

115TH CONGRESS  
1ST SESSION

# H. R. 1836

To amend title 17, United States Code, to provide fair treatment of radio stations and artists for the use of sound recordings, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 30, 2017

Mr. NADLER (for himself, Mrs. BLACKBURN, Mr. CONYERS, Mr. ISSA, Mr. DEUTCH, and Mr. THOMAS J. ROONEY of Florida) 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, to provide fair treatment of radio stations and artists for the use of sound recordings, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Fair Play Fair Pay Act of 2017”.

6 (b) TABLE OF CONTENTS.—The table of contents for  
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Equitable treatment for terrestrial broadcasts and Internet services.
- Sec. 3. Timing of proceedings under sections 112(e) and 114(f).
- Sec. 4. Ensuring platform parity.

Sec. 5. Special protection for small broadcasters, public and educational radio, religious services, and incidental use of music.

Sec. 6. Distribution of certain royalties.

Sec. 7. Equitable treatment of legacy sound recordings.

Sec. 8. No harmful effects on songwriters.

Sec. 9. Allocation of payments to music producers.

Sec. 10. Effective date.

1 **SEC. 2. EQUITABLE TREATMENT FOR TERRESTRIAL**  
 2 **BROADCASTS AND INTERNET SERVICES.**

3 (a) PERFORMANCE RIGHT APPLICABLE TO TRANS-  
 4 MISSIONS GENERALLY.—Paragraph (6) of section 106 of  
 5 title 17, United States Code, is amended to read as fol-  
 6 lows:

7 “(6) in the case of sound recordings, to perform  
 8 the copyrighted work publicly by means of an audio  
 9 transmission.”.

10 (b) INCLUSION OF TERRESTRIAL BROADCASTS IN  
 11 EXISTING PERFORMANCE RIGHT AND STATUTORY LI-  
 12 CENSE.—Section 114(d)(1) of title 17, United States  
 13 Code, is amended—

14 (1) in the matter preceding subparagraph (A),  
 15 by striking “a digital” and inserting “an”; and

16 (2) in subparagraph (B)—

17 (A) by striking clauses (i) and (iii);

18 (B) by redesignating clauses (ii) and (iv)  
 19 as clauses (i) and (ii), respectively;

20 (C) in clause (i), as so redesignated, by  
 21 adding “or” after “retransmitter;” and

1 (D) in clause (ii), as so redesignated, by  
2 striking “retransmission, whether or not simul-  
3 taneous, is a” and inserting “retransmission is  
4 a non-simultaneous,”.

5 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

6 (1) DEFINITION.—Section 101 of title 17,  
7 United States Code, is amended by inserting after  
8 the definition of “architectural work” the following:

9 “An ‘audio transmission’ is a transmission of a  
10 sound recording, whether in a digital, analog, or  
11 other format. This term does not include the trans-  
12 mission of any audiovisual work.”.

13 (2) CONFORMING REMOVAL OF DIGITAL.—Title  
14 17, United States Code, is amended—

15 (A) in section 112(e)(8), by striking “a  
16 digital audio transmission” and inserting “an  
17 audio transmission”; and

18 (B) in section 114—

19 (i) in subsection (d)—

20 (I) in paragraph (2)—

21 (aa) in the matter preceding  
22 subparagraph (A), by striking  
23 “subscription digital” and insert-  
24 ing “subscription”; and

- 1 (bb) in subparagraph  
2 (C)(viii), by striking “digital sig-  
3 nal” and inserting “signal”; and  
4 (II) in paragraph (4)—
- 5 (aa) in subparagraph (A),  
6 by striking “a digital audio  
7 transmission” and inserting “an  
8 audio transmission”; and
- 9 (bb) in subparagraph (B)(i),  
10 by striking “a digital audio  
11 transmission” and inserting “an  
12 audio transmission”;
- 13 (ii) in subsection (g)(2)(A), by strik-  
14 ing “a digital” and inserting “an”; and
- 15 (iii) in subsection (j)—
- 16 (I) in paragraph (6)—
- 17 (aa) by striking “digital”;  
18 and
- 19 (bb) by striking “retrans-  
20 missions of broadcast trans-  
21 missions” and inserting “broad-  
22 cast transmissions and retrans-  
23 missions of broadcast trans-  
24 missions”; and

1 (II) in paragraph (8), by striking  
2 “subscription digital” and inserting  
3 “subscription”.

