

# Union Calendar No. 499

115<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5447

[Report No. 115-651]

To modernize copyright law, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 10, 2018

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

APRIL 25, 2018

Additional sponsors: Mr. MCCARTHY, Mr. HOYER, Mr. BUCK, Mr. ESTES of Kansas, Mrs. HANDEL, Mr. RUTHERFORD, Mr. YOHO, Mrs. BROOKS of Indiana, Mr. HURD, Ms. ESHOO, Mr. CÁRDENAS, Mr. GOMEZ, Ms. SÁNCHEZ, Mr. DUNCAN of Tennessee, Mr. CRAMER, Mr. GROTHMAN, Mr. SCALISE, Mr. LAMALFA, and Mr. DESAULNIER

APRIL 25, 2018

Committed to the Committee of the Whole House on the State of the Union  
and ordered to be printed

# **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.

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

10 **SEC. 101. SHORT TITLE.**

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

13 **SEC. 102. BLANKET LICENSE FOR DIGITAL USES AND ME-**  
 14 **CHANICAL LICENSING COLLECTIVE.**

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

1 (1) in subsection (a)—

2 (A) by inserting “IN GENERAL” after  
3 “AVAILABILITY AND SCOPE OF COMPULSORY  
4 LICENSE”;

5 (B) by striking paragraph (1) and insert-  
6 ing the following new paragraph:

7 “(1) ELIGIBILITY FOR COMPULSORY LI-  
8 CENSE.—

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

20 “(i) phonorecords of such musical  
21 work have previously been distributed to  
22 the public in the United States under the  
23 authority of the copyright owner of the  
24 work, including by means of digital phono-  
25 record delivery; or

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

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

17           “(II) the sound recording copy-  
18 right owner or its authorized dis-  
19 tributor has authorized the digital  
20 music provider to make and distribute  
21 digital phonorecord deliveries of the  
22 sound recording to the public in the  
23 United States.

24           “(B) DUPLICATION OF SOUND RECORD-  
25 ING.—A person may not obtain a compulsory li-

1 cense for the use of the work in the making of  
2 phonorecords duplicating a sound recording  
3 fixed by another, including by means of digital  
4 phonorecord delivery, unless—

5 “(i) such sound recording was fixed  
6 lawfully; and

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

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

20 (2) by striking subsection (b) and inserting the  
21 following:

22 “(b) PROCEDURES TO OBTAIN A COMPULSORY LI-  
23 CENSE.—

24 “(1) PHONORECORDS OTHER THAN DIGITAL  
25 PHONORECORD DELIVERIES.—A person who seeks to

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

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

20 “(A) prior to the license availability date,  
21 shall, before or within 30 calendar days after  
22 first making any such digital phonorecord deliv-  
23 ery, serve a notice of intention to do so on the  
24 copyright owner (but may not file the notice  
25 with the Copyright Office, even if the public

1 records of the Office do not identify the owner  
2 or the owner’s address), and such notice shall  
3 comply, in form, content, and manner of serv-  
4 ice, with requirements that the Register of  
5 Copyrights shall prescribe by regulation; or

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

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

22 “(4) FAILURE TO OBTAIN LICENSE.—

23 “(A) PHONORECORDS OTHER THAN DIG-  
24 ITAL PHONORECORD DELIVERIES.—In the case  
25 of phonorecords made and distributed other



1 than by means of digital phonorecord delivery,  
2 the failure to serve or file the notice of inten-  
3 tion required by paragraph (1) forecloses the  
4 possibility of a compulsory license under para-  
5 graph (1). In the absence of a voluntary license,  
6 the failure to obtain a compulsory license ren-  
7 ders the making and distribution of phonore-  
8 cords actionable as acts of infringement under  
9 section 501 and subject to the remedies pro-  
10 vided by sections 502 through 506.

11 “(B) DIGITAL PHONORECORD DELIV-  
12 ERIES.—

13 “(i) In the case of phonorecords made  
14 and distributed by means of digital phono-  
15 record delivery:

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

22 “(II) The failure to comply with  
23 paragraph (2)(B) forecloses the possi-  
24 bility of a blanket license for a period  
25 of 3 years after the last calendar day

1                   on which the notice of license was re-  
2                   quired to be submitted to the mechan-  
3                   ical licensing collective under such  
4                   paragraph.

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

14                  (3) by amending subsection (c) to read as fol-  
15                  lows:

16                  “(c) GENERAL CONDITIONS APPLICABLE TO COM-  
17                  PULSORY LICENSE.—

18                         “(1) ROYALTY PAYABLE UNDER COMPULSORY  
19                         LICENSE.—

20                                 “(A) IDENTIFICATION REQUIREMENT.—To  
21                                 be entitled to receive royalties under a compul-  
22                                 sory license obtained under subsection (b)(1)  
23                                 the copyright owner must be identified in the  
24                                 registration or other public records of the Copy-  
25                                 right Office. The owner is entitled to royalties

1 for phonorecords made and distributed after  
2 being so identified, but is not entitled to recover  
3 for any phonorecords previously made and dis-  
4 tributed.

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

20 “(C) ROYALTY FOR DIGITAL PHONO-  
21 RECORD DELIVERIES.—For every digital phono-  
22 record delivery of a musical work made under  
23 a compulsory license under this section, the roy-  
24 alty payable shall be the royalty prescribed

1 under subparagraphs (D) through (F) and  
2 paragraph (2)(A) and chapter 8 of this title.

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

21 “(E) DETERMINATION OF REASONABLE  
22 RATES AND TERMS.—Proceedings under chap-  
23 ter 8 shall determine reasonable rates and  
24 terms of royalty payments for the activities  
25 specified by this section during the period be-

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

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

1 that most clearly represent the rates and terms  
2 that would have been negotiated in the market-  
3 place between a willing buyer and a willing sell-  
4 er. In determining such rates and terms for dig-  
5 ital phonorecord deliveries, the Copyright Roy-  
6 alty Judges shall base their decision on eco-  
7 nomic, competitive, and programming informa-  
8 tion presented by the parties, including—

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

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

23 “(2) ADDITIONAL TERMS AND CONDITIONS.—

24 “(A) VOLUNTARY LICENSES AND CON-  
25 TRACTUAL ROYALTY RATES.—

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

1                   “(ii) The second sentence of clause (i)  
2 shall not apply to—

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

24                   “(II) a contract entered into  
25 after the date that the sound record-



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

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

21          “(C) INFRINGEMENT REMEDIES.—

22                 “(i) A digital phonorecord delivery of  
23                 a sound recording is actionable as an act  
24                 of infringement under section 501, and is

1 fully subject to the remedies provided by  
2 sections 502 through 506, unless—

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

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

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

24 “(D) LIABILITY OF SOUND RECORDING  
25 OWNERS.—The liability of the copyright owner

1 of a sound recording for infringement of the  
2 copyright in a nondramatic musical work em-  
3 bodied in the sound recording shall be deter-  
4 mined in accordance with applicable law, except  
5 that the owner of a copyright in a sound re-  
6 cording shall not be liable for a digital phono-  
7 record delivery by a third party if the owner of  
8 the copyright in the sound recording does not  
9 license the distribution of a phonorecord of the  
10 nondramatic musical work.

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

24 “(F) PRESERVATION OF RIGHTS.—Noth-  
25 ing in this section annuls or limits (i) the exclu-

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

16 “(G) EXEMPT TRANSMISSIONS AND RE-  
17 TRANSMISSIONS.—The provisions of this section  
18 concerning digital phonorecord deliveries shall  
19 not apply to any exempt transmissions or re-  
20 transmissions under section 114(d)(1). The ex-  
21 emptions created in section 114(d)(1) do not  
22 expand or reduce the rights of copyright owners  
23 under section 106(1) through (5) with respect  
24 to such transmissions and retransmissions.

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

22           “(I) PAYMENT OF ROYALTIES AND STATE-  
23           MENTS OF ACCOUNT.—Except as provided in  
24           paragraphs (4)(A)(i) and (10)(B) of subsection  
25           (d), royalty payments shall be made on or be-

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

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

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

11          (4) by amending subsection (d) to read as fol-  
12          lows:

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

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

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

1           “(B) INCLUDED ACTIVITIES.—A blanket li-  
2           cense—

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

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

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

19          “(C) OTHER LICENSES.—A voluntary li-  
20          cense for covered activities entered into by or  
21          under the authority of one or more copyright  
22          owners and one or more digital music providers,  
23          or authority to make and distribute permanent  
24          downloads of a musical work obtained by a dig-  
25          ital music provider from a sound recording



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

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

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

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

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

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

18          “(2) AVAILABILITY OF BLANKET LICENSE.—

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

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

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

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

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

22                 “(II) the digital music provider  
23                 has had a blanket license terminated  
24                 by the mechanical licensing collective

1           within the past 3 years pursuant to  
2           paragraph (4)(E).

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

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

24          “(B)   BLANKET   LICENSE   EFFECTIVE  
25          DATE.—Blanket licenses shall be made available

1 by the mechanical licensing collective on and  
2 after the license availability date. No such li-  
3 cense shall be effective prior to the license avail-  
4 ability date.

5 “(3) MECHANICAL LICENSING COLLECTIVE.—

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

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

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

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

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

4           “(B) DESIGNATION OF MECHANICAL LI-  
5           CENSING COLLECTIVE.—

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

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

24           “(II) After reviewing the infor-  
25          mation requested under subclause (I)

1 and making a designation, the Reg-  
2 ister shall publish notice in the Fed-  
3 eral Register setting forth the identity  
4 of and contact information for the me-  
5 chanical licensing collective.

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

20 “(I) The Register shall, after re-  
21 viewing the information submitted and  
22 conducting additional proceedings as  
23 appropriate, publish notice in the Fed-  
24 eral Register of a continuing designa-  
25 tion or new designation of the me-

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

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

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

25          “(C) AUTHORITIES AND FUNCTIONS.—



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

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

10                   “(II) Collect and distribute roy-  
11                   alties from digital music providers for  
12                   covered activities.

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

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

23                   “(V) Administer a process by  
24                   which copyright owners can claim  
25                   ownership of musical works (and

1 shares of such works), and a process  
2 by which royalties for works for which  
3 the owner is not identified or located  
4 are equitably distributed to known  
5 copyright owners.

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

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

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

22 “(IX) Initiate and participate in  
23 proceedings before the Copyright Roy-  
24 alty Judges to establish the adminis-

1 trative assessment under this sub-  
2 section.

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

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

11 “(XII) Maintain records of its  
12 activities and engage in and respond  
13 to audits described under this sub-  
14 section.

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

19 “(ii) ADDITIONAL ADMINISTRATIVE  
20 ACTIVITIES.—Subject to paragraph  
21 (11)(C) and clause (iii), the mechanical li-  
22 censing collective may also administer, or  
23 assist in administering, voluntary licenses  
24 issued by or individual download licenses  
25 obtained from copyright owners for uses of

1 musical works, for which the mechanical li-  
2 censing collective shall charge reasonable  
3 fees for such services.

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

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

22 “(D) GOVERNANCE.—

23 “(i) BOARD OF DIRECTORS.—The me-  
24 chanical licensing collective shall have a  
25 board of directors consisting of 14 voting

1 members and 3 nonvoting members, as fol-  
2 lows:

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

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

19 “(III) One nonvoting member  
20 shall be a representative of the non-  
21 profit trade association of music pub-  
22 lishers that represents the greatest  
23 percentage of the licensor market for  
24 uses of musical works in covered ac-

1                   activities, as measured over the pre-  
2                   ceding 3 full calendar years.

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

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

22                  “(ii) BOARD MEETINGS.—The board  
23                  of directors shall meet no less than 2 times  
24                  per year and discuss matters pertinent to

1 the operations, including the mechanical li-  
2 censing collective budget.

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

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

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

23 “(iv) UNCLAIMED ROYALTIES OVER-  
24 SIGHT COMMITTEE.—The board of direc-  
25 tors of the mechanical licensing collective

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

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

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



1           endar year. At the time of posting, a copy  
2           of the report shall be provided to the Reg-  
3           ister of Copyrights.

4           “(E) MUSICAL WORKS DATABASE.—

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

22                   “(ii) MATCHED WORKS.—With respect  
23          to musical works (and shares thereof) that  
24          have been matched to copyright owners,  
25          the musical works database shall include—

1 “(I) the title of the musical work;

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

5 “(III) contact information for  
6 such copyright owner;

7 “(IV) to the extent reasonably  
8 available to the mechanical licensing  
9 collective—

10 “(aa) the international  
11 standard musical work code for  
12 the work; and

13 “(bb) identifying informa-  
14 tion for sound recordings in  
15 which the musical work is em-  
16 bodied, including the name of the  
17 sound recording, featured artist,  
18 sound recording copyright owner,  
19 international standard recording  
20 code, and other information com-  
21 monly used to assist in associ-  
22 ating sound recordings with mu-  
23 sical works; and

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

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

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

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

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

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

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

1 copyright owner, international  
2 standard recording code, and  
3 other information commonly used  
4 to assist in associating sound re-  
5 cordings with musical works; and

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

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

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

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

4           “(v) ACCESSIBILITY OF DATABASE.—

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

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

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

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

23                   “(IV) The Register of Copy-  
24                   rights, free of charge (but the Reg-  
25                   ister shall not treat such database or

1 any information therein as a Govern-  
2 ment record).

