

109TH CONGRESS
2^D SESSION

H. R. 6052

To amend title 17, United States Code, to provide for licensing of digital delivery of musical works and to provide for limitation of remedies in cases in which the copyright owner cannot be located, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 12, 2006

Mr. SMITH of Texas introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 17, United States Code, to provide for licensing of digital delivery of musical works and to provide for limitation of remedies in cases in which the copyright owner cannot be located, 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 “Copyright Modernization Act of 2006”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is the following:

Sec. 1. Short title; table of contents.

1 subsections (a), (c), and (d). The license under this
2 subsection covers—

3 “(A) the making and distribution of gen-
4 eral and incidental digital phonorecord deliv-
5 eries in the form of full downloads, limited
6 downloads, interactive streams, and any other
7 form constituting a digital phonorecord delivery
8 or hybrid offering; and

9 “(B) all reproduction and distribution
10 rights necessary to engage in activities de-
11 scribed in subparagraph (A), solely for the pur-
12 pose of engaging in such activities under the li-
13 cense, including—

14 “(i) the making of reproductions by
15 and for end users;

16 “(ii) reproductions made on servers
17 under the authority of the licensee; and

18 “(iii) incidental reproductions made
19 under the authority of the licensee in the
20 normal course of engaging in activities de-
21 scribed in subparagraph (A), including
22 cached, network, and RAM buffer repro-
23 ductions.

24 “(2) BLANKET LICENSES.—A person may ob-
25 tain a compulsory license to engage in activities sub-

1 ject to this subsection only from a designated agent
2 under paragraph (4) and only if the person is a dig-
3 ital music provider. Except as provided in paragraph
4 (9)(E)(v), a person may engage in activities subject
5 to this subsection under authority of a compulsory
6 license only—

7 “(A) if the license was obtained by a dig-
8 ital music provider; and

9 “(B) with respect to end users with which
10 the digital music provider meets the require-
11 ments of paragraph (14)(C).

12 “(3) EXEMPTION FOR NONINTERACTIVE SERV-
13 ER AND INCIDENTAL REPRODUCTIONS.—

14 “(A) IN GENERAL.—Notwithstanding sec-
15 tion 106, it shall not be an infringement of the
16 exclusive right of reproduction or distribution in
17 a copyrighted musical work, as described in sec-
18 tion 106(1) and (3), for a digital music provider
19 or a transmitting entity to make server and in-
20 cidental reproductions to facilitate noninter-
21 active streaming or terrestrial radio analog
22 broadcasts of that musical work, subject to the
23 following:

24 “(i) The exemption under this sub-
25 paragraph is limited to reproductions on

1 servers and incidental reproductions made
2 under authority of the digital music pro-
3 vider or transmitting entity and incident to
4 noninteractive streaming or terrestrial
5 radio analog broadcasting, including
6 cached, network, and RAM buffer repro-
7 ductions, to the extent reasonably nec-
8 essary for, and only to the extent that such
9 reproductions are used for the purpose of,
10 engaging in noninteractive streaming or
11 terrestrial radio analog broadcasting.

12 “(ii) The exemption under this sub-
13 paragraph does not apply to any server or
14 incidental reproductions made to facilitate
15 noninteractive streaming or terrestrial
16 radio analog broadcasts by a digital music
17 provider or a transmitting entity that takes
18 affirmative steps to intentionally induce,
19 cause, or promote the making of reproduc-
20 tions of musical works by or for end users
21 that are accessible by those end users for
22 future listening, unless valid license au-
23 thority for reproduction and distribution
24 rights otherwise exists permitting the serv-
25 ice to use such server or incidental repro-

1 ductions for that activity. For purposes of
2 this clause, none of the following shall in
3 itself be considered an affirmative step to
4 intentionally induce, cause, or promote the
5 making of reproductions of musical works:

6 “(I) The transmission of
7 metadata to identify sound recordings.

8 “(II) The transmission of
9 unencrypted streams.

10 “(III) A transmitting entity’s an-
11 nouncement of a particular song to be
12 broadcast.

13 “(B) RETROACTIVE EFFECT.—The exemp-
14 tion from liability provided under subparagraph
15 (A) shall apply to actions taken on or after
16 January 1, 2001.

17 “(C) SAVINGS CLAUSE REGARDING IN-
18 FRINGEMENT.—Neither the exemption provided
19 under subparagraph (A), nor the limitations on
20 such exemption set forth in subparagraph
21 (A)(ii), shall be construed to imply that the
22 making of server or incidental reproductions not
23 covered by the exemption does or does not con-
24 stitute copyright infringement. In evaluating a
25 claim of infringement based on the making by

1 a service of server or incidental reproductions in
2 a case in which the use of such server or inci-
3 dental reproductions is not within the scope of
4 the exemption set forth in subparagraph (A), a
5 court shall not take into account the exemption,
6 or the activities that are excluded from the
7 scope of the exemption under subparagraph
8 (A)(ii).

9 “(D) RIGHTS WITH RESPECT TO SOUND
10 RECORDINGS.—The exemption under this para-
11 graph does not limit or otherwise affect any
12 rights with respect to sound recordings under
13 this title.

14 “(4) APPLICATIONS FOR LICENSES.—Any dig-
15 ital music provider seeking a license under this sub-
16 section may apply to a designated agent for the li-
17 cense, identifying in the application each type of
18 qualifying activity for which the license is sought.
19 Any digital music provider that has a license under
20 this subsection and seeks to engage in any activity
21 covered by this subsection that is not identified in
22 the license may engage in that activity only upon fil-
23 ing a new application identifying the additional ac-
24 tivity.

1 “(5) LICENSE SCOPE AND EFFECTIVE DATE.—
2 All activities specified in an application filed under
3 paragraph (4) for which a license is available under
4 this subsection shall be licensed by the designated
5 agent. The license shall be effective, upon the filing
6 of the application, for all copyrighted nondramatic
7 musical works (or shares of such musical works)
8 represented by the designated agent.

9 “(6) RETROACTIVE ROYALTY PAYMENTS.—

10 “(A) RETROACTIVE PAYMENTS.—A digital
11 music provider that has obtained a license from
12 a designated agent under this subsection for—

13 “(i) the making and distribution of
14 limited downloads, or

15 “(ii) the making or distribution of
16 interactive streams,

17 may report to the designated agent activity au-
18 thorized by the license that the digital music
19 provider engaged in during the period beginning
20 on January 1, 2001, and ending on January 1,
21 2008, and pay to the designated agent royalties
22 applicable to that activity. Such reporting and
23 payments shall be made not later than March
24 1, 2008, in accordance with the regulations

1 issued under paragraph (10) regarding report-
2 ing and payments.

3 “(B) LIMITATION ON LIABILITY.—A dig-
4 ital music provider that reports activity and
5 makes payments under this paragraph for an
6 activity under this paragraph shall not be sub-
7 ject to an action for copyright infringement al-
8 leging violation of reproduction or distribution
9 rights to the extent such action is based on ac-
10 tivity so reported for which all payments due
11 have been made.

12 “(7) LICENSE NOT TRANSFERABLE.—A license
13 granted to a digital music provider under this sub-
14 section may not be transferred to any other person
15 or entity.

16 “(8) ROYALTY RATES AND TERMS.—

17 “(A) RATES AND TERMS IN EFFECT.—
18 Rates and terms in effect under subsection (c)
19 on the effective date of the Section 115 Reform
20 Act of 2006 for any activity for which a license
21 is available under this section shall continue to
22 apply to that activity on and after that date
23 until a new rate is determined under subsection
24 (c) and chapter 8.

1 “(B) PAYMENT.—Licensees under this
2 subsection shall make payments of royalties to
3 the designated agents at rates and terms as di-
4 rected by the Copyright Royalty Judges.

5 “(C) RATES AND TERMS FOR NEW LI-
6 CENSE ACTIVITIES.—

7 “(i) IN GENERAL.—Not later than
8 July 1, 2007, the Copyright Royalty
9 Judges shall initiate a ratemaking pro-
10 ceeding, pursuant to the procedures set
11 forth in chapter 8, to determine a final
12 rate and terms for any activity for which
13 a license is available under this subsection
14 if—

15 “(I) a final rate and terms have
16 not been established for the activity as
17 of that date; or

18 “(II) the activity is not the sub-
19 ject of a proceeding to set a final rate
20 and terms under subsection (c) that is
21 pending before the Copyright Royalty
22 Judges on that date.

23 “(ii) PENDING PROCEEDINGS.—In
24 any case in which a proceeding is pending
25 before the Copyright Royalty Judges, on

1 July 1, 2007, to determine final rates and
2 terms under subsection (e) for any activity
3 for which a license is available under this
4 subsection, the Copyright Royalty Judges
5 may expand and adjust the schedule of the
6 proceeding to cover rates and terms for
7 any activity described in clause (i), in lieu
8 of initiating a proceeding under clause (i)
9 with respect to that activity, if so expand-
10 ing and adjusting the schedule of the pro-
11 ceeding will not unduly prejudice any party
12 to the proceeding and will not delay the
13 final determination of rates and terms by
14 the Copyright Royalty Judges by more
15 than 90 days.

16 “(iii) PARTICIPATION OF DESIGNATED
17 AGENTS.—All designated agents, and any
18 other parties who have a significant inter-
19 est, within the meaning of section 804(a),
20 in the applicable royalty rate, are entitled
21 to participate in a proceeding under this
22 subparagraph relating to activities licensed
23 under this subsection.

24 “(D) INTERIM RATES.—

1 “(i) IN GENERAL.—For any activity
2 for which a license is available under this
3 subsection and for which a rate and terms
4 have not been determined under subsection
5 (c), a digital music provider shall, upon fil-
6 ing a valid application with the relevant
7 designated agent, have a license under this
8 subsection to engage in the activity, sub-
9 ject to clause (ii).

10 “(ii) INTERIM RATES AND TERMS.—
11 Upon the filing of an application under
12 clause (i)—

13 “(I) the digital music provider
14 and the designated agent may nego-
15 tiate an interim rate and terms that
16 will apply to the activity under the li-
17 cense; or

18 “(II) the digital music provider
19 or the designated agent, or both, may
20 apply to the Copyright Royalty
21 Judges for an interim rate and terms,
22 in which case—

23 “(aa) the Copyright Royalty
24 Judges shall, not later than 15
25 days after the application is

1 made, publish notice of an expedited proceeding to determine the
2 interim rate and terms; and
3

4 “(bb) the Judges shall determine the interim rate and
5 terms not less than 30 days and
6 not more than 60 days after publishing the notice, through the
7 expedited proceeding.
8

9
10 “(iii) APPLICABILITY OF INTERIM
11 RATES AND TERMS.—(I) An interim rate
12 and terms negotiated under clause (ii)(I)
13 or established under clause (ii)(II) shall
14 apply to the activity under the license concerned, retroactive to the inception of the
15 activity, until a final rate and terms for
16 the activity are determined under subparagraph (C), or as otherwise agreed by the
17 parties.
18

19
20 “(II) An interim rate and terms described in clause (ii) with respect to an activity by a digital music provider shall not
21 be treated as precedent in a final rate-making proceeding. If the Copyright Royalty Judges have established an interim
22
23
24
25

1 rate and terms under clause (ii)(II), sub-
2 ject to clause (iv), that rate and those
3 terms shall apply to the same activity en-
4 gaged in by any digital music provider, ex-
5 cept as otherwise agreed to by the parties.

6 “(iv) SINGLE PROCEEDING FOR EACH
7 ACTIVITY.—Unless the Copyright Royalty
8 Judges determine that there is good cause
9 to review an interim rate and terms estab-
10 lished under clause (ii)(II), the Judges
11 may conduct only 1 proceeding to deter-
12 mine an interim rate and terms for an ac-
13 tivity for which a license is available under
14 this subsection.

