

115TH CONGRESS  
1ST SESSION

# H. R. 4706

To amend title 17, United States Code, to provide clarity and modernize the licensing system for musical works under section 115 and to ensure fairness in the establishment of certain rates and fees under sections 114 and 115 of such title, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 21, 2017

Mr. COLLINS of Georgia (for himself, Mr. JEFFRIES, Mr. CROWLEY, Mrs. BLACK, Mr. COHEN, Mrs. BLACKBURN, Mr. TED LIEU of California, Mr. SESSIONS, Mr. FLEISCHMANN, Mr. CRAMER, Mr. COOPER, and Ms. BASS) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 17, United States Code, to provide clarity and modernize the licensing system for musical works under section 115 and to ensure fairness in the establishment of certain rates and fees under sections 114 and 115 of such title, 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.**

4 This Act may be cited as the “Music Modernization  
5 Act of 2017”.

1 **SEC. 2. BLANKET LICENSE FOR DIGITAL USES AND ME-**  
2 **CHANICAL LICENSING COLLECTIVE.**

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

5 (1) in subsection (a)—

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

9 (B) by striking paragraph (1) and insert-  
10 ing the following:

11 “(1)(A) A person may by complying with the  
12 provisions of this section obtain a compulsory license  
13 to make and distribute phonorecords of a nondra-  
14 matic musical work, including by means of digital  
15 phonorecord delivery. A person may obtain a com-  
16 pulsory license only if the primary purpose in mak-  
17 ing phonorecords of the musical work is to distribute  
18 them to the public for private use, including by  
19 means of digital phonorecord delivery, and—

20 “(i) phonorecords of such musical work  
21 have previously been distributed to the public in  
22 the United States under the authority of the  
23 copyright owner of the work; or

24 “(ii) in the case of a digital music provider  
25 seeking to make and distribute digital phono-  
26 record deliveries of a sound recording embody-

1           ing a musical work under a compulsory li-  
2           cense—

3                   “(I) the copyright owner of the sound  
4                   recording first fixed such sound recording  
5                   under the authority of the copyright owner  
6                   of the musical work and is further author-  
7                   ized by the copyright owner of the musical  
8                   work to make and distribute phonorecords  
9                   embodying such work to the public in the  
10                  United States; and

11                   “(II) the copyright owner of the  
12                   sound recording or its authorized dis-  
13                   tributor has authorized the digital music  
14                   provider to make and distribute digital  
15                   phonorecord deliveries of the sound record-  
16                   ing to the public in the United States.

17                  “(B) A person may not obtain a compulsory li-  
18                  cense for the use of the work in the making of  
19                  phonorecords duplicating a sound recording fixed by  
20                  another, including by means of digital phonorecord  
21                  delivery, unless—

22                   “(i) such sound recording was fixed law-  
23                   fully; and

24                   “(ii) the making of the phonorecords was  
25                   authorized by the owner of the copyright in the

1 sound recording or, if the sound recording was  
2 fixed before February 15, 1972, by any person  
3 who fixed the sound recording pursuant to an  
4 express license from the owner of the copyright  
5 in the musical work or pursuant to a valid com-  
6 pulsory license for use of such work in a sound  
7 recording.”;

8 (2) by striking subsection (b) and inserting the  
9 following:

10 “(b) PROCEDURES TO OBTAIN A COMPULSORY LI-  
11 CENSE.—

12 “(1) PHONORECORDS OTHER THAN DIGITAL  
13 PHONORECORD DELIVERIES.—A person who seeks to  
14 obtain a compulsory license under this section to  
15 make and distribute phonorecords of a musical work  
16 other than by means of digital phonorecord delivery  
17 shall, before or within 30 days after making, and be-  
18 fore distributing, any phonorecord of the work, serve  
19 notice of intention to do so on the copyright owner.  
20 If the registration or other public records of the  
21 Copyright Office do not identify the copyright owner  
22 and include an address at which notice can be  
23 served, it shall be sufficient to file the notice of in-  
24 tention in the Copyright Office. The notice shall  
25 comply, in form, content, and manner of service,

1 with requirements that the Register of Copyrights  
2 shall prescribe by regulation.

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

8 “(A) prior to the license availability date  
9 set forth in subsection (e), shall, before or with-  
10 in 30 days after first making any such digital  
11 phonorecord delivery, serve a notice of intention  
12 to do so on the copyright owner. The notice,  
13 which may not be filed with the Copyright Of-  
14 fice, shall comply, in form, content, and manner  
15 of service, with requirements that the Register  
16 of Copyrights shall prescribe by regulation; and

17 “(B) on or after the license availability  
18 date, shall, before making any such digital pho-  
19 norecord delivery, follow the procedure set forth  
20 in subsection (d)(2), except as provided in para-  
21 graph (3).

22 “(3) RECORD COMPANY DOWNLOAD LI-  
23 CENSES.—Notwithstanding anything to the contrary  
24 in this section, a record company may, on or after  
25 the license availability date, obtain a license to make

1 and distribute, or authorize the making and distribu-  
2 tion of, digital phonorecord deliveries of musical  
3 works in the form of permanent downloads in the  
4 manner described in paragraph (2)(A). A record  
5 company that obtains a compulsory license for per-  
6 manent downloads as permitted under this para-  
7 graph shall provide statements of account and pay  
8 royalties as provided in subsection (c)(5).

9 “(4) FAILURE TO OBTAIN LICENSE.—

10 “(A) PHONORECORDS OTHER THAN DIG-  
11 ITAL PHONORECORD DELIVERIES.—In the case  
12 of phonorecords made and distributed other  
13 than by means of digital phonorecord delivery,  
14 the failure to serve or file the notice of inten-  
15 tion required by paragraph (1) forecloses the  
16 possibility of a compulsory license under para-  
17 graph (1). In the case of phonorecords made  
18 and distributed by means of digital phonorecord  
19 delivery prior to the license availability date, the  
20 failure to serve the notice of intention required  
21 by paragraph (2)(A) forecloses the possibility of  
22 a compulsory license under paragraph (2)(A).  
23 In either case, in the absence of a voluntary li-  
24 cense, the failure to obtain a compulsory license  
25 renders the making and distribution of

1 phonorecords, including by means of digital  
2 phonorecord delivery, actionable as acts of in-  
3 fringement under section 501 and subject to the  
4 remedies provided by sections 502 through 506.

5 “(B) DIGITAL PHONORECORD DELIV-  
6 ERIES.—In the case of phonorecords made and  
7 distributed by means of digital phonorecord de-  
8 livery on or after the license availability date,  
9 the failure to comply with paragraph (2)(B), or,  
10 if applicable, paragraph (3), forecloses the pos-  
11 sibility of a compulsory license under this sec-  
12 tion. In the absence of a voluntary license, the  
13 failure to obtain a compulsory license renders  
14 the making and distribution of phonorecords by  
15 means of digital phonorecord delivery actionable  
16 as acts of infringement under section 501 and  
17 subject to the remedies provided by sections  
18 502 through 506.”;

19 (3) in subsection (c)—

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

22 “(1) To be entitled to receive royalties under a  
23 compulsory license obtained under subsection (b)(1)  
24 the copyright owner must be identified in the reg-  
25 istration or other public records of the Copyright Of-

1        fice. The owner is entitled to royalties for  
2        phonorecords made and distributed after being so  
3        identified, but is not entitled to recover for any  
4        phonorecords previously made and distributed.

5            “(2) Except as provided by paragraph (1), for  
6        every phonorecord made and distributed under a  
7        compulsory license under this section other than by  
8        means of digital phonorecord delivery, with respect  
9        to each work embodied in the phonorecord, the roy-  
10       alty shall be the royalty prescribed under subpara-  
11       graphs (B) through (E) of paragraph (3) and chap-  
12       ter 8 of this title. For purposes of this paragraph,  
13       a phonorecord is considered ‘distributed’ if the per-  
14       son exercising the compulsory license has voluntarily  
15       and permanently parted with its possession.”;

16            (B) by striking paragraph (3)(A) and in-  
17        sserting the following:

18            “(3)(A) For every digital phonorecord delivery  
19        of a musical work made under a compulsory license  
20        under this section, the royalty payable shall be the  
21        royalty prescribed under subparagraphs (B) through  
22        (E) and chapter 8 of this title.”;

23            (C) in paragraph (3)(C)—

24            (i) by striking the second sentence;

25            and



1 (ii) by adding at the end the following  
2 new sentence: “The administrative assess-  
3 ment to be paid by digital music providers  
4 and significant nonblanket licensees under  
5 subsection (d) shall be established in sepa-  
6 rate proceedings before the Copyright Roy-  
7 alty Judges as provided in subsection  
8 (d)(7).”;

9 (D) by striking paragraph (3)(D) and in-  
10 sserting the following:

11 “(D) The schedule of reasonable rates and  
12 terms determined by the Copyright Royalty Judges  
13 shall, subject to subparagraph (E), be binding on all  
14 copyright owners of nondramatic musical works and  
15 persons entitled to obtain a compulsory license under  
16 subsection (a)(1) during the period specified in sub-  
17 paragraph (C), such other period as may be deter-  
18 mined pursuant to subparagraphs (B) and (C), or  
19 such other period as the parties may agree. The  
20 Copyright Royalty Judges shall establish rates and  
21 terms that most clearly represent the rates and  
22 terms that would have been negotiated in the mar-  
23 ketplace between a willing buyer and a willing seller.  
24 In determining such rates and terms for digital pho-  
25 norecord deliveries, the Copyright Royalty Judges

1 shall base their decision on economic, competitive,  
2 and programming information presented by the par-  
3 ties, including—

4 “(i) whether use of the compulsory licens-  
5 ee’s service may substitute for or may promote  
6 the sales of phonorecords or otherwise may  
7 interfere with or may enhance the musical work  
8 copyright owner’s other streams of revenue  
9 from its musical works; and

10 “(ii) the relative roles of the copyright  
11 owner and the compulsory licensee in the copy-  
12 righted work and the service made available to  
13 the public with respect to the relative creative  
14 contribution, technological contribution, capital  
15 investment, cost, and risk.”;

16 (E) in paragraph (3)(E)(i), by striking  
17 “Librarian of Congress and”;

18 (F) in paragraph (3)(G)(i)(II)—

19 (i) by striking “owner of the copyright  
20 in the sound recording or the”; and

21 (ii) by striking “to distribute or au-  
22 thorize the distribution, by means of a dig-  
23 ital phonorecord delivery” and inserting “,  
24 or by a record company pursuant to an in-  
25 dividual download license, to make and dis-

