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Old File:

Music Modernization Act.pdf

109 pages (242 KB)

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versus

New File:

Draft MMA music bill 032218.pdf

151 pages (325 KB)

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Total Changes

603

Text only comparison

Content

491 Replacements
80 Insertions
32 Deletions

Styling and Annotations

0 Styling
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[Go to First Change \(page 1\)](#)

.....
(Original Signature of Member)

115TH CONGRESS
2D SESSION

H. R. _____

To modernize copyright law, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the
Committee on _____

A BILL

To modernize copyright law, and for other purposes.

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

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

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

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

Sec. 1. Short title; table of contents.

TITLE I—MUSIC LICENSING MODERNIZATION

Sec. 101. Short title.

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

Sec. 103. Amendments to section 114.

Sec. 104. Random Assignment of Rate Court Proceedings.

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

Sec. 201. Short title.

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

Sec. 203. Effective date.

TITLE III—ALLOCATION FOR MUSIC PRODUCERS

Sec. 301. Short title.

Sec. 302. Payment of statutory performance royalties.

Sec. 303. Effective date.

1 TITLE I—MUSIC LICENSING
2 MODERNIZATION

3 SEC. 101. SHORT TITLE.

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

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

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

10 (1) in subsection (a)—

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

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

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

18 “(A) CONDITIONS FOR COMPULSORY LI-
19 CENSE.—A person may by complying with the

provisions of this section obtain a compulsory license to make and distribute phonorecords of a nondramatic musical work, including by means of digital phonorecord delivery. A person may obtain a compulsory license only if the primary purpose in making phonorecords of the musical work is to distribute them to the public for private use, including by means of digital phonorecord delivery, and—

“(i) phonorecords of such musical work have previously been distributed to the public in the United States under the authority of the copyright owner of the work, including by means of digital phonorecord delivery; or

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

“(I) the first fixation of such sound recording was made under the authority of the musical work copyright owner, and sound recording

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

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

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

20 “(i) such sound recording was fixed
21 lawfully; and

22 “(ii) the making of the phonorecords
23 was authorized by the owner of the copy-
24 right in the sound recording or, if the
25 sound recording was fixed before February

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

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

12 “(b) PROCEDURES TO OBTAIN A COMPULSORY LI-
13 CENSE.—

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

1 notice of intention with the Copyright Office. The
2 notice shall comply, in form, content, and manner of
3 service, with requirements that the Register of Copy-
4 rights shall prescribe by regulation.

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

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

21 “(B) on or after the license availability
22 date, shall, before making any such digital pho-
23 norecord delivery, follow the procedure de-
24 scribed in subsection (d)(2), except as provided
25 in paragraph (3).

1 “(3) RECORD COMPANY INDIVIDUAL DOWNLOAD
2 LICENSES.—Notwithstanding paragraph (2)(B), a
3 record company may, on or after the license avail-
4 ability date, obtain an individual download license in
5 accordance with the notice requirements described in
6 paragraph (2)(A) (but does not include the require-
7 ment that notice occur prior to the license avail-
8 ability date). A record company that obtains an indi-
9 vidual download license as permitted under this
10 paragraph shall provide statements of account and
11 pay royalties as provided in subsection (c)(2)(I).

12 “(4) FAILURE TO OBTAIN LICENSE.—

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

1 “(B) DIGITAL PHONORECORD DELIV-
2 ERIES.—In the case of phonorecords made and
3 distributed by means of digital phonorecord de-
4 livery prior to the license availability date, the
5 failure to serve the notice of intention required
6 by paragraph (2)(A) forecloses the possibility of
7 a compulsory license under such paragraph. In
8 the case of phonorecords made and distributed
9 by means of digital phonorecord delivery on or
10 after the license availability date, the failure to
11 comply with paragraph (2)(B), or, if applicable,
12 paragraph (3), forecloses the possibility of a
13 compulsory license under subsection (a). In ei-
14 ther case, in the absence of a voluntary license,
15 the failure to obtain a compulsory license ren-
16 ders the making and distribution of
17 phonorecords by means of digital phonorecord
18 delivery actionable as acts of infringement
19 under section 501 and subject to the remedies
20 provided by sections 502 through 506.”;
21 (3) by amending subsection (c) to read as fol-

22 lows:

23 “(c) GENERAL CONDITIONS APPLICABLE TO COM-
24 PULSORY LICENSE.—

1 “(1) ROYALTY PAYABLE UNDER COMPULSORY
2 LICENSE.—

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

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

1 cense has voluntarily and permanently parted
2 with its possession.



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



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

1 and paragraph (2)(A) and chapter 8 of this
2 title shall next be determined.

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

21 “(F) SCHEDULE OF REASONABLE
22 RATES.—The schedule of reasonable rates and
23 terms determined by the Copyright Royalty
24 Judges shall, subject to paragraph (2)(A), be
25 binding on all copyright owners of nondramatic

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

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

23 “(ii) the relative roles of the copyright
24 owner and the compulsory licensee in the
25 copyrighted work and the service made

1 available to the public with respect to the
2 relative creative contribution, technological
3 contribution, capital investment, cost, and
4 risk.

5 “(2) ADDITIONAL TERMS AND CONDITIONS.—

6 “(A) VOLUNTARY LICENSES AND CON-
7 TRACTUAL ROYALTY RATES.—

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

1 mits another person to grant a license in
2 that musical work under paragraphs (1)
3 and (3) of section 106, to a person desir-
4 ing to fix in a tangible medium of expres-
5 sion a sound recording embodying the mu-
6 sical work.

7 “(ii) The second sentence of clause (i)
8 shall not apply to—

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

1 and (F) of paragraph (1) for the
2 number of musical works within the
3 scope of the contract as of June 22,
4 1995; and

5 “(II) a contract entered into
6 after the date that the sound record-
7 ing is fixed in a tangible medium of
8 expression substantially in a form in-
9 tended for commercial release, if at
10 the time the contract is entered into,
11 the recording artist retains the right
12 to grant licenses as to the musical
13 work under paragraphs (1) and (3) of
14 section 106.

