

110TH CONGRESS  
1ST SESSION

# H. R. 2060

To nullify the March 2, 2007, determination of the Copyright Royalty Judges with respect to webcasting, to modify the basis for making such a determination, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 26, 2007

Mr. INSLEE introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To nullify the March 2, 2007, determination of the Copyright Royalty Judges with respect to webcasting, to modify the basis for making such a determination, 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 “Internet Radio Equal-  
5 ity Act”.

1 **SEC. 2. NULLIFICATION OF DECISION OF COPYRIGHT ROY-**  
2 **ALTY JUDGES.**

3 The March 2, 2007, Determination of Rates and  
4 Terms of the United States Copyright Royalty Judges re-  
5 garding rates and terms for the digital performance of  
6 sound recordings and ephemeral recordings, including that  
7 determination as modified by the April 17, 2007, Order  
8 Denying Motions for Rehearing and any subsequent modi-  
9 fication to that determination by the Copyright Royalty  
10 Judges that is published in the Federal Register, is not  
11 effective, and shall be deemed never to have been effective.

12 **SEC. 3. COMPUTATION OF ROYALTY FEES FOR COMMER-**  
13 **CIAL INTERNET RADIO SERVICES OFFERING**  
14 **DIGITAL PERFORMANCES OF SOUND RE-**  
15 **CORDINGS.**

16 (a) STANDARD FOR DETERMINING RATES AND  
17 TERMS.—Section 114(f)(2)(B) of title 17, United States  
18 Code, is amended by striking “Such rates and terms shall  
19 distinguish” and all that follows through the end of clause  
20 (ii) and inserting the following: “The Copyright Royalty  
21 Judges shall establish rates and terms in accordance with  
22 the objectives set forth in section 801(b)(1). Such rates  
23 and terms may include a minimum annual royalty of not  
24 more than \$500 for each provider of services that are sub-  
25 ject to such rates and terms, which shall be the only min-

1 imum royalty fee and shall be assessed only once annually  
2 to that provider.”.

3 (b) **TRANSITION RULE.**—Except for services covered  
4 by section 118 of title 17, United States Code, each pro-  
5 vider of digital audio transmissions that otherwise would  
6 have been subject to the rates and terms of the determina-  
7 tion of the Copyright Royalty Judges made ineffective by  
8 section 2 of this Act shall instead pay royalties for each  
9 year of the 5-year period beginning on January 1, 2006,  
10 at one of the following rates, as selected by the provider  
11 for that year:

12 (1) 0.33 cents per hour of sound recordings  
13 transmitted to a single listener.

14 (2) 7.5 percent of the revenues received by the  
15 provider during that year that are directly related to  
16 the provider’s digital transmissions of sound record-  
17 ings.

18 **SEC. 4. COMPUTATION OF ROYALTY FEES FOR NON-**  
19 **COMMERCIAL STATIONS OFFERING DIGITAL**  
20 **PERFORMANCES OF SOUND RECORDINGS.**

21 (a) **AMENDMENTS TO SECTION 118 OF TITLE 17,**  
22 **UNITED STATES CODE.**—Section 118 of title 17, United  
23 States Code, is amended—

24 (1) in subsection (b), in the matter preceding  
25 paragraph (1), by striking “and published pictorial”

1 and inserting “, sound recordings, and published  
2 pictorial”;

3 (2) in subsection (c)—

4 (A) in the matter preceding paragraph (1),  
5 by striking “and published pictorial” and in-  
6 serting “, sound recordings, and published pic-  
7 torial”; and

8 (B) in paragraph (1), by inserting “or non-  
9 profit institution or organization” after “broad-  
10 cast station”; and

11 (3) in subsection (f), by striking “paragraph  
12 (2)” and inserting “paragraph (1) or (2)”.

