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(Original Signature of Member)

115TH CONGRESS  
2D SESSION

# H. R.

To modernize copyright law, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

M. . . . . introduced the following bill; which was referred to the  
Committee on . . . . .

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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”.

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

Sec. 1. Short title; table of contents.

### 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.

1           **TITLE I—MUSIC LICENSING**  
2                           **MODERNIZATION**

3   **SEC. 101. SHORT TITLE.**

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

6   **SEC. 102. BLANKET LICENSE FOR DIGITAL USES AND ME-**  
7                           **CHANICAL LICENSING COLLECTIVE.**

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

10                   (1) in subsection (a)—

11                           (A) by inserting “IN GENERAL” after  
12                   “AVAILABILITY AND SCOPE OF COMPULSORY  
13                   LICENSE”;

14                           (B) by striking paragraph (1) and insert-  
15                   ing the following new paragraph:

16                   “(1) ELIGIBILITY FOR COMPULSORY LI-  
17                   CENSE.—

18                           “(A) CONDITIONS FOR COMPULSORY LI-  
19                   CENSE.—A person may by complying with the

1 provisions of this section obtain a compulsory li-  
2 cense to make and distribute phonorecords of a  
3 nondramatic musical work, including by means  
4 of digital phonorecord delivery. A person may  
5 obtain a compulsory license only if the primary  
6 purpose in making phonorecords of the musical  
7 work is to distribute them to the public for pri-  
8 vate use, including by means of digital phono-  
9 record delivery, and—

10 “(i) phonorecords of such musical  
11 work have previously been distributed to  
12 the public in the United States under the  
13 authority of the copyright owner of the  
14 work, including by means of digital phono-  
15 record delivery; or

16 “(ii) in the case of a digital music  
17 provider seeking to make and distribute  
18 digital phonorecord deliveries of a sound  
19 recording embodying a musical work under  
20 a compulsory license for which clause (i)  
21 does not apply—

22 “(I) the first fixation of such  
23 sound recording was made under the  
24 authority of the musical work copy-  
25 right owner, and sound recording

1 copyright owner has the authority of  
2 the musical work copyright owner to  
3 make and distribute digital phono-  
4 record deliveries embodying such work  
5 to the public in the United States;  
6 and

7 “(II) the sound recording copy-  
8 right owner or its authorized dis-  
9 tributor has authorized the digital  
10 music provider to make and distribute  
11 digital phonorecord deliveries of the  
12 sound recording to the public in the  
13 United States.

14 “(B) DUPLICATION OF SOUND RECORD-  
15 ING.—A person may not obtain a compulsory li-  
16 cense for the use of the work in the making of  
17 phonorecords duplicating a sound recording  
18 fixed by another, including by means of digital  
19 phonorecord delivery, unless—

20 “(i) such sound recording was fixed  
21 lawfully; and

22 “(ii) the making of the phonorecords  
23 was authorized by the owner of the copy-  
24 right in the sound recording or, if the  
25 sound recording was fixed before February

1           15, 1972, by any person who fixed the  
2           sound recording pursuant to an express li-  
3           cense from the owner of the copyright in  
4           the musical work or pursuant to a valid  
5           compulsory license for use of such work in  
6           a sound recording.”; and

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

10          (2) by striking subsection (b) and inserting the  
11          following:

12          “(b) PROCEDURES TO OBTAIN A COMPULSORY LI-  
13          CENSE.—

14                 “(1) PHONORECORDS OTHER THAN DIGITAL  
15          PHONORECORD DELIVERIES.—A person who seeks to  
16          obtain a compulsory license under subsection (a) to  
17          make and distribute phonorecords of a musical work  
18          other than by means of digital phonorecord delivery  
19          shall, before or within 30 calendar days after mak-  
20          ing, and before distributing, any phonorecord of the  
21          work, serve notice of intention to do so on the copy-  
22          right owner. If the registration or other public  
23          records of the Copyright Office do not identify the  
24          copyright owner and include an address at which no-  
25          tice can be served, it shall be sufficient to file the

1 notice of intention with the Copyright Office. The  
2 notice shall comply, in form, content, and manner of  
3 service, with requirements that the Register of Copy-  
4 rights shall prescribe by regulation.

5 “(2) DIGITAL PHONORECORD DELIVERIES.—A  
6 person who seeks to obtain a compulsory license  
7 under subsection (a) to make and distribute  
8 phonorecords of a musical work by means of digital  
9 phonorecord delivery—

10 “(A) prior to the license availability date,  
11 shall, before or within 30 calendar days after  
12 first making any such digital phonorecord deliv-  
13 ery, serve a notice of intention to do so on the  
14 copyright owner (but may not file the notice  
15 with the Copyright Office, even if the public  
16 records of the Office do not identify the owner  
17 or the owner’s address), and such notice shall  
18 comply, in form, content, and manner of serv-  
19 ice, with requirements that the Register of  
20 Copyrights shall prescribe by regulation; or

21 “(B) on or after the license availability  
22 date, shall, before making any such digital pho-  
23 norecord delivery, follow the procedure de-  
24 scribed in subsection (d)(2), except as provided  
25 in paragraph (3).

1           “(3) RECORD COMPANY INDIVIDUAL DOWNLOAD  
2           LICENSES.—Notwithstanding paragraph (2)(B), a  
3           record company may, on or after the license avail-  
4           ability date, obtain an individual download license in  
5           accordance with the notice requirements described in  
6           paragraph (2)(A) (except for the requirement that  
7           notice occur prior to the license availability date). A  
8           record company that obtains an individual download  
9           license as permitted under this paragraph shall pro-  
10          vide statements of account and pay royalties as pro-  
11          vided in subsection (c)(2)(I).

12           “(4) FAILURE TO OBTAIN LICENSE.—

13           “(A) PHONORECORDS OTHER THAN DIG-  
14           ITAL PHONORECORD DELIVERIES.—In the case  
15           of phonorecords made and distributed other  
16           than by means of digital phonorecord delivery,  
17           the failure to serve or file the notice of inten-  
18           tion required by paragraph (1) forecloses the  
19           possibility of a compulsory license under para-  
20           graph (1). In the absence of a voluntary license,  
21           the failure to obtain a compulsory license ren-  
22           ders the making and distribution of  
23           phonorecords actionable as acts of infringement  
24           under section 501 and subject to the remedies  
25           provided by sections 502 through 506.

1                   “(B) DIGITAL PHONORECORD DELIV-  
2                   ERIES.—

3                   “(i) In the case of phonorecords made  
4                   and distributed by means of digital phono-  
5                   record delivery:

6                   “(I) The failure to serve the no-  
7                   tice of intention required by para-  
8                   graph (2)(A) or paragraph (3), as ap-  
9                   plicable, forecloses the possibility of a  
10                  compulsory license under such para-  
11                  graph.

12                  “(II) The failure to comply with  
13                  paragraph (2)(B) forecloses the possi-  
14                  bility of a blanket license for a period  
15                  of 3 years after the last calendar day  
16                  on which the notice of license was re-  
17                  quired to be submitted to the mechan-  
18                  ical licensing collective under such  
19                  paragraph.

20                  “(ii) In either case described in clause  
21                  (i), in the absence of a voluntary license,  
22                  the failure to obtain a compulsory license  
23                  renders the making and distribution of  
24                  phonorecords by means of digital phono-  
25                  record delivery actionable as acts of in-



1 fringement under section 501 and subject  
2 to the remedies provided by sections 502  
3 through 506.”;

4 (3) by amending subsection (c) to read as fol-  
5 lows:

6 “(c) GENERAL CONDITIONS APPLICABLE TO COM-  
7 PULSORY LICENSE.—

8 “(1) ROYALTY PAYABLE UNDER COMPULSORY  
9 LICENSE.—

10 “(A) IDENTIFICATION REQUIREMENT.—To  
11 be entitled to receive royalties under a compul-  
12 sory license obtained under subsection (b)(1)  
13 the copyright owner must be identified in the  
14 registration or other public records of the Copy-  
15 right Office. The owner is entitled to royalties  
16 for phonorecords made and distributed after  
17 being so identified, but is not entitled to recover  
18 for any phonorecords previously made and dis-  
19 tributed.

20 “(B) ROYALTY FOR PHONORECORDS  
21 OTHER THAN DIGITAL PHONORECORD DELIV-  
22 ERIES.—Except as provided by subparagraph  
23 (A), for every phonorecord made and distrib-  
24 uted under a compulsory license under sub-  
25 section (a) other than by means of digital pho-

1           norecord delivery, with respect to each work  
2           embodied in the phonorecord, the royalty shall  
3           be the royalty prescribed under subparagraphs  
4           (D) through (F) and paragraph (2)(A) and  
5           chapter 8 of this title. For purposes of this sub-  
6           paragraph, a phonorecord is considered ‘distrib-  
7           uted’ if the person exercising the compulsory li-  
8           cense has voluntarily and permanently parted  
9           with its possession.

10           “(C) ROYALTY FOR DIGITAL PHONO-  
11           RECORD DELIVERIES.—For every digital phono-  
12           record delivery of a musical work made under  
13           a compulsory license under this section, the roy-  
14           alty payable shall be the royalty prescribed  
15           under subparagraphs (D) through (F) and  
16           paragraph (2)(A) and chapter 8 of this title.

17           “(D) AUTHORITY TO NEGOTIATE.—Not-  
18           withstanding any provision of the antitrust  
19           laws, any copyright owners of nondramatic mu-  
20           sical works and any persons entitled to obtain  
21           a compulsory license under subsection (a) may  
22           negotiate and agree upon the terms and rates  
23           of royalty payments under this section and the  
24           proportionate division of fees paid among copy-  
25           right owners, and may designate common

1 agents on a nonexclusive basis to negotiate,  
2 agree to, pay or receive such royalty payments.  
3 Such authority to negotiate the terms and rates  
4 of royalty payments includes, but is not limited  
5 to, the authority to negotiate the year during  
6 which the royalty rates prescribed under this  
7 subparagraph and subparagraphs (E) and (F)  
8 and paragraph (2)(A) and chapter 8 of this  
9 title shall next be determined.

10 “(E) DETERMINATION OF REASONABLE  
11 RATES AND TERMS.—Proceedings under chap-  
12 ter 8 shall determine reasonable rates and  
13 terms of royalty payments for the activities  
14 specified by this section during the period be-  
15 ginning with the effective date of such rates  
16 and terms, but not earlier than January 1 of  
17 the second year following the year in which the  
18 petition requesting the proceeding is filed, and  
19 ending on the effective date of successor rates  
20 and terms, or such other period as the parties  
21 may agree. Any copyright owners of nondra-  
22 matic musical works and any persons entitled  
23 to obtain a compulsory license under subsection  
24 (a) may submit to the Copyright Royalty  
25 Judges licenses covering such activities. The

1 parties to each proceeding shall bear their own  
2 costs.

