

**SUSPEND THE RULES AND PASS THE BILL, H.R. 5469, WITH
AMENDMENTS**

**(The amendments strike all after the enacting clause and insert a
new text and a new title)**

107TH CONGRESS
2^D SESSION

H. R. 5469

To suspend for a period of 6 months the determination of the Librarian of Congress of July 8, 2002, relating to rates and terms for the digital performance of sound recordings and ephemeral recordings.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 26, 2002

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

A BILL

To suspend for a period of 6 months the determination of the Librarian of Congress of July 8, 2002, relating to rates and terms for the digital performance of sound recordings and ephemeral recordings.

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



1 **SECTION. 1. SHORT TITLE.**

2 This Act may be cited as the “Small Webcaster
3 Amendments Act of 2002”.

4 **SEC. 2. EPHEMERAL ROYALTY RATES FOR ELIGIBLE SMALL**
5 **WEBCASTERS.**

6 Section 112(e) of title 17, United States Code, is
7 amended—

8 (1) in paragraph (4), by inserting immediately
9 before the period at the end of the first sentence the
10 following: “, except that the royalty payable under
11 this section for any reproduction of a phonorecord
12 made during the period beginning on October 28,
13 1998, and ending on December 31, 2004, and used
14 solely by an eligible small webcaster to facilitate
15 transmissions for which it pays royalties as and
16 when provided in section 114(f)(2)(D) shall be
17 deemed to be included within such royalty pay-
18 ments”; and

19 (2) in paragraph (6), by adding at the end the
20 following: “Notwithstanding the preceding provisions
21 of this paragraph, the royalty payable under this
22 section for any reproduction of a phonorecord made
23 during the period beginning on October 28, 1998,
24 and ending on December 31, 2004, and used solely
25 by an eligible small webcaster to facilitate trans-
26 missions for which it pays royalties as and when



1 provided in section 114(f)(2)(D) shall be deemed to
2 be included within such royalty payments.”

3 **SEC. 3. ROYALTY RATES AND NOTICE AND RECORD-**
4 **KEEPING FOR ELIGIBLE SMALL**
5 **WEBCASTERS.**

6 (a) PROVISION FOR CERTAIN RATES.—Section
7 114(f)(2) of title 17, United States Code, is amended—

8 (1) in subparagraph (B), by inserting imme-
9 diately before the period at the end of the first sen-
10 tence the following: “, except that the royalty rates
11 for certain public performances of sound recordings
12 shall be as provided in subparagraph (D)”;

13 (2) in subparagraph (C), by adding after clause
14 (iii) the following:

15 “(iv) Notwithstanding the preceding provisions
16 of this subparagraph, the royalty rates and terms
17 for certain public performances of sound recordings
18 by certain entities shall be as provided in subpara-
19 graph (D).”.

20 (b) RATES FOR ELIGIBLE SMALL WEBCASTERS.—

21 Section 114(f)(2) of title 17, United States Code, is
22 amended by adding after subparagraph (C) the following:

23 “(D)(i) Subject to clause (iii) and paragraph
24 (3), but notwithstanding any other provision of this
25 paragraph, an eligible small webcaster may, as pro-



1 vided in clause (ii)(VII), for the period beginning on
2 October 28, 1998, and ending on December 31,
3 2002, or one or both of calendar years 2003 and
4 2004, elect the royalty rates specified in this clause
5 in lieu of any other applicable royalty rates:

6 “(I) For eligible nonsubscription trans-
7 missions made by an eligible small webcaster
8 during the period beginning on October 28,
9 1998, and ending on December 31, 2002, the
10 royalty rate shall be 8 percent of the
11 webcaster’s gross revenues during such period,
12 or 5 percent of the webcaster’s expenses during
13 such period, whichever is greater, except that
14 an eligible small webcaster that is a natural
15 person shall exclude from expenses those ex-
16 penses not incurred in connection with the oper-
17 ation of a service that makes eligible non-
18 subscription transmissions, and an eligible small
19 webcaster that is a natural person shall exclude
20 from gross revenues his or her income during
21 such period, other than income derived from—

22 “(aa) a media or entertainment re-
23 lated business that provides audio or other
24 entertainment programming, or



1 “(bb) a business that primarily oper-
2 ates an Internet or wireless service,
3 that is in either case directly or indirectly con-
4 trolled by such natural person, or of which such
5 natural person beneficially owns 5 percent or
6 more of the outstanding voting or non-voting
7 stock.

