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104TH CONGRESS  
1ST SESSION

# H. R. 1506

To amend title 17, United States Code, to provide an exclusive right to perform sound recordings publicly by means of digital transmissions, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 7, 1995

Mr. MOORHEAD (for himself, Mr. HYDE, Mr. CONYERS, and Mr. GEKAS) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 17, United States Code, to provide an exclusive right to perform sound recordings publicly by means of digital transmissions, 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 "Digital Performance  
5 Right in Sound Recordings Act of 1995".

6 **SEC. 2. EXCLUSIVE RIGHTS IN COPYRIGHTED WORKS.**

7 Section 106 of title 17, United States Code, is  
8 amended—

1 (1) in paragraph (4) by striking “and” after  
2 the semicolon;

3 (2) in paragraph (5) by striking the period and  
4 inserting “; and”; and

5 (3) by adding at the end the following:

6 “(6) in the case of sound recordings, to perform  
7 the copyrighted work publicly by means of a digital  
8 transmission.”.

9 **SEC. 3. SCOPE OF EXCLUSIVE RIGHTS IN SOUND RECORD-**  
10 **INGS.**

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

13 (1) in subsection (a) by striking “and (3)” and  
14 inserting “, (3), and (6)”;

15 (2) in the first sentence of subsection (b) by  
16 striking “phonorecords, or of copies of motion pic-  
17 tures and other audiovisual works,” and inserting  
18 “phonorecords or copies”; and

19 (3) by striking subsection (d) and inserting the  
20 following:

21 “(d) LIMITATIONS ON EXCLUSIVE RIGHT.—Notwith-  
22 standing the provisions of section 106(6)—

23 “(1) EXEMPT TRANSMISSIONS.—The perform-  
24 ance of a sound recording publicly by means of a  
25 digital transmission, other than as part of an inter-

1 active service, is not an infringement of section  
2 106(6) if the performance is part of—

3 “(A) a nonsubscription transmission, such  
4 as a nonsubscription broadcast transmission;

5 “(B) any of the following transmissions,  
6 whether it is a subscription transmission or a  
7 nonsubscription transmission:

8 “(i) a prior or simultaneous trans-  
9 mission incidental to a nonsubscription  
10 transmission, such as a feed received by  
11 and then retransmitted by the  
12 nonsubscription transmitter, if such inci-  
13 dental transmission does not include any  
14 subscription transmission directly for re-  
15 ception by members of the public;

16 “(ii) a retransmission of a  
17 nonsubscription broadcast transmission if,  
18 in the case of a retransmission of a radio  
19 station’s broadcast transmission, the trans-  
20 mission is not willfully or repeatedly  
21 retransmitted beyond a radius of 150 miles  
22 from the site of the radio broadcast trans-  
23 mitter;

24 “(iii) a transmission to or within a  
25 business establishment, that is confined to

1 the premises of that business establish-  
2 ment, the premises of other business estab-  
3 lishments under common ownership or con-  
4 trol, and the vicinity immediately sur-  
5 rounding such establishment and establish-  
6 ments; or

7 “(iv) a retransmission that is other-  
8 wise an infringement of section 106(6), if  
9 such transmission is simultaneous with the  
10 primary transmission and is authorized by  
11 the primary transmitter, and the primary  
12 transmitter has been licensed to publicly  
13 perform the sound recording.

14 “(2) SUBSCRIPTION TRANSMISSIONS.—In the  
15 case of a subscription transmission other than a  
16 transmission exempt under paragraph (1), the per-  
17 formance of a sound recording publicly by means of  
18 a digital transmission shall be subject to statutory li-  
19 censing in accordance with subsection (f), if—

20 “(A) at least—

21 “(i) 3 months have expired since the  
22 first public performance by means of a dig-  
23 ital transmission of the sound recording  
24 under the authority of the copyright owner

1 in a subscription transmission in the Unit-  
2 ed States, or

3 “(ii) 4 months have expired since the  
4 first distribution for ultimate sale to con-  
5 sumers in the United States of a phono-  
6 record embodying the sound recording  
7 under the authority of the copyright owner,  
8 whichever period is shorter;