4 **SEC. 3. TIMING OF PROCEEDINGS UNDER SECTIONS 112(e)**  
5 **AND 114(f).**

6 Paragraph (3) of section 804(b) of title 17, United  
7 States Code, is amended by adding at the end the fol-  
8 lowing new subparagraph:

9 “(D) A proceeding under this chapter shall  
10 be commenced as soon as practicable after the  
11 date of the enactment of the Fair Play Fair  
12 Pay Act of 2017 to determine royalty rates and  
13 terms for nonsubscription broadcast trans-  
14 missions, to be effective for the period begin-  
15 ning on such date of enactment, and ending on  
16 December 31, 2022. Any payment due under  
17 section 114(f)(1)(D) shall not be due until the  
18 due date of the first royalty payments for non-  
19 subscription broadcast transmissions that are  
20 determined, after the date of the enactment of  
21 the Fair Play Fair Pay Act of 2017, by the  
22 Copyright Royalty Judges. Thereafter, such  
23 proceeding shall be repeated in each subsequent  
24 fifth calendar year.”.

1 **SEC. 4. ENSURING PLATFORM PARITY.**

2 (a) UNIFORM RATE STANDARD.—Section 114(f) of  
3 title 17, United States Code, is amended—

4 (1) by striking paragraphs (1) and (2) and in-  
5 serting the following:

6 “(1)(A) Proceedings under chapter 8 shall de-  
7 termine reasonable rates and terms of royalty pay-  
8 ments for transmissions subject to statutory licens-  
9 ing under subsection (d)(2) during the 5-year period  
10 beginning on January 1 of the second year following  
11 the year in which the proceedings are to be com-  
12 menced pursuant to subparagraph (A) or (B) of sec-  
13 tion 804(b)(3), as the case may be, or such other pe-  
14 riod as the parties may agree. The parties to each  
15 proceeding shall bear their own costs.

16 “(B) The schedule of reasonable rates and  
17 terms determined by the Copyright Royalty Judges  
18 shall, subject to paragraph (2), be binding on all  
19 copyright owners of sound recordings and entities  
20 performing sound recordings affected by this para-  
21 graph during the 5-year period specified in subpara-  
22 graph (A), or such other period as the parties may  
23 agree. Such rates and terms shall distinguish among  
24 the different types of services then in operation and  
25 shall include a minimum fee for each such type of  
26 service, such differences to be based on criteria in-

1 including the quantity and nature of the use of sound  
2 recordings and the degree to which use of the service  
3 may substitute for or may promote the purchase of  
4 phonorecords by consumers. The Copyright Royalty  
5 Judges shall establish rates and terms that most  
6 clearly represent the rates and terms that would  
7 have been negotiated in the marketplace between a  
8 willing buyer and a willing seller. In determining  
9 such rates and terms, the Copyright Royalty  
10 Judges—

11 “(i) shall base their decision on economic,  
12 competitive, and programming information pre-  
13 sented by the parties, including—

14 “(I) whether use of the service may  
15 substitute for or may promote the sales of  
16 phonorecords or otherwise may interfere  
17 with or may enhance the sound recording  
18 copyright owner’s other streams of revenue  
19 from the copyright owner’s sound record-  
20 ings; and

21 “(II) the relative roles of the copy-  
22 right owner and the transmitting entity in  
23 the copyrighted work and the service made  
24 available to the public with respect to rel-  
25 ative creative contribution, technological

1 contribution, capital investment, cost, and  
2 risk; and

3 “(ii) may consider the rates and terms for  
4 comparable types of audio transmission services  
5 and comparable circumstances under voluntary  
6 license agreements.

7 “(C) The procedures under subparagraphs (A)  
8 and (B) shall also be initiated pursuant to a petition  
9 filed by any copyright owner of sound recordings or  
10 any transmitting entity indicating that a new type of  
11 service on which sound recordings are performed is  
12 or is about to become operational, for the purpose  
13 of determining reasonable terms and rates of royalty  
14 payments with respect to such new type of service  
15 for the period beginning with the inception of such  
16 new type of service and ending on the date on which  
17 the royalty rates and terms for eligible nonsubscrip-  
18 tion services and new subscription services, or pre-  
19 existing services, as the case may be, most recently  
20 determined under subparagraph (A) or (B) and  
21 chapter 8 expire, or such other period as the parties  
22 may agree.”; and

23 (2) by redesignating paragraphs (3), (4), and  
24 (5) as paragraphs (2), (3), and (4), respectively.

