

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

# H. R. 5361

To harmonize rate setting standards for copyright licenses under sections 112 and 114 of title 17, United States Code, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

MAY 11, 2006

Mr. BERMAN (for himself and Mrs. BONO) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To harmonize rate setting standards for copyright licenses under sections 112 and 114 of 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 “Platform Equality and  
5 Remedies for Rights Holders in Music Act of 2006” or  
6 the “Perform Act of 2006” .

7       **SEC. 2. RATE SETTING STANDARDS.**

8       (a) **SECTION 112 LICENSES.**—Section 112(e)(4) of  
9 title 17, United States Code, is amended in the third sen-  
10 tence by striking “fees that would have been negotiated

1 in the marketplace between a willing buyer and a willing  
2 seller” and inserting “the fair market value of the rights  
3 licensed under this subsection”.

4 (b) SECTION 114 LICENSES.—Section 114(f) of title  
5 17, United States Code, is amended—

6 (1) by striking paragraph (1);

7 (2) by redesignating paragraphs (2), (3), (4),  
8 and (5) as paragraphs (1), (2), (3), and (4), respec-  
9 tively; and

10 (3) in paragraph (1) (as redesignated under  
11 this subsection)—

12 (A) in subparagraph (A), by striking all  
13 after “Proceedings” and inserting “under chap-  
14 ter 8 shall determine reasonable rates and  
15 terms of royalty payments for eligible trans-  
16 missions during the 5-year period beginning on  
17 January 1 of the second year following the year  
18 in which the proceedings are to be commenced,  
19 and on January 1 of every 5-year period there-  
20 after, except when a different transitional pe-  
21 riod is provided under section 6(b)(3) of the  
22 Copyright Royalty and Distribution Reform Act  
23 of 2004, or such other period as the parties  
24 may agree.”;

25 (B) in subparagraph (B)—

1 (i) in the first sentence, by striking  
2 “affected by this paragraph” and inserting  
3 “under this section”;

4 (ii) in the second sentence, by striking  
5 “nonsubscription”; and

6 (iii) in the third sentence—

7 (I) by striking “transmissions by  
8 eligible nonsubscription services and  
9 new subscription” and inserting “eli-  
10 gible transmission”; and

11 (II) by striking “rates and terms  
12 that would have been negotiated in  
13 the marketplace between a willing  
14 buyer and a willing seller” and insert-  
15 ing “the fair market value of the  
16 rights licensed under this section”;

17 (iv) in the fourth sentence, by striking  
18 “base its” and inserting “base their”;

19 (v) in clause (i), by striking “and”  
20 after the semicolon;

21 (vi) in clause (ii), by striking the pe-  
22 riod and inserting “; and”;

23 (vii) by inserting after clause (ii) the  
24 following:

1           “(iii) the degree to which reasonable  
2           recording affects the potential market for  
3           sound recordings, and the additional fees  
4           that are required to be paid by services for  
5           compensation.”; and

6           (viii) in the matter following clause  
7           (ii), by striking “described in subpara-  
8           graph (A)”;

9           (C) by striking subparagraph (C) and in-  
10          serting the following:

11          “(C) The procedures under subparagraphs (A)  
12          and (B) shall also be initiated pursuant to a petition  
13          filed by any copyright owners of sound recordings or  
14          any transmitting entity indicating that a new type of  
15          service on which sound recordings are performed is  
16          or is about to become operational, for the purpose  
17          of determining reasonable terms and rates of royalty  
18          payments with respect to that new type of service  
19          for the period beginning with the inception of such  
20          new type of service and ending on the date on which  
21          the royalty rates and terms for preexisting subscrip-  
22          tion services, eligible nonsubscription services, or  
23          new subscription services, as the case may be, most  
24          recently determined under subparagraph (A) or (B)

1 and chapter 8 expire, or such other period as the  
2 parties may agree.

3 “(D) In this paragraph, the term ‘eligible trans-  
4 mission’ means—

5 “(i) subscription transmissions by pre-  
6 existing subscription services;

7 “(ii) subscription transmissions by pre-  
8 existing satellite digital audio radio services;

9 “(iii) eligible nonsubscription trans-  
10 missions; and

11 “(iv) transmissions by new subscription  
12 services.”.

13 (c) CONTENT PROTECTION.—Section 114(d)(2) of  
14 title 17, United States Code, is amended—

15 (1) in subparagraph (A)—

16 (A) in clause (ii), by striking “and” after  
17 the semicolon;

18 (B) in clause (iii), by adding “and” after  
19 the semicolon; and

20 (C) by adding after clause (iii) the fol-  
21 lowing:

22 “(iv) the transmitting entity takes no  
23 affirmative steps to authorize, enable,  
24 cause, or induce the making of a copy or  
25 phonorecord by or for the transmission re-

1           cipient and uses technology that is reason-  
2           ably available, technologically feasible, and  
3           economically reasonable to prevent the  
4           making of copies or phonorecords embody-  
5           ing the transmission, in whole or in part,  
6           except for reasonable recording as defined  
7           in subsection (j)(10);”;