8 “(II) For eligible nonsubscription trans-
9 missions made by an eligible small webcaster
10 during 2003 or 2004, the royalty rate shall be
11 10 percent of the eligible small webcaster’s first
12 \$250,000 in gross revenues and 12 percent of
13 any gross revenues in excess of \$250,000 dur-
14 ing the applicable year, or 7 percent of the
15 webcaster’s expenses during the applicable year,
16 whichever is greater.

17 “(ii) Notwithstanding paragraph (4)(C), pay-
18 ment of the amounts specified in clause (i) shall be
19 made as follows:

20 “(I) Except as provided in clause (iii)(I)
21 and (IV), the amounts specified in clause (i)(I)
22 for eligible nonsubscription transmissions made
23 by an eligible small webcaster during the period
24 beginning on October 28, 1998, and ending on
25 September 30, 2002, shall be paid in three



1 equal installments, with the first due by No-
2 vember 30, 2002, the second due by May 31,
3 2003, and the third due by October 31, 2003.

4 “(II) The amounts specified in clause (i)
5 for eligible nonsubscription transmissions made
6 by an eligible small webcaster during October
7 2002 or any month thereafter shall be paid on
8 or before the twentieth day of the month next
9 succeeding such month.

10 “(III) If the gross revenues, plus the third
11 party participation revenues and revenues from
12 the operation of new subscription services, of a
13 transmitting entity and its affiliates have not
14 exceeded \$1,250,000 in any year, and the
15 transmitting entity expects to be an eligible
16 small webcaster in 2003 or 2004, the transmit-
17 ting entity may make payments for 2003 or
18 2004, as the case may be, on the assumption
19 that it will be an eligible small webcaster for
20 that year for so long as that assumption is rea-
21 sonable.

22 “(IV) In making payments under clause
23 (i)(II), the webcaster shall, at the time a pay-
24 ment is due, calculate its gross revenues and
25 expenses for the year through the end of the



1 applicable month, and for the applicable month
2 pay the applicable percentage of gross revenues
3 or expenses, as the case may be, for the year
4 through the end of the applicable month, less
5 any amounts previously paid for such year.

6 “(V) If a transmitting entity has made
7 payments under clause (i)(II) for 2003 or 2004
8 based on the assumption that it will qualify as
9 an eligible small webcaster, as provided in sub-
10 clause (IV), but the actual gross revenues in
11 2003, or the actual gross revenues, third party
12 participation revenues, and revenues from the
13 operation of new subscription services in 2004,
14 of the eligible small webcaster and its affiliates,
15 exceed the maximum amounts provided in
16 clause (vi)(II), then the transmitting entity
17 shall immediately commence to pay monthly
18 royalties based on the royalty rates otherwise
19 applicable under this subsection, and on the
20 third payment date after the month in which
21 such maximum amounts are exceeded, it shall
22 pay an amount of royalties based on such other-
23 wise applicable rates for the whole year through
24 the end of the immediately preceding month,



1 less any amounts previously paid under clause
2 (i) for such year.

3 “(VI) Payments of all amounts specified in
4 clause (i) shall be made to the entity designated
5 by the Copyright Office to receive royalty pay-
6 ments under this section and shall under no cir-
7 cumstances be refundable, but if an eligible
8 small webcaster makes overpayments during a
9 year, it shall be entitled to a credit in the
10 amount of its overpayment, and such credit
11 shall be applicable to its payments in subse-
12 quent years.

13 “(VII) An eligible small webcaster that
14 wishes to elect the royalty rates specified in
15 clause (i) in lieu of any other royalty rates that
16 otherwise might apply under this subsection for
17 the period beginning on October 28, 1998, and
18 ending on December 31, 2002, or one or both
19 of calendar years 2003 and 2004, shall file an
20 election with the Copyright Office and serve it
21 on each entity designated by the Copyright Of-
22 fice to distribute royalty payments under this
23 section to copyright owners and performers en-
24 titled to receive royalties under subsection
25 (d)(2) by no later than the first date on which



1 the webcaster is obligated under this clause to
2 make a royalty payment for such period. An eli-
3 gible small webcaster that fails to make a time-
4 ly election shall pay royalties as otherwise pro-
5 vided under this section. As a condition of such
6 election, an eligible small webcaster shall—

7 “(aa) make available to the entity des-
8 ignated to receive royalties under this sec-
9 tion, on request at any time during the 3
10 years following the applicable period, suffi-
11 cient evidence to support its eligibility as
12 an eligible small webcaster; and

13 “(bb) provide to such entity, by not
14 later than January 31 of the year following
15 the applicable period, an accounting of its
16 third party participation revenues.

