

Calendar No. 181

111TH CONGRESS
1ST SESSION**S. 379**

To provide fair compensation to artists for use of their sound recordings.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 4, 2009

Mr. LEAHY (for himself, Mr. HATCH, Mrs. FEINSTEIN, Mr. CORKER, Mrs. BOXER, Mr. ALEXANDER, and Mr. SCHUMER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

OCTOBER 15, 2009

Reported by Mr. LEAHY, with amendments

[Omit the part struck through and insert the part printed in *italic*]

A BILL

To provide fair compensation to artists for use of their
sound recordings.

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 ESTABLISHING EQUITABLE***
 3 ***TREATMENT FOR TERRESTRIAL, CABLE, SAT-***
 4 ***ELLITE, AND INTERNET SERVICES.***

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

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

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

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

16 (2) by striking subparagraph (A).

17 (c) **INCLUSION OF TERRESTRIAL BROADCASTS IN**
 18 **EXISTING STATUTORY LICENSE SYSTEM.**—Section
 19 114(j)(6) of title 17, United States Code, is amended by
 20 striking “digital”.

21 (d) **ELIMINATING REGULATORY BURDENS FOR TER-**
 22 **RESTRIAL BROADCAST STATIONS.**—Section 114(d)(2) of
 23 title 17, United States Code, is amended in the matter
 24 preceding subparagraph (A) by striking “subsection (f) if”
 25 and inserting “subsection (f) if, other than for a non-
 26 subscription and noninteractive broadcast transmission,”.

1 (e) *ENSURING PLATFORM PARITY*.—Section 114(f) of
2 *title 17, United States Code, is amended—*

3 (1) *by striking paragraph (1);*

4 (2) *by redesignating paragraphs (2), (3), (4),*
5 *and (5) as paragraphs (1), (2), (3), and (4), respec-*
6 *tively; and*

7 (3) *in paragraph (1), as redesignated—*

8 (A) *in subparagraph (A), by striking*
9 *“under chapter 8” and all that follows through*
10 *the end of the third sentence and inserting*
11 *“under chapter 8 shall determine reasonable*
12 *rates and terms of royalty payments for trans-*
13 *missions subject to statutory licensing under sub-*
14 *section (d)(2) during 5-year periods beginning*
15 *on January 1 of the second year following the*
16 *year in which the proceedings are to be com-*
17 *menced, except in the case of a different transi-*
18 *tional period provided under section 6(b)(3) of*
19 *the Copyright Royalty and Distribution Reform*
20 *Act of 2004, or such other period as the parties*
21 *may agree.”;*

22 (B) *in subparagraph (B)—*

23 (i) *in the second sentence, by striking*
24 *“eligible nonsubscription transmission”;*
25 *and*

1 (ii) in the third sentence, by striking
2 “eligible nonsubscription services and new
3 subscription” and all that follows through
4 “subparagraph (A)” and inserting “services,
5 in addition to the objectives set forth in sub-
6 paragraphs (A), (B), and (C) of section
7 801(b)(1), the Copyright Royalty Judges
8 may consider the rates and terms for com-
9 parable types of services and comparable
10 circumstances under voluntary license
11 agreements. Notwithstanding section
12 801(b)(1), the provisions of section
13 801(b)(1)(D) shall not be taken into account
14 by the Copyright Royalty Judges in any
15 proceeding under this section”; and

16 (C) by striking subparagraph (C) and in-
17 serting the following:

18 “(C) The procedures under subparagraphs
19 (A) and (B) shall also be initiated pursuant to
20 a petition filed by any copyright owner of sound
21 recordings or any transmitting entity indicating
22 that a new type of service on which sound re-
23 cordings are performed is or is about to become
24 operational, for the purpose of determining rea-
25 sonable terms and rates of royalty payments

1 with respect to such new type of service for the
2 period beginning with the inception of such new
3 type of service and ending on the date on which
4 the royalty rates and terms for preexisting serv-
5 ices most recently determined under subpara-
6 graph (A) or (B) and chapter 8 expire, or such
7 other period as the parties may agree.”.

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

9 (1) *SECTION 114(F).*—Section 114(f) of title 17,
10 United States Code (as amended by subsection (e)), is
11 further amended—

12 (A) in paragraph (1)(B), in the first sen-
13 tence, by striking “paragraph (3)” and inserting
14 “paragraph (2)”; and

15 (B) in paragraph (4)(C), by striking
16 “under paragraph (4)” and inserting “under
17 paragraph (3)”.

18 (2) *SECTION 114(J).*—Section 114(j)(6) of title
19 17, United States Code, is amended by striking “re-
20 transmissions of broadcast transmissions” and insert-
21 ing “broadcast transmissions and retransmissions of
22 broadcast transmissions”.

