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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.

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Internet Radio Fairness Act of 2012''.

SEC. 2. APPOINTMENT OF COPYRIGHT ROYALTY JUDGES AND QUALIFICATIONS.

Chapter 8 of title 17, United States Code, is amended—

(1) in section 801(a)—

(A) in the first sentence, by striking ''Librarian of Congress'' and inserting ''President of the United States, by and with the advice and consent of the Senate,''; and

(B) by striking the second sentence; and

(2) in section 802—

(A) in subsection (a)(1), by striking ''Each'' and all that follows through ''economics.'' and inserting the following: ''Each Copyright Royalty Judge shall be an attorney who has not fewer than 10 years of legal experience and has significant experience in adjudicating arbitrations or court trials. The Chief Copyright Royalty Judge shall have not fewer than 7 years of experience in adjudicating court trials in civil cases.''; and

(B) in subsection (d)—

(i) in paragraph (1), in the first sentence, by striking ''Librarian'' and all that follows through ''section.'' and inserting ''President of the United States shall act expeditiously to fill the vacancy.''; and

(ii) in paragraph (2), by striking ''Librarian of Congress'' and inserting ''Presi-

dent of the United States, by and with the advise and consent of the Senate,''.

SEC. 3. COMPUTATION OF ROYALTY FEES FOR INTERNET RADIO SERVICES OFFERING DIGITAL PERFORMANCES OF SOUND RECORDINGS AND REPORTING OBLIGATIONS.

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

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

(A) in paragraph (3), by striking the second sentence and inserting the following: ''Such rates may include a minimum annual fee for each type of service offered by the transmitting organization.'';

(B) in paragraph (4), by striking ''Such rates shall'' and all that follows through ''paragraphs (2) and (3).'' and insert the following: ''In establishing rates and terms under this paragraph, the Copyright Royalty Judges shall apply the objectives set forth in section 801(b)(1), in accordance with subparagraphs (C) and (D) of section 114(f)(1). In any proceeding under this paragraph, the burden of proof shall be on the copyright owners of sound

recordings to establish that the fees and terms that they seek satisfy the requirements of this paragraph, and do not exceed the fees to which most copyright owners and users would agree under competitive market circumstances. To the extent the Copyright Royalty Judges consider marketplace benchmarks to be relevant, they shall limit those benchmarks to benchmarks reflecting the rates and terms that have been agreed under competitive market circumstances by most copyright users.''; and

(C) in paragraph (5), by striking ''in lieu of any'' and all that follows and inserting the following: ''and be binding upon the parties to any such agreements in lieu of any determination by the Copyright Royalty Judges.''.

(2) DIGITAL SOUND RECORDING PERFORMANCES.—Section 114(f) of title 17, United States Code, is amended—

(A) in paragraph (1)—

(i) in subparagraph (A)—

(I) in the first sentence—

(aa) by striking ''subscription transmissions by preexisting subscription services and trans-

missions by preexisting satellite digital audio radio''; and

(bb) by striking '', except in the case of a different transitional period provided under section 6(b)(3) of the Copyright Royalty and Distribution Reform Act of 2004,''; and

(II) by striking ''Such terms and rates'' and all that follows and inserting the following: ''Such terms and rates shall distinguish among the different types of digital audio transmission services then in operation and may take into account the different characteristics of such services, and may include a minimum annual fee of not more than $500 for each provider of services that is subject to such rates and terms, which may be the only minimum fee for such provider and may be assessed only once annually to that provider. Any copyright owners of sound recordings or any entities performing sound recordings af-

fected by this paragraph may submit to the Copyright Royalty Judges for consideration in such rate-setting proceedings licenses covering such noninteractive sound recording performances. The parties to each proceeding shall bear their own costs.'';

(ii) in subparagraph (B)—

(I) in the first sentence—

(aa) by striking ''paragraph (3)'' and inserting ''paragraph (2)''; and

(bb) by striking '', a transitional period provided under section 6(b)(3) of the Copyright Royalty and Distribution Reform Act of 2004,''; and

(II) by striking the second sentence and inserting the following: ''In establishing rates and terms under this paragraph, the Copyright Royalty Judges shall apply the objectives set forth in section 801(b)(1) and may also consider the rates and terms for noninteractive digital audio trans-

mission services under voluntary license agreements described in subparagraph (A) that were entered into under competitive market circumstances. In any proceeding under this subsection, the burden of proof shall be on the copyright owners of sound recordings to establish that the fees and terms that they seek satisfy the requirements of this subsection, and do not exceed the fees to which most copyright owners and users would agree under competitive market circumstances.'';

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

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

''(C)(i) In construing the objectives set forth in section 801(b)(1), the Copyright Royalty Judges shall take into consideration—

''(I) the public's interest in both the creation of new sound recordings of musical works and in fostering online and other

digital performances of sound recordings; and

"(II) the income necessary to provide a reasonable return on all relevant investments, including investments in prior periods for which returns have not been earned.

