

[DISCUSSION DRAFT]

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

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

To amend title 17, United States Code, to provide for additional compensation in statutory licensing for certain public performances of sound recordings, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

Mr. NADLER introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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**A BILL**

To amend title 17, United States Code, to provide for additional compensation in statutory licensing for certain public performances 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.**

4 This Act may be cited as the “Interim Fairness in  
5 Radio Starting Today Act of 2012” or the “Interim  
6 FIRST Act of 2012”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

3 (1) The recording industry represents a signifi-  
4 cant segment of the United States economy.

5 (2) Supporting recording artists and copyright  
6 owners, as well as the creativity they inspire, is vital  
7 to the economic and cultural future of the United  
8 States.

9 (3) Investment in the creation of great recorded  
10 music should be nurtured and encouraged.

11 (4) It is vital to the American economy that the  
12 appropriate economic incentives are present for mu-  
13 sical creators and their investors to take the risks  
14 necessary to continue to create and innovate.

15 (5) The United States should be a leader in  
16 promoting the creative industries.

17 (6) The genius of American recording artists  
18 has created a great cultural legacy and continues to  
19 create a critical source of income to the American  
20 economy.

21 (7) Article I, section 8, clause 8 of the Con-  
22 stitution specifically empowers Congress to protect  
23 and encourage artistic creations through copyright  
24 law.

25 (8) Under current copyright law, literary works,  
26 musical works, dramatic works, pantomimes, choreo-

1 graphic works, motion pictures and other audiovisual  
2 works have a full performance right, but sound re-  
3 cordings do not.

4 (9) Sound recordings are the only works capa-  
5 ble of being performed that do not have a full per-  
6 formance right in the United States.

7 (10) Terrestrial broadcasting is the only indus-  
8 try in America that can use another's intellectual  
9 property without permission or compensation.

10 (11) All other radio formats, such as satellite,  
11 cable and Internet radio, compensate recording art-  
12 ists and copyright owners for their music.

13 (12) All other OECD countries besides the  
14 United States provide a performance right in sound  
15 recordings.

16 (13) Broadcast radio clings to an old business  
17 model that is out of step with the modern, digital  
18 marketplace for recorded music.

19 (14) Congressionally encouraged, private nego-  
20 tiations to compensate artists for the recordings  
21 broadcast radio plays over terrestrial radio have, to  
22 date, failed.

23 (15) The United States should provide fair and  
24 meaningful protection for musical artists and cre-  
25 ators.

1           (16) Even the largest radio broadcaster in the  
2           United States has now recognized that recording  
3           artists and their investors deserve compensation for  
4           the public performance of their intellectual property.

5           (17) It is Congress' hope that broadcast radio  
6           will soon compensate artists for the music broadcast  
7           radio plays over terrestrial radio.

8           (18) Until a full performance right in sound re-  
9           cordings is established, Congress believes that, in the  
10          interim, broadcasters relying on statutory licenses  
11          should provide additional compensation to artists for  
12          their non-broadcast digital transmissions.

13          (19) It is understood that such additional and  
14          interim compensation is not intended to reflect fair  
15          market consideration for the long absence of a per-  
16          formance right, or to replace a performance right,  
17          but to mitigate artists' subsidizing the businesses of  
18          broadcast stations while discussions continue con-  
19          cerning permanent, fair compensation.

20          (20) Just as all radio platforms should com-  
21          pensate creators and copyright owners for the use of  
22          their music, all radio platforms should pay com-  
23          pensation based on the same royalty standard, re-  
24          gardless of the technology or business model they  
25          employ.

1           (21) The royalty rate standard for the public  
2           performance of sound recordings should approximate  
3           the royalty rate that would otherwise be agreed upon  
4           in the marketplace and should not give any indi-  
5           vidual companies, industries, or technology platforms  
6           a special advantage.

7   **SEC. 3. PLATFORM PARITY FOR INTERNET RADIO TRANS-**  
8                   **MISSIONS BY FCC LICENSED COMMERCIAL**  
9                   **BROADCAST STATIONS.**

10          (a) **ADDITIONAL COMPENSATION.**—Section 114(f)(2)  
11          of title 17, United States Code, is amended by adding at  
12          the end the following:

13                   “(D) **ADDITIONAL COMPENSATION.**—

14                           “(i) **IN GENERAL.**—Notwithstanding the  
15                           provisions of subparagraphs (A) through (C), in  
16                           the case of any entity that owns or operates one  
17                           or more commercial terrestrial broadcast sta-  
18                           tions that are licensed as such by the Federal  
19                           Communications Commission, or that is affili-  
20                           ated with an entity that owns or operates one  
21                           or more such commercial terrestrial stations,  
22                           and makes transmissions under a statutory li-  
23                           cense of programming transmitted over-the-air  
24                           by one or more such commercial terrestrial sta-  
25                           tions, the royalty rate to be paid by such entity

1 for such transmissions under this section and  
2 section 112(e) shall include an additional roy-  
3 alty fee determined by multiplying the rate oth-  
4 erwise applicable under this subsection (f) and  
5 section 112(e), regardless of whether such oth-  
6 erwise applicable rate was set by the Copyright  
7 Royalty Judges or an agreement as described in  
8 paragraph (5), by a factor to be determined by  
9 the Copyright Royalty Judges.