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

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

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

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

24 “(ii) NOTICES OF NONBLANKET AC-  
25 TIVITY.—The mechanical licensing collec-

1           tive shall receive notices of nonblanket ac-  
2           tivity from significant nonblanket licensees,  
3           as provided in paragraph (6)(A). The col-  
4           lective shall maintain a current, publicly  
5           accessible list of notices of nonblanket ac-  
6           tivity that includes contact information for  
7           significant nonblanket licensees and the  
8           dates of receipt of such notices.

9           “(G) COLLECTION AND DISTRIBUTION OF  
10          ROYALTIES.—

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

16           “(I) engage in efforts to—

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

23           “(bb) confirm uses of musi-  
24           cal works subject to voluntary li-  
25           censes and individual download

1 licenses, and the corresponding  
2 pro rata amounts to be deducted  
3 from royalties that would other-  
4 wise be due under the blanket li-  
5 cense; and

6 “(cc) confirm proper pay-  
7 ment of royalties due;

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

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

18 “(aa) an inability to identify  
19 or locate a copyright owner of a  
20 musical work (or share thereof);  
21 or

22 “(bb) a pending dispute be-  
23 fore the dispute resolution com-  
24 mittee of the mechanical licens-  
25 ing collective.



1                   “(ii) OTHER COLLECTION EFFORTS.—

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

17                  “(H) HOLDING OF ACCRUED ROYAL-  
18                  TIES.—

19                  “(i) HOLDING PERIOD.—The mechan-  
20                  ical licensing collective shall hold accrued  
21                  royalties associated with particular musical  
22                  works (and shares of works) that remain  
23                  unmatched for a period of at least 3 years  
24                  after the date on which the funds were re-  
25                  ceived by the mechanical licensing collec-

1           tive, or at least 3 years after the date on  
2           which they were accrued by a digital music  
3           provider that subsequently transferred  
4           such funds to the mechanical licensing col-  
5           lective pursuant to paragraph (10)(B),  
6           whichever period expires sooner.

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

16          “(I) MUSICAL WORKS CLAIMING PROC-  
17          ESS.—The mechanical licensing collective shall  
18          publicize the existence of accrued royalties for  
19          unmatched musical works (and shares of such  
20          works) within 6 months of receiving a transfer  
21          of accrued royalties for such works by publicly  
22          listing the works and the procedures by which  
23          copyright owners may identify themselves and  
24          provide ownership, contact, and other relevant  
25          information to the mechanical licensing collec-

1           tive in order to receive payment of accrued roy-  
2           alties. When a copyright owner of an un-  
3           matched work (or share of a work) has been  
4           identified and located in accordance with the  
5           procedures of the mechanical licensing collec-  
6           tive, the collective shall—

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

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

22                  “(J) DISTRIBUTION OF UNCLAIMED AC-  
23                  CRUED ROYALTIES.—

24                   “(i) DISTRIBUTION PROCEDURES.—

25                  After the expiration of the prescribed hold-

1 ing period for accrued royalties provided in  
2 paragraph (H)(i), the mechanical licensing  
3 collective shall distribute such accrued roy-  
4 alties, along with a proportionate share of  
5 accrued interest, to copyright owners iden-  
6 tified in the records of the collective, sub-  
7 ject to the following requirements, and in  
8 accordance with the policies and proce-  
9 dures established under clause (ii):

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

17 “(II) Copyright owners’ payment  
18 shares for unclaimed accrued royalties  
19 for particular reporting periods shall  
20 be determined in a transparent and  
21 equitable manner based on data indi-  
22 cating the relative market shares of  
23 such copyright owners as reflected by  
24 royalty payments made by digital  
25 music providers for covered activities

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

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

21 “(bb) the mechanical licens-  
22 ing collective shall take appro-  
23 priate steps to safeguard the con-  
24 fidentiality and security of finan-  
25 cial and other sensitive data used

1 to compute market shares in ac-  
2 cordance with the confidentiality  
3 provisions prescribed by the Reg-  
4 ister of Copyrights under para-  
5 graph (12)(C).

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

18 “(iii) ADVANCE NOTICE OF DISTRIBUTIONS.—The mechanical licensing collec-  
19 tive shall publicize a pending distribution  
20 of unclaimed accrued royalties and accrued  
21 interest at least 90 calendar days in ad-  
22 vance of such distribution.  
23  
24

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

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

18                   “(II) in no case shall the pay-  
19                  ment or credit to an individual song-  
20                  writer be less than 50 percent of the  
21                  payment received by the copyright  
22                  owner attributable to usage of musical  
23                  works (or shares of works) of that  
24                  songwriter.

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

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

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

23           “(L) VERIFICATION OF PAYMENTS BY ME-  
24 CHANICAL LICENSING COLLECTIVE.—



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

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

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

1 scribed by the Register of Copyrights  
2 under paragraph (12)(C).

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

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

24 “(V) The qualified auditor shall  
25 determine the accuracy of royalty pay-

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

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

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

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

15 “(M) RECORDS OF MECHANICAL LICENS-  
16 ING COLLECTIVE.—

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

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

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

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

20           “(A) ROYALTY REPORTING AND PAY-  
21           MENTS.—

22           “(i) MONTHLY REPORTS AND PAY-  
23           MENT.—A digital music provider shall re-  
24           port and pay royalties to the mechanical li-  
25           censing collective under the blanket license

1 on a monthly basis in accordance with  
2 clause (ii) and subsection (c)(2)(I), but the  
3 monthly reporting shall be due 45 calendar  
4 days, rather than 20 calendar days, after  
5 the end of the monthly reporting period.

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

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

19 “(aa) provide identifying in-  
20 formation for the sound record-  
21 ing, including sound recording  
22 name, featured artist, and, to the  
23 extent reasonably available to the  
24 digital music provider, sound re-  
25 cording copyright owner, inter-

1 national standard recording code,  
2 and other information commonly  
3 used in the industry to identify  
4 sound recordings and match  
5 them to the musical works the  
6 sound recordings embody;

7 “(bb) to the extent reason-  
8 ably available to the digital music  
9 provider, provide information  
10 concerning authorship and own-  
11 ership of the applicable rights in  
12 the musical work embodied in the  
13 sound recording (including each  
14 songwriter, publisher name, and  
15 respective ownership share) and  
16 the international standard musi-  
17 cal work code; and

18 “(cc) provide the number of  
19 digital phonorecord deliveries of  
20 the sound recording, including  
21 limited downloads and interactive  
22 streams;

23 “(II) identify and provide contact  
24 information for all musical work copy-  
25 right owners for works embodied in

1 sound recordings as to which a vol-  
2 untary license, rather than the blan-  
3 ket license, is in effect with respect to  
4 the uses being reported; and

5 “(III) provide such other infor-  
6 mation as the Register of Copyrights  
7 shall require by regulation.

8 “(iii) **FORMAT AND MAINTENANCE OF**  
9 **REPORTS.**—Reports of usage provided by  
10 digital music providers to the mechanical  
11 licensing collective shall be in a machine-  
12 readable format that is compatible with the  
13 information technology systems of the me-  
14 chanical licensing collective and meets the  
15 requirements of regulations adopted by the  
16 Register of Copyrights. The Register shall  
17 also adopt regulations setting forth re-  
18 quirements under which records of use  
19 shall be maintained and made available to  
20 the mechanical licensing collective by dig-  
21 ital music providers engaged in covered ac-  
22 tivities under a blanket license.

23 “(iv) **ADOPTION OF REGULATIONS.**—  
24 The Register shall adopt regulations—



1           “(I) setting forth requirements  
2           under which records of use shall be  
3           maintained and made available to the  
4           mechanical licensing collective by dig-  
5           ital music providers engaged in cov-  
6           ered activities under a blanket license;  
7           and

8           “(II) regarding adjustments to  
9           reports of usage by digital music pro-  
10          viders, including mechanisms to ac-  
11          count for overpayment and under-  
12          payment of royalties in prior periods.

13           “(B) COLLECTION OF SOUND RECORDING  
14          INFORMATION.—A digital music provider shall  
15          engage in good-faith, commercially reasonable  
16          efforts to obtain from copyright owners of  
17          sound recordings made available through the  
18          service of such digital music provider—

19           “(i) sound recording copyright owners,  
20          international standard recording codes,  
21          and other information commonly used in  
22          the industry to identify sound recordings  
23          and match them to the musical works the  
24          sound recordings embody; and

1           “(ii) information concerning the au-  
2           thorship and ownership of musical works,  
3           including songwriters, publisher names,  
4           ownership shares, and international stand-  
5           ard musical work codes.

6           “(C) PAYMENT OF ADMINISTRATIVE AS-  
7           SESSMENT.—A digital music provider and any  
8           significant nonblanket licensee shall pay the ad-  
9           ministrative assessment established under para-  
10          graph (7)(D) in accordance with this subsection  
11          and applicable regulations.

12          “(D) VERIFICATION OF PAYMENTS BY DIG-  
13          ITAL MUSIC PROVIDERS.—

14                 “(i) VERIFICATION PROCESS.—The  
15                 mechanical licensing collective may conduct  
16                 an audit of a digital music provider oper-  
17                 ating under the blanket license to verify  
18                 the accuracy of royalty payments by the  
19                 digital music provider to the mechanical li-  
20                 censing collective as follows:

21                         “(I) The mechanical licensing  
22                         collective may commence an audit of a  
23                         digital music provider no more than  
24                         once in any 3-calendar-year period to  
25                         cover a verification period of no more

1 than the 3 full calendar years pre-  
2 ceding the date of commencement of  
3 the audit, and such audit may not  
4 audit records for any such 3-year  
5 verification period more than once.

6 “(II) The audit shall be con-  
7 ducted by a qualified auditor, who  
8 shall perform the audit during the or-  
9 dinary course of business by exam-  
10 ining the books, records, and data of  
11 the digital music provider, according  
12 to generally accepted auditing stand-  
13 ards and subject to applicable con-  
14 fidentiality requirements prescribed by  
15 the Register of Copyrights under  
16 paragraph (12)(C).

17 “(III) The digital music provider  
18 shall make such books, records, and  
19 data available to the qualified auditor  
20 and respond to reasonable requests  
21 for relevant information, and shall use  
22 commercially reasonable efforts to  
23 provide access to relevant information  
24 maintained with respect to a digital  
25 music provider by third parties.

1           “(IV) To commence the audit,  
2           the mechanical licensing collective  
3           shall file with the Copyright Office a  
4           notice of intent to conduct an audit of  
5           the digital music provider, identifying  
6           the period of time to be audited, and  
7           shall simultaneously deliver a copy of  
8           such notice to the digital music pro-  
9           vider. 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 digital music pro-  
18          vider to the mechanical licensing col-  
19          lective, but before providing a final  
20          audit report to the mechanical licens-  
21          ing collective, the qualified auditor  
22          shall provide a tentative draft of the  
23          report to the digital music provider  
24          and allow the digital music provider a  
25          reasonable opportunity to respond to

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

3 “(VI) The mechanical licensing  
4 collective shall pay the cost of the  
5 audit, unless the qualified auditor de-  
6 termines that there was an under-  
7 payment by the digital music provider  
8 of 10 percent or more, in which case  
9 the digital music provider shall bear  
10 the reasonable costs of the audit, in  
11 addition to paying the amount of any  
12 underpayment to the mechanical li-  
13 censing collective. In case of an over-  
14 payment by the digital music provider,  
15 the mechanical licensing collective  
16 shall provide a credit to the account  
17 of the digital music provider.

18 “(VII) A digital music provider  
19 may not assert section 507 or any  
20 other Federal or State statute of limi-  
21 tations, doctrine of laches or estoppel,  
22 or similar provision as a defense to a  
23 legal action arising from an audit  
24 under this subparagraph if such legal  
25 action is commenced no more than 6

1 years after the commencement of the  
2 audit that is the basis for such action.

3 “(ii) ALTERNATIVE VERIFICATION  
4 PROCEDURES.—Nothing in this subpara-  
5 graph shall preclude the mechanical licens-  
6 ing collective and a digital music provider  
7 from agreeing to audit procedures different  
8 from those described herein, but a notice  
9 of the audit shall be provided to and pub-  
10 lished by the Copyright Office as described  
11 in clause (i)(IV).

