

**Suspend the Rules and Pass the Bill, H.R. 5447, With an Amendment****(The amendment strikes all after the enacting clause and inserts a new text)**115<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION**H. R. 5447**

To modernize copyright law, and for other purposes.

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**IN THE HOUSE OF REPRESENTATIVES**

APRIL 10, 2018

Mr. GOODLATTE (for himself, Mr. NADLER, Mr. COLLINS of Georgia, Mr. JEFFRIES, Mr. ISSA, Mr. DEUTCH, Mr. THOMAS J. ROONEY of Florida, Mr. CROWLEY, Ms. BASS, Mrs. BLACKBURN, Mr. CHABOT, Mr. COHEN, Mr. COOPER, Mrs. DEMINGS, Mr. JOHNSON of Georgia, Mr. JOHNSON of Louisiana, Ms. JACKSON LEE, Mr. TED LIEU of California, Mr. MARINO, Mr. PAYNE, Mrs. ROBY, Mr. SCHIFF, Mr. SCHNEIDER, Mr. SHERMAN, Mr. SMITH of Texas, Mr. SWALWELL of California, Mr. RASKIN, Mr. CICILLINE, Ms. JUDY CHU of California, Ms. JAYAPAL, and Mr. BIGGS) introduced the following bill; which was referred to the Committee on the Judiciary

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**A BILL**

To modernize copyright law, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Music Modernization Act”.

1 (b) TABLE OF CONTENTS.—The table of contents for  
2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Rescission Of Unobligated Balances In The Department Of Justice Assets Forfeiture Fund.

#### TITLE I—MUSIC LICENSING MODERNIZATION

- Sec. 101. Short title.
- Sec. 102. Blanket license for digital uses and mechanical licensing collective.
- Sec. 103. Amendments to section 114.
- Sec. 104. Random assignment of rate court proceedings.

#### TITLE II—COMPENSATING LEGACY ARTISTS FOR THEIR SONGS, SERVICE, AND IMPORTANT CONTRIBUTIONS TO SOCIETY

- Sec. 201. Short title.
- Sec. 202. Unauthorized digital performance of pre-1972 sound recordings.
- Sec. 203. Effective date.

#### TITLE III—ALLOCATION FOR MUSIC PRODUCERS

- Sec. 301. Short title.
- Sec. 302. Payment of statutory performance royalties.
- Sec. 303. Effective date.

3 **SEC. 2. RESCISSION OF UNOBLIGATED BALANCES IN THE**  
4 **DEPARTMENT OF JUSTICE ASSETS FOR-**  
5 **FEITURE FUND.**

6 Of the unobligated balances available under the De-  
7 partment of Justice Assets Forfeiture Fund,  
8 \$100,000,000 is hereby permanently rescinded.

9 **TITLE I—MUSIC LICENSING**  
10 **MODERNIZATION**

11 **SEC. 101. SHORT TITLE.**

12 This title may be cited as the “Musical Works Mod-  
13 ernization Act”.

1 **SEC. 102. BLANKET LICENSE FOR DIGITAL USES AND ME-**  
2 **CHANICAL LICENSING COLLECTIVE.**

3 (a) AMENDMENT.—Section 115 of title 17, United  
4 States Code, is amended—

5 (1) in subsection (a)—

6 (A) by inserting “IN GENERAL” after  
7 “AVAILABILITY AND SCOPE OF COMPULSORY  
8 LICENSE”;

9 (B) by striking paragraph (1) and insert-  
10 ing the following new paragraph:

11 “(1) ELIGIBILITY FOR COMPULSORY LI-  
12 CENSE.—

13 “(A) CONDITIONS FOR COMPULSORY LI-  
14 CENSE.—A person may by complying with the  
15 provisions of this section obtain a compulsory li-  
16 cense to make and distribute phonorecords of a  
17 nondramatic musical work, including by means  
18 of digital phonorecord delivery. A person may  
19 obtain a compulsory license only if the primary  
20 purpose in making phonorecords of the musical  
21 work is to distribute them to the public for pri-  
22 vate use, including by means of digital phono-  
23 record delivery, and—

24 “(i) phonorecords of such musical  
25 work have previously been distributed to  
26 the public in the United States under the

1 authority of the copyright owner of the  
2 work, including by means of digital phono-  
3 record delivery; or

4 “(ii) in the case of a digital music  
5 provider seeking to make and distribute  
6 digital phonorecord deliveries of a sound  
7 recording embodying a musical work under  
8 a compulsory license for which clause (i)  
9 does not apply—

10 “(I) the first fixation of such  
11 sound recording was made under the  
12 authority of the musical work copy-  
13 right owner, and sound recording  
14 copyright owner has the authority of  
15 the musical work copyright owner to  
16 make and distribute digital phono-  
17 record deliveries embodying such work  
18 to the public in the United States;  
19 and

20 “(II) the sound recording copy-  
21 right owner or its authorized dis-  
22 tributor has authorized the digital  
23 music provider to make and distribute  
24 digital phonorecord deliveries of the

1 sound recording to the public in the  
2 United States.

3 “(B) DUPLICATION OF SOUND RECORD-  
4 ING.—A person may not obtain a compulsory li-  
5 cense for the use of the work in the making of  
6 phonorecords duplicating a sound recording  
7 fixed by another, including by means of digital  
8 phonorecord delivery, unless—

9 “(i) such sound recording was fixed  
10 lawfully; and

11 “(ii) the making of the phonorecords  
12 was authorized by the owner of the copy-  
13 right in the sound recording or, if the  
14 sound recording was fixed before February  
15 15, 1972, by any person who fixed the  
16 sound recording pursuant to an express li-  
17 cense from the owner of the copyright in  
18 the musical work or pursuant to a valid  
19 compulsory license for use of such work in  
20 a sound recording.”; and

21 (C) in paragraph (2), by striking “A com-  
22 pulsory license” and inserting “MUSICAL AR-  
23 RANGEMENT.—A compulsory license”;

24 (2) by striking subsection (b) and inserting the  
25 following:

1           “(b) PROCEDURES TO OBTAIN A COMPULSORY LI-  
2 CENSE.—

3           “(1) PHONORECORDS OTHER THAN DIGITAL  
4 PHONORECORD DELIVERIES.—A person who seeks to  
5 obtain a compulsory license under subsection (a) to  
6 make and distribute phonorecords of a musical work  
7 other than by means of digital phonorecord delivery  
8 shall, before or within 30 calendar days after mak-  
9 ing, and before distributing, any phonorecord of the  
10 work, serve notice of intention to do so on the copy-  
11 right owner. If the registration or other public  
12 records of the Copyright Office do not identify the  
13 copyright owner and include an address at which no-  
14 tice can be served, it shall be sufficient to file the  
15 notice of intention with the Copyright Office. The  
16 notice shall comply, in form, content, and manner of  
17 service, with requirements that the Register of Copy-  
18 rights shall prescribe by regulation.

19           “(2) DIGITAL PHONORECORD DELIVERIES.—A  
20 person who seeks to obtain a compulsory license  
21 under subsection (a) to make and distribute  
22 phonorecords of a musical work by means of digital  
23 phonorecord delivery—

24           “(A) prior to the license availability date,  
25           shall, before or within 30 calendar days after

1 first making any such digital phonorecord deliv-  
2 ery, serve a notice of intention to do so on the  
3 copyright owner (but may not file the notice  
4 with the Copyright Office, even if the public  
5 records of the Office do not identify the owner  
6 or the owner's address), and such notice shall  
7 comply, in form, content, and manner of serv-  
8 ice, with requirements that the Register of  
9 Copyrights shall prescribe by regulation; or

10 “(B) on or after the license availability  
11 date, shall, before making any such digital pho-  
12 norecord delivery, follow the procedure de-  
13 scribed in subsection (d)(2), except as provided  
14 in paragraph (3).

15 “(3) RECORD COMPANY INDIVIDUAL DOWNLOAD  
16 LICENSES.—Notwithstanding paragraph (2)(B), a  
17 record company may, on or after the license avail-  
18 ability date, obtain an individual download license in  
19 accordance with the notice requirements described in  
20 paragraph (2)(A) (except for the requirement that  
21 notice occur prior to the license availability date). A  
22 record company that obtains an individual download  
23 license as permitted under this paragraph shall pro-  
24 vide statements of account and pay royalties as pro-  
25 vided in subsection (c)(2)(I).

1 “(4) FAILURE TO OBTAIN LICENSE.—

2 “(A) PHONORECORDS OTHER THAN DIG-  
3 ITAL PHONORECORD DELIVERIES.—In the case  
4 of phonorecords made and distributed other  
5 than by means of digital phonorecord delivery,  
6 the failure to serve or file the notice of inten-  
7 tion required by paragraph (1) forecloses the  
8 possibility of a compulsory license under para-  
9 graph (1). In the absence of a voluntary license,  
10 the failure to obtain a compulsory license ren-  
11 ders the making and distribution of phonore-  
12 cords actionable as acts of infringement under  
13 section 501 and subject to the remedies pro-  
14 vided by sections 502 through 506.

15 “(B) DIGITAL PHONORECORD DELIV-  
16 ERIES.—

17 “(i) In the case of phonorecords made  
18 and distributed by means of digital phono-  
19 record delivery:

20 “(I) The failure to serve the no-  
21 tice of intention required by para-  
22 graph (2)(A) or paragraph (3), as ap-  
23 plicable, forecloses the possibility of a  
24 compulsory license under such para-  
25 graph.



1                   “(II) The failure to comply with  
2                   paragraph (2)(B) forecloses the possi-  
3                   bility of a blanket license for a period  
4                   of 3 years after the last calendar day  
5                   on which the notice of license was re-  
6                   quired to be submitted to the mechan-  
7                   ical licensing collective under such  
8                   paragraph.

9                   “(ii) In either case described in clause  
10                  (i), in the absence of a voluntary license,  
11                  the failure to obtain a compulsory license  
12                  renders the making and distribution of  
13                  phonorecords by means of digital phono-  
14                  record delivery actionable as acts of in-  
15                  fringement under section 501 and subject  
16                  to the remedies provided by sections 502  
17                  through 506.”;

18                  (3) by amending subsection (c) to read as fol-  
19                  lows:

20                  “(c) GENERAL CONDITIONS APPLICABLE TO COM-  
21                  PULSORY LICENSE.—

22                  “(1) ROYALTY PAYABLE UNDER COMPULSORY  
23                  LICENSE.—

24                  “(A) IDENTIFICATION REQUIREMENT.—To  
25                  be entitled to receive royalties under a compul-

1           sory license obtained under subsection (b)(1)  
2           the copyright owner must be identified in the  
3           registration or other public records of the Copy-  
4           right Office. The owner is entitled to royalties  
5           for phonorecords made and distributed after  
6           being so identified, but is not entitled to recover  
7           for any phonorecords previously made and dis-  
8           tributed.

9           “(B) ROYALTY FOR PHONORECORDS  
10          OTHER THAN DIGITAL PHONORECORD DELIV-  
11          ERIES.—Except as provided by subparagraph  
12          (A), for every phonorecord made and distrib-  
13          uted under a compulsory license under sub-  
14          section (a) other than by means of digital pho-  
15          norecord delivery, with respect to each work  
16          embodied in the phonorecord, the royalty shall  
17          be the royalty prescribed under subparagraphs  
18          (D) through (F) and paragraph (2)(A) and  
19          chapter 8 of this title. For purposes of this sub-  
20          paragraph, a phonorecord is considered ‘distrib-  
21          uted’ if the person exercising the compulsory li-  
22          cense has voluntarily and permanently parted  
23          with its possession.

24          “(C) ROYALTY FOR DIGITAL PHONO-  
25          RECORD DELIVERIES.—For every digital phono-

1 record delivery of a musical work made under  
2 a compulsory license under this section, the roy-  
3 alty payable shall be the royalty prescribed  
4 under subparagraphs (D) through (F) and  
5 paragraph (2)(A) and chapter 8 of this title.

6 “(D) AUTHORITY TO NEGOTIATE.—Not-  
7 withstanding any provision of the antitrust  
8 laws, any copyright owners of nondramatic mu-  
9 sical works and any persons entitled to obtain  
10 a compulsory license under subsection (a) may  
11 negotiate and agree upon the terms and rates  
12 of royalty payments under this section and the  
13 proportionate division of fees paid among copy-  
14 right owners, and may designate common  
15 agents on a nonexclusive basis to negotiate,  
16 agree to, pay or receive such royalty payments.  
17 Such authority to negotiate the terms and rates  
18 of royalty payments includes, but is not limited  
19 to, the authority to negotiate the year during  
20 which the royalty rates prescribed under this  
21 subparagraph and subparagraphs (E) and (F)  
22 and paragraph (2)(A) and chapter 8 of this  
23 title shall next be determined.

24 “(E) DETERMINATION OF REASONABLE  
25 RATES AND TERMS.—Proceedings under chap-

1           ter 8 shall determine reasonable rates and  
2           terms of royalty payments for the activities  
3           specified by this section during the period be-  
4           ginning with the effective date of such rates  
5           and terms, but not earlier than January 1 of  
6           the second year following the year in which the  
7           petition requesting the proceeding is filed, and  
8           ending on the effective date of successor rates  
9           and terms, or such other period as the parties  
10          may agree. Any copyright owners of nondra-  
11          matic musical works and any persons entitled  
12          to obtain a compulsory license under subsection  
13          (a) may submit to the Copyright Royalty  
14          Judges licenses covering such activities. The  
15          parties to each proceeding shall bear their own  
16          costs.

17                 “(F) SCHEDULE OF REASONABLE  
18                 RATES.—The schedule of reasonable rates and  
19                 terms determined by the Copyright Royalty  
20                 Judges shall, subject to paragraph (2)(A), be  
21                 binding on all copyright owners of nondramatic  
22                 musical works and persons entitled to obtain a  
23                 compulsory license under subsection (a) during  
24                 the period specified in subparagraph (E), such  
25                 other period as may be determined pursuant to

1           subparagraphs (D) and (E), or such other pe-  
2           riod as the parties may agree. The Copyright  
3           Royalty Judges shall establish rates and terms  
4           that most clearly represent the rates and terms  
5           that would have been negotiated in the market-  
6           place between a willing buyer and a willing sell-  
7           er. In determining such rates and terms for dig-  
8           ital phonorecord deliveries, the Copyright Roy-  
9           alty Judges shall base their decision on eco-  
10          nomic, competitive, and programming informa-  
11          tion presented by the parties, including—

12                   “(i) whether use of the compulsory li-  
13                   censee’s service may substitute for or may  
14                   promote the sales of phonorecords or oth-  
15                   erwise may interfere with or may enhance  
16                   the musical work copyright owner’s other  
17                   streams of revenue from its musical works;  
18                   and

19                   “(ii) the relative roles of the copyright  
20                   owner and the compulsory licensee in the  
21                   copyrighted work and the service made  
22                   available to the public with respect to the  
23                   relative creative contribution, technological  
24                   contribution, capital investment, cost, and  
25                   risk.

1 “(2) ADDITIONAL TERMS AND CONDITIONS.—

2 “(A) VOLUNTARY LICENSES AND CON-  
3 TRACTUAL ROYALTY RATES.—

4 “(i) License agreements voluntarily  
5 negotiated at any time between one or  
6 more copyright owners of nondramatic mu-  
7 sical works and one or more persons enti-  
8 tled to obtain a compulsory license under  
9 subsection (a) shall be given effect in lieu  
10 of any determination by the Copyright  
11 Royalty Judges. Subject to clause (ii), the  
12 royalty rates determined pursuant to sub-  
13 paragraphs (E) and (F) of paragraph (1)  
14 shall be given effect as to digital phono-  
15 record deliveries in lieu of any contrary  
16 royalty rates specified in a contract pursu-  
17 ant to which a recording artist who is the  
18 author of a nondramatic musical work  
19 grants a license under that person’s exclu-  
20 sive rights in the musical work under para-  
21 graphs (1) and (3) of section 106 or com-  
22 mits another person to grant a license in  
23 that musical work under paragraphs (1)  
24 and (3) of section 106, to a person desir-  
25 ing to fix in a tangible medium of expres-

1 sion a sound recording embodying the mu-  
2 sical work.

3 “(ii) The second sentence of clause (i)  
4 shall not apply to—

5 “(I) a contract entered into on or  
6 before June 22, 1995, and not modi-  
7 fied thereafter for the purpose of re-  
8 ducing the royalty rates determined  
9 pursuant to subparagraphs (E) and  
10 (F) of paragraph (1) or of increasing  
11 the number of musical works within  
12 the scope of the contract covered by  
13 the reduced rates, except if a contract  
14 entered into on or before June 22,  
15 1995, is modified thereafter for the  
16 purpose of increasing the number of  
17 musical works within the scope of the  
18 contract, any contrary royalty rates  
19 specified in the contract shall be given  
20 effect in lieu of royalty rates deter-  
21 mined pursuant to subparagraphs (E)  
22 and (F) of paragraph (1) for the  
23 number of musical works within the  
24 scope of the contract as of June 22,  
25 1995; and

1                   “(II) a contract entered into  
2                   after the date that the sound record-  
3                   ing is fixed in a tangible medium of  
4                   expression substantially in a form in-  
5                   tended for commercial release, if at  
6                   the time the contract is entered into,  
7                   the recording artist retains the right  
8                   to grant licenses as to the musical  
9                   work under paragraphs (1) and (3) of  
10                  section 106.

11                  “(B) SOUND RECORDING INFORMATION.—  
12                  Except as provided in section 1002(e) of this  
13                  title, a digital phonorecord delivery licensed  
14                  under this paragraph shall be accompanied by  
15                  the information encoded in the sound recording,  
16                  if any, by or under the authority of the copy-  
17                  right owner of that sound recording, that iden-  
18                  tifies the title of the sound recording, the fea-  
19                  tured recording artist who performs on the  
20                  sound recording, and related information, in-  
21                  cluding information concerning the underlying  
22                  musical work and its writer.

23                  “(C) INFRINGEMENT REMEDIES.—

24                  “(i) A digital phonorecord delivery of  
25                  a sound recording is actionable as an act



1 of infringement under section 501, and is  
2 fully subject to the remedies provided by  
3 sections 502 through 506, unless—

4 “(I) the digital phonorecord de-  
5 livery has been authorized by the  
6 sound recording copyright owner; and

7 “(II) the entity making the dig-  
8 ital phonorecord delivery has obtained  
9 a compulsory license under subsection  
10 (a) or has otherwise been authorized  
11 by the musical work copyright owner,  
12 or by a record company pursuant to  
13 an individual download license, to  
14 make and distribute phonorecords of  
15 each musical work embodied in the  
16 sound recording by means of digital  
17 phonorecord delivery.

18 “(ii) Any cause of action under this  
19 subparagraph shall be in addition to those  
20 available to the owner of the copyright in  
21 the nondramatic musical work under sub-  
22 paragraph (J) and section 106(4) and the  
23 owner of the copyright in the sound record-  
24 ing under section 106(6).

1           “(D) LIABILITY OF SOUND RECORDING  
2 OWNERS.—The liability of the copyright owner  
3 of a sound recording for infringement of the  
4 copyright in a nondramatic musical work em-  
5 bodied in the sound recording shall be deter-  
6 mined in accordance with applicable law, except  
7 that the owner of a copyright in a sound re-  
8 cording shall not be liable for a digital phono-  
9 record delivery by a third party if the owner of  
10 the copyright in the sound recording does not  
11 license the distribution of a phonorecord of the  
12 nondramatic musical work.

13           “(E) RECORDING DEVICES AND MEDIA.—  
14 Nothing in section 1008 shall be construed to  
15 prevent the exercise of the rights and remedies  
16 allowed by this paragraph, subparagraph (J),  
17 and chapter 5 in the event of a digital phono-  
18 record delivery, except that no action alleging  
19 infringement of copyright may be brought  
20 under this title against a manufacturer, im-  
21 porter or distributor of a digital audio recording  
22 device, a digital audio recording medium, an  
23 analog recording device, or an analog recording  
24 medium, or against a consumer, based on the  
25 actions described in such section.

