To amend title 17, United States Code, to provide fair treatment of radio stations and artists for the use of sound recordings, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. DEUTCH introduced the following bill; which was referred to the Committee on ____________________

A BILL

To amend title 17, United States Code, to provide fair treatment of radio stations and artists for the use of sound recordings, 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; TABLE OF CONTENTS.

4 (a) Short Title.—This Act may be cited as the “American Music Fairness Act”.

5 (b) Table of Contents.—The table of contents for

6 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Equitable treatment for terrestrial broadcasts and internet services.
Sec. 3. Timing of proceedings under sections 112(e) and 114(f).
Sec. 4. Special protection for small broadcasters.
Sec. 5. Distribution of certain royalties.
Sec. 6. No harmful effects on songwriters.
Sec. 7. Value of promotion taken into account.

SEC. 2. EQUITABLE TREATMENT FOR TERRESTRIAL BROADCASTS AND INTERNET SERVICES.

(a) Performance Right Applicable to Audio Transmissions Generally.—Paragraph (6) of section 106 of title 17, United States Code, is amended to read as follows:

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

(b) Inclusion of Terrestrial Broadcasts in Existing Performance Right and Statutory License.—Section 114(d)(1) of title 17, United States Code, is amended—

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

(2) by striking subparagraph (A);

(3) by redesignating subparagraphs (B) and (C) as (A) and (B), respectively; and

(4) in subparagraph (A), as redesignated by paragraph (3), by striking “nonsubscription” and inserting “licensed nonsubscription”.

(c) Technical and Conforming Amendments.—
(1) DEFINITION.—Section 101 of title 17, United States Code, is amended by inserting after the definition of “architectural work” the following: “An ‘audio transmission’ is a transmission of a sound recording, whether in a digital, analog, or other format. This term does not include the transmission of any audio-visual work.”.

(2) CONFORMING REMOVAL OF DIGITAL.—Title 17, United States Code, is amended—

(A) in section 112(e)(8), by striking “a digital audio transmission” and inserting “an audio transmission”;

(B) in section 114—

(i) in subsection (d)—

(I) in paragraph (2)—

(aa) in the matter preceding subparagraph (A), by striking “subscription digital” and inserting “subscription”; and

(bb) in subparagraph (C)(viii), by striking “digital signal” and inserting “signal”; and

(II) in paragraph (4)—

(aa) in subparagraph (A), by striking “a digital audio
transmission” and inserting “an audio transmission”; and

(bb) in subparagraph (B)(i), by striking “a digital audio transmission” and inserting “an audio transmission”;

(ii) in subsection (g)(2)(A), by striking “a digital” and inserting “an”; and

(iii) in subsection (j)—

(I) in paragraph (6)—

(aa) by striking “digital”;

and

(bb) by striking “retransmissions of broadcast transmissions” and inserting “broadcast transmissions and retransmissions of broadcast transmissions”; and

(II) in paragraph (8), by striking “subscription digital” and inserting “subscription”; and

(C) in section 1401—

(i) in subsection (b), by striking “a digital audio” and inserting “an audio”; and
(ii) in subsection (d)—

(I) in paragraph (1), by striking “a digital audio” and inserting “an audio”;

(II) in paragraph (2)(A), by striking “a digital audio” and inserting “an audio”; and

(III) in paragraph (4)(A), by striking “a digital audio” and inserting “an audio”.

SEC. 3. TIMING OF PROCEEDINGS UNDER SECTIONS 112(E) AND 114(F).

Paragraph (3) of section 804(b) of title 17, United States Code, is amended by adding at the end the following new subparagraph:

“(D) A proceeding under this chapter shall be commenced as soon as practicable after the date of the enactment of this subparagraph to determine royalty rates and terms for non-subscription broadcast transmissions, to be effective for the period beginning on such date of enactment, and ending on December 31, 2028. Any payment due under section 114(f)(1)(D) shall not be due until the due date of the first royalty payments for nonsubscription broadcast
transmissions that are determined, after the
date of the enactment of this subparagraph, by
the Copyright Royalty Judges. Thereafter, such
proceeding shall be repeated in each subsequent
fifth calendar year.”.

SEC. 4. SPECIAL PROTECTION FOR SMALL BROADCASTERS.

