

# Union Calendar No. 509

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

# H. R. 4130

[Report No. 117-693]

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

JUNE 24, 2021

Mr. DEUTCH (for himself, Mr. ISSA, Mr. NADLER, Mr. MCCLINTOCK, Ms. BASS, Mrs. HARSHBARGER, and Ms. CHU) introduced the following bill; which was referred to the Committee on the Judiciary

DECEMBER 30, 2022

Additional sponsors: Mr. SUOZZI, Mr. SHERMAN, Mr. SCHIFF, Mr. COOPER, Mr. HIGGINS of New York, Mr. THOMPSON of Mississippi, Mr. MCCAUL, Mr. LIEU, Ms. WASSERMAN SCHULTZ, Mr. GREEN of Tennessee, Mr. RASKIN, Mr. HUFFMAN, Ms. JAYAPAL, Mr. COHEN, Mr. CORREA, Ms. BROWNLEY, Mr. ESPAILLAT, Mr. NORCROSS, Mr. GOMEZ, Mrs. MCBATH, Mr. RUSH, Mr. MEEKS, Ms. TLAIB, Mr. BOWMAN, Mr. EVANS, Mr. SIRES, Ms. SÁNCHEZ, Mr. DOGGETT, Mr. CARTER of Louisiana, and Ms. BROWN of Ohio

DECEMBER 30, 2022

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on June 24, 2021]

# **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 *“American Music Fairness Act of 2022”.*

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. Special protection for small broadcasters.*

*Sec. 5. Distribution of certain royalties.*

*Sec. 6. No harmful effects on songwriters.*

*Sec. 7. Value of promotion taken into account.*

8 **SEC. 2. EQUITABLE TREATMENT FOR TERRESTRIAL BROAD-**

9 **CASTS AND INTERNET SERVICES.**

10 (a) *PERFORMANCE RIGHT APPLICABLE TO AUDIO*  
 11 *TRANSMISSIONS GENERALLY.*—*Paragraph (6) of section*  
 12 *106 of title 17, United States Code, is amended to read as*  
 13 *follows:*

14 “(6) *in the case of sound recordings, to perform*  
 15 *the copyrighted work publicly by means of an audio*  
 16 *transmission.”.*

17 (b) *INCLUSION OF TERRESTRIAL BROADCASTS IN EX-*  
 18 *ISTING PERFORMANCE RIGHT AND STATUTORY LICENSE.*—  
 19 *Section 114(d)(1) of title 17, United States Code, is amend-*  
 20 *ed—*

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

1           (2) *by striking subparagraph (A);*

2           (3) *by redesignating subparagraphs (B) and (C)*

3 *as (A) and (B), respectively; and*

4           (4) *in subparagraph (A), as redesignated by*

5 *paragraph (3), by striking “nonsubscription” each*

6 *place such term appears and inserting “licensed non-*

7 *subscription”.*

8       (c) *TECHNICAL AND CONFORMING AMENDMENTS.—*

9           (1) *DEFINITION.—Section 101 of title 17, United*

10 *States Code, is amended by inserting after the defini-*

11 *tion of “architectural work” the following:*

12       *“An “audio transmission” is a transmission of a*

13 *sound recording, whether in a digital, analog, or other for-*

14 *mat. This term does not include the transmission of any*

15 *audiovisual work.”.*

16           (2) *CONFORMING REMOVAL OF DIGITAL.—Title*

17 *17, United States Code, is amended—*

18           (A) *in section 112(e)(8), by striking “a dig-*

19 *ital audio transmission” and inserting “an*

20 *audio transmission”;*

21           (B) *in section 114—*

22           (i) *in subsection (d)—*

23           (I) *in paragraph (2)—*

24           (aa) *in the matter preceding*

25 *subparagraph (A), by striking*

1                   *“subscription digital” and insert-*  
2                   *ing “subscription”; and*

3                   *(bb) in subparagraph*  
4                   *(C)(viii), by striking “digital sig-*  
5                   *nal” and inserting “signal”; and*  
6                   *(II) in paragraph (4)—*