1           tribute phonorecords by means of digital  
2           phonorecord delivery”;

3           (G) in paragraph (4), by striking the first  
4           sentence and inserting “A compulsory license  
5           obtained in accordance with subsection (b)(1) to  
6           make and distribute phonorecords includes the  
7           right of the maker of such a phonorecord to  
8           distribute or authorize distribution of such pho-  
9           norecord, other than by means of a digital pho-  
10          norecord delivery, by rental, lease, or lending  
11          (or by acts or practices in the nature of rental,  
12          lease, or lending).”;

13          (H) in paragraph (5), by striking “Royalty  
14          payments shall” and inserting “Except as pro-  
15          vided in paragraphs (4)(A)(i) and (10)(B) of  
16          subsection (d), royalty payments shall”; and

17          (I) in paragraph (6)—

18                 (i) by striking “If the copyright  
19                 owner” and inserting “In the case of a li-  
20                 cense obtained under subsection (b)(1),  
21                 (b)(2)(A), or (b)(3), if the copyright  
22                 owner”; and

23                 (ii) by adding at the end the following  
24                 sentence: “In the case of a license obtained  
25                 under subsection (b)(2)(B), license author-

1           ity under the compulsory license may be  
2           terminated as provided in subsection  
3           (d)(4)(E).”;

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

6           “(d) BLANKET LICENSE FOR DIGITAL USES, ME-  
7       CHANICAL LICENSING COLLECTIVE, AND DIGITAL LI-  
8       CENSEE COORDINATOR.—

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

10       A digital music provider that qualifies for a compul-  
11       sory license under subsection (a) may, by complying  
12       with the terms and conditions of this subsection, ob-  
13       tain a blanket license from copyright owners through  
14       the mechanical licensing collective designated under  
15       paragraph (3)(B) to make and distribute digital  
16       phonorecord deliveries of musical works through one  
17       or more covered activities.

18           “(A) INCLUDED ACTIVITIES.—A blanket li-  
19       cense obtained under this subsection—

20           “(i) covers all musical works (or  
21       shares of such works) available for compul-  
22       sory licensing under this section for pur-  
23       poses of engaging in covered activities, ex-  
24       cept as provided in subparagraph (B);

1           “(ii) includes the making and dis-  
2           tribution of server, intermediate, archival,  
3           and incidental reproductions of musical  
4           works that are reasonable and necessary  
5           for the digital music provider to engage in  
6           covered activities licensed under this sub-  
7           section, solely for the purpose of engaging  
8           in such covered activities; and

9           “(iii) does not cover or include any  
10          rights or uses other than those set forth in  
11          subsection (d)(1)(A)(i) and (ii).

12          “(B) OTHER LICENSES.—A voluntary li-  
13          cense for covered activities entered into between  
14          one or more copyright owners and one or more  
15          digital music providers, or authority to make  
16          and distribute permanent downloads of a musi-  
17          cal work obtained by a digital music provider  
18          from the copyright owner of a sound recording  
19          pursuant to an individual download license,  
20          shall be given effect in lieu of a blanket license  
21          under this subsection with respect to the musi-  
22          cal works (or shares thereof) covered by such  
23          voluntary license or individual download author-  
24          ity; provided, however, that—

1           “(i) where a voluntary or individual  
2           download license applies, the license au-  
3           thority provided under the blanket license  
4           shall exclude any musical works (or shares  
5           thereof) subject to the voluntary or indi-  
6           vidual download license;

7           “(ii) an entity engaged in covered ac-  
8           tivities under a voluntary license or author-  
9           ity obtained pursuant to an individual  
10          download license that is a significant non-  
11          blanket licensee shall comply with para-  
12          graph (6)(A); and

13          “(iii) the rates and terms of any vol-  
14          untary license shall be subject to the sec-  
15          ond sentence of clause (i) and clause (ii) of  
16          subsection (c)(3)(E) and paragraph (9)(C)  
17          as applicable.

18          “(C) PROTECTION AGAINST INFRINGE-  
19          MENT ACTIONS.—A digital music provider that  
20          obtains and complies with the terms of a valid  
21          blanket license under this subsection shall not  
22          be subject to an action for infringement of the  
23          exclusive rights provided by paragraphs (1) and  
24          (3) of section 106 under this title arising from  
25          use of a musical work (or share thereof) to en-

1           engage in covered activities authorized by such li-  
2           cense, subject to paragraph (4)(E).

3           “(D) OTHER REQUIREMENTS AND CONDI-  
4           TIONS APPLY.—Except as expressly provided in  
5           this subsection, each requirement, limitation,  
6           condition, privilege, right, and remedy otherwise  
7           applicable to compulsory licenses under this sec-  
8           tion shall apply to compulsory blanket licenses  
9           under this subsection.

10          “(2) AVAILABILITY OF BLANKET LICENSE.—

11           “(A) PROCEDURE FOR OBTAINING LI-  
12           CENSE.—A digital music provider may obtain a  
13           blanket license under this subsection to engage  
14           in one or more covered activities by submitting  
15           a notice of license to the mechanical licensing  
16           collective described in paragraph (3) that speci-  
17           fies the particular covered activities in which  
18           the digital music provider seeks to engage, as  
19           follows:

20                   “(i) The notice of license shall comply  
21                   in form and substance with requirements  
22                   that the Register of Copyrights shall estab-  
23                   lish by regulation.

24                   “(ii) Unless rejected in writing by the  
25                   mechanical licensing collective within 30

1 days after receipt, the blanket license shall  
2 be effective as of the date the notice of li-  
3 cense was provided by the digital music  
4 provider.

5 “(iii) A notice of license shall not be  
6 rejected by the mechanical licensing collec-  
7 tive unless—

8 “(I) the digital music provider or  
9 notice of license does not meet all re-  
10 quirements of this section or applica-  
11 ble regulations, in which case the re-  
12 quirements at issue shall be specified  
13 with reasonable particularity in the  
14 notice of rejection, or

15 “(II) the digital music provider  
16 has had a license under this sub-  
17 section terminated by the mechanical  
18 licensing collective within the past 3  
19 years pursuant to paragraph (4)(E).

20 “(iv) If a notice of license is rejected  
21 under clause (iii), the digital music pro-  
22 vider shall have 30 days after receipt of  
23 the notice of rejection to cure any defi-  
24 ciency and submit an amended notice of li-  
25 cense to the mechanical licensing collective.



1           If the deficiency has been cured, the me-  
2           chanical licensing collective shall so con-  
3           firm in writing, and the license shall be ef-  
4           fective as of the date that the original no-  
5           tice of license was provided by the digital  
6           music provider.

7           “(B) BLANKET LICENSE EFFECTIVE  
8           DATE.—Blanket licenses under this subsection  
9           shall be made available by the mechanical li-  
10          censing collective as of the license availability  
11          date specified in subsection (e)(15). No such li-  
12          cense shall be effective prior to the license avail-  
13          ability date.

14          “(3) MECHANICAL LICENSING COLLECTIVE.—

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

17                         “(i) is a not-for-profit entity, not  
18                         owned by any other entity, that is created  
19                         by copyright owners to carry out respon-  
20                         sibilities under this subsection;

21                         “(ii) is endorsed by and enjoys sub-  
22                         stantial support from copyright owners of  
23                         musical works that together represent the  
24                         greatest share of the licensor market for  
25                         uses of such works in covered activities, as

1 measured over the preceding 3 full cal-  
2 endar years;

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

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

13 “(B) DESIGNATION OF MECHANICAL LI-  
14 CENSING COLLECTIVE.—

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

20 “(I) Within 90 days of the enact-  
21 ment date, the Register shall publish  
22 notice in the Federal Register solie-  
23 iting information to assist in identi-  
24 fying the appropriate entity to serve  
25 as the mechanical licensing collective.

1           “(II) After reviewing the infor-  
2           mation requested under subclause (I)  
3           and making a designation, the Reg-  
4           ister shall publish notice in the Fed-  
5           eral Register setting forth the identity  
6           of and contact information for the me-  
7           chanical licensing collective.

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

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

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

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

17           “(C) AUTHORITIES AND FUNCTIONS.—

18                   “(i) IN GENERAL.—The mechanical li-  
19                  censing collective is authorized to perform  
20                  the following functions, subject to more  
21                  particular requirements as set forth in this  
22                  subsection:

23                           “(I) Offer and administer blanket  
24                           licenses for covered activities, includ-  
25                           ing receipt of notices of license and

1 reports of usage from digital music  
2 providers.

3 “(II) Collect and distribute royalti-  
4 ties from digital music providers for  
5 covered activities.

6 “(III) Engage in efforts to iden-  
7 tify musical works (and shares of such  
8 works) embodied in particular sound  
9 recordings, and to identify and locate  
10 the copyright owners of such musical  
11 works (and shares of such works).

12 “(IV) Maintain a publicly acces-  
13 sible database of musical works (and  
14 shares of such works) and copyright  
15 owners, and other information rel-  
16 evant to the administration of licens-  
17 ing activities under this section.

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

1           “(VI) Administer collections of  
2 the administrative assessment from  
3 digital music providers and significant  
4 nonblanket licensees, including receipt  
5 of notices of nonblanket activity.

6           “(VII) Invest in relevant re-  
7 sources, and arrange for services of  
8 outside vendors and others, to support  
9 its activities.

10           “(VIII) Engage in efforts to en-  
11 force rights and obligations under this  
12 subsection, including in coordination  
13 with the digital licensee coordinator.

14           “(IX) Initiate and participate in  
15 proceedings before the Copyright Roy-  
16 alty Judges to establish the adminis-  
17 trative assessment under this sub-  
18 section.

19           “(X) Initiate and participate in  
20 proceedings before the Copyright Of-  
21 fice with respect to activities under  
22 this subsection.

23           “(XI) Gather and provide docu-  
24 mentation for use in proceedings be-

1 fore the Copyright Royalty Judges to  
2 set rates and terms under this section.

3 “(XII) Maintain records of its  
4 activities and engage in and respond  
5 to audits as contemplated under this  
6 subsection.

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

11 “(ii) ADDITIONAL ADMINISTRATIVE  
12 ACTIVITIES.—Subject to paragraph  
13 (11)(C) and subsection (e)(31), the me-  
14 chanical licensing collective may also ad-  
15 minister, or assist in administering, vol-  
16 untary or individual download licenses  
17 issued by copyright owners for uses of mu-  
18 sical works, for which the mechanical li-  
19 censing collective shall charge reasonable  
20 fees for such services.

21 “(iii) RESTRICTION ON LOBBYING.—  
22 The mechanical licensing collective shall  
23 not engage in government lobbying activi-  
24 ties; provided, however, that it may engage

1 in the activities set forth in clause (i)(IX),  
2 (X) and (XI).

3 “(D) GOVERNANCE.—

4 “(i) BOARD OF DIRECTORS.—The me-  
5 chanical licensing collective shall have a  
6 board of directors consisting of 10 voting  
7 members and 3 nonvoting members, as fol-  
8 lows:

9 “(I) Eight voting members shall  
10 be music publishers to which song-  
11 writers have assigned exclusive rights  
12 of reproduction and distribution of  
13 musical works with respect to covered  
14 activities; provided, however, that no  
15 such music publisher member may be  
16 owned by, or under common control  
17 with, any other board member.

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



1                   “(III) One nonvoting member  
2 shall be a representative of the non-  
3 profit trade association of music pub-  
4 lishers that represents the greatest  
5 share of the licensor market for uses  
6 of musical works in covered activities,  
7 as measured over the preceding 3 full  
8 calendar years.

9                   “(IV) One nonvoting member  
10 shall be a representative of the digital  
11 licensee coordinator, provided that a  
12 digital licensee coordinator has been  
13 designated pursuant to subsection  
14 (d)(5)(B). Otherwise, the nonvoting  
15 member shall be the nonprofit trade  
16 association of digital licensees that  
17 represents the greatest share of the li-  
18 censee market for uses of musical  
19 works in covered activities, as meas-  
20 ured over the preceding 3 full cal-  
21 endar years.

22                   “(V) One nonvoting member  
23 shall be a representative of a nation-  
24 ally recognized nonprofit trade asso-  
25 ciation whose primary mission is advo-

1 cacy on behalf of American song-  
2 writers.

3 “(ii) BOARD MEETINGS.—The board  
4 of directors shall meet no less than 2 times  
5 per year and discuss matters pertinent to  
6 the operations, including the budget, of the  
7 board of directors.

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

20 “(I) copyright owners of musical  
21 works who are appointed by the board  
22 of directors of the mechanical licens-  
23 ing collective; and

1                   “(II) representatives of digital  
2                   music providers who are appointed by  
3                   the digital licensee coordinator.

4                   “(iv) UNCLAIMED ROYALTIES OVER-  
5                   SIGHT COMMITTEE.—The board of direc-  
6                   tors of the mechanical licensing collective  
7                   shall establish and appoint an unclaimed  
8                   royalties oversight committee consisting of  
9                   10 members, 6 of which shall be copyright  
10                  owners of musical works and 4 of which  
11                  shall be professional songwriters whose  
12                  works are used in covered activities.

13                  “(v) DISPUTE RESOLUTION COM-  
14                  MITTEE.—The board of directors of the  
15                  mechanical licensing collective shall estab-  
16                  lish and appoint a dispute resolution com-  
17                  mittee consisting of no fewer than 6 mem-  
18                  bers, which committee shall include an  
19                  equal number of representatives of copy-  
20                  right owners of musical works and profes-  
21                  sional songwriters.

22                  “(E) MUSICAL WORKS DATABASE.—

23                  “(i) ESTABLISHMENT AND MAINTEN-  
24                  NANCE OF DATABASE.—The mechanical li-  
25                  censing collective shall establish and main-

1           tain a database of musical works (and  
2           shares of such works) and, to the extent  
3           known, the identity and location of the  
4           copyright owners of such works (and  
5           shares thereof) and the sound recordings  
6           in which they are embodied. In furtherance  
7           of maintaining such database, the mechan-  
8           ical licensing collective shall engage in ef-  
9           forts to identify the musical works em-  
10          bodied in particular sound recordings, as  
11          well as to identify and locate the copyright  
12          owners of such works (and shares thereof),  
13          and update such data as appropriate.

14                 “(ii) MATCHED WORKS.—With respect  
15          to musical works (and shares thereof) that  
16          have been matched to copyright owners,  
17          the musical works database shall include—

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

19                         “(II) the copyright owner of the  
20          work (or share thereof), and such  
21          owner’s ownership percentage;

22                         “(III) contact information for  
23          such copyright owner;

24                         “(IV) to the extent available—

1                   “(aa) the international  
2 standard musical work code for  
3 the work; and

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

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

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

21                   “(I) to the extent available—

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

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

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

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

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

24           “(II) such other information re-  
25 lating to the identity and ownership of

1 musical works (and shares of such  
2 works) as the Register of Copyrights  
3 may prescribe by regulation.

4 “(iv) SOUND RECORDING INFORMA-  
5 TION.—Each copyright owner of musical  
6 works shall engage in commercially reason-  
7 able efforts to deliver to the mechanical li-  
8 censing collective for use in the musical  
9 works database, to the extent such infor-  
10 mation is not then available in the data-  
11 base, information regarding the names of  
12 the sound recordings in which that copy-  
13 right owner’s musical works (or shares  
14 thereof) are embodied, to the extent prac-  
15 ticable.

16 “(v) ACCESSIBILITY OF DATABASE.—  
17 The musical work database shall be acces-  
18 sible to the public in a searchable, online  
19 format free of charge. The mechanical li-  
20 censing collective shall also make such  
21 database available free of charge in a bulk,  
22 machine-readable format, via a widely  
23 available software application, to—

24 “(I) digital music providers oper-  
25 ating under valid notices of license;

1                   “(II) significant nonblanket li-  
2                   censees; and

3                   “(III) authorized vendors of the  
4                   entities described in subclauses (I)  
5                   and (II).

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

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

13                  “(i) IN GENERAL.—The mechanical li-  
14                  censing collective shall receive, review, and  
15                  confirm or reject notices of license from  
16                  digital music providers, as provided in sub-  
17                  section (d)(2)(A). The collective shall  
18                  maintain a current, publicly accessible list  
19                  of blanket licenses obtained by digital  
20                  music providers under this subsection that  
21                  includes contact information for the licens-  
22                  ees and the effective dates of such licenses.

23                  “(ii) PUBLIC LIST OF NOTICES.—The  
24                  mechanical licensing collective shall receive  
25                  notices of nonblanket activity from signifi-



1 cant nonblanket licensees, as provided in  
2 subsection (d)(6)(A). The collective shall  
3 maintain a current, publicly accessible list  
4 of notices of nonblanket activity submitted  
5 by significant nonblanket licensees that in-  
6 cludes contact information for such licens-  
7 ees and the dates of receipt of such no-  
8 tices.

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

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

16 “(I) engage in efforts to—

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

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

1 and the corresponding pro rata  
2 amounts to be deducted from  
3 royalties that would otherwise be  
4 due under the blanket license;  
5 and

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

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

14 “(III) deposit royalties that can-  
15 not be distributed due to an inability  
16 to identify or locate a copyright owner  
17 of a musical work (or share thereof),  
18 or due to a pending dispute before the  
19 dispute resolution committee of the  
20 mechanical licensing collective, in an  
21 interest-bearing account as provided  
22 in subparagraph (H)(ii).

23 “(ii) REGULATIONS REQUIRED.—The  
24 Register of Copyrights shall adopt regula-  
25 tions regarding adjustments to reports of

1 usage by digital music providers, including  
2 establishing mechanisms to account for  
3 overpayments and underpayments made in  
4 prior periods.

5 “(H) HOLDING OF ACCRUED ROYAL-  
6 TIES.—

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

20 “(ii) INTEREST-BEARING ACCOUNT.—  
21 Accrued royalties for unmatched works  
22 (and shares thereof) shall be maintained  
23 by the mechanical licensing collective in an  
24 interest-bearing account that earns month-  
25 ly interest at the Federal, short-term rate,

1           such interest to accrue for the benefit of  
2           copyright owners entitled to payment of  
3           such accrued royalties.

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

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

22                 “(ii) provided that accrued royalties  
23                 for the musical work (or share thereof)  
24                 have not yet been included in a distribution  
25                 pursuant to subparagraph (J)(i), pay such

1 accrued royalties and a proportionate share  
2 of accrued interest associated with that  
3 work (or share thereof) to the copyright  
4 owner, accompanied by a cumulative state-  
5 ment of account reflecting usage of such  
6 work and accrued royalties based on infor-  
7 mation provided by digital music providers  
8 to the mechanical licensing collective.

9 “(J) DISTRIBUTION OF UNCLAIMED AC-  
10 CRUED ROYALTIES.—

11 “(i) DISTRIBUTION PROCEDURES.—  
12 After the expiration of the prescribed hold-  
13 ing period for accrued royalties provided in  
14 subparagraph (H)(i), the mechanical li-  
15 censing collective shall distribute such ac-  
16 crued royalties, along with a proportionate  
17 share of accrued interest, to copyright  
18 owners identified in its records, subject to  
19 the following requirements, and in accord-  
20 ance with the policies and procedures es-  
21 tablished under clause (ii):

22 “(I) The first such distribution  
23 shall occur in the first full calendar  
24 year to commence after the license  
25 availability date, with at least one

1 such distribution to take place in each  
2 calendar year thereafter.

3 “(II) Copyright owners’ payment  
4 shares for unclaimed accrued royalties  
5 for particular reporting periods shall  
6 be determined in a transparent and  
7 equitable manner based on data indi-  
8 cating the relative market shares of  
9 such copyright owners as reflected by  
10 royalty payments made by digital  
11 music providers for covered activities  
12 for the periods in question, including,  
13 in addition to royalty payments made  
14 to the mechanical licensing collective,  
15 royalty payments made to copyright  
16 owners under voluntary and individual  
17 download licenses for covered activi-  
18 ties, to the extent such information is  
19 available to the mechanical licensing  
20 collective. In furtherance of the deter-  
21 mination of equitable market shares  
22 under this paragraph—

23 “(aa) the mechanical licens-  
24 ing collective may require copy-  
25 right owners seeking distribu-

1 tions of unclaimed accrued royal-  
2 ties to provide, or direct the pro-  
3 vision of, information concerning  
4 royalties received under voluntary  
5 and individual download licenses  
6 for covered activities; and

7 “(bb) the mechanical licens-  
8 ing collective shall take appro-  
9 priate steps to safeguard the con-  
10 fidentiality and security of finan-  
11 cial and other sensitive data used  
12 to compute market shares in ac-  
13 cordance with the confidentiality  
14 provisions prescribed by the Reg-  
15 ister of Copyrights under sub-  
16 section (d)(12)(C).

