

**AMENDMENT TO H.R. 4789**  
**OFFERED BY MR. BERMAN OF CALIFORNIA AND**  
**MS. JACKSON-LEE OF TEXAS**

Section 5(a) is amended to read as follows:

1           (a) PRESERVATION OF ROYALTIES ON UNDERLYING  
2 WORKS.—Section 114(i) of title 17, United States Code,  
3 is amended to read as follows:

4           “(i) PRESERVATION OF ROYALTIES ON UNDERLYING  
5 WORKS.—License fees payable for the public performance  
6 of sound recordings under section 106(6) shall not be  
7 cited, taken into account, or otherwise used to set or ad-  
8 just the license fees payable to copyright owners of musical  
9 works or their representatives for the public performance  
10 of their works for the purpose of reducing or adversely  
11 affecting such license fees for the public performance of  
12 such musical works in any administrative, judicial, or  
13 other governmental forum or proceeding, or otherwise. Li-  
14 cense fees payable to copyright owners for the public per-  
15 formance of their musical works shall not be reduced or  
16 adversely affected in any respect as a result of the rights  
17 granted by section 106(6).”.

Amend section 5 by adding at the end the following  
new subsection:

1           (c) PRESERVATION OF ROYALTIES ON UNDERLYING  
2 WORKS PUBLICLY PERFORMED BY TERRESTRIAL BROAD-  
3 CAST STATIONS.—Section 114(f) of title 17, United States  
4 Code, is amended by adding at the end the following new  
5 paragraph:

6           “(6) Notwithstanding any other provision of  
7 this section, under no circumstances shall the rates  
8 established by the Copyright Royalty Judges for the  
9 public performance of sound recordings be cited,  
10 taken into account, or otherwise used in any admin-  
11 istrative, judicial, or other governmental forum or  
12 proceeding, or otherwise, to reduce or adversely af-  
13 fect the license fees payable to copyright owners of  
14 musical works or their representatives for the public  
15 performance of their works by terrestrial broadcast  
16 stations, and such license fees for the public per-  
17 formance of musical works shall be independent of  
18 license fees paid for the public performance of sound  
19 recordings.”.

Add at the end the following new sections:

1 **SEC. 6. REQUIREMENT OF MUSICAL WORK LICENSE FOR**  
2 **THE PUBLIC PERFORMANCE OF A SOUND RE-**  
3 **CORDING.**

4 Section 114(d)(3)(C) of title 17, United States Code,  
5 is amended by striking “an interactive service” and insert-  
6 ing “a music user”.

7 **SEC. 7. PAYMENT OF CERTAIN ROYALTIES.**

8 Section 114(g) of title 17, United States Code, is  
9 amended—

10 (1) by amending paragraph (1) to read as fol-  
11 lows:

12 “(1) Except in the case of a transmission to  
13 which paragraph (5) applies or a transmission li-  
14 censed under a statutory license in accordance with  
15 subsection (f) of this section, the following shall  
16 apply:

17 “(A) A featured recording artist who per-  
18 forms on a sound recording that has been li-  
19 censed for public performance by means of a  
20 digital audio transmission shall be entitled to  
21 receive payments from the copyright owner of  
22 the sound recording in accordance with the  
23 terms of the artist’s contract.

24 “(B)(i) A sound recording copyright owner  
25 shall deposit 1 percent of the receipts from li-  
26 censing for the public performance of sound re-

1 cordings by means of a digital audio trans-  
2 mission with the American Federation of Musi-  
3 cians and American Federation of Television  
4 and Radio Artists Intellectual Property Rights  
5 Distribution Fund (or any successor entity) (in  
6 this subparagraph referred to as the ‘Fund’) to  
7 be distributed to nonfeatured performers who  
8 have performed on sound recordings. The sound  
9 recording copyright owner shall make such de-  
10 posits for receipts received during the first half  
11 of a calendar year by August 15 and for re-  
12 ceipts received during the second half of a cal-  
13 endar year by February 15 of the following cal-  
14 endar year.

15 “(ii) A sound recording copyright owner  
16 shall include with such deposits information re-  
17 garding the amount of such deposits attrib-  
18 utable to each licensee and, subject to obtaining  
19 consent, if necessary, from such licensee, for  
20 each sound recording performed by means of a  
21 digital audio transmission by such licensee dur-  
22 ing the applicable time period, and to the extent  
23 included in the accounting reports provided by  
24 the licensee to the sound recording copyright  
25 owner—

1 “(I) the identity of the artist;

2 “(II) the International Standard Re-  
3 cording Code of the sound recording;

4 “(III) the title of the sound recording;

5 “(IV) the number of times the sound  
6 recording was transmitted; and

7 “(V) the total amount of receipts col-  
8 lected from that licensee.

9 “(iii) The Fund shall make the distribu-  
10 tions described in clause (i) as follows: 50 per-  
11 cent shall be paid to nonfeatured musicians  
12 (whether or not members of the American Fed-  
13 eration of Musicians) and 50 percent shall be  
14 paid to nonfeatured vocalists (whether or not  
15 members of the American Federation of Tele-  
16 vision and Radio Artists). The Fund may, prior  
17 to making such distributions, deduct the rea-  
18 sonable costs related to making such distribu-  
19 tions.

20 “(iv) The sound recording copyright owner  
21 shall not be required to provide any additional  
22 information to the Fund other than what is re-  
23 quired under this subparagraph. Sound record-  
24 ing copyright owners shall use reasonable good  
25 faith efforts to include in all relevant licenses a

1 requirement to report the information identified  
2 in subclauses (I) through (V) of clause (ii).  
3 Late deposits of amounts required under clause  
4 (i) shall be subject to interest at the rate of 6  
5 percent per annum from the date the payment  
6 was due.”; and

7 (2) by adding at the end the following new  
8 paragraph:

9 “(5) Notwithstanding paragraph (1), to the ex-  
10 tent that a license granted by the copyright owner  
11 of a sound recording to a terrestrial broadcast sta-  
12 tion extends to such station’s nonsubscription broad-  
13 cast transmissions otherwise licensable under a stat-  
14 utory license in accordance with subsection (f), the  
15 station shall pay to the agent designated to dis-  
16 tribute statutory licensing receipts from the licensing  
17 of transmissions in accordance with subsection (f),  
18 50 percent of the total royalties that the station is  
19 required to pay for such transmissions under the ap-  
20 plicable license agreement. That agent shall dis-  
21 tribute such payments in proportion to the distribu-  
22 tions provided in subparagraphs (B) through (D) of  
23 paragraph (2), and such payments shall be the sole  
24 payments to which featured and nonfeatured artists

1 are entitled by virtue of such transmissions under  
2 the direct license with that station.”.

