

In the Senate of the United States,

September 18, 2018.

Resolved, That the bill from the House of Representatives (H.R. 1551) entitled “An Act to amend the Internal Revenue Code of 1986 to modify the credit for production from advanced nuclear power facilities.”, do pass with the following

AMENDMENT:

Strike all after the enacting clause and insert the following:

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

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

4 (b) *TABLE OF CONTENTS.*—*The table of contents for*
5 *this Act is as follows:*

Sec. 1. Short title; table of contents.

Sec. 2. Customs user fees.

TITLE I—MUSIC LICENSING MODERNIZATION

Sec. 101. Short title.

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

Sec. 103. Amendments to section 114.

Sec. 104. Random assignment of rate court proceedings.

Sec. 105. Performing rights society consent decrees.

Sec. 106. *Effective date.*

TITLE II—CLASSICS PROTECTION AND ACCESS

Sec. 201. *Short title.*

Sec. 202. *Unauthorized use of pre-1972 sound recordings.*

TITLE III—ALLOCATION FOR MUSIC PRODUCERS

Sec. 301. *Short title.*

Sec. 302. *Payment of statutory performance royalties.*

Sec. 303. *Effective date.*

TITLE IV—SEVERABILITY

Sec. 401. *Severability.*

1 **SEC. 2. CUSTOMS USER FEES.**

2 *Section 13031(j)(3)(A) of the Consolidated Omnibus*
 3 *Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)(A))*
 4 *is amended by striking “October 13, 2027” and inserting*
 5 *“October 20, 2027”.*

6 **TITLE I—MUSIC LICENSING**
 7 **MODERNIZATION**

8 **SEC. 101. SHORT TITLE.**

9 *This title may be cited as the “Musical Works Mod-*
 10 *ernization Act”.*

11 **SEC. 102. BLANKET LICENSE FOR DIGITAL USES AND ME-**
 12 **CHANICAL LICENSING COLLECTIVE.**

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

15 *(1) in subsection (a)—*

16 *(A) in the subsection heading, by inserting*

17 *“IN GENERAL” after “AVAILABILITY AND SCOPE*

18 *OF COMPULSORY LICENSE”;*

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

3 “(1) *ELIGIBILITY FOR COMPULSORY LICENSE.*—

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

15 “(i) phonorecords of such musical work
16 have previously been distributed to the pub-
17 lic in the United States under the authority
18 of the copyright owner of the work, includ-
19 ing by means of digital phonorecord deliv-
20 ery; or

21 “(ii) in the case of a digital music pro-
22 vider seeking to make and distribute digital
23 phonorecord deliveries of a sound recording
24 embodying a musical work under a compul-

1 sory license for which clause (i) does not
2 apply—

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

12 “(II) the sound recording copy-
13 right owner, or the authorized dis-
14 tributor of the sound recording copy-
15 right owner, has authorized the digital
16 music provider to make and distribute
17 digital phonorecord deliveries of the
18 sound recording to the public in the
19 United States.

20 “(B) *DUPLICATION OF SOUND RECORD-*
21 *ING.—A person may not obtain a compulsory li-*
22 *cence for the use of the work in the making of*
23 *phonorecords duplicating a sound recording fixed*
24 *by another, including by means of digital phono-*
25 *record delivery, unless—*

1 “(i) such sound recording was fixed
2 lawfully; and

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

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

16 (2) by striking subsection (b) and inserting the
17 following:

18 “(b) PROCEDURES TO OBTAIN A COMPULSORY LI-
19 CENSE.—

20 “(1) PHONORECORDS OTHER THAN DIGITAL
21 PHONORECORD DELIVERIES.—A person who seeks to
22 obtain a compulsory license under subsection (a) to
23 make and distribute phonorecords of a musical work
24 other than by means of digital phonorecord delivery
25 shall, before, or not later than 30 calendar days after,

1 *making, and before distributing, any phonorecord of*
2 *the work, serve notice of intention to do so on the*
3 *copyright owner. If the registration or other public*
4 *records of the Copyright Office do not identify the*
5 *copyright owner and include an address at which no-*
6 *tice can be served, it shall be sufficient to file the no-*
7 *tice of intention with the Copyright Office. The notice*
8 *shall comply, in form, content, and manner of service,*
9 *with requirements that the Register of Copyrights*
10 *shall prescribe by regulation.*

11 “(2) *DIGITAL PHONORECORD DELIVERIES.*—A
12 *person who seeks to obtain a compulsory license under*
13 *subsection (a) to make and distribute phonorecords of*
14 *a musical work by means of digital phonorecord de-*
15 *livery—*

16 “(A) *prior to the license availability date,*
17 *shall, before, or not later than 30 calendar days*
18 *after, first making any such digital phonorecord*
19 *delivery, serve a notice of intention to do so on*
20 *the copyright owner (but may not file the notice*
21 *with the Copyright Office, even if the public*
22 *records of the Office do not identify the owner or*
23 *the owner’s address), and such notice shall com-*
24 *ply, in form, content, and manner of service,*

1 with requirements that the Register of Copy-
2 rights shall prescribe by regulation; or

3 “(B) on or after the license availability
4 date, shall, before making any such digital pho-
5 norecord delivery, follow the procedure described
6 in subsection (d)(2), except as provided in para-
7 graph (3).