25 (b) TECHNICAL AND CONFORMING AMENDMENTS.—



1           (1) SECTION 114.—Section 114(f) of title 17,  
2           United States Code, as amended by subsection (a),  
3           is further amended in paragraph (4)(C), as so reded-  
4           ignated, by striking “under paragraph (4)” and in-  
5           serting “under paragraph (3)”.

6           (2) SECTION 801.—Section 801(b)(1) of title  
7           17, United States Code, is amended by striking  
8           “114(f)(1)(B), 115,” and inserting “115”.

9           (3) SECTION 804.—Section 804(b)(3)(C) of title  
10          17, United States Code, is amended—

11                 (A) in clause (i), by striking “and  
12                 114(f)(2)(C)”;

13                 (B) in clause (iii)(II), by striking  
14                 “114(f)(4)(B)(ii)” and inserting  
15                 “114(f)(3)(B)(ii)”;

16                 (C) in clause (iv), by striking “or  
17                 114(f)(2)(C), as the case may be”.

18 **SEC. 5. SPECIAL PROTECTION FOR SMALL BROADCASTERS,**  
19 **PUBLIC AND EDUCATIONAL RADIO, RELI-**  
20 **GIUS SERVICES, AND INCIDENTAL USE OF**  
21 **MUSIC.**

22           (a) SPECIAL PROTECTION FOR SMALL BROAD-  
23           CASTERS.—Section 114(f)(1) of title 17, United States  
24           Code, as amended by section 4(a), is further amended by  
25           inserting at the end the following new subparagraph:

1           “(D)(i) Notwithstanding the provisions of sub-  
2           paragraphs (A) through (C), the royalty rate for  
3           nonsubscription broadcast transmissions by each in-  
4           dividual terrestrial broadcast station licensed as such  
5           by the Federal Communications Commission that is  
6           not a public broadcasting entity as defined in section  
7           118(f) and that has revenues in any calendar year  
8           of less than \$1,000,000 shall be \$500 per year for  
9           any such year. For purposes of such determination,  
10          such revenues shall include all revenues from the op-  
11          eration of the station, calculated in accordance with  
12          generally accepted accounting principles in the  
13          United States. In the case of affiliated broadcast  
14          stations, revenues shall be allocated reasonably to in-  
15          dividual stations associated with those revenues.”.

16          (b) SPECIAL PROTECTION FOR PUBLIC BROAD-  
17          CASTERS, COLLEGE RADIO, AND OTHER NONCOMMER-  
18          CIAL STATIONS.—Subparagraph (D) of section 114(f)(1)  
19          of title 17, United States Code, as added by subsection  
20          (a), is amended by inserting at the end the following new  
21          clauses:

22                 “(ii) Notwithstanding the provisions of subpara-  
23                 graphs (A) through (C), the royalty rate for non-  
24                 subscription broadcast transmissions by each indi-  
25                 vidual terrestrial broadcast station licensed as such

1 by the Federal Communications Commission that is  
2 a public broadcasting entity as defined in section  
3 118(f) shall be \$100 per year.

4 “(iii) The royalty rates specified in clauses (i)  
5 and (ii) shall not be admissible as evidence or other-  
6 wise taken into account in determining royalty rates  
7 in a proceeding under chapter 8, or in any other ad-  
8 ministrative, judicial, or other Federal Government  
9 proceeding involving the setting or adjustment of the  
10 royalties payable for the public performance or re-  
11 production in ephemeral phonorecords or copies of  
12 sound recordings, the determination of terms or con-  
13 ditions related thereto, or the establishment of notice  
14 or recordkeeping requirements.”.

15 (c) NO ROYALTIES FOR RELIGIOUS SERVICES OR IN-  
16 CIDENTAL USES OF MUSIC.—Section 114(d)(1) of title  
17 17, United States Code, as amended by section 2(b), is  
18 further amended by striking subparagraph (A) and insert-  
19 ing the following:

20 “(A) a nonsubscription broadcast trans-  
21 mission of—

22 “(i) services at a place of worship or  
23 other religious assembly; or

24 “(ii) an incidental use of a sound re-  
25 cording of a musical work;”.

