

119TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

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.

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IN THE SENATE OF THE UNITED STATES

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Mrs. BLACKBURN (for herself, Mr. PADILLA, Mr. TILLIS, and Mr. BOOKER) introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**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”.

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 subparagraphs (A) and (B), respectively; and

19 (4) in subparagraph (A), as redesignated by  
20 paragraph (3), by striking “nonsubscription” and in-  
21 serting “licensed nonsubscription”.

22 (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”.—  
9           Title 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 sub-  
11 paragraphs (A) through (C), the royalty rate shall  
12 be as follows for nonsubscription broadcast trans-  
13 missions by each individual terrestrial broadcast sta-  
14 tion licensed as such by the Federal Communica-  
15 tions Commission that satisfies the conditions in  
16 clause (ii)—

17 “(I) \$10 per calendar year, in the case of  
18 nonsubscription broadcast transmissions by a  
19 broadcast station that generated revenue in the  
20 immediately preceding calendar year of less  
21 than \$100,000;

22 “(II) \$100 per calendar year, in the case  
23 of nonsubscription broadcast transmissions by a  
24 broadcast station that is a public broadcasting  
25 entity as defined in section 118(f) and gen-

1 erated revenue in the immediately preceding  
2 calendar year of \$100,000 or more, but less  
3 than \$1,500,000; and

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

11 “(ii) An individual terrestrial broadcast station  
12 licensed as such by the Federal Communications  
13 Commission is eligible for a royalty rate set forth in  
14 clause (i) if—

15 “(I) the revenue from the operation of that  
16 individual station was less than \$1,500,000  
17 during the immediately preceding calendar year;

18 “(II) the aggregate revenue of the owner  
19 and operator of the broadcast station and any  
20 person directly or indirectly controlling, con-  
21 trolled by, or under common control with such  
22 owner or operator, from any source, was less  
23 than \$10,000,000 during the immediately pre-  
24 ceding calendar year; and

1           “(III) the owner or operator of the broad-  
2           cast station provides to the nonprofit collective  
3           designated by the Copyright Royalty Judges to  
4           distribute receipts from the licensing of trans-  
5           missions in accordance with subsection (f), by  
6           no later than January 31 of the relevant cal-  
7           endar year, a written and signed certification of  
8           the station’s eligibility under this clause and the  
9           applicable subclause of clause (i), in accordance  
10          with requirements the Copyright Royalty  
11          Judges shall prescribe by regulation.

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

13                 “(I) revenue shall be calculated in accord-  
14                 ance with generally accepted accounting prin-  
15                 ciples;

16                 “(II) revenue generated by a terrestrial  
17                 broadcast station shall include all revenue from  
18                 the operation of the station, from any source;  
19                 and

20                 “(III) in the case of affiliated broadcast  
21                 stations, revenue shall be allocated reasonably  
22                 to individual stations associated with the rev-  
23                 enue.

24          “(iv) The royalty rates specified in clause (i)  
25          shall not be admissible as evidence or otherwise



1 taken into account in determining royalty rates in a  
2 proceeding under chapter 8, or in any other adminis-  
3 trative, judicial, or other Federal Government pro-  
4 ceeding involving the setting or adjustment of the  
5 royalties payable for the public performance or re-  
6 production in ephemeral phonorecords or copies of  
7 sound recordings, the determination of terms or con-  
8 ditions related thereto, or the establishment of notice  
9 or recordkeeping requirements.”.

10 (b) **TECHNICAL CORRECTION.**—Section 118 of title  
11 17, United States Code, is amended by striking “section  
12 397 of title 47” and inserting “section 397 of the Commu-  
13 nications Act of 1934 (47 U.S.C. 397)” in each place it  
14 appears.

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

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

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

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

23 (3) by inserting after paragraph (4) the fol-  
24 lowing new paragraph:

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

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

22          Nothing in this Act, or the amendments made by this  
23          Act, shall adversely affect in any respect the public per-  
24          formance rights of or royalties payable to songwriters or  
25          copyright owners of musical works.

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

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