23 (3) *SECTION 804.*—Section 804(b)(3)(C) of title
24 17, United States Code, is amended—

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

3 (B) in clause (iii)(II), by striking
4 “114(f)(4)(B)(ii)” and inserting
5 “114(f)(3)(B)(ii)”; and

6 (C) in clause (iv), by striking “or
7 114(f)(2)(C), as the case may be”.

8 **SEC. 3. SPECIAL TREATMENT FOR SMALL, NONCOMMER-**
9 **CIAL, EDUCATIONAL, AND RELIGIOUS STA-**
10 **TIONS AND CERTAIN USES.**

11 (a) ~~SMALL, NONCOMMERCIAL, EDUCATIONAL, AND~~
12 ~~RELIGIOUS RADIO STATIONS.—~~

13 (1) ~~IN GENERAL.—~~Section 114(f)(2) of title 17,
14 United States Code, is amended by adding at the
15 end the following:

16 “~~(D)~~ Notwithstanding the provisions of sub-
17 paragraphs ~~(A)~~ through ~~(C)~~, each individual terres-
18 trial broadcast station that has gross revenues in
19 any calendar year of less than \$1,250,000 may elect
20 to pay for its over-the-air nonsubscription broadcast
21 transmissions a royalty fee of \$5,000 per year, in
22 lieu of the amount such station would otherwise be
23 required to pay under this paragraph. Such royalty
24 fee shall not be taken into account in determining
25 royalty rates in a proceeding under chapter 8, or in

1 any other administrative, judicial, or other Federal
2 Government proceeding.

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

15 **SEC. 3. SPECIAL TREATMENT FOR SMALL, NONCOMMERCIAL,**
16 **EDUCATIONAL, AND RELIGIOUS STA-**
17 **TIONS AND CERTAIN USES.**

18 (a) *SMALL, NONCOMMERCIAL, EDUCATIONAL, AND RE-*
19 *LIGIOUS RADIO STATIONS.—*

20 (1) *IN GENERAL.—Section 114(f)(1) of title 17,*
21 *United States Code, as redesignated by section 2(e),*
22 *is amended by adding at the end the following:*

23 “(D)(i) Notwithstanding the provisions of
24 subparagraphs (A) through (C), each individual
25 terrestrial broadcast station that has gross reve-

1 *nues within a range specified in clause (ii) may*
2 *elect to pay for its over-the-air nonsubscription*
3 *broadcast transmissions a royalty fee as pro-*
4 *vided in clause (ii), in lieu of the amount such*
5 *station would otherwise be required to pay under*
6 *this paragraph. Such royalty fee shall not be*
7 *taken into account in determining royalty rates*
8 *in a proceeding under chapter 8, or in any other*
9 *administrative, judicial, or other Federal Gov-*
10 *ernment proceeding.*

11 *“(i) As provided in clause (i), each indi-*
12 *vidual terrestrial broadcast station that has gross*
13 *revenues in any calendar year of—*

14 *“(I) less than \$50,000 may elect to pay*
15 *for its over-the-air nonsubscription broad-*
16 *cast transmissions a royalty fee of \$100 per*
17 *year;*

18 *“(II) at least \$50,000 but less than*
19 *\$100,000 may elect to pay for its over-the-*
20 *air nonsubscription broadcast transmissions*
21 *a royalty fee of \$500 per year;*

22 *“(III) at least \$100,000 but less than*
23 *\$500,000 may elect to pay for its over-the-*
24 *air nonsubscription broadcast transmissions*
25 *a royalty fee of \$2,500 per year; and*

1 “(IV) at least \$500,000 but less than
2 \$1,250,000 may elect to pay for its over-the-
3 air nonsubscription broadcast transmissions
4 a royalty fee of \$5,000 per year.

5 “(E)(i) Notwithstanding the provisions of
6 subparagraphs (A) through (C), each individual
7 terrestrial broadcast station that is a public
8 broadcasting entity as defined in section 118(f)
9 and that has gross revenues within a range spec-
10 ified in clause (ii) may elect to pay for its over-
11 the-air nonsubscription broadcast transmissions
12 a royalty fee as provided in clause (ii), in lieu
13 of the amount such station would otherwise be
14 required to pay under this paragraph. Such roy-
15 alty fee shall not be taken into account in deter-
16 mining royalty rates in a proceeding under
17 chapter 8, or in any other administrative, judi-
18 cial, or other Federal Government proceeding.

