

AMENDMENT TO H.R. 6052
OFFERED BY MR. SMITH OF TEXAS

Page 6, insert the following after line 16 and redesignate succeeding subparagraphs accordingly:

1 “(B) TRANSMITTING ENTITY DEFINED.—
2 For purposes of subparagraph (A), the term
3 ‘transmitting entity’ means—
4 “(i) a terrestrial radio broadcast sta-
5 tion, or affiliate thereof, or a satellite dig-
6 ital audio radio service, that is making
7 subscription or nonsubscription broadcast
8 radio transmissions; or
9 “(ii) a subscription or nonsubscription
10 webcasting service.

Page 17, line 4, insert before the period the following: “, and 3 of whom shall be representatives of music publishing entities”.

Page 63, strike line 13 and all that follows through page 64, line 20.

Page 64, insert the following after line 20 and redesignate succeeding paragraphs accordingly:

1 “(14) DETERMINATIONS OF WHETHER SERV-
2 ICES ARE NONINTERACTIVE.—

3 “(A) NOTICE TO DESIGNATED AGENTS.—A
4 digital music provider may provide written no-
5 tice to the General Designated Agent and all
6 additional designated agents representing musi-
7 cal works offered by the digital music provider
8 of the nature of the services provided by the
9 digital music provider for the purpose of obtain-
10 ing the views of the General Designated Agent
11 and the additional designated agents on wheth-
12 er the services are noninteractive streams eligi-
13 ble for the exemption under paragraph (3).

14 “(B) RESPONSE BY DESIGNATED
15 AGENTS.—The General Designated Agent and
16 all additional designated agents that receive a
17 notice from a digital music provider under sub-
18 paragraph (A) shall respond in writing to the
19 digital music provider not later than 30 days
20 after receiving the notice, stating the view of
21 the General Designated Agent or additional
22 designated agent, as the case may be, of wheth-
23 er the services that were the subject of the no-
24 tice are noninteractive streams.

25 “(C) ACTION UPON RESPONSES.—

1 “(i) IF SERVICES NONINTERACTIVE.—
2 If the General Designated Agent and all
3 additional designated agents state the view
4 that the services of the digital music pro-
5 vider are noninteractive streams, then the
6 services are exempt under paragraph (3).

7 “(ii) IF SERVICES INTERACTIVE.—If
8 the General Designated Agent or any addi-
9 tional designated agent states the view
10 that the services of the digital music pro-
11 vider are interactive streams, then the dig-
12 ital music provider may elect to—

13 “(I) pay royalties under this sub-
14 section for the service for interactive
15 streams in accordance with the stated
16 view; or

17 “(II) request the designated
18 agents to whom royalties under this
19 subsection would be paid to hold in
20 escrow the royalties payable for inter-
21 active streams in accordance with the
22 state view, pending a court determina-
23 tion under subparagraph (D).

24 “(D) DECLARATORY JUDGMENT.—

1 “(i) IN GENERAL.—In any case in
2 which royalties are held in escrow under
3 subparagraph (C)(ii)(III), the digital music
4 provider may bring an action in the appro-
5 priate United States district court for a
6 declaratory judgment. In such action, the
7 court shall determine only whether the
8 services of the digital music provider are
9 interactive streams or noninteractive
10 streams.

11 “(ii) IF STREAMS INTERACTIVE.—If
12 the court determines under clause (i) that
13 the services of the digital music provider
14 are interactive streams, the designated
15 agents holding the royalties in escrow re-
16 tain the royalties and the digital music
17 provider shall continue to pay royalties to
18 the designated agents under this sub-
19 section for the services.

20 “(iii) IF STREAMS NONINTER-
21 ACTIVE.—If the court determines under
22 clause (i) that the services of the digital
23 music provider are noninteractive streams,
24 the designated agents holding the royalties
25 in escrow shall return the royalties to the

1 digital music provider, with interest cal-
2 culated at an annual rate of the Federal
3 funds rate described in paragraph
4 (10)(A)(iii)(II), such interest to accrue
5 monthly from the date the payments are
6 made until the date the funds are re-
7 turned. The digital music provider is not
8 thereafter required to pay royalties under
9 this subsection for those services.

10 “(iv) COSTS.—In an action for declar-
11 atory judgment under this subparagraph,
12 all parties bear their own costs.

13 “(E) IF DESIGNATED AGENTS FAIL TO RE-
14 SPOND.—If the General Designated agent or
15 any additional agent that receives a notice
16 under subparagraph (A) fails to respond within
17 the 30-day period described in subparagraph
18 (B), then the digital music provider shall not be
19 liable for any statutory damages in any action
20 for infringement brought for failure to pay roy-
21 alties under this subsection for the services that
22 were the subject of the notice.”

Page 77, line 15, strike “exclusions from” and insert
“exceptions to”.

Page 84, strike lines 4 through 9 and insert the following:

1 (B) in subparagraph (C), by striking “dis-
2 tinguish between” and inserting “include terms
3 and rates for”;

4 (C) in subparagraph (D), by striking “dis-
5 tinguish between” and inserting “include terms
6 and rates for”;

Page 92, strike line 15 and all that follows through page 93, line 11, and insert the following:

7 “(C) LIMITATION.—In a case in which a
8 new work of authorship recasts, transforms,
9 adapts, or integrates the infringed work with
10 the new work’s original expression, injunctive
11 relief shall not be available against an infringer
12 who asserts in an action under section 501(b)
13 that neither it nor its representative acting in
14 an official capacity is subject to suit in Federal
15 court for an award of damages to the copyright
16 owner under section 504, if the court finds that
17 the infringer—

18 “(i) has complied with the require-
19 ments of subsection (a); and

1 “(ii) pays reasonable compensation to
2 the copyright owner as defined under para-
3 graph (3).

