

118TH CONGRESS
1ST SESSION

H. R. 791

To amend title 17, United States Code, to provide fair treatment of radio stations and artists for the use of sound recordings, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 2023

Mr. ISSA (for himself, Mr. NADLER, Mr. LIEU, and Mr. McCLINTOCK) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 17, United States Code, to provide fair treatment of radio stations and artists for the use of sound recordings, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “American Music Fairness Act of 2023”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Equitable treatment for terrestrial broadcasts and internet services.
- Sec. 3. Timing of proceedings under sections 112(e) and 114(f).
- Sec. 4. Special protection for small broadcasters.

Sec. 5. Distribution of certain royalties.

Sec. 6. No harmful effects on songwriters.

Sec. 7. Value of promotion taken into account.

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

3 (a) PERFORMANCE RIGHT APPLICABLE TO AUDIO
 4 TRANSMISSIONS GENERALLY.—Paragraph (6) of section
 5 106 of title 17, United States Code, is amended to read
 6 as follows:

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

10 (b) INCLUSION OF TERRESTRIAL BROADCASTS IN
 11 EXISTING PERFORMANCE RIGHT AND STATUTORY LI-
 12 CENSE.—Section 114(d)(1) of title 17, United States
 13 Code, is amended—

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

16 (2) by striking subparagraph (A);

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

19 (4) in subparagraph (A), as redesignated by
 20 paragraph (3), by striking “nonsubscription” each
 21 place such term appears and inserting “licensed non-
 22 subscription”.

23 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

1 (1) DEFINITION.—Section 101 of title 17,
2 United States Code, is amended by inserting after
3 the definition of “architectural work” the following:
4 “An ‘audio transmission’ is a transmission of a sound
5 recording, whether in a digital, analog, or other format.
6 This term does not include the transmission of any audio-
7 visual work.”.

8 (2) CONFORMING REMOVAL OF DIGITAL.—Title
9 17, United States Code, is amended—

10 (A) in section 112(e)(8), by striking “a
11 digital audio transmission” and inserting “an
12 audio transmission”;

13 (B) in section 114—

14 (i) in subsection (d)—

15 (I) in paragraph (2)—

16 (aa) in the matter preceding
17 subparagraph (A), by striking
18 “subscription digital” and insert-
19 ing “subscription”; and

20 (bb) in subparagraph
21 (C)(viii), by striking “digital sig-
22 nal” and inserting “signal”; and

23 (II) in paragraph (4)—

24 (aa) in subparagraph (A),
25 by striking “a digital audio

1 transmission” and inserting “an
2 audio transmission”; and

3 (bb) in subparagraph (B)(i),
4 by striking “a digital audio
5 transmission” and inserting “an
6 audio transmission”;

7 (ii) in subsection (g)(2)(A), by strik-
8 ing “a digital” and inserting “an”; and

9 (iii) in subsection (j)—

10 (I) in paragraph (6)—

11 (aa) by striking “digital”;
12 and

13 (bb) by striking “retrans-
14 missions of broadcast trans-
15 missions” and inserting “broad-
16 cast transmissions and retrans-
17 missions of broadcast trans-
18 missions”; and

19 (II) in paragraph (8), by striking
20 “subscription digital” and inserting
21 “subscription”; and

22 (C) in section 1401—

23 (i) in subsection (b), by striking “a
24 digital audio” and inserting “an audio”;
25 and

1 (ii) in subsection (d)—

2 (I) in paragraph (1), by striking
3 “a digital audio” and inserting “an
4 audio”;

5 (II) in paragraph (2)(A), by
6 striking “a digital audio” and insert-
7 ing “an audio”; and

8 (III) in paragraph (4)(A), by
9 striking “a digital audio” and insert-
10 ing “an audio”.

11 **SEC. 3. TIMING OF PROCEEDINGS UNDER SECTIONS 112(e)**

12 **AND 114(f).**

13 Paragraph (3) of section 804(b) of title 17, United
14 States Code, is amended by adding at the end the fol-
15 lowing new subparagraph:

16 “(D) A proceeding under this chapter shall
17 be commenced as soon as practicable after the
18 date of the enactment of this subparagraph to
19 determine royalty rates and terms for non-
20 subscription broadcast transmissions, to be ef-
21 fective for the period beginning on such date of
22 enactment, and ending on December 31, 2028.
23 Any payment due under section 114(f)(1)(D)
24 shall not be due until the due date of the first
25 royalty payments for nonsubscription broadcast

1 transmissions that are determined, after the
2 date of the enactment of this subparagraph, by
3 the Copyright Royalty Judges. Thereafter, such
4 proceeding shall be repeated in each subsequent
5 fifth calendar year.”.