17 The entity designated to receive royalties under
18 this section may share with individual copyright
19 owners the accounting provided by an eligible
20 small webcaster under division (bb) if such enti-
21 ty does so in such a way that the eligible small
22 webcaster cannot readily be identified.

23 “(iii) Notwithstanding clause (i), eligible small
24 webcasters that elect the royalty rates specified in



1 clause (i) shall pay a minimum fee for the periods
2 specified in this clause, as follows:

3 “(I) For eligible nonsubscription trans-
4 missions made by an eligible small webcaster
5 during the period beginning on October 28,
6 1998, and ending on December 31, 1998, the
7 minimum fee for the year shall be \$500.

8 “(II) For eligible nonsubscription trans-
9 missions made by an eligible small webcaster in
10 any part of calendar years 1999 through 2002,
11 the minimum fee for each year in which such
12 transmissions are made shall be \$2,000.

13 “(III) For eligible nonsubscription trans-
14 missions made by an eligible small webcaster in
15 any part of calendar years 2003 and 2004, the
16 minimum fee for each year in which such trans-
17 missions are made shall be \$2,000 if the eligible
18 small webcaster had gross revenues during the
19 immediately preceding year of not more than
20 \$50,000 and expects to have gross revenues
21 during the applicable year of not more than
22 \$50,000.

23 “(IV) For eligible nonsubscription trans-
24 missions made by an eligible small webcaster in
25 any part of calendar years 2003 and 2004, the



1 minimum fee for each year in which such trans-
2 missions are made shall be \$5,000 if the eligible
3 small webcaster had gross revenues during the
4 immediately preceding year of more than
5 \$50,000 or expects to have gross revenues dur-
6 ing the applicable year of more than \$50,000.

7 “(V) The minimum fees specified in sub-
8 clauses (I) and (II) shall be paid within 30 days
9 after the date of the enactment of the Small
10 Webcaster Amendments Act of 2002, except in
11 the case of an eligible small webcaster with
12 gross revenues during the period beginning on
13 October 28, 1998, and ending on December 31,
14 2002, of not more than \$100,000, which may
15 pay such minimum fees in three equal install-
16 ments at the times specified in clause (ii)(I).
17 The minimum fees specified in subclauses (III)
18 and (IV) shall be paid in two equal install-
19 ments, with the first due by January 31 of the
20 applicable year and the second due by June 30
21 of the applicable year.

22 “(VI) Payments of all amounts specified in
23 this clause shall be made to the entity des-
24 ignated by the Copyright Office to receive roy-



1 alty payments under this section and shall
2 under no circumstances be refundable.

3 “(VII) All amounts paid under this clause
4 shall be fully creditable toward amounts due
5 under clauses (i) and (ii) for the same year.

6 “(iv) Subject to paragraph (3), but notwith-
7 standing any other provision of this paragraph, a
8 noncommercial, non-FCC webcaster may, for the pe-
9 riod beginning on October 28, 1998, and ending on
10 December 31, 2002, or one or both of calendar years
11 2003 and 2004, elect the royalty rates specified in
12 this clause in lieu of any other royalty rates that
13 otherwise might apply under this section. The roy-
14 alty rate shall be .02 cents per performance. For the
15 purpose of this clause, the term ‘performance’ has
16 the meaning given that term in section 261.2 of title
17 37, Code of Federal Regulations, as published in the
18 Federal Register on July 8, 2002. Such royalties
19 shall be payable at the times specified in clause
20 (ii)(I) and (II). Noncommercial, non-FCC
21 webcasters shall pay a minimum fee, for any part of
22 calendar years 1998 through 2004, of \$500 for each
23 year in which such performances are made. Such
24 minimum fee shall be fully creditable toward roy-
25 alties due for the same year. For performances made



1 during the period beginning on October 28, 1998,
2 and ending on December 31, 2002, such minimum
3 fee shall be paid within 30 days after the date of the
4 enactment of the Small Webcaster Amendments Act
5 of 2002. The minimum fee for a subsequent year
6 shall be paid by January 31 of that year. All pay-
7 ments specified in this clause shall be made to the
8 entity designated by the Copyright Office to receive
9 royalty payments under this section and shall under
10 no circumstances be refundable.

