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(Original Signature of Member)

112TH CONGRESS  
2D SESSION

**H. R.** \_\_\_\_\_

To adopt fair standards and procedures by which determinations of Copyright Royalty Judges are made with respect to webcasting, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

Mr. CHAFFETZ (for himself and Mr. POLIS) introduced the following bill;  
which was referred to the Committee on \_\_\_\_\_

\_\_\_\_\_  
**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.

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 of 2012”.

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

3 Chapter 8 of title 17, United States Code, is amend-  
4 ed—

5 (1) in section 801(a)—

6 (A) in the first sentence, by striking “Li-  
7 brarian of Congress” and inserting “President  
8 of the United States, by and with the advice  
9 and consent of the Senate,”; and

10 (B) by striking the second sentence; and

11 (2) in section 802—

12 (A) in subsection (a)(1), by striking  
13 “Each” and all that follows through “econom-  
14 ics.” and inserting the following: “Each Copy-  
15 right Royalty Judge shall be an attorney who  
16 has not fewer than 10 years of legal experience  
17 and has significant experience in adjudicating  
18 arbitrations or court trials. The Chief Copyright  
19 Royalty Judge shall have not fewer than 7  
20 years of experience in adjudicating court trials  
21 in civil cases.”; and

22 (B) in subsection (d)—

23 (i) in paragraph (1), in the first sen-  
24 tence, by striking “Librarian” and all that  
25 follows through “section.” and inserting

1 “President of the United States shall act  
2 expeditiously to fill the vacancy.”; and

3 (ii) in paragraph (2), by striking “Li-  
4 brarian of Congress” and inserting “Presi-  
5 dent of the United States, by and with the  
6 advise and consent of the Senate,”.

7 **SEC. 3. COMPUTATION OF ROYALTY FEES FOR INTERNET**  
8 **RADIO SERVICES OFFERING DIGITAL PER-**  
9 **FORMANCES OF SOUND RECORDINGS AND**  
10 **REPORTING OBLIGATIONS.**

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

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

15 (A) in paragraph (3), by striking the sec-  
16 ond sentence and inserting the following: “Such  
17 rates may include a minimum annual fee for  
18 each type of service offered by the transmitting  
19 organization.”;

20 (B) in paragraph (4), by striking “Such  
21 rates shall” and all that follows through “para-  
22 graphs (2) and (3).” and insert the following:  
23 “In establishing rates and terms under this  
24 paragraph, the Copyright Royalty Judges shall  
25 apply the objectives set forth in section

1           801(b)(1), in accordance with subparagraphs  
2           (C) and (D) of section 114(f)(1). In any pro-  
3           ceeding under this paragraph, the burden of  
4           proof shall be on the copyright owners of sound  
5           recordings to establish that the fees and terms  
6           that they seek satisfy the requirements of this  
7           paragraph, and do not exceed the fees to which  
8           most copyright owners and users would agree  
9           under competitive market circumstances. To the  
10          extent the Copyright Royalty Judges consider  
11          marketplace benchmarks to be relevant, they  
12          shall limit those benchmarks to benchmarks re-  
13          flecting the rates and terms that have been  
14          agreed under competitive market circumstances  
15          by most copyright users.”; and

16                 (C) in paragraph (5), by striking “in lieu  
17                 of any” and all that follows and inserting the  
18                 following: “and be binding upon the parties to  
19                 any such agreements in lieu of any determina-  
20                 tion by the Copyright Royalty Judges.”.

21                 (2) DIGITAL SOUND RECORDING PERFORM-  
22                 ANCES.—Section 114(f) of title 17, United States  
23                 Code, is amended—

24                         (A) in paragraph (1)—

25                                 (i) in subparagraph (A)—

1 (I) in the first sentence—

2 (aa) by striking “subscrip-  
3 tion transmissions by preexisting  
4 subscription services and trans-  
5 missions by preexisting satellite  
6 digital audio radio”; and

7 (bb) by striking “, except in  
8 the case of a different transi-  
9 tional period provided under sec-  
10 tion 6(b)(3) of the Copyright  
11 Royalty and Distribution Reform  
12 Act of 2004,”; and

