

115TH CONGRESS
2D SESSION

H. R. 5447

To modernize copyright law, and for other purposes.

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

A BILL

To modernize copyright law, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

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

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

Sec. 1. Short title; table of contents.

TITLE I—MUSIC LICENSING MODERNIZATION

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

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

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

TITLE III—ALLOCATION FOR MUSIC PRODUCERS

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

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

3 **SEC. 101. SHORT TITLE.**

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

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

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

10 (1) in subsection (a)—

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

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

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

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

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

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

24 “(I) the first fixation of such
25 sound recording was made under the

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

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

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

22 “(i) such sound recording was fixed
23 lawfully; and

24 “(ii) the making of the phonorecords
25 was authorized by the owner of the copy-

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

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

12 (2) by striking subsection (b) and inserting the
13 following:

14 “(b) PROCEDURES TO OBTAIN A COMPULSORY LI-
15 CENSE.—

16 “(1) PHONORECORDS OTHER THAN DIGITAL
17 PHONORECORD DELIVERIES.—A person who seeks to
18 obtain a compulsory license under subsection (a) to
19 make and distribute phonorecords of a musical work
20 other than by means of digital phonorecord delivery
21 shall, before or within 30 calendar days after mak-
22 ing, and before distributing, any phonorecord of the
23 work, serve notice of intention to do so on the copy-
24 right owner. If the registration or other public
25 records of the Copyright Office do not identify the

1 copyright owner and include an address at which no-
2 tice can be served, it shall be sufficient to file the
3 notice of intention with the Copyright Office. The
4 notice shall comply, in form, content, and manner of
5 service, with requirements that the Register of Copy-
6 rights shall prescribe by regulation.

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

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

23 “(B) on or after the license availability
24 date, shall, before making any such digital pho-
25 norecord delivery, follow the procedure de-

1 scribed in subsection (d)(2), except as provided
2 in paragraph (3).

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

14 “(4) FAILURE TO OBTAIN LICENSE.—

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

1 section 501 and subject to the remedies pro-
2 vided by sections 502 through 506.

3 “(B) DIGITAL PHONORECORD DELIV-
4 ERIES.—

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

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

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

22 “(ii) In either case described in clause
23 (i), in the absence of a voluntary license,
24 the failure to obtain a compulsory license
25 renders the making and distribution of

1 phonorecords by means of digital phono-
2 record delivery actionable as acts of in-
3 fringement under section 501 and subject
4 to the remedies provided by sections 502
5 through 506.”;

6 (3) by amending subsection (c) to read as fol-
7 lows:

8 “(c) GENERAL CONDITIONS APPLICABLE TO COM-
9 PULSORY LICENSE.—

10 “(1) ROYALTY PAYABLE UNDER COMPULSORY
11 LICENSE.—

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

22 “(B) ROYALTY FOR PHONORECORDS
23 OTHER THAN DIGITAL PHONORECORD DELIV-
24 ERIES.—Except as provided by subparagraph
25 (A), for every phonorecord made and distrib-

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

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

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

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

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

1 (a) may submit to the Copyright Royalty
2 Judges licenses covering such activities. The
3 parties to each proceeding shall bear their own
4 costs.

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

1 “(i) whether use of the compulsory li-
2 censee’s service may substitute for or may
3 promote the sales of phonorecords or oth-
4 erwise may interfere with or may enhance
5 the musical work copyright owner’s other
6 streams of revenue from its musical works;
7 and

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

15 “(2) ADDITIONAL TERMS AND CONDITIONS.—

16 “(A) VOLUNTARY LICENSES AND CON-
17 TRACTUAL ROYALTY RATES.—

18 “(i) License agreements voluntarily
19 negotiated at any time between one or
20 more copyright owners of nondramatic mu-
21 sical works and one or more persons enti-
22 tled to obtain a compulsory license under
23 subsection (a) shall be given effect in lieu
24 of any determination by the Copyright
25 Royalty Judges. Subject to clause (ii), the

