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OAKLAND

CITY OF OAKLAND

BILL ANALYSIS



Date: 08 JUN - 5 PM 4: 33
June 12, 2008

Bill Number: H.R. 2060/S. 1353

Bill Name: Internet Radio Equality Act (IREA)

Bill Author: Representatives Jay Inslee (D-WA) and Don Manzullo (R-IL)
Senators Ron Wyden (D-OR) and Sam Brownback (R-KS)

DEPARTMENT INFORMATION

Contact: Elinor Buchen
Department: Legislative Analyst
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RECOMMENDED POSITION: SUPPORT

Summary of the Bill

This bill nullifies the March 2, 2007 ruling of the Copyright Royalty Board (CRB) to increase the royalties and fees paid by radio internet providers. The increase affected not just Internet broadcasters but noncommercial groups such as NPR.

Under the CRB ruling, internet radio services are required to pay a per-song-per-listener royalty rate that is much higher than the traditional percentage-of-revenue rates paid by satellite and cable radio stations. Though it costs only fractions of a penny per song, the increase amounted to a 300 percent cost increase for the largest webcasters and up to a 1200 percent increase for smaller operations. Terrestrial (traditional) radio stations do not pay any royalty fees.

By vacating the CRB decision, this bill would return the webcasting industry to a percentage-of-revenue model, and credit back any fees paid by internet radio providers levied according to the 2007 CRB decision. The bill also sets transitional royalty payment rates for the next five years that are more competitive with the rates paid by other forms of radio.

Positive Factors for Oakland

Pandora, the most popular internet radio service in the country, is located in Oakland's Uptown Enterprise Zone and employs over 100 workers. This bill is critical for Pandora to be able to compete with other forms of radio and to stay in business.

Item: _____
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June 12, 2008

Negative Factors for Oakland

None identified.

PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:

- Critical** (top priority for City lobbyist, city position required ASAP)
 Very Important (priority for City lobbyist, city position necessary)
 Somewhat Important (City position desirable if time and resources are available)
 Minimal or **None** (do not review with City Council, position not required)

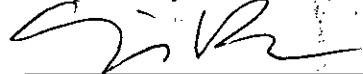
Known support:

Digital Media Association (DiMA)
National Association of Broadcasters (NAB)
SaveNetRadio.org

Known Opposition:

Recording Industry Association of America (RIAA)/SoundExchange

Respectfully Submitted,



Elinor Buchen
Legislative Analyst

Approved for Forwarding to Rules Committee

Office of City Administrator

Item: _____
Rules & Legislation Comte.
June 12, 2008

110TH CONGRESS
1ST SESSION

H. R. 2060

To nullify the March 2, 2007, determination of the Copyright Royalty Judges with respect to webcasting, to modify the basis for making such a determination, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 26, 2007

Mr. INSLEE introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To nullify the March 2, 2007, determination of the Copyright Royalty Judges with respect to webcasting, to modify the basis for making such a determination, 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 "Internet Radio Equal-
5 ity Act".

1 **SEC. 2. NULLIFICATION OF DECISION OF COPYRIGHT ROY-**
2 **ALTY JUDGES.**

3 The March 2, 2007, Determination of Rates and
4 Terms of the United States Copyright Royalty Judges re-
5 garding rates and terms for the digital performance of
6 sound recordings and ephemeral recordings, including that
7 determination as modified by the April 17, 2007, Order
8 Denying Motions for Rehearing and any subsequent modi-
9 fication to that determination by the Copyright Royalty
10 Judges that is published in the Federal Register, is not
11 effective, and shall be deemed never to have been effective.

12 **SEC. 3. COMPUTATION OF ROYALTY FEES FOR COMMER-**
13 **CIAL INTERNET RADIO SERVICES OFFERING**
14 **DIGITAL PERFORMANCES OF SOUND RE-**
15 **CORDINGS.**

16 (a) STANDARD FOR DETERMINING RATES AND
17 TERMS.—Section 114(f)(2)(B) of title 17, United States
18 Code, is amended by striking “Such rates and terms shall
19 distinguish” and all that follows through the end of clause
20 (ii) and inserting the following: “The Copyright Royalty
21 Judges shall establish rates and terms in accordance with
22 the objectives set forth in section 801(b)(1). Such rates
23 and terms may include a minimum annual royalty of not
24 more than \$500 for each provider of services that are sub-
25 ject to such rates and terms, which shall be the only min-

1 imum royalty fee and shall be assessed only once annually
2 to that provider.”.