"(ii) To the extent the Copyright Royalty Judges consider marketplace benchmarks to be relevant, the Copyright Royalty Judges shall limit those benchmarks to benchmarks reflecting the rates and terms that have been agreed under competitive market circumstances by most copyright users.

"(D) In applying the objectives set forth in section 801(b)(1), the Copyright Royalty Judges—

"(i) shall not disfavor percentage of revenue-based fees;

"(ii) shall establish license fee structures that foster competition among the licensors of sound recording performances and between sound recording performances and other programming, including per-use or per-program fees, or percentage of rev-

enue or other fees that include carve-outs on a pro-rata basis for sound recordings the performance of which have been licensed either directly with the copyright owner or at the source, or for which a license is not necessary;

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

''(iv) shall give full consideration to the contributions made by the digital audio transmission service to the content and value of its programming; and

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

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

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

ings, or any entity performing sound recordings affected by this paragraph, indicating that a new type of digital audio transmission service engaged in the public performance of sound recordings is or is about to become operational, for the purpose of determining reasonable terms and rates of royalty payments with respect to such new type of transmission service for the period beginning with the inception of such new type of service and ending on the date on which the royalty rates and terms for the most comparable digital audio transmission services most recently determined under subparagraph (A) and chapter 8 expire, or such other period as the parties may agree.'';

(B) by striking paragraph (2);

(C) by redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4), respectively; and

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

(i) by inserting ''or their authorized representatives'' after ''owners of sound recordings''; and

(ii) by striking ''in lieu of any'' and all that follows and inserting the following:

"and be binding upon the parties to any such agreements in lieu of any determination by the Copyright Royalty Judges.".

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

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

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

"(4) 'Competitive market circumstances' are circumstances in which a licensee enters into a license for the noninteractive performance of sound recordings with a licensor that does not possess market power resulting from the aggregation of copyrights, either by a licensing collective or individual copyright owners.".

(b) PRECEDENTIAL VALUE OF SETTLEMENTS.—Section 114(f)(4) of title 17, United States Code, as so redesignated by subsection (a)(2), is amended—

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

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

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

(4) by adding at the end the following:

"(E) The rates and terms of any settlements made pursuant to the amendments made by the Webcaster Settlement Act of 2009 (Public Law 111–36; 123 Stat. 1926) that were to expire before December 31, 2015, shall be extended through December 31, 2015, according to the rates and terms applicable to 2014.".

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

(1) in section 801(b)(7)(B), by striking "114(f)(3)" and inserting "114(f)(2)";

(2) in section 803(c)(2)(E)(i)(II)—

(A) by striking "section 114(f)(1)(C) or 114(f)(2)(C)" and inserting "section 114(f)(1)(E)"; and

(B) by striking "section 114(f)(4)(B)" and inserting "section 114(f)(3)(B)"; and

(3) in section 804(b)(3)(C)—

(A) in clause (i), by striking "section 114(f)(1)(C) and 114(f)(2)(C)" and inserting "section 114(f)(1)(E)";

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

paragraphs (B)(ii) and (C) of section 114(f)(3)''; and

(C) in clause (iv), by striking ''section 114(f)(1)(C) or 114(f)(2)(C)'' and inserting ''section 114(f)(1)(E)''.

SEC. 4. MODERNIZATION OF CONDITIONS GOVERNING EPHEMERAL RECORDING EXEMPTION AND STATUTORY LICENSES.

(a) EPHEMERAL RECORDING EXEMPTION.—Section 112(a)(1) of title 17, United States Code, is amended by striking ''no more than'' and all that follows and inserting the following: ''1 or more copies or phonorecords embodying the performance or display, if—

''(A) the copies or phonorecords are retained and used solely by the transmitting organization that made them, and no further copies or phonorecords are reproduced from them, except as may be incidental to the operation of the transmission technology used by the transmitting organization; and

''(B) the copies or phonorecords are used solely for the transmitting organization's own transmissions originating in the United States, or for purposes of archival preservation or security.''.