12 “(E) DEFAULT UNDER BLANKET LI-  
13 CENSE.—

14 “(i) CONDITIONS OF DEFAULT.—A  
15 digital music provider shall be in default  
16 under a blanket license if the digital music  
17 provider—

18 “(I) fails to provide one or more  
19 monthly reports of usage to the me-  
20 chanical licensing collective when due;

21 “(II) fails to make a monthly  
22 royalty or late fee payment to the me-  
23 chanical licensing collective when due,  
24 in all or material part;

1           “(III) provides one or more  
2           monthly reports of usage to the me-  
3           chanical licensing collective that, on  
4           the whole, is or are materially defi-  
5           cient as a result of inaccurate, miss-  
6           ing, or unreadable data, where the  
7           correct data was available to the dig-  
8           ital music provider and required to be  
9           reported under this section and appli-  
10          cable regulations;

11           “(IV) fails to pay the administra-  
12          tive assessment as required under this  
13          subsection and applicable regulations;  
14          or

15           “(V) after being provided written  
16          notice by the mechanical licensing col-  
17          lective, refuses to comply with any  
18          other material term or condition of  
19          the blanket license under this section  
20          for a period of 60 calendar days or  
21          longer.

22           “(ii) NOTICE OF DEFAULT AND TER-  
23          MINATION.—In case of a default by a dig-  
24          ital music provider, the mechanical licens-  
25          ing collective may proceed to terminate the

1 blanket license of the digital music pro-  
2 vider as follows:

3 “(I) The mechanical licensing  
4 collective shall provide written notice  
5 to the digital music provider describ-  
6 ing with reasonable particularity the  
7 default and advising that unless such  
8 default is cured within 60 calendar  
9 days after the date of the notice, the  
10 blanket license will automatically ter-  
11minate at the end of that period.

12 “(II) If the digital music provider  
13 fails to remedy the default within the  
14 60-day period referenced in subclause  
15 (I), the license shall terminate without  
16 any further action on the part of the  
17 mechanical licensing collective. Such  
18 termination renders the making of all  
19 digital phonorecord deliveries of all  
20 musical works (and shares thereof)  
21 covered by the blanket license for  
22 which the royalty or administrative  
23 assessment has not been paid action-  
24 able as acts of infringement under  
25 section 501 and subject to the rem-



1 edies provided by sections 502  
2 through 506.

3 “(iii) NOTICE TO COPYRIGHT OWN-  
4 ERS.—The mechanical licensing collective  
5 shall provide written notice of any termi-  
6 nation under this subparagraph to copy-  
7 right owners of affected works.

8 “(iv) REVIEW BY FEDERAL DISTRICT  
9 COURT.—A digital music provider that be-  
10 lieves a blanket license was improperly ter-  
11 minated by the mechanical licensing collec-  
12 tive may seek review of such termination in  
13 Federal district court. The district court  
14 shall determine the matter de novo based  
15 on the record before the mechanical licens-  
16 ing collective and any additional sup-  
17 porting evidence presented by the parties.

18 “(5) DIGITAL LICENSEE COORDINATOR.—

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

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

24 “(ii) is endorsed by and enjoys sub-  
25 stantial support from digital music pro-

1           viders and significant nonblanket licensees  
2           that together represent the greatest per-  
3           centage of the licensee market for uses of  
4           musical works in covered activities, as  
5           measured over the preceding 3 calendar  
6           years;

7           “(iii) is able to demonstrate that it  
8           has, or will have prior to the license avail-  
9           ability date, the administrative capabilities  
10          to perform the required functions of the  
11          digital licensee coordinator under this sub-  
12          section; and

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

16          “(B) DESIGNATION OF DIGITAL LICENSEE  
17          COORDINATOR.—

18          “(i) INITIAL DESIGNATION.—The  
19          Register of Copyrights shall initially des-  
20          ignate the digital licensee coordinator with-  
21          in 9 months after the enactment date, in  
22          accordance with the same procedure de-  
23          scribed for designation of the mechanical  
24          licensing collective in paragraph (3)(B)(i).

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

14          “(iii) INABILITY TO DESIGNATE.—If  
15          the Register is unable to identify an entity  
16          that fulfills each of the qualifications de-  
17          scribed in clauses (i) through (iii) of sub-  
18          paragraph (A) to serve as the digital li-  
19          censee coordinator, the Register may de-  
20          cline to designate a digital licensee coordi-  
21          nator. The Register’s determination not to  
22          designate a digital licensee coordinator  
23          shall not negate or otherwise affect any  
24          provision of this subsection except to the  
25          limited extent that a provision references

1 the digital licensee coordinator. In such  
2 case, the reference to the digital licensee  
3 coordinator shall be without effect unless  
4 and until a new digital licensee coordinator  
5 is designated.

6 “(C) AUTHORITIES AND FUNCTIONS.—

7 “(i) IN GENERAL.—The digital li-  
8 censee coordinator is authorized to perform  
9 the following functions, subject to more  
10 particular requirements as described in  
11 this subsection:

12 “(I) Establish a governance  
13 structure, criteria for membership,  
14 and any dues to be paid by its mem-  
15 bers.

16 “(II) Engage in efforts to enforce  
17 notice and payment obligations with  
18 respect to the administrative assess-  
19 ment, including by receiving informa-  
20 tion from and coordinating with the  
21 mechanical licensing collective.

22 “(III) Initiate and participate in  
23 proceedings before the Copyright Roy-  
24 alty Judges to establish the adminis-

1 trative assessment under this sub-  
2 section.

3 “(IV) Initiate and participate in  
4 proceedings before the Copyright Of-  
5 fice with respect to activities under  
6 this subsection.

7 “(V) Gather and provide docu-  
8 mentation for use in proceedings be-  
9 fore the Copyright Royalty Judges to  
10 set rates and terms under this section.

11 “(VI) Maintain records of its ac-  
12 tivities.

13 “(VII) Engage in such other ac-  
14 tivities as may be necessary or appro-  
15 priate to fulfill its responsibilities  
16 under this subsection.

17 “(ii) RESTRICTION ON LOBBYING.—  
18 The digital licensee coordinator may not  
19 engage in government lobbying activities,  
20 but may engage in the activities described  
21 in subclauses (III), (IV), and (V) of clause  
22 (i).

23 “(6) REQUIREMENTS FOR SIGNIFICANT NON-  
24 BLANKET LICENSEES.—

25 “(A) IN GENERAL.—

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

16           “(ii) REPORTING AND PAYMENT OBLI-  
17 GATIONS.—The notice of nonblanket activ-  
18 ity submitted to the mechanical licensing  
19 collective shall be accompanied by a report  
20 of usage that contains the information de-  
21 scribed in paragraph (4)(A)(ii), as well as  
22 any payment of the administrative assess-  
23 ment required under this subsection and  
24 applicable regulations. Thereafter, subject  
25 to clause (iii), a significant nonblanket li-

1 censee shall continue to provide monthly  
2 reports of usage, accompanied by any re-  
3 quired payment of the administrative as-  
4 sessment, to the mechanical licensing col-  
5 lective. Such reports and payments shall be  
6 submitted not later than 45 calendar days  
7 after the end of the calendar month being  
8 reported.

9 “(iii) DISCONTINUATION OF OBLIGA-  
10 TIONS.—An entity that has submitted a  
11 notice of nonblanket activity to the me-  
12 chanical licensing collective that has ceased  
13 to qualify as a significant nonblanket li-  
14 censee may so notify the collective in writ-  
15 ing. In such case, as of the calendar month  
16 in which such notice is provided, such enti-  
17 ty shall no longer be required to provide  
18 reports of usage or pay the administrative  
19 assessment, but if such entity later quali-  
20 fies as a significant nonblanket licensee,  
21 such entity shall again be required to com-  
22 ply with clauses (i) and (ii).

23 “(B) REPORTING BY MECHANICAL LICENS-  
24 ING COLLECTIVE TO DIGITAL LICENSEE COOR-  
25 DINATOR.—

1           “(i) MONTHLY REPORTS OF NON-  
2 COMPLIANT LICENSEES.—The mechanical  
3 licensing collective shall provide monthly  
4 reports to the digital licensee coordinator  
5 setting forth any significant nonblanket li-  
6 censees of which the collective is aware  
7 that have failed to comply with subpara-  
8 graph (A).

9           “(ii) TREATMENT OF CONFIDENTIAL  
10 INFORMATION.—The mechanical licensing  
11 collective and digital licensee coordinator  
12 shall take appropriate steps to safeguard  
13 the confidentiality and security of financial  
14 and other sensitive data shared under this  
15 subparagraph, in accordance with the con-  
16 fidentiality requirements prescribed by the  
17 Register of Copyrights under paragraph  
18 (12)(C).

19           “(C) LEGAL ENFORCEMENT EFFORTS.—

20           “(i) FEDERAL COURT ACTION.—  
21 Should the mechanical licensing collective  
22 or digital licensee coordinator become  
23 aware that a significant nonblanket li-  
24 censee has failed to comply with subpara-  
25 graph (A), either may commence an action



1 in Federal district court for damages and  
2 injunctive relief. If the significant non-  
3 blanket licensee is found liable, the court  
4 shall, absent a finding of excusable neglect,  
5 award damages in an amount equal to  
6 three times the total amount of the unpaid  
7 administrative assessment and, notwith-  
8 standing anything to the contrary in sec-  
9 tion 505, reasonable attorney’s fees and  
10 costs, as well as such other relief as the  
11 court deems appropriate. In all other  
12 cases, the court shall award relief as ap-  
13 propriate. Any recovery of damages shall  
14 be payable to the mechanical licensing col-  
15 lective as an offset to the collective total  
16 costs.

17 “(ii) STATUTE OF LIMITATIONS FOR  
18 ENFORCEMENT ACTION.—Any action de-  
19 scribed in this subparagraph shall be com-  
20 menced within the time period described in  
21 section 507(b).

22 “(iii) OTHER RIGHTS AND REMEDIES  
23 PRESERVED.—The ability of the mechan-  
24 ical licensing collective or digital licensee  
25 coordinator to bring an action under this

1           subparagraph shall in no way alter, limit  
2           or negate any other right or remedy that  
3           may be available to any party at law or in  
4           equity.

5           “(7) FUNDING OF MECHANICAL LICENSING  
6           COLLECTIVE.—

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

9           “(i) an administrative assessment, as  
10          such assessment is established by the  
11          Copyright Royalty Judges pursuant to sub-  
12          paragraph (D) from time to time, to be  
13          paid by—

14                 “(I) digital music providers that  
15                 are engaged, in all or in part, in cov-  
16                 ered activities pursuant to a blanket  
17                 license; and

18                 “(II) significant nonblanket li-  
19                 censees; and

20                 “(ii) voluntary contributions from dig-  
21                 ital music providers and significant non-  
22                 blanket licensees as may be agreed with  
23                 copyright owners.

24           “(B) VOLUNTARY CONTRIBUTIONS.—

1           “(i) AGREEMENTS CONCERNING CON-  
2           TRIBUTIONS.—Except as provided in  
3           clause (ii), voluntary contributions by dig-  
4           ital music providers and significant non-  
5           blanket licensees shall be determined by  
6           private negotiation and agreement, and the  
7           following conditions apply:

8                   “(I) The date and amount of  
9                   each voluntary contribution to the me-  
10                  chanical licensing collective shall be  
11                  documented in a writing signed by an  
12                  authorized agent of the mechanical li-  
13                  censing collective and the contributing  
14                  party.

15                  “(II) Such agreement shall be  
16                  made available as required in pro-  
17                  ceedings before the Copyright Royalty  
18                  Judges to establish or adjust the ad-  
19                  ministrative assessment in accordance  
20                  with applicable statutory and regu-  
21                  latory provisions and rulings of the  
22                  Copyright Royalty Judges.

23           “(ii) TREATMENT OF CONTRIBU-  
24           TIONS.—Each such voluntary contribution  
25           shall be treated for purposes of an admin-

1            administrative assessment proceeding as an off-  
2            set to the collective total costs that would  
3            otherwise be recovered through the admin-  
4            istrative assessment. Any allocation or re-  
5            allocation of voluntary contributions be-  
6            tween or among individual digital music  
7            providers or significant nonblanket licens-  
8            ees shall be a matter of private negotiation  
9            and agreement among such parties and  
10          outside the scope of the administrative as-  
11          sessment proceeding.

12            “(C) INTERIM APPLICATION OF ACCRUED  
13          ROYALTIES.—In the event that the administra-  
14          tive assessment, together with any funding from  
15          voluntary contributions as provided in subpara-  
16          graphs (A) and (B), is inadequate to cover cur-  
17          rent collective total costs, the collective, with  
18          approval of its board of directors, may apply  
19          unclaimed accrued royalties on an interim basis  
20          to defray such costs, subject to future reim-  
21          bursement of such royalties from future collec-  
22          tions of the assessment.