15 “(B) SOUND RECORDING INFORMATION.—
16 Except as provided in section 1002(e) of this
17 title, a digital phonorecord delivery licensed
18 under this paragraph shall be accompanied by
19 the information encoded in the sound recording,
20 if any, by or under the authority of the copy-
21 right owner of that sound recording, that iden-
22 tifies the title of the sound recording, the fea-
23 tured recording artist who performs on the
24 sound recording, and related information, in-

1 cluding information concerning the underlying
2 musical work and its writer.

3 “(C) INFRINGEMENT REMEDIES.—

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

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

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

23 “(ii) Any cause of action under this
24 subparagraph shall be in addition to those
25 available to the owner of the copyright in

1 the nondramatic musical work under sub-
2 paragraph (J) and section 106(4) and the
3 owner of the copyright in the sound record-
4 ing under section 106(6).

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

17 “(E) RECORDING DEVICES AND MEDIA.—
18 Nothing in section 1008 shall be construed to
19 prevent the exercise of the rights and remedies
20 allowed by this paragraph, subparagraph (J),
21 and chapter 5 in the event of a digital phono-
22 record delivery, except that no action alleging
23 infringement of copyright may be brought
24 under this title against a manufacturer, im-
25 porter or distributor of a digital audio recording

1 device, a digital audio recording medium, an
2 analog recording device, or an analog recording
3 medium, or against a consumer, based on the
4 actions described in such section.

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

22 “(G) EXEMPT TRANSMISSIONS AND RE-
23 TRANSMISSIONS.—The provisions of this section
24 concerning digital phonorecord deliveries shall
25 not apply to any exempt transmissions or re-

1 transmissions under section 114(d)(1). The ex-
2 emptions created in section 114(d)(1) do not
3 expand or reduce the rights of copyright owners
4 under section 106(1) through (5) with respect
5 to such transmissions and retransmissions.

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

1 The Register of Copyrights shall issue regula-
2 tions to carry out the purpose of this clause.

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

22 “(J) NOTICE OF DEFAULT AND TERMI-
23 NATION OF COMPULSORY LICENSE.—In the
24 case of a license obtained under subsection
25 (b)(1), (b)(2)(A), or (b)(3), if the copyright

1 owner does not receive the monthly payment
2 and the monthly and annual statements of ac-
3 count when due, the owner may give written no-
4 tice to the licensee that, unless the default is
5 remedied within thirty days from the date of
6 the notice, the compulsory license will be auto-
7 matically terminated. Such termination renders
8 either the making or the distribution, or both,
9 of all phonorecords for which the royalty has
10 not been paid, actionable as acts of infringe-
11 ment under section 501 and fully subject to the
12 remedies provided by sections 502 through 506.
13 In the case of a license obtained under sub-
14 section (b)(2)(B), license authority under the
15 compulsory license may be terminated as pro-
16 vided in subsection (d)(4)(E).”.

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

19 “(d) BLANKET LICENSE FOR DIGITAL USES, ME-
20 CHANICAL LICENSING COLLECTIVE, AND DIGITAL LI-
21 CENSEE COORDINATOR.—

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

23 “(A) IN GENERAL.—A digital music pro-
24 vider that qualifies for a compulsory license
25 under subsection (a) may, by complying with

1 the terms and conditions of this subsection, ob-
2 tain a blanket license from copyright owners
3 through the mechanical licensing collective to
4 make and distribute digital phonorecord deliv-
5 eries of musical works through one or more cov-
6 ered activities.

7 “(B) INCLUDED ACTIVITIES.—A blanket li-
8 cense—

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

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

22 “(iii) does not cover or include any
23 rights or uses other than those described
24 in clauses (i) and (ii).

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

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

21 “(ii) An entity engaged in covered ac-
22 tivities under a voluntary license or author-
23 ity obtained pursuant to an individual
24 download license that is a significant non-

1 blanket licensee shall comply with para-
2 graph (6)(A).

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

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

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

25 “(2) AVAILABILITY OF BLANKET LICENSE.—

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

8 “(i) The notice of license shall comply
9 in form and substance with requirements
10 that the Register of Copyrights shall estab-
11 lish by regulation.

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

19 “(iii) A notice of license may only be
20 rejected by the mechanical licensing collec-
21 tive if—

22 “(I) the digital music provider or
23 notice of license does not meet the re-
24 quirements of this section or applica-
25 ble regulations, in which case the re-

1 quirements at issue shall be specified
2 with reasonable particularity in the
3 notice of rejection, or

4 “(II) the digital music provider
5 has had a blanket license terminated
6 by the mechanical licensing collective
7 within the past 3 years pursuant to
8 paragraph (4)(E).

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

21 “(B) BLANKET LICENSE EFFECTIVE
22 DATE.—Blanket licenses shall be made available
23 by the mechanical licensing collective on and
24 after the license availability date. No such li-

1 cense shall be effective prior to the license avail-
2 ability date.

3 “(3) MECHANICAL LICENSING COLLECTIVE.—

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

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

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

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

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

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

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

1 after the date of publication of such
2 notice, as specified by the Register.

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

11 “(C) AUTHORITIES AND FUNCTIONS.—

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

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

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

24 “(III) Engage in efforts to iden-
25 tify musical works (and shares of such

1 works) embodied in particular sound
2 recordings, and to identify and locate
3 the copyright^{*} owners of such musical
4 works (and shares of such works).

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

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

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

22 “(VII) Invest in relevant re-
23 sources, and arrange for services of
24 outside vendors and others, to support
25 its activities.

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

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

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

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

21 “(XII) Maintain records of its
22 activities and engage in and respond
23 to audits described under this sub-
24 section.

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

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

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

1 signee or grantee of the right of public per-
2 formance in musical works.