13 (b) TRANSITION RULE.—For each calendar year (or  
14 portion thereof) beginning after December 31, 2004, until  
15 an applicable voluntary license agreement is filed with the  
16 Copyright Royalty Judges pursuant to section 118 of title  
17 17, United States Code (as amended by subsection (a) of  
18 this section) or an applicable determination is issued by  
19 the Copyright Royalty Judges pursuant to section 118 of  
20 such title (as so amended), the annual royalty that a pub-  
21 lic broadcasting entity shall pay to owners of copyrights  
22 in sound recordings for the uses provided under section  
23 118(e) of such title (as so amended) shall be an amount  
24 equal to the 1.5 times the total fees paid by that entity  
25 (or in the case of a group of related entities, the fees paid

1 by such group) pursuant to section 114(f)(2) of title 17,  
2 United States Code, for such uses during the calendar  
3 year ending December 31, 2004.

4 **SEC. 5. REPORT BY THE NATIONAL TELECOMMUNICATIONS**  
5 **AND INFORMATION ADMINISTRATION.**

6       Upon the publication in the Federal Register under  
7 section 803(b)(1) of title 17, United States Code, of the  
8 commencement of proceedings of the Copyright Royalty  
9 Judges under section 114(f) or 118 of title 17, United  
10 States Code, to determine rates and terms for Internet  
11 radio service providers under the statutory license pro-  
12 vided under section 114(d)(2) or 118 (as the case may  
13 be), the Assistant Secretary of Commerce for Communica-  
14 tions and Information, after consulting with representa-  
15 tives of copyright owners, nonprofit educational institu-  
16 tions, and commercial and noncommercial Internet radio  
17 providers, shall submit to the Copyright Royalty Judges  
18 a report on the competitiveness of the Internet radio mar-  
19 ketplace and the effect on Internet radio providers of pro-  
20 posed rate determinations in the proceedings. The Assist-  
21 ant Secretary shall submit the report to the Copyright  
22 Royalty Judges in a timely manner before the conclusion  
23 of the proceedings.

1 **SEC. 6. REPORT BY THE FEDERAL COMMUNICATIONS COM-**  
2 **MISSION.**

3       Upon the publication in the Federal Register under  
4 section 803(b)(1) of title 17, United States Code, of the  
5 commencement of proceedings of the Copyright Royalty  
6 Judges under section 114(f) or 118 of title 17, United  
7 States Code, to determine rates and terms for Internet  
8 radio service providers under the statutory license pro-  
9 vided under section 114(d)(2) or 118 (as the case may  
10 be), the Federal Communications Commission shall sub-  
11 mit to the Copyright Royalty Judges a report on the effect  
12 of proposed rate determinations in the proceedings on lo-  
13 calism, diversity, and competition in the Internet radio  
14 marketplace. The report shall include the Commission's  
15 views on the effects of the proposed rate determinations  
16 on—

17           (1) localism, diversity, and competition in rural  
18       areas;

19           (2) diversity of programming, including foreign  
20       language programming; and

21           (3) competitive barriers to entry into the Inter-  
22       net radio market.

23 The Commission shall submit the report to the Copyright  
24 Royalty Judges in a timely manner before the conclusion  
25 of the proceedings.

1 **SEC. 7. REPORT BY CORPORATION FOR PUBLIC BROAD-**  
2 **CASTING.**

3       Upon the publication in the Federal Register under  
4 section 803(b)(1) of title 17, United States Code, of the  
5 commencement of proceedings of the Copyright Royalty  
6 Judges under section 114(f) or 118 of title 17, United  
7 States Code, to determine rates and terms for Internet  
8 radio service providers under the statutory license pro-  
9 vided under section 114(d)(2) or 118 (as the case may  
10 be), Corporation for Public Broadcasting, in consultation  
11 with public radio licensees or permittees, or their des-  
12 ignated representatives, shall submit to the Congress a re-  
13 port on the effect of the proposed rate determinations on  
14 such licensees and permittees. The Corporation shall sub-  
15 mit the report to the Copyright Royalty Judges in a timely  
16 manner before the conclusion of the proceedings.

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