13 (II) by striking “Such terms and  
14 rates” and all that follows and insert-  
15 ing the following: “Such terms and  
16 rates shall distinguish among the dif-  
17 ferent types of digital audio trans-  
18 mission services then in operation and  
19 may take into account the different  
20 characteristics of such services, and  
21 may include a minimum annual fee of  
22 not more than \$500 for each provider  
23 of services that is subject to such  
24 rates and terms, which may be the  
25 only minimum fee for such provider

1 and may be assessed only once annu-  
2 ally to that provider. Any copyright  
3 owners of sound recordings or any en-  
4 tities performing sound recordings af-  
5 fected by this paragraph may submit  
6 to the Copyright Royalty Judges for  
7 consideration in such rate-setting pro-  
8 ceedings licenses covering such non-  
9 interactive sound recording perform-  
10 ances. The parties to each proceeding  
11 shall bear their own costs.”;

12 (ii) in subparagraph (B)—

13 (I) in the first sentence—

14 (aa) by striking “paragraph  
15 (3)” and inserting “paragraph  
16 (2)”; and

17 (bb) by striking “, a transi-  
18 tional period provided under sec-  
19 tion 6(b)(3) of the Copyright  
20 Royalty and Distribution Reform  
21 Act of 2004,”; and

22 (II) by striking the second sen-  
23 tence and inserting the following: “In  
24 establishing rates and terms under  
25 this paragraph, the Copyright Royalty

1 Judges shall apply the objectives set  
2 forth in section 801(b)(1) and may  
3 also consider the rates and terms for  
4 noninteractive digital audio trans-  
5 mission services under voluntary li-  
6 cense agreements described in sub-  
7 paragraph (A) that were entered into  
8 under competitive market cir-  
9 cumstances. In any proceeding under  
10 this subsection, the burden of proof  
11 shall be on the copyright owners of  
12 sound recordings to establish that the  
13 fees and terms that they seek satisfy  
14 the requirements of this subsection,  
15 and do not exceed the fees to which  
16 most copyright owners and users  
17 would agree under competitive market  
18 circumstances.”;

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

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

23 “(C)(i) In construing the objectives set  
24 forth in section 801(b)(1), the Copyright Roy-  
25 alty Judges shall take into consideration—

1           “(I) the public’s interest in both the  
2           creation of new sound recordings of musi-  
3           cal works and in fostering online and other  
4           digital performances of sound recordings;  
5           and

6           “(II) the income necessary to provide  
7           a reasonable return on all relevant invest-  
8           ments, including investments in prior peri-  
9           ods for which returns have not been  
10          earned.

11          “(ii) To the extent the Copyright Royalty  
12          Judges consider marketplace benchmarks to be  
13          relevant, the Copyright Royalty Judges shall  
14          limit those benchmarks to benchmarks reflect-  
15          ing the rates and terms that have been agreed  
16          under competitive market circumstances by  
17          most copyright users.

18          “(D) In applying the objectives set forth in  
19          section 801(b)(1), the Copyright Royalty  
20          Judges—

21                 “(i) shall not disfavor percentage of  
22                 revenue-based fees;

23                 “(ii) shall establish license fee struc-  
24                 tures that foster competition among the  
25                 licensors of sound recording performances



1 and between sound recording performances  
2 and other programming, including per-use  
3 or per-program fees, or percentage of rev-  
4 enue or other fees that include carve-outs  
5 on a pro-rata basis for sound recordings  
6 the performance of which have been li-  
7 censed either directly with the copyright  
8 owner or at the source, or for which a li-  
9 cense is not necessary;

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

14 “(iv) shall give full consideration to  
15 the contributions made by the digital audio  
16 transmission service to the content and  
17 value of its programming; and

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

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

1           “(E) The procedures under subparagraph  
2           (A) may also be initiated pursuant to a petition  
3           filed by any copyright owners of sound record-  
4           ings, or any entity performing sound recordings  
5           affected by this paragraph, indicating that a  
6           new type of digital audio transmission service  
7           engaged in the public performance of sound re-  
8           cordings is or is about to become operational,  
9           for the purpose of determining reasonable terms  
10          and rates of royalty payments with respect to  
11          such new type of transmission service for the  
12          period beginning with the inception of such new  
13          type of service and ending on the date on which  
14          the royalty rates and terms for the most com-  
15          parable digital audio transmission services most  
16          recently determined under subparagraph (A)  
17          and chapter 8 expire, or such other period as  
18          the parties may agree.”;

19                 (B) by striking paragraph (2);

20                 (C) by redesignating paragraphs (3), (4),  
21                 and (5) as paragraphs (2), (3), and (4), respec-  
22                 tively; and

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

1 (i) by inserting “or their authorized  
2 representatives” after “owners of sound re-  
3 cordings”; and

4 (ii) by striking “in lieu of any” and  
5 all that follows and inserting the following:  
6 “and be binding upon the parties to any  
7 such agreements in lieu of any determina-  
8 tion by the Copyright Royalty Judges.”.

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

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

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

16 “(4) ‘Competitive market circumstances’ are  
17 circumstances in which a licensee enters into a li-  
18 cense for the noninteractive performance of sound  
19 recordings with a licensor that does not possess mar-  
20 ket power resulting from the aggregation of copy-  
21 rights, either by a licensing collective or individual  
22 copyright owners.”.

23 (b) PRECEDENTIAL VALUE OF SETTLEMENTS.—Sec-  
24 tion 114(f)(4) of title 17, United States Code, as so redes-  
25 ignated by subsection (a)(2), is amended—

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

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

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

6 (4) by adding at the end the following:

7 “(E) The rates and terms of any settle-  
8 ments made pursuant to the amendments made  
9 by the Webcaster Settlement Act of 2009 (Pub-  
10 lic Law 111–36; 123 Stat. 1926) that were to  
11 expire before December 31, 2015, shall be ex-  
12 tended through December 31, 2015, according  
13 to the rates and terms applicable to 2014.”.

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

16 (1) in section 801(b)(7)(B), by striking  
17 “114(f)(3)” and inserting “114(f)(2)”;

18 (2) in section 803(c)(2)(E)(i)(II)—

19 (A) by striking “section 114(f)(1)(C) or  
20 114(f)(2)(C)” and inserting “section  
21 114(f)(1)(E)”; and

22 (B) by striking “section 114(f)(4)(B)” and  
23 inserting “section 114(f)(3)(B)”; and

24 (3) in section 804(b)(3)(C)—

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

4 (B) in clause (iii)(II), by striking “section  
5 114(f)(4)(B)(ii) and (C)” and inserting “sub-  
6 paragraphs (B)(ii) and (C) of section  
7 114(f)(3)”;

8 (C) in clause (iv), by striking “section  
9 114(f)(1)(C) or 114(f)(2)(C)” and inserting  
10 “section 114(f)(1)(E)”.

11 **SEC. 4. MODERNIZATION OF CONDITIONS GOVERNING**  
12 **EPHEMERAL RECORDING EXEMPTION AND**  
13 **STATUTORY LICENSES.**

14 (a) EPHEMERAL RECORDING EXEMPTION.—Section  
15 112(a)(1) of title 17, United States Code, is amended by  
16 striking “no more than” and all that follows and inserting  
17 the following: “1 or more copies or phonorecords embody-  
18 ing the performance or display, if—

19 “(A) the copies or phonorecords are re-  
20 tained and used solely by the transmitting orga-  
21 nization that made them, and no further copies  
22 or phonorecords are reproduced from them, ex-  
23 cept as may be incidental to the operation of  
24 the transmission technology used by the trans-  
25 mitting organization; and

1           “(B) the copies or phonorecords are used  
2 solely for the transmitting organization’s own  
3 transmissions originating in the United States,  
4 or for purposes of archival preservation or secu-  
5 rity.”.

6           (b) EPHEMERAL RECORDING STATUTORY LI-  
7 CENSE.—Section 112(e)(1) of title 17, United States  
8 Code, is amended—

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

10           (A) by striking “or under a statutory li-  
11 cense in accordance with section 114(f)”; and

12           (B) by striking “ if the following condi-  
13 tions are satisfied:” and inserting “if—”;

14           (2) in subparagraph (A)—

15           (A) by striking “The” and inserting “the”;

16           and

17           (B) by striking the period at the end and  
18 inserting “, except as may be incidental to the  
19 operation of the transmission technology used  
20 by the transmitting organization;”;

21           (3) in subparagraph (B)—

22           (A) by striking “The” and inserting “the”;

23           (B) by striking “a statutory license in ac-  
24 cordance with section 114(f) or”; and

1 (C) by striking the period at the end and  
2 inserting “, or for purposes of archival preser-  
3 vation or security; and”;

4 (4) by striking subparagraph (C);

5 (5) by redesignating subparagraph (D) as sub-  
6 paragraph (C); and

7 (6) in subparagraph (C), as so redesignated, by  
8 striking “Phonorecords” and inserting  
9 “phonorecords”.

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

13 (1) in clause (i), by striking “of a broadcast  
14 transmission” and all that follows and inserting the  
15 following: “or simultaneous transmission of a broad-  
16 cast transmission in any medium, which may include  
17 programming substituted for programming con-  
18 tained in the broadcast transmission with respect to  
19 which the transmitting entity lacks the requisite li-  
20 censes or clearances to make the transmission in the  
21 medium, or for advertisements contained in the  
22 broadcast transmission, or the transmission of any  
23 programming previously included in a broadcast  
24 transmission as an archived program in conformance  
25 with clause (iii);”;

1           (2) by striking clause (ii) and inserting the fol-  
2           lowing:

3                           “(ii) the transmitting entity  
4                           does not cause to be published in  
5                           writing by means of an advance  
6                           program schedule the titles of the  
7                           specific sound recordings or  
8                           phonorecords embodying such  
9                           sound recordings to be trans-  
10                          mitted at particular times, except  
11                          that this clause does not dis-  
12                          qualify a transmitting entity that  
13                          publishes in writing—

14                           “(AA) such a program  
15                           schedule that identifies  
16                           sound                recordings,  
17                           phonorecords or artists that  
18                           will be featured within a pe-  
19                           riod of time greater than 3  
20                           hours or within an unspec-  
21                           ified future time period; or

22                           “(BB) an advance pro-  
23                           gram schedule that is that is  
24                           a schedule of classical music  
25                           programming to be per-



1                   formed as part of a retrans-  
2                   mission or simultaneous  
3                   transmission of a broadcast  
4                   transmission, which may in-  
5                   clude programming sub-  
6                   stituted for programming  
7                   contained in the broadcast  
8                   transmission with respect to  
9                   which the transmitting enti-  
10                  ty lacks the requisite li-  
11                  censes or clearances to make  
12                  the transmission in the me-  
13                  dium, or for advertisements  
14                  contained in the broadcast  
15                  transmission;”;

16                  (3) in clause (iii)—

17                    (A) in subclause (II), by adding “or” at  
18                  the end; and

19                    (B) beginning in subclause (III), by strik-  
20                  ing “or” and all that follows through “require-  
21                  ment;’ ”

22                  (4) in clause (vii)—

23                    (A) by striking “and the transmitting enti-  
24                  ty” through “of the copyright owner;” and

1 (B) by striking “of a broadcast trans-  
2 mission” and all that follows and inserting “or  
3 simultaneous transmission of a broadcast trans-  
4 mission, which may include programming sub-  
5 stituted for programming contained in the  
6 broadcast transmission with respect to which  
7 the transmitting entity lacks the requisite li-  
8 censes or clearances to make the transmission  
9 in the medium, or for advertisements contained  
10 in the broadcast transmission;”; and

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

12 “(ix) the transmitting entity identifies  
13 in textual data the sound recording during,  
14 but not before, the time it is performed, in-  
15 cluding the title of the sound recording  
16 and the featured recording artist, in a  
17 manner to permit it to be displayed to the  
18 transmission recipient by the device or  
19 technology intended for receiving the serv-  
20 ice provided by the transmitting entity, ex-  
21 cept that the obligation in this clause shall  
22 not apply to the extent that the transmit-  
23 ting entity does not have the technology or  
24 information necessary to provide such tex-  
25 tual data.”.

1 **SEC. 5. PROMOTION OF A COMPETITIVE MARKETPLACE.**

2 (a) LIMITATION OF ANTITRUST EXEMPTIONS.—

3 (1) EPHEMERAL RECORDINGS.—Section  
4 112(e)(2) of title 17, United States Code, is amend-  
5 ed—

6 (A) by inserting “, on a nonexclusive  
7 basis,” after “common agents”; and

8 (B) by adding at the end the following:  
9 “Nothing in this paragraph shall be construed  
10 to permit any copyright owners of sound re-  
11 cordings acting jointly, or any common agent or  
12 collective representing such copyright owners, to  
13 take any action that would prohibit, interfere  
14 with, or impede direct licensing by copyright  
15 owners of sound recordings in competition with  
16 licensing by any common agent or collective,  
17 and any such action that affects interstate com-  
18 merce shall be deemed a contract, combination  
19 or conspiracy in restraint of trade in violation  
20 of section 1 of the Sherman Act (15 U.S.C.  
21 1).”.

22 (2) DIGITAL SOUND RECORDING PERFORM-  
23 ANCES.—Section 114(e) of title 17, United States  
24 Code, is amended by adding at the end the fol-  
25 lowing:

1           “(3) Nothing in this subsection shall be con-  
2           strued to permit any copyright owners of sound re-  
3           cordings acting jointly, or any common agent or col-  
4           lective representing such copyright owners, to take  
5           any action that would prohibit, interfere with, or im-  
6           pede direct licensing by copyright owners of sound  
7           recordings in competition with licensing by any com-  
8           mon agent or collective, and any such action that af-  
9           fects interstate commerce shall be deemed a con-  
10          tract, combination or conspiracy in restraint of trade  
11          in violation of section 1 of the Sherman Act (15  
12          U.S.C. 1).

13           “(4) In order to obtain the benefits of para-  
14          graph (1), a common agent or collective representing  
15          copyright owners of sound recordings must make  
16          available at no charge through publicly accessible  
17          computer access through the Internet the most cur-  
18          rent available list of sound recording copyright own-  
19          ers represented by the organization and the most  
20          current list of sound recordings licensed by the orga-  
21          nization.”.

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

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

6 (1) by striking the first sentence and inserting  
7 the following: “‘In carrying out the purposes set  
8 forth in section 801, all proceedings of the Copyright  
9 Royalty Judges shall be conducted in accordance  
10 with this title and, unless contrary to a procedure  
11 set forth in subsection (b), according to the Federal  
12 Rules of Civil Procedure and the Federal Rules of  
13 Evidence.”; and

14 (2) by adding at the end the following: “Not-  
15 withstanding the preceding sentence, in any rate-set-  
16 ting proceeding under section 112(e)(4) or section  
17 114(f)(2)(B), the Copyright Royalty Judges may  
18 only consider as precedent and act in accordance  
19 with determinations and interpretations that are  
20 made under the objectives set forth in section 801(b)  
21 for the statutory licenses under sections 112(e) and  
22 114(d)(2).”.

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

25 (1) in subparagraph (C), by striking “RE-  
26 QUIREMENTS.—Regulations” and inserting “RE-

1        REQUIREMENTS IN CASES NOT INVOLVING DIGITAL  
2        PERFORMANCES OF SOUND RECORDINGS.—In pro-  
3        ceedings other than proceedings to determine terms  
4        and rates of royalty payments under section 112 or  
5        114, regulations”; and

6            (2) by adding at the end the following:

7                    “(D) REQUIREMENTS IN PROCEEDINGS IN-  
8                    VOLVING DIGITAL PERFORMANCES OF SOUND  
9                    RECORDINGS.—In proceedings to determine  
10                   terms and rates of royalty payments under sec-  
11                   tion 112 or 114, the following shall apply:

12                            “(i) INITIAL DISCLOSURES.—Not later  
13                            than 30 days after the date on which the  
14                            voluntary negotiation period is initiated  
15                            pursuant to paragraph (3)(A)(i), each par-  
16                            ticipant shall make an initial disclosure to  
17                            the other participants by providing cop-  
18                            ies—

19                                    “(I) of all license agreements en-  
20                                    tered into by that participant, its  
21                                    members, or any licensor or licensee  
22                                    represented in the proceeding by that  
23                                    participant during the applicable 5-  
24                                    year period or covering any portion of

1 the period for which the rates are to  
2 be set, relating to—

3 “(aa) in a proceeding under  
4 section 112, the making of  
5 ephemeral recordings; or

6 “(bb) in a proceeding under  
7 section 114, the public perform-  
8 ance of musical works, sound re-  
9 cordings, or audiovisual works in-  
10 corporating recorded musical  
11 works; or

12 “(II) of any other license agree-  
13 ment or document upon which the  
14 participant intends to rely, in whole or  
15 in part, in its ratemaking proposal, as  
16 well as all license agreements entered  
17 into by the participant, its members,  
18 or any licensor or licensee represented  
19 in the proceeding by that participant  
20 for the same or similar rights during  
21 the applicable 5-year period or cov-  
22 ering any portion of the period for  
23 which the rates are to be set.

24 “(ii) PROTECTIVE ORDER; SANC-  
25 TIONS.—Disclosures under clause (i) and

1 other confidential information produced by  
2 a participant or third party during dis-  
3 covery, or used during the proceeding,  
4 shall be subject to a protective order, en-  
5 tered by the Copyright Royalty Judges in  
6 the proceeding, that prohibits use of the  
7 disclosures and the confidential informa-  
8 tion for any purpose other than the pro-  
9 ceeding and that prohibits disclosure of the  
10 licenses or other documents included in the  
11 disclosure or of other confidential informa-  
12 tion to any person that is not counsel of  
13 record in the proceeding. The Copyright  
14 Royalty Judges may impose appropriate  
15 sanctions for failure to comply in a timely  
16 manner with the matters required to be  
17 disclosed under clause (i).

18 “(iii) STATEMENTS OF THE CASE.—  
19 Statements of the case shall be filed by a  
20 date specified by the Copyright Royalty  
21 Judges, which for licensor participants  
22 shall be no earlier than the end of the 90-  
23 day period beginning on the date on which  
24 the voluntary negotiation period concludes,  
25 and for licensee participants shall be no



1 earlier than the end of the 60-day period  
2 beginning on the date on which the state-  
3 ments of the case are required to be sub-  
4 mitted by licensor participants.

5 “(iv) SUBPOENA POWER.—The Copy-  
6 right Royalty Judges shall have the power  
7 to issue subpoenas at the request of a par-  
8 ticipant to non-participants, subject to the  
9 Federal Rules of Civil Procedure. Orders  
10 by the Copyright Royalty Judges to en-  
11 force such subpoenas may be enforced by  
12 the requesting participant in an action in  
13 the district court in which the subpoenaed  
14 party resides.

15 “(v) SCHEDULING CONFERENCE.—  
16 The Copyright Royalty Judges shall order  
17 a scheduling conference no sooner than 45  
18 days following the submission to the Copy-  
19 right Royalty Judges of the statement of  
20 the case of the licensee participants. Par-  
21 ticipants shall submit jointly a proposed  
22 discovery plan no later than 21 days before  
23 the conference. Following the conference,  
24 the Copyright Royalty Judges shall issue  
25 an initial scheduling order governing pre-

1 trial procedures, and permitting discovery  
2 that is reasonable and sufficient, giving  
3 due consideration to the proposals of the  
4 participants and the magnitude of the po-  
5 tential royalty payments at issue during  
6 the license period covered by the pro-  
7 ceeding. The period to conduct discovery  
8 shall be no shorter than 90 days, plus the  
9 time needed to complete discovery ordered  
10 by the Copyright Royalty Judges in con-  
11 nection with the resolution of motions, or-  
12 ders, and disputes pending at the end of  
13 such period.

14 “(vi) SETTLEMENT CONFERENCE.—  
15 The Copyright Royalty Judges shall order  
16 a settlement conference among the partici-  
17 pants in the proceeding to facilitate the  
18 presentation of offers of settlement among  
19 the participants. The settlement conference  
20 shall be held during the 21-day period be-  
21 ginning on the day after the last day of the  
22 discovery period ordered pursuant to clause  
23 (iv) and shall take place outside the pres-  
24 ence of the Copyright Royalty Judges.

1                   “(vii) JOINT PRETRIAL ORDER.—If  
2                   the conference required in clause (v) does  
3                   not result in a settlement among all par-  
4                   ties, not later than 60 days after the last  
5                   day of the settlement conference, the re-  
6                   maining participants shall propose a joint  
7                   pretrial order—

8                                 “(I) stating the rates and terms  
9                                 proposed by each participant and set-  
10                                ting forth, in detail, the grounds for  
11                                such proposals;

12                               “(II) setting forth admissions  
13                                and stipulations about facts and docu-  
14                                ments;

15                               “(III) avoiding unnecessary proof  
16                                and cumulative evidence and limiting  
17                                the use of testimony under rule 702 of  
18                                the Federal Rules of Evidence;

19                               “(IV) identifying the witnesses to  
20                                be offered by each party, and attach-  
21                                ing all witness statements, testimony,  
22                                and exhibits to be presented in the  
23                                proceeding and such other information  
24                                that is necessary to establish terms  
25                                and rates;

1                   “(V) listing the evidence to be of-  
2                   ferred by each party, and identifying  
3                   any objections to any such evidence;

4                   “(VI) identifying any pending  
5                   motions, including motions in limine  
6                   and attaching any such motions that  
7                   have not yet been filed;

8                   “(VII) proposing a reasonable  
9                   limit on the time allowed to present  
10                  evidence; and

11                  “(VIII) proposing other ways to  
12                  facilitate the just, speedy, and inex-  
13                  pensive disposition of the proceeding.

14                  “(viii) PRETRIAL ORDER.—The Copy-  
15                  right Royalty Judges shall hold a pre-  
16                  hearing conference to address the issues  
17                  set forth in the proposed joint pretrial  
18                  order, and shall issue an order reciting the  
19                  action taken. The order shall allocate to  
20                  the licensor participants and licensee par-  
21                  ticipants sufficient, reasonable, and equal  
22                  time in which to present their respective  
23                  cases, and shall afford each set of partici-  
24                  pants an opportunity for rebuttal. The  
25                  order issued by the Copyright Royalty

1 Judges under this clause shall control the  
2 course of the action unless the Judges  
3 modify it.

4 “(ix) DEFINITIONS.—In this subpara-  
5 graph:

6 “(I) APPLICABLE 5-YEAR PE-  
7 RIOD.—The term ‘applicable 5-year  
8 period’ means—

9 “(aa) the period of 5 cal-  
10 endar years preceding the year in  
11 which the applicable voluntary  
12 negotiation period begins; and

13 “(bb) the period of the cur-  
14 rent calendar year through the  
15 date on which the initial disclo-  
16 sure under clause (i) is made.

17 “(II) LICENSEE.—The term ‘li-  
18 censee’ means a person or entity that  
19 exercises rights under a statutory li-  
20 cense under section 112 or 114.

21 “(III) LICENSEE PARTICIPANT.—  
22 The term ‘licensee participant’ means  
23 a participant that is, or is an author-  
24 ized representative of, a licensee.

1                   “(IV) LICENSOR.—The term ‘li-  
2                   censor’ means a person or entity enti-  
3                   tled to receive royalty payments under  
4                   section 112 or 114.

5                   “(V) LICENSOR PARTICIPANT.—  
6                   The term ‘licensor participant’ means  
7                   a participant that is, or that is an au-  
8                   thorized representative of, a licensor.

9                   “(VI) STATEMENT OF THE  
10                  CASE.—The term ‘statement of the  
11                  case’ means a short and plain state-  
12                  ment that—

13                         “(aa) identifies all partici-  
14                         pants and licensors or licensees  
15                         on whose behalf the statement is  
16                         being submitted;

17                         “(bb) states the proposed  
18                         rate or rates and terms of the  
19                         participants for each right at  
20                         issue in the proceeding and sets  
21                         forth in detail the basis of each  
22                         such proposed rate and term;

23                         “(cc) identifies each witness  
24                         that the participant intends to  
25                         call in support of its rate and

1 terms proposal and summarizes  
2 the anticipated testimony of each  
3 witness; and

4 “(dd) includes any reports,  
5 including expert reports, and any  
6 documents upon which the par-  
7 ticipant relies.”.

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

13 (d) **JUDICIAL REVIEW.**—Section 803(d)(3) of title  
14 17, United States Code, is amended by striking the first  
15 sentence and inserting the following: “Conclusions of law,  
16 and determinations of rates in which the Copyright Roy-  
17 alty Judges are required to apply the facts of record to  
18 the objectives set forth in section 801(b) shall be subject  
19 to de novo review. Findings of fact by the Copyright Roy-  
20 alty Judges shall be subject to review for clear error. All  
21 other actions by the Copyright Royalty Judges shall be  
22 subject to review for abuse of discretion.”.

23 **SEC. 7. GLOBAL MUSIC RIGHTS DATABASE.**

24 For purposes of facilitating compensation to artists  
25 of musical works and combating copyright infringement,

1 not later than 180 days after the date of enactment of  
2 this Act, the Librarian of Congress, in consultation with  
3 the Intellectual Property Enforcement Coordinate and the  
4 United States Patent and Trademark Office, shall submit  
5 to Congress a report that provides a set of recommenda-  
6 tions about how the Federal Government can facilitate,  
7 and possibly establish, a global music registry that is  
8 sustainably financed and consistent with World Intellec-  
9 tual Property Organization obligations. Such registry  
10 should, to the extent practicable, include all known or  
11 copyrighted musical works, the writers of the work, the  
12 owners of the rights, the entity on behalf of those owners  
13 who can licenses such rights on a territory-by-territory  
14 basis, and all known sound recording data.

15 **SEC. 8. EFFECTIVE DATE AND TRANSITIONAL RULES.**

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

24 (b) REGULATIONS.—Not later than 60 days after the  
25 date on which not less than 2 Copyright Royalty Judges



1 are appointed and confirmed pursuant to section 2, the  
2 Copyright Royalty Judges shall propose regulations imple-  
3 menting the amendments set forth in section 6(b), by no-  
4 tice in the Federal Register, providing 30 days for com-  
5 ments and 15 days for reply comments. Not later than  
6 45 days after date on which the 15-day period for reply  
7 comments ends, the Copyright Royalty Judges shall pro-  
8 mulgate final regulations.

9 (c) APPLICABILITY TO PENDING PROCEEDINGS.—

10 (1) PROCEEDINGS IN WHICH THE HEARING ON  
11 THE MERITS HAS CONCLUDED.—The Copyright Roy-  
12 alty Judges sitting on the date of enactment shall  
13 have authority to decide any pending proceeding in  
14 which the hearing on the merits has concluded,  
15 under the standards, procedures, and regulations in  
16 effect prior to the enactment of this Act. This au-  
17 thority shall include the authority to decide any mo-  
18 tion for rehearing under section 803(c)(2) of title  
19 17, United States Code, in any such proceeding.

20 (2) PROCEEDINGS IN WHICH THE HEARING ON  
21 THE MERITS HAS COMMENCED BUT NOT CON-  
22 CLUDED.—The Copyright Royalty Judges sitting on  
23 the date of enactment shall have authority to decide  
24 any pending proceeding in which the hearing on the  
25 merits has commenced but not concluded, under the

1 standards, procedures, and regulations in effect  
2 prior to the enactment of this Act, except that this  
3 authority may only be exercised with the consent of  
4 all participants in any proceeding to determine  
5 terms and rates of royalty payments under section  
6 112 or 114 of title 17, United States Code. This au-  
7 thority shall include the authority to decide any mo-  
8 tion for rehearing under section 803(c)(2) of title  
9 17, United States Code, in any such proceeding.

10 (3) ALL OTHER PENDING PROCEEDINGS.—The  
11 Copyright Royalty Judges appointed pursuant to  
12 section 2 shall assume authority over any pending  
13 proceeding in which the hearing on the merits has  
14 not commenced. The Copyright Royalty Judges shall  
15 recommence any pending proceeding to determine  
16 terms and rates of royalty payments under section  
17 112 or 114 of title 17, United States Code, under  
18 the procedures, standards and regulations set forth  
19 in this Act, and the requirement set forth in section  
20 803(c)(1) of title 17, United States Code, that the  
21 proceeding be concluded no later than 15 days be-  
22 fore the expiration of the then current statutory  
23 rates and terms, shall not apply. The Copyright  
24 Royalty Judges shall set a reasonable schedule for  
25 the continuation of any pending proceeding other

1       than a proceeding to determine the terms and rates  
2       of royalty payments under section 112 or 114 of  
3       title 17, United States Code.