

110TH CONGRESS
1ST SESSION

S. 1353

To nullify the determinations of the Copyright Royalty Judges with respect to webcasting, to modify the basis for making such a determination, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 10, 2007

Mr. WYDEN (for himself and Mr. BROWNBACK) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To nullify the determinations of the Copyright Royalty Judges with respect to webcasting, to modify the basis for making such a determination, 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 Equal-
5 ity Act of 2007”.

6 **SEC. 2. NULLIFICATION OF DECISION OF COPYRIGHT ROY-**
7 **ALTY JUDGES.**

8 The March 2, 2007, Determination of Rates and
9 Terms of the United States Copyright Royalty Judges re-

1 guarding rates and terms for the digital performance of
2 sound recordings and ephemeral recordings, including that
3 determination as modified by the April 17, 2007, Order
4 Denying Motions for Rehearing and any subsequent modi-
5 fication to that determination by the Copyright Royalty
6 Judges that is published in the Federal Register and the
7 April 23, 2007, Final Determination of Rates and Terms
8 of the United States Copyright Royalty Judges regarding
9 rates and terms for the digital performance of sound re-
10 cordings and ephemeral recordings and any subsequent
11 modification to that determination by the Copyright Roy-
12 alty Judges that is published in the Federal Register, are
13 not effective, and shall be deemed never to have been effec-
14 tive.

15 **SEC. 3. COMPUTATION OF ROYALTY FEES FOR COMMER-**
16 **CIAL INTERNET RADIO SERVICES OFFERING**
17 **DIGITAL PERFORMANCES OF SOUND RE-**
18 **CORDINGS.**

19 (a) STANDARD FOR DETERMINING RATES AND
20 TERMS.—Section 114(f)(2)(B) of title 17, United States
21 Code, is amended by striking “Such rates and terms shall
22 distinguish” and all that follows through the end of clause
23 (ii) and inserting the following: “The Copyright Royalty
24 Judges shall establish rates and terms in accordance with
25 the objectives set forth in section 801(b)(1). Such rates

1 and terms may include a minimum annual royalty of not
2 more than \$500 for each provider of services that are sub-
3 ject to such rates and terms, which shall be the only min-
4 imum royalty fee and shall be assessed only once annually
5 to that provider.”.

6 (b) TRANSITION RULE.—Except for services covered
7 by section 118 of title 17, United States Code, each pro-
8 vider of digital audio transmissions that otherwise would
9 have been subject to the rates and terms of the determina-
10 tion of the Copyright Royalty Judges made ineffective by
11 section 2 of this Act shall instead pay royalties for each
12 year of the 5-year period beginning on January 1, 2006,
13 at 1 of the following rates, as selected by the provider for
14 that year:

15 (1) 0.33 cents per hour of sound recordings
16 transmitted to a single listener.

17 (2) 7.5 percent of the revenues received by the
18 provider during that year that are directly related to
19 the provider’s digital transmissions of sound record-
20 ings.

1 **SEC. 4. COMPUTATION OF ROYALTY FEES FOR NON-**
2 **COMMERCIAL STATIONS OFFERING DIGITAL**
3 **PERFORMANCES OF SOUND RECORDINGS.**

4 (a) AMENDMENTS TO SECTION 118 OF TITLE 17,
5 UNITED STATES CODE.—Section 118 of title 17, United
6 States Code, is amended—

7 (1) in subsection (b), in the matter preceding
8 paragraph (1), by striking “and published pictorial”
9 and inserting “, sound recordings, and published
10 pictorial”;

11 (2) in subsection (c)—

12 (A) in the matter preceding paragraph (1),
13 by striking “and published pictorial” and in-
14 serting “, sound recordings, and published pic-
15 torial”; and

16 (B) in paragraph (1), by inserting “or non-
17 profit institution or organization” after “broad-
18 cast station”; and

19 (3) in subsection (f), by striking “paragraph
20 (2)” and inserting “paragraph (1) or (2)”.

21 (b) TRANSITION RULES.—

22 (1) IN GENERAL.—Except as provided under
23 paragraph (2), for each calendar year (or portion
24 thereof) beginning after December 31, 2004, until
25 an applicable voluntary license agreement is filed
26 with the Copyright Royalty Judges under section

1 118 of title 17, United States Code (as amended by
2 subsection (a) of this section), or an applicable de-
3 termination is issued by the Copyright Royalty
4 Judges under section 118 of such title (as so amend-
5 ed) —

6 (A) except as provided under subpara-
7 graphs (B) and (C), the annual royalty that a
8 public broadcast entity shall pay to owners of
9 copyrights in sound recordings for the uses pro-
10 vided under section 118(c) of such title (as so
11 amended) shall be an amount equal to 1.05
12 times the amount paid by that entity (or in the
13 case of a group of related entities, the fees paid
14 by such group) under section 114(f)(2) of title
15 17, United States Code, for such uses during
16 the calendar year ending December 31, 2004;

17 (B) the annual royalty that a public broad-
18 casting entity that is a noncommercial
19 webcaster and did not owe royalties under sec-
20 tion 114(f)(2) of title 17, United States Code,
21 during the calendar year ending December 31,
22 2004, shall pay to owners of copyrights in
23 sound recordings for the uses provided under
24 section 118(c) of such title (as so amended)
25 shall be the amount that would have been owed

1 under the agreement entered into under section
2 114(f)(5) of that title for such uses applicable
3 to noncommercial webcasters as in effect during
4 calendar year 2004; and

5 (C) the annual royalty that public broad-
6 casting entities constituting National Public
7 Radio, Inc., its member stations and public
8 radio stations qualified to receive funding from
9 the Corporation for Public Broadcasting, shall
10 collectively pay to owners of copyrights in sound
11 recordings for the uses provided under section
12 118(c) of such title (as so amended) shall be an
13 amount equal to 1.05 times the amount paid on
14 the behalf of these entities under section
15 114(f)(2) of title 17, United States Code, for
16 such uses during the calendar year ending De-
17 cember 31, 2004.

18 (2) LIMITATION.—No entity shall be required
19 under paragraph (1)(A) or (B) to pay more than
20 \$5,000 for any calendar year.

21 **SEC. 5. CREDIT OF ROYALTY FEES.**

22 Any royalties received under the March 2, 2007, De-
23 termination of Rates and Terms of the United States
24 Copyright Royalty Judges regarding rates and terms for
25 the digital performance of sound recordings and ephem-

1 eral recordings, including that determination as modified
2 by the April 17, 2007, Order Denying Motions for Rehear-
3 ing and any subsequent modification to that determination
4 by the Copyright Royalty Judges that is published in the
5 Federal Register and the April 23, 2007, Final Deter-
6 mination of Rates and Terms of the United States Copy-
7 right Royalty Judges regarding rates and terms for the
8 digital performance of sound recordings and ephemeral re-
9 cordings and any subsequent modification to that deter-
10 mination by the Copyright Royalty Judges that is pub-
11 lished in the Federal Register shall be credited against
12 royalties required to be paid under section 3 or 4 of this
13 Act.

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