

Union Calendar No. 499

115TH CONGRESS
2D SESSION

H. R. 5447

[Report No. 115–651]

To modernize copyright law, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 10, 2018

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

APRIL 25, 2018

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

APRIL 25, 2018

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

A BILL

To modernize copyright law, and for other purposes.

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

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

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

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

Sec. 1. Short title; table of contents.

TITLE I—MUSIC LICENSING MODERNIZATION

Sec. 101. Short title.

Sec. 102. Blanket license for digital uses and mechanical licensing collective.

Sec. 103. Amendments to section 114.

Sec. 104. Random assignment of rate court proceedings.

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

Sec. 201. Short title.

Sec. 202. Unauthorized digital performance of pre-1972 sound recordings.

Sec. 203. Effective date.

TITLE III—ALLOCATION FOR MUSIC PRODUCERS

Sec. 301. Short title.

Sec. 302. Payment of statutory performance royalties.

Sec. 303. Effective date.

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

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

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

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

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

1 (1) in subsection (a)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 “(4) FAILURE TO OBTAIN LICENSE.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“(F) SCHEDULE OF REASONABLE RATES.—The schedule of reasonable rates and 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

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

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

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

23 “(2) ADDITIONAL TERMS AND CONDITIONS.—

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

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

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

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

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

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

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

21 “(C) INFRINGEMENT REMEDIES.—

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

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

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

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

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

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

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

11 “(E) RECORDING DEVICES AND MEDIA.—

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

24 “(F) PRESERVATION OF RIGHTS.—Noth-

25 ing in this section annuls or limits (i) the exclu-

sive right to publicly perform a sound recording or the musical work embodied therein, including by means of a digital transmission, under sections 106(4) and 106(6), (ii) except for compulsory licensing under the conditions specified by this section, the exclusive rights to reproduce and distribute the sound recording and the musical work embodied therein under sections 106(1) and 106(3), including by means of a digital phonorecord delivery, or (iii) any other rights under any other provision of section 106, or remedies available under this title, as such rights or remedies exist either before or after the date of enactment of the Digital Performance Right in Sound Recordings Act of 1995.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 “(2) AVAILABILITY OF BLANKET LICENSE.—

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

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

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

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

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

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

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

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

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

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

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

5 “(3) MECHANICAL LICENSING COLLECTIVE.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 “(C) AUTHORITIES AND FUNCTIONS.—

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

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

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

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

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

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

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

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

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

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

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

1 trative assessment under this sub-
2 section.

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

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

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

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

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

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

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

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

22 “(D) GOVERNANCE.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 “(E) MUSICAL WORKS DATABASE.—

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

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

1 “(I) the title of the musical work;

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

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

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

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

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

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

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

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

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

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

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

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

1 copyright owner, international
2 standard recording code, and
3 other information commonly used
4 to assist in associating sound re-
5 cordings with musical works; and
6 “(ee) any additional infor-
7 mation reported to the mechan-
8 ical licensing collective that may
9 assist in identifying the work;
10 and

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

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

ings in which that copyright owner’s musical works (or shares thereof) are embodied, to the extent practicable.

“(v) ACCESSIBILITY OF DATABASE.—

The musical works database shall be made available to members of the public in a searchable, online format, free of charge. The mechanical licensing collective shall make such database available in a bulk, machine-readable format, through a widely available software application, to the following entities:

“(I) Digital music providers operating under the authority of valid notices of license, free of charge.

“(II) Significant nonblanket licensees in compliance with their obligations under paragraph (6), free of charge.

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

“(IV) The Register of Copyrights, free of charge (but the Register shall not treat such database or

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

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

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

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

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

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

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

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

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

16 “(I) engage in efforts to—

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

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

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

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

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

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

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

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

1 “(ii) OTHER COLLECTION EFFORTS.—

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

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

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

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

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

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

tive in order to receive payment of accrued royalties. When a copyright owner of an unmatched work (or share of a work) has been identified and located in accordance with the procedures of the mechanical licensing collective, the collective shall—

“(i) update the musical works database and its other records accordingly; and

“(ii) provided that accrued royalties for the musical work (or share thereof) have not yet been included in a distribution pursuant to subparagraph (J)(i), pay such accrued royalties and a proportionate amount of accrued interest associated with that work (or share thereof) to the copyright owner, accompanied by a cumulative statement of account reflecting usage of such work and accrued royalties based on information provided by digital music providers to the mechanical licensing collective.

