

112TH CONGRESS  
2D SESSION

# S. 3609

To adopt fair standards and procedures by which determinations of Copyright Royalty Judges are made with respect to webcasting, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 21, 2012

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To adopt fair standards and procedures by which determinations of Copyright Royalty Judges are made with respect to webcasting, 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 Fair-  
5 ness Act of 2012”.

6 **SEC. 2. APPOINTMENT OF COPYRIGHT ROYALTY JUDGES**  
7 **AND QUALIFICATIONS.**

8 Chapter 8 of title 17, United States Code, is amend-  
9 ed—

10 (1) in section 801(a)—

1 (A) in the first sentence, by striking “Li-  
2 brarian of Congress” and inserting “President  
3 of the United States, by and with the advice  
4 and consent of the Senate,”; and

5 (B) by striking the second sentence; and  
6 (2) in section 802—

7 (A) in subsection (a)(1), by striking  
8 “Each” and all that follows through “econom-  
9 ics.” and inserting the following: “Each Copy-  
10 right Royalty Judge shall be an attorney who  
11 has not fewer than 10 years of legal experience  
12 and has significant experience in adjudicating  
13 arbitrations or court trials. The Chief Copyright  
14 Royalty Judge shall have not fewer than 7  
15 years of experience in adjudicating court trials  
16 in civil cases.”; and

17 (B) in subsection (d)—

18 (i) in paragraph (1), in the first sen-  
19 tence, by striking “Librarian” and all that  
20 follows through “section.” and inserting  
21 “President of the United States shall act  
22 expeditiously to fill the vacancy.”; and

23 (ii) in paragraph (2), by striking “Li-  
24 brarian of Congress” and inserting “Presi-

1                   dent of the United States, by and with the  
2                   advise and consent of the Senate,”.

3 **SEC. 3. COMPUTATION OF ROYALTY FEES FOR INTERNET**  
4                   **RADIO SERVICES OFFERING DIGITAL PER-**  
5                   **FORMANCES OF SOUND RECORDINGS AND**  
6                   **REPORTING OBLIGATIONS.**

7           (a) STANDARD FOR DETERMINING RATES AND  
8 TERMS; BURDEN OF PROOF.—

9                   (1) EPHEMERAL RECORDINGS.—Section 112(e)  
10 of title 17, United States Code, is amended—

11                           (A) in paragraph (3), by striking the sec-  
12 ond sentence and inserting the following: “Such  
13 rates may include a minimum annual fee for  
14 each type of service offered by the transmitting  
15 organization.”;

16                           (B) in paragraph (4), by striking “Such  
17 rates shall” and all that follows through “para-  
18 graphs (2) and (3).” and insert the following:  
19 “In establishing rates and terms under this  
20 paragraph, the Copyright Royalty Judges shall  
21 apply the objectives set forth in section  
22 801(b)(1), in accordance with subparagraphs  
23 (C) and (D) of section 114(f)(1). In any pro-  
24 ceeding under this paragraph, the burden of  
25 proof shall be on the copyright owners of sound

1 recordings to establish that the fees and terms  
2 that they seek satisfy the requirements of this  
3 paragraph, and do not exceed the fees to which  
4 most copyright owners and users would agree  
5 under competitive market circumstances. To the  
6 extent the Copyright Royalty Judges consider  
7 marketplace benchmarks to be relevant, they  
8 shall limit those benchmarks to benchmarks re-  
9 flecting the rates and terms that have been  
10 agreed under competitive market circumstances  
11 by most copyright users.”; and

12 (C) in paragraph (5), by striking “in lieu  
13 of any” and all that follows and inserting the  
14 following: “and be binding upon the parties to  
15 any such agreements in lieu of any determina-  
16 tion by the Copyright Royalty Judges.”.

17 (2) DIGITAL SOUND RECORDING PERFORM-  
18 ANCES.—Section 114(f) of title 17, United States  
19 Code, is amended—

20 (A) in paragraph (1)—

21 (i) in subparagraph (A)—

22 (I) in the first sentence—

23 (aa) by striking “subscrip-  
24 tion transmissions by preexisting  
25 subscription services and trans-

1 missions by preexisting satellite  
2 digital audio radio”; and

3 (bb) by striking “, except in  
4 the case of a different transi-  
5 tional period provided under sec-  
6 tion 6(b)(3) of the Copyright  
7 Royalty and Distribution Reform  
8 Act of 2004,”; and