1           “(F) PRESERVATION OF RIGHTS.—Noth-  
2           ing in this section annuls or limits (i) the exclu-  
3           sive right to publicly perform a sound recording  
4           or the musical work embodied therein, including  
5           by means of a digital transmission, under sec-  
6           tions 106(4) and 106(6), (ii) except for compul-  
7           sory licensing under the conditions specified by  
8           this section, the exclusive rights to reproduce  
9           and distribute the sound recording and the mu-  
10          sical work embodied therein under sections  
11          106(1) and 106(3), including by means of a  
12          digital phonorecord delivery, or (iii) any other  
13          rights under any other provision of section 106,  
14          or remedies available under this title, as such  
15          rights or remedies exist either before or after  
16          the date of enactment of the Digital Perform-  
17          ance Right in Sound Recordings Act of 1995.

18           “(G) EXEMPT TRANSMISSIONS AND RE-  
19          TRANSMISSIONS.—The provisions of this section  
20          concerning digital phonorecord deliveries shall  
21          not apply to any exempt transmissions or re-  
22          transmissions under section 114(d)(1). The ex-  
23          emptions created in section 114(d)(1) do not  
24          expand or reduce the rights of copyright owners

1 under section 106(1) through (5) with respect  
2 to such transmissions and retransmissions.

3 “(H) DISTRIBUTION BY RENTAL, LEASE,  
4 OR LENDING.—A compulsory license obtained  
5 under subsection (b)(1) to make and distribute  
6 phonorecords includes the right of the maker of  
7 such a phonorecord to distribute or authorize  
8 distribution of such phonorecord, other than by  
9 means of a digital phonorecord delivery, by  
10 rental, lease, or lending (or by acts or practices  
11 in the nature of rental, lease, or lending). With  
12 respect to each nondramatic musical work em-  
13 bodied in the phonorecord, the royalty shall be  
14 a proportion of the revenue received by the  
15 compulsory licensee from every such act of dis-  
16 tribution of the phonorecord under this clause  
17 equal to the proportion of the revenue received  
18 by the compulsory licensee from distribution of  
19 the phonorecord under subsection  
20 (a)(1)(A)(ii)(II) that is payable by a compulsory  
21 licensee under that clause and under chapter 8.  
22 The Register of Copyrights shall issue regula-  
23 tions to carry out the purpose of this clause.

24 “(I) PAYMENT OF ROYALTIES AND STATE-  
25 MENTS OF ACCOUNT.—Except as provided in

1 paragraphs (4)(A)(i) and (10)(B) of subsection  
2 (d), royalty payments shall be made on or be-  
3 fore the twentieth day of each month and shall  
4 include all royalties for the month next pre-  
5 ceeding. Each monthly payment shall be made  
6 under oath and shall comply with requirements  
7 that the Register of Copyrights shall prescribe  
8 by regulation. The Register shall also prescribe  
9 regulations under which detailed cumulative an-  
10 nual statements of account, certified by a cer-  
11 tified public accountant, shall be filed for every  
12 compulsory license under subsection (a). The  
13 regulations covering both the monthly and the  
14 annual statements of account shall prescribe  
15 the form, content, and manner of certification  
16 with respect to the number of records made and  
17 the number of records distributed.

18 “(J) NOTICE OF DEFAULT AND TERMI-  
19 NATION OF COMPULSORY LICENSE.—In the  
20 case of a license obtained under subsection  
21 (b)(1), (b)(2)(A), or (b)(3), if the copyright  
22 owner does not receive the monthly payment  
23 and the monthly and annual statements of ac-  
24 count when due, the owner may give written no-  
25 tice to the licensee that, unless the default is

1 remedied within thirty days from the date of  
2 the notice, the compulsory license will be auto-  
3 matically terminated. Such termination renders  
4 either the making or the distribution, or both,  
5 of all phonorecords for which the royalty has  
6 not been paid, actionable as acts of infringe-  
7 ment under section 501 and fully subject to the  
8 remedies provided by sections 502 through 506.  
9 In the case of a license obtained under sub-  
10 section (b)(2)(B), license authority under the  
11 compulsory license may be terminated as pro-  
12 vided in subsection (d)(4)(E).”;

13 (4) by amending subsection (d) to read as fol-  
14 lows:

15 “(d) BLANKET LICENSE FOR DIGITAL USES, ME-  
16 CHANICAL LICENSING COLLECTIVE, AND DIGITAL LI-  
17 CENSEE COORDINATOR.—

18 “(1) BLANKET LICENSE FOR DIGITAL USES.—

19 “(A) IN GENERAL.—A digital music pro-  
20 vider that qualifies for a compulsory license  
21 under subsection (a) may, by complying with  
22 the terms and conditions of this subsection, ob-  
23 tain a blanket license from copyright owners  
24 through the mechanical licensing collective to  
25 make and distribute digital phonorecord deliv-

1           eries of musical works through one or more cov-  
2           ered activities.

3           “(B) INCLUDED ACTIVITIES.—A blanket li-  
4           cense—

5           “(i) covers all musical works (or  
6           shares of such works) available for compul-  
7           sory licensing under this section for pur-  
8           poses of engaging in covered activities, ex-  
9           cept as provided in subparagraph (C);

10          “(ii) includes the making and dis-  
11          tribution of server, intermediate, archival,  
12          and incidental reproductions of musical  
13          works that are reasonable and necessary  
14          for the digital music provider to engage in  
15          covered activities licensed under this sub-  
16          section, solely for the purpose of engaging  
17          in such covered activities; and

18          “(iii) does not cover or include any  
19          rights or uses other than those described  
20          in clauses (i) and (ii).

21          “(C) OTHER LICENSES.—A voluntary li-  
22          cense for covered activities entered into by or  
23          under the authority of one or more copyright  
24          owners and one or more digital music providers,  
25          or authority to make and distribute permanent

1           downloads of a musical work obtained by a dig-  
2           ital music provider from a sound recording  
3           copyright owner pursuant to an individual  
4           download license, shall be given effect in lieu of  
5           a blanket license under this subsection with re-  
6           spect to the musical works (or shares thereof)  
7           covered by such voluntary license or individual  
8           download authority and the following conditions  
9           apply:

10                   “(i) Where a voluntary license or indi-  
11                   vidual download license applies, the license  
12                   authority provided under the blanket li-  
13                   cense shall exclude any musical works (or  
14                   shares thereof) subject to the voluntary li-  
15                   cense or individual download license.

16                   “(ii) An entity engaged in covered ac-  
17                   tivities under a voluntary license or author-  
18                   ity obtained pursuant to an individual  
19                   download license that is a significant non-  
20                   blanket licensee shall comply with para-  
21                   graph (6)(A).

22                   “(iii) The rates and terms of any vol-  
23                   untary license shall be subject to the sec-  
24                   ond sentence of clause (i) and clause (ii) of



1 subsection (c)(2)(A) and paragraph (9)(C),  
2 as applicable.

3 “(D) PROTECTION AGAINST INFRINGE-  
4 MENT ACTIONS.—A digital music provider that  
5 obtains and complies with the terms of a valid  
6 blanket license under this subsection shall not  
7 be subject to an action for infringement of the  
8 exclusive rights provided by paragraphs (1) and  
9 (3) of section 106 under this title arising from  
10 use of a musical work (or share thereof) to en-  
11 gage in covered activities authorized by such li-  
12 cense, subject to paragraph (4)(E).

13 “(E) OTHER REQUIREMENTS AND CONDI-  
14 TIONS APPLY.—Except as expressly provided in  
15 this subsection, each requirement, limitation,  
16 condition, privilege, right, and remedy otherwise  
17 applicable to compulsory licenses under this sec-  
18 tion shall apply to compulsory blanket licenses  
19 under this subsection.

20 “(2) AVAILABILITY OF BLANKET LICENSE.—

21 “(A) PROCEDURE FOR OBTAINING LI-  
22 CENSE.—A digital music provider may obtain a  
23 blanket license by submitting a notice of license  
24 to the mechanical licensing collective that speci-  
25 fies the particular covered activities in which

1 the digital music provider seeks to engage, as  
2 follows:

3 “(i) The notice of license shall comply  
4 in form and substance with requirements  
5 that the Register of Copyrights shall estab-  
6 lish by regulation.

7 “(ii) Unless rejected in writing by the  
8 mechanical licensing collective within 30  
9 calendar days after receipt, the blanket li-  
10 cense shall be effective as of the date the  
11 notice of license was sent by the digital  
12 music provider as shown by a physical or  
13 electronic record.

14 “(iii) A notice of license may only be  
15 rejected by the mechanical licensing collec-  
16 tive if—

17 “(I) the digital music provider or  
18 notice of license does not meet the re-  
19 quirements of this section or applica-  
20 ble regulations, in which case the re-  
21 quirements at issue shall be specified  
22 with reasonable particularity in the  
23 notice of rejection; or

24 “(II) the digital music provider  
25 has had a blanket license terminated

1 by the mechanical licensing collective  
2 within the past 3 years pursuant to  
3 paragraph (4)(E).

4 “(iv) If a notice of license is rejected  
5 under clause (iii)(I), the digital music pro-  
6 vider shall have 30 calendar days after re-  
7 ceipt of the notice of rejection to cure any  
8 deficiency and submit an amended notice  
9 of license to the mechanical licensing col-  
10 lective. If the deficiency has been cured,  
11 the mechanical licensing collective shall so  
12 confirm in writing, and the license shall be  
13 effective as of the date that the original  
14 notice of license was provided by the dig-  
15 ital music provider.

16 “(v) A digital music provider that be-  
17 lieves a notice of license was improperly re-  
18 jected by the mechanical licensing collec-  
19 tive may seek review of such rejection in  
20 Federal district court. The district court  
21 shall determine the matter de novo based  
22 on the record before the mechanical licens-  
23 ing collective and any additional evidence  
24 presented by the parties.

1           “(B) BLANKET LICENSE EFFECTIVE  
2           DATE.—Blanket licenses shall be made available  
3           by the mechanical licensing collective on and  
4           after the license availability date. No such li-  
5           cense shall be effective prior to the license avail-  
6           ability date.

7           “(3) MECHANICAL LICENSING COLLECTIVE.—

8           “(A) IN GENERAL.—The mechanical li-  
9           censing collective shall be a single entity that—

10           “(i) is a nonprofit, not owned by any  
11           other entity, that is created by copyright  
12           owners to carry out responsibilities under  
13           this subsection;

14           “(ii) is endorsed by and enjoys sub-  
15           stantial support from musical work copy-  
16           right owners that together represent the  
17           greatest percentage of the licensor market  
18           for uses of such works in covered activities,  
19           as measured over the preceding 3 full cal-  
20           endar years;

21           “(iii) is able to demonstrate to the  
22           Register of Copyrights that it has, or will  
23           have prior to the license availability date,  
24           the administrative and technological capa-  
25           bilities to perform the required functions of

1 the mechanical licensing collective under  
2 this subsection; and

3 “(iv) has been designated by the Reg-  
4 ister of Copyrights in accordance with sub-  
5 paragraph (B).

6 “(B) DESIGNATION OF MECHANICAL LI-  
7 CENSING COLLECTIVE.—

8 “(i) INITIAL DESIGNATION.—The  
9 Register of Copyrights shall initially des-  
10 ignate the mechanical licensing collective  
11 within 9 months after the enactment date  
12 as follows:

13 “(I) Within 90 calendar days  
14 after the enactment date, the Register  
15 shall publish notice in the Federal  
16 Register soliciting information to as-  
17 sist in identifying the appropriate en-  
18 tity to serve as the mechanical licens-  
19 ing collective, including the name and  
20 affiliation of each member of the  
21 board of directors described under  
22 subparagraph (D)(i) and each com-  
23 mittee established pursuant to clauses  
24 (iii), (iv), and (v) of subparagraph  
25 (D).

1                   “(II) After reviewing the infor-  
2                   mation requested under subclause (I)  
3                   and making a designation, the Reg-  
4                   ister shall publish notice in the Fed-  
5                   eral Register setting forth the identity  
6                   of and contact information for the me-  
7                   chanical licensing collective.

8                   “(ii) PERIODIC REVIEW OF DESIGNA-  
9                   TION.—Following the initial designation of  
10                  the mechanical licensing collective, the  
11                  Register shall, every 5 years, beginning  
12                  with the fifth full calendar year to com-  
13                  mence after the initial designation, publish  
14                  notice in the Federal Register in the  
15                  month of January soliciting information  
16                  concerning whether the existing designa-  
17                  tion should be continued, or a different en-  
18                  tity meeting the criteria described in  
19                  clauses (i) through (iii) of subparagraph  
20                  (A) shall be designated. Following publica-  
21                  tion of such notice:

22                               “(I) The Register shall, after re-  
23                               viewing the information submitted and  
24                               conducting additional proceedings as  
25                               appropriate, publish notice in the Fed-

1           eral Register of a continuing designa-  
2           tion or new designation of the me-  
3           chanical licensing collective, as the  
4           case may be, with any new designa-  
5           tion to be effective as of the first day  
6           of a month that is no less than 6  
7           months and no longer than 9 months  
8           after the date of publication of such  
9           notice, as specified by the Register.

10                   “(II) If a new entity is des-  
11                   ignated as a mechanical licensing col-  
12                   lective, the Register shall adopt regu-  
13                   lations to govern the transfer of li-  
14                   censes, funds, records, data, and ad-  
15                   ministrative responsibilities from the  
16                   existing mechanical licensing collective  
17                   to the new entity.

18                   “(iii) CLOSEST ALTERNATIVE DES-  
19                   IGNATION.—If the Register is unable to  
20                   identify an entity that fulfills each of the  
21                   qualifications set forth in clauses (i)  
22                   through (iii) of subparagraph (A), the Reg-  
23                   ister shall designate the entity that most  
24                   nearly fulfills such qualifications for pur-

1 poses of carrying out the responsibilities of  
2 the mechanical licensing collective.

3 “(C) AUTHORITIES AND FUNCTIONS.—

4 “(i) IN GENERAL.—The mechanical li-  
5 censing collective is authorized to perform  
6 the following functions, subject to more  
7 particular requirements as described in  
8 this subsection:

9 “(I) Offer and administer blanket  
10 licenses, including receipt of notices of  
11 license and reports of usage from dig-  
12 ital music providers.

13 “(II) Collect and distribute royalti-  
14 ties from digital music providers for  
15 covered activities.

16 “(III) Engage in efforts to iden-  
17 tify musical works (and shares of such  
18 works) embodied in particular sound  
19 recordings, and to identify and locate  
20 the copyright owners of such musical  
21 works (and shares of such works).

22 “(IV) Maintain the musical  
23 works database and other information  
24 relevant to the administration of li-  
25 censing activities under this section.



1           “(V) Administer a process by  
2           which copyright owners can claim  
3           ownership of musical works (and  
4           shares of such works), and a process  
5           by which royalties for works for which  
6           the owner is not identified or located  
7           are equitably distributed to known  
8           copyright owners.

9           “(VI) Administer collections of  
10          the administrative assessment from  
11          digital music providers and significant  
12          nonblanket licensees, including receipt  
13          of notices of nonblanket activity.

14          “(VII) Invest in relevant re-  
15          sources, and arrange for services of  
16          outside vendors and others, to support  
17          its activities.

18          “(VIII) Engage in legal and  
19          other efforts to enforce rights and ob-  
20          ligations under this subsection, includ-  
21          ing by filing bankruptcy proofs of  
22          claims for amounts owed under li-  
23          censes, and acting in coordination  
24          with the digital licensee coordinator..

1           “(IX) Initiate and participate in  
2           proceedings before the Copyright Roy-  
3           alty Judges to establish the adminis-  
4           trative assessment under this sub-  
5           section.

6           “(X) Initiate and participate in  
7           proceedings before the Copyright Of-  
8           fice with respect to activities under  
9           this subsection.

10          “(XI) Gather and provide docu-  
11          mentation for use in proceedings be-  
12          fore the Copyright Royalty Judges to  
13          set rates and terms under this section.

14          “(XII) Maintain records of its  
15          activities and engage in and respond  
16          to audits described under this sub-  
17          section.

18          “(XIII) Engage in such other ac-  
19          tivities as may be necessary or appro-  
20          priate to fulfill its responsibilities  
21          under this subsection.

22          “(ii) ADDITIONAL ADMINISTRATIVE  
23          ACTIVITIES.—Subject to paragraph  
24          (11)(C) and clause (iii), the mechanical li-  
25          censing collective may also administer, or

1 assist in administering, voluntary licenses  
2 issued by or individual download licenses  
3 obtained from copyright owners for uses of  
4 musical works, for which the mechanical li-  
5 censing collective shall charge reasonable  
6 fees for such services.

7 “(iii) RESTRICTION CONCERNING PUB-  
8 LIC PERFORMANCE RIGHTS.—The mechan-  
9 ical licensing collective may, pursuant to  
10 clause (ii), provide administration services  
11 with respect to voluntary licenses that in-  
12 clude the right of public performance in  
13 musical works, but may not itself negotiate  
14 or grant licenses for the right of public  
15 performance in musical works, and may  
16 not be the exclusive or nonexclusive as-  
17 signee or grantee of the right of public per-  
18 formance in musical works.

19 “(iv) RESTRICTION ON LOBBYING.—  
20 The mechanical licensing collective may  
21 not engage in government lobbying activi-  
22 ties, but may engage in the activities de-  
23 scribed in subclauses (IX), (X), and (XI)  
24 of clause (i).

25 “(D) GOVERNANCE.—

1                   “(i) BOARD OF DIRECTORS.—The me-  
2                   chanical licensing collective shall have a  
3                   board of directors consisting of 14 voting  
4                   members and 3 nonvoting members, as fol-  
5                   lows:

6                               “(I) Ten voting members shall be  
7                               representatives of music publishers to  
8                               which songwriters have assigned ex-  
9                               clusive rights of reproduction and dis-  
10                              tribution of musical works with re-  
11                              spect to covered activities and no such  
12                              music publisher member may be  
13                              owned by, or under common control  
14                              with, any other board member.

15                             “(II) Four voting members shall  
16                             be professional songwriters who have  
17                             retained and exercise exclusive rights  
18                             of reproduction and distribution with  
19                             respect to covered activities with re-  
20                             spect to musical works they have au-  
21                             thored.

22                             “(III) One nonvoting member  
23                             shall be a representative of the non-  
24                             profit trade association of music pub-  
25                             lishers that represents the greatest

1 percentage of the licensor market for  
2 uses of musical works in covered ac-  
3 tivities, as measured over the pre-  
4 ceding 3 full calendar years.

5 “(IV) One nonvoting member  
6 shall be a representative of the digital  
7 licensee coordinator, provided that a  
8 digital licensee coordinator has been  
9 designated pursuant to paragraph  
10 (5)(B). Otherwise, the nonvoting  
11 member shall be the nonprofit trade  
12 association of digital licensees that  
13 represents the greatest percentage of  
14 the licensee market for uses of musi-  
15 cal works in covered activities, as  
16 measured over the preceding 3 full  
17 calendar years.

18 “(V) One nonvoting member  
19 shall be a representative of a nation-  
20 ally recognized nonprofit trade asso-  
21 ciation whose primary mission is advo-  
22 cacy on behalf of songwriters in the  
23 United States.

24 “(ii) BOARD MEETINGS.—The board  
25 of directors shall meet no less than 2 times

1 per year and discuss matters pertinent to  
2 the operations, including the mechanical li-  
3 censing collective budget.

4 “(iii) OPERATIONS ADVISORY COM-  
5 MITTEE.—The board of directors of the  
6 mechanical licensing collective shall estab-  
7 lish an operations advisory committee con-  
8 sisting of no fewer than 6 members to  
9 make recommendations to the board of di-  
10 rectors concerning the operations of the  
11 mechanical licensing collective, including  
12 the efficient investment in and deployment  
13 of information technology and data re-  
14 sources. Such committee shall have an  
15 equal number of members of the committee  
16 who are—

17 “(I) musical work copyright own-  
18 ers who are appointed by the board of  
19 directors of the mechanical licensing  
20 collective; and

21 “(II) representatives of digital  
22 music providers who are appointed by  
23 the digital licensee coordinator.