17 “(ii) ESTABLISHMENT OF DISTRIBUTION POLICIES.—The unclaimed royalties  
18 oversight committee established under  
19 paragraph (3)(D)(iv) shall establish poli-  
20 cies and procedures for the distribution of  
21 unclaimed accrued royalties in accordance  
22 with this subparagraph, subject to the ap-  
23 proval of the board of directors of the me-  
24 chanical licensing collective.  
25

1           “(iii) ADVANCE NOTICE OF DISTRIBUTIONS.—The mechanical licensing collective shall publicize a pending distribution of unclaimed accrued royalties at least 90 days in advance of such distribution.

2           “(iv) SONGWRITER PAYMENTS.—Copyright owners that receive a distribution of unclaimed accrued royalties and accrued interest shall pay or credit a portion to songwriters (or the authorized agents of songwriters) on whose behalf they license or administer musical works for covered activities, in accordance with applicable contractual terms; provided, however, that notwithstanding any agreement to the contrary—

3                   “(I) such payments and credits to songwriters shall be allocated in proportion to reported usage of individual musical works by digital music providers during the reporting periods covered by the distribution from the mechanical licensing collective; and

4                   “(II) in no case shall the payment or credit to an individual song-



1 writer be less than 50 percent of the  
2 payment received by the copyright  
3 owner attributable to usage of musical  
4 works (or shares of works) of that  
5 songwriter.

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

17 “(i) shall include a mechanism to hold  
18 disputed funds in accordance with the re-  
19 quirements set forth in subparagraph  
20 (H)(ii) pending resolution of the dispute by  
21 the committee, written agreement of the  
22 affected parties, or pursuant to a binding  
23 judicial determination or arbitration; and

24 “(ii) except as provided in paragraph  
25 (11)(D), shall not affect any legal or equi-

1 table rights or remedies available to any  
2 copyright owner or songwriter concerning  
3 ownership of, and entitlement to royalties  
4 for, a musical work.

5 “(L) VERIFICATION OF PAYMENTS BY ME-  
6 CHANICAL LICENSING COLLECTIVE.—

7 “(i) VERIFICATION PROCESS.—A  
8 copyright owner entitled to receive pay-  
9 ments of royalties for covered activities  
10 from the mechanical licensing collective  
11 may, individually or with other copyright  
12 owners, conduct an audit of the mechanical  
13 licensing collective to verify the accuracy of  
14 royalty payments and distributions by the  
15 mechanical licensing collective to such  
16 copyright owner, as follows:

17 “(I) A copyright owner may  
18 audit the mechanical licensing collec-  
19 tive only once in a year for any or all  
20 of the prior 3 calendar years, and may  
21 not audit records for any calendar  
22 year more than once.

23 “(II) The audit shall be con-  
24 ducted by a qualified auditor, who  
25 shall perform the audit during the or-

1           dinary course of business by exam-  
2           ining the books, records and systems  
3           of the mechanical licensing collective,  
4           as well as underlying data, according  
5           to generally accepted auditing stand-  
6           ards and subject to applicable con-  
7           fidentiality requirements prescribed by  
8           the Register of Copyrights under sub-  
9           section (d)(12)(C).

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

19           “(IV) To commence the audit,  
20           the copyright owner(s) shall file with  
21           the Copyright Office a notice of intent  
22           to conduct an audit of the mechanical  
23           licensing collective, and shall simulta-  
24           neously deliver a copy of such notice  
25           to the mechanical licensing collective.

1 The Register of Copyrights shall  
2 cause the notice of audit to be pub-  
3 lished in the Federal Register within  
4 30 days of receipt.

5 “(V) The qualified auditor shall  
6 determine the accuracy of royalty pay-  
7 ments, including whether an under-  
8 payment or overpayment of royalties  
9 was made by the mechanical licensing  
10 collective to the auditing copyright  
11 owner(s); provided, however, that be-  
12 fore providing a final audit report to  
13 such copyright owner(s), the qualified  
14 auditor shall provide a tentative draft  
15 of the report to the mechanical licens-  
16 ing collective and allow the mechanical  
17 licensing collective a reasonable oppor-  
18 tunity to respond to the findings, in-  
19 cluding by clarifying issues and cor-  
20 recting factual errors.

21 “(VI) The auditing copyright  
22 owner(s) shall bear the cost of the  
23 audit. In case of an underpayment to  
24 the copyright owner(s), the mechan-  
25 ical licensing collective shall pay the

1 amounts of any such underpayment to  
2 the auditing copyright owner(s), as  
3 appropriate. In case of an overpay-  
4 ment by the mechanical licensing col-  
5 lective, the mechanical licensing collec-  
6 tive may debit the accounts of the au-  
7 diting copyright owner(s) for such  
8 overpaid amounts, or such owner(s)  
9 shall refund overpaid amounts to the  
10 mechanical licensing collective, as ap-  
11 propriate.

12 “(ii) ALTERNATIVE VERIFICATION  
13 PROCEDURES.—Nothing in this subpara-  
14 graph shall preclude a copyright owner and  
15 the mechanical licensing collective from  
16 agreeing to audit procedures different from  
17 those set forth herein; provided, however,  
18 that notice of the audit shall still be pro-  
19 vided to and published by the Copyright  
20 Office as set forth in clause (i)(IV).

21 “(M) RECORDS OF MECHANICAL LICENS-  
22 ING COLLECTIVE.—

23 “(i) RECORDS MAINTENANCE.—The  
24 mechanical licensing collective shall ensure  
25 that all material records of its operations,

1 including those relating to notices of li-  
2 cense, the administration of its claims  
3 process, reports of usage, royalty pay-  
4 ments, receipt and maintenance of accrued  
5 royalties, royalty distribution processes,  
6 and legal matters, are preserved and main-  
7 tained in a secure and reliable manner,  
8 with appropriate commercially reasonable  
9 safeguards against unauthorized access,  
10 copying, and disclosure, and subject to the  
11 confidentiality requirements prescribed by  
12 the Register of Copyrights under sub-  
13 section (d)(12)(C) for a period of no less  
14 than 7 years from date of creation or re-  
15 ceipt, whichever occurs later.

16 “(ii) RECORDS ACCESS.—The mechan-  
17 ical licensing collective shall provide  
18 prompt access to electronic and other  
19 records pertaining to the administration of  
20 a copyright owner’s musical works upon  
21 reasonable written request of such owner  
22 or the owner’s authorized representative.

23 “(4) TERMS AND CONDITIONS OF BLANKET LI-  
24 CENSE.—A blanket license obtained under this sub-

1 section is subject to, and conditioned upon, the fol-  
2 lowing requirements:

3 “(A) ROYALTY REPORTING AND PAY-  
4 MENTS.—

5 “(i) MONTHLY REPORTS AND PAY-  
6 MENT.—A digital music provider shall re-  
7 port and pay royalties to the mechanical li-  
8 censing collective under the blanket license  
9 on a monthly basis in accordance with  
10 clause (ii) and subsection (c)(5); provided,  
11 however, that monthly reporting shall be  
12 due 45 days, rather than 20 days, after  
13 the end of the monthly reporting period.

14 “(ii) DATA TO BE REPORTED.—In re-  
15 porting usage of musical works to the me-  
16 chanical licensing collective, a digital music  
17 provider shall provide usage data for musi-  
18 cal works used under the blanket license  
19 under this subsection as well as usage data  
20 for musical works used in covered activities  
21 under voluntary and individual download  
22 licenses. In its report of usage, the digital  
23 music provider shall—

24 “(I) with respect to each musical  
25 work—

1                   “(aa) provide identifying in-  
2                   formation for the sound record-  
3                   ing embodying such work, includ-  
4                   ing sound recording name, fea-  
5                   tured artist, producer and, to the  
6                   extent available, producer, inter-  
7                   national standard recording code,  
8                   and other information commonly  
9                   used in the industry to identify  
10                  sound recordings and match  
11                  them to the musical works they  
12                  embody;

13                  “(bb) to the extent available,  
14                  provide information concerning  
15                  authorship and ownership of the  
16                  applicable rights in the musical  
17                  work, including songwriter(s),  
18                  publisher name(s) and respective  
19                  ownership share(s), and the  
20                  international standard musical  
21                  work code; and

22                  “(cc) provide the number of  
23                  digital phonorecord deliveries of  
24                  such work, including limited



1 downloads and interactive  
2 streams;

3 “(II) identify and provide contact  
4 information for all copyright owners  
5 of musical works as to which a vol-  
6 untary license, rather than the blan-  
7 ket license, is in effect with respect to  
8 the uses being reported; and

9 “(III) provide such other infor-  
10 mation as the Register of Copyrights  
11 shall require by regulation.

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

1           ital music providers engaged in covered ac-  
2           tivities under a blanket license.

3           “(B) PROCUREMENT OF SOUND RECORD-  
4           ING INFORMATION.—In addition to obtaining  
5           sound recording names and featured artists, a  
6           digital music provider shall engage in good-  
7           faith, commercially reasonable efforts to obtain  
8           from copyright owners of sound recordings  
9           made available through the service of such dig-  
10          ital music provider—

11           “(i) producers, international standard  
12          recording codes, and other information  
13          commonly used in the industry to identify  
14          sound recordings and match them to the  
15          musical works they embody; and

16           “(ii) information concerning the au-  
17          thorship and ownership of musical works,  
18          including songwriters, publisher names,  
19          ownership shares, and international stand-  
20          ard musical work codes.

21           “(C) PAYMENT OF ADMINISTRATIVE AS-  
22          SESSMENT.—A digital music provider and any  
23          significant nonblanket licensee shall pay the ad-  
24          ministrative assessment established under para-

1 graph (7)(D) in accordance with this subsection  
2 and applicable regulations.

3 “(D) VERIFICATION OF PAYMENTS BY DIG-  
4 ITAL MUSIC PROVIDERS.—

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

12 “(I) The mechanical licensing  
13 collective may commence an audit of a  
14 digital music provider no more than  
15 once in any 3-year period to cover a  
16 verification period of no more than  
17 the 3 preceding full calendar years,  
18 and such audit may not audit records  
19 for any such 3-year verification period  
20 more than once.

21 “(II) The audit shall be con-  
22 ducted by a qualified auditor, who  
23 shall perform the audit during the or-  
24 dinary course of business by exam-  
25 ining the books, records, and systems

1 of the digital music provider, as well  
2 as underlying data, according to gen-  
3 erally accepted auditing standards and  
4 subject to applicable confidentiality  
5 requirements prescribed by the Reg-  
6 ister of Copyrights under subsection  
7 (d)(12)(C).

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

17 “(IV) To commence the audit,  
18 the mechanical licensing collective  
19 shall file with the Copyright Office a  
20 notice of intent to conduct an audit of  
21 the digital music provider, and shall  
22 simultaneously deliver a copy of such  
23 notice to the digital music provider.  
24 The Register of Copyrights shall  
25 cause the notice of audit to be pub-

1 lished in the Federal Register within  
2 30 days of receipt.

3 “(V) The qualified auditor shall  
4 determine the accuracy of royalty pay-  
5 ments, including whether an under-  
6 payment or overpayment of royalties  
7 was made by the digital music pro-  
8 vider to the mechanical licensing col-  
9 lective; provided, however, that before  
10 providing a final audit report to the  
11 copyright owner(s), the qualified audi-  
12 tor shall provide a tentative draft of  
13 the report to the digital music pro-  
14 vider and allow the digital music pro-  
15 vider a reasonable opportunity to re-  
16 spond to the findings, including by  
17 clarifying issues and correcting factual  
18 errors.

19 “(VI) The mechanical licensing  
20 collective shall pay the cost of the  
21 audit, unless the qualified auditor de-  
22 termines that there was an under-  
23 payment by the digital music provider  
24 of 10 percent or more, in which case  
25 the digital music provider shall bear

1 the reasonable costs of the audit, in  
2 addition to paying the amount of any  
3 underpayment to the mechanical li-  
4 censing collective. In case of an over-  
5 payment by the digital music provider,  
6 the mechanical licensing collective  
7 shall provide a credit to the digital  
8 music provider.

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

20 “(ii) ALTERNATIVE VERIFICATION  
21 PROCEDURES.—Nothing in this subpara-  
22 graph shall preclude the mechanical licens-  
23 ing collective and a digital music provider  
24 from agreeing to audit procedures different  
25 from those set forth herein; provided, how-

1           ever, that notice of the audit shall still be  
2           provided to and published by the Copyright  
3           Office as set forth in clause (i)(IV).

4           “(E) DEFAULT UNDER BLANKET LI-  
5           CENSE.—

6           “(i) CONDITION OF DEFAULT.—A dig-  
7           ital music provider shall be considered gen-  
8           erally in default under a blanket license  
9           obtained under this subsection if the dig-  
10          ital music provider—

11           “(I) fails to provide one or more  
12          monthly reports of usage to the me-  
13          chanical licensing collective when due;

14           “(II) fails to make a monthly  
15          royalty or late fee payment to the me-  
16          chanical licensing collective when due,  
17          in all or material part;

18           “(III) provides one or more  
19          monthly reports of usage to the me-  
20          chanical licensing collective that, on  
21          the whole, is or are materially defi-  
22          cient as a result of inaccurate, miss-  
23          ing, or unreadable data, where the  
24          correct data was available to the dig-  
25          ital music provider and required to be

1 reported under this section and appli-  
2 cable regulations;

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

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

13 “(ii) NOTICE OF DEFAULT AND TER-  
14 MINATION.—In case of a general default by  
15 a digital music provider, the mechanical li-  
16 censing collective may proceed to terminate  
17 the blanket license of the digital music pro-  
18 vider as follows:

19 “(I) The mechanical licensing  
20 collective shall provide written notice  
21 to the digital music provider describ-  
22 ing with reasonable particularity the  
23 default and advising that unless such  
24 default is cured within 60 days from  
25 the date of the notice, the blanket li-



1                   cense will automatically terminate at  
2                   the end of that period.

3                   “(II) If the digital music provider  
4                   fails to remedy the default within the  
5                   60-day period referenced in subclause  
6                   (I), the license shall terminate without  
7                   any further action on the part of the  
8                   mechanical licensing collective. Such  
9                   termination renders the making of all  
10                  digital phonorecord deliveries of all  
11                  musical works (and shares thereof)  
12                  covered by the blanket license for  
13                  which the royalty or administrative  
14                  assessment has not been paid action-  
15                  able as acts of infringement under  
16                  section 501 and subject to the rem-  
17                  edies provided by sections 502  
18                  through 506.

19                  “(iii) NOTICE TO COPYRIGHT OWN-  
20                  ERS.—The mechanical licensing collective  
21                  shall provide written notice of any termi-  
22                  nation under this subparagraph to copy-  
23                  right owners of affected works.

24                  “(5) DIGITAL LICENSEE COORDINATOR.—

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

3                   “(i) is a not-for-profit entity, not  
4 owned by any other entity, that is des-  
5 ignated by the Register of Copyrights to  
6 carry out responsibilities under this sub-  
7 section;

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

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

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

24           “(B) DESIGNATION OF DIGITAL LICENSEE  
25 COORDINATOR.—

1           “(i) INITIAL DESIGNATION.—The  
2 Register of Copyrights shall initially des-  
3 ignate the digital licensee coordinator with-  
4 in 9 months of the enactment date, in ac-  
5 cordance with the same procedure as set  
6 forth for designation of the mechanical li-  
7 censing collective in paragraph (3)(B)(i).

8           “(ii) PERIODIC REVIEW OF DESIGNA-  
9 TION.—Following the initial designation of  
10 the digital licensee coordinator, the Reg-  
11 ister shall, every 5 years, beginning with  
12 the fifth full calendar year to commence  
13 after the initial designation, determine  
14 whether the existing designation should be  
15 continued, or a different entity meeting the  
16 criteria set forth in subparagraph (A)  
17 should be designated, in accordance with  
18 the same procedure as set forth for the  
19 mechanical licensing collective in para-  
20 graph (3)(B)(ii).

21           “(iii) INABILITY TO DESIGNATE.—If  
22 the Register is unable to identify an entity  
23 that fulfills the qualifications set forth in  
24 paragraph (A) that is willing to serve as  
25 digital licensee coordinator, the Register

1 shall decline to designate a digital licensee  
2 coordinator. The Register’s inability to  
3 designate a digital licensee coordinator  
4 shall not negate or otherwise affect any  
5 provision of this subsection except to the  
6 limited extent that a provision references  
7 the digital licensee coordinator. In such  
8 case, the reference to the digital licensee  
9 coordinator shall be without effect unless  
10 and until a new digital licensee coordinator  
11 is designated.

12 “(C) AUTHORITIES AND FUNCTIONS.—

13 “(i) IN GENERAL.—The digital li-  
14 censee coordinator is authorized to perform  
15 the following functions, subject to more  
16 particular requirements as set forth in this  
17 subsection:

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

22 “(II) Engage in efforts to enforce  
23 notice and payment obligations with  
24 respect to the administrative assess-  
25 ment, including by receiving informa-

1                   tion from and coordinating with the  
2                   mechanical licensing collective.

3                   “(III) Initiate and participate in  
4                   proceedings before the Copyright Roy-  
5                   alty Judges to establish the adminis-  
6                   trative assessment under this sub-  
7                   section.

8                   “(IV) Initiate and participate in  
9                   proceedings before the Copyright Of-  
10                  fice with respect to activities under  
11                  this subsection.

12                  “(V) Gather and provide docu-  
13                  mentation for use in proceedings be-  
14                  fore the Copyright Royalty Judges to  
15                  set rates and terms under this section.

16                  “(VI) Maintain records of its ac-  
17                  tivities.

18                  “(VII) Engage in such other ac-  
19                  tivities as may be necessary or appro-  
20                  priate to fulfill its responsibilities  
21                  under this subsection.

22                  “(ii) RESTRICTION ON LOBBYING.—  
23                  The digital licensee coordinator shall not  
24                  engage in government lobbying activities;  
25                  provided, however, that it may engage in

1           the activities set forth in clause (i)(III),  
2           (IV), and (V).

3           “(6) REQUIREMENTS FOR SIGNIFICANT NON-  
4           BLANKET LICENSEES.—

5           “(A) IN GENERAL.—

6           “(i) NOTICE OF ACTIVITY.—Not later  
7           than 45 days after the license availability  
8           date, or 45 days after the end of the first  
9           full calendar month in which an entity ini-  
10          tially qualifies as a significant nonblanket  
11          licensee as defined in subsection (e)(29),  
12          whichever occurs later, a significant non-  
13          blanket licensee shall submit a notice of  
14          nonblanket activity to the mechanical li-  
15          censing collective. The notice of nonblanket  
16          activity shall comply in form and substance  
17          with requirements that the Register of  
18          Copyrights shall establish by regulation,  
19          and a copy shall be made available to the  
20          digital licensee coordinator.

21          “(ii) REPORTING AND PAYMENT OBLI-  
22          GATIONS.—The notice of nonblanket activ-  
23          ity submitted to the mechanical licensing  
24          collective shall be accompanied by a report  
25          of usage that contains the information de-

1 scribed in paragraph (4)(A)(ii), as well as  
2 payment of the administrative assessment  
3 as required under this subsection and ap-  
4 plicable regulations. Thereafter, subject to  
5 clause (iii), a significant nonblanket li-  
6 censee shall continue to provide monthly  
7 reports of usage, accompanied by payment  
8 of the administrative assessment, to the  
9 mechanical licensing collective, such re-  
10 ports and payments to be submitted not  
11 later than 45 days after the end of the cal-  
12 endar month being reported.

13 “(iii) DISCONTINUATION OF OBLIGA-  
14 TIONS.—An entity that has submitted a  
15 notice of nonblanket activity to the me-  
16 chanical licensing collective that has ceased  
17 to qualify as a significant nonblanket li-  
18 censee may so notify the collective in writ-  
19 ing. In such case, as of the calendar month  
20 in which such notice is provided, such enti-  
21 ty shall no longer be required to provide  
22 reports of usage or pay the administrative  
23 assessment; provided, however, that should  
24 such entity once again qualify as a signifi-  
25 cant nonblanket licensee, it shall again be

1 required to comply with clauses (i) and  
2 (ii).

3 “(B) REPORTING BY MECHANICAL LICENS-  
4 ING COLLECTIVE TO DIGITAL LICENSEE COOR-  
5 DINATOR.—

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

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

24 “(C) LEGAL ENFORCEMENT EFFORTS.—



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

22                   “(ii) STATUTE OF LIMITATIONS FOR  
23                   ENFORCEMENT ACTION.—Any action de-  
24                   scribed in this subparagraph shall be com-

1 menced within the time period set forth in  
2 section 507(b).

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

11 “(7) FUNDING OF MECHANICAL LICENSING  
12 COLLECTIVE.—

13 “(A) IN GENERAL.—The total costs of the  
14 mechanical licensing collective shall be funded  
15 by—

16 “(i) an administrative assessment, as  
17 such assessment is established by the  
18 Copyright Royalty Judges pursuant to sub-  
19 paragraph (D) from time to time, to be  
20 paid by—

21 “(I) digital music providers that  
22 are engaged, in all or in part, in cov-  
23 ered activities pursuant to a blanket  
24 license under this subsection; and

1                   “(II) significant nonblanket li-  
2                   censees; and

3                   “(ii) voluntary contributions from dig-  
4                   ital music providers and significant non-  
5                   blanket licensees as may be agreed with  
6                   copyright owners.

7                   “(B) VOLUNTARY CONTRIBUTIONS.—

8                   “(i) AGREEMENTS CONCERNING CON-  
9                   TRIBUTIONS.—Except as provided in  
10                  clause (ii), any voluntary contributions by  
11                  digital music providers and significant non-  
12                  blanket licensees shall be determined by  
13                  private negotiation and agreement; pro-  
14                  vided, however, that—

15                  “(I) the date and amount of any  
16                  voluntary contribution to the mechan-  
17                  ical licensing collective shall be docu-  
18                  mented in a writing signed by an au-  
19                  thorized agent of the mechanical li-  
20                  censing collective and the contributing  
21                  party; and

22                  “(II) such agreement shall be  
23                  made available as required in pro-  
24                  ceedings before the Copyright Royalty  
25                  Judges to establish or adjust the ad-

1           ministrative assessment in accordance  
2           with applicable statutory and regu-  
3           latory provisions and rulings of the  
4           Copyright Royalty Judges.

5           “(ii) TREATMENT OF CONTRIBU-  
6           TIONS.—Any such voluntary contribution  
7           shall be treated for purposes of an admin-  
8           istrative assessment proceeding as a gen-  
9           eral offset to total costs of the mechanical  
10          licensing collective that would otherwise be  
11          recovered through the administrative as-  
12          sessment. Any allocation or reallocation of  
13          voluntary contributions between or among  
14          individual digital music providers or sig-  
15          nificant nonblanket licensees shall be a  
16          matter of private negotiation and agree-  
17          ment among such parties and outside the  
18          scope of the administrative assessment pro-  
19          ceeding.

20          “(C) INTERIM APPLICATION OF ACCRUED  
21          ROYALTIES.—In the event that the administra-  
22          tive assessment, together with any funding from  
23          voluntary contributions as provided in subpara-  
24          graphs (A) and (B), is inadequate to cover cur-  
25          rent total costs of the mechanical licensing col-

1           lective, the collective, with approval of its board  
2           of directors, may apply unclaimed accrued roy-  
3           alties on an interim basis to defray such costs,  
4           subject to future reimbursement of such roy-  
5           alties from future collections of the assessment.

6           “(D) DETERMINATION OF ADMINISTRA-  
7           TIVE ASSESSMENT.—

8           “(i) ADMINISTRATIVE ASSESSMENT TO  
9           COVER TOTAL COSTS.—The administrative  
10          assessment shall be used solely and exclu-  
11          sively to fund the total costs of the me-  
12          chanical licensing collective.

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

23                  “(I) be wholly independent of  
24                  royalty rates and terms applicable to  
25                  digital music providers, which shall

1 not be taken into consideration in any  
2 manner in establishing the adminis-  
3 trative assessment;

4 “(II) be established by the Copy-  
5 right Royalty Judges in an amount  
6 that is calculated to defray the rea-  
7 sonable total costs of the mechanical  
8 licensing collective, as such total costs  
9 are defined in subsection (e)(31);

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

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

1 and significant nonblanket licensees  
2 engaged in covered activities, but shall  
3 include as a component a minimum  
4 fee for all digital music providers and  
5 significant nonblanket licensees; and

6 “(V) take into consideration not  
7 only anticipated future total costs and  
8 collections of the administrative as-  
9 sessment, but also, as applicable—

10 “(aa) any portion of past ac-  
11 tual total costs of the mechanical  
12 licensing collective not funded by  
13 previous collections of the admin-  
14 istrative assessment or voluntary  
15 contributions because such collec-  
16 tions or contributions together  
17 were insufficient to fund such  
18 costs;

19 “(bb) any past collections of  
20 the administrative assessment  
21 and voluntary contributions that  
22 exceeded past actual total costs  
23 of the mechanical licensing collec-  
24 tive, resulting in a surplus; and

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

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

12                  “(I) The Copyright Royalty  
13                  Judges shall commence a proceeding  
14                  to establish the initial administrative  
15                  assessment within one year of the en-  
16                  actment date by publishing a notice in  
17                  the Federal Register seeking petitions  
18                  to participate.

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



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

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

17 “(IV) The initial administrative  
18 assessment shall be determined, and  
19 such determination shall be published  
20 in the Federal Register by the Copy-  
21 right Royalty Judges, within 9  
22 months of commencement of the pro-  
23 ceeding contemplated by this clause.  
24 The determination shall be supported  
25 by a written record. The initial ad-

1           administrative assessment shall be effective as of the license availability date,  
2           and shall continue in effect unless and  
3           until an adjusted administrative assessment is established pursuant to an  
4           adjustment proceeding under clause  
5           (iii).

6           “(iv) ADJUSTMENT OF ADMINISTRATIVE ASSESSMENT.—The administrative  
7           assessment may be adjusted by the Copyright Royalty Judges in a proceeding to  
8           occur no more than once every 2 years, in  
9           accordance with the following procedure:

10           “(I) The mechanical licensing  
11           collective, digital licensee coordinator,  
12           or one or more interested copyright  
13           owners, digital music providers or significant nonblanket licensees may file  
14           a petition with the Copyright Royalty  
15           Judges in the month of January to  
16           commence a proceeding to adjust the  
17           administrative assessment, if at least  
18           2 years have expired since the date of  
19           the most recent determination of the  
20  
21  
22  
23  
24

1 administrative assessment by the  
2 Copyright Royalty Judges.

3 “(II) Notice of the commence-  
4 ment of such proceeding shall be pub-  
5 lished in the Federal Register in the  
6 month of February, along with a  
7 schedule of requested information and  
8 additional proceedings, as described in  
9 clause (iii)(III). The mechanical li-  
10 censing collective and digital licensee  
11 coordinator shall participate in such  
12 proceeding, along with any interested  
13 copyright owners, digital music pro-  
14 viders or significant nonblanket licens-  
15 ees that have notified the Copyright  
16 Royalty Judges of their desire to par-  
17 ticipate.

18 “(III) The adjusted administra-  
19 tive assessment, which shall be sup-  
20 ported by a written record, shall be  
21 published in the Federal Register no  
22 later than 9 months after the publica-  
23 tion of the notice of commencement of  
24 the adjustment proceeding. The ad-  
25 justed administrative assessment shall

1 take effect as of January 1 of the fol-  
2 lowing year.

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

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

10           “(vii) APPEAL OF ADMINISTRATIVE  
11 ASSESSMENT.—The determination of an  
12 administrative assessment by the Copy-  
13 right Royalty Judges shall be appealable,  
14 within 30 days after publication in the  
15 Federal Register, to the Court of Appeals  
16 for the District of Columbia Circuit by any  
17 party that fully participated in the pro-  
18 ceeding. The administrative assessment as  
19 established by the Copyright Royalty  
20 Judges shall remain in effect pending the  
21 final outcome of any such appeal; provided,  
22 however, that the mechanical licensing col-  
23 lective, digital licensee coordinator, digital  
24 music providers, and significant non-  
25 blanket licensees shall implement appro-

1           appropriate financial or other measures within 3  
2           months of any modification of the assess-  
3           ment to reflect and account for such out-  
4           come.

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

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

11          “(A) RESTRICTIONS ON RATESETTING  
12          PARTICIPATION.—Neither the mechanical li-  
13          censing collective nor the digital licensee coordi-  
14          nator shall be a party to a proceeding to deter-  
15          mine rates and terms for activities under this  
16          section as described in subsection (c)(3)(C);  
17          provided, however, that either may gather and  
18          provide financial and other information for the  
19          use of a party to such a proceeding and comply  
20          with requests for information as required under  
21          applicable statutory and regulatory provisions  
22          and rulings of the Copyright Royalty Judges.

23          “(B) APPLICATION OF LATE FEES.—In  
24          any proceeding described in subparagraph (A)  
25          in which the Copyright Royalty Judges estab-

1           lish a late fee for late payment of royalties for  
2           uses of musical works under this section, such  
3           fee shall apply to covered activities under blan-  
4           ket licenses under this subsection, as follows:

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

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

14                  “(C) INTERIM RATE AGREEMENTS.—For  
15                  any covered activity for which no rate or terms  
16                  have been established by the Copyright Royalty  
17                  Judges, the mechanical licensing collective and  
18                  a digital music provider may agree to an in-  
19                  terim rate and terms for such activity; provided,  
20                  however, that any such interim rate and  
21                  terms—

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

1                   “(ii) shall automatically expire upon  
2                   the establishment of a rate and terms for  
3                   such covered activity by the Copyright  
4                   Royalty Judges, except as may otherwise  
5                   be agreed by the parties.

6                   “(9) TRANSITION TO BLANKET LICENSES.—

7                   “(A) SUBSTITUTION OF BLANKET LI-  
8                   CENSE.—As of the license availability date, a  
9                   blanket license obtained by a digital music pro-  
10                  vider under this subsection shall, without any  
11                  interruption in license authority enjoyed by  
12                  such digital music provider, be automatically  
13                  substituted for and supersede any existing li-  
14                  cense previously obtained by the digital music  
15                  provider from a copyright owner under this sec-  
16                  tion to engage in one or more covered activities  
17                  with respect to a musical work; provided, how-  
18                  ever, that the foregoing shall not apply to au-  
19                  thority obtained from a record company to  
20                  make and distribute permanent downloads un-  
21                  less and until such record company terminates  
22                  such authority in writing as of the end of a  
23                  monthly reporting period, with a copy to the  
24                  mechanical licensing collective.



1           “(B) EXPIRATION OF EXISTING LI-  
2           CENSES.—Except to the extent provided in sub-  
3           paragraph (A), as of the license availability  
4           date, licenses obtained under this section for  
5           covered activities prior to the license availability  
6           date shall no longer continue in effect.