9 (II) by striking “Such terms and  
10 rates” and all that follows and insert-  
11 ing the following: “Such terms and  
12 rates shall distinguish among the dif-  
13 ferent types of digital audio trans-  
14 mission services then in operation and  
15 may take into account the different  
16 characteristics of such services, and  
17 may include a minimum annual fee of  
18 not more than \$500 for each provider  
19 of services that is subject to such  
20 rates and terms, which may be the  
21 only minimum fee for such provider  
22 and may be assessed only once annu-  
23 ally to that provider. Any copyright  
24 owners of sound recordings or any en-  
25 tities performing sound recordings af-

1           fected by this paragraph may submit  
2           to the Copyright Royalty Judges for  
3           consideration in such rate-setting pro-  
4           ceedings licenses covering such non-  
5           interactive sound recording perform-  
6           ances. The parties to each proceeding  
7           shall bear their own costs.”;

8           (ii) in subparagraph (B)—

9                   (I) in the first sentence—

10                           (aa) by striking “paragraph  
11                           (3)” and inserting “paragraph  
12                           (2)”; and

13                           (bb) by striking “, a transi-  
14                           tional period provided under sec-  
15                           tion 6(b)(3) of the Copyright  
16                           Royalty and Distribution Reform  
17                           Act of 2004,”; and

18                   (II) by striking the second sen-  
19                   tence and inserting the following: “In  
20                   establishing rates and terms under  
21                   this paragraph, the Copyright Royalty  
22                   Judges shall apply the objectives set  
23                   forth in section 801(b)(1) and may  
24                   also consider the rates and terms for  
25                   noninteractive digital audio trans-

1 mission services under voluntary li-  
2 cense agreements described in sub-  
3 paragraph (A) that were entered into  
4 under competitive market cir-  
5 cumstances. In any proceeding under  
6 this subsection, the burden of proof  
7 shall be on the copyright owners of  
8 sound recordings to establish that the  
9 fees and terms that they seek satisfy  
10 the requirements of this subsection,  
11 and do not exceed the fees to which  
12 most copyright owners and users  
13 would agree under competitive market  
14 circumstances.”;

15 (iii) by redesignating subparagraph  
16 (C) as subparagraph (E);

17 (iv) by inserting after subparagraph  
18 (B) the following:

19 “(C)(i) In construing the objectives set  
20 forth in section 801(b)(1), the Copyright Roy-  
21 alty Judges shall take into consideration—

22 “(I) the public’s interest in both the  
23 creation of new sound recordings of musi-  
24 cal works and in fostering online and other

1 digital performances of sound recordings;  
2 and

3 “(II) the income necessary to provide  
4 a reasonable return on all relevant invest-  
5 ments, including investments in prior peri-  
6 ods for which returns have not been  
7 earned.

8 “(ii) To the extent the Copyright Royalty  
9 Judges consider marketplace benchmarks to be  
10 relevant, the Copyright Royalty Judges shall  
11 limit those benchmarks to benchmarks reflect-  
12 ing the rates and terms that have been agreed  
13 under competitive market circumstances by  
14 most copyright users.

15 “(D) In applying the objectives set forth in  
16 section 801(b)(1), the Copyright Royalty  
17 Judges—

18 “(i) shall not disfavor percentage of  
19 revenue-based fees;

20 “(ii) shall establish license fee struc-  
21 tures that foster competition among the  
22 licensors of sound recording performances  
23 and between sound recording performances  
24 and other programming, including per-use  
25 or per-program fees, or percentage of rev-



1           enue or other fees that include carve-outs  
2           on a pro-rata basis for sound recordings  
3           the performance of which have been li-  
4           censed either directly with the copyright  
5           owner or at the source, or for which a li-  
6           cense is not necessary;

7           “(iii) shall give full consideration for  
8           the value of any promotional benefit or  
9           other non-monetary benefit conferred on  
10          the copyright owner by the performance;

11          “(iv) shall give full consideration to  
12          the contributions made by the digital audio  
13          transmission service to the content and  
14          value of its programming; and

15          “(v) shall not take into account either  
16          the rates and terms provided in licenses for  
17          interactive services or the determinations  
18          rendered by the Copyright Royalty Judges  
19          prior to the enactment of the Internet  
20          Radio Fairness Act of 2012.”; and

21          (v) by amending subparagraph (E), as  
22          so redesignated, to read as follows:

23          “(E) The procedures under subparagraph  
24          (A) may also be initiated pursuant to a petition  
25          filed by any copyright owners of sound record-

