

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 4130  
OFFERED BY MR. NADLER OF NEW YORK**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “American Music Fairness Act of 2022”.

4 (b) TABLE OF CONTENTS.—The table of contents for  
5 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.

**6 SEC. 2. EQUITABLE TREATMENT FOR TERRESTRIAL  
7 BROADCASTS AND INTERNET SERVICES.**

8 (a) PERFORMANCE RIGHT APPLICABLE TO AUDIO  
9 TRANSMISSIONS GENERALLY.—Paragraph (6) of section  
10 106 of title 17, United States Code, is amended to read  
11 as follows:

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

1 (b) INCLUSION OF TERRESTRIAL BROADCASTS IN  
2 EXISTING PERFORMANCE RIGHT AND STATUTORY LI-  
3 CENSE.—Section 114(d)(1) of title 17, United States  
4 Code, is amended—

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

7 (2) by striking subparagraph (A);

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

10 (4) in subparagraph (A), as redesignated by  
11 paragraph (3), by striking “nonsubscription” and in-  
12 serting “licensed nonsubscription”.

13 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

14 (1) DEFINITION.—Section 101 of title 17,  
15 United States Code, is amended by inserting after  
16 the definition of “architectural work” the following:

17 “An ‘audio transmission’ is a transmission of a sound  
18 recording, whether in a digital, analog, or other format.  
19 This term does not include the transmission of any audio-  
20 visual work.”.

21 (2) CONFORMING REMOVAL OF DIGITAL.—Title  
22 17, United States Code, is amended—

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

- 1 (B) in section 114—
- 2 (i) in subsection (d)—
- 3 (I) in paragraph (2)—
- 4 (aa) in the matter preceding
- 5 subparagraph (A), by striking
- 6 “subscription digital” and insert-
- 7 ing “subscription”; and
- 8 (bb) in subparagraph
- 9 (C)(viii), by striking “digital sig-
- 10 nal” and inserting “signal”; and
- 11 (II) in paragraph (4)—
- 12 (aa) in subparagraph (A),
- 13 by striking “a digital audio
- 14 transmission” and inserting “an
- 15 audio transmission”; and
- 16 (bb) in subparagraph (B)(i),
- 17 by striking “a digital audio
- 18 transmission” and inserting “an
- 19 audio transmission”;
- 20 (ii) in subsection (g)(2)(A), by strik-
- 21 ing “a digital” and inserting “an”; and
- 22 (iii) in subsection (j)—
- 23 (I) in paragraph (6)—
- 24 (aa) by striking “digital”;
- 25 and

1 (bb) by striking “retrans-  
2 missions of broadcast trans-  
3 missions” and inserting “broad-  
4 cast transmissions and retrans-  
5 missions of broadcast trans-  
6 missions”; and

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

10 (C) in section 1401—

11 (i) in subsection (b), by striking “a  
12 digital audio” and inserting “an audio”;  
13 and

14 (ii) in subsection (d)—

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

18 (II) in paragraph (2)(A), by  
19 striking “a digital audio” and insert-  
20 ing “an audio”; and

21 (III) in paragraph (4)(A), by  
22 striking “a digital audio” and insert-  
23 ing “an audio”.

1 **SEC. 3. TIMING OF PROCEEDINGS UNDER SECTIONS 112(e)**  
2 **AND 114(f).**

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

6 “(D) A proceeding under this chapter shall  
7 be commenced as soon as practicable after the  
8 date of the enactment of this subparagraph to  
9 determine royalty rates and terms for non-  
10 subscription broadcast transmissions, to be ef-  
11 fective for the period beginning on such date of  
12 enactment, and ending on December 31, 2028.  
13 Any payment due under section 114(f)(1)(D)  
14 shall not be due until the due date of the first  
15 royalty payments for nonsubscription broadcast  
16 transmissions that are determined, after the  
17 date of the enactment of this subparagraph, by  
18 the Copyright Royalty Judges. Thereafter, such  
19 proceeding shall be repeated in each subsequent  
20 fifth calendar year.”.

21 **SEC. 4. SPECIAL PROTECTION FOR SMALL BROADCASTERS.**

22 (a) **SPECIFIED ROYALTY FEES.**—Section 114(f)(1)  
23 of title 17, United States Code, is amended by inserting  
24 at the end the following new subparagraph:

25 “(D)(i) Notwithstanding the provisions of  
26 subparagraphs (A) through (C), the royalty

1 rate shall be as follows for nonsubscription  
2 broadcast transmissions by each individual ter-  
3 restrial broadcast station licensed as such by  
4 the Federal Communications Commission that  
5 satisfies the conditions in clause (ii)—

6 “(I) \$10 per calendar year, in the  
7 case of nonsubscription broadcast trans-  
8 missions by a broadcast station that gen-  
9 erated revenue in the immediately pre-  
10 ceding calendar year of less than  
11 \$100,000;

12 “(II) \$100 per calendar year, in the  
13 case of nonsubscription broadcast trans-  
14 missions by a broadcast station that is a  
15 public broadcasting entity as defined in  
16 section 118(f) and generated revenue in  
17 the immediately preceding calendar year of  
18 \$100,000 or more, but less than  
19 \$1,500,000; and

20 “(III) \$500 per calendar year, in the  
21 case of nonsubscription broadcast trans-  
22 missions by a broadcast station that is not  
23 a public broadcasting entity as defined in  
24 section 118(f) and generated revenue in  
25 the immediately preceding calendar year of

1           \$100,000 or more, but less than  
2           \$1,500,000.