24 “(iv) UNCLAIMED ROYALTIES OVER-  
25 SIGHT COMMITTEE.—The board of direc-

1           tors of the mechanical licensing collective  
2           shall establish and appoint an unclaimed  
3           royalties oversight committee consisting of  
4           10 members, 5 of which shall be musical  
5           work copyright owners and 5 of which  
6           shall be professional songwriters whose  
7           works are used in covered activities.

8                   “(v) DISPUTE RESOLUTION COM-  
9                   MITTEE.—The board of directors of the  
10                  mechanical licensing collective shall estab-  
11                  lish and appoint a dispute resolution com-  
12                  mittee consisting of no fewer than 6 mem-  
13                  bers, which committee shall include an  
14                  equal number of representatives of musical  
15                  work copyright owners and professional  
16                  songwriters.

17                   “(vi) MECHANICAL LICENSING COL-  
18                   LECTIVE ANNUAL REPORT.—Not later  
19                  than June 30 of each year commencing  
20                  after the license availability date, the me-  
21                  chanical licensing collective shall post, and  
22                  make available online for a period of at  
23                  least 3 years, an annual report that sets  
24                  forth how the collective operates, how roy-  
25                  alties are collected and distributed, and the

1 collective total costs for the preceding cal-  
2 endar year. At the time of posting, a copy  
3 of the report shall be provided to the Reg-  
4 ister of Copyrights.

5 “(E) MUSICAL WORKS DATABASE.—

6 “(i) ESTABLISHMENT AND MAINTEN-  
7 NANCE OF DATABASE.—The mechanical li-  
8 censing collective shall establish and main-  
9 tain a database containing information re-  
10 lating to musical works (and shares of  
11 such works) and, to the extent known, the  
12 identity and location of the copyright own-  
13 ers of such works (and shares thereof) and  
14 the sound recordings in which the musical  
15 works are embodied. In furtherance of  
16 maintaining such database, the mechanical  
17 licensing collective shall engage in efforts  
18 to identify the musical works embodied in  
19 particular sound recordings, as well as to  
20 identify and locate the copyright owners of  
21 such works (and shares thereof), and up-  
22 date such data as appropriate.

23 “(ii) MATCHED WORKS.—With respect  
24 to musical works (and shares thereof) that



1 have been matched to copyright owners,  
2 the musical works database shall include—

3 “(I) the title of the musical work;

4 “(II) the copyright owner of the  
5 work (or share thereof), and such  
6 owner’s ownership percentage;

7 “(III) contact information for  
8 such copyright owner;

9 “(IV) to the extent reasonably  
10 available to the mechanical licensing  
11 collective—

12 “(aa) the international  
13 standard musical work code for  
14 the work; and

15 “(bb) identifying informa-  
16 tion for sound recordings in  
17 which the musical work is em-  
18 bodied, including the name of the  
19 sound recording, featured artist,  
20 sound recording copyright owner,  
21 producer, international standard  
22 recording code, and other infor-  
23 mation commonly used to assist  
24 in associating sound recordings  
25 with musical works; and

1                   “(V) such other information as  
2                   the Register of Copyrights may pre-  
3                   scribe by regulation.

4                   “(iii) UNMATCHED WORKS.—With re-  
5                   spect to unmatched musical works (and  
6                   shares of works) in the database, the musi-  
7                   cal works database shall include—

8                   “(I) to the extent reasonably  
9                   available to the mechanical licensing  
10                  collective—

11                  “(aa) the title of the musical  
12                  work;

13                  “(bb) the ownership percent-  
14                  age for which an owner has not  
15                  been identified;

16                  “(cc) if a copyright owner  
17                  has been identified but not lo-  
18                  cated, the identity of such owner  
19                  and such owner’s ownership per-  
20                  centage;

21                  “(dd) identifying informa-  
22                  tion for sound recordings in  
23                  which the work is embodied, in-  
24                  cluding sound recording name,  
25                  featured artist, sound recording

1 copyright owner, producer, inter-  
2 national standard recording code,  
3 and other information commonly  
4 used to assist in associating  
5 sound recordings with musical  
6 works; and

7 “(ee) any additional infor-  
8 mation reported to the mechan-  
9 ical licensing collective that may  
10 assist in identifying the work;  
11 and

12 “(II) such other information re-  
13 lating to the identity and ownership of  
14 musical works (and shares of such  
15 works) as the Register of Copyrights  
16 may prescribe by regulation.

17 “(iv) SOUND RECORDING INFORMA-  
18 TION.—Each musical work copyright  
19 owner with any musical work listed in the  
20 musical works database shall engage in  
21 commercially reasonable efforts to deliver  
22 to the mechanical licensing collective, in-  
23 cluding for use in the musical works data-  
24 base, to the extent such information is not  
25 then available in the database, information

1           regarding the names of the sound record-  
2           ings in which that copyright owner’s musi-  
3           cal works (or shares thereof) are embodied,  
4           to the extent practicable.

5           “(v) ACCESSIBILITY OF DATABASE.—  
6           The musical works database shall be made  
7           available to members of the public in a  
8           searchable, online format, free of charge.  
9           The mechanical licensing collective shall  
10          make such database available in a bulk,  
11          machine-readable format, through a widely  
12          available software application, to the fol-  
13          lowing entities:

14                   “(I) Digital music providers oper-  
15                   ating under the authority of valid no-  
16                   tices of license, free of charge.

17                   “(II) Significant nonblanket li-  
18                   censees in compliance with their obli-  
19                   gations under paragraph (6), free of  
20                   charge.

21                   “(III) Authorized vendors of the  
22                   entities described in subclauses (I)  
23                   and (II), free of charge.

24                   “(IV) The Register of Copy-  
25                   rights, free of charge (but the Reg-

1           ister shall not treat such database or  
2           any information therein as a Govern-  
3           ment record).

4                   “(V) Any member of the public,  
5           for a fee not to exceed the marginal  
6           cost to the mechanical licensing collec-  
7           tive of providing the database to such  
8           person.

9                   “(vi) ADDITIONAL REQUIREMENTS.—  
10          The Register of Copyrights shall establish  
11          requirements by regulations to ensure the  
12          usability, interoperability, and usage re-  
13          strictions of the musical works database.

14                   “(F) NOTICES OF LICENSE AND NON-  
15          BLANKET ACTIVITY.—

16                   “(i) NOTICES OF LICENSES.—The me-  
17          chanical licensing collective shall receive,  
18          review, and confirm or reject notices of li-  
19          cense from digital music providers, as pro-  
20          vided in paragraph (2)(A). The collective  
21          shall maintain a current, publicly acces-  
22          sible list of blanket licenses that includes  
23          contact information for the licensees and  
24          the effective dates of such licenses.

1                   “(ii) NOTICES OF NONBLANKET AC-  
2                   TIVITY.—The mechanical licensing collec-  
3                   tive shall receive notices of nonblanket ac-  
4                   tivity from significant nonblanket licensees,  
5                   as provided in paragraph (6)(A). The col-  
6                   lective shall maintain a current, publicly  
7                   accessible list of notices of nonblanket ac-  
8                   tivity that includes contact information for  
9                   significant nonblanket licensees and the  
10                  dates of receipt of such notices.

11                  “(G) COLLECTION AND DISTRIBUTION OF  
12                  ROYALTIES.—

13                         “(i) IN GENERAL.—Upon receiving re-  
14                         ports of usage and payments of royalties  
15                         from digital music providers for covered  
16                         activities, the mechanical licensing collec-  
17                         tive shall—

18                                 “(I) engage in efforts to—

19   “(aa) identify the musical  
20   works embodied in sound record-  
21   ings reflected in such reports,  
22   and the copyright owners of such  
23   musical works (and shares there-  
24   of);

1 “(bb) confirm uses of musi-  
2 cal works subject to voluntary li-  
3 censes and individual download  
4 licenses, and the corresponding  
5 pro rata amounts to be deducted  
6 from royalties that would other-  
7 wise be due under the blanket li-  
8 cense; and

9 “(cc) confirm proper pay-  
10 ment of royalties due;

11 “(II) distribute royalties to copy-  
12 right owners in accordance with the  
13 usage and other information contained  
14 in such reports, as well as the owner-  
15 ship and other information contained  
16 in the records of the collective; and

17 “(III) deposit into an interest-  
18 bearing account, as provided in sub-  
19 paragraph (H)(ii), royalties that can-  
20 not be distributed due to—

21 “(aa) an inability to identify  
22 or locate a copyright owner of a  
23 musical work (or share thereof);  
24 or

1                   “(bb) a pending dispute be-  
2                   fore the dispute resolution com-  
3                   mittee of the mechanical licens-  
4                   ing collective.

5                   “(ii) OTHER COLLECTION EFFORTS.—  
6                   Any royalties recovered by the mechanical  
7                   licensing collective as a result of efforts to  
8                   enforce rights or obligations under a blan-  
9                   ket license, including through a bankruptcy  
10                  proceeding or other legal action, shall be  
11                  distributed to copyright owners based on  
12                  available usage information and in accord-  
13                  ance with the procedures described in sub-  
14                  clauses (I) and (II) of clause (i), on a pro  
15                  rata basis in proportion to the overall per-  
16                  centage recovery of the total royalties  
17                  owed, with any pro rata share of royalties  
18                  that cannot be distributed deposited in an  
19                  interest-bearing account as provided in  
20                  subparagraph (H)(ii).

21                  “(H) HOLDING OF ACCRUED ROYAL-  
22                  TIES.—

23                  “(i) HOLDING PERIOD.—The mechan-  
24                  ical licensing collective shall hold accrued  
25                  royalties associated with particular musical



1 works (and shares of works) that remain  
2 unmatched for a period of at least 3 years  
3 after the date on which the funds were re-  
4 ceived by the mechanical licensing collec-  
5 tive, or at least 3 years after the date on  
6 which they were accrued by a digital music  
7 provider that subsequently transferred  
8 such funds to the mechanical licensing col-  
9 lective pursuant to paragraph (10)(B),  
10 whichever period expires sooner.

11 “(ii) INTEREST-BEARING ACCOUNT.—  
12 Accrued royalties for unmatched works  
13 (and shares thereof) shall be maintained  
14 by the mechanical licensing collective in an  
15 interest-bearing account that earns month-  
16 ly interest at the Federal, short-term rate,  
17 such interest to accrue for the benefit of  
18 copyright owners entitled to payment of  
19 such accrued royalties.

20 “(I) MUSICAL WORKS CLAIMING PROC-  
21 ESS.—The mechanical licensing collective shall  
22 publicize the existence of accrued royalties for  
23 unmatched musical works (and shares of such  
24 works) within 6 months of receiving a transfer  
25 of accrued royalties for such works by publicly

1 listing the works and the procedures by which  
2 copyright owners may identify themselves and  
3 provide ownership, contact, and other relevant  
4 information to the mechanical licensing collec-  
5 tive in order to receive payment of accrued roy-  
6 alties. When a copyright owner of an un-  
7 matched work (or share of a work) has been  
8 identified and located in accordance with the  
9 procedures of the mechanical licensing collec-  
10 tive, the collective shall—

11 “(i) update the musical works data-  
12 base and its other records accordingly; and

13 “(ii) provided that accrued royalties  
14 for the musical work (or share thereof)  
15 have not yet been included in a distribution  
16 pursuant to subparagraph (J)(i), pay such  
17 accrued royalties and a proportionate  
18 amount of accrued interest associated with  
19 that work (or share thereof) to the copy-  
20 right owner, accompanied by a cumulative  
21 statement of account reflecting usage of  
22 such work and accrued royalties based on  
23 information provided by digital music pro-  
24 viders to the mechanical licensing collec-  
25 tive.

1                   “(J) DISTRIBUTION OF UNCLAIMED AC-  
2                   CRUED ROYALTIES.—

3                   “(i) DISTRIBUTION PROCEDURES.—  
4                   After the expiration of the prescribed hold-  
5                   ing period for accrued royalties provided in  
6                   paragraph (H)(i), the mechanical licensing  
7                   collective shall distribute such accrued roy-  
8                   alties, along with a proportionate share of  
9                   accrued interest, to copyright owners iden-  
10                  tified in the records of the collective, sub-  
11                  ject to the following requirements, and in  
12                  accordance with the policies and proce-  
13                  dures established under clause (ii):

14                   “(I) The first such distribution  
15                   shall occur on or after July 1 of the  
16                   first full calendar year to commence  
17                   after the license availability date, with  
18                   at least one such distribution to take  
19                   place during each calendar year there-  
20                   after.

21                   “(II) Copyright owners’ payment  
22                   shares for unclaimed accrued royalties  
23                   for particular reporting periods shall  
24                   be determined in a transparent and  
25                   equitable manner based on data indi-

1           cating the relative market shares of  
2           such copyright owners as reflected by  
3           royalty payments made by digital  
4           music providers for covered activities  
5           for the periods in question, including,  
6           in addition to royalty payments made  
7           to the mechanical licensing collective,  
8           royalty payments made to copyright  
9           owners under voluntary licenses and  
10          individual download licenses for cov-  
11          ered activities, to the extent such in-  
12          formation is available to the mechan-  
13          ical licensing collective. In furtherance  
14          of the determination of equitable mar-  
15          ket shares under this subparagraph—

16                   “(aa) the mechanical licens-  
17                   ing collective may require copy-  
18                   right owners seeking distribu-  
19                   tions of unclaimed accrued royalti-  
20                   ties to provide, or direct the pro-  
21                   vision of, information concerning  
22                   royalties received under voluntary  
23                   licenses and individual download  
24                   licenses for covered activities, and

1                   “(bb) the mechanical licens-  
2                   ing collective shall take appro-  
3                   priate steps to safeguard the con-  
4                   fidentiality and security of finan-  
5                   cial and other sensitive data used  
6                   to compute market shares in ac-  
7                   cordance with the confidentiality  
8                   provisions prescribed by the Reg-  
9                   ister of Copyrights under para-  
10                  graph (12)(C).

11                  “(ii) ESTABLISHMENT OF DISTRIBUTION POLICIES.—The unclaimed royalties  
12                  oversight committee established under  
13                  paragraph (3)(D)(iv) shall establish poli-  
14                  cies and procedures for the distribution of  
15                  unclaimed accrued royalties and accrued  
16                  interest in accordance with this subpara-  
17                  graph, including the provision of usage  
18                  data to copyright owners to allocate pay-  
19                  ments and credits to songwriters pursuant  
20                  to clause (iv), subject to the approval of  
21                  the board of directors of the mechanical li-  
22                  censing collective.

23                  “(iii) ADVANCE NOTICE OF DISTRIBUTIONS.—The mechanical licensing collec-  
24                  tions.—The mechanical licensing collec-  
25

1           tive shall publicize a pending distribution  
2           of unclaimed accrued royalties and accrued  
3           interest at least 90 calendar days in ad-  
4           vance of such distribution.

5           “(iv) SONGWRITER PAYMENTS.—  
6           Copyright owners that receive a distribu-  
7           tion of unclaimed accrued royalties and ac-  
8           crued interest shall pay or credit a portion  
9           to songwriters (or the authorized agents of  
10          songwriters) on whose behalf the copyright  
11          owners license or administer musical works  
12          for covered activities, in accordance with  
13          applicable contractual terms, but notwith-  
14          standing any agreement to the contrary—

15               “(I) such payments and credits  
16               to songwriters shall be allocated in  
17               proportion to reported usage of indi-  
18               vidual musical works by digital music  
19               providers during the reporting periods  
20               covered by the distribution from the  
21               mechanical licensing collective; and

22               “(II) in no case shall the pay-  
23               ment or credit to an individual song-  
24               writer be less than 50 percent of the  
25               payment received by the copyright

1 owner attributable to usage of musical  
2 works (or shares of works) of that  
3 songwriter.

4 “(K) DISPUTE RESOLUTION.—The dispute  
5 resolution committee established under para-  
6 graph (3)(D)(v) shall address and resolve in a  
7 timely and equitable manner disputes among  
8 copyright owners relating to ownership interests  
9 in musical works licensed under this section and  
10 allocation and distribution of royalties by the  
11 mechanical licensing collective, according to a  
12 process approved by the board of directors of  
13 the mechanical licensing collective. Such proc-  
14 ess—

15 “(i) shall include a mechanism to hold  
16 disputed funds in accordance with the re-  
17 quirements described in subparagraph  
18 (H)(ii) pending resolution of the dispute;  
19 and

20 “(ii) except as provided in paragraph  
21 (11)(D), shall not affect any legal or equi-  
22 table rights or remedies available to any  
23 copyright owner or songwriter concerning  
24 ownership of, and entitlement to royalties  
25 for, a musical work.

1                   “(L) VERIFICATION OF PAYMENTS BY ME-  
2                   CHANICAL LICENSING COLLECTIVE.—

3                   “(i) VERIFICATION PROCESS.—A  
4                   copyright owner entitled to receive pay-  
5                   ments of royalties for covered activities  
6                   from the mechanical licensing collective  
7                   may, individually or with other copyright  
8                   owners, conduct an audit of the mechanical  
9                   licensing collective to verify the accuracy of  
10                  royalty payments by the mechanical licens-  
11                  ing collective to such copyright owner, as  
12                  follows:

13                  “(I) A copyright owner may  
14                  audit the mechanical licensing collec-  
15                  tive only once in a year for any or all  
16                  of the prior 3 calendar years, and may  
17                  not audit records for any calendar  
18                  year more than once.

19                  “(II) The audit shall be con-  
20                  ducted by a qualified auditor, who  
21                  shall perform the audit during the or-  
22                  dinary course of business by exam-  
23                  ining the books, records, and data of  
24                  the mechanical licensing collective, ac-  
25                  cording to generally accepted auditing



1 standards and subject to applicable  
2 confidentiality requirements pre-  
3 scribed by the Register of Copyrights  
4 under paragraph (12)(C).

5 “(III) The mechanical licensing  
6 collective shall make such books,  
7 records, and data available to the  
8 qualified auditor and respond to rea-  
9 sonable requests for relevant informa-  
10 tion, and shall use commercially rea-  
11 sonable efforts to facilitate access to  
12 relevant information maintained by  
13 third parties.

14 “(IV) To commence the audit,  
15 any copyright owner shall file with the  
16 Copyright Office a notice of intent to  
17 conduct an audit of the mechanical li-  
18 censing collective, identifying the pe-  
19 riod of time to be audited, and shall  
20 simultaneously deliver a copy of such  
21 notice to the mechanical licensing col-  
22 lective. The Register of Copyrights  
23 shall cause the notice of audit to be  
24 published in the Federal Register  
25 within 45 calendar days after receipt.

1                   “(V) The qualified auditor shall  
2 determine the accuracy of royalty pay-  
3 ments, including whether an under-  
4 payment or overpayment of royalties  
5 was made by the mechanical licensing  
6 collective to each auditing copyright  
7 owner, but before providing a final  
8 audit report to any such copyright  
9 owner, the qualified auditor shall pro-  
10 vide a tentative draft of the report to  
11 the mechanical licensing collective and  
12 allow the mechanical licensing collec-  
13 tive a reasonable opportunity to re-  
14 spond to the findings, including by  
15 clarifying issues and correcting factual  
16 errors.

17                   “(VI) The auditing copyright  
18 owner or owners shall bear the cost of  
19 the audit. In case of an underpayment  
20 to any copyright owner, the mechan-  
21 ical licensing collective shall pay the  
22 amounts of any such underpayment to  
23 such auditing copyright owner, as ap-  
24 propriate. In case of an overpayment  
25 by the mechanical licensing collective,

1 the mechanical licensing collective  
2 may debit the account of the auditing  
3 copyright owner or owners for such  
4 overpaid amounts, or such owner(s)  
5 shall refund overpaid amounts to the  
6 mechanical licensing collective, as ap-  
7 propriate.

8 “(ii) ALTERNATIVE VERIFICATION  
9 PROCEDURES.—Nothing in this subpara-  
10 graph shall preclude a copyright owner and  
11 the mechanical licensing collective from  
12 agreeing to audit procedures different from  
13 those described herein, but a notice of the  
14 audit shall be provided to and published by  
15 the Copyright Office as described in clause  
16 (i)(IV).