19 “(ii) As provided in clause (i), each indi-
20 vidual terrestrial broadcast station that is a
21 public broadcasting entity as defined in section
22 118(f) and has gross receipts in any calendar
23 year of—

24 “(I) less than \$50,000 may elect to pay
25 for its over-the-air nonsubscription broad-

1 *cast transmissions a royalty fee of \$100 per*
2 *year;*

3 *“(II) at least \$50,000 but less than*
4 *\$100,000 may elect to pay for its over-the-*
5 *air nonsubscription broadcast transmissions*
6 *a royalty fee of \$500 per year; and*

7 *“(III) \$100,000 or more may elect to*
8 *pay for its over-the-air nonsubscription*
9 *broadcast transmissions a royalty fee of*
10 *\$1,000 per year.*

11 *“(F) Notwithstanding the provisions of sub-*
12 *paragraphs (A) through (E), each individual ter-*
13 *restrial broadcast station that had total gross*
14 *revenues during the 4 full calendar quarters im-*
15 *mediately preceding the date of enactment of the*
16 *Performance Rights Act of—*

17 *“(i) less than \$5,000,000 shall not be*
18 *required to pay a royalty under this para-*
19 *graph during the 3 years immediately fol-*
20 *lowing the date of enactment of the Per-*
21 *formance Rights Act; and*

22 *“(ii) \$5,000,000 or more shall not be*
23 *required to pay a royalty under this para-*
24 *graph during the 1 year immediately fol-*

1 *lowing the date of enactment of the Per-*
 2 *formance Rights Act.*

3 *The provisions of this subparagraph shall not be*
 4 *taken into account in determining royalty rates*
 5 *in a proceeding under chapter 8, or in any other*
 6 *administrative, judicial, or other Federal Gov-*
 7 *ernment proceeding.”.*

8 (2) PAYMENT DATE.—A payment under sub-
 9 paragraph (D) or (E) of section ~~114(f)(2)~~114(f)(1)
 10 of title 17, United States Code, as added by para-
 11 graph (1), shall not be due until the due date of the
 12 first royalty payments for nonsubscription broadcast
 13 transmissions that are determined, after the date of
 14 the enactment of this Act, under such section
 15 ~~114(f)(2)~~114(f)(1) by reason of the amendment
 16 made by section 2(b)(2) of this Act.

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

22 “(A) an eligible nonsubscription trans-
 23 mission of—

24 “(i) services at a place of worship or
 25 other religious assembly; ~~and~~or

1 “(ii) an incidental use of a musical
2 sound recording;”.

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

4 Section ~~114(f)(2)(B)~~ of title 17, United States
5 Code ~~114(f)(1)(B)~~ of title 17, United States Code, as redesign-
6 *ated by section 2(e)*, is amended by inserting after the
7 second sentence the following new sentence: “Such rates
8 and terms shall include a per program license option for
9 terrestrial broadcast stations that make limited feature
10 uses of sound recordings.”.

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

12 ~~(a) PRESERVATION OF ROYALTIES ON UNDERLYING~~
13 ~~WORKS.—~~Section 114(i) of title 17, United States Code,
14 is amended in the second sentence by striking “It is the
15 intent of Congress that royalties” and inserting “Royalt-
16 ties”.

17 ~~(b) PUBLIC PERFORMANCE RIGHTS AND ROYAL-~~
18 ~~TIES.—~~Nothing in this Act shall adversely affect in any
19 respect the public performance rights of or royalties pay-
20 able to songwriters or copyright owners of musical works.

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

22 ~~(a) NO ADVERSE AFFECT ON LICENSE FEES FOR UN-~~
23 ~~DERLYING MUSICAL WORKS; NECESSITY FOR OTHER LI-~~
24 ~~CENSES.—~~

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

3 “(i) *NO ADVERSE AFFECT ON LICENSE FEES FOR UN-*
4 *DERLYING MUSICAL WORKS; NECESSITY FOR OTHER LI-*
5 *CENSES.*—

6 “(1) *NO ADVERSE AFFECT ON LICENSE FEES FOR*
7 *UNDERLYING MUSICAL WORKS.*—*License fees payable*
8 *for the public performance of sound recordings under*
9 *section 106(6) shall not be cited, taken into account,*
10 *or otherwise used in any administrative, judicial, or*
11 *other governmental forum or proceeding, or otherwise,*
12 *to set or adjust the license fees payable to copyright*
13 *owners of musical works or their representatives for*
14 *the public performance of their works, for the purpose*
15 *of reducing or adversely affecting such license fees. Li-*
16 *cence fees payable to copyright owners for the public*
17 *performance of their musical works shall not be re-*
18 *duced or adversely affected in any respect as a result*
19 *of the rights granted by section 106(6).*