23            “(D) DETERMINATION OF ADMINISTRA-  
24          TIVE ASSESSMENT.—

1           “(i) ADMINISTRATIVE ASSESSMENT TO  
2 COVER COLLECTIVE TOTAL COSTS.—The  
3 administrative assessment shall be used  
4 solely and exclusively to fund the collective  
5 total costs.

6           “(ii) SEPARATE PROCEEDING BEFORE  
7 COPYRIGHT ROYALTY JUDGES.—The  
8 amount and terms of the administrative  
9 assessment shall be determined and estab-  
10 lished in a separate and independent pro-  
11 ceeding before the Copyright Royalty  
12 Judges, according to the procedures de-  
13 scribed in clauses (iii) and (iv). The admin-  
14 istrative assessment determined in such  
15 proceeding shall—

16           “(I) be wholly independent of  
17 royalty rates and terms applicable to  
18 digital music providers, which shall  
19 not be taken into consideration in any  
20 manner in establishing the adminis-  
21 trative assessment;

22           “(II) be established by the Copy-  
23 right Royalty Judges in an amount  
24 that is calculated to defray the rea-  
25 sonable collective total costs;

1           “(III) be assessed based on usage  
2 of musical works by digital music pro-  
3 viders and significant nonblanket li-  
4 censees in covered activities under  
5 both compulsory and nonblanket li-  
6 censes;

7           “(IV) may be in the form of a  
8 percentage of royalties payable under  
9 this section for usage of musical  
10 works in covered activities (regardless  
11 of whether a different rate applies  
12 under a voluntary license), or any  
13 other usage-based metric reasonably  
14 calculated to equitably allocate the  
15 collective total costs across digital  
16 music providers and significant non-  
17 blanket licensees engaged in covered  
18 activities, but shall include as a com-  
19 ponent a minimum fee for all digital  
20 music providers and significant non-  
21 blanket licensees; and

22           “(V) take into consideration an-  
23 ticipated future collective total costs  
24 and collections of the administrative  
25 assessment, but also, as applicable—

1           “(aa) any portion of past ac-  
2           tual collective total costs of the  
3           mechanical licensing collective  
4           not funded by previous collections  
5           of the administrative assessment  
6           or voluntary contributions be-  
7           cause such collections or con-  
8           tributions together were insuffi-  
9           cient to fund such costs;

10           “(bb) any past collections of  
11           the administrative assessment  
12           and voluntary contributions that  
13           exceeded past actual collective  
14           total costs, resulting in a surplus;  
15           and

16           “(cc) the amount of any vol-  
17           untary contributions by digital  
18           music providers or significant  
19           nonblanket licensees in relevant  
20           periods, described in subpara-  
21           graphs (A) and (B) of paragraph  
22           (7).

23           “(iii) INITIAL ADMINISTRATIVE AS-  
24           SESSMENT.—The procedure for estab-

1           lishing the initial administrative assess-  
2           ment shall be as follows:

3                   “(I) The Copyright Royalty  
4                   Judges shall commence a proceeding  
5                   to establish the initial administrative  
6                   assessment within 9 months after the  
7                   enactment date by publishing a notice  
8                   in the Federal Register seeking peti-  
9                   tions to participate.

10                   “(II) The mechanical licensing  
11                   collective and digital licensee coordi-  
12                   nator shall participate in such pro-  
13                   ceeding, along with any interested  
14                   copyright owners, digital music pro-  
15                   viders or significant nonblanket licens-  
16                   ees that have notified the Copyright  
17                   Royalty Judges of their desire to par-  
18                   ticipate.

19                   “(III) The Copyright Royalty  
20                   Judges shall establish a schedule for  
21                   submission by the parties of informa-  
22                   tion that may be relevant to estab-  
23                   lishing the administrative assessment,  
24                   including actual and anticipated col-  
25                   lective total costs of the mechanical li-



1 censing collective, actual and antici-  
2 pated collections from digital music  
3 providers and significant nonblanket  
4 licensees, and documentation of vol-  
5 untary contributions, as well as a  
6 schedule for further proceedings,  
7 which shall include a hearing, as they  
8 deem appropriate.

9 “(IV) The initial administrative  
10 assessment shall be determined, and  
11 such determination shall be published  
12 in the Federal Register by the Copy-  
13 right Royalty Judges, within 1 year  
14 after commencement of the proceeding  
15 described in this clause. The deter-  
16 mination shall be supported by a writ-  
17 ten record. The initial administrative  
18 assessment shall be effective as of the  
19 license availability date, and shall con-  
20 tinue in effect unless and until an ad-  
21 justed administrative assessment is  
22 established pursuant to an adjustment  
23 proceeding under clause (iii).

24 “(iv) ADJUSTMENT OF ADMINISTRA-  
25 TIVE ASSESSMENT.—The administrative

1 assessment may be adjusted by the Copy-  
2 right Royalty Judges periodically, in ac-  
3 cordance with the following procedures:

4 “(I) No earlier than one year  
5 after the most recent publication of a  
6 determination of the administrative  
7 assessment by the Copyright Royalty  
8 Judges, the mechanical licensing col-  
9 lective, the digital licensee coordi-  
10 nator, or one or more interested copy-  
11 right owners, digital music providers,  
12 or significant nonblanket licensees,  
13 may file a petition with the Copyright  
14 Royalty Judges in the month of Octo-  
15 ber to commence a proceeding to ad-  
16 just the administrative assessment.

17 “(II) Notice of the commence-  
18 ment of such proceeding shall be pub-  
19 lished in the Federal Register in the  
20 month of November following the fil-  
21 ing of any petition, with a schedule of  
22 requested information and additional  
23 proceedings, as described in clause  
24 (iii)(III). The mechanical licensing  
25 collective and digital licensee coordi-

1 nator shall participate in such pro-  
2 ceeding, along with any interested  
3 copyright owners, digital music pro-  
4 viders, or significant nonblanket li-  
5 censees that have notified the Copy-  
6 right Royalty Judges of their desire to  
7 participate.

8 “(III) The determination of the  
9 adjusted administrative assessment,  
10 which shall be supported by a written  
11 record, shall be published in the Fed-  
12 eral Register during November of the  
13 calendar year following the commence-  
14 ment of the proceeding. The adjusted  
15 administrative assessment shall take  
16 effect January 1 of the year following  
17 such publication.

18 “(v) ADOPTION OF VOLUNTARY  
19 AGREEMENTS.—In lieu of reaching their  
20 own determination based on evaluation of  
21 relevant data, the Copyright Royalty  
22 Judges shall approve and adopt a nego-  
23 tiated agreement to establish the amount  
24 and terms of the administrative assessment  
25 that has been agreed to by the mechanical

1 licensing collective and the digital licensee  
2 coordinator (or if none has been des-  
3 ignated, interested digital music providers  
4 and significant nonblanket licensees rep-  
5 resenting more than half of the market for  
6 uses of musical works in covered activi-  
7 ties), but the Copyright Royalty Judges  
8 shall have the discretion to reject any such  
9 agreement for good cause shown. An ad-  
10 ministrative assessment adopted under this  
11 clause shall apply to all digital music pro-  
12 viders and significant nonblanket licensees  
13 engaged in covered activities during the pe-  
14 riod it is in effect.

15 “(vi) CONTINUING AUTHORITY TO  
16 AMEND.—The Copyright Royalty Judges  
17 shall retain continuing authority to amend  
18 a determination of an administrative as-  
19 sessment to correct technical or clerical er-  
20 rors, or modify the terms of implementa-  
21 tion, for good cause, with any such amend-  
22 ment to be published in the Federal Reg-  
23 ister.

24 “(vii) APPEAL OF ADMINISTRATIVE  
25 ASSESSMENT.—The determination of an

1 administrative assessment by the Copy-  
2 right Royalty Judges shall be appealable,  
3 within 30 calendar days after publication  
4 in the Federal Register, to the Court of  
5 Appeals for the District of Columbia Cir-  
6 cuit by any party that fully participated in  
7 the proceeding. The administrative assess-  
8 ment as established by the Copyright Roy-  
9 alty Judges shall remain in effect pending  
10 the final outcome of any such appeal, and  
11 the mechanical licensing collective, digital  
12 licensee coordinator, digital music pro-  
13 viders, and significant nonblanket licensees  
14 shall implement appropriate financial or  
15 other measures within 3 months after any  
16 modification of the assessment to reflect  
17 and account for such outcome.

18 “(viii) REGULATIONS.—The Copyright  
19 Royalty Judges may adopt regulations to  
20 govern the conduct of proceedings under  
21 this paragraph.

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

24 “(A) RESTRICTIONS ON RATESETTING  
25 PARTICIPATION.—Neither the mechanical li-

1           censing collective nor the digital licensee coordi-  
2           nator shall be a party to a proceeding described  
3           in subsection (c)(1)(E), but either may gather  
4           and provide financial and other information for  
5           the use of a party to such a proceeding and  
6           comply with requests for information as re-  
7           quired under applicable statutory and regu-  
8           latory provisions and rulings of the Copyright  
9           Royalty Judges.

10           “(B) APPLICATION OF LATE FEES.—In  
11           any proceeding described in subparagraph (A)  
12           in which the Copyright Royalty Judges estab-  
13           lish a late fee for late payment of royalties for  
14           uses of musical works under this section, such  
15           fee shall apply to covered activities under blan-  
16           ket licenses, as follows:

17                   “(i) Late fees for past due royalty  
18                   payments shall accrue from the due date  
19                   for payment until payment is received by  
20                   the mechanical licensing collective.

21                   “(ii) The availability of late fees shall  
22                   in no way prevent a copyright owner or the  
23                   mechanical licensing collective from assert-  
24                   ing any other rights or remedies to which  
25                   such copyright owner or the mechanical li-

1           censing collective may be entitled under  
2           this title.

3           “(C) INTERIM RATE AGREEMENTS IN GEN-  
4           ERAL.—For any covered activity for which no  
5           rate or terms have been established by the  
6           Copyright Royalty Judges, the mechanical li-  
7           censing collective and any digital music provider  
8           may agree to an interim rate and terms for  
9           such activity under the blanket license, and any  
10          such rate and terms—

11                   “(i) shall be treated as nonpreceden-  
12                   tial and not cited or relied upon in any  
13                   ratesetting proceeding before the Copyright  
14                   Royalty Judges or any other tribunal; and

15                   “(ii) shall automatically expire upon  
16                   the establishment of a rate and terms for  
17                   such covered activity by the Copyright  
18                   Royalty Judges, under subsection  
19                   (c)(1)(E).

20           “(D) ADJUSTMENTS FOR INTERIM  
21           RATES.—The rate and terms established by the  
22           Copyright Royalty Judges for a covered activity  
23           to which an interim rate and terms have been  
24           agreed under subparagraph (C) shall supersede  
25           the interim rate and terms and apply retro-

1 actively to the inception of the activity under  
2 the blanket license. In such case, within 3  
3 months after the rate and terms established by  
4 the Copyright Royalty Judges become effec-  
5 tive—

6 “(i) if the rate established by the  
7 Copyright Royalty Judges exceeds the in-  
8 terim rate, the digital music provider shall  
9 pay to the mechanical licensing collective  
10 the amount of any underpayment of roy-  
11 ties due; or

12 “(ii) if the interim rate exceeds the  
13 rate established by the Copyright Royalty  
14 Judges, the mechanical licensing collective  
15 shall credit the account of the digital music  
16 provider for the amount of any overpay-  
17 ment of royalties due.

18 “(9) TRANSITION TO BLANKET LICENSES.—

19 “(A) SUBSTITUTION OF BLANKET LI-  
20 CENSE.—On the license availability date, a  
21 blanket license shall, without any interruption  
22 in license authority enjoyed by such digital  
23 music provider, be automatically substituted for  
24 and supersede any existing compulsory license  
25 previously obtained under this section by the



1 digital music provider from a copyright owner  
2 to engage in one or more covered activities with  
3 respect to a musical work, but the foregoing  
4 shall not apply to any authority obtained from  
5 a record company pursuant to a compulsory li-  
6 cense to make and distribute permanent  
7 downloads unless and until such record com-  
8 pany terminates such authority in writing to  
9 take effect at the end of a monthly reporting  
10 period, with a copy to the mechanical licensing  
11 collective.

12 “(B) EXPIRATION OF EXISTING LI-  
13 CENSES.—Except to the extent provided in sub-  
14 paragraph (A), on and after the license avail-  
15 ability date, licenses other than individual  
16 download licenses obtained under this section  
17 for covered activities prior to the license avail-  
18 ability date shall no longer continue in effect.