9 “(B) the transmission is not made for the  
10 purpose of enabling the recipient of the trans-  
11 mission to reproduce the sound recording;

12 “(C) the transmission does not exceed the  
13 sound recording performance complement; and

14 “(D) except as provided in section 1002(e),  
15 the transmission of the sound recording is ac-  
16 companied by the information encoded in that  
17 sound recording, if any, by or under the author-  
18 ity of the copyright owner of that sound record-  
19 ing, that identifies the title of the sound record-  
20 ing, the featured recording artist who performs  
21 on the sound recording, and related informa-  
22 tion, including information concerning the un-  
23 derlying musical work and its writer.

24 “(3) RIGHTS NOT OTHERWISE LIMITED.—

1           “(A) Except as expressly provided in this  
2 section, this section does not limit or impair the  
3 exclusive right to perform a sound recording  
4 publicly by means of a digital transmission  
5 under section 106(6).

6           “(B) Nothing in this section annuls or lim-  
7 its in any way—

8                   “(i) the exclusive right to publicly per-  
9 form a musical work, including by means  
10 of a digital transmission, under section  
11 106(4);

12                   “(ii) the exclusive rights to reproduce  
13 and distribute a sound recording or the  
14 musical work embodied therein under para-  
15 graphs (1) and (3) of section 106, includ-  
16 ing by means of a digital phonorecord de-  
17 livery as defined in section 115; or

18                   “(iii) any other rights under any other  
19 provision of section 106, or remedies avail-  
20 able under this title, as such rights or rem-  
21 edies exist either before or after the enact-  
22 ment of the Digital Performance in Sound  
23 Recordings Act of 1995.

24           “(e) AUTHORITY FOR NEGOTIATIONS.—Any copy-  
25 right owners of sound recordings and any entities perform-

1 ing sound recordings affected by this section may nego-  
2 tiate and agree upon the terms and rates of royalty pay-  
3 ments for the performance of such sound recordings and  
4 the proportionate division of fees paid among copyright  
5 owners, and may designate common agents to negotiate,  
6 agree to, pay, or receive such royalty payments.

7       “(f) LICENSES FOR SUBSCRIPTION TRANS-  
8 MISSIONS.—

9           “(1) VOLUNTARY NEGOTIATION PROCEED-  
10       INGS.—Not later than 30 days after the date of the  
11       enactment of the Digital Performance in Sound Re-  
12       cordings Act of 1995, the Librarian of Congress  
13       shall cause notice to be published in the Federal  
14       Register of the initiation of voluntary negotiation  
15       proceedings for the purpose of determining reason-  
16       able terms and rates of royalty payments for the ac-  
17       tivities specified in subsection (d)(2) during the pe-  
18       riod beginning on January 1, 1996, and ending on  
19       December 31, 2000. Such terms and rates shall dis-  
20       tinguish among the different types of digital trans-  
21       mission services then in operation. Any copyright  
22       owners of sound recordings or any entities perform-  
23       ing sound recordings affected by this section may  
24       submit to the Librarian of Congress licenses cover-  
25       ing such activities with respect to such sound record-



1        ings. The parties to each such negotiation proceed-  
2        ing shall bear the entire costs thereof.

3           “(2) COPYRIGHT ARBITRATION ROYALTY PANEL  
4        PROCEEDING.—In the absence of license agreements  
5        negotiated under paragraph (1), the Librarian of  
6        Congress shall, pursuant to chapter 8, convene a  
7        copyright arbitration royalty panel to determine and  
8        publish in the Federal Register a schedule of rates  
9        and terms which, subject to paragraph (3), shall be  
10       binding on all copyright owners of sound recordings  
11       and entities performing sound recordings. In estab-  
12       lishing such rates and terms the copyright arbitra-  
13       tion royalty panel may consider the rates for com-  
14       parable types of digital transmission services and  
15       comparable circumstances under voluntary license  
16       agreements negotiated under paragraph (1). The  
17       parties to the proceeding shall bear the entire cost  
18       thereof in such manner and proportion as the arbi-  
19       tration panel shall direct. The Librarian of Congress  
20       shall also establish requirements by which copyright  
21       owners may receive reasonable notice of the use of  
22       their sound recordings under this section, and under  
23       which records of such use shall be kept by entities  
24       performing sound recordings.