3 “(iv) RESTRICTION ON LOBBYING.—

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

9 “(D) GOVERNANCE.—

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

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

24 “(II) Four voting members shall
25 be professional songwriters who have

1 retained and exercise exclusive rights
2 of reproduction and distribution with
3 respect to covered activities with re-
4 spect to musical works they have au-
5 thored.

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

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

1 measured over the preceding 3 full
2 calendar years.

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

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

14 “(iii) OPERATIONS ADVISORY COM-
15 MITTEE.—The board of directors of the
16 mechanical licensing collective shall estab-
17 lish an operations advisory committee con-
18 sisting of no fewer than 6 members to
19 make recommendations to the board of di-
20 rectors concerning the operations of the
21 mechanical licensing collective, including
22 the efficient investment in and deployment
23 of information technology and data re-
24 sources. Such committee shall have an

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

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

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

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

19 “(v) DISPUTE RESOLUTION COM-
20 MITTEE.—The board of directors of the
21 mechanical licensing collective shall estab-
22 lish and appoint a dispute resolution com-
23 mittee consisting of no fewer than 6 mem-
24 bers, which committee shall include an
25 equal number of representatives of musical

1 work copyright owners and professional
2 songwriters.

3 “(E) MUSICAL WORKS DATABASE.—

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

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

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

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

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

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

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

12 “(bb) identifying informa-
13 tion for sound recordings in
14 which the musical work is em-
15 bodied, including the name of the
16 sound recording, featured artist,
17 producer, international standard
18 recording code, and other infor-
19 mation commonly used to assist
20 in associating sound recordings
21 with musical works; and

22 “(V) such other information as
23 the Register of Copyrights may pre-
24 scribe by regulation.

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

5 “(I) to the extent reasonably
6 available to the mechanical licensing
7 collective—

8 “(aa) the title of the musical
9 work;

10 “(bb) the ownership percent-
11 age for which an owner has not
12 been identified;

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

18 “(dd) identifying informa-
19 tion for sound recordings in
20 which the work is embodied, in-
21 cluding sound recording name,
22 featured artist, producer, inter-
23 national standard recording code,
24 and other information commonly
25 used to assist in associating

1 sound recordings with musical
2 works; and

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

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

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

1 “(v) ACCESSIBILITY OF DATABASE.—

2 The musical works database shall be made

3 available to members of the public in a

4 searchable, online format, free of charge.

5 The mechanical licensing collective shall

6 make such database available in a bulk,

7 machine-readable format, through a widely

8 available software application, to the fol-

9 lowing entities:

10 “(I) Digital music providers oper-

11 ating under the authority of valid no-

12 tices of license, free of charge.

13 “(II) Significant nonblanket li-

14 censees in compliance with their obli-

15 gations under paragraph (6), free of

16 charge.

17 “(III) Authorized vendors of the

18 entities described in subclauses (I)

19 and (II), free of charge.

20 “(IV) The Register of Copy-

21 rights, free of charge (but the Reg-

22 ister shall not be treat such database

23 or any information therein as a Gov-

24 ernment record).

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

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

11 “(F) NOTICES OF LICENSE AND NON-
12 BLANKET ACTIVITY.—

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

22 “(ii) NOTICES OF NONBLANKET AC-
23 TIVITY.—The mechanical licensing collec-
24 tive shall receive notices of nonblanket ac-
25 tivity from significant nonblanket licensees,

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

7 “(G) COLLECTION AND DISTRIBUTION OF
8 ROYALTIES.—

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

14 “(I) engage in efforts to—

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

21 “(bb) confirm uses of musi-
22 cal works subject to voluntary li-
23 censes and individual download
24 licenses, and the corresponding
25 pro rata amounts to be deducted

1 from royalties that would other-
2 wise be due under the blanket li-
3 cense; and

4 “(cc) confirm proper pay-
5 ment of royalties due;

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

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

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

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

24 “(ii) OTHER COLLECTION EFFORTS.—

25 Any royalties recovered by the mechanical

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

15 “(H) HOLDING OF ACCRUED ROYAL-
16 TIES.—

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

1 provider that subsequently transferred
2 such funds to the mechanical licensing col-
3 lective pursuant to paragraph (10)(B),
4 whichever period expires sooner.

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

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

1 matched work (or share of a work) has been
2 identified and located in accordance with the
3 procedures of the mechanical licensing collec-
4 tive, the collective shall—

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

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

20 “(J) DISTRIBUTION OF UNCLAIMED AC-
21 CRUED ROYALTIES.—

22 “(i) DISTRIBUTION PROCEDURES.—
23 After the expiration of the prescribed hold-
24 ing period for accrued royalties provided in
25 paragraph (H)(i), the mechanical licensing

1 collective shall distribute such accrued roy-
2 alties, along with a proportionate share of
3 accrued interest, to copyright owners iden-
4 tified in the records of the collective, sub-
5 ject to the following requirements, and in
6 accordance with the policies and proce-
7 dures established under clause (ii):

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

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

1 to the mechanical licensing collective,
2 royalty payments made to copyright
3 owners under voluntary licenses and
4 individual download licenses for cov-
5 ered activities, to the extent such in-
6 formation is available to the mechan-
7 ical licensing collective. In furtherance
8 of the determination of equitable mar-
9 ket shares under this subparagraph—
10 “(aa) the mechanical licens-
11 ing collective may require copy-
12 right owners seeking distribu-
13 tions of unclaimed accrued royal-
14 ties to provide, or direct the pro-
15 vision of, information concerning
16 royalties received under voluntary
17 licenses and individual download
18 licenses for covered activities, and
19 “(bb) the mechanical licens-
20 ing collective shall take appro-
21 priate steps to safeguard the con-
22 fidentiality and security of finan-
23 cial and other sensitive data used
24 to compute market shares in ac-
25 cordance with the confidentiality

1 provisions prescribed by the Reg-
2 ister of Copyrights under para-
3 graph (12)(C).