17 “(M) RECORDS OF MECHANICAL LICENS-  
18 ING COLLECTIVE.—

19 “(i) RECORDS MAINTENANCE.—The  
20 mechanical licensing collective shall ensure  
21 that all material records of its operations,  
22 including those relating to notices of li-  
23 cense, the administration of its claims  
24 process, reports of usage, royalty pay-  
25 ments, receipt and maintenance of accrued

1 royalties, royalty distribution processes,  
2 and legal matters, are preserved and main-  
3 tained in a secure and reliable manner,  
4 with appropriate commercially reasonable  
5 safeguards against unauthorized access,  
6 copying, and disclosure, and subject to the  
7 confidentiality requirements prescribed by  
8 the Register of Copyrights under para-  
9 graph (12)(C) for a period of no less than  
10 7 years after the date of creation or re-  
11 ceipt, whichever occurs later.

12 “(ii) RECORDS ACCESS.—The mechan-  
13 ical licensing collective shall provide  
14 prompt access to electronic and other  
15 records pertaining to the administration of  
16 a copyright owner’s musical works upon  
17 reasonable written request of such owner  
18 or the owner’s authorized representative.

19 “(4) TERMS AND CONDITIONS OF BLANKET LI-  
20 CENSE.—A blanket license is subject to, and condi-  
21 tioned upon, the following requirements:

22 “(A) ROYALTY REPORTING AND PAY-  
23 MENTS.—

24 “(i) MONTHLY REPORTS AND PAY-  
25 MENT.—A digital music provider shall re-

1 port and pay royalties to the mechanical li-  
2 censing collective under the blanket license  
3 on a monthly basis in accordance with  
4 clause (ii) and subsection (c)(2)(I), but the  
5 monthly reporting shall be due 45 calendar  
6 days, rather than 20 calendar days, after  
7 the end of the monthly reporting period.

8 “(ii) DATA TO BE REPORTED.—In re-  
9 porting usage of musical works to the me-  
10 chanical licensing collective, a digital music  
11 provider shall provide usage data for musi-  
12 cal works used under the blanket license  
13 and usage data for musical works used in  
14 covered activities under voluntary licenses  
15 and individual download licenses. In the re-  
16 port of usage, the digital music provider  
17 shall—

18 “(I) with respect to each sound  
19 recording embodying a musical  
20 work—

21 “(aa) provide identifying in-  
22 formation for the sound record-  
23 ing, including sound recording  
24 name, featured artist and, to the  
25 extent acquired by the digital

1 music provider in connection with  
2 its use of sound recordings of  
3 musical works to engage in cov-  
4 ered activities, including pursu-  
5 ant to subparagraph (B), pro-  
6 ducer, international standard re-  
7 cording code, and other informa-  
8 tion commonly used in the indus-  
9 try to identify sound recordings  
10 and match them to the musical  
11 works the sound recordings em-  
12 body;

13 “(bb) to the extent acquired  
14 by the digital music provider in  
15 the metadata in connection with  
16 its use of sound recordings of  
17 musical works to engage in cov-  
18 ered activities, including pursu-  
19 ant to subparagraph (B), provide  
20 information concerning author-  
21 ship and ownership of the appli-  
22 cable rights in the musical work  
23 embodied in the sound recording  
24 (including each songwriter, pub-  
25 lisher name, and respective own-

1           ership share) and the inter-  
2           national standard musical work  
3           code; and

4                   “(cc) provide the number of  
5           digital phonorecord deliveries of  
6           the sound recording, including  
7           limited downloads and interactive  
8           streams;

9                   “(II) identify and provide contact  
10          information for all musical work copy-  
11          right owners for works embodied in  
12          sound recordings as to which a vol-  
13          untary license, rather than the blan-  
14          ket license, is in effect with respect to  
15          the uses being reported; and

16                   “(III) provide such other infor-  
17          mation as the Register of Copyrights  
18          shall require by regulation.

19                   “(iii) **FORMAT AND MAINTENANCE OF**  
20          **REPORTS.**—Reports of usage provided by  
21          digital music providers to the mechanical  
22          licensing collective shall be in a machine-  
23          readable format that is compatible with the  
24          information technology systems of the me-  
25          chanical licensing collective and meets the

1 requirements of regulations adopted by the  
2 Register of Copyrights. The Register shall  
3 also adopt regulations setting forth re-  
4 quirements under which records of use  
5 shall be maintained and made available to  
6 the mechanical licensing collective by dig-  
7 ital music providers engaged in covered ac-  
8 tivities under a blanket license.

9 “(iv) ADOPTION OF REGULATIONS.—  
10 The Register shall adopt regulations—

11 “(I) setting forth requirements  
12 under which records of use shall be  
13 maintained and made available to the  
14 mechanical licensing collective by dig-  
15 ital music providers engaged in cov-  
16 ered activities under a blanket license;  
17 and

18 “(II) regarding adjustments to  
19 reports of usage by digital music pro-  
20 viders, including mechanisms to ac-  
21 count for overpayment and under-  
22 payment of royalties in prior periods.

23 “(B) COLLECTION OF SOUND RECORDING  
24 INFORMATION.—A digital music provider shall  
25 engage in good-faith, commercially reasonable



1 efforts to obtain from copyright owners of  
2 sound recordings made available through the  
3 service of such digital music provider—

4 “(i) sound recording copyright owners,  
5 producers, international standard recording  
6 codes, and other information commonly  
7 used in the industry to identify sound re-  
8 cordings and match them to the musical  
9 works the sound recordings embody; and

10 “(ii) information concerning the au-  
11 thorship and ownership of musical works,  
12 including songwriters, publisher names,  
13 ownership shares, and international stand-  
14 ard musical work codes.

15 “(C) PAYMENT OF ADMINISTRATIVE AS-  
16 SESSMENT.—A digital music provider and any  
17 significant nonblanket licensee shall pay the ad-  
18 ministrative assessment established under para-  
19 graph (7)(D) in accordance with this subsection  
20 and applicable regulations.

21 “(D) VERIFICATION OF PAYMENTS BY DIG-  
22 ITAL MUSIC PROVIDERS.—

23 “(i) VERIFICATION PROCESS.—The  
24 mechanical licensing collective may conduct  
25 an audit of a digital music provider oper-

1           ating under the blanket license to verify  
2           the accuracy of royalty payments by the  
3           digital music provider to the mechanical li-  
4           censing collective as follows:

5                   “(I) The mechanical licensing  
6                   collective may commence an audit of a  
7                   digital music provider no more than  
8                   once in any 3-calendar-year period to  
9                   cover a verification period of no more  
10                  than the 3 full calendar years pre-  
11                  ceding the date of commencement of  
12                  the audit, and such audit may not  
13                  audit records for any such 3-year  
14                  verification period more than once.

15                   “(II) The audit shall be con-  
16                   ducted by a qualified auditor, who  
17                   shall perform the audit during the or-  
18                   dinary course of business by exam-  
19                   ining the books, records, and data of  
20                   the digital music provider, according  
21                   to generally accepted auditing stand-  
22                   ards and subject to applicable con-  
23                   fidentiality requirements prescribed by  
24                   the Register of Copyrights under  
25                   paragraph (12)(C).

1           “(III) The digital music provider  
2 shall make such books, records, and  
3 data available to the qualified auditor  
4 and respond to reasonable requests  
5 for relevant information, and shall use  
6 commercially reasonable efforts to  
7 provide access to relevant information  
8 maintained with respect to a digital  
9 music provider by third parties.

10           “(IV) To commence the audit,  
11 the mechanical licensing collective  
12 shall file with the Copyright Office a  
13 notice of intent to conduct an audit of  
14 the digital music provider, identifying  
15 the period of time to be audited, and  
16 shall simultaneously deliver a copy of  
17 such notice to the digital music pro-  
18 vider. The Register of Copyrights  
19 shall cause the notice of audit to be  
20 published in the Federal Register  
21 within 45 calendar days after receipt.

22           “(V) The qualified auditor shall  
23 determine the accuracy of royalty pay-  
24 ments, including whether an under-  
25 payment or overpayment of royalties

1 was made by the digital music pro-  
2 vider to the mechanical licensing col-  
3 lective, but before providing a final  
4 audit report to the mechanical licens-  
5 ing collective, the qualified auditor  
6 shall provide a tentative draft of the  
7 report to the digital music provider  
8 and allow the digital music provider a  
9 reasonable opportunity to respond to  
10 the findings, including by clarifying  
11 issues and correcting factual errors.

12 “(VI) The mechanical licensing  
13 collective shall pay the cost of the  
14 audit, unless the qualified auditor de-  
15 termines that there was an under-  
16 payment by the digital music provider  
17 of 10 percent or more, in which case  
18 the digital music provider shall bear  
19 the reasonable costs of the audit, in  
20 addition to paying the amount of any  
21 underpayment to the mechanical li-  
22 censing collective. In case of an over-  
23 payment by the digital music provider,  
24 the mechanical licensing collective

1 shall provide a credit to the account  
2 of the digital music provider.

3 “(VII) A digital music provider  
4 may not assert section 507 or any  
5 other Federal or State statute of limi-  
6 tations, doctrine of laches or estoppel,  
7 or similar provision as a defense to a  
8 legal action arising from an audit  
9 under this subparagraph if such legal  
10 action is commenced no more than 6  
11 years after the commencement of the  
12 audit that is the basis for such action.

13 “(ii) ALTERNATIVE VERIFICATION  
14 PROCEDURES.—Nothing in this subpara-  
15 graph shall preclude the mechanical licens-  
16 ing collective and a digital music provider  
17 from agreeing to audit procedures different  
18 from those described herein, but a notice  
19 of the audit shall be provided to and pub-  
20 lished by the Copyright Office as described  
21 in clause (i)(IV).

22 “(E) DEFAULT UNDER BLANKET LI-  
23 CENSE.—

24 “(i) CONDITIONS OF DEFAULT.—A  
25 digital music provider shall be in default

1 under a blanket license if the digital music  
2 provider—

3 “(I) fails to provide one or more  
4 monthly reports of usage to the me-  
5 chanical licensing collective when due;

6 “(II) fails to make a monthly  
7 royalty or late fee payment to the me-  
8 chanical licensing collective when due,  
9 in all or material part;

10 “(III) provides one or more  
11 monthly reports of usage to the me-  
12 chanical licensing collective that, on  
13 the whole, is or are materially defi-  
14 cient as a result of inaccurate, miss-  
15 ing, or unreadable data, where the  
16 correct data was available to the dig-  
17 ital music provider and required to be  
18 reported under this section and appli-  
19 cable regulations;

20 “(IV) fails to pay the administra-  
21 tive assessment as required under this  
22 subsection and applicable regulations;  
23 or

24 “(V) after being provided written  
25 notice by the mechanical licensing col-

1 lective, refuses to comply with any  
2 other material term or condition of  
3 the blanket license under this section  
4 for a period of 60 calendar days or  
5 longer.

6 “(ii) NOTICE OF DEFAULT AND TER-  
7 MINATION.—In case of a default by a dig-  
8 ital music provider, the mechanical licens-  
9 ing collective may proceed to terminate the  
10 blanket license of the digital music pro-  
11 vider as follows:

12 “(I) The mechanical licensing  
13 collective shall provide written notice  
14 to the digital music provider describ-  
15 ing with reasonable particularity the  
16 default and advising that unless such  
17 default is cured within 60 calendar  
18 days after the date of the notice, the  
19 blanket license will automatically ter-  
20minate at the end of that period.

21 “(II) If the digital music provider  
22 fails to remedy the default within the  
23 60-day period referenced in subclause  
24 (I), the license shall terminate without  
25 any further action on the part of the

1 mechanical licensing collective. Such  
2 termination renders the making of all  
3 digital phonorecord deliveries of all  
4 musical works (and shares thereof)  
5 covered by the blanket license for  
6 which the royalty or administrative  
7 assessment has not been paid action-  
8 able as acts of infringement under  
9 section 501 and subject to the rem-  
10 edies provided by sections 502  
11 through 506.

12 “(iii) NOTICE TO COPYRIGHT OWN-  
13 ERS.—The mechanical licensing collective  
14 shall provide written notice of any termi-  
15 nation under this subparagraph to copy-  
16 right owners of affected works.

17 “(iv) REVIEW BY FEDERAL DISTRICT  
18 COURT.—A digital music provider that be-  
19 lieves a blanket license was improperly ter-  
20 minated by the mechanical licensing collec-  
21 tive may seek review of such termination in  
22 Federal district court. The district court  
23 shall determine the matter de novo based  
24 on the record before the mechanical licens-



1           ing collective and any additional sup-  
2           porting evidence presented by the parties.

3           “(5) DIGITAL LICENSEE COORDINATOR.—

4           “(A) IN GENERAL.—The digital licensee  
5           coordinator shall be a single entity that—

6           “(i) is a nonprofit, not owned by any  
7           other entity, that is created to carry out  
8           responsibilities under this subsection;

9           “(ii) is endorsed by and enjoys sub-  
10          stantial support from digital music pro-  
11          viders and significant nonblanket licensees  
12          that together represent the greatest per-  
13          centage of the licensee market for uses of  
14          musical works in covered activities, as  
15          measured over the preceding 3 calendar  
16          years;

17          “(iii) is able to demonstrate that it  
18          has, or will have prior to the license avail-  
19          ability date, the administrative capabilities  
20          to perform the required functions of the  
21          digital licensee coordinator under this sub-  
22          section; and

23          “(iv) has been designated by the Reg-  
24          ister of Copyrights in accordance with sub-  
25          paragraph (B).

1                   “(B) DESIGNATION OF DIGITAL LICENSEE  
2                   COORDINATOR.—

3                   “(i) INITIAL DESIGNATION.—The  
4                   Register of Copyrights shall initially des-  
5                   ignate the digital licensee coordinator with-  
6                   in 9 months after the enactment date, in  
7                   accordance with the same procedure de-  
8                   scribed for designation of the mechanical  
9                   licensing collective in paragraph (3)(B)(i).

10                  “(ii) PERIODIC REVIEW OF DESIGNA-  
11                  TION.—Following the initial designation of  
12                  the digital licensee coordinator, the Reg-  
13                  ister shall, every 5 years, beginning with  
14                  the fifth full calendar year to commence  
15                  after the initial designation, determine  
16                  whether the existing designation should be  
17                  continued, or a different entity meeting the  
18                  criteria described in clauses (i) through  
19                  (iii) of subparagraph (A) should be des-  
20                  ignated, in accordance with the same pro-  
21                  cedure described for the mechanical licens-  
22                  ing collective in paragraph (3)(B)(ii).

23                  “(iii) INABILITY TO DESIGNATE.—If  
24                  the Register is unable to identify an entity  
25                  that fulfills each of the qualifications de-

1           scribed in clauses (i) through (iii) of sub-  
2           paragraph (A) to serve as the digital li-  
3           censee coordinator, the Register may de-  
4           cline to designate a digital licensee coordi-  
5           nator. The Register’s determination not to  
6           designate a digital licensee coordinator  
7           shall not negate or otherwise affect any  
8           provision of this subsection except to the  
9           limited extent that a provision references  
10          the digital licensee coordinator. In such  
11          case, the reference to the digital licensee  
12          coordinator shall be without effect unless  
13          and until a new digital licensee coordinator  
14          is designated.

15          “(C) AUTHORITIES AND FUNCTIONS.—

16                 “(i) IN GENERAL.—The digital li-  
17                 censee coordinator is authorized to perform  
18                 the following functions, subject to more  
19                 particular requirements as described in  
20                 this subsection:

21                         “(I) Establish a governance  
22                         structure, criteria for membership,  
23                         and any dues to be paid by its mem-  
24                         bers.

1           “(II) Engage in efforts to enforce  
2 notice and payment obligations with  
3 respect to the administrative assess-  
4 ment, including by receiving informa-  
5 tion from and coordinating with the  
6 mechanical licensing collective.

7           “(III) Initiate and participate in  
8 proceedings before the Copyright Roy-  
9 alty Judges to establish the adminis-  
10 trative assessment under this sub-  
11 section.

12           “(IV) Initiate and participate in  
13 proceedings before the Copyright Of-  
14 fice with respect to activities under  
15 this subsection.

16           “(V) Gather and provide docu-  
17 mentation for use in proceedings be-  
18 fore the Copyright Royalty Judges to  
19 set rates and terms under this section.

20           “(VI) Maintain records of its ac-  
21 tivities.

22           “(VII) Engage in such other ac-  
23 tivities as may be necessary or appro-  
24 priate to fulfill its responsibilities  
25 under this subsection.

1                   “(ii) RESTRICTION ON LOBBYING.—  
2                   The digital licensee coordinator may not  
3                   engage in government lobbying activities,  
4                   but may engage in the activities described  
5                   in subclauses (III), (IV), and (V) of clause  
6                   (i).

7                   “(6) REQUIREMENTS FOR SIGNIFICANT NON-  
8                   BLANKET LICENSEES.—

9                   “(A) IN GENERAL.—

10                   “(i) NOTICE OF ACTIVITY.—Not later  
11                   than 45 calendar days after the license  
12                   availability date, or 45 calendar days after  
13                   the end of the first full calendar month in  
14                   which an entity initially qualifies as a sig-  
15                   nificant nonblanket licensee, whichever oc-  
16                   curs later, a significant nonblanket licensee  
17                   shall submit a notice of nonblanket activity  
18                   to the mechanical licensing collective. The  
19                   notice of nonblanket activity shall comply  
20                   in form and substance with requirements  
21                   that the Register of Copyrights shall estab-  
22                   lish by regulation, and a copy shall be  
23                   made available to the digital licensee coor-  
24                   dinator.

1                   “(ii) REPORTING AND PAYMENT OBLI-  
2                   GATIONS.—The notice of nonblanket activ-  
3                   ity submitted to the mechanical licensing  
4                   collective shall be accompanied by a report  
5                   of usage that contains the information de-  
6                   scribed in paragraph (4)(A)(ii), as well as  
7                   any payment of the administrative assess-  
8                   ment required under this subsection and  
9                   applicable regulations. Thereafter, subject  
10                  to clause (iii), a significant nonblanket li-  
11                  censee shall continue to provide monthly  
12                  reports of usage, accompanied by any re-  
13                  quired payment of the administrative as-  
14                  sessment, to the mechanical licensing col-  
15                  lective. Such reports and payments shall be  
16                  submitted not later than 45 calendar days  
17                  after the end of the calendar month being  
18                  reported.

19                  “(iii) DISCONTINUATION OF OBLIGA-  
20                  TIONS.—An entity that has submitted a  
21                  notice of nonblanket activity to the me-  
22                  chanical licensing collective that has ceased  
23                  to qualify as a significant nonblanket li-  
24                  censee may so notify the collective in writ-  
25                  ing. In such case, as of the calendar month

1 in which such notice is provided, such enti-  
2 ty shall no longer be required to provide  
3 reports of usage or pay the administrative  
4 assessment, but if such entity later quali-  
5 fies as a significant nonblanket licensee,  
6 such entity shall again be required to com-  
7 ply with clauses (i) and (ii).

8 “(B) REPORTING BY MECHANICAL LICENS-  
9 ING COLLECTIVE TO DIGITAL LICENSEE COOR-  
10 DINATOR.—

11 “(i) MONTHLY REPORTS OF NON-  
12 COMPLIANT LICENSEES.—The mechanical  
13 licensing collective shall provide monthly  
14 reports to the digital licensee coordinator  
15 setting forth any significant nonblanket li-  
16 censees of which the collective is aware  
17 that have failed to comply with subpara-  
18 graph (A).

19 “(ii) TREATMENT OF CONFIDENTIAL  
20 INFORMATION.—The mechanical licensing  
21 collective and digital licensee coordinator  
22 shall take appropriate steps to safeguard  
23 the confidentiality and security of financial  
24 and other sensitive data shared under this  
25 subparagraph, in accordance with the con-

1            confidentiality requirements prescribed by the  
2            Register of Copyrights under paragraph  
3            (12)(C).

