

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To amend title 17, United States Code, to clarify the meaning of “preexisting” services.

**IN THE SENATE OF THE UNITED STATES—115th Cong., 2d Sess.**

**S. 2823**

To modernize copyright law, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by \_\_\_\_\_

Viz:

1 At the appropriate place in title I, insert the fol-  
2 lowing:

3 **SEC. 10 . ENSURING CONTINUED PROTECTION FOR “PRE-**  
4 **EXISTING” SERVICES.**

5 (a) AMENDMENT.—Section 114(j) of title 17, United  
6 States Code, is amended by striking paragraph (11) and  
7 inserting the following:

8 “(11)(A) A ‘preexisting subscription service’ is  
9 a service that performs sound recordings by means  
10 of noninteractive audio-only subscription digital  
11 audio transmissions, which was in existence and was  
12 making such transmissions to the public for a fee on  
13 or before July 31, 1998, and may include a limited

1 number of sample channels representative of the  
2 subscription service that are made available on a  
3 nonsubscription basis in order to promote the sub-  
4 scription service.

5 “(B) For purposes of this paragraph, the term  
6 ‘service’—

7 “(i) means the business in operation on or  
8 before July 31, 1998; and

9 “(ii) does not mean a specific product of-  
10 fering of such business.

11 “(C) For purposes of this paragraph—

12 “(i) a service may alter and modernize the  
13 product offerings of the service, including  
14 through expanded distribution via the same or  
15 new programming distributors or media, or use  
16 of different branding to identify product offer-  
17 ings, or acquiring assets from other entities, in-  
18 cluding via acquisition of another entity, with-  
19 out losing eligibility to be considered a pre-  
20 existing subscription service if the altered or  
21 modified product offerings maintain the funda-  
22 mental character of providing noninteractive  
23 audio-only subscription digital audio trans-  
24 missions; and

1           “(ii) a change in ownership of a service or  
2           any affiliated business entities of the service, in-  
3           cluding through a merger, acquisition, asset  
4           sale, corporate restructuring, or other means,  
5           shall not terminate the status of the service as  
6           a preexisting subscription service.”.

7           (b) APPLICABILITY.—The amendment made by sub-  
8           section (a) shall apply to any preexisting subscription serv-  
9           ice offered before, on, or after the date of enactment of  
10          this Act.