To amend title 17, United States Code, to provide for additional compensation in statutory licensing for certain public performances of sound recordings, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

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

A BILL

To amend title 17, United States Code, to provide for additional compensation in statutory licensing for certain public performances of sound recordings, and for other purposes.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Interim Fairness in Radio Starting Today Act of 2012” or the “Interim FIRST Act of 2012”.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The recording industry represents a significant segment of the United States economy.

(2) Supporting recording artists and copyright owners, as well as the creativity they inspire, is vital to the economic and cultural future of the United States.

(3) Investment in the creation of great recorded music should be nurtured and encouraged.

(4) It is vital to the American economy that the appropriate economic incentives are present for musical creators and their investors to take the risks necessary to continue to create and innovate.

(5) The United States should be a leader in promoting the creative industries.

(6) The genius of American recording artists has created a great cultural legacy and continues to create a critical source of income to the American economy.

(7) Article I, section 8, clause 8 of the Constitution specifically empowers Congress to protect and encourage artistic creations through copyright law.

(8) Under current copyright law, literary works, musical works, dramatic works, pantomimes, choreo-
graphic works, motion pictures and other audiovisual works have a full performance right, but sound recordings do not.

(9) Sound recordings are the only works capable of being performed that do not have a full performance right in the United States.

(10) Terrestrial broadcasting is the only industry in America that can use another’s intellectual property without permission or compensation.

(11) All other radio formats, such as satellite, cable and Internet radio, compensate recording artists and copyright owners for their music.

(12) All other OECD countries besides the United States provide a performance right in sound recordings.

(13) Broadcast radio clings to an old business model that is out of step with the modern, digital marketplace for recorded music.

(14) Congressionally encouraged, private negotiations to compensate artists for the recordings broadcast radio plays over terrestrial radio have, to date, failed.

(15) The United States should provide fair and meaningful protection for musical artists and creators.
(16) Even the largest radio broadcaster in the United States has now recognized that recording artists and their investors deserve compensation for the public performance of their intellectual property.

(17) It is Congress’ hope that broadcast radio will soon compensate artists for the music broadcast radio plays over terrestrial radio.

(18) Until a full performance right in sound recordings is established, Congress believes that, in the interim, broadcasters relying on statutory licenses should provide additional compensation to artists for their non-broadcast digital transmissions.

(19) It is understood that such additional and interim compensation is not intended to reflect fair market consideration for the long absence of a performance right, or to replace a performance right, but to mitigate artists’ subsidizing the businesses of broadcast stations while discussions continue concerning permanent, fair compensation.

(20) Just as all radio platforms should compensate creators and copyright owners for the use of their music, all radio platforms should pay compensation based on the same royalty standard, regardless of the technology or business model they employ.
(21) The royalty rate standard for the public performance of sound recordings should approximate the royalty rate that would otherwise be agreed upon in the marketplace and should not give any individual companies, industries, or technology platforms a special advantage.

SEC. 3. PLATFORM PARITY FOR INTERNET RADIO TRANSMISSIONS BY FCC LICENSED COMMERCIAL BROADCAST STATIONS.

(a) ADDITIONAL COMPENSATION.—Section 114(f)(2) of title 17, United States Code, is amended by adding at the end the following:

“(D) ADDITIONAL COMPENSATION.—

“(i) IN GENERAL.—Notwithstanding the provisions of subparagraphs (A) through (C), in the case of any entity that owns or operates one or more commercial terrestrial broadcast stations that are licensed as such by the Federal Communications Commission, or that is affiliated with an entity that owns or operates one or more such commercial terrestrial stations, and makes transmissions under a statutory license of programming transmitted over-the-air by one or more such commercial terrestrial stations, the royalty rate to be paid by such entity
for such transmissions under this section and section 112(e) shall include an additional royalty fee determined by multiplying the rate otherwise applicable under this subsection (f) and section 112(e), regardless of whether such otherwise applicable rate was set by the Copyright Royalty Judges or an agreement as described in paragraph (5), by a factor to be determined by the Copyright Royalty Judges.

“(ii) Determination of Factor.—The Copyright Royalty Judges shall establish the factor described in clause (i) so that the additional royalty fee most clearly represents the royalty that would have been negotiated in the marketplace between a willing buyer and a willing seller for the public performance of sound recordings by means of over-the-air non-subscription broadcast transmissions by affiliated terrestrial broadcast radio stations, if a sound recording copyright owner had the exclusive right to make and authorize such transmissions of the relevant recordings.”.

(b) Timing of Proceedings.—Section 804(b)(3) of title 17, United States Code, is amended by adding at the end the following:
“(D) As to any applicable section 112(e) or 114 rate period for which royalty rates and terms have already been set as of the date of enactment of the Interim FIRST Act of 2012, a proceeding under this chapter shall be commenced as soon as practicable after such date of enactment to determine the factor described in section 114(f)(2)(D) for the portion of such period between the date of enactment of the Interim FIRST Act of 2012 and the expiration of such period. For any other section 112(e) or 114 rate period, such factor shall be determined in the proceedings otherwise contemplated by this paragraph.”.

SEC. 4. PROTECTION OF SONGWRITERS AND COPYRIGHT OWNERS OF MUSICAL WORKS.

(a) No Adverse Effect on License Fees and Royalties for Underlying Musical Works.—Section 114(i) of title 17, United States Code, is amended to read as follows:

“(i) No Adverse Effect on License Fees and Royalties for Underlying Musical Works.—License fees and royalties payable for the public performance of sound recordings under section 106(6), including license fees and royalties payable pursuant to section
114(f)(2)(D), shall not be cited, taken into account, or otherwise used in any administrative, judicial, or other governmental proceeding, or otherwise, to set or adjust the license fees and royalties payable to copyright owners of musical works or their representatives for the public performance of their works, for the purpose of diminishing or adversely affecting such license fees and royalties. License fees and royalties payable to copyright owners of musical works or their representatives for the public performance of their works shall not be diminished or adversely affected in any respect as a result of the rights granted by section 106(6) and on account of license fees and royalties payable for the public performance of sound recordings.”.

(b) Public Performance Rights and License Fees and Royalties.—Nothing in this Act or the amendments made by this Act shall be construed to diminish or adversely affect in any respect the public performance rights of, or license fees and royalties payable to, songwriters or copyright owners of musical works.

SEC. 5. ESTABLISHING MARKET-BASED, TECHNOLOGY NEUTRAL RATE STANDARD PARITY FOR ALL SERVICES.

(a) In General.—Section 114(f)(1)(B) of title 17, United States Code, is amended by striking the second
sentence and inserting “In establishing rates and terms for preexisting subscription services and preexisting satellite digital audio radio services, the Copyright Royalty Judges shall apply the same standards as applicable under paragraph (2)(B).”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 801(b)(1) of title 17, United States Code, is amended by striking “sections 114(f)(1)(B), 115, and” and inserting “sections 115 and”.