3 “(F) SCHEDULE OF REASONABLE  
4 RATES.—The schedule of reasonable rates and  
5 terms determined by the Copyright Royalty  
6 Judges shall, subject to paragraph (2)(A), be  
7 binding on all copyright owners of nondramatic  
8 musical works and persons entitled to obtain a  
9 compulsory license under subsection (a) during  
10 the period specified in subparagraph (E), such  
11 other period as may be determined pursuant to  
12 subparagraphs (D) and (E), or such other pe-  
13 riod as the parties may agree. The Copyright  
14 Royalty Judges shall establish rates and terms  
15 that most clearly represent the rates and terms  
16 that would have been negotiated in the market-  
17 place between a willing buyer and a willing sell-  
18 er. In determining such rates and terms for dig-  
19 ital phonorecord deliveries, the Copyright Roy-  
20 alty Judges shall base their decision on eco-  
21 nomic, competitive, and programming informa-  
22 tion presented by the parties, including—

23 “(i) whether use of the compulsory li-  
24 censee’s service may substitute for or may  
25 promote the sales of phonorecords or oth-

1           erwise may interfere with or may enhance  
2           the musical work copyright owner’s other  
3           streams of revenue from its musical works;  
4           and

5                   “(ii) the relative roles of the copyright  
6           owner and the compulsory licensee in the  
7           copyrighted work and the service made  
8           available to the public with respect to the  
9           relative creative contribution, technological  
10          contribution, capital investment, cost, and  
11          risk.

12          “(2) ADDITIONAL TERMS AND CONDITIONS.—

13                   “(A) VOLUNTARY LICENSES AND CON-  
14          TRACTUAL ROYALTY RATES.—

15                   “(i) License agreements voluntarily  
16          negotiated at any time between one or  
17          more copyright owners of nondramatic mu-  
18          sical works and one or more persons enti-  
19          tled to obtain a compulsory license under  
20          subsection (a) shall be given effect in lieu  
21          of any determination by the Copyright  
22          Royalty Judges. Subject to clause (ii), the  
23          royalty rates determined pursuant to sub-  
24          paragraphs (E) and (F) of paragraph (1)  
25          shall be given effect as to digital phono-

1 record deliveries in lieu of any contrary  
2 royalty rates specified in a contract pursu-  
3 ant to which a recording artist who is the  
4 author of a nondramatic musical work  
5 grants a license under that person's exclu-  
6 sive rights in the musical work under para-  
7 graphs (1) and (3) of section 106 or com-  
8 mits another person to grant a license in  
9 that musical work under paragraphs (1)  
10 and (3) of section 106, to a person desir-  
11 ing to fix in a tangible medium of expres-  
12 sion a sound recording embodying the mu-  
13 sical work.

14 “(ii) The second sentence of clause (i)  
15 shall not apply to—

16 “(I) a contract entered into on or  
17 before June 22, 1995, and not modi-  
18 fied thereafter for the purpose of re-  
19 ducing the royalty rates determined  
20 pursuant to subparagraphs (E) and  
21 (F) of paragraph (1) or of increasing  
22 the number of musical works within  
23 the scope of the contract covered by  
24 the reduced rates, except if a contract  
25 entered into on or before June 22,

1 1995, is modified thereafter for the  
2 purpose of increasing the number of  
3 musical works within the scope of the  
4 contract, any contrary royalty rates  
5 specified in the contract shall be given  
6 effect in lieu of royalty rates deter-  
7 mined pursuant to subparagraphs (E)  
8 and (F) of paragraph (1) for the  
9 number of musical works within the  
10 scope of the contract as of June 22,  
11 1995; and

12 “(II) a contract entered into  
13 after the date that the sound record-  
14 ing is fixed in a tangible medium of  
15 expression substantially in a form in-  
16 tended for commercial release, if at  
17 the time the contract is entered into,  
18 the recording artist retains the right  
19 to grant licenses as to the musical  
20 work under paragraphs (1) and (3) of  
21 section 106.

22 “(B) SOUND RECORDING INFORMATION.—  
23 Except as provided in section 1002(e) of this  
24 title, a digital phonorecord delivery licensed  
25 under this paragraph shall be accompanied by

1 the information encoded in the sound recording,  
2 if any, by or under the authority of the copy-  
3 right owner of that sound recording, that iden-  
4 tifies the title of the sound recording, the fea-  
5 tured recording artist who performs on the  
6 sound recording, and related information, in-  
7 cluding information concerning the underlying  
8 musical work and its writer.

9 “(C) INFRINGEMENT REMEDIES.—

10 “(i) A digital phonorecord delivery of  
11 a sound recording is actionable as an act  
12 of infringement under section 501, and is  
13 fully subject to the remedies provided by  
14 sections 502 through 506, unless—

15 “(I) the digital phonorecord de-  
16 livery has been authorized by the  
17 sound recording copyright owner; and

18 “(II) the entity making the dig-  
19 ital phonorecord delivery has obtained  
20 a compulsory license under subsection  
21 (a) or has otherwise been authorized  
22 by the musical work copyright owner,  
23 or by a record company pursuant to  
24 an individual download license, to  
25 make and distribute phonorecords of



1           each musical work embodied in the  
2           sound recording by means of digital  
3           phonorecord delivery.

4           “(ii) Any cause of action under this  
5           subparagraph shall be in addition to those  
6           available to the owner of the copyright in  
7           the nondramatic musical work under sub-  
8           paragraph (J) and section 106(4) and the  
9           owner of the copyright in the sound record-  
10          ing under section 106(6).

11          “(D) LIABILITY OF SOUND RECORDING  
12          OWNERS.—The liability of the copyright owner  
13          of a sound recording for infringement of the  
14          copyright in a nondramatic musical work em-  
15          bodied in the sound recording shall be deter-  
16          mined in accordance with applicable law, except  
17          that the owner of a copyright in a sound re-  
18          cording shall not be liable for a digital phono-  
19          record delivery by a third party if the owner of  
20          the copyright in the sound recording does not  
21          license the distribution of a phonorecord of the  
22          nondramatic musical work.

23          “(E) RECORDING DEVICES AND MEDIA.—  
24          Nothing in section 1008 shall be construed to  
25          prevent the exercise of the rights and remedies

1 allowed by this paragraph, subparagraph (J),  
2 and chapter 5 in the event of a digital phono-  
3 record delivery, except that no action alleging  
4 infringement of copyright may be brought  
5 under this title against a manufacturer, im-  
6 porter or distributor of a digital audio recording  
7 device, a digital audio recording medium, an  
8 analog recording device, or an analog recording  
9 medium, or against a consumer, based on the  
10 actions described in such section.

11 “(F) PRESERVATION OF RIGHTS.—Noth-  
12 ing in this section annuls or limits (i) the exclu-  
13 sive right to publicly perform a sound recording  
14 or the musical work embodied therein, including  
15 by means of a digital transmission, under sec-  
16 tions 106(4) and 106(6), (ii) except for compul-  
17 sory licensing under the conditions specified by  
18 this section, the exclusive rights to reproduce  
19 and distribute the sound recording and the mu-  
20 sical work embodied therein under sections  
21 106(1) and 106(3), including by means of a  
22 digital phonorecord delivery, or (iii) any other  
23 rights under any other provision of section 106,  
24 or remedies available under this title, as such  
25 rights or remedies exist either before or after

1 the date of enactment of the Digital Perform-  
2 ance Right in Sound Recordings Act of 1995.

3 “(G) EXEMPT TRANSMISSIONS AND RE-  
4 TRANSMISSIONS.—The provisions of this section  
5 concerning digital phonorecord deliveries shall  
6 not apply to any exempt transmissions or re-  
7 transmissions under section 114(d)(1). The ex-  
8 emptions created in section 114(d)(1) do not  
9 expand or reduce the rights of copyright owners  
10 under section 106(1) through (5) with respect  
11 to such transmissions and retransmissions.

12 “(H) DISTRIBUTION BY RENTAL, LEASE,  
13 OR LENDING.—A compulsory license obtained  
14 under subsection (b)(1) to make and distribute  
15 phonorecords includes the right of the maker of  
16 such a phonorecord to distribute or authorize  
17 distribution of such phonorecord, other than by  
18 means of a digital phonorecord delivery, by  
19 rental, lease, or lending (or by acts or practices  
20 in the nature of rental, lease, or lending). With  
21 respect to each nondramatic musical work em-  
22 bodied in the phonorecord, the royalty shall be  
23 a proportion of the revenue received by the  
24 compulsory licensee from every such act of dis-  
25 tribution of the phonorecord under this clause

1 equal to the proportion of the revenue received  
2 by the compulsory licensee from distribution of  
3 the phonorecord under subsection  
4 (a)(1)(A)(ii)(II) that is payable by a compulsory  
5 licensee under that clause and under chapter 8.  
6 The Register of Copyrights shall issue regula-  
7 tions to carry out the purpose of this clause.

8 “(I) PAYMENT OF ROYALTIES AND STATE-  
9 MENTS OF ACCOUNT.—Except as provided in  
10 paragraphs (4)(A)(i) and (10)(B) of subsection  
11 (d), royalty payments shall be made on or be-  
12 fore the twentieth day of each month and shall  
13 include all royalties for the month next pre-  
14 ceeding. Each monthly payment shall be made  
15 under oath and shall comply with requirements  
16 that the Register of Copyrights shall prescribe  
17 by regulation. The Register shall also prescribe  
18 regulations under which detailed cumulative an-  
19 nual statements of account, certified by a cer-  
20 tified public accountant, shall be filed for every  
21 compulsory license under subsection (a). The  
22 regulations covering both the monthly and the  
23 annual statements of account shall prescribe  
24 the form, content, and manner of certification

1 with respect to the number of records made and  
2 the number of records distributed.

3 “(J) NOTICE OF DEFAULT AND TERMINATION OF COMPULSORY LICENSE.—In the  
4 case of a license obtained under subsection  
5 (b)(1), (b)(2)(A), or (b)(3), if the copyright  
6 owner does not receive the monthly payment  
7 and the monthly and annual statements of ac-  
8 count when due, the owner may give written no-  
9 tice to the licensee that, unless the default is  
10 remedied within thirty days from the date of  
11 the notice, the compulsory license will be auto-  
12 matically terminated. Such termination renders  
13 either the making or the distribution, or both,  
14 of all phonorecords for which the royalty has  
15 not been paid, actionable as acts of infringe-  
16 ment under section 501 and fully subject to the  
17 remedies provided by sections 502 through 506.  
18 In the case of a license obtained under sub-  
19 section (b)(2)(B), license authority under the  
20 compulsory license may be terminated as pro-  
21 vided in subsection (d)(4)(E).”.