8           (2) in subparagraph (C)—

9           (A) by striking clause (vi); and

10           (B) by redesignating clauses (vii) through  
11           (ix) as clauses (vi) through (viii), respectively;  
12           and

13           (3) by adding at the end the following:

14           “For purposes of subparagraph (A)(iv), the mere offering  
15           of a transmission and accompanying metadata does not  
16           in itself enable the making of a copy or phonorecord.  
17           Nothing in subparagraph (A)(iv) shall preclude or prevent  
18           a performing rights society or a mechanical rights organi-  
19           zation, or any entity owned in whole or in part by, or act-  
20           ing on behalf of, such organizations, from monitoring pub-  
21           lic performances or other uses of copyrighted works con-  
22           tained in such transmissions. Any such organization or en-  
23           tity shall be granted a license on either a gratuitous basis  
24           or for a de minimus fee to cover only the reasonable costs  
25           to the licensor of providing the license, and on reasonable,

1 nondiscriminatory terms, to access and retransmit as nec-  
2 essary any content contained in such transmissions pro-  
3 tected by content protection or similar technologies, if  
4 such licenses are for purposes of carrying out the activities  
5 of such organizations or entities in monitoring the public  
6 performance or other uses of copyrighted works, and such  
7 organizations or entities employ reasonable methods to  
8 protect any such content accessed from further distribu-  
9 tion.”.

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

12 (1) by redesignating paragraphs (10) through  
13 (15) as paragraphs (11) through (16), respectively;  
14 and

15 (2) by inserting after paragraph (9) the fol-  
16 lowing:

17 “(10)(A) A ‘reasonable recording’ means the  
18 making of a copy or phonorecord of a performance  
19 licensed under this section for private, noncommer-  
20 cial use if technological measures used by the trans-  
21 mitting entity and incorporated into a recording de-  
22 vice—

23 “(i) permit automated recording or play-  
24 back based on specific programs, time periods,  
25 or channels as selected by or for the user;

1           “(ii) do not permit automated recording or  
2           playback based on specific sound recordings, al-  
3           bums, or artists;

4           “(iii) do not permit the separation of com-  
5           ponent segments of the copyrighted material  
6           contained in the transmission program which  
7           results in the playback of a manipulated se-  
8           quence; and

9           “(iv) do not permit the redistribution, re-  
10          transmission, or other exporting of a phono-  
11          record embodying all or part of a performance  
12          licensed under this section from the device by  
13          digital outputs or removable media, unless the  
14          destination device is part of a secure in-home  
15          network that also complies with this paragraph.

16          “(B) Nothing in this paragraph prevents a con-  
17          sumer from engaging in non-automated manual re-  
18          cording and playback in a manner that is not an in-  
19          fringement of copyright.”.

20          (e) TECHNICAL AND CONFORMING AMENDMENTS.—

21                 (1) SECTION 114.—Section 114(f) of title 17,  
22          United States Code (as amended by subsection (b)  
23          of this section), is further amended—

1 (A) in paragraph (1)(B), in the first sen-  
2 tence, by striking “paragraph (3)” and insert-  
3 ing “paragraph (2)”; and

4 (B) in paragraph (4)(C), by striking  
5 “under paragraph (4)” and inserting “under  
6 paragraph (3)”.

7 (2) CHAPTER 8.—(A) Section 801(b) of title  
8 17, United States Code, is amended—

9 (i) in paragraph (1), by striking  
10 “114(1)(B), 115,” and inserting “115”; and

11 (ii) in paragraph (7)(B), by striking  
12 “114(f)(3)” and inserting “114(f)(2)”.

13 (B) Section 803(c)(2)(E)(i)(II) of title 17,  
14 United States Code, is amended—

15 (i) by striking “or 114(f)(2)(C)”; and

16 (ii) by striking “114(f)(4)(B)” and insert-  
17 ing “114(f)(3)(B)”.

18 (C) Section 804(b)(3)(C) of title 17, United  
19 States Code, is amended—

20 (i) in clause (i), by striking “and  
21 114(f)(2)(C)”; and

22 (ii) in clause (iv), by striking “or  
23 114(f)(2)(C), as the case may be”.

1 **SEC. 3. REGISTER OF COPYRIGHTS MEETING AND REPORT.**

2 (a) MEETING.—Not later than 60 days after the  
3 Copyright Royalty Judges make their final determination  
4 in Docket No. 2005–1 CRB DTRA, the Register of Copy-  
5 rights shall convene a meeting among affected parties to  
6 discuss whether to recommend creating a new category of  
7 limited interactive services, including an appropriate pre-  
8 mium rate for such services, within the statutory license  
9 contained in section 114 of title 17, United States Code.

10 (b) REPORT.—Not later than 90 days after the con-  
11 vening of the meeting under subsection (a), the Register  
12 of Copyrights shall submit a report on the discussions at  
13 that meeting to the Committee on the Judiciary of the  
14 Senate and the Committee on the Judiciary of the House  
15 of Representatives.

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