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111TH CONGRESS
1ST SESSION

H. R. 848

[Report No. 111-]

To provide parity in radio performance rights under title 17, United States Code, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 4, 2009

Mr. CONYERS (for himself, Mr. ISSA, Mr. BERMAN, Mrs. BLACKBURN, Mr. HODES, Ms. WASSERMAN SCHULTZ, Mr. WEINER, Mr. COHEN, Mr. NADLER of New York, Mr. WEXLER, Mr. PETERSON, Mr. JOHNSON of Georgia, Mr. SCHIFF, Mr. SHERMAN, Mr. SHADEGG, Ms. JACKSON-LEE of Texas, Ms. LINDA T. SÁNCHEZ of California, Ms. HARMAN, and Mr. WAXMAN) introduced the following bill; which was referred to the Committee on the Judiciary

MAY --, 2009

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on February 4, 2009]

A BILL

To provide parity in radio performance rights under title 17, United States Code, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Performance Rights*
3 *Act”.*

4 **SEC. 2. ESTABLISHING EQUITABLE TREATMENT FOR TER-**
5 **RESTRIAL, CABLE, SATELLITE, AND INTER-**
6 **NET SERVICES.**

7 *(a) PERFORMANCE RIGHT APPLICABLE TO RADIO*
8 *TRANSMISSIONS GENERALLY.—Section 106(6) of title 17,*
9 *United States Code, is amended to read as follows:*

10 *“(6) in the case of sound recordings, to perform*
11 *the copyrighted work publicly by means of an audio*
12 *transmission.”.*

13 *(b) INCLUSION OF TERRESTRIAL BROADCASTS IN EX-*
14 *ISTING PERFORMANCE RIGHT.—Section 114(d)(1) of title*
15 *17, United States Code, is amended—*

16 *(1) in the matter preceding subparagraph (A),*
17 *by striking “a digital” and inserting “an”; and*

18 *(2) by striking subparagraph (A).*

19 *(c) INCLUSION OF TERRESTRIAL BROADCASTS IN EX-*
20 *ISTING STATUTORY LICENSE SYSTEM.—Section 114(j)(6) of*
21 *title 17, United States Code, is amended by striking “dig-*
22 *ital”.*

23 *(d) ENSURING PLATFORM PARITY.—Section 114(f) of*
24 *title 17, United States Code, is amended—*

25 *(1) by striking paragraph (1);*

1 (2) *by redesignating paragraphs (2), (3), (4),*
2 *and (5) as paragraphs (1), (2), (3), and (4), respec-*
3 *tively; and*

4 (3) *in paragraph (1), as redesignated—*

5 (A) *in subparagraph (A), by striking*
6 *“under chapter 8” and all that follows through*
7 *the end of the third sentence and inserting*
8 *“under chapter 8 shall determine reasonable*
9 *rates and terms of royalty payments for trans-*
10 *missions subject to statutory licensing under sub-*
11 *section (d)(2) during 5-year periods beginning*
12 *on January 1 of the second year following the*
13 *year in which the proceedings are to be com-*
14 *menced, except in the case of a different transi-*
15 *tional period provided under section 6(b)(3) of*
16 *the Copyright Royalty and Distribution Reform*
17 *Act of 2004, or such other period as the parties*
18 *may agree.”;*

19 (B) *in subparagraph (B)—*

20 (i) *in the second sentence, by striking*
21 *“eligible nonsubscription transmission”;*
22 *and*

23 (ii) *in the third sentence, by striking*
24 *“eligible nonsubscription services and new*
25 *subscription” and all that follows through*

1 *“subparagraph (A)” and inserting “services,*
2 *in addition to the objectives set forth in sub-*
3 *paragraphs (A), (B), and (C) of section*
4 *801(b)(1), the Copyright Royalty Judges*
5 *may consider the rates and terms for com-*
6 *parable types of services and comparable*
7 *circumstances under voluntary license*
8 *agreements. Notwithstanding section*
9 *801(b)(1), the provisions of section*
10 *801(b)(1)(D) shall not be taken into account*
11 *by the Copyright Royalty Judges in any*
12 *proceeding under this section”;*