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

17 “(ii) The second sentence of clause (i)
18 shall not apply to—

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

1 the scope of the contract covered by
2 the reduced rates, except if a contract
3 entered into on or before June 22,
4 1995, is modified thereafter for the
5 purpose of increasing the number of
6 musical works within the scope of the
7 contract, any contrary royalty rates
8 specified in the contract shall be given
9 effect in lieu of royalty rates deter-
10 mined pursuant to subparagraphs (E)
11 and (F) of paragraph (1) for the
12 number of musical works within the
13 scope of the contract as of June 22,
14 1995; and

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

“(B) SOUND RECORDING INFORMATION.—

Except as provided in section 1002(e) of this title, a digital phonorecord delivery licensed under this paragraph shall be accompanied by the information encoded in the sound recording, if any, by or under the authority of the copyright owner of that sound recording, that identifies the title of the sound recording, the featured recording artist who performs on the sound recording, and related information, including information concerning the underlying musical work and its writer.

“(C) INFRINGEMENT REMEDIES.—

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

“(I) the digital phonorecord delivery has been authorized by the sound recording copyright owner; and

“(II) the entity making the digital phonorecord delivery has obtained a compulsory license under subsection (a) or has otherwise been authorized

1 by the musical work copyright owner,
2 or by a record company pursuant to
3 an individual download license, to
4 make and distribute phonorecords of
5 each musical work embodied in the
6 sound recording by means of digital
7 phonorecord delivery.

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

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

1 license the distribution of a phonorecord of the
2 nondramatic musical work.

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

16 “(F) PRESERVATION OF RIGHTS.—Noth-
17 ing in this section annuls or limits (i) the exclu-
18 sive right to publicly perform a sound recording
19 or the musical work embodied therein, including
20 by means of a digital transmission, under sec-
21 tions 106(4) and 106(6), (ii) except for compul-
22 sory licensing under the conditions specified by
23 this section, the exclusive rights to reproduce
24 and distribute the sound recording and the mu-
25 sical work embodied therein under sections

106(1) and 106(3), including by means of a digital phonorecord delivery, or (iii) any other rights under any other provision of section 106, or remedies available under this title, as such rights or remedies exist either before or after the date of enactment of the Digital Performance Right in Sound Recordings Act of 1995.

“(G) EXEMPT TRANSMISSIONS AND RETRANSMISSIONS.—The provisions of this section concerning digital phonorecord deliveries shall not apply to any exempt transmissions or retransmissions under section 114(d)(1). The exemptions created in section 114(d)(1) do not expand or reduce the rights of copyright owners under section 106(1) through (5) with respect to such transmissions and retransmissions.

“(H) DISTRIBUTION BY RENTAL, LEASE, OR LENDING.—A compulsory license obtained under subsection (b)(1) to make and distribute phonorecords includes the right of the maker of such a phonorecord to distribute or authorize distribution of such phonorecord, other than by means of a digital phonorecord delivery, by rental, lease, or lending (or by acts or practices in the nature of rental, lease, or lending). With

1 respect to each nondramatic musical work em-
2 bodied in the phonorecord, the royalty shall be
3 a proportion of the revenue received by the
4 compulsory licensee from every such act of dis-
5 tribution of the phonorecord under this clause
6 equal to the proportion of the revenue received
7 by the compulsory licensee from distribution of
8 the phonorecord under subsection
9 (a)(1)(A)(ii)(II) that is payable by a compulsory
10 licensee under that clause and under chapter 8.
11 The Register of Copyrights shall issue regula-
12 tions to carry out the purpose of this clause.

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

1 compulsory license under subsection (a). The
2 regulations covering both the monthly and the
3 annual statements of account shall prescribe
4 the form, content, and manner of certification
5 with respect to the number of records made and
6 the number of records distributed.