3           “(ii) An individual terrestrial broadcast  
4           station licensed as such by the Federal Commu-  
5           nications Commission is eligible for a royalty  
6           rate set forth in clause (i) if—

7                   “(I) the revenue from the operation of  
8                   that individual station was less than  
9                   \$1,500,000 during the immediately pre-  
10                  ceding calendar year;

11                  “(II) the aggregate revenue of the  
12                  owner and operator of the broadcast sta-  
13                  tion and any person directly or indirectly  
14                  controlling, controlled by, or under com-  
15                  mon control with such owner or operator,  
16                  from any source, was less than  
17                  \$10,000,000 during the immediately pre-  
18                  ceding calendar year; and

19                  “(III) the owner or operator of the  
20                  broadcast station provides to the nonprofit  
21                  collective designated by the Copyright Roy-  
22                  alty Judges to distribute receipts from the  
23                  licensing of transmissions in accordance  
24                  with subsection (f), by no later than Janu-  
25                  ary 31 of the relevant calendar year, a

1 written and signed certification of the sta-  
2 tion's eligibility under this clause and the  
3 applicable subclause of clause (i), in ac-  
4 cordance with requirements the Copyright  
5 Royalty Judges shall prescribe by regula-  
6 tion.

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

8 “(I) revenue shall be calculated in ac-  
9 cordance with generally accepted account-  
10 ing principles;

11 “(II) revenue generated by a terres-  
12 trial broadcast station shall include all rev-  
13 enue from the operation of the station,  
14 from any source; and

15 “(III) in the case of affiliated broad-  
16 cast stations, revenue shall be allocated  
17 reasonably to individual stations associated  
18 with the revenue.

19 “(iv) The royalty rates specified in clause  
20 (i) shall not be admissible as evidence or other-  
21 wise taken into account in determining royalty  
22 rates in a proceeding under chapter 8, or in any  
23 other administrative, judicial, or other Federal  
24 Government proceeding involving the setting or  
25 adjustment of the royalties payable for the pub-



1           lic performance or reproduction in ephemeral  
2           phonorecords or copies of sound recordings, the  
3           determination of terms or conditions related  
4           thereto, or the establishment of notice or rec-  
5           ordkeeping requirements.”.

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

10 **SEC. 5. DISTRIBUTION OF CERTAIN ROYALTIES.**

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

13           (1) in paragraph (1), by inserting “or in the  
14 case of a transmission to which paragraph (5) ap-  
15 plies” after “this section”;

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

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

20           “(5) Notwithstanding paragraph (1), to the ex-  
21 tent that a license granted by the copyright owner  
22 of a sound recording to a transmitting entity eligible  
23 for a statutory license under subsection (d)(2) ex-  
24 tends to such entity’s transmissions otherwise licens-  
25 able under a statutory license in accordance with

1 subsection (f), such entity shall pay to the collective  
2 designated to distribute statutory licensing receipts  
3 from the licensing of transmissions in accordance  
4 with subsection (f), 50 percent of the total royalties  
5 that such entity is required, pursuant to the applica-  
6 ble license agreement, to pay for such transmissions  
7 otherwise licensable under a statutory license in ac-  
8 cordance with subsection (f). That collective shall  
9 distribute such payments in proportion to the dis-  
10 tributions provided in subparagraphs (B) through  
11 (D) of paragraph (2), and such payments shall be  
12 the only payments to which featured and nonfea-  
13 tured artists are entitled by virtue of such trans-  
14 missions under the direct license with such entity.”.

15 **SEC. 6. NO HARMFUL EFFECTS ON SONGWRITERS.**

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

20 **SEC. 7. VALUE OF PROMOTION TAKEN INTO ACCOUNT.**

21 Pursuant to section 114(f)(1)(B) of title 17, United  
22 States Code, in determining rates and terms for terrestrial  
23 broadcast radio stations under this Act, and the amend-  
24 ments made by this Act, the Copyright Royalty Judges  
25 shall base their decision on economic, competitive, and

1 programming information presented by the parties, includ-  
2 ing whether use of the station's service may substitute for  
3 or may promote the sales of phonorecords or otherwise  
4 may interfere with or may enhance the sound recording  
5 copyright owner's other streams of revenue from the copy-  
6 right owner's sound recordings.