13 *(C) by striking subparagraph (C) and in-*
14 *serting the following:*

15 *“(C) The procedures under subparagraphs*
16 *(A) and (B) shall also be initiated pursuant to*
17 *a petition filed by any copyright owner of sound*
18 *recordings or any transmitting entity indicating*
19 *that a new type of service on which sound re-*
20 *cordings are performed is or is about to become*
21 *operational, for the purpose of determining rea-*
22 *sonable terms and rates of royalty payments*
23 *with respect to such new type of service for the*
24 *period beginning with the inception of such new*
25 *type of service and ending on the date on which*

1 *the royalty rates and terms for preexisting serv-*
2 *ices most recently determined under subpara-*
3 *graph (A) or (B) and chapter 8 expire, or such*
4 *other period as the parties may agree.”.*

5 *(e) TECHNICAL AND CONFORMING AMENDMENTS.—*

6 (1) *SECTION 114(F).—Section 114(f) of title 17,*
7 *United States Code (as amended by subsection (d)),*
8 *is further amended—*

9 (A) *in paragraph (1)(B), in the first sen-*
10 *tence, by striking “paragraph (3)” and inserting*
11 *“paragraph (2)”;* and

12 (B) *in paragraph (4)(C), by striking*
13 *“under paragraph (4)” and inserting “under*
14 *paragraph (3)”.*

15 (2) *SECTION 114(J).—Section 114(j)(6) of title*
16 *17, United States Code, is amended by striking “re-*
17 *transmissions of broadcast transmissions” and insert-*
18 *ing “broadcast transmissions and retransmissions of*
19 *broadcast transmissions”.*

20 (3) *SECTION 804.—Section 804(b)(3)(C) of title*
21 *17, United States Code, is amended—*

22 (A) *in clause (i), by striking “and*
23 *114(f)(2)(C)”;*

1 (B) in clause (iii)(II), by striking
2 “114(f)(4)(B)(ii)” and inserting
3 “114(f)(3)(B)(ii)”; and
4 (C) in clause (iv), by striking “or
5 114(f)(2)(C), as the case may be”.

6 **SEC. 3. TREATMENT FOR MINORITY, FEMALE, RELIGIOUS,**
7 **RURAL, SMALL, NONCOMMERCIAL, PUBLIC,**
8 **EDUCATIONAL, AND COMMUNITY STATIONS**
9 **AND CERTAIN USES.**

10 (a) *MINORITY, FEMALE, RELIGIOUS, RURAL, SMALL,*
11 *NONCOMMERCIAL, PUBLIC, EDUCATIONAL, AND COMMUNITY*
12 *RADIO STATIONS.*—

13 (1) *IN GENERAL.*—Section 114(f)(1) of title 17,
14 *United States Code, as redesignated by section 2(d),*
15 *is amended by adding at the end the following:*

16 “(D)(i) *Notwithstanding the provisions of*
17 *subparagraphs (A) through (C), each individual*
18 *terrestrial broadcast station that has gross reve-*
19 *nues within a range specified in clause (ii) may*
20 *elect to pay for its over-the-air nonsubscription*
21 *broadcast transmissions a royalty fee as pro-*
22 *vided in clause (ii), in lieu of the amount such*
23 *station would otherwise be required to pay under*
24 *this paragraph. Such royalty fee shall not be*
25 *taken into account in determining royalty rates*

1 *in a proceeding under chapter 8, or in any other*
2 *administrative, judicial, or other Federal Gov-*
3 *ernment proceeding.*

4 “(i) *As provided in clause (i), each indi-*
5 *vidual terrestrial broadcast station that has gross*
6 *revenues in any calendar year of—*

7 “(I) *less than \$100,000 may elect to*
8 *pay for its over-the-air nonsubscription*
9 *broadcast transmissions a royalty fee of*
10 *\$500 per year;*

11 “(II) *at least \$100,000 but less than*
12 *\$500,000 may elect to pay for its over-the-*
13 *air nonsubscription broadcast transmissions*
14 *a royalty fee of \$2,500 per year; and*

15 “(III) *at least \$500,000 but less than*
16 *\$1,250,000 may elect to pay for its over-the-*
17 *air nonsubscription broadcast transmissions*
18 *a royalty fee of \$5,000 per year.*

19 “(E)(i) *Notwithstanding the provisions of*
20 *subparagraphs (A) through (C), each individual*
21 *terrestrial broadcast station that is a public*
22 *broadcasting entity as defined in section 118(f)*
23 *and that has gross revenues within a range spec-*
24 *ified in clause (ii) may elect to pay for its over-*
25 *the-air nonsubscription broadcast transmissions*