3 (b) **TRANSITION RULE.**—Except for services covered
4 by section 118 of title 17, United States Code, each pro-
5 vider of digital audio transmissions that otherwise would
6 have been subject to the rates and terms of the determina-
7 tion of the Copyright Royalty Judges made ineffective by
8 section 2 of this Act shall instead pay royalties for each
9 year of the 5-year period beginning on January 1, 2006,
10 at one of the following rates, as selected by the provider
11 for that year:

12 (1) 0.33 cents per hour of sound recordings
13 transmitted to a single listener.

14 (2) 7.5 percent of the revenues received by the
15 provider during that year that are directly related to
16 the provider’s digital transmissions of sound record-
17 ings.

18 **SEC. 4. COMPUTATION OF ROYALTY FEES FOR NON-**
19 **COMMERCIAL STATIONS OFFERING DIGITAL**
20 **PERFORMANCES OF SOUND RECORDINGS.**

21 (a) **AMENDMENTS TO SECTION 118 OF TITLE 17,**
22 **UNITED STATES CODE.**—Section 118 of title 17, United
23 States Code, is amended—

24 (1) in subsection (b), in the matter preceding
25 paragraph (1), by striking “and published pictorial”

1 and inserting “, sound recordings, and published
2 pictorial”;

3 (2) in subsection (c)—

4 (A) in the matter preceding paragraph (1),
5 by striking “and published pictorial” and in-
6 serting “, sound recordings, and published pic-
7 torial”; and

8 (B) in paragraph (1), by inserting “or non-
9 profit institution or organization” after “broad-
10 cast station”; and

11 (3) in subsection (f), by striking “paragraph
12 (2)” and inserting “paragraph (1) or (2)”.

13 (b) **TRANSITION RULE.**—For each calendar year (or
14 portion thereof) beginning after December 31, 2004, until
15 an applicable voluntary license agreement is filed with the
16 Copyright Royalty Judges pursuant to section 118 of title
17 17, United States Code (as amended by subsection (a) of
18 this section) or an applicable determination is issued by
19 the Copyright Royalty Judges pursuant to section 118 of
20 such title (as so amended), the annual royalty that a pub-
21 lic broadcasting entity shall pay to owners of copyrights
22 in sound recordings for the uses provided under section
23 118(c) of such title (as so amended) shall be an amount
24 equal to the 1.5 times the total fees paid by that entity
25 (or in the case of a group of related entities, the fees paid

1 by such group) pursuant to section 114(f)(2) of title 17,
2 United States Code, for such uses during the calendar
3 year ending December 31, 2004.

4 **SEC. 5. REPORT BY THE NATIONAL TELECOMMUNICATIONS**
5 **AND INFORMATION ADMINISTRATION.**

6 Upon the publication in the Federal Register under
7 section 803(b)(1) of title 17, United States Code, of the
8 commencement of proceedings of the Copyright Royalty
9 Judges under section 114(f) or 118 of title 17, United
10 States Code, to determine rates and terms for Internet
11 radio service providers under the statutory license pro-
12 vided under section 114(d)(2) or 118 (as the case may
13 be), the Assistant Secretary of Commerce for Communica-
14 tions and Information, after consulting with representa-
15 tives of copyright owners, nonprofit educational institu-
16 tions, and commercial and noncommercial Internet radio
17 providers, shall submit to the Copyright Royalty Judges
18 a report on the competitiveness of the Internet radio mar-
19 ketplace and the effect on Internet radio providers of pro-
20 posed rate determinations in the proceedings. The Assist-
21 ant Secretary shall submit the report to the Copyright
22 Royalty Judges in a timely manner before the conclusion
23 of the proceedings.

1 **SEC. 6. REPORT BY THE FEDERAL COMMUNICATIONS COM-**
2 **MISSION.**

3 Upon the publication in the Federal Register under
4 section 803(b)(1) of title 17, United States Code, of the
5 commencement of proceedings of the Copyright Royalty
6 Judges under section 114(f) or 118 of title 17, United
7 States Code, to determine rates and terms for Internet
8 radio service providers under the statutory license pro-
9 vided under section 114(d)(2) or 118 (as the case may
10 be), the Federal Communications Commission shall sub-
11 mit to the Copyright Royalty Judges a report on the effect
12 of proposed rate determinations in the proceedings on lo-
13 calism, diversity, and competition in the Internet radio
14 marketplace. The report shall include the Commission's
15 views on the effects of the proposed rate determinations
16 on—

17 (1) localism, diversity, and competition in rural
18 areas;

19 (2) diversity of programming, including foreign
20 language programming; and

21 (3) competitive barriers to entry into the Inter-
22 net radio market.

23 The Commission shall submit the report to the Copyright
24 Royalty Judges in a timely manner before the conclusion
25 of the proceedings.