15 “(v) ADJUSTMENT OF INTERIM
16 RATES.—After a determination of a final
17 rate and terms that will apply to an activ-
18 ity for which a license is available under
19 this subsection has been made under sub-
20 paragraph (C), the final rate and terms
21 shall be retroactive to the inception of the
22 activity under all licenses to which such
23 rate and terms apply, unless an agreement
24 between the parties to a license provides
25 otherwise. Not later than 60 days after the

1 determination of the final rate becomes ef-
2 fective—

3 “(I) the digital music provider
4 shall pay to the designated agent any
5 amounts due from underpayment of
6 fees by the digital music provider be-
7 cause the final rate exceeds the in-
8 terim rate; or

9 “(II) the designated agent shall
10 refund to the digital music provider
11 the amounts of any overpayment of
12 fees by the digital music provider be-
13 cause the interim rate exceeds the
14 final rate, or, at the election of the
15 digital music provider, the designated
16 agent shall credit such overpayment
17 against future payments by the digital
18 music provider to the designated
19 agent under this subsection.

20 “(9) DESIGNATED AGENTS.—

21 “(A) IN GENERAL.—Designated agents
22 under this subsection are the General Des-
23 ignated Agent and additional designated agents.

24 “(B) GENERAL DESIGNATED AGENT.—

1 “(i) DESIGNATION AND PURPOSE.—

2 (I) Not later than March 1, 2007, the Reg-
3 ister of Copyrights shall designate a me-
4 chanical licensing and collection agency
5 representing music publishing entities that
6 represent the greatest share of the music
7 publishing market, as measured by the
8 amount of royalties collected during the
9 preceding 3 full calendar years with re-
10 spect to the use of copyrighted musical
11 works pursuant to this section, to establish
12 and operate the General Designated Agent.

13 “(II) The General Designated Agent
14 shall grant and administer licenses and col-
15 lect and distribute royalties payable for the
16 use of musical works licensed under this
17 subsection, but only for copyright owners
18 who do not choose to be represented by an
19 additional designated agent, and to the ex-
20 tent provided in subparagraphs (E)(ii)(II)
21 and (G)(ii).

22 “(III)(aa) The General Designated
23 Agent shall be governed by a board of di-
24 rectors consisting of 5 members, 2 of
25 whom shall be professional songwriters.

1 “(bb) The mechanical licensing and
2 collection agency described in subclause (I)
3 shall select the representatives of music
4 publishing entities that will serve on the
5 board of directors of the General Des-
6 ignated Agent.

7 “(cc) The Register of Copyrights shall
8 select the 2 songwriter directors, after con-
9 sulting with the songwriter community.
10 Each of the 2 songwriter directors shall
11 have—

12 “(AA) significant artistic experi-
13 ence in the songwriting profession, in-
14 cluding by deriving the major portion
15 of his or her income from songwriter
16 activities such as mechanical, per-
17 formance, and synchronization rights,
18 whether online or terrestrial; and

19 “(BB) significant business experi-
20 ence in the songwriting profession so
21 that he or she can fully understand
22 and participate in the deliberations of
23 the board of directors.

24 The 2 songwriter directors shall serve stag-
25 gered 3-year terms.

1 “(dd) All members of the board of di-
2 rectors of the General Designated Agent
3 have a fiduciary duty to the publishing en-
4 tities and songwriters that the board rep-
5 resents.

6 “(ii) DECERTIFICATION.—Upon a
7 showing that the General Designated
8 Agent fails to meet the qualifications
9 under this subparagraph or otherwise fails
10 to meet the requirements under this para-
11 graph, the Register of Copyrights may,
12 after providing the General Designated
13 Agent a reasonable opportunity to respond,
14 disqualify the General Designated Agent.
15 In such a case, the Register of Copyrights
16 shall designate another General Designated
17 Agent.

18 “(C) ADDITIONAL DESIGNATED AGENTS.—

19 “(i) CERTIFICATION.—The Register of
20 Copyrights shall certify as an additional
21 designated agent to represent copyright
22 owners for purposes of licenses under this
23 subsection any entity that demonstrates
24 that—

1 “(I) upon certification, it will
2 represent 1 or more music publishing
3 entities that represent at least a 15
4 percent share of the music publishing
5 market, as measured by the amount
6 of royalties collected during the pre-
7 ceding 3 full calendar years with re-
8 spect to the use of copyrighted musi-
9 cal works pursuant to this section;
10 and

11 “(II) it has the capability to per-
12 form the required functions of a des-
13 ignated agent under this subsection.

14 “(ii) DUTIES.—(I) Upon certification
15 under clause (i), an additional designated
16 agent shall represent any copyright owners
17 of musical works who elect to have the ad-
18 ditional designated agent represent them
19 and the musical works (or shares of musi-
20 cal works) owned or controlled by such
21 copyright owners for purposes of the li-
22 censes under this subsection.

23 “(II) Each additional designated
24 agent shall notify the General Designated
25 Agent and any other additional designated

1 agent of each copyright owner, and the
2 musical works (or shares of musical works)
3 owned or controlled by the copyright
4 owner, that the additional designated agent
5 represents pursuant to subclause (I).

6 “(III) Any election under subclause
7 (I) is effective only if it is made in writing.
8 The additional designated agent elected
9 shall make a copy of the election available
10 to any other designated agent upon a rea-
11 sonable request for such a copy.

12 “(iii) DECERTIFICATION.—Upon a
13 showing that an additional designated
14 agent fails to meet the qualifications under
15 this subparagraph or otherwise fails to
16 meet the requirements under this para-
17 graph, the Register of Copyrights may,
18 after providing the additional designated
19 agent a reasonable opportunity to respond,
20 remove the certification of the additional
21 designated agent.

22 “(D) AUTHORITIES OF DESIGNATED
23 AGENTS.—A designated agent may—

24 “(i) engage in activities pursuant to
25 this subsection;

1 “(ii) engage in such additional activi-
2 ties in the interest of music publishers and
3 songwriters as the designated agent con-
4 siders appropriate, including industry ne-
5 gotiations, ratesetting proceedings, litiga-
6 tion, and legislative efforts; and

7 “(iii) apply any administrative fees or
8 other funds it collects to support the activi-
9 ties described in clauses (i) and (ii).

10 “(E) ELECTIONS BY COPYRIGHT OWN-
11 ERS.—

12 “(i) REPRESENTATION BY SINGLE
13 DESIGNATED AGENT.—Each copyright
14 owner, and the musical works (or shares of
15 musical works) that the copyright owner
16 owns or controls, may choose an additional
17 designated agent to represent the owner,
18 except that a copyright owner may be rep-
19 resented by only 1 designated agent during
20 any calendar year.

21 “(ii) ANNUAL ENROLLMENT PE-
22 RIOD.—

23 “(I) IN GENERAL.—Each copy-
24 right owner may, during the month of
25 September of each year, elect to

1 change the designated agent to rep-
2 resent the owner and the musical
3 works (or shares of musical works) re-
4 ferred to in clause (i), beginning on
5 January 1 of the succeeding calendar
6 year.

7 “(II) SELECTION.— If the addi-
8 tional designated agent chosen by a
9 copyright owner is not certified pursu-
10 ant to subparagraph (C)(i) or is de-
11 certified pursuant to subparagraph
12 (C)(iii), the copyright owner and the
13 musical works (or shares) referred to
14 in clause (i) shall be represented by
15 the General Designated Agent for the
16 succeeding calendar year.

17 “(iii) EFFECT ON LICENSES.—A des-
18 ignated agent’s representation of the musi-
19 cal works (and shares of musical works) of
20 any copyright owner who elects to change
21 designated agents under clause (ii) shall
22 terminate on December 31 of the year in
23 which the election is made, after which the
24 musical works (and shares of musical
25 works) of the copyright owner will become

1 subject to the licenses in effect with the
2 new designated agent, as provided in
3 clause (ii).

4 “(iv) VOLUNTARY AGREEMENTS.—A
5 copyright owner and a digital music pro-
6 vider may enter into a voluntary license
7 agreement to cover activities licensed under
8 this subsection. Any such agreement shall
9 apply in lieu of a blanket license under this
10 subsection, to the extent permissible under
11 subsection (c)(3)(E), with respect to those
12 musical works (or shares of musical works)
13 and activities covered by the agreement
14 during the period that the agreement is in
15 effect. The royalty fees due for usage of
16 musical works (or shares of musical works)
17 under a blanket license under this sub-
18 section shall be reduced in proportion to
19 the usage covered under such a voluntary
20 license agreement. Each designated agent
21 shall establish procedures by which copy-
22 right owners and licensees shall be re-
23 quired to notify the designated agent of
24 the existence of voluntary license agree-
25 ments upon which they are relying in lieu

1 of the blanket license. Such procedures
2 shall include appropriate measures to pro-
3 tect confidential information of licensees.

4 “(F) NOTICE OF DESIGNATED AGENTS.—

5 At least 90 days before beginning operations,
6 any interested party wishing to serve as an ad-
7 ditional designated agent shall file with the
8 Copyright Office a notice of intent to operate as
9 a designated agent under this subsection. The
10 notice shall contain such contact information,
11 and such information concerning applications
12 for licenses under this subsection and access to
13 the electronic database of the additional des-
14 ignated agent (described in subparagraph
15 (H)(i)) identifying musical works (or shares of
16 musical works) represented by the additional
17 designated agent, as required in regulations
18 issued to carry out this subsection. The Copy-
19 right Office shall make each notice filed under
20 this subparagraph available to the public on the
21 Internet.

22 “(G) TERMINATION OF DESIGNATED
23 AGENT.—

24 “(i) NOTICE AND TRANSFER OF
25 RECORDS.—At least 180 days before termi-

1 nating operations, a designated agent
2 shall—

3 “(I) notify the Copyright Office,
4 all of its licensees under this sub-
5 section, all of the copyright owners
6 represented by the designated agent
7 for the purposes of this subsection,
8 and all other designated agents of its
9 intent to terminate operations; and

10 “(II) transfer to the existing
11 General Designated Agent or, in the
12 case of the termination of the General
13 Designated Agent, to the successor
14 General Designated Agent, electronic
15 and other copies of all records that
16 are necessary to determine copyright
17 ownership and payment of royalties.

18 “(ii) ASSUMPTION OF DUTIES BY
19 GENERAL DESIGNATED AGENT.—Upon the
20 termination of operations of a designated
21 agent, the General Designated Agent or
22 successor General Designated Agent, as
23 the case may be, shall assume the adminis-
24 tration of the musical works and rights
25 previously administered by the terminated

1 designated agent, regardless of whether the
2 terminated agent has complied with clause
3 (i).

4 “(H) MUSICAL WORKS DATABASE.—

5 “(i) AVAILABILITY.—The General
6 Designated Agent and each additional des-
7 ignated agent shall maintain and make
8 available to licensees, free of charge, a
9 searchable electronic database of informa-
10 tion from which licensees can determine
11 which musical works (or shares of musical
12 works) are available for licensing under
13 this subsection through that designated
14 agent. Any musical work (or shares of a
15 musical work) not identified as being rep-
16 resented by the General Designated Agent
17 or any additional designated agent in any
18 such database may be presumed by licens-
19 ees to be represented by the General Des-
20 ignated Agent.

