

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To improve the bill.

**IN THE SENATE OF THE UNITED STATES—111th Cong., 1st Sess.**

**S. 379**

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

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mr. LEAHY

Viz:

On page 1, lines 6 and 7, strike “**EQUITABLE TREATMENT FOR TERRESTRIAL BROADCASTS**” and insert “**ESTABLISHING EQUITABLE TREATMENT FOR TERRESTRIAL, CABLE, SATELLITE, AND INTERNET SERVICES**”.

On page 2, between lines 19 and 20, insert the following:

- 1 (e) ENSURING PLATFORM PARITY.—Section 114(f)
- 2 of title 17, United States Code, is amended—
- 3 (1) by striking paragraph (1);

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

4           (3) in paragraph (1), as redesignated—

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

19          (B) in subparagraph (B)—

20                 (i) in the second sentence, by striking  
21                 “eligible nonsubscription transmission”;

22                 and

23                 (ii) in the third sentence, by striking  
24                 “eligible nonsubscription services and new  
25                 subscription” and all that follows through

1 “subparagraph (A)” and inserting “serv-  
2 ices, in addition to the objectives set forth  
3 in subparagraphs (A), (B), and (C) of sec-  
4 tion 801(b)(1), the Copyright Royalty  
5 Judges may consider the rates and terms  
6 for comparable types of services and com-  
7 parable circumstances under voluntary li-  
8 cense agreements. Notwithstanding section  
9 801(b)(1), the provisions of section  
10 801(b)(1)(D) shall not be taken into ac-  
11 count by the Copyright Royalty Judges in  
12 any proceeding under this section”;

13 (C) by striking subparagraph (C) and in-  
14 serting the following:

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

1 the royalty rates and terms for preexisting serv-  
2 ices most recently determined under subpara-  
3 graph (A) or (B) and chapter 8 expire, or such  
4 other period as the parties may agree.”.

5 (f) TECHNICAL AND CONFORMING AMENDMENTS.—

6 (1) SECTION 114(F).—Section 114(f) of title 17,  
7 United States Code (as amended by subsection (e)),  
8 is further amended—

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

12 (B) in paragraph (4)(C), by striking  
13 “under paragraph (4)” and inserting “under  
14 paragraph (3)”.

15 (2) SECTION 114(J).—Section 114(j)(6) of title  
16 17, United States Code, is amended by striking “re-  
17 transmissions of broadcast transmissions” and in-  
18 serting “broadcast transmissions and retrans-  
19 missions of broadcast transmissions”.

20 (3) SECTION 804.—Section 804(b)(3)(C) of title  
21 17, United States Code, is amended—

22 (A) in clause (i), by striking “and  
23 114(f)(2)(C)”;

1 (B) in clause (iii)(II), by striking  
2 “114(f)(4)(B)(ii)” and inserting  
3 “114(f)(3)(B)(ii)”; and  
4 (C) in clause (iv), by striking “or  
5 114(f)(2)(C), as the case may be”.

On page 2, strike line 20 and all that follows  
through page 4, line 2, and insert the following:

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

9 (a) SMALL, NONCOMMERCIAL, EDUCATIONAL, AND  
10 RELIGIOUS RADIO STATIONS.—

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

14 “(D)(i) Notwithstanding the provisions of  
15 subparagraphs (A) through (C), each individual  
16 terrestrial broadcast station that has gross rev-  
17 enues within a range specified in clause (ii) may  
18 elect to pay for its over-the-air nonsubscription  
19 broadcast transmissions a royalty fee as pro-  
20 vided in clause (ii), in lieu of the amount such  
21 station would otherwise be required to pay  
22 under this paragraph. Such royalty fee shall not

1 be taken into account in determining royalty  
2 rates in a proceeding under chapter 8, or in any  
3 other administrative, judicial, or other Federal  
4 Government proceeding.

5 “(ii) As provided in clause (i), each indi-  
6 vidual terrestrial broadcast station that has  
7 gross revenues in any calendar year of—

8 “(I) less than \$50,000 may elect to  
9 pay for its over-the-air nonsubscription  
10 broadcast transmissions a royalty fee of  
11 \$100 per year;

12 “(II) at least \$50,000 but less than  
13 \$100,000 may elect to pay for its over-the-  
14 air nonsubscription broadcast trans-  
15 missions a royalty fee of \$500 per year;

16 “(III) at least \$100,000 but less than  
17 \$500,000 may elect to pay for its over-the-  
18 air nonsubscription broadcast trans-  
19 missions a royalty fee of \$2,500 per year;  
20 and

21 “(IV) at least \$500,000 but less than  
22 \$1,250,000 may elect to pay for its over-  
23 the-air nonsubscription broadcast trans-  
24 missions a royalty fee of \$5,000 per year.