20 “(2) *NECESSITY FOR OTHER LICENSES.*—*Not-*
21 *withstanding the grant by an owner of copyright in*
22 *a sound recording of an exclusive or nonexclusive li-*
23 *cence of the right under section 106(6) to perform the*
24 *work publicly, a licensee of that sound recording may*
25 *not publicly perform such sound recording unless a li-*

1 *cense has been granted for the public performance of*
2 *any copyrighted musical work contained in the sound*
3 *recording. Such license to publicly perform the copy-*
4 *righted musical work may be granted either by a per-*
5 *forming rights society representing the copyright*
6 *owner or by the copyright owner.”.*

7 (2) *CONFORMING AMENDMENT.—Section*
8 *114(d)(3)(C) of title 17, United States Code, is hereby*
9 *repealed.*

10 (b) *PUBLIC PERFORMANCE RIGHTS AND ROYAL-*
11 *TIES.—Nothing in this Act or the amendments made by this*
12 *Act shall adversely affect in any respect the public perform-*
13 *ance rights of or royalties payable to songwriters or copy-*
14 *right owners of musical works.*

15 (c) *PRESERVATION OF ROYALTIES ON UNDERLYING*
16 *WORKS PUBLICLY PERFORMED BY TERRESTRIAL BROAD-*
17 *CAST STATIONS.—Section 114(f) of title 17, United States*
18 *Code, is amended by adding at the end the following new*
19 *paragraph:*

20 “(5) *Notwithstanding any other provision of this*
21 *section, under no circumstances shall the rates estab-*
22 *lished by the Copyright Royalty Judges for the public*
23 *performance of sound recordings be cited, taken into*
24 *account, or otherwise used in any administrative, ju-*
25 *dicial, or other governmental forum or proceeding, or*

1 *otherwise, to reduce or adversely affect the license fees*
2 *payable to copyright owners of musical works or their*
3 *representatives for the public performance of their*
4 *works by terrestrial broadcast stations, and such li-*
5 *cence fees for the public performance of musical works*
6 *shall be independent of license fees paid for the public*
7 *performance of sound recordings.”.*

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

9 *Section 114(g) of title 17, United States Code, is*
10 *amended—*

11 *(1) by amending paragraph (1) to read as fol-*
12 *lows:*

13 *“(1) Except in the case of a transmission to*
14 *which paragraph (5) applies or a transmission li-*
15 *icensed under a statutory license in accordance with*
16 *subsection (f) of this section, the following shall apply:*

17 *“(A) A featured recording artist who per-*
18 *forms on a sound recording that has been li-*
19 *censed for public performance by means of an*
20 *audio transmission shall be entitled to receive*
21 *payments from the copyright owner of the sound*
22 *recording in accordance with the terms of the*
23 *artist’s contract.*

24 *“(B)(i) In a case in which the copyright*
25 *owner of a sound recording has licensed the*

1 *sound recording for the public performance of the*
2 *sound recording by means of an audio trans-*
3 *mission, the copyright owner shall deposit 1 per-*
4 *cent of the receipts from the license with the*
5 *American Federation of Musicians and Amer-*
6 *ican Federation of Television and Radio Artists*
7 *Intellectual Property Rights Distribution Fund*
8 *(or any successor entity) (in this subparagraph*
9 *referred to as the ‘Fund’) to be distributed to*
10 *nonfeatured performers who have performed on*
11 *sound recordings. The sound recording copyright*
12 *owner shall make such deposits for receipts re-*
13 *ceived during the first half of a calendar year by*
14 *August 15 and for receipts received during the*
15 *second half of a calendar year by February 15*
16 *of the following calendar year.*

17 “(i) A sound recording copyright owner
18 shall include with deposits under clause (i) in-
19 formation regarding the amount of such deposits
20 attributable to each licensee and, subject to ob-
21 taining consent, if necessary, from such licensee,
22 for each sound recording performed by means of
23 an audio transmission by such licensee during
24 the applicable time period, and to the extent in-
25 cluded in the accounting reports provided by the

1 *licensee to the sound recording copyright*
2 *owner—*

3 *“(I) the identity of the artist;*

4 *“(II) the International Standard Re-*
5 *coding Code of the sound recording;*

6 *“(III) the title of the sound recording;*

7 *“(IV) the number of times the sound*
8 *recording was transmitted; and*

9 *“(V) the total amount of receipts col-*
10 *lected from that licensee.*

11 *“(iii) The Fund shall make the distribu-*
12 *tions described in clause (i) as follows: 50 per-*
13 *cent shall be paid to nonfeatured musicians*
14 *(whether or not members of the American Fed-*
15 *eration of Musicians) and 50 percent shall be*
16 *paid to nonfeatured vocalists (whether or not*
17 *members of the American Federation of Tele-*
18 *vision and Radio Artists). The Fund may, prior*
19 *to making such distributions, deduct the reason-*
20 *able costs related to making such distributions.*