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

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

23 “(iv) SONGWRITER PAYMENTS.—
24 Copyright owners that receive a distribu-
25 tion of unclaimed accrued royalties and ac-

1 crued interest shall pay or credit a portion
2 to songwriters (or the authorized agents of
3 songwriters) on whose behalf the copyright
4 owners license or administer musical works
5 for covered activities, in accordance with
6 applicable contractual terms, but notwith-
7 standing any agreement to the contrary—

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

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

22 “(K) DISPUTE RESOLUTION.—The dispute
23 resolution committee established under para-
24 graph (3)(D)(v) shall address and resolve in a
25 timely and equitable manner disputes among

1 copyright owners relating to ownership interests
2 in musical works licensed under this section and
3 allocation and distribution of royalties by the
4 mechanical licensing collective, according to a
5 process approved by the board of directors of
6 the mechanical licensing collective. Such proc-
7 ess—

8 “(i) shall include a mechanism to hold
9 disputed funds in accordance with the re-
10 quirements described in subparagraph
11 (H)(ii) pending resolution of the dispute;
12 and

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

19 “(L) VERIFICATION OF PAYMENTS BY ME-
20 CHANICAL LICENSING COLLECTIVE.—

21 “(i) VERIFICATION PROCESS.—A
22 copyright owner entitled to receive pay-
23 ments of royalties for covered activities
24 from the mechanical licensing collective
25 may, individually or with other copyright

1 owners, conduct an audit of the mechanical
2 licensing collective to verify the accuracy of
3 royalty payments by the mechanical licens-
4 ing collective to such copyright owner, as
5 follows:

6 “(I) A copyright owner may
7 audit the mechanical licensing collec-
8 tive only once in a year for any or all
9 of the prior 3 calendar years, and may
10 not audit records for any calendar
11 year more than once.

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

23 “(III) The mechanical licensing
24 collective shall make such books,
25 records, and data available to the

1 qualified auditor^x and respond to rea-
2 sonable requests for relevant informa-
3 tion, and shall use commercially rea-
4 sonable efforts to facilitate access to
5 relevant information maintained by
6 third parties.

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

19 “(V) The qualified auditor shall
20 determine the accuracy of royalty pay-
21 ments, including whether an under-
22 payment or overpayment of royalties
23 was made by the mechanical licensing
24 collective to each auditing copyright
25 owner, but before providing a final

1 audit report to any such copyright
2 owner, the qualified auditor shall pro-
3 vide a tentative draft of the report to
4 the mechanical licensing collective and
5 allow the mechanical licensing collec-
6 tive a reasonable opportunity to re-
7 spond to the findings, including by
8 clarifying issues and correcting factual
9 errors.

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

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

10 “(M) RECORDS OF MECHANICAL LICENS-
11 ING COLLECTIVE.—

12 “(i) RECORDS MAINTENANCE.—The
13 mechanical licensing collective shall ensure
14 that all material records of its operations,
15 including those relating to notices of li-
16 cense, the administration of its claims
17 process, reports of usage, royalty pay-
18 ments, receipt and maintenance of accrued
19 royalties, royalty distribution processes,
20 and legal matters, are preserved and main-
21 tained in a secure and reliable manner,
22 with appropriate commercially reasonable
23 safeguards against unauthorized access,
24 copying, and disclosure, and subject to the
25 confidentiality requirements prescribed by

1 the Register of Copyrights under para-
2 graph (12)(C) for a period of no less than
3 7 years after the date of creation or re-
4 ceipt, whichever occurs later.

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

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

15 “(A) ROYALTY REPORTING AND PAY-
16 MENTS.—

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

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

11 “(I) with respect to each sound
12 recording embodying a musical
13 work—


14 “(aa) provide identifying in-
15 formation for the sound record-
16 ing, including sound recording
17 name, featured artist, and, to the
18 extent reasonably available to the
19 digital music provider, producer,
20 international standard recording
21 code, and other information com-
22 monly used in the industry to
23 identify sound recordings and
24 match them to the musical works
25 the sound recordings embody;

1 “(bb) to the extent reason-
2 ably available to the digital music
3 provider, provide information
4 concerning authorship and own-
5 ership of the applicable rights in
6 the musical work embodied in the
7 sound recording (including each
8 songwriter, publisher name, and
9 respective ownership share) and
10 the international standard musi-
11 cal work code; and
12 “(cc) provide the number of
13 digital phonorecord deliveries of
14 the sound recording, including
15 limited downloads and interactive
16 streams;
17 “(II) identify and provide contact
18 information for all musical work copy-
19 right owners for works embodied in
20 sound recordings as to which a vol-
21 untary license, rather than the blan-
22 ket license, is in effect with respect to
23 the uses being reported; and

1 “(III) provide such other infor-
2 mation as the Register of Copyrights
3 shall require by regulation.

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

19 “(iv) ADOPTION OF REGULATIONS.—
20 The Register shall adopt regulations—

21 “(I) setting forth requirements
22 under which records of use shall be
23 maintained and made available to the
24  mechanical licensing collective by dig-
25 ital music providers engaged in cov-

1 ered activities under a blanket license;
2 and

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

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

14 “(i) producers, international standard
15 recording codes, and other information
16 commonly used in the industry to identify
17 sound recordings and match them to the
18 musical works the sound recordings em-
19 body; and

20 “(ii) information concerning the au-
21 thorship and ownership of musical works,
22 including songwriters, publisher names,
23 ownership shares, and international stand-
24 ard musical work codes.

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

7 “(D) VERIFICATION OF PAYMENTS BY DIG-
8 ITAL MUSIC PROVIDERS.—

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

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

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

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

21 “(IV) To commence the audit,
22 the mechanical licensing collective
23 shall file with the Copyright Office a
24 notice of intent to conduct an audit of
25 the digital music provider, identifying

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

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

23 “(VI) The mechanical licensing
24 collective shall pay the cost of the
25 audit, unless the qualified auditor de-

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

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


23 “(ii) ALTERNATIVE VERIFICATION
24 PROCEDURES.—Nothing in this subpara-
25 graph shall preclude the mechanical licens-

1 ing collective and a digital music provider
2 from agreeing to audit procedures different
3 from those described herein, but a notice
4 of the audit shall be provided to and pub-
5 lished by the Copyright Office as described
6 in clause (i)(IV).