1 **SEC. 7. REPORT BY CORPORATION FOR PUBLIC BROAD-**
2 **CASTING.**

3 Upon the publication in the Federal Register under
4 section 803(b)(1) of title 17, United States Code, of the
5 commencement of proceedings of the Copyright Royalty
6 Judges under section 114(f) or 118 of title 17, United
7 States Code, to determine rates and terms for Internet
8 radio service providers under the statutory license pro-
9 vided under section 114(d)(2) or 118 (as the case may
10 be), Corporation for Public Broadcasting, in consultation
11 with public radio licensees or permittees, or their des-
12 ignated representatives, shall submit to the Congress a re-
13 port on the effect of the proposed rate determinations on
14 such licensees and permittees. The Corporation shall sub-
15 mit the report to the Copyright Royalty Judges in a timely
16 manner before the conclusion of the proceedings.

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110TH CONGRESS
1ST SESSION

S. 1353

To nullify the determinations of the Copyright Royalty Judges with respect to webcasting, to modify the basis for making such a determination, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 10, 2007

Mr. WYDEN (for himself and Mr. BROWNBACK) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To nullify the determinations of the Copyright Royalty Judges with respect to webcasting, to modify the basis for making such a determination, 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 “Internet Radio Equal-
5 ity Act of 2007”.

6 **SEC. 2. NULLIFICATION OF DECISION OF COPYRIGHT ROY-**
7 **ALTY JUDGES.**

8 The March 2, 2007, Determination of Rates and
9 Terms of the United States Copyright Royalty Judges re-

1 guarding rates and terms for the digital performance of
2 sound recordings and ephemeral recordings, including that
3 determination as modified by the April 17, 2007, Order
4 Denying Motions for Rehearing and any subsequent modi-
5 fication to that determination by the Copyright Royalty
6 Judges that is published in the Federal Register and the
7 April 23, 2007, Final Determination of Rates and Terms
8 of the United States Copyright Royalty Judges regarding
9 rates and terms for the digital performance of sound re-
10 cordings and ephemeral recordings and any subsequent
11 modification to that determination by the Copyright Roy-
12 alty Judges that is published in the Federal Register, are
13 not effective, and shall be deemed never to have been effec-
14 tive.

15 **SEC. 3. COMPUTATION OF ROYALTY FEES FOR COMMER-**
16 **CIAL INTERNET RADIO SERVICES OFFERING**
17 **DIGITAL PERFORMANCES OF SOUND RE-**
18 **CORDINGS.**

19 (a) STANDARD FOR DETERMINING RATES AND
20 TERMS.—Section 114(f)(2)(B) of title 17, United States
21 Code, is amended by striking “Such rates and terms shall
22 distinguish” and all that follows through the end of clause
23 (ii) and inserting the following: “The Copyright Royalty
24 Judges shall establish rates and terms in accordance with
25 the objectives set forth in section 801(b)(1). Such rates

1 and terms may include a minimum annual royalty of not
2 more than \$500 for each provider of services that are sub-
3 ject to such rates and terms, which shall be the only min-
4 imum royalty fee and shall be assessed only once annually
5 to that provider.”.

6 (b) TRANSITION RULE.—Except for services covered
7 by section 118 of title 17, United States Code, each pro-
8 vider of digital audio transmissions that otherwise would
9 have been subject to the rates and terms of the determina-
10 tion of the Copyright Royalty Judges made ineffective by
11 section 2 of this Act shall instead pay royalties for each
12 year of the 5-year period beginning on January 1, 2006,
13 at 1 of the following rates, as selected by the provider for
14 that year:

15 (1) 0.33 cents per hour of sound recordings
16 transmitted to a single listener.

17 (2) 7.5 percent of the revenues received by the
18 provider during that year that are directly related to
19 the provider’s digital transmissions of sound record-
20 ings:

1 **SEC. 4. COMPUTATION OF ROYALTY FEES FOR NON-**
2 **COMMERCIAL STATIONS OFFERING DIGITAL**
3 **PERFORMANCES OF SOUND RECORDINGS.**

4 (a) AMENDMENTS TO SECTION 118 OF TITLE 17,
5 UNITED STATES CODE.—Section 118 of title 17, United
6 States Code, is amended—

7 (1) in subsection (b), in the matter preceding
8 paragraph (1), by striking “and published pictorial”
9 and inserting “, sound recordings, and published
10 pictorial”;

11 (2) in subsection (c)—

12 (A) in the matter preceding paragraph (1),
13 by striking “and published pictorial” and in-
14 serting “, sound recordings, and published pic-
15 torial”; and

16 (B) in paragraph (1), by inserting “or non-
17 profit institution or organization” after “broad-
18 cast station”; and

19 (3) in subsection (f), by striking “paragraph
20 (2)” and inserting “paragraph (1) or (2)”.

