

107TH CONGRESS  
1ST SESSION

# H. R. 2724

To amend title 17, United States Code, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 2, 2001

Mr. CANNON (for himself and Mr. BOUCHER) introduced the following bill;  
which was referred to the Committee on the Judiciary

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## A BILL

To amend 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 “Music Online Competi-  
5 tion Act of 2001”.

6 **SEC. 2. EXEMPTION OF CERTAIN PERFORMANCES IN ON-**  
7 **LINE AND PHYSICAL RETAIL ESTABLISH-**  
8 **MENTS.**

9 (a) EXEMPTION.—Section 110(7) of title 17, United  
10 States Code, is amended—

11 (1) by striking “(7)” and inserting “(7)(A)”;

1           (2) by striking “by a vending establishment”  
2           and inserting “or of a sound recording by digital  
3           audio transmission, by or in a physical vending es-  
4           tablishment”; and

5           (3) by adding after the semicolon at the end the  
6           following: “or

7                   “(B) performance of a sample of a nondra-  
8                   matic musical work or a sample of a sound re-  
9                   cording by digital audio transmission, by or  
10                  through a digital online service open to the pub-  
11                  lic at large without any direct or indirect admis-  
12                  sion charge, if—

13                           “(i) the purpose of the performance is  
14                           to promote the retail sale, distribution or  
15                           license, by or through the service, of copies  
16                           or phonorecords of the work, including by  
17                           digital phonorecord delivery as defined in  
18                           section 115(d)(1);

19                           “(ii) the transmitting entity transmits  
20                           the sample solely to the particular recipient  
21                           requesting the transmission; and,

22                           “(iii) the length of the sample does  
23                           not exceed 30 seconds or, in the case of a  
24                           sound recording of more than 5 minutes in

1 duration, 10 percent of that sound record-  
2 ing not to exceed 60 seconds;”.

3 (b) DEFINITION OF PERFORMANCE.—Section 110 of  
4 title 17, United States Code, is amended by adding at the  
5 end the following: “For purposes of paragraph (7), a ‘per-  
6 formance’ includes a transmission made by a transmitting  
7 organization to or on behalf of a vending establishment  
8 or a digital online service.”.

9 **SEC. 3. EXEMPTION FOR EPHEMERAL RECORDINGS AND**  
10 **FOR MULTIPLE EPHEMERAL RECORDINGS.**

11 (a) EXEMPTION.—Section 112(a)(1) of title 17,  
12 United States Code, is amended—

13 (1) in subparagraph (A), by striking “made it,  
14 and” and inserting “made it and, except to facilitate  
15 transmission of the performance,”; and

16 (2) in subparagraph (C), by striking “public.”  
17 and inserting the following: “public, except that a  
18 transmission program as set forth in section  
19 114(d)(2)(B) or section 114(d)(2)(C)(iii) is not re-  
20 quired to be destroyed by a transmitting organiza-  
21 tion entitled to a statutory license under section  
22 114(f).”.

23 (b) MULTIPLE EPHEMERAL RECORDINGS EXEMP-  
24 TION.—Section 112 of title 17, United States Code, is  
25 amended—

1           (1) by striking subparagraph (C) of subsection  
2           (e)(1) and redesignating subparagraph (D) as sub-  
3           paragraph (C);

4           (2) by redesignating subsection (f) as sub-  
5           section (g);

6           (3) by adding after subsection (e) the following:

7           “(f) Notwithstanding the provisions of section 106,  
8           and except in the case of a motion picture or other audio-  
9           visual work, it is not an infringement of copyright for a  
10          transmitting organization entitled to transmit to the pub-  
11          lic a performance or display of a work, under a license,  
12          including a statutory license under section 114(f), or  
13          transfer of the copyright or under the limitations on exclu-  
14          sive rights in sound recordings specified by section 114(a)  
15          or for a transmitting organization that is a broadcast  
16          radio or television station licensed as such by the Federal  
17          Communications Commission and that makes a broadcast  
18          transmission of a performance of a sound recording in a  
19          digital format on a nonsubscription basis, to make one or  
20          more copies or phonorecords of a work included in a sound  
21          recording, if—

22                 “(1) each copy or phonorecord is retained and  
23                 used solely by the transmitting organization that  
24                 made it; and

1           “(2) each copy or phonorecord is used solely for  
2           the transmitting organization’s own transmissions  
3           within its local service area, or for purposes of archi-  
4           val preservation or security.”