21 “(ii) USE OF DATABASE BY DES-
22 IGNATED AGENTS AND LICENSEES.—Sub-
23 ject to the public access described under
24 clause (iii), the database required by clause
25 (i) may be used by designated agents and

1 licensees only for purposes of determining
2 the identity and availability of musical
3 works for licenses under this subsection,
4 obtaining such licenses, reporting of use of
5 musical works, payment of royalties, and
6 otherwise to comply with licenses under
7 this subsection, except that a designated
8 agent may use or make the database it
9 maintains available for other purposes re-
10 lating to musical works or music pub-
11 lishers. The Copyright Royalty Judges
12 shall, in establishing cost-sharing amounts
13 pursuant to paragraph (12), consider the
14 value and benefit of any such other pur-
15 poses to the designated agent and the
16 copyright owners it represents. The use of
17 any such database shall be subject to rea-
18 sonable confidentiality and security stand-
19 ards prescribed in regulations to carry out
20 this subsection.

21 “(iii) PUBLIC ACCESS TO DATA-
22 BASE.—The General Designated Agent
23 and each additional designated agent shall
24 make relevant portions of the database re-
25 quired by clause (i) available free of charge

1 to the general public to access information
2 concerning specific musical works that are
3 represented by the designated agent, sub-
4 ject to reasonable terms and conditions of
5 use as may be prescribed by the Register
6 of Copyrights, taking into account reason-
7 able protection of proprietary data.

8 “(I) LETTERS OF DIRECTION.—

9 “(i) RECOUPMENT OF ADVANCE.—

10 “(I) LETTER OF DIRECTION.—

11 Subject to subclauses (II), (III), (IV),
12 and (V), a copyright owner may sub-
13 mit a letter of direction to a des-
14 ignated agent instructing the des-
15 ignated agent to pay royalties other-
16 wise payable to the copyright owner to
17 the sound recording company in order
18 to allow the sound recording company
19 to recoup an advance payment made
20 to the copyright owner under a con-
21 tract entered into between the copy-
22 right owner and the sound recording
23 company.

24 “(II) CONTRACTS ENTERED INTO
25 BEFORE OCTOBER 1, 2006.—In the

1 case of a contract described in sub-
2 clause (I) that is entered into before
3 October 1, 2006, a letter of direction
4 is valid only if it is submitted to the
5 General Designated Agent by March
6 30, 2008.

7 “(III) CONTRACTS ENTERED
8 INTO AFTER SEPTEMBER 30, 2006.—In
9 the case of a contract described in
10 subclause (I) that is entered into be-
11 fore on or after October 1, 2006, a
12 letter of direction is valid only if it
13 uses the terms ‘letter of direction’ and
14 ‘designated agent’ within the meaning
15 of this subsection.

16 “(IV) VALIDITY OF LETTERS OF
17 DIRECTION.—A letter of direction that
18 complies with subclauses (II) and
19 (III) is valid (subject to the resolution
20 of any dispute with respect to the let-
21 ter that is resolved under subclause
22 (VI)) with respect to any designated
23 agent who is or may become respon-
24 sible for payment of royalties that are
25 the subject of the contract between

1 the copyright owner and the sound re-
2 cording company.

3 “(V) EXCEPTION.—A copyright
4 owner may not submit a letter of di-
5 rection under subclause (I) if another
6 person who is not a party to the con-
7 tract described in subclause (I) owns
8 a share of the copyright in the musi-
9 cal work covered by the contract and
10 is due royalties for that musical work.

11 “(VI) DISPUTES.—If the copy-
12 right owner and the sound recording
13 company disagree on whether the con-
14 tract described in subclause (I) re-
15 quires the artist to allow recoupment,
16 either party may bring an action to
17 resolve the dispute only in the court
18 specified in the contract. If the con-
19 tract does not specify such a court, ei-
20 ther party may bring an action to re-
21 solve the dispute only in the United
22 States district court for the judicial
23 district in which the General Des-
24 ignated Agent is located.

1 “(ii) IN GENERAL.—A designated
2 agent shall comply with a valid letter of di-
3 rection submitted under clause (i)(I) that
4 instructs the designated agent to pay all or
5 part of the royalties otherwise payable to
6 the copyright owner to another person.

7 “(10) ROYALTY REPORTING AND COMPLI-
8 ANCE.—

9 “(A) REQUIREMENTS.—

10 “(i) IN GENERAL.—Each licensee
11 under this subsection shall, not later than
12 30 days after the end of each calendar
13 quarter, report to the applicable designated
14 agent, in electronic format, the licensee’s
15 usage of musical works under the license,
16 and make royalty payments by reason of
17 such usage,.

18 “(ii) LIMITATION ON DISCLOSURE.—

19 “(I) IN GENERAL.—A designated
20 agent may disclose information re-
21 ceived under clause (i) to a recipient
22 of royalty payments made by a li-
23 censee only with respect to musical
24 works owned or controlled by the re-
25 cipient. The designated agent may not

1 disclose such information to any other
2 person in a form that can be readily
3 associated with a licensee except to
4 the extent permitted by written agree-
5 ment of the licensee.

6 “(II) EXCEPTION.—Subclause (I)
7 does not prevent a designated agent
8 from providing information with re-
9 spect to a licensee—

10 “(aa) to the legal and finan-
11 cial advisors of the designated
12 agent or to an accountant or
13 auditor rendering services relat-
14 ing to this subsection; or

15 “(bb) to the extent nec-
16 essary in connection with a bona
17 fide dispute or legal claim or pro-
18 ceeding, in which case the des-
19 ignated agent shall make reason-
20 able efforts to obtain confidential
21 treatment of such information
22 and, unless precluded by oper-
23 ation of law, shall provide written
24 notice to the licensee of any im-

1 pending disclosure of the infor-
2 mation.

3 “(iii) INTEREST.—

4 “(I) IN GENERAL.—A licensee
5 who has failed to make a payment re-
6 quired under this subsection by the
7 due date to a designated agent (in-
8 cluding as specified in a notice of pay-
9 ment deficiency or default, as deter-
10 mined in a royalty compliance exam-
11 ination under subparagraph (B), or as
12 required by a determination of the
13 Copyright Royalty Judges), shall pay
14 to the designated agent interest on
15 the overdue amount, at an annual
16 rate of the Federal funds rate plus 5
17 percent, such interest to accrue
18 monthly from the date payment was
19 due until the date payment is received
20 by the designated agent.

21 “(II) DEFINITION.—In this
22 clause, the term ‘Federal funds rate’
23 means the interest rate established by
24 the Federal Reserve at which deposi-
25 tory institutions lend balances at the

1 Federal Reserve to other depository
2 institutions overnight. The Federal
3 funds rate for any 1-month period
4 during which interest accrues under
5 clause (i) is the Federal funds rate in
6 effect on the first day of that 1-month
7 period.

8 “(iv) PROMOTIONAL USE EXEMP-
9 TIONS.—

10 “(I) FREE PROMOTIONAL USES
11 BY DIGITAL MUSIC PROVIDERS.—A
12 digital music provider shall not be re-
13 quired to pay royalties under this sub-
14 section for a free promotional use of
15 a musical work in the form of an
16 interactive stream or limited
17 download, if the digital music provider
18 is authorized to do so by the owner or
19 licensee of the applicable sound re-
20 cording, and reports to all appropriate
21 designated agents such use as a free
22 promotional use in its quarterly re-
23 ports under subparagraph (A)(i).

1 “(II) OTHER FREE PRO-
2 MOTIONAL USES BY SOUND RECORD-
3 ING OWNERS.—

4 “(aa) AUTHORITY.—The
5 owner or licensee of a sound re-
6 cording who seeks to offer free
7 promotional uses of the sound re-
8 cording in the form of an inter-
9 active stream or limited download
10 through a third party not li-
11 censed as a digital music pro-
12 vider under this subsection may
13 offer such free promotional uses
14 if the owner or licensee (as the
15 case may be)—

16 “(AA) files a notice of
17 such free promotional use,
18 at the same time that a re-
19 port under subparagraph
20 (A)(i) is filed for each quar-
21 terly reporting period in
22 which such free promotional
23 use is provided, with the
24 designated agent that rep-
25 represents the musical work (or

1 share thereof) embodied in
2 the sound recording;

3 “(BB) includes in the
4 notice the identity of the
5 work in question, the date or
6 dates of the free promotional
7 uses, the types of uses being
8 offered, the third party that
9 is distributing the uses to
10 end users, the street and
11 internet addresses of the
12 third party, and such other
13 information as the Register
14 of Copyrights may prescribe
15 by regulation.

16 “(bb) REQUEST FOR DOCU-
17 MENTATION.—By written notice,
18 a designated agent may request
19 the owner or licensee of the
20 sound recording to provide docu-
21 mentation demonstrating that a
22 use of a musical work qualifies as
23 a free promotional use under this
24 clause. If the owner or licensee
25 fails to provide such documenta-

1 tion within 30 days after the date
2 of such notice, the free pro-
3 motional use shall be considered
4 not to have been authorized
5 under this subclause.

6 “(III) 30-SECOND PROMOTIONAL
7 STREAMS.—

8 “(aa) IN GENERAL.—Not-
9 withstanding subsection (a) or
10 any other provision of this sec-
11 tion, but subject to subsection
12 (f), a digital music provider li-
13 censed under this subsection to
14 distribute a full download of a
15 sound recording, or authorized to
16 distribute a physical phonorecord
17 of a sound recording, shall, if the
18 digital music provider is author-
19 ized to do so by the owner or li-
20 censee of the sound recording,
21 has the right to create, repro-
22 duce, and transmit, including the
23 making of all server and inci-
24 dental reproductions that are
25 necessary, an excerpt of the

1 sound recording of up to 30 sec-
2 onds in length to be made avail-
3 able directly to end users in the
4 form of an interactive stream—

5 “(AA) solely for pur-
6 poses of promoting the law-
7 ful sale or paid use of the
8 sound recording, or the paid
9 use of a subscription service
10 offering the sound recording;
11 and

12 “(BB) only if such
13 stream is a free promotional
14 use.

15 “(bb) REPORTING NOT RE-
16 QUIRED.—A digital music pro-
17 vider is not required to report to
18 the designated agent free pro-
19 motional uses of 30-second ex-
20 cerpts authorized under this sub-
21 clause.

22 “(cc) CONSTRUCTION.—
23 (AA) The authority granted
24 under this subclause does not in-
25 clude or extend to any other

1 right to create, reproduce, or dis-
2 tribute an excerpt of a musical
3 work for any purpose other than
4 that expressly authorized under
5 this subclause, including for use
6 as, or to promote, a ringtone or
7 mastertone.

8 “(BB) Nothing in this sub-
9 clause shall be cited, relied upon,
10 interpreted, or construed for pur-
11 poses of evaluating or deter-
12 mining whether the creation or
13 use of an excerpt of a musical
14 work other than as expressly au-
15 thorized under this subclause
16 does or does not qualify for a
17 compulsory license under this
18 section.

19 “(IV) REGULATIONS.—The Reg-
20 ister of Copyrights shall promulgate
21 regulations detailing reporting and
22 recordkeeping requirements for free
23 promotional uses.

24 “(B) ROYALTY COMPLIANCE EXAMINA-
25 TIONS.—A designated agent may, upon pro-

1 viding written notice to its licensee under this
2 subsection, conduct a royalty compliance exam-
3 ination of the licensee, subject to the following:

4 “(i) A designated agent may conduct
5 only 1 examination of any licensee in a cal-
6 endar year, and may conduct an examina-
7 tion of a licensee with respect to a report-
8 ing period only once. A designated agent
9 may conduct an examination jointly with 1
10 or more other designated agents.