11 “(v) Any otherwise applicable terms determined
12 in accordance with this paragraph and applicable to
13 payments under this paragraph shall apply to pay-
14 ments under this subparagraph except to the extent
15 inconsistent with this subparagraph.

16 “(vi) The rates and terms set forth in this sub-
17 paragraph shall not constitute evidence of rates and
18 terms that would have been negotiated in the mar-
19 ketplace between a willing buyer and a willing seller
20 or that meet the objectives set forth in section
21 801(b)(1).

22 “(E) As used in subparagraph (D), the fol-
23 lowing terms have the following meanings:



1 “(i) An ‘affiliate’ of a transmitting entity
2 is a person or entity that directly, or indirectly
3 through one or more intermediaries —

4 “(I) has securities or other ownership
5 interests representing more than 50 per-
6 cent of such person’s or entity’s voting in-
7 terests beneficially owned by—

8 “(aa) such transmitting entity; or

9 “(bb) a person or entity bene-
10 ficially owning securities or other own-
11 ership interests representing more
12 than 50 percent of the voting interests
13 of the transmitting entity;

14 “(II) beneficially owns securities or
15 other ownership interests representing
16 more than 50 percent of the voting inter-
17 ests of the transmitting entity; or

18 “(III) otherwise controls, is controlled
19 by, or is under common control with the
20 transmitting entity.

21 “(ii) A ‘beneficial owner’ of a security or
22 other ownership interest is any person or entity
23 who, directly or indirectly, through any con-
24 tract, arrangement, understanding, relationship,
25 or otherwise, has or shares voting power with



1 respect to such security or other ownership in-
2 terest.

3 “(iii) The term ‘control’ means the posses-
4 sion, direct or indirect, of the power to direct
5 or cause the direction of the management and
6 policies of a person or entity, whether through
7 the ownership of voting securities, by contract
8 or otherwise.

9 “(iv)(I) Subject to subclause (II), an ‘eligi-
10 ble small webcaster’ is a webcaster (as defined
11 in section 261.2 of title 37, Code of Federal
12 Regulations, as published in the Federal Reg-
13 ister on July 8, 2002) that—

14 “(aa) for the period beginning on Oc-
15 tober 28, 1998, and ending on December
16 31, 2002, has gross revenues during the
17 period beginning on November 1, 1998,
18 and ending on June 30, 2002, of not more
19 than \$1,000,000;

20 “(bb) for 2003, together with its af-
21 filiates, has gross revenues during 2003 of
22 not more than \$500,000; and

23 “(cc) for 2004, together with its affili-
24 ates, has gross revenues, third party par-
25 ticipation revenues, and revenues from the



1 operation of new subscription services dur-
2 ing 2004 of not more than \$1,250,000.

3 “(II) In determining qualification under
4 subclauses (I)(bb) and (cc), a transmitting enti-
5 ty shall exclude—

6 “(aa) income of an affiliate that is a
7 natural person, other than income such
8 natural person derives from another affil-
9 iate of such natural person that is either a
10 media or entertainment related business
11 that provides audio or other entertainment
12 programming, or a business that primarily
13 operates an Internet or wireless service;
14 and

15 “(bb) gross revenues of any affiliate
16 that is not engaged in a media or enter-
17 tainment related business that provides
18 audio or other entertainment program-
19 ming, and is not engaged in a business
20 that primarily operates an Internet or
21 wireless service, if the only reason such af-
22 filiate is affiliated with the transmitting
23 entity is that it is under common control
24 of the same natural person or both are



1 beneficially owned by the same natural
2 person.

3 “(v) The term ‘expenses’—

4 “ (I) means all costs incurred (whether
5 actually paid or not) by an eligible small
6 webcaster, except that capital costs shall
7 be treated as expenses allocable to a period
8 only to the extent of charges for amortiza-
9 tion or depreciation of such costs during
10 such period as are properly allocated to
11 such period in accordance with United
12 States generally accepted accounting prin-
13 ciples (GAAP);

14 “(II) includes the fair market value of
15 all goods, services, or other non-cash con-
16 sideration (including real, personal, tan-
17 gible, and intangible property) provided by
18 an eligible small webcaster to any third
19 party in lieu of a cash payment and the
20 fair market value of any goods or services
21 purchased for or provided to an eligible
22 small webcaster by an affiliate of such
23 webcaster; and

24 “(III) shall not include—



1 “(aa) the imputed value of per-
2 sonal services rendered by up to 5
3 natural persons who are, directly or
4 indirectly, owners of the eligible small
5 webcaster, and for which no com-
6 pensation has been paid;

7 “(bb) the imputed value of occu-
8 pancy of residential property for
9 which no Federal income tax deduc-
10 tion is claimed as a business expense;
11 or

12 “(cc) costs of purchasing
13 phonorecords of sound recordings
14 used in the eligible small webcaster’s
15 service.

