

113TH CONGRESS
1ST SESSION

H. R. 3219

To amend title 17, United States Code, to provide copyright owners in sound recordings with the exclusive right to negotiate in the marketplace the performance of their works to the public by means of an audio transmission, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 30, 2013

Mr. WATT introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 17, United States Code, to provide copyright owners in sound recordings with the exclusive right to negotiate in the marketplace the performance of their works to the public by means of an audio transmission, 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 “Free Market Royalty
5 Act”.

1 **SEC. 2. BROADCAST PERFORMANCE RIGHT IN SOUND RE-**
2 **CORDINGS.**

3 Section 106(6) of title 17, United States Code, is
4 amended by striking “a digital audio” and inserting “an
5 audio”.

6 **SEC. 3. FREE MARKET FOR LICENSING OF PUBLIC PER-**
7 **FORMANCES.**

8 Section 114 of title 17, United States Code, is
9 amended as follows:

10 (1) Subsection (d) is amended—

11 (A) in paragraph (1)—

12 (i) in the matter preceding subpara-
13 graph (A), by striking “a digital audio”
14 and inserting “an audio”;

15 (ii) by striking subparagraph (A); and

16 (iii) by redesignating subparagraphs
17 (B) and (C) as subparagraphs (A) and
18 (B), respectively;

19 (B) by striking paragraph (2);

20 (C) in paragraph (3)—

21 (i) in subparagraphs (A) and (B)(i),
22 by striking “of digital audio” and inserting
23 “of an audio”; and

24 (ii) in subparagraph (D), by striking
25 “a digital audio” and inserting “an audio”;

1 (D) in paragraph (4), in subparagraphs
2 (A) and (B)(i), by striking “a digital audio”
3 and inserting “an audio”; and

4 (E) by redesignating paragraphs (3) and
5 (4) as paragraphs (2) and (3), respectively.

6 (2) Section 114 of title 17, United States Code,
7 is amended by striking subsections (e), (f), and (g),
8 and inserting the following:

9 “(e) EFFICIENCY OF LICENSING.—

10 “(1) COLLECTIVE NEGOTIATION FOR NON-
11 INTERACTIVE SERVICES.—Pursuant to section
12 106(6), and notwithstanding any other provision of
13 law, any noninteractive services performing sound
14 recordings publicly by means of an audio trans-
15 mission may collectively negotiate and agree to roy-
16 alty rates and license terms and conditions for the
17 performance of such sound recordings.

18 “(2) ONE-STOP LICENSING FOR NONINTER-
19 ACTIVE SERVICES.—

20 “(A) NEGOTIATION OF LICENSES BY COM-
21 MON AGENT.—Pursuant to section 106(6), and
22 notwithstanding any other provision of law, for
23 licenses for noninteractive audio transmissions,
24 SoundExchange, Inc., or any successor entity is
25 designated as the sole common agent to nego-

1 tiate, agree to, pay, and receive payments under
2 this section. If a license for noninteractive audio
3 transmissions is agreed to by such common
4 agent, copyright owners of sound recordings
5 may subsequently negotiate and agree to roy-
6 alty rates and license terms and conditions with
7 any noninteractive services performing sound
8 recordings publicly by means of an audio trans-
9 mission for the performance of such sound re-
10 cordings.

11 “(B) DIRECT PAYMENT AND EQUAL COM-
12 PENSATION.—The common agent under sub-
13 paragraph (A) shall make distributions directly
14 to the following recipients from payments col-
15 lected under this section as follows:

16 “(i) 50 percent shall be paid to the
17 copyright owner.

18 “(ii) 45 percent shall be paid to fea-
19 tured recording artists.

20 “(iii) 5 percent shall be paid to non-
21 featured musicians and vocalists (through
22 the American Federation of Musicians and
23 Screen Actors Guild-American Federation
24 of Television and Radio Artists Intellectual

1 Property Rights Distribution Fund, or
2 their successors).

3 “(f) PAYMENTS FROM INDIVIDUAL LICENSES FOR
4 NONINTERACTIVE AUDIO TRANSMISSIONS.—In the case
5 of a license granted by the copyright owner of a sound
6 recording to a noninteractive service performing sound re-
7 cordings publicly by means of an audio transmission, such
8 service shall pay to the common agent described in sub-
9 section (e) receipts from the licensing of such trans-
10 missions in an amount equal to 50 percent of the total
11 royalties and other compensation that the service is re-
12 quired to pay for such transmissions under the applicable
13 license agreement. Such common agent shall distribute
14 such payments in proportion to the distributions provided
15 in clauses (ii) and (iii) of subsection (e)(2)(B), and such
16 payments shall be the sole payments to which featured and
17 nonfeatured artists are entitled by reason of such trans-
18 missions under the license with that service.