1           ings, or any entity performing sound recordings  
2           affected by this paragraph, indicating that a  
3           new type of digital audio transmission service  
4           engaged in the public performance of sound re-  
5           cordings is or is about to become operational,  
6           for the purpose of determining reasonable terms  
7           and rates of royalty payments with respect to  
8           such new type of transmission service for the  
9           period beginning with the inception of such new  
10          type of service and ending on the date on which  
11          the royalty rates and terms for the most com-  
12          parable digital audio transmission services most  
13          recently determined under subparagraph (A)  
14          and chapter 8 expire, or such other period as  
15          the parties may agree.”;

16                 (B) by striking paragraph (2);

17                 (C) by redesignating paragraphs (3), (4),  
18                 and (5) as paragraphs (2), (3), and (4), respec-  
19                 tively; and

20                 (D) in paragraph (2), as so redesignated—

21                         (i) by inserting “or their authorized  
22                         representatives” after “owners of sound re-  
23                         cordings”; and

24                         (ii) by striking “in lieu of any” and  
25                         all that follows and inserting the following:

1           “and be binding upon the parties to any  
2           such agreements in lieu of any determina-  
3           tion by the Copyright Royalty Judges.”.

4           (3) DEFINITION.—Section 114(j) of title 17,  
5           United States Code, is amended—

6                   (A) by redesignating paragraphs (4)  
7                   through (15) as paragraphs (5) through (16),  
8                   respectively; and

9                   (B) by inserting after paragraph (3) the  
10                  following:

11                  “(4) ‘Competitive market circumstances’ are  
12                  circumstances in which a licensee enters into a li-  
13                  cense for the noninteractive performance of sound  
14                  recordings with a licensor that does not possess mar-  
15                  ket power resulting from the aggregation of copy-  
16                  rights, either by a licensing collective or individual  
17                  copyright owners.”.

18           (b) PRECEDENTIAL VALUE OF SETTLEMENTS.—Sec-  
19           tion 114(f)(4) of title 17, United States Code, as so redес-  
20           ignated by subsection (a)(2), is amended—

21                   (1) in subparagraph (B), by striking the second  
22                   sentence;

23                   (2) by striking subparagraphs (C) and (F);

24                   (3) by redesignating subparagraphs (D) and  
25                   (E) as subparagraphs (C) and (D), respectively; and

1 (4) by adding at the end the following:

2 “(E) The rates and terms of any settle-  
3 ments made pursuant to the amendments made  
4 by the Webcaster Settlement Act of 2009 (Pub-  
5 lic Law 111–36; 123 Stat. 1926) that were to  
6 expire before December 31, 2015, shall be ex-  
7 tended through December 31, 2015, according  
8 to the rates and terms applicable to 2014.”.

9 (c) TECHNICAL AND CONFORMING AMENDMENTS.—  
10 Chapter 8 of title 17, United States Code, is amended—

11 (1) in section 801(b)(7)(B), by striking  
12 “114(f)(3)” and inserting “114(f)(2)”;

13 (2) in section 803(e)(2)(E)(i)(II)—

14 (A) by striking “section 114(f)(1)(C) or  
15 114(f)(2)(C)” and inserting “section  
16 114(f)(1)(E)”; and

17 (B) by striking “section 114(f)(4)(B)” and  
18 inserting “section 114(f)(3)(B)”; and

19 (3) in section 804(b)(3)(C)—

20 (A) in clause (i), by striking “section  
21 114(f)(1)(C) and 114(f)(2)(C)” and inserting  
22 “section 114(f)(1)(E)”;

23 (B) in clause (iii)(II), by striking “section  
24 114(f)(4)(B)(ii) and (C)” and inserting “sub-

1 paragraphs (B)(ii) and (C) of section  
2 114(f)(3)”; and

3 (C) in clause (iv), by striking “section  
4 114(f)(1)(C) or 114(f)(2)(C)” and inserting  
5 “section 114(f)(1)(E)”.

6 **SEC. 4. MODERNIZATION OF CONDITIONS GOVERNING**  
7 **EPHEMERAL RECORDING EXEMPTION AND**  
8 **STATUTORY LICENSES.**

9 (a) EPHEMERAL RECORDING EXEMPTION.—Section  
10 112(a)(1) of title 17, United States Code, is amended by  
11 striking “no more than” and all that follows and inserting  
12 the following: “1 or more copies or phonorecords embody-  
13 ing the performance or display, if—

14 “(A) the copies or phonorecords are re-  
15 tained and used solely by the transmitting orga-  
16 nization that made them, and no further copies  
17 or phonorecords are reproduced from them, ex-  
18 cept as may be incidental to the operation of  
19 the transmission technology used by the trans-  
20 mitting organization; and

21 “(B) the copies or phonorecords are used  
22 solely for the transmitting organization’s own  
23 transmissions originating in the United States,  
24 or for purposes of archival preservation or secu-  
25 rity.”.