19 “(C) TREATMENT OF VOLUNTARY LI-  
20 CENSES.—A voluntary license for a covered ac-  
21 tivity in effect on the license availability date  
22 will remain in effect unless and until the vol-  
23 untary license expires according to the terms of  
24 the voluntary license, or the parties agree to  
25 amend or terminate the voluntary license. In a

1 case where a voluntary license for a covered ac-  
2 tivity entered into before the license availability  
3 date incorporates the terms of this section by  
4 reference, the terms so incorporated (but not  
5 the rates) shall be those in effect immediately  
6 prior to the license availability date, and those  
7 terms shall continue to apply unless and until  
8 such voluntary license is terminated or amend-  
9 ed, or the parties enter into a new voluntary li-  
10 cense.

11 “(D) FURTHER ACCEPTANCE OF NOTICES  
12 FOR COVERED ACTIVITIES BY COPYRIGHT OF-  
13 FICE.—On and after the enactment date—

14 “(i) the Copyright Office shall no  
15 longer accept notices of intention with re-  
16 spect to covered activities; and

17 “(ii) previously filed notices of inten-  
18 tion will no longer be effective or provide  
19 license authority with respect to covered  
20 activities, but before the license availability  
21 date there shall be no liability under sec-  
22 tion 501 for the reproduction or distribu-  
23 tion of a musical work (or share thereof)  
24 in covered activities if a valid notice of in-

1           tention was filed for such work (or share)  
2           before the enactment date.

3           “(10) PRIOR UNLICENSED USES.—

4           “(A) LIMITATION ON LIABILITY IN GEN-  
5           ERAL.—A copyright owner that commences an  
6           action under section 501 on or after January 1,  
7           2018, against a digital music provider for the  
8           infringement of the exclusive rights provided by  
9           paragraph (1) or (3) of section 106 arising  
10          from the unauthorized reproduction or distribu-  
11          tion of a musical work by such digital music  
12          provider in the course of engaging in covered  
13          activities prior to the license availability date,  
14          shall, as the copyright owner’s sole and exclu-  
15          sive remedy against the digital music provider,  
16          be eligible to recover the royalty prescribed  
17          under subsection (c)(1)(C) and chapter 8 of  
18          this title, from the digital music provider, pro-  
19          vided that such digital music provider can dem-  
20          onstrate compliance with the requirements of  
21          subparagraph (B), as applicable. In all other  
22          cases the limitation on liability under this sub-  
23          paragraph shall not apply.

24          “(B) REQUIREMENTS FOR LIMITATION ON  
25          LIABILITY.—The following requirements shall

1 apply on the enactment date and through the  
2 end of the period that expires 90 days after the  
3 license availability date to digital music pro-  
4 viders seeking to avail themselves of the limita-  
5 tion on liability described in subparagraph (A):

6 “(i) No later than 30 calendar days  
7 after first making a particular sound re-  
8 cording of a musical work available  
9 through its service via one or more covered  
10 activities, or 30 calendar days after the en-  
11 actment date, whichever occurs later, a  
12 digital music provider shall engage in  
13 good-faith, commercially reasonable efforts  
14 to identify and locate each copyright owner  
15 of such musical work (or share thereof).  
16 Such required matching efforts shall in-  
17 clude the following:

18 “(I) Good-faith, commercially  
19 reasonable efforts to obtain from the  
20 owner of the corresponding sound re-  
21 cording made available through the  
22 digital music provider’s service the fol-  
23 lowing information:

24 “(aa) Sound recording  
25 name, featured artist, sound re-

1 cording copyright owner, inter-  
2 national standard recording code,  
3 and other information commonly  
4 used in the industry to identify  
5 sound recordings and match  
6 them to the musical works they  
7 embody.

8 “(bb) Any available musical  
9 work ownership information, in-  
10 cluding each songwriter and pub-  
11 lisher name, percentage owner-  
12 ship share, and international  
13 standard musical work code.

14 “(II) Employment of one or more  
15 bulk electronic matching processes  
16 that are available to the digital music  
17 provider through a third-party vendor  
18 on commercially reasonable terms, but  
19 a digital music provider may rely on  
20 its own bulk electronic matching pro-  
21 cess if it has capabilities comparable to  
22 or better than those available from a  
23 third-party vendor on commercially  
24 reasonable terms.

1           “(ii) The required matching efforts  
2 shall be repeated by the digital music pro-  
3 vider no less than once per month for so  
4 long as the copyright owner remains un-  
5 identified or has not been located.

6           “(iii) If the required matching efforts  
7 are successful in identifying and locating a  
8 copyright owner of a musical work (or  
9 share thereof) by the end of the calendar  
10 month in which the digital music provider  
11 first makes use of the work, the digital  
12 music provider shall provide statements of  
13 account and pay royalties to such copy-  
14 right owner in accordance with this section  
15 and applicable regulations.

16           “(iv) If the copyright owner is not  
17 identified or located by the end of the cal-  
18 endar month in which the digital music  
19 provider first makes use of the work, the  
20 digital music provider shall accrue and  
21 hold royalties calculated under the applica-  
22 ble statutory rate in accordance with usage  
23 of the work, from initial use of the work  
24 until the accrued royalties can be paid to  
25 the copyright owner or are required to be

1 transferred to the mechanical licensing col-  
2 lective, as follows:

3 “(I) Accrued royalties shall be  
4 maintained by the digital music pro-  
5 vider in accordance with generally ac-  
6 cepted accounting principles.

7 “(II) If a copyright owner of an  
8 unmatched musical work (or share  
9 thereof) is identified and located by or  
10 to the digital music provider before  
11 the license availability date, the digital  
12 music provider shall—

13 “(aa) within 45 calendar  
14 days after the end of the cal-  
15 endar month during which the  
16 copyright owner was identified  
17 and located, pay the copyright  
18 owner all accrued royalties, such  
19 payment to be accompanied by a  
20 cumulative statement of account  
21 that includes all of the informa-  
22 tion that would have been pro-  
23 vided to the copyright owner had  
24 the digital music provider been  
25 providing monthly statements of

1 account to the copyright owner  
2 from initial use of the work in  
3 accordance with this section and  
4 applicable regulations, including  
5 the requisite certification under  
6 subsection (c)(2)(I);

7 “(bb) beginning with the ac-  
8 counting period following the cal-  
9 endar month in which the copy-  
10 right owner was identified and lo-  
11 cated, and for all other account-  
12 ing periods prior to the license  
13 availability date, provide monthly  
14 statements of account and pay  
15 royalties to the copyright owner  
16 as required under this section  
17 and applicable regulations; and

18 “(cc) beginning with the  
19 monthly royalty reporting period  
20 commencing on the license avail-  
21 ability date, report usage and pay  
22 royalties for such musical work  
23 (or share thereof) for such re-  
24 porting period and reporting pe-  
25 riods thereafter to the mechanical



1 licensing collective, as required  
2 under this subsection and appli-  
3 cable regulations.

4 “(III) If a copyright owner of an  
5 unmatched musical work (or share  
6 thereof) is not identified and located  
7 by the license availability date, the  
8 digital music provider shall—

9 “(aa) within 45 calendar  
10 days after the license availability  
11 date, transfer all accrued royalti-  
12 ties to the mechanical licensing  
13 collective, such payment to be ac-  
14 companied by a cumulative state-  
15 ment of account that includes all  
16 of the information that would  
17 have been provided to the copy-  
18 right owner had the digital music  
19 provider been serving monthly  
20 statements of account on the  
21 copyright owner from initial use  
22 of the work in accordance with  
23 this section and applicable regu-  
24 lations, including the requisite  
25 certification under subsection

1 (c)(2)(I), and accompanied by an  
2 additional certification by a duly  
3 authorized officer of the digital  
4 music provider that the digital  
5 music provider has fulfilled the  
6 requirements of clauses (i) and  
7 (ii) of subparagraph (B) but has  
8 not been successful in locating or  
9 identifying the copyright owner;  
10 and

11 “(bb) beginning with the  
12 monthly royalty reporting period  
13 commencing on the license avail-  
14 ability date, report usage and pay  
15 royalties for such musical work  
16 (or share thereof) for such period  
17 and reporting periods thereafter  
18 to the mechanical licensing collec-  
19 tive, as required under this sub-  
20 section and applicable regula-  
21 tions.

22 “(v) SUSPENSION OF LATE FEES.—A  
23 digital music provider that complies with  
24 the requirements of this paragraph with  
25 respect to unmatched musical works (or

1 shares of works) shall not be liable for or  
2 accrue late fees for late payments of royal-  
3 ties for such works until such time as the  
4 digital music provider is required to begin  
5 paying monthly royalties to the copyright  
6 owner or the mechanical licensing collec-  
7 tive, as applicable.

8 “(C) ADJUSTED STATUTE OF LIMITA-  
9 TIONS.—Notwithstanding anything to the con-  
10 trary in section 507(b), with respect to any  
11 claim of infringement of the exclusive rights  
12 provided by paragraphs (1) and (3) of section  
13 106 against a digital music provider arising  
14 from the unauthorized reproduction or distribu-  
15 tion of a musical work by such digital music  
16 provider to engage in covered activities that ac-  
17 crued no more than 3 years prior to the license  
18 availability date, such action may be com-  
19 menced within 3 years of the date the claim ac-  
20 crued, or up to 2 years after the license avail-  
21 ability date, whichever is later.

22 “(D) OTHER RIGHTS AND REMEDIES PRE-  
23 SERVED.—Except as expressly provided in this  
24 paragraph, nothing in this paragraph shall be  
25 construed to alter, limit, or negate any right or

1 remedy of a copyright owner with respect to un-  
2 authorized use of a musical work.

3 “(E) REMEDY IN FEDERAL DISTRICT  
4 COURT.—A person may bring a claim in a Fed-  
5 eral district court of competent jurisdiction for  
6 an issue that is not adequately resolved by the  
7 board of directors or a committee of the me-  
8 chanical licensing collective, as applicable.

9 “(11) LEGAL PROTECTIONS FOR LICENSING AC-  
10 TIVITIES.—

11 “(A) EXEMPTION FOR COMPULSORY LI-  
12 CENSE ACTIVITIES.—The antitrust exemption  
13 described in subsection (c)(1)(D) shall apply to  
14 negotiations and agreements between and  
15 among copyright owners and persons entitled to  
16 obtain a compulsory license for covered activi-  
17 ties, and common agents acting on behalf of  
18 such copyright owners or persons, including  
19 with respect to the administrative assessment  
20 established under this subsection.

21 “(B) LIMITATION ON COMMON AGENT EX-  
22 EMPTION.—Notwithstanding the antitrust ex-  
23 emption provided in subsection (c)(1)(D) and  
24 subparagraph (A) (except for the administrative  
25 assessment referenced therein and except as

1 provided in paragraph (8)(C)), neither the me-  
2 chanical licensing collective nor the digital li-  
3 censee coordinator shall serve as a common  
4 agent with respect to the establishment of roy-  
5 alty rates or terms under this section.

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

16 “(i) Each copyright owner shall estab-  
17 lish the royalty rates and material terms of  
18 any such voluntary license individually and  
19 not in agreement, combination, or concert  
20 with any other copyright owner.

21 “(ii) Each person entitled to obtain a  
22 compulsory license under this section shall  
23 establish the royalty rates and material  
24 terms of any such voluntary license indi-  
25 vidually and not in agreement, combina-

1           tion, or concert with any other digital  
2           music provider.

3           “(iii) The mechanical licensing collec-  
4           tive shall maintain the confidentiality of  
5           the voluntary licenses in accordance with  
6           the confidentiality provisions prescribed by  
7           the Register of Copyrights under para-  
8           graph (12)(C).

9           “(D) LIABILITY FOR GOOD-FAITH ACTIVI-  
10          TIES.—The mechanical licensing collective shall  
11          not be liable to any person or entity based on  
12          a claim arising from its good-faith administra-  
13          tion of policies and procedures adopted and im-  
14          plemented to carry out the responsibilities de-  
15          scribed in subparagraphs (J) and (K) of para-  
16          graph (3), except to the extent of correcting an  
17          underpayment or overpayment of royalties as  
18          provided in paragraph (3)(L)(i)(VI), but the  
19          collective may participate in a legal proceeding  
20          as a stakeholder party if the collective is hold-  
21          ing funds that are the subject of a dispute be-  
22          tween copyright owners. For purposes of this  
23          subparagraph, ‘good-faith administration’  
24          means administration in a manner that is not  
25          grossly negligent.

1           “(E) PREEMPTION OF STATE PROPERTY  
2 LAWS.—The holding and distribution of funds  
3 by the mechanical licensing collective in accord-  
4 ance with this subsection shall supersede and  
5 preempt any State law (including common law)  
6 concerning escheatment or abandoned property,  
7 or any analogous provision, that might other-  
8 wise apply.