21 (b) TRANSITION RULES.—

22 (1) IN GENERAL.—Except as provided under
23 paragraph (2), for each calendar year (or portion
24 thereof) beginning after December 31, 2004, until
25 an applicable voluntary license agreement is filed
26 with the Copyright Royalty Judges under section

1 118 of title 17, United States Code (as amended by
2 subsection (a) of this section), or an applicable de-
3 termination is issued by the Copyright Royalty
4 Judges under section 118 of such title (as so amend-
5 ed) —

6 (A) except as provided under subpara-
7 graphs (B) and (C), the annual royalty that a
8 public broadcast entity shall pay to owners of
9 copyrights in sound recordings for the uses pro-
10 vided under section 118(c) of such title (as so
11 amended) shall be an amount equal to 1.05
12 times the amount paid by that entity (or in the
13 case of a group of related entities, the fees paid
14 by such group) under section 114(f)(2) of title
15 17, United States Code, for such uses during
16 the calendar year ending December 31, 2004;

17 (B) the annual royalty that a public broad-
18 casting entity that is a noncommercial
19 webcaster and did not owe royalties under sec-
20 tion 114(f)(2) of title 17, United States Code,
21 during the calendar year ending December 31,
22 2004, shall pay to owners of copyrights in
23 sound recordings for the uses provided under
24 section 118(c) of such title (as so amended)
25 shall be the amount that would have been owed

1 under the agreement entered into under section
2 114(f)(5) of that title for such uses applicable
3 to noncommercial webcasters as in effect during
4 calendar year 2004; and

5 (C) the annual royalty that public broad-
6 casting entities constituting National Public
7 Radio, Inc., its member stations and public
8 radio stations qualified to receive funding from
9 the Corporation for Public Broadcasting, shall
10 collectively pay to owners of copyrights in sound
11 recordings for the uses provided under section
12 118(c) of such title (as so amended) shall be an
13 amount equal to 1.05 times the amount paid on
14 the behalf of these entities under section
15 114(f)(2) of title 17, United States Code, for
16 such uses during the calendar year ending De-
17 cember 31, 2004.

18 (2) LIMITATION.—No entity shall be required
19 under paragraph (1)(A) or (B) to pay more than
20 \$5,000 for any calendar year.

21 **SEC. 5. CREDIT OF ROYALTY FEES.**

22 Any royalties received under the March 2, 2007, De-
23 termination of Rates and Terms of the United States
24 Copyright Royalty Judges regarding rates and terms for
25 the digital performance of sound recordings and ephem-

1 eral recordings, including that determination as modified
2 by the April 17, 2007, Order Denying Motions for Rehear-
3 ing and any subsequent modification to that determination
4 by the Copyright Royalty Judges that is published in the
5 Federal Register and the April 23, 2007, Final Deter-
6 mination of Rates and Terms of the United States Copy-
7 right Royalty Judges regarding rates and terms for the
8 digital performance of sound recordings and ephemeral re-
9 cordings and any subsequent modification to that deter-
10 mination by the Copyright Royalty Judges that is pub-
11 lished in the Federal Register shall be credited against
12 royalties required to be paid under section 3 or 4 of this
13 Act.

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2008 JUN -5 PM 4:55

OAKLAND CITY COUNCIL

DRAFT

City Attorney

RESOLUTION No. _____ C.M.S.

Introduced by Councilmembers Jane Brunner and Nancy J. Nadel

A RESOLUTION IN SUPPORT OF THE INTERNET RADIO EQUALITY ACT (H.R. 2060, S. 1353) AND PANDORA, A FREE ONLINE RADIO STATION LOCATED IN OAKLAND'S UPTOWN AREA ENTERPRISE ZONE

WHEREAS, Pandora is a young company located in the Oakland Enterprise zone and

WHEREAS, Pandora now employs more than 100 people in Uptown Oakland, and has become the most popular Internet radio service in the country; and

WHEREAS, Pandora's continued existence and ability to contribute to the revitalization of Uptown Oakland are threatened by music royalty rates 3-5 times greater than those paid by other forms of radio; and

WHEREAS, Pandora and other internet radio services offer a free, legal alternative to piracy and further benefit artists by allowing consumers to discover new music; and

WHEREAS, the Internet Radio Equality Act (H.R. 2060, S. 1353) has been introduced in both Houses of Congress to establish a level playing field for all Internet radio services, including Pandora, now, therefore be it

RESOLVED: that the Oakland City Council expresses its support for the Internet Radio Equality Act and calls on Congress to pass this legislation.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California