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To modernize copyright law, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 10, 2018

Mr. HATCH (for himself, Mr. GRASSLEY, Mr. WHITEHOUSE, Mr. ALEXANDER, Mr. COONS, Mr. KENNEDY, Ms. HARRIS, Mr. CORKER, Mr. DURBIN, Mr. ISAKSON, Mr. LEAHY, Mr. CRAPO, Mr. JONES, Mr. TILLIS, Mr. PERDUE, Mrs. CAPITO, Mr. NELSON, Mr. BLUNT, Mr. WICKER, Mr. BROWN, Mr. BENNET, Mr. BLUMENTHAL, Mr. CASSIDY, Mr. KAINE, Mrs. HYDE-SMITH, Ms. HIRONO, Ms. CORTEZ MASTO, Mr. ROBERTS, Mrs. MCCASKILL, Mrs. MURRAY, Ms. KLOBUCHAR, Mr. BOOKER, Mr. SCHATZ, Mr. MANCHIN, Mrs. FEINSTEIN, Mr. DAINES, Ms. HEITKAMP, Mr. VAN HOLLEN, Mrs. ERNST, Mr. YOUNG, Ms. HASSAN, Mr. INHOFE, Mr. THUNE, Mr. BURR, Mr. ROUNDS, Mr. RISCH, Mr. ENZI, Mr. MORAN, Mr. SCOTT, Ms. BALDWIN, Mrs. FISCHER, Ms. SMITH, Mrs. GILLIBRAND, Ms. COLLINS, Mrs. SHAHEEN, Mr. BOOZMAN, Mr. BARRASSO, Ms. MURKOWSKI, Mr. MARKEY, Mr. PETERS, Mr. HOEVEN, Mr. KING, Mr. PORTMAN, Mr. CARDIN, Ms. DUCKWORTH, Mr. GARDNER, Mr. RUBIO, Ms. STABENOW, Mr. SULLIVAN, Mr. LANKFORD, Mr. JOHNSON, Mr. HEINRICH, Mr. TESTER, Mr. WARNER, Mr. DONNELLY, and Ms. CANTWELL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

SEPTEMBER 12, 2018

Reported by Mr. GRASSLEY, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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.
- Sec. 2. Rescission of unobligated balances in the Department of Justice Assets Forfeiture Fund.

TITLE I—MUSIC LICENSING MODERNIZATION

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

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

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

TITLE III—ALLOCATION FOR MUSIC PRODUCERS

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

8 **SEC. 2. RESCISSION OF UNOBLIGATED BALANCES IN THE**
 9 **DEPARTMENT OF JUSTICE ASSETS FOR-**
 10 **FEITURE FUND.**

11 Of the unobligated balances available under the De-
 12 partment of Justice Assets Forfeiture Fund, \$47,000,000
 13 is hereby permanently rescinded.

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

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

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

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

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

10 (1) in subsection (a)—

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

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

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

18 “(A) CONDITIONS FOR COMPULSORY LI-
 19 CENSE.—A person may by complying with the
 20 provisions of this section obtain a compulsory li-
 21 cense to make and distribute phonorecords of a
 22 nondramatic musical work, including by means
 23 of digital phonorecord delivery. A person may
 24 obtain a compulsory license only if the primary
 25 purpose in making phonorecords of the musical

1 work is to distribute them to the public for pri-
2 vate use, including by means of digital phono-
3 record delivery, and—

4 “(i) phonorecords of such musical
5 work have previously been distributed to
6 the public in the United States under the
7 authority of the copyright owner of the
8 work, including by means of digital phono-
9 record delivery; or

10 “(ii) in the case of a digital music
11 provider seeking to make and distribute
12 digital phonorecord deliveries of a sound
13 recording embodying a musical work under
14 a compulsory license for which clause (i)
15 does not apply—

16 “(I) the first fixation of such
17 sound recording was made under the
18 authority of the musical work copy-
19 right owner, and sound recording
20 copyright owner has the authority of
21 the musical work copyright owner to
22 make and distribute digital phono-
23 record deliveries embodying such work
24 to the public in the United States;
25 and

1 “(H) the sound recording copy-
2 right owner or its authorized dis-
3 tributor has authorized the digital
4 music provider to make and distribute
5 digital phonorecord deliveries of the
6 sound recording to the public in the
7 United States.

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

14 “(i) such sound recording was fixed
15 lawfully; and

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

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

4 (2) by striking subsection (b) and inserting the
 5 following:

6 “(b) PROCEDURES TO OBTAIN A COMPULSORY LI-
 7 CENSE.—

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

24 “(2) DIGITAL PHONORECORD DELIVERIES.—A
 25 person who seeks to obtain a compulsory license

1 under subsection (a) to make and distribute
 2 phonorecords of a musical work by means of digital
 3 phonorecord delivery—

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

15 “(B) on or after the license availability
 16 date, shall, before making any such digital pho-
 17 norecord delivery, follow the procedure de-
 18 scribed in subsection (d)(2), except as provided
 19 in paragraph (3).

20 “(3) RECORD COMPANY INDIVIDUAL DOWNLOAD
 21 LICENSES.—Notwithstanding paragraph (2)(B), a
 22 record company may, on or after the license avail-
 23 ability date, obtain an individual download license in
 24 accordance with the notice requirements described in
 25 paragraph (2)(A) (except for the requirement that

1 notice occur prior to the license availability date). A
 2 record company that obtains an individual download
 3 license as permitted under this paragraph shall pro-
 4 vide statements of account and pay royalties as pro-
 5 vided in subsection (c)(2)(I).

6 “(4) FAILURE TO OBTAIN LICENSE.—

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

20 “(B) DIGITAL PHONORECORD DELIV-
 21 ERIES.—

22 “(i) In the case of phonorecords made
 23 and distributed by means of digital phono-
 24 record delivery:

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

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

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

24 (3) by amending subsection (c) to read as fol-
 25 lows:

1 “(c) GENERAL CONDITIONS APPLICABLE TO COM-
2 PULSORY LICENSE.—

3 “(1) ROYALTY PAYABLE UNDER COMPULSORY
4 LICENSE.—

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

15 “(B) ROYALTY FOR PHONORECORDS
16 OTHER THAN DIGITAL PHONORECORD DELIV-
17 ERIES.—Except as provided by subparagraph
18 (A), for every phonorecord made and distrib-
19 uted under a compulsory license under sub-
20 section (a) other than by means of digital pho-
21 norecord delivery, with respect to each work
22 embodied in the phonorecord, the royalty shall
23 be the royalty prescribed under subparagraphs
24 (D) through (F) and paragraph (2)(A) and
25 chapter 8 of this title. For purposes of this sub-

1 paragraph, a phonorecord is considered ‘distrib-
2 uted’ if the person exercising the compulsory li-
3 cense has voluntarily and permanently parted
4 with its possession.

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

12 “(D) AUTHORITY TO NEGOTIATE.—Not-
13 withstanding any provision of the antitrust
14 laws, any copyright owners of nondramatic mu-
15 sical works and any persons entitled to obtain
16 a compulsory license under subsection (a) may
17 negotiate and agree upon the terms and rates
18 of royalty payments under this section and the
19 proportionate division of fees paid among copy-
20 right owners, and may designate common
21 agents on a nonexclusive basis to negotiate,
22 agree to, pay or receive such royalty payments.
23 Such authority to negotiate the terms and rates
24 of royalty payments includes, but is not limited
25 to, the authority to negotiate the year during

1 which the royalty rates prescribed under this
2 subparagraph and subparagraphs (E) and (F)
3 and paragraph (2)(A) and chapter 8 of this
4 title shall next be determined.

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

23 “(F) SCHEDULE OF REASONABLE
24 RATES.—The schedule of reasonable rates and
25 terms determined by the Copyright Royalty

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

18 “(i) whether use of the compulsory li-
19 censee’s service may substitute for or may
20 promote the sales of phonorecords or oth-
21 erwise may interfere with or may enhance
22 the musical work copyright owner’s other
23 streams of revenue from its musical works;
24 and

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

8 “(2) ADDITIONAL TERMS AND CONDITIONS.—

9 “(A) VOLUNTARY LICENSES AND CON-
10 TRACTUAL ROYALTY RATES.—

11 “(i) License agreements voluntarily
12 negotiated at any time between one or
13 more copyright owners of nondramatic mu-
14 sical works and one or more persons enti-
15 tled to obtain a compulsory license under
16 subsection (a) shall be given effect in lieu
17 of any determination by the Copyright
18 Royalty Judges. Subject to clause (ii), the
19 royalty rates determined pursuant to sub-
20 paragraphs (E) and (F) of paragraph (1)
21 shall be given effect as to digital phono-
22 record deliveries in lieu of any contrary
23 royalty rates specified in a contract pursu-
24 ant to which a recording artist who is the
25 author of a nondramatic musical work

1 grants a license under that person's exclu-
2 sive rights in the musical work under para-
3 graphs (1) and (3) of section 106 or com-
4 mits another person to grant a license in
5 that musical work under paragraphs (1)
6 and (3) of section 106, to a person desir-
7 ing to fix in a tangible medium of expres-
8 sion a sound recording embodying the mu-
9 sical work.

10 “(ii) The second sentence of clause (i)
11 shall not apply to—

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

1 specified in the contract shall be given
2 effect in lieu of royalty rates deter-
3 mined pursuant to subparagraphs ~~(E)~~
4 and ~~(F)~~ of paragraph ~~(1)~~ for the
5 number of musical works within the
6 scope of the contract as of June 22,
7 1995; and

8 “~~(H)~~ a contract entered into
9 after the date that the sound record-
10 ing is fixed in a tangible medium of
11 expression substantially in a form in-
12 tended for commercial release; if at
13 the time the contract is entered into,
14 the recording artist retains the right
15 to grant licenses as to the musical
16 work under paragraphs ~~(1)~~ and ~~(2)~~ of
17 section 106.

18 “~~(B)~~ SOUND RECORDING INFORMATION.—

19 Except as provided in section 1002(e) of this
20 title, a digital phonorecord delivery licensed
21 under this paragraph shall be accompanied by
22 the information encoded in the sound recording,
23 if any, by or under the authority of the copy-
24 right owner of that sound recording, that iden-
25 tifies the title of the sound recording, the fea-

1 tured recording artist who performs on the
2 sound recording, and related information, in-
3 cluding information concerning the underlying
4 musical work and its writer.

5 “(C) INFRINGEMENT REMEDIES.—

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

11 “(I) the digital phonorecord de-
12 livery has been authorized by the
13 sound recording copyright owner; and

14 “(II) the entity making the dig-
15 ital phonorecord delivery has obtained
16 a compulsory license under subsection
17 (a) or has otherwise been authorized
18 by the musical work copyright owner,
19 or by a record company pursuant to
20 an individual download license, to
21 make and distribute phonorecords of
22 each musical work embodied in the
23 sound recording by means of digital
24 phonorecord delivery.

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

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

20 “(E) RECORDING DEVICES AND MEDIA.—
21 Nothing in section 1008 shall be construed to
22 prevent the exercise of the rights and remedies
23 allowed by this paragraph, subparagraph (J),
24 and chapter 5 in the event of a digital phono-
25 record delivery, except that no action alleging

1 infringement of copyright may be brought
2 under this title against a manufacturer, im-
3 porter or distributor of a digital audio recording
4 device, a digital audio recording medium, an
5 analog recording device, or an analog recording
6 medium, or against a consumer, based on the
7 actions described in such section.

8 “(F) PRESERVATION OF RIGHTS.—Noth-
9 ing in this section annuls or limits (i) the exclu-
10 sive right to publicly perform a sound recording
11 or the musical work embodied therein, including
12 by means of a digital transmission, under sec-
13 tions 106(4) and 106(6), (ii) except for compul-
14 sory licensing under the conditions specified by
15 this section, the exclusive rights to reproduce
16 and distribute the sound recording and the mu-
17 sical work embodied therein under sections
18 106(1) and 106(3), including by means of a
19 digital phonorecord delivery, or (iii) any other
20 rights under any other provision of section 106,
21 or remedies available under this title, as such
22 rights or remedies exist either before or after
23 the date of enactment of the Digital Perform-
24 ance Right in Sound Recordings Act of 1995.

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

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

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

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

1 “(J) NOTICE OF DEFAULT AND TERMI-
 2 NATION OF COMPULSORY LICENSE.—In the
 3 ease of a license obtained under subsection
 4 (b)(1), (b)(2)(A), or (b)(3), if the copyright
 5 owner does not receive the monthly payment
 6 and the monthly and annual statements of ac-
 7 count when due, the owner may give written no-
 8 tice to the licensee that, unless the default is
 9 remedied within 30 days from the date of the
 10 notice, the compulsory license will be automati-
 11 cally terminated. Such termination renders ei-
 12 ther the making or the distribution, or both, of
 13 all phonorecords for which the royalty has not
 14 been paid, actionable as acts of infringement
 15 under section 501 and fully subject to the rem-
 16 edies provided by sections 502 through 506. In
 17 the ease of a license obtained under subsection
 18 (b)(2)(B), license authority under the compul-
 19 sory license may be terminated as provided in
 20 subsection (d)(4)(E).”;

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

23 “(d) BLANKET LICENSE FOR DIGITAL USES, ME-
 24 CHANICAL LICENSING COLLECTIVE, AND DIGITAL LI-
 25 CENSEE COORDINATOR.—

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

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

11 “(B) INCLUDED ACTIVITIES.—A blanket li-
12 cense—

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

18 “(ii) includes the making and dis-
19 tribution of server, intermediate, archival,
20 and incidental reproductions of musical
21 works that are reasonable and necessary
22 for the digital music provider to engage in
23 covered activities licensed under this sub-
24 section, solely for the purpose of engaging
25 in such covered activities; and

1 “(iii) does not cover or include any
2 rights or uses other than those described
3 in clauses (i) and (ii).”

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

18 “(i) Where a voluntary license or indi-
19 vidual download license applies, the license
20 authority provided under the blanket li-
21 cense shall exclude any musical works (or
22 shares thereof) subject to the voluntary li-
23 cense or individual download license.

24 “(ii) An entity engaged in covered ac-
25 tivities under a voluntary license or author-

1 ity obtained pursuant to an individual
2 download license that is a significant non-
3 blanket licensee shall comply with para-
4 graph (6)(A).

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

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

20 “(E) OTHER REQUIREMENTS AND CONDI-
21 TIONS APPLY.—Except as expressly provided in
22 this subsection, each requirement, limitation,
23 condition, privilege, right, and remedy otherwise
24 applicable to compulsory licenses under this sec-

1 tion shall apply to compulsory blanket licenses
2 under this subsection.

3 ~~“(2) AVAILABILITY OF BLANKET LICENSE.—~~

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

11 ~~“(i) The notice of license shall comply~~
12 ~~in form and substance with requirements~~
13 ~~that the Register of Copyrights shall estab-~~
14 ~~lish by regulation.~~

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

22 ~~“(iii) A notice of license may only be~~
23 ~~rejected by the mechanical licensing collec-~~
24 ~~tive if—~~

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

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

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

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

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

16 “(3) **MECHANICAL LICENSING COLLECTIVE.**—

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

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

23 “(ii) is endorsed by and enjoys sub-
 24 stantial support from musical work copy-
 25 right owners that together represent the

1 greatest percentage of the licensor market
 2 for uses of such works in covered activities,
 3 as measured over the preceding 3 full cal-
 4 endar years;

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

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

15 “(B) DESIGNATION OF MECHANICAL LI-
 16 CENSING COLLECTIVE.—

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

22 “(I) Within 90 calendar days
 23 after the enactment date, the Register
 24 shall publish notice in the Federal
 25 Register soliciting information to as-

1 sist in identifying the appropriate en-
2 tity to serve as the mechanical licens-
3 ing collective, including the name and
4 affiliation of each member of the
5 board of directors described under
6 subparagraph (D)(i) and each com-
7 mittee established pursuant to clauses
8 (iii), (iv), and (v) of subparagraph
9 (D).

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

17 “(ii) PERIODIC REVIEW OF DESIGNA-
18 TION.—Following the initial designation of
19 the mechanical licensing collective, the
20 Register shall, every 5 years, beginning
21 with the fifth full calendar year to com-
22 mence after the initial designation, publish
23 notice in the Federal Register in the
24 month of January soliciting information
25 concerning whether the existing designa-

1 tion should be continued, or a different en-
2 tity meeting the criteria described in
3 clauses (i) through (iii) of subparagraph
4 (A) shall be designated. Following publica-
5 tion of such notice:

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

19 “(II) If a new entity is des-
20 ignated as a mechanical licensing col-
21 lective, the Register shall adopt regu-
22 lations to govern the transfer of li-
23 censes, funds, records, data, and ad-
24 ministrative responsibilities from the

1 existing mechanical licensing collective
2 to the new entity.

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

12 “(C) AUTHORITIES AND FUNCTIONS.—

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

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

22 “(II) Collect and distribute royalti-
23 ties from digital music providers for
24 covered activities.

1 “(III) Engage in efforts to identify
2 musical works (and shares of such
3 works) embodied in particular sound
4 recordings, and to identify and locate
5 the copyright owners of such musical
6 works (and shares of such works).

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

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

19 “(VI) Administer collections of
20 the administrative assessment from
21 digital music providers and significant
22 nonblanket licensees, including receipt
23 of notices of nonblanket activity.

24 “(VII) Invest in relevant re-
25 sources, and arrange for services of

1 outside vendors and others, to support
2 its activities.

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

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

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

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

23 “(XII) Maintain records of its
24 activities and engage in and respond

1 to audits described under this sub-
2 section.

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

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

17 “(iii) RESTRICTION CONCERNING PUB-
18 LIC PERFORMANCE RIGHTS.—The mechan-
19 ical licensing collective may, pursuant to
20 clause (ii), provide administration services
21 with respect to voluntary licenses that in-
22 clude the right of public performance in
23 musical works, but may not itself negotiate
24 or grant licenses for the right of public
25 performance in musical works, and may

1 not be the exclusive or nonexclusive as-
2 signee or grantee of the right of public per-
3 formance in musical works.

4 “(iv) RESTRICTION ON LOBBYING.—

5 The mechanical licensing collective may
6 not engage in government lobbying activi-
7 ties, but may engage in the activities de-
8 scribed in subclauses (IX), (X), and (XI)
9 of clause (i).

10 “(D) GOVERNANCE.—

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

16 “(I) Ten voting members shall be
17 representatives of music publishers to
18 which songwriters have assigned ex-
19 clusive rights of reproduction and dis-
20 tribution of musical works with re-
21 spect to covered activities and no such
22 music publisher member may be
23 owned by, or under common control
24 with, any other board member.

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

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

16 “(IV) One nonvoting member
17 shall be a representative of the digital
18 licensee coordinator, provided that a
19 digital licensee coordinator has been
20 designated pursuant to paragraph
21 (5)(B). Otherwise, the nonvoting
22 member shall be the nonprofit trade
23 association of digital licensees that
24 represents the greatest percentage of
25 the licensee market for uses of musi-

1 eal works in covered activities, as
2 measured over the preceding 3 full
3 calendar years.

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

10 “(ii) BOARD MEETINGS.—The board
11 of directors shall meet no less than two
12 times per year and discuss matters perti-
13 nent to the operations, including the me-
14 chanical licensing collective budget.

15 “(iii) OPERATIONS ADVISORY COM-
16 MITTEE.—The board of directors of the
17 mechanical licensing collective shall estab-
18 lish an operations advisory committee con-
19 sisting of no fewer than six members to
20 make recommendations to the board of di-
21 rectors concerning the operations of the
22 mechanical licensing collective, including
23 the efficient investment in and deployment
24 of information technology and data re-
25 sources. Such committee shall have an

1 equal number of members of the committee
2 who are—

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

7 “(II) representatives of digital
8 music providers who are appointed by
9 the digital licensee coordinator.

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

19 “(v) DISPUTE RESOLUTION COM-
20 MITTEE.—The board of directors of the
21 mechanical licensing collective shall estab-
22 lish and appoint a dispute resolution com-
23 mittee consisting of no fewer than six
24 members, which committee shall include an
25 equal number of representatives of musical

1 work copyright owners and professional
2 songwriters.

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

16 “(E) MUSICAL WORKS DATABASE.—

17 “(i) ESTABLISHMENT AND MAINTEN-
18 NANCE OF DATABASE.—The mechanical li-
19 censing collective shall establish and main-
20 tain a database containing information re-
21 lating to musical works (and shares of
22 such works) and, to the extent known, the
23 identity and location of the copyright own-
24 ers of such works (and shares thereof) and
25 the sound recordings in which the musical

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

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

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

14 “(II) the copyright owner of the
15 work (or share thereof), and such
16 owner’s ownership percentage;

17 “(III) contact information for
18 such copyright owner;

19 “(IV) to the extent reasonably
20 available to the mechanical licensing
21 collective—

22 “(aa) the international
23 standard musical work code for
24 the work; and

1 “(bb) identifying informa-
2 tion for sound recordings in
3 which the musical work is em-
4 bodied, including the name of the
5 sound recording, featured artist,
6 sound recording copyright owner,
7 producer, international standard
8 recording code, and other infor-
9 mation commonly used to assist
10 in associating sound recordings
11 with musical works; and

12 “(V) such other information as
13 the Register of Copyrights may pre-
14 scribe by regulation.

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

19 “(I) to the extent reasonably
20 available to the mechanical licensing
21 collective—

22 “(aa) the title of the musical
23 work;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 “(I) engage in efforts to—

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

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

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

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

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

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

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

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

16 “(ii) OTHER COLLECTION EFFORTS.—

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

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

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

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

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

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

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

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

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

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

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

14 “(i) DISTRIBUTION PROCEDURES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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 ~~ensing 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 acquired by the digital
13 music provider in connection with
14 its use of sound recordings of
15 musical works to engage in cov-
16 ered activities, including pursu-
17 ant to subparagraph (B), pro-
18 ducer, international standard re-
19 cording code, and other informa-
20 tion commonly used in the indus-
21 try to identify sound recordings
22 and match them to the musical
23 works the sound recordings em-
24 body;

1 “(bb) to the extent acquired
2 by the digital music provider in
3 the metadata in connection with
4 its use of sound recordings of
5 musical works to engage in cov-
6 ered activities, including pursu-
7 ant to subparagraph (B), provide
8 information concerning author-
9 ship and ownership of the appli-
10 cable rights in the musical work
11 embodied in the sound recording
12 (including each songwriter, pub-
13 lisher name, and respective own-
14 ership share) and the inter-
15 national standard musical work
16 code; and

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

22 “(H) identify and provide contact
23 information for all musical work copy-
24 right owners for works embodied in
25 sound recordings as to which a vol-

1 untary license, rather than the blan-
2 ket license, is in effect with respect to
3 the uses being reported; and

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

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

22 “(iv) ~~ADOPTION OF REGULATIONS.~~—
23 The Register shall adopt regulations—

24 “(I) setting forth requirements
25 under which records of use shall be

1 maintained and made available to the
2 mechanical licensing collective by dig-
3 ital music providers engaged in cov-
4 ered activities under a blanket license;
5 and

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

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

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

23 “(ii) information concerning the au-
24 thorship and ownership of musical works,
25 including songwriters, publisher names,

1 ownership shares, and international stand-
2 ard musical work codes.

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

9 “(D) VERIFICATION OF PAYMENTS BY DIG-
10 ITAL MUSIC PROVIDERS.—

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

18 “(I) The mechanical licensing
19 collective may commence an audit of a
20 digital music provider no more than
21 once in any 3-calendar-year period to
22 cover a verification period of no more
23 than the 3 full calendar years pre-
24 ceeding the date of commencement of
25 the audit, and such audit may not

1 audit records for any such ~~3~~-year
2 verification period more than once.