11 “(ii) The examination may begin only
12 within 18 months after the end of the pe-
13 riod being examined and may only cover a
14 period of not less than 2 and not more
15 than 4 consecutive years, except that an
16 examination may cover a period of—

17 “(I) more than 4 years if the ex-
18 amination includes activities subject
19 to retroactive payments under para-
20 graph (6);

21 “(II) less than 2 years if—

22 “(aa) the licensee’s license
23 has been terminated;

1 “(bb) the licensee has de-
2 faulted in its reporting or pay-
3 ments under this paragraph; or

4 “(cc) the licensee has termi-
5 nated or is about to terminate
6 operations, has filed or indicated
7 an intent to file for bankruptcy,
8 or has transferred or indicated
9 an intent to transfer its assets to
10 a third party; or

11 “(III) less than 2 years or more
12 than 4 years if, for other good cause,
13 the examination cannot reasonably
14 cover a period of 2 to 4 years.

15 “(iii) At the conclusion of the exam-
16 ination, the designated agent shall, after
17 considering any written rebuttal provided
18 by the licensee during the examination,
19 provide a written notice to the licensee set-
20 ting forth the designated agent’s final
21 claim, if any, resulting from the examina-
22 tion.

23 “(iv) The designated agent shall bear
24 the costs of the examination, except that,
25 if the licensee underpaid royalty fees by 10

1 percent or more, the licensee shall bear the
2 reasonable costs of the examination.

3 “(v) A licensee may not assert section
4 507 of this title or any other Federal or
5 State statute of limitations, doctrine of
6 laches or estoppel, or similar provision to
7 avoid a royalty examination under this
8 subparagraph, or as a defense to a legal
9 action arising from such a royalty exam-
10 ination, if the legal action is commenced
11 within 18 months after the final claim of
12 the designated agent (as stated in the writ-
13 ten notice under clause (iii)) resulting from
14 the examination that is the basis for such
15 action.

16 “(C) FAILURE TO REPORT OR PAY ROYAL-
17 TIES.—

18 “(i) SUBSTANTIAL FAILURE.—If a li-
19 censee under this subsection—

20 “(I) fails to provide a quarterly
21 report when due or fails to provide a
22 quarterly report in compliance with
23 the error tolerance standard, or

1 “(II) fails to make all quarterly
2 royalty payments when due or fails to
3 pay royalties due for reported usage,
4 the designated agent may provide written
5 notice to the licensee describing the default
6 under subclause (I) or (II) and providing
7 that if the default is not remedied within
8 30 days after receipt of the notice, the li-
9 cense will automatically terminate upon the
10 expiration of that 30-day period. If the de-
11 fault is not remedied within that 30-day
12 period, the license terminates upon the ex-
13 piration of that 30-day period. Such termi-
14 nation makes the uses of the musical
15 works that are the subject of the default
16 actionable as acts of infringement under
17 section 501 and fully subject to the rem-
18 edies provided by sections 502 through 506
19 and 509.

20 “(ii) FAILURE WITH RESPECT TO IN-
21 DIVIDUAL WORK.—

22 “(I) EXCLUSION FROM LI-
23 CENSE.—If a licensee with an other-
24 wise valid license under this sub-
25 section—

1 “(aa) has not made the re-
2 quired reports or royalty pay-
3 ments under subparagraph (A)(i)
4 for a musical work covered by the
5 license, or

6 “(bb) upon being sent writ-
7 ten notice from the designated
8 agent of a valid reporting or pay-
9 ment deficiency with respect to
10 the use of a musical work, fails
11 to remedy that deficiency within
12 the specified cure period,

13 that work is excluded from the scope
14 of the license until such time as the li-
15 censee provides all the reports that
16 are past due, and makes all royalty
17 payments that are past due, to the
18 designated agent for that work, or the
19 designated agent otherwise identifies
20 the work, determines the usage of the
21 work, and has received from the li-
22 censee all royalty payments for the
23 work that are past due.

24 “(II) SPECIFIED CURE PE-
25 RIOD.—For purposes of subclause

1 (I)(bb), the “specified cure period”
2 means, with respect to a licensee—

3 “(aa) 90 days, during the
4 first 12 month-period in which
5 the licensee engages in activities
6 under a license under this sub-
7 section;

8 “(bb) 60 days, during the
9 succeeding 12-month period in
10 which a licensee engages in ac-
11 tivities under a license under this
12 subsection; and

13 “(cc) 30 days, during any
14 period thereafter.

15 “(III) EXCEPTION.—If the li-
16 censee demonstrates to the designated
17 agent with respect to a musical work
18 that is the subject of a notice of defi-
19 ciency described in subclause (I)(bb)
20 that the deficiency cannot be remedied
21 because it is due to missing informa-
22 tion that, notwithstanding a diligent
23 search by the licensee, is actually and
24 objectively unobtainable by the li-
25 censee from any known source, then

1 the license shall not be invalidated
2 with respect to that work, if all royal-
3 ties due for that work have been paid.

4 “(iii) OBTAINING SUBSEQUENT LI-
5 CENSES.—A licensee whose license is ter-
6 minated by a designated agent under
7 clause (i) and who fully remedies the de-
8 fault within 60 days after the date on
9 which the license terminates, may apply for
10 and obtain a new license from that des-
11 ignated agent, if, during the 5-year period
12 ending on the date of such termination, the
13 licensee has not previously had a license
14 terminated by the designated agent. In any
15 other case in which a license is validly ter-
16 minated by a designated agent, the des-
17 ignated agent may require the licensee to
18 meet reasonable credit or advance require-
19 ments or to demonstrate the capability to
20 report and make royalty payments in com-
21 pliance with this subsection before obtain-
22 ing a new license.

23 “(D) INFORMATION PROVIDED TO COPY-
24 RIGHT OWNERS.—Each designated agent shall,
25 on an annual basis, provide to copyright own-

1 ers, free of charge, the information, regarding
2 the musical works of those copyright owners,
3 that the designated agent receives from digital
4 music providers in the quarterly reports under
5 subparagraph (A). A copyright owner may re-
6 quest such information more frequently, but in
7 such a case the designated agent may charge
8 the copyright owner the costs borne by the des-
9 ignated agent in providing the information.
10 Designated agents may provide the information
11 under this subparagraph in electronic or paper
12 format.

13 “(11) DISTRIBUTION OF ROYALTIES, UN-
14 CLAIMED FUNDS, AND DISPUTE RESOLUTION.—

15 “(A) DISTRIBUTION OF ROYALTIES.—Each
16 designated agent shall be responsible for dis-
17 tributing, on a quarterly basis, royalties col-
18 lected from licensees under this subsection to
19 any copyright owner whom the designated agent
20 represents and who has provided the designated
21 agent with sufficient information to identify
22 and pay that copyright owner (or the copyright
23 owner’s designee). Distributions under the pre-
24 ceding sentence shall be made not later than 60
25 days after the end of each calendar quarter.

1 “(B) UNCLAIMED FUNDS.—

2 “(i) IN GENERAL.—If a designated
3 agent is unable, after a reasonably diligent
4 search, to identify or locate a copyright
5 owner entitled to receive royalties under
6 subparagraph (A), the designated agent
7 may deposit the undistributed royalties (in
8 this subparagraph referred to as ‘un-
9 claimed funds’) into an unclaimed funds
10 account that earns interest, accrued
11 monthly, at the Federal short term rate
12 determined under section 1274(d)(1)(C)(i)
13 of the Internal Revenue Code of 1986. In-
14 terest accrued on unclaimed funds shall be
15 payable to a copyright owner upon dis-
16 tribution of the unclaimed funds to such
17 copyright owner.

18 “(ii) HOLDING AND DISTRIBUTION.—

19 “(I) HOLDING.—A designated
20 agent with unclaimed funds shall hold
21 the funds for a period of at least 3
22 years after the date on which the li-
23 censee paid the funds. The designated
24 agent shall make reasonably diligent
25 efforts to publicize the existence of the

1 unclaimed funds and the procedures
2 by which copyright owners may claim
3 such funds from the designated agent.

4 “(II) LICENSING ADMINISTRATIVE COSTS.—At the end of the pe-
5 riod in which funds are held under
6 subclause (I), the designated agent
7 may apply the funds to offset licens-
8 ing administrative costs.

9
10 “(III) DISTRIBUTION OF RE-
11 MAINDER.—Any unclaimed funds not
12 applied to offset licensing administra-
13 tive costs under subclause (II) shall
14 be distributed as follows:

15 “(aa) The designated agent
16 shall pay to every other des-
17 ignated agent its pro rata share
18 of the unclaimed funds as deter-
19 mined on the basis of the propor-
20 tionate distribution of royalties
21 by each designated agent to copy-
22 right owners for the reporting pe-
23 riods during which the funds
24 were collected.

1 “(bb) Each designated agent
2 shall distribute, on an equitable
3 basis, its pro rata share of the
4 unclaimed funds to the copyright
5 owners that the designated agent
6 represents under this subsection
7 (other than those that cannot be
8 identified or located).

9 “(iii) PREEMPTION.—This subpara-
10 graph preempts any State claim to un-
11 claimed funds.

12 “(C) DISPUTES.—

13 “(i) DISPUTE RESOLUTION COM-
14 MITTEE.—Each designated agent shall es-
15 tablish a dispute resolution committee con-
16 sisting of—

17 “(I) at least 6 representatives of
18 different music publishing entities
19 represented by the designated agent,
20 and

21 “(II) an equal number of song-
22 writers who are legally and financially
23 independent of the designated agent,
24 who shall be appointed under clause (iii).

1 “(ii) PURPOSE.—The purpose of each
2 dispute resolution committee is to address
3 any disputes raised by a copyright owner
4 or songwriter whose works are represented
5 by the designated agent relating to license
6 rates or terms, the expenditure of fees and
7 other funds by the designated agent, and
8 the allocation and payment by the des-
9 ignated agent of royalties among individual
10 copyright owners under licenses granted by
11 the designated agent under this subsection.

12 “(iii) APPOINTMENT.—The Register
13 of Copyrights shall appoint the members of
14 each dispute resolution committee based
15 upon nominees provided by music pub-
16 lishers and songwriters. Of the music pub-
17 lishing representatives, at least 2 shall be
18 appointed from among large music pub-
19 lishing companies, and at least 2 shall be
20 appointed from among small music pub-
21 lishing companies. Of the songwriter rep-
22 resentatives, at least 3 shall be representa-
23 tives, affiliates, or members of each of the
24 performing rights organizations. The mem-
25 bers of the dispute resolution committee

1 shall serve staggered 3-year terms. In
2 making appointments under this clause,
3 the Register shall give preference to the
4 nominees that have the greatest support
5 among the interested parties.

6 “(iv) PROCEDURES.— The Register of
7 Copyrights shall establish procedures to
8 govern the conduct of meetings by the dis-
9 pute resolution committees to assure that
10 the proceedings are fair and that decisions
11 are reached in a timely manner. The Reg-
12 ister shall include in such procedures a
13 mechanism to resolve cases in which an
14 equal number of members of the dispute
15 resolution committee vote for and against
16 a proposed solution to a dispute. The dis-
17 pute resolution process shall not affect any
18 other legal or equitable rights or remedies
19 available to any copyright owner, song-
20 writer, or designated agent.

21 “(D) PROCEDURES FOR HOLDING FUNDS
22 AND ROYALTIES SUBJECT TO LEGAL PRO-
23 CEEDINGS.—The Register of Copyrights shall
24 establish by regulation the procedures for the
25 holding by a designated agent of unclaimed

1 funds and royalties paid under this subsection
2 that are attributable to musical works that are
3 the subject of a legal dispute or proceeding. A
4 designated agent that complies with the re-
5 quirements of this paragraph and such regula-
6 tions shall not be subject to a legal claim based
7 upon or arising from unclaimed funds or funds
8 that are the subject of an ownership dispute or
9 legal proceeding, nor shall a copyright owner be
10 subject to a legal claim based upon or arising
11 from a designated agent’s compliance with this
12 paragraph.

