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:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

(b) TABLE OF CONTENTS.—The table of contents for 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 audiovisual 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”; and

(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 terrestrial 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 transmissions by a broadcast station that generated revenue in the immediately preceding calendar year of less than $100,000;

“(II) $100 per calendar year, in the case of nonsubscription broadcast transmissions 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 common 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 pub-
lic 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) applies” 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 following new paragraph:

“(5) Notwithstanding paragraph (1), to the extent 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) extends to such entity’s transmissions otherwise licensable 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 applicable license agreement, to pay for such transmissions otherwise licensable under a statutory license in accordance with subsection (f). That collective shall distribute such payments in proportion to the distributions provided in subparagraphs (B) through (D) of paragraph (2), and such payments shall be the only payments to which featured and nonfeatured artists are entitled by virtue of such transmissions 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 performance 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 amendments made by this Act, the Copyright Royalty Judges shall base their decision on economic, competitive, and
programming information presented by the parties, including 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 copyright owner’s sound recordings.