1 (b) EPHEMERAL RECORDING STATUTORY LI-  
2 CENSE.—Section 112(e)(1) of title 17, United States  
3 Code, is amended—

4 (1) in the matter preceding subparagraph (A)—

5 (A) by striking “or under a statutory li-  
6 cense in accordance with section 114(f)”; and

7 (B) by striking “ if the following condi-  
8 tions are satisfied:” and inserting “if—”;

9 (2) in subparagraph (A)—

10 (A) by striking “The” and inserting “the”;

11 and

12 (B) by striking the period at the end and  
13 inserting “, except as may be incidental to the  
14 operation of the transmission technology used  
15 by the transmitting organization;”;

16 (3) in subparagraph (B)—

17 (A) by striking “The” and inserting “the”;

18 (B) by striking “a statutory license in ac-  
19 cordance with section 114(f) or”; and

20 (C) by striking the period at the end and  
21 inserting “, or for purposes of archival preser-  
22 vation or security; and”;

23 (4) by striking subparagraph (C);

24 (5) by redesignating subparagraph (D) as sub-  
25 paragraph (C); and

1           (6) in subparagraph (C), as so redesignated, by  
2       striking “Phonorecords” and inserting  
3       “phonorecords”.

4       (c) SOUND RECORDING PERFORMANCE STATUTORY  
5       LICENSE.—Section 114(d)(2)(C) of title 17, United  
6       States Code, is amended—

7           (1) in clause (i), by striking “of a broadcast  
8       transmission” and all that follows and inserting the  
9       following: “or simultaneous transmission of a broad-  
10      cast transmission in any medium, which may include  
11      programming substituted for programming con-  
12      tained in the broadcast transmission with respect to  
13      which the transmitting entity lacks the requisite li-  
14      censes or clearances to make the transmission in the  
15      medium, or for advertisements contained in the  
16      broadcast transmission, or the transmission of any  
17      programming previously included in a broadcast  
18      transmission as an archived program in conformance  
19      with clause (iii);”;

20          (2) by striking clause (ii) and inserting the fol-  
21      lowing:

22                           “(ii) the transmitting entity  
23                           does not cause to be published in  
24                           writing by means of an advance  
25                           program schedule the titles of the

1 specific sound recordings or  
2 phonorecords embodying such  
3 sound recordings to be trans-  
4 mitted at particular times, except  
5 that this clause does not dis-  
6 qualify a transmitting entity that  
7 publishes in writing—

8 “(AA) such a program  
9 schedule that identifies  
10 sound recordings,  
11 phonorecords or artists that  
12 will be featured within a pe-  
13 riod of time greater than 3  
14 hours or within an unspec-  
15 ified future time period; or

16 “(BB) an advance pro-  
17 gram schedule that is that is  
18 a schedule of classical music  
19 programming to be per-  
20 formed as part of a retrans-  
21 mission or simultaneous  
22 transmission of a broadcast  
23 transmission, which may in-  
24 clude programming sub-  
25 stituted for programming



1 contained in the broadcast  
2 transmission with respect to  
3 which the transmitting enti-  
4 ty lacks the requisite li-  
5 censes or clearances to make  
6 the transmission in the me-  
7 dium, or for advertisements  
8 contained in the broadcast  
9 transmission;”;

10 (3) in clause (iii)—

11 (A) in subclause (II), by adding “or” at  
12 the end; and

13 (B) beginning in subclause (III), by strik-  
14 ing “or” and all that follows through “require-  
15 ment;”

16 (4) in clause (vii)—

17 (A) by striking “and the transmitting enti-  
18 ty” through “of the copyright owner;” and

19 (B) by striking “of a broadcast trans-  
20 mission” and all that follows and inserting “or  
21 simultaneous transmission of a broadcast trans-  
22 mission, which may include programming sub-  
23 stituted for programming contained in the  
24 broadcast transmission with respect to which  
25 the transmitting entity lacks the requisite li-

1 censes or clearances to make the transmission  
 2 in the medium, or for advertisements contained  
 3 in the broadcast transmission;” and

4 (5) by amending clause (ix) to read as follows:

5 “(ix) the transmitting entity identifies  
 6 in textual data the sound recording during,  
 7 but not before, the time it is performed, in-  
 8 cluding the title of the sound recording  
 9 and the featured recording artist, in a  
 10 manner to permit it to be displayed to the  
 11 transmission recipient by the device or  
 12 technology intended for receiving the serv-  
 13 ice provided by the transmitting entity, ex-  
 14 cept that the obligation in this clause shall  
 15 not apply to the extent that the transmit-  
 16 ting entity does not have the technology or  
 17 information necessary to provide such tex-  
 18 tual data.”.

