

.....  
(Original Signature of Member)

111TH CONGRESS  
1ST SESSION

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

To provide parity in radio performance rights under title 17, United States Code, and for other purposes.

\_\_\_\_\_  
IN THE HOUSE OF REPRESENTATIVES

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

\_\_\_\_\_  
**A BILL**

To provide parity in radio performance rights under title 17, United States Code, 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 “Performance Rights  
5 Act”.

1 **SEC. 2. EQUITABLE TREATMENT FOR TERRESTRIAL**  
2 **BROADCASTS.**

3 (a) PERFORMANCE RIGHT APPLICABLE TO RADIO  
4 TRANSMISSIONS GENERALLY.—Section 106(6) of title 17,  
5 United States Code, is amended to read as follows:

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

9 (b) INCLUSION OF TERRESTRIAL BROADCASTS IN  
10 EXISTING PERFORMANCE RIGHT.—Section 114(d)(1) of  
11 title 17, United States Code, is amended—

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

14 (2) by striking subparagraph (A).

15 (c) INCLUSION OF TERRESTRIAL BROADCASTS IN  
16 EXISTING STATUTORY LICENSE SYSTEM.—Section  
17 114(j)(6) of title 17, United States Code, is amended by  
18 striking “digital”.

19 **SEC. 3. SPECIAL TREATMENT FOR SMALL, NONCOMMER-**  
20 **CIAL, EDUCATIONAL, AND RELIGIOUS STA-**  
21 **TIONS AND CERTAIN USES.**

22 (a) SMALL, NONCOMMERCIAL, EDUCATIONAL, AND  
23 RELIGIOUS RADIO STATIONS.—

24 (1) IN GENERAL.—Section 114(f)(2) of title 17,  
25 United States Code, is amended by adding at the  
26 end the following:

1           “(D) Notwithstanding the provisions of sub-  
2           paragraphs (A) through (C), each individual terres-  
3           trial broadcast station that has gross revenues in  
4           any calendar year of less than \$1,250,000 may elect  
5           to pay for its over-the-air nonsubscription broadcast  
6           transmissions a royalty fee of \$5,000 per year, in  
7           lieu of the amount such station would otherwise be  
8           required to pay under this paragraph. Such royalty  
9           fee shall not be taken into account in determining  
10          royalty rates in a proceeding under chapter 8, or in  
11          any other administrative, judicial, or other Federal  
12          Government proceeding.

13          “(E) Notwithstanding the provisions of sub-  
14          paragraphs (A) through (C), each individual terres-  
15          trial broadcast station that is a public broadcasting  
16          entity as defined in section 118(f) may elect to pay  
17          for its over-the-air nonsubscription broadcast trans-  
18          missions a royalty fee of \$1,000 per year, in lieu of  
19          the amount such station would otherwise be required  
20          to pay under this paragraph. Such royalty fee shall  
21          not be taken into account in determining royalty  
22          rates in a proceeding under chapter 8, or in any  
23          other administrative, judicial, or other Federal Gov-  
24          ernment proceeding.”.

1           (2) PAYMENT DATE.—A payment under sub-  
2       paragraph (D) or (E) of section 114(f)(2) of title  
3       17, United States Code, as added by paragraph (1),  
4       shall not be due until the due date of the first roy-  
5       alty payments for nonsubscription broadcast trans-  
6       missions that are determined, after the date of the  
7       enactment of this Act, under such section 114(f)(2)  
8       by reason of the amendment made by section 2(b)(2)  
9       of this Act.

10       (b) TRANSMISSION OF RELIGIOUS SERVICES; INCI-  
11       DENTAL USES OF MUSIC.—Section 114(d)(1) of title 17,  
12       United States Code, as amended by section 2(b), is further  
13       amended by inserting the following before subparagraph  
14       (B):

15                   “(A) an eligible nonsubscription trans-  
16       mission of—

17                           “(i) services at a place of worship or  
18       other religious assembly; and

19                           “(ii) an incidental use of a musical  
20       sound recording;”.

21       **SEC. 4. AVAILABILITY OF PER PROGRAM LICENSE.**

22       Section 114(f)(2)(B) of title 17, United States Code,  
23       is amended by inserting after the second sentence the fol-  
24       lowing new sentence: “Such rates and terms shall include

1 a per program license option for terrestrial broadcast sta-  
2 tions that make limited feature uses of sound recordings.”

3 **SEC. 5. NO HARMFUL EFFECTS ON SONGWRITERS.**

4 (a) NO ADVERSE AFFECT ON LICENSE FEES FOR  
5 UNDERLYING MUSICAL WORKS; NECESSITY FOR OTHER  
6 LICENSES.—

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

9 “(i) NO ADVERSE AFFECT ON LICENSE FEES FOR  
10 UNDERLYING MUSICAL WORKS; NECESSITY FOR OTHER  
11 LICENSES.—

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

1        fected in any respect as a result of the rights grant-  
2        ed by section 106(6).

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

15               (2) CONFORMING AMENDMENT.—Section  
16       114(d)(3)(C) of title 17, United States Code, is  
17       hereby repealed.

