

109TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

To harmonize rate setting standards for copyright licenses under sections 112 and 114 of title 17, United States Code, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

Mrs. FEINSTEIN (for herself and Mr. GRAHAM) introduced the following bill; which was read twice and referred to the Committee on

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**A BILL**

To harmonize rate setting standards for copyright licenses under sections 112 and 114 of title 17, United States Code, 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 “Platform Equality and  
5 Remedies for Rights Holders in Music Act of 2006” or  
6 the “Perform Act of 2006”.

7 **SEC. 2. RATE SETTING STANDARDS.**

8 (a) SECTION 112 LICENSES.—Section 112(e)(4) of  
9 title 17, United States Code, is amended in the third sen-

1 tence by striking “fees that would have been negotiated  
2 in the marketplace between a willing buyer and a willing  
3 seller” and inserting “the fair market value of the rights  
4 licensed under this subsection”.

5 (b) SECTION 114 LICENSES.—Section 114(f) of title  
6 17, United States Code, is amended—

7 (1) by striking paragraph (1);

8 (2) by redesignating paragraphs (2), (3), (4),  
9 and (5) as paragraphs (1), (2), (3), and (4), respec-  
10 tively; and

11 (3) in paragraph (1) (as redesignated under  
12 this subsection)—

13 (A) in subparagraph (A), by striking all  
14 after “Proceedings” and inserting “under chap-  
15 ter 8 shall determine reasonable rates and  
16 terms of royalty payments for transmissions  
17 during 5-year periods beginning on January 1  
18 of the second year following the year in which  
19 the proceedings are to be commenced, except  
20 where a different transitional period is provided  
21 under section 6(b)(3) of the Copyright Royalty  
22 and Distribution Reform Act of 2004, or such  
23 other period as the parties may agree.”;

24 (B) in subparagraph (B)—

1 (i) in the first sentence, by striking  
2 “affected by this paragraph” and inserting  
3 “under this section”;

4 (ii) in the second sentence, by striking  
5 “eligible nonsubscription transmission”;  
6 and

7 (iii) in the third sentence—

8 (I) by striking “by eligible non-  
9 subscription services and new sub-  
10 scription”; and

11 (II) by striking “rates and terms  
12 that would have been negotiated in  
13 the marketplace between a willing  
14 buyer and a willing seller” and insert-  
15 ing “the fair market value of the  
16 rights licensed under this section”;

17 (iv) in clause (i), by striking “and”  
18 after the semicolon;

19 (v) in clause (ii), by striking the pe-  
20 riod and inserting “; and”; and

21 (vi) by inserting after clause (ii) the  
22 following:

23 “(iii) the degree to which reasonable  
24 recording affects the potential market for  
25 sound recordings, and the additional fees

1           that are required to be paid by services for  
2           compensation.”; and

3           (C) by striking subparagraph (C) and in-  
4           serting the following:

5           “(C) The procedures under subparagraphs  
6           (A) and (B) shall also be initiated pursuant to  
7           a petition filed by any copyright owners of  
8           sound recordings or any transmitting entity in-  
9           dicating that a new type of service on which  
10          sound recordings are performed is or is about  
11          to become operational, for the purpose of deter-  
12          mining reasonable terms and rates of royalty  
13          payments with respect to such new type of serv-  
14          ice for the period beginning with the inception  
15          of such new type of service and ending on the  
16          date on which the royalty rates and terms for  
17          preexisting subscription digital audio trans-  
18          mission services, eligible nonsubscription serv-  
19          ices, or new subscription services, as the case  
20          may be, most recently determined under sub-  
21          paragraph (A) or (B) and chapter 8 expire, or  
22          such other period as the parties may agree.”.

23          (e) CONTENT PROTECTION.—Section 114(d)(2)(C) of  
24          title 17, United States Code, is amended—

1           (1) by striking clause (vi) and inserting the fol-  
2           lowing:

3                           “(vi) the transmitting entity takes no  
4                           affirmative steps to authorize, enable,  
5                           cause or induce the making of a phono-  
6                           record by the transmission recipient and  
7                           uses reasonably available technology to  
8                           prevent copying of the transmission, except  
9                           for reasonable recording as defined in this  
10                          subsection;” and

11           (2) by adding at the end the following:

12   “Nothing in clause (vi) shall preclude or prevent a per-  
13   forming rights society or a mechanical rights organization,  
14   or any entity owned in whole or in part by, or acting on  
15   behalf of, such organizations, from monitoring public per-  
16   formances or other uses of copyrighted works contained  
17   in such transmissions. Any such organization or entity  
18   shall be granted a license on either a gratuitous basis or  
19   for a de minimus fee to cover only the reasonable costs  
20   to the licensor of providing the license, and on reasonable,  
21   nondiscriminatory terms, to access and retransmit as nec-  
22   essary any content contained in such transmissions pro-  
23   tected by content protection or similar technologies, if  
24   such licenses are for purposes of carrying out the activities  
25   of such organizations or entities in monitoring the public

1 performance or other uses of copyrighted works, and such  
2 organizations or entities employ reasonable methods to  
3 protect any such content accessed from further distribu-  
4 tion.”.

5 (d) DEFINITION.—Section 114(j) of title 17, United  
6 States Code, is amended—

7 (1) by redesignating paragraphs (10) through  
8 (15) as paragraphs (11) through (16), respectively;  
9 and

10 (2) by inserting after paragraph (9) the fol-  
11 lowing:

12 “(10)(A) A ‘reasonable recording’ means re-  
13 cording of a performance licensed under this section  
14 where technological measures used by the transmit-  
15 ting entity and incorporated into the recording de-  
16 vice—

17 “(i) permit automatic recording or play-  
18 back based on specific programs, time periods,  
19 or channels as selected by the user;

20 “(ii) does not permit automatic recording  
21 or playback based on specific sound recordings,  
22 artists, genres (not including channel designa-  
23 tion) or other user preferences;

24 “(iii) does not permit the separation of  
25 component segments of the copyrighted mate-

1           rial contained in the transmission program  
2           which results in the creation of a manipulated  
3           program; and

4                   “(iv) does not permit the redistribution, re-  
5           transmission or other exporting of recorded ma-  
6           terial from the device by digital outputs or re-  
7           movable media.

8           “(B) Nothing in this paragraph shall prevent a  
9           consumer from engaging in manual recording and  
10          playback in a manner that is not an infringement of  
11          copyright.”.

12          (e) TECHNICAL AND CONFORMING AMENDMENTS.—

13               (1) SECTION 114.—Section 114(f) of title 17,  
14          United States Code (as amended by subsection (b)  
15          of this section), is further amended—

16                   (A) in paragraph (1)(B), in the first sen-  
17           tence, by striking “paragraph (3)” and insert-  
18           ing “paragraph (2)”; and

19                   (B) in paragraph (4)(C), by striking  
20           “under paragraph (4)” and inserting “under  
21           paragraph (3)”.

22               (2) SECTION 804.—Section 804(b)(3)(C) of title  
23          17, United States Code, is amended—

24                   (A) in clause (i), by striking “and  
25           114(f)(2)(C)”; and

1 (B) in clause (iv), by striking “or  
2 114(f)(2)(C), as the case may be”.