22 (4) by amending subsection (d) to read as fol-  
23 lows:  
24

1       “(d) BLANKET LICENSE FOR DIGITAL USES, ME-  
2 CHANICAL LICENSING COLLECTIVE, AND DIGITAL LI-  
3 CENSEE COORDINATOR.—

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

5               “(A) IN GENERAL.—A digital music pro-  
6 vider that qualifies for a compulsory license  
7 under subsection (a) may, by complying with  
8 the terms and conditions of this subsection, ob-  
9 tain a blanket license from copyright owners  
10 through the mechanical licensing collective to  
11 make and distribute digital phonorecord deliv-  
12 eries of musical works through one or more cov-  
13 ered activities.

14               “(B) INCLUDED ACTIVITIES.—A blanket li-  
15 cense—

16                   “(i) covers all musical works (or  
17 shares of such works) available for compul-  
18 sory licensing under this section for pur-  
19 poses of engaging in covered activities, ex-  
20 cept as provided in subparagraph (C);

21                   “(ii) includes the making and dis-  
22 tribution of server, intermediate, archival,  
23 and incidental reproductions of musical  
24 works that are reasonable and necessary  
25 for the digital music provider to engage in

1 covered activities licensed under this sub-  
2 section, solely for the purpose of engaging  
3 in such covered activities; and

4 “(iii) does not cover or include any  
5 rights or uses other than those described  
6 in clauses (i) and (ii).

7 “(C) OTHER LICENSES.—A voluntary li-  
8 cense for covered activities entered into by or  
9 under the authority of one or more copyright  
10 owners and one or more digital music providers,  
11 or authority to make and distribute permanent  
12 downloads of a musical work obtained by a dig-  
13 ital music provider from a sound recording  
14 copyright owner pursuant to an individual  
15 download license, shall be given effect in lieu of  
16 a blanket license under this subsection with re-  
17 spect to the musical works (or shares thereof)  
18 covered by such voluntary license or individual  
19 download authority and the following conditions  
20 apply:

21 “(i) Where a voluntary license or indi-  
22 vidual download license applies, the license  
23 authority provided under the blanket li-  
24 cense shall exclude any musical works (or

1 shares thereof) subject to the voluntary li-  
2 cense or individual download license.

3 “(ii) An entity engaged in covered ac-  
4 tivities under a voluntary license or author-  
5 ity obtained pursuant to an individual  
6 download license that is a significant non-  
7 blanket licensee shall comply with para-  
8 graph (6)(A).

9 “(iii) The rates and terms of any vol-  
10 untary license shall be subject to the sec-  
11 ond sentence of clause (i) and clause (ii) of  
12 subsection (c)(2)(A) and paragraph (9)(C),  
13 as applicable.

14 “(D) PROTECTION AGAINST INFRINGE-  
15 MENT ACTIONS.—A digital music provider that  
16 obtains and complies with the terms of a valid  
17 blanket license under this subsection shall not  
18 be subject to an action for infringement of the  
19 exclusive rights provided by paragraphs (1) and  
20 (3) of section 106 under this title arising from  
21 use of a musical work (or share thereof) to en-  
22 gage in covered activities authorized by such li-  
23 cense, subject to paragraph (4)(E).

24 “(E) OTHER REQUIREMENTS AND CONDI-  
25 TIONS APPLY.—Except as expressly provided in



1           this subsection, each requirement, limitation,  
2           condition, privilege, right, and remedy otherwise  
3           applicable to compulsory licenses under this sec-  
4           tion shall apply to compulsory blanket licenses  
5           under this subsection.

6           “(2) AVAILABILITY OF BLANKET LICENSE.—

7                   “(A) PROCEDURE FOR OBTAINING LI-  
8           CENSE.—A digital music provider may obtain a  
9           blanket license by submitting a notice of license  
10          to the mechanical licensing collective that speci-  
11          fies the particular covered activities in which  
12          the digital music provider seeks to engage, as  
13          follows:

14                   “(i) The notice of license shall comply  
15           in form and substance with requirements  
16           that the Register of Copyrights shall estab-  
17           lish by regulation.

18                   “(ii) Unless rejected in writing by the  
19           mechanical licensing collective within 30  
20           calendar days after receipt, the blanket li-  
21           cense shall be effective as of the date the  
22           notice of license was sent by the digital  
23           music provider as shown by a physical or  
24           electronic record.

1                   “(iii) A notice of license may only be  
2                   rejected by the mechanical licensing collec-  
3                   tive if—

4                                 “(I) the digital music provider or  
5                                 notice of license does not meet the re-  
6                                 quirements of this section or applica-  
7                                 ble regulations, in which case the re-  
8                                 quirements at issue shall be specified  
9                                 with reasonable particularity in the  
10                                notice of rejection, or

11                               “(II) the digital music provider  
12                               has had a blanket license terminated  
13                               by the mechanical licensing collective  
14                               within the past 3 years pursuant to  
15                               paragraph (4)(E).

16                               “(iv) If a notice of license is rejected  
17                               under clause (iii)(I), the digital music pro-  
18                               vider shall have 30 calendar days after re-  
19                               ceipt of the notice of rejection to cure any  
20                               deficiency and submit an amended notice  
21                               of license to the mechanical licensing col-  
22                               lective. If the deficiency has been cured,  
23                               the mechanical licensing collective shall so  
24                               confirm in writing, and the license shall be  
25                               effective as of the date that the original

1 notice of license was provided by the dig-  
2 ital music provider.

3 “(v) A digital music provider that be-  
4 lieves a notice of license was improperly re-  
5 jected by the mechanical licensing collec-  
6 tive may seek review of such rejection in  
7 Federal district court. The district court  
8 shall determine the matter de novo based  
9 on the record before the mechanical licens-  
10 ing collective and any additional evidence  
11 presented by the parties.

12 “(B) BLANKET LICENSE EFFECTIVE  
13 DATE.—Blanket licenses shall be made available  
14 by the mechanical licensing collective on and  
15 after the license availability date. No such li-  
16 cense shall be effective prior to the license avail-  
17 ability date.

18 “(3) MECHANICAL LICENSING COLLECTIVE.—

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

21 “(i) is a nonprofit, not owned by any  
22 other entity, that is created by copyright  
23 owners to carry out responsibilities under  
24 this subsection;

1           “(ii) is endorsed by and enjoys sub-  
2           stantial support from musical work copy-  
3           right owners that together represent the  
4           greatest percentage of the licensor market  
5           for uses of such works in covered activities,  
6           as measured over the preceding 3 full cal-  
7           endar years;

8           “(iii) is able to demonstrate to the  
9           Register of Copyrights that it has, or will  
10          have prior to the license availability date,  
11          the administrative and technological capa-  
12          bilities to perform the required functions of  
13          the mechanical licensing collective under  
14          this subsection; and

15          “(iv) has been designated by the Reg-  
16          ister of Copyrights in accordance with sub-  
17          paragraph (B).

18          “(B) DESIGNATION OF MECHANICAL LI-  
19          CENSING COLLECTIVE.—

20          “(i) INITIAL DESIGNATION.—The  
21          Register of Copyrights shall initially des-  
22          ignate the mechanical licensing collective  
23          within 9 months after the enactment date  
24          as follows:

1           “(I) Within 90 calendar days  
2           after the enactment date, the Register  
3           shall publish notice in the Federal  
4           Register soliciting information to as-  
5           sist in identifying the appropriate en-  
6           tity to serve as the mechanical licens-  
7           ing collective, including the name and  
8           affiliation of each member of the  
9           board of directors described under  
10          subparagraph (D)(i) and each com-  
11          mittee established pursuant to clauses  
12          (iii), (iv), and (v) of subparagraph  
13          (D).

14           “(II) After reviewing the infor-  
15          mation requested under subclause (I)  
16          and making a designation, the Reg-  
17          ister shall publish notice in the Fed-  
18          eral Register setting forth the identity  
19          of and contact information for the me-  
20          chanical licensing collective.

21           “(ii) PERIODIC REVIEW OF DESIGNA-  
22          TION.—Following the initial designation of  
23          the mechanical licensing collective, the  
24          Register shall, every 5 years, beginning  
25          with the fifth full calendar year to com-

1 mence after the initial designation, publish  
2 notice in the Federal Register in the  
3 month of January soliciting information  
4 concerning whether the existing designa-  
5 tion should be continued, or a different en-  
6 tity meeting the criteria described in  
7 clauses (i) through (iii) of subparagraph  
8 (A) shall be designated. Following publica-  
9 tion of such notice:

10 “(I) The Register shall, after re-  
11 viewing the information submitted and  
12 conducting additional proceedings as  
13 appropriate, publish notice in the Fed-  
14 eral Register of a continuing designa-  
15 tion or new designation of the me-  
16 chanical licensing collective, as the  
17 case may be, with any new designa-  
18 tion to be effective as of the first day  
19 of a month that is no less than 6  
20 months and no longer than 9 months  
21 after the date of publication of such  
22 notice, as specified by the Register.

23 “(II) If a new entity is des-  
24 ignated as a mechanical licensing col-  
25 lective, the Register shall adopt regu-

1                   lations to govern the transfer of li-  
2                   censes, funds, records, data, and ad-  
3                   ministrative responsibilities from the  
4                   existing mechanical licensing collective  
5                   to the new entity.

6                   “(iii) CLOSEST ALTERNATIVE DES-  
7                   IGNATION.—If the Register is unable to  
8                   identify an entity that fulfills each of the  
9                   qualifications set forth in clauses (i)  
10                  through (iii) of subparagraph (A), the Reg-  
11                  ister shall designate the entity that most  
12                  nearly fulfills such qualifications for pur-  
13                  poses of carrying out the responsibilities of  
14                  the mechanical licensing collective.

15                  “(C) AUTHORITIES AND FUNCTIONS.—

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

21                                  “(I) Offer and administer blanket  
22                                  licenses, including receipt of notices of  
23                                  license and reports of usage from dig-  
24                                  ital music providers.

1                   “(II) Collect and distribute royal-  
2 ties from digital music providers for  
3 covered activities.

4                   “(III) Engage in efforts to iden-  
5 tify musical works (and shares of such  
6 works) embodied in particular sound  
7 recordings, and to identify and locate  
8 the copyright owners of such musical  
9 works (and shares of such works).