13 “(E) SONGWRITER ACCESS TO INFORMA-
14 TION.—

15 “(i) IN GENERAL.—Subject to clause
16 (ii), a songwriter whose musical works (or
17 shares thereof) are administered by a
18 music publisher for licensing under this
19 subsection (including those music pub-
20 lishers represented through default rep-
21 resentation pursuant to paragraph
22 (9)(E)(iv)) may request from a designated
23 agent a copy of the relevant portions of
24 any royalty statement that the designated
25 agent provided, within the preceding 4 cal-

1 endar years, to that publisher, and that
2 shows all data provided by the designated
3 agent to the publisher regarding the use
4 and royalties distributed to the publisher
5 in connection with those works (or shares
6 thereof). A designated agent shall provide
7 the information requested by the song-
8 writer within a reasonable time after re-
9 ceiving the request. A songwriter may
10 make such a request of a particular des-
11 ignated agent not more than once each cal-
12 endar year.

13 “(ii) EXCEPTION.—If a designated
14 agent, on an annual basis or more fre-
15 quently, provides to all songwriters whose
16 works the designated agent represents in-
17 formation on royalty statements provided
18 to music publishers, the designated agent
19 is not required to provide such information
20 pursuant to a request under clause (i).

21 “(F) WITHHOLDING OF INTERIM ROYAL-
22 TIES.—Each designated agent may withhold
23 reasonable reserves from the distribution of in-
24 terim royalties collected under this subsection
25 to allow for the possibility of a lower final stat-

1 utory rate. Upon final determination of the
2 statutory rate, to the extent such reserves are
3 not required to be returned or credited to the
4 licensee, the designated agent shall distribute to
5 copyright owners such reserves with interest.

6 “(12) COST SHARING FEES.—

7 “(A) IN GENERAL.—The Copyright Roy-
8 alty Judges shall determine, under such proce-
9 dures as they may establish, an appropriate
10 cost-sharing mechanism and cost-sharing
11 amounts to be paid by licensees under this sub-
12 section to designated agents. Not later than
13 March 1, 2007, the Copyright Royalty Judges
14 shall initiate a proceeding to determine, not
15 later than June 1, 2007, appropriate interim
16 cost-sharing amounts to apply pending the es-
17 tablishment of final cost-sharing amounts. Any
18 cost-sharing mechanism or cost-sharing
19 amounts shall be equitably applied to all des-
20 ignated agents. In determining a cost-sharing
21 mechanism or cost-sharing amount under this
22 paragraph, the Copyright Royalty Judges shall
23 consider—

24 “(i)(I) the actual, reasonable costs of
25 creating and maintaining an infrastructure

1 for activities of designated agents under
2 this subsection;

3 “(II) any nonmonetary contributions
4 by the parties to such infrastructures, in-
5 cluding contributions of data and services;

6 “(III) the actual, reasonable costs to
7 designated agents specifically associated
8 with the administration of licenses under
9 this subsection;

10 “(IV) the nature and value of any col-
11 lateral benefits that any party may realize
12 from the blanket license and blanket li-
13 cense system created by this subsection;
14 and

15 “(V) any other factors deemed rel-
16 evant by the Copyright Royalty Judges.

17 “(B) COST-SHARING NOT A FACTOR IN
18 ROYALTY RATES.—The Copyright Royalty
19 Judges, in establishing royalty rates for statu-
20 tory licenses, may not take into account the
21 cost-sharing mechanism or cost-sharing
22 amounts under subparagraph (A).

23 “(13) EXCEPTION UNDER BLANKET LI-
24 CENSES.—

25 “(A) IN GENERAL.—

1 “(i) ELECTION TO RETAIN RIGHT TO
2 BE PAID BY LICENSEE.—A sound record-
3 ing company may elect to retain the right
4 to be paid, by any licensee under this sub-
5 section with which the sound recording
6 company has a contract for the distribu-
7 tion of digital phonorecord deliveries or hy-
8 brid offerings, the applicable royalties
9 under a compulsory license under para-
10 graph (2) for the use a musical work as
11 embodied in a particular sound recording
12 in the form of such digital phonorecord de-
13 liveries or hybrid offerings, and to dis-
14 tribute such royalties as appropriate to
15 copyright owners, if the following condi-
16 tions are met:

17 “(I) The sound recording com-
18 pany notifies the appropriate des-
19 ignated agent and each such licensee
20 in writing of the election.

21 “(II) The use of the musical
22 work as embodied in the sound re-
23 cording—

24 “(aa) is a digital phono-
25 record delivery that is subject to

1 a contract to which the second
2 sentence of subsection
3 (c)(3)(E)(i) is inapplicable by op-
4 eration of subsection
5 (c)(3)(E)(ii); or

6 “(bb) is not a digital phono-
7 record delivery and is subject to
8 a contract to which subsection
9 (c)(3)(E)(i) applies.

10 “(ii) REQUIREMENTS OF NOTICE.—

11 The notice required by clause (i)(I) may be
12 provided electronically at any time and
13 shall be effective beginning with payment
14 for the reporting quarter following the
15 quarter during which the notice is pro-
16 vided. The notice shall include sufficient
17 data to identify the applicable sound re-
18 cording, the musical work embodied in the
19 sound recording and relevant shares there-
20 of, and the digital music provider and spe-
21 cific activities that are the subject of the
22 election under clause (i).

23 “(iii) ACTIONS BY DESIGNATED
24 AGENT.—A designated agent receiving a
25 notice of an election under clause (i)(I)

1 shall indicate that election in its database
2 maintained under paragraph (9)(H) and
3 shall take such other steps as may be re-
4 quired, in view of its payment arrange-
5 ments with digital music providers, to im-
6 plement the election.

7 “(iv) PAYMENTS.—For any musical
8 work or share thereof that with respect to
9 which a sound recording company makes
10 an election under this subparagraph, the
11 digital music provider shall make the ap-
12 propriate payments to the sound recording
13 company in accordance with the contracts
14 between the digital music provider and the
15 sound recording company, and the sound
16 recording company shall make the appro-
17 priate payments to copyright owners in ac-
18 cordance with its contracts for use of the
19 musical work.

20 “(B) ERRORS.—

21 “(i) BY DESIGNATED AGENTS.—In
22 any case in which a designated agent ac-
23 cepts in error payments for a use of a mu-
24 sical work with respect to which a sound
25 recording company makes an election

1 under subparagraph (A), the sound record-
2 ing company may provide written notice of
3 the error to the designated agent. If the
4 designated agent fails to remedy the error
5 by sending to the sound recording com-
6 pany, within 30 days after the date of the
7 notice, the erroneously accepted funds,
8 with interest calculated as provided in
9 paragraph (10)(A)(iii), the designated
10 agent shall be liable to the sound recording
11 company in a civil action for the payment
12 of the erroneously accepted funds, with in-
13 terest calculated as provided in paragraph
14 (10)(A)(iii). The United States district
15 courts shall have exclusive jurisdiction of
16 such a civil action. The remedy provided in
17 section 505 shall be available in such an
18 action only if the designated agent did not
19 act in good faith.

20 “(ii) BY SOUND RECORDING COMPA-
21 NIES.—In any case in which a sound re-
22 cording company makes an election under
23 subparagraph (A) with respect to the use
24 of a musical work in error, the copyright
25 owner of the work may provide written no-

1 tice of the error to the sound recording
2 company. If the sound recording company
3 fails to remedy the error by correcting the
4 erroneous notice and sending to the copy-
5 right owner the difference between the roy-
6 alties that the copyright owner should have
7 received from the designated agent and the
8 royalties paid by the sound recording com-
9 pany based upon the erroneous election,
10 with interest calculated as provided in
11 paragraph (10)(A)(iii), the sound recording
12 company shall be liable to the copyright
13 owner in a civil action for the payment of
14 the difference in royalties, with interest
15 calculated as provided in paragraph
16 (10)(A)(iii). The United States district
17 courts shall have exclusive jurisdiction of
18 such a civil action. The remedy provided in
19 section 505 shall be available in such an
20 action only if the sound recording company
21 did not act in good faith.

22 “(iii) DESIGNATED AGENTS PRO-
23 TECTED.—A designated agent that acts in
24 accordance with a notice provided under
25 subparagraph (A)(i)(I), even if the notice

1 was erroneously provided, shall not be sub-
2 ject to a legal claim by a copyright owner
3 based upon or arising out of the actions of
4 the designated agent with respect to the
5 notice.

6 “(iv) CONSEQUENCES FOR DIGITAL
7 MUSIC PROVIDERS AND SOUND RECORDING
8 COMPANIES.—Any digital music provider
9 that has a valid license under this sub-
10 section with the appropriate designated
11 agent, that acts in good faith with respect
12 to an election under subparagraph (A) by
13 a sound recording company, and that re-
14 ports activity and makes payments under
15 this subsection to the designated agent or
16 sound recording company in accordance
17 with the notice of the election under sub-
18 paragraph (A)(i)(I), shall not be subject to
19 any liability, including any action for copy-
20 right infringement of musical works alleg-
21 ing the violation of reproduction or dis-
22 tribution rights, to the extent such action
23 is based on activity so reported for which
24 all payments due have been made. In any
25 case in which a digital music provider or a

1 sound recording company does not make
2 the required payments for the use of a mu-
3 sical work, this paragraph neither expands
4 nor limits the rights of any person under
5 the applicable contracts, this title, or other
6 applicable law.

7 “(C) EXCLUSION ERRORS.—

8 “(i) NOT EXCLUDED.—In any case in
9 which a musical work could have been ex-
10 cluded pursuant to subparagraph (A) but
11 was not due to uncertainty concerning
12 ownership of the copyright of the musical
13 work or the application of a contract de-
14 scribed in subsection (c)(3)(E)(ii), or in
15 any case in which a digital music provider
16 makes payments to a designated agent for
17 use of a musical work excluded under sub-
18 paragraph (A), the designated agent shall
19 make payments to the appropriate person
20 as if the exclusion under subparagraph (A)
21 had applied on the date of the enactment
22 of the Section 115 Reform Act of 2006,
23 unless an agreement between the des-
24 ignated agent and the appropriate person
25 provides otherwise.

1 “(ii) EXCLUDED.—In any case in
2 which a musical work was excluded pursu-
3 ant to subparagraph (A) in error—

4 “(I) a sound recording company
5 acting in good faith with regard to the
6 exclusion shall only be liable for the
7 payment of amounts that otherwise
8 would have been payable under this
9 subsection, plus interest as described
10 in paragraph (10)(A)(iii)(II); and

11 “(II) a licensee acting in good
12 faith with regard to the exclusion
13 shall not be liable because of such
14 error.

15 “(14) DEFINITIONS.—In this subsection:

16 “(A) ADMINISTRATIVE FEES.—The term
17 ‘administrative fees’ means any fees that are
18 collected or deducted by a designated agent to
19 cover licensing administrative costs or other ad-
20 ministrative costs.

21 “(B) COPYRIGHT OWNER.—The term
22 ‘copyright owner’ means a copyright owner, as
23 defined in section 101, that is a natural person
24 or legally recognized entity that owns or con-
25 trols an interest or share in 1 or more copy-

1 righted nondramatic musical works subject to
2 licensing under this section.