6 **SEC. 4. SPECIAL PROTECTION FOR SMALL BROADCASTERS.**

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

10 “(D)(i) Notwithstanding the provisions of
11 subparagraphs (A) through (C), the royalty
12 rate shall be as follows for nonsubscription
13 broadcast transmissions by each individual ter-
14 restrial broadcast station licensed as such by
15 the Federal Communications Commission that
16 satisfies the conditions in clause (ii)—

17 “(I) \$10 per calendar year, in the
18 case of nonsubscription broadcast trans-
19 missions by a broadcast station that gen-
20 erated revenue in the immediately pre-
21 ceding calendar year of less than
22 \$100,000;

23 “(II) \$100 per calendar year, in the
24 case of nonsubscription broadcast trans-
25 missions by a broadcast station that is a

1 public broadcasting entity as defined in
2 section 118(f) and generated revenue in
3 the immediately preceding calendar year of
4 \$100,000 or more, but less than
5 \$1,500,000; and

6 “(III) \$500 per calendar year, in the
7 case of nonsubscription broadcast trans-
8 missions by a broadcast station that is not
9 a public broadcasting entity as defined in
10 section 118(f) and generated revenue in
11 the immediately preceding calendar year of
12 \$100,000 or more, but less than
13 \$1,500,000.

14 “(ii) An individual terrestrial broadcast
15 station licensed as such by the Federal Commu-
16 nications Commission is eligible for a royalty
17 rate set forth in clause (i) if—

18 “(I) the revenue from the operation of
19 that individual station was less than
20 \$1,500,000 during the immediately pre-
21 ceding calendar year;

22 “(II) the aggregate revenue of the
23 owner and operator of the broadcast sta-
24 tion and any person directly or indirectly
25 controlling, controlled by, or under com-

1 mon control with such owner or operator,
2 from any source, was less than
3 \$10,000,000 during the immediately pre-
4 ceding calendar year; and

5 “(III) the owner or operator of the
6 broadcast station provides to the nonprofit
7 collective designated by the Copyright Roy-
8 alty Judges to distribute receipts from the
9 licensing of transmissions in accordance
10 with subsection (f), by no later than Janu-
11 ary 31 of the relevant calendar year, a
12 written and signed certification of the sta-
13 tion’s eligibility under this clause and the
14 applicable subclause of clause (i), in ac-
15 cordance with requirements the Copyright
16 Royalty Judges shall prescribe by regula-
17 tion.

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

19 “(I) revenue shall be calculated in ac-
20 cordance with generally accepted account-
21 ing principles;

22 “(II) revenue generated by a terres-
23 trial broadcast station shall include all rev-
24 enue from the operation of the station,
25 from any source; and

1 “(III) in the case of affiliated broad-
2 cast stations, revenue shall be allocated
3 reasonably to individual stations associated
4 with the revenue.

5 “(iv) The royalty rates specified in clause
6 (i) shall not be admissible as evidence or other-
7 wise taken into account in determining royalty
8 rates in a proceeding under chapter 8, or in any
9 other administrative, judicial, or other Federal
10 Government proceeding involving the setting or
11 adjustment of the royalties payable for the pub-
12 lic performance or reproduction in ephemeral
13 phonorecords or copies of sound recordings, the
14 determination of terms or conditions related
15 thereto, or the establishment of notice or rec-
16 ordkeeping requirements.”.

17 (b) TECHNICAL CORRECTION.—Section 118(f) of
18 title 17, United States Code, is amended by striking “sec-
19 tion 397 of title 47” and inserting “section 397 of the
20 Communications Act of 1934 (47 U.S.C. 397)”.

21 **SEC. 5. DISTRIBUTION OF CERTAIN ROYALTIES.**

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

1 (1) in paragraph (1), by inserting “or in the
2 case of a transmission to which paragraph (5) ap-
3 plies” after “this section”;

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

6 (3) by inserting after paragraph (4) the fol-
7 lowing new paragraph:

8 “(5) Notwithstanding paragraph (1), to the ex-
9 tent that a license granted by the copyright owner
10 of a sound recording to a transmitting entity eligible
11 for a statutory license under subsection (d)(2) ex-
12 tends to such entity’s transmissions otherwise licens-
13 able under a statutory license in accordance with
14 subsection (f), such entity shall pay to the collective
15 designated to distribute statutory licensing receipts
16 from the licensing of transmissions in accordance
17 with subsection (f), 50 percent of the total royalties
18 that such entity is required, pursuant to the applica-
19 ble license agreement, to pay for such transmissions
20 otherwise licensable under a statutory license in ac-
21 cordance with subsection (f). That collective shall
22 distribute such payments in proportion to the dis-
23 tributions provided in subparagraphs (B) through
24 (D) of paragraph (2), and such payments shall be
25 the only payments to which featured and nonfea-

1 tured artists are entitled by virtue of such trans-
2 missions under the direct license with such entity.”.

3 **SEC. 6. NO HARMFUL EFFECTS ON SONGWRITERS.**

4 Nothing in this Act, or the amendments made by this
5 Act, shall adversely affect in any respect the public per-
6 formance rights of or royalties payable to songwriters or
7 copyright owners of musical works.

8 **SEC. 7. VALUE OF PROMOTION TAKEN INTO ACCOUNT.**

9 Pursuant to section 114(f)(1)(B) of title 17, United
10 States Code, in determining rates and terms for terrestrial
11 broadcast radio stations under this Act, and the amend-
12 ments made by this Act, the Copyright Royalty Judges
13 shall base their decision on economic, competitive, and
14 programming information presented by the parties, includ-
15 ing whether use of the station’s service may substitute for
16 or may promote the sales of phonorecords or otherwise
17 may interfere with or may enhance the sound recording
18 copyright owner’s other streams of revenue from the copy-
19 right owner’s sound recordings.

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