7                   *(aa) in subparagraph (A), by*  
8                   *striking “a digital audio trans-*  
9                   *mission” and inserting “an audio*  
10                   *transmission”; and*

11                   *(bb) in subparagraph (B)(i),*  
12                   *by striking “a digital audio*  
13                   *transmission” and inserting “an*  
14                   *audio transmission”;*

15                   *(ii) in subsection (g)(2)(A), by striking*  
16                   *“a digital” and inserting “an”; and*

17                   *(iii) in subsection (j)—*

18                   *(I) in paragraph (6)—*

19                   *(aa) by striking “digital”;*  
20                   *and*

21                   *(bb) by striking “retrans-*  
22                   *missions of broadcast trans-*  
23                   *missions” and inserting “broad-*  
24                   *cast transmissions and retrans-*

1                   missions of broadcast trans-  
2                   missions”; and

3                   (II) in paragraph (8), by striking  
4                   “subscription digital” and inserting  
5                   “subscription”; and

6                   (C) in section 1401—

7                   (i) in subsection (b), by striking “a  
8                   digital audio” and inserting “an audio”;  
9                   and

10                  (ii) in subsection (d)—

11                   (I) in paragraph (1), by striking  
12                   “a digital audio” and inserting “an  
13                   audio”;

14                   (II) in paragraph (2)(A), by  
15                   striking “a digital audio” and insert-  
16                   ing “an audio”; and

17                   (III) in paragraph (4)(A), by  
18                   striking “a digital audio” and insert-  
19                   ing “an audio”.

20 **SEC. 3. TIMING OF PROCEEDINGS UNDER SECTIONS 112(e)**

21 **AND 114(f).**

22                   Paragraph (3) of section 804(b) of title 17, United  
23 States Code, is amended by adding at the end the following  
24 new subparagraph:

1           “(D) A proceeding under this chapter shall  
2           be commenced as soon as practicable after the  
3           date of the enactment of this subparagraph to de-  
4           termine royalty rates and terms for nonsubscrip-  
5           tion broadcast transmissions, to be effective for  
6           the period beginning on such date of enactment,  
7           and ending on December 31, 2028. Any payment  
8           due under section 114(f)(1)(D) shall not be due  
9           until the due date of the first royalty payments  
10          for nonsubscription broadcast transmissions that  
11          are determined, after the date of the enactment  
12          of this subparagraph, by the Copyright Royalty  
13          Judges. Thereafter, such proceeding shall be re-  
14          peated in each subsequent fifth calendar year.”.

15 **SEC. 4. SPECIAL PROTECTION FOR SMALL BROADCASTERS.**

16          (a) *SPECIFIED ROYALTY FEES.*—Section 114(f)(1) of  
17          title 17, United States Code, is amended by inserting at  
18          the end the following new subparagraph:

19                 “(D)(i) Notwithstanding the provisions of  
20                 subparagraphs (A) through (C), the royalty rate  
21                 shall be as follows for nonsubscription broadcast  
22                 transmissions by each individual terrestrial  
23                 broadcast station licensed as such by the Federal  
24                 Communications Commission that satisfies the  
25                 conditions in clause (ii)—

1           “(I) \$10 per calendar year, in the case  
2           of nonsubscription broadcast transmissions  
3           by a broadcast station that generated rev-  
4           enue in the immediately preceding calendar  
5           year of less than \$100,000;

6           “(II) \$100 per calendar year, in the  
7           case of nonsubscription broadcast trans-  
8           missions by a broadcast station that is a  
9           public broadcasting entity as defined in sec-  
10          tion 118(f) and generated revenue in the  
11          immediately preceding calendar year of  
12          \$100,000 or more, but less than \$1,500,000;  
13          and

14          “(III) \$500 per calendar year, in the  
15          case of nonsubscription broadcast trans-  
16          missions by a broadcast station that is not  
17          a public broadcasting entity as defined in  
18          section 118(f) and generated revenue in the  
19          immediately preceding calendar year of  
20          \$100,000 or more, but less than \$1,500,000.