4            “(C) LEGAL ENFORCEMENT EFFORTS.—

5                  “(i) FEDERAL COURT ACTION.—

6            Should the mechanical licensing collective  
7            or digital licensee coordinator become  
8            aware that a significant nonblanket li-  
9            censee has failed to comply with subpara-  
10          graph (A), either may commence an action  
11          in Federal district court for damages and  
12          injunctive relief. If the significant non-  
13          blanket licensee is found liable, the court  
14          shall, absent a finding of excusable neglect,  
15          award damages in an amount equal to  
16          three times the total amount of the unpaid  
17          administrative assessment and, notwith-  
18          standing anything to the contrary in sec-  
19          tion 505, reasonable attorney’s fees and  
20          costs, as well as such other relief as the  
21          court deems appropriate. In all other  
22          cases, the court shall award relief as ap-  
23          propriate. Any recovery of damages shall  
24          be payable to the mechanical licensing col-



1           lective as an offset to the collective total  
2           costs.

3           “(ii) STATUTE OF LIMITATIONS FOR  
4           ENFORCEMENT ACTION.—Any action de-  
5           scribed in this subparagraph shall be com-  
6           menced within the time period described in  
7           section 507(b).

8           “(iii) OTHER RIGHTS AND REMEDIES  
9           PRESERVED.—The ability of the mechan-  
10          ical licensing collective or digital licensee  
11          coordinator to bring an action under this  
12          subparagraph shall in no way alter, limit  
13          or negate any other right or remedy that  
14          may be available to any party at law or in  
15          equity.

16          “(7) FUNDING OF MECHANICAL LICENSING  
17          COLLECTIVE.—

18               “(A) IN GENERAL.—The collective total  
19               costs shall be funded by—

20                   “(i) an administrative assessment, as  
21                   such assessment is established by the  
22                   Copyright Royalty Judges pursuant to sub-  
23                   paragraph (D) from time to time, to be  
24                   paid by—

1                   “(I) digital music providers that  
2                   are engaged, in all or in part, in cov-  
3                   ered activities pursuant to a blanket  
4                   license; and

5                   “(II) significant nonblanket li-  
6                   censees; and

7                   “(ii) voluntary contributions from dig-  
8                   ital music providers and significant non-  
9                   blanket licensees as may be agreed with  
10                  copyright owners.

11                  “(B) VOLUNTARY CONTRIBUTIONS.—

12                  “(i) AGREEMENTS CONCERNING CON-  
13                  TRIBUTIONS.—Except as provided in  
14                  clause (ii), voluntary contributions by dig-  
15                  ital music providers and significant non-  
16                  blanket licensees shall be determined by  
17                  private negotiation and agreement, and the  
18                  following conditions apply:

19                  “(I) The date and amount of  
20                  each voluntary contribution to the me-  
21                  chanical licensing collective shall be  
22                  documented in a writing signed by an  
23                  authorized agent of the mechanical li-  
24                  censing collective and the contributing  
25                  party.

1                   “(II) Such agreement shall be  
2                   made available as required in pro-  
3                   ceedings before the Copyright Royalty  
4                   Judges to establish or adjust the ad-  
5                   ministrative assessment in accordance  
6                   with applicable statutory and regu-  
7                   latory provisions and rulings of the  
8                   Copyright Royalty Judges.

9                   “(ii) TREATMENT OF CONTRIBU-  
10                  TIONS.—Each such voluntary contribution  
11                  shall be treated for purposes of an admin-  
12                  istrative assessment proceeding as an off-  
13                  set to the collective total costs that would  
14                  otherwise be recovered through the admin-  
15                  istrative assessment. Any allocation or re-  
16                  allocation of voluntary contributions be-  
17                  tween or among individual digital music  
18                  providers or significant nonblanket licens-  
19                  ees shall be a matter of private negotiation  
20                  and agreement among such parties and  
21                  outside the scope of the administrative as-  
22                  sessment proceeding.

23                  “(C) INTERIM APPLICATION OF ACCRUED  
24                  ROYALTIES.—In the event that the administra-  
25                  tive assessment, together with any funding from

1 voluntary contributions as provided in subpara-  
2 graphs (A) and (B), is inadequate to cover cur-  
3 rent collective total costs, the collective, with  
4 approval of its board of directors, may apply  
5 unclaimed accrued royalties on an interim basis  
6 to defray such costs, subject to future reim-  
7 bursement of such royalties from future collec-  
8 tions of the assessment.

9 “(D) DETERMINATION OF ADMINISTRA-  
10 TIVE ASSESSMENT.—

11 “(i) ADMINISTRATIVE ASSESSMENT TO  
12 COVER COLLECTIVE TOTAL COSTS.—The  
13 administrative assessment shall be used  
14 solely and exclusively to fund the collective  
15 total costs.

16 “(ii) SEPARATE PROCEEDING BEFORE  
17 COPYRIGHT ROYALTY JUDGES.—The  
18 amount and terms of the administrative  
19 assessment shall be determined and estab-  
20 lished in a separate and independent pro-  
21 ceeding before the Copyright Royalty  
22 Judges, according to the procedures de-  
23 scribed in clauses (iii) and (iv). The admin-  
24 istrative assessment determined in such  
25 proceeding shall—

1           “(I) be wholly independent of  
2 royalty rates and terms applicable to  
3 digital music providers, which shall  
4 not be taken into consideration in any  
5 manner in establishing the adminis-  
6 trative assessment;

7           “(II) be established by the Copy-  
8 right Royalty Judges in an amount  
9 that is calculated to defray the rea-  
10 sonable collective total costs;

11           “(III) be assessed based on usage  
12 of musical works by digital music pro-  
13 viders and significant nonblanket li-  
14 censees in covered activities under  
15 both compulsory and nonblanket li-  
16 censes;

17           “(IV) may be in the form of a  
18 percentage of royalties payable under  
19 this section for usage of musical  
20 works in covered activities (regardless  
21 of whether a different rate applies  
22 under a voluntary license), or any  
23 other usage-based metric reasonably  
24 calculated to equitably allocate the  
25 collective total costs across digital

1 music providers and significant non-  
2 blanket licensees engaged in covered  
3 activities, but shall include as a com-  
4 ponent a minimum fee for all digital  
5 music providers and significant non-  
6 blanket licensees; and

7 “(V) take into consideration an-  
8 ticipated future collective total costs  
9 and collections of the administrative  
10 assessment, but also, as applicable—

11 “(aa) any portion of past ac-  
12 tual collective total costs of the  
13 mechanical licensing collective  
14 not funded by previous collections  
15 of the administrative assessment  
16 or voluntary contributions be-  
17 cause such collections or con-  
18 tributions together were insuffi-  
19 cient to fund such costs;

20 “(bb) any past collections of  
21 the administrative assessment  
22 and voluntary contributions that  
23 exceeded past actual collective  
24 total costs, resulting in a surplus;  
25 and

1                   “(cc) the amount of any vol-  
2                   untary contributions by digital  
3                   music providers or significant  
4                   nonblanket licensees in relevant  
5                   periods, described in subpara-  
6                   graphs (A) and (B) of paragraph  
7                   (7).

8                   “(iii) INITIAL ADMINISTRATIVE AS-  
9                   SESSMENT.—The procedure for estab-  
10                  lishing the initial administrative assess-  
11                  ment shall be as follows:

12                  “(I) The Copyright Royalty  
13                  Judges shall commence a proceeding  
14                  to establish the initial administrative  
15                  assessment within 9 months after the  
16                  enactment date by publishing a notice  
17                  in the Federal Register seeking peti-  
18                  tions to participate.

19                  “(II) The mechanical licensing  
20                  collective and digital licensee coordi-  
21                  nator shall participate in such pro-  
22                  ceeding, along with any interested  
23                  copyright owners, digital music pro-  
24                  viders or significant nonblanket licens-  
25                  ees that have notified the Copyright

1 Royalty Judges of their desire to par-  
2 ticipate.

3 “(III) The Copyright Royalty  
4 Judges shall establish a schedule for  
5 submission by the parties of informa-  
6 tion that may be relevant to estab-  
7 lishing the administrative assessment,  
8 including actual and anticipated col-  
9 lective total costs of the mechanical li-  
10 censing collective, actual and antici-  
11 pated collections from digital music  
12 providers and significant nonblanket  
13 licensees, and documentation of vol-  
14 untary contributions, as well as a  
15 schedule for further proceedings,  
16 which shall include a hearing, as they  
17 deem appropriate.

18 “(IV) The initial administrative  
19 assessment shall be determined, and  
20 such determination shall be published  
21 in the Federal Register by the Copy-  
22 right Royalty Judges, within 1 year  
23 after commencement of the proceeding  
24 described in this clause. The deter-  
25 mination shall be supported by a writ-



1 ten record. The initial administrative  
2 assessment shall be effective as of the  
3 license availability date, and shall con-  
4 tinue in effect unless and until an ad-  
5 justed administrative assessment is  
6 established pursuant to an adjustment  
7 proceeding under clause (iii).

8 “(iv) ADJUSTMENT OF ADMINISTRA-  
9 TIVE ASSESSMENT.—The administrative  
10 assessment may be adjusted by the Copy-  
11 right Royalty Judges periodically, in ac-  
12 cordance with the following procedures:

13 “(I) No earlier than one year  
14 after the most recent publication of a  
15 determination of the administrative  
16 assessment by the Copyright Royalty  
17 Judges, the mechanical licensing col-  
18 lective, the digital licensee coordi-  
19 nator, or one or more interested copy-  
20 right owners, digital music providers,  
21 or significant nonblanket licensees,  
22 may file a petition with the Copyright  
23 Royalty Judges in the month of Octo-  
24 ber to commence a proceeding to ad-  
25 just the administrative assessment.

1                   “(II) Notice of the commence-  
2                   ment of such proceeding shall be pub-  
3                   lished in the Federal Register in the  
4                   month of November following the fil-  
5                   ing of any petition, with a schedule of  
6                   requested information and additional  
7                   proceedings, as described in clause  
8                   (iii)(III). The mechanical licensing  
9                   collective and digital licensee coordi-  
10                  nator shall participate in such pro-  
11                  ceeding, along with any interested  
12                  copyright owners, digital music pro-  
13                  viders, or significant nonblanket li-  
14                  censees that have notified the Copy-  
15                  right Royalty Judges of their desire to  
16                  participate.

17                   “(III) The determination of the  
18                   adjusted administrative assessment,  
19                   which shall be supported by a written  
20                   record, shall be published in the Fed-  
21                   eral Register during November of the  
22                   calendar year following the commence-  
23                   ment of the proceeding. The adjusted  
24                   administrative assessment shall take

1 effect January 1 of the year following  
2 such publication.

3 “(v) ADOPTION OF VOLUNTARY  
4 AGREEMENTS.—In lieu of reaching their  
5 own determination based on evaluation of  
6 relevant data, the Copyright Royalty  
7 Judges shall approve and adopt a nego-  
8 tiated agreement to establish the amount  
9 and terms of the administrative assessment  
10 that has been agreed to by the mechanical  
11 licensing collective and the digital licensee  
12 coordinator (or if none has been des-  
13 ignated, interested digital music providers  
14 and significant nonblanket licensees rep-  
15 resenting more than half of the market for  
16 uses of musical works in covered activi-  
17 ties), but the Copyright Royalty Judges  
18 shall have the discretion to reject any such  
19 agreement for good cause shown. An ad-  
20 ministrative assessment adopted under this  
21 clause shall apply to all digital music pro-  
22 viders and significant nonblanket licensees  
23 engaged in covered activities during the pe-  
24 riod it is in effect.

1                   “(vi) CONTINUING AUTHORITY TO  
2 AMEND.—The Copyright Royalty Judges  
3 shall retain continuing authority to amend  
4 a determination of an administrative as-  
5 sessment to correct technical or clerical er-  
6 rors, or modify the terms of implementa-  
7 tion, for good cause, with any such amend-  
8 ment to be published in the Federal Reg-  
9 ister.

10                   “(vii) APPEAL OF ADMINISTRATIVE  
11 ASSESSMENT.—The determination of an  
12 administrative assessment by the Copy-  
13 right Royalty Judges shall be appealable,  
14 within 30 calendar days after publication  
15 in the Federal Register, to the Court of  
16 Appeals for the District of Columbia Cir-  
17 cuit by any party that fully participated in  
18 the proceeding. The administrative assess-  
19 ment as established by the Copyright Roy-  
20 alty Judges shall remain in effect pending  
21 the final outcome of any such appeal, and  
22 the mechanical licensing collective, digital  
23 licensee coordinator, digital music pro-  
24 viders, and significant nonblanket licensees  
25 shall implement appropriate financial or

1 other measures within 3 months after any  
2 modification of the assessment to reflect  
3 and account for such outcome.

4 “(viii) REGULATIONS.—The Copyright  
5 Royalty Judges may adopt regulations to  
6 govern the conduct of proceedings under  
7 this paragraph.

8 “(8) ESTABLISHMENT OF RATES AND TERMS  
9 UNDER BLANKET LICENSE.—

10 “(A) RESTRICTIONS ON RATESETTING  
11 PARTICIPATION.—Neither the mechanical li-  
12 censing collective nor the digital licensee coordi-  
13 nator shall be a party to a proceeding described  
14 in subsection (c)(1)(E), but either may gather  
15 and provide financial and other information for  
16 the use of a party to such a proceeding and  
17 comply with requests for information as re-  
18 quired under applicable statutory and regu-  
19 latory provisions and rulings of the Copyright  
20 Royalty Judges.

21 “(B) APPLICATION OF LATE FEES.—In  
22 any proceeding described in subparagraph (A)  
23 in which the Copyright Royalty Judges estab-  
24 lish a late fee for late payment of royalties for  
25 uses of musical works under this section, such

1 fee shall apply to covered activities under blan-  
2 ket licenses, as follows:

3 “(i) Late fees for past due royalty  
4 payments shall accrue from the due date  
5 for payment until payment is received by  
6 the mechanical licensing collective.

7 “(ii) The availability of late fees shall  
8 in no way prevent a copyright owner or the  
9 mechanical licensing collective from assert-  
10 ing any other rights or remedies to which  
11 such copyright owner or the mechanical li-  
12 censing collective may be entitled under  
13 this title.

14 “(C) INTERIM RATE AGREEMENTS IN GEN-  
15 ERAL.—For any covered activity for which no  
16 rate or terms have been established by the  
17 Copyright Royalty Judges, the mechanical li-  
18 censing collective and any digital music provider  
19 may agree to an interim rate and terms for  
20 such activity under the blanket license, and any  
21 such rate and terms—

22 “(i) shall be treated as nonpreceden-  
23 tial and not cited or relied upon in any  
24 ratesetting proceeding before the Copyright  
25 Royalty Judges or any other tribunal; and

1                   “(ii) shall automatically expire upon  
2                   the establishment of a rate and terms for  
3                   such covered activity by the Copyright  
4                   Royalty Judges, under subsection  
5                   (c)(1)(E).

6                   “(D) ADJUSTMENTS FOR INTERIM  
7                   RATES.—The rate and terms established by the  
8                   Copyright Royalty Judges for a covered activity  
9                   to which an interim rate and terms have been  
10                  agreed under subparagraph (C) shall supersede  
11                  the interim rate and terms and apply retro-  
12                  actively to the inception of the activity under  
13                  the blanket license. In such case, within 3  
14                  months after the rate and terms established by  
15                  the Copyright Royalty Judges become effec-  
16                  tive—

17                   “(i) if the rate established by the  
18                   Copyright Royalty Judges exceeds the in-  
19                   terim rate, the digital music provider shall  
20                   pay to the mechanical licensing collective  
21                   the amount of any underpayment of royalti-  
22                   ties due; or

23                   “(ii) if the interim rate exceeds the  
24                   rate established by the Copyright Royalty  
25                   Judges, the mechanical licensing collective

1           shall credit the account of the digital music  
2           provider for the amount of any overpay-  
3           ment of royalties due.

4           “(9) TRANSITION TO BLANKET LICENSES.—

5           “(A) SUBSTITUTION OF BLANKET LI-  
6           CENSE.—On the license availability date, a  
7           blanket license shall, without any interruption  
8           in license authority enjoyed by such digital  
9           music provider, be automatically substituted for  
10          and supersede any existing compulsory license  
11          previously obtained under this section by the  
12          digital music provider from a copyright owner  
13          to engage in one or more covered activities with  
14          respect to a musical work, but the foregoing  
15          shall not apply to any authority obtained from  
16          a record company pursuant to a compulsory li-  
17          cense to make and distribute permanent  
18          downloads unless and until such record com-  
19          pany terminates such authority in writing to  
20          take effect at the end of a monthly reporting  
21          period, with a copy to the mechanical licensing  
22          collective.

23          “(B) EXPIRATION OF EXISTING LI-  
24          CENSES.—Except to the extent provided in sub-  
25          paragraph (A), on and after the license avail-



1 ability date, licenses other than individual  
2 download licenses obtained under this section  
3 for covered activities prior to the license avail-  
4 ability date shall no longer continue in effect.

5 “(C) TREATMENT OF VOLUNTARY LI-  
6 CENSES.—A voluntary license for a covered ac-  
7 tivity in effect on the license availability date  
8 will remain in effect unless and until the vol-  
9 untary license expires according to the terms of  
10 the voluntary license, or the parties agree to  
11 amend or terminate the voluntary license. In a  
12 case where a voluntary license for a covered ac-  
13 tivity entered into before the license availability  
14 date incorporates the terms of this section by  
15 reference, the terms so incorporated (but not  
16 the rates) shall be those in effect immediately  
17 prior to the license availability date, and those  
18 terms shall continue to apply unless and until  
19 such voluntary license is terminated or amend-  
20 ed, or the parties enter into a new voluntary li-  
21 cense.

22 “(D) FURTHER ACCEPTANCE OF NOTICES  
23 FOR COVERED ACTIVITIES BY COPYRIGHT OF-  
24 FICE.—On and after the enactment date—

1 “(i) the Copyright Office shall no  
2 longer accept notices of intention with re-  
3 spect to covered activities; and

4 “(ii) previously filed notices of inten-  
5 tion will no longer be effective or provide  
6 license authority with respect to covered  
7 activities, but before the license availability  
8 date there shall be no liability under sec-  
9 tion 501 for the reproduction or distribu-  
10 tion of a musical work (or share thereof)  
11 in covered activities if a valid notice of in-  
12 tention was filed for such work (or share)  
13 before the enactment date.

14 “(10) PRIOR UNLICENSED USES.—

15 “(A) LIMITATION ON LIABILITY IN GEN-  
16 ERAL.—A copyright owner that commences an  
17 action under section 501 on or after January 1,  
18 2018, against a digital music provider for the  
19 infringement of the exclusive rights provided by  
20 paragraph (1) or (3) of section 106 arising  
21 from the unauthorized reproduction or distribu-  
22 tion of a musical work by such digital music  
23 provider in the course of engaging in covered  
24 activities prior to the license availability date,  
25 shall, as the copyright owner’s sole and exclu-

1           sive remedy against the digital music provider,  
2           be eligible to recover the royalty prescribed  
3           under subsection (c)(1)(C) and chapter 8 of  
4           this title, from the digital music provider, pro-  
5           vided that such digital music provider can dem-  
6           onstrate compliance with the requirements of  
7           subparagraph (B), as applicable. In all other  
8           cases the limitation on liability under this sub-  
9           paragraph shall not apply.

10           “(B) REQUIREMENTS FOR LIMITATION ON  
11           LIABILITY.—The following requirements shall  
12           apply on the enactment date and through the  
13           end of the period that expires 90 days after the  
14           license availability date to digital music pro-  
15           viders seeking to avail themselves of the limita-  
16           tion on liability described in subparagraph (A):

17           “(i) No later than 30 calendar days  
18           after first making a particular sound re-  
19           cording of a musical work available  
20           through its service via one or more covered  
21           activities, or 30 calendar days after the en-  
22           actment date, whichever occurs later, a  
23           digital music provider shall engage in  
24           good-faith, commercially reasonable efforts  
25           to identify and locate each copyright owner

1 of such musical work (or share thereof).  
2 Such required matching efforts shall in-  
3 clude the following:

4 “(I) Good-faith, commercially  
5 reasonable efforts to obtain from the  
6 owner of the corresponding sound re-  
7 cording made available through the  
8 digital music provider’s service the fol-  
9 lowing information:

10 “(aa) Sound recording  
11 name, featured artist, sound re-  
12 cording copyright owner, pro-  
13 ducer, international standard re-  
14 cording code, and other informa-  
15 tion commonly used in the indus-  
16 try to identify sound recordings  
17 and match them to the musical  
18 works they embody.