1           “(3) PRIORITY OF VOLUNTARY LICENSE AGREE-  
2           MENTS.—License agreements voluntarily negotiated  
3           at any time between one or more copyright owners  
4           of sound recordings and one or more entities per-  
5           forming sound recordings with respect to activities  
6           specified in subsection (d)(2) shall be given effect in  
7           lieu of any determination by the Librarian of Con-  
8           gress under chapter 8 with respect to the same mat-  
9           ter.

10           “(4) PERIODIC APPLICATION OF PROCE-  
11           DURES.—The procedures set forth in paragraphs (1)  
12           and (2) shall be repeated and concluded, in accord-  
13           ance with regulations that the Librarian of Congress  
14           shall prescribe—

15                   “(A) within the 6-month period beginning  
16                   on the date on which a petition is filed by any  
17                   copyright owners of sound recordings or any en-  
18                   tities performing sound recordings affected by  
19                   this section indicating that a new type of digital  
20                   transmission service on which sound recordings  
21                   are performed is or is about to become oper-  
22                   ational, and

23                   “(B) between June 30 and December 31 of  
24                   the year 2000 and every fifth year thereafter.

1           “(5) NOTICE AND ROYALTIES REQUIREMENTS  
2           FOR SUBSCRIPTION TRANSMISSIONS.—Any person  
3           who wishes to perform a sound recording publicly by  
4           means of a subscription transmission under this sub-  
5           section may do so without infringing the exclusive  
6           right of the copyright owner of the sound recording  
7           by complying with such notice requirements as the  
8           Register of Copyrights shall prescribe by regulation  
9           and by paying royalty fees in accordance with this  
10          subsection, or, if such royalty fees have not been set,  
11          by agreeing to pay such royalty fees as shall be de-  
12          termined in accordance with this subsection, and any  
13          royalty payments in arrears shall be made on or be-  
14          fore the twentieth day of the month after the month  
15          in which the royalty fees are set.

16          “(g) PROCEEDS FROM LICENSING OF SUBSCRIPTION  
17          TRANSMISSIONS.—

18                 “(1) PAYMENTS TO RECORDING ARTISTS.—Ex-  
19                 cept in the case of a subscription transmission li-  
20                 censed in accordance with subsection (f)—

21                         “(A) a featured recording artist who per-  
22                         forms on a sound recording that has been li-  
23                         censed for a subscription transmission shall be  
24                         entitled to receive payments from the copyright

1 owner of the sound recording in accordance  
2 with the terms of the artist's contract; and

3 “(B) a nonfeatured recording artist who  
4 performs on a sound recording that has been li-  
5 censed for a subscription transmission shall be  
6 entitled to receive payments from the copyright  
7 owner of the sound recording in accordance  
8 with the terms of the nonfeatured recording  
9 artist's applicable contract or other applicable  
10 agreement.

11 “(2) ALLOCATION OF RECEIPTS TO RECORDING  
12 ARTISTS.—The copyright owner of the exclusive  
13 right under section 106(6) to publicly perform a  
14 sound recording by means of a digital transmission  
15 shall allocate to recording artists in the following  
16 manner its receipts from the licensing of subscrip-  
17 tion transmission performances of the sound record-  
18 ing in accordance with subsection (f):

19 “(A) 2½ percent of the receipts shall be  
20 deposited in an escrow account managed by an  
21 independent administrator jointly appointed by  
22 copyright owners of sound recordings and the  
23 American Federation of Musicians (or any suc-  
24 cessor entity) to be distributed to nonfeatured  
25 musicians (whether or not members of the

1 American Federation of Musicians) who have  
2 performed on sound recordings.

3 “(B) 2½ percent of the receipts shall be  
4 deposited in an escrow account managed by an  
5 independent administrator jointly appointed by  
6 copyright owners of sound recordings and the  
7 American Federation of Television and Radio  
8 Artists (or any successor entity) to be distrib-  
9 uted to nonfeatured vocalists (whether or not  
10 members of the American Federation of Tele-  
11 vision and Radio Artists) who have performed  
12 on sound recordings.