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

1 compulsory license may be terminated as pro-
2 vided in subsection (d)(4)(E).”;

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

5 “(d) BLANKET LICENSE FOR DIGITAL USES, ME-
6 CHANICAL LICENSING COLLECTIVE, AND DIGITAL LI-
7 CENSEE COORDINATOR.—

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

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

18 “(B) INCLUDED ACTIVITIES.—A blanket li-
19 cense—

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

1 “(ii) includes the making and dis-
2 tribution of server, intermediate, archival,
3 and incidental reproductions of musical
4 works that are reasonable and necessary
5 for the digital music provider to engage in
6 covered activities licensed under this sub-
7 section, solely for the purpose of engaging
8 in such covered activities; and

9 “(iii) does not cover or include any
10 rights or uses other than those described
11 in clauses (i) and (ii).

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

1 “(i) Where a voluntary license or indi-
2 vidual download license applies, the license
3 authority provided under the blanket li-
4 cense shall exclude any musical works (or
5 shares thereof) subject to the voluntary li-
6 cense or individual download license.

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

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

18 “(D) PROTECTION AGAINST INFRINGE-
19 MENT ACTIONS.—A digital music provider that
20 obtains and complies with the terms of a valid
21 blanket license under this subsection shall not
22 be subject to an action for infringement of the
23 exclusive rights provided by paragraphs (1) and
24 (3) of section 106 under this title arising from
25 use of a musical work (or share thereof) to en-

1 gage in covered activities authorized by such li-
2 cense, subject to paragraph (4)(E).

3 “(E) OTHER REQUIREMENTS AND CONDI-
4 TIONS APPLY.—Except as expressly provided in
5 this subsection, each requirement, limitation,
6 condition, privilege, right, and remedy otherwise
7 applicable to compulsory licenses under this sec-
8 tion shall apply to compulsory blanket licenses
9 under this subsection.

10 “(2) AVAILABILITY OF BLANKET LICENSE.—

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

18 “(i) The notice of license shall comply
19 in form and substance with requirements
20 that the Register of Copyrights shall estab-
21 lish by regulation.

22 “(ii) Unless rejected in writing by the
23 mechanical licensing collective within 30
24 calendar days after receipt, the blanket li-
25 cense shall be effective as of the date the

1 notice of license was sent by the digital
2 music provider as shown by a physical or
3 electronic record.

4 “(iii) A notice of license may only be
5 rejected by the mechanical licensing collec-
6 tive if—

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

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

19 “(iv) If a notice of license is rejected
20 under clause (iii)(I), the digital music pro-
21 vider shall have 30 calendar days after re-
22 ceipt of the notice of rejection to cure any
23 deficiency and submit an amended notice
24 of license to the mechanical licensing col-
25 lective. If the deficiency has been cured,

1 the mechanical licensing collective shall so
2 confirm in writing, and the license shall be
3 effective as of the date that the original
4 notice of license was provided by the dig-
5 ital music provider.

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

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

21 “(3) MECHANICAL LICENSING COLLECTIVE.—

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

24 “(i) is a nonprofit, not owned by any
25 other entity, that is created by copyright

1 owners to carry out responsibilities under
2 this subsection;

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

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

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

20 “(B) DESIGNATION OF MECHANICAL LI-
21 CENSING COLLECTIVE.—

22 “(i) INITIAL DESIGNATION.—The
23 Register of Copyrights shall initially des-
24 ignate the mechanical licensing collective

1 within 9 months after the enactment date
2 as follows:

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

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

23 “(ii) PERIODIC REVIEW OF DESIGNA-
24 TION.—Following the initial designation of
25 the mechanical licensing collective, the

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

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

1 “(II) If a new entity is des-
2 ignated as a mechanical licensing col-
3 lective, the Register shall adopt regu-
4 lations to govern the transfer of li-
5 censes, funds, records, data, and ad-
6 ministrative responsibilities from the
7 existing mechanical licensing collective
8 to the new entity.

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

18 “(C) AUTHORITIES AND FUNCTIONS.—

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

24 “(I) Offer and administer blanket
25 licenses, including receipt of notices of

1 license and reports of usage from dig-
2 ital music providers.

3 “(II) Collect and distribute roy-
4 ties from digital music providers for
5 covered activities.

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

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

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

24 “(VI) Administer collections of
25 the administrative assessment from

1 digital music providers and significant
2 nonblanket licensees, including receipt
3 of notices of nonblanket activity.