9           “(12) REGULATIONS.—

10           “(A) ADOPTION BY REGISTER OF COPY-  
11 RIGHTS AND COPYRIGHT ROYALTY JUDGES.—  
12 The Register of Copyrights may conduct such  
13 proceedings and adopt such regulations as may  
14 be necessary or appropriate to effectuate the  
15 provisions of this subsection, except for regula-  
16 tions concerning proceedings before the Copy-  
17 right Royalty Judges to establish the adminis-  
18 trative assessment, which shall be adopted by  
19 the Copyright Royalty Judges.

20           “(B) JUDICIAL REVIEW OF REGULA-  
21 TIONS.—Except as provided in paragraph  
22 (7)(D)(vii), regulations adopted under this sub-  
23 section shall be subject to judicial review pursu-  
24 ant to chapter 7 of title 5.

1           “(C) PROTECTION OF CONFIDENTIAL IN-  
2           FORMATION.—The Register of Copyrights shall  
3           adopt regulations to provide for the appropriate  
4           procedures to ensure that confidential, private,  
5           proprietary, or privileged information contained  
6           in the records of the mechanical licensing collec-  
7           tive and digital licensee coordinator is not im-  
8           properly disclosed or used, including through  
9           any disclosure or use by the board of directors  
10          or personnel of either entity, and specifically in-  
11          cluding the unclaimed royalties oversight com-  
12          mittee and the dispute resolution committee of  
13          the mechanical licensing collective.

14          “(13) SAVINGS CLAUSES.—

15                 “(A) LIMITATION ON ACTIVITIES AND  
16                 RIGHTS COVERED.—This subsection applies  
17                 solely to uses of musical works subject to licens-  
18                 ing under this section. The blanket license shall  
19                 not be construed to extend or apply to activities  
20                 other than covered activities or to rights other  
21                 than the exclusive rights of reproduction and  
22                 distribution licensed under this section, or serve  
23                 or act as the basis to extend or expand the  
24                 compulsory license under this section to activi-



1           ties and rights not covered by this section on  
2           the enactment date.

3           “(B) RIGHTS OF PUBLIC PERFORMANCE  
4           NOT AFFECTED.—The rights, protections, and  
5           immunities granted under this subsection, the  
6           data concerning musical works collected and  
7           made available under this subsection, and the  
8           definitions described in subsection (e) shall not  
9           extend to, limit, or otherwise affect any right of  
10          public performance in a musical work.”; and

11          (5) by adding at the end the following new sub-  
12          section:

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

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

17                 “(2) ACCRUED ROYALTIES.—The term ‘accrued  
18                 royalties’ means royalties accrued for the reproduc-  
19                 tion or distribution of a musical work (or share  
20                 thereof) in a covered activity, calculated in accord-  
21                 ance with the applicable royalty rate under this sec-  
22                 tion.

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

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

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

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

10           “(A) means the total costs of establishing,  
11 maintaining, and operating the mechanical li-  
12 censing collective to fulfill its statutory func-  
13 tions, including—

14           “(i) startup costs;

15           “(ii) financing, legal, and insurance  
16 costs;

17           “(iii) investments in information tech-  
18 nology, infrastructure, and other long-term  
19 resources;

20           “(iv) outside vendor costs;

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

23           “(vi) costs of bad debt; and

24           “(vii) costs of automated and manual  
25 efforts to identify and locate copyright

1 owners of musical works (and shares of  
2 such musical works) and match sound re-  
3 cordings to the musical works the sound  
4 recordings embody; and

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

8 “(7) COVERED ACTIVITY.—The term ‘covered  
9 activity’ means the activity of making a digital pho-  
10 norecord delivery of a musical work, including in the  
11 form of a permanent download, limited download, or  
12 interactive stream, where such activity qualified for  
13 a compulsory license under this section.

14 “(8) DIGITAL MUSIC PROVIDER.—The term  
15 ‘digital music provider’ means a person (or persons  
16 operating under the authority of that person) that,  
17 with respect to a service engaged in covered activi-  
18 ties—

19 “(A) has a direct contractual, subscription,  
20 or other economic relationship with end users of  
21 the service, or, if no such relationship with end  
22 users exists, exercises direct control over the  
23 provision of the service to end users;

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

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

4           “(9) DIGITAL LICENSEE COORDINATOR.—The  
5           term ‘digital licensee coordinator’ means the entity  
6           most recently designated pursuant to subsection  
7           (d)(5).

8           “(10) DIGITAL PHONORECORD DELIVERY.—The  
9           term ‘digital phonorecord delivery’ means each indi-  
10          vidual delivery of a phonorecord by digital trans-  
11          mission of a sound recording that results in a spe-  
12          cifically identifiable reproduction by or for any  
13          transmission recipient of a phonorecord of that  
14          sound recording, regardless of whether the digital  
15          transmission is also a public performance of the  
16          sound recording or any musical work embodied  
17          therein, and includes a permanent download, a lim-  
18          ited download, or an interactive stream. A digital  
19          phonorecord delivery does not result from a real-  
20          time, noninteractive subscription transmission of a  
21          sound recording where no reproduction of the sound  
22          recording or the musical work embodied therein is  
23          made from the inception of the transmission through  
24          to its receipt by the transmission recipient in order  
25          to make the sound recording audible. A digital pho-

1       norecord delivery does not include the digital trans-  
2       mission of sounds accompanying a motion picture or  
3       other audiovisual work as defined in section 101 of  
4       this title.

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

8               “(12) INDIVIDUAL DOWNLOAD LICENSE.—The  
9       term ‘individual download license’ means a compul-  
10      sory license obtained by a record company to make  
11      and distribute, or authorize the making and distribu-  
12      tion of, permanent downloads embodying a specific  
13      individual musical work.

14              “(13) INTERACTIVE STREAM.—The term ‘inter-  
15      active stream’ means a digital transmission of a  
16      sound recording of a musical work in the form of a  
17      stream, where the performance of the sound record-  
18      ing by means of such transmission is not exempt  
19      under section 114(d)(1) and does not in itself, or as  
20      a result of a program in which it is included, qualify  
21      for statutory licensing under section 114(d)(2). An  
22      interactive stream is a digital phonorecord delivery.

23              “(14) INTERESTED.—The term ‘interested’, as  
24      applied to a party seeking to participate in a pro-  
25      ceeding under subsection (d)(7)(D), is a party as to

1 which the Copyright Royalty Judges have not deter-  
2 mined that the party lacks a significant interest in  
3 such proceeding.

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

8 “(16) LIMITED DOWNLOAD.—The term ‘limited  
9 download’ means a digital transmission of a sound  
10 recording of a musical work in the form of a  
11 download, where such sound recording is accessible  
12 for listening only for a limited amount of time or  
13 specified number of times.

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

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

22 “(19) MECHANICAL LICENSING COLLECTIVE  
23 BUDGET.—The term ‘mechanical licensing collective  
24 budget’ means a statement of the financial position  
25 of the mechanical licensing collective for a fiscal year

1 or quarter thereof based on estimates of expendi-  
2 tures during the period and proposals for financing  
3 them, including a calculation of the collective total  
4 costs.

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

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

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

14 “(23) NOTICE OF NONBLANKET ACTIVITY.—  
15 The term ‘notice of nonblanket activity’ means a no-  
16 tice from a significant nonblanket licensee provided  
17 under subsection (d)(6)(A) for purposes of notifying  
18 the mechanical licensing collective that the licensee  
19 has been engaging in covered activities.

20 “(24) PERMANENT DOWNLOAD.—The term  
21 ‘permanent download’ means a digital transmission  
22 of a sound recording of a musical work in the form  
23 of a download, where such sound recording is acces-  
24 sible for listening without restriction as to the

1 amount of time or number of times it may be  
2 accessed.

3 “(25) QUALIFIED AUDITOR.—The term ‘quali-  
4 fied auditor’ means an independent, certified public  
5 accountant with experience performing music royalty  
6 audits.

7 “(26) RECORD COMPANY.—The term ‘record  
8 company’ means an entity that invests in, produces,  
9 and markets sound recordings of musical works, and  
10 distributes such sound recordings for remuneration  
11 through multiple sales channels, including a cor-  
12 porate affiliate of such an entity engaged in distribu-  
13 tion of sound recordings.

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

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

22 “(29) SERVICE.—The term ‘service’, as used in  
23 relation to covered activities, means any site, facility,  
24 or offering by or through which sound recordings of



1 musical works are digitally transmitted to members  
2 of the public.

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

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

8 “(A) means an entity, including a group of  
9 entities under common ownership or control  
10 that, acting under the authority of one or more  
11 voluntary licenses or individual download li-  
12 censes, offers a service engaged in covered ac-  
13 tivities, and such entity or group of entities—

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

18 “(ii) has a direct contractual, sub-  
19 scription, or other economic relationship  
20 with end users of the service or, if no such  
21 relationship with end users exists, exercises  
22 direct control over the provision of the  
23 service to end users; and

24 “(iii) either—

1           “(I) on any day in a calendar  
2           month, makes more than 5,000 dif-  
3           ferent sound recordings of musical  
4           works available through such service;  
5           or

6           “(II) derives revenue or other  
7           consideration in connection with such  
8           covered activities greater than  
9           \$50,000 in a calendar month, or total  
10          revenue or other consideration greater  
11          than \$500,000 during the preceding  
12          12 calendar months; and

13          “(B) does not include—

14               “(i) an entity whose covered activity  
15               consists solely of free-to-the-user streams  
16               of segments of sound recordings of musical  
17               works that do not exceed 90 seconds in  
18               length, are offered only to facilitate a li-  
19               censed use of musical works that is not a  
20               covered activity, and have no revenue di-  
21               rectly attributable to such streams consti-  
22               tuting the covered activity; or

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

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

4           “(33) STATE.—The term ‘State’ means each  
5 State of the United States, the District of Columbia,  
6 and each territory or possession of the United  
7 States.

8           “(34) UNCLAIMED ACCRUED ROYALTIES.—The  
9 term ‘unclaimed accrued royalties’ means accrued  
10 royalties eligible for distribution under subsection  
11 (d)(3)(J).

12           “(35) UNMATCHED.—The term ‘unmatched’, as  
13 applied to a musical work (or share thereof), means  
14 that the copyright owner of such work (or share  
15 thereof) has not been identified or located.

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

20           (b) TECHNICAL AND CONFORMING AMENDMENTS TO  
21 SECTION 801.—Section 801(b) of title 17, United States  
22 Code, is amended—

23           (1) by redesignating paragraph (8) as para-  
24 graph (9); and

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

3           “(8) To determine the administrative assess-  
4           ment to be paid by digital music providers under  
5           section 115(d). The provisions of section 115(d)  
6           shall apply to the conduct of proceedings by the  
7           Copyright Royalty Judges under section 115(d) and  
8           not the procedures described in this section, or sec-  
9           tion 803, 804, or 805.”.

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

15          (d) TECHNICAL AND CONFORMING AMENDMENTS TO  
16 TITLE 37, PART 385 OF THE CODE OF FEDERAL REGU-  
17 LATIONS.—Within 9 months after the date of the enact-  
18 ment of this Act, the Copyright Royalty Judges shall  
19 amend the regulations for section 115 in part 385 of title  
20 37, Code of Federal Regulations to conform the definitions  
21 used in such part to the definitions of the same terms de-  
22 scribed in section 115(e) of title 17, United States Code,  
23 as amended by subsection (a). In so doing, the Copyright  
24 Royalty Judges shall make adjustments to the language  
25 of the regulations as necessary to achieve the same pur-

1 pose and effect as the original regulations with respect to  
2 the rates and terms previously adopted by the Copyright  
3 Royalty Judges.

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

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

7 (1) by striking paragraphs (1) and (2) and in-  
8 serting the following:

9 “(1)(A) Proceedings under chapter 8 shall de-  
10 termine reasonable rates and terms of royalty pay-  
11 ments for transmissions subject to statutory licens-  
12 ing under subsection (d)(2) during the 5-year period  
13 beginning on January 1 of the second year following  
14 the year in which the proceedings are to be com-  
15 menced pursuant to subparagraph (A) or (B) of sec-  
16 tion 804(b)(3), as the case may be, or such other pe-  
17 riod as the parties may agree. The parties to each  
18 proceeding shall bear their own costs.