1 *a royalty fee as provided in clause (ii), in lieu*
2 *of the amount such station would otherwise be*
3 *required to pay under this paragraph. Such roy-*
4 *alty fee shall not be taken into account in deter-*
5 *mining royalty rates in a proceeding under*
6 *chapter 8, or in any other administrative, judi-*
7 *cial, or other Federal Government proceeding.*

8 *“(i) As provided in clause (i), each indi-*
9 *vidual terrestrial broadcast station that is a*
10 *public broadcasting entity as defined in section*
11 *118(f) and has gross receipts in any calendar*
12 *year of—*

13 *“(I) less than \$100,000 may elect to*
14 *pay for its over-the-air nonsubscription*
15 *broadcast transmissions a royalty fee of*
16 *\$500 per year; and*

17 *“(II) \$100,000 or more may elect to*
18 *pay for its over-the-air nonsubscription*
19 *broadcast transmissions a royalty fee of*
20 *\$1,000 per year.*

21 *“(F) Notwithstanding the provisions of sub-*
22 *paragraphs (A) through (E), each individual ter-*
23 *restrial broadcast station that had total gross*
24 *revenues during the 4 full calendar quarters im-*

1 *mediately preceding the date of enactment of the*
2 *Performance Rights Act of—*

3 “(i) *less than \$5,000,000 shall not be*
4 *required to pay a royalty under this para-*
5 *graph during the 3 years immediately fol-*
6 *lowing the date of enactment of the Per-*
7 *formance Rights Act; and*

8 “(ii) *\$5,000,000 or more shall not be*
9 *required to pay a royalty under this para-*
10 *graph during the 1 year immediately fol-*
11 *lowing the date of enactment of the Per-*
12 *formance Rights Act.*

13 *The provisions of this subparagraph shall not be*
14 *taken into account in determining royalty rates*
15 *in a proceeding under chapter 8, or in any other*
16 *administrative, judicial, or other Federal Gov-*
17 *ernment proceeding.”.*

18 (2) *PAYMENT DATE.—A payment under subpara-*
19 *graph (D) or (E) of section 114(f)(1) of title 17,*
20 *United States Code, as added by paragraph (1), shall*
21 *not be due until the due date of the first royalty pay-*
22 *ments for nonsubscription broadcast transmissions*
23 *that are determined, after the date of the enactment*
24 *of this Act, under such section 114(f)(2) by reason of*
25 *the amendment made by section 2(b)(2) of this Act.*

1 (b) *TRANSMISSION OF RELIGIOUS SERVICES; INCI-*
2 *DENTAL USES OF MUSIC.*—Section 114(d)(1) of title 17,
3 *United States Code, as amended by section 2(b), is further*
4 *amended by inserting the following before subparagraph*
5 *(B):*

6 “(A) *an eligible nonsubscription trans-*
7 *mission of—*

8 “(i) *services at a place of worship or*
9 *other religious assembly; and*

10 “(ii) *an incidental use of a musical*
11 *sound recording;”.*

12 **SEC. 4. AVAILABILITY OF PER PROGRAM LICENSE.**

13 Section 114(f)(1)(B) of title 17, *United States Code,*
14 *as redesignated by section 2(d), is amended by inserting*
15 *after the second sentence the following new sentence: “Such*
16 *rates and terms shall include a per program license option*
17 *for terrestrial broadcast stations that make limited feature*
18 *uses of sound recordings.”*

19 **SEC. 5. NO HARMFUL EFFECTS ON SONGWRITERS.**

20 (a) *NO ADVERSE AFFECT ON LICENSE FEES FOR UN-*
21 *DERLYING MUSICAL WORKS; NECESSITY FOR OTHER LI-*
22 *CENSES.*—

23 (1) *IN GENERAL.*—Section 114(i) of title 17,
24 *United States Code, is amended to read as follows:*