8 “(3) *RECORD COMPANY INDIVIDUAL DOWNLOAD*
9 *LICENSES.*—Notwithstanding paragraph (2)(B), a
10 record company may, on or after the license avail-
11 ability date, obtain an individual download license in
12 accordance with the notice requirements described in
13 paragraph (2)(A) (except for the requirement that no-
14 tice occur prior to the license availability date). A
15 record company that obtains an individual download
16 license as permitted under this paragraph shall pro-
17 vide statements of account and pay royalties as pro-
18 vided in subsection (c)(2)(I).

19 “(4) *FAILURE TO OBTAIN LICENSE.*—

20 “(A) *PHONORECORDS OTHER THAN DIGITAL*
21 *PHONORECORD DELIVERIES.*—In the case of
22 phonorecords made and distributed other than by
23 means of digital phonorecord delivery, the failure
24 to serve or file the notice of intention required by
25 paragraph (1) forecloses the possibility of a com-

1 *pulsory license under paragraph (1). In the ab-*
2 *sence of a voluntary license, the failure to obtain*
3 *a compulsory license renders the making and*
4 *distribution of phonorecords actionable as acts of*
5 *infringement under section 501 and subject to*
6 *the remedies provided by sections 502 through*
7 *506.*

8 “(B) DIGITAL PHONORECORD DELIV-
9 ERIES.—

10 “(i) IN GENERAL.—*In the case of*
11 *phonorecords made and distributed by*
12 *means of digital phonorecord delivery:*

13 “(I) *The failure to serve the notice*
14 *of intention required by paragraph*
15 *(2)(A) or paragraph (3), as applicable,*
16 *forecloses the possibility of a compul-*
17 *sory license under such paragraph.*

18 “(II) *The failure to comply with*
19 *paragraph (2)(B) forecloses the possi-*
20 *bility of a blanket license for a period*
21 *of 3 years after the last calendar day*
22 *on which the notice of license was re-*
23 *quired to be submitted to the mechan-*
24 *ical licensing collective under such*
25 *paragraph.*

1 “(i) *EFFECT OF FAILURE.*—*In either*
2 *case described in subclause (I) or (II) of*
3 *clause (i), in the absence of a voluntary li-*
4 *cence, the failure to obtain a compulsory li-*
5 *cence renders the making and distribution*
6 *of phonorecords by means of digital phono-*
7 *record delivery actionable as acts of in-*
8 *fringement under section 501 and subject to*
9 *the remedies provided by sections 502*
10 *through 506.”;*

11 (3) *by amending subsection (c) to read as fol-*
12 *lows:*

13 “(c) *GENERAL CONDITIONS APPLICABLE TO COMPUL-*
14 *SORY LICENSE.*—

15 “(1) *ROYALTY PAYABLE UNDER COMPULSORY LI-*
16 *CENSE.*—

17 “(A) *IDENTIFICATION REQUIREMENT.*—*To*
18 *be entitled to receive royalties under a compul-*
19 *sory license obtained under subsection (b)(1) the*
20 *copyright owner must be identified in the reg-*
21 *istration or other public records of the Copyright*
22 *Office. The owner is entitled to royalties for*
23 *phonorecords made and distributed after being so*
24 *identified, but is not entitled to recover for any*
25 *phonorecords previously made and distributed.*

1 “(B) *ROYALTY FOR PHONORECORDS OTHER*
2 *THAN DIGITAL PHONORECORD DELIVERIES.*—*Ex-*
3 *cept as provided by subparagraph (A), for every*
4 *phonorecord made and distributed under a com-*
5 *pulsory license under subsection (a) other than*
6 *by means of digital phonorecord delivery, with*
7 *respect to each work embodied in the phono-*
8 *record, the royalty shall be the royalty prescribed*
9 *under subparagraphs (D) through (F), para-*
10 *graph (2)(A), and chapter 8. For purposes of*
11 *this subparagraph, a phonorecord is considered*
12 *‘distributed’ if the person exercising the compul-*
13 *sory license has voluntarily and permanently*
14 *parted with its possession.*

15 “(C) *ROYALTY FOR DIGITAL PHONORECORD*
16 *DELIVERIES.*—*For every digital phonorecord de-*
17 *livery of a musical work made under a compul-*
18 *sory license under this section, the royalty pay-*
19 *able shall be the royalty prescribed under sub-*
20 *paragraphs (D) through (F), paragraph (2)(A),*
21 *and chapter 8.*