1           “(E)(i) Notwithstanding the provisions of  
2           subparagraphs (A) through (C), each individual  
3           terrestrial broadcast station that is a public  
4           broadcasting entity as defined in section 118(f)  
5           and that has gross revenues within a range  
6           specified in clause (ii) may elect to pay for its  
7           over-the-air nonsubscription broadcast trans-  
8           missions a royalty fee as provided in clause (ii),  
9           in lieu of the amount such station would other-  
10          wise be required to pay under this paragraph.  
11          Such royalty fee shall not be taken into account  
12          in determining royalty rates in a proceeding  
13          under chapter 8, or in any other administrative,  
14          judicial, or other Federal Government pro-  
15          ceeding.

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

21                   “(I) less than \$50,000 may elect to  
22                   pay for its over-the-air nonsubscription  
23                   broadcast transmissions a royalty fee of  
24                   \$100 per year;

1                   “(II) at least \$50,000 but less than  
2                   \$100,000 may elect to pay for its over-the-  
3                   air nonsubscription broadcast trans-  
4                   missions a royalty fee of \$500 per year;  
5                   and

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

10                  “(F) Notwithstanding the provisions of  
11                  subparagraphs (A) through (E), each individual  
12                  terrestrial broadcast station that had total  
13                  gross revenues during the 4 full calendar quar-  
14                  ters immediately preceding the date of enact-  
15                  ment of the Performance Rights Act of—

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

21                         “(ii) \$5,000,000 or more shall not be  
22                         required to pay a royalty under this para-  
23                         graph during the 1 year immediately fol-  
24                         lowing the date of enactment of the Per-  
25                         formance Rights Act.

1           The provisions of this subparagraph shall not  
2           be taken into account in determining royalty  
3           rates in a proceeding under chapter 8, or in any  
4           other administrative, judicial, or other Federal  
5           Government proceeding.”.

On page 4, line 4, strike “114(f)(2)” and insert  
“114(f)(1)”.

On page 4, line 9, strike “114(f)(2)” and insert  
“114(f)(1)”.

On page 4, line 20, strike “and” and insert “or”.

On page 4, line 24, strike “114(f)(2)(B) of title 17,  
United States Code” and insert “114(f)(1)(B) of title 17,  
United States Code, as redesignated by section 2(e)”.

On page 5, strike line 4 and all that follows through  
line 13, and insert the following:

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

7       (a) NO ADVERSE AFFECT ON LICENSE FEES FOR  
8   UNDERLYING MUSICAL WORKS; NECESSITY FOR OTHER  
9   LICENSES.—

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  
4           UNDERLYING MUSICAL WORKS; NECESSITY FOR OTHER  
5           LICENSES.—

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

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

1       may not publicly perform such sound recording un-  
2       less a license has been granted for the public per-  
3       formance of any copyrighted musical work contained  
4       in the sound recording. Such license to publicly per-  
5       form the copyrighted musical work may be granted  
6       either by a performing rights society representing  
7       the copyright owner or by the copyright owner.”.

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

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

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

21               “(5) Notwithstanding any other provision of  
22      this section, under no circumstances shall the rates  
23      established by the Copyright Royalty Judges for the  
24      public performance of sound recordings be cited,  
25      taken into account, or otherwise used in any admin-

1        istrative, judicial, or other governmental forum or  
2        proceeding, or otherwise, to reduce or adversely af-  
3        fect the license fees payable to copyright owners of  
4        musical works or their representatives for the public  
5        performance of their works by terrestrial broadcast  
6        stations, and such license fees for the public per-  
7        formance of musical works shall be independent of  
8        license fees paid for the public performance of sound  
9        recordings.”.

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

11        Section 114(g) of title 17, United States Code, is  
12 amended—

13            (1) by amending paragraph (1) to read as fol-  
14 lows:

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

20            “(A) A featured recording artist who per-  
21 forms on a sound recording that has been li-  
22 censed for public performance by means of an  
23 audio transmission shall be entitled to receive  
24 payments from the copyright owner of the

1 sound recording in accordance with the terms of  
2 the artist's contract.

3 “(B)(i) In a case in which the copyright  
4 owner of a sound recording has licensed the  
5 sound recording for the public performance of  
6 the sound recording by means of an audio  
7 transmission, the copyright owner shall deposit  
8 1 percent of the receipts from the license with  
9 the American Federation of Musicians and  
10 American Federation of Television and Radio  
11 Artists Intellectual Property Rights Distribu-  
12 tion Fund (or any successor entity) (in this  
13 subparagraph referred to as the ‘Fund’) to be  
14 distributed to nonfeatured performers who have  
15 performed on sound recordings. The sound re-  
16 cording copyright owner shall make such depos-  
17 its for receipts received during the first half of  
18 a calendar year by August 15 and for receipts  
19 received during the second half of a calendar  
20 year by February 15 of the following calendar  
21 year.