5 **SEC. 4. LICENSING FOR TRANSMISSION.**

6           (a) **STATUTORY PERFORMANCE LICENSE PAY-**  
7 **MENTS.**—Subsection (g) of section 114 of title 17, United  
8 States Code, is amended—

9           (1) by striking paragraph (2), and

10           (2) by adding after paragraph (1) the following:

11           “(2) Receipts from the statutory licensing of  
12           public performances of sound recordings by digital  
13           audio transmission in accordance with subsection (f)  
14           shall be allocated and paid in the following manner:

15                   “(A) 45 percent of the receipts shall be  
16                   paid, on a per sound recording basis, to the re-  
17                   cording artist or artists featured on such sound  
18                   recording or to a designated collection and dis-  
19                   tribution organization on behalf of such fea-  
20                   tured recording artist or artists.

21                   “(B) 2.5 percent of the receipts shall be  
22                   deposited in an escrow account managed by an  
23                   independent administrator jointly appointed by  
24                   copyright owners of sound recordings and the  
25                   American Federation of Musicians (or any suc-

1           cessor entity) to be distributed to nonfeatured  
2           musicians (whether or not such musicians are  
3           members of the American Federation of Musi-  
4           cians) who have performed on sound recordings.

5           “(C) 2.5 percent of the receipts shall be  
6           deposited in an escrow account managed by an  
7           independent administrator jointly appointed by  
8           copyright owners of sound recordings and the  
9           American Federation of Television and Radio  
10          Artists (or any successor entity) to be distrib-  
11          uted to nonfeatured vocalists (whether or not  
12          such vocalists are members of the American  
13          Federation of Television and Radio Artists) who  
14          have performed on sound recordings.

15          “(D) 50 percent of the receipts shall be  
16          paid to a designated collection and distribution  
17          organization on behalf of the copyright owner of  
18          the exclusive right under section 106(6) of this  
19          title to perform publicly the sound recording by  
20          means of digital audio transmission under the  
21          statutory license of subsection (f) of this sec-  
22          tion.”.

23          (b) LICENSING AFFILIATES.—

24                  (1) IN GENERAL.—Subsection (h) of section  
25          114, title 17, United States Code, is amended—

1 (A) by striking paragraphs (1) and (2) and  
2 inserting the following:

3 “(1) If the copyright owner of a sound record-  
4 ing licenses an affiliated entity the right to repro-  
5 duce the copyrighted work, to distribute the copy-  
6 righted work to the public by means of a digital pho-  
7 norecord delivery or to perform the copyrighted work  
8 publicly, the copyright owner shall make the licensed  
9 sound recording available on no less favorable terms  
10 and conditions to all bona fide entities that offer  
11 similar services, except that, if there are material  
12 differences in the scope of the requested license with  
13 respect to the type of service, the particular sound  
14 recordings licensed, the frequency of use, the num-  
15 ber of subscribers served, or the duration, then the  
16 copyright owner may establish different terms and  
17 conditions for such other services, that such dif-  
18 ferent terms and conditions—

19 “(A) shall be limited to, and shall accu-  
20 rately reflect any such material differences in  
21 the scope of the requested license; and

22 “(B) permitted under this paragraph, shall  
23 be made available to all bona fide entities that  
24 offer similar services.

1           “(2)(A) Except as provided in subparagraph  
2           (B), a copyright owner that licenses a sound record-  
3           ing pursuant to paragraph (1) shall not mandate as  
4           part of the terms and conditions of the license that  
5           the licensee use any particular digital rights man-  
6           agement technology.

7           “(B) A copyright owner described in subpara-  
8           graph (A) shall not be prevented from including in  
9           the license a requirement that the licensee imple-  
10          ment digital rights management technology that  
11          meets reasonable and nondiscriminatory perform-  
12          ance criteria the copyright owner has established to  
13          protect a right of a copyright owner under this title  
14          in a work or a portion thereof.