22 “(D) *AUTHORITY TO NEGOTIATE.*—*Notwith-*
23 *standing any provision of the antitrust laws,*
24 *any copyright owners of nondramatic musical*
25 *works and any persons entitled to obtain a com-*

1 *pulsory license under subsection (a) may nego-*
2 *tiate and agree upon the terms and rates of roy-*
3 *alty payments under this section and the propor-*
4 *tionate division of fees paid among copyright*
5 *owners, and may designate common agents on a*
6 *nonexclusive basis to negotiate, agree to, pay or*
7 *receive such royalty payments. Such authority to*
8 *negotiate the terms and rates of royalty pay-*
9 *ments includes, but is not limited to, the author-*
10 *ity to negotiate the year during which the roy-*
11 *alty rates prescribed under this subparagraph,*
12 *subparagraphs (E) and (F), paragraph (2)(A),*
13 *and chapter 8 shall next be determined.*

14 *“(E) DETERMINATION OF REASONABLE*
15 *RATES AND TERMS.—Proceedings under chapter*
16 *8 shall determine reasonable rates and terms of*
17 *royalty payments for the activities specified by*
18 *this section during the period beginning with the*
19 *effective date of such rates and terms, but not*
20 *earlier than January 1 of the second year fol-*
21 *lowing the year in which the petition requesting*
22 *the proceeding is filed, and ending on the effec-*
23 *tive date of successor rates and terms, or such*
24 *other period as the parties may agree. Any copy-*
25 *right owners of nondramatic musical works and*

1 *any persons entitled to obtain a compulsory li-*
2 *cence under subsection (a) may submit to the*
3 *Copyright Royalty Judges licenses covering such*
4 *activities. The parties to each proceeding shall*
5 *bear their own costs.*

6 “(F) *SCHEDULE OF REASONABLE RATES.—*
7 *The schedule of reasonable rates and terms deter-*
8 *mined by the Copyright Royalty Judges shall,*
9 *subject to paragraph (2)(A), be binding on all*
10 *copyright owners of nondramatic musical works*
11 *and persons entitled to obtain a compulsory li-*
12 *cence under subsection (a) during the period*
13 *specified in subparagraph (E), such other period*
14 *as may be determined pursuant to subpara-*
15 *graphs (D) and (E), or such other period as the*
16 *parties may agree. The Copyright Royalty*
17 *Judges shall establish rates and terms that most*
18 *clearly represent the rates and terms that would*
19 *have been negotiated in the marketplace between*
20 *a willing buyer and a willing seller. In deter-*
21 *mining such rates and terms for digital phono-*
22 *record deliveries, the Copyright Royalty Judges*
23 *shall base their decision on economic, competi-*
24 *tive, and programming information presented by*
25 *the parties, including—*

1 “(i) *whether use of the compulsory li-*
2 *censee’s service may substitute for or may*
3 *promote the sales of phonorecords or other-*
4 *wise may interfere with or may enhance the*
5 *musical work copyright owner’s other*
6 *streams of revenue from its musical works;*
7 *and*

8 “(ii) *the relative roles of the copyright*
9 *owner and the compulsory licensee in the*
10 *copyrighted work and the service made*
11 *available to the public with respect to the*
12 *relative creative contribution, technological*
13 *contribution, capital investment, cost, and*
14 *risk.*

15 “(2) *ADDITIONAL TERMS AND CONDITIONS.—*

16 “(A) *VOLUNTARY LICENSES AND CONTRAC-*
17 *TUAL ROYALTY RATES.—*

18 “(i) *IN GENERAL.—License agreements*
19 *voluntarily negotiated at any time between*
20 *one or more copyright owners of nondra-*
21 *matic musical works and one or more per-*
22 *sons entitled to obtain a compulsory license*
23 *under subsection (a) shall be given effect in*
24 *lieu of any determination by the Copyright*
25 *Royalty Judges. Subject to clause (ii), the*

1 *royalty rates determined pursuant to sub-*
2 *paragraphs (E) and (F) of paragraph (1)*
3 *shall be given effect as to digital phono-*
4 *record deliveries in lieu of any contrary*
5 *royalty rates specified in a contract pursu-*
6 *ant to which a recording artist who is the*
7 *author of a nondramatic musical work*
8 *grants a license under that person's exclu-*
9 *sive rights in the musical work under para-*
10 *graphs (1) and (3) of section 106 or com-*
11 *mits another person to grant a license in*
12 *that musical work under paragraphs (1)*
13 *and (3) of section 106, to a person desiring*
14 *to fix in a tangible medium of expression a*
15 *sound recording embodying the musical*
16 *work.*

17 “(i) *APPLICABILITY.*—*The second sen-*
18 *tence of clause (i) shall not apply to—*