1 (d) TECHNICAL CORRECTION.—Section 118(f) of  
2 title 17, United States Code, is amended by striking “sec-  
3 tion 397 of title 47” and inserting “section 397 of the  
4 Communications Act of 1934 (47 U.S.C. 397)”.

5 **SEC. 6. DISTRIBUTION OF CERTAIN ROYALTIES.**

6 Section 114(g) of title 17, United States Code, is  
7 amended—

8 (1) in paragraph (1), by inserting “or in the  
9 case of a transmission to which paragraph (5) ap-  
10 plies” after “this section”; and

11 (2) by adding at the end the following new  
12 paragraph:

13 “(5) Notwithstanding paragraph (1), to the ex-  
14 tent that a license granted by the copyright owner  
15 of a sound recording to a transmitting entity eligible  
16 for a statutory license under subsection (d)(2) ex-  
17 tends to such entity’s transmissions otherwise licens-  
18 able under a statutory license in accordance with  
19 subsection (f), such entity shall pay to the agent  
20 designated to distribute statutory licensing receipts  
21 from the licensing of transmissions in accordance  
22 with subsection (f), 50 percent of the total royalties  
23 that such entity is required, pursuant to the applica-  
24 ble license agreement, to pay for such transmissions  
25 otherwise licensable under a statutory license in ac-

1 cordance with subsection (f). That agent shall dis-  
2 tribute such payments in proportion to the distribu-  
3 tions provided in subparagraphs (B) through (D) of  
4 paragraph (2), and such payments shall be the sole  
5 payments to which featured and nonfeatured artists  
6 are entitled by virtue of such transmissions under  
7 the direct license with such entity.”.

8 **SEC. 7. EQUITABLE TREATMENT OF LEGACY SOUND RE-**  
9 **CORDINGS.**

10 (a) PAYMENT FOR USE OF CERTAIN SOUND RE-  
11 CORDINGS.—Section 114(f)(3) of title 17, United States  
12 Code, as so redesignated, is amended by adding at the end  
13 the following:

14 “(D)(i) Any person publicly performing sound  
15 recordings protected under this title by means of  
16 transmissions under a statutory license under this  
17 section, or making reproductions of such sound re-  
18 cordings under section 112(e), shall make royalty  
19 payments for transmissions that person makes of  
20 sound recordings that were fixed before February  
21 15, 1972, and reproductions that person makes of  
22 those sound recordings under the circumstances de-  
23 scribed in section 112(e)(1), in the same manner as  
24 such person does for sound recordings that are pro-  
25 tected under this title.

1           “(ii) If a person fails to make royalty payments  
2 described in clause (i) for sound recordings fixed be-  
3 fore February 15, 1972, there shall be available, in  
4 addition to any remedy that may be available under  
5 the laws of any State, a civil action in an appro-  
6 priate United States district court for recovery lim-  
7 ited to the payments described in clause (i), in addi-  
8 tion to interest, costs, and attorneys’ fees. Any such  
9 recovery that is obtained shall be offset against any  
10 recovery for such violation that may be available  
11 under the laws of any State.

12           “(iii) No action may be brought under the laws  
13 of any State against a transmitting entity alleging  
14 infringement of a right equivalent to the right grant-  
15 ed in section 106(6) based on a public performance  
16 of a sound recording fixed before February 15,  
17 1972, or alleging infringement of a right equivalent  
18 to the right granted in section 106(1) based on a re-  
19 production of such a sound recording, if—

20                   “(I) the performance would have been sub-  
21 ject to statutory licensing under subsection  
22 (d)(2) if the sound recording had been first  
23 fixed on or after February 15, 1972;

24                   “(II) the reproduction would have been  
25 subject to statutory licensing under section

1           112(e)(1) if the sound recording had been first  
2           fixed on or after February 15, 1972;

3           “(III) the transmitting entity has satisfied  
4           the requirements for statutory licensing under  
5           subparagraph (B) and section 112(e)(6); and

6           “(IV) the applicable royalty was paid and  
7           accounted for under this subparagraph.

8           “(iv) This subparagraph does not confer copy-  
9           right protection under this title upon sound record-  
10          ings that were fixed before February 15, 1972. Such  
11          sound recordings are subject to the protection avail-  
12          able under the laws of the States, and except as pro-  
13          vided in clause (iii), are not subject to any limitation  
14          of rights or remedies, or any defense, provided under  
15          this title.