15          “(3)(A) Except as provided in subparagraph  
16          (B), a copyright owner that licenses a sound record-  
17          ing pursuant to paragraph (1) shall not mandate as  
18          part of the terms and conditions of the license that  
19          the licensee use any particular digital music player.

20          “(B) A copyright owner described in subpara-  
21          graph (A) shall not be prevented from including in  
22          the license a requirement that the licensee use a dig-  
23          ital music player that meets reasonable and non-  
24          discriminatory performance criteria the copyright  
25          owner has established.

1           “(4) ENFORCEMENT.—(A) The Attorney Gen-  
2           eral may investigate an alleged violation of this sub-  
3           section if an investigation begins not later than 2  
4           years after an alleged violation occurred.

5           “(B) If the date of an alleged violation is unknown,  
6           the Attorney General may investigate to determine the  
7           date of the alleged violation.

8           “(C) If the Attorney General determines that a viola-  
9           tion of this subsection has occurred, the Attorney General  
10          has the power to seek to enforce the requirements of this  
11          subsection through all appropriate means.

12          “(D) Nothing contained in this paragraph shall be  
13          construed to limit the authority of the Attorney General  
14          under any other provision of law.

15                 (2) DEFINITIONS.—Subsection (j) of section  
16          114 of title 17, United States Code, is amended—

17                         (A) by amending paragraph (1) to read as  
18                         follows:

19                         “(1) The term ‘affiliated entity’ means an enti-  
20                         ty, other than an entity that wholly owns or is whol-  
21                         ly owned by the licensor, engaging in digital audio  
22                         transmissions covered by section 106(6) or digital  
23                         phonorecord deliveries in which the licensor has any  
24                         direct or indirect partnership or any ownership in-

1 interest amounting to 5 percent or more of the out-  
2 standing voting or nonvoting stock.”;

3 (B) by redesignating paragraphs (6)  
4 through (15) as paragraphs (9) through (18),  
5 respectively;

6 (C) by inserting after paragraph (5) the  
7 following:

8 “(6) The term ‘digital music player’ means a  
9 technology that renders audible the sounds in a  
10 sound recording embodied in a digital audio trans-  
11 mission or a digital phonorecord delivery.

12 “(7) The term ‘digital phonorecord delivery’  
13 shall have the meaning given such term in section  
14 115(d)(1).

15 “(8) The term ‘digital rights management tech-  
16 nology’ means a technological measure used to limit  
17 the uses of copyrighted work to those authorized by  
18 the copyright owner or the law.”.

19 **SEC. 5. ELECTRONIC ADMINISTRATION OF THE COMPUL-**  
20 **SORY LICENSE FOR MAKING AND DISTRIB-**  
21 **UTING SOUND RECORDINGS.**

22 (a) NOTICE OF INTENTION.—Section 115(b) of title  
23 17, United States Code, is amended—

24 (1) by striking paragraph (1) and inserting the  
25 following:

1           “(1) NOTICE.—(A) Any person who wishes to  
2 obtain a compulsory license under this section shall  
3 do so by serving a notice of intention to make and  
4 distribute phonorecords of the work.

5           “(B) Such notice may be given by direct notice  
6 served upon the copyright owner or by constructive  
7 notice that does not identify the copyright owner  
8 and that is to be served upon the Copyright Office.

9           “(C) Notice shall be served before or within 30  
10 days after making, and before distributing, any  
11 phonorecords of the work, except that a notice of in-  
12 tention to make digital phonorecord deliveries shall  
13 be made within 30 days after enactment of this Act  
14 or before the making of a digital phonorecord deliv-  
15 ery of the work, whichever is later.

16           “(D) Any notice of intention may identify more  
17 than one work and a constructive notice also may  
18 identify a work by one or more copyright owners.