19 “(B) The schedule of reasonable rates and  
20 terms determined by the Copyright Royalty Judges  
21 shall, subject to paragraph (2), be binding on all  
22 copyright owners of sound recordings and entities  
23 performing sound recordings affected by this para-  
24 graph during the 5-year period specified in subpara-  
25 graph (A), or such other period as the parties may

1 agree. Such rates and terms shall distinguish among  
2 the different types of services then in operation and  
3 shall include a minimum fee for each such type of  
4 service, such differences to be based on criteria in-  
5 cluding the quantity and nature of the use of sound  
6 recordings and the degree to which use of the service  
7 may substitute for or may promote the purchase of  
8 phonorecords by consumers. The Copyright Royalty  
9 Judges shall establish rates and terms that most  
10 clearly represent the rates and terms that would  
11 have been negotiated in the marketplace between a  
12 willing buyer and a willing seller. In determining  
13 such rates and terms, the Copyright Royalty  
14 Judges—

15 “(i) shall base their decision on economic,  
16 competitive, and programming information pre-  
17 sented by the parties, including—

18 “(I) whether use of the service may  
19 substitute for or may promote the sales of  
20 phonorecords or otherwise may interfere  
21 with or may enhance the sound recording  
22 copyright owner’s other streams of revenue  
23 from the copyright owner’s sound record-  
24 ings; and

1           “(II) the relative roles of the copy-  
2           right owner and the transmitting entity in  
3           the copyrighted work and the service made  
4           available to the public with respect to rel-  
5           ative creative contribution, technological  
6           contribution, capital investment, cost, and  
7           risk; and

8           “(ii) may consider the rates and terms for  
9           comparable types of audio transmission services  
10          and comparable circumstances under voluntary  
11          license agreements.

12          “(C) The procedures under subparagraphs (A)  
13          and (B) shall also be initiated pursuant to a petition  
14          filed by any sound recording copyright owner or any  
15          transmitting entity indicating that a new type of  
16          service on which sound recordings are performed is  
17          or is about to become operational, for the purpose  
18          of determining reasonable terms and rates of royalty  
19          payments with respect to such new type of service  
20          for the period beginning with the inception of such  
21          new type of service and ending on the date on which  
22          the royalty rates and terms for eligible nonsubscrip-  
23          tion services and new subscription services, or pre-  
24          existing services, as the case may be, most recently  
25          determined under subparagraph (A) or (B) and

1 chapter 8 expire, or such other period as the parties  
2 may agree.”; and

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

5 (b) REPEAL.—Subsection (i) of section 114 of title  
6 17, United States Code, is repealed.

7 (c) USE IN MUSICAL WORK PROCEEDINGS.—

8 (1) IN GENERAL.—License fees payable for the  
9 public performance of sound recordings under sec-  
10 tion 106(6) of title 17, United States Code, shall not  
11 be taken into account in any administrative, judicial,  
12 or other governmental proceeding to set or adjust  
13 the royalties payable to musical work copyright own-  
14 ers for the public performance of their works except  
15 in such a proceeding to set or adjust royalties for  
16 the public performance of musical works by means  
17 of a digital audio transmission other than a trans-  
18 mission by a broadcaster, and may be taken into ac-  
19 count only with respect to such digital audio trans-  
20 mission.

21 (2) DEFINITIONS.—In this subsection:

22 (A) TRANSMISSION BY A BROADCASTER.—  
23 A “transmission by a broadcaster” means a  
24 nonsubscription digital transmission made by a  
25 terrestrial broadcast station on its own behalf,



1 or on the behalf of a terrestrial broadcast sta-  
2 tion under common ownership or control, that  
3 is not part of an interactive service or a music-  
4 intensive service comprising the transmission of  
5 sound recordings customized for or customiz-  
6 able by recipients or service users.

7 (B) TERRESTRIAL BROADCAST STATION.—  
8 A “terrestrial broadcast station” means a ter-  
9 restrial, over-the-air radio or television broad-  
10 cast station, licensed as such by the Federal  
11 Communications Commission, including an FM  
12 Translator as defined in section 74.1231 of title  
13 47, Code of Federal Regulations, and whose  
14 primary business activities are comprised of,  
15 and revenues are generated through, terrestrial,  
16 over-the-air broadcast transmissions, or the si-  
17 multaneous or substantially-simultaneous digital  
18 retransmission by the terrestrial, over-the-air  
19 broadcast station of its over-the-air broadcast  
20 transmissions.

21 (d) RULE OF CONSTRUCTION.—Subsection (c)(2)  
22 shall not be given effect in interpreting provisions of title  
23 17, United States Code.

24 (e) USE IN SOUND RECORDING PROCEEDINGS.—The  
25 repeal of section 114(i) of title 17, United States Code,

1 by subsection (b) shall not be taken into account in any  
2 proceeding to set or adjust the rates and fees payable for  
3 the use of sound recordings under section 112(e) or sec-  
4 tion 114(f) of such title that is pending on, or commenced  
5 on or after, the date of the enactment of this Act.

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

14 (g) TECHNICAL AND CONFORMING AMENDMENTS.—

15 (1) SECTION 114.—Section 114(f) of title 17,  
16 United States Code, as amended by subsection (a),  
17 is further amended in paragraph (4)(C), as so reded-  
18 icated, by striking “under paragraph (4)” and in-  
19 sserting “under paragraph (3)”.

20 (2) SECTION 801.—Section 801(b)(1) of title  
21 17, United States Code, is amended by striking  
22 “The rates applicable” and all that follows though  
23 “prevailing industry practices”.

24 (3) SECTION 804.—Section 804(b)(3)(C) of title  
25 17, United States Code, is amended—

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

3 (B) in clause (iii)(II), by striking  
4 “114(f)(4)(B)(ii)” and inserting  
5 “114(f)(3)(B)(ii)”;

6 (C) in clause (iv), by striking “or  
7 114(f)(2)(C), as the case may be”.

8 **SEC. 104. RANDOM ASSIGNMENT OF RATE COURT PRO-**  
9 **CEEDINGS.**

10 Section 137 of title 28, United States Code, is  
11 amended—

12 (1) by striking “The business” and inserting  
13 “(A) IN GENERAL. The business”; and

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

16 “(b) RANDOM ASSIGNMENT OF RATE COURT PRO-  
17 CEEDINGS.—

18 “(1) IN GENERAL.—

19 “(A) DETERMINATION OF LICENSE FEE.—

20 Except as provided in subparagraph (B), in the  
21 case of any performing rights society subject to  
22 a consent decree, any application for the deter-  
23 mination of a license fee for the public perform-  
24 ance of music in accordance with the applicable  
25 consent decree shall be made in the district

1 court with jurisdiction over that consent decree  
2 and randomly assigned to a judge of that dis-  
3 trict court according to that court's rules for  
4 the division of business among district judges  
5 currently in effect or as may be amended from  
6 time to time, provided that any such application  
7 shall not be assigned to—

8 “(i) a judge to whom continuing juris-  
9 diction over any performing rights society  
10 for any performing rights society consent  
11 decree is assigned or has previously been  
12 assigned; or

13 “(ii) a judge to whom another pro-  
14 ceeding concerning an application for the  
15 determination of a reasonable license fee is  
16 assigned at the time of the filing of the ap-  
17 plication.

18 “(B) EXCEPTION.—Subparagraph (A)  
19 does not apply to an application to determine  
20 reasonable license fees made by individual pro-  
21 prietors under section 513 of title 17.

22 “(2) RULE OF CONSTRUCTION.—Nothing in  
23 paragraph (1) shall modify the rights of any party  
24 to a consent decree or to a proceeding to determine  
25 reasonable license fees, to make an application for

1 the construction of any provision of the applicable  
2 consent decree. Such application shall be referred to  
3 the judge to whom continuing jurisdiction over the  
4 applicable consent decree is currently assigned. If  
5 any such application is made in connection with a  
6 rate proceeding, such rate proceeding shall be stayed  
7 until the final determination of the construction ap-  
8 plication. Disputes in connection with a rate pro-  
9 ceeding about whether a licensee is similarly situated  
10 to another licensee shall not be subject to referral to  
11 the judge with continuing jurisdiction over the appli-  
12 cable consent decree.”.

13 **TITLE II—COMPENSATING LEG-**  
14 **ACY ARTISTS FOR THEIR**  
15 **SONGS, SERVICE, AND IMPOR-**  
16 **TANT CONTRIBUTIONS TO SO-**  
17 **CIETY**

18 **SEC. 201. SHORT TITLE.**

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

1 **SEC. 202. UNAUTHORIZED DIGITAL PERFORMANCE OF PRE-**  
 2 **1972 SOUND RECORDINGS.**

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

6 **“CHAPTER 14—UNAUTHORIZED DIGITAL**  
 7 **PERFORMANCE OF PRE-1972 SOUND**  
 8 **RECORDINGS**

“Sec.

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

9 **“§ 1401. Unauthorized digital performance of pre-**  
 10 **1972 sound recordings**

11 “(a) UNAUTHORIZED ACTS.—Anyone who, before  
 12 February 15, 2067, and without the consent of the rights  
 13 owner, performs publicly, by means of a digital audio  
 14 transmission, a sound recording fixed on or after January  
 15 1, 1923, and before February 15, 1972, shall be subject  
 16 to the remedies provided in sections 502 through 505 to  
 17 the same extent as an infringer of copyright.

18 “(b) CERTAIN AUTHORIZED TRANSMISSIONS.—A  
 19 digital audio transmission of a sound recording fixed on  
 20 or after January 1, 1923, and before February 15, 1972,  
 21 shall, for purposes of subsection (a), be considered to be  
 22 authorized and made with the consent of the rights owner  
 23 if—

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

5           “(2) the transmission would satisfy the require-  
6           ments for statutory licensing under section  
7           114(d)(2), or would be exempt under section  
8           114(d)(1), if the sound recording were fixed on or  
9           after February 15, 1972;

10           “(3) in the case of a transmission that would  
11           not be exempt under section 114(d)(1) as described  
12           in paragraph (2), the transmitting entity pays statu-  
13           tory royalties and provides notice of its use of the  
14           relevant sound recordings in the same manner as is  
15           required by regulations adopted by the Copyright  
16           Royalty Judges for sound recordings fixed on or  
17           after February 15, 1972; and

18           “(4) 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 otherwise  
21           satisfies the requirements for statutory licensing  
22           under section 114(f)(4)(B).

23           “(c) TRANSMISSIONS BY DIRECT LICENSING OF  
24           STATUTORY SERVICES.—

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

10           “(2) PAYMENT OF ROYALTIES TO NONPROFIT  
11 COLLECTIVE.—To the extent that such a license  
12 agreement entered into on or after the date of the  
13 enactment of this section extends to digital audio  
14 transmissions of a sound recording fixed on or after  
15 January 1, 1923, and before February 15, 1972,  
16 that meet the conditions of subsection (b), the li-  
17 censee shall pay, to the collective designated to dis-  
18 tribute receipts from the licensing of transmissions  
19 in accordance with section 114(f), 50 percent of the  
20 performance royalties for the transmissions due  
21 under the license, with such royalties fully credited  
22 as payments due under the license.

23           “(3) DISTRIBUTION OF ROYALTIES BY COLLEC-  
24 TIVE.—The collective described in paragraph (2)  
25 shall, in accordance with subparagraphs (B) through



1 (D) of section 114(g)(2), and paragraphs (5) and  
2 (6) of section 114(g), distribute the royalties re-  
3 ceived under paragraph (2) under the license de-  
4 scribed in paragraph (2). Such payments shall be  
5 the only payments to which featured and nonfea-  
6 tured artists are entitled by virtue of the trans-  
7 missions described in paragraph (2) under the li-  
8 cense.

9 “(4) RULE OF CONSTRUCTION.—This section  
10 does not prohibit any other license from directing  
11 the licensee to pay other royalties due to featured  
12 and nonfeatured artists for such transmissions to  
13 the collective designated to distribute receipts from  
14 the licensing of transmissions in accordance with  
15 section 114(f).

16 “(d) RELATIONSHIP TO STATE LAW.—

17 “(1) IN GENERAL.—Nothing in this section  
18 shall be construed to annul or limit any rights or  
19 remedies under the common law or statutes of any  
20 State for sound recordings fixed before February 15,  
21 1972, except, notwithstanding section 301(c), for the  
22 following:

23 “(A) 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 that is made, on and after  
2 the date of the enactment of this section, of a  
3 sound recording fixed on or after January 1,  
4 1923, and before February 15, 1972.

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

16 “(C) This section preempts any claim of  
17 common law copyright or equivalent right under  
18 the laws of any State arising from any digital  
19 audio transmission or reproduction that is  
20 made, before the date of the enactment of this  
21 section, of a sound recording fixed on or after  
22 January 1, 1923, and before February 15,  
23 1972, if—

24 “(i) the digital audio transmission  
25 would have satisfied the requirements for

1 statutory licensing under section 114(d)(2)  
2 or been exempt under section 114(d)(1), or  
3 the reproduction would have satisfied the  
4 requirements of section 112(e)(1), as the  
5 case may be, if the sound recording were  
6 fixed on or after February 15, 1972; and

7 “(ii) except in the case of trans-  
8 missions that would have been exempt  
9 under section 114(d)(1), the transmitting  
10 entity, before the end of the 270-day pe-  
11 riod beginning on the date of the enact-  
12 ment of this section, pays statutory royal-  
13 ties and provides notice of the use of the  
14 relevant sound recordings in the same  
15 manner as is required by regulations  
16 adopted by the Copyright Royalty Judges  
17 for sound recordings that are protected  
18 under this title for all the digital audio  
19 transmissions and reproductions satisfying  
20 the requirements for statutory licensing  
21 under section 114(d)(2) and section  
22 112(e)(1) during the 3 years prior to the  
23 date of the enactment of this section.