13 “(C) 45 percent of the receipts shall be al-  
14 located, on a per sound recording basis, to the  
15 recording artist or artists featured on such  
16 sound recording (or the persons conveying  
17 rights in the artists’ performance in the sound  
18 recordings).

19 “(h) LICENSING TO AFFILIATES.—Where the copy-  
20 right owner of a sound recording owns a controlling inter-  
21 est in, or otherwise has the power directly or indirectly  
22 to exercise a controlling influence over the management  
23 or policies of, an entity engaging in digital transmissions  
24 covered by section 106(6) and licenses to such entity the  
25 right to publicly perform a sound recording by means of

1 a digital transmission, the copyright owner shall make the  
2 licensed sound recording available under section 106(6) on  
3 similar terms and conditions to all other similarly-situated  
4 entities offering similar types of digital transmission serv-  
5 ices, except that the copyright owner may—

6           “(1) impose reasonable requirements for credit  
7           worthiness; and

8           “(2) establish different prices, terms, and con-  
9           ditions to take into account the types of services of-  
10          ferred, the duration of the license, the geographic re-  
11          gion, the numbers of subscribers served, and any  
12          other relevant factors.

13          “(i) NO EFFECT ON ROYALTIES FOR UNDERLYING  
14          WORKS.—License fees payable for the public performance  
15          of sound recordings under section 106(6) shall not be  
16          taken into account in any administrative, judicial, or other  
17          governmental proceeding to set or adjust the royalties pay-  
18          able to copyright owners of musical works for the public  
19          performance of their works. Royalties payable to copyright  
20          owners of musical works for the public performance of  
21          their works shall not be diminished in any respect as a  
22          result of the rights granted by section 106(6).

23          “(j) DEFINITIONS.—As used in this section, the fol-  
24          lowing terms have the following meanings:

1           “(1) A ‘broadcast transmission’ is a trans-  
2           mission made by a broadcast station licensed as such  
3           by the Federal Communications Commission.

4           “(2) An ‘interactive service’ is one that enables  
5           a member of the public to receive, on request, a  
6           transmission of a particular sound recording chosen  
7           by or on behalf of the recipient. The ability of indi-  
8           viduals to request that particular sound recordings  
9           be performed for reception by the public at large  
10          does not make a service interactive. If an entity of-  
11          fers both interactive and non-interactive services (ei-  
12          ther concurrently or at different times), the non-  
13          interactive component shall not be treated as part of  
14          an interactive service.

15          “(3) A ‘nonsubscription transmission’ is any  
16          transmission that is not a subscription transmission.

17          “(4) The ‘sound recording performance com-  
18          plement’ is—

19                 “(A) in the case of an interactive service,  
20                 the capability of a member of the public to re-  
21                 ceive transmissions, during a 1-week period, of  
22                 no more than the complement number; or

23                 “(B) in the case of a transmission other  
24                 than in the course of an interactive service, the

1 transmission consecutively of no more than the  
2 complement number.

3 “(5) The ‘complement number’ is—

4 “(A) 2 selections of sound recordings em-  
5 bodied in any one phonorecord distributed in  
6 the United States for ultimate sale to consum-  
7 ers; or

8 “(B) 3 selections of sound recordings of  
9 performances—

10 “(i) by the same featured recording  
11 artist, or

12 “(ii) embodied in any set of  
13 phonorecords or compilation of sound re-  
14 cordings marketed together as a unit for  
15 ultimate sale to consumers.

16 “(6) A ‘subscription transmission’ is a trans-  
17 mission that is controlled and limited to particular  
18 recipients, and for which consideration is required to  
19 be paid or otherwise given by or on behalf of the re-  
20 cipient to receive the transmission or a package of  
21 transmissions that includes the transmission.”.