16          “(v) This subparagraph shall have no effect  
17          with respect to any public performance that is made  
18          of a sound recording, or reproduction that is made  
19          of a sound recording under the circumstances de-  
20          scribed in section 112(e)(1), on or after February  
21          15, 2067.”.

22          (b) EFFECTIVE DATE.—The amendments made by  
23          this section shall apply to performances and reproductions  
24          of sound recordings occurring on or after the date of the  
25          enactment of this Act.

1 **SEC. 8. NO HARMFUL EFFECTS ON SONGWRITERS.**

2 (a) NO ADVERSE EFFECT ON LICENSE FEES FOR  
3 UNDERLYING MUSICAL WORKS; NECESSITY FOR OTHER  
4 LICENSES.—

5 (1) IN GENERAL.—Section 114(i) of title 17,  
6 United States Code, is amended to read as follows:

7 “(i) NO ADVERSE EFFECT ON LICENSE FEES FOR  
8 UNDERLYING MUSICAL WORKS; NECESSITY FOR OTHER  
9 LICENSES.—

10 “(1) NO ADVERSE EFFECT ON LICENSE FEES  
11 FOR UNDERLYING MUSICAL WORKS.—License fees  
12 payable for the public performance of sound record-  
13 ings under section 106(6) shall not be cited, taken  
14 into account, or otherwise used in any administra-  
15 tive, judicial, or other governmental forum or pro-  
16 ceeding, or otherwise, to set or adjust the license  
17 fees payable to copyright owners of musical works or  
18 their representatives for the public performance of  
19 their works, for the purpose of reducing or adversely  
20 affecting such license fees. License fees payable to  
21 copyright owners for the public performance of their  
22 musical works shall not be reduced or adversely af-  
23 fected in any respect as a result of the rights grant-  
24 ed by section 106(6).

25 “(2) NECESSITY FOR OTHER LICENSES.—Not-  
26 withstanding the grant by an owner of copyright in



1 a sound recording of an exclusive or nonexclusive li-  
2 cense of the right under section 106(6) to perform  
3 the work publicly, a licensee of that sound recording  
4 may not publicly perform such sound recording un-  
5 less a license has been granted for the public per-  
6 formance of any copyrighted musical work contained  
7 in the sound recording. Such license to publicly per-  
8 form the copyrighted musical work may be granted  
9 either by a performing rights society representing  
10 the copyright owner or by the copyright owner.”.

11 (2) CONFORMING AMENDMENT.—Section  
12 114(d)(3)(C) of title 17, United States Code, is  
13 hereby repealed.

14 (b) PUBLIC PERFORMANCE RIGHTS AND ROYAL-  
15 TIES.—Nothing in this Act, or the amendments made by  
16 this Act, shall adversely affect in any respect the public  
17 performance rights of or royalties payable to songwriters  
18 or copyright owners of musical works.

19 (c) PRESERVATION OF ROYALTIES ON UNDERLYING  
20 WORKS PUBLICLY PERFORMED BY TERRESTRIAL BROAD-  
21 CAST STATIONS.—Section 114(f) of title 17, United States  
22 Code, as amended by section 4(a), is further amended by  
23 adding at the end the following new paragraph:

24 “(5) Notwithstanding any other provision of  
25 this section, under no circumstances shall the rates

1 established by the Copyright Royalty Judges for the  
2 public performance of sound recordings be cited,  
3 taken into account, or otherwise used in any admin-  
4 istrative, judicial, or other governmental forum or  
5 proceeding, or otherwise, to reduce or adversely af-  
6 fect the license fees payable to copyright owners of  
7 musical works or their representatives for the public  
8 performance of their works by terrestrial broadcast  
9 stations, and such license fees for the public per-  
10 formance of musical works shall be independent of  
11 license fees paid for the public performance of sound  
12 recordings.”.