3 “(C) DIGITAL MUSIC PROVIDER.—The
4 term ‘digital music provider’ means a person
5 that—

6 “(i) with respect to a service engaging
7 in activities licensed under this sub-
8 section—

9 “(I) contracts with or has a di-
10 rect relationship with the end users of
11 the service, and controls what, if any,
12 consideration is received from end
13 users or others for the service;

14 “(II) controls how musical con-
15 tent is bundled with other musical or
16 nonmusical content and offered
17 through the service;

18 “(III) is able to fully report on
19 all revenues and consideration re-
20 ceived by or credited to the service;
21 and

22 “(IV) is able to fully report on all
23 elements of music usage by the service
24 (or procure such reporting); or

1 “(ii) with respect to hybrid offerings
2 only, makes and distributes a hybrid offer-
3 ing, and—

4 “(I) controls how musical content
5 is bundled with other musical and
6 nonmusical content in the hybrid of-
7 fering;

8 “(II) is able to fully report on all
9 revenues and consideration received
10 by or credited to such person with re-
11 spect to the hybrid offering; and

12 “(III) is able to fully report on
13 all elements of music usage in the hy-
14 brid offering (or procure such report-
15 ing).

16 “(D) ERROR TOLERANCE STANDARD.—
17 The term ‘error tolerance standard’ means the
18 maximum percentage, of all data that a licensee
19 is required to report under this subsection
20 under its license in any statutory reporting pe-
21 riod, that is permitted to be inaccurate,
22 unreadable, or missing, or any combination
23 thereof, as determined under regulations issued
24 to carry out this subsection.

1 “(E) FREE PROMOTIONAL USE.—The term
2 ‘free promotional use’ means the audio-only use
3 of a musical work if—

4 “(i) with respect to the owner or ex-
5 clusive licensee of the sound recording that
6 is authorizing the use, or, as applicable,
7 the digital music provider making the use,
8 the primary purpose of the use is to pro-
9 mote either the lawful sale or paid use of
10 a sound recording embodying the musical
11 work or other sound recordings by the
12 same featured recording artist, or the paid
13 use of a subscription service offering the
14 sound recording, but the primary purpose
15 is not to promote any other product, offer-
16 ing, or entity;

17 “(ii) the sound recording is made
18 available to end users free of charge;

19 “(iii)(I) no cash or non-cash consider-
20 ation of any kind is received by the owner
21 or exclusive licensee of the sound record-
22 ing, a digital music provider, third party
23 distributor, or any other person, in connec-
24 tion with such use of the musical work or
25 sound recording, except for—

1 “(aa) the promotion of the lawful
2 sale or paid use of the sound record-
3 ing or paid use of a subscription serv-
4 ice offering the sound recording; or

5 “(bb) the lawful collection of con-
6 tact information from end users to ac-
7 cess the work, either directly or
8 through the third party user, solely
9 for the purposes permitted by clause
10 (i); and

11 “(II) the limited consideration per-
12 mitted under items (aa) and (bb) of sub-
13 clause (I) is not received in connection
14 with, or used to support, any other prod-
15 uct, offering, or entity.

16 “(F) FULL DOWNLOAD.—The term ‘full
17 download’ means a digital phonorecord delivery
18 of a sound recording of a musical work that is
19 not limited in availability for listening by the
20 end user either to a period of time or a number
21 of times the sound recording can be played.

22 “(G) HYBRID OFFERING.—The term ‘hy-
23 brid offering’ means—

24 “(i) a reproduction or distribution of
25 a phonorecord in physical form subject to

1 a compulsory license under this section if
2 a digital transmission of data by or under
3 the authority of the licensee is required to
4 render the sound recording embodied on
5 the phonorecord audible to the end user, or
6 to enable the continued rendering of the
7 sound recording audible after a finite pe-
8 riod of time or a specified number of times
9 rendered; or

10 “(ii) a reproduction or distribution of
11 a phonorecord subject to a compulsory li-
12 cense under this section that is custom-
13 made by or under the authority of the li-
14 censee—

15 “(I) using a device located at a
16 physical retail establishment based
17 upon the specific request of an end
18 user for distribution as a digital pho-
19 norecord delivery or in physical form
20 to that end user at such retail estab-
21 lishment; or

22 “(II) based upon the specific re-
23 quest of an end user for distribution
24 in physical form to that end user (or

1 the end user's designee) through a
2 mail order or private delivery service.

3 “(H) INTERACTIVE STREAM.—

4 “(i) IN GENERAL.—The term ‘inter-
5 active stream’ means an audio-only stream
6 of a sound recording of a musical work
7 that—

8 “(I) is made by an interactive
9 service;

10 “(II) is made by a service if more
11 than 7 percent of the programming of
12 the service, on a per channel basis, as
13 measured over a period of 168 hours
14 of broadcasting, consists of—

15 “(aa) selections of sound re-
16 cordings from any single com-
17 mercially released phonorecord;
18 or

19 “(bb) selections of sound re-
20 cordings by the same featured re-
21 cording artist, that are either
22 played consecutively or constitute
23 more than 50 percent of the pro-
24 gramming in any given hour, ex-
25 cept in unique and isolated cir-

1 cumstances such as a memorial
2 tribute program for a particular
3 artist lasting no more than 24
4 hours that is broadcast within a
5 week of the honoree's death or
6 upon the anniversary of the hon-
7 oree's death; or

8 “(III) is made by a service that
9 publishes or publicizes, in advance,
10 the titles of sound recordings to be
11 transmitted at specified times or dur-
12 ing specific blocks of time in the fu-
13 ture, other than a schedule of classical
14 music programming, except that this
15 subclause does not include the an-
16 nouncement by a transmitting entity
17 of a particular song to be broadcast.

18 If an entity offers both interactive and
19 noninteractive services (either concur-
20 rently, through different channels or offer-
21 ings, or at different times), the noninter-
22 active component shall not be treated as
23 part of an interactive service.

24 “(ii) INTERACTIVE SERVICE.—In this
25 subparagraph, the term ‘interactive service’

1 means a service that enables a member of
2 the public to receive a transmission of a
3 program specially created for the recipient,
4 or on request, a transmission of a par-
5 ticular sound recording, whether or not as
6 part of a program, which is selected by or
7 on behalf of the recipient; except that the
8 ability of individuals to request that par-
9 ticular sound recordings be performed for
10 reception by the public at large, or in the
11 case of a subscription service, by all sub-
12 scribers of the service, does not make a
13 service interactive, if the programming on
14 each channel of the service does not sub-
15 stantially consist of sound recordings that
16 are performed within 1 hour of the request
17 or at a time designated by either the trans-
18 mitting entity or the individual making the
19 request.

20 “(I) LICENSING ADMINISTRATIVE COSTS.—

21 The term ‘licensing administrative costs’ means
22 the actual costs to a designated agent that are
23 attributable to the issuance and administration
24 of licenses under this subsection, including—

1 “(i) costs in connection with the col-
2 lection and distribution of royalties under
3 this subsection;

4 “(ii) the costs of identifying and locat-
5 ing copyright owners and administering a
6 claims system for unidentified copyright
7 owners;

8 “(iii) the costs of royalty examinations
9 and other royalty compliance efforts; and

10 “(iv) the costs of creating and main-
11 taining an infrastructure for the activities
12 described in clauses (i), (ii), and (iii).

13 “(J) LIMITED DOWNLOAD.—The term
14 ‘limited download’ means a digital phonorecord
15 delivery to an end user of a sound recording of
16 a musical work that is only available for listen-
17 ing for—

18 “(i) a definite period of time (includ-
19 ing a period of time defined by ongoing
20 subscription payments made by an end
21 user); or

22 “(ii) a specified number of times.

23 “(K) NONINTERACTIVE STREAMING.—The
24 term ‘noninteractive streaming’ means the mak-

1 ing of any audio-only stream of a sound record-
2 ings of musical work—

3 “(i) that is not an interactive stream;

4 “(ii) that, except as may otherwise be
5 authorized by the copyright owner, consists
6 of a transmission of a musical work that—

7 “(I) has previously been distrib-
8 uted to the public in the United
9 States under authority of the copy-
10 right owner or pre-released under au-
11 thority of the sound recording owner
12 for promotional purposes; and

13 “(II) is embodied in a lawfully
14 made sound recording;

15 “(iii) that does not violate the condi-
16 tions that apply to compulsory licensing of
17 musical works set forth in subsection
18 (a)(2); and

19 “(iv) for which all necessary licenses
20 have been obtained to perform the musical
21 work publicly.

22 “(L) OTHER ADMINISTRATIVE COSTS.—

23 The term ‘other administrative costs’ means all
24 expenses, expenditures, retained earnings, and
25 reserves of a designated agent, other than li-

1 censing administrative costs, that are author-
2 ized by the board of directors of the designated
3 agent.

4 “(M) SONGWRITER.—The term ‘song-
5 writer’ means the author of a musical work.

6 “(N) SOUND RECORDING COMPANY.—The
7 term ‘sound recording company’ means a per-
8 son who—

9 “(i) is a copyright owner of a sound
10 recording of a musical work;

11 “(ii) in the case of a sound recording
12 of a musical fixed before February 15,
13 1972, has rights to the sound recording,
14 under the common law or statutes of any
15 State, that are similar to the rights under
16 this title of a copyright owner of a sound
17 recording of a musical work;

18 “(iii) is an exclusive licensee of a
19 sound recording of a musical work; or

20 “(iv) performs the functions of mar-
21 keting and authorizing the distribution of
22 a sound recording of a musical work under
23 its own label, under the authority of the
24 copyright owner of the sound recording.

1 “(O) STREAM.—(i) The term ‘stream’
2 means the digital transmission of a sound re-
3 cording embodying a musical work for one-time
4 listening by the end user using technology such
5 that the transmission is not intended or de-
6 signed to result in a substantially complete re-
7 production of the sound recording, other than
8 an incidental reproduction made in the normal
9 course of such activity, including a cached, net-
10 work, or RAM buffer reproduction, to permit
11 such one-time listening.

12 “(ii) The term ‘streaming’ means the proc-
13 ess of making and distributing streams.

14 “(15) REGULATIONS.—

15 “(A) IN GENERAL.—The Register of Copy-
16 rights shall issue such regulations as are nec-
17 essary to carry out this subsection, including—

18 “(i) specifying the requirements and
19 procedures for reporting and making pay-
20 ments, and conducting royalty compliance
21 examinations, under paragraph (10), in-
22 cluding provisions for the protection of
23 confidential information and the effect of
24 settlements with respect to royalty compli-
25 ance examinations;

1 “(ii) specifying the procedures for ex-
2 pedited proceedings under paragraph
3 (8)(E)(ii)(II)(bb) and subsection
4 (c)(7)(B)(ii)(II);

5 “(iii) specifying the form of a letter of
6 direction under paragraph (9)(I)(i); and

7 “(iv) facilitating exclusions from the
8 blanket license under paragraph (13).

9 “(B) RESOLUTION OF DISPUTES.—If a
10 copyright owner or user of nondramatic musical
11 works wishes to have the Register of Copyrights
12 resolve a dispute concerning whether an activity
13 or offering subject to compulsory licensing
14 under this section is licensable under this sub-
15 section or under subsection (b), the copyright
16 owner or user may petition the Register for
17 such a determination. If it appears to the Reg-
18 ister from the petition that the issue presented
19 is likely to be material to multiple copyright
20 owners or users, then the Register shall decide
21 the issue by rulemaking within 6 months after
22 the date of the petition.

23 “(16) APPLICATION OF SUBSECTION TO PRE-
24 EXISTING LICENSES.—This subsection shall apply to
25 digital phonorecord deliveries and hybrid offerings in

1 lieu of any compulsory license under this section
2 that applied to such digital phonorecord deliveries
3 and hybrid offerings before the enactment of the
4 Section 115 Reform Act of 2006.”.

5 **SEC. 103. PERFORMANCE RIGHT PRESERVED.**

6 Section 115 of title 17, United States Code, is
7 amended by adding at the end the following new sub-
8 section:

9 “(f) PERFORMANCE RIGHT PRESERVED.—The
10 rights, exemptions, and licenses granted under, and the
11 definitions contained in, subsection (e) shall not include,
12 limit, or otherwise affect any right of public performance
13 of a musical work. The third sentence of subsection
14 (e)(9)(E)(iv) and the definitions contained in paragraph
15 (14) of subsection (e) shall not be taken into account in
16 any administrative, judicial, or other governmental pro-
17 ceeding to set or adjust the royalties payable to copyright
18 owners of musical works for, the right of public perform-
19 ance of their works.”.

