

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”.

1 **SEC. 2. UNAUTHORIZED DIGITAL PERFORMANCE OF PRE-**
 2 **1972 SOUND RECORDINGS.**

3 (a) AMENDMENT.—Title 17, United States Code, is
 4 amended by adding at the end the following:

5 **“CHAPTER 14—UNAUTHORIZED DIGITAL**
 6 **PERFORMANCE OF PRE-1972 SOUND**
 7 **RECORDINGS**

“Sec.

“1401. Unauthorized digital performance of pre-1972 sound recordings.

8 **“§ 1401. Unauthorized digital performance of pre-**
 9 **1972 sound recordings**

10 “(a) UNAUTHORIZED ACTS.—Anyone who, prior to
 11 February 15, 2067, performs publicly by means of digital
 12 audio transmission a sound recording fixed before Feb-
 13 ruary 15, 1972, without the consent of the rights owner,
 14 shall be subject to the remedies provided in sections 502
 15 through 505 to the same extent as an infringer of copy-
 16 right.

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—

22 “(1) the transmissions are made by a transmit-
 23 ting entity publicly performing sound recordings pro-

1 tected under this title by means of digital audio
2 transmissions subject to section 114;

3 “(2) the transmissions would satisfy the re-
4 quirements for statutory licensing under section
5 114(d)(2) or would be exempt under section
6 114(d)(1), if the sound recordings were fixed on or
7 after February 15, 1972;

8 “(3) in the case of transmissions that would not
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
15 under this title; and

16 “(4) in the case of transmissions that would not
17 be exempt under section 114(d)(1) as described in
18 paragraph (2), the transmitting entity otherwise sat-
19 isfies the requirements for statutory licensing under
20 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

1 rights owner for purposes of subsection (a) if in-
2 cluded in any license agreement voluntarily nego-
3 tiated at any time between the rights owner and the
4 entity performing the sound recording.

5 “(2) PAYMENT OF ROYALTIES TO NONPROFIT
6 AGENT.—To the extent that such a license extends
7 to transmissions of sound recordings fixed before
8 February 15, 1972, that satisfy the conditions of
9 subsection (b), the licensee shall pay 50 percent of
10 the performance royalties for the transmissions due
11 under the license to the collective designated to dis-
12 tribute receipts from the licensing of transmissions
13 in accordance with section 114(f), with such royal-
14 ties fully credited as payments due under such li-
15 cense.

16 “(3) DISTRIBUTION OF ROYALTIES BY NON-
17 PROFIT AGENT.—That collective shall distribute the
18 royalties received pursuant to paragraph (2) in ac-
19 cordance with subparagraphs (B) through (D) of
20 section 114(g)(2). Such payments shall be the sole
21 payments to which featured and nonfeatured artists
22 are entitled by virtue of such transmissions under
23 the license.

24 “(4) RULE OF CONSTRUCTION.—This section
25 does not prohibit any other license from directing

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

6 “(d) RELATIONSHIP TO STATE LAW.—

7 “(1) IN GENERAL.—Nothing in this section
8 shall be construed to annul or limit any rights or
9 remedies under the common law or statutes of any
10 State for sound recordings fixed before February 15,
11 1972, except, notwithstanding section 301(c), the
12 following:

13 “(A) This section preempts claims of com-
14 mon law copyright or equivalent rights under
15 the law of any State arising from digital audio
16 transmissions of sound recordings fixed before
17 February 15, 1972, made on and after the ef-
18 fective date of this section.

19 “(B) This section preempts claims of com-
20 mon law copyright or equivalent rights under
21 the law of any State arising from reproductions
22 of sound recordings fixed before February 15,
23 1972, made on and after the effective date of
24 this section, for reproductions that would sat-
25 isfy 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
25 Copyright Royalty Judges for sound re-

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

1 formance of a sound recording fixed before February
2 15, 1972, under subsection (a).

3 “(2) ACTIONS.—The limitations on actions de-
4 scribed in section 507 shall apply to a claim for un-
5 authorized performance of a sound recording fixed
6 before February 15, 1972, under subsection (a).

7 “(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).

12 “(4) PRINCIPLES OF EQUITY.—Principles of eq-
13 uity apply to remedies for a violation of this section
14 to the same extent as such principles apply to rem-
15 edies 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
20 (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”.**