19 “(bb) Any available musical  
20 work ownership information, in-  
21 cluding each songwriter and pub-  
22 lisher name, percentage owner-  
23 ship share, and international  
24 standard musical work code.

1                   “(II) Employment of one or more  
2                   bulk electronic matching processes  
3                   that are available to the digital music  
4                   provider through a third-party vendor  
5                   on commercially reasonable terms, but  
6                   a digital music provider may rely on  
7                   its own bulk electronic matching pro-  
8                   cess if it has capabilities comparable to  
9                   or better than those available from a  
10                  third-party vendor on commercially  
11                  reasonable terms.

12                  “(ii) The required matching efforts  
13                  shall be repeated by the digital music pro-  
14                  vider no less than once per month for so  
15                  long as the copyright owner remains un-  
16                  identified or has not been located.

17                  “(iii) If the required matching efforts  
18                  are successful in identifying and locating a  
19                  copyright owner of a musical work (or  
20                  share thereof) by the end of the calendar  
21                  month in which the digital music provider  
22                  first makes use of the work, the digital  
23                  music provider shall provide statements of  
24                  account and pay royalties to such copy-

1 right owner in accordance with this section  
2 and applicable regulations.

3 “(iv) If the copyright owner is not  
4 identified or located by the end of the cal-  
5 endar month in which the digital music  
6 provider first makes use of the work, the  
7 digital music provider shall accrue and  
8 hold royalties calculated under the applica-  
9 ble statutory rate in accordance with usage  
10 of the work, from initial use of the work  
11 until the accrued royalties can be paid to  
12 the copyright owner or are required to be  
13 transferred to the mechanical licensing col-  
14 lective, as follows:

15 “(I) Accrued royalties shall be  
16 maintained by the digital music pro-  
17 vider in accordance with generally ac-  
18 cepted accounting principles.

19 “(II) If a copyright owner of an  
20 unmatched musical work (or share  
21 thereof) is identified and located by or  
22 to the digital music provider before  
23 the license availability date, the digital  
24 music provider shall—

1           “(aa) within 45 calendar  
2 days after the end of the cal-  
3 endar month during which the  
4 copyright owner was identified  
5 and located, pay the copyright  
6 owner all accrued royalties, such  
7 payment to be accompanied by a  
8 cumulative statement of account  
9 that includes all of the informa-  
10 tion that would have been pro-  
11 vided to the copyright owner had  
12 the digital music provider been  
13 providing monthly statements of  
14 account to the copyright owner  
15 from initial use of the work in  
16 accordance with this section and  
17 applicable regulations, including  
18 the requisite certification under  
19 subsection (c)(2)(I);

20           “(bb) beginning with the ac-  
21 counting period following the cal-  
22 endar month in which the copy-  
23 right owner was identified and lo-  
24 cated, and for all other account-  
25 ing periods prior to the license

1 availability date, provide monthly  
2 statements of account and pay  
3 royalties to the copyright owner  
4 as required under this section  
5 and applicable regulations; and

6 “(cc) beginning with the  
7 monthly royalty reporting period  
8 commencing on the license avail-  
9 ability date, report usage and pay  
10 royalties for such musical work  
11 (or share thereof) for such re-  
12 porting period and reporting pe-  
13 riods thereafter to the mechanical  
14 licensing collective, as required  
15 under this subsection and appli-  
16 cable regulations.

17 “(III) If a copyright owner of an  
18 unmatched musical work (or share  
19 thereof) is not identified and located  
20 by the license availability date, the  
21 digital music provider shall—

22 “(aa) within 45 calendar  
23 days after the license availability  
24 date, transfer all accrued royal-  
25 ties to the mechanical licensing



1 collective, such payment to be ac-  
2 companied by a cumulative state-  
3 ment of account that includes all  
4 of the information that would  
5 have been provided to the copy-  
6 right owner had the digital music  
7 provider been serving monthly  
8 statements of account on the  
9 copyright owner from initial use  
10 of the work in accordance with  
11 this section and applicable regu-  
12 lations, including the requisite  
13 certification under subsection  
14 (c)(2)(I), and accompanied by an  
15 additional certification by a duly  
16 authorized officer of the digital  
17 music provider that the digital  
18 music provider has fulfilled the  
19 requirements of clauses (i) and  
20 (ii) of subparagraph (B) but has  
21 not been successful in locating or  
22 identifying the copyright owner;  
23 and  
24 “(bb) beginning with the  
25 monthly royalty reporting period

1 commencing on the license avail-  
2 ability date, report usage and pay  
3 royalties for such musical work  
4 (or share thereof) for such period  
5 and reporting periods thereafter  
6 to the mechanical licensing collec-  
7 tive, as required under this sub-  
8 section and applicable regula-  
9 tions.

10 “(v) SUSPENSION OF LATE FEES.—A  
11 digital music provider that complies with  
12 the requirements of this paragraph with  
13 respect to unmatched musical works (or  
14 shares of works) shall not be liable for or  
15 accrue late fees for late payments of roy-  
16 alties for such works until such time as the  
17 digital music provider is required to begin  
18 paying monthly royalties to the copyright  
19 owner or the mechanical licensing collec-  
20 tive, as applicable.

21 “(C) ADJUSTED STATUTE OF LIMITA-  
22 TIONS.—Notwithstanding anything to the con-  
23 trary in section 507(b), with respect to any  
24 claim of infringement of the exclusive rights  
25 provided by paragraphs (1) and (3) of section

1           106 against a digital music provider arising  
2           from the unauthorized reproduction or distribu-  
3           tion of a musical work by such digital music  
4           provider to engage in covered activities that ac-  
5           crued no more than 3 years prior to the license  
6           availability date, such action may be com-  
7           menced within 3 years of the date the claim ac-  
8           crued, or up to 2 years after the license avail-  
9           ability date, whichever is later.

10           “(D) OTHER RIGHTS AND REMEDIES PRE-  
11           SERVED.—Except as expressly provided in this  
12           paragraph, nothing in this paragraph shall be  
13           construed to alter, limit, or negate any right or  
14           remedy of a copyright owner with respect to un-  
15           authorized use of a musical work.

16           “(11) LEGAL PROTECTIONS FOR LICENSING AC-  
17           TIVITIES.—

18           “(A) EXEMPTION FOR COMPULSORY LI-  
19           CENSE ACTIVITIES.—The antitrust exemption  
20           described in subsection (c)(1)(D) shall apply to  
21           negotiations and agreements between and  
22           among copyright owners and persons entitled to  
23           obtain a compulsory license for covered activi-  
24           ties, and common agents acting on behalf of  
25           such copyright owners or persons, including

1 with respect to the administrative assessment  
2 established under this subsection.

3 “(B) LIMITATION ON COMMON AGENT EX-  
4 EMPTION.—Notwithstanding the antitrust ex-  
5 emption provided in subsection (c)(1)(D) and  
6 subparagraph (A) (except for the administrative  
7 assessment referenced therein and except as  
8 provided in paragraph (8)(C)), neither the me-  
9 chanical licensing collective nor the digital li-  
10 censee coordinator shall serve as a common  
11 agent with respect to the establishment of roy-  
12 alty rates or terms under this section.

13 “(C) ANTITRUST EXEMPTION FOR ADMIN-  
14 ISTRACTIVE ACTIVITIES.—Notwithstanding any  
15 provision of the antitrust laws, copyright own-  
16 ers and persons entitled to obtain a compulsory  
17 license under this section may designate the  
18 mechanical licensing collective to administer vol-  
19 untary licenses for the reproduction or distribu-  
20 tion of musical works in covered activities on  
21 behalf of such copyright owners and persons,  
22 but the following conditions apply:

23 “(i) Each copyright owner shall estab-  
24 lish the royalty rates and material terms of  
25 any such voluntary license individually and

1 not in agreement, combination, or concert  
2 with any other copyright owner.

3 “(ii) Each person entitled to obtain a  
4 compulsory license under this section shall  
5 establish the royalty rates and material  
6 terms of any such voluntary license indi-  
7 vidually and not in agreement, combina-  
8 tion, or concert with any other digital  
9 music provider.

10 “(iii) The mechanical licensing collec-  
11 tive shall maintain the confidentiality of  
12 the voluntary licenses in accordance with  
13 the confidentiality provisions prescribed by  
14 the Register of Copyrights under para-  
15 graph (12)(C).

16 “(D) LIABILITY FOR GOOD-FAITH ACTIVI-  
17 TIES.—The mechanical licensing collective shall  
18 not be liable to any person or entity based on  
19 a claim arising from its good-faith administra-  
20 tion of policies and procedures adopted and im-  
21 plemented to carry out the responsibilities de-  
22 scribed in subparagraphs (J) and (K) of para-  
23 graph (3), except to the extent of correcting an  
24 underpayment or overpayment of royalties as  
25 provided in paragraph (3)(L)(i)(VI), but the

1 collective may participate in a legal proceeding  
2 as a stakeholder party if the collective is hold-  
3 ing funds that are the subject of a dispute be-  
4 tween copyright owners. For purposes of this  
5 subparagraph, ‘good-faith administration’  
6 means administration in a manner that is not  
7 grossly negligent.

8 “(E) PREEMPTION OF STATE PROPERTY  
9 LAWS.—The holding and distribution of funds  
10 by the mechanical licensing collective in accord-  
11 ance with this subsection shall supersede and  
12 preempt any State law (including common law)  
13 concerning escheatment or abandoned property,  
14 or any analogous provision, that might other-  
15 wise apply.

16 “(F) RULE OF CONSTRUCTION.—Except as  
17 expressly provided in this subsection, nothing in  
18 this subsection shall negate or limit the ability  
19 of any person to pursue an action in Federal  
20 court against the mechanical licensing collective  
21 or any other person based upon a claim arising  
22 under this title or other applicable law.

23 “(12) REGULATIONS.—

24 “(A) ADOPTION BY REGISTER OF COPY-  
25 RIGHTS AND COPYRIGHT ROYALTY JUDGES.—

1           The Register of Copyrights may conduct such  
2           proceedings and adopt such regulations as may  
3           be necessary or appropriate to effectuate the  
4           provisions of this subsection, except for regula-  
5           tions concerning proceedings before the Copy-  
6           right Royalty Judges to establish the adminis-  
7           trative assessment, which shall be adopted by  
8           the Copyright Royalty Judges.

9           “(B) JUDICIAL REVIEW OF REGULA-  
10          TIONS.—Except as provided in paragraph  
11          (7)(D)(vii), regulations adopted under this sub-  
12          section shall be subject to judicial review pursu-  
13          ant to chapter 7 of title 5.

14          “(C) PROTECTION OF CONFIDENTIAL IN-  
15          FORMATION.—The Register of Copyrights shall  
16          adopt regulations to provide for the appropriate  
17          procedures to ensure that confidential, private,  
18          proprietary, or privileged information contained  
19          in the records of the mechanical licensing collec-  
20          tive and digital licensee coordinator is not im-  
21          properly disclosed or used, including through  
22          any disclosure or use by the board of directors  
23          or personnel of either entity, and specifically in-  
24          cluding the unclaimed royalties oversight com-

1 mittee and the dispute resolution committee of  
2 the mechanical licensing collective.

3 “(13) SAVINGS CLAUSES.—

4 “(A) LIMITATION ON ACTIVITIES AND  
5 RIGHTS COVERED.—This subsection applies  
6 solely to uses of musical works subject to licens-  
7 ing under this section. The blanket license shall  
8 not be construed to extend or apply to activities  
9 other than covered activities or to rights other  
10 than the exclusive rights of reproduction and  
11 distribution licensed under this section, or serve  
12 or act as the basis to extend or expand the  
13 compulsory license under this section to activi-  
14 ties and rights not covered by this section on  
15 the enactment date.

16 “(B) RIGHTS OF PUBLIC PERFORMANCE  
17 NOT AFFECTED.—The rights, protections, and  
18 immunities granted under this subsection, the  
19 data concerning musical works collected and  
20 made available under this subsection, and the  
21 definitions described in subsection (e) shall not  
22 extend to, limit, or otherwise affect any right of  
23 public performance in a musical work.”; and

24 (5) by adding at the end the following new sub-  
25 section:



1 “(e) DEFINITIONS.—As used in this section:

2 “(1) ACCRUED INTEREST.—The term ‘accrued  
3 interest’ means interest accrued on accrued royal-  
4 ties, as described in subsection (d)(3)(H)(ii).

5 “(2) ACCRUED ROYALTIES.—The term ‘accrued  
6 royalties’ means royalties accrued for the reproduc-  
7 tion or distribution of a musical work (or share  
8 thereof) in a covered activity, calculated in accord-  
9 ance with the applicable royalty rate under this sec-  
10 tion.

11 “(3) ADMINISTRATIVE ASSESSMENT.—The term  
12 ‘administrative assessment’ means the fee estab-  
13 lished pursuant to subsection (d)(7)(D).

14 “(4) AUDIT.—The term ‘audit’ means a royalty  
15 compliance examination to verify the accuracy of  
16 royalty payments, or the conduct of such an exam-  
17 ination, as applicable.

18 “(5) BLANKET LICENSE.—The term ‘blanket li-  
19 cense’ means a compulsory license described in sub-  
20 section (d)(1)(A) to engage in covered activities.

21 “(6) COLLECTIVE TOTAL COSTS.—The term  
22 ‘collective total costs’—

23 “(A) means the total costs of establishing,  
24 maintaining, and operating the mechanical li-

1           censing collective to fulfill its statutory func-  
2           tions, including—

3                   “(i) startup costs;

4                   “(ii) financing, legal, and insurance  
5           costs;

6                   “(iii) investments in information tech-  
7           nology, infrastructure, and other long-term  
8           resources;

9                   “(iv) outside vendor costs;

10                  “(v) costs of licensing, royalty admin-  
11           istration, and enforcement of rights;

12                  “(vi) costs of bad debt; and

13                  “(vii) costs of automated and manual  
14           efforts to identify and locate copyright  
15           owners of musical works (and shares of  
16           such musical works) and match sound re-  
17           cordings to the musical works the sound  
18           recordings embody; and

19                  “(B) does not include any added costs in-  
20           curred by the mechanical licensing collective to  
21           provide services under voluntary licenses.

22                  “(7) COVERED ACTIVITY.—The term ‘covered  
23           activity’ means the activity of making a digital pho-  
24           norecord delivery of a musical work, including in the  
25           form of a permanent download, limited download, or

1 interactive stream, where such activity qualified for  
2 a compulsory license under this section.

3 “(8) DIGITAL MUSIC PROVIDER.—The term  
4 ‘digital music provider’ means a person (or persons  
5 operating under the authority of that person) that,  
6 with respect to a service engaged in covered activi-  
7 ties—

8 “(A) has a direct contractual, subscription,  
9 or other economic relationship with end users of  
10 the service, or, if no such relationship with end  
11 users exists, exercises direct control over the  
12 provision of the service to end users;

13 “(B) is able to fully report on any revenues  
14 and consideration generated by the service; and

15 “(C) is able to fully report on usage of  
16 sound recordings of musical works by the serv-  
17 ice (or procure such reporting).

18 “(9) DIGITAL LICENSEE COORDINATOR.—The  
19 term ‘digital licensee coordinator’ means the entity  
20 most recently designated pursuant to subsection  
21 (d)(5).

22 “(10) DIGITAL PHONORECORD DELIVERY.—The  
23 term ‘digital phonorecord delivery’ means each indi-  
24 vidual delivery of a phonorecord by digital trans-  
25 mission of a sound recording that results in a spe-

1        cifically identifiable reproduction by or for any  
2        transmission recipient of a phonorecord of that  
3        sound recording, regardless of whether the digital  
4        transmission is also a public performance of the  
5        sound recording or any musical work embodied  
6        therein, and includes a permanent download, a lim-  
7        ited download, or an interactive stream. A digital  
8        phonorecord delivery does not result from a real-  
9        time, noninteractive subscription transmission of a  
10       sound recording where no reproduction of the sound  
11       recording or the musical work embodied therein is  
12       made from the inception of the transmission through  
13       to its receipt by the transmission recipient in order  
14       to make the sound recording audible. A digital pho-  
15       norecord delivery does not include the digital trans-  
16       mission of sounds accompanying a motion picture or  
17       other audiovisual work as defined in section 101 of  
18       this title.

19           “(11) ENACTMENT DATE.—The term ‘enact-  
20        ment date’ means the date of the enactment of the  
21        Musical Works Modernization Act.

22           “(12) INDIVIDUAL DOWNLOAD LICENSE.—The  
23        term ‘individual download license’ means a compul-  
24        sory license obtained by a record company to make  
25        and distribute, or authorize the making and distribu-

1       tion of, permanent downloads embodying a specific  
2       individual musical work.

3           “(13) INTERACTIVE STREAM.—The term ‘inter-  
4       active stream’ means a digital transmission of a  
5       sound recording of a musical work in the form of a  
6       stream, where the performance of the sound record-  
7       ing by means of such transmission is not exempt  
8       under section 114(d)(1) and does not in itself, or as  
9       a result of a program in which it is included, qualify  
10      for statutory licensing under section 114(d)(2). An  
11      interactive stream is a digital phonorecord delivery.

12          “(14) INTERESTED.—The term ‘interested’, as  
13      applied to a party seeking to participate in a pro-  
14      ceeding under subsection (d)(7)(D), is a party as to  
15      which the Copyright Royalty Judges have not deter-  
16      mined that the party lacks a significant interest in  
17      such proceeding.

18          “(15) LICENSE AVAILABILITY DATE.—The term  
19      ‘license availability date’ means the next January 1  
20      following the expiration of the two-year period begin-  
21      ning on the enactment date.

22          “(16) LIMITED DOWNLOAD.—The term ‘limited  
23      download’ means a digital transmission of a sound  
24      recording of a musical work in the form of a  
25      download, where such sound recording is accessible

1 for listening only for a limited amount of time or  
2 specified number of times.

3 “(17) MATCHED.—The term ‘matched’, as ap-  
4 plied to a musical work (or share thereof), means  
5 that the copyright owner of such work (or share  
6 thereof) has been identified and located.

7 “(18) MECHANICAL LICENSING COLLECTIVE.—  
8 The term ‘mechanical licensing collective’ means the  
9 entity most recently designated as such by the Reg-  
10 ister of Copyrights under subsection (d)(3).

11 “(19) MECHANICAL LICENSING COLLECTIVE  
12 BUDGET.—The term ‘mechanical licensing collective  
13 budget’ means a statement of the financial position  
14 of the mechanical licensing collective for a fiscal year  
15 or quarter thereof based on estimates of expendi-  
16 tures during the period and proposals for financing  
17 them, including a calculation of the collective total  
18 costs.

19 “(20) MUSICAL WORKS DATABASE.—The term  
20 ‘musical works database’ means the database de-  
21 scribed in subsection (d)(3)(E).

22 “(21) NONPROFIT.—The term ‘nonprofit’  
23 means a nonprofit created or organized in a State.

24 “(22) NOTICE OF LICENSE.—The term ‘notice  
25 of license’ means a notice from a digital music pro-

1 vider provided under subsection (d)(2)(A) for pur-  
2 poses of obtaining a blanket license.

3 “(23) NOTICE OF NONBLANKET ACTIVITY.—

4 The term ‘notice of nonblanket activity’ means a no-  
5 tice from a significant nonblanket licensee provided  
6 under subsection (d)(6)(A) for purposes of notifying  
7 the mechanical licensing collective that the licensee  
8 has been engaging in covered activities.

9 “(24) PERMANENT DOWNLOAD.—The term  
10 ‘permanent download’ means a digital transmission  
11 of a sound recording of a musical work in the form  
12 of a download, where such sound recording is acces-  
13 sible for listening without restriction as to the  
14 amount of time or number of times it may be  
15 accessed.