10                   “(IV) Maintain the musical  
11 works database and other information  
12 relevant to the administration of li-  
13 censing activities under this section.

14                   “(V) Administer a process by  
15 which copyright owners can claim  
16 ownership of musical works (and  
17 shares of such works), and a process  
18 by which royalties for works for which  
19 the owner is not identified or located  
20 are equitably distributed to known  
21 copyright owners.

22                   “(VI) Administer collections of  
23 the administrative assessment from  
24 digital music providers and significant



1 nonblanket licensees, including receipt  
2 of notices of nonblanket activity.

3 “(VII) Invest in relevant re-  
4 sources, and arrange for services of  
5 outside vendors and others, to support  
6 its activities.

7 “(VIII) Engage in legal and  
8 other efforts to enforce rights and ob-  
9 ligations under this subsection, includ-  
10 ing by filing bankruptcy proofs of  
11 claims for amounts owed under li-  
12 censes, and acting in coordination  
13 with the digital licensee coordinator..

14 “(IX) Initiate and participate in  
15 proceedings before the Copyright Roy-  
16 alty Judges to establish the adminis-  
17 trative assessment under this sub-  
18 section.

19 “(X) Initiate and participate in  
20 proceedings before the Copyright Of-  
21 fice with respect to activities under  
22 this subsection.

23 “(XI) Gather and provide docu-  
24 mentation for use in proceedings be-

1 fore the Copyright Royalty Judges to  
2 set rates and terms under this section.

3 “(XII) Maintain records of its  
4 activities and engage in and respond  
5 to audits described under this sub-  
6 section.

7 “(XIII) Engage in such other ac-  
8 tivities as may be necessary or appro-  
9 priate to fulfill its responsibilities  
10 under this subsection.

11 “(ii) ADDITIONAL ADMINISTRATIVE  
12 ACTIVITIES.—Subject to paragraph  
13 (11)(C) and clause (iii), the mechanical li-  
14 censing collective may also administer, or  
15 assist in administering, voluntary licenses  
16 issued by or individual download licenses  
17 obtained from copyright owners for uses of  
18 musical works, for which the mechanical li-  
19 censing collective shall charge reasonable  
20 fees for such services.

21 “(iii) RESTRICTION CONCERNING PUB-  
22 LIC PERFORMANCE RIGHTS.—The mechan-  
23 ical licensing collective may, pursuant to  
24 clause (ii), provide administration services  
25 with respect to voluntary licenses that in-

1           clude the right of public performance in  
2           musical works, but may not itself negotiate  
3           or grant licenses for the right of public  
4           performance in musical works, and may  
5           not be the exclusive or nonexclusive as-  
6           signee or grantee of the right of public per-  
7           formance in musical works.

8           “(iv) RESTRICTION ON LOBBYING.—  
9           The mechanical licensing collective may  
10          not engage in government lobbying activi-  
11          ties, but may engage in the activities de-  
12          scribed in subclauses (IX), (X), and (XI)  
13          of clause (i).

14          “(D) GOVERNANCE.—

15          “(i) BOARD OF DIRECTORS.—The me-  
16          chanical licensing collective shall have a  
17          board of directors consisting of 14 voting  
18          members and 3 nonvoting members, as fol-  
19          lows:

20                  “(I) Ten voting members shall be  
21                  representatives of music publishers to  
22                  which songwriters have assigned ex-  
23                  clusive rights of reproduction and dis-  
24                  tribution of musical works with re-  
25                  spect to covered activities and no such

1 music publisher member may be  
2 owned by, or under common control  
3 with, any other board member.

4 “(II) Four voting members shall  
5 be professional songwriters who have  
6 retained and exercise exclusive rights  
7 of reproduction and distribution with  
8 respect to covered activities with re-  
9 spect to musical works they have au-  
10 thored.

11 “(III) One nonvoting member  
12 shall be a representative of the non-  
13 profit trade association of music pub-  
14 lishers that represents the greatest  
15 percentage of the licensor market for  
16 uses of musical works in covered ac-  
17 tivities, as measured over the pre-  
18 ceding 3 full calendar years.

19 “(IV) One nonvoting member  
20 shall be a representative of the digital  
21 licensee coordinator, provided that a  
22 digital licensee coordinator has been  
23 designated pursuant to paragraph  
24 (5)(B). Otherwise, the nonvoting  
25 member shall be the nonprofit trade

1 association of digital licensees that  
2 represents the greatest percentage of  
3 the licensee market for uses of musi-  
4 cal works in covered activities, as  
5 measured over the preceding 3 full  
6 calendar years.

7 “(V) One nonvoting member  
8 shall be a representative of a nation-  
9 ally recognized nonprofit trade asso-  
10 ciation whose primary mission is advo-  
11 cacy on behalf of songwriters in the  
12 United States.

13 “(ii) BOARD MEETINGS.—The board  
14 of directors shall meet no less than 2 times  
15 per year and discuss matters pertinent to  
16 the operations, including the mechanical li-  
17 censing collective budget.

18 “(iii) OPERATIONS ADVISORY COM-  
19 MITTEE.—The board of directors of the  
20 mechanical licensing collective shall estab-  
21 lish an operations advisory committee con-  
22 sisting of no fewer than 6 members to  
23 make recommendations to the board of di-  
24 rectors concerning the operations of the  
25 mechanical licensing collective, including

1 the efficient investment in and deployment  
2 of information technology and data re-  
3 sources. Such committee shall have an  
4 equal number of members of the committee  
5 who are—

6 “(I) musical work copyright own-  
7 ers who are appointed by the board of  
8 directors of the mechanical licensing  
9 collective; and

10 “(II) representatives of digital  
11 music providers who are appointed by  
12 the digital licensee coordinator.

13 “(iv) UNCLAIMED ROYALTIES OVER-  
14 SIGHT COMMITTEE.—The board of direc-  
15 tors of the mechanical licensing collective  
16 shall establish and appoint an unclaimed  
17 royalties oversight committee consisting of  
18 10 members, 5 of which shall be musical  
19 work copyright owners and 5 of which  
20 shall be professional songwriters whose  
21 works are used in covered activities.

22 “(v) DISPUTE RESOLUTION COM-  
23 MITTEE.—The board of directors of the  
24 mechanical licensing collective shall estab-  
25 lish and appoint a dispute resolution com-

1           mittee consisting of no fewer than 6 mem-  
2           bers, which committee shall include an  
3           equal number of representatives of musical  
4           work copyright owners and professional  
5           songwriters.

6           “(vi) MECHANICAL LICENSING COL-  
7           LECTIVE ANNUAL REPORT.—Not later  
8           than June 30 of each year commencing  
9           after the license availability date, the me-  
10          chanical licensing collective shall post, and  
11          make available online for a period of at  
12          least 3 years, an annual report that sets  
13          forth how the collective operates, how roy-  
14          alties are collected and distributed, and the  
15          collective total costs for the preceding cal-  
16          endar year. At the time of posting, a copy  
17          of the report shall be provided to the Reg-  
18          ister of Copyrights.

19          “(E) MUSICAL WORKS DATABASE.—

20                 “(i) ESTABLISHMENT AND MAINTEN-  
21                 NANCE OF DATABASE.—The mechanical li-  
22                 censing collective shall establish and main-  
23                 tain a database containing information re-  
24                 lating to musical works (and shares of  
25                 such works) and, to the extent known, the

1 identity and location of the copyright own-  
2 ers of such works (and shares thereof) and  
3 the sound recordings in which the musical  
4 works are embodied. In furtherance of  
5 maintaining such database, the mechanical  
6 licensing collective shall engage in efforts  
7 to identify the musical works embodied in  
8 particular sound recordings, as well as to  
9 identify and locate the copyright owners of  
10 such works (and shares thereof), and up-  
11 date such data as appropriate.

12 “(ii) MATCHED WORKS.—With respect  
13 to musical works (and shares thereof) that  
14 have been matched to copyright owners,  
15 the musical works database shall include—

16 “(I) the title of the musical work;

17 “(II) the copyright owner of the  
18 work (or share thereof), and such  
19 owner’s ownership percentage;

20 “(III) contact information for  
21 such copyright owner;

22 “(IV) to the extent reasonably  
23 available to the mechanical licensing  
24 collective—



1           “(aa) the international  
2 standard musical work code for  
3 the work; and

4           “(bb) identifying informa-  
5 tion for sound recordings in  
6 which the musical work is em-  
7 bodied, including the name of the  
8 sound recording, featured artist,  
9 sound recording copyright owner,  
10 international standard recording  
11 code, and other information com-  
12 monly used to assist in associ-  
13 ating sound recordings with mu-  
14 sical works; and

15           “(V) such other information as  
16 the Register of Copyrights may pre-  
17 scribe by regulation.

18           “(iii) UNMATCHED WORKS.—With re-  
19 spect to unmatched musical works (and  
20 shares of works) in the database, the musi-  
21 cal works database shall include—

22           “(I) to the extent reasonably  
23 available to the mechanical licensing  
24 collective—

1                   “(aa) the title of the musical  
2 work;  
3                   “(bb) the ownership percent-  
4 age for which an owner has not  
5 been identified;  
6                   “(cc) if a copyright owner  
7 has been identified but not lo-  
8 cated, the identity of such owner  
9 and such owner’s ownership per-  
10 centage;  
11                   “(dd) identifying informa-  
12 tion for sound recordings in  
13 which the work is embodied, in-  
14 cluding sound recording name,  
15 featured artist, sound recording  
16 copyright owner, international  
17 standard recording code, and  
18 other information commonly used  
19 to assist in associating sound re-  
20 cordings with musical works; and  
21                   “(ee) any additional infor-  
22 mation reported to the mechan-  
23 ical licensing collective that may  
24 assist in identifying the work;  
25 and

1                   “(II) such other information re-  
2 relating to the identity and ownership of  
3 musical works (and shares of such  
4 works) as the Register of Copyrights  
5 may prescribe by regulation.

6                   “(iv) SOUND RECORDING INFORMA-  
7 TION.—Each musical work copyright  
8 owner with any musical work listed in the  
9 musical works database shall engage in  
10 commercially reasonable efforts to deliver  
11 to the mechanical licensing collective, in-  
12 cluding for use in the musical works data-  
13 base, to the extent such information is not  
14 then available in the database, information  
15 regarding the names of the sound record-  
16 ings in which that copyright owner’s musi-  
17 cal works (or shares thereof) are embodied,  
18 to the extent practicable.