7 “(E) DEFAULT UNDER BLANKET LI-
8 CENSE.—

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

13 “(I) fails to provide one or more
14 monthly reports of usage to the me-
15 chanical licensing collective when due;
16 “(II) fails to make a monthly
17 royalty or late fee payment to the me-
18 chanical licensing collective when due,
19 in all or material part;

20 “(III) provides one or more
21 monthly reports of usage to the me-
22 chanical licensing collective that, on
23 the whole, is or are materially defi-
24 cient as a result of inaccurate, miss-
25 ing, or unreadable data, where the 

1 correct data was available to the dig-
2 ital music provider and required to be
3 reported under this section and appli-
4 cable regulations;

5 “(IV) fails to pay the administra-
6 tive assessment as required under this
7 subsection and applicable regulations;
8 or

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

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

22 “(I) The mechanical licensing
23 collective shall provide written notice
24 to the digital music provider describ-
25 ing with reasonable particularity the

1 default and advising that unless such
2 default is cured within 60 calendar
3 days after the date of the notice, the
4 blanket license will automatically ter-
5minate at the end of that period.

6 “(II) If the digital music provider
7 fails to remedy the default within the
8 60-day period referenced in subclause
9 (I), the license shall terminate without
10 any further action on the part of the
11 mechanical licensing collective. Such
12 termination renders the making of all
13 digital phonorecord deliveries of all
14 musical works (and shares thereof)
15 covered by the blanket license for
16 which the royalty or administrative
17 assessment has not been paid action-
18able as acts of infringement under
19 section 501 and subject to the rem-
20edies provided by sections 502
21through 506.

22 “(iii) NOTICE TO COPYRIGHT OWN-
23ERS.—The mechanical licensing collective
24 shall provide written notice of any termi-

1 nation under this subparagraph to copy-
2 right owners of affected works.

3 “(5) DIGITAL LICENSEE COORDINATOR.—

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

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

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

17 “(iii) is able to demonstrate that it
18 has, or will have prior to the license avail-
19 ability date, the administrative capabilities
20 to perform the required functions of the
21 digital licensee coordinator under this sub-
22 section; and

23 “(iv) has been designated by the Reg-
24 ister of Copyrights in accordance with sub-
25 paragraph (B).

1 “(B) DESIGNATION OF DIGITAL LICENSEE
2 COORDINATOR.—

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

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

23 “(iii) INABILITY TO DESIGNATE.—If
24 the Register is unable to identify an entity
25 that fulfills each of the qualifications de-

1 scribed in clauses (i) through (iii) of sub-
2 paragraph (A) to serve as the digital li-
3 censee coordinator, the Register may de-
4 cline to designate a digital licensee coordi-
5 nator. The Register's determination not to
6 designate a digital licensee coordinator
7 shall not negate or otherwise affect any
8 provision of this subsection except to the
9 limited extent that a provision references
10 the digital licensee coordinator. In such
11 case, the reference to the digital licensee
12 coordinator shall be without effect unless
13 and until a new digital licensee coordinator
14 is designated.

15 “(C) AUTHORITIES AND FUNCTIONS.—

16 “(i) IN GENERAL.—The digital li-
17 censee coordinator is authorized to perform
18 the following functions, subject to more
19 particular requirements as described in
20 this subsection:

21 “(I) Establish a governance
22 structure, criteria for membership,
23 and any dues to be paid by its mem-
24 bers.

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

7 “(III) Initiate and participate in
8 proceedings before the Copyright Roy-
9 alty Judges to establish the adminis-
10 trative assessment under this sub-
11 section.

12 “(IV) Initiate and participate in
13 proceedings before the Copyright Of-
14 fice with respect to activities under
15 this subsection.

16 “(V) Gather and provide docu-
17 mentation for use in proceedings be-
18 fore the Copyright Royalty Judges to
19 set rates and terms under this section.

20 “(VI) Maintain records of its ac-
21 tivities.

22 “(VII) Engage in such other ac-
23 tivities as may be necessary or appro-
24 priate to fulfill its responsibilities
25 under this subsection.

1 “(ii) RESTRICTION ON LOBBYING.—

2 The digital licensee coordinator may not
3 engage in government lobbying activities,
4 but may engage in the activities described
5 in subclauses (III), (IV), and (V) of clause
6 (i).

7 “(6) REQUIREMENTS FOR SIGNIFICANT NON-
8 BLANKET LICENSEES.—

9 “(A) IN GENERAL.—

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

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

19 “(iii) DISCONTINUATION OF OBLIGA-
20 TIONS.—An entity that has submitted a
21 notice of nonblanket activity to the me-
22 chanical licensing collective that has ceased
23 to qualify as a significant nonblanket li-
24 censee may so notify the collective in writ-
25 ing. In such case, as of the calendar month

1 in which such notice is provided, such enti-
2 ty shall no longer be required to provide
3 reports of usage or pay the administrative
4 assessment, but if such entity later quali-
5 fies as a significant nonblanket licensee,
6 such entity shall again be required to com-
7 ply with clauses (i) and (ii).

8 “(B) REPORTING BY MECHANICAL LICENS-
9 ING COLLECTIVE TO DIGITAL LICENSEE COOR-
10 DINATOR.—

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

19 “(ii) TREATMENT OF CONFIDENTIAL
20 INFORMATION.—The mechanical licensing
21 collective and digital licensee coordinator
22 shall take appropriate steps to safeguard
23 the confidentiality and security of financial
24 and other sensitive data shared under this
25 subparagraph, in accordance with the con-

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

4 “(C) LEGAL ENFORCEMENT EFFORTS.—

5 “(i) FEDERAL COURT ACTION.—

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

1 lective as an offset to the collective total
2 costs.