1 **SEC. 4. SCOPE OF EXCLUSIVE RIGHTS IN NONDRAMATIC**  
2 **MUSICAL WORKS: COMPULSORY LICENSE**  
3 **FOR MAKING AND DISTRIBUTING**  
4 **PHONORECORDS.**

5 Section 115 of title 17, United State Code, is  
6 amended—

7 (1) by striking “clause” each place it appears  
8 and inserting “paragraph”;

9 (2) in subsection (a)(1) by inserting before the  
10 period at the end of the second sentence “, including  
11 by means of a digital phonorecord delivery”;

12 (3) in the second sentence of subsection (c)(2),  
13 by inserting “and except as provided in paragraph  
14 (3),” after “For this purpose,”;

15 (4) in subsection (c) by redesignating para-  
16 graphs (3), (4), and (5) as paragraphs (5), (6), and  
17 (7), respectively, and by inserting after paragraph  
18 (2) the following:

19 “(3)(A) A compulsory license under this section  
20 includes the right of the maker of a phonorecord of  
21 a nondramatic musical work under subsection (a)(1)  
22 to distribute or authorize distribution of the sound  
23 recording embodied in such phonorecord by means of  
24 a digital transmission which constitutes a digital  
25 phonorecord delivery. Such transmission may also  
26 constitute a public performance of a nondramatic

1 musical work under section 106(4) and of a sound  
2 recording under section 106(6).

3 “(B)(i) For every digital phonorecord delivery  
4 by or under the authority of the compulsory licensee  
5 which is identifiable, the royalty payable by the com-  
6 pulsory licensee shall be the royalty prescribed under  
7 paragraph (2) and chapter 8 of this title.

8 “(ii) For every digital phonorecord delivery by  
9 or under the authority of the compulsory licensee  
10 which is not identifiable but which can be reasonably  
11 expected to result from a digital transmission of a  
12 sound recording, the royalty payable by the compul-  
13 sory licensee shall be the royalty prescribed under  
14 paragraph (4).

15 “(iii) The Librarian of Congress shall prescribe  
16 regulations describing the types of digital trans-  
17 missions of a sound recording which are described in  
18 clauses (i) and (ii). Such regulations—

19 “(I) shall take into account any efforts by  
20 transmitters to avoid or evade the reasonable  
21 use of available techniques to identify deliveries  
22 to transmission recipients of phonorecords of  
23 sound recordings, and

24 “(II) may consider the nature of the digi-  
25 tal transmission service, its marketing practices,

1 technical characteristics, or other indicia to de-  
2 termine whether it is described in clause (ii).

3 “(C) Independent of any right of public per-  
4 formance under section 106(4), the copyright owner  
5 of a nondramatic musical work embodied in a sound  
6 recording has the right to receive royalty payments  
7 at the rates prescribed under this subsection when  
8 the digital transmission of that sound recording con-  
9 stitutes a digital phonorecord delivery. Unless au-  
10 thorized by the copyright owner of the nondramatic  
11 musical work or by any person who has obtained a  
12 compulsory license under this section, such a digital  
13 transmission, by whomever made, shall be actionable  
14 by the copyright owner in the nondramatic musical  
15 work as an act of infringement, except that no such  
16 cause of action may be brought against a copyright  
17 owner of a sound recording unless it authorized the  
18 digital phonorecord delivery. Any such cause of ac-  
19 tion shall be in addition to remedies available to the  
20 copyright owner of the musical work under section  
21 106(4) and the copyright owner of the sound record-  
22 ing with respect to digital phonorecord deliveries  
23 under section 106(6).

24 “(D) Nothing in section 1008 shall be con-  
25 strued to prevent the exercise of the rights and rem-

1 edies allowed by this paragraph, paragraph (7), and  
2 chapter 5 in the event of a digital phonorecord deliv-  
3 ery, except that no action alleging infringement of  
4 copyright may be brought under this title against a  
5 manufacturer, importer, or distributor of a digital  
6 audio recording device, a digital audio recording me-  
7 dium, an analog recording device, or an analog re-  
8 cording medium, or against a consumer, based on  
9 the actions described in such section.