16 “(vi) The term ‘gross revenues’—

17 “(I) means all revenue of any kind
18 earned by a person or entity, less —

19 “(aa) revenue from sales of
20 phonorecords and digital phonorecord
21 deliveries of sound recordings;

22 “(bb) the person or entity’s ac-
23 tual cost of other products and serv-
24 ices actually sold through a service
25 that makes eligible nonsubscription



1 transmissions, and related sales and
2 use taxes imposed on such trans-
3 actions, costs of shipping such prod-
4 ucts, allowance for bad debts, and
5 credit card and similar fees paid to
6 unrelated third parties;

7 “(cc) revenue from the operation
8 of a new subscription service for
9 which royalties are paid in accordance
10 with provisions of this section other
11 than this subparagraph; and

12 “(dd) revenue from the sale of
13 assets in connection with the sale of
14 all or substantially all of the assets of
15 such person’s or entity’s business, or
16 from the sale of capital assets; and

17 “(II) includes—

18 “(aa) all cash or cash equiva-
19 lents;

20 “(bb) the fair market value of
21 goods, services, or other non-cash con-
22 sideration (including real, personal,
23 tangible, and intangible property); and

24 “(cc) amounts earned by such
25 person or entity but paid to an affil-



1 iate of such person or entity in lieu of
2 payment to such person or entity.

3 Gross revenues shall be calculated in ac-
4 cordance with United States generally ac-
5 cepted accounting principles (GAAP), ex-
6 cept that a transmitting entity that com-
7 putes Federal taxable income on the basis
8 of the cash receipts and disbursements
9 method of accounting for any taxable year
10 may compute its gross receipts for any pe-
11 riod included in such taxable year on the
12 same basis.

13 “(vii) A ‘noncommercial, non-FCC
14 webcaster’ is a webcaster as defined in section
15 261.2 of title 37, Code of Federal Regulations,
16 as published in the Federal Register on July 8,
17 2002, that is exempt from taxation under sec-
18 tion 501 of the Internal Revenue Code of 1986
19 (26 U.S.C. 501).

20 “(viii) The ‘third party participation reve-
21 nues’ of a transmitting entity are revenues of
22 any kind earned by a person or entity, other
23 than the transmitting entity, including those
24 identified in divisions (aa), (bb), and (cc) of
25 clause (vi)(II)—



1 “(I) that relate to the public perform-
2 ance of sound recordings and are subject
3 to an economic arrangement in which the
4 transmitting entity receives anything of
5 value; or

6 “(II) that are earned by such person
7 or entity from the sale of advertising of
8 any kind in connection with the transmit-
9 ting entity’s eligible nonsubscription trans-
10 missions.”.

11 (c) NOTICE AND RECORDKEEPING.—Section
12 114(f)(4)(A) of title 17, United States Code, is
13 amended—

14 (1) by striking “(A) The” and inserting “(A)(i)
15 Subject to clauses (ii) and (iii), the”; and

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

17 “(ii) For either or both of calendar years 2003
18 and 2004, an eligible small webcaster that makes an
19 election pursuant to paragraph (2)(D)(ii)(VII) for
20 any year shall, for that year, keep records, and make
21 available to copyright owners of sound recordings re-
22 ports of use, covering the following on a channel by
23 channel basis:

24 “(I) The featured recording artist, group
25 or orchestra.



1 “(II) The sound recording title.

2 “(III) The title of the retail album or other
3 product (or, in the case of compilation albums
4 created for commercial purposes, the name of
5 the retail album identified by the eligible small
6 webcaster for purchase of the sound recording).

7 “(IV) The marketing label of the commer-
8 cially available album or other product on which
9 the sound recording is found—

10 “(aa) for all albums or other products
11 commercially released after 2002; and

12 “(bb) in the case of albums or other
13 products commercially released before
14 2003, for 67 percent of the eligible small
15 webcaster’s digital audio transmissions of
16 such pre-2003 releases during 2003 and all
17 of the eligible small webcaster’s digital
18 audio transmissions during 2004.

19 “(V) The International Standard Record-
20 ing Code (ISRC) embedded in the sound re-
21 cording, if available—

22 “(aa) for all albums or other products
23 commercially released after 2002; and

24 “(bb) in the case of albums or other
25 products commercially released before



1 2003, for 50 percent of the eligible small
2 webcaster's digital audio transmissions of
3 such pre-2003 releases during 2003, and
4 for 75 percent of the eligible small
5 webcaster's digital audio transmissions of
6 such pre-2003 releases during 2004, to the
7 extent that such information concerning
8 such pre-2003 releases can be provided
9 using commercially reasonable efforts.

10 “(VI) The copyright owner information
11 provided in the copyright notice on the retail
12 album or other product (e.g., following the sym-
13 bol (P) (the letter P in a circle) or, in the case
14 of compilation albums created for commercial
15 purposes, in the copyright notice for the indi-
16 vidual track)—

17 “(aa) for all albums or other products
18 commercially released after 2002; and

19 “(bb) in the case of albums or other
20 products commercially released before
21 2003, for 50 percent of an eligible small
22 webcaster's digital audio transmissions of
23 such pre-2003 releases during 2003, and
24 for 75 percent of an eligible small
25 webcaster's digital audio transmissions of



1 such pre-2003 releases during 2004, to the
2 extent that such information concerning
3 such pre-2003 releases can be provided
4 using commercially reasonable efforts.

5 “(VII) The aggregate tuning hours, on a
6 monthly basis, for each channel provided by the
7 eligible small webcaster as computed by a rec-
8 ognized industry ratings service or as computed
9 by the eligible small webcaster from its server
10 logs. For the purpose of this subclause, the
11 term ‘aggregate tuning hours’ has the meaning
12 given that term in section 261.2 of title 37,
13 Code of Federal Regulations, as published in
14 the Federal Register on July 8, 2002.

15 “(VIII) The channel for each transmission
16 of each sound recording.

17 “(IX) The start date and time of each
18 transmission of each sound recording.

19 “(iii) Reports of use described in clause (ii)
20 shall be provided, at the same time royalty payments
21 are due under paragraph (2)(D)(ii)(II), to the entity
22 designated by the Copyright Office to distribute roy-
23 alty payments under this section.

24 “(iv) For calendar years 2003 and 2004, details
25 of the means by which copyright owners may receive



1 notice of the use of their sound recordings, and de-
2 tails of the requirements under which reports of use
3 concerning the matters identified in clause (ii) shall
4 be made available, shall be as provided in regula-
5 tions issued by the Librarian of Congress under
6 clause (i).”.

7 **SEC. 4. DEDUCTIBILITY OF COSTS AND EXPENSES OF**
8 **AGENTS AND DIRECT PAYMENT TO ARTISTS**
9 **OF ROYALTIES FOR DIGITAL PERFORMANCES**
10 **OF SOUND RECORDINGS.**

11 (a) FINDINGS.—The Congress finds that—

12 (1) in the case of royalty payments from the li-
13 censing of digital transmissions of sound recordings
14 under subsection (f) of section 114 of title 17,
15 United States Code, the parties have voluntarily ne-
16 gotiated arrangements under which payments shall
17 be made directly to featured recording artists and
18 the administrators of the accounts provided in sub-
19 section (g)(2) of that section;

20 (2) such voluntarily-negotiated payment ar-
21 rangements have been codified in regulations issued
22 by the Librarian of Congress, currently found in sec-
23 tion 261.4 of title 37, Code of Federal Regulations,
24 as published in the Federal Register on July 8,
25 2002;



1 (3) other regulations issued by the Librarian of
2 Congress were inconsistent with the voluntarily-ne-
3 gotiated arrangements by such parties concerning
4 the deductibility of certain costs incurred for licens-
5 ing and arbitration, and the Congress is therefore
6 restoring those terms as originally negotiated among
7 the parties; and

8 (4) in light of the special circumstances de-
9 scribed in this subsection, the uncertainty created by
10 the regulations issued by the Librarian of Congress,
11 and the fact that all of the interested parties have
12 reached agreement, the voluntarily-negotiated ar-
13 rangements agreed to among the parties are being
14 codified.