“(J) DISTRIBUTION OF UNCLAIMED ACCRUED ROYALTIES.—

“(i) DISTRIBUTION PROCEDURES.—

After the expiration of the prescribed hold-

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

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

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

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

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

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

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

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

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

1 “(iv) SONGWRITER PAYMENTS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 edies provided by sections 502
2 through 506.

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

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

18 “(5) DIGITAL LICENSEE COORDINATOR.—

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

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

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

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

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

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

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

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

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

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

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

6 “(C) AUTHORITIES AND FUNCTIONS.—

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

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

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

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

1 trative assessment under this sub-
2 section.

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

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

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

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

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

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

25 “(A) IN GENERAL.—

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

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

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

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

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

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

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

19 “(C) LEGAL ENFORCEMENT EFFORTS.—

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

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

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

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

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

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

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

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

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

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

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

24 “(B) VOLUNTARY CONTRIBUTIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

lishing the initial administrative assessment shall be as follows:

“(I) The Copyright Royalty Judges shall commence a proceeding to establish the initial administrative assessment within 9 months after the enactment date by publishing a notice in the Federal Register seeking petitions to participate.

“(II) The mechanical licensing collective and digital licensee coordinator shall participate in such proceeding, along with any interested copyright owners, digital music providers or significant nonblanket licensees that have notified the Copyright Royalty Judges of their desire to participate.

“(III) The Copyright Royalty Judges shall establish a schedule for submission by the parties of information that may be relevant to establishing the administrative assessment, including actual and anticipated collective total costs of the mechanical li-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 censing collective may be entitled under
2 this title.

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

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

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

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

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

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

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

18 “(9) TRANSITION TO BLANKET LICENSES.—

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

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

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

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

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

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

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

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

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

3 “(10) PRIOR UNLICENSED USES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“(bb) beginning with the monthly royalty reporting period commencing on the license availability date, report usage and pay royalties for such musical work (or share thereof) for such period and reporting periods thereafter to the mechanical licensing collective, as required under this subsection and applicable regulations.

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

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

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

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

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

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

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

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

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

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

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

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

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

tion, or concert with any other digital music provider.

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

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

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

9 “(12) REGULATIONS.—

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

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

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

14 “(13) SAVINGS CLAUSES.—

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

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

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

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

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

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

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

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

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

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

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

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

14 “(i) startup costs;

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

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

20 “(iv) outside vendor costs;

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

23 “(vi) costs of bad debt; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 “(iii) either—

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

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

13 “(B) does not include—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (c) USE IN MUSICAL WORK PROCEEDINGS.—

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

21 (2) DEFINITIONS.—In this subsection:

22 (A) TRANSMISSION BY A BROADCASTER.—

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

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

7 (B) TERRESTRIAL BROADCAST STATION.—

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

21 (d) RULE OF CONSTRUCTION.—Subsection (c)(2)

22 shall not be given effect in interpreting provisions of title
23 17, United States Code.

24 (e) USE IN SOUND RECORDING PROCEEDINGS.—The

25 repeal of section 114(i) of title 17, United States Code,

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

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

14 (g) TECHNICAL AND CONFORMING AMENDMENTS.—

15 (1) SECTION 114.—Section 114(f) of title 17,
16 United States Code, as amended by subsection (a),
17 is further amended in paragraph (4)(C), as so 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; and
 21 (3) in paragraph (4)—

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

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

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

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

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

Union Calendar No. 499

115TH CONGRESS
2D Session

H. R. 5447

[Report No. 115-651]

A BILL

To modernize copyright law, and for other
purposes.

APRIL 25, 2018

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