19 “(I) *a contract entered into on or*
20 *before June 22, 1995, and not modified*
21 *thereafter for the purpose of reducing*
22 *the royalty rates determined pursuant*
23 *to subparagraphs (E) and (F) of para-*
24 *graph (1) or of increasing the number*
25 *of musical works within the scope of*

1 *the contract covered by the reduced*
2 *rates, except if a contract entered into*
3 *on or before June 22, 1995, is modified*
4 *thereafter for the purpose of increasing*
5 *the number of musical works within*
6 *the scope of the contract, any contrary*
7 *royalty rates specified in the contract*
8 *shall be given effect in lieu of royalty*
9 *rates determined pursuant to subpara-*
10 *graphs (E) and (F) of paragraph (1)*
11 *for the number of musical works with-*
12 *in the scope of the contract as of June*
13 *22, 1995; and*

14 “(II) *a contract entered into after*
15 *the date that the sound recording is*
16 *fixed in a tangible medium of expres-*
17 *sion substantially in a form intended*
18 *for commercial release, if at the time*
19 *the contract is entered into, the record-*
20 *ing artist retains the right to grant li-*
21 *censes as to the musical work under*
22 *paragraphs (1) and (3) of section 106.*

23 “(B) *SOUND RECORDING INFORMATION.—*
24 *Except as provided in section 1002(e), a digital*
25 *phonorecord delivery licensed under this para-*

1 *graph shall be accompanied by the information*
2 *encoded in the sound recording, if any, by or*
3 *under the authority of the copyright owner of*
4 *that sound recording, that identifies the title of*
5 *the sound recording, the featured recording artist*
6 *who performs on the sound recording, and re-*
7 *lated information, including information con-*
8 *cerning the underlying musical work and its*
9 *writer.*

10 *“(C) INFRINGEMENT REMEDIES.—*

11 *“(i) IN GENERAL.—A digital phono-*
12 *record delivery of a sound recording is ac-*
13 *tionable as an act of infringement under*
14 *section 501, and is fully subject to the rem-*
15 *edies provided by sections 502 through 506,*
16 *unless—*

17 *“(I) the digital phonorecord deliv-*
18 *ery has been authorized by the sound*
19 *recording copyright owner; and*

20 *“(II) the entity making the digital*
21 *phonorecord delivery has obtained a*
22 *compulsory license under subsection*
23 *(a) or has otherwise been authorized by*
24 *the musical work copyright owner, or*
25 *by a record company pursuant to an*

1 *individual download license, to make*
2 *and distribute phonorecords of each*
3 *musical work embodied in the sound*
4 *recording by means of digital phono-*
5 *record delivery.*

6 “(ii) *OTHER REMEDIES.*—*Any cause of*
7 *action under this subparagraph shall be in*
8 *addition to those available to the owner of*
9 *the copyright in the nondramatic musical*
10 *work under subparagraph (J) and section*
11 *106(4) and the owner of the copyright in*
12 *the sound recording under section 106(6).*

13 “(D) *LIABILITY OF SOUND RECORDING OWN-*
14 *ERS.*—*The liability of the copyright owner of a*
15 *sound recording for infringement of the copy-*
16 *right in a nondramatic musical work embodied*
17 *in the sound recording shall be determined in ac-*
18 *cordance with applicable law, except that the*
19 *owner of a copyright in a sound recording shall*
20 *not be liable for a digital phonorecord delivery*
21 *by a third party if the owner of the copyright in*
22 *the sound recording does not license the distribu-*
23 *tion of a phonorecord of the nondramatic musi-*
24 *cal work.*

1 “(E) *RECORDING DEVICES AND MEDIA.*—
2 *Nothing in section 1008 shall be construed to*
3 *prevent the exercise of the rights and remedies al-*
4 *lowed by this paragraph, subparagraph (J), and*
5 *chapter 5 in the event of a digital phonorecord*
6 *delivery, except that no action alleging infringe-*
7 *ment of copyright may be brought under this*
8 *title against a manufacturer, importer or dis-*
9 *tributor of a digital audio recording device, a*
10 *digital audio recording medium, an analog re-*
11 *recording device, or an analog recording medium,*
12 *or against a consumer, based on the actions de-*
13 *scribed in such section.*

14 “(F) *PRESERVATION OF RIGHTS.*—*Nothing*
15 *in this section annuls or limits—*

16 “(i) *the exclusive right to publicly per-*
17 *form a sound recording or the musical work*
18 *embodied therein, including by means of a*
19 *digital transmission, under paragraphs (4)*
20 *and (6) of section 106;*

21 “(ii) *except for compulsory licensing*
22 *under the conditions specified by this sec-*
23 *tion, the exclusive rights to reproduce and*
24 *distribute the sound recording and the mu-*
25 *sical work embodied therein under para-*

1 *graphs (1) and (3) of section 106, including*
2 *by means of a digital phonorecord delivery;*
3 *or*