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

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

23 ~~“(IV) To commence the audit,~~
24 ~~the mechanical licensing collective~~
25 ~~shall file with the Copyright Office a~~

1 notice of intent to conduct an audit of
2 the digital music provider, identifying
3 the period of time to be audited, and
4 shall simultaneously deliver a copy of
5 such notice to the digital music pro-
6 vider. The Register of Copyrights
7 shall cause the notice of audit to be
8 published in the Federal Register
9 within 45 calendar days after receipt.

10 “(V) The qualified auditor shall
11 determine the accuracy of royalty pay-
12 ments, including whether an under-
13 payment or overpayment of royalties
14 was made by the digital music pro-
15 vider to the mechanical licensing col-
16 lective, but before providing a final
17 audit report to the mechanical licens-
18 ing collective, the qualified auditor
19 shall provide a tentative draft of the
20 report to the digital music provider
21 and allow the digital music provider a
22 reasonable opportunity to respond to
23 the findings, including by clarifying
24 issues and correcting factual errors.

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

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

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

10 “(E) DEFAULT UNDER BLANKET LI-
 11 CENSE.—

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

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

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

23 “(III) provides one or more
 24 monthly reports of usage to the me-
 25 chanical licensing collective that, on

1 the whole, is or are materially defi-
2 cient as a result of inaccurate, miss-
3 ing, or unreadable data, where the
4 correct data was available to the dig-
5 ital music provider and required to be
6 reported under this section and appli-
7 cable regulations;

8 “(IV) fails to pay the administra-
9 tive assessment as required under this
10 subsection and applicable regulations;
11 or

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

19 “(ii) NOTICE OF DEFAULT AND TER-
20 MINATION.—In case of a default by a dig-
21 ital music provider, the mechanical licens-
22 ing collective may proceed to terminate the
23 blanket license of the digital music pro-
24 vider as follows:

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

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

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

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

16 “(5) DIGITAL LICENSEE COORDINATOR.—

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

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

22 “(ii) is endorsed by and enjoys sub-
 23 stantial support from digital music pro-
 24 viders and significant nonblanket licensees
 25 that together represent the greatest per-

1 centage of the licensee market for uses of
2 musical works in covered activities, as
3 measured over the preceding 3 calendar
4 years;

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

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

14 “(B) DESIGNATION OF DIGITAL LICENSEE
15 COORDINATOR.—

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

23 “(ii) PERIODIC REVIEW OF DESIGNA-
24 TION.—Following the initial designation of
25 the digital licensee coordinator, the Reg-

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

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

1 and until a new digital licensee coordinator
2 is designated.

3 “(C) AUTHORITIES AND FUNCTIONS.—

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

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

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

19 “(III) Initiate and participate in
20 proceedings before the Copyright Roy-
21 alty Judges to establish the adminis-
22 trative assessment under this sub-
23 section.

24 “(IV) Initiate and participate in
25 proceedings before the Copyright Of-

1 fice with respect to activities under
2 this subsection.

3 “(V) Gather and provide docu-
4 mentation for use in proceedings be-
5 fore the Copyright Royalty Judges to
6 set rates and terms under this section.

7 “(VI) Maintain records of its ac-
8 tivities.

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

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

19 “(6) REQUIREMENTS FOR SIGNIFICANT NON-
20 BLANKET LICENSEES.—

21 “(A) IN GENERAL.—

22 “(i) NOTICE OF ACTIVITY.—Not later
23 than 45 calendar days after the license
24 availability date, or 45 calendar days after
25 the end of the first full calendar month in

1 which an entity initially qualifies as a sig-
2 nificant nonblanket licensee, whichever oc-
3 curs later, a significant nonblanket licensee
4 shall submit a notice of nonblanket activity
5 to the mechanical licensing collective. The
6 notice of nonblanket activity shall comply
7 in form and substance with requirements
8 that the Register of Copyrights shall estab-
9 lish by regulation, and a copy shall be
10 made available to the digital licensee coor-
11 dinator.

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

1 lective. Such reports and payments shall be
2 submitted not later than 45 calendar days
3 after the end of the calendar month being
4 reported.

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

19 “(B) REPORTING BY MECHANICAL LICENS-
20 ING COLLECTIVE TO DIGITAL LICENSEE COOR-
21 DINATOR.—

22 “(i) MONTHLY REPORTS OF NON-
23 COMPLIANT LICENSEES.—The mechanical
24 licensing collective shall provide monthly
25 reports to the digital licensee coordinator

1 setting forth any significant nonblanket li-
2 censees of which the collective is aware
3 that have failed to comply with subpara-
4 graph (A).

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

15 “(C) LEGAL ENFORCEMENT EFFORTS.—

16 “(i) FEDERAL COURT ACTION.—
17 Should the mechanical licensing collective
18 or digital licensee coordinator become
19 aware that a significant nonblanket li-
20 censee has failed to comply with subpara-
21 graph (A), either may commence an action
22 in Federal district court for damages and
23 injunctive relief. If the significant non-
24 blanket licensee is found liable, the court
25 shall, absent a finding of excusable neglect,

1 award damages in an amount equal to
2 three times the total amount of the unpaid
3 administrative assessment and, notwith-
4 standing anything to the contrary in sec-
5 tion 505, reasonable attorney's fees and
6 costs, as well as such other relief as the
7 court deems appropriate. In all other
8 cases, the court shall award relief as ap-
9 propriate. Any recovery of damages shall
10 be payable to the mechanical licensing col-
11 lective as an offset to the collective total
12 costs.

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

18 “(iii) OTHER RIGHTS AND REMEDIES
19 PRESERVED.—The ability of the mechan-
20 ical licensing collective or digital licensee
21 coordinator to bring an action under this
22 subparagraph shall in no way alter, limit
23 or negate any other right or remedy that
24 may be available to any party at law or in
25 equity.

1 “(7) FUNDING OF MECHANICAL LICENSING
2 COLLECTIVE.—

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

5 “(i) an administrative assessment, as
6 such assessment is established by the
7 Copyright Royalty Judges pursuant to sub-
8 paragraph (D) from time to time, to be
9 paid by—

10 “(I) digital music providers that
11 are engaged, in all or in part, in cov-
12 ered activities pursuant to a blanket
13 license; and

14 “(II) significant nonblanket li-
15 censees; and

16 “(ii) voluntary contributions from dig-
17 ital music providers and significant non-
18 blanket licensees as may be agreed with
19 copyright owners.

20 “(B) VOLUNTARY CONTRIBUTIONS.—

21 “(i) AGREEMENTS CONCERNING CON-
22 TRIBUTIONS.—Except as provided in
23 clause (ii), voluntary contributions by dig-
24 ital music providers and significant non-
25 blanket licensees shall be determined by

1 private negotiation and agreement, and the
2 following conditions apply:

3 “(I) The date and amount of
4 each voluntary contribution to the me-
5 chanical licensing collective shall be
6 documented in a writing signed by an
7 authorized agent of the mechanical li-
8 censing collective and the contributing
9 party.

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

18 “(ii) TREATMENT OF CONTRIBU-
19 TIONS.—Each such voluntary contribution
20 shall be treated for purposes of an admin-
21 istrative assessment proceeding as an off-
22 set to the collective total costs that would
23 otherwise be recovered through the admin-
24 istrative assessment. Any allocation or re-
25 allocation of voluntary contributions be-

1 tween or among individual digital music
2 providers or significant nonblanket licens-
3 ees shall be a matter of private negotiation
4 and agreement among such parties and
5 outside the scope of the administrative as-
6 sessment proceeding.

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

18 “(D) DETERMINATION OF ADMINISTRA-
19 TIVE ASSESSMENT.—

20 “(i) ADMINISTRATIVE ASSESSMENT TO
21 COVER COLLECTIVE TOTAL COSTS.—The
22 administrative assessment shall be used
23 solely and exclusively to fund the collective
24 total costs.

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

11 “(I) be wholly independent of
12 royalty rates and terms applicable to
13 digital music providers, which shall
14 not be taken into consideration in any
15 manner in establishing the adminis-
16 trative assessment;

17 “(II) be established by the Copy-
18 right Royalty Judges in an amount
19 that is calculated to defray the rea-
20 sonable collective total costs;

21 “(III) be assessed based on usage
22 of musical works by digital music pro-
23 viders and significant nonblanket li-
24 censees in covered activities under

1 both compulsory and nonblanket li-
2 censes;

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

18 “(V) take into consideration an-
19 ticipated future collective total costs
20 and collections of the administrative
21 assessment, but also, as applicable—

22 “(aa) any portion of past ac-
23 tual collective total costs of the
24 mechanical licensing collective
25 not funded by previous collections

1 of the administrative assessment
2 or voluntary contributions be-
3 cause such collections or con-
4 tributions together were insuffi-
5 cient to fund such costs;

6 “(bb) any past collections of
7 the administrative assessment
8 and voluntary contributions that
9 exceeded past actual collective
10 total costs, resulting in a surplus;
11 and

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

19 “(iii) INITIAL ADMINISTRATIVE AS-
20 SESSMENT.—The procedure for estab-
21 lishing the initial administrative assess-
22 ment shall be as follows:

23 “(I) The Copyright Royalty
24 Judges shall commence a proceeding
25 to establish the initial administrative

1 assessment within 9 months after the
2 enactment date by publishing a notice
3 in the Federal Register seeking peti-
4 tions to participate.

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

14 “(III) The Copyright Royalty
15 Judges shall establish a schedule for
16 submission by the parties of informa-
17 tion that may be relevant to estab-
18 lishing the administrative assessment,
19 including actual and anticipated col-
20 lective total costs of the mechanical li-
21 censing collective, actual and antici-
22 pated collections from digital music
23 providers and significant nonblanket
24 licensees, and documentation of vol-
25 untary contributions, as well as a

1 schedule for further proceedings,
2 which shall include a hearing, as they
3 deem appropriate.

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

19 “(iv) ADJUSTMENT OF ADMINISTRA-
20 TIVE ASSESSMENT.—The administrative
21 assessment may be adjusted by the Copy-
22 right Royalty Judges periodically, in ac-
23 cordance with the following procedures:

24 “(I) No earlier than 1 year after
25 the most recent publication of a deter-

1 mination of the administrative assess-
2 ment by the Copyright Royalty
3 Judges, the mechanical licensing col-
4 lective, the digital licensee coordi-
5 nator, or one or more interested copy-
6 right owners, digital music providers,
7 or significant nonblanket licensees,
8 may file a petition with the Copyright
9 Royalty Judges in the month of Octo-
10 ber to commence a proceeding to ad-
11 just the administrative assessment.

12 “(H) Notice of the commence-
13 ment of such proceeding shall be pub-
14 lished in the Federal Register in the
15 month of November following the fil-
16 ing of any petition, with a schedule of
17 requested information and additional
18 proceedings, as described in clause
19 (iii)(III). The mechanical licensing
20 collective and digital licensee coordi-
21 nator shall participate in such pro-
22 ceeding, along with any interested
23 copyright owners, digital music pro-
24 viders, or significant nonblanket li-
25 censees that have notified the Copy-

1 right Royalty Judges of their desire to
2 participate.

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

13 “(v) ADOPTION OF VOLUNTARY
14 AGREEMENTS.—In lieu of reaching their
15 own determination based on evaluation of
16 relevant data, the Copyright Royalty
17 Judges shall approve and adopt a nego-
18 tiated agreement to establish the amount
19 and terms of the administrative assessment
20 that has been agreed to by the mechanical
21 licensing collective and the digital licensee
22 coordinator (or if none has been des-
23 ignated, interested digital music providers
24 and significant nonblanket licensees rep-
25 resenting more than half of the market for

1 uses of musical works in covered activi-
2 ties); but the Copyright Royalty Judges
3 shall have the discretion to reject any such
4 agreement for good cause shown. An ad-
5 ministrative assessment adopted under this
6 clause shall apply to all digital music pro-
7 viders and significant nonblanket licensees
8 engaged in covered activities during the pe-
9 riod it is in effect.

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

19 “(vii) APPEAL OF ADMINISTRATIVE
20 ASSESSMENT.—The determination of an
21 administrative assessment by the Copy-
22 right Royalty Judges shall be appealable,
23 within 30 calendar days after publication
24 in the Federal Register, to the Court of
25 Appeals for the District of Columbia Cir-

1 cuit by any party that fully participated in
2 the proceeding. The administrative assess-
3 ment as established by the Copyright Roy-
4 alty Judges shall remain in effect pending
5 the final outcome of any such appeal, and
6 the mechanical licensing collective, digital
7 licensee coordinator, digital music pro-
8 viders, and significant nonblanket licensees
9 shall implement appropriate financial or
10 other measures within 3 months after any
11 modification of the assessment to reflect
12 and account for such outcome.

13 “(viii) REGULATIONS.—The Copyright
14 Royalty Judges may adopt regulations to
15 govern the conduct of proceedings under
16 this paragraph.

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

19 “(A) RESTRICTIONS ON RATESETTING
20 PARTICIPATION.—Neither the mechanical li-
21 censing collective nor the digital licensee coordi-
22 nator shall be a party to a proceeding described
23 in subsection (e)(1)(E), but either may gather
24 and provide financial and other information for
25 the use of a party to such a proceeding and

1 comply with requests for information as re-
2 quired under applicable statutory and regu-
3 latory provisions and rulings of the Copyright
4 Royalty Judges.

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

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

16 “(ii) The availability of late fees shall
17 in no way prevent a copyright owner or the
18 mechanical licensing collective from assert-
19 ing any other rights or remedies to which
20 such copyright owner or the mechanical li-
21 censing collective may be entitled under
22 this title.

23 “(C) INTERIM RATE AGREEMENTS IN GEN-
24 ERAL.—For any covered activity for which no
25 rate or terms have been established by the

1 Copyright Royalty Judges, the mechanical li-
2 censing collective and any digital music provider
3 may agree to an interim rate and terms for
4 such activity under the blanket license, and any
5 such rate and terms—

6 “(i) shall be treated as nonpreceden-
7 tial and not cited or relied upon in any
8 ratesetting proceeding before the Copyright
9 Royalty Judges or any other tribunal; and

10 “(ii) shall automatically expire upon
11 the establishment of a rate and terms for
12 such covered activity by the Copyright
13 Royalty Judges, under subsection
14 (e)(1)(E).

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

1 “(i) if the rate established by the
2 Copyright Royalty Judges exceeds the in-
3 terim rate, the digital music provider shall
4 pay to the mechanical licensing collective
5 the amount of any underpayment of roy-
6 alties due; or

7 “(ii) if the interim rate exceeds the
8 rate established by the Copyright Royalty
9 Judges, the mechanical licensing collective
10 shall credit the account of the digital music
11 provider for the amount of any overpay-
12 ment of royalties due.

13 “(9) TRANSITION TO BLANKET LICENSES.—

14 “(A) SUBSTITUTION OF BLANKET LI-
15 CENSE.—On the license availability date, a
16 blanket license shall, without any interruption
17 in license authority enjoyed by such digital
18 music provider, be automatically substituted for
19 and supersede any existing compulsory license
20 previously obtained under this section by the
21 digital music provider from a copyright owner
22 to engage in one or more covered activities with
23 respect to a musical work, but the foregoing
24 shall not apply to any authority obtained from
25 a record company pursuant to a compulsory li-

1 cense to make and distribute permanent
2 downloads unless and until such record com-
3 pany terminates such authority in writing to
4 take effect at the end of a monthly reporting
5 period, with a copy to the mechanical licensing
6 collective.

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

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

1 prior to the license availability date, and those
 2 terms shall continue to apply unless and until
 3 such voluntary license is terminated or amend-
 4 ed, or the parties enter into a new voluntary li-
 5 cense.

6 “(D) FURTHER ACCEPTANCE OF NOTICES
 7 FOR COVERED ACTIVITIES BY COPYRIGHT OF-
 8 FICE.—On and after the enactment date—

9 “(i) the Copyright Office shall no
 10 longer accept notices of intention with re-
 11 spect to covered activities; and

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

22 “(10) PRIOR UNLICENSED USES.—

23 “(A) LIMITATION ON LIABILITY IN GEN-
 24 ERAL.—A copyright owner that commences an
 25 action under section 501 on or after January 1,

1 2018, against a digital music provider for the
2 infringement of the exclusive rights provided by
3 paragraph (1) or (2) of section 106 arising
4 from the unauthorized reproduction or distribu-
5 tion of a musical work by such digital music
6 provider in the course of engaging in covered
7 activities prior to the license availability date,
8 shall, as the copyright owner's sole and exclu-
9 sive remedy against the digital music provider,
10 be eligible to recover the royalty prescribed
11 under subsection (e)(1)(C) and chapter 8 of
12 this title, from the digital music provider, pro-
13 vided that such digital music provider can dem-
14 onstrate compliance with the requirements of
15 subparagraph (B), as applicable. In all other
16 cases the limitation on liability under this sub-
17 paragraph shall not apply.

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

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

13 “(I) Good-faith, commercially
14 reasonable efforts to obtain from the
15 owner of the corresponding sound re-
16 cording made available through the
17 digital music provider’s service the fol-
18 lowing information:

19 “(aa) Sound recording
20 name, featured artist, sound re-
21 cording copyright owner, pro-
22 ducer, international standard re-
23 cording code, and other informa-
24 tion commonly used in the indus-
25 try to identify sound recordings

1 and match them to the musical
2 works they embody.

3 “(bb) Any available musical
4 work ownership information, in-
5 cluding each songwriter and pub-
6 lisher name; percentage owner-
7 ship share; and international
8 standard musical work code.

9 “(H) Employment of one or more
10 bulk electronic matching processes
11 that are available to the digital music
12 provider through a third-party vendor
13 on commercially reasonable terms; but
14 a digital music provider may rely on
15 its own bulk electronic matching pro-
16 cess if it has capabilities comparable to
17 or better than those available from a
18 third-party vendor on commercially
19 reasonable terms.

20 “(ii) The required matching efforts
21 shall be repeated by the digital music pro-
22 vider no less than once per month for so
23 long as the copyright owner remains un-
24 identified or has not been located.

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

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

23 “(I) Accrued royalties shall be
24 maintained by the digital music pro-

1 vider in accordance with generally ac-
2 cepted accounting principles.

3 “(H) If a copyright owner of an
4 unmatched musical work (or share
5 thereof) is identified and located by or
6 to the digital music provider before
7 the license availability date, the digital
8 music provider shall—

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

1 the requisite certification under
2 subsection (e)(2)(I);

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

14 “(cc) beginning with the
15 monthly royalty reporting period
16 commencing on the license avail-
17 ability date, report usage and pay
18 royalties for such musical work
19 (or share thereof) for such re-
20 porting period and reporting pe-
21 riods thereafter to the mechanical
22 licensing collective, as required
23 under this subsection and appli-
24 cable regulations.

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

6 “(aa) within 45 calendar
7 days after the license availability
8 date, transfer all accrued royalti-
9 ties to the mechanical licensing
10 collective, such payment to be ac-
11 companied by a cumulative state-
12 ment of account that includes all
13 of the information that would
14 have been provided to the copy-
15 right owner had the digital music
16 provider been serving monthly
17 statements of account on the
18 copyright owner from initial use
19 of the work in accordance with
20 this section and applicable regu-
21 lations, including the requisite
22 certification under subsection
23 (e)(2)(I), and accompanied by an
24 additional certification by a duly
25 authorized officer of the digital

1 music provider that the digital
2 music provider has fulfilled the
3 requirements of clauses (i) and
4 (ii) of subparagraph (B) but has
5 not been successful in locating or
6 identifying the copyright owner;
7 and

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

19 “(v) SUSPENSION OF LATE FEES.—A
20 digital music provider that complies with
21 the requirements of this paragraph with
22 respect to unmatched musical works (or
23 shares of works) shall not be liable for or
24 accrue late fees for late payments of royal-
25 ties for such works until such time as the

1 digital music provider is required to begin
2 paying monthly royalties to the copyright
3 owner or the mechanical licensing collec-
4 tive, as applicable.

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

19 “(D) OTHER RIGHTS AND REMEDIES PRE-
20 SERVED.—Except as expressly provided in this
21 paragraph, nothing in this paragraph shall be
22 construed to alter, limit, or negate any right or
23 remedy of a copyright owner with respect to un-
24 authorized use of a musical work.

1 “(11) LEGAL PROTECTIONS FOR LICENSING AC-
2 TIVITIES.—

3 “(A) EXEMPTION FOR COMPULSORY LI-
4 CENSE ACTIVITIES.—The antitrust exemption
5 described in subsection (e)(1)(D) shall apply to
6 negotiations and agreements between and
7 among copyright owners and persons entitled to
8 obtain a compulsory license for covered activi-
9 ties, and common agents acting on behalf of
10 such copyright owners or persons, including
11 with respect to the administrative assessment
12 established under this subsection.

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

23 “(C) ANTITRUST EXEMPTION FOR ADMIN-
24 ISTRATIVE ACTIVITIES.—Notwithstanding any
25 provision of the antitrust laws, copyright own-

1 ers and persons entitled to obtain a compulsory
2 license under this section may designate the
3 mechanical licensing collective to administer vol-
4 untary licenses for the reproduction or distribu-
5 tion of musical works in covered activities on
6 behalf of such copyright owners and persons,
7 but the following conditions apply:

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

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

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

1 “(D) LIABILITY FOR GOOD-FAITH ACTIVITIES.—The mechanical licensing collective shall
2 not be liable to any person or entity based on
3 a claim arising from its good-faith administration of policies and procedures adopted and im-
4 plemented to carry out the responsibilities described in subparagraphs (J) and (K) of para-
5 graph (3), except to the extent of correcting an underpayment or overpayment of royalties as
6 provided in paragraph (3)(L)(i)(VI), but the collective may participate in a legal proceeding
7 as a stakeholder party if the collective is holding funds that are the subject of a dispute be-
8 tween copyright owners. For purposes of this subparagraph, ‘good-faith administration’
9 means administration in a manner that is not grossly negligent.”

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

1 “(F) RULE OF CONSTRUCTION.—Except as
2 expressly provided in this subsection, nothing in
3 this subsection shall negate or limit the ability
4 of any person to pursue an action in Federal
5 court against the mechanical licensing collective
6 or any other person based upon a claim arising
7 under this title or other applicable law.

8 “(12) REGULATIONS.—

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

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

24 “(C) PROTECTION OF CONFIDENTIAL IN-
25 FORMATION.—The Register of Copyrights shall

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

12 “(13) SAVINGS CLAUSES.—

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

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

9 (5) by adding at the end the following new sub-
 10 section:

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

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

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

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

24 “(4) AUDIT.—The term ‘audit’ means a royalty
 25 compliance examination to verify the accuracy of

1 royalty payments, or the conduct of such an exam-
 2 ination, as applicable.

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

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

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

12 “(i) startup costs;

13 “(ii) financing, legal, and insurance
 14 costs;

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

18 “(iv) outside vendor costs;

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

21 “(vi) costs of bad debt; and

22 “(vii) costs of automated and manual
 23 efforts to identify and locate copyright
 24 owners of musical works (and shares of
 25 such musical works) and match sound re-

1 cordings to the musical works the sound
2 recordings embody; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 “(15) LICENSE AVAILABILITY DATE.—The term
5 ‘license availability date’ means the next January 1
6 following the expiration of the 2-year period begin-
7 ning on the enactment date.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 “(iii) either—

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

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

13 “(B) does not include—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (c) USE IN MUSICAL WORK PROCEEDINGS.—

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

21 ~~(2) DEFINITIONS.—In this subsection:~~

22 ~~(A) TRANSMISSION BY A BROADCASTER.—~~

23 A “transmission by a broadcaster” means a
24 nonsubscription digital transmission made by a
25 terrestrial broadcast station on its own behalf,

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

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

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

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

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

6 (f) DECISIONS AND PRECEDENTS NOT AFFECTED.—

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

14 (g) TECHNICAL AND CONFORMING AMENDMENTS.—

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

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

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

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

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

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

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

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

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

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

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

18 “(1) IN GENERAL.—

19 “(A) DETERMINATION OF LICENSE FEE.—

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

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

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

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

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

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

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

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

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

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

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

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

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

“Sec.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 “(d) RELATIONSHIP TO STATE LAW.—

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

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

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

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

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

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

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

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

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

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

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

12 “(e) LIMITATIONS ON REMEDIES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 “(6) APPLICABILITY OF OTHER PROVISIONS.—

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

17 “(B) APPLICABILITY OF DEFINITIONS.—

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

21 “(f) APPLICATION OF SECTION 230 SAFE HAR-

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

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

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

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

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

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

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

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

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

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

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

21 “(5) LETTER OF DIRECTION.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (2) in paragraph (3)—

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

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

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

21 (3) in paragraph (4)—

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

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

1 (4) by adding at the end the following new
2 paragraph:

3 “(7) **PREEMPTION OF STATE PROPERTY**
4 **LAWS.**—The holding and distribution of receipts
5 under section 112 and this section by a nonprofit
6 collective designated by the Copyright Royalty
7 Judges in accordance with this subsection and regu-
8 lations adopted by the Copyright Royalty Judges
9 shall supersede and preempt any State law (includ-
10 ing common law) concerning escheatment or aban-
11 doned property, or any analogous provision, that
12 might otherwise apply.”.