7           “(C) TREATMENT OF VOLUNTARY LI-  
8           CENSES.—A voluntary license for a covered ac-  
9           tivity in effect as of the license availability date  
10          will remain in effect unless and until it expires  
11          according to its terms, or the parties agree to  
12          amend or terminate the license. In a case where  
13          a voluntary license for a covered activity en-  
14          tered into before the license availability date in-  
15          corporates the terms of this section by ref-  
16          erence, the terms so incorporated (but not the  
17          rates) shall be those in effect immediately prior  
18          to the license availability date, and those terms  
19          shall continue to apply unless and until such li-  
20          cense is terminated or amended, or the parties  
21          enter into a new voluntary license.

22          “(D) FURTHER ACCEPTANCE OF NOTICES  
23          FOR COVERED ACTIVITIES BY COPYRIGHT OF-  
24          FICE.—As of the enactment date—

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

4           “(ii) previously filed notices of inten-  
5           tion will no longer be effective or provide  
6           license authority with respect to covered  
7           activities; provided, however, that there  
8           shall be no liability pursuant to section  
9           501 for the reproduction or distribution of  
10          a musical work (or share thereof) under a  
11          validly filed notice of intention through the  
12          license availability date.

13          “(10) PRIOR UNLICENSED USES.—

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

1           vider, be eligible to recover the royalty pre-  
2           scribed under subsection (c)(3)(A) and chapter  
3           8 of this title, from the digital music provider,  
4           provided that such digital music provider can  
5           demonstrate compliance with the requirements  
6           of subparagraph (B), as applicable. In all other  
7           cases the limitation on liability under this sub-  
8           paragraph shall not apply.

9           “(B) REQUIREMENTS FOR LIMITATION ON  
10          LIABILITY.—The following requirements shall  
11          apply as of the enactment date through the li-  
12          cense availability date to digital music providers  
13          seeking to avail themselves of the limitation on  
14          liability described in subparagraph (A):

15                 “(i) No later than 30 days after first  
16                 making a particular sound recording of a  
17                 musical work available through its service  
18                 via one or more covered activities, or 30  
19                 days after the enactment date, whichever  
20                 occurs later, a digital music provider shall  
21                 engage in good-faith, commercially reason-  
22                 able efforts to identify and locate each  
23                 copyright owner of such musical work (or  
24                 share thereof). Such required matching ef-  
25                 forts shall include:

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

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

15                   “(bb) Any available musical  
16 work ownership information, in-  
17 cluding songwriter and publisher  
18 name(s), percentage ownership  
19 share(s), and international stand-  
20 ard musical work code.

21           “(II) Employment of one or more  
22 bulk electronic matching processes  
23 that are available to the digital music  
24 provider through third-party vendors  
25 on commercially reasonable terms;

1 provided, however, that a digital  
2 music provider may rely on its own  
3 bulk electronic matching process if it  
4 has capabilities comparable to or bet-  
5 ter than such third-party offerings.

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

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

21 “(iv) If the copyright owner is not  
22 identified or located by the end of the cal-  
23 endar month in which the digital music  
24 provider first makes use of the work, the  
25 digital music provider shall accrue and

1 hold royalties calculated under the applica-  
2 ble statutory rate in accordance with usage  
3 of the work, from initial use of the work  
4 until the accrued royalties can be paid to  
5 the copyright owner or are required to be  
6 transferred to the mechanical licensing col-  
7 lective, as follows:

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

12 “(II) If a copyright owner of an  
13 unmatched work (or share thereof) is  
14 identified and located by or to the dig-  
15 ital music provider before the license  
16 availability date, the digital music  
17 provider shall—

18 “(aa) within 45 days after  
19 the end of the calendar month  
20 during which the copyright owner  
21 was identified and located, pay  
22 the copyright owner all accrued  
23 royalties, such payment to be ac-  
24 companied by a cumulative state-  
25 ment of account that includes all

1 of the information that would  
2 have been provided to the copy-  
3 right owner had the digital music  
4 provider been providing monthly  
5 statements of account to the  
6 copyright owner from initial use  
7 of the work in accordance with  
8 this section and applicable regu-  
9 lations, including the requisite  
10 certification under subsection  
11 (c)(5);

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

23 “(cc) as of the monthly roy-  
24 alty reporting period commencing  
25 on the license availability date,

1 begin reporting usage and paying  
2 royalties for such musical work  
3 (or share thereof) for such re-  
4 porting period and reporting pe-  
5 riods thereafter to the mechanical  
6 licensing collective, as required  
7 under this subsection and appli-  
8 cable regulations.

9 “(III) If a copyright owner of an  
10 unmatched work (or share thereof) is  
11 not identified and located by the li-  
12 cense availability date, the digital  
13 music provider shall—

14 “(aa) within 45 days after  
15 the license availability date,  
16 transfer all accrued royalties to  
17 the mechanical licensing collec-  
18 tive, such payment to be accom-  
19 panied by a cumulative statement  
20 of account that includes all of the  
21 information that would have been  
22 provided to the copyright owner  
23 had the digital music provider  
24 been serving monthly statements  
25 of account on the copyright



1 owner from initial use of the  
2 work in accordance with this sec-  
3 tion and applicable regulations,  
4 including the requisite certifi-  
5 cation under subsection (c)(5),  
6 and accompanied by an addi-  
7 tional certification by a duly au-  
8 thorized officer of the digital  
9 music provider that the digital  
10 music provider has fulfilled the  
11 requirements of clauses (i) and  
12 (ii) of subparagraph (B) but has  
13 not been successful in locating or  
14 identifying the copyright owner;  
15 and

16 “(bb) as of the monthly roy-  
17 alty reporting period commencing  
18 on the license availability date,  
19 begin reporting usage and paying  
20 royalties for such musical work  
21 (or share thereof) for such period  
22 and reporting periods thereafter  
23 to the mechanical licensing collec-  
24 tive, as required under this sub-

1 section and applicable regula-  
2 tions.

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

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

1           erued, or up to 2 years after the license avail-  
2           ability date, whichever is later.

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

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

11           “(A) EXEMPTION FOR COMPULSORY LI-  
12          CENSE ACTIVITIES.—The antitrust exemption  
13          set forth in subsection (c)(3)(B) shall apply to  
14          negotiations and agreements between and  
15          among copyright owners and persons entitled to  
16          obtain a compulsory license for covered activi-  
17          ties under this subsection, and common agents  
18          acting on their behalf, including with respect to  
19          the administrative assessment established under  
20          this subsection.

21           “(B) LIMITATION ON COMMON AGENT EX-  
22          EMPTION.—Notwithstanding the antitrust ex-  
23          emption provided in subsection (c)(3)(B) and  
24          subparagraph (A), except for the administrative  
25          assessment, neither the mechanical licensing

1 collective nor the digital licensee coordinator  
2 shall serve as a common agent with respect to  
3 the establishment of royalty rates or terms  
4 under this section.

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

14 “(i) each copyright owner shall estab-  
15 lish the royalty rates and material license  
16 terms of any such voluntary license indi-  
17 vidualy and not in agreement, combina-  
18 tion, or concert with any other copyright  
19 owner;

20 “(ii) each person entitled to obtain a  
21 compulsory license under this section shall  
22 establish the royalty rates and material li-  
23 cense terms of any such voluntary license  
24 individually and not in agreement, com-

1            bination, or concert with any other digital  
2            music provider; and

3            “(iii) the mechanical licensing collec-  
4            tive shall maintain the confidentiality of  
5            the voluntary licenses in accordance with  
6            the confidentiality provisions prescribed by  
7            the Register of Copyrights under sub-  
8            section (d)(12)(C).

9            “(D) LIABILITY FOR GOOD-FAITH ACTIVI-  
10           TIES.—The mechanical licensing collective shall  
11           not be liable to any person or entity based on  
12           a claim arising from its good-faith administra-  
13           tion of policies and procedures adopted and im-  
14           plemented to carry out the responsibilities set  
15           forth in subparagraphs (J) and (K) of para-  
16           graph (3), except to the extent of correcting an  
17           underpayment or overpayment of royalties as  
18           provided in paragraph (3)(L)(i)(VI); provided,  
19           however, that it may be named as a stakeholder  
20           in an action between copyright owners if it is  
21           holding disputed funds that are the subject of  
22           such action. For purposes of this subparagraph,  
23           ‘good-faith administration’ means administra-  
24           tion in a manner that is not grossly negligent.

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

9           “(12) REGULATIONS.—

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

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

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

14          “(13) SAVINGS CLAUSES.—

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

1 and rights not covered by this section as of the  
2 enactment date.

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

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

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

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

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

22 “(3) ADMINISTRATIVE ASSESSMENT.—The term  
23 ‘administrative assessment’ means the fee to be paid  
24 by digital music providers and significant nonblanket



1 licensees that is established pursuant to subsection  
2 (d)(7)(D).

3 “(4) BLANKET LICENSE.—The term ‘blanket li-  
4 cense’ means a compulsory license to engage in cov-  
5 ered activities as described in subsection (d)(1).

6 “(5) BUDGET.—The term ‘budget’ means a  
7 statement of the financial position of the mechanical  
8 licensing collective for a fiscal year or quarter there-  
9 of based on estimates of expenditures during the pe-  
10 riod and proposals for financing them, including a  
11 calculation of total costs.

12 “(6) COPYRIGHT OWNER.—The term ‘copyright  
13 owner’—

14 “(A) means the owner of the exclusive  
15 right of reproduction or distribution in a musi-  
16 cal work, in all or in part, as provided in sec-  
17 tion 201 of this title; and

18 “(B) does not refer to ownership of any  
19 other right.

20 “(7) COVERED ACTIVITY.—The term ‘covered  
21 activity’ means the activity of making a digital pho-  
22 norecord delivery of a musical work, including in the  
23 form of a permanent download, limited download, or  
24 interactive stream, where such activity is subject to  
25 compulsory licensing under this section.

1           “(8) DIGITAL MUSIC PROVIDER.—The term  
2           ‘digital music provider’ means a person (or persons  
3           operating under the authority of that person) that,  
4           with respect to a service engaged in covered activi-  
5           ties licensed under this subsection—

6                   “(A) has a direct contractual, subscription,  
7                   or other economic relationship with end users of  
8                   the service, or, if no such relationship with end  
9                   users exists, exercises direct control over the  
10                  provision of the service to end users;

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

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

16           “(9) DIGITAL LICENSEE COORDINATOR.—The  
17           term ‘digital licensee coordinator’ means the entity  
18           described in subsection (d)(5).