4 *“(iii) any other rights under any other*
5 *provision of section 106, or remedies avail-*
6 *able under this title, as such rights or rem-*
7 *edies exist before, on, or after the date of en-*
8 *actment of the Digital Performance Right*
9 *in Sound Recordings Act of 1995.*

10 *“(G) EXEMPT TRANSMISSIONS AND RE-*
11 *TRANSMISSIONS.—The provisions of this section*
12 *concerning digital phonorecord deliveries shall*
13 *not apply to any exempt transmissions or re-*
14 *transmissions under section 114(d)(1). The ex-*
15 *emptions created in section 114(d)(1) do not ex-*
16 *pand or reduce the rights of copyright owners*
17 *under paragraphs (1) through (5) of section 106*
18 *with respect to such transmissions and retrans-*
19 *missions.*

20 *“(H) DISTRIBUTION BY RENTAL, LEASE, OR*
21 *LENDING.—A compulsory license obtained under*
22 *subsection (b)(1) to make and distribute*
23 *phonorecords includes the right of the maker of*
24 *such a phonorecord to distribute or authorize*
25 *distribution of such phonorecord, other than by*

1 means of a digital phonorecord delivery, by rent-
2 al, lease, or lending (or by acts or practices in
3 the nature of rental, lease, or lending). With re-
4 spect to each nondramatic musical work em-
5 bodied in the phonorecord, the royalty shall be a
6 proportion of the revenue received by the compul-
7 sory licensee from every such act of distribution
8 of the phonorecord under this clause equal to the
9 proportion of the revenue received by the compul-
10 sory licensee from distribution of the phonorecord
11 under subsection (a)(1)(A)(ii)(II) that is payable
12 by a compulsory licensee under that clause and
13 under chapter 8. The Register of Copyrights shall
14 issue regulations to carry out the purpose of this
15 subparagraph.

16 “(I) PAYMENT OF ROYALTIES AND STATE-
17 MENTS OF ACCOUNT.—Except as provided in
18 paragraphs (4)(A)(i) and (10)(B) of subsection
19 (d), royalty payments shall be made on or before
20 the twentieth day of each month and shall in-
21 clude all royalties for the month next preceding.
22 Each monthly payment shall be made under oath
23 and shall comply with requirements that the
24 Register of Copyrights shall prescribe by regula-
25 tion. The Register shall also prescribe regulations

1 *under which detailed cumulative annual state-*
2 *ments of account, certified by a certified public*
3 *accountant, shall be filed for every compulsory*
4 *license under subsection (a). The regulations cov-*
5 *ering both the monthly and the annual state-*
6 *ments of account shall prescribe the form, con-*
7 *tent, and manner of certification with respect to*
8 *the number of records made and the number of*
9 *records distributed.*

10 “(J) NOTICE OF DEFAULT AND TERMI-
11 NATION OF COMPULSORY LICENSE.—*In the case*
12 *of a license obtained under paragraph (1),*
13 *(2)(A), or (3) of subsection (b), if the copyright*
14 *owner does not receive the monthly payment and*
15 *the monthly and annual statements of account*
16 *when due, the owner may give written notice to*
17 *the licensee that, unless the default is remedied*
18 *not later than 30 days after the date on which*
19 *the notice is sent, the compulsory license will be*
20 *automatically terminated. Such termination ren-*
21 *ders either the making or the distribution, or*
22 *both, of all phonorecords for which the royalty*
23 *has not been paid, actionable as acts of infringe-*
24 *ment under section 501 and fully subject to the*
25 *remedies provided by sections 502 through 506.*

1 *In the case of a license obtained under subsection*
2 *(b)(2)(B), license authority under the compulsory*
3 *license may be terminated as provided in sub-*
4 *section (d)(4)(E).”;*

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

7 *“(d) BLANKET LICENSE FOR DIGITAL USES, MECHAN-*
8 *ICAL LICENSING COLLECTIVE, AND DIGITAL LICENSEE CO-*
9 *ORDINATOR.—*

10 *“(1) BLANKET LICENSE FOR DIGITAL USES.—*

11 *“(A) IN GENERAL.—A digital music pro-*
12 *vider that qualifies for a compulsory license*
13 *under subsection (a) may, by complying with the*
14 *terms and conditions of this subsection, obtain a*
15 *blanket license from copyright owners through*
16 *the mechanical licensing collective to make and*
17 *distribute digital phonorecord deliveries of musi-*
18 *cal works through one or more covered activities.*

19 *“(B) INCLUDED ACTIVITIES.—A blanket li-*
20 *cense—*

21 *“(i) covers all musical works (or shares*
22 *of such works) available for compulsory li-*
23 *censing under this section for purposes of*
24 *engaging in covered activities, except as*
25 *provided in subparagraph (C);*

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

9 “(iii) does not cover or include any
10 rights or uses other than those described in
11 clauses (i) and (ii).