13 **SEC. 303. EFFECTIVE DATE.**

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

17 (b) **DELAYED EFFECTIVE DATE.**—The effective date
18 for paragraphs (5)(B) and (6)(E) of section 114(g) of title
19 17, United States Code, as added by section 302, shall
20 be January 1, 2020.

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

22 (a) **SHORT TITLE.**—*This Act may be cited as the*
23 *“Music Modernization Act”.*

24 (b) **TABLE OF CONTENTS.**—*The table of contents for*
25 *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.**Sec. 105. Performing rights society consent decrees.**Sec. 106. Effective date.**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) in the subsection heading, by inserting*
 12 *“IN GENERAL” after “AVAILABILITY AND SCOPE*
 13 *OF COMPULSORY LICENSE”;*

14 *(B) by striking paragraph (1) and inserting*
 15 *the following new paragraph:*

16 *“(1) ELIGIBILITY FOR COMPULSORY LICENSE.—*

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 *cence 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 work*
13 *have previously been distributed to the pub-*
14 *lic in the United States under the authority*
15 *of the copyright owner of the work, includ-*
16 *ing by means of digital phonorecord deliv-*
17 *ery; or*

18 “(ii) *in the case of a digital music pro-*
19 *vider seeking to make and distribute digital*
20 *phonorecord deliveries of a sound recording*
21 *embodying a musical work under a compul-*
22 *sory license for which clause (i) does not*
23 *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 the 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; and*

8 *“(II) the sound recording copy-*
9 *right owner, or the authorized dis-*
10 *tributor of the sound recording copy-*
11 *right owner, 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 *cence for the use of the work in the making of*
19 *phonorecords duplicating a sound recording fixed*
20 *by another, including by means of digital phono-*
21 *record 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 sound*
 2 *recording was fixed before February 15,*
 3 *1972, by any person who fixed the sound re-*
 4 *recording pursuant to an express license from*
 5 *the owner of the copyright in the musical*
 6 *work or pursuant to a valid compulsory li-*
 7 *cence for use of such work in a sound re-*
 8 *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 not later than 30 calendar days after,*
 22 *making, and before distributing, any phonorecord of*
 23 *the work, serve notice of intention to do so on the*
 24 *copyright 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 no-*
3 *tice of intention with the Copyright Office. The notice*
4 *shall comply, in form, content, and manner of service,*
5 *with requirements that the Register of Copyrights*
6 *shall prescribe by regulation.*

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

12 “(A) *prior to the license availability date,*
13 *shall, before, or not later than 30 calendar days*
14 *after, first making any such digital phonorecord*
15 *delivery, serve a notice of intention to do so on*
16 *the 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 or*
19 *the owner’s address), and such notice shall com-*
20 *ply, in form, content, and manner of service,*
21 *with requirements that the Register of Copy-*
22 *rights 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 described*

1 *in subsection (d)(2), except as provided in para-*
2 *graph (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 no-*
9 *tice 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 DIGITAL*
16 *PHONORECORD DELIVERIES.—In the case of*
17 *phonorecords made and distributed other than by*
18 *means of digital phonorecord delivery, the failure*
19 *to serve or file the notice of intention required by*
20 *paragraph (1) forecloses the possibility of a com-*
21 *pulsory license under paragraph (1). In the ab-*
22 *sence of a voluntary license, the failure to obtain*
23 *a compulsory license renders the making and*
24 *distribution of phonorecords actionable as acts of*
25 *infringement under section 501 and subject to*

1 *the remedies provided by sections 502 through*
2 *506.*

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

5 “(i) *IN GENERAL.—In the case of*
6 *phonorecords made and distributed by*
7 *means of digital phonorecord delivery:*

8 “(I) *The failure to serve the notice*
9 *of intention required by paragraph*
10 *(2)(A) or paragraph (3), as applicable,*
11 *forecloses the possibility of a compul-*
12 *sory license under such paragraph.*

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

21 “(ii) *EFFECT OF FAILURE.—In either*
22 *case described in subclause (I) or (II) of*
23 *clause (i), in the absence of a voluntary li-*
24 *cence, the failure to obtain a compulsory li-*
25 *cence renders the making and distribution*

1 *of phonorecords by means of digital phono-*
 2 *record delivery actionable as acts of in-*
 3 *fringement under section 501 and subject to*
 4 *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 COMPUL-*
 9 *SORY LICENSE.—*

10 “(1) *ROYALTY PAYABLE UNDER COMPULSORY LI-*
 11 *CENSE.—*

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

21 “(B) *ROYALTY FOR PHONORECORDS OTHER*
 22 *THAN DIGITAL PHONORECORD DELIVERIES.—Ex-*
 23 *cept as provided by subparagraph (A), for every*
 24 *phonorecord made and distributed under a com-*
 25 *pulsory license under subsection (a) other than*

1 *by means of digital phonorecord delivery, with*
2 *respect to each work embodied in the phono-*
3 *record, the royalty shall be the royalty prescribed*
4 *under subparagraphs (D) through (F), para-*
5 *graph (2)(A), and chapter 8. For purposes of*
6 *this subparagraph, a phonorecord is considered*
7 *‘distributed’ if the person exercising the compul-*
8 *sory license has voluntarily and permanently*
9 *parted with its possession.*

10 “(C) *ROYALTY FOR DIGITAL PHONORECORD*
11 *DELIVERIES.—For every digital phonorecord de-*
12 *livery of a musical work made under a compul-*
13 *sory license under this section, the royalty pay-*
14 *able shall be the royalty prescribed under sub-*
15 *paragraphs (D) through (F), paragraph (2)(A),*
16 *and chapter 8.*

17 “(D) *AUTHORITY TO NEGOTIATE.—Notwith-*
18 *standing any provision of the antitrust laws,*
19 *any copyright owners of nondramatic musical*
20 *works and any persons entitled to obtain a com-*
21 *pulsory license under subsection (a) may nego-*
22 *tiate and agree upon the terms and rates of roy-*
23 *alty payments under this section and the propor-*
24 *tionate division of fees paid among copyright*
25 *owners, and may designate common agents on a*

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

9 “(E) *DETERMINATION OF REASONABLE*
10 *RATES AND TERMS.—Proceedings under chapter*
11 *8 shall determine reasonable rates and terms of*
12 *royalty payments for the activities specified by*
13 *this section during the period beginning with the*
14 *effective date of such rates and terms, but not*
15 *earlier than January 1 of the second year fol-*
16 *lowing the year in which the petition requesting*
17 *the proceeding is filed, and ending on the effec-*
18 *tive date of successor rates and terms, or such*
19 *other period as the parties may agree. Any copy-*
20 *right owners of nondramatic musical works and*
21 *any persons entitled to obtain a compulsory li-*
22 *cence under subsection (a) may submit to the*
23 *Copyright Royalty Judges licenses covering such*
24 *activities. The parties to each proceeding shall*
25 *bear their own costs.*

1 “(F) *SCHEDULE OF REASONABLE RATES.*—

2 *The schedule of reasonable rates and terms deter-*
3 *mined by the Copyright Royalty Judges shall,*
4 *subject to paragraph (2)(A), be binding on all*
5 *copyright owners of nondramatic musical works*
6 *and persons entitled to obtain a compulsory li-*
7 *cense under subsection (a) during the period*
8 *specified in subparagraph (E), such other period*
9 *as may be determined pursuant to subpara-*
10 *graphs (D) and (E), or such other period as the*
11 *parties may agree. The Copyright Royalty*
12 *Judges shall establish rates and terms that most*
13 *clearly represent the rates and terms that would*
14 *have been negotiated in the marketplace between*
15 *a willing buyer and a willing seller. In deter-*
16 *mining such rates and terms for digital phono-*
17 *record deliveries, the Copyright Royalty Judges*
18 *shall base their decision on economic, competi-*
19 *tive, and programming information presented by*
20 *the parties, including—*

21 “(i) *whether use of the compulsory li-*
22 *censee’s service may substitute for or may*
23 *promote the sales of phonorecords or other-*
24 *wise may interfere with or may enhance the*
25 *musical work copyright owner’s other*

1 *streams of revenue from its musical works;*
2 *and*

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

10 *“(2) ADDITIONAL TERMS AND CONDITIONS.—*

11 *“(A) VOLUNTARY LICENSES AND CONTRAC-*
12 *TUAL ROYALTY RATES.—*

13 *“(i) IN GENERAL.—License agreements*
14 *voluntarily negotiated at any time between*
15 *one or more copyright owners of nondra-*
16 *matic musical works and one or more per-*
17 *sons entitled to obtain a compulsory license*
18 *under subsection (a) shall be given effect in*
19 *lieu of any determination by the Copyright*
20 *Royalty Judges. Subject to clause (ii), the*
21 *royalty rates determined pursuant to sub-*
22 *paragraphs (E) and (F) of paragraph (1)*
23 *shall be given effect as to digital phono-*
24 *record deliveries in lieu of any contrary*
25 *royalty rates specified in a contract pursu-*

1 *ant to which a recording artist who is the*
2 *author of a nondramatic musical work*
3 *grants a license under that person's exclu-*
4 *sive rights in the musical work under para-*
5 *graphs (1) and (3) of section 106 or com-*
6 *mits another person to grant a license in*
7 *that musical work under paragraphs (1)*
8 *and (3) of section 106, to a person desiring*
9 *to fix in a tangible medium of expression a*
10 *sound recording embodying the musical*
11 *work.*

12 *“(ii) APPLICABILITY.—The second sen-*
13 *tence of clause (i) shall not apply to—*

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

1 *the scope of the contract, any contrary*
2 *royalty rates specified in the contract*
3 *shall be given effect in lieu of royalty*
4 *rates determined pursuant to subpara-*
5 *graphs (E) and (F) of paragraph (1)*
6 *for the number of musical works with-*
7 *in the scope of the contract as of June*
8 *22, 1995; and*

9 *“(II) a contract entered into after*
10 *the date that the sound recording is*
11 *fixed in a tangible medium of expres-*
12 *sion substantially in a form intended*
13 *for commercial release, if at the time*
14 *the contract is entered into, the record-*
15 *ing artist retains the right to grant li-*
16 *censes as to the musical work under*
17 *paragraphs (1) and (3) of section 106.*

18 *“(B) SOUND RECORDING INFORMATION.—*
19 *Except as provided in section 1002(e), a digital*
20 *phonorecord delivery licensed under this para-*
21 *graph shall be accompanied by the information*
22 *encoded in the sound recording, if any, by or*
23 *under the authority of the copyright owner of*
24 *that sound recording, that identifies the title of*
25 *the sound recording, the featured recording artist*

1 *who performs on the sound recording, and re-*
2 *lated information, including information con-*
3 *cerning the underlying musical work and its*
4 *writer.*

5 “(C) *INFRINGEMENT REMEDIES.*—

6 “(i) *IN GENERAL.*—*A digital phono-*
7 *record delivery of a sound recording is ac-*
8 *tionable as an act of infringement under*
9 *section 501, and is fully subject to the rem-*
10 *edies provided by sections 502 through 506,*
11 *unless—*

12 “(I) *the digital phonorecord deliv-*
13 *ery has been authorized by the sound*
14 *recording copyright owner; and*

15 “(II) *the entity making the digital*
16 *phonorecord delivery has obtained a*
17 *compulsory license under subsection*
18 *(a) or has otherwise been authorized by*
19 *the musical work copyright owner, or*
20 *by a record company pursuant to an*
21 *individual download license, to make*
22 *and distribute phonorecords of each*
23 *musical work embodied in the sound*
24 *recording by means of digital phono-*
25 *record delivery.*

1 “(i) *OTHER REMEDIES.*—Any cause of
2 action under this subparagraph shall be in
3 addition to those available to the owner of
4 the copyright in the nondramatic musical
5 work under subparagraph (J) and section
6 106(4) and the owner of the copyright in
7 the sound recording under section 106(6).

8 “(D) *LIABILITY OF SOUND RECORDING OWN-*
9 *ERS.*—The liability of the copyright owner of a
10 sound recording for infringement of the copy-
11 right in a nondramatic musical work embodied
12 in the sound recording shall be determined in ac-
13 cordance with applicable law, except that the
14 owner of a copyright in a sound recording shall
15 not be liable for a digital phonorecord delivery
16 by a third party if the owner of the copyright in
17 the sound recording does not license the distribu-
18 tion of a phonorecord of the nondramatic musi-
19 cal work.

20 “(E) *RECORDING DEVICES AND MEDIA.*—
21 Nothing in section 1008 shall be construed to
22 prevent the exercise of the rights and remedies al-
23 lowed by this paragraph, subparagraph (J), and
24 chapter 5 in the event of a digital phonorecord
25 delivery, except that no action alleging infringe-

1 *ment of copyright may be brought under this*
2 *title against a manufacturer, importer or dis-*
3 *tributor of a digital audio recording device, a*
4 *digital audio recording medium, an analog re-*
5 *recording device, or an analog recording medium,*
6 *or against a consumer, based on the actions de-*
7 *scribed in such section.*

8 “(F) *PRESERVATION OF RIGHTS.*—*Nothing*
9 *in this section annuls or limits—*

10 “(i) *the exclusive right to publicly per-*
11 *form a sound recording or the musical work*
12 *embodied therein, including by means of a*
13 *digital transmission, under paragraphs (4)*
14 *and (6) of section 106;*

15 “(ii) *except for compulsory licensing*
16 *under the conditions specified by this sec-*
17 *tion, the exclusive rights to reproduce and*
18 *distribute the sound recording and the mu-*
19 *sical work embodied therein under para-*
20 *graphs (1) and (3) of section 106, including*
21 *by means of a digital phonorecord delivery;*
22 *or*

23 “(iii) *any other rights under any other*
24 *provision of section 106, or remedies avail-*
25 *able under this title, as such rights or rem-*

1 *edies exist before, on, or after the date of en-*
2 *actment of the Digital Performance Right*
3 *in Sound Recordings Act of 1995.*

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

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

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

10 “(I) PAYMENT OF ROYALTIES AND STATE-
11 MENTS OF ACCOUNT.—Except as provided in
12 paragraphs (4)(A)(i) and (10)(B) of subsection
13 (d), royalty payments shall be made on or before
14 the twentieth day of each month and shall in-
15 clude all royalties for the month next preceding.
16 Each monthly payment shall be made under oath
17 and shall comply with requirements that the
18 Register of Copyrights shall prescribe by regula-
19 tion. The Register shall also prescribe regulations
20 under which detailed cumulative annual state-
21 ments of account, certified by a certified public
22 accountant, shall be filed for every compulsory
23 license under subsection (a). The regulations cov-
24 ering both the monthly and the annual state-
25 ments of account shall prescribe the form, con-

1 *tent, and manner of certification with respect to*
2 *the number of records made and the number of*
3 *records distributed.*

4 “(J) NOTICE OF DEFAULT AND TERMINATION OF COMPULSORY LICENSE.—*In the case*
5 *of a license obtained under paragraph (1),*
6 *(2)(A), or (3) of subsection (b), if the copyright*
7 *owner does not receive the monthly payment and*
8 *the monthly and annual statements of account*
9 *when due, the owner may give written notice to*
10 *the licensee that, unless the default is remedied*
11 *not later than 30 days after the date on which*
12 *the notice is sent, the compulsory license will be*
13 *automatically terminated. Such termination ren-*
14 *ders either the making or the distribution, or*
15 *both, of all phonorecords for which the royalty*
16 *has not been paid, actionable as acts of infringe-*
17 *ment under section 501 and fully subject to the*
18 *remedies provided by sections 502 through 506.*
19 *In the case of a license obtained under subsection*
20 *(b)(2)(B), license authority under the compulsory*
21 *license may be terminated as provided in sub-*
22 *section (d)(4)(E).”;*

23 (4) by amending subsection (d) to read as fol-
24 lows:
25

1 “(d) *BLANKET LICENSE FOR DIGITAL USES, MECHAN-*
2 *ICAL LICENSING COLLECTIVE, AND DIGITAL LICENSEE CO-*
3 *ORDINATOR.*—

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

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

13 “(B) *INCLUDED ACTIVITIES.*—*A blanket li-*
14 *cence—*

15 “(i) *covers all musical works (or shares*
16 *of such works) available for compulsory li-*
17 *censing under this section for purposes of*
18 *engaging in covered activities, except as*
19 *provided in subparagraph (C);*

20 “(ii) *includes the making and distribu-*
21 *tion of server, intermediate, archival, and*
22 *incidental reproductions of musical works*
23 *that are reasonable and necessary for the*
24 *digital music provider to engage in covered*
25 *activities licensed under this subsection,*

1 *solely for the purpose of engaging in such*
2 *covered activities; and*

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

6 “(C) *OTHER LICENSES.—A voluntary li-*
7 *cence for covered activities entered into by or*
8 *under the authority of 1 or more copyright own-*
9 *ers and 1 or more digital music providers, or au-*
10 *thority to make and distribute permanent*
11 *downloads of a musical work obtained by a dig-*
12 *ital music provider from a sound recording*
13 *copyright owner pursuant to an individual*
14 *download license, shall be given effect in lieu of*
15 *a blanket license under this subsection with re-*
16 *spect to the musical works (or shares thereof)*
17 *covered by such voluntary license or individual*
18 *download authority and the following conditions*
19 *apply:*

20 “(i) *Where a voluntary license or indi-*
21 *vidual download license applies, the license*
22 *authority provided under the blanket license*
23 *shall exclude any musical works (or shares*
24 *thereof) subject to the voluntary license or*
25 *individual download license.*

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

7 “(iii) *The rates and terms of any vol-*
8 *untary license shall be subject to the second*
9 *sentence of clause (i) and clause (ii) of sub-*
10 *section (c)(2)(A) and paragraph (9)(C), as*
11 *applicable.*

12 “(D) *PROTECTION AGAINST INFRINGEMENT*
13 *ACTIONS.—A digital music provider that obtains*
14 *and complies with the terms of a valid blanket*
15 *license under this subsection shall not be subject*
16 *to an action for infringement of the exclusive*
17 *rights provided by paragraphs (1) and (3) of sec-*
18 *tion 106 under this title arising from use of a*
19 *musical work (or share thereof) to engage in cov-*
20 *ered activities authorized by such license, subject*
21 *to paragraph (4)(E).*

22 “(E) *OTHER REQUIREMENTS AND CONDI-*
23 *TIONS APPLY.—Except as expressly provided in*
24 *this subsection, each requirement, limitation,*
25 *condition, privilege, right, and remedy otherwise*

1 *applicable to compulsory licenses under this sec-*
2 *tion shall apply to compulsory blanket licenses*
3 *under this subsection.*

4 “(2) *AVAILABILITY OF BLANKET LICENSE.—*

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

11 “(i) *The notice of license shall comply*
12 *in form and substance with requirements*
13 *that the Register of Copyrights shall estab-*
14 *lish by regulation.*

15 “(ii) *Unless rejected in writing by the*
16 *mechanical licensing collective not later*
17 *than 30 calendar days after the date on*
18 *which the mechanical licensing collective re-*
19 *ceives the notice, the blanket license shall be*
20 *effective as of the date on which the notice*
21 *of license was sent by the digital music pro-*
22 *vider, as shown by a physical or electronic*
23 *record.*

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

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

11 “(II) the digital music provider
12 has had a blanket license terminated
13 by the mechanical licensing collective
14 during the 3-year period preceding the
15 date on which the mechanical licensing
16 collective receives the notice pursuant
17 to paragraph (4)(E).

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

1 *in writing, and the license shall be effective*
2 *as of the date that the original notice of li-*
3 *cence was provided by the digital music*
4 *provider.*

5 “(v) *A digital music provider that be-*
6 *lieves a notice of license was improperly re-*
7 *jected by the mechanical licensing collective*
8 *may seek review of such rejection in an ap-*
9 *propriate district court of the United*
10 *States. The district court shall determine*
11 *the matter de novo based on the record be-*
12 *fore the mechanical licensing collective and*
13 *any additional evidence presented by the*
14 *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 license*
19 *shall be effective prior to the license availability*
20 *date.*

21 “(3) *MECHANICAL LICENSING COLLECTIVE.—*

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

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

1 *right owners to carry out responsibilities*
2 *under 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 Reg-*
11 *ister of Copyrights that the entity has, or*
12 *will have prior to the license availability*
13 *date, the administrative and technological*
14 *capabilities to perform the required func-*
15 *tions of the mechanical licensing collective*
16 *under this subsection and that is governed*
17 *by a board of directors in accordance with*
18 *subparagraph (D)(i); and*

19 *“(iv) has been designated by the Reg-*
20 *ister of Copyrights, with the approval of the*
21 *Librarian of Congress pursuant to section*
22 *702, in accordance with subparagraph (B).*

23 *“(B) DESIGNATION OF MECHANICAL LICENS-*

24 *ING COLLECTIVE.—*

1 “(i) *INITIAL DESIGNATION.*—Not later
2 than 270 days after the enactment date, the
3 Register of Copyrights shall initially des-
4 ignate the mechanical licensing collective as
5 follows:

6 “(I) Not later than 90 calendar
7 days after the enactment date, the Reg-
8 ister shall publish notice in the Federal
9 Register soliciting information to as-
10 sist in identifying the appropriate en-
11 tity to serve as the mechanical licens-
12 ing collective, including the name and
13 affiliation of each member of the board
14 of directors described under subpara-
15 graph (D)(i) and each committee estab-
16 lished pursuant to clauses (iii), (iv),
17 and (v) of subparagraph (D).

18 “(II) After reviewing the informa-
19 tion requested under subclause (I) and
20 making a designation, the Register
21 shall publish notice in the Federal Reg-
22 ister setting forth—

23 “(aa) the identity of and
24 contact information for the me-
25 chanical licensing collective; and

1 “(bb) *the reasons for the des-*
2 *ignation.*

3 “(ii) *PERIODIC REVIEW OF DESIGNA-*
4 *TION.—Following the initial designation of*
5 *the mechanical licensing collective, the Reg-*
6 *ister shall, every 5 years, beginning with the*
7 *fifth full calendar year to commence after*
8 *the initial designation, publish notice in the*
9 *Federal Register in the month of January*
10 *soliciting information concerning whether*
11 *the existing designation should be contin-*
12 *ued, or a different entity meeting the cri-*
13 *teria described in clauses (i) through (iii) of*
14 *subparagraph (A) shall be designated. Fol-*
15 *lowing publication of such notice, the Reg-*
16 *ister shall—*

17 “(I) *after reviewing the informa-*
18 *tion submitted and conducting addi-*
19 *tional proceedings as appropriate, pub-*
20 *lish notice in the Federal Register of a*
21 *continuing designation or new designa-*
22 *tion of the mechanical licensing collec-*
23 *tive, as the case may be, and the rea-*
24 *sons for such a designation, with any*
25 *new designation to be effective as of the*

1 *first day of a month that is not less*
2 *than 6 months and not longer than 9*
3 *months after the date on which the*
4 *Register publishes the notice, as speci-*
5 *fied by the Register; and*

6 *“(II) if a new entity is designated*
7 *as the mechanical licensing collective,*
8 *adopt regulations to govern the trans-*
9 *fer of licenses, funds, records, data, and*
10 *administrative responsibilities from the*
11 *existing mechanical licensing collective*
12 *to the new entity.*

13 *“(iii) CLOSEST ALTERNATIVE DESIGNA-*
14 *TION.—If the Register is unable to identify*
15 *an entity that fulfills each of the qualifica-*
16 *tions set forth in clauses (i) through (iii) of*
17 *subparagraph (A), the Register shall des-*
18 *ignate the entity that most nearly fulfills*
19 *such qualifications for purposes of carrying*
20 *out the responsibilities of the mechanical li-*
21 *censing collective.*

22 *“(C) AUTHORITIES AND FUNCTIONS.—*

23 *“(i) IN GENERAL.—The mechanical li-*
24 *censing collective is authorized to perform*
25 *the following functions, subject to more par-*

1 *ticular requirements as described in this*
2 *subsection:*

3 *“(I) Offer and administer blanket*
4 *licenses, including receipt of notices of*
5 *license and reports of usage from dig-*
6 *ital music providers.*

7 *“(II) Collect and distribute royal-*
8 *ties from digital music providers for*
9 *covered activities.*

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

16 *“(IV) Maintain the musical works*
17 *database and other information rel-*
18 *evant to the administration of licens-*
19 *ing activities under this section.*

20 *“(V) Administer a process by*
21 *which copyright owners can claim*
22 *ownership of musical works (and*
23 *shares of such works), and a process by*
24 *which royalties for works for which the*
25 *owner is not identified or located are*

1 *equitably distributed to known copy-*
2 *right owners.*

3 “(VI) *Administer collections of the*
4 *administrative assessment from digital*
5 *music providers and significant non-*
6 *blanket licensees, including receipt of*
7 *notices of nonblanket activity.*

8 “(VII) *Invest in relevant re-*
9 *sources, and arrange for services of*
10 *outside vendors and others, to support*
11 *the activities of the mechanical licens-*
12 *ing collective.*

13 “(VIII) *Engage in legal and other*
14 *efforts to enforce rights and obligations*
15 *under this subsection, including by fil-*
16 *ing bankruptcy proofs of claims for*
17 *amounts owed under licenses, and act-*
18 *ing in coordination with the digital li-*
19 *censee coordinator.*

20 “(IX) *Initiate and participate in*
21 *proceedings before the Copyright Roy-*
22 *alty Judges to establish the adminis-*
23 *trative assessment under this sub-*
24 *section.*

1 “(X) *Initiate and participate in*
2 *proceedings before the Copyright Office*
3 *with respect to activities under this*
4 *subsection.*

5 “(XI) *Gather and provide docu-*
6 *mentation for use in proceedings before*
7 *the Copyright Royalty Judges to set*
8 *rates and terms under this section.*

9 “(XII) *Maintain records of the ac-*
10 *tivities of the mechanical licensing col-*
11 *lective and engage in and respond to*
12 *audits described in this subsection.*

13 “(XIII) *Engage in such other ac-*
14 *tivities as may be necessary or appro-*
15 *priate to fulfill the responsibilities of*
16 *the mechanical licensing collective*
17 *under this subsection.*

18 “(ii) *ADDITIONAL ADMINISTRATIVE AC-*
19 *TIVITIES.—Subject to clause (iii) and para-*
20 *graph (11)(C), the mechanical licensing col-*
21 *lective may also administer, or assist in ad-*
22 *ministering, voluntary licenses issued by or*
23 *individual download licenses obtained from*
24 *copyright owners for uses of musical works,*

1 *for which the mechanical licensing collective*
 2 *shall charge reasonable fees for such services.*

3 “(iii) *RESTRICTION CONCERNING PUB-*
 4 *LIC PERFORMANCE RIGHTS.—The mechan-*
 5 *ical licensing collective—*

6 “(I) *may, pursuant to clause (ii),*
 7 *provide administration services with*
 8 *respect to voluntary licenses that in-*
 9 *clude the right of public performance*
 10 *in musical works; and*

11 “(II) *may not—*

12 “(aa) *negotiate or grant li-*
 13 *censes for the right of public per-*
 14 *formance in musical works; or*

15 “(bb) *be the exclusive or non-*
 16 *exclusive assignee or grantee of the*
 17 *right of public performance in*
 18 *musical works.*

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

25 “(D) *GOVERNANCE.—*

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

6 “(I) *Ten voting members shall be*
7 *representatives of music publishers—*

8 “(aa) *to which songwriters*
9 *have assigned exclusive rights of*
10 *reproduction and distribution of*
11 *musical works with respect to cov-*
12 *ered activities; and*

13 “(bb) *none of which may be*
14 *owned by, or under common con-*
15 *trol with, any other board mem-*
16 *ber.*

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

23 “(III) *One nonvoting member*
24 *shall be a representative of the non-*
25 *profit trade association of music pub-*

1 lishers that represents the greatest per-
2 centage of the licensor market for uses
3 of musical works in covered activities,
4 as measured for the 3-year period pre-
5 ceding the date on which the member is
6 appointed.

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

19 “(V) One nonvoting member shall
20 be a representative of a nationally rec-
21 ognized nonprofit trade association
22 whose primary mission is advocacy on
23 behalf of songwriters in the United
24 States.

25 “(ii) *BYLAWS.*—

1 “(I) *ESTABLISHMENT.*—Not later
2 than 1 year after the date on which the
3 mechanical licensing collective is ini-
4 tially designated by the Register of
5 Copyrights under subparagraph (B)(i),
6 the collective shall establish bylaws to
7 determine issues relating to the govern-
8 ance of the collective, including, but
9 not limited to—

10 “(aa) the length of the term
11 for each member of the board of
12 directors;

13 “(bb) the staggering of the
14 terms of the members of the board
15 of directors;

16 “(cc) a process for filling a
17 seat on the board of directors that
18 is vacated before the end of the
19 term with respect to that seat;

20 “(dd) a process for electing a
21 member to the board of directors;
22 and

23 “(ee) a management struc-
24 ture for daily operation of the col-
25 lective.

1 “(II) *PUBLIC AVAILABILITY.*—*The*
2 *mechanical licensing collective shall*
3 *make the bylaws established under sub-*
4 *clause (I) available to the public.*

5 “(iii) *BOARD MEETINGS.*—*The board*
6 *of directors shall meet not less frequently*
7 *than biannually and discuss matters perti-*
8 *nent to the operations of the mechanical li-*
9 *censing collective, including the mechanical*
10 *licensing collective budget.*

11 “(iv) *OPERATIONS ADVISORY COM-*
12 *MITTEE.*—*The board of directors of the me-*
13 *chanical licensing collective shall establish*
14 *an operations advisory committee consisting*
15 *of not fewer than 6 members to make rec-*
16 *ommendations to the board of directors con-*
17 *cerning the operations of the mechanical li-*
18 *censing collective, including the efficient in-*
19 *vestment in and deployment of information*
20 *technology and data resources. Such com-*
21 *mittee shall have an equal number of mem-*
22 *bers of the committee who are—*

23 “(I) *musical work copyright own-*
24 *ers who are appointed by the board of*

1 *directors of the mechanical licensing*
2 *collective; and*

3 “*(II) representatives of digital*
4 *music providers who are appointed by*
5 *the digital licensee coordinator.*

6 “*(v) UNCLAIMED ROYALTIES OVER-*
7 *SIGHT COMMITTEE.—The board of directors*
8 *of the mechanical licensing collective shall*
9 *establish and appoint an unclaimed roy-*
10 *alties oversight committee consisting of 10*
11 *members, 5 of which shall be musical work*
12 *copyright owners and 5 of which shall be*
13 *professional songwriters whose works are*
14 *used in covered activities.*

15 “*(vi) DISPUTE RESOLUTION COM-*
16 *MITTEE.—The board of directors of the me-*
17 *chanical licensing collective shall establish*
18 *and appoint a dispute resolution committee*
19 *that shall—*

20 “*(I) consist of not fewer than 6*
21 *members; and*

22 “*(II) include an equal number of*
23 *representatives of musical work copy-*
24 *right owners and professional song-*
25 *writers.*

1 “(vii) *MECHANICAL LICENSING COL-*
2 *LECTIVE ANNUAL REPORT.—*

3 “(I) *IN GENERAL.—Not later than*
4 *June 30 of each year commencing after*
5 *the license availability date, the me-*
6 *chanical licensing collective shall post,*
7 *and make available online for a period*
8 *of not less than 3 years, an annual re-*
9 *port that sets forth information regard-*
10 *ing—*

11 “(aa) *the operational and li-*
12 *censing practices of the collective;*

13 “(bb) *how royalties are col-*
14 *lected and distributed;*

15 “(cc) *budgeting and expendi-*
16 *tures;*

17 “(dd) *the collective total costs*
18 *for the preceding calendar year;*

19 “(ee) *the projected annual*
20 *mechanical licensing collective*
21 *budget;*

22 “(ff) *aggregated royalty re-*
23 *ceipts and payments;*

24 “(gg) *expenses that are more*
25 *than 10 percent of the annual me-*

1 *chanical licensing collective budg-*
2 *et; and*

3 “(hh) *the efforts of the collec-*
4 *tive to locate and identify copy-*
5 *right owners of unmatched musi-*
6 *cal works (and shares of works).*

7 “(II) *SUBMISSION.*—*On the date*
8 *on which the mechanical licensing col-*
9 *lective posts each report required under*
10 *subclause (I), the collective shall pro-*
11 *vide a copy of the report to the Reg-*
12 *ister of Copyrights.*

13 “(viii) *INDEPENDENT OFFICERS.*—*An*
14 *individual serving as an officer of the me-*
15 *chanical licensing collective may not, at the*
16 *same time, also be an employee or agent of*
17 *any member of the board of directors of the*
18 *collective or any entity represented by a*
19 *member of the board of directors, as de-*
20 *scribed in clause (i).*

21 “(ix) *OVERSIGHT AND ACCOUNT-*
22 *ABILITY.*—

23 “(I) *IN GENERAL.*—*The mechan-*
24 *ical licensing collective shall—*

1 “(aa) ensure that the policies
2 and practices of the collective are
3 transparent and accountable;

4 “(bb) identify a point of con-
5 tact for publisher inquiries and
6 complaints with timely redress;
7 and

8 “(cc) establish an anti-co-
9 mingling policy for funds not col-
10 lected under this section and roy-
11 alties collected under this section.

12 “(II) AUDITS.—

13 “(aa) IN GENERAL.—Begin-
14 ning in the fourth full calendar
15 year that begins after the initial
16 designation of the mechanical li-
17 censing collective by the Register
18 of Copyrights under subparagraph
19 (B)(i), and in every fifth calendar
20 year thereafter, the collective shall
21 retain a qualified auditor that
22 shall—

23 “(AA) examine the
24 books, records, and oper-
25 ations of the collective;

1 “(BB) prepare a report
2 for the board of directors of
3 the collective with respect to
4 the matters described in item
5 (bb); and

6 “(CC) not later than
7 December 31 of the year in
8 which the qualified auditor is
9 retained, deliver the report
10 described in subitem (BB) to
11 the board of directors of the
12 collective.

13 “(bb) MATTERS AD-
14 DRESSED.—Each report prepared
15 under item (aa) shall address the
16 implementation and efficacy of
17 procedures of the mechanical li-
18 censing collective—

19 “(AA) for the receipt,
20 handling, and distribution of
21 royalty funds, including any
22 amounts held as unclaimed
23 royalties;

24 “(BB) to guard against
25 fraud, abuse, waste, and the

1 *unreasonable use of funds;*
 2 *and*

3 “(CC) *to protect the*
 4 *confidentiality of financial,*
 5 *proprietary, and other sen-*
 6 *sitive information.*

7 “(cc) *PUBLIC AVAIL-*
 8 *ABILITY.—With respect to each re-*
 9 *port prepared under item (aa),*
 10 *the mechanical licensing collective*
 11 *shall—*

12 “(AA) *submit the report*
 13 *to the Register of Copyrights;*
 14 *and*

15 “(BB) *make the report*
 16 *available to the public.*

17 “(E) *MUSICAL WORKS DATABASE.—*

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

1 *sound recordings in which the musical*
2 *works are embodied. In furtherance of*
3 *maintaining such database, the mechanical*
4 *licensing collective shall engage in efforts to*
5 *identify the musical works embodied in par-*
6 *ticular sound recordings, as well as to iden-*
7 *tify and locate the copyright owners of such*
8 *works (and shares thereof), and update such*
9 *data as appropriate.*

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

14 “(I) *the title of the musical work;*

15 “(II) *the copyright owner of the*
16 *work (or share thereof), and the owner-*
17 *ship percentage of that owner;*

18 “(III) *contact information for*
19 *such copyright owner;*

20 “(IV) *to the extent reasonably*
21 *available to the mechanical licensing*
22 *collective—*

23 “(aa) *the international*
24 *standard musical work code for*
25 *the work; and*

1 “(bb) identifying information
2 for sound recordings in which the
3 musical work is embodied, includ-
4 ing the name of the sound record-
5 ing, featured artist, sound record-
6 ing copyright owner, producer,
7 international standard recording
8 code, and other information com-
9 monly used to assist in associ-
10 ating sound recordings with musi-
11 cal works; and

12 “(V) such other information as the
13 Register of Copyrights may prescribe
14 by regulation.

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

19 “(I) to the extent reasonably
20 available to the mechanical licensing
21 collective—

22 “(aa) the title of the musical
23 work;

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

4 “(cc) if a copyright owner
5 has been identified but not lo-
6 cated, the identity of such owner
7 and the ownership percentage of
8 that owner;

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

19 “(ee) any additional infor-
20 mation reported to the mechanical
21 licensing collective that may assist
22 in identifying the work; and

23 “(II) such other information relat-
24 ing to the identity and ownership of
25 musical works (and shares of such

1 *works) as the Register of Copyrights*
2 *may prescribe by regulation.*

3 “(iv) *SOUND RECORDING INFORMA-*
4 *TION.—Each musical work copyright owner*
5 *with any musical work listed in the musical*
6 *works database shall engage in commer-*
7 *cially reasonable efforts to deliver to the me-*
8 *chanical licensing collective, including for*
9 *use in the musical works database, to the*
10 *extent such information is not then avail-*
11 *able in the database, information regarding*
12 *the names of the sound recordings in which*
13 *that copyright owner’s musical works (or*
14 *shares thereof) are embodied, to the extent*
15 *practicable.*

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

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

4 “(II) *Significant nonblanket li-*
5 *censes in compliance with their obli-*
6 *gations under paragraph (6), free of*
7 *charge.*

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

11 “(IV) *The Register of Copyrights,*
12 *free of charge (but the Register shall*
13 *not treat such database or any infor-*
14 *mation therein as a Government*
15 *record).*

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

21 “(vi) *ADDITIONAL REQUIREMENTS.—*
22 *The Register of Copyrights shall establish*
23 *requirements by regulations to ensure the*
24 *usability, interoperability, and usage re-*
25 *strictions of the musical works database.*

1 “(F) *NOTICES OF LICENSE AND NON-*
2 *BLANKET ACTIVITY.*—

3 “(i) *NOTICES OF LICENSES.*—*The me-*
4 *chanical licensing collective shall receive, re-*
5 *view, and confirm or reject notices of license*
6 *from digital music providers, as provided*
7 *in paragraph (2)(A). The collective shall*
8 *maintain a current, publicly accessible list*
9 *of blanket licenses that includes contact in-*
10 *formation for the licensees and the effective*
11 *dates of such licenses.*

12 “(ii) *NOTICES OF NONBLANKET ACTIV-*
13 *ITY.*—*The mechanical licensing collective*
14 *shall receive notices of nonblanket activity*
15 *from significant nonblanket licensees, as*
16 *provided in paragraph (6)(A). The collective*
17 *shall maintain a current, publicly accessible*
18 *list of notices of nonblanket activity that in-*
19 *cludes contact information for significant*
20 *nonblanket licensees and the dates of receipt*
21 *of such notices.*

22 “(G) *COLLECTION AND DISTRIBUTION OF*
23 *ROYALTIES.*—

24 “(i) *IN GENERAL.*—*Upon receiving re-*
25 *ports of usage and payments of royalties*

1 *from digital music providers for covered ac-*
2 *tivities, the mechanical licensing collective*
3 *shall—*

4 “(I) engage in efforts to—

5 “(aa) identify the musical
6 works embodied in sound record-
7 ings reflected in such reports, and
8 the copyright owners of such mu-
9 sical works (and shares thereof);

10 “(bb) confirm uses of musical
11 works subject to voluntary licenses
12 and individual download licenses,
13 and the corresponding pro rata
14 amounts to be deducted from roy-
15 alties that would otherwise be due
16 under the blanket license; and

17 “(cc) confirm proper pay-
18 ment of royalties due;

19 “(II) distribute royalties to copy-
20 right owners in accordance with the
21 usage and other information contained
22 in such reports, as well as the owner-
23 ship and other information contained
24 in the records of the collective; and

1 “(III) deposit into an interest-
2 bearing account, as provided in sub-
3 paragraph (H)(i), royalties that can-
4 not be distributed due to—

5 “(aa) an inability to identify
6 or locate a copyright owner of a
7 musical work (or share thereof); or

8 “(bb) a pending dispute be-
9 fore the dispute resolution com-
10 mittee of the mechanical licensing
11 collective.

12 “(ii) OTHER COLLECTION EFFORTS.—

13 Any royalties recovered by the mechanical
14 licensing collective as a result of efforts to
15 enforce rights or obligations under a blanket
16 license, including through a bankruptcy
17 proceeding or other legal action, shall be
18 distributed to copyright owners based on
19 available usage information and in accord-
20 ance with the procedures described in sub-
21 clauses (I) and (II) of clause (i), on a pro
22 rata basis in proportion to the overall per-
23 centage recovery of the total royalties owed,
24 with any pro rata share of royalties that
25 cannot be distributed deposited in an inter-

1 *est-bearing account as provided in subpara-*
2 *graph (H)(ii).*

3 “(H) *HOLDING OF ACCRUED ROYALTIES.*—

4 “(i) *HOLDING PERIOD.*—*The mechan-*
5 *ical licensing collective shall hold accrued*
6 *royalties associated with particular musical*
7 *works (and shares of works) that remain*
8 *unmatched for a period of not less than 3*
9 *years after the date on which the funds were*
10 *received by the mechanical licensing collec-*
11 *tive, or not less than 3 years after the date*
12 *on which the funds were accrued by a dig-*
13 *ital music provider that subsequently trans-*
14 *ferred such funds to the mechanical licens-*
15 *ing collective pursuant to paragraph*
16 *(10)(B), whichever period expires sooner.*

17 “(ii) *INTEREST-BEARING ACCOUNT.*—

18 *Accrued royalties for unmatched works (and*
19 *shares thereof) shall be maintained by the*
20 *mechanical licensing collective in an inter-*
21 *est-bearing account that earns monthly in-*
22 *terest—*

23 “(I) *at the Federal, short-term*
24 *rate; and*

1 “(II) that accrues for the benefit
2 of copyright owners entitled to pay-
3 ment of such accrued royalties.

4 “(I) *MUSICAL WORKS CLAIMING PROCESS.*—
5 When a copyright owner of an unmatched work
6 (or share of a work) has been identified and lo-
7 cated in accordance with the procedures of the
8 mechanical licensing collective, the collective
9 shall—

10 “(i) update the musical works database
11 and the other records of the collective ac-
12 cordingly; and

13 “(ii) provided that accrued royalties
14 for the musical work (or share thereof) have
15 not yet been included in a distribution pur-
16 suant to subparagraph (J)(i), pay such ac-
17 crued royalties and a proportionate amount
18 of accrued interest associated with that
19 work (or share thereof) to the copyright
20 owner, accompanied by a cumulative state-
21 ment of account reflecting usage of such
22 work and accrued royalties based on infor-
23 mation provided by digital music providers
24 to the mechanical licensing collective.

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

3 “(i) *DISTRIBUTION PROCEDURES.—*
4 *After the expiration of the prescribed hold-*
5 *ing period for accrued royalties provided in*
6 *subparagraph (H)(i), the mechanical licens-*
7 *ing collective shall distribute such accrued*
8 *royalties, along with a proportionate share*
9 *of accrued interest, to copyright owners*
10 *identified in the records of the collective,*
11 *subject to the following requirements, and in*
12 *accordance with the policies and procedures*
13 *established under clause (ii):*

14 “(I) *The first such distribution*
15 *shall occur on or after January 1 of*
16 *the second full calendar year to com-*
17 *mence after the license availability*
18 *date, with not less than 1 such dis-*
19 *tribution to take place during each cal-*
20 *endar year thereafter.*

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

1 *cating the relative market shares of*
2 *such copyright owners as reflected in*
3 *reports of usage provided by digital*
4 *music providers for covered activities*
5 *for the periods in question, including,*
6 *in addition to usage data provided to*
7 *the mechanical licensing collective,*
8 *usage data provided to copyright own-*
9 *ers under voluntary licenses and indi-*
10 *vidual download licenses for covered*
11 *activities, to the extent such informa-*
12 *tion is available to the mechanical li-*
13 *censing collective. In furtherance of the*
14 *determination of equitable market*
15 *shares under this subparagraph—*

16 *“(aa) the mechanical licens-*
17 *ing collective may require copy-*
18 *right owners seeking distributions*
19 *of unclaimed accrued royalties to*
20 *provide, or direct the provision of,*
21 *information concerning the usage*
22 *of musical works under voluntary*
23 *licenses and individual download*
24 *licenses for covered activities; and*

1 “(bb) the mechanical licens-
2 ing collective shall take appro-
3 priate steps to safeguard the con-
4 fidentiality and security of usage,
5 financial, and other sensitive data
6 used to compute market shares in
7 accordance with the confiden-
8 tiality provisions prescribed by
9 the Register of Copyrights under
10 paragraph (12)(C).

11 “(ii) *ESTABLISHMENT OF DISTRIBUTION POLICIES.*—*The unclaimed royalties*
12 *oversight committee established under sub-*
13 *paragraph (D)(v) shall establish policies*
14 *and procedures for the distribution of un-*
15 *claimed accrued royalties and accrued in-*
16 *terest in accordance with this subpara-*
17 *graph, including the provision of usage data*
18 *to copyright owners to allocate payments*
19 *and credits to songwriters pursuant to*
20 *clause (iv), subject to the approval of the*
21 *board of directors of the mechanical licens-*
22 *ing collective.*
23

1 “(iii) *PUBLIC NOTICE OF UNCLAIMED*
2 *ACCRUED ROYALTIES.*—*The mechanical li-*
3 *censing collective shall—*

4 “(I) *maintain a publicly acces-*
5 *sible online facility with contact infor-*
6 *mation for the collective that lists un-*
7 *matched musical works (and shares of*
8 *works), through which a copyright*
9 *owner may assert an ownership claim*
10 *with respect to such a work (and a*
11 *share of such a work);*

12 “(II) *engage in diligent, good-*
13 *faith efforts to publicize, throughout the*
14 *music industry—*

15 “(aa) *the existence of the col-*
16 *lective and the ability to claim*
17 *unclaimed accrued royalties for*
18 *unmatched musical works (and*
19 *shares of such works) held by the*
20 *collective;*

21 “(bb) *the procedures by*
22 *which copyright owners may iden-*
23 *tify themselves and provide con-*
24 *tact, ownership, and other rel-*
25 *evant information to the collective*

1 *in order to receive payments of*
2 *accrued royalties;*

3 “(cc) *any transfer of accrued*
4 *royalties for musical works under*
5 *paragraph (10)(B), not later than*
6 *180 days after the date on which*
7 *the transfer is received; and*

8 “(dd) *any pending distribu-*
9 *tion of unclaimed accrued royalti-*
10 *ties and accrued interest, not less*
11 *than 90 days before the date on*
12 *which the distribution is made;*
13 *and*

14 “(III) *as appropriate, participate*
15 *in music industry conferences and*
16 *events for the purpose of publicizing*
17 *the matters described in subclause (II).*

18 “(iv) *SONGWRITER PAYMENTS.—Copy-*
19 *right owners that receive a distribution of*
20 *unclaimed accrued royalties and accrued*
21 *interest shall pay or credit a portion to*
22 *songwriters (or the authorized agents of*
23 *songwriters) on whose behalf the copyright*
24 *owners license or administer musical works*
25 *for covered activities, in accordance with*

1 applicable contractual terms, but notwith-
2 standing any agreement to the contrary—

3 “(I) such payments and credits to
4 songwriters shall be allocated in pro-
5 portion to reported usage of individual
6 musical works by digital music pro-
7 viders during the reporting periods
8 covered by the distribution from the
9 mechanical licensing collective; and

10 “(II) in no case shall the payment
11 or credit to an individual songwriter
12 be less than 50 percent of the payment
13 received by the copyright owner attrib-
14 utable to usage of musical works (or
15 shares of works) of that songwriter.

16 “(K) *DISPUTE RESOLUTION.*—The dispute
17 resolution committee established under subpara-
18 graph (D)(vi) shall establish policies and proce-
19 dures—

20 “(i) for copyright owners to address in
21 a timely and equitable manner disputes re-
22 lating to ownership interests in musical
23 works licensed under this section and allo-
24 cation and distribution of royalties by the
25 mechanical licensing collective, subject to

1 *the approval of the board of directors of the*
2 *mechanical licensing collective;*

3 “(ii) *that shall include a mechanism to*
4 *hold disputed funds in accordance with the*
5 *requirements described in subparagraph*
6 *(H)(ii) pending resolution of the dispute;*
7 *and*

8 “(iii) *except as provided in paragraph*
9 *(11)(D), that shall not affect any legal or*
10 *equitable rights or remedies available to any*
11 *copyright owner or songwriter concerning*
12 *ownership of, and entitlement to royalties*
13 *for, a musical work.*

14 “(L) *VERIFICATION OF PAYMENTS BY ME-*
15 *CHANICAL LICENSING COLLECTIVE.—*

16 “(i) *VERIFICATION PROCESS.—A copy-*
17 *right owner entitled to receive payments of*
18 *royalties for covered activities from the me-*
19 *chanical licensing collective may, individ-*
20 *ually or with other copyright owners, con-*
21 *duct an audit of the mechanical licensing*
22 *collective to verify the accuracy of royalty*
23 *payments by the mechanical licensing col-*
24 *lective to such copyright owner, as follows:*

1 “(I) A copyright owner may audit
2 the mechanical licensing collective only
3 once in a year for any or all of the 3
4 calendar years preceding the year in
5 which the audit is commenced, and
6 may not audit records for any cal-
7 endar year more than once.

8 “(II) The audit shall be conducted
9 by a qualified auditor, who shall per-
10 form the audit during the ordinary
11 course of business by examining the
12 books, records, and data of the mechan-
13 ical licensing collective, according to
14 generally accepted auditing standards
15 and subject to applicable confiden-
16 tiality requirements prescribed by the
17 Register of Copyrights under para-
18 graph (12)(C).

19 “(III) The mechanical licensing
20 collective shall make such books,
21 records, and data available to the
22 qualified auditor and respond to rea-
23 sonable requests for relevant informa-
24 tion, and shall use commercially rea-
25 sonable efforts to facilitate access to rel-

1 *evant information maintained by third*
2 *parties.*

3 *“(IV) To commence the audit, any*
4 *copyright owner shall file with the*
5 *Copyright Office a notice of intent to*
6 *conduct an audit of the mechanical li-*
7 *censing collective, identifying the pe-*
8 *riod of time to be audited, and shall si-*
9 *multaneously deliver a copy of such*
10 *notice to the mechanical licensing col-*
11 *lective. The Register of Copyrights*
12 *shall cause the notice of audit to be*
13 *published in the Federal Register not*
14 *later than 45 calendar days after the*
15 *date on which the notice is received.*

16 *“(V) The qualified auditor shall*
17 *determine the accuracy of royalty pay-*
18 *ments, including whether an under-*
19 *payment or overpayment of royalties*
20 *was made by the mechanical licensing*
21 *collective to each auditing copyright*
22 *owner, except that, before providing a*
23 *final audit report to any such copy-*
24 *right owner, the qualified auditor shall*
25 *provide a tentative draft of the report*

1 to the mechanical licensing collective
2 and allow the mechanical licensing col-
3 lective a reasonable opportunity to re-
4 spond to the findings, including by
5 clarifying issues and correcting factual
6 errors.

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

23 “(ii) *ALTERNATIVE VERIFICATION PRO-*
24 *CEDURES.*—Nothing in this subparagraph
25 shall preclude a copyright owner and the

1 *mechanical licensing collective from agree-*
2 *ing to audit procedures different from those*
3 *described in this subparagraph, except that*
4 *a notice of the audit shall be provided to*
5 *and published by the Copyright Office as*
6 *described in clause (i)(IV).*

7 “(M) *RECORDS OF MECHANICAL LICENSING*
8 *COLLECTIVE.—*

9 “(i) *RECORDS MAINTENANCE.—The*
10 *mechanical licensing collective shall ensure*
11 *that all material records of the operations of*
12 *the mechanical licensing collective, includ-*
13 *ing those relating to notices of license, the*
14 *administration of the claims process of the*
15 *mechanical licensing collective, reports of*
16 *usage, royalty payments, receipt and main-*
17 *tenance of accrued royalties, royalty dis-*
18 *tribution processes, and legal matters, are*
19 *preserved and maintained in a secure and*
20 *reliable manner, with appropriate commer-*
21 *cially reasonable safeguards against unau-*
22 *thorized access, copying, and disclosure, and*
23 *subject to the confidentiality requirements*
24 *prescribed by the Register of Copyrights*
25 *under paragraph (12)(C) for a period of not*

1 *less than 7 years after the date of creation*
2 *or receipt, whichever occurs later.*

3 “(ii) *RECORDS ACCESS.*—*The mechan-*
4 *ical licensing collective shall provide*
5 *prompt access to electronic and other*
6 *records pertaining to the administration of*
7 *a copyright owner’s musical works upon*
8 *reasonable written request of the owner or*
9 *the authorized representative of the owner.*

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

13 “(A) *ROYALTY REPORTING AND PAY-*
14 *MENTS.*—

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

1 “(i) *DATA TO BE REPORTED.*—*In re-*
2 *porting usage of musical works to the me-*
3 *chanical licensing collective, a digital music*
4 *provider shall provide usage data for musi-*
5 *cal works used under the blanket license and*
6 *usage data for musical works used in cov-*
7 *ered activities under voluntary licenses and*
8 *individual download licenses. In the report*
9 *of usage, the digital music provider shall—*

10 “(I) *with respect to each sound re-*
11 *cording embodying a musical work—*

12 “(aa) *provide identifying in-*
13 *formation for the sound recording,*
14 *including sound recording name,*
15 *featured artist, and, to the extent*
16 *acquired by the digital music pro-*
17 *vider in connection with its use of*
18 *sound recordings of musical works*
19 *to engage in covered activities, in-*
20 *cluding pursuant to subparagraph*
21 *(B), sound recording copyright*
22 *owner, producer, international*
23 *standard recording code, and*
24 *other information commonly used*
25 *in the industry to identify sound*

1 *recordings and match them to the*
2 *musical works the sound record-*
3 *ings embody;*

4 *“(bb) to the extent acquired*
5 *by the digital music provider in*
6 *the metadata provided by sound*
7 *recording copyright owners or*
8 *other licensors of sound recordings*
9 *in connection with the use of*
10 *sound recordings of musical works*
11 *to engage in covered activities, in-*
12 *cluding pursuant to subparagraph*
13 *(B), provide information con-*
14 *cerning authorship and ownership*
15 *of the applicable rights in the mu-*
16 *sical work embodied in the sound*
17 *recording (including each song-*
18 *writer, publisher name, and re-*
19 *spective ownership share) and the*
20 *international standard musical*
21 *work code; and*

22 *“(cc) provide the number of*
23 *digital phonorecord deliveries of*
24 *the sound recording, including*

1 *limited downloads and interactive*
2 *streams;*

3 “(II) *identify and provide contact*
4 *information for all musical work copy-*
5 *right owners for works embodied in*
6 *sound recordings as to which a vol-*
7 *untary license, rather than the blanket*
8 *license, is in effect with respect to the*
9 *uses being reported; and*

10 “(III) *provide such other informa-*
11 *tion as the Register of Copyrights shall*
12 *require by regulation.*

13 “(iii) *FORMAT AND MAINTENANCE OF*
14 *REPORTS.—Reports of usage provided by*
15 *digital music providers to the mechanical*
16 *licensing collective shall be in a machine-*
17 *readable format that is compatible with the*
18 *information technology systems of the me-*
19 *chanical licensing collective and meets the*
20 *requirements of regulations adopted by the*
21 *Register of Copyrights. The Register shall*
22 *also adopt regulations setting forth require-*
23 *ments under which records of use shall be*
24 *maintained and made available to the me-*
25 *chanical licensing collective by digital*

1 *music providers engaged in covered activi-*
2 *ties under a blanket license.*

3 “(iv) *ADOPTION OF REGULATIONS.—*
4 *The Register of Copyrights shall adopt regu-*
5 *lations—*

6 “(I) *setting forth requirements*
7 *under which records of use shall be*
8 *maintained and made available to the*
9 *mechanical licensing collective by dig-*
10 *ital music providers engaged in cov-*
11 *ered activities under a blanket license;*
12 *and*

13 “(II) *regarding adjustments to re-*
14 *ports of usage by digital music pro-*
15 *viders, including mechanisms to ac-*
16 *count for overpayment and under-*
17 *payment of royalties in prior periods.*

18 “(B) *COLLECTION OF SOUND RECORDING*
19 *INFORMATION.—A digital music provider shall*
20 *engage in good-faith, commercially reasonable ef-*
21 *forts to obtain from sound recording copyright*
22 *owners and other licensors of sound recordings*
23 *made available through the service of such dig-*
24 *ital music provider information concerning—*

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

7 “(ii) the authorship and ownership of
8 musical works, including songwriters, pub-
9 lisher names, ownership shares, and inter-
10 national standard musical work codes.

11 “(C) *PAYMENT OF ADMINISTRATIVE ASSESS-*
12 *MENT.—A digital music provider and any sig-*
13 *nificant nonblanket licensee shall pay the admin-*
14 *istrative assessment established under paragraph*
15 *(7)(D) in accordance with this subsection and*
16 *applicable regulations.*

17 “(D) *VERIFICATION OF PAYMENTS BY DIG-*
18 *ITAL MUSIC PROVIDERS.—*

19 “(i) *VERIFICATION PROCESS.—The me-*
20 *chanical licensing collective may conduct an*
21 *audit of a digital music provider operating*
22 *under the blanket license to verify the accu-*
23 *racy of royalty payments by the digital*
24 *music provider to the mechanical licensing*
25 *collective as follows:*

1 “(I) *The mechanical licensing col-*
2 *lective may commence an audit of a*
3 *digital music provider not more fre-*
4 *quently than once in any 3-calendar-*
5 *year period to cover a verification pe-*
6 *riod of not more than the 3 full cal-*
7 *endar years preceding the date of com-*
8 *mencement of the audit, and such*
9 *audit may not audit records for any*
10 *such 3-year verification period more*
11 *than once.*

12 “(II) *The audit shall be conducted*
13 *by a qualified auditor, who shall per-*
14 *form the audit during the ordinary*
15 *course of business by examining the*
16 *books, records, and data of the digital*
17 *music provider, according to generally*
18 *accepted auditing standards and sub-*
19 *ject to applicable confidentiality re-*
20 *quirements prescribed by the Register*
21 *of Copyrights under paragraph*
22 *(12)(C).*

23 “(III) *The digital music provider*
24 *shall make such books, records, and*
25 *data available to the qualified auditor*

1 *and respond to reasonable requests for*
2 *relevant information, and shall use*
3 *commercially reasonable efforts to pro-*
4 *vide access to relevant information*
5 *maintained with respect to a digital*
6 *music provider by third parties.*

7 “(IV) *To commence the audit, the*
8 *mechanical licensing collective shall*
9 *file with the Copyright Office a notice*
10 *of intent to conduct an audit of the*
11 *digital music provider, identifying the*
12 *period of time to be audited, and shall*
13 *simultaneously deliver a copy of such*
14 *notice to the digital music provider.*
15 *The Register of Copyrights shall cause*
16 *the notice of audit to be published in*
17 *the Federal Register not later than 45*
18 *calendar days after the date on which*
19 *notice is received.*

20 “(V) *The qualified auditor shall*
21 *determine the accuracy of royalty pay-*
22 *ments, including whether an under-*
23 *payment or overpayment of royalties*
24 *was made by the digital music pro-*
25 *vider to the mechanical licensing col-*

1 lective, except that, before providing a
2 final audit report to the mechanical li-
3 censing collective, the qualified auditor
4 shall provide a tentative draft of the
5 report to the digital music provider
6 and allow the digital music provider a
7 reasonable opportunity to respond to
8 the findings, including by clarifying
9 issues and correcting factual errors.

10 “(VI) The mechanical licensing
11 collective shall pay the cost of the
12 audit, unless the qualified auditor de-
13 termines that there was an under-
14 payment by the digital music provider
15 of not less than 10 percent, in which
16 case the digital music provider shall
17 bear the reasonable costs of the audit,
18 in addition to paying the amount of
19 any underpayment to the mechanical
20 licensing collective. In case of an over-
21 payment by the digital music provider,
22 the mechanical licensing collective shall
23 provide a credit to the account of the
24 digital music provider.

1 “(VII) *A digital music provider*
2 *may not assert section 507 or any*
3 *other Federal or State statute of limi-*
4 *tations, doctrine of laches or estoppel,*
5 *or similar provision as a defense to a*
6 *legal action arising from an audit*
7 *under this subparagraph if such legal*
8 *action is commenced not more than 6*
9 *years after the commencement of the*
10 *audit that is the basis for such action.*

11 “(ii) *ALTERNATIVE VERIFICATION PRO-*
12 *CEDURES.—Nothing in this subparagraph*
13 *shall preclude the mechanical licensing col-*
14 *lective and a digital music provider from*
15 *agreeing to audit procedures different from*
16 *those described in this subparagraph, except*
17 *that a notice of the audit shall be provided*
18 *to and published by the Copyright Office as*
19 *described in clause (i)(IV).*

20 “(E) *DEFAULT UNDER BLANKET LI-*
21 *CENSE.—*

22 “(i) *CONDITIONS OF DEFAULT.—A dig-*
23 *ital music provider shall be in default*
24 *under a blanket license if the digital music*
25 *provider—*

1 “(I) fails to provide 1 or more
2 monthly reports of usage to the me-
3 chanical licensing collective when due;

4 “(II) fails to make a monthly roy-
5 alty or late fee payment to the mechan-
6 ical licensing collective when due, in
7 all or material part;

8 “(III) provides 1 or more monthly
9 reports of usage to the mechanical li-
10 censing collective that, on the whole, is
11 or are materially deficient as a result
12 of inaccurate, missing, or unreadable
13 data, where the correct data was avail-
14 able to the digital music provider and
15 required to be reported under this sec-
16 tion and applicable regulations;

17 “(IV) fails to pay the administra-
18 tive assessment as required under this
19 subsection and applicable regulations;
20 or

21 “(V) after being provided written
22 notice by the mechanical licensing col-
23 lective, refuses to comply with any
24 other material term or condition of the
25 blanket license under this section for a

1 *period of not less than 60 calendar*
2 *days.*

3 “(ii) *NOTICE OF DEFAULT AND TERMI-*
4 *NATION.—In case of a default by a digital*
5 *music provider, the mechanical licensing*
6 *collective may proceed to terminate the*
7 *blanket license of the digital music provider*
8 *as follows:*

9 “(I) *The mechanical licensing col-*
10 *lective shall provide written notice to*
11 *the digital music provider describing*
12 *with reasonable particularity the de-*
13 *fault and advising that unless such de-*
14 *fault is cured not later than 60 cal-*
15 *endar days after the date of the notice,*
16 *the blanket license will automatically*
17 *terminate at the end of that period.*

18 “(II) *If the digital music provider*
19 *fails to remedy the default before the*
20 *end of the 60-day period described in*
21 *subclause (I), the license shall termi-*
22 *nate without any further action on the*
23 *part of the mechanical licensing collec-*
24 *tive. Such termination renders the*
25 *making of all digital phonorecord de-*

1 *liveries of all musical works (and*
2 *shares thereof) covered by the blanket*
3 *license for which the royalty or admin-*
4 *istrative assessment has not been paid*
5 *actionable as acts of infringement*
6 *under section 501 and subject to the*
7 *remedies provided by sections 502*
8 *through 506.*

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

14 “(iv) *REVIEW BY FEDERAL DISTRICT*
15 *COURT.—A digital music provider that be-*
16 *lieves a blanket license was improperly ter-*
17 *minated by the mechanical licensing collec-*
18 *tive may seek review of such termination in*
19 *an appropriate district court of the United*
20 *States. The district court shall determine*
21 *the matter de novo based on the record be-*
22 *fore the mechanical licensing collective and*
23 *any additional supporting evidence pre-*
24 *sented by the parties.*

25 “(5) *DIGITAL LICENSEE COORDINATOR.—*

1 “(A) *IN GENERAL.*—*The digital licensee co-*
2 *ordinator shall be a single entity that—*

3 “(i) *is a nonprofit, not owned by any*
4 *other entity, that is created to carry out re-*
5 *sponsibilities under this subsection;*

6 “(ii) *is endorsed by and enjoys sub-*
7 *stantial support from digital music pro-*
8 *viders and significant nonblanket licensees*
9 *that together represent the greatest percent-*
10 *age of the licensee market for uses of musi-*
11 *cal works in covered activities, as measured*
12 *over the preceding 3 calendar years;*

13 “(iii) *is able to demonstrate that it*
14 *has, or will have prior to the license avail-*
15 *ability date, the administrative capabilities*
16 *to perform the required functions of the dig-*
17 *ital licensee coordinator under this sub-*
18 *section; and*

19 “(iv) *has been designated by the Reg-*
20 *ister of Copyrights, with the approval of the*
21 *Librarian of Congress pursuant to section*
22 *702, in accordance with subparagraph (B).*

23 “(B) *DESIGNATION OF DIGITAL LICENSEE*
24 *COORDINATOR.*—

1 “(i) *INITIAL DESIGNATION.*—*The Register of Copyrights shall initially designate*
2 *the digital licensee coordinator not later*
3 *than 270 days after the enactment date, in*
4 *accordance with the same procedure de-*
5 *scribed for designation of the mechanical li-*
6 *ensing collective in paragraph (3)(B)(i).*

8 “(ii) *PERIODIC REVIEW OF DESIGNA-*
9 *TION.*—*Following the initial designation of*
10 *the digital licensee coordinator, the Register*
11 *of Copyrights shall, every 5 years, begin-*
12 *ning with the fifth full calendar year to*
13 *commence after the initial designation, de-*
14 *termine whether the existing designation*
15 *should be continued, or a different entity*
16 *meeting the criteria described in clauses (i)*
17 *through (iii) of subparagraph (A) should be*
18 *designated, in accordance with the same*
19 *procedure described for the mechanical li-*
20 *ensing collective in paragraph (3)(B)(ii).*

21 “(iii) *INABILITY TO DESIGNATE.*—*If*
22 *the Register of Copyrights is unable to iden-*
23 *tify an entity that fulfills each of the quali-*
24 *fications described in clauses (i) through*
25 *(iii) of subparagraph (A) to serve as the*

1 *digital licensee coordinator, the Register*
2 *may decline to designate a digital licensee*
3 *coordinator. The determination of the Reg-*
4 *ister not to designate a digital licensee coor-*
5 *dinator shall not negate or otherwise affect*
6 *any provision of this subsection except to*
7 *the limited extent that a provision ref-*
8 *erences the digital licensee coordinator. In*
9 *such case, the reference to the digital li-*
10 *cence coordinator shall be without effect*
11 *unless and until a new digital licensee coor-*
12 *dinator is designated.*

13 “(C) *AUTHORITIES AND FUNCTIONS.*—

14 “(i) *IN GENERAL.*—*The digital licensee*
15 *coordinator is authorized to perform the fol-*
16 *lowing functions, subject to more particular*
17 *requirements as described in this subsection:*

18 “(I) *Establish a governance struc-*
19 *ture, criteria for membership, and any*
20 *dues to be paid by its members.*

21 “(II) *Engage in efforts to enforce*
22 *notice and payment obligations with*
23 *respect to the administrative assess-*
24 *ment, including by receiving informa-*

1 *tion from and coordinating with the*
2 *mechanical licensing collective.*

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

8 *“(IV) Initiate and participate in*
9 *proceedings before the Copyright Office*
10 *with respect to activities under this*
11 *subsection.*

12 *“(V) Gather and provide docu-*
13 *mentation for use in proceedings before*
14 *the Copyright Royalty Judges to set*
15 *rates and terms under this section.*

16 *“(VI) Maintain records of its ac-*
17 *tivities.*

18 *“(VII) Assist in publicizing the*
19 *existence of the mechanical licensing*
20 *collective and the ability of copyright*
21 *owners to claim royalties for un-*
22 *matched musical works (and shares of*
23 *works) through the collective.*

24 *“(VIII) Engage in such other ac-*
25 *tivities as may be necessary or appro-*

1 *prate to fulfill its responsibilities*
2 *under this subsection.*

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

8 “(iii) *ASSISTANCE WITH PUBLICITY*
9 *FOR UNCLAIMED ROYALTIES.—The digital*
10 *licensee coordinator shall make reasonable,*
11 *good-faith efforts to assist the mechanical li-*
12 *censing collective in the efforts of the collec-*
13 *tive to locate and identify copyright owners*
14 *of unmatched musical works (and shares of*
15 *such works) by encouraging digital music*
16 *providers to publicize the existence of the*
17 *collective and the ability of copyright own-*
18 *ers to claim unclaimed accrued royalties,*
19 *including by—*

20 “(I) *posting contact information*
21 *for the collective at reasonably promi-*
22 *nent locations on digital music pro-*
23 *vider websites and applications; and*

24 “(II) *conducting in-person out-*
25 *reach activities with songwriters.*

1 “(6) *REQUIREMENTS FOR SIGNIFICANT NON-*
2 *BLANKET LICENSEES.—*

3 “(A) *IN GENERAL.—*

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

18 “(ii) *REPORTING AND PAYMENT OBLI-*
19 *GATIONS.—The notice of nonblanket activity*
20 *submitted to the mechanical licensing collec-*
21 *tive shall be accompanied by a report of*
22 *usage that contains the information de-*
23 *scribed in paragraph (4)(A)(ii), as well as*
24 *any payment of the administrative assess-*
25 *ment required under this subsection and ap-*

1 *plicable regulations. Thereafter, subject to*
2 *clause (iii), a significant nonblanket li-*
3 *icensee shall continue to provide monthly re-*
4 *ports of usage, accompanied by any re-*
5 *quired payment of the administrative as-*
6 *essment, to the mechanical licensing collec-*
7 *tive. Such reports and payments shall be*
8 *submitted not later than 45 calendar days*
9 *after the end of the calendar month being*
10 *reported.*

11 *“(iii) DISCONTINUATION OF OBLIGA-*
12 *TIONS.—An entity that has submitted a no-*
13 *tice of nonblanket activity to the mechanical*
14 *licensing collective that has ceased to qual-*
15 *ify as a significant nonblanket licensee may*
16 *so notify the collective in writing. In such*
17 *case, as of the calendar month in which*
18 *such notice is provided, such entity shall no*
19 *longer be required to provide reports of*
20 *usage or pay the administrative assessment,*
21 *but if such entity later qualifies as a sig-*
22 *nificant nonblanket licensee, such entity*
23 *shall again be required to comply with*
24 *clauses (i) and (ii).*

1 “(B) *REPORTING BY MECHANICAL LICENS-*
2 *ING COLLECTIVE TO DIGITAL LICENSEE COORDI-*
3 *NATOR.*—

4 “(i) *MONTHLY REPORTS OF NON-*
5 *COMPLIANT LICENSEES.*—*The mechanical*
6 *licensing collective shall provide monthly re-*
7 *ports to the digital licensee coordinator set-*
8 *ting forth any significant nonblanket licens-*
9 *ees of which the collective is aware that have*
10 *failed to comply with subparagraph (A).*

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

21 “(C) *LEGAL ENFORCEMENT EFFORTS.*—

22 “(i) *FEDERAL COURT ACTION.*—*Should*
23 *the mechanical licensing collective or digital*
24 *licensee coordinator become aware that a*
25 *significant nonblanket licensee has failed to*

1 *comply with subparagraph (A), either may*
2 *commence an action in an appropriate dis-*
3 *trict court of the United States for damages*
4 *and injunctive relief. If the significant non-*
5 *blanket licensee is found liable, the court*
6 *shall, absent a finding of excusable neglect,*
7 *award damages in an amount equal to*
8 *three times the total amount of the unpaid*
9 *administrative assessment and, notwith-*
10 *standing anything to the contrary in sec-*
11 *tion 505, reasonable attorney’s fees and*
12 *costs, as well as such other relief as the*
13 *court determines appropriate. In all other*
14 *cases, the court shall award relief as appro-*
15 *priate. Any recovery of damages shall be*
16 *payable to the mechanical licensing collec-*
17 *tive as an offset to the collective total costs.*

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

23 “(iii) *OTHER RIGHTS AND REMEDIES*
24 *PRESERVED.—The ability of the mechanical*
25 *licensing collective or digital licensee coordi-*

1 nator to bring an action under this sub-
 2 paragraph shall in no way alter, limit or
 3 negate any other right or remedy that may
 4 be available to any party at law or in eq-
 5 uity.

6 “(7) *FUNDING OF MECHANICAL LICENSING COL-*
 7 *LECTIVE.*—

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

10 “(i) *an administrative assessment, as*
 11 *such assessment is established by the Copy-*
 12 *right Royalty Judges pursuant to subpara-*
 13 *graph (D) from time to time, to be paid*
 14 *by—*

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

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

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

25 “(B) *VOLUNTARY CONTRIBUTIONS.*—

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

8 “(I) *The date and amount of each*
9 *voluntary contribution to the mechan-*
10 *ical licensing collective shall be docu-*
11 *mented in a writing signed by an au-*
12 *thorized agent of the mechanical licens-*
13 *ing collective and the contributing*
14 *party.*

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

23 “(ii) *TREATMENT OF CONTRIBU-*
24 *TIONS.—Each voluntary contribution de-*
25 *scribed in clause (i) shall be treated for pur-*

1 *poses of an administrative assessment pro-*
2 *ceeding as an offset to the collective total*
3 *costs that would otherwise be recovered*
4 *through the administrative assessment. Any*
5 *allocation or reallocation of voluntary con-*
6 *tributions between or among individual dig-*
7 *ital music providers or significant non-*
8 *blanket licensees shall be a matter of private*
9 *negotiation and agreement among such par-*
10 *ties and outside the scope of the administra-*
11 *tive assessment proceeding.*

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

23 “(D) *DETERMINATION OF ADMINISTRATIVE*
24 *ASSESSMENT.—*

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

6 “(ii) *SEPARATE PROCEEDING BEFORE*
7 *COPYRIGHT ROYALTY JUDGES.*—*The amount*
8 *and terms of the administrative assessment*
9 *shall be determined and established in a*
10 *separate and independent proceeding before*
11 *the Copyright Royalty Judges, according to*
12 *the procedures described in clauses (iii) and*
13 *(iv). The administrative assessment deter-*
14 *mined in such proceeding shall—*

15 “(I) *be wholly independent of roy-*
16 *alty rates and terms applicable to dig-*
17 *ital music providers, which shall not be*
18 *taken into consideration in any man-*
19 *ner in establishing the administrative*
20 *assessment;*

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

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

6 “(IV) may be in the form of a
7 percentage of royalties payable under
8 this section for usage of musical works
9 in covered activities (regardless of
10 whether a different rate applies under
11 a voluntary license), or any other
12 usage-based metric reasonably cal-
13 culated to equitably allocate the collec-
14 tive total costs across digital music
15 providers and significant nonblanket
16 licensees engaged in covered activities,
17 and shall include as a component a
18 minimum fee for all digital music pro-
19 viders and significant nonblanket li-
20 censees; and

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

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

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

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

22 “(iii) INITIAL ADMINISTRATIVE AS-
23 SESSMENT.—The procedure for establishing
24 the initial administrative assessment shall
25 be as follows:

1 “(I) Not later than 270 days after
2 the enactment date, the Copyright Roy-
3 alty Judges shall commence a pro-
4 ceeding to establish the initial admin-
5 istrative assessment by publishing a
6 notice in the Federal Register seeking
7 petitions to participate.

8 “(II) The mechanical licensing
9 collective and digital licensee coordi-
10 nator shall participate in the pro-
11 ceeding described in subclause (I),
12 along with any interested copyright
13 owners, digital music providers or sig-
14 nificant nonblanket licensees that have
15 notified the Copyright Royalty Judges
16 of their desire to participate.

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

1 *providers and significant nonblanket*
2 *licensees, and documentation of vol-*
3 *untary contributions, as well as a*
4 *schedule for further proceedings, which*
5 *shall include a hearing, as the Copy-*
6 *right Royalty Judges determine appro-*
7 *priate.*

8 *“(IV) The initial administrative*
9 *assessment shall be determined, and*
10 *such determination shall be published*
11 *in the Federal Register by the Copy-*
12 *right Royalty Judges, not later than 1*
13 *year after commencement of the pro-*
14 *ceeding described in this clause. The*
15 *determination shall be supported by a*
16 *written record. The initial administra-*
17 *tive assessment shall be effective as of*
18 *the license availability date, and shall*
19 *continue in effect unless and until an*
20 *adjusted administrative assessment is*
21 *established pursuant to an adjustment*
22 *proceeding under clause (iv).*

23 *“(iv) ADJUSTMENT OF ADMINISTRA-*
24 *TIVE ASSESSMENT.—The administrative as-*
25 *essment may be adjusted by the Copyright*

1 *Royalty Judges periodically, in accordance*
2 *with the following procedures:*

3 “(I) Not earlier than 1 year after
4 the most recent publication of a deter-
5 mination of the administrative assess-
6 ment by the Copyright Royalty Judges,
7 the mechanical licensing collective, the
8 digital licensee coordinator, or one or
9 more interested copyright owners, dig-
10 ital music providers, or significant
11 nonblanket licensees, may file a peti-
12 tion with the Copyright Royalty
13 Judges in the month of May to com-
14 mence a proceeding to adjust the ad-
15 ministrative assessment.

16 “(II) Notice of the commencement
17 of such proceeding shall be published in
18 the Federal Register in the month of
19 June following the filing of any peti-
20 tion, with a schedule of requested infor-
21 mation and additional proceedings, as
22 described in clause (iii)(III). The me-
23 chanical licensing collective and digital
24 licensee coordinator shall participate
25 in such proceeding, along with any in-

1 *terested copyright owners, digital*
2 *music providers, or significant non-*
3 *blanket licensees that have notified the*
4 *Copyright Royalty Judges of their de-*
5 *sire to participate.*

6 *“(III) The determination of the*
7 *adjusted administrative assessment,*
8 *which shall be supported by a written*
9 *record, shall be published in the Fed-*
10 *eral Register during June of the cal-*
11 *endar year following the commence-*
12 *ment of the proceeding. The adjusted*
13 *administrative assessment shall take ef-*
14 *fect January 1 of the year following*
15 *such publication.*

16 *“(v) ADOPTION OF VOLUNTARY AGREE-*
17 *MENTS.—In lieu of reaching their own de-*
18 *termination based on evaluation of relevant*
19 *data, the Copyright Royalty Judges shall*
20 *approve and adopt a negotiated agreement*
21 *to establish the amount and terms of the ad-*
22 *ministrative assessment that has been*
23 *agreed to by the mechanical licensing collec-*
24 *tive and the digital licensee coordinator (or*
25 *if none has been designated, interested dig-*

1 *ital music providers and significant non-*
2 *blanket licensees representing more than*
3 *half of the market for uses of musical works*
4 *in covered activities), except that the Copy-*
5 *right Royalty Judges shall have the discre-*
6 *tion to reject any such agreement for good*
7 *cause shown. An administrative assessment*
8 *adopted under this clause shall apply to all*
9 *digital music providers and significant*
10 *nonblanket licensees engaged in covered ac-*
11 *tivities during the period the administrative*
12 *assessment is in effect.*

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

22 “(vii) APPEAL OF ADMINISTRATIVE AS-
23 SESSMENT.—*The determination of an ad-*
24 *ministrative assessment by the Copyright*
25 *Royalty Judges shall be appealable, not*

1 *later than 30 calendar days after publica-*
2 *tion in the Federal Register, to the Court of*
3 *Appeals for the District of Columbia Circuit*
4 *by any party that fully participated in the*
5 *proceeding. The administrative assessment*
6 *as established by the Copyright Royalty*
7 *Judges shall remain in effect pending the*
8 *final outcome of any such appeal, and the*
9 *mechanical licensing collective, digital li-*
10 *censee coordinator, digital music providers,*
11 *and significant nonblanket licensees shall*
12 *implement appropriate financial or other*
13 *measures not later than 90 days after any*
14 *modification of the assessment to reflect and*
15 *account for such outcome.*

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

20 “(8) *ESTABLISHMENT OF RATES AND TERMS*
21 *UNDER BLANKET LICENSE.—*

22 “(A) *RESTRICTIONS ON RATESETTING PAR-*
23 *TICIPATION.—Neither the mechanical licensing*
24 *collective nor the digital licensee coordinator*
25 *shall be a party to a proceeding described in sub-*

1 *section (c)(1)(E), except that the mechanical li-*
2 *ensing collective or the digital licensee coordi-*
3 *nator may gather and provide financial and*
4 *other information for the use of a party to such*
5 *a proceeding and comply with requests for infor-*
6 *mation as required under applicable statutory*
7 *and regulatory provisions and rulings of the*
8 *Copyright Royalty Judges.*

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

16 “(i) *Late fees for past due royalty pay-*
17 *ments shall accrue from the due date for*
18 *payment until payment is received by the*
19 *mechanical licensing collective.*

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

1 *censing collective may be entitled under this*
2 *title.*

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

11 “(i) *shall be treated as nonprecedential*
12 *and not cited or relied upon in any rate-*
13 *setting proceeding before the Copyright Roy-*
14 *alty Judges or any other tribunal; and*

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

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

1 *cense. In such case, not later than 90 days after*
2 *the effective date of the rate and terms estab-*
3 *lished by the Copyright Royalty Judges—*

4 *“(i) if the rate established by the Copy-*
5 *right Royalty Judges exceeds the interim*
6 *rate, the digital music provider shall pay to*
7 *the mechanical licensing collective the*
8 *amount of any underpayment of royalties*
9 *due; or*

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

16 “(9) *TRANSITION TO BLANKET LICENSES.—*

17 “(A) *SUBSTITUTION OF BLANKET LI-*
18 *CENSE.—On the license availability date, a blan-*
19 *ket license shall, without any interruption in li-*
20 *cence authority enjoyed by such digital music*
21 *provider, be automatically substituted for and*
22 *supersede any existing compulsory license pre-*
23 *viously obtained under this section by the digital*
24 *music provider from a copyright owner to engage*
25 *in 1 or more covered activities with respect to a*

1 *musical work, except that such substitution shall*
2 *not apply to any authority obtained from a*
3 *record company pursuant to a compulsory li-*
4 *cence to make and distribute permanent*
5 *downloads unless and until such record company*
6 *terminates such authority in writing to take ef-*
7 *fect at the end of a monthly reporting period,*
8 *with a copy to the mechanical licensing collec-*
9 *tive.*

10 “(B) *EXPIRATION OF EXISTING LICENSES.—*
11 *Except to the extent provided in subparagraph*
12 *(A), on and after the license availability date, li-*
13 *censes other than individual download licenses*
14 *obtained under this section for covered activities*
15 *prior to the license availability date shall no*
16 *longer continue in effect.*

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

1 *date incorporates the terms of this section by ref-*
 2 *erence, the terms so incorporated (but not the*
 3 *rates) shall be those in effect immediately prior*
 4 *to the license availability date, and those terms*
 5 *shall continue to apply unless and until such*
 6 *voluntary license is terminated or amended, or*
 7 *the parties enter into a new voluntary license.*

8 “(D) *FURTHER ACCEPTANCE OF NOTICES*
 9 *FOR COVERED ACTIVITIES BY COPYRIGHT OF-*
 10 *FICE.—On and after the enactment date—*

11 “(i) *the Copyright Office shall no*
 12 *longer accept notices of intention with re-*
 13 *spect to covered activities; and*

14 “(ii) *notices of intention filed before*
 15 *the enactment date will no longer be effec-*
 16 *tive or provide license authority with re-*
 17 *spect to covered activities, except that, before*
 18 *the license availability date, there shall be*
 19 *no liability under section 501 for the repro-*
 20 *duction or distribution of a musical work*
 21 *(or share thereof) in covered activities if a*
 22 *valid notice of intention was filed for such*
 23 *work (or share) before the enactment date.*

24 “(10) *PRIOR UNLICENSED USES.—*

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

20 “(B) *REQUIREMENTS FOR LIMITATION ON*
21 *LIABILITY.—The following requirements shall*
22 *apply on the enactment date and through the*
23 *end of the period that expires 90 days after the*
24 *license availability date to digital music pro-*

1 *viders seeking to avail themselves of the limita-*
2 *tion on liability described in subparagraph (A):*

3 “(i) *Not later than 30 calendar days*
4 *after first making a particular sound re-*
5 *ording of a musical work available through*
6 *its service via one or more covered activi-*
7 *ties, or 30 calendar days after the enact-*
8 *ment date, whichever occurs later, a digital*
9 *music provider shall engage in good-faith,*
10 *commercially reasonable efforts to identify*
11 *and locate each copyright owner of such*
12 *musical work (or share thereof). Such re-*
13 *quired matching efforts shall include the fol-*
14 *lowing:*

15 “(I) *Good-faith, commercially rea-*
16 *sonable efforts to obtain from the owner*
17 *of the corresponding sound recording*
18 *made available through the digital*
19 *music provider’s service the following*
20 *information:*

21 “(aa) *Sound recording name,*
22 *featured artist, sound recording*
23 *copyright owner, producer, inter-*
24 *national standard recording code,*
25 *and other information commonly*

1 *used in the industry to identify*
2 *sound recordings and match them*
3 *to the musical works they embody.*

4 “(bb) *Any available musical*
5 *work ownership information, in-*
6 *cluding each songwriter and pub-*
7 *lisher name, percentage ownership*
8 *share, and international standard*
9 *musical work code.*

10 “(II) *Employment of 1 or more*
11 *bulk electronic matching processes that*
12 *are available to the digital music pro-*
13 *vider through a third-party vendor on*
14 *commercially reasonable terms, except*
15 *that a digital music provider may rely*
16 *on its own bulk electronic matching*
17 *process if that process has capabilities*
18 *comparable to or better than those*
19 *available from a third-party vendor on*
20 *commercially reasonable terms.*

21 “(ii) *The required matching efforts*
22 *shall be repeated by the digital music pro-*
23 *vider not less than once per month for so*
24 *long as the copyright owner remains un-*
25 *identified or has not been located.*

1 “(iii) If the required matching efforts
2 are successful in identifying and locating a
3 copyright owner of a musical work (or share
4 thereof) by the end of the calendar month in
5 which the digital music provider first makes
6 use of the work, the digital music provider
7 shall provide statements of account and pay
8 royalties to such copyright owner in accord-
9 ance with this section and applicable regu-
10 lations.

11 “(iv) If the copyright owner is not
12 identified or located by the end of the cal-
13 endar month in which the digital music
14 provider first makes use of the work, the
15 digital music provider shall accrue and hold
16 royalties calculated under the applicable
17 statutory rate in accordance with usage of
18 the work, from initial use of the work until
19 the accrued royalties can be paid to the
20 copyright owner or are required to be trans-
21 ferred to the mechanical licensing collective,
22 as follows:

23 “(I) Accrued royalties shall be
24 maintained by the digital music pro-

1 *vider in accordance with generally ac-*
2 *cepted accounting principles.*

3 *“(II) If a copyright owner of an*
4 *unmatched musical work (or share*
5 *thereof) is identified and located by or*
6 *to the digital music provider before the*
7 *license availability date, the digital*
8 *music provider shall—*

9 *“(aa) not later than 45 cal-*
10 *endar days after the end of the*
11 *calendar month during which the*
12 *copyright owner was identified*
13 *and located, pay the copyright*
14 *owner all accrued royalties, such*
15 *payment to be accompanied by a*
16 *cumulative statement of account*
17 *that includes all of the informa-*
18 *tion that would have been pro-*
19 *vided to the copyright owner had*
20 *the digital music provider been*
21 *providing monthly statements of*
22 *account to the copyright owner*
23 *from initial use of the work in ac-*
24 *cordance with this section and ap-*
25 *licable regulations, including the*

1 requisite certification under sub-
2 section (c)(2)(I);

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

14 “(cc) beginning with the
15 monthly royalty reporting period
16 commencing on the license avail-
17 ability date, report usage and pay
18 royalties for such musical work
19 (or share thereof) for such report-
20 ing period and reporting periods
21 thereafter to the mechanical li-
22 censing collective, as required
23 under this subsection and applica-
24 ble regulations.

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

6 “(aa) not later than 45 cal-
7 endar days after the license avail-
8 ability date, transfer all accrued
9 royalties to the mechanical licens-
10 ing collective, such payment to be
11 accompanied by a cumulative
12 statement of account that includes
13 all of the information that would
14 have been provided to the copy-
15 right owner had the digital music
16 provider been serving monthly
17 statements of account on the copy-
18 right owner from initial use of the
19 work in accordance with this sec-
20 tion and applicable regulations,
21 including the requisite certifi-
22 cation under subsection (c)(2)(I),
23 and accompanied by an addi-
24 tional certification by a duly au-
25 thorized officer of the digital

1 *music provider that the digital*
2 *music provider has fulfilled the*
3 *requirements of clauses (i) and*
4 *(ii) of subparagraph (B) but has*
5 *not been successful in locating or*
6 *identifying the copyright owner;*
7 *and*

8 *“(bb) beginning with the*
9 *monthly royalty reporting period*
10 *commencing on the license avail-*
11 *ability date, report usage and pay*
12 *royalties for such musical work*
13 *(or share thereof) for such period*
14 *and reporting periods thereafter to*
15 *the mechanical licensing collective,*
16 *as required under this subsection*
17 *and applicable regulations.*

18 *“(v) A digital music provider that*
19 *complies with the requirements of this sub-*
20 *paragraph with respect to unmatched musi-*
21 *cal works (or shares of works) shall not be*
22 *liable for or accrue late fees for late pay-*
23 *ments of royalties for such works until such*
24 *time as the digital music provider is re-*
25 *quired to begin paying monthly royalties to*

1 *the copyright owner or the mechanical li-*
2 *censing collective, as applicable.*

3 “(C) *ADJUSTED STATUTE OF LIMITA-*
4 *TIONS.—Notwithstanding anything to the con-*
5 *trary in section 507(b), with respect to any*
6 *claim of infringement of the exclusive rights pro-*
7 *vided by paragraphs (1) and (3) of section 106*
8 *against a digital music provider arising from*
9 *the unauthorized reproduction or distribution of*
10 *a musical work by such digital music provider*
11 *in the course of engaging in covered activities*
12 *that accrued not more than 3 years prior to the*
13 *license availability date, such action may be*
14 *commenced not later than the later of—*

15 “(i) *3 years after the date on which the*
16 *claim accrued; or*

17 “(ii) *2 years after the license avail-*
18 *ability date.*

19 “(D) *OTHER RIGHTS AND REMEDIES PRE-*
20 *SERVED.—Except as expressly provided in this*
21 *paragraph, nothing in this paragraph shall be*
22 *construed to alter, limit, or negate any right or*
23 *remedy of a copyright owner with respect to un-*
24 *authorized use of a musical work.*

1 “(11) *LEGAL PROTECTIONS FOR LICENSING AC-*
2 *TIVITIES.—*—

3 “(A) *EXEMPTION FOR COMPULSORY LI-*
4 *CENSE ACTIVITIES.—*The antitrust exemption de-
5 scribed in subsection (c)(1)(D) shall apply to ne-
6 gotiations and agreements between and among
7 copyright owners and persons entitled to obtain
8 a compulsory license for covered activities, and
9 common agents acting on behalf of such copy-
10 right owners or persons, including with respect
11 to the administrative assessment established
12 under this subsection.

13 “(B) *LIMITATION ON COMMON AGENT EX-*
14 *EMPTION.—*Notwithstanding the antitrust ex-
15 emption provided in subsection (c)(1)(D) and
16 subparagraph (A) of this paragraph (except for
17 the administrative assessment referenced in such
18 subparagraph (A) and except as provided in
19 paragraph (8)(C)), neither the mechanical licens-
20 ing collective nor the digital licensee coordinator
21 shall serve as a common agent with respect to the
22 establishment of royalty rates or terms under
23 this section.

24 “(C) *ANTITRUST EXEMPTION FOR ADMINIS-*
25 *TRATIVE ACTIVITIES.—*Notwithstanding any pro-

1 *vision of the antitrust laws, copyright owners*
2 *and persons entitled to obtain a compulsory li-*
3 *cence under this section may designate the me-*
4 *chanical licensing collective to administer vol-*
5 *untary licenses for the reproduction or distribu-*
6 *tion of musical works in covered activities on be-*
7 *half of such copyright owners and persons, sub-*
8 *ject to the following conditions:*

9 *“(i) Each copyright owner shall estab-*
10 *lish the royalty rates and material terms of*
11 *any such voluntary license individually and*
12 *not in agreement, combination, or concert*
13 *with any other copyright owner.*

14 *“(ii) Each person entitled to obtain a*
15 *compulsory license under this section shall*
16 *establish the royalty rates and material*
17 *terms of any such voluntary license individ-*
18 *ually and not in agreement, combination,*
19 *or concert with any other digital music pro-*
20 *vider.*

21 *“(iii) The mechanical licensing collec-*
22 *tive shall maintain the confidentiality of*
23 *the voluntary licenses in accordance with*
24 *the confidentiality provisions prescribed by*

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

3 “(D) *LIABILITY FOR GOOD-FAITH ACTIVITIES.*—The mechanical licensing collective shall
4 not be liable to any person or entity based on a
5 claim arising from its good-faith administration
6 of policies and procedures adopted and imple-
7 mented to carry out the responsibilities described
8 in subparagraphs (J) and (K) of paragraph (3),
9 except to the extent of correcting an under-
10 payment or overpayment of royalties as provided
11 in paragraph (3)(L)(i)(VI), but the collective
12 may participate in a legal proceeding as a stake-
13 holder party if the collective is holding funds
14 that are the subject of a dispute between copy-
15 right owners. For purposes of this subparagraph,
16 the term ‘good-faith administration’ means ad-
17 ministration in a manner that is not grossly
18 negligent.

19 “(E) *PREEMPTION OF STATE PROPERTY*
20 *LAWS.*—The holding and distribution of funds by
21 the mechanical licensing collective in accordance
22 with this subsection shall supersede and preempt
23 any State law (including common law) con-
24 cerning escheatment or abandoned property, or
25

1 *any analogous provision, that might otherwise*
2 *apply.*

3 “(F) *RULE OF CONSTRUCTION.*—*Except as*
4 *expressly provided in this subsection, nothing in*
5 *this subsection shall negate or limit the ability*
6 *of any person to pursue an action in Federal*
7 *court against the mechanical licensing collective*
8 *or any other person based upon a claim arising*
9 *under this title or other applicable law.*

10 “(12) *REGULATIONS.*—

11 “(A) *ADOPTION BY REGISTER OF COPY-*
12 *RIGHTS AND COPYRIGHT ROYALTY JUDGES.*—*The*
13 *Register of Copyrights may conduct such pro-*
14 *ceedings and adopt such regulations as may be*
15 *necessary or appropriate to effectuate the provi-*
16 *sions of this subsection, except for regulations*
17 *concerning proceedings before the Copyright Roy-*
18 *alty Judges to establish the administrative as-*
19 *essment, which shall be adopted by the Copy-*
20 *right Royalty Judges.*

21 “(B) *JUDICIAL REVIEW OF REGULATIONS.*—
22 *Except as provided in paragraph (7)(D)(vii),*
23 *regulations adopted under this subsection shall*
24 *be subject to judicial review pursuant to chapter*
25 *7 of title 5.*

1 “(C) *PROTECTION OF CONFIDENTIAL INFOR-*
2 *MATION.—The Register of Copyrights shall adopt*
3 *regulations to provide for the appropriate proce-*
4 *dures to ensure that confidential, private, pro-*
5 *prietary, or privileged information contained in*
6 *the records of the mechanical licensing collective*
7 *and digital licensee coordinator is not impropr-*
8 *erly disclosed or used, including through any*
9 *disclosure or use by the board of directors or per-*
10 *sonnel of either entity, and specifically including*
11 *the unclaimed royalties oversight committee and*
12 *the dispute resolution committee of the mechan-*
13 *ical licensing collective.*

14 “(13) *SAVINGS CLAUSES.—*

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

1 *rights not covered by this section on the day be-*
 2 *fore the enactment date.*

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

11 *(5) by adding at the end the following:*

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

13 “(1) *ACCRUED INTEREST.*—*The term ‘accrued*
 14 *interest’ means interest accrued on accrued royalties,*
 15 *as described in subsection (d)(3)(H)(ii).*

16 “(2) *ACCRUED ROYALTIES.*—*The term ‘accrued*
 17 *royalties’ means royalties accrued for the reproduc-*
 18 *tion or distribution of a musical work (or share there-*
 19 *of) in a covered activity, calculated in accordance*
 20 *with the applicable royalty rate under this section.*

21 “(3) *ADMINISTRATIVE ASSESSMENT.*—*The term*
 22 *‘administrative assessment’ means the fee established*
 23 *pursuant to subsection (d)(7)(D).*

24 “(4) *AUDIT.*—*The term ‘audit’ means a royalty*
 25 *compliance examination to verify the accuracy of roy-*

1 *alty payments, or the conduct of such an examina-*
 2 *tion, as applicable.*

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

6 “(6) *COLLECTIVE TOTAL COSTS.*—*The term ‘col-*
 7 *lective total costs’—*

8 “(A) *means the total costs of establishing,*
 9 *maintaining, and operating the mechanical li-*
 10 *ensing collective to fulfill its statutory functions,*
 11 *including—*

12 “(i) *startup costs;*

13 “(ii) *financing, legal, audit, and in-*
 14 *surance costs;*

15 “(iii) *investments in information tech-*
 16 *nology, infrastructure, and other long-term*
 17 *resources;*

18 “(iv) *outside vendor costs;*

19 “(v) *costs of licensing, royalty admin-*
 20 *istration, and enforcement of rights;*

21 “(vi) *costs of bad debt; and*

22 “(vii) *costs of automated and manual*
 23 *efforts to identify and locate copyright own-*
 24 *ers of musical works (and shares of such*
 25 *musical works) and match sound recordings*

1 to the musical works the sound recordings
2 embody; and

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

6 “(7) *COVERED ACTIVITY*.—The term ‘covered ac-
7 tivity’ means the activity of making a digital phono-
8 record delivery of a musical work, including in the
9 form of a permanent download, limited download, or
10 interactive stream, where such activity qualifies for a
11 compulsory license under this section.

12 “(8) *DIGITAL MUSIC PROVIDER*.—The term ‘dig-
13 ital music provider’ means a person (or persons oper-
14 ating under the authority of that person) that, with
15 respect to a service engaged in covered activities—

16 “(A) has a direct contractual, subscription,
17 or other economic relationship with end users of
18 the service, or, if no such relationship with end
19 users exists, exercises direct control over the pro-
20 vision of the service to end users;

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

23 “(C) is able to fully report on usage of
24 sound recordings of musical works by the service
25 (or procure such reporting).

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

5 “(10) *DIGITAL PHONORECORD DELIVERY.*—*The*
6 *term ‘digital phonorecord delivery’ means each indi-*
7 *vidual delivery of a phonorecord by digital trans-*
8 *mission of a sound recording that results in a specifi-*
9 *cally identifiable reproduction by or for any trans-*
10 *mission recipient of a phonorecord of that sound re-*
11 *recording, regardless of whether the digital transmission*
12 *is also a public performance of the sound recording*
13 *or any musical work embodied therein, and includes*
14 *a permanent download, a limited download, or an*
15 *interactive stream. A digital phonorecord delivery*
16 *does not result from a real-time, noninteractive sub-*
17 *scription transmission of a sound recording where no*
18 *reproduction of the sound recording or the musical*
19 *work embodied therein is made from the inception of*
20 *the transmission through to its receipt by the trans-*
21 *mission recipient in order to make the sound record-*
22 *ing audible. A digital phonorecord delivery does not*
23 *include the digital transmission of sounds accom-*
24 *panying a motion picture or other audiovisual work*
25 *as defined in section 101.*

1 “(11) *ENACTMENT DATE*.—The term ‘enactment
2 *date*’ means the date of the enactment of the Musical
3 *Works Modernization Act*.

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

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

19 “(14) *INTERESTED*.—The term ‘interested’, as
20 applied to a party seeking to participate in a pro-
21 ceeding under subsection (d)(7)(D), is a party as to
22 which the Copyright Royalty Judges have not deter-
23 mined that the party lacks a significant interest in
24 such proceeding.

1 “(15) *LICENSE AVAILABILITY DATE*.—The term
2 *‘license availability date’* means January 1 following
3 the expiration of the 2-year period beginning on the
4 enactment date.

5 “(16) *LIMITED DOWNLOAD*.—The term *‘limited*
6 *download’* means a digital transmission of a sound
7 recording of a musical work in the form of a
8 download, where such sound recording is accessible for
9 listening only for a limited amount of time or speci-
10 fied number of times.

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

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

19 “(19) *MECHANICAL LICENSING COLLECTIVE*
20 *BUDGET*.—The term *‘mechanical licensing collective*
21 *budget’* means a statement of the financial position of
22 the mechanical licensing collective for a fiscal year or
23 quarter thereof based on estimates of expenditures
24 during the period and proposals for financing those

1 *expenditures, including a calculation of the collective*
2 *total costs.*

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

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

8 “(22) *NOTICE OF LICENSE.*—*The term ‘notice of*
9 *license’ means a notice from a digital music provider*
10 *provided under subsection (d)(2)(A) for purposes of*
11 *obtaining a blanket license.*

12 “(23) *NOTICE OF NONBLANKET ACTIVITY.*—*The*
13 *term ‘notice of nonblanket activity’ means a notice*
14 *from a significant nonblanket licensee provided under*
15 *subsection (d)(6)(A) for purposes of notifying the me-*
16 *chanical licensing collective that the licensee has been*
17 *engaging in covered activities.*

18 “(24) *PERMANENT DOWNLOAD.*—*The term ‘per-*
19 *manent download’ means a digital transmission of a*
20 *sound recording of a musical work in the form of a*
21 *download, where such sound recording is accessible for*
22 *listening without restriction as to the amount of time*
23 *or number of times it may be accessed.*

24 “(25) *QUALIFIED AUDITOR.*—*The term ‘qualified*
25 *auditor’ means an independent, certified public ac-*

1 *countant with experience performing music royalty*
2 *audits.*

3 “(26) *RECORD COMPANY.*—*The term ‘record com-*
4 *pany’ means an entity that invests in, produces, and*
5 *markets sound recordings of musical works, and dis-*
6 *tributes such sound recordings for remuneration*
7 *through multiple sales channels, including a corporate*
8 *affiliate of such an entity engaged in distribution of*
9 *sound recordings.*

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

14 “(28) *REQUIRED MATCHING EFFORTS.*—*The*
15 *term ‘required matching efforts’ means efforts to iden-*
16 *tify and locate copyright owners of musical works as*
17 *described in subsection (d)(10)(B)(i).*

18 “(29) *SERVICE.*—*The term ‘service’, as used in*
19 *relation to covered activities, means any site, facility,*
20 *or offering by or through which sound recordings of*
21 *musical works are digitally transmitted to members of*
22 *the public.*

23 “(30) *SHARE.*—*The term ‘share’, as applied to a*
24 *musical work, means a fractional ownership interest*
25 *in such work.*

1 “(31) *SIGNIFICANT NONBLANKET LICENSEE.*—

2 *The term ‘significant nonblanket licensee’—*

3 “(A) *means an entity, including a group of*
4 *entities under common ownership or control*
5 *that, acting under the authority of one or more*
6 *voluntary licenses or individual download li-*
7 *licenses, offers a service engaged in covered activi-*
8 *ties, and such entity or group of entities—*

9 “(i) *is not currently operating under a*
10 *blanket license and is not obligated to pro-*
11 *vide reports of usage reflecting covered ac-*
12 *tivities under subsection (d)(4)(A);*

13 “(ii) *has a direct contractual, subscrip-*
14 *tion, or other economic relationship with*
15 *end users of the service or, if no such rela-*
16 *tionship with end users exists, exercises di-*
17 *rect control over the provision of the service*
18 *to end users; and*

19 “(iii) *either—*

20 “(I) *on any day in a calendar*
21 *month, makes more than 5,000 dif-*
22 *ferent sound recordings of musical*
23 *works available through such service;*
24 *or*

1 “(II) derives revenue or other con-
2 sideration in connection with such cov-
3 ered activities greater than \$50,000 in
4 a calendar month, or total revenue or
5 other consideration greater than
6 \$500,000 during the preceding 12 cal-
7 endar months; and

8 “(B) does not include—

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

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

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

23 “(33) STATE.—The term ‘State’ means each
24 State of the United States, the District of Columbia,
25 and each territory or possession of the United States.

1 “(34) *UNCLAIMED ACCRUED ROYALTIES.*—*The*
 2 *term ‘unclaimed accrued royalties’ means accrued*
 3 *royalties eligible for distribution under subsection*
 4 *(d)(3)(J).*”

5 “(35) *UNMATCHED.*—*The term ‘unmatched’, as*
 6 *applied to a musical work (or share thereof), means*
 7 *that the copyright owner of such work (or share there-*
 8 *of) has not been identified or located.*”

9 “(36) *VOLUNTARY LICENSE.*—*The term ‘vol-*
 10 *untary license’ means a license for use of a musical*
 11 *work (or share thereof) other than a compulsory li-*
 12 *cence obtained under this section.”.*”

13 **(b) *TECHNICAL AND CONFORMING AMENDMENTS TO***
 14 ***SECTION 801.***—*Section 801(b) of title 17, United States*
 15 *Code, is amended—*

16 (1) *by redesignating paragraph (8) as para-*
 17 *graph (9); and*

18 (2) *by inserting after paragraph (7) the fol-*
 19 *lowing:*

20 “(8) *To determine the administrative assessment*
 21 *to be paid by digital music providers under section*
 22 *115(d). The provisions of section 115(d) shall apply*
 23 *to the conduct of proceedings by the Copyright Roy-*
 24 *alty Judges under section 115(d) and not the proce-*

1 dures described in this section, or section 803, 804, or
2 805.”.

3 (c) *EFFECTIVE DATE OF AMENDED RATE SETTING*
4 *STANDARD.*—The amendments made by subsection (a)(3)
5 and section 103(g)(2) shall apply to any proceeding before
6 the Copyright Royalty Judges that is commenced on or after
7 the date of the enactment of this Act.

8 (d) *TECHNICAL AND CONFORMING AMENDMENTS TO*
9 *TITLE 37, PART 385 OF THE CODE OF FEDERAL REGULA-*
10 *TIONS.*—Not later than 270 days after the date of enactment
11 of this Act, the Copyright Royalty Judges shall amend the
12 regulations for section 115 in part 385 of title 37, Code
13 of Federal Regulations to conform the definitions used in
14 such part to the definitions of the same terms described in
15 section 115(e) of title 17, United States Code, as amended
16 by subsection (a). In so doing, the Copyright Royalty
17 Judges shall make adjustments to the language of the regu-
18 lations as necessary to achieve the same purpose and effect
19 as the original regulations with respect to the rates and
20 terms previously adopted by the Copyright Royalty Judges.

21 (e) *COPYRIGHT OFFICE ACTIVITIES.*—The Register of
22 Copyrights shall engage in public outreach and educational
23 activities—

24 (1) regarding the amendments made by sub-
25 section (a) to section 115 of title 17, United States

1 *Code, including the responsibilities of the mechanical*
 2 *licensing collective designated under those amend-*
 3 *ments;*

4 (2) *which shall include educating songwriters*
 5 *and other interested parties with respect to the process*
 6 *established under section 115(d)(3)(C)(i)(V) of title*
 7 *17, United States Code, as added by subsection (a),*
 8 *by which—*

9 (A) *a copyright owner may claim owner-*
 10 *ship of musical works (and shares of such*
 11 *works); and*

12 (B) *royalties for works for which the owner*
 13 *is not identified or located shall be equitably dis-*
 14 *tributed to known copyright owners; and*

15 (3) *which the Register shall make available on-*
 16 *line.*

17 (f) *UNCLAIMED ROYALTIES STUDY AND RECOMMENDA-*
 18 *TIONS.—*

19 (1) *IN GENERAL.—Not later than 2 years after*
 20 *the date on which the Register of Copyrights initially*
 21 *designates the mechanical licensing collective under*
 22 *section 115(d)(3)(B)(i) of title 17, United States*
 23 *Code, as added by subsection (a)(4), the Register, in*
 24 *consultation with the Comptroller General of the*
 25 *United States, and after soliciting and reviewing*

1 *comments and relevant information from music in-*
2 *dustry participants and other interested parties, shall*
3 *submit to the Committee on the Judiciary of the Sen-*
4 *ate and the Committee on the Judiciary of the House*
5 *of Representatives a report that recommends best*
6 *practices that the collective may implement in order*
7 *to—*

8 *(A) identify and locate musical work copy-*
9 *right owners with unclaimed accrued royalties*
10 *held by the collective;*

11 *(B) encourage musical work copyright own-*
12 *ers to claim the royalties of those owners; and*

13 *(C) reduce the incidence of unclaimed royal-*
14 *ties.*

15 *(2) CONSIDERATION OF RECOMMENDATIONS.—*

16 *The mechanical licensing collective shall carefully*
17 *consider, and give substantial weight to, the rec-*
18 *ommendations submitted by the Register of Copy-*
19 *rights under paragraph (1) when establishing the pro-*
20 *cedures of the collective with respect to the—*

21 *(A) identification and location of musical*
22 *work copyright owners; and*

23 *(B) distribution of unclaimed royalties.*

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

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

4 (1) by striking paragraphs (1) and (2) and in-
5 serting the following:

6 “(1)(A) Proceedings under chapter 8 shall deter-
7 mine reasonable rates and terms of royalty payments
8 for transmissions subject to statutory licensing under
9 subsection (d)(2) during the 5-year period beginning
10 on January 1 of the second year following the year
11 in which the proceedings are to be commenced pursu-
12 ant to subparagraph (A) or (B) of section 804(b)(3),
13 as the case may be, or such other period as the parties
14 may agree. The parties to each proceeding shall bear
15 their own costs.

16 “(B) The schedule of reasonable rates and terms
17 determined by the Copyright Royalty Judges shall,
18 subject to paragraph (2), be binding on all copyright
19 owners of sound recordings and entities performing
20 sound recordings affected by this paragraph during
21 the 5-year period specified in subparagraph (A), or
22 such other period as the parties may agree. Such rates
23 and terms shall distinguish among the different types
24 of services then in operation and shall include a min-
25 imum fee for each such type of service, such dif-
26 ferences to be based on criteria including the quantity

1 *and nature of the use of sound recordings and the de-*
2 *gree to which use of the service may substitute for or*
3 *may promote the purchase of phonorecords by con-*
4 *sumers. The Copyright Royalty Judges shall establish*
5 *rates and terms that most clearly represent the rates*
6 *and terms that would have been negotiated in the*
7 *marketplace between a willing buyer and a willing*
8 *seller. In determining such rates and terms, the Copy-*
9 *right Royalty Judges—*

10 *“(i) shall base their decision on economic,*
11 *competitive, and programming information pre-*
12 *sented by the parties, including—*

13 *“(I) whether use of the service may*
14 *substitute for or may promote the sales of*
15 *phonorecords or otherwise may interfere*
16 *with or may enhance the sound recording*
17 *copyright owner’s other streams of revenue*
18 *from the copyright owner’s sound record-*
19 *ings; and*

20 *“(II) the relative roles of the copyright*
21 *owner and the transmitting entity in the*
22 *copyrighted work and the service made*
23 *available to the public with respect to rel-*
24 *ative creative contribution, technological*

1 *contribution, capital investment, cost, and*
2 *risk; and*

3 “(i) *may consider the rates and terms for*
4 *comparable types of audio transmission services*
5 *and comparable circumstances under voluntary*
6 *license agreements.*

7 “(C) *The procedures under subparagraphs (A)*
8 *and (B) shall also be initiated pursuant to a petition*
9 *filed by any sound recording copyright owner or any*
10 *transmitting entity indicating that a new type of*
11 *service on which sound recordings are performed is or*
12 *is about to become operational, for the purpose of de-*
13 *termining reasonable terms and rates of royalty pay-*
14 *ments with respect to such new type of service for the*
15 *period beginning with the inception of such new type*
16 *of service and ending on the date on which the roy-*
17 *alty rates and terms for eligible nonsubscription serv-*
18 *ices and new subscription services, or preexisting sub-*
19 *scription services and preexisting satellite digital*
20 *audio radio services, as the case may be, most re-*
21 *cently determined under subparagraph (A) or (B)*
22 *and chapter 8 expire, or such other period as the par-*
23 *ties may agree.”; and*

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

1 (b) *REPEAL.*—Subsection (i) of section 114 of title 17,
2 *United States Code*, is repealed.

3 (c) *USE IN MUSICAL WORK PROCEEDINGS.*—

4 (1) *IN GENERAL.*—License fees payable for the
5 public performance of sound recordings under section
6 106(6) of title 17, *United States Code*, shall not be
7 taken into account in any administrative, judicial, or
8 other governmental proceeding to set or adjust the
9 royalties payable to musical work copyright owners
10 for the public performance of their works except in
11 such a proceeding to set or adjust royalties for the
12 public performance of musical works by means of a
13 digital audio transmission other than a transmission
14 by a broadcaster, and may be taken into account only
15 with respect to such digital audio transmission.

16 (2) *DEFINITIONS.*—In this subsection:

17 (A) *TRANSMISSION BY A BROADCASTER.*—

18 The term “transmission by a broadcaster” means
19 a nonsubscription digital transmission made by
20 a terrestrial broadcast station on its own behalf,
21 or on the behalf of a terrestrial broadcast station
22 under common ownership or control, that is not
23 part of an interactive service or a music-inten-
24 sive service comprising the transmission of sound

1 *recordings customized for or customizable by re-*
2 *ipients or service users.*

3 (B) *TERRESTRIAL BROADCAST STATION.*—

4 *The term “terrestrial broadcast station” means a*
5 *terrestrial, over-the-air radio or television broad-*
6 *cast station, including an FM translator (as de-*
7 *fined in section 74.1201 of title 47, Code of Fed-*
8 *eral Regulations, and licensed as such by the*
9 *Federal Communications Commission) whose*
10 *primary business activities are comprised of,*
11 *and whose revenues are generated through, ter-*
12 *restrial, over-the-air broadcast transmissions, or*
13 *the simultaneous or substantially-simultaneous*
14 *digital retransmission by the terrestrial, over-*
15 *the-air broadcast station of its over-the-air*
16 *broadcast transmissions.*

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

20 (e) *USE IN SOUND RECORDING PROCEEDINGS.*—*The*
21 *repeal of section 114(i) of title 17, United States Code, by*
22 *subsection (b) shall not be taken into account in any pro-*
23 *ceeding to set or adjust the rates and fees payable for the*
24 *use of sound recordings under section 112(e) or 114(f) of*

1 *such title that is pending on, or commenced on or after,*
2 *the date of the enactment of this Act.*

3 (f) *DECISIONS AND PRECEDENTS NOT AFFECTED.—*

4 *The repeal of section 114(i) of title 17, United States Code,*
5 *by subsection (b) shall not have any effect upon the deci-*
6 *sions, or the precedents established or relied upon, in any*
7 *proceeding to set or adjust the rates and fees payable for*
8 *the use of sound recordings under section 112(e) or 114(f)*
9 *of such title before the date of the enactment of this Act.*

10 (g) *TECHNICAL AND CONFORMING AMENDMENTS.—*

11 (1) *SECTION 114.—Section 114(f) of title 17,*
12 *United States Code, as amended by subsection (a), is*
13 *further amended in paragraph (4)(C), as so redesign-*
14 *ated, by striking “under paragraph (4)” and insert-*
15 *ing “under paragraph (3)”.*

16 (2) *SECTION 801.—Section 801(b) of title 17,*
17 *United States Code, is amended—*

18 (A) *in paragraph (1), by striking “The*
19 *rates applicable” and all that follows though*
20 *“prevailing industry practices.”; and*

21 (B) *in paragraph (7)(B), by striking*
22 *“114(f)(3)” and inserting “114(f)(2)”.*

23 (3) *SECTION 803.—Section 803(c)(2)(E)(i)(II) of*
24 *title 17, United States Code, is amended—*

25 (A) *by striking “or 114(f)(2)(C)”;* and

1 (B) by striking “114(f)(4)(B)” and insert-
2 ing “114(f)(3)(B)”.

3 (4) SECTION 804.—Section 804(b)(3)(C) of title
4 17, United States Code, is amended—

5 (A) in clause (i), by striking “and
6 114(f)(2)(C)”;

7 (B) in clause (iii)(II), by striking
8 “114(f)(4)(B)(ii)” and inserting
9 “114(f)(3)(B)(ii)”; and

10 (C) in clause (iv), by striking “or
11 114(f)(2)(C), as the case may be”.

12 (h) EFFECTIVE DATE OF AMENDED RATE SETTING
13 STANDARD.—The amendments made by subsection (a)(1)
14 shall apply to any proceeding before the Copyright Royalty
15 Judges that is commenced on or after the date of the enact-
16 ment of this Act.

17 **SEC. 104. RANDOM ASSIGNMENT OF RATE COURT PRO-**
18 **CEEDINGS.**

19 Section 137 of title 28, United States Code, is amend-
20 ed—

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

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

1 “(b) *RANDOM ASSIGNMENT OF RATE COURT PRO-*
2 *CEEDINGS.*—

3 “(1) *IN GENERAL.*—

4 “(A) *DETERMINATION OF LICENSE FEE.*—
5 *Except as provided in subparagraph (B), in the*
6 *case of any performing rights society subject to*
7 *a consent decree, any application for the deter-*
8 *mination of a license fee for the public perform-*
9 *ance of music in accordance with the applicable*
10 *consent decree shall be made in the district court*
11 *with jurisdiction over that consent decree and*
12 *randomly assigned to a judge of that district*
13 *court according to the rules of that court for the*
14 *division of business among district judges, pro-*
15 *vided that any such application shall not be as-*
16 *signed to—*

17 “(i) *a judge to whom continuing juris-*
18 *isdiction over any performing rights society*
19 *for any performing rights society consent*
20 *decree is assigned or has previously been as-*
21 *signed; or*

22 “(ii) *a judge to whom another pro-*
23 *ceeding concerning an application for the*
24 *determination of a reasonable license fee is*

1 *assigned at the time of the filing of the ap-*
2 *plication.*

3 “(B) *EXCEPTION.*—*Subparagraph (A) does*
4 *not apply to an application to determine reason-*
5 *able license fees made by individual proprietors*
6 *under section 513 of title 17.*

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

1 **SEC. 105. PERFORMING RIGHTS SOCIETY CONSENT DE-**
2 **CREES.**

3 (a) *DEFINITION.*—*In this section, the term “per-*
4 *forming rights society” has the meaning given the term in*
5 *section 101 of title 17, United States Code.*

6 (b) *NOTIFICATION OF REVIEW.*—

7 (1) *IN GENERAL.*—*The Department of Justice*
8 *shall provide timely briefings upon request of any*
9 *Member of the Committee on the Judiciary of the*
10 *Senate and the Committee on the Judiciary of the*
11 *House of Representatives regarding the status of a re-*
12 *view in progress of a consent decree between the*
13 *United States and a performing rights society.*

14 (2) *CONFIDENTIALITY AND DELIBERATIVE PROC-*
15 *ESS.*—*In accordance with applicable rules relating to*
16 *confidentiality and agency deliberative process, the*
17 *Department of Justice shall share with such Members*
18 *of Congress detailed and timely information and per-*
19 *tinent documents related to the consent decree review.*

20 (c) *ACTION BEFORE MOTION TO TERMINATE.*—

21 (1) *IN GENERAL.*—*Before filing with the appro-*
22 *priate district court of the United States a motion to*
23 *terminate a consent decree between the United States*
24 *and a performing rights society, including a motion*
25 *to terminate a consent decree after the passage of a*

1 *specified period of time, the Department of Justice*
2 *shall—*

3 *(A) notify Members of Congress and com-*
4 *mittees of Congress described in subsection (b);*
5 *and*

6 *(B) provide to such Members of Congress*
7 *and committees information regarding the im-*
8 *port of the proposed termination on the market*
9 *for licensing the public performance of musical*
10 *works should the motion be granted.*

11 *(2) NOTIFICATION.—*

12 *(A) IN GENERAL.—During the notification*
13 *described in paragraph (1), and not later than*
14 *90 days before the date on which the Department*
15 *of Justice files with the appropriate district*
16 *court of the United States a motion to terminate*
17 *a consent decree between the United States and*
18 *a performing rights society, the Department of*
19 *Justice shall submit to the chairmen and rank-*
20 *ing members of the Committee on the Judiciary*
21 *of the Senate and the Committee on the Judici-*
22 *ary of the House of Representatives a written no-*
23 *tification of the intent of the Department of Jus-*
24 *tice to file the motion.*

1 (B) *CONTENTS.*—*The notification provided*
2 *in subparagraph (A) shall include a written re-*
3 *port to the chairmen and ranking members of the*
4 *Committee on the Judiciary of Senate and the*
5 *Committee on the Judiciary of the House of Rep-*
6 *resentatives setting forth—*

7 (i) *an explanation of the process used*
8 *by the Department of Justice to review the*
9 *consent decree;*

10 (ii) *a summary of the public comments*
11 *received by the Department of Justice dur-*
12 *ing the review by the Department; and*

13 (iii) *other information requested by*
14 *Congress under paragraph (1).*

15 (d) *SCOPE.*—*This section applies only to a consent de-*
16 *cree between the United States and a performing rights soci-*
17 *ety.*

18 **SEC. 106. EFFECTIVE DATE.**

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

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 by*
 14 *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-1972**
 19 **sound recordings**

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

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

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

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

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

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

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

6 “(c) *TRANSMISSIONS BY DIRECT LICENSING OF STAT-*
7 *UTORY 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 voluntarily*
14 *negotiated at any time between the rights owner and*
15 *the entity performing the sound recording.*

16 “(2) *PAYMENT OF ROYALTIES TO NONPROFIT*
17 *COLLECTIVE.—To the extent that a license agreement*
18 *described in paragraph (1) and entered into on or*
19 *after the date of the enactment of this section extends*
20 *to digital audio transmissions of a sound recording*
21 *fixed on or after January 1, 1923, and before Feb-*
22 *ruary 15, 1972, that meet the conditions of subsection*
23 *(b), the licensee shall pay, to the collective designated*
24 *to distribute receipts from the licensing of trans-*
25 *missions in accordance with section 114(f), 50 percent*

1 *of the performance royalties for the transmissions due*
2 *under the license, with such royalties fully credited as*
3 *payments due under the license.*

4 “(3) *DISTRIBUTION OF ROYALTIES BY COLLEC-*
5 *TIVE.—The collective described in paragraph (2)*
6 *shall, in accordance with subparagraphs (B) through*
7 *(D) of section 114(g)(2), and paragraphs (5) and (6)*
8 *of section 114(g), distribute the royalties received*
9 *under paragraph (2) under the license described in*
10 *paragraph (2). Such payments shall be the only pay-*
11 *ments to which featured and nonfeatured artists are*
12 *entitled by virtue of the transmissions described in*
13 *paragraph (2) under the license.*

14 “(4) *RULE OF CONSTRUCTION.—This subsection*
15 *does not prohibit any other license from directing the*
16 *licensee to pay other royalties due to featured and*
17 *nonfeatured artists for such transmissions to the col-*
18 *lective designated to distribute receipts from the li-*
19 *censing of transmissions in accordance with section*
20 *114(f).*

21 “(d) *RELATIONSHIP TO STATE LAW.—*

22 “(1) *IN GENERAL.—Nothing in this section shall*
23 *be construed to annul or limit any rights or remedies*
24 *under the common law or statutes of any State for*

1 *sound recordings fixed before February 15, 1972, ex-*
2 *cept, notwithstanding section 301(c), for the following:*

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

10 “(B) *This section preempts any claim of*
11 *common law copyright or equivalent right under*
12 *the laws of any State arising from any reproduc-*
13 *tion that is made, on and after the date of the*
14 *enactment of this section, of a sound recording*
15 *fixed on or after January 1, 1923, and before*
16 *February 15, 1972, and that would satisfy the*
17 *requirements for statutory licensing under para-*
18 *graphs (1) and (6) of section 112(e), if the sound*
19 *recording were fixed on or after February 15,*
20 *1972.*

21 “(C) *This section preempts any claim of*
22 *common law copyright or equivalent right under*
23 *the laws of any State arising from any digital*
24 *audio transmission or reproduction that is*
25 *made, before the date of the enactment of this sec-*

1 *tion, of a sound recording fixed on or after Jan-*
2 *uary 1, 1923, and before February 15, 1972, if—*

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

11 *“(ii) either—*

12 *“(I) except in the case of a trans-*
13 *mission that would have been exempt*
14 *under section 114(d)(1), the transmit-*
15 *ting entity, not later than 270 days*
16 *after the date of enactment of this sec-*
17 *tion, pays statutory royalties and pro-*
18 *vides notice of the use of the relevant*
19 *sound recordings in the same manner*
20 *as is required by regulations adopted*
21 *by the Copyright Royalty Judges for*
22 *sound recordings that are protected*
23 *under this title for all the digital audio*
24 *transmissions and reproductions satis-*
25 *fying the requirements for statutory li-*

1 *censing under sections 112(e)(1) and*
2 *114(d)(2) during the 3-year period*
3 *ending on the date of enactment of this*
4 *section; or*

5 “(II) *an agreement voluntarily*
6 *negotiated between the rights owner*
7 *and the entity performing the sound*
8 *recording authorizes or waives liability*
9 *for any such transmission or reproduc-*
10 *tion and the transmitting entity has*
11 *complied with all provisions of such*
12 *agreement for any such transmission*
13 *or reproduction.*

14 “(2) *RULE OF CONSTRUCTION FOR COMMON LAW*
15 *COPYRIGHT.—For purposes of subparagraphs (A)*
16 *through (C) of paragraph (1), a claim of common law*
17 *copyright or equivalent right under the laws of any*
18 *State includes a claim that characterizes conduct sub-*
19 *ject to such subparagraphs as an unlawful distribu-*
20 *tion, act of record piracy, or similar violation.*

21 “(3) *RULE OF CONSTRUCTION FOR PUBLIC PER-*
22 *FORMANCE RIGHTS.—Nothing in this section shall be*
23 *construed to recognize or negate the existence of public*
24 *performance rights in sound recordings under the*
25 *laws of any State.*

1 “(e) *LIMITATIONS ON REMEDIES.*—

2 “(1) *FAIR USE; USES BY LIBRARIES, ARCHIVES,*
3 *AND EDUCATIONAL INSTITUTIONS.*—

4 “(A) *IN GENERAL.*—*The limitations on the*
5 *exclusive rights of a copyright owner described in*
6 *sections 107, 108, and 110 shall apply to a*
7 *claim under subsection (a) of this section for the*
8 *unauthorized performance of a sound recording*
9 *fixed on or after January 1, 1923, and before*
10 *February 15, 1972.*

11 “(B) *RULE OF CONSTRUCTION FOR SECTION*
12 *108(H).*—*With respect to the application of sec-*
13 *tion 108(h) to a claim for unauthorized perform-*
14 *ance of a sound recording first fixed on or after*
15 *January 1, 1923, and before February 15, 1972,*
16 *under subsection (a) of this section, the phrase*
17 *‘during the last 20 years of any term of copy-*
18 *right of a published work’ in such section 108(h)*
19 *shall be construed to mean at any time after the*
20 *effective date of this section.*

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

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

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

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

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

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

23 “(I) *the rights owner has filed*
24 *with the Copyright Office a schedule*
25 *that specifies the title, artist, and*

1 *rights owner of the sound recording*
2 *and contains such other information,*
3 *as practicable, as the Register of Copy-*
4 *rights prescribes by regulation; and*

5 “(II) *the transmission is made*
6 *after the end of the 90-day period be-*
7 *ginning on the date on which the infor-*
8 *mation filed under subclause (I) is in-*
9 *dexed into the public records of the*
10 *Copyright Office.*

11 “(i) *REGULATIONS.—Not later than*
12 *180 days after the date of enactment of this*
13 *section, the Register of Copyrights shall*
14 *issue regulations establishing the form, con-*
15 *tent, and procedures for the filing of sched-*
16 *ules under clause (i). Such regulations shall*
17 *provide that persons may request that they*
18 *receive timely notification of such filings,*
19 *and shall set forth the manner in which*
20 *such requests may be made.*

21 “(B) *FILING OF CONTACT INFORMATION FOR*
22 *TRANSMITTING ENTITIES.—*

23 “(i) *FILING REQUIREMENT.—Not later*
24 *than 30 days after the date of enactment of*
25 *this section, the Register of Copyrights shall*

1 *issue regulations establishing the form, con-*
2 *tent, and procedures for the filing, by any*
3 *entity that, as of the date of the enactment*
4 *of this section, performs sound recordings*
5 *fixed before February 15, 1972, by means of*
6 *digital audio transmissions, of contact in-*
7 *formation for such entity.*

8 “(ii) *TIME LIMIT ON FILINGS.—The*
9 *Register of Copyrights may not accept fil-*
10 *ings under clause (i) after the date that is*
11 *180 days after the date of enactment of this*
12 *section.*

13 “(iii) *LIMITATION ON STATUTORY DAM-*
14 *AGES AND ATTORNEYS’ FEES.—*

15 “(I) *LIMITATION.—An award of*
16 *statutory damages or of attorneys’ fees*
17 *under section 504 or 505 may not be*
18 *made, against an entity that has filed*
19 *contact information for that entity*
20 *under clause (i) of this subparagraph,*
21 *with respect to an unauthorized trans-*
22 *mission by that entity of a sound re-*
23 *ording under subsection (a) of this*
24 *section if the transmission is made not*
25 *later than 90 days after the date on*

1 *which the entity receives a notice*
2 *that—*

3 *“(aa) is sent by or on behalf*
4 *of the rights owner of the sound*
5 *recording;*

6 *“(bb) states that the entity is*
7 *not legally authorized to transmit*
8 *that sound recording under sub-*
9 *section (a); and*

10 *“(cc) identifies the sound re-*
11 *coding in a schedule conforming*
12 *to the requirements prescribed by*
13 *the regulations issued under sub-*
14 *paragraph (A)(i).*

15 *“(II) UNDELIVERABLE NO-*
16 *TICES.—In any case in which a notice*
17 *under subclause (I) is sent to an entity*
18 *by mail or courier service and the no-*
19 *tice is returned to the sender because*
20 *the entity either is no longer located at*
21 *the address provided in the contact in-*
22 *formation filed under clause (i) or has*
23 *refused to accept delivery, or the notice*
24 *is sent by electronic mail and is un-*
25 *deliverable, the 90-day period under*

1 *subclause (I) shall begin on the date of*
2 *the attempted delivery.*

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

9 “(6) APPLICABILITY OF OTHER PROVISIONS.—

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

14 “(B) APPLICABILITY OF DEFINITIONS.—Any
15 *term used in this section that is defined in sec-*
16 *tion 101 shall have the meaning given that term*
17 *in section 101.*

18 “(f) APPLICATION OF SECTION 230 SAFE HARBOR.—
19 *For purposes of section 230 of the Communications Act of*
20 *1934 (47 U.S.C. 230), subsection (a) of this section shall*
21 *be considered to be a ‘law pertaining to intellectual prop-*
22 *erty’ under subsection (e)(2) of such section 230.*

23 “(g) RIGHTS OWNER DEFINED.—In this section, the
24 *term ‘rights owner’ means the person who has the exclusive*

1 *right to reproduce a sound recording under the laws of any*
 2 *State.”.*

3 (b) *CONFORMING AMENDMENT.—The table of chapters*
 4 *for title 17, United States Code, is amended by adding at*
 5 *the end the following:*

“14. Unauthorized Digital Performance of Pre-1972 Sound Recordings ... 1401”.

6 **SEC. 203. EFFECTIVE DATE.**

7 *This title and the amendments made by this title shall*
 8 *take effect on the date of the enactment of this Act.*

9 **TITLE III—ALLOCATION FOR**
 10 **MUSIC PRODUCERS**

11 **SEC. 301. SHORT TITLE.**

12 *This title may be cited as the “Allocation for Music*
 13 *Producers Act” or the “AMP Act”.*

14 **SEC. 302. PAYMENT OF STATUTORY PERFORMANCE ROYAL-**
 15 **TIES.**

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

19 *“(5) LETTER OF DIRECTION.—*

20 *“(A) IN GENERAL.—A nonprofit collective*
 21 *designated by the Copyright Royalty Judges to*
 22 *distribute receipts from the licensing of trans-*
 23 *missions in accordance with subsection (f) shall*
 24 *adopt and reasonably implement a policy that*
 25 *provides, in circumstances determined by the col-*

1 lective to be appropriate, for acceptance of in-
2 structions from a payee identified under sub-
3 paragraph (A) or (D) of paragraph (2) to dis-
4 tribute, to a producer, mixer, or sound engineer
5 who was part of the creative process that created
6 a sound recording, a portion of the payments to
7 which the payee would otherwise be entitled from
8 the licensing of transmissions of the sound re-
9 cording. In this section, such instructions shall
10 be referred to as a 'letter of direction'.

11 “(B) ACCEPTANCE OF LETTER.—To the ex-
12 tent that a collective described in subparagraph
13 (A) accepts a letter of direction under that sub-
14 paragraph, the person entitled to payment pur-
15 suant to the letter of direction shall, during the
16 period in which the letter of direction is in effect
17 and carried out by the collective, be treated for
18 all purposes as the owner of the right to receive
19 such payment, and the payee providing the letter
20 of direction to the collective shall be treated as
21 having no interest in such payment.

22 “(C) AUTHORITY OF COLLECTIVE.—This
23 paragraph shall not be construed in such a man-
24 ner so that the collective is not authorized to ac-
25 cept or act upon payment instructions in cir-

1 *cumstances other than those to which this para-*
2 *graph applies.”.*

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

7 **“(6) SOUND RECORDINGS FIXED BEFORE NOVEM-**
8 **BER 1, 1995.—**

9 **“(A) PAYMENT ABSENT LETTER OF DIREC-**
10 **TION.—A nonprofit collective designated by the**
11 **Copyright Royalty Judges to distribute receipts**
12 **from the licensing of transmissions in accordance**
13 **with subsection (f) (in this paragraph referred to**
14 **as the ‘collective’) shall adopt and reasonably**
15 **implement a policy that provides, in cir-**
16 **cumstances determined by the collective to be ap-**
17 **propriate, for the deduction of 2 percent of all**
18 **the receipts that are collected from the licensing**
19 **of transmissions of a sound recording fixed be-**
20 **fore November 1, 1995, but which is withdrawn**
21 **from the amount otherwise payable under para-**
22 **graph (2)(D) to the recording artist or artists**
23 **featured on the sound recording (or the persons**
24 **conveying rights in the artists’ performance in**
25 **the sound recording), and the distribution of**

1 *such amount to one or more persons described in*
2 *subparagraph (B) of this paragraph, after deduc-*
3 *tion of costs described in paragraph (3) or (4),*
4 *as applicable, if each of the following require-*
5 *ments is met:*

6 “(i) *CERTIFICATION OF ATTEMPT TO*
7 *OBTAIN A LETTER OF DIRECTION.—The per-*
8 *son described in subparagraph (B) who is*
9 *to receive the distribution has certified to*
10 *the collective, under penalty of perjury,*
11 *that—*

12 “(I) *for a period of not less than*
13 *120 days, that person made reasonable*
14 *efforts to contact the artist payee for*
15 *such sound recording to request and*
16 *obtain a letter of direction instructing*
17 *the collective to pay to that person a*
18 *portion of the royalties payable to the*
19 *featured recording artist or artists; and*

20 “(II) *during the period beginning*
21 *on the date on which that person began*
22 *the reasonable efforts described in sub-*
23 *clause (I) and ending on the date of*
24 *that person’s certification to the collec-*
25 *tive, the artist payee did not affirm or*

1 *deny in writing the request for a letter*
2 *of direction.*

3 “(ii) *COLLECTIVE ATTEMPT TO CON-*
4 *TACT ARTIST.—After receipt of the certifi-*
5 *cation described in clause (i) and for a pe-*
6 *riod of not less than 120 days before the*
7 *first distribution by the collective to the per-*
8 *son described in subparagraph (B), the col-*
9 *lective attempts, in a reasonable manner as*
10 *determined by the collective, to notify the*
11 *artist payee of the certification made by the*
12 *person described in subparagraph (B).*

13 “(iii) *NO OBJECTION RECEIVED.—The*
14 *artist payee does not, as of the date that*
15 *was 10 business days before the date on*
16 *which the first distribution is made, submit*
17 *to the collective in writing an objection to*
18 *the distribution.*

19 “(B) *ELIGIBILITY FOR PAYMENT.—A person*
20 *shall be eligible for payment under subparagraph*
21 *(A) if the person—*

22 “(i) *is a producer, mixer, or sound en-*
23 *gineer of the sound recording;*

24 “(ii) *has entered into a written con-*
25 *tract with a record company involved in the*

1 *creation or lawful exploitation of the sound*
2 *recording, or with the recording artist or*
3 *artists featured on the sound recording (or*
4 *the persons conveying rights in the artists’*
5 *performance in the sound recording), under*
6 *which the person seeking payment is enti-*
7 *tled to participate in royalty payments that*
8 *are based on the exploitation of the sound*
9 *recording and are payable from royalties*
10 *otherwise payable to the recording artist or*
11 *artists featured on the sound recording (or*
12 *the persons conveying rights in the artists’*
13 *performance in the sound recording);*

14 *“(iii) made a creative contribution to*
15 *the creation of the sound recording; and*

16 *“(iv) submits to the collective—*

17 *“(I) a written certification stat-*
18 *ing, under penalty of perjury, that the*
19 *person meets the requirements in*
20 *clauses (i) through (iii); and*

21 *“(II) a true copy of the contract*
22 *described in clause (ii).*

23 *“(C) MULTIPLE CERTIFICATIONS.—Subject*
24 *to subparagraph (D), in a case in which more*
25 *than one person described in subparagraph (B)*

1 *has met the requirements for a distribution*
2 *under subparagraph (A) with respect to a sound*
3 *recording as of the date that is 10 business days*
4 *before the date on which the distribution is*
5 *made, the collective shall divide the 2 percent*
6 *distribution equally among all such persons.*

7 “(D) *OBJECTION TO PAYMENT.*—*Not later*
8 *than 10 business days after the date on which*
9 *the collective receives from the artist payee a*
10 *written objection to a distribution made pursu-*
11 *ant to subparagraph (A), the collective shall*
12 *cease making any further payment relating to*
13 *such distribution. In any case in which the col-*
14 *lective has made one or more distributions pur-*
15 *suant to subparagraph (A) to a person described*
16 *in subparagraph (B) before the date that is 10*
17 *business days after the date on which the collec-*
18 *tive receives from the artist payee an objection to*
19 *such distribution, the objection shall not affect*
20 *that person’s entitlement to any distribution*
21 *made before the collective ceases such distribution*
22 *under this subparagraph.*

23 “(E) *OWNERSHIP OF THE RIGHT TO RE-*
24 *CEIVE PAYMENTS.*—*To the extent that the collec-*
25 *tive determines that a distribution will be made*

1 *under subparagraph (A) to a person described in*
2 *subparagraph (B), such person shall, during the*
3 *period covered by such distribution, be treated*
4 *for all purposes as the owner of the right to re-*
5 *ceive such payments, and the artist payee to*
6 *whom such payments would otherwise be payable*
7 *shall be treated as having no interest in such*
8 *payments.*

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

22 (c) *TECHNICAL AND CONFORMING AMENDMENTS.*—
23 *Section 114(g) of title 17, United States Code, as amended*
24 *by subsections (a) and (b), is further amended—*

1 (1) *in paragraph (2), by striking “An agent des-*
2 *ignated” and inserting “Except as provided for in*
3 *paragraph (6), a nonprofit collective designated by*
4 *the Copyright Royalty Judges”;*

5 (2) *in paragraph (3)—*

6 (A) *by striking “nonprofit agent des-*
7 *ignated” and inserting “nonprofit collective des-*
8 *ignated by the Copyright Royalty Judges”;*

9 (B) *by striking “another designated agent”*
10 *and inserting “another designated nonprofit col-*
11 *lective”;* and

12 (C) *by striking “agent” and inserting “col-*
13 *lective” each subsequent place it appears;*

14 (3) *in paragraph (4)—*

15 (A) *by striking “designated agent” and in-*
16 *serting “nonprofit collective”;* and

17 (B) *by striking “agent” and inserting “col-*
18 *lective” each subsequent place it appears;* and

19 (4) *by adding at the end the following new para-*
20 *graph:*

21 “(7) *PREEMPTION OF STATE PROPERTY LAWS.—*

22 *The holding and distribution of receipts under section*
23 *112 and this section by a nonprofit collective des-*
24 *ignated by the Copyright Royalty Judges in accord-*
25 *ance with this subsection and regulations adopted by*

1 *the Copyright Royalty Judges shall supersede and*
2 *preempt any State law (including common law) con-*
3 *cerning escheatment or abandoned property, or any*
4 *analogous provision, that might otherwise apply.”.*

5 **SEC. 303. EFFECTIVE DATE.**

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

9 *(b) DELAYED EFFECTIVE DATE.—Paragraphs (5)(B)*
10 *and (6)(E) of section 114(g) of title 17, United States Code,*
11 *as added by section 302, shall take effect on January 1,*
12 *2020.*

Calendar No. 569

115TH CONGRESS
2^D SESSION

S. 2823

A BILL

To modernize copyright law, and for other purposes.

SEPTEMBER 12, 2018

Reported with an amendment