22 “(ii) A sound recording copyright owner  
23 shall include with deposits under clause (i) in-  
24 formation regarding the amount of such depos-  
25 its attributable to each licensee and, subject to

1 obtaining consent, if necessary, from such li-  
2 censee, for each sound recording performed by  
3 means of an audio transmission by such li-  
4 censee during the applicable time period, and to  
5 the extent included in the accounting reports  
6 provided by the licensee to the sound recording  
7 copyright owner—

8 “(I) the identity of the artist;

9 “(II) the International Standard Re-  
10 cording Code of the sound recording;

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

12 “(IV) the number of times the sound  
13 recording was transmitted; and

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

16 “(iii) The Fund shall make the distribu-  
17 tions described in clause (i) as follows: 50 per-  
18 cent shall be paid to nonfeatured musicians  
19 (whether or not members of the American Fed-  
20 eration of Musicians) and 50 percent shall be  
21 paid to nonfeatured vocalists (whether or not  
22 members of the American Federation of Tele-  
23 vision and Radio Artists). The Fund may, prior  
24 to making such distributions, deduct the rea-

1 sonable costs related to making such distribu-  
2 tions.

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

16 (2) in paragraph (2)(A), by striking “digital”;  
17 and

18 (3) by adding at the end the following new  
19 paragraph:

20 “(5) Notwithstanding paragraph (1), to the ex-  
21 tent that a license granted by the copyright owner  
22 of a sound recording to a transmitting entity eligible  
23 for a statutory license as specified by subsection  
24 (d)(2) extends to such entity’s transmissions other-  
25 wise licensable under a statutory license in accord-

1       ance with subsection (f), such entity shall pay to the  
2       agent designated to distribute statutory licensing re-  
3       ceipts from the licensing of transmissions in accord-  
4       ance with subsection (f), 50 percent of the total roy-  
5       alties that such entity is required, pursuant to the  
6       applicable license agreement, to pay for such trans-  
7       missions otherwise licensable under a statutory li-  
8       cense in accordance with subsection (f). That agent  
9       shall distribute such payments in proportion to the  
10      distributions provided in subparagraphs (B) through  
11      (D) of paragraph (2), and such payments shall be  
12      the sole payments to which featured and nonfea-  
13      tured artists are entitled by virtue of such trans-  
14      missions under the direct license with such entity.”.

15 **SEC. 7. EPHEMERAL RECORDINGS ROYALTY.**

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

18           “(4)(A) The schedule of reasonable rates and  
19       terms determined by the Copyright Royalty Judges  
20       shall, subject to paragraph (5), be binding on all  
21       copyright owners of sound recordings and transmit-  
22       ting organizations entitled to a statutory license  
23       under this subsection during the 5-year period speci-  
24       fied in paragraph (3), or such other period as the  
25       parties may agree. Such rates shall include a min-

1       imum fee for each type of service offered by trans-  
2       mitting organizations.

3               “(B) With respect to phonorecords made pursu-  
4       ant to this subsection to facilitate transmissions of  
5       public performances under the limitation on exclu-  
6       sive rights specified by section 114(d)(1)(C)(iv), the  
7       Copyright Royalty Judges shall establish rates that  
8       most clearly represent the fees that would have been  
9       negotiated in the marketplace between a willing  
10      buyer and a willing seller. In determining such rates  
11      and terms, the Copyright Royalty Judges shall base  
12      their decision on economic, competitive, and pro-  
13      gramming information presented by the parties, in-  
14      cluding—

15              “(i) whether use of the service may sub-  
16              stitute for or may promote the sales of  
17              phonorecords or otherwise interferes with or en-  
18              hances the copyright owner’s traditional  
19              streams of revenue;

20              “(ii) the relative roles of the copyright  
21              owner and the transmitting organization in the  
22              copyrighted work and the service made available  
23              to the public with respect to relative creative  
24              contribution, technological contribution, capital  
25              investment, cost, and risk; and

1           “(iii) rates and terms under voluntary li-  
2           cense agreements described in paragraphs (2)  
3           and (3).

4           “(C) With respect to phonorecords made pursu-  
5           ant to this subsection to facilitate transmissions of  
6           public performances under a statutory license in ac-  
7           cordance with section 114(f)—

8           “(i) the Copyright Royalty Judges shall es-  
9           tablish rates and terms by application of the  
10          applicable standard in section 114(f) covering  
11          both the applicable public performances, and  
12          the making of phonorecords pursuant to this  
13          subsection solely to facilitate such public per-  
14          formances, together; and

15          “(ii) the royalty payable under this sub-  
16          section for the making of phonorecords used by  
17          the transmitting organization solely to facilitate  
18          transmissions for which it pays royalties estab-  
19          lished as provided in clause (i) shall constitute  
20          5 percent of such payments.

21          “(D) The Copyright Royalty Judges shall also  
22          establish requirements by which copyright owners  
23          may receive reasonable notice of the use of their  
24          sound recordings under this section, and under  
25          which records of such use shall be kept and made

- 1 available by transmitting organizations entitled to
- 2 obtain a statutory license under this subsection.”.