

109TH CONGRESS
2^D SESSION

H. R. 5361

To harmonize rate setting standards for copyright licenses under sections 112 and 114 of title 17, United States Code, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 11, 2006

Mr. BERMAN (for himself and Mrs. BONO) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To harmonize rate setting standards for copyright licenses under sections 112 and 114 of 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Platform Equality and
5 Remedies for Rights Holders in Music Act of 2006” or
6 the “Perform Act of 2006” .

7 **SEC. 2. RATE SETTING STANDARDS.**

8 (a) **SECTION 112 LICENSES.**—Section 112(e)(4) of
9 title 17, United States Code, is amended in the third sen-
10 tence by striking “fees that would have been negotiated

1 in the marketplace between a willing buyer and a willing
2 seller” and inserting “the fair market value of the rights
3 licensed under this subsection”.

4 (b) SECTION 114 LICENSES.—Section 114(f) of title
5 17, United States Code, is amended—

6 (1) by striking paragraph (1);

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

10 (3) in paragraph (1) (as redesignated under
11 this subsection)—

12 (A) in subparagraph (A), by striking all
13 after “Proceedings” and inserting “under chap-
14 ter 8 shall determine reasonable rates and
15 terms of royalty payments for eligible trans-
16 missions during the 5-year period beginning on
17 January 1 of the second year following the year
18 in which the proceedings are to be commenced,
19 and on January 1 of every 5-year period there-
20 after, except when a different transitional pe-
21 riod is provided under section 6(b)(3) of the
22 Copyright Royalty and Distribution Reform Act
23 of 2004, or such other period as the parties
24 may agree.”;

25 (B) in subparagraph (B)—

1 (i) in the first sentence, by striking
2 “affected by this paragraph” and inserting
3 “under this section”;

4 (ii) in the second sentence, by striking
5 “nonsubscription”; and

6 (iii) in the third sentence—

7 (I) by striking “transmissions by
8 eligible nonsubscription services and
9 new subscription” and inserting “eli-
10 gible transmission”; and

11 (II) by striking “rates and terms
12 that would have been negotiated in
13 the marketplace between a willing
14 buyer and a willing seller” and insert-
15 ing “the fair market value of the
16 rights licensed under this section”;

17 (iv) in the fourth sentence, by striking
18 “base its” and inserting “base their”;

19 (v) in clause (i), by striking “and”
20 after the semicolon;

21 (vi) in clause (ii), by striking the pe-
22 riod and inserting “; and”;

23 (vii) by inserting after clause (ii) the
24 following:

1 “(iii) the degree to which reasonable
2 recording affects the potential market for
3 sound recordings, and the additional fees
4 that are required to be paid by services for
5 compensation.”; and

6 (viii) in the matter following clause
7 (ii), by striking “described in subpara-
8 graph (A)”;

9 (C) by striking subparagraph (C) and in-
10 serting the following:

11 “(C) The procedures under subparagraphs (A)
12 and (B) shall also be initiated pursuant to a petition
13 filed by any copyright owners of sound recordings or
14 any transmitting entity indicating that a new type of
15 service on which sound recordings are performed is
16 or is about to become operational, for the purpose
17 of determining reasonable terms and rates of royalty
18 payments with respect to that new type of service
19 for the period beginning with the inception of such
20 new type of service and ending on the date on which
21 the royalty rates and terms for preexisting subscrip-
22 tion services, eligible nonsubscription services, or
23 new subscription services, as the case may be, most
24 recently determined under subparagraph (A) or (B)

1 and chapter 8 expire, or such other period as the
2 parties may agree.

3 “(D) In this paragraph, the term ‘eligible trans-
4 mission’ means—

5 “(i) subscription transmissions by pre-
6 existing subscription services;

7 “(ii) subscription transmissions by pre-
8 existing satellite digital audio radio services;

9 “(iii) eligible nonsubscription trans-
10 missions; and

11 “(iv) transmissions by new subscription
12 services.”.

13 (c) CONTENT PROTECTION.—Section 114(d)(2) of
14 title 17, United States Code, is amended—

15 (1) in subparagraph (A)—

16 (A) in clause (ii), by striking “and” after
17 the semicolon;

18 (B) in clause (iii), by adding “and” after
19 the semicolon; and

20 (C) by adding after clause (iii) the fol-
21 lowing:

22 “(iv) the transmitting entity takes no
23 affirmative steps to authorize, enable,
24 cause, or induce the making of a copy or
25 phonorecord by or for the transmission re-

1 cipient and uses technology that is reason-
2 ably available, technologically feasible, and
3 economically reasonable to prevent the
4 making of copies or phonorecords embody-
5 ing the transmission, in whole or in part,
6 except for reasonable recording as defined
7 in subsection (j)(10);”;