19           “(E) The notice shall comply, in form, content,  
20 and manner of service, with requirements that the  
21 Register of Copyrights shall prescribe by regula-  
22 tion.”;

23           (2) by redesignating paragraph (2) as para-  
24 graph (3); and,

1           (3) by inserting after paragraph (1) the fol-  
2           lowing:

3           “(2) ROYALTY FEES.—Any person who obtains  
4           a compulsory license under this section shall—

5                   “(A) pay royalty fees in accordance with  
6                   subsection (c); or

7                   “(B) if such royalty fees have not been de-  
8                   termined, agree to pay such royalty fees as  
9                   shall be determined in accordance with sub-  
10                  section (c).”;

11           (4) in paragraph (3), as redesignated, by insert-  
12           ing “or (2)” after “(1)”.

13           (b) LIMITED DIGITAL PHONORECORD DELIVERY.—  
14           Section 115(c) of title 17, United States Code, is  
15           amended—

16                   (1) in paragraph (3)—

17                           (A) in subparagraph (C) by striking “and  
18                           (ii)” and inserting “(ii) limited digital phono-  
19                           record deliveries, and (iii)”;

20                           (B) in subparagraph (D)—

21                                   (i) by striking “and (ii)” and inserting  
22                                   “(ii) limited digital phonorecord deliveries,  
23                                   and (iii)”;

24                                   (ii) by inserting after “as provided in  
25                                   subparagraphs (B) and (C).” the following:

1 “In setting royalty rates and terms for lim-  
2 ited digital phonorecord deliveries under  
3 this section, the copyright arbitration roy-  
4 alty panel also shall consider the limita-  
5 tions imposed upon the use of the limited  
6 digital phonorecord delivery by a trans-  
7 mission recipient in proportion to digital  
8 phonorecord deliveries in general, the ex-  
9 tent to which limited digital phonorecord  
10 deliveries may promote or may substitute  
11 for the sales of phonorecords or otherwise  
12 may enhance or may interfere with the  
13 copyright owner’s other streams of revenue  
14 from its nondramatic musical works, and  
15 the proportion of the revenue received by  
16 the compulsory licensee from every such  
17 act of distribution of the phonorecord  
18 under this clause equal to the proportion  
19 of the revenue received by the compulsory  
20 licensee from distribution of a general dig-  
21 ital phonorecord delivery that is payable by  
22 a compulsory licensee under clause (2) and  
23 under chapter 8.”;

24 (4) by inserting in paragraph (5) after “next  
25 preceding.” the following: “Payments for digital pho-

1       norecord deliveries shall be made to the copyright  
2       owner or, if the notice of intention has been served  
3       upon the Copyright Office, to either the copyright  
4       owner or the Copyright Office.”

5               (5) by inserting in paragraph (6) after “copy-  
6       right owner” the following: “or, pursuant to para-  
7       graph (5) the Copyright Office,”.

8       (c) DEFINITIONS.—Section 115(d) of title 17, United  
9       States Code, is amended—

10              (1) by striking the paragraph heading and in-  
11       serting “DEFINITIONS.—”

12              (2) by striking “term has the following mean-  
13       ing” and inserting “terms have the following mean-  
14       ings”;

15              (3) by inserting after “meanings:” the fol-  
16       lowing: “(1)”;

17              (4) by inserting after paragraph (1) as so des-  
18       ignated the following:

19              “(2) A ‘limited digital phonorecord delivery’ is  
20       a digital phonorecord delivery that uses a technology  
21       that restricts the time or manner in which the trans-  
22       mission recipient may render such sound recording  
23       audible.”.

24       (d) ELECTRONIC FILING AND NOTICE TO COPY-  
25       RIGHT OWNERS.—

1           (1) DUTIES OF REGISTER.—Not later than 120  
2 days after the date of enactment of this Act, the  
3 Register of Copyrights shall—

4           (A) establish procedures by which the no-  
5 tice of intention may be served electronically  
6 upon the Copyright Office, and by which rea-  
7 sonable notice of the filing of a notice of inten-  
8 tion may be given to the owner of copyright in  
9 the nondramatic musical work;

10          (B) prescribe by regulation the require-  
11 ments for the form, content, and manner of  
12 electronic service of the notice, including notices  
13 that identify one or more works of a particular  
14 copyright owner and notices that identify one or  
15 more works of numerous copyright owners; and

16          (C) prescribe regulations for the appoint-  
17 ment of a designated agent to receive royalty  
18 fees and statements of account, to distribute  
19 royalty fees to the copyright owner, and to ad-  
20 minister royalty fees that have been submitted  
21 for unknown copyright owners.