19                   “(v) ACCESSIBILITY OF DATABASE.—  
20 The musical works database shall be made  
21 available to members of the public in a  
22 searchable, online format, free of charge.  
23 The mechanical licensing collective shall  
24 make such database available in a bulk,  
25 machine-readable format, through a widely

1 available software application, to the fol-  
2 lowing entities:

3 “(I) Digital music providers oper-  
4 ating under the authority of valid no-  
5 tices of license, free of charge.

6 “(II) Significant nonblanket li-  
7 censees in compliance with their obli-  
8 gations under paragraph (6), free of  
9 charge.

10 “(III) Authorized vendors of the  
11 entities described in subclauses (I)  
12 and (II), free of charge.

13 “(IV) The Register of Copy-  
14 rights, free of charge (but the Reg-  
15 ister shall not treat such database or  
16 any information therein as a Govern-  
17 ment record).

18 “(V) Any member of the public,  
19 for a fee not to exceed the marginal  
20 cost to the mechanical licensing collec-  
21 tive of providing the database to such  
22 person.

23 “(vi) ADDITIONAL REQUIREMENTS.—  
24 The Register of Copyrights shall establish  
25 requirements by regulations to ensure the

1 usability, interoperability, and usage re-  
2 strictions of the musical works database.

3 “(F) NOTICES OF LICENSE AND NON-  
4 BLANKET ACTIVITY.—

5 “(i) NOTICES OF LICENSES.—The me-  
6 chanical licensing collective shall receive,  
7 review, and confirm or reject notices of li-  
8 cense from digital music providers, as pro-  
9 vided in paragraph (2)(A). The collective  
10 shall maintain a current, publicly acces-  
11 sible list of blanket licenses that includes  
12 contact information for the licensees and  
13 the effective dates of such licenses.

14 “(ii) NOTICES OF NONBLANKET AC-  
15 TIVITY.—The mechanical licensing collec-  
16 tive shall receive notices of nonblanket ac-  
17 tivity from significant nonblanket licensees,  
18 as provided in paragraph (6)(A). The col-  
19 lective shall maintain a current, publicly  
20 accessible list of notices of nonblanket ac-  
21 tivity that includes contact information for  
22 significant nonblanket licensees and the  
23 dates of receipt of such notices.

24 “(G) COLLECTION AND DISTRIBUTION OF  
25 ROYALTIES.—

1                   “(i) IN GENERAL.—Upon receiving re-  
2                   ports of usage and payments of royalties  
3                   from digital music providers for covered  
4                   activities, the mechanical licensing collec-  
5                   tive shall—

6                                   “(I) engage in efforts to—

7   “(aa) identify the musical  
8   works embodied in sound record-  
9   ings reflected in such reports,  
10    and the copyright owners of such  
11    musical works (and shares there-  
12    of);

13    “(bb) confirm uses of musi-  
14    cal works subject to voluntary li-  
15    censes and individual download  
16    licenses, and the corresponding  
17    pro rata amounts to be deducted  
18    from royalties that would other-  
19    wise be due under the blanket li-  
20    cense; and

21    “(cc) confirm proper pay-  
22    ment of royalties due;

23    “(II) distribute royalties to copy-  
24    right owners in accordance with the  
25    usage and other information contained

1 in such reports, as well as the owner-  
2 ship and other information contained  
3 in the records of the collective; and

4 “(III) deposit into an interest-  
5 bearing account, as provided in sub-  
6 paragraph (H)(ii), royalties that can-  
7 not be distributed due to—

8 “(aa) an inability to identify  
9 or locate a copyright owner of a  
10 musical work (or share thereof);  
11 or

12 “(bb) a pending dispute be-  
13 fore the dispute resolution com-  
14 mittee of the mechanical licens-  
15 ing collective.

16 “(ii) OTHER COLLECTION EFFORTS.—  
17 Any royalties recovered by the mechanical  
18 licensing collective as a result of efforts to  
19 enforce rights or obligations under a blan-  
20 ket license, including through a bankruptcy  
21 proceeding or other legal action, shall be  
22 distributed to copyright owners based on  
23 available usage information and in accord-  
24 ance with the procedures described in sub-  
25 clauses (I) and (II) of clause (i), on a pro

1           rata basis in proportion to the overall per-  
2           centage recovery of the total royalties  
3           owed, with any pro rata share of royalties  
4           that cannot be distributed deposited in an  
5           interest-bearing account as provided in  
6           subparagraph (H)(ii).

7           “(H) HOLDING OF ACCRUED ROYAL-  
8           TIES.—

9                   “(i) HOLDING PERIOD.—The mechan-  
10           ical licensing collective shall hold accrued  
11           royalties associated with particular musical  
12           works (and shares of works) that remain  
13           unmatched for a period of at least 3 years  
14           after the date on which the funds were re-  
15           ceived by the mechanical licensing collec-  
16           tive, or at least 3 years after the date on  
17           which they were accrued by a digital music  
18           provider that subsequently transferred  
19           such funds to the mechanical licensing col-  
20           lective pursuant to paragraph (10)(B),  
21           whichever period expires sooner.

22                   “(ii) INTEREST-BEARING ACCOUNT.—  
23           Accrued royalties for unmatched works  
24           (and shares thereof) shall be maintained  
25           by the mechanical licensing collective in an



1 interest-bearing account that earns month-  
2 ly interest at the Federal, short-term rate,  
3 such interest to accrue for the benefit of  
4 copyright owners entitled to payment of  
5 such accrued royalties.

6 “(I) MUSICAL WORKS CLAIMING PROC-  
7 ESS.—The mechanical licensing collective shall  
8 publicize the existence of accrued royalties for  
9 unmatched musical works (and shares of such  
10 works) within 6 months of receiving a transfer  
11 of accrued royalties for such works by publicly  
12 listing the works and the procedures by which  
13 copyright owners may identify themselves and  
14 provide ownership, contact, and other relevant  
15 information to the mechanical licensing collec-  
16 tive in order to receive payment of accrued roy-  
17 alties. When a copyright owner of an un-  
18 matched work (or share of a work) has been  
19 identified and located in accordance with the  
20 procedures of the mechanical licensing collec-  
21 tive, the collective shall—

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

24 “(ii) provided that accrued royalties  
25 for the musical work (or share thereof)

1           have not yet been included in a distribution  
2           pursuant to subparagraph (J)(i), pay such  
3           accrued royalties and a proportionate  
4           amount of accrued interest associated with  
5           that work (or share thereof) to the copy-  
6           right owner, accompanied by a cumulative  
7           statement of account reflecting usage of  
8           such work and accrued royalties based on  
9           information provided by digital music pro-  
10          viders to the mechanical licensing collec-  
11          tive.

12           “(J) DISTRIBUTION OF UNCLAIMED AC-  
13          CRUED ROYALTIES.—

14           “(i) DISTRIBUTION PROCEDURES.—  
15          After the expiration of the prescribed hold-  
16          ing period for accrued royalties provided in  
17          paragraph (H)(i), the mechanical licensing  
18          collective shall distribute such accrued roy-  
19          alties, along with a proportionate share of  
20          accrued interest, to copyright owners iden-  
21          tified in the records of the collective, sub-  
22          ject to the following requirements, and in  
23          accordance with the policies and proce-  
24          dures established under clause (ii):

1           “(I) The first such distribution  
2 shall occur on or after July 1 of the  
3 first full calendar year to commence  
4 after the license availability date, with  
5 at least one such distribution to take  
6 place during each calendar year there-  
7 after.

8           “(II) Copyright owners’ payment  
9 shares for unclaimed accrued royalties  
10 for particular reporting periods shall  
11 be determined in a transparent and  
12 equitable manner based on data indi-  
13 cating the relative market shares of  
14 such copyright owners as reflected by  
15 royalty payments made by digital  
16 music providers for covered activities  
17 for the periods in question, including,  
18 in addition to royalty payments made  
19 to the mechanical licensing collective,  
20 royalty payments made to copyright  
21 owners under voluntary licenses and  
22 individual download licenses for cov-  
23 ered activities, to the extent such in-  
24 formation is available to the mechan-  
25 ical licensing collective. In furtherance

1 of the determination of equitable mar-  
2 ket shares under this subparagraph—

3 “(aa) the mechanical licens-  
4 ing collective may require copy-  
5 right owners seeking distribu-  
6 tions of unclaimed accrued royalti-  
7 ties to provide, or direct the pro-  
8 vision of, information concerning  
9 royalties received under voluntary  
10 licenses and individual download  
11 licenses for covered activities, and

12 “(bb) the mechanical licens-  
13 ing collective shall take appro-  
14 priate steps to safeguard the con-  
15 fidentiality and security of finan-  
16 cial and other sensitive data used  
17 to compute market shares in ac-  
18 cordance with the confidentiality  
19 provisions prescribed by the Reg-  
20 ister of Copyrights under para-  
21 graph (12)(C).

22 “(ii) ESTABLISHMENT OF DISTRIBUTION POLICIES.—The unclaimed royalties  
23 oversight committee established under  
24 paragraph (3)(D)(iv) shall establish poli-  
25

1           cies and procedures for the distribution of  
2           unclaimed accrued royalties and accrued  
3           interest in accordance with this subpara-  
4           graph, including the provision of usage  
5           data to copyright owners to allocate pay-  
6           ments and credits to songwriters pursuant  
7           to clause (iv), subject to the approval of  
8           the board of directors of the mechanical li-  
9           censing collective.

10           “(iii) ADVANCE NOTICE OF DISTRIBUTIONS.—The mechanical licensing collec-  
11           tive shall publicize a pending distribution  
12           of unclaimed accrued royalties and accrued  
13           interest at least 90 calendar days in ad-  
14           vance of such distribution.

15           “(iv) SONGWRITER PAYMENTS.—  
16           Copyright owners that receive a distribu-  
17           tion of unclaimed accrued royalties and ac-  
18           crued interest shall pay or credit a portion  
19           to songwriters (or the authorized agents of  
20           songwriters) on whose behalf the copyright  
21           owners license or administer musical works  
22           for covered activities, in accordance with  
23           applicable contractual terms, but notwith-  
24           standing any agreement to the contrary—  
25

1                   “(I) such payments and credits  
2                   to songwriters shall be allocated in  
3                   proportion to reported usage of indi-  
4                   vidual musical works by digital music  
5                   providers during the reporting periods  
6                   covered by the distribution from the  
7                   mechanical licensing collective; and

8                   “(II) in no case shall the pay-  
9                   ment or credit to an individual song-  
10                  writer be less than 50 percent of the  
11                  payment received by the copyright  
12                  owner attributable to usage of musical  
13                  works (or shares of works) of that  
14                  songwriter.