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

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

16 “(7) FUNDING OF MECHANICAL LICENSING
17 COLLECTIVE.—

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

20 “(i) an administrative assessment, as
21 such assessment is established by the
22 Copyright Royalty Judges pursuant to sub-
23 paragraph (D) from time to time, to be
24 paid by—

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

5 “(II) significant nonblanket li-
6 censees; and

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

11 “(B) VOLUNTARY CONTRIBUTIONS.—

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

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

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

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

23 “(C) INTERIM APPLICATION OF ACCRUED
24 ROYALTIES.—In the event that the administra-
25 tive assessment, together with any funding from

1 voluntary contributions as provided in subpara-
2 graphs (A) and (B), is inadequate to cover cur-
3 rent collective total costs, the collective, with
4 approval of its board of directors, may apply
5 unclaimed accrued royalties on an interim basis
6 to defray such costs, subject to future reim-
7 bursement of such royalties from future collec-
8 tions of the assessment.

9 “(D) DETERMINATION OF ADMINISTRA-
10 TIVE ASSESSMENT.—

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

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

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

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

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

17 “(IV) may be in the form of a
18 percentage of royalties payable under
19 this section for usage of musical
20 works in covered activities (regardless
21 of whether a different rate applies
22 under a voluntary license), or any
23 other usage-based metric reasonably
24 calculated to equitably allocate the
25 collective total costs across digital

1 music providers and significant non-
2 blanket licensees engaged in covered
3 activities, but shall include as a com-
4 ponent a minimum fee for all digital
5 music providers and significant non-
6 blanket licensees; and

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

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

20 “(bb) any past collections of
21 the administrative assessment
22 and voluntary contributions that
23 exceeded past actual collective
24 total costs, resulting in a surplus;
25 and ❖

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

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

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

19 “(II) The mechanical licensing
20 collective and digital licensee coordi-
21 nator shall participate in such pro-
22 ceeding, along with any interested
23 copyright owners, digital music pro-
24 viders or significant nonblanket licens-
25 ees that have notified the Copyright

1 Royalty Judges of their desire to par-
2 ticipate.

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

18 “(IV) The initial administrative
19 assessment shall be determined, and
20 such determination shall be published
21 in the Federal Register by the Copy-
22 right Royalty Judges, within 1 year
23 after commencement of the proceeding
24 described in this clause. The deter-
25 mination shall be supported by a writ-

1 ten record. The initial administrative
2 assessment shall be effective as of the
3 license availability date, and shall con-
4 tinue in effect unless and until an ad-
5 justed administrative assessment is
6 established pursuant to an adjustment
7 proceeding under clause (iii).

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

13 “(I) No earlier than one year
14 after the most recent publication of a
15 determination of the administrative
16 assessment by the Copyright Royalty
17 Judges, the mechanical licensing col-
18 lective, the digital licensee coordi-
19 nator, or one or more interested copy-
20 right owner, digital music provider, or
21 significant nonblanket licensee, may
22 file a petition with the Copyright Roy-
23 alty Judges in the month of October
24 to commence a proceeding to adjust
25 the administrative assessment.

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

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

1 effect January 1 of the year following
2 such publication.

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

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

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

1 other measures within 3 months after any
2 modification of the assessment to reflect
3 and account for such outcome.

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

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

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


21 “(B) APPLICATION OF LATE FEES.—In
22 any proceeding described in subparagraph (A)
23 in which the Copyright Royalty Judges estab-
24 lish a late fee for late payment of royalties for
25 uses of musical works under this section, such

1 fee shall apply to covered activities under blan-
2 ket licenses, as follows:

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

7 “(ii) The availability of late fees shall
8 in no way prevent a copyright owner or the
9 mechanical licensing collective from assert-
10 ing any other rights or remedies to which
11 such copyright owner or the mechanical li-
12 censing collective may be entitled under
13 this title.

14 “(C) INTERIM RATE AGREEMENTS IN GEN-
15 ERAL.—For any covered activity for which no
16 rate or terms have been established by the
17 Copyright Royalty Judges, the mechanical li-
18 censing collective and any digital music provider
19 may agree to an interim rate and terms for
20 such activity under the blanket license, and any
21 such rate and terms—

22 “(i) shall be treated as nonpreceden-
23 tial and not cited or relied upon in any
24 ratesetting proceeding before the Copyright
25 Royalty Judges or any other tribunal; and 

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

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

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

23 “(ii) if the interim rate exceeds the
24 rate established by the Copyright Royalty
25 Judges, the mechanical licensing collective

1 shall credit the account of the digital music
2 provider for the amount of any overpay-
3 ment of royalties due.

4 “(9) TRANSITION TO BLANKET LICENSES.—

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

23 “(B) EXPIRATION OF EXISTING LI-
24 CENSES.—Except to the extent provided in sub-
25 paragraph (A), on and after the license avail-

1 ability date, licenses obtained under this section
2 for covered activities prior to the license avail-
3 ability date shall no longer continue in effect.

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

21 “(D) FURTHER ACCEPTANCE OF NOTICES
22 FOR COVERED ACTIVITIES BY COPYRIGHT OF-
23 FICE.—On and after the enactment date—

1 “(i) the Copyright Office shall no
2 longer accept notices of intention with re-
3 spect to covered activities; and

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

14 “(10) PRIOR UNLICENSED USES.—

15 “(A) LIMITATION ON LIABILITY IN GEN-
16 ERAL.—A copyright owner that commences an
17 action under section 501 on or after January 1,
18 2018, against a digital music provider for the
19 infringement of the exclusive rights provided by
20 paragraph (1) or (3) of section 106 arising
21 from the unauthorized reproduction or distribu-
22 tion of a musical work by such digital music
23 provider in the course of engaging in covered
24 activities prior to the license availability date,
25 shall, as the copyright owner’s sole and exclu-

1 sive remedy against the digital music provider,
2 be eligible to recover the royalty prescribed
3 under subsection (c)(1)(C) and chapter 8 of
4 this title, from the digital music provider, pro-
5 vided that such digital music provider can dem-
6 onstrate compliance with the requirements of
7 subparagraph (B), as applicable. In all other
8 cases the limitation on liability under this sub-
9 paragraph shall not apply.