20 **SEC. 104. INTERIM RATE PROCESS.**

21 Section 115(c) of title 17, United States Code, is
22 amended by adding at the end the following new para-
23 graph:

24 “(7) INTERIM RATES.—

1 “(A) IN GENERAL.—For any new type of
2 phonorecord configuration for which a license is
3 available under this section (other than an ac-
4 tivity for which a license is available under sub-
5 section (e)) for which a rate and terms have not
6 been determined, any person shall, upon serving
7 notice in accordance with subsection (b)(1),
8 have a license to make and distribute such
9 phonorecords, subject to subparagraph (B).

10 “(B) INTERIM RATES.—Upon serving no-
11 tice as described in subparagraph (A) with re-
12 spect to a phonorecord configuration—

13 “(i) the parties may negotiate an in-
14 terim rate and terms that will apply to the
15 configuration under the license; or

16 “(ii) either party or both parties may
17 apply to the Copyright Royalty Judges for
18 an interim rate and terms, in which case—

19 “(I) the Copyright Royalty
20 Judges shall, not later than 15 days
21 after the application is made, publish
22 notice of an expedited proceeding to
23 determine the interim rate and terms;
24 and

1 “(II) the Judges shall conduct
2 the expedited proceeding and deter-
3 mine the interim rate and terms not
4 less than 30 days and not more than
5 60 days after publishing the notice.

6 “(C) APPLICABILITY OF INTERIM
7 RATES.—(i) Interim rates and terms negotiated
8 under subparagraph (B)(i) or established under
9 subparagraph (B)(ii) shall be retroactive to the
10 inception of the activity under the license con-
11 cerned and shall apply until a rate and terms
12 for the phonorecord configuration are deter-
13 mined under paragraph (3)(C) and chapter 8,
14 or as otherwise agreed by the parties.

15 “(ii) Interim rates and terms described in
16 subparagraph (B) with respect to a configura-
17 tion shall not be treated as precedent in a final
18 ratemaking proceeding. If the Copyright Roy-
19 alty Judges have established an interim rate
20 and terms under subparagraph (B)(ii), that
21 rate and those terms shall apply to the same
22 activity engaged in by any person, except as
23 otherwise agreed to by the parties.

24 “(D) SINGLE PROCEEDING FOR EACH AC-
25 TIVITY.—Unless the Copyright Royalty Judges

1 determine that there is good cause to review an
2 interim rate or terms established under sub-
3 paragraph (B)(ii), the Copyright Royalty
4 Judges may conduct only 1 proceeding to deter-
5 mine an interim rate and terms for a configura-
6 tion for which a license is available under this
7 subsection.

8 “(E) ADJUSTMENT OF INTERIM RATES.—
9 After a final determination of rates and terms
10 that will apply to a configuration for which a li-
11 cense is available under this subsection has
12 been made under paragraph (3)(C) and chapter
13 8, the final rate and terms shall be retroactive
14 to the inception of the making and distribution
15 of phonorecords under all licenses to which such
16 rate and terms apply, unless an agreement be-
17 tween the parties to a license provides other-
18 wise. Not later than 60 days after the deter-
19 mination of the final rate and terms becomes
20 effective—

21 “(i) the licensee shall pay to the copy-
22 right owner any amounts due from under-
23 payment of fees by the licensee because the
24 final rate exceeds the interim rate; or

1 “(ii) the copyright owner shall refund
2 to the licensee the amounts of any overpay-
3 ment of fees by the licensee because the in-
4 terim rate exceeds the final rate, or, at the
5 election of the licensee, the copyright
6 owner shall credit such overpayment
7 against future payments by the licensee to
8 the copyright owner under this subsection.
9 ”.

10 **SEC. 105. TECHNICAL AMENDMENTS.**

11 (a) DEFINITION.—Section 115(d) of title 17, United
12 States Code, is amended—

13 (1) in the first sentence, by striking “As used”
14 and inserting by adding at the end the following: “.”

15 “(1) IN GENERAL.—As used”;

16 (2) by moving the remaining text 2 ems to the
17 right; and

18 (3) by adding at the end the following:

19 “(2) INTERACTIVE STREAMS.—The term ‘dig-
20 ital phonorecord delivery’ includes an interactive
21 stream (as such term is defined in subsection
22 (e)(14)(H)) of nondramatic musical works, on the
23 following terms:

24 “(A) An interactive stream is an incidental
25 digital phonorecord delivery as described in sub-

1 section (c)(3)(C)(i) and (D)(i). An interactive
2 stream is not a general digital phonorecord de-
3 livery as described in subsection (c)(3)(C)(ii)
4 and (D)(ii).

5 “(B) The Copyright Royalty Judges, in es-
6 tablishing royalty rates or terms for digital pho-
7 norecord deliveries, shall not consider the char-
8 acterization, in this section or regulations
9 issued under this section, of a digital phono-
10 record delivery as general or incidental. The
11 preceding sentence does not limit the ability of
12 the Copyright Royalty Judges to refer to the
13 actual nature or functionality of the particular
14 type of digital phonorecord delivery in a rate-
15 making proceeding.”.

16 (b) CONFORMING AMENDMENTS.—Section 115(c) of
17 title 17, United States Code, is amended—

18 (1) in paragraph (3)—

19 (A) in the first sentence of subparagraph
20 (A), by striking “or authorize the distribution
21 of”;

22 (B) in subparagraph (C), by striking
23 “Such terms and rates shall distinguish” and
24 all that follows through the end of the sentence;

1 (C) in subparagraph (D), by striking
2 “Such terms and rates shall distinguish” and
3 all that follows through the end of the sentence;
4 and

5 (D) in subparagraph (E)(i), by inserting
6 after “License agreements,” the following: “to
7 make and distribute phonorecords other than
8 digital phonorecord deliveries and hybrid offer-
9 ings” ; and

10 (2) in paragraph (5)—

11 (A) by striking “(5) Royalty payments”
12 and inserting “(5)(A) Subject to subparagraph
13 (B), royalty payments”; and

14 (B) by adding at the end the following:

15 “(B) Payments under the license provided for
16 under subsection (e) shall be governed by that sub-
17 section in lieu of subparagraph (A).”.

18 **SEC. 106. EFFECTIVE DATE.**

19 (a) IN GENERAL.—Subject to subsection (b), this
20 title and the amendments made by this title take effect
21 on the date of the enactment of this Act.

22 (b) DELAY OF LICENSES.—No license under sub-
23 section (e) of section 115 of title 17, United States Code,
24 may take effect before January 1, 2008.

1 **SEC. 107. SAVINGS CLAUSES.**

2 (a) SCOPE OF RIGHTS COVERED.—This title and the
3 amendments made by this title are limited to the exclusive
4 rights to reproduce and distribute musical works as pro-
5 vided by paragraphs (1) and (3) of section 106 of title
6 17, United States Code, and do not create any new exclu-
7 sive rights under section 106 of title 17, United States
8 Code.

9 (b) FAIR USE.—Nothing in this title shall affect any
10 right, limitation, or defense to copyright infringement, in-
11 cluding fair use, under title 17, United States Code.

12 (c) PROTECTIONS OF SERVICE PROVIDERS.—This
13 title and the amendments made by this title shall not be
14 construed to limit in any manner the protections afforded
15 to service providers under section 512 of title 17, United
16 States Code.

17 **SEC. 108. STAYING OF INFRINGEMENT ACTIONS.**

18 If an action for infringement is brought against a dig-
19 ital music provider (as defined in section 115(e)(14) of
20 title 17, United States Code) for activities engaged in be-
21 fore January 1, 2008, that may be covered by a license
22 under section 115(e) of title 17, United States Code, the
23 court may stay the action until not later than March 1,
24 2008, if the digital music provider makes the payments
25 required under section 115(e)(6) of such title, for such
26 activities.

1 **TITLE II—ORPHAN WORKS**

2 **SEC. 201. SHORT TITLE.**

3 This title may be cited as the “Orphan Works Act
4 of 2006”

5 **SEC. 202. LIMITATION ON REMEDIES IN CASES INVOLVING** 6 **ORPHAN WORKS.**

7 (a) **LIMITATION ON REMEDIES.**—Chapter 5 of title
8 17, United States Code, is amended by adding at the end
9 the following new section:

10 **“§ 514. Limitation on remedies in cases involving or-** 11 **phan works**

12 “(a) **CONDITIONS FOR ELIGIBILITY.**—

13 “(1) **CONDITIONS.**—Notwithstanding sections
14 502 through 505, in an action brought under this
15 title for infringement of copyright in a work, the
16 remedies for infringement shall be limited under
17 subsection (b) if the infringer sustains the burden of
18 proving, and the court finds, that—

19 “(A) before the infringing use of the work
20 began, the infringer, a person acting on behalf
21 of the infringer, or any person jointly and sev-
22 erally liable with the infringer for the infringe-
23 ment of the work—

24 “(i) performed and documented a rea-
25 sonably diligent search in good faith to

1 identify and locate the owner of the in-
2 fringed copyright; but

3 “(ii) was unable to locate the owner;
4 and

5 “(B) the infringing use of the work pro-
6 vided attribution, in a manner reasonable under
7 the circumstances, to the author and owner of
8 the copyright, if known with a reasonable de-
9 gree of certainty based on information obtained
10 in performing the reasonably diligent search.

11 “(2) DEFINITIONS; REQUIREMENTS FOR
12 SEARCHES.—

13 “(A) OWNER OF INFRINGED COPYRIGHT.—

14 For purposes of paragraph (1)(A), the ‘owner’
15 of an infringed copyright in a work is the legal
16 or beneficial owner of, or any party with au-
17 thority to grant or license, an exclusive right
18 under section 106 applicable to the infringe-
19 ment.

20 “(B) REQUIREMENTS FOR REASONABLY
21 DILIGENT SEARCH.—(i) For purposes of para-
22 graph (1), a search to locate the owner of an
23 infringed copyright in a work—

24 “(I) is ‘reasonably diligent’ only if it
25 includes such steps that are reasonable

1 under the circumstances to locate that
2 owner in order to obtain permission for the
3 use of the work; and

4 “(II) is not ‘reasonably diligent’ solely
5 by reference to the lack of identifying in-
6 formation with respect to the copyright on
7 the copy or phonorecord of the work.

8 “(ii) The steps referred to in clause (i)(I)
9 shall ordinarily include, at a minimum, review
10 of the information maintained by the Register
11 of Copyrights under subparagraph (C).

12 “(iii) A reasonably diligent search includes
13 the use of such expertise and technology as are
14 reasonably available and appropriate under the
15 circumstances, and may include, if reasonable
16 under the circumstances, resources for which a
17 charge or subscription fee is imposed.

18 “(C) INFORMATION TO GUIDE
19 SEARCHES.—The Register of Copyrights shall
20 receive, maintain, and make available to the
21 public, including through the Internet, informa-
22 tion from authoritative sources, such as indus-
23 try guidelines, statements of best practices, and
24 other relevant documents, that is designed to
25 assist users in conducting and documenting a

1 reasonably diligent search under this sub-
2 section. Such information may include—

3 “(i) the records of the Copyright Of-
4 fice that are relevant to identifying and lo-
5 cating copyright owners;

6 “(ii) other sources of copyright owner-
7 ship information reasonably available to
8 users;

9 “(iii) methods to identify copyright
10 ownership information associated with a
11 work;

12 “(iv) sources of reasonably available
13 technology tools and reasonably available
14 expert assistance; and

15 “(v) best practices for documenting a
16 reasonably diligent search.