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

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

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

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

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

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

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

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

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

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

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

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

14 “(D) GOVERNANCE.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 “(E) MUSICAL WORKS DATABASE.—

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

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

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

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

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

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

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

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

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

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

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

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

1 “(aa) the title of the musical
2 work;

3 “(bb) the ownership percent-
4 age for which an owner has not
5 been identified;

6 “(cc) if a copyright owner
7 has been identified but not lo-
8 cated, the identity of such owner
9 and such owner’s ownership per-
10 centage;

11 “(dd) identifying informa-
12 tion for sound recordings in
13 which the work is embodied, in-
14 cluding sound recording name,
15 featured artist, sound recording
16 copyright owner, international
17 standard recording code, and
18 other information commonly used
19 to assist in associating sound re-
20 cordings with musical works; and

21 “(ee) any additional infor-
22 mation reported to the mechan-
23 ical licensing collective that may
24 assist in identifying the work;
25 and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 “(I) engage in efforts to—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 “(iv) ADOPTION OF REGULATIONS.—

13 The Register shall adopt regulations—

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

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

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

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

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

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

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

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

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

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

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

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

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

1 “(V) The qualified auditor shall
2 determine the accuracy of royalty pay-
3 ments, including whether an under-
4 payment or overpayment of royalties
5 was made by the digital music pro-
6 vider to the mechanical licensing col-
7 lective, but before providing a final
8 audit report to the mechanical licens-
9 ing collective, the qualified auditor
10 shall provide a tentative draft of the
11 report to the digital music provider
12 and allow the digital music provider a
13 reasonable opportunity to respond to
14 the findings, including by clarifying
15 issues and correcting factual errors.

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

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

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

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

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

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

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

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

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

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

1 subsection and applicable regulations;
2 or

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

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

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

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

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

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

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

7 “(5) DIGITAL LICENSEE COORDINATOR.—

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

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

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

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

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

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

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

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

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

cedure described for the mechanical licensing collective in paragraph (3)(B)(ii).

“(iii) INABILITY TO DESIGNATE.—If the Register is unable to identify an entity that fulfills each of the qualifications described in clauses (i) through (iii) of subparagraph (A) to serve as the digital licensee coordinator, the Register may decline to designate a digital licensee coordinator. The Register’s determination not to designate a digital licensee coordinator shall not negate or otherwise affect any provision of this subsection except to the limited extent that a provision references the digital licensee coordinator. In such case, the reference to the digital licensee coordinator shall be without effect unless and until a new digital licensee coordinator is designated.

“(C) AUTHORITIES AND FUNCTIONS.—

“(i) IN GENERAL.—The digital licensee coordinator is authorized to perform the following functions, subject to more particular requirements as described in this subsection:

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

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

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

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

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

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

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

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

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

13 “(A) IN GENERAL.—

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

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

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

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

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

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

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

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

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

7 “(C) LEGAL ENFORCEMENT EFFORTS.—

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

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

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

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

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

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

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

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

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

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

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

13 “(B) VOLUNTARY CONTRIBUTIONS.—

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

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

1 censing collective and the contributing
2 party.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

lish a late fee for late payment of royalties for
uses of musical works under this section, such
fee shall apply to covered activities under blanket
licenses, as follows:

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

“(ii) The availability of late fees shall
in no way prevent a copyright owner or the
mechanical licensing collective from asserting
any other rights or remedies to which
such copyright owner or the mechanical licensing
collective may be entitled under
this title.