16 “(25) QUALIFIED AUDITOR.—The term ‘quali-  
17 fied auditor’ means an independent, certified public  
18 accountant with experience performing music royalty  
19 audits.

20 “(26) RECORD COMPANY.—The term ‘record  
21 company’ means an entity that invests in, produces,  
22 and markets sound recordings of musical works, and  
23 distributes such sound recordings for remuneration  
24 through multiple sales channels, including a cor-

1       porate affiliate of such an entity engaged in distribu-  
2       tion of sound recordings.

3               “(27) REPORT OF USAGE.—The term ‘report of  
4       usage’ means a report reflecting an entity’s usage of  
5       musical works in covered activities described in sub-  
6       section (d)(4)(A).

7               “(28) REQUIRED MATCHING EFFORTS.—The  
8       term ‘required matching efforts’ means efforts to  
9       identify and locate copyright owners of musical  
10      works as described in subsection (d)(10)(B)(i).

11              “(29) SERVICE.—The term ‘service’, as used in  
12      relation to covered activities, means any site, facility,  
13      or offering by or through which sound recordings of  
14      musical works are digitally transmitted to members  
15      of the public.

16              “(30) SHARE.—The term ‘share’, as applied to  
17      a musical work, means a fractional ownership inter-  
18      est in such work.

19              “(31) SIGNIFICANT NONBLANKET LICENSEE.—  
20      The term ‘significant nonblanket licensee’—

21                      “(A) means an entity, including a group of  
22                      entities under common ownership or control  
23                      that, acting under the authority of one or more  
24                      voluntary licenses or individual download li-



1           censes, offers a service engaged in covered ac-  
2           tivities, and such entity or group of entities—

3                   “(i) is not currently operating under a  
4                   blanket license and is not obligated to pro-  
5                   vide reports of usage reflecting covered ac-  
6                   tivities under subsection (d)(4)(A);

7                   “(ii) has a direct contractual, sub-  
8                   scription, or other economic relationship  
9                   with end users of the service or, if no such  
10                  relationship with end users exists, exercises  
11                  direct control over the provision of the  
12                  service to end users; and

13                  “(iii) either—

14                          “(I) on any day in a calendar  
15                          month, makes more than 5,000 dif-  
16                          ferent sound recordings of musical  
17                          works available through such service;  
18                          or

19                          “(II) derives revenue or other  
20                          consideration in connection with such  
21                          covered activities greater than  
22                          \$50,000 in a calendar month, or total  
23                          revenue or other consideration greater  
24                          than \$500,000 during the preceding  
25                          12 calendar months; and

1 “(B) does not include—

2 “(i) an entity whose covered activity  
3 consists solely of free-to-the-user streams  
4 of segments of sound recordings of musical  
5 works that do not exceed 90 seconds in  
6 length, are offered only to facilitate a li-  
7 censed use of musical works that is not a  
8 covered activity, and have no revenue di-  
9 rectly attributable to such streams consti-  
10 tuting the covered activity; or

11 “(ii) a ‘public broadcasting entity’ as  
12 defined in section 118(f).

13 “(32) SONGWRITER.—The term ‘songwriter’  
14 means the author of all or part of a musical work,  
15 including a composer or lyricist.

16 “(33) STATE.—The term ‘State’ means each  
17 State of the United States, the District of Columbia,  
18 and each territory or possession of the United  
19 States.

20 “(34) UNCLAIMED ACCRUED ROYALTIES.—The  
21 term ‘unclaimed accrued royalties’ means accrued  
22 royalties eligible for distribution under subsection  
23 (d)(3)(J).

24 “(35) UNMATCHED.—The term ‘unmatched’, as  
25 applied to a musical work (or share thereof), means

1 that the copyright owner of such work (or share  
2 thereof) has not been identified or located.

3 “(36) VOLUNTARY LICENSE.—The term ‘vol-  
4 untary license’ means a license for use of a musical  
5 work (or share thereof) other than a compulsory li-  
6 cense obtained under this section.”.

7 (b) TECHNICAL AND CONFORMING AMENDMENTS TO  
8 SECTION 801.—Section 801(b) of title 17, United States  
9 Code, is amended—

10 (1) by redesignating paragraph (8) as para-  
11 graph (9); and

12 (2) by inserting after paragraph (7) the fol-  
13 lowing new paragraph:

14 “(8) To determine the administrative assess-  
15 ment to be paid by digital music providers under  
16 section 115(d). The provisions of section 115(d)  
17 shall apply to the conduct of proceedings by the  
18 Copyright Royalty Judges under section 115(d) and  
19 not the procedures described in this section, or sec-  
20 tion 803, 804, or 805.”.

21 (c) EFFECTIVE DATE OF AMENDED RATE SETTING  
22 STANDARD.—The amendments made by subsections  
23 (a)(3)(D) and (b)(1) shall apply to any proceeding before  
24 the Copyright Royalty Judges that is pending on, or com-  
25 menced on or after, the date of the enactment of this Act.

1 (d) TECHNICAL AND CONFORMING AMENDMENTS TO  
2 TITLE 37, PART 385 OF THE CODE OF FEDERAL REGU-  
3 LATIONS.—Within 9 months after the date of the enact-  
4 ment of this Act, the Copyright Royalty Judges shall  
5 amend the regulations for section 115 in part 385 of title  
6 37, Code of Federal Regulations to conform the definitions  
7 used in such part to the definitions of the same terms de-  
8 scribed in section 115(e) of title 17, United States Code,  
9 as amended by subsection (a). In so doing, the Copyright  
10 Royalty Judges shall make adjustments to the language  
11 of the regulations as necessary to achieve the same pur-  
12 pose and effect as the original regulations with respect to  
13 the rates and terms previously adopted by the Copyright  
14 Royalty Judges.

15 **SEC. 103. AMENDMENTS TO SECTION 114.**

16 (a) UNIFORM RATE STANDARD.—Section 114(f) of  
17 title 17, United States Code, is amended—

18 (1) by striking paragraphs (1) and (2) and in-  
19 serting the following:

20 “(1)(A) Proceedings under chapter 8 shall de-  
21 termine reasonable rates and terms of royalty pay-  
22 ments for transmissions subject to statutory licens-  
23 ing under subsection (d)(2) during the 5-year period  
24 beginning on January 1 of the second year following  
25 the year in which the proceedings are to be com-

1 menced pursuant to subparagraph (A) or (B) of sec-  
2 tion 804(b)(3), as the case may be, or such other pe-  
3 riod as the parties may agree. The parties to each  
4 proceeding shall bear their own costs.

5 “(B) The schedule of reasonable rates and  
6 terms determined by the Copyright Royalty Judges  
7 shall, subject to paragraph (2), be binding on all  
8 copyright owners of sound recordings and entities  
9 performing sound recordings affected by this para-  
10 graph during the 5-year period specified in subpara-  
11 graph (A), or such other period as the parties may  
12 agree. Such rates and terms shall distinguish among  
13 the different types of services then in operation and  
14 shall include a minimum fee for each such type of  
15 service, such differences to be based on criteria in-  
16 cluding the quantity and nature of the use of sound  
17 recordings and the degree to which use of the service  
18 may substitute for or may promote the purchase of  
19 phonorecords by consumers. The Copyright Royalty  
20 Judges shall establish rates and terms that most  
21 clearly represent the rates and terms that would  
22 have been negotiated in the marketplace between a  
23 willing buyer and a willing seller. In determining  
24 such rates and terms, the Copyright Royalty  
25 Judges—

1           “(i) shall base their decision on economic,  
2 competitive, and programming information pre-  
3 sented by the parties, including—

4           “(I) whether use of the service may  
5 substitute for or may promote the sales of  
6 phonorecords or otherwise may interfere  
7 with or may enhance the sound recording  
8 copyright owner’s other streams of revenue  
9 from the copyright owner’s sound record-  
10 ings; and

11           “(II) the relative roles of the copy-  
12 right owner and the transmitting entity in  
13 the copyrighted work and the service made  
14 available to the public with respect to rel-  
15 ative creative contribution, technological  
16 contribution, capital investment, cost, and  
17 risk; and

18           “(ii) may consider the rates and terms for  
19 comparable types of audio transmission services  
20 and comparable circumstances under voluntary  
21 license agreements.

22           “(C) The procedures under subparagraphs (A)  
23 and (B) shall also be initiated pursuant to a petition  
24 filed by any sound recording copyright owner or any  
25 transmitting entity indicating that a new type of

1 service on which sound recordings are performed is  
2 or is about to become operational, for the purpose  
3 of determining reasonable terms and rates of royalty  
4 payments with respect to such new type of service  
5 for the period beginning with the inception of such  
6 new type of service and ending on the date on which  
7 the royalty rates and terms for eligible nonsubscrip-  
8 tion services and new subscription services, or pre-  
9 existing services, as the case may be, most recently  
10 determined under subparagraph (A) or (B) and  
11 chapter 8 expire, or such other period as the parties  
12 may agree.”; and

13 (2) by redesignating paragraphs (3), (4), and  
14 (5) as paragraphs (2), (3), and (4), respectively.

15 (b) REPEAL.—Subsection (i) of section 114 of title  
16 17, United States Code, is repealed.

17 (c) USE IN MUSICAL WORK PROCEEDINGS.—

18 (1) IN GENERAL.—License fees payable for the  
19 public performance of sound recordings under sec-  
20 tion 106(6) of title 17, United States Code, shall not  
21 be taken into account in any administrative, judicial,  
22 or other governmental proceeding to set or adjust  
23 the royalties payable to musical work copyright own-  
24 ers for the public performance of their works except  
25 in such a proceeding to set or adjust royalties for

1 the public performance of musical works by means  
2 of a digital audio transmission other than a trans-  
3 mission by a broadcaster, and may be taken into ac-  
4 count only with respect to such digital audio trans-  
5 mission.

6 (2) DEFINITIONS.—In this subsection:

7 (A) TRANSMISSION BY A BROADCASTER.—  
8 A “transmission by a broadcaster” means a  
9 nonsubscription digital transmission made by a  
10 terrestrial broadcast station on its own behalf,  
11 or on the behalf of a terrestrial broadcast sta-  
12 tion under common ownership or control, that  
13 is not part of an interactive service or a music-  
14 intensive service comprising the transmission of  
15 sound recordings customized for or customiz-  
16 able by recipients or service users.

17 (B) TERRESTRIAL BROADCAST STATION.—  
18 A “terrestrial broadcast station” means a ter-  
19 restrial, over-the-air radio or television broad-  
20 cast station, licensed as such by the Federal  
21 Communications Commission, including an FM  
22 Translator as defined in section 74.1231 of title  
23 47, Code of Federal Regulations, and whose  
24 primary business activities are comprised of,  
25 and revenues are generated through, terrestrial,



1 over-the-air broadcast transmissions, or the si-  
2 multaneous or substantially-simultaneous digital  
3 retransmission by the terrestrial, over-the-air  
4 broadcast station of its over-the-air broadcast  
5 transmissions.

6 (d) RULE OF CONSTRUCTION.—Subsection (c)(2)  
7 shall not be given effect in interpreting provisions of title  
8 17, United States Code.

9 (e) USE IN SOUND RECORDING PROCEEDINGS.—The  
10 repeal of section 114(i) of title 17, United States Code,  
11 by subsection (b) shall not be taken into account in any  
12 proceeding to set or adjust the rates and fees payable for  
13 the use of sound recordings under section 112(e) or sec-  
14 tion 114(f) of such title that is pending on, or commenced  
15 on or after, the date of the enactment of this Act.

16 (f) DECISIONS AND PRECEDENTS NOT AFFECTED.—  
17 The repeal of section 114(i) of title 17, United States  
18 Code, by subsection (b) shall not have any effect upon the  
19 decisions, or the precedents established or relied upon, in  
20 any proceeding to set or adjust the rates and fees payable  
21 for the use of sound recordings under section 112(e) or  
22 section 114(f) of such title before the date of the enact-  
23 ment of this Act.

24 (g) TECHNICAL AND CONFORMING AMENDMENTS.—

1           (1) SECTION 114.—Section 114(f) of title 17,  
2           United States Code, as amended by subsection (a),  
3           is further amended in paragraph (4)(C), as so reded-  
4           ignated, by striking “under paragraph (4)” and in-  
5           serting “under paragraph (3)”.

6           (2) SECTION 801.—Section 801(b)(1) of title  
7           17, United States Code, is amended by striking  
8           “The rates applicable” and all that follows though  
9           “prevailing industry practices.”.

10          (3) SECTION 804.—Section 804(b)(3)(C) of title  
11          17, United States Code, is amended—

12                 (A) in clause (i), by striking “and  
13                 114(f)(2)(C)”;

14                 (B) in clause (iii)(II), by striking  
15                 “114(f)(4)(B)(ii)” and inserting  
16                 “114(f)(3)(B)(ii)”; and

17                 (C) in clause (iv), by striking “or  
18                 114(f)(2)(C), as the case may be”.

19   **SEC. 104. RANDOM ASSIGNMENT OF RATE COURT PRO-**  
20                   **CEEDINGS.**

21          Section 137 of title 28, United States Code, is  
22          amended—

23                 (1) by striking “The business” and inserting  
24                 “(a) IN GENERAL.—The business”; and

1           (2) by adding at the end the following new sub-  
2           section:

3           “(b) RANDOM ASSIGNMENT OF RATE COURT PRO-  
4           CEEDINGS.—

5           “(1) IN GENERAL.—

6           “(A) DETERMINATION OF LICENSE FEE.—

7           Except as provided in subparagraph (B), in the  
8           case of any performing rights society subject to  
9           a consent decree, any application for the deter-  
10          mination of a license fee for the public perform-  
11          ance of music in accordance with the applicable  
12          consent decree shall be made in the district  
13          court with jurisdiction over that consent decree  
14          and randomly assigned to a judge of that dis-  
15          trict court according to that court’s rules for  
16          the division of business among district judges  
17          currently in effect or as may be amended from  
18          time to time, provided that any such application  
19          shall not be assigned to—

20                 “(i) a judge to whom continuing juris-  
21                 diction over any performing rights society  
22                 for any performing rights society consent  
23                 decree is assigned or has previously been  
24                 assigned; or

1           “(ii) a judge to whom another pro-  
2           ceeding concerning an application for the  
3           determination of a reasonable license fee is  
4           assigned at the time of the filing of the ap-  
5           plication.

6           “(B) EXCEPTION.—Subparagraph (A)  
7           does not apply to an application to determine  
8           reasonable license fees made by individual pro-  
9           prietors under section 513 of title 17.

10          “(2) RULE OF CONSTRUCTION.—Nothing in  
11          paragraph (1) shall modify the rights of any party  
12          to a consent decree or to a proceeding to determine  
13          reasonable license fees, to make an application for  
14          the construction of any provision of the applicable  
15          consent decree. Such application shall be referred to  
16          the judge to whom continuing jurisdiction over the  
17          applicable consent decree is currently assigned. If  
18          any such application is made in connection with a  
19          rate proceeding, such rate proceeding shall be stayed  
20          until the final determination of the construction ap-  
21          plication. Disputes in connection with a rate pro-  
22          ceeding about whether a licensee is similarly situated  
23          to another licensee shall not be subject to referral to  
24          the judge with continuing jurisdiction over the appli-  
25          cable consent decree.”.

1 **TITLE II—COMPENSATING LEG-**  
2 **ACY ARTISTS FOR THEIR**  
3 **SONGS, SERVICE, AND IMPOR-**  
4 **TANT CONTRIBUTIONS TO SO-**  
5 **CIETY**

6 **SEC. 201. SHORT TITLE.**

7 This title may be cited as the “Compensating Legacy  
8 Artists for their Songs, Service, and Important Contribu-  
9 tions to Society Act” or the “CLASSICS Act”.

10 **SEC. 202. UNAUTHORIZED DIGITAL PERFORMANCE OF PRE-**  
11 **1972 SOUND RECORDINGS.**

12 (a) PROTECTION FOR UNAUTHORIZED DIGITAL PER-  
13 FORMANCES.—Title 17, United States Code, is amended  
14 by adding at the end the following new chapter:

15 **“CHAPTER 14—UNAUTHORIZED DIGITAL**  
16 **PERFORMANCE OF PRE-1972 SOUND**  
17 **RECORDINGS**

“Sec.

“1401. Unauthorized digital performance of pre-1972 sound recordings.

18 **“§ 1401. Unauthorized digital performance of pre-**  
19 **1972 sound recordings**

20 “(a) UNAUTHORIZED ACTS.—Anyone who, before  
21 February 15, 2067, and without the consent of the rights  
22 owner, performs publicly, by means of a digital audio  
23 transmission, a sound recording fixed on or after January  
24 1, 1923, and before February 15, 1972, shall be subject

1 to the remedies provided in sections 502 through 505 to  
2 the same extent as an infringer of copyright.

3 “(b) CERTAIN AUTHORIZED TRANSMISSIONS.—A  
4 digital audio transmission of a sound recording fixed on  
5 or after January 1, 1923, and before February 15, 1972,  
6 shall, for purposes of subsection (a), be considered to be  
7 authorized and made with the consent of the rights owner  
8 if—

9 “(1) the transmission is made by a transmitting  
10 entity that is publicly performing sound recordings  
11 fixed on or after February 15, 1972, by means of  
12 digital audio transmissions subject to section 114;

13 “(2) the transmission would satisfy the require-  
14 ments for statutory licensing under section  
15 114(d)(2), or would be exempt under section  
16 114(d)(1), if the sound recording were fixed on or  
17 after February 15, 1972;

18 “(3) in the case of a transmission that would  
19 not be exempt under section 114(d)(1) as described  
20 in paragraph (2), the transmitting entity pays statu-  
21 tory royalties and provides notice of its use of the  
22 relevant sound recordings in the same manner as is  
23 required by regulations adopted by the Copyright  
24 Royalty Judges for sound recordings fixed on or  
25 after February 15, 1972; and

1           “(4) in the case of a transmission that would  
2 not be exempt under section 114(d)(1) as described  
3 in paragraph (2), the transmitting entity otherwise  
4 satisfies the requirements for statutory licensing  
5 under section 114(f)(4)(B).

6           “(c) TRANSMISSIONS BY DIRECT LICENSING OF  
7 STATUTORY SERVICES.—

8           “(1) IN GENERAL.—A transmission of a sound  
9 recording fixed on or after January 1, 1923, and be-  
10 fore February 15, 1972, shall, for purposes of sub-  
11 section (a), be considered to be authorized and made  
12 with the consent of the rights owner if such trans-  
13 mission is included in a license agreement volun-  
14 tarily negotiated at any time between the rights  
15 owner and the entity performing the sound record-  
16 ing.

17           “(2) PAYMENT OF ROYALTIES TO NONPROFIT  
18 COLLECTIVE.—To the extent that such a license  
19 agreement entered into on or after the date of the  
20 enactment of this section extends to digital audio  
21 transmissions of a sound recording fixed on or after  
22 January 1, 1923, and before February 15, 1972,  
23 that meet the conditions of subsection (b), the li-  
24 censee shall pay, to the collective designated to dis-  
25 tribute receipts from the licensing of transmissions

1 in accordance with section 114(f), 50 percent of the  
2 performance royalties for the transmissions due  
3 under the license, with such royalties fully credited  
4 as payments due under the license.

5 “(3) DISTRIBUTION OF ROYALTIES BY COLLEC-  
6 TIVE.—The collective described in paragraph (2)  
7 shall, in accordance with subparagraphs (B) through  
8 (D) of section 114(g)(2), and paragraphs (5) and  
9 (6) of section 114(g)), distribute the royalties re-  
10 ceived under paragraph (2) under the license de-  
11 scribed in paragraph (2). Such payments shall be  
12 the only payments to which featured and nonfea-  
13 tured artists are entitled by virtue of the trans-  
14 missions described in paragraph (2) under the li-  
15 cense.

16 “(4) RULE OF CONSTRUCTION.—This section  
17 does not prohibit any other license from directing  
18 the licensee to pay other royalties due to featured  
19 and nonfeatured artists for such transmissions to  
20 the collective designated to distribute receipts from  
21 the licensing of transmissions in accordance with  
22 section 114(f).

