent child abduction, and for other purposes, as amended.

The Clerk read as follows:

H.R. 5422

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Child Abduction Prevention Act''.

TITLE I—SANCTIONS AND OFFENSES

SEC. 101. SUPERVISED RELEASE TERM FOR SEX OFFENDERS.

Section 3583 of title 18, United States Code, is amended by adding at the end the following:

''(k) SUPERVISED RELEASE TERMS FOR SEX OFFENDERS.—Notwithstanding subsection (b), the authorized term of supervised release for any offense under section 1201 involving a victim who has not attained the age of 18 years, and for any offense under chapter 109A, 110, 117, or section 1591 is any term of years or life.''.

SEC. 102. FIRST DEGREE MURDER FOR CHILD ABUSE AND CHILD TORTURE MURDERS.

Section 1111 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by inserting ''child abuse,'' after ''sexual abuse,''; and

(B) by inserting ''or perpetrated as part of a pattern or practice of assault or torture against a child or children;'' after ''robbery;''; and

(2) by inserting at the end the following:

''(c) For purposes of this section—

''(1) the term 'assault' has the same meaning as given that term in section 113;

''(2) the term 'child' means a person who has not attained the age of 18 years and is—

''(A) under the perpetrator's care or control; or

''(B) at least six years younger than the perpetrator;

''(3) the term 'child abuse' means intentionally, knowingly, or recklessly causing death or serious bodily injury to a child;

''(4) the term 'pattern or practice of assault or torture' means assault or torture engaged in on at least two occasions;

''(5) the term 'recklessly' with respect to causing death or serious bodily injury—

''(A) means causing death or serious bodily injury under circumstances in which the perpetrator is aware of and disregards a grave risk of death or serious bodily injury; and

''(B) such recklessness can be inferred from the character, manner, and circumstances of the perpetrator's conduct;

''(6) the term 'serious bodily injury' has the meaning set forth in section 1365; and

''(7) the term 'torture' means conduct, whether or not committed under the color of law, that otherwise satisfies the definition set forth in section 2340(1).''.

SEC. 103. SEXUAL ABUSE PENALTIES.

(a) MAXIMUM PENALTY INCREASES.—(1) Chapter 110 of title 18, United States Code, is amended—

(A) in section 2251(d)—

(i) by striking ''20'' and inserting ''30''; and

(ii) by striking ''30'' the first place it appears and inserting ''50'';

(B) in section 2252(b)(1)—

(i) by striking ''15'' and inserting ''20''; and

(ii) by striking ''30'' and inserting ''40'';

(C) in section 2252(b)(2)—

(i) by striking ''5'' and inserting ''10''; and

(ii) by striking ''10'' and inserting ''20'';

(D) in section 2252A(b)(1)—

(i) by striking ''15'' and inserting ''20''; and

(ii) by striking ''30'' and inserting ''40''; and

(E) in section 2252A(b)(2)—

(i) by striking ''5'' and inserting ''10''; and

(ii) by striking ''10'' and inserting ''20''.

(2) Chapter 117 of title 18, United States Code, is amended—

(A) in section 2422(a), by striking ''10'' and inserting ''20'';

(B) in section 2422(b), by striking ''15'' and inserting ''30''; and

(C) in section 2423(a), by striking ''15'' and inserting ''30''.

(3) Section 1591(b)(2) of title 18, United States Code, is amended by striking ''20'' and inserting ''40''.

(b) MINIMUM PENALTY INCREASES.—(1) Chapter 110 of title 18, United States Code, is amended—

(A) in section 2251(d)—

(i) by striking ''or imprisoned not less than 10'' and inserting ''and imprisoned not less than 15'';

(ii) by striking ''and both,'';

(iii) by striking ''15'' and inserting ''25''; and

(iv) by striking ''30'' the second place it appears and inserting ''35'';

(B) in section 2251A(a) and (b), by striking ''20'' and inserting ''30'';

(C) in section 2252(b)(1)—

(i) by striking ''or imprisoned'' and inserting ''and imprisoned not less than 10 years and'';

(ii) by striking ''or both,''; and

(iii) by striking ''5'' and inserting ''15'';

(D) in section 2252(b)(2)—

(i) by striking ''or imprisoned'' and inserting ''and imprisoned not less than 5 years and'';

(ii) by striking ''or both,''; and

(iii) by striking ''2'' and inserting ''10'';

(E) in section 2252A(b)(1)—

(i) by striking ''or imprisoned'' and inserting ''and imprisoned not less than 10 years and'';

(ii) by striking ''or both,''; and

(iii) by striking ''5'' and inserting ''15''; and

(F) in section 2252A(b)(2)—

(i) by striking ''or imprisoned'' and inserting ''and imprisoned not less than 5 years and'';

(ii) by striking ''or both,''; and

(iii) by striking ''2'' and inserting ''10''.

(2) Chapter 117 of title 18, United States Code, is amended—

(A) in section 2422(a)—

(i) by striking ''or imprisoned'' and inserting ''and imprisoned not less than 2 years and''; and

(ii) by striking '', or both'';

(B) in section 2422(b)—

(i) by striking '', imprisoned'' and inserting ''and imprisoned not less than 5 years and''; and

(ii) by striking '', or both''; and

(C) in section 2423(a)—

(i) by striking '', imprisoned'' and inserting ''and imprisoned not less than 5 years and''; and

(ii) by striking '', or both''.