19 **SEC. 5. PROMOTION OF A COMPETITIVE MARKETPLACE.**

20 (a) **LIMITATION OF ANTITRUST EXEMPTIONS.—**

21 (1) **EPHEMERAL RECORDINGS.—**Section  
 22 112(e)(2) of title 17, United States Code, is amend-  
 23 ed—

24 (A) by inserting “, on a nonexclusive  
 25 basis,” after “common agents”; and

1           (B) by adding at the end the following:  
2           “Nothing in this paragraph shall be construed  
3           to permit any copyright owners of sound re-  
4           cordings acting jointly, or any common agent or  
5           collective representing such copyright owners, to  
6           take any action that would prohibit, interfere  
7           with, or impede direct licensing by copyright  
8           owners of sound recordings in competition with  
9           licensing by any common agent or collective,  
10          and any such action that affects interstate com-  
11          merce shall be deemed a contract, combination  
12          or conspiracy in restraint of trade in violation  
13          of section 1 of the Sherman Act (15 U.S.C.  
14          1).”.

15          (2) DIGITAL SOUND RECORDING PERFORM-  
16          ANCES.—Section 114(e) of title 17, United States  
17          Code, is amended by adding at the end the fol-  
18          lowing:

19               “(3) Nothing in this subsection shall be con-  
20               strued to permit any copyright owners of sound re-  
21               cordings acting jointly, or any common agent or col-  
22               lective representing such copyright owners, to take  
23               any action that would prohibit, interfere with, or im-  
24               pede direct licensing by copyright owners of sound  
25               recordings in competition with licensing by any com-

1 mon agent or collective, and any such action that af-  
 2 fects interstate commerce shall be deemed a con-  
 3 tract, combination or conspiracy in restraint of trade  
 4 in violation of section 1 of the Sherman Act (15  
 5 U.S.C. 1).

6 “(4) In order to obtain the benefits of para-  
 7 graph (1), a common agent or collective representing  
 8 copyright owners of sound recordings must make  
 9 available at no charge through publicly accessible  
 10 computer access through the Internet the most cur-  
 11 rent available list of sound recording copyright own-  
 12 ers represented by the organization and the most  
 13 current list of sound recordings licensed by the orga-  
 14 nization.”.

15 **SEC. 6. PROCEEDINGS OF THE COPYRIGHT ROYALTY**  
 16 **JUDGES AND JUDICIAL REVIEW.**

17 (a) PROCEEDINGS AND PRECEDENTIAL VALUE.—  
 18 Section 803(a)(1) of title 17, United States Code, is  
 19 amended—

20 (1) by striking the first sentence and inserting  
 21 the following: “‘In carrying out the purposes set  
 22 forth in section 801, all proceedings of the Copyright  
 23 Royalty Judges shall be conducted in accordance  
 24 with this title and, unless contrary to a procedure  
 25 set forth in subsection (b), according to the Federal

1 Rules of Civil Procedure and the Federal Rules of  
2 Evidence.”; and

3 (2) by adding at the end the following: “Not-  
4 withstanding the preceding sentence, in any rate-set-  
5 ting proceeding under section 112(e)(4) or section  
6 114(f)(2)(B), the Copyright Royalty Judges may  
7 only consider as precedent and act in accordance  
8 with determinations and interpretations that are  
9 made under the objectives set forth in section 801(b)  
10 for the statutory licenses under sections 112(e) and  
11 114(d)(2).”.

12 (b) REGULATIONS.—Section 803(b)(6) of title 17,  
13 United States Code, is amended—

14 (1) in subparagraph (C), by striking “RE-  
15 QUIREMENTS.—Regulations” and inserting “RE-  
16 QUIREMENTS IN CASES NOT INVOLVING DIGITAL  
17 PERFORMANCES OF SOUND RECORDINGS.—In pro-  
18 ceedings other than proceedings to determine terms  
19 and rates of royalty payments under section 112 or  
20 114, regulations”; and

21 (2) by adding at the end the following:

22 “(D) REQUIREMENTS IN PROCEEDINGS IN-  
23 VOLVING DIGITAL PERFORMANCES OF SOUND  
24 RECORDINGS.—In proceedings to determine

1 terms and rates of royalty payments under sec-  
2 tion 112 or 114, the following shall apply:

3 “(i) INITIAL DISCLOSURES.—Not later  
4 than 30 days after the date on which the  
5 voluntary negotiation period is initiated  
6 pursuant to paragraph (3)(A)(i), each par-  
7 ticipant shall make an initial disclosure to  
8 the other participants by providing cop-  
9 ies—