23 “(d) RELATIONSHIP TO STATE LAW.—

24 “(1) IN GENERAL.—Nothing in this section  
25 shall be construed to annul or limit any rights or



1 remedies under the common law or statutes of any  
2 State for sound recordings fixed before February 15,  
3 1972, except, notwithstanding section 301(c), for the  
4 following:

5 “(A) This section preempts any claim of  
6 common law copyright or equivalent right under  
7 the laws of any State arising from any digital  
8 audio transmission that is made, on and after  
9 the date of the enactment of this section, of a  
10 sound recording fixed on or after January 1,  
11 1923, and before February 15, 1972.

12 “(B) This section preempts any claim of  
13 common law copyright or equivalent right under  
14 the laws of any State arising from any repro-  
15 duction that is made, on and after the date of  
16 the enactment of this section, of a sound re-  
17 cording fixed on or after January 1, 1923, and  
18 before February 15, 1972, and that would sat-  
19 isfy the requirements for statutory licensing  
20 under paragraphs (1) and (6) of section 112(e),  
21 if the sound recording were fixed on or after  
22 February 15, 1972.

23 “(C) This section preempts any claim of  
24 common law copyright or equivalent right under  
25 the laws of any State arising from any digital

1 audio transmission or reproduction that is  
2 made, before the date of the enactment of this  
3 section, of a sound recording fixed on or after  
4 January 1, 1923, and before February 15,  
5 1972, if—

6 “(i) the digital audio transmission  
7 would have satisfied the requirements for  
8 statutory licensing under section 114(d)(2)  
9 or been exempt under section 114(d)(1), or  
10 the reproduction would have satisfied the  
11 requirements of section 112(e)(1), as the  
12 case may be, if the sound recording were  
13 fixed on or after February 15, 1972; and

14 “(ii) except in the case of trans-  
15 missions that would have been exempt  
16 under section 114(d)(1), the transmitting  
17 entity, before the end of the 270-day pe-  
18 riod beginning on the date of the enact-  
19 ment of this section, pays statutory royal-  
20 ties and provides notice of the use of the  
21 relevant sound recordings in the same  
22 manner as is required by regulations  
23 adopted by the Copyright Royalty Judges  
24 for sound recordings that are protected  
25 under this title for all the digital audio

1           transmissions and reproductions satisfying  
2           the requirements for statutory licensing  
3           under section 114(d)(2) and section  
4           112(e)(1) during the 3 years prior to the  
5           date of the enactment of this section.

6           “(2) RULE OF CONSTRUCTION FOR COMMON  
7           LAW COPYRIGHT.—For purposes of subparagraphs  
8           (A) through (C) of paragraph (1), a claim of com-  
9           mon law copyright or equivalent right under the  
10          laws of any State includes a claim that characterizes  
11          conduct subject to such subparagraphs as an unlaw-  
12          ful distribution, act of record piracy, or similar viola-  
13          tion.

14          “(3) RULE OF CONSTRUCTION FOR PUBLIC  
15          PERFORMANCE RIGHTS.—Nothing in this section  
16          shall be construed to recognize or negate the exist-  
17          ence of public performance rights in sound record-  
18          ings under the laws of any State.

19          “(e) LIMITATIONS ON REMEDIES.—

20          “(1) FAIR USE; USES BY LIBRARIES, ARCHIVES,  
21          AND EDUCATIONAL INSTITUTIONS.—The limitations  
22          on the exclusive rights of a copyright owner de-  
23          scribed in sections 107, 108, and 110(1) and (2)  
24          shall apply to a claim under subsection (a) for the  
25          unauthorized performance of a sound recording fixed

1 on or after January 1, 1923, and before February  
2 15, 1972.

3 “(2) ACTIONS.—The limitations on actions de-  
4 scribed in section 507 shall apply to a claim under  
5 subsection (a) for the unauthorized performance of  
6 a sound recording fixed on or after January 1, 1923,  
7 and before February 15, 1972.

8 “(3) MATERIAL ONLINE.—Section 512 shall  
9 apply to a claim under subsection (a) for the unau-  
10 thorized performance of a sound recording fixed on  
11 or after January 1, 1923, and before February 15,  
12 1972.

13 “(4) PRINCIPLES OF EQUITY.—Principles of eq-  
14 uity apply to remedies for a violation of this section  
15 to the same extent as such principles apply to rem-  
16 edies for infringement of copyright.

17 “(5) FILING REQUIREMENT FOR STATUTORY  
18 DAMAGES AND ATTORNEYS’ FEES.—

19 “(A) FILING OF INFORMATION ON SOUND  
20 RECORDINGS.—

21 “(i) FILING REQUIREMENT.—Except  
22 in the case of a transmitting entity that  
23 has filed contact information for that  
24 transmitting entity under subparagraph  
25 (B), in any action under this section, an

1 award of statutory damages or of attor-  
2 neys' fees under section 504 or 505 may  
3 be made with respect to an unauthorized  
4 transmission of a sound recording under  
5 subsection (a) only if—

6 “(I) the rights owner has filed  
7 with the Copyright Office a schedule  
8 that specifies the title, artist, and  
9 rights owner of the sound recording  
10 and contains such other information,  
11 as practicable, as the Register of  
12 Copyrights prescribes by regulation;  
13 and

14 “(II) the transmission is made  
15 after the end of the 90-day period be-  
16 ginning on the date on which the in-  
17 formation filed under subclause (I) is  
18 indexed into the public records of the  
19 Copyright Office.

20 “(ii) REGULATIONS.—The Register of  
21 Copyrights shall, before the end of the  
22 180-day period beginning on the date of  
23 the enactment of this section, issue regula-  
24 tions establishing the form, content, and  
25 procedures for the filing of schedules under

1 clause (i). Such regulations shall provide  
2 that persons may request that they receive  
3 timely notification of such filings, and shall  
4 set forth the manner in which such re-  
5 quests may be made.

6 “(B) FILING OF CONTACT INFORMATION  
7 FOR TRANSMITTING ENTITIES.—

8 “(i) FILING REQUIREMENT.—The  
9 Register of Copyrights shall, before the  
10 end of the 30-day period beginning on the  
11 date of the enactment of this section, issue  
12 regulations establishing the form, content,  
13 and procedures for the filing, by any entity  
14 that, as of the date of the enactment of  
15 this section, performs sound recordings  
16 fixed before February 15, 1972, by means  
17 of digital audio transmissions, of contact  
18 information for such entity.

19 “(ii) TIME LIMIT ON FILINGS.—The  
20 Register of Copyrights may accept filings  
21 under clause (i) only until the 180th day  
22 after the date of the enactment of this sec-  
23 tion.

24 “(iii) LIMITATION ON STATUTORY  
25 DAMAGES AND ATTORNEYS’ FEES.—

1           “(I) LIMITATION.—An award of  
2           statutory damages or of attorneys’  
3           fees under section 504 or 505 may  
4           not be made, against an entity that  
5           has filed contact information for that  
6           entity under clause (i), with respect to  
7           an unauthorized transmission by that  
8           entity of a sound recording under sub-  
9           section (a) if the transmission is made  
10          before the end of the 90-day period  
11          beginning on the date on which the  
12          entity receives a notice that—

13                   “(aa) is sent by or on behalf  
14                   of the rights owner of the sound  
15                   recording;

16                   “(bb) states that the entity  
17                   is not legally authorized to trans-  
18                   mit that sound recording under  
19                   subsection (a); and

20                   “(cc) identifies the sound re-  
21                   cording in a schedule conforming  
22                   to the requirements prescribed by  
23                   the regulations issued under sub-  
24                   paragraph (A)(ii).

1                   “(II) UNDELIVERABLE NO-  
2                   TICES.—In any case in which a notice  
3                   under subclause (I) is sent to an enti-  
4                   ty by mail or courier service and the  
5                   notice is returned to the sender be-  
6                   cause the entity either is no longer lo-  
7                   cated at the address provided in the  
8                   contact information filed under clause  
9                   (i) or has refused to accept delivery,  
10                  or the notice is sent by electronic mail  
11                  and is undeliverable, the 90-day pe-  
12                  riod under subclause (I) shall begin  
13                  on the date of the attempted delivery.

14                  “(C) SECTION 412.—Section 412 shall not  
15                  limit an award of statutory damages under sec-  
16                  tion 504(e) or attorneys’ fees under section 505  
17                  with respect to an unauthorized transmission of  
18                  a sound recording under subsection (a).

19                  “(6) APPLICABILITY OF OTHER PROVISIONS.—

20                  “(A) IN GENERAL.—Subject to subpara-  
21                  graph (B), no provision of this title shall apply  
22                  to or limit the remedies available under this  
23                  section except as otherwise provided in this sec-  
24                  tion.



1                   “(B) APPLICABILITY OF DEFINITIONS.—

2                   Any term used in this section that is defined in  
3                   section 101 shall have the meaning given that  
4                   term in section 101.

5                   “(f) APPLICATION OF SECTION 230 SAFE HAR-  
6 BOR.—For purposes of section 230 of the Communica-  
7 tions Act of 1934 (47 U.S.C. 230), subsection (a) shall  
8 be considered to be a ‘law pertaining to intellectual prop-  
9 erty’ under subsection (e)(2) of such section.

10                  “(g) RIGHTS OWNER DEFINED.—In this section, the  
11 term ‘rights owner’ means the person who has the exclu-  
12 sive right to reproduce a sound recording under the laws  
13 of any State.”.

14                  (b) CONFORMING AMENDMENT.—The table of chap-  
15 ters for title 17, United States Code, is amended by add-  
16 ing at the end the following new chapter:

                  “14. Unauthorized digital performance of pre-1972 sound recordings ... 1401”.

17 **SEC. 203. EFFECTIVE DATE.**

18                  This title and the amendments made by this title  
19 shall take effect on the date of the enactment of this Act.

20                   **TITLE III—ALLOCATION FOR**  
21                   **MUSIC PRODUCERS**

22 **SEC. 301. SHORT TITLE.**

23                  This title may be cited as the “Allocation for Music  
24 Producers Act” or the “AMP Act”.

1 **SEC. 302. PAYMENT OF STATUTORY PERFORMANCE ROYAL-**  
2 **TIES.**

3 (a) LETTER OF DIRECTION.—Section 114(g) of title  
4 17, United States Code, is amended by adding at the end  
5 the following new paragraph:

6 “(5) LETTER OF DIRECTION.—

7 “(A) IN GENERAL.—A nonprofit collective  
8 designated by the Copyright Royalty Judges to  
9 distribute receipts from the licensing of trans-  
10 missions in accordance with subsection (f) shall  
11 adopt and reasonably implement a policy that  
12 provides, in circumstances determined by the  
13 collective to be appropriate, for acceptance of  
14 instructions from an artist payee identified  
15 under subparagraph (A) or (D) of paragraph  
16 (2) to distribute, to a producer, mixer, or sound  
17 engineer who was part of the creative process  
18 that created a sound recording, a portion of the  
19 payments to which the artist payee would other-  
20 wise be entitled from the licensing of trans-  
21 missions of the sound recording. In this section,  
22 such instructions shall be referred to as a ‘letter  
23 of direction’.

24 “(B) ACCEPTANCE OF LETTER.—To the  
25 extent that the collective accepts a letter of di-  
26 rection under subparagraph (A), the person en-

1 titled to payment pursuant to the letter of di-  
2 rection shall, during the period in which the let-  
3 ter of direction is in effect and carried out by  
4 the collective, be treated for all purposes as the  
5 owner of the right to receive such payment, and  
6 the artist payee providing the letter of direction  
7 to the collective shall be treated as having no  
8 interest in such payment.

9 “(C) AUTHORITY OF COLLECTIVE.—This  
10 paragraph shall not be construed in such a  
11 manner so that the collective is not authorized  
12 to accept or act upon payment instructions in  
13 circumstances other than those to which this  
14 paragraph applies.”.

15 (b) ADDITIONAL PROVISIONS FOR RECORDINGS  
16 FIXED BEFORE NOVEMBER 1, 1995.—Section 114(g) of  
17 title 17, United States Code, as amended by subsection  
18 (a), is further amended by adding at the end the following  
19 new paragraph:

20 “(6) SOUND RECORDINGS FIXED BEFORE NO-  
21 VEMBER 1, 1995.—

22 “(A) PAYMENT ABSENT LETTER OF DI-  
23 RECTION.—A nonprofit collective designated by  
24 the Copyright Royalty Judges to distribute re-  
25 cepts from the licensing of transmissions in ac-

1 cordance with subsection (f) (in this paragraph  
2 referred to as the ‘collective’) shall adopt and  
3 reasonably implement a policy that provides, in  
4 circumstances determined by the collective to be  
5 appropriate, for the deduction of 2 percent of  
6 all the receipts that are collected from the li-  
7 censing of transmissions of a sound recording  
8 fixed before November 1, 1995, but which is  
9 withdrawn from the amount otherwise payable  
10 under paragraph (2)(D) to the recording artist  
11 or artists featured on the sound recording (or  
12 the persons conveying rights in the artists’ per-  
13 formance in the sound recording), and the dis-  
14 tribution of such amount to one or more per-  
15 sons described in subparagraph (B), after de-  
16 duction of costs described in paragraph (3) or  
17 (4), as applicable, if each of the following re-  
18 quirements is met:

19 “(i) CERTIFICATION OF ATTEMPT TO  
20 OBTAIN A LETTER OF DIRECTION.—The  
21 person described in subparagraph (B) who  
22 is to receive the distribution has certified  
23 to the collective, under penalty of perjury,  
24 that—

1           “(I) for a period of at least 4  
2           months, that person made reasonable  
3           efforts to contact the artist payee for  
4           such sound recording to request and  
5           obtain a letter of direction instructing  
6           the collective to pay to that person a  
7           portion of the royalties payable to the  
8           featured recording artist or artists;  
9           and

10           “(II) during the period beginning  
11           on the date that person began the rea-  
12           sonable efforts described in subclause  
13           (I) and ending on the date of that  
14           person’s certification to the collective,  
15           the artist payee did not affirm or  
16           deny in writing the request for a let-  
17           ter of direction.

18           “(ii) COLLECTIVE ATTEMPT TO CON-  
19           TACT ARTIST.—After receipt of the certifi-  
20           cation described in clause (i) and for a pe-  
21           riod of at least 4 months before the collec-  
22           tive’s first distribution to the person de-  
23           scribed in subparagraph (B), the collective  
24           attempted, in a reasonable manner as de-  
25           termined by the collective, to notify the

1 artist payee of the certification made by  
2 the person described in subparagraph (B).

3 “(iii) NO OBJECTION RECEIVED.—The  
4 artist payee did not, as of the date that is  
5 10 business days before the date on which  
6 the first distribution is made, submit to  
7 the collective in writing an objection to the  
8 distribution.

9 “(B) ELIGIBILITY FOR PAYMENT.—A per-  
10 son shall be eligible for payment under subpara-  
11 graph (A) if the person—

12 “(i) is a producer, mixer, or sound en-  
13 gineer of the sound recording;

14 “(ii) has entered into a written con-  
15 tract with a record company involved in  
16 the creation or lawful exploitation of the  
17 sound recording, or with the recording art-  
18 ist or artists featured on the sound record-  
19 ing (or the persons conveying rights in the  
20 artists’ performance in the sound record-  
21 ing), under which the person seeking pay-  
22 ment is entitled to participate in royalty  
23 payments that are based on the exploi-  
24 tation of the sound recording and are pay-  
25 able from royalties otherwise payable to

1 the recording artist or artists featured on  
2 the sound recording (or the persons con-  
3 veying rights in the artists' performance in  
4 the sound recording);

5 “(iii) made a creative contribution to  
6 the creation of the sound recording; and

7 “(iv) submits a written certification to  
8 the collective stating, under penalty of per-  
9 jury, that the person meets the require-  
10 ments in clauses (i) through (iii) and in-  
11 cludes a true copy of the contract de-  
12 scribed in clause (ii).

13 “(C) MULTIPLE CERTIFICATIONS.—Sub-  
14 ject to subparagraph (D), in a case in which  
15 more than one person described in subpara-  
16 graph (B) has met the requirements for a dis-  
17 tribution under subparagraph (A) with respect  
18 to a sound recording as of the date that is 10  
19 business days before the date on which a dis-  
20 tribution is made, the collective shall divide the  
21 2 percent distribution equally among all such  
22 persons.

23 “(D) OBJECTION TO PAYMENT.—Not later  
24 than 10 business days after the date on which  
25 the collective receives from the artist payee a

1 written objection to a distribution made pursu-  
2 ant to subparagraph (A), the collective shall  
3 cease making any further payment relating to  
4 such distribution. In any case in which the col-  
5 lective has made one or more distributions pur-  
6 suant to subparagraph (A) to a person de-  
7 scribed in subparagraph (B) before the date  
8 that is 10 business days after the date on which  
9 the collective receives from the artist payee an  
10 objection to such distribution, the objection  
11 shall not affect that person's entitlement to any  
12 distribution made before the collective ceases  
13 such distribution under this subparagraph.

14 “(E) OWNERSHIP OF THE RIGHT TO RE-  
15 CEIVE PAYMENTS.—To the extent that the col-  
16 lective determines that a distribution will be  
17 made under subparagraph (A) to a person de-  
18 scribed in subparagraph (B), such person shall,  
19 during the period covered by such distribution,  
20 be treated for all purposes as the owner of the  
21 right to receive such payments, and the artist  
22 payee to whom such payments would otherwise  
23 be payable shall be treated as having no inter-  
24 est in such payments.



1           “(F) ARTIST PAYEE DEFINED.—In this  
2 paragraph, the term ‘artist payee’ means a per-  
3 son, other than a person described in subpara-  
4 graph (B), who owns the right to receive all or  
5 part of the receipts payable under paragraph  
6 (2)(D) with respect to a sound recording. In a  
7 case in which there are multiple artist payees  
8 with respect to a sound recording, an objection  
9 by one such payee shall apply only to that pay-  
10 ee’s share of the receipts payable under para-  
11 graph (2)(D), and does not preclude payment  
12 under subparagraph (A) from the share of an  
13 artist payee that does not so object.”.

14           (c) TECHNICAL AND CONFORMING AMENDMENTS.—  
15 Section 114(g) of title 17, United States Code, as amend-  
16 ed by subsections (a) and (b), is further amended—

17           (1) in paragraph (2), by striking “An agent  
18 designated” and inserting “Except as provided for in  
19 paragraph (6), a nonprofit collective designated by  
20 the Copyright Royalty Judges”;

21           (2) in paragraph (3)—

22           (A) by striking “nonprofit agent des-  
23 igned” and inserting “nonprofit collective des-  
24 igned by the Copyright Royalty Judges”;

1 (B) by striking “another designated agent”  
2 and inserting “another designated nonprofit col-  
3 lective”; and

4 (C) by striking “agent” and inserting “col-  
5 lective” each subsequent place it appears;

6 (3) in paragraph (4)—

7 (A) by striking “designated agent” and in-  
8 serting “nonprofit collective”; and

9 (B) by striking “agent” and inserting “col-  
10 lective” each subsequent place it appears; and

11 (4) by adding at the end the following new  
12 paragraph:

13 “(7) PREEMPTION OF STATE PROPERTY  
14 LAWS.—The holding and distribution of receipts  
15 under section 112 and this section by a nonprofit  
16 collective designated by the Copyright Royalty  
17 Judges in accordance with this subsection and regu-  
18 lations adopted by the Copyright Royalty Judges  
19 shall supersede and preempt any State law (includ-  
20 ing common law) concerning escheatment or aban-  
21 doned property, or any analogous provision, that  
22 might otherwise apply.”.

1 **SEC. 303. EFFECTIVE DATE.**

2 (a) IN GENERAL.—Except as provided in subsection  
3 (b), this title and the amendments made by this title shall  
4 take effect on the date of the enactment of this Act.

5 (b) DELAYED EFFECTIVE DATE.—The effective date  
6 for paragraphs (5)(B) and (6)(E) of section 114(g) of title  
7 17, United States Code, as added by section 302, shall  
8 be January 1, 2020.