

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5285

To amend title 17, United States Code, with respect to royalty fees for webcasting, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 26, 2002

Mr. INSLEE (for himself, Mr. NETHERCUTT, Mr. BOUCHER, Mr. MANZULLO, Mr. MORAN of Virginia, Mrs. MINK of Hawaii, Mr. LARSEN of Washington, Mr. KUCINICH, Mr. KLECZKA, Mr. LEACH, Ms. LOFGREN, Ms. BROWN of Florida, Mr. DICKS, and Mr. SMITH of Washington) 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, with respect to royalty fees for 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”.

1 **SEC. 2. APPLICABILITY OF ROYALTY RATES TO SMALL**  
2 **BUSINESS CONCERNS.**

3 (a) **INAPPLICABILITY OF DETERMINATION OF JULY**  
4 **8, 2002.**—The determination by the Librarian of Congress  
5 of rates and terms for the digital performance of sound  
6 recordings and ephemeral recordings of July 8, 2002, pur-  
7 suant to section 112(e) and section 114(f)(2)(B) of title  
8 17, United States Code, shall not apply to transmissions  
9 and ephemeral recordings by small entities.

10 (b) **FUTURE PROCEEDINGS.**—The first determination  
11 of terms and rates of royalty payments that is made pur-  
12 suant to section 114(f)(2)(B) of title 17, United States  
13 Code, after the enactment of this Act shall apply to trans-  
14 missions (to which such section applies) that are made by  
15 small business concerns during the period beginning on  
16 the date of the enactment of the Digital Millennium Copy-  
17 right Act and ending on the date provided for in that de-  
18 termination.

19 (c) **VOLUNTARY NEGOTIATIONS.**—Nothing in this  
20 section shall affect the participation of small entities in  
21 voluntary negotiation proceedings under section  
22 114(f)(2)(A) and (C)(i) of title 17, United States Code.

23 **SEC. 3. STANDARD FOR DETERMINING RATES.**

24 Section 114(f)(2)(B) of title 17, United States Code,  
25 is amended—

1           (1) by striking “Such rates and terms shall dis-  
2           tinguish” and all that follows through “capital in-  
3           vestment, cost, and risk.”; and

4           (2) by inserting after “as the parties may  
5           agree.” the following: “The copyright arbitration  
6           royalty panel shall establish rates and terms in ac-  
7           cordance with the objectives set forth in section  
8           801(b)(1).”.

9   **SEC. 4. COSTS OF PROCEEDINGS; REGULATING FLEXI-**  
10                                   **BILITY.**

11           (a) **COSTS OF PROCEEDINGS.**—Section 802(c) of title  
12 17, United States Code, is amended—

13           (1) by inserting after “In ratemaking pro-  
14           ceedings, the parties to the proceedings” the fol-  
15           lowing: “, except for small entities that are parties  
16           to ratemaking proceedings under section  
17           114(f)(2)(B),”; and

18           (2) by adding at the end the following: “In this  
19           subsection, the term ‘small entity’ means a small  
20           business, small organization, or small governmental  
21           jurisdiction, as those terms are defined in section  
22           601 of title 5.”.

23           (b) **REGULATING FLEXIBILITY.**—Section 701(e) of  
24 title 17, United States Code, is amended by inserting be-

1 fore the period “and to the provisions of chapter 6 of title  
2 5”.

3 **SEC. 5. ELIMINATION OF CERTAIN STATUTORY LICENSES**  
4 **FOR EPHEMERAL RECORDINGS.**

5 (a) ELIMINATION OF STATUTORY LICENSE.—Section  
6 112(a) of title 17, United States Code, is amended by add-  
7 ing at the end the following:

8 “(3) Notwithstanding the provisions of section 106  
9 and paragraph (1) of this subsection, and except in the  
10 case of a motion picture or other audiovisual work, it is  
11 not an infringement of copyright for a transmitting orga-  
12 nization entitled to transmit to the public a performance  
13 or display of a work, under a license, including a statutory  
14 license under section 114(f), or transfer of the copyright  
15 or for a transmitting organization that is a broadcast  
16 radio station licensed as such by the Federal Communica-  
17 tions Commission and that makes a broadcast trans-  
18 mission of a sound recording in a digital format on a non-  
19 subscription basis, to make one or more copies or  
20 phonorecords of that work, if—

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

24 “(B) each copy or phonorecord is used solely  
25 for the purpose of making the transmitting organi-

1 zation’s own transmissions or for purposes of archi-  
2 val preservation or security.”.

3 (b) CONFORMING AMENDMENTS.—Section 112(e) of  
4 title 17, United States Code, is amended—

5 (1) by striking in paragraph (1) “or under a  
6 statutory license in accordance with section 114(f)”;  
7 and

8 (2) by striking in paragraph (1)(B) “a statu-  
9 tory license in accordance with section 114(f) or”.

10 (c) EFFECTIVE DATE.—The amendments made by  
11 subsection (a) take effect on January 1, 2003.

12 **SEC. 6. DEFINITION.**

13 In this Act, the term “small entity” means a small  
14 business, small organization, or small governmental juris-  
15 diction, as those terms are defined in section 601 of title  
16 5, United States Code.

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