10 “(I) of all license agreements en-  
11 tered into by that participant, its  
12 members, or any licensor or licensee  
13 represented in the proceeding by that  
14 participant during the applicable 5-  
15 year period or covering any portion of  
16 the period for which the rates are to  
17 be set, relating to—

18 “(aa) in a proceeding under  
19 section 112, the making of  
20 ephemeral recordings; or

21 “(bb) in a proceeding under  
22 section 114, the public perform-  
23 ance of musical works, sound re-  
24 cordings, or audiovisual works in-

1                   corporating recorded musical  
2                   works; or

3                   “(II) of any other license agree-  
4                   ment or document upon which the  
5                   participant intends to rely, in whole or  
6                   in part, in its ratemaking proposal, as  
7                   well as all license agreements entered  
8                   into by the participant, its members,  
9                   or any licensor or licensee represented  
10                  in the proceeding by that participant  
11                  for the same or similar rights during  
12                  the applicable 5-year period or cov-  
13                  ering any portion of the period for  
14                  which the rates are to be set.

15                  “(ii) PROTECTIVE ORDER; SANC-  
16                  TIONS.—Disclosures under clause (i) and  
17                  other confidential information produced by  
18                  a participant or third party during dis-  
19                  covery, or used during the proceeding,  
20                  shall be subject to a protective order, en-  
21                  tered by the Copyright Royalty Judges in  
22                  the proceeding, that prohibits use of the  
23                  disclosures and the confidential informa-  
24                  tion for any purpose other than the pro-  
25                  ceeding and that prohibits disclosure of the

1 licenses or other documents included in the  
2 disclosure or of other confidential informa-  
3 tion to any person that is not counsel of  
4 record in the proceeding. The Copyright  
5 Royalty Judges may impose appropriate  
6 sanctions for failure to comply in a timely  
7 manner with the matters required to be  
8 disclosed under clause (i).

9 “(iii) STATEMENTS OF THE CASE.—  
10 Statements of the case shall be filed by a  
11 date specified by the Copyright Royalty  
12 Judges, which for licensor participants  
13 shall be no earlier than the end of the 90-  
14 day period beginning on the date on which  
15 the voluntary negotiation period concludes,  
16 and for licensee participants shall be no  
17 earlier than the end of the 60-day period  
18 beginning on the date on which the state-  
19 ments of the case are required to be sub-  
20 mitted by licensor participants.

21 “(iv) SUBPOENA POWER.—The Copy-  
22 right Royalty Judges shall have the power  
23 to issue subpoenas at the request of a par-  
24 ticipant to non-participants, subject to the  
25 Federal Rules of Civil Procedure. Orders



1 by the Copyright Royalty Judges to en-  
2 force such subpoenas may be enforced by  
3 the requesting participant in an action in  
4 the district court in which the subpoenaed  
5 party resides.

6 “(v) SCHEDULING CONFERENCE.—

7 The Copyright Royalty Judges shall order  
8 a scheduling conference no sooner than 45  
9 days following the submission to the Copy-  
10 right Royalty Judges of the statement of  
11 the case of the licensee participants. Par-  
12 ticipants shall submit jointly a proposed  
13 discovery plan no later than 21 days before  
14 the conference. Following the conference,  
15 the Copyright Royalty Judges shall issue  
16 an initial scheduling order governing pre-  
17 trial procedures, and permitting discovery  
18 that is reasonable and sufficient, giving  
19 due consideration to the proposals of the  
20 participants and the magnitude of the po-  
21 tential royalty payments at issue during  
22 the license period covered by the pro-  
23 ceeding. The period to conduct discovery  
24 shall be no shorter than 90 days, plus the  
25 time needed to complete discovery ordered

1 by the Copyright Royalty Judges in con-  
2 nection with the resolution of motions, or-  
3 ders, and disputes pending at the end of  
4 such period.

5 “(vi) SETTLEMENT CONFERENCE.—  
6 The Copyright Royalty Judges shall order  
7 a settlement conference among the partici-  
8 pants in the proceeding to facilitate the  
9 presentation of offers of settlement among  
10 the participants. The settlement conference  
11 shall be held during the 21-day period be-  
12 ginning on the day after the last day of the  
13 discovery period ordered pursuant to clause  
14 (iv) and shall take place outside the pres-  
15 ence of the Copyright Royalty Judges.