21          “(i) An individual terrestrial broadcast  
22          station licensed as such by the Federal Commu-  
23          nications Commission is eligible for a royalty  
24          rate set forth in clause (i) if—



1           “(I) the revenue from the operation of  
2           that individual station was less than  
3           \$1,500,000 during the immediately pre-  
4           ceding calendar year;

5           “(II) the aggregate revenue of the  
6           owner and operator of the broadcast station  
7           and any person directly or indirectly con-  
8           trolling, controlled by, or under common  
9           control with such owner or operator, from  
10          any source, was less than \$10,000,000 dur-  
11          ing the immediately preceding calendar  
12          year; and

13          “(III) the owner or operator of the  
14          broadcast station provides to the nonprofit  
15          collective designated by the Copyright Roy-  
16          alty Judges to distribute receipts from the  
17          licensing of transmissions in accordance  
18          with subsection (f), by no later than Janu-  
19          ary 31 of the relevant calendar year, a  
20          written and signed certification of the sta-  
21          tion’s eligibility under this clause and the  
22          applicable subclause of clause (i), in accord-  
23          ance with requirements the Copyright Roy-  
24          alty Judges shall prescribe by regulation.

25          “(iii) For purposes of clauses (i) and (ii)—

1           “(I) revenue shall be calculated in ac-  
2           cordance with generally accepted accounting  
3           principles;

4           “(II) revenue generated by a terrestrial  
5           broadcast station shall include all revenue  
6           from the operation of the station, from any  
7           source; and

8           “(III) in the case of affiliated broad-  
9           cast stations, revenue shall be allocated rea-  
10          sonably to individual stations associated  
11          with the revenue.

12          “(iv) The royalty rates specified in clause  
13          (i) shall not be admissible as evidence or other-  
14          wise taken into account in determining royalty  
15          rates in a proceeding under chapter 8, or in any  
16          other administrative, judicial, or other Federal  
17          Government proceeding involving the setting or  
18          adjustment of the royalties payable for the public  
19          performance or reproduction in ephemeral  
20          phonorecords or copies of sound recordings, the  
21          determination of terms or conditions related  
22          thereto, or the establishment of notice or record-  
23          keeping requirements.”.

24          (b) *TECHNICAL CORRECTION.*—Section 118(f) of title  
25          17, *United States Code*, is amended by striking “section 397

1 of title 47” and inserting “section 397 of the Communica-  
2 tions Act of 1934 (47 U.S.C. 397)”.

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

4 Section 114(g) of title 17, United States Code, is  
5 amended—

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

9 (2) by redesignating paragraphs (5), (6), and (7)  
10 as (6), (7), and (8), respectively; and

11 (3) by inserting after paragraph (4) the fol-  
12 lowing new paragraph:

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

1        *section (f). That collective shall distribute such pay-*  
2        *ments in proportion to the distributions provided in*  
3        *subparagraphs (B) through (D) of paragraph (2), and*  
4        *such payments shall be the only payments to which*  
5        *featured and nonfeatured artists are entitled by virtue*  
6        *of such transmissions under the direct license with*  
7        *such entity.”.*

8        **SEC. 6. NO HARMFUL EFFECTS ON SONGWRITERS.**

9        *Nothing in this Act, or the amendments made by this*  
10       *Act, shall adversely affect in any respect the public perform-*  
11       *ance rights of or royalties payable to songwriters or copy-*  
12       *right owners of musical works.*

13       **SEC. 7. VALUE OF PROMOTION TAKEN INTO ACCOUNT.**

14       *Pursuant to section 114(f)(1)(B) of title 17, United*  
15       *States Code, in determining rates and terms for terrestrial*  
16       *broadcast radio stations under this Act, and the amend-*  
17       *ments made by this Act, the Copyright Royalty Judges shall*  
18       *base their decision on economic, competitive, and program-*  
19       *ming information presented by the parties, including*  
20       *whether use of the station’s service may substitute for or*  
21       *may promote the sales of phonorecords or otherwise may*  
22       *interfere with or may enhance the sound recording copy-*  
23       *right owner’s other streams of revenue from the copyright*  
24       *owner’s sound recordings.*



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2<sup>D</sup> SESSION

**H. R. 4130**

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**A BILL**

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