12 “(C) OTHER LICENSES.—A voluntary li-
13 cense for covered activities entered into by or
14 under the authority of 1 or more copyright own-
15 ers and 1 or more digital music providers, or au-
16 thority to make and distribute permanent
17 downloads of a musical work obtained by a dig-
18 ital music provider from a sound recording
19 copyright owner pursuant to an individual
20 download license, shall be given effect in lieu of
21 a blanket license under this subsection with re-
22 spect to the musical works (or shares thereof)
23 covered by such voluntary license or individual
24 download authority and the following conditions
25 apply:

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

13 “(iii) The rates and terms of any vol-
14 untary license shall be subject to the second
15 sentence of clause (i) and clause (ii) of sub-
16 section (c)(2)(A) and paragraph (9)(C), as
17 applicable.

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

1 *ered activities authorized by such license, subject*
2 *to paragraph (4)(E).*

3 *“(E) 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 by submitting a notice of license*
14 *to the mechanical licensing collective that speci-*
15 *fies the particular covered activities in which the*
16 *digital music provider seeks to engage, as follows:*

17 *“(i) The notice of license shall comply*
18 *in form and substance with requirements*
19 *that the Register of Copyrights shall estab-*
20 *lish by regulation.*

21 *“(ii) Unless rejected in writing by the*
22 *mechanical licensing collective not later*
23 *than 30 calendar days after the date on*
24 *which the mechanical licensing collective re-*
25 *ceives the notice, the blanket license shall be*

1 *effective as of the date on which the notice*
2 *of license was sent by the digital music pro-*
3 *vider, as shown by a physical or electronic*
4 *record.*

5 “(iii) *A notice of license may only be*
6 *rejected by the mechanical licensing collec-*
7 *tive if—*

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

15 “(II) *the digital music provider*
16 *has had a blanket license terminated*
17 *by the mechanical licensing collective*
18 *during the 3-year period preceding the*
19 *date on which the mechanical licensing*
20 *collective receives the notice pursuant*
21 *to paragraph (4)(E).*

22 “(iv) *If a notice of license is rejected*
23 *under clause (iii)(I), the digital music pro-*
24 *vider shall have 30 calendar days after re-*
25 *ceipt of the notice of rejection to cure any*

1 *deficiency and submit an amended notice of*
2 *license to the mechanical licensing collective.*
3 *If the deficiency has been cured, the me-*
4 *chanical licensing collective shall so confirm*
5 *in writing, and the license shall be effective*
6 *as of the date that the original notice of li-*
7 *cence was provided by the digital music*
8 *provider.*

9 “(v) *A digital music provider that be-*
10 *lieves a notice of license was improperly re-*
11 *jected by the mechanical licensing collective*
12 *may seek review of such rejection in an ap-*
13 *propriate district court of the United*
14 *States. The district court shall determine*
15 *the matter de novo based on the record be-*
16 *fore the mechanical licensing collective and*
17 *any additional evidence presented by the*
18 *parties.*

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

25 “(3) *MECHANICAL LICENSING COLLECTIVE.—*

1 “(A) *IN GENERAL.*—*The mechanical licens-*
2 *ing collective shall be a single entity that—*

3 “(i) *is a nonprofit entity, not owned*
4 *by any other entity, that is created by copy-*
5 *right owners to carry out responsibilities*
6 *under this subsection;*

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

14 “(iii) *is able to demonstrate to the Reg-*
15 *ister of Copyrights that the entity has, or*
16 *will have prior to the license availability*
17 *date, the administrative and technological*
18 *capabilities to perform the required func-*
19 *tions of the mechanical licensing collective*
20 *under this subsection and that is governed*
21 *by a board of directors in accordance with*
22 *subparagraph (D)(i); and*

23 “(iv) *has been designated by the Reg-*
24 *ister of Copyrights, with the approval of the*

1 *Librarian of Congress pursuant to section*
2 *702, in accordance with subparagraph (B).*

3 *“(B) DESIGNATION OF MECHANICAL LICENS-*
4 *ING COLLECTIVE.—*

5 *“(i) INITIAL DESIGNATION.—Not later*
6 *than 270 days after the enactment date, the*
7 *Register of Copyrights shall initially des-*
8 *ignate the mechanical licensing collective as*
9 *follows:*

10 *“(I) Not later than 90 calendar*
11 *days after the enactment date, the Reg-*
12 *ister shall publish notice in the Federal*
13 *Register soliciting information to as-*
14 *sist in identifying the appropriate en-*
15 *tity to serve as the mechanical licens-*
16 *ing collective, including the name and*
17 *affiliation of each member of the board*
18 *of directors described under subpara-*
19 *graph (D)(i) and each committee estab-*
20 *lished pursuant to clauses (iii), (iv),*
21 *and (v) of subparagraph (D).*

22 *“(II) After reviewing the informa-*
23 *tion requested under subclause (I) and*
24 *making a designation, the Register*

1 shall publish notice in the Federal Reg-
2 ister setting forth—

3 “(aa) the identity of and
4 contact information for the me-
5 chanical licensing collective; and

6 “(bb) the reasons for the des-
7 ignation.