15                  “(K) DISPUTE RESOLUTION.—The dispute  
16                  resolution committee established under para-  
17                  graph (3)(D)(v) shall address and resolve in a  
18                  timely and equitable manner disputes among  
19                  copyright owners relating to ownership interests  
20                  in musical works licensed under this section and  
21                  allocation and distribution of royalties by the  
22                  mechanical licensing collective, according to a  
23                  process approved by the board of directors of  
24                  the mechanical licensing collective. Such proc-  
25                  ess—

1           “(i) shall include a mechanism to hold  
2           disputed funds in accordance with the re-  
3           quirements described in subparagraph  
4           (H)(ii) pending resolution of the dispute;  
5           and

6           “(ii) except as provided in paragraph  
7           (11)(D), shall not affect any legal or equi-  
8           table rights or remedies available to any  
9           copyright owner or songwriter concerning  
10          ownership of, and entitlement to royalties  
11          for, a musical work.

12          “(L) VERIFICATION OF PAYMENTS BY ME-  
13          CHANICAL LICENSING COLLECTIVE.—

14          “(i) VERIFICATION PROCESS.—A  
15          copyright owner entitled to receive pay-  
16          ments of royalties for covered activities  
17          from the mechanical licensing collective  
18          may, individually or with other copyright  
19          owners, conduct an audit of the mechanical  
20          licensing collective to verify the accuracy of  
21          royalty payments by the mechanical licens-  
22          ing collective to such copyright owner, as  
23          follows:

24                  “(I) A copyright owner may  
25                  audit the mechanical licensing collec-

1           tive only once in a year for any or all  
2           of the prior 3 calendar years, and may  
3           not audit records for any calendar  
4           year more than once.

5           “(II) The audit shall be con-  
6           ducted by a qualified auditor, who  
7           shall perform the audit during the or-  
8           dinary course of business by exam-  
9           ining the books, records, and data of  
10          the mechanical licensing collective, ac-  
11          cording to generally accepted auditing  
12          standards and subject to applicable  
13          confidentiality requirements pre-  
14          scribed by the Register of Copyrights  
15          under paragraph (12)(C).

16          “(III) The mechanical licensing  
17          collective shall make such books,  
18          records, and data available to the  
19          qualified auditor and respond to rea-  
20          sonable requests for relevant informa-  
21          tion, and shall use commercially rea-  
22          sonable efforts to facilitate access to  
23          relevant information maintained by  
24          third parties.



1                   “(IV) To commence the audit,  
2                   any copyright owner shall file with the  
3                   Copyright Office a notice of intent to  
4                   conduct an audit of the mechanical li-  
5                   censing collective, identifying the pe-  
6                   riod of time to be audited, and shall  
7                   simultaneously deliver a copy of such  
8                   notice to the mechanical licensing col-  
9                   lective. The Register of Copyrights  
10                  shall cause the notice of audit to be  
11                  published in the Federal Register  
12                  within 45 calendar days after receipt.

13                  “(V) The qualified auditor shall  
14                  determine the accuracy of royalty pay-  
15                  ments, including whether an under-  
16                  payment or overpayment of royalties  
17                  was made by the mechanical licensing  
18                  collective to each auditing copyright  
19                  owner, but before providing a final  
20                  audit report to any such copyright  
21                  owner, the qualified auditor shall pro-  
22                  vide a tentative draft of the report to  
23                  the mechanical licensing collective and  
24                  allow the mechanical licensing collec-  
25                  tive a reasonable opportunity to re-

1                   spond to the findings, including by  
2                   clarifying issues and correcting factual  
3                   errors.

4                   “(VI) The auditing copyright  
5                   owner or owners shall bear the cost of  
6                   the audit. In case of an underpayment  
7                   to any copyright owner, the mechan-  
8                   ical licensing collective shall pay the  
9                   amounts of any such underpayment to  
10                  such auditing copyright owner, as ap-  
11                  propriate. In case of an overpayment  
12                  by the mechanical licensing collective,  
13                  the mechanical licensing collective  
14                  may debit the account of the auditing  
15                  copyright owner or owners for such  
16                  overpaid amounts, or such owner(s)  
17                  shall refund overpaid amounts to the  
18                  mechanical licensing collective, as ap-  
19                  propriate.

20                  “(ii) ALTERNATIVE VERIFICATION  
21                  PROCEDURES.—Nothing in this subpara-  
22                  graph shall preclude a copyright owner and  
23                  the mechanical licensing collective from  
24                  agreeing to audit procedures different from  
25                  those described herein, but a notice of the

1           audit shall be provided to and published by  
2           the Copyright Office as described in clause  
3           (i)(IV).

4           “(M) RECORDS OF MECHANICAL LICENS-  
5           ING COLLECTIVE.—

6                   “(i) RECORDS MAINTENANCE.—The  
7                   mechanical licensing collective shall ensure  
8                   that all material records of its operations,  
9                   including those relating to notices of li-  
10                  cense, the administration of its claims  
11                  process, reports of usage, royalty pay-  
12                  ments, receipt and maintenance of accrued  
13                  royalties, royalty distribution processes,  
14                  and legal matters, are preserved and main-  
15                  tained in a secure and reliable manner,  
16                  with appropriate commercially reasonable  
17                  safeguards against unauthorized access,  
18                  copying, and disclosure, and subject to the  
19                  confidentiality requirements prescribed by  
20                  the Register of Copyrights under para-  
21                  graph (12)(C) for a period of no less than  
22                  7 years after the date of creation or re-  
23                  ceipt, whichever occurs later.

24                   “(ii) RECORDS ACCESS.—The mechan-  
25                  ical licensing collective shall provide

1 prompt access to electronic and other  
2 records pertaining to the administration of  
3 a copyright owner's musical works upon  
4 reasonable written request of such owner  
5 or the owner's authorized representative.

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

9 “(A) ROYALTY REPORTING AND PAY-  
10 MENTS.—

11 “(i) MONTHLY REPORTS AND PAY-  
12 MENT.—A digital music provider shall re-  
13 port and pay royalties to the mechanical li-  
14 censing collective under the blanket license  
15 on a monthly basis in accordance with  
16 clause (ii) and subsection (c)(2)(I), but the  
17 monthly reporting shall be due 45 calendar  
18 days, rather than 20 calendar days, after  
19 the end of the monthly reporting period.

20 “(ii) DATA TO BE REPORTED.—In re-  
21 porting usage of musical works to the me-  
22 chanical licensing collective, a digital music  
23 provider shall provide usage data for musi-  
24 cal works used under the blanket license  
25 and usage data for musical works used in

1 covered activities under voluntary licenses  
2 and individual download licenses. In the re-  
3 port of usage, the digital music provider  
4 shall—

5 “(I) with respect to each sound  
6 recording embodying a musical  
7 work—

8 “(aa) provide identifying in-  
9 formation for the sound record-  
10 ing, including sound recording  
11 name, featured artist, and, to the  
12 extent reasonably available to the  
13 digital music provider, sound re-  
14 cording copyright owner, inter-  
15 national standard recording code,  
16 and other information commonly  
17 used in the industry to identify  
18 sound recordings and match  
19 them to the musical works the  
20 sound recordings embody;

21 “(bb) to the extent reason-  
22 ably available to the digital music  
23 provider, provide information  
24 concerning authorship and own-  
25 ership of the applicable rights in

1 the musical work embodied in the  
2 sound recording (including each  
3 songwriter, publisher name, and  
4 respective ownership share) and  
5 the international standard musi-  
6 cal work code; and

7 “(cc) provide the number of  
8 digital phonorecord deliveries of  
9 the sound recording, including  
10 limited downloads and interactive  
11 streams;

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

19 “(III) provide such other infor-  
20 mation as the Register of Copyrights  
21 shall require by regulation.

22 “(iii) **FORMAT AND MAINTENANCE OF**  
23 **REPORTS.**—Reports of usage provided by  
24 digital music providers to the mechanical  
25 licensing collective shall be in a machine-

1 readable format that is compatible with the  
2 information technology systems of the me-  
3 chanical licensing collective and meets the  
4 requirements of regulations adopted by the  
5 Register of Copyrights. The Register shall  
6 also adopt regulations setting forth re-  
7 quirements under which records of use  
8 shall be maintained and made available to  
9 the mechanical licensing collective by dig-  
10 ital music providers engaged in covered ac-  
11 tivities under a blanket license.

12 “(iv) ADOPTION OF REGULATIONS.—  
13 The Register shall adopt regulations—

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

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

1           “(B) COLLECTION OF SOUND RECORDING  
2 INFORMATION.—A digital music provider shall  
3 engage in good-faith, commercially reasonable  
4 efforts to obtain from copyright owners of  
5 sound recordings made available through the  
6 service of such digital music provider—

7           “(i) sound recording copyright owners,  
8 international standard recording codes,  
9 and other information commonly used in  
10 the industry to identify sound recordings  
11 and match them to the musical works the  
12 sound recordings embody; and

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

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

24           “(D) VERIFICATION OF PAYMENTS BY DIG-  
25 ITAL MUSIC PROVIDERS.—



1                   “(i) VERIFICATION PROCESS.—The  
2                   mechanical licensing collective may conduct  
3                   an audit of a digital music provider oper-  
4                   ating under the blanket license to verify  
5                   the accuracy of royalty payments by the  
6                   digital music provider to the mechanical li-  
7                   censing collective as follows:

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

18                  “(II) The audit shall be con-  
19                  ducted by a qualified auditor, who  
20                  shall perform the audit during the or-  
21                  dinary course of business by exam-  
22                  ining the books, records, and data of  
23                  the digital music provider, according  
24                  to generally accepted auditing stand-  
25                  ards and subject to applicable con-

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

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

13           “(IV) To commence the audit,  
14           the mechanical licensing collective  
15           shall file with the Copyright Office a  
16           notice of intent to conduct an audit of  
17           the digital music provider, identifying  
18           the period of time to be audited, and  
19           shall simultaneously deliver a copy of  
20           such notice to the digital music pro-  
21           vider. The Register of Copyrights  
22           shall cause the notice of audit to be  
23           published in the Federal Register  
24           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 digital music pro-  
6 vider to the mechanical licensing col-  
7 lective, but before providing a final  
8 audit report to the mechanical licens-  
9 ing collective, the qualified auditor  
10 shall provide a tentative draft of the  
11 report to the digital music provider  
12 and allow the digital music provider a  
13 reasonable opportunity to respond to  
14 the findings, including by clarifying  
15 issues and correcting factual errors.

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

1                   censing collective. In case of an over-  
2                   payment by the digital music provider,  
3                   the mechanical licensing collective  
4                   shall provide a credit to the account  
5                   of the digital music provider.