21 *“(iv) The sound recording copyright owner*
22 *shall not be required to provide any additional*
23 *information to the Fund other than what is re-*
24 *quired under this subparagraph. Sound record-*
25 *ing copyright owners shall use reasonable good*

1 *faith efforts to include in all relevant licenses a*
2 *requirement to report the information identified*
3 *in subclauses (I) through (V) of clause (ii).*
4 *Amounts required under clause (i) that are not*
5 *paid by the date specified in such clause shall be*
6 *subject to interest at the rate of 6 percent per*
7 *annum for each day of nonpayment after the*
8 *date the payment was due.”;*

9 *(2) in paragraph (2)(A), by striking “digital”;*
10 *and*

11 *(3) by adding at the end the following new para-*
12 *graph:*

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 as specified by subsection (d)(2)*
17 *extends to such entity’s transmissions otherwise li-*
18 *censable under a statutory license in accordance with*
19 *subsection (f), such entity shall pay to the agent des-*
20 *ignated to distribute statutory licensing receipts from*
21 *the licensing of transmissions in accordance with sub-*
22 *section (f), 50 percent of the total royalties that such*
23 *entity is required, pursuant to the applicable license*
24 *agreement, to pay for such transmissions otherwise li-*
25 *censable under a statutory license in accordance with*

1 *subsection (f). That agent 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 sole 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. 7. EPHEMERAL RECORDINGS ROYALTY.**

9 *Section 112(e)(4) of title 17, United States Code, is*
10 *amended to read as follows:*

11 *“(4)(A) The schedule of reasonable rates and*
12 *terms determined by the Copyright Royalty Judges*
13 *shall, subject to paragraph (5), be binding on all*
14 *copyright owners of sound recordings and transmit-*
15 *ting organizations entitled to a statutory license*
16 *under this subsection during the 5-year period speci-*
17 *fied in paragraph (3), or such other period as the*
18 *parties may agree. Such rates shall include a min-*
19 *imum fee for each type of service offered by transmit-*
20 *ting organizations.*

21 *“(B) With respect to phonorecords made pursu-*
22 *ant to this subsection to facilitate transmissions of*
23 *public performances under the limitation on exclusive*
24 *rights specified by section 114(d)(1)(C)(iv), the Copy-*
25 *right Royalty Judges shall establish rates that most*

1 *clearly represent the fees that would have been nego-*
2 *tiated in the marketplace between a willing buyer and*
3 *a willing seller. In determining such rates and terms,*
4 *the Copyright Royalty Judges shall base their deci-*
5 *sion on economic, competitive, and programming in-*
6 *formation presented by the parties, including—*

7 *“(i) whether use of the service may sub-*
8 *stitute for or may promote the sales of*
9 *phonorecords or otherwise interferes with or en-*
10 *hances the copyright owner’s traditional streams*
11 *of revenue;*

12 *“(ii) the relative roles of the copyright*
13 *owner and the transmitting organization in the*
14 *copyrighted work and the service made available*
15 *to the public with respect to relative creative con-*
16 *tribution, technological contribution, capital in-*
17 *vestment, cost, and risk; and*

18 *“(iii) rates and terms under voluntary li-*
19 *cence agreements described in paragraphs (2)*
20 *and (3).*

21 *“(C) With respect to phonorecords made pursu-*
22 *ant to this subsection to facilitate transmissions of*
23 *public performances under a statutory license in ac-*
24 *cordance with section 114(f)—*

1 “(i) the Copyright Royalty Judges shall es-
2 tablish rates and terms by application of the ap-
3 plicable standard in section 114(f) covering both
4 the applicable public performances, and the mak-
5 ing of phonorecords pursuant to this subsection
6 solely to facilitate such public performances, to-
7 gether; and

8 “(ii) the royalty payable under this sub-
9 section for the making of phonorecords used by
10 the transmitting organization solely to facilitate
11 transmissions for which it pays royalties estab-
12 lished as provided in clause (i) shall constitute
13 5 percent of such payments.

14 “(D) The Copyright Royalty Judges shall also
15 establish requirements by which copyright owners
16 may receive reasonable notice of the use of their sound
17 recordings under this section, and under which
18 records of such use shall be kept and made available
19 by transmitting organizations entitled to obtain a
20 statutory license under this subsection.”.

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S. 379

A BILL

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OCTOBER 15, 2009

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