15 (b) DEDUCTIBILITY.—Section 114(g) of title 17,
16 United States Code, is amended by adding after para-
17 graph (2) the following:

18 “(3) A nonprofit agent designated to distribute
19 receipts from the licensing of transmissions in ac-
20 cordance with subsection (f) may deduct from any of
21 its receipts, prior to the distribution of such receipts
22 to any person or entity entitled thereto, the reason-
23 able costs of such agent incurred after November 1,
24 1995, in—



1 “(A) the administration of the collection,
2 distribution, and calculation of the royalties;

3 “(B) the settlement of disputes relating to
4 the collection and calculation of the royalties;
5 and

6 “(C) the licensing and enforcement of
7 rights with respect to the making of ephemeral
8 recordings and performances subject to licens-
9 ing under section 112 and this section, includ-
10 ing those incurred in participating in negotia-
11 tions or arbitration proceedings under section
12 112 and this section.”.

13 (c) DIRECT PAYMENT TO ARTISTS.—Section
14 114(g)(2) of title 17, United States Code, is amended to
15 read:

16 “(2) An agent designated to distribute receipts
17 from the licensing of transmissions in accordance
18 with subsection (f) shall distribute such receipts as
19 follows:

20 “(A) 50 percent of the receipts shall be
21 paid to the copyright owner of the exclusive
22 right under section 106(6) of this title to pub-
23 licly perform a sound recording by means of a
24 digital audio transmission.



1 “(B) 2-1/2 percent of the receipts shall be
2 deposited in an escrow account managed by an
3 independent administrator jointly appointed by
4 copyright owners of sound recordings and the
5 American Federation of Musicians (or any suc-
6 cessor entity) to be distributed to nonfeatured
7 musicians (whether or not members of the
8 American Federation of Musicians) who have
9 performed on sound recordings.

10 “(C) 2-1/2 percent of the receipts shall be
11 deposited in an escrow account managed by an
12 independent administrator jointly appointed by
13 copyright owners of sound recordings and the
14 American Federation of Television and Radio
15 Artists (or any successor entity) to be distrib-
16 uted to nonfeatured vocalists (whether or not
17 members of the American Federation of Tele-
18 vision and Radio Artists) who have performed
19 on sound recordings.

20 “(D) 45 percent of the receipts shall be
21 paid, on a per sound recording basis, to the re-
22 cording artist or artists featured on such sound
23 recording (or the persons conveying rights in
24 the artists’ performance in the sound record-
25 ings).”.



1 **SEC. 5. REPORT TO CONGRESS.**

2 (a) FINDINGS.—The Congress finds that—

3 (1) eligible small webcasters have economic ar-
4 rangements with third parties, as a result of which
5 third parties, many of them large businesses, realize
6 a significant portion of the revenues generated from
7 the use of sound recordings in the services operated
8 by eligible small webcasters; and

9 (2) as a result of these arrangements, any roy-
10 alty based on revenues realized by an eligible small
11 webcaster may result in recording artists and sound
12 recording copyright owners receiving a royalty based
13 on revenues that are a fraction of the total revenues
14 generated from the use of the sound recordings
15 under statutory license.

16 (b) REPORT TO CONGRESS.—By not later than June
17 1, 2004, the Register of Copyrights and the Comptroller
18 General of the United States shall prepare and submit to
19 the Committee on the Judiciary of the House of Rep-
20 resentatives and the Committee on the Judiciary of the
21 Senate a joint report concerning—

22 (1) the economic arrangements among eligible
23 small webcasters and third parties and their con-
24 sequences for the ability of recording artists and
25 sound recording copyright owners to be compensated
26 appropriately on a percentage of revenue basis; and



1 (2) the economic incentives that percentage of
2 revenue statutory rates create for structuring eco-
3 nomic arrangements among eligible small webcasters
4 and third parties that may be to the detriment of re-
5 cording artists and sound recording copyright own-
6 ers.

7 (c) DEFINITION.—In this section, the term “eligible
8 small webcaster” has the meaning given that term in sec-
9 tion 114(f)(2)(E) of title 17, United States Code, as added
10 by section 3 of this Act.

11 **SEC. 6. EFFECTIVE DATE.**

12 The amendments made by this Act shall take effect
13 on the date of the enactment of this Act.

Amend the title so as to read: “A bill to amend title
17, United States Code, with respect to the statutory li-
cense for webcasting, and for other purposes.”.

