To amend title 17, United States Code, to provide Federal protection to the digital audio transmission of a sound recording fixed before February 15, 1972, and for other purposes.

IN THE SENATE OF THE UNITED STATES

February 7, 2018

Mr. Coons (for himself, Mr. Kennedy, Mr. Tillis, Mr. Corker, and Mr. Booker) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 17, United States Code, to provide Federal protection to the digital audio transmission of a sound recording fixed before February 15, 1972, 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 “Compensating Legacy Artists for their Songs, Service, and Important Contributions to Society Act” or the “CLASSICS Act”.

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SEC. 2. UNAUTHORIZED DIGITAL PERFORMANCE OF PRE-1972 SOUND RECORDINGS.

(a) Amendment.—Title 17, United States Code, is amended by adding at the end the following:

“CHAPTER 14—UNAUTHORIZED DIGITAL PERFORMANCE OF PRE-1972 SOUND RECORDINGS

Sec. 1401. Unauthorized digital performance of pre-1972 sound recordings

§ 1401. Unauthorized digital performance of pre-1972 sound recordings

“(a) UNAUTHORIZED ACTS.—Anyone who, prior to February 15, 2067, performs publicly by means of digital audio transmission a sound recording fixed before February 15, 1972, without the consent of the rights owner, shall be subject to the remedies provided in sections 502 through 505 to the same extent as an infringer of copyright.

“(b) CERTAIN UNAUTHORIZED TRANSMISSIONS.—Transmissions of sound recordings fixed before February 15, 1972, shall be considered authorized and with the consent of the rights owner for purposes of subsection (a), if—

“(1) the transmissions are made by a transmitting entity publicly performing sound recordings pro-
protected under this title by means of digital audio
transmissions subject to section 114;

“(2) the transmissions would satisfy the re-
quirements for statutory licensing under section
114(d)(2) or would be exempt under section
114(d)(1), if the sound recordings were fixed on or
after February 15, 1972;

“(3) in the case of transmissions that would not
be exempt under section 114(d)(1) as described in
paragraph (2), the transmitting entity pays statu-
tory royalties and provides notice of its use of the
relevant sound recordings in the same manner as re-
quired by regulations adopted by the Copyright Roy-
alty Judges for sound recordings that are protected
under this title; and

“(4) in the case of transmissions that would not
be exempt under section 114(d)(1) as described in
paragraph (2), the transmitting entity otherwise sat-
ifies the requirements for statutory licensing under
section 114(f)(4)(B).

“(c) TRANSMISSIONS BY DIRECT LICENSING OF
STATUTORY SERVICES.—

“(1) IN GENERAL.—A transmission of a sound
recording fixed before February 15, 1972, shall be
considered authorized and with the consent of the
rights owner for purposes of subsection (a) if included in any license agreement voluntarily negotiated at any time between the rights owner and the entity performing the sound recording.

“(2) Payment of royalties to nonprofit agent.—To the extent that such a license extends to transmissions of sound recordings fixed before February 15, 1972, that satisfy the conditions of subsection (b), the licensee shall pay 50 percent of the performance royalties for the transmissions due under the license to the collective designated to distribute receipts from the licensing of transmissions in accordance with section 114(f), with such royalties fully credited as payments due under such license.

“(3) Distribution of royalties by nonprofit agent.—That collective shall distribute the royalties received pursuant to paragraph (2) in accordance with subparagraphs (B) through (D) of section 114(g)(2). Such payments shall be the sole payments to which featured and nonfeatured artists are entitled by virtue of such transmissions under the license.

“(4) Rule of construction.—This section does not prohibit any other license from directing
the licensee to pay other royalties due to featured
and nonfeatured artists for such transmissions to
the collective designated to distribute receipts from
the licensing of transmissions in accordance with
section 114(f).

“(d) RELATIONSHIP TO STATE LAW.—

“(1) IN GENERAL.—Nothing in this section
shall be construed to annul or limit any rights or
remedies under the common law or statutes of any
State for sound recordings fixed before February 15,
1972, except, notwithstanding section 301(c), the
following:

“(A) This section preempts claims of com-
mon law copyright or equivalent rights under
the law of any State arising from digital audio
transmissions of sound recordings fixed before
February 15, 1972, made on and after the ef-
fective date of this section.

“(B) This section preempts claims of com-
mon law copyright or equivalent rights under
the law of any State arising from reproductions
of sound recordings fixed before February 15,
1972, made on and after the effective date of
this section, for reproductions that would sat-
isfy the requirements for statutory licensing.
under section 112(e)(1) and (6), if the sound recordings were fixed on or after February 15, 1972.

“(C) This section pre-empts claims of common law copyright or equivalent rights under the law of any State arising from digital audio transmissions and reproductions of sound recordings fixed before February 15, 1972, made before the effective date of this section, if—

“(i) the digital audio transmissions and reproductions would have satisfied the requirements for statutory licensing under section 114(d)(2) or been exempt under section 114(d)(1), or would have satisfied the requirements of section 112(e)(1), respectively; and

“(ii) within 270 days after the effective date of this section, except in the case of transmissions that would have been exempt under section 114(d)(1), the transmitting entity pays statutory royalties and provides notice of the use of the relevant sound recordings in the same manner as required by regulations adopted by the Copyright Royalty Judges for sound re-
cordings that are protected under this title for all the digital audio transmissions and reproductions satisfying the requirements for statutory licensing under section 114(d)(2) and section 112(e)(1) during the 3 years prior to the effective date of this section.

“(2) Rule of Construction for Common Law Copyright.—For purposes of subparagraphs (A) through (C) of paragraph (1), claims of common law copyright or equivalent rights under the law of any State include claims that characterize conduct subject to such subparagraphs as an unlawful distribution, act of record piracy, or similar violation.

“(3) Rule of Construction for Public Performance Rights.—Nothing in this section shall be construed to recognize or negate the existence of public performance rights in sound recordings under the law of any State.

“(e) Limitations on Remedies.—

“(1) Fair Use; Reproduction by Libraries and Archives.—The limitations on the exclusive rights of a copyright owner described in sections 107 and 108 shall apply to a claim for unauthorized per-
formance of a sound recording fixed before February 15, 1972, under subsection (a).

“(2) ACTIONS.—The limitations on actions described in section 507 shall apply to a claim for unauthorized performance of a sound recording fixed before February 15, 1972, under subsection (a).

“(3) MATERIAL ONLINE.—The limitations on liability described in section 512 of this title shall apply to a claim for unauthorized performance of a sound recording fixed before February 15, 1972, under subsection (a).

“(4) PRINCIPLES OF EQUITY.—Principles of equity apply to remedies for a violation of this section to the same extent as such principles apply to remedies for infringement of copyright.

“(f) APPLICATION OF SECTION 230 SAFE HARBOR.—For purposes of section 230 of the Communications Act of 1934 (47 U.S.C. 230), subsection (a) shall be considered ‘intellectual property laws’ under subsection (e)(2) of such section.

“(g) RIGHTS OWNER DEFINED.—In this section, the term ‘rights owner’ means the person who has the exclusive right to reproduce a sound recording under the law of any State.”.
(b) TECHNICAL AND CONFORMING AMENDMENT.—

The table of chapters for title 17, United States Code, is amended by adding at the end the following:


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