1 “(i) *NO ADVERSE AFFECT ON LICENSE FEES FOR UN-*
2 *DERLYING MUSICAL WORKS; NECESSITY FOR OTHER LI-*
3 *CENSES.—*

4 “(1) *NO ADVERSE AFFECT ON LICENSE FEES FOR*
5 *UNDERLYING MUSICAL WORKS.—License fees payable*
6 *for the public performance of sound recordings under*
7 *section 106(6) shall not be cited, taken into account,*
8 *or otherwise used in any administrative, judicial, or*
9 *other governmental forum or proceeding, or otherwise,*
10 *to set or adjust the license fees payable to copyright*
11 *owners of musical works or their representatives for*
12 *the public performance of their works, for the purpose*
13 *of reducing or adversely affecting such license fees. Li-*
14 *cence fees payable to copyright owners for the public*
15 *performance of their musical works shall not be re-*
16 *duced or adversely affected in any respect as a result*
17 *of the rights granted by section 106(6).*

18 “(2) *NECESSITY FOR OTHER LICENSES.—Not-*
19 *withstanding the grant by an owner of copyright in*
20 *a sound recording of an exclusive or nonexclusive li-*
21 *cence of the right under section 106(6) to perform the*
22 *work publicly, a licensee of that sound recording may*
23 *not publicly perform such sound recording unless a li-*
24 *cence has been granted for the public performance of*
25 *any copyrighted musical work contained in the sound*

1 *recording. Such license to publicly perform the copy-*
2 *righted musical work may be granted either by a per-*
3 *forming rights society representing the copyright*
4 *owner or by the copyright owner.”.*

5 (2) *CONFORMING AMENDMENT.—Section*
6 *114(d)(3)(C) of title 17, United States Code, is hereby*
7 *repealed.*

8 (b) *PUBLIC PERFORMANCE RIGHTS AND ROYAL-*
9 *TIES.—Nothing in this Act or the amendments made by this*
10 *Act shall adversely affect in any respect the public perform-*
11 *ance rights of or royalties payable to songwriters or copy-*
12 *right owners of musical works.*

13 (c) *PRESERVATION OF ROYALTIES ON UNDERLYING*
14 *WORKS PUBLICLY PERFORMED BY TERRESTRIAL BROAD-*
15 *CAST STATIONS.—Section 114(f) of title 17, United States*
16 *Code, (as amended by section 2(d)) is further amended by*
17 *adding at the end the following new paragraph:*

18 “(5) Notwithstanding any other provision of this
19 *section, under no circumstances shall the rates estab-*
20 *lished by the Copyright Royalty Judges for the public*
21 *performance of sound recordings be cited, taken into*
22 *account, or otherwise used in any administrative, ju-*
23 *dicial, or other governmental forum or proceeding, or*
24 *otherwise, to reduce or adversely affect the license fees*
25 *payable to copyright owners of musical works or their*

1 *representatives for the public performance of their*
2 *works by terrestrial broadcast stations, and such li-*
3 *cence fees for the public performance of musical works*
4 *shall be independent of license fees paid for the public*
5 *performance of sound recordings.”.*

6 **SEC. 6. PAYMENT OF CERTAIN ROYALTIES.**

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

9 *(1) by amending paragraph (1) to read as fol-*
10 *lows:*

11 *“(1) Except in the case of a transmission to*
12 *which paragraph (5) applies or a transmission li-*
13 *censed under a statutory license in accordance with*
14 *subsection (f) of this section, the following shall apply:*

15 *“(A) A featured recording artist who per-*
16 *forms on a sound recording that has been li-*
17 *censed for public performance by means of an*
18 *audio transmission shall be entitled to receive*
19 *payments from the copyright owner of the sound*
20 *recording in accordance with the terms of the*
21 *artist’s contract.*

22 *“(B)(i) In a case in which the copyright*
23 *owner of a sound recording has licensed the*
24 *sound recording for the public performance of the*
25 *sound recording by means of an audio trans-*

1 *mission, the copyright owner shall deposit 1 per-*
2 *cent of the receipts from the license with the*
3 *American Federation of Musicians and Amer-*
4 *ican Federation of Television and Radio Artists*
5 *Intellectual Property Rights Distribution Fund*
6 *(or any successor entity) (in this subparagraph*
7 *referred to as the ‘Fund’) to be distributed to*
8 *nonfeatured performers who have performed on*
9 *sound recordings. The sound recording copyright*
10 *owner shall make such deposits for receipts re-*
11 *ceived during the first half of a calendar year by*
12 *August 15 and for receipts received during the*
13 *second half of a calendar year by February 15*
14 *of the following calendar year.*