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

17 “(i) No later than 30 calendar days
18 after first making a particular sound re-
19 cording of a musical work available
20 through its service via one or more covered
21 activities, or 30 calendar days after the en-
22 actment date, whichever occurs later, a
23 digital music provider shall engage in
24 good-faith, commercially reasonable efforts
25 to identify and locate each copyright owner

1 of such musical work (or share thereof).
2 Such required matching efforts shall in-
3 clude the following:

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

10 “(aa) Sound recording
11 name, featured artist, producer,
12 international standard recording
13 code, and other information com-
14 monly used in the industry to
15 identify sound recordings and
16 match them to the musical works
17 they embody.

18 “(bb) Any available musical
19 work ownership information, in-
20 cluding each songwriter and pub-
21 lisher name, percentage owner-
22 ship share, and international
23 standard musical work code.

24 “(II) Employment of one or more
25 bulk electronic matching processes

1 that are available to the digital music
2 provider through a third-party vendor
3 on commercially reasonable terms, but
4 a digital music provider may rely on
5 its own bulk electronic matching proc-
6 ess if it has capabilities comparable to
7 or better than a third-party vendor on
8 commercially reasonable terms.

9 “(ii) The required matching efforts
10 shall be repeated by the digital music pro-
11 vider no less than once per month for so
12 long as the copyright owner remains un-
13 identified or has not been located.

14 “(iii) If the required matching efforts
15 are successful in identifying and locating a
16 copyright owner of a musical work (or
17 share thereof) by the end of the calendar
18 month in which the digital music provider
19 first makes use of the work, the digital
20 music provider shall provide statements of
21 account and pay royalties to such copy-
22 right owner in accordance with this section
23 and applicable regulations.

24 “(iv) If the copyright owner is not
25 identified or located by the end of the cal-

1 endar month in which the digital music
2 provider first makes use of the work, the
3 digital music provider shall accrue and
4 hold royalties calculated under the applica-
5 ble statutory rate in accordance with usage
6 of the work, from initial use of the work
7 until the accrued royalties can be paid to
8 the copyright owner or are required to be
9 transferred to the mechanical licensing col-
10 lective, as follows:

11 “(I) Accrued royalties shall be
12 maintained by the digital music pro-
13 vider in accordance with generally ac-
14 cepted accounting principles.

15 “(II) If a copyright owner of an
16 unmatched musical work (or share
17 thereof) is identified and located by or
18 to the digital music provider before
19 the license availability date, the digital
20 music provider shall—

21 “(aa) within 45 calendar
22 days after the end of the cal-
23 endar month during which the
24 copyright owner was identified
25 and located, pay the copyright

1 owner all accrued royalties, such
2 payment to be accompanied by a
3 cumulative statement of account
4 that includes all of the informa-
5 tion that would have been pro-
6 vided to the copyright owner had
7 the digital music provider been
8 providing monthly statements of
9 account to the copyright owner
10 from initial use of the work in
11 accordance with this section and
12 applicable regulations, including
13 the requisite certification under
14 subsection (c)(2)(I);

15 “(bb) beginning with the ac-
16 counting period following the cal-
17 endar month in which the copy-
18 right owner was identified and lo-
19 cated, and for all other account-
20 ing periods prior to the license
21 availability date, provide monthly
22 statements of account and pay
23 royalties to the copyright owner
24 as required under this section
25 and applicable regulations; and

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

12 “(III) If a copyright owner of an
13 unmatched musical work (or share
14 thereof) is not identified and located
15 by the license availability date, the
16 digital music provider shall—

17 “(aa) within 45 calendar
18 days after the license availability
19 date, transfer all accrued royal-
20 ties to the mechanical licensing
21 collective, such payment to be ac-
22 companied by a cumulative state-
23 ment of account that includes all
24 of the information that would
25 have been provided to the copy-

1 right owner had the digital music
2 provider been serving monthly
3 statements of account on the
4 copyright owner from initial use
5 of the work in accordance with
6 this section and applicable regu-
7 lations, including the requisite
8 certification under subsection
9 (c)(2)(I), and accompanied by an
10 additional certification by a duly
11 authorized officer of the digital
12 music provider that the digital
13 music provider has fulfilled the
14 requirements of clauses (i) and
15 (ii) of subparagraph (B) but has
16 not been successful in locating or
17 identifying the copyright owner;
18 and

19 “(bb) beginning with the
20 monthly royalty reporting period
21 commencing on the license avail-
22 ability date, report usage and pay
23 royalties for such musical work
24 (or share thereof) for such period
25 and reporting periods thereafter

1 to the mechanical licensing collec-
2 tive, as required under this sub-
3 section and applicable regula-
4 tions.

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

16 “(C) ADJUSTED STATUTE OF LIMITA-
17 TIONS.—Notwithstanding anything to the con-
18 trary in section 507(b), with respect to any
19 claim of infringement of the exclusive rights
20 provided by paragraphs (1) and (3) of section
21 106 against a digital music provider arising
22 from the unauthorized reproduction or distribu-
23 tion of a musical work by such digital music
24 provider to engage in covered activities that ac-
25 crued no more than 3 years prior to the license

1 availability date, such action may be com-
2 menced within 3 years of the date the claim ac-
3 crued, or up to 2 years after the license avail-
4 ability date, whichever is later.