13 **SEC. 9. ALLOCATION OF PAYMENTS TO MUSIC PRODUCERS.**

14 (a) LETTER OF DIRECTION.—Section 114(g) of title  
15 17, United States Code, as amended by section 6, is fur-  
16 ther amended by adding at the end the following new para-  
17 graph:

18 “(6) LETTER OF DIRECTION.—A collective des-  
19 ignated by the Copyright Royalty Judges to dis-  
20 tribute receipts from the licensing of transmissions  
21 in accordance with subsection (f) shall adopt and  
22 reasonably implement a policy that provides, in cir-  
23 cumstances determined by the collective to be appro-  
24 priate, for acceptance of instructions from a payee  
25 identified in subparagraph (A) or (D) of paragraph

1 (2) to distribute a portion of the payments to which  
2 the payee otherwise would be entitled from the li-  
3 censing of transmissions of a particular sound re-  
4 cording to a producer, mixer, or sound engineer who  
5 was part of the creative process that created the  
6 sound recording (in this section, referred to as a ‘let-  
7 ter of direction’). To the extent that the collective  
8 accepts a letter of direction, the person entitled to  
9 payment pursuant to such letter of direction shall,  
10 during the time such letter of direction is in effect  
11 and followed by the collective, be treated for all pur-  
12 poses as the owner of the right to receive such pay-  
13 ment. This paragraph shall not be interpreted to  
14 imply that a collective cannot accept or act upon  
15 payment instructions in other circumstances.”.

16 (b) ADDITIONAL PROVISIONS FOR RECORDINGS  
17 FIXED BEFORE NOVEMBER 1, 1995.—Section 114(g) of  
18 title 17, United States Code, as amended by subsection  
19 (a), is further amended by adding at the end the following  
20 new paragraph:

21 “(7) SOUND RECORDINGS FIXED BEFORE NO-  
22 VEMBER 1, 1995.—

23 “(A) PAYMENT ABSENT LETTER OF DI-  
24 RECTION.—A collective designated by the Copy-  
25 right Royalty Judges to distribute receipts from

1 the licensing of transmissions in accordance  
2 with subsection (f) shall adopt and reasonably  
3 implement a policy that provides, in cir-  
4 cumstances determined by the collective to be  
5 appropriate, for deduction of 2 percent of the  
6 receipts from the licensing of transmissions of  
7 a sound recording fixed before November 1,  
8 1995, from receipts otherwise payable to the re-  
9 cording artist or artists featured on such sound  
10 recording (or the persons conveying rights in  
11 the artists' performance in the sound record-  
12 ings) pursuant to paragraph (2)(D) (which  
13 leaves the recording artist or artists featured on  
14 such sound recording (or the persons conveying  
15 rights in the artists' performance in the sound  
16 recordings) 43 percent of the total receipts paid  
17 pursuant to paragraph (2)) and distribution of  
18 such amount to one or more persons described  
19 in subparagraph (B), after deduction of costs as  
20 described in paragraph (3) or (4), as applicable,  
21 if each of the following requirements is met:

22 “(i) CERTIFICATION OF ATTEMPT TO  
23 OBTAIN A LETTER OF DIRECTION.—A per-  
24 son described in subparagraph (B) cer-

1           tified to the collective, under penalty of  
2           perjury, that—

3                   “(I) for a period of at least 4  
4                   months, that person made reasonable  
5                   efforts to contact the artist payee for  
6                   such sound recording to request and  
7                   obtain a letter of direction instructing  
8                   the collective to pay a portion of the  
9                   royalties from the featured recording  
10                  artist or artists to that person; and

11                   “(II) during the period beginning  
12                   on the date that person began the rea-  
13                   sonable efforts described in subclause  
14                   (I) and ending on date of that per-  
15                   son’s certification to the collective, the  
16                   artist payee did not definitively affirm  
17                   or deny the request for a letter of di-  
18                   rection.

19                   “(ii) COLLECTIVE ATTEMPT TO CON-  
20                   TACT ARTIST.—After receipt of the certifi-  
21                   cation described in clause (i) and for a pe-  
22                   riod of at least 4 months before the collec-  
23                   tive’s first distribution to the person de-  
24                   scribed in subparagraph (B), the collective  
25                   attempted to notify the artist payee of the

1 certification made by the person described  
2 in subparagraph (B) in a manner reason-  
3 ably determined by the collective.

4 “(iii) NO OBJECTION RECEIVED.—An  
5 objection to the distribution has not been  
6 submitted to the collective by the artist  
7 payee as of the date that is 10 business  
8 days before the date on which the first dis-  
9 tribution is made.