(b) EPHEMERAL RECORDING STATUTORY LICENSE.—Section 112(e)(1) of title 17, United States Code, is amended—

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

(A) by striking ''or under a statutory license in accordance with section 114(f)''; and

(B) by striking '' if the following conditions are satisfied:'' and inserting ''if—'';

(2) in subparagraph (A)—

(A) by striking ''The'' and inserting ''the''; and

(B) by striking the period at the end and inserting '', except as may be incidental to the operation of the transmission technology used by the transmitting organization;'';

(3) in subparagraph (B)—

(A) by striking ''The'' and inserting ''the'';

(B) by striking ''a statutory license in accordance with section 114(f) or''; and

(C) by striking the period at the end and inserting '', or for purposes of archival preservation or security; and'';

(4) by striking subparagraph (C);

(5) by redesignating subparagraph (D) as subparagraph (C); and

(6) in subparagraph (C), as so redesignated, by striking ''Phonorecords'' and inserting ''phonorecords''.

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

(1) in clause (i), by striking ''of a broadcast transmission'' and all that follows and inserting the following: ''or simultaneous transmission of a broadcast transmission in any medium, which may include programming substituted for programming contained in the broadcast transmission with respect to which the transmitting entity lacks the requisite licenses or clearances to make the transmission in the medium, or for advertisements contained in the broadcast transmission, or the transmission of any programming previously included in a broadcast transmission as an archived program in conformance with clause (iii);'';

(2) by striking clause (ii) and inserting the following:

''(ii) the transmitting entity does not cause to be published in writing by means of an advance program schedule the titles of the

specific sound recordings or phonorecords embodying such sound recordings to be transmitted at particular times, except that this clause does not disqualify a transmitting entity that publishes in writing—

"(AA) such a program schedule that identifies sound recordings, phonorecords or artists that will be featured within a period of time greater than 3 hours or within an unspecified future time period; or

"(BB) an advance program schedule that is that is a schedule of classical music programming to be performed as part of a retransmission or simultaneous transmission of a broadcast transmission, which may include programming substituted for programming

contained in the broadcast transmission with respect to which the transmitting entity lacks the requisite licenses or clearances to make the transmission in the medium, or for advertisements contained in the broadcast transmission;'';

(3) in clause (iii)—

(A) in subclause (II), by adding ''or'' at the end; and

(B) beginning in subclause (III), by striking ''or'' and all that follows through ''requirement;' ''

(4) in clause (vii)—

(A) by striking ''and the transmitting entity'' through ''of the copyright owner,''; and

(B) by striking ''of a broadcast transmission'' and all that follows and inserting ''or simultaneous transmission of a broadcast transmission, which may include programming substituted for programming contained in the broadcast transmission with respect to which the transmitting entity lacks the requisite li-

censes or clearances to make the transmission in the medium, or for advertisements contained in the broadcast transmission;''; and

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

''(ix) the transmitting entity identifies in textual data the sound recording during, but not before, the time it is performed, including the title of the sound recording and the featured recording artist, in a manner to permit it to be displayed to the transmission recipient by the device or technology intended for receiving the service provided by the transmitting entity, except that the obligation in this clause shall not apply to the extent that the transmitting entity does not have the technology or information necessary to provide such textual data.''.

SEC. 5. PROMOTION OF A COMPETITIVE MARKETPLACE.

(a) LIMITATION OF ANTITRUST EXEMPTIONS.—

(1) EPHEMERAL RECORDINGS.—Section 112(e)(2) of title 17, United States Code, is amended—

(A) by inserting '', on a nonexclusive basis,'' after ''common agents''; and

(B) by adding at the end the following: ''Nothing in this paragraph shall be construed to permit any copyright owners of sound recordings acting jointly, or any common agent or collective representing such copyright owners, to take any action that would prohibit, interfere with, or impede direct licensing by copyright owners of sound recordings in competition with licensing by any common agent or collective, and any such action that affects interstate commerce shall be deemed a contract, combination or conspiracy in restraint of trade in violation of section 1 of the Sherman Act (15 U.S.C. 1).''.

(2) DIGITAL SOUND RECORDING PERFORMANCES.—Section 114(e) of title 17, United States Code, is amended by adding at the end the following:

''(3) Nothing in this subsection shall be construed to permit any copyright owners of sound recordings acting jointly, or any common agent or collective representing such copyright owners, to take any action that would prohibit, interfere with, or impede direct licensing by copyright owners of sound recordings in competition with licensing by any com-

mon agent or collective, and any such action that affects interstate commerce shall be deemed a contract, combination or conspiracy in restraint of trade in violation of section 1 of the Sherman Act (15 U.S.C. 1).