5 “(D) OTHER RIGHTS AND REMEDIES PRE-
6 SERVED.—Except as expressly provided in this
7 paragraph, nothing in this paragraph shall be
8 construed to alter, limit, or negate any right or
9 remedy of a copyright owner with respect to un-
10 authorized use of a musical work.

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

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

23 “(B) LIMITATION ON COMMON AGENT EX-
24 EMPTION.—Notwithstanding the antitrust ex-
25 emption provided in subsection (c)(1)(D) and

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

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

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

23 “(ii) Each person entitled to obtain a
24 compulsory license under this section shall
25 establish the royalty rates and material

1 terms of any such voluntary license indi-
2 vidually and not in agreement, combina-
3 tion, or concert with any other digital
4 music provider.

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

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

1 means administration in a manner that is not
2 grossly negligent.

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

11 “(12) REGULATIONS.—

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

22 “(B) JUDICIAL REVIEW OF REGULA-
23 TIONS.—Except as provided in paragraph
24 (7)(D)(vii), regulations adopted under this sub-

1 section shall be subject to judicial review pursu-
2 ant to chapter 7 of title 5.

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

16 “(13) SAVINGS CLAUSES.—

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

1 compulsory license under this section to activi-
2 ties and rights not covered by this section on
3 the enactment date.

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

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

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

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

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

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

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

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

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

17 “(i) startup costs;

18 “(ii) financing, legal, and insurance
19 costs;

20 “(iii) investments in information tech-
21 nology, infrastructure, and other long-term
22 resources;

23 “(iv) outside vendor costs;

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

1 “(vi) costs of bad debt; and

2 “(vii) costs of automated and manual
3 efforts to identify and locate musical work
4 copyright owners (and shares of such mu-
5 sical work) and match sound recordings to
6 the musical works the sound recordings
7 embody; and

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

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

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

22 “(A) has a direct contractual, subscription,
23 or other economic relationship with end users of
24 the service, or, if no such relationship with end

1 users exists, exercises direct control over the
2 provision of the service to end users;

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

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

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

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

1 recording or the musical work embodied therein is
2 made from the inception of the transmission through
3 to its receipt by the transmission recipient in order
4 to make the sound recording audible. A digital pho-
5 norecord delivery does not include the digital trans-
6 mission of sounds accompanying a motion picture or
7 other audiovisual work as defined in section 101 of
8 this title.

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

12 “(12) INDIVIDUAL DOWNLOAD LICENSE.—The
13 term ‘individual download license’ means a compul-
14 sory license obtained by a record company to make
15 and distribute, or authorize the making and distribu-
16 tion of, permanent downloads embodying an indi-
17 vidual musical work (or share of a work).

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

1 for statutory licensing under section 114(d)(2). An
2 interactive stream is a digital phonorecord delivery.

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

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

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

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

23 “(18) MECHANICAL LICENSING COLLECTIVE.—
24 The term ‘mechanical licensing collective’ means the

1 entity most recently designated as such by the Reg-
2 ister of Copyrights under subsection (d)(3).

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

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

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

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

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

1 “(24) PERMANENT DOWNLOAD.—The term
2 ‘permanent download’ means a digital transmission
3 of a sound recording of a musical work in the form
4 of a download, where such sound recording is acces-
5 sible for listening without restriction as to the
6 amount of time or number of times it may be
7 accessed.

8 “(25) QUALIFIED AUDITOR.—The term ‘quali-
9 fied auditor’ means an independent, certified public
10 accountant with experience performing music royalty
11 audits.

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

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

23 “(28) REQUIRED MATCHING EFFORTS.—The
24 term ‘required matching efforts’ means efforts to

1 identify and locate copyright owners of musical
2 works as described in subsection (d)(10)(B)(i).

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

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

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

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

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

23 “(ii) has a direct contractual, sub-
24 scription, or other economic relationship
25 with end users of the service or, if no such

1 relationship with end users exists, exercises
2 direct control over the provision of the
3 service to end users; and

4 “(iii) either—

5 “(I) on any day in a calendar
6 month, makes more than 5,000 dif-
7 ferent sound recordings of musical
8 works available through such service;
9 or

10 “(II) derives revenue or other
11 consideration in connection with such
12 covered activities greater than
13 \$50,000 in a calendar month, or total
14 revenue or other consideration greater
15 than \$500,000 during the preceding
16 12 calendar months; and

17 “(B) does not include an entity whose cov-
18 ered activity consists solely of free-to-the-user
19 streams of segments of sound recordings of mu-
20 sical works that do not exceed 90 seconds in
21 length, are offered only to facilitate a licensed
22 use of musical works that is not a covered ac-
23 tivity, and have no revenue directly attributable
24 to such streams constituting the covered activ-
25 ity.

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-

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

SEC. 103. AMENDMENTS TO SECTION 114.

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

(1) by striking paragraphs (1) and (2) and inserting the following:

“(1)(A) Proceedings under chapter 8 shall determine reasonable rates and terms of royalty payments for transmissions subject to statutory licensing under subsection (d)(2) during the 5-year period beginning on January 1 of the second year following the year in which the proceedings are to be commenced pursuant to subparagraph (A) or (B) of section 804(b)(3), as the case may be, or such other period as the parties may agree. The parties to each proceeding shall bear their own costs.

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

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

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

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

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

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

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

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

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

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

7 (c) USE IN MUSICAL WORK PROCEEDINGS.—

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

21 (2) DEFINITIONS.—In this subsection:

22 (A) TRANSMISSION BY A BROADCASTER.—

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

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

7 (B) TERRESTRIAL BROADCAST STATION.—

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

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

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

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

6 (f) DECISIONS AND PRECEDENTS NOT AFFECTED.—

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

14 (g) TECHNICAL AND CONFORMING AMENDMENTS.—

15 (1) SECTION 114.—Section 114(f) of title 17,
16 United States Code, as amended by subsection (a),
17 is further amended in paragraph (4)(C), as so redес-
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 This title and the amendments made by this title
3 shall take effect on the date of the enactment of this Act.