

115TH CONGRESS 2D SESSION

S. 2393

To amend title 17, United States Code, to provide Federal protection to the digital audio transmission of a sound recording fixed before February 15, 1972, and for other purposes.

IN THE SENATE OF THE UNITED STATES

February 7, 2018

Mr. Coons (for himself, Mr. Kennedy, Mr. Tillis, Mr. Corker, and Mr. Booker) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 17, United States Code, to provide Federal protection to the digital audio transmission of a sound recording fixed before February 15, 1972, 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 "Compensating Legacy
- 5 Artists for their Songs, Service, and Important Contribu-
- 6 tions to Society Act" or the "CLASSICS Act".

SEC. 2. UNAUTHORIZED DIGITAL PERFORMANCE OF PRE-2 1972 SOUND RECORDINGS. 3 (a) AMENDMENT.—Title 17, United States Code, is amended by adding at the end the following: 4 5 "CHAPTER 14—UNAUTHORIZED DIGITAL 6 PERFORMANCE OF PRE-1972 SOUND 7 RECORDINGS "Sec. "1401. Unauthorized digital performance of pre-1972 sound recordings. "§ 1401. Unauthorized digital performance of pre-8 9 1972 sound recordings 10 "(a) UNAUTHORIZED ACTS.—Anyone who, prior to February 15, 2067, performs publicly by means of digital 11 audio transmission a sound recording fixed before Feb-12 ruary 15, 1972, without the consent of the rights owner, 14 shall be subject to the remedies provided in sections 502 through 505 to the same extent as an infringer of copy-15 right. 16 17 "(b) CERTAIN UNAUTHORIZED TRANSMISSIONS.— 18 Transmissions of sound recordings fixed before February 19 15, 1972, shall be considered authorized and with the con-20 sent of the rights owner for purposes of subsection (a), 21 if—

ting entity publicly performing sound recordings pro-

"(1) the transmissions are made by a transmit-

- tected under this title by means of digital audio
 transmissions subject to section 114;
- "(2) the transmissions would satisfy the requirements for statutory licensing under section 114(d)(2) or would be exempt under section 114(d)(1), if the sound recordings were fixed on or after February 15, 1972;
- "(3) in the case of transmissions that would not 8 9 be exempt under section 114(d)(1) as described in 10 paragraph (2), the transmitting entity pays statu-11 tory royalties and provides notice of its use of the 12 relevant sound recordings in the same manner as re-13 quired by regulations adopted by the Copyright Roy-14 alty Judges for sound recordings that are protected under this title; and 15
 - "(4) in the case of transmissions that would not be exempt under section 114(d)(1) as described in paragraph (2), the transmitting entity otherwise satisfies the requirements for statutory licensing under section 114(f)(4)(B).
- 21 "(c) Transmissions by Direct Licensing of 22 Statutory Services.—
- 23 "(1) IN GENERAL.—A transmission of a sound 24 recording fixed before February 15, 1972, shall be 25 considered authorized and with the consent of the

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- rights owner for purposes of subsection (a) if included in any license agreement voluntarily negotiated at any time between the rights owner and the entity performing the sound recording.
 - "(2) Payment of Royalties to Nonprofit Agent.—To the extent that such a license extends to transmissions of sound recordings fixed before February 15, 1972, that satisfy the conditions of subsection (b), the licensee shall pay 50 percent of the performance royalties for the transmissions due under the license to the collective designated to distribute receipts from the licensing of transmissions in accordance with section 114(f), with such royalties fully credited as payments due under such license.
 - "(3) DISTRIBUTION OF ROYALTIES BY NON-PROFIT AGENT.—That collective shall distribute the royalties received pursuant to paragraph (2) in accordance with subparagraphs (B) through (D) of section 114(g)(2). Such payments shall be the sole payments to which featured and nonfeatured artists are entitled by virtue of such transmissions under the license.
- "(4) RULE OF CONSTRUCTION.—This section does not prohibit any other license from directing

the licensee to pay other royalties due to featured and nonfeatured artists for such transmissions to the collective designated to distribute receipts from the licensing of transmissions in accordance with section 114(f).