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

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

1                   “(E) DEFAULT UNDER BLANKET LI-  
2                   CENSE.—

3                   “(i) CONDITIONS OF DEFAULT.—A  
4                   digital music provider shall be in default  
5                   under a blanket license if the digital music  
6                   provider—

7                   “(I) fails to provide one or more  
8                   monthly reports of usage to the me-  
9                   chanical licensing collective when due;

10                   “(II) fails to make a monthly  
11                   royalty or late fee payment to the me-  
12                   chanical licensing collective when due,  
13                   in all or material part;

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

24                   “(IV) fails to pay the administra-  
25                   tive assessment as required under this

1 subsection and applicable regulations;  
2 or

3 “(V) after being provided written  
4 notice by the mechanical licensing col-  
5 lective, refuses to comply with any  
6 other material term or condition of  
7 the blanket license under this section  
8 for a period of 60 calendar days or  
9 longer.

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

16 “(I) The mechanical licensing  
17 collective shall provide written notice  
18 to the digital music provider describ-  
19 ing with reasonable particularity the  
20 default and advising that unless such  
21 default is cured within 60 calendar  
22 days after the date of the notice, the  
23 blanket license will automatically ter-  
24minate at the end of that period.

1                   “(II) If the digital music provider  
2                   fails to remedy the default within the  
3                   60-day period referenced in subclause  
4                   (I), the license shall terminate without  
5                   any further action on the part of the  
6                   mechanical licensing collective. Such  
7                   termination renders the making of all  
8                   digital phonorecord deliveries of all  
9                   musical works (and shares thereof)  
10                  covered by the blanket license for  
11                  which the royalty or administrative  
12                  assessment has not been paid action-  
13                  able as acts of infringement under  
14                  section 501 and subject to the rem-  
15                  edies provided by sections 502  
16                  through 506.

17                  “(iii) NOTICE TO COPYRIGHT OWN-  
18                  ERS.—The mechanical licensing collective  
19                  shall provide written notice of any termi-  
20                  nation under this subparagraph to copy-  
21                  right owners of affected works.

22                  “(iv) REVIEW BY FEDERAL DISTRICT  
23                  COURT.—A digital music provider that be-  
24                  lieves a blanket license was improperly ter-  
25                  minated by the mechanical licensing collec-

1           tive may seek review of such termination in  
2           Federal district court. The district court  
3           shall determine the matter de novo based  
4           on the record before the mechanical licens-  
5           ing collective and any additional sup-  
6           porting evidence presented by the parties.

7           “(5) DIGITAL LICENSEE COORDINATOR.—

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

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

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

21           “(iii) is able to demonstrate that it  
22           has, or will have prior to the license avail-  
23           ability date, the administrative capabilities  
24           to perform the required functions of the



1 digital licensee coordinator under this sub-  
2 section; and

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

6 “(B) DESIGNATION OF DIGITAL LICENSEE  
7 COORDINATOR.—

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

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

1           cedure described for the mechanical licens-  
2           ing collective in paragraph (3)(B)(ii).

3           “(iii) INABILITY TO DESIGNATE.—If  
4           the Register is unable to identify an entity  
5           that fulfills each of the qualifications de-  
6           scribed in clauses (i) through (iii) of sub-  
7           paragraph (A) to serve as the digital li-  
8           censee coordinator, the Register may de-  
9           cline to designate a digital licensee coordi-  
10          nator. The Register’s determination not to  
11          designate a digital licensee coordinator  
12          shall not negate or otherwise affect any  
13          provision of this subsection except to the  
14          limited extent that a provision references  
15          the digital licensee coordinator. In such  
16          case, the reference to the digital licensee  
17          coordinator shall be without effect unless  
18          and until a new digital licensee coordinator  
19          is designated.

20          “(C) AUTHORITIES AND FUNCTIONS.—

21          “(i) IN GENERAL.—The digital li-  
22          censee coordinator is authorized to perform  
23          the following functions, subject to more  
24          particular requirements as described in  
25          this subsection:

1                   “(I) Establish a governance  
2 structure, criteria for membership,  
3 and any dues to be paid by its mem-  
4 bers.

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

11                   “(III) Initiate and participate in  
12 proceedings before the Copyright Roy-  
13 alty Judges to establish the adminis-  
14 trative assessment under this sub-  
15 section.

16                   “(IV) Initiate and participate in  
17 proceedings before the Copyright Of-  
18 fice with respect to activities under  
19 this subsection.

20                   “(V) Gather and provide docu-  
21 mentation for use in proceedings be-  
22 fore the Copyright Royalty Judges to  
23 set rates and terms under this section.

24                   “(VI) Maintain records of its ac-  
25 tivities.

1                   “(VII) Engage in such other ac-  
2                   tivities as may be necessary or appro-  
3                   priate to fulfill its responsibilities  
4                   under this subsection.

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

11                  “(6) REQUIREMENTS FOR SIGNIFICANT NON-  
12                  BLANKET LICENSEES.—

13                  “(A) IN GENERAL.—

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

1           lish by regulation, and a copy shall be  
2           made available to the digital licensee coor-  
3           dinator.

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

22          “(iii) DISCONTINUATION OF OBLIGA-  
23          TIONS.—An entity that has submitted a  
24          notice of nonblanket activity to the me-  
25          chanical licensing collective that has ceased

1 to qualify as a significant nonblanket li-  
2 censee may so notify the collective in writ-  
3 ing. In such case, as of the calendar month  
4 in which such notice is provided, such enti-  
5 ty shall no longer be required to provide  
6 reports of usage or pay the administrative  
7 assessment, but if such entity later quali-  
8 fies as a significant nonblanket licensee,  
9 such entity shall again be required to com-  
10 ply with clauses (i) and (ii).

11 “(B) REPORTING BY MECHANICAL LICENS-  
12 ING COLLECTIVE TO DIGITAL LICENSEE COOR-  
13 DINATOR.—

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

22 “(ii) TREATMENT OF CONFIDENTIAL  
23 INFORMATION.—The mechanical licensing  
24 collective and digital licensee coordinator  
25 shall take appropriate steps to safeguard

1 the confidentiality and security of financial  
2 and other sensitive data shared under this  
3 subparagraph, in accordance with the con-  
4 fidentiality requirements prescribed by the  
5 Register of Copyrights under paragraph  
6 (12)(C).

7 “(C) LEGAL ENFORCEMENT EFFORTS.—

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

1           appropriate. Any recovery of damages shall  
2           be payable to the mechanical licensing col-  
3           lective as an offset to the collective total  
4           costs.

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

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

18          “(7) FUNDING OF MECHANICAL LICENSING  
19          COLLECTIVE.—

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

22                 “(i) an administrative assessment, as  
23                 such assessment is established by the  
24                 Copyright Royalty Judges pursuant to sub-



1 paragraph (D) from time to time, to be  
2 paid by—

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

7 “(II) significant nonblanket li-  
8 censees; and

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

13 “(B) VOLUNTARY CONTRIBUTIONS.—

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

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

1 censing collective and the contributing  
2 party.

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

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

1           “(C) INTERIM APPLICATION OF ACCRUED  
2 ROYALTIES.—In the event that the administra-  
3 tive assessment, together with any funding from  
4 voluntary contributions as provided in subpara-  
5 graphs (A) and (B), is inadequate to cover cur-  
6 rent collective total costs, the collective, with  
7 approval of its board of directors, may apply  
8 unclaimed accrued royalties on an interim basis  
9 to defray such costs, subject to future reim-  
10 bursement of such royalties from future collec-  
11 tions of the assessment.

12           “(D) DETERMINATION OF ADMINISTRA-  
13 TIVE ASSESSMENT.—

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

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

1 scribed in clauses (iii) and (iv). The admin-  
2 istrative assessment determined in such  
3 proceeding shall—

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

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

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

20 “(IV) may be in the form of a  
21 percentage of royalties payable under  
22 this section for usage of musical  
23 works in covered activities (regardless  
24 of whether a different rate applies  
25 under a voluntary license), or any

1 other usage-based metric reasonably  
2 calculated to equitably allocate the  
3 collective total costs across digital  
4 music providers and significant non-  
5 blanket licensees engaged in covered  
6 activities, but shall include as a com-  
7 ponent a minimum fee for all digital  
8 music providers and significant non-  
9 blanket licensees; and

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

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

23 “(bb) any past collections of  
24 the administrative assessment  
25 and voluntary contributions that

1 exceeded past actual collective  
2 total costs, resulting in a surplus;  
3 and

4 “(cc) the amount of any vol-  
5 untary contributions by digital  
6 music providers or significant  
7 nonblanket licensees in relevant  
8 periods, described in subpara-  
9 graphs (A) and (B) of paragraph  
10 (7).

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

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

22 “(II) The mechanical licensing  
23 collective and digital licensee coordi-  
24 nator shall participate in such pro-  
25 ceeding, along with any interested

1 copyright owners, digital music pro-  
2 viders or significant nonblanket licens-  
3 ees that have notified the Copyright  
4 Royalty Judges of their desire to par-  
5 ticipate.

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

21 “(IV) The initial administrative  
22 assessment shall be determined, and  
23 such determination shall be published  
24 in the Federal Register by the Copy-  
25 right Royalty Judges, within 1 year

1 after commencement of the proceeding  
2 described in this clause. The deter-  
3 mination shall be supported by a writ-  
4 ten record. The initial administrative  
5 assessment shall be effective as of the  
6 license availability date, and shall con-  
7 tinue in effect unless and until an ad-  
8 justed administrative assessment is  
9 established pursuant to an adjustment  
10 proceeding under clause (iii).

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

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



1 Royalty Judges in the month of Octo-  
2 ber to commence a proceeding to ad-  
3 just the administrative assessment.

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

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

1                   ment of the proceeding. The adjusted  
2                   administrative assessment shall take  
3                   effect January 1 of the year following  
4                   such publication.

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

1 engaged in covered activities during the pe-  
2 riod it is in effect.

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

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

1           viders, and significant nonblanket licensees  
2           shall implement appropriate financial or  
3           other measures within 3 months after any  
4           modification of the assessment to reflect  
5           and account for such outcome.

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

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

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

23                   “(B) APPLICATION OF LATE FEES.—In  
24           any proceeding described in subparagraph (A)  
25           in which the Copyright Royalty Judges estab-

1           lish a late fee for late payment of royalties for  
2           uses of musical works under this section, such  
3           fee shall apply to covered activities under blan-  
4           ket licenses, as follows:

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

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

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

24                           “(i) shall be treated as nonpreceden-  
25                           tial and not cited or relied upon in any

1 ratesetting proceeding before the Copyright  
2 Royalty Judges or any other tribunal; and  
3 “(ii) shall automatically expire upon  
4 the establishment of a rate and terms for  
5 such covered activity by the Copyright  
6 Royalty Judges, under subsection  
7 (c)(1)(E).