19           “(10) DIGITAL PHONORECORD DELIVERY.—The  
20           term ‘digital phonorecord delivery’ means each indi-  
21           vidual delivery of a phonorecord by digital trans-  
22           mission of a sound recording that results in a spe-  
23           cifically identifiable reproduction by or for any  
24           transmission recipient of a phonorecord of that  
25           sound recording, regardless of whether the digital

1 transmission is also a public performance of the  
2 sound recording or any musical work embodied  
3 therein, and includes a permanent download, a lim-  
4 ited download, or an interactive stream. A digital  
5 phonorecord delivery does not result from a real-  
6 time, noninteractive subscription transmission of a  
7 sound recording where no reproduction of the sound  
8 recording or the musical work embodied therein is  
9 made from the inception of the transmission through  
10 to its receipt by the transmission recipient in order  
11 to make the sound recording audible. A digital pho-  
12 norecord delivery does not include the digital trans-  
13 mission of sounds accompanying a motion picture or  
14 other audiovisual work as defined in section 101 of  
15 this title.

16 “(11) ENACTMENT DATE.—The term ‘enact-  
17 ment date’ means the date of enactment of the  
18 Music Modernization Act of 2017.

19 “(12) INDIVIDUAL DOWNLOAD LICENSE.—The  
20 term ‘individual download license’ means a license  
21 obtained by a record company under subsection  
22 (b)(3) to make and distribute, or authorize the mak-  
23 ing and distribution of, permanent downloads em-  
24 bodying a specific musical work (or share of a work).

1           “(13) INTERACTIVE STREAM.—The term ‘inter-  
2       active stream’ means a digital transmission of a  
3       sound recording of a musical work in the form of a  
4       stream, where the performance of the sound record-  
5       ing by means of such transmission is not exempt  
6       under section 114(d)(1) and does not in itself, or as  
7       a result of a program in which it is included, qualify  
8       for statutory licensing under section 114(d)(2). An  
9       interactive stream is a digital phonorecord delivery.

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

16           “(15) LICENSE AVAILABILITY DATE.—The term  
17       ‘license availability date’ means January 1 following  
18       the second anniversary of the enactment of the  
19       Music Modernization Act of 2017.

20           “(16) LIMITED DOWNLOAD.—The term ‘limited  
21       download’ means a digital transmission of a sound  
22       recording of a musical work in the form of a  
23       download, where such sound recording is accessible  
24       for listening only for a limited amount of time or  
25       specified number of times.

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

5           “(18) MECHANICAL LICENSING COLLECTIVE.—  
6           The term ‘mechanical licensing collective’ means the  
7           entity described in subsection (d)(3)(A).

8           “(19) MUSICAL WORKS DATABASE.—The term  
9           ‘musical works database’ means the database de-  
10          scribed in subsection (d)(3)(E).

11          “(20) NOTICE OF LICENSE.—The term ‘notice  
12          of license’ means a notice from a digital music pro-  
13          vider provided under subsection (d)(2)(A) for pur-  
14          poses of obtaining a blanket license to engage in cov-  
15          ered activities under subsection (d).

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

22          “(22) PERMANENT DOWNLOAD.—The term  
23          ‘permanent download’ means a digital transmission  
24          of a sound recording of a musical work in the form  
25          of a download, where such sound recording is acces-

1 sible for listening without restriction as to the  
2 amount of time or number of times it may be  
3 accessed.

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

8 “(24) RECORD COMPANY.—The term ‘record  
9 company’ means an entity that invests in, produces,  
10 and markets sound recordings of musical works, and  
11 distributes such sound recordings for remuneration  
12 through multiple sales channels.

13 “(25) REPORT OF USAGE.—The term ‘report of  
14 usage’ means a report reflecting an entity’s usage of  
15 musical works in covered activities as described in  
16 subsection (d)(4)(A).

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

21 “(27) SERVICE.—The term ‘service’, as used in  
22 relation to covered activities, means any site or other  
23 facility through which sound recordings of musical  
24 works are made available by digital transmission to  
25 members of the public.

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

4           “(29) SIGNIFICANT NONBLANKET LICENSEE.—  
5 The term ‘significant nonblanket licensee’ means an  
6 entity, including a group of entities under common  
7 ownership or control that, acting under the authority  
8 of one or more voluntary or individual download li-  
9 censes, offers a service engaged in covered activities,  
10 where such entity or group of entities—

11           “(A) is not currently operating under a  
12 blanket license obtained under this subsection  
13 and therefore is not obligated to provide reports  
14 of usage reflecting covered activities under sub-  
15 section (d)(4)(A);

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

21           “(C) either—

22           “(i) at any time in a calendar month,  
23 makes more than 5,000 different sound re-  
24 cordings of musical works available  
25 through its service; or

1                   “(ii) derives revenue or other consid-  
2                   eration in connection with such covered ac-  
3                   tivities greater than 50,000 dollars in a  
4                   calendar month, or total revenue or other  
5                   consideration greater than 500,000 dollars  
6                   during the preceding 12 calendar months.

7                   “(30) SONGWRITER.—The term ‘songwriter’  
8                   means the author of all or part of a musical work,  
9                   including a composer or lyricist.

10                  “(31) TOTAL COSTS.—The term ‘total costs’  
11                  means the total costs of establishing, maintaining,  
12                  and operating the mechanical licensing collective to  
13                  fulfill its statutory functions, including startup costs;  
14                  financing, legal, and insurance costs; investments in  
15                  information technology, infrastructure, and other  
16                  long-term resources; outside vendor costs; costs of li-  
17                  censing, royalty administration, and enforcement of  
18                  rights; costs of bad debt; and costs of automated  
19                  and manual efforts to identify and locate copyright  
20                  owners of musical works (and shares thereof) and  
21                  match sound recordings to the musical works they  
22                  embody; provided, however, that total costs shall not  
23                  include any added costs incurred by the mechanical  
24                  licensing collective to provide services under vol-  
25                  untary licenses.



1           “(32) UNCLAIMED ACCRUED ROYALTIES.—The  
2 term ‘unclaimed accrued royalties’ means accrued  
3 royalties eligible for distribution under subsection  
4 (d)(3)(J).

5           “(33) UNMATCHED.—The term ‘unmatched’, as  
6 applied to a musical work (or share thereof), means  
7 that the copyright owner of such work (or share  
8 thereof) has not been identified or located.

9           “(34) VOLUNTARY LICENSE.—The term ‘vol-  
10 untary license’ means a license for use of a musical  
11 work (or share thereof) other than a compulsory li-  
12 cense obtained under this section.”.

13       (b) TECHNICAL AND CONFORMING AMENDMENTS TO  
14 SECTION 801.—Section 801(b) of title 17, United States  
15 Code, is amended—

16           (1) in paragraph (1), by striking “The rates ap-  
17 plicable under sections 114(f)(1)(B), 115, and 116  
18 shall be calculated to achieve the following objec-  
19 tives” and inserting “The rates applicable under sec-  
20 tions 114(f)(1)(B) and 116 shall be calculated to  
21 achieve the following objectives”;

22           (2) by redesignating paragraph (8) as para-  
23 graph (9); and

24           (3) by inserting after paragraph (7) the fol-  
25 lowing new paragraph:

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

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

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

1 respect to the rates and terms previously adopted by the  
2 Copyright Royalty Judges.

3 (e) BEST PRACTICES WORKING GROUP.—Not later  
4 than 1 year after the date of the enactment of this Act,  
5 the Register of Copyrights shall establish a working group  
6 consisting of representatives of the mechanical licensing  
7 collective, the digital licensee coordinator, copyright own-  
8 ers, digital music providers, sound recording owners, and  
9 performing rights societies to consider and advise on best  
10 practices to minimize the incidence of unidentified and un-  
11 matched musical works and facilitate and encourage the  
12 exchange of ownership information and prompt access to  
13 such information by and among such parties.

14 **SEC. 3. AMENDMENT TO SECTION 114.**

15 (a) REPEAL.—Subsection (i) of section 114 of title  
16 17, United States Code, is repealed.

17 (b) PROCEEDINGS NOT AFFECTED.—The repeal of  
18 section 114(i) of title 17, United States Code, by sub-  
19 section (a) shall not be taken into account in any pro-  
20 ceeding to set or adjust the rates and fees payable for the  
21 use of sound recordings under section 112(e) or section  
22 114(f) of such title that is pending on, or commenced on  
23 or after, the date of the enactment of this Act.

24 (c) DECISIONS AND PRECEDENTS NOT AFFECTED.—  
25 The repeal of section 114(i) of title 17, United States

1 Code, by subsection (a) shall not have any effect upon the  
2 decisions, or the precedents established or relied upon, in  
3 any proceeding to set or adjust the rates and fees payable  
4 for the use of sound recordings under section 112(e) or  
5 section 114(f) of such title before the date of the enact-  
6 ment of this Act.

7 **SEC. 4. RANDOM ASSIGNMENT OF RATE COURT PRO-**  
8 **CEEDINGS.**

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

11 (1) by striking “The business” and inserting  
12 “(a) The business”; and

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

15 “(b)(1) In the case of any performing rights society  
16 subject to a consent decree, any application for the deter-  
17 mination of a license fee for the public performance of  
18 music in accordance with the applicable consent decree  
19 shall be made in the district court with jurisdiction over  
20 that consent decree and assigned by lot to a judge of that  
21 district court according to that court’s rules for the divi-  
22 sion of business among district judges currently in effect  
23 or as may be amended from time to time, provided that  
24 any such application shall not be assigned to—

1           “(A) a judge to whom continuing jurisdiction  
2           over any performing rights society for any per-  
3           forming rights society consent decree is assigned or  
4           has previously been assigned; or

5           “(B) a judge to whom another proceeding con-  
6           cerning an application for the determination of a  
7           reasonable license fee is assigned at the time of the  
8           filing of the application.

9           This provision does not apply to applications to determine  
10          reasonable license fees made by individual proprietors  
11          under section 513 of title 17.

12          “(2) Nothing in paragraph (1) shall abrogate the  
13          right of any party to the applicable consent decree to make  
14          an application for a construction of any provision of the  
15          applicable consent decree to the judge to whom continuing  
16          jurisdiction over the applicable consent decree is currently  
17          assigned. If a party to a consent decree makes such an  
18          application in connection with any rate proceeding, such  
19          proceeding shall be stayed until the final determination of  
20          the construction application.”.

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