(a) Specified Royalty Fees.—Section 114(f)(1)
of title 17, United States Code, is amended by inserting
at the end the following new subparagraph:

“(D)(i) Notwithstanding the provisions of
subparagraphs (A) through (C), the royalty
rate shall be as follows for nonsubscription
broadcast transmissions by each individual ter-
restrial broadcast station licensed as such by
the Federal Communications Commission that
satisfies the conditions in clause (ii)—

“(I) $10 per calendar year, in the
case of nonsubscription broadcast trans-
missions by a broadcast station that gen-
erated revenue in the immediately pre-
ceding calendar year of less than
$100,000;

“(II) $100 per calendar year, in the
case of nonsubscription broadcast trans-
missions by a broadcast station that is a
public broadcasting entity as defined in section 118(f) and generated revenue in the immediately preceding calendar year of $100,000 or more, but less than $1,500,000; and

“(III) $500 per calendar year, in the case of nonsubscription broadcast transmissions by a broadcast station that is not a public broadcasting entity as defined in section 118(f) and generated revenue in the immediately preceding calendar year of $100,000 or more, but less than $1,500,000.

“(ii) An individual terrestrial broadcast station licensed as such by the Federal Communications Commission is eligible for a royalty rate set forth in clause (i) if—

“(I) the revenue from the operation of that individual station was less than $1,500,000 during the immediately preceding calendar year;

“(II) the aggregate revenue of the owner and operator of the broadcast station and any person directly or indirectly controlling, controlled by, or under comm-
mon control with such owner or operator, from any source, was less than $10,000,000 during the immediately preceding calendar year; and

“(III) the owner or operator of the broadcast station provides to the nonprofit collective designated by the Copyright Royalty Judges to distribute receipts from the licensing of transmissions in accordance with subsection (f), by no later than January 31 of the relevant calendar year, a written and signed certification of the station’s eligibility under this clause and the applicable subclause of clause (i), in accordance with requirements the Copyright Royalty Judges shall prescribe by regulation.

“(iii) For purposes of clauses (i) and (ii)—

“(I) revenue shall be calculated in accordance with generally accepted accounting principles;

“(II) revenue generated by a terrestrial broadcast station shall include all revenue from the operation of the station, from any source; and
“(III) in the case of affiliated broadcast stations, revenue shall be allocated reasonably to individual stations associated with the revenue.

“(iv) The royalty rates specified in clause (i) shall not be admissible as evidence or otherwise taken into account in determining royalty rates in a proceeding under chapter 8, or in any other administrative, judicial, or other Federal Government proceeding involving the setting or adjustment of the royalties payable for the public performance or reproduction in ephemeral phonorecords or copies of sound recordings, the determination of terms or conditions related thereto, or the establishment of notice or recordkeeping requirements.”.

(b) TECHNICAL CORRECTION.—Section 118(f) of title 17, United States Code, is amended by striking “section 397 of title 47” and inserting “section 397 of the Communications Act of 1934 (47 U.S.C. 397)”.

SEC. 5. DISTRIBUTION OF CERTAIN ROYALTIES.

Section 114(g) of title 17, United States Code, is amended—
(1) in paragraph (1), by inserting “or in the
case of a transmission to which paragraph (5) ap-
plies” after “this section”;

(2) by redesignating paragraphs (5), (6), and
(7) as (6), (7), and (8), respectively; and

(3) by inserting after paragraph (4) the fol-
lowing new paragraph:

“(5) Notwithstanding paragraph (1), to the ex-
tent that a license granted by the copyright owner
of a sound recording to a transmitting entity eligible
for a statutory license under subsection (d)(2) ex-
tends to such entity’s transmissions otherwise licens-
able under a statutory license in accordance with
subsection (f), such entity shall pay to the collective
designated to distribute statutory licensing receipts
from the licensing of transmissions in accordance
with subsection (f), 50 percent of the total royalties
that such entity is required, pursuant to the applica-
ble license agreement, to pay for such transmissions
otherwise licensable under a statutory license in ac-
cordance with subsection (f). That collective shall
distribute such payments in proportion to the dis-
tributions provided in subparagraphs (B) through
(D) of paragraph (2), and such payments shall be
the only payments to which featured and nonfea-
tured artists are entitled by virtue of such trans-
missions under the direct license with such entity.”.

SEC. 6. NO HARMFUL EFFECTS ON SONGWRITERS.

Nothing in this Act, or the amendments made by this
Act, shall adversely affect in any respect the public per-
formance rights of or royalties payable to songwriters or
copyright owners of musical works.

SEC. 7. VALUE OF PROMOTION TAKEN INTO ACCOUNT.

Pursuant to section 114(f)(1)(B) of title 17, United
States Code, in determining rates and terms for terrestrial
broadcast radio stations under this Act, and the amend-
ments made by this Act, the Copyright Royalty Judges
shall base their decision on economic, competitive, and
programming information presented by the parties, includ-
ing whether use of the station’s service may substitute for
or may promote the sales of phonorecords or otherwise
may interfere with or may enhance the sound recording
copyright owner’s other streams of revenue from the copy-
right owner’s sound recordings.