10 “(B) ELIGIBILITY FOR PAYMENT.—A per-  
11 son shall be eligible for payment under subpara-  
12 graph (A) if such person—

13 “(i) is a producer, mixer, or sound en-  
14 gineer of the relevant sound recording;

15 “(ii) has entered into a written con-  
16 tract with a record company involved in  
17 the creation or lawful exploitation of the  
18 relevant sound recording, or with the re-  
19 cording artist or artists featured on such  
20 sound recording (or the persons conveying  
21 rights in the artists performance in the  
22 sound recordings), pursuant to which such  
23 person is entitled to participate in royalty  
24 payments based on exploitation of the rel-  
25 evant sound recording that are payable

1 from royalties otherwise payable to the re-  
2 cording artist or artists featured on such  
3 sound recording (or the persons conveying  
4 rights in the artists performance in the  
5 sound recordings);

6 “(iii) made a contribution, of a nature  
7 subject to copyright protection under sec-  
8 tion 102, to the creation of the relevant  
9 sound recording; and

10 “(iv) submits a written certification to  
11 the collective stating, under penalty of per-  
12 jury, that such person meets the require-  
13 ments in clauses (i) through (iii) and in-  
14 cludes a true copy of the contract de-  
15 scribed in clause (ii).

16 “(C) MULTIPLE CERTIFICATIONS.—Sub-  
17 ject to subparagraph (D), in a case in which  
18 more than one person described in subpara-  
19 graph (B) has met the requirements for a dis-  
20 tribution pursuant to subparagraph (A) with re-  
21 spect to a sound recording as of the date that  
22 is 10 business days before the date on which a  
23 distribution is made, the collective shall divide  
24 the 2 percent distribution equally among all  
25 such persons.

1           “(D) OBJECTION TO PAYMENT.—Not later  
2 than 10 days after the collective receives from  
3 the artist payee a written objection to a dis-  
4 tribution made pursuant to subparagraph (A),  
5 the collective shall cease making any further  
6 payment related to such distribution. In any  
7 case in which the collective has made one or  
8 more distributions pursuant to subparagraph  
9 (A) to a person described in subparagraph (B)  
10 before the date that is 10 business days after  
11 the date on which the collective receives an ob-  
12 jection by the artist payee to such distribution,  
13 the objection shall not affect that person’s enti-  
14 tlement to any distribution made before the col-  
15 lective ceases such distribution pursuant to this  
16 subparagraph.

17           “(E) OWNERSHIP OF THE RIGHT TO RE-  
18 CEIVE PAYMENTS.—To the extent that the col-  
19 lective determines that a distribution will be  
20 made pursuant to subparagraph (A) to a person  
21 described in subparagraph (B), such person  
22 shall during the period of such distribution be  
23 treated for all purposes as the owner of the  
24 right to receive such payments.



1           “(F) ARTIST PAYEE DEFINED.—In this  
2 paragraph, the term ‘artist payee’ means a per-  
3 son, other than a person described in subpara-  
4 graph (B), who owns the right to receive all or  
5 part of the receipts payable under paragraph  
6 (2)(D) with respect to a sound recording. In a  
7 case in which there are multiple artist payees  
8 with respect to a sound recording, an objection  
9 by one such payee shall apply only to that pay-  
10 ee’s share of the receipts payable under para-  
11 graph (2)(D), and does not preclude payment  
12 under subparagraph (A) from the share of an  
13 artist payee that does not object.”.

14       (c) TECHNICAL AND CONFORMING AMENDMENTS.—  
15 Section 114(g) of title 17, United States Code, as amend-  
16 ed by subsections (a) and (b), is further amended—

17           (1) in paragraph (2), by striking “An agent  
18 designated” and inserting “Except as provided for in  
19 paragraph (7), a collective designated by the Copy-  
20 right Royalty Judges”;

21           (2) in paragraph (3)—

22               (A) by striking “agent designated” and in-  
23 serting “collective designated by the Copyright  
24 Royalty Judges”; and

1                   (B) by striking “agent” and inserting “col-  
2                   lective”, each place it appears; and  
3                   (3) in paragraph (4), by striking “agent” and  
4                   inserting “collective”, each place it appears.

5 **SEC. 10. EFFECTIVE DATE.**

6           This Act, and the amendments made by this Act,  
7 shall take effect on the date of enactment of this Act, and  
8 except as provided in the amendment made by section 3,  
9 shall apply to any proceeding that is pending on, or com-  
10 menced on or after, such effective date.

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