17 “(b) LIMITATIONS ON REMEDIES.—The limitations
18 on remedies in a case to which subsection (a) applies are
19 the following:

20 “(1) MONETARY RELIEF.—

21 “(A) GENERAL RULE.—Subject to sub-
22 paragraph (B), an award for monetary relief
23 (including actual damages, statutory damages,
24 costs, and attorney’s fees) may not be made,
25 other than an order requiring the infringer to

1 pay reasonable compensation for the use of the
2 infringed work.

3 “(B) EXCEPTIONS.—(i) An order requiring
4 the infringer to pay reasonable compensation
5 for the use of the infringed work may not be
6 made under subparagraph (A) if—

7 “(I) the infringement is performed
8 without any purpose of direct or indirect
9 commercial advantage and primarily for a
10 charitable, religious, scholarly, or edu-
11 cational purpose, and

12 “(II) the infringer ceases the infringe-
13 ment expeditiously after receiving notice of
14 the claim for infringement,

15 unless the copyright owner proves, and the
16 court finds, that the infringer has earned pro-
17 ceeds directly attributable to the infringement.

18 “(ii) If, after receiving notice of the claim
19 for infringement, the infringer fails to negotiate
20 in good faith with the owner of the infringed
21 work regarding the amount of reasonable com-
22 pensation for the use of the infringed work, the
23 court may award full costs, including a reason-
24 able attorney’s fee, against the infringer under
25 section 505, subject to section 412.

1 “(2) INJUNCTIVE RELIEF.—

2 “(A) GENERAL RULE.—Subject to sub-
3 paragraph (B), the court may impose injunctive
4 relief to prevent or restrain the infringing use,
5 except that, if the infringer has met the re-
6 quirements of subsection (a), the relief shall, to
7 the extent practicable, account for any harm
8 that the relief would cause the infringer due to
9 its reliance on the reasonably diligent search
10 performed under subsection (a).

11 “(B) SPECIAL RULE FOR NEW WORKS.—In
12 a case in which a new work of authorship
13 recasts, transforms, adapts, or integrates the
14 infringed work with the new work’s original ex-
15 pression, any injunctive relief ordered by the
16 court—

17 “(i) may not restrain the infringer’s
18 continued preparation or use of that new
19 work;

20 “(ii) shall require that the infringer
21 pay reasonable compensation to the owner
22 of the infringed copyright for the use of
23 the infringed work; and

24 “(iii) shall require that the infringer
25 provide attribution to the owner of the in-

1 fringed copyright in a manner that the
2 court determines is reasonable under the
3 circumstances.

4 “(C) TREATMENT OF PARTIES NOT SUB-
5 JECT TO SUIT.—The limitations on remedies
6 under this paragraph shall not be available to
7 an infringer that asserts in an action under sec-
8 tion 501(b) that neither it nor its representative
9 acting in an official capacity is subject to suit
10 in Federal court for an award of damages to
11 the copyright owner under section 504, unless
12 the court finds that the infringer—

13 “(i) has complied with the require-
14 ments of subsection (a) of this section; and

15 “(ii) pays reasonable compensation to
16 the copyright owner as defined under para-
17 graph (3).

18 “(D) CONSTRUCTION.—Nothing in sub-
19 paragraph (C) shall be deemed to authorize or
20 require, and no action taken pursuant to sub-
21 paragraph (C) shall be deemed to constitute, an
22 award of damages by the court against the in-
23 fringer.

24 “(E) RIGHTS AND PRIVILEGES NOT
25 WAIVED.—No action taken by an infringer pur-

1 suant to subparagraph (C) shall be deemed to
2 waive any right or privilege that, as a matter of
3 law, protects the infringer from being subject to
4 suit in Federal court for an award of damages
5 to the copyright owner under section 504.

6 “(3) REASONABLE COMPENSATION.—In estab-
7 lishing reasonable compensation under paragraph
8 (1) or (2), the owner of the infringed copyright has
9 the burden of establishing the amount on which a
10 reasonable willing buyer and a reasonable willing
11 seller in the positions of the owner and the infringer
12 would have agreed with respect to the infringing use
13 of the work immediately before the infringement
14 began.

15 “(c) PRESERVATION OF OTHER RIGHTS, LIMITA-
16 TIONS, AND DEFENSES.—This section does not affect any
17 right, limitation, or defense to copyright infringement, in-
18 cluding fair use, under this title. If another provision of
19 this title provides for a statutory license when the copy-
20 right owner cannot be located, that provision applies in
21 lieu of this section.

22 “(d) COPYRIGHT FOR DERIVATIVE WORKS AND COM-
23 PILATIONS.—Notwithstanding section 103(a), the infring-
24 ing use of a work in accordance with this section shall

1 not limit or affect the copyright protection for a work that
2 employs the infringed work.”.

3 (b) CONFORMING AMENDMENT.—The table of sec-
4 tions for chapter 5 of title 17, United States Code, is
5 amended by adding at the end the following new item:

“514. Limitation on remedies in cases involving orphan works”.

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall apply only to infringing uses that com-
8 mence on or after June 1, 2008.

9 **SEC. 203. REPORT TO CONGRESS ON AMENDMENTS.**

10 The Register of Copyrights shall, not later than De-
11 cember 12, 2014, report to the Committee on the Judici-
12 ary of the House of Representatives and the Committee
13 on the Judiciary of the Senate on the implementation and
14 effects of the amendments made by section 202, including
15 any recommendations for legislative changes that the Reg-
16 ister considers appropriate.

17 **SEC. 204. INQUIRY ON REMEDIES FOR SMALL COPYRIGHT**
18 **CLAIMS.**

19 (a) IN GENERAL.—The Register of Copyrights shall
20 conduct an inquiry with respect to remedies for copyright
21 infringement claims by an individual copyright owner or
22 a related group of copyright owners seeking limited
23 amounts of monetary relief, including consideration of al-
24 ternative means of resolving disputes currently heard in
25 the United States district courts. The inquiry shall cover

1 infringement claims to which section 514 of title 17,
2 United States Code (as added by section 202 of this Act),
3 apply, and other infringement claims under title 17,
4 United States Code.

5 (b) PROCEDURES.—The Register of Copyrights shall
6 publish notice of the inquiry under subsection (a), pro-
7 viding a period during which interested persons may sub-
8 mit comments on the inquiry, and an opportunity for in-
9 terested persons to participate in public roundtables on
10 the inquiry. The Register shall hold the public roundtables
11 at such times as the Register considers appropriate.

12 (c) REPORT TO CONGRESS.—The Register of Copy-
13 rights shall, not later than 1 year after the date of the
14 enactment of this Act, prepare and submit to the Com-
15 mittee on the Judiciary of the House of Representatives
16 and the Committee on the Judiciary of the Senate a report
17 on the inquiry conducted under this section, including
18 such recommendations that the Register considers appro-
19 priate.

20 **TITLE III—COPYRIGHT**

21 **PROTECTION RESOURCES**

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

23 This title may be cited as the “Copyright Protection
24 Resources Authorization Act of 2006”.

1 **SEC. 302. REGISTRATION IN CIVIL INFRINGEMENT AC-**
2 **TIONS.**

3 (a) LIMITATION TO CIVIL ACTIONS; PROTECTION OF
4 COPYRIGHT CLAIM WITH PENDING APPLICATION; HARM-
5 LESS ERROR.—Section 411 of title 17, United States
6 Code, is amended by inserting after subsection (a) the fol-
7 lowing new subsection:

8 “(b)(1) A certificate of registration satisfies the re-
9 quirements of this section and section 412, regardless of
10 whether the certificate contains any inaccurate informa-
11 tion, unless—

12 “(A) the inaccurate information was included
13 on the application for copyright registration with
14 knowledge that it was inaccurate; and

15 “(B) the inaccurate information, if known,
16 would have caused the Register of Copyrights to
17 refuse registration.

18 “(2) In any case in which inaccurate information de-
19 scribed under paragraph (1) is alleged, the court shall re-
20 quest the Register of Copyrights to advise the court
21 whether the inaccurate information, if known, would have
22 caused the Register of Copyrights to refuse registra-
23 tion.”;”.

24 (b) CONFORMING AMENDMENT.—Section 412 of title
25 17, United States Code, is amended by striking “411(b)”
26 and inserting “411(c)”.

1 **SEC. 303. STATUTORY DAMAGES.**

2 Section 504(c)(1) of title 17, United States Code, is
3 amended in the second sentence by inserting before the
4 period “, except that the court in its discretion may deter-
5 mine that such parts are separate works if the court con-
6 cludes that they are distinct works having independent
7 economic value”.

8 **SEC. 304. IMPROVED INVESTIGATIVE AND FORENSIC RE-**
9 **SOURCES FOR ENFORCEMENT OF LAWS RE-**
10 **LATED TO INTELLECTUAL PROPERTY**
11 **CRIMES.**

12 (a) IN GENERAL.—The Attorney General, in con-
13 sultation with the Director of the Federal Bureau of In-
14 vestigation, shall, with respect to crimes related to the
15 theft of intellectual property—

16 (1) create an operational unit of the Federal
17 Bureau of Investigation—

18 (A) to work with the Computer Crime and
19 Intellectual Property section of the Department
20 of Justice on the investigation and coordination
21 of intellectual property crimes that are complex,
22 committed in more than one judicial district, or
23 international;

24 (B) that consists of at least 10 agents of
25 the Bureau; and

1 (C) that is located at the headquarters of
2 the Bureau;

3 (2) ensure that any unit in the Department of
4 Justice responsible for investigating computer hack-
5 ing or intellectual property crimes is assigned at
6 least 2 agents of the Federal Bureau of Investiga-
7 tion (in addition to any agent assigned, or author-
8 ized to be assigned, to such unit as of the date of
9 the enactment of this Act) to support such unit for
10 the purpose of investigating or prosecuting intellec-
11 tual property crimes; and

12 (3) implement a comprehensive program—

13 (A) the purpose of which is to train agents
14 of the Federal Bureau of Investigation in the
15 investigation and prosecution of such crimes
16 and the enforcement of laws related to intellec-
17 tual property crimes;

18 (B) that includes relevant forensic training
19 related to investigating and prosecuting intellec-
20 tual property crimes; and

21 (C) that requires such agents who inves-
22 tigate or prosecute intellectual property crimes
23 to attend the program annually.

24 (b) INTELLECTUAL PROPERTY LAW ENFORCEMENT
25 COORDINATORS.—Not later than 120 days after the date

1 of the enactment of this Act, the Attorney General shall
2 assign one Federal prosecutor to the appropriate office of
3 the Department of Justice located in Hong Kong and one
4 Federal prosecutor to such an office located in Budapest,
5 Hungary, to assist in the coordination of the enforcement
6 of intellectual property laws between the United States
7 and foreign nations.

8 (c) ORGANIZED CRIME TASK FORCE.—Not later
9 than 120 days after the date of the enactment of this Act,
10 the Attorney General, through the United States Attor-
11 neys' Offices, the Computer Crime and Intellectual Prop-
12 erty section, and the Organized Crime and Racketeering
13 section of the Department of Justice, and in consultation
14 with the Federal Bureau of Investigation and other Fed-
15 eral law enforcement agencies, shall create a Task Force
16 to develop and implement a comprehensive, long-range
17 plan to investigate and prosecute international organized
18 crime syndicates engaging in or supporting crimes relating
19 to the theft of intellectual property.

20 (d) AUTHORIZATION.—There are authorized to be ap-
21 propriated to carry out this section \$12,000,000 for each
22 of fiscal years 2007 through 2011.

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