22          (2) REGULATIONS.—The Register of Copyrights  
23 may prescribe regulations whereby royalty fees are  
24 paid to an escrow account at the last established  
25 rate in which the terms and rates for the then-cur-

1 rent period have not been determined, including for  
2 the period prior to the date of enactment of this Act.

3 **SEC. 6. LIMITATIONS ON EXCLUSIVE RIGHTS: INCIDENTAL**  
4 **AND ARCHIVAL COPYING.**

5 (a) TITLE.—The title heading of section 117 of title  
6 17, United States Code, is amended to read as follows:

7 **“SEC. 117. LIMITATIONS ON EXCLUSIVE RIGHTS: COM-**  
8 **PUTER PROGRAMS AND DIGITAL COPIES.”;**

9 (b) DIGITAL COPIES.—Section 117 of title 17, United  
10 States Code, is amended—

11 (1) by redesignating subsection (d) as sub-  
12 section (f), and

13 (2) by inserting after subsection (c) the fol-  
14 lowing:

15 “(d) Notwithstanding the provisions of section 106,  
16 it is not an infringement to make or to authorize the mak-  
17 ing of a copy or phonorecord of a sound recording or a  
18 work included in a sound recording, in a digital format,  
19 provided that such copy or phonorecord is created by and  
20 is incidental to the operation of a device in the ordinary  
21 course of the use of a work otherwise lawful under this  
22 title.

23 “(e) Notwithstanding the provisions of section 106,  
24 it is not an infringement for the owner of a phonorecord  
25 lawfully acquired by digital phonorecord delivery, or a copy

1 lawfully acquired by digital transmission of a literary work  
2 embodied in that phonorecord, to make or authorize the  
3 making of another phonorecord or copy of such works, if  
4 such new phonorecord or copy is for archival purposes only  
5 and that all archival phonorecord or copies are destroyed  
6 in the event that continued possession of the phonorecord  
7 or copy should cease to be rightful.”.

8 **SEC. 7. EVALUATION OF IMPACT OF CERTAIN STATUTORY**  
9 **PERFORMANCE LICENSE CRITERIA ON PRO-**  
10 **GRAMMING SERVICES.**

11 (a) EVALUATION BY THE REGISTER OF COPY-  
12 RIGHTS.—The Register of Copyrights, in consultation with  
13 the Assistant Secretary of the Office of Technology Policy  
14 of the Department of Commerce, shall evaluate the effects,  
15 under the statutory sound recording performance license  
16 set forth in section 114(d)(2) of title 17, United States  
17 Code, upon preexisting and emerging noninteractive dig-  
18 ital audio transmission services of the criteria set forth  
19 in sections 114(d)(2)(B) and 114(d)(2)(C)(i) and (ii) of  
20 such title, with respect to—

- 21 (1) the economic costs of compliance with the  
22 criteria;
- 23 (2) the effect of compliance with the criteria  
24 upon the nature of the programming and the mar-  
25 ketability of such services;

1           (3) whether any noninteractive digital audio  
2 transmission service would be unable to comply with  
3 the criteria and, therefore, to qualify for the statu-  
4 tory license;

5           (4) whether any changes to the criteria, includ-  
6 ing the elimination thereof, would enable additional  
7 noninteractive digital audio transmission services to  
8 qualify for the statutory license; and

9           (5) the likely impact upon copyright owners of  
10 sound recordings of any such changes to the criteria.

11       (b) REPORT TO CONGRESS.—The Register of Copy-  
12 rights shall, not later than 12 months after the date of  
13 enactment of this Act, submit to the Congress a report  
14 on the evaluation conducted under subsection (a), includ-  
15 ing any legislative recommendations the Register may  
16 have.

○