4 “(D) CONSTRUCTION.—Nothing in sub-
5 paragraph (C) shall be deemed to authorize or
6 require, and no action taken pursuant to such
7 subparagraph shall be deemed to constitute, ei-
8 ther an award of damages by the court against
9 the infringer or an authorization to sue a State
10 in its own name.”.

Page 94, strike lines 18 through 20 and insert the following, and redesignate succeeding sections accordingly:

11 **SEC. 203. EFFECTIVE DATE; DATABASE.**

12 (a) IN GENERAL.—With respect to works other than
13 pictorial, graphic, and sculptural works, the amendments
14 made by section 202 apply to infringing uses that com-
15 mence on or after June 1, 2007.

16 (b) PICTORIAL, GRAPHIC, AND SCULPTURAL
17 WORKS.—With respect to pictorial, graphic, and sculp-
18 tural works, the amendments made by section 202 take
19 effect on the earlier of—

20 (1) the date on which the Copyright Office first
21 implements a searchable, up-to-date, electronic data-
22 base, developed by the Copyright Office, that allows

1 for searches for copyrighted works that are pictorial,
2 graphic, and sculptural works, is available to the
3 public through the Internet, and meets the require-
4 ments of subsection (c); or

5 (2) December 1, 2011.

6 The Register of Copyrights shall publish the date de-
7 scribed in paragraph (1) in the Federal Register, together
8 with a notice that the amendments made by section 202
9 take effect on that date.

10 (c) REQUIREMENTS FOR DATABASE.—

11 (1) IN GENERAL.—The database referred to in
12 subsection (b) is a database that—

13 (A) is arranged to permit search for and
14 retrieval of information regarding copyrighted
15 works, through text recognition;

16 (B) includes, with respect to each copy-
17 righted work in the database—

18 (i) the name of the author or authors
19 of the work;

20 (ii) the name of the copyright owner
21 if different from the author, and contact
22 information of the copyright owner;

23 (iii) the title of the copyrighted work;

1 (iv) the medium of the copyrighted
2 work (such as a photograph, oil painting,
3 or poster);

4 (v) a description of the copyrighted
5 work

6 (vi) a copy or representation of the
7 work;

8 (vii) the date the work was registered;

9 (viii) the date the work was created;

10 and

11 (ix) the copyright registration num-
12 ber;

13 (C) is searchable by any field or any com-
14 bination of fields; and

15 (D) meets the requirements of paragraph
16 (2).

17 (2) TECHNICAL MEASURES.—The Register of
18 Copyrights, after consulting with copyright owners
19 and users of pictorial, graphic and sculptural works,
20 shall take measures to reduce the likelihood that
21 copies or representations of works that are included
22 in the database referred to in subsection (b) will be
23 used for purposes of infringement. Such measures
24 may include prescribing technical standards or
25 guidelines relating to copies or representations of

1 works to be submitted by copyright owners in con-
2 nection with applications for copyright registration,
3 so that the copies or representations will be suffi-
4 cient—

5 (A) for purposes of examination by the
6 Copyright Office, and

7 (B) for purposes of identifying registered
8 works,

9 but will be unlikely to be suitable for purposes of
10 copyright infringement.

11 (3) INCLUSION OF ELECTRONIC REGISTRA-
12 TION.—The Register of Copyrights need only include
13 in the database registrations of copyrighted works
14 that are filed electronically.

15 (d) ADDITIONAL ACTIONS BY REGISTER OF COPY-
16 RIGHTS.—

17 (1) IN GENERAL.—The Register of Copyrights
18 shall take the necessary steps, including through
19 modifying the application to register a copyrighted
20 work in the Copyright Office, to provide persons the
21 opportunity—

22 (A) to include a description of their copy-
23 righted works, the terms of which will be used
24 as a link to the works in the database; and

1 (B) in the case of copyrighted works de-
2 posited with the Copyright Office under section
3 407 or 408 of title 17, United States Code, be-
4 fore the database is implemented, to redeposit
5 such works in order to make an election under
6 subparagraph (A) or (B).

7 (2) REGULATIONS.—The Register of Copyrights
8 may issue such regulations as are necessary to carry
9 out paragraph (1).

10 (e) COMPLETION DATE.—The Register of Copyrights
11 shall complete implementation of the database referred to
12 in subsection (b) by not later than December 1, 2011.

13 (f) REPORT.—The Register of Copyrights shall sub-
14 mit to the Congress, not later than December 31 of each
15 year, a report on the status and usage of the database
16 developed under this section.

17 (g) DEFINITIONS.—In this section, the term “pic-
18 torial, graphic, and sculptural works” has the meaning
19 given that term in section 101 of title 17, United States
20 Code.

21 (h) AUTHORIZATION OF APPROPRIATIONS.—There
22 are authorized to be appropriated such sums as may be
23 necessary to develop, implement, and maintain the data-
24 base referred to subsection (b).

Page 89, line 13, insert before the semicolon the following: “, including the database of pictorial, graphic, and sculptural works developed under section 203 of the Copyright Modernization Act of 2006”.

Strike sections 302 and 303 and redesignate the succeeding section accordingly.