"(d) Relationship to State Law.—

"(1) IN GENERAL.—Nothing in this section shall be construed to annul or limit any rights or remedies under the common law or statutes of any State for sound recordings fixed before February 15, 1972, except, notwithstanding section 301(c), the following:

"(A) This section preempts claims of common law copyright or equivalent rights under the law of any State arising from digital audio transmissions of sound recordings fixed before February 15, 1972, made on and after the effective date of this section.

"(B) This section preempts claims of common law copyright or equivalent rights under the law of any State arising from reproductions of sound recordings fixed before February 15, 1972, made on and after the effective date of this section, for reproductions that would satisfy the requirements for statutory licensing

1	under section 112(e)(1) and (6), if the sound
2	recordings were fixed on or after February 15,
3	1972.
4	"(C) This section preempts claims of com-
5	mon law copyright or equivalent rights under
6	the law of any State arising from digital audio
7	transmissions and reproductions of sound re-
8	cordings fixed before February 15, 1972, made
9	before the effective date of this section, if—
10	"(i) the digital audio transmissions
11	and reproductions would have satisfied the
12	requirements for statutory licensing under
13	section $114(d)(2)$ or been exempt under
14	section 114(d)(1), or would have satisfied
15	the requirements of section 112(e)(1), re-
16	spectively; and
17	"(ii) within 270 days after the effec-
18	tive date of this section, except in the case
19	of transmissions that would have been ex-
20	empt under section $114(d)(1)$, the trans-
21	mitting entity pays statutory royalties and
22	provides notice of the use of the relevant
23	sound recordings in the same manner as
24	required by regulations adopted by the

Copyright Royalty Judges for sound re-

1 cordings that are protected under this title
2 for all the digital audio transmissions and
3 reproductions satisfying the requirements
4 for statutory licensing under section
5 114(d)(2) and section 112(e)(1) during the
6 3 years prior to the effective date of this
7 section.

- "(2) RULE OF CONSTRUCTION FOR COMMON LAW COPYRIGHT.—For purposes of subparagraphs (A) through (C) of paragraph (1), claims of common law copyright or equivalent rights under the law of any State include claims that characterize conduct subject to such subparagraphs as an unlawful distribution, act of record piracy, or similar violation.
- "(3) Rule of construction for public Performance rights.—Nothing in this section shall be construed to recognize or negate the existence of public performance rights in sound recordings under the law of any State.

"(e) Limitations on Remedies.—

"(1) Fair use; reproduction by libraries and archives.—The limitations on the exclusive rights of a copyright owner described in sections 107 and 108 shall apply to a claim for unauthorized per-

- formance of a sound recording fixed before February
- 2 15, 1972, under subsection (a).
- "(2) ACTIONS.—The limitations on actions described in section 507 shall apply to a claim for unauthorized performance of a sound recording fixed before February 15, 1972, under subsection (a).
- "(3) MATERIAL ONLINE.—The limitations on li-8 ability described in section 512 of this title shall 9 apply to a claim for unauthorized performance of a 10 sound recording fixed before February 15, 1972, 11 under subsection (a).
- "(4) Principles of equity.—Principles of equity apply to remedies for a violation of this section to the same extent as such principles apply to remedies for infringement of copyright.
- 16 "(f) APPLICATION OF SECTION 230 SAFE HAR-17 BOR.—For purposes of section 230 of the Communica-
- 18 tions Act of 1934 (47 U.S.C. 230), subsection (a) shall
- 19 be considered 'intellectual property laws' under subsection
- (e)(2) of such section.
- 21 "(g) RIGHTS OWNER DEFINED.—In this section, the
- 22 term 'rights owner' means the person who has the exclu-
- 23 sive right to reproduce a sound recording under the law
- 24 of any State.".

- 1 (b) Technical and Conforming Amendment.—
- 2 The table of chapters for title 17, United States Code,
- 3 is amended by adding at the end the following:

"14. Unauthorized Digital Performance of Pre-1972 Sound Recordings 1401".

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