8 (2) in subparagraph (C)—

9 (A) by striking clause (vi); and

10 (B) by redesignating clauses (vii) through
11 (ix) as clauses (vi) through (viii), respectively;
12 and

13 (3) by adding at the end the following:

14 “For purposes of subparagraph (A)(iv), the mere offering
15 of a transmission and accompanying metadata does not
16 in itself enable the making of a copy or phonorecord.
17 Nothing in subparagraph (A)(iv) shall preclude or prevent
18 a performing rights society or a mechanical rights organi-
19 zation, or any entity owned in whole or in part by, or act-
20 ing on behalf of, such organizations, from monitoring pub-
21 lic performances or other uses of copyrighted works con-
22 tained in such transmissions. Any such organization or en-
23 tity shall be granted a license on either a gratuitous basis
24 or for a de minimus fee to cover only the reasonable costs
25 to the licensor of providing the license, and on reasonable,

1 nondiscriminatory terms, to access and retransmit as nec-
2 essary any content contained in such transmissions pro-
3 tected by content protection or similar technologies, if
4 such licenses are for purposes of carrying out the activities
5 of such organizations or entities in monitoring the public
6 performance or other uses of copyrighted works, and such
7 organizations or entities employ reasonable methods to
8 protect any such content accessed from further distribu-
9 tion.”.

10 (d) DEFINITION.—Section 114(j) of title 17, United
11 States Code, is amended—

12 (1) by redesignating paragraphs (10) through
13 (15) as paragraphs (11) through (16), respectively;
14 and

15 (2) by inserting after paragraph (9) the fol-
16 lowing:

17 “(10)(A) A ‘reasonable recording’ means the
18 making of a copy or phonorecord of a performance
19 licensed under this section for private, noncommer-
20 cial use if technological measures used by the trans-
21 mitting entity and incorporated into a recording de-
22 vice—

23 “(i) permit automated recording or play-
24 back based on specific programs, time periods,
25 or channels as selected by or for the user;

1 “(ii) do not permit automated recording or
2 playback based on specific sound recordings, al-
3 bums, or artists;

4 “(iii) do not permit the separation of com-
5 ponent segments of the copyrighted material
6 contained in the transmission program which
7 results in the playback of a manipulated se-
8 quence; and

9 “(iv) do not permit the redistribution, re-
10 transmission, or other exporting of a phono-
11 record embodying all or part of a performance
12 licensed under this section from the device by
13 digital outputs or removable media, unless the
14 destination device is part of a secure in-home
15 network that also complies with this paragraph.

16 “(B) Nothing in this paragraph prevents a con-
17 sumer from engaging in non-automated manual re-
18 cording and playback in a manner that is not an in-
19 fringement of copyright.”.

20 (e) TECHNICAL AND CONFORMING AMENDMENTS.—

21 (1) SECTION 114.—Section 114(f) of title 17,
22 United States Code (as amended by subsection (b)
23 of this section), is further amended—

1 (A) in paragraph (1)(B), in the first sen-
2 tence, by striking “paragraph (3)” and insert-
3 ing “paragraph (2)”; and

4 (B) in paragraph (4)(C), by striking
5 “under paragraph (4)” and inserting “under
6 paragraph (3)”.

7 (2) CHAPTER 8.—(A) Section 801(b) of title
8 17, United States Code, is amended—

9 (i) in paragraph (1), by striking
10 “114(1)(B), 115,” and inserting “115”; and

11 (ii) in paragraph (7)(B), by striking
12 “114(f)(3)” and inserting “114(f)(2)”.

13 (B) Section 803(c)(2)(E)(i)(II) of title 17,
14 United States Code, is amended—

15 (i) by striking “or 114(f)(2)(C)”; and

16 (ii) by striking “114(f)(4)(B)” and insert-
17 ing “114(f)(3)(B)”.

18 (C) Section 804(b)(3)(C) of title 17, United
19 States Code, is amended—

20 (i) in clause (i), by striking “and
21 114(f)(2)(C)”; and

22 (ii) in clause (iv), by striking “or
23 114(f)(2)(C), as the case may be”.

1 **SEC. 3. REGISTER OF COPYRIGHTS MEETING AND REPORT.**

2 (a) MEETING.—Not later than 60 days after the
3 Copyright Royalty Judges make their final determination
4 in Docket No. 2005–1 CRB DTRA, the Register of Copy-
5 rights shall convene a meeting among affected parties to
6 discuss whether to recommend creating a new category of
7 limited interactive services, including an appropriate pre-
8 mium rate for such services, within the statutory license
9 contained in section 114 of title 17, United States Code.

10 (b) REPORT.—Not later than 90 days after the con-
11 vening of the meeting under subsection (a), the Register
12 of Copyrights shall submit a report on the discussions at
13 that meeting to the Committee on the Judiciary of the
14 Senate and the Committee on the Judiciary of the House
15 of Representatives.

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