19 “(g) BACKSTOP FOR PUBLIC AND NONCOMMERCIAL
20 STATIONS.—

21 “(1) ESTABLISHMENT OF RATES AND TERMS.—

22 If royalty rates and license terms and conditions for
23 the audio transmission or retransmission of a non-
24 subscription broadcast consisting solely of non-
25 commercial educational and cultural radio programs

1 are not negotiated and agreed upon collectively
2 under subsection (e) between the common agent and
3 a noncommercial educational broadcast station fund-
4 ed on or after January 1, 1995, under section
5 396(k) of the Communications Act of 1934 (47
6 U.S.C. 396(k)), a proceeding under chapter 8 of this
7 title shall determine the rates and terms for such
8 transmissions and retransmissions. The Copyright
9 Royalty Judges shall establish such rates and terms
10 that most clearly represent the rates and terms that
11 would have been negotiated in the marketplace be-
12 tween a willing buyer and a willing seller. In deter-
13 mining such rates and terms, the Copyright Royalty
14 Judges shall base their decision on economic, com-
15 petitive, and programming information presented by
16 the parties.

17 “(2) PAYMENT OF ROYALTIES.—All royalty
18 payments under this subsection for over-the-air non-
19 subscription broadcast transmissions required to be
20 paid by public broadcasting entities that are eligible
21 to receive funding on the basis of the formula set
22 forth in section 396(k)(6)(B) of the Communications
23 Act of 1934 (47 U.S.C. 396(k)(6)(B)) or that are
24 authorized to transmit over-the-air nonsubscription
25 broadcast performances of nondramatic musical

1 works pursuant to arrangements negotiated or oth-
2 erwise made by the Corporation for Public Broad-
3 casting under section 118, shall first be made using
4 funds made available pursuant to section
5 396(k)(3)(A)(I)(II) of the Communications Act of
6 1934.”.

7 (3) Subsection (h)(1) is amended by striking “a
8 digital audio” and inserting “an audio”.

9 (4) Subsection (j) is amended—

10 (A) in paragraph (1), by striking “digital
11 audio” and inserting “audio”;

12 (B) by striking paragraphs (2), (4), (5),
13 (6), (8), (10), and (11);

14 (C) by inserting after paragraph (1) the
15 following:

16 “(2) An ‘audio transmission’ is a transmission
17 that embodies the transmission of a sound recording,
18 and does not include the transmission of any audio-
19 visual work.”;

20 (D) by redesignating paragraph (7) as
21 paragraph (4);

22 (E) by inserting after paragraph (4), as re-
23 designated, the following:

24 “(5) A ‘noninteractive service’ is a service that
25 would have been eligible for statutory licensing

1 under subsection (d)(2) of this section, as such sub-
 2 section was in effect on September 1, 2013”; and

3 (F) by redesignating paragraphs (9), (12),
 4 (13), (14), and (15) as paragraphs (6), (7), (8),
 5 (9), and (10) respectively.

6 **SEC. 4. EPHEMERAL RECORDINGS.**

7 Section 112 of title 17, United States Code, is
 8 amended—

9 (1) in subsection (a)(1), by striking “including
 10 a statutory license under section 114(f)” and insert-
 11 ing “including a license to perform a sound record-
 12 ing under section 114”; and

13 (2) by striking subsection (e) and inserting the
 14 following:

15 “(e) EFFICIENCY OF LICENSING.—The provisions of
 16 subsections (e)(1), (e)(2)(A), and (g) of section 114 shall
 17 apply to licensing of the right to reproduce phonorecords
 18 of a sound recording under section 106(1)—

19 “(1) for use solely to make noninteractive audio
 20 transmissions licensable under such subsections of
 21 section 114, or

22 “(2) for use solely under the limitation on ex-
 23 clusive rights specified by section 114(d)(1)(B)(iv),
 24 under circumstances in which such reproductions would
 25 have been eligible for statutory licensing under this sub-

1 section, as this subsection was in effect on September 1,
2 2013.”.

3 **SEC. 5. CHAPTER 8 PROCEEDINGS OF COPYRIGHT ROY-**
4 **ALTY JUDGES; TECHNICAL AMENDMENTS.**

5 (a) FUNCTIONS.—Section 801(b) of title 17, United
6 States Code, is amended—

7 (1) in paragraph (1)—

8 (A) by striking “112(e), 114,”; and

9 (B) by striking “sections 114(f)(1)(B),
10 115,” and inserting “sections 115”;

11 (2) in paragraph (3)(C), by striking
12 “804(b)(8)” and inserting “804(b)(7)”;

13 (3) in paragraph (7)(B), by striking “112(e)(5),
14 114(f)(3),”;

15 (4) by redesignating paragraph (8) as para-
16 graph (9); and

17 (5) by inserting after paragraph (7) the fol-
18 lowing:

19 “(8) To determine the rates and terms for
20 transmissions under section 114(g) and reproduc-
21 tions under section 112(e).”.

22 (b) PROCEEDINGS.—Section 803 of title 17, United
23 States Code, is amended—

24 (1) in subsection (b)(1)(A)(i)—

25 (A) by striking subclauses (II) and (III);

1 (B) in subclause (IV), by striking
2 “804(b)(8)” and inserting “804(b)(7)”; and

3 (C) by redesignating subclauses (IV) and
4 (V) as subclauses (II) and (III), respectively;
5 and

6 (2) in subsection (c)(2)(E)(i), by striking “on a
7 specified date, then—” and all that follows through
8 “as of the date of that determination.” and inserting
9 “on a specified date, then the initial determination
10 of the Copyright Royalty Judges that is the subject
11 of the rehearing motion shall be effective as of the
12 day following the date on which the rates and terms
13 that were previously in effect expire.”.

14 (c) JUDICIAL REVIEW.—Section 803(d)(2)(C)(ii) of
15 title 17, United States Code, is amended by striking “by
16 the Copyright Royalty Judges” and inserting “under sec-
17 tion 114(e)(2) or 112(e), or, in any other case, by the
18 Copyright Royalty Judges,”.

19 (d) INSTITUTION OF PROCEEDINGS.—Section 804 of
20 title 17, United States Code, is amended—

21 (1) in subsection (a)—

22 (A) in the first sentence, by striking “112,
23 114,”; and

24 (B) by striking the last sentence; and

25 (2) in subsection (b)—

1 (A) by striking paragraph (2);

2 (B) by striking paragraph (3) and insert-
3 ing the following:

4 “(2) CERTAIN SECTIONS 114 AND 112 PRO-
5 CEEDINGS.—Proceedings under this chapter to de-
6 termine terms and rates of royalty payments under
7 section 114(g) or 112(e) may be commenced only
8 pursuant to petitions filed after the end of the 6-
9 month period beginning on the effective date of the
10 Free Market Royalty Act. Thereafter, proceedings
11 described in the preceding sentence may be com-
12 menced only pursuant to a petition filed at any time
13 within 1 year after negotiated licenses authorized by
14 section 114 or 112(e) (as the case may be) expire
15 and are not replaced by subsequent agreements. For
16 purposes of proceedings to determine terms and
17 rates under this paragraph, the Copyright Royalty
18 Judges shall make a determination as to whether the
19 petitioner has a significant interest in the terms and
20 rates in which a determination by the Judges is re-
21 quested. If the Copyright Royalty Judges determine
22 that the petitioner has such a significant interest,
23 the Copyright Royalty Judges shall cause notice of
24 this determination, with the reasons for such deter-
25 mination, to be published in the Federal Register,

1 together with the notice of commencement of pro-
2 ceedings under this chapter.”; and

3 (C) by redesignating paragraphs (4)
4 through (8) as paragraphs (3) through (7), re-
5 spectively.

6 (e) TECHNICAL AMENDMENTS.—Section 114 of title
7 17, United States Code, is amended as follows:

8 (1) Subsection (a) is amended by striking
9 “clauses” and inserting “paragraphs”.

10 (2) Subsection (b) is amended—

11 (A) by striking “clause” each place it ap-
12 pears and inserting “paragraph”;

13 (B) by striking “clauses” each place it ap-
14 pears and inserting “paragraphs”; and

15 (C) by striking “section 397 of title 47”
16 and inserting “section 397 of the Communica-
17 tions Act of 1934 (47 U.S.C. 397)”.

18 **SEC. 6. STUDY BY COPYRIGHT OFFICE.**

19 The Register of Copyrights shall—

20 (1) conduct a study on the protection of making
21 available to the public copyrighted works under
22 paragraph (3) of section 106 of title 17, United
23 States Code, and communicating to the public copy-
24 righted works under paragraph (4) of such section,
25 and recommend any amendments to such para-

1 graphs necessary to so protect the rights of making
2 available to the public copyrighted works and com-
3 municating to the public copyrighted works; and

4 (2) not later than 9 months after the date of
5 the enactment of this Act, submit to the Committees
6 on the Judiciary of the House of Representatives
7 and the Senate a report on the results of the studies
8 conducted under paragraph (1), including any rec-
9 ommendations under such paragraph.

10 **SEC. 7. EFFECTIVE DATE.**

11 (a) PHASE-OUT OF STATUTORY LICENSES.—The
12 amendments made by sections 2, 3, 4, and 5—

13 (1) shall take effect upon the expiration of the
14 1-year period beginning on the date of the enact-
15 ment of this Act; and

16 (2) shall apply with respect to audio trans-
17 missions of sound recordings that are made on or
18 after the effective date under paragraph (1).

19 (b) OTHER PROVISIONS.—Sections 1 and 6 shall take
20 effect on the date of the enactment of this Act.