10 “(E) Nothing in this section annuls or limits in  
11 any way—

12 “(i) the exclusive right to publicly perform  
13 a sound recording or the musical work em-  
14 bodied therein, including by means of a digital  
15 transmission, under sections 106(4) and  
16 106(6),

17 “(ii) except for the compulsory licensing  
18 under the conditions specified by this section,  
19 the exclusive rights to reproduce and distribute  
20 the sound recording and the musical work em-  
21 bodied therein under sections 106(1) and  
22 106(3), including by means of a digital phono-  
23 record delivery, or

24 “(iii) any other rights under any other pro-  
25 vision of section 106, or remedies available

1 under this title, as such rights or remedies exist  
2 either before or after the enactment of the Digi-  
3 tal Performance in Sound Recordings Act of  
4 1995.

5 “(4) LICENSES FOR CERTAIN DIGITAL PHONO-  
6 RECORD DELIVERIES.—

7 “(A) Notwithstanding any provision of the  
8 antitrust laws, for the purposes of this para-  
9 graph any copyright owners of nondramatic  
10 musical works and any persons entitled to ob-  
11 tain a compulsory license under subsection  
12 (a)(1) may negotiate and agree upon the terms  
13 and rates of royalty payments for any digital  
14 phonorecord deliveries described in paragraph  
15 (3)(B)(ii) and the proportionate division of fees  
16 paid among copyright owners, and may des-  
17 ignate common agents to negotiate, agree to,  
18 pay, or receive such royalty payments.

19 “(B) Not later than 30 days after the date  
20 of the enactment of the Digital Performance  
21 Right in Sound Recordings Act of 1995, the Li-  
22 brarian of Congress shall cause notice to be  
23 published in the Federal Register of the initi-  
24 ation of voluntary negotiations for the purpose  
25 of determining reasonable terms and rates of

1 royalty payments for the digital phonorecord  
2 deliveries described in clause (3)(B)(ii) during  
3 the period beginning on January 1, 1996, and  
4 ending on December 31, 1999. Such terms and  
5 rates shall distinguish among the different  
6 types of digital phonorecord delivery services  
7 then in operation. Any copyright owners of  
8 nondramatic musical works and any persons en-  
9 titled to obtain a compulsory license under sub-  
10 section (a)(1) may submit to the Librarian of  
11 Congress licenses covering activities with re-  
12 spect to such works. The parties to each such  
13 negotiation proceeding shall bear the entire  
14 costs thereof.

15 “(C) In the absence of license agreements  
16 negotiated under subparagraph (B), the Librar-  
17 ian of Congress shall, pursuant to chapter 8,  
18 convene a copyright arbitration royalty panel to  
19 determine and publish in the Federal Register  
20 a schedule of rates and terms which, subject to  
21 subparagraph (D), shall be binding on all copy-  
22 right owners of nondramatic musical works and  
23 persons entitled to obtain a compulsory license  
24 under subsection (a)(1). In establishing such  
25 rates and terms the copyright arbitration roy-

1           alty panel may consider the rates for com-  
2           parable types of digital phonorecord delivery  
3           services and comparable circumstances under  
4           voluntary license agreements negotiated under  
5           subparagraph (B). The parties to the proceed-  
6           ing shall bear the entire cost thereof in such  
7           manner and proportion as the arbitration panel  
8           shall direct. The Librarian of Congress shall  
9           also establish requirements by which copyright  
10          owners shall receive reasonable notice of the use  
11          of their works under this subsection, and under  
12          which records of such use shall be kept and  
13          made available by persons entitled to obtain a  
14          compulsory license under subsection (a)(1) and  
15          authorized to make digital phonorecord deliv-  
16          eries.

17                   “(D) License agreements voluntarily nego-  
18                   tiated at any time between one or more copy-  
19                   right owners of nondramatic musical works and  
20                   one or more persons entitled to obtain a com-  
21                   pulsory license under subsection (a)(1) shall be  
22                   given effect in lieu of any determination by the  
23                   Librarian of Congress under chapter 8 that  
24                   would otherwise apply.