24 “(2) RULE OF CONSTRUCTION FOR COMMON  
25 LAW COPYRIGHT.—For purposes of subparagraphs

1 (A) through (C) of paragraph (1), a claim of com-  
2 mon law copyright or equivalent right under the  
3 laws of any State includes a claim that characterizes  
4 conduct subject to such subparagraphs as an unlaw-  
5 ful distribution, act of record piracy, or similar viola-  
6 tion.

7 “(3) RULE OF CONSTRUCTION FOR PUBLIC  
8 PERFORMANCE RIGHTS.—Nothing in this section  
9 shall be construed to recognize or negate the exist-  
10 ence of public performance rights in sound record-  
11 ings under the laws of any State.

12 “(e) LIMITATIONS ON REMEDIES.—

13 “(1) FAIR USE; USES BY LIBRARIES, ARCHIVES,  
14 AND EDUCATIONAL INSTITUTIONS.—The limitations  
15 on the exclusive rights of a copyright owner de-  
16 scribed in sections 107, 108, and 110(1) and (2)  
17 shall apply to a claim under subsection (a) for the  
18 unauthorized performance of a sound recording fixed  
19 on or after January 1, 1923, and before February  
20 15, 1972.

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

1           “(3) MATERIAL ONLINE.—Section 512 shall  
2 apply to a claim under subsection (a) for the unau-  
3 thorized performance of a sound recording fixed on  
4 or after January 1, 1923, and before February 15,  
5 1972.

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

10           “(5) FILING REQUIREMENT FOR STATUTORY  
11 DAMAGES AND ATTORNEYS’ FEES.—

12           “(A) FILING OF INFORMATION ON SOUND  
13 RECORDINGS.—

14           “(i) FILING REQUIREMENT.—Except  
15 in the case of a transmitting entity that  
16 has filed contact information for that  
17 transmitting entity under subparagraph  
18 (B), in any action under this section, an  
19 award of statutory damages or of attor-  
20 neys’ fees under section 504 or 505 may  
21 be made with respect to an unauthorized  
22 transmission of a sound recording under  
23 subsection (a) only if—

24           “(I) the rights owner has filed  
25 with the Copyright Office a schedule

1 that specifies the title, artist, and  
2 rights owner of the sound recording  
3 and contains such other information,  
4 as practicable, as the Register of  
5 Copyrights prescribes by regulation;  
6 and

7 “(II) the transmission is made  
8 after the end of the 90-day period be-  
9 ginning on the date on which the in-  
10 formation filed under subclause (I) is  
11 indexed into the public records of the  
12 Copyright Office.

13 “(ii) REGULATIONS.—The Register of  
14 Copyrights shall, before the end of the  
15 180-day period beginning on the date of  
16 the enactment of this section, issue regula-  
17 tions establishing the form, content, and  
18 procedures for the filing of schedules under  
19 clause (i). Such regulations shall provide  
20 that persons may request that they receive  
21 timely notification of such filings, and shall  
22 set forth the manner in which such re-  
23 quests may be made.

24 “(B) FILING OF CONTACT INFORMATION  
25 FOR TRANSMITTING ENTITIES.—

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

12           “(ii) TIME LIMIT ON FILINGS.—The  
13 Register of Copyrights may accept filings  
14 under clause (i) only until the 180th day  
15 after the date of the enactment of this sec-  
16 tion.

17           “(iii) LIMITATION ON STATUTORY  
18 DAMAGES AND ATTORNEYS’ FEES.—

19           “(I) LIMITATION.—An award of  
20 statutory damages or of attorneys’  
21 fees under section 504 or 505 may  
22 not be made, against an entity that  
23 has filed contact information for that  
24 entity under clause (i), with respect to  
25 an unauthorized transmission by that

1 entity of a sound recording under sub-  
2 section (a) if the transmission is made  
3 before the end of the 90-day period  
4 beginning on the date on which the  
5 entity receives a notice that—

6 “(aa) is sent by or on behalf  
7 of the rights owner of the sound  
8 recording;

9 “(bb) states that the entity  
10 is not legally authorized to trans-  
11 mit that sound recording under  
12 subsection (a); and

13 “(cc) identifies the sound re-  
14 cording in a schedule conforming  
15 to the requirements prescribed by  
16 the regulations issued under sub-  
17 paragraph (A)(ii).

18 “(II) UNDELIVERABLE NO-  
19 TICES.—In any case in which a notice  
20 under subclause (I) is sent to an enti-  
21 ty by mail or courier service and the  
22 notice is returned to the sender be-  
23 cause the entity either is no longer lo-  
24 cated at the address provided in the  
25 contact information filed under clause



1 (i) or has refused to accept delivery,  
2 or the notice is sent by electronic mail  
3 and is undeliverable, the 90-day pe-  
4 riod under subclause (I) shall begin  
5 on the date of the attempted delivery.

6 “(C) SECTION 412.—Section 412 shall not  
7 limit an award of statutory damages under sec-  
8 tion 504(e) or attorneys’ fees under section 505  
9 with respect to an unauthorized transmission of  
10 a sound recording under subsection (a).

11 “(6) APPLICABILITY OF OTHER PROVISIONS.—

12 “(A) IN GENERAL.—Subject to subpara-  
13 graph (B), no provision of this title shall apply  
14 to or limit the remedies available under this  
15 section except as otherwise provided in this sec-  
16 tion.

17 “(B) APPLICABILITY OF DEFINITIONS.—

18 Any term used in this section that is defined in  
19 section 101 shall have the meaning given that  
20 term in section 101.

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

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

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

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

8 **SEC. 203. EFFECTIVE DATE.**

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

11       **TITLE III—ALLOCATION FOR**  
12                   **MUSIC PRODUCERS**

13 **SEC. 301. SHORT TITLE.**

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

16 **SEC. 302. PAYMENT OF STATUTORY PERFORMANCE ROYAL-**  
17                   **TIES.**

18       (a) LETTER OF DIRECTION.—Section 114(g) of title  
19 17, United States Code, is amended by adding at the end  
20 the following new paragraph:

21                   “(5) LETTER OF DIRECTION.—

22                           “(A) IN GENERAL.—A nonprofit collective  
23                   designated by the Copyright Royalty Judges to  
24                   distribute receipts from the licensing of trans-  
25                   missions in accordance with subsection (f) shall

1 adopt and reasonably implement a policy that  
2 provides, in circumstances determined by the  
3 collective to be appropriate, for acceptance of  
4 instructions from an artist payee identified  
5 under subparagraph (A) or (D) of paragraph  
6 (2) to distribute, to a producer, mixer, or sound  
7 engineer who was part of the creative process  
8 that created a sound recording, a portion of the  
9 payments to which the artist payee would other-  
10 wise be entitled from the licensing of trans-  
11 missions of the sound recording. In this section,  
12 such instructions shall be referred to as a ‘letter  
13 of direction’.

14 “(B) ACCEPTANCE OF LETTER.—To the  
15 extent that the collective accepts a letter of di-  
16 rection under subparagraph (A), the person en-  
17 titled to payment pursuant to the letter of di-  
18 rection shall, during the period in which the let-  
19 ter of direction is in effect and carried out by  
20 the collective, be treated for all purposes as the  
21 owner of the right to receive such payment, and  
22 the artist payee providing the letter of direction  
23 to the collective shall be treated as having no  
24 interest in such payment.

1           “(C) AUTHORITY OF COLLECTIVE.—This  
2 paragraph shall not be construed in such a  
3 manner so that the collective is not authorized  
4 to accept or act upon payment instructions in  
5 circumstances other than those to which this  
6 paragraph applies.”.

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

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

14           “(A) PAYMENT ABSENT LETTER OF DI-  
15 RECTION.—A nonprofit collective designated by  
16 the Copyright Royalty Judges to distribute re-  
17 cepts from the licensing of transmissions in ac-  
18 cordance with subsection (f) (in this paragraph  
19 referred to as the ‘collective’) shall adopt and  
20 reasonably implement a policy that provides, in  
21 circumstances determined by the collective to be  
22 appropriate, for the deduction of 2 percent of  
23 all the receipts that are collected from the li-  
24 censing of transmissions of a sound recording  
25 fixed before November 1, 1995, but which is

1 withdrawn from the amount otherwise payable  
2 under paragraph (2)(D) to the recording artist  
3 or artists featured on the sound recording (or  
4 the persons conveying rights in the artists' per-  
5 formance in the sound recording), and the dis-  
6 tribution of such amount to one or more per-  
7 sons described in subparagraph (B), after de-  
8 duction of costs described in paragraph (3) or  
9 (4), as applicable, if each of the following re-  
10 quirements is met:

11 “(i) CERTIFICATION OF ATTEMPT TO  
12 OBTAIN A LETTER OF DIRECTION.—The  
13 person described in subparagraph (B) who  
14 is to receive the distribution has certified  
15 to the collective, under penalty of perjury,  
16 that—

17 “(I) for a period of at least 4  
18 months, that person made reasonable  
19 efforts to contact the artist payee for  
20 such sound recording to request and  
21 obtain a letter of direction instructing  
22 the collective to pay to that person a  
23 portion of the royalties payable to the  
24 featured recording artist or artists;  
25 and

1                   “(II) during the period beginning  
2                   on the date that person began the rea-  
3                   sonable efforts described in subclause  
4                   (I) and ending on the date of that  
5                   person’s certification to the collective,  
6                   the artist payee did not affirm or  
7                   deny in writing the request for a let-  
8                   ter of direction.

9                   “(ii) COLLECTIVE ATTEMPT TO CON-  
10                  TACT ARTIST.—After receipt of the certifi-  
11                  cation described in clause (i) and for a pe-  
12                  riod of at least 4 months before the collec-  
13                  tive’s first distribution to the person de-  
14                  scribed in subparagraph (B), the collective  
15                  attempted, in a reasonable manner as de-  
16                  termined by the collective, to notify the  
17                  artist payee of the certification made by  
18                  the person described in subparagraph (B).

19                  “(iii) NO OBJECTION RECEIVED.—The  
20                  artist payee did not, as of the date that is  
21                  10 business days before the date on which  
22                  the first distribution is made, submit to  
23                  the collective in writing an objection to the  
24                  distribution.

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

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

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

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

24                  “(iv) submits a written certification to  
25                  the collective stating, under penalty of per-

1           jury, that the person meets the require-  
2           ments in clauses (i) through (iii) and in-  
3           cludes a true copy of the contract de-  
4           scribed in clause (ii).

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

15          “(D) OBJECTION TO PAYMENT.—Not later  
16          than 10 business days after the date on which  
17          the collective receives from the artist payee a  
18          written objection to a distribution made pursu-  
19          ant to subparagraph (A), the collective shall  
20          cease making any further payment relating to  
21          such distribution. In any case in which the col-  
22          lective has made one or more distributions pur-  
23          suant to subparagraph (A) to a person de-  
24          scribed in subparagraph (B) before the date  
25          that is 10 business days after the date on which



1 the collective receives from the artist payee an  
2 objection to such distribution, the objection  
3 shall not affect that person's entitlement to any  
4 distribution made before the collective ceases  
5 such distribution under this subparagraph.

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

17 “(F) ARTIST PAYEE DEFINED.—In this  
18 paragraph, the term ‘artist payee’ means a per-  
19 son, other than a person described in subpara-  
20 graph (B), who owns the right to receive all or  
21 part of the receipts payable under paragraph  
22 (2)(D) with respect to a sound recording. In a  
23 case in which there are multiple artist payees  
24 with respect to a sound recording, an objection  
25 by one such payee shall apply only to that pay-

1 ee’s share of the receipts payable under para-  
2 graph (2)(D), and does not preclude payment  
3 under subparagraph (A) from the share of an  
4 artist payee that does not so object.”.

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

8 (1) in paragraph (2), by striking “An agent  
9 designated” and inserting “Except as provided for in  
10 paragraph (6), a nonprofit collective designated by  
11 the Copyright Royalty Judges”;

12 (2) in paragraph (3)—

13 (A) by striking “nonprofit agent des-  
14 ignated” and inserting “nonprofit collective des-  
15 ignated by the Copyright Royalty Judges”;

16 (B) by striking “another designated agent”  
17 and inserting “another designated nonprofit col-  
18 lective”; and

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

21 (3) in paragraph (4)—

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

24 (B) by striking “agent” and inserting “col-  
25 lective” each subsequent place it appears.

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

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

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

Union Calendar No. 499

115<sup>TH</sup> CONGRESS  
2D SESSION

**H. R. 5447**

[Report No. 115-651]

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## **A BILL**

To modernize copyright law, and for other purposes.

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APRIL 25, 2018

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed