

115TH CONGRESS
2D SESSION

H. R. 5447

AN ACT

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,*

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

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

4 (b) TABLE OF CONTENTS.—The table of contents for
5 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.

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

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11 is hereby permanently rescinded.

TITLE I—MUSIC LICENSING

MODERNIZATION

SEC. 101. SHORT TITLE.

This title may be cited as the “Musical Works Modernization Act”.

SEC. 102. BLANKET LICENSE FOR DIGITAL USES AND MECHANICAL LICENSING COLLECTIVE.

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

(1) in subsection (a)—

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

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

“(1) ELIGIBILITY FOR COMPULSORY LICENSE.—

“(A) CONDITIONS FOR COMPULSORY LICENSE.—A person may by complying with the provisions of this section obtain a compulsory license to make and distribute phonorecords of a nondramatic musical work, including by means of digital phonorecord delivery. A person may obtain a compulsory license only if the primary 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 “(II) 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

Judges shall, subject to paragraph (2)(A), be binding on all copyright owners of nondramatic musical works and persons entitled to obtain a compulsory license under subsection (a) during the period specified in subparagraph (E), such other period as may be determined pursuant to subparagraphs (D) and (E), or such other period as the parties may agree. The Copyright Royalty Judges shall establish rates and terms that most clearly represent the rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller. In determining such rates and terms for digital phonorecord deliveries, the Copyright Royalty Judges shall base their decision on economic, competitive, and programming information presented by the parties, including—

“(i) whether use of the compulsory licensee’s service may substitute for or may promote the sales of phonorecords or otherwise may interfere with or may enhance the musical work copyright owner’s other streams of revenue from its musical works; 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 “(II) 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 (3) 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 ceding. 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 case 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 case 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 (3) 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-

tion shall apply to compulsory blanket licenses under this subsection.

“(2) AVAILABILITY OF BLANKET LICENSE.—

“(A) PROCEDURE FOR OBTAINING LICENSE.—A digital music provider may obtain a blanket license by submitting a notice of license to the mechanical licensing collective that specifies the particular covered activities in which the digital music provider seeks to engage, as follows:

“(i) The notice of license shall comply in form and substance with requirements that the Register of Copyrights shall establish by regulation.

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

“(iii) A notice of license may only be rejected by the mechanical licensing collective 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 “(II) 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-

tion should be continued, or a different entity meeting the criteria described in clauses (i) through (iii) of subparagraph (A) shall be designated. Following publication of such notice:

“(I) The Register shall, after reviewing the information submitted and conducting additional proceedings as appropriate, publish notice in the Federal Register of a continuing designation or new designation of the mechanical licensing collective, as the case may be, with any new designation to be effective as of the first day of a month that is no less than 6 months and no longer than 9 months after the date of publication of such notice, as specified by the Register.

“(II) If a new entity is designated as a mechanical licensing collective, the Register shall adopt regulations to govern the transfer of licenses, funds, records, data, and administrative 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 royal-
23 ties from digital music providers for
24 covered activities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 “(I) engage in efforts to—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 “(aa) provide identifying in-
9 formation for the sound record-
10 ing, including sound recording
11 name, featured artist and, to the
12 extent 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 “(II) 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 “(II) 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 ceding 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 dinary 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-
9minate 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-
22able as acts of infringement under
23 section 501 and subject to the rem-
24edies 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-

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

“(iii) is able to demonstrate that it has, or will have prior to the license availability date, the administrative capabilities to perform the required functions of the digital licensee coordinator under this subsection; and

“(iv) has been designated by the Register of Copyrights in accordance with subparagraph (B).

“(B) DESIGNATION OF DIGITAL LICENSEE COORDINATOR.—

“(i) INITIAL DESIGNATION.—The Register of Copyrights shall initially designate the digital licensee coordinator within 9 months after the enactment date, in accordance with the same procedure described for designation of the mechanical licensing collective in paragraph (3)(B)(i).

“(ii) PERIODIC REVIEW OF DESIGNATION.—Following the initial designation of 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 “(II) 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 (c)(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 (c)(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 ties 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,

2018, against a digital music provider for the infringement of the exclusive rights provided by paragraph (1) or (3) of section 106 arising from the unauthorized reproduction or distribution of a musical work by such digital music provider in the course of engaging in covered activities prior to the license availability date, shall, as the copyright owner's sole and exclusive remedy against the digital music provider, be eligible to recover the royalty prescribed under subsection (c)(1)(C) and chapter 8 of this title, from the digital music provider, provided that such digital music provider can demonstrate compliance with the requirements of subparagraph (B), as applicable. In all other cases the limitation on liability under this subparagraph shall not apply.

“(B) REQUIREMENTS FOR LIMITATION ON LIABILITY.—The following requirements shall apply on the enactment date and through the end of the period that expires 90 days after the license availability date to digital music providers seeking to avail themselves of the limitation 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 “(II) 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 proc-
16 ess 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 “(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
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 (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 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 royal-
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 (c)(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 crued 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 crued, 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 (c)(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 (c)(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 royal-
 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 “(II) the relative roles of the copy-
2 right owner and the transmitting entity in
3 the copyrighted work and the service made
4 available to the public with respect to rel-
5 ative creative contribution, technological
6 contribution, capital investment, cost, and
7 risk; and

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

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

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

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

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

7 (c) USE IN MUSICAL WORK PROCEEDINGS.—

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

21 (2) DEFINITIONS.—In this subsection:

22 (A) TRANSMISSION BY A BROADCASTER.—

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

1 or on the behalf of a terrestrial broadcast sta-
2 tion under common ownership or control, that
3 is not part of an interactive service or a music-
4 intensive service comprising the transmission of
5 sound recordings customized for or
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 redes-
18 ignated, 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 cable consent decree.”.

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

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

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

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

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

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

“Sec.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 “(d) RELATIONSHIP TO STATE LAW.—

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

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

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

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

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

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

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

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

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

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

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

12 “(e) LIMITATIONS ON REMEDIES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 “(C) SECTION 412.—Section 412 shall not
7 limit an award of statutory damages under sec-
8 tion 504(c) 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 ceipts from the licensing of transmissions in ac-
18 cordance with subsection (f) (in this paragraph
19 referred to as the ‘collective’) shall adopt and
20 reasonably implement a policy that provides, in
21 circumstances determined by the collective to be
22 appropriate, for the deduction of 2 percent of
23 all the receipts that are collected from the li-
24 censing of transmissions of a sound recording
25 fixed before November 1, 1995, but which is

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (2) in paragraph (3)—

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

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

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

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.

Passed the House of Representatives April 25, 2018.

Attest:

Clerk.

115TH CONGRESS
2^D SESSION

H. R. 5447

AN ACT

To modernize copyright law, and for other
purposes.