“(C) INTERIM RATE AGREEMENTS IN GENERAL.—For any covered activity for which no
rate or terms have been established by the
Copyright Royalty Judges, the mechanical licensing
collective and any digital music provider
may agree to an interim rate and terms for
such activity under the blanket license, and any
such rate and terms—

“(i) shall be treated as nonprecedential
and not cited or relied upon in any

1 ratesetting proceeding before the Copyright
2 Royalty Judges or any other tribunal; and

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

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

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

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

7 “(9) TRANSITION TO BLANKET LICENSES.—

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

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

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

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

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

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

17 “(10) PRIOR UNLICENSED USES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 “(bb) beginning with the
25 monthly royalty reporting period

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

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

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

106 against a digital music provider arising from the unauthorized reproduction or distribution of a musical work by such digital music provider to engage in covered activities that accrued no more than 3 years prior to the license availability date, such action may be commenced within 3 years of the date the claim accrued, or up to 2 years after the license availability date, whichever is later.

“(D) OTHER RIGHTS AND REMEDIES PRESERVED.—Except as expressly provided in this paragraph, nothing in this paragraph shall be construed to alter, limit, or negate any right or remedy of a copyright owner with respect to unauthorized use of a musical work.

“(E) REMEDY IN FEDERAL DISTRICT COURT.—A person may bring a claim in a Federal district court of competent jurisdiction for an issue that is not adequately resolved by the board of directors or a committee of the mechanical licensing collective, as applicable.

“(11) LEGAL PROTECTIONS FOR LICENSING ACTIVITIES.—

“(A) EXEMPTION FOR COMPULSORY LICENSE ACTIVITIES.—The antitrust exemption

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

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

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

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

“(i) Each copyright owner shall establish the royalty rates and material terms of any such voluntary license individually and not in agreement, combination, or concert with any other copyright owner.

“(ii) Each person entitled to obtain a compulsory license under this section shall establish the royalty rates and material terms of any such voluntary license individually and not in agreement, combination, or concert with any other digital music provider.

“(iii) The mechanical licensing collective shall maintain the confidentiality of the voluntary licenses in accordance with the confidentiality provisions prescribed by the Register of Copyrights under paragraph (12)(C).

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

tion of policies and procedures adopted and implemented to carry out the responsibilities described in subparagraphs (J) and (K) of paragraph (3), except to the extent of correcting an underpayment or overpayment of royalties as provided in paragraph (3)(L)(i)(VI), but the collective may participate in a legal proceeding as a stakeholder party if the collective is holding funds that are the subject of a dispute between copyright owners. For purposes of this subparagraph, ‘good-faith administration’ means administration in a manner that is not grossly negligent.

“(E) PREEMPTION OF STATE PROPERTY LAWS.—The holding and distribution of funds by the mechanical licensing collective in accordance with this subsection shall supersede and preempt any State law (including common law) concerning escheatment or abandoned property, or any analogous provision, that might otherwise apply.

“(12) REGULATIONS.—

“(A) ADOPTION BY REGISTER OF COPYRIGHTS AND COPYRIGHT ROYALTY JUDGES.—The Register of Copyrights may conduct such

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

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

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

1 “(13) SAVINGS CLAUSES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 “(23) NOTICE OF NONBLANKET ACTIVITY.—

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

7 “(24) PERMANENT DOWNLOAD.—The term

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

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

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

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

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

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

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

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

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

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

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

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

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

11 “(iii) either—

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

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

24 “(B) does not include—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (c) USE IN MUSICAL WORK PROCEEDINGS.—

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

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

6 (2) DEFINITIONS.—In this subsection:

7 (A) TRANSMISSION BY A BROADCASTER.—

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

17 (B) TERRESTRIAL BROADCAST STATION.—

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

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

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

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

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

24 (g) TECHNICAL AND CONFORMING AMENDMENTS.—

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

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

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

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

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

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

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

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

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

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

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

5 “(1) IN GENERAL.—

6 “(A) DETERMINATION OF LICENSE FEE.—

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

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

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

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

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

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

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

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

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

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

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

“Sec.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 “(d) RELATIONSHIP TO STATE LAW.—

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

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

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

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

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

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

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

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

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

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

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

19 “(e) LIMITATIONS ON REMEDIES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 “(6) APPLICABILITY OF OTHER PROVISIONS.—

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

1 “(B) APPLICABILITY OF DEFINITIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

6 “(5) LETTER OF DIRECTION.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (2) in paragraph (3)—

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

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

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

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

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

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

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

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

○