10 “(ii) DETERMINATION OF FACTOR.—The  
11 Copyright Royalty Judges shall establish the  
12 factor described in clause (i) so that the addi-  
13 tional royalty fee most clearly represents the  
14 royalty that would have been negotiated in the  
15 marketplace between a willing buyer and a will-  
16 ing seller for the public performance of sound  
17 recordings by means of over-the-air non-  
18 subscription broadcast transmissions by affili-  
19 ated terrestrial broadcast radio stations, if a  
20 sound recording copyright owner had the exclu-  
21 sive right to make and authorize such trans-  
22 missions of the relevant recordings.”.

23 (b) TIMING OF PROCEEDINGS.—Section 804(b)(3) of  
24 title 17, United States Code, is amended by adding at the  
25 end the following:

1           “(D) As to any applicable section 112(e)  
2           or 114 rate period for which royalty rates and  
3           terms have already been set as of the date of  
4           enactment of the Interim FIRST Act of 2012,  
5           a proceeding under this chapter shall be com-  
6           menced as soon as practicable after such date  
7           of enactment to determine the factor described  
8           in section 114(f)(2)(D) for the portion of such  
9           period between the date of enactment of the In-  
10          terim FIRST Act of 2012 and the expiration of  
11          such period. For any other section 112(e) or  
12          114 rate period, such factor shall be determined  
13          in the proceedings otherwise contemplated by  
14          this paragraph.”.

15 **SEC. 4. PROTECTION OF SONGWRITERS AND COPYRIGHT**  
16 **OWNERS OF MUSICAL WORKS.**

17          (a) **NO ADVERSE EFFECT ON LICENSE FEES AND**  
18 **ROYALTIES FOR UNDERLYING MUSICAL WORKS.**—Sec-  
19 tion 114(i) of title 17, United States Code, is amended  
20 to read as follows:

21          “(i) **NO ADVERSE EFFECT ON LICENSE FEES AND**  
22 **ROYALTIES FOR UNDERLYING MUSICAL WORKS.**—Li-  
23 cense fees and royalties payable for the public performance  
24 of sound recordings under section 106(6), including li-  
25 cense fees and royalties payable pursuant to section

1 114(f)(2)(D), shall not be cited, taken into account, or  
2 otherwise used in any administrative, judicial, or other  
3 governmental proceeding, or otherwise, to set or adjust the  
4 license fees and royalties payable to copyright owners of  
5 musical works or their representatives for the public per-  
6 formance of their works, for the purpose of diminishing  
7 or adversely affecting such license fees and royalties. Li-  
8 cense fees and royalties payable to copyright owners of  
9 musical works or their representatives for the public per-  
10 formance of their works shall not be diminished or ad-  
11 versely affected in any respect as a result of the rights  
12 granted by section 106(6) and on account of license fees  
13 and royalties payable for the public performance of sound  
14 recordings.”.

15 (b) PUBLIC PERFORMANCE RIGHTS AND LICENSE  
16 FEES AND ROYALTIES.—Nothing in this Act or the  
17 amendments made by this Act shall be construed to dimin-  
18 ish or adversely affect in any respect the public perform-  
19 ance rights of, or license fees and royalties payable to,  
20 songwriters or copyright owners of musical works.

21 **SEC. 5. ESTABLISHING MARKET-BASED, TECHNOLOGY NEU-**  
22 **TRAL RATE STANDARD PARITY FOR ALL**  
23 **SERVICES.**

24 (a) IN GENERAL.—Section 114(f)(1)(B) of title 17,  
25 United States Code, is amended by striking the second

1 sentence and inserting “In establishing rates and terms  
2 for preexisting subscription services and preexisting sat-  
3 ellite digital audio radio services, the Copyright Royalty  
4 Judges shall apply the same standards as applicable under  
5 paragraph (2)(B).”.

6 (b) TECHNICAL AND CONFORMING AMENDMENT.—  
7 Section 801(b)(1) of title 17, United States Code, is  
8 amended by striking “sections 114(f)(1)(B), 115, and”  
9 and inserting “sections 115 and”.