16 “(vii) JOINT PRETRIAL ORDER.—If  
17 the conference required in clause (v) does  
18 not result in a settlement among all par-  
19 ties, not later than 60 days after the last  
20 day of the settlement conference, the re-  
21 maining participants shall propose a joint  
22 pretrial order—

23 “(I) stating the rates and terms  
24 proposed by each participant and set-

1           ting forth, in detail, the grounds for  
2           such proposals;

3           “(II) setting forth admissions  
4           and stipulations about facts and docu-  
5           ments;

6           “(III) avoiding unnecessary proof  
7           and cumulative evidence and limiting  
8           the use of testimony under rule 702 of  
9           the Federal Rules of Evidence;

10          “(IV) identifying the witnesses to  
11          be offered by each party, and attach-  
12          ing all witness statements, testimony,  
13          and exhibits to be presented in the  
14          proceeding and such other information  
15          that is necessary to establish terms  
16          and rates;

17          “(V) listing the evidence to be of-  
18          fered by each party, and identifying  
19          any objections to any such evidence;

20          “(VI) identifying any pending  
21          motions, including motions in limine  
22          and attaching any such motions that  
23          have not yet been filed;

1                   “(VII) proposing a reasonable  
2                   limit on the time allowed to present  
3                   evidence; and

4                   “(VIII) proposing other ways to  
5                   facilitate the just, speedy, and inex-  
6                   pensive disposition of the proceeding.

7                   “(viii) PRETRIAL ORDER.—The Copy-  
8                   right Royalty Judges shall hold a pre-  
9                   hearing conference to address the issues  
10                  set forth in the proposed joint pretrial  
11                  order, and shall issue an order reciting the  
12                  action taken. The order shall allocate to  
13                  the licensor participants and licensee par-  
14                  ticipants sufficient, reasonable, and equal  
15                  time in which to present their respective  
16                  cases, and shall afford each set of partici-  
17                  pants an opportunity for rebuttal. The  
18                  order issued by the Copyright Royalty  
19                  Judges under this clause shall control the  
20                  course of the action unless the Judges  
21                  modify it.

22                  “(ix) DEFINITIONS.—In this subpara-  
23                  graph:

1           “(I) APPLICABLE 5-YEAR PE-  
2           RIOD.—The term ‘applicable 5-year  
3           period’ means—

4                   “(aa) the period of 5 cal-  
5                   endar years preceding the year in  
6                   which the applicable voluntary  
7                   negotiation period begins; and

8                   “(bb) the period of the cur-  
9                   rent calendar year through the  
10                  date on which the initial disclo-  
11                  sure under clause (i) is made.

12           “(II) LICENSEE.—The term ‘li-  
13           censee’ means a person or entity that  
14           exercises rights under a statutory li-  
15           cense under section 112 or 114.

16           “(III) LICENSEE PARTICIPANT.—  
17           The term ‘licensee participant’ means  
18           a participant that is, or is an author-  
19           ized representative of, a licensee.

20           “(IV) LICENSOR.—The term ‘li-  
21           censor’ means a person or entity enti-  
22           tled to receive royalty payments under  
23           section 112 or 114.

24           “(V) LICENSOR PARTICIPANT.—  
25           The term ‘licensor participant’ means

1 a participant that is, or that is an au-  
2 thORIZED representative of, a licensor.

3 “(VI) STATEMENT OF THE  
4 CASE.—The term ‘statement of the  
5 case’ means a short and plain state-  
6 ment that—

7 “(aa) identifies all partici-  
8 pants and licensors or licensees  
9 on whose behalf the statement is  
10 being submitted;

11 “(bb) states the proposed  
12 rate or rates and terms of the  
13 participants for each right at  
14 issue in the proceeding and sets  
15 forth in detail the basis of each  
16 such proposed rate and term;

17 “(cc) identifies each witness  
18 that the participant intends to  
19 call in support of its rate and  
20 terms proposal and summarizes  
21 the anticipated testimony of each  
22 witness; and

23 “(dd) includes any reports,  
24 including expert reports, and any

1 documents upon which the par-  
2 ticipant relies.”.

3 (c) **TIMING OF DETERMINATION.**—Section 803(c)(1)  
4 of title 17, United States Code, is amended by striking  
5 “subsection (b)(6)(C)(x)” and inserting “subparagraph  
6 (C)(x) or (D)(v) of subsection (b)(6) (as the case may  
7 be)”.

8 (d) **JUDICIAL REVIEW.**—Section 803(d)(3) of title  
9 17, United States Code, is amended by striking the first  
10 sentence and inserting the following: “Conclusions of law,  
11 and determinations of rates in which the Copyright Roy-  
12 alty Judges are required to apply the facts of record to  
13 the objectives set forth in section 801(b) shall be subject  
14 to de novo review. Findings of fact by the Copyright Roy-  
15 alty Judges shall be subject to review for clear error. All  
16 other actions by the Copyright Royalty Judges shall be  
17 subject to review for abuse of discretion.”.