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

23       (c) PRESERVATION OF ROYALTIES ON UNDERLYING  
24       WORKS PUBLICLY PERFORMED BY TERRESTRIAL BROAD-  
25       CAST STATIONS.—Section 114(f) of title 17, United States

1 Code, is amended by adding at the end the following new  
2 paragraph:

3           “(6) Notwithstanding any other provision of  
4 this section, under no circumstances shall the rates  
5 established by the Copyright Royalty Judges for the  
6 public performance of sound recordings be cited,  
7 taken into account, or otherwise used in any admin-  
8 istrative, judicial, or other governmental forum or  
9 proceeding, or otherwise, to reduce or adversely af-  
10 fect the license fees payable to copyright owners of  
11 musical works or their representatives for the public  
12 performance of their works by terrestrial broadcast  
13 stations, and such license fees for the public per-  
14 formance of musical works shall be independent of  
15 license fees paid for the public performance of sound  
16 recordings.”.

17 **SEC. 6. PAYMENT OF CERTAIN ROYALTIES.**

18 Section 114(g) of title 17, United States Code, is  
19 amended—

20           (1) by amending paragraph (1) to read as fol-  
21 lows:

22           “(1) Except in the case of a transmission to  
23 which paragraph (5) applies or a transmission li-  
24 censed under a statutory license in accordance with

1 subsection (f) of this section, the following shall  
2 apply:

3 “(A) A featured recording artist who per-  
4 forms on a sound recording that has been li-  
5 censed for public performance by means of a  
6 digital audio transmission shall be entitled to  
7 receive payments from the copyright owner of  
8 the sound recording in accordance with the  
9 terms of the artist’s contract.

10 “(B)(i) In a case in which the copyright  
11 owner of a sound recording has licensed the  
12 sound recording for the public performance of  
13 the sound recording by means of a digital audio  
14 transmission, the copyright owner shall deposit  
15 1 percent of the receipts from the license with  
16 the American Federation of Musicians and  
17 American Federation of Television and Radio  
18 Artists Intellectual Property Rights Distribu-  
19 tion Fund (or any successor entity) (in this  
20 subparagraph referred to as the ‘Fund’) to be  
21 distributed to nonfeatured performers who have  
22 performed on sound recordings. The sound re-  
23 cording copyright owner shall make such depos-  
24 its for receipts received during the first half of  
25 a calendar year by August 15 and for receipts



1 received during the second half of a calendar  
2 year by February 15 of the following calendar  
3 year.

4 “(ii) A sound recording copyright owner  
5 shall include with deposits under clause (i) in-  
6 formation regarding the amount of such depos-  
7 its attributable to each licensee and, subject to  
8 obtaining consent, if necessary, from such li-  
9 censee, for each sound recording performed by  
10 means of a digital audio transmission by such  
11 licensee during the applicable time period, and  
12 to the extent included in the accounting reports  
13 provided by the licensee to the sound recording  
14 copyright owner—

15 “(I) the identity of the artist;

16 “(II) the International Standard Re-  
17 cording Code of the sound recording;

18 “(III) the title of the sound recording;

19 “(IV) the number of times the sound  
20 recording was transmitted; and

21 “(V) the total amount of receipts col-  
22 lected from that licensee.

23 “(iii) The Fund shall make the distribu-  
24 tions described in clause (i) as follows: 50 per-  
25 cent shall be paid to nonfeatured musicians

1 (whether or not members of the American Fed-  
2 eration of Musicians) and 50 percent shall be  
3 paid to nonfeatured vocalists (whether or not  
4 members of the American Federation of Tele-  
5 vision and Radio Artists). The Fund may, prior  
6 to making such distributions, deduct the rea-  
7 sonable costs related to making such distribu-  
8 tions.

9 “(iv) The sound recording copyright owner  
10 shall not be required to provide any additional  
11 information to the Fund other than what is re-  
12 quired under this subparagraph. Sound record-  
13 ing copyright owners shall use reasonable good  
14 faith efforts to include in all relevant licenses a  
15 requirement to report the information identified  
16 in subclauses (I) through (V) of clause (ii).  
17 Amounts required under clause (i) that are not  
18 paid by the date specified in such clause shall  
19 be subject to interest at the rate of 6 percent  
20 per annum for each day of nonpayment after  
21 the date the payment was due.”; and

22 (2) by adding at the end the following new  
23 paragraph:

24 “(5) Notwithstanding paragraph (1), to the ex-  
25 tent that a license granted by the copyright owner

1 of a sound recording to a terrestrial broadcast sta-  
2 tion extends to such station's nonsubscription broad-  
3 cast transmissions otherwise licensable under a stat-  
4 utory license in accordance with subsection (f), the  
5 station shall pay to the agent designated to dis-  
6 tribute statutory licensing receipts from the licensing  
7 of transmissions in accordance with subsection (f),  
8 50 percent of the total royalties that the station is  
9 required to pay for such transmissions under the ap-  
10 plicable license agreement. That agent shall dis-  
11 tribute such payments in proportion to the distribu-  
12 tions provided in subparagraphs (B) through (D) of  
13 paragraph (2), and such payments shall be the sole  
14 payments to which featured and nonfeatured artists  
15 are entitled by virtue of such transmissions under  
16 the direct license with that station.”.