"(4) In order to obtain the benefits of paragraph (1), a common agent or collective representing copyright owners of sound recordings must make available at no charge through publicly accessible computer access through the Internet the most current available list of sound recording copyright owners represented by the organization and the most current list of sound recordings licensed by the organization.".

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

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

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

Rules of Civil Procedure and the Federal Rules of Evidence.''; and

(2) by adding at the end the following: ''Notwithstanding the preceding sentence, in any rate-setting proceeding under section 112(e)(4) or section 114(f)(2)(B), the Copyright Royalty Judges may only consider as precedent and act in accordance with determinations and interpretations that are made under the objectives set forth in section 801(b) for the statutory licenses under sections 112(e) and 114(d)(2).''.

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

(1) in subparagraph (C), by striking ''REQUIREMENTS.—Regulations'' and inserting ''REQUIREMENTS IN CASES NOT INVOLVING DIGITAL PERFORMANCES OF SOUND RECORDINGS.—In proceedings other than proceedings to determine terms and rates of royalty payments under section 112 or 114, regulations''; and

(2) by adding at the end the following:

''(D) REQUIREMENTS IN PROCEEDINGS INVOLVING DIGITAL PERFORMANCES OF SOUND RECORDINGS.—In proceedings to determine

terms and rates of royalty payments under section 112 or 114, the following shall apply:

"(i) INITIAL DISCLOSURES.—Not later than 30 days after the date on which the voluntary negotiation period is initiated pursuant to paragraph (3)(A)(i), each participant shall make an initial disclosure to the other participants by providing copies—

"(I) of all license agreements entered into by that participant, its members, or any licensor or licensee represented in the proceeding by that participant during the applicable 5-year period or covering any portion of the period for which the rates are to be set, relating to—

"(aa) in a proceeding under section 112, the making of ephemeral recordings; or

"(bb) in a proceeding under section 114, the public performance of musical works, sound recordings, or audiovisual works in-

corporating recorded musical works; or

"(II) of any other license agreement or document upon which the participant intends to rely, in whole or in part, in its ratemaking proposal, as well as all license agreements entered into by the participant, its members, or any licensor or licensee represented in the proceeding by that participant for the same or similar rights during the applicable 5-year period or covering any portion of the period for which the rates are to be set.

"(ii) PROTECTIVE ORDER; SANCTIONS.—Disclosures under clause (i) and other confidential information produced by a participant or third party during discovery, or used during the proceeding, shall be subject to a protective order, entered by the Copyright Royalty Judges in the proceeding, that prohibits use of the disclosures and the confidential information for any purpose other than the proceeding and that prohibits disclosure of the

licenses or other documents included in the disclosure or of other confidential information to any person that is not counsel of record in the proceeding. The Copyright Royalty Judges may impose appropriate sanctions for failure to comply in a timely manner with the matters required to be disclosed under clause (i).

"(iii) STATEMENTS OF THE CASE.—Statements of the case shall be filed by a date specified by the Copyright Royalty Judges, which for licensor participants shall be no earlier than the end of the 90-day period beginning on the date on which the voluntary negotiation period concludes, and for licensee participants shall be no earlier than the end of the 60-day period beginning on the date on which the statements of the case are required to be submitted by licensor participants.

"(iv) SUBPOENA POWER.—The Copyright Royalty Judges shall have the power to issue subpoenas at the request of a participant to non-participants, subject to the Federal Rules of Civil Procedure. Orders

by the Copyright Royalty Judges to enforce such subpoenas may be enforced by the requesting participant in an action in the district court in which the subpoenaed party resides.

"(v) SCHEDULING CONFERENCE.—The Copyright Royalty Judges shall order a scheduling conference no sooner than 45 days following the submission to the Copyright Royalty Judges of the statement of the case of the licensee participants. Participants shall submit jointly a proposed discovery plan no later than 21 days before the conference. Following the conference, the Copyright Royalty Judges shall issue an initial scheduling order governing pretrial procedures, and permitting discovery that is reasonable and sufficient, giving due consideration to the proposals of the participants and the magnitude of the potential royalty payments at issue during the license period covered by the proceeding. The period to conduct discovery shall be no shorter than 90 days, plus the time needed to complete discovery ordered

by the Copyright Royalty Judges in connection with the resolution of motions, orders, and disputes pending at the end of such period.