18 **SEC. 7. GLOBAL MUSIC RIGHTS DATABASE.**

19 For purposes of facilitating compensation to artists  
20 of musical works and combating copyright infringement,  
21 not later than 180 days after the date of enactment of  
22 this Act, the Librarian of Congress, in consultation with  
23 the Intellectual Property Enforcement Coordinate and the  
24 United States Patent and Trademark Office, shall submit  
25 to Congress a report that provides a set of recommenda-

1 tions about how the Federal Government can facilitate,  
2 and possibly establish, a global music registry that is  
3 sustainably financed and consistent with World Intellec-  
4 tual Property Organization obligations. Such registry  
5 should, to the extent practicable, include all known or  
6 copyrighted musical works, the writers of the work, the  
7 owners of the rights, the entity on behalf of those owners  
8 who can license such rights on a territory-by-territory  
9 basis, and all known sound recording data.

10 **SEC. 8. EFFECTIVE DATE AND TRANSITIONAL RULES.**

11 (a) IN GENERAL.—Except as provided in subsection  
12 (c), the amendments made by this Act shall take effect  
13 on the date of enactment of this Act and shall apply to  
14 any proceeding that is pending on, or that begins on or  
15 after the date of enactment. The Copyright Royalty  
16 Judges in office as of the date of enactment shall have  
17 only such continuing authority as is provided in para-  
18 graphs (1) and (2) of subsection (c).

19 (b) REGULATIONS.—Not later than 60 days after the  
20 date on which not less than 2 Copyright Royalty Judges  
21 are appointed and confirmed pursuant to section 2, the  
22 Copyright Royalty Judges shall propose regulations imple-  
23 menting the amendments set forth in section 6(b), by no-  
24 tice in the Federal Register, providing 30 days for com-  
25 ments and 15 days for reply comments. Not later than



1 45 days after date on which the 15-day period for reply  
2 comments ends, the Copyright Royalty Judges shall pro-  
3 mulgate final regulations.

4 (c) APPLICABILITY TO PENDING PROCEEDINGS.—

5 (1) PROCEEDINGS IN WHICH THE HEARING ON  
6 THE MERITS HAS CONCLUDED.—The Copyright Roy-  
7 alty Judges sitting on the date of enactment shall  
8 have authority to decide any pending proceeding in  
9 which the hearing on the merits has concluded,  
10 under the standards, procedures, and regulations in  
11 effect prior to the enactment of this Act. This au-  
12 thority shall include the authority to decide any mo-  
13 tion for rehearing under section 803(c)(2) of title  
14 17, United States Code, in any such proceeding.

15 (2) PROCEEDINGS IN WHICH THE HEARING ON  
16 THE MERITS HAS COMMENCED BUT NOT CON-  
17 CLUDED.—The Copyright Royalty Judges sitting on  
18 the date of enactment shall have authority to decide  
19 any pending proceeding in which the hearing on the  
20 merits has commenced but not concluded, under the  
21 standards, procedures, and regulations in effect  
22 prior to the enactment of this Act, except that this  
23 authority may only be exercised with the consent of  
24 all participants in any proceeding to determine  
25 terms and rates of royalty payments under section

1 112 or 114 of title 17, United States Code. This au-  
2 thority shall include the authority to decide any mo-  
3 tion for rehearing under section 803(c)(2) of title  
4 17, United States Code, in any such proceeding.

5 (3) ALL OTHER PENDING PROCEEDINGS.—The  
6 Copyright Royalty Judges appointed pursuant to  
7 section 2 shall assume authority over any pending  
8 proceeding in which the hearing on the merits has  
9 not commenced. The Copyright Royalty Judges shall  
10 recommence any pending proceeding to determine  
11 terms and rates of royalty payments under section  
12 112 or 114 of title 17, United States Code, under  
13 the procedures, standards and regulations set forth  
14 in this Act, and the requirement set forth in section  
15 803(c)(1) of title 17, United States Code, that the  
16 proceeding be concluded no later than 15 days be-  
17 fore the expiration of the then current statutory  
18 rates and terms, shall not apply. The Copyright  
19 Royalty Judges shall set a reasonable schedule for  
20 the continuation of any pending proceeding other  
21 than a proceeding to determine the terms and rates  
22 of royalty payments under section 112 or 114 of  
23 title 17, United States Code.

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