15 “(i) A sound recording copyright owner
16 shall include with deposits under clause (i) in-
17 formation regarding the amount of such deposits
18 attributable to each licensee and, subject to ob-
19 taining consent, if necessary, from such licensee,
20 for each sound recording performed by means of
21 an audio transmission by such licensee during
22 the applicable time period, and to the extent in-
23 cluded in the accounting reports provided by the
24 licensee to the sound recording copyright
25 owner—

1 “(I) the identity of the artist;

2 “(II) the International Standard Re-
3 cording Code of the sound recording;

4 “(III) the title of the sound recording;

5 “(IV) the number of times the sound
6 recording was transmitted; and

7 “(V) the total amount of receipts col-
8 lected from that licensee.

9 “(iii) The Fund shall make the distribu-
10 tions described in clause (i) as follows: 50 per-
11 cent shall be paid to nonfeatured musicians
12 (whether or not members of the American Fed-
13 eration of Musicians) and 50 percent shall be
14 paid to nonfeatured vocalists (whether or not
15 members of the American Federation of Tele-
16 vision and Radio Artists). The Fund may, prior
17 to making such distributions, deduct the reason-
18 able costs related to making such distributions.

19 “(iv) The sound recording copyright owner
20 shall not be required to provide any additional
21 information to the Fund other than what is re-
22 quired under this subparagraph. Sound record-
23 ing copyright owners shall use reasonable good
24 faith efforts to include in all relevant licenses a
25 requirement to report the information identified

1 *in subclauses (I) through (V) of clause (ii).*
2 *Amounts required under clause (i) that are not*
3 *paid by the date specified in such clause shall be*
4 *subject to interest at the rate of 6 percent per*
5 *annum for each day of nonpayment after the*
6 *date the payment was due.”;*

7 *(2) in paragraph (2)(A), by striking “digital”;*
8 *and*

9 *(3) by adding at the end the following new para-*
10 *graph:*

11 *“(5) Notwithstanding paragraph (1), to the ex-*
12 *tent that a license granted by the copyright owner of*
13 *a sound recording to a terrestrial broadcast station*
14 *extends to such station’s nonsubscription broadcast*
15 *transmissions otherwise licensable under a statutory*
16 *license in accordance with subsection (f), the station*
17 *shall pay to the agent designated to distribute statu-*
18 *tory licensing receipts from the licensing of trans-*
19 *missions in accordance with subsection (f), 50 percent*
20 *of the total royalties that the station is required to*
21 *pay for such transmissions under the applicable li-*
22 *cence agreement. That agent shall distribute such pay-*
23 *ments in proportion to the distributions provided in*
24 *subparagraphs (B) through (D) of paragraph (2), and*
25 *such payments shall be the sole payments to which*

1 *featured and nonfeatured artists are entitled by virtue*
2 *of such transmissions under the direct license with*
3 *that station.”.*

4 **SEC. 7. NO EFFECT ON LOCAL COMMUNITIES.**

5 *Section 114(f) of title 17, United States Code, (as*
6 *amended by section 5(c)) is further amended by adding at*
7 *the end the following new paragraph:*

8 *“(6) Neither this subsection nor the payment of*
9 *royalties by broadcasters hereunder shall affect in any*
10 *respect the public interest obligations of a broadcaster*
11 *to its local community under part 73 of title 47 of*
12 *the Code of Federal Regulations.”.*

13 **SEC. 8. PRESERVATION OF DIVERSITY.**

14 *Section 114(f) of title 17, United States Code, (as*
15 *amended by section 7) is further amended by adding at the*
16 *end the following new paragraph:*

17 *“(7) PRESERVATION OF DIVERSITY.—The Copy-*
18 *right Royalty Judges shall, in making determinations*
19 *or adjustments of rates and terms of copyright roy-*
20 *alty payments for public performances of sound re-*
21 *cordings, consider evidence on the effect of such rates*
22 *and terms on—*

23 *“(A) religious, minority-owned, female-*
24 *owned, small, and noncommercial broadcasters;*

1 “(B) non-music programming, including
2 local news and information programming for
3 stations that are part of station groups in which
4 all stations within the group are located in one
5 designated market area (as such term is defined
6 in section 122(j)(2)(C)); and

7 “(C) religious, minority or minority-owned,
8 and female or female-owned royalty recipients.”.