"(vi) SETTLEMENT CONFERENCE.—The Copyright Royalty Judges shall order a settlement conference among the participants in the proceeding to facilitate the presentation of offers of settlement among the participants. The settlement conference shall be held during the 21-day period beginning on the day after the last day of the discovery period ordered pursuant to clause (iv) and shall take place outside the presence of the Copyright Royalty Judges.

"(vii) JOINT PRETRIAL ORDER.—If the conference required in clause (v) does not result in a settlement among all parties, not later than 60 days after the last day of the settlement conference, the remaining participants shall propose a joint pretrial order—

"(I) stating the rates and terms proposed by each participant and set-

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

"(II) setting forth admissions and stipulations about facts and documents;

"(III) avoiding unnecessary proof and cumulative evidence and limiting the use of testimony under rule 702 of the Federal Rules of Evidence;

"(IV) identifying the witnesses to be offered by each party, and attaching all witness statements, testimony, and exhibits to be presented in the proceeding and such other information that is necessary to establish terms and rates;

"(V) listing the evidence to be offered by each party, and identifying any objections to any such evidence;

"(VI) identifying any pending motions, including motions in limine and attaching any such motions that have not yet been filed;

"(VII) proposing a reasonable limit on the time allowed to present evidence; and

"(VIII) proposing other ways to facilitate the just, speedy, and inexpensive disposition of the proceeding.

"(viii) PRETRIAL ORDER.—The Copyright Royalty Judges shall hold a prehearing conference to address the issues set forth in the proposed joint pretrial order, and shall issue an order reciting the action taken. The order shall allocate to the licensor participants and licensee participants sufficient, reasonable, and equal time in which to present their respective cases, and shall afford each set of participants an opportunity for rebuttal. The order issued by the Copyright Royalty Judges under this clause shall control the course of the action unless the Judges modify it.

"(ix) DEFINITIONS.—In this subparagraph:

"(I) APPLICABLE 5-YEAR PERIOD.—The term 'applicable 5-year period' means—

"(aa) the period of 5 calendar years preceding the year in which the applicable voluntary negotiation period begins; and

"(bb) the period of the current calendar year through the date on which the initial disclosure under clause (i) is made.

"(II) LICENSEE.—The term 'licensee' means a person or entity that exercises rights under a statutory license under section 112 or 114.

"(III) LICENSEE PARTICIPANT.—The term 'licensee participant' means a participant that is, or is an authorized representative of, a licensee.

"(IV) LICENSOR.—The term 'licensor' means a person or entity entitled to receive royalty payments under section 112 or 114.

"(V) LICENSOR PARTICIPANT.—The term 'licensor participant' means

a participant that is, or that is an authorized representative of, a licensor.

"(VI) STATEMENT OF THE CASE.—The term 'statement of the case' means a short and plain statement that—

"(aa) identifies all participants and licensors or licensees on whose behalf the statement is being submitted;

"(bb) states the proposed rate or rates and terms of the participants for each right at issue in the proceeding and sets forth in detail the basis of each such proposed rate and term;

"(cc) identifies each witness that the participant intends to call in support of its rate and terms proposal and summarizes the anticipated testimony of each witness; and

"(dd) includes any reports, including expert reports, and any

documents upon which the participant relies.''.

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

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

SEC. 7. GLOBAL MUSIC RIGHTS DATABASE.

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

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

SEC. 8. EFFECTIVE DATE AND TRANSITIONAL RULES.

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

(b) REGULATIONS.—Not later than 60 days after the date on which not less than 2 Copyright Royalty Judges are appointed and confirmed pursuant to section 2, the Copyright Royalty Judges shall propose regulations implementing the amendments set forth in section 6(b), by notice in the Federal Register, providing 30 days for comments and 15 days for reply comments. Not later than

45 days after date on which the 15-day period for reply comments ends, the Copyright Royalty Judges shall promulgate final regulations.

(c) APPLICABILITY TO PENDING PROCEEDINGS.—

(1) PROCEEDINGS IN WHICH THE HEARING ON THE MERITS HAS CONCLUDED.—The Copyright Royalty Judges sitting on the date of enactment shall have authority to decide any pending proceeding in which the hearing on the merits has concluded, under the standards, procedures, and regulations in effect prior to the enactment of this Act. This authority shall include the authority to decide any motion for rehearing under section 803(c)(2) of title 17, United States Code, in any such proceeding.

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

112 or 114 of title 17, United States Code. This authority shall include the authority to decide any motion for rehearing under section 803(c)(2) of title 17, United States Code, in any such proceeding.

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

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