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

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

1                   “(ii) if the interim rate exceeds the  
2                   rate established by the Copyright Royalty  
3                   Judges, the mechanical licensing collective  
4                   shall credit the account of the digital music  
5                   provider for the amount of any overpay-  
6                   ment of royalties due.

7                   “(9) TRANSITION TO BLANKET LICENSES.—

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

1           “(B) EXPIRATION OF EXISTING LI-  
2           CENSES.—Except to the extent provided in sub-  
3           paragraph (A), on and after the license avail-  
4           ability date, licenses other than individual  
5           download licenses obtained under this section  
6           for covered activities prior to the license avail-  
7           ability date shall no longer continue in effect.

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



1           “(D) FURTHER ACCEPTANCE OF NOTICES  
2 FOR COVERED ACTIVITIES BY COPYRIGHT OF-  
3 FICE.—On and after the enactment date—

4           “(i) the Copyright Office shall no  
5 longer accept notices of intention with re-  
6 spect to covered activities; and

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

17           “(10) PRIOR UNLICENSED USES.—

18           “(A) LIMITATION ON LIABILITY IN GEN-  
19 ERAL.—A copyright owner that commences an  
20 action under section 501 on or after January 1,  
21 2018, against a digital music provider for the  
22 infringement of the exclusive rights provided by  
23 paragraph (1) or (3) of section 106 arising  
24 from the unauthorized reproduction or distribu-  
25 tion of a musical work by such digital music

1 provider in the course of engaging in covered  
2 activities prior to the license availability date,  
3 shall, as the copyright owner's sole and exclu-  
4 sive remedy against the digital music provider,  
5 be eligible to recover the royalty prescribed  
6 under subsection (c)(1)(C) and chapter 8 of  
7 this title, from the digital music provider, pro-  
8 vided that such digital music provider can dem-  
9 onstrate compliance with the requirements of  
10 subparagraph (B), as applicable. In all other  
11 cases the limitation on liability under this sub-  
12 paragraph shall not apply.

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

20 “(i) No later than 30 calendar days  
21 after first making a particular sound re-  
22 cording of a musical work available  
23 through its service via one or more covered  
24 activities, or 30 calendar days after the en-  
25 actment date, whichever occurs later, a

1 digital music provider shall engage in  
2 good-faith, commercially reasonable efforts  
3 to identify and locate each copyright owner  
4 of such musical work (or share thereof).  
5 Such required matching efforts shall in-  
6 clude the following:

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

13 “(aa) Sound recording  
14 name, featured artist, sound re-  
15 cording copyright owner, inter-  
16 national standard recording code,  
17 and other information commonly  
18 used in the industry to identify  
19 sound recordings and match  
20 them to the musical works they  
21 embody.

22 “(bb) Any available musical  
23 work ownership information, in-  
24 cluding each songwriter and pub-  
25 lisher name, percentage owner-

1 ship share, and international  
2 standard musical work code.

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

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

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

1 account and pay royalties to such copy-  
2 right owner in accordance with this section  
3 and applicable regulations.

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

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

20 “(II) If a copyright owner of an  
21 unmatched musical work (or share  
22 thereof) is identified and located by or  
23 to the digital music provider before  
24 the license availability date, the digital  
25 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           “(E) REMEDY IN FEDERAL DISTRICT  
17           COURT.—A person may bring a claim in a Fed-  
18           eral district court of competent jurisdiction for  
19           an issue that is not adequately resolved by the  
20           board of directors or a committee of the me-  
21           chanical licensing collective, as applicable.

22           “(11) LEGAL PROTECTIONS FOR LICENSING AC-  
23           TIVITIES.—

24           “(A) EXEMPTION FOR COMPULSORY LI-  
25           CENSE ACTIVITIES.—The antitrust exemption

1 described in subsection (c)(1)(D) shall apply to  
2 negotiations and agreements between and  
3 among copyright owners and persons entitled to  
4 obtain a compulsory license for covered activi-  
5 ties, and common agents acting on behalf of  
6 such copyright owners or persons, including  
7 with respect to the administrative assessment  
8 established under this subsection.

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

19 “(C) ANTITRUST EXEMPTION FOR ADMIN-  
20 ISTRATIVE ACTIVITIES.—Notwithstanding any  
21 provision of the antitrust laws, copyright own-  
22 ers and persons entitled to obtain a compulsory  
23 license under this section may designate the  
24 mechanical licensing collective to administer vol-  
25 untary licenses for the reproduction or distribu-

1           tion of musical works in covered activities on  
2           behalf of such copyright owners and persons,  
3           but the following conditions apply:

4                   “(i) Each copyright owner shall estab-  
5                   lish the royalty rates and material terms of  
6                   any such voluntary license individually and  
7                   not in agreement, combination, or concert  
8                   with any other copyright owner.

9                   “(ii) Each person entitled to obtain a  
10                  compulsory license under this section shall  
11                  establish the royalty rates and material  
12                  terms of any such voluntary license indi-  
13                  vidually and not in agreement, combina-  
14                  tion, or concert with any other digital  
15                  music provider.

16                  “(iii) The mechanical licensing collec-  
17                  tive shall maintain the confidentiality of  
18                  the voluntary licenses in accordance with  
19                  the confidentiality provisions prescribed by  
20                  the Register of Copyrights under para-  
21                  graph (12)(C).

22                  “(D) LIABILITY FOR GOOD-FAITH ACTIVI-  
23                  TIES.—The mechanical licensing collective shall  
24                  not be liable to any person or entity based on  
25                  a claim arising from its good-faith administra-

1           tion of policies and procedures adopted and im-  
2           plemented to carry out the responsibilities de-  
3           scribed in subparagraphs (J) and (K) of para-  
4           graph (3), except to the extent of correcting an  
5           underpayment or overpayment of royalties as  
6           provided in paragraph (3)(L)(i)(VI), but the  
7           collective may participate in a legal proceeding  
8           as a stakeholder party if the collective is hold-  
9           ing funds that are the subject of a dispute be-  
10          tween copyright owners. For purposes of this  
11          subparagraph, ‘good-faith administration’  
12          means administration in a manner that is not  
13          grossly negligent.

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

22               “(12) REGULATIONS.—

23               “(A) ADOPTION BY REGISTER OF COPY-  
24          RIGHTS AND COPYRIGHT ROYALTY JUDGES.—  
25          The Register of Copyrights may conduct such

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

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

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

1 “(13) SAVINGS CLAUSES.—

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

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

22 (5) by adding at the end the following new sub-  
23 section:

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

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

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

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

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

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

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

22           “(A) means the total costs of establishing,  
23 maintaining, and operating the mechanical li-  
24 censing collective to fulfill its statutory func-  
25 tions, including—



- 1 “(i) startup costs;
- 2 “(ii) financing, legal, and insurance
- 3 costs;
- 4 “(iii) investments in information tech-
- 5 nology, infrastructure, and other long-term
- 6 resources;
- 7 “(iv) outside vendor costs;
- 8 “(v) costs of licensing, royalty admin-
- 9 istration, and enforcement of rights;
- 10 “(vi) costs of bad debt; and
- 11 “(vii) costs of automated and manual
- 12 efforts to identify and locate copyright
- 13 owners of musical works (and shares of
- 14 such musical works) and match sound re-
- 15 cordings to the musical works the sound
- 16 recordings embody; and
- 17 “(B) does not include any added costs in-
- 18 curred by the mechanical licensing collective to
- 19 provide services under voluntary licenses.
- 20 “(7) COVERED ACTIVITY.—The term ‘covered
- 21 activity’ means the activity of making a digital pho-
- 22 norecord delivery of a musical work, including in the
- 23 form of a permanent download, limited download, or
- 24 interactive stream, where such activity qualified for
- 25 a compulsory license under this section.

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

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

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

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

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

20           “(10) DIGITAL PHONORECORD DELIVERY.—The  
21           term ‘digital phonorecord delivery’ means each indi-  
22           vidual delivery of a phonorecord by digital trans-  
23           mission of a sound recording that results in a spe-  
24           cifically identifiable reproduction by or for any  
25           transmission recipient of a phonorecord of that

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

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

20 “(12) INDIVIDUAL DOWNLOAD LICENSE.—The  
21 term ‘individual download license’ means a compul-  
22 sory license obtained by a record company to make  
23 and distribute, or authorize the making and distribu-  
24 tion of, permanent downloads embodying a specific  
25 individual musical work.

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

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

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

20           “(16) LIMITED DOWNLOAD.—The term ‘limited  
21           download’ means a digital transmission of a sound  
22           recording of a musical work in the form of a  
23           download, where such sound recording is accessible  
24           for listening only for a limited amount of time or  
25           specified number of times.

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

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

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

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

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

22          “(22) NOTICE OF LICENSE.—The term ‘notice  
23          of license’ means a notice from a digital music pro-  
24          vider provided under subsection (d)(2)(A) for pur-  
25          poses of obtaining a blanket license.

1           “(23) NOTICE OF NONBLANKET ACTIVITY.—

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

7           “(24) PERMANENT DOWNLOAD.—The term

8           ‘permanent download’ means a digital transmission  
9           of a sound recording of a musical work in the form  
10          of a download, where such sound recording is acces-  
11          sible for listening without restriction as to the  
12          amount of time or number of times it may be  
13          accessed.

14          “(25) QUALIFIED AUDITOR.—The term ‘quali-

15          fied auditor’ means an independent, certified public  
16          accountant with experience performing music royalty  
17          audits.

18          “(26) RECORD COMPANY.—The term ‘record

19          company’ means an entity that invests in, produces,  
20          and markets sound recordings of musical works, and  
21          distributes such sound recordings for remuneration  
22          through multiple sales channels, including a cor-  
23          porate affiliate of such an entity engaged in distribu-  
24          tion of sound recordings.

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

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

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

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

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

19           “(A) means an entity, including a group of  
20 entities under common ownership or control  
21 that, acting under the authority of one or more  
22 voluntary licenses or individual download li-  
23 censes, offers a service engaged in covered ac-  
24 tivities, and such entity or group of entities—

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

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

11 “(iii) either—

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

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

24 “(B) does not include—



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

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

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

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

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

23           “(35) UNMATCHED.—The term ‘unmatched’, as  
24           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  
16 customizable 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 ceipts 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 ignated” and inserting “nonprofit collective des-  
24 ignated 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; and  
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.

11 **SEC. 303. EFFECTIVE DATE.**

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

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