1           “(E) The procedures set forth in subpara-  
2           graphs (B) and (C) shall be repeated and con-  
3           cluded, in accordance with regulations that the  
4           Librarian of Congress shall prescribe—

5                   “(i) within the 6-month period begin-  
6                   ning on the date on which a petition is  
7                   filed by any copyright owners of  
8                   nondramatic musical works or any person  
9                   entitled to obtain a compulsory license  
10                  under subsection (a)(1) affected by this  
11                  section indicating that a new type of digi-  
12                  tal phonorecord delivery service is or is  
13                  about to become operational, and

14                   “(ii) between June 30 and December  
15                  31 of the year 1999 and each fifth year  
16                  thereafter.”;

17           (5) by inserting after the first sentence in sec-  
18           tion (c)(6) (as so redesignated) the following: “In  
19           the case of digital phonorecord deliveries described  
20           in paragraph (3)(B)(ii) for which royalty fees have  
21           not been set, the compulsory licensee shall pay, ef-  
22           fective as of the initial delivery, such royalty fees as  
23           shall later be determined in accordance with sub-  
24           section (c)(4), and any royalty payments in arrears  
25           shall be made on or before the twentieth day of the



1 month after the month in which the royalty fees are  
2 set.”; and

3 (6) by adding after subsection (c) the following:

4 “(d) DEFINITION.—As used in this section, the term  
5 ‘digital phonorecord delivery’ means each individual deliv-  
6 ery of a phonorecord by digital transmission of a sound  
7 recording which—

8 “(1) results in an identifiable reproduction by  
9 or for any transmission recipient of such sound re-  
10 cording, or

11 “(2) can be reasonably expected to result in a re-  
12 production by or for any transmission recipient of  
13 such sound recording even though such delivery is  
14 not identifiable,

15 regardless of whether the digital transmission is also a  
16 public performance of the sound recording or any  
17 nondramatic musical work embodied therein. None of the  
18 exempt transmissions described in section 114(d)(1) shall  
19 be considered a digital phonorecord delivery.”.

20 **SEC. 5. CONFORMING AMENDMENTS.**

21 (a) DEFINITIONS.—Section 101 of title 17, United  
22 States Code, is amended by inserting after the definition  
23 of “device”, “machine”, or “process” the following:

24 “A ‘digital transmission’ is a transmission in a  
25 digital format. A retransmission in a nondigital for-

1 mat of a digital transmission is not itself a digital  
2 transmission.”

3 (b) LIMITATIONS ON EXCLUSIVE RIGHTS: SECOND-  
4 ARY TRANSMISSIONS.—Section 111(c)(1) of title 17,  
5 United States Code, is amended in the first sentence by  
6 striking “The” and inserting “Except in the case of a per-  
7 formance of a sound recording in the course of a digital  
8 transmission, the”.

9 (c) LIMITATIONS ON EXCLUSIVE RIGHTS: SECOND-  
10 ARY TRANSMISSIONS OF SUPERSTATIONS AND NETWORK  
11 STATIONS FOR PRIVATE HOME VIEWING.—Section  
12 119(a)(1) of title 17, United States Code, is amended by  
13 striking “Subject to” and inserting “Except in the case  
14 of a performance of a sound recording in the course of  
15 a digital transmission, and subject to”.

16 (d) COPYRIGHT ARBITRATION ROYALTY PANELS.—

17 (1) Section 801(b)(1) of title 17, United States  
18 Code, is amended in the first and second sentences  
19 by striking “115” and inserting “114, 115,”.

20 (2) Section 802(c) of title 17, United States  
21 Code, is amended in the third sentence by striking  
22 “section 111, 116, or 119,” and inserting “section  
23 111, 114, 116, or 119, any person entitled to a com-  
24 pulsory license under section 114(d), any person en-  
25 titled to a compulsory license under section 115,”.

1           (3) Section 802(g) of title 17, United States  
2 Code, is amended in the third sentence by striking  
3 “115, 116, 118, 119, or 1003” and inserting “114,  
4 115, 116, 118, 119, and 1003”.

5           (4) Section 802(h)(2) of title 17, United States  
6 Code, is amended by inserting “114,” after “111,”.

7 **SEC. 6. EFFECTIVE DATE.**

8           This Act, and the amendments made by this Act,  
9 shall take effect January 1, 1996, except that the provi-  
10 sions of sections 114(e) and 114(f) of title 17, United  
11 States Code, as added by section 3 of this Act, shall take  
12 effect on the date of the enactment of this Act.

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