8 “(ii) *PERIODIC REVIEW OF DESIGNA-*
9 *TION.—Following the initial designation of*
10 *the mechanical licensing collective, the Reg-*
11 *ister shall, every 5 years, beginning with the*
12 *fifth full calendar year to commence after*
13 *the initial designation, publish notice in the*
14 *Federal Register in the month of January*
15 *soliciting information concerning whether*
16 *the existing designation should be contin-*
17 *ued, or a different entity meeting the cri-*
18 *teria described in clauses (i) through (iii) of*
19 *subparagraph (A) shall be designated. Fol-*
20 *lowing publication of such notice, the Reg-*
21 *ister shall—*

22 “(I) after reviewing the informa-
23 tion submitted and conducting addi-
24 tional proceedings as appropriate, pub-
25 lish notice in the Federal Register of a

1 continuing designation or new designa-
2 tion of the mechanical licensing collec-
3 tive, as the case may be, and the rea-
4 sons for such a designation, with any
5 new designation to be effective as of the
6 first day of a month that is not less
7 than 6 months and not longer than 9
8 months after the date on which the
9 Register publishes the notice, as speci-
10 fied by the Register; and

11 “(II) if a new entity is designated
12 as the mechanical licensing collective,
13 adopt regulations to govern the trans-
14 fer of licenses, funds, records, data, and
15 administrative responsibilities from the
16 existing mechanical licensing collective
17 to the new entity.

18 “(iii) CLOSEST ALTERNATIVE DESIGNA-
19 TION.—If the Register is unable to identify
20 an entity that fulfills each of the qualifica-
21 tions set forth in clauses (i) through (iii) of
22 subparagraph (A), the Register shall des-
23 ignate the entity that most nearly fulfills
24 such qualifications for purposes of carrying

1 *out the responsibilities of the mechanical li-*
2 *ensing collective.*

3 “(C) *AUTHORITIES AND FUNCTIONS.*—

4 “(i) *IN GENERAL.*—*The mechanical li-*
5 *ensing collective is authorized to perform*
6 *the following functions, subject to more par-*
7 *ticular requirements as described in this*
8 *subsection:*

9 “(I) *Offer and administer blanket*
10 *licenses, including receipt of notices of*
11 *license and reports of usage from dig-*
12 *ital music providers.*

13 “(II) *Collect and distribute royalti-*
14 *es from digital music providers for*
15 *covered activities.*

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

22 “(IV) *Maintain the musical works*
23 *database and other information rel-*
24 *evant to the administration of licens-*
25 *ing activities under this section.*

1 “(V) *Administer a process by*
2 *which copyright owners can claim*
3 *ownership of musical works (and*
4 *shares of such works), and a process by*
5 *which royalties for works for which the*
6 *owner is not identified or located are*
7 *equitably distributed to known copy-*
8 *right owners.*

9 “(VI) *Administer collections of the*
10 *administrative assessment from digital*
11 *music providers and significant non-*
12 *blanket licensees, including receipt of*
13 *notices of nonblanket activity.*

14 “(VII) *Invest in relevant re-*
15 *sources, and arrange for services of*
16 *outside vendors and others, to support*
17 *the activities of the mechanical licens-*
18 *ing collective.*

19 “(VIII) *Engage in legal and other*
20 *efforts to enforce rights and obligations*
21 *under this subsection, including by fil-*
22 *ing bankruptcy proofs of claims for*
23 *amounts owed under licenses, and act-*
24 *ing in coordination with the digital li-*
25 *censee coordinator.*

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

6 “(X) Initiate and participate in
7 proceedings before the Copyright Office
8 with respect to activities under this
9 subsection.

10 “(XI) Gather and provide docu-
11 mentation for use in proceedings before
12 the Copyright Royalty Judges to set
13 rates and terms under this section.

14 “(XII) Maintain records of the ac-
15 tivities of the mechanical licensing col-
16 lective and engage in and respond to
17 audits described in this subsection.

18 “(XIII) Engage in such other ac-
19 tivities as may be necessary or appro-
20 priate to fulfill the responsibilities of
21 the mechanical licensing collective
22 under this subsection.

23 “(ii) *RESTRICTIONS CONCERNING LI-*
24 *CENSING AND ADMINISTRATIVE ACTIVI-*
25 *TIES.—With respect to the administration*

1 *of licenses, except as provided in clauses (i)*
2 *and (iii) and subparagraph (E)(v), the me-*
3 *chanical licensing collective may only—*

4 “(I) *issue blanket licenses pursu-*
5 *ant to subsection (d)(1); and*

6 “(II) *administer blanket licenses*
7 *for reproduction or distribution rights*
8 *in musical works for covered activities,*
9 *including collecting and distributing*
10 *royalties, pursuant to blanket licenses.*

11 “(iii) *ADDITIONAL ADMINISTRATIVE*
12 *ACTIVITIES.—Subject to paragraph (11)(C),*
13 *the mechanical licensing collective may also*
14 *administer, including by collecting and dis-*
15 *tributing royalties, voluntary licenses issued*
16 *by, or individual download licenses ob-*
17 *tained from, copyright owners only for re-*
18 *production or distribution rights in musical*
19 *works for covered activities, for which the*
20 *mechanical licensing collective shall charge*
21 *reasonable fees for such services.*

22 “(iv) *RESTRICTION ON LOBBYING.—*
23 *The mechanical licensing collective may not*
24 *engage in government lobbying activities,*
25 *but may engage in the activities described*

1 in subclauses (IX), (X), and (XI) of clause
2 (i).

3 “(D) GOVERNANCE.—

4 “(i) BOARD OF DIRECTORS.—The me-
5 chanical licensing collective shall have a
6 board of directors consisting of 14 voting
7 members and 3 nonvoting members, as fol-
8 lows:

9 “(I) Ten voting members shall be
10 representatives of music publishers—

11 “(aa) to which songwriters
12 have assigned exclusive rights of
13 reproduction and distribution of
14 musical works with respect to cov-
15 ered activities; and

16 “(bb) none of which may be
17 owned by, or under common con-
18 trol with, any other board mem-
19 ber.

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

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 per-
5 centage of the licensor market for uses
6 of musical works in covered activities,
7 as measured for the 3-year period pre-
8 ceding the date on which the member is
9 appointed.

10 “(IV) One nonvoting member
11 shall be a representative of the digital
12 licensee coordinator, provided that a
13 digital licensee coordinator has been
14 designated pursuant to paragraph
15 (5)(B). Otherwise, the nonvoting mem-
16 ber shall be the nonprofit trade associa-
17 tion of digital licensees that represents
18 the greatest percentage of the licensee
19 market for uses of musical works in
20 covered activities, as measured over the
21 preceding 3 full calendar years.

22 “(V) One nonvoting member shall
23 be a representative of a nationally rec-
24 ognized nonprofit trade association
25 whose primary mission is advocacy on

1 *behalf of songwriters in the United*
2 *States.*

3 “(ii) *BYLAWS.*—

4 “(I) *ESTABLISHMENT.*—*Not later*
5 *than 1 year after the date on which the*
6 *mechanical licensing collective is ini-*
7 *tially designated by the Register of*
8 *Copyrights under subparagraph (B)(i),*
9 *the collective shall establish bylaws to*
10 *determine issues relating to the govern-*
11 *ance of the collective, including, but*
12 *not limited to—*

13 “(aa) *the length of the term*
14 *for each member of the board of*
15 *directors;*

16 “(bb) *the staggering of the*
17 *terms of the members of the board*
18 *of directors;*

19 “(cc) *a process for filling a*
20 *seat on the board of directors that*
21 *is vacated before the end of the*
22 *term with respect to that seat;*

23 “(dd) *a process for electing a*
24 *member to the board of directors;*
25 *and*

1 “(ee) a management struc-
2 ture for daily operation of the col-
3 lective.

4 “(II) PUBLIC AVAILABILITY.—The
5 mechanical licensing collective shall
6 make the bylaws established under sub-
7 clause (I) available to the public.

8 “(iii) BOARD MEETINGS.—The board
9 of directors shall meet not less frequently
10 than biannually and discuss matters perti-
11 nent to the operations of the mechanical li-
12 censing collective, including the mechanical
13 licensing collective budget.

14 “(iv) OPERATIONS ADVISORY COM-
15 MITTEE.—The board of directors of the me-
16 chanical licensing collective shall establish
17 an operations advisory committee consisting
18 of not fewer than 6 members to make rec-
19 ommendations to the board of directors con-
20 cerning the operations of the mechanical li-
21 censing collective, including the efficient in-
22 vestment in and deployment of information
23 technology and data resources. Such com-
24 mittee shall have an equal number of mem-
25 bers of the committee who are—

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

5 “(II) *representatives of digital*
6 *music providers who are appointed by*
7 *the digital licensee coordinator.*

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

17 “(vi) *DISPUTE RESOLUTION COM-*
18 *MITTEE.—The board of directors of the me-*
19 *chanical licensing collective shall establish*
20 *and appoint a dispute resolution committee*
21 *that shall—*

22 “(I) *consist of not fewer than 6*
23 *members; and*

24 “(II) *include an equal number of*
25 *representatives of musical work copy-*

1 *right owners and professional song-*
2 *writers.*

3 “(vii) *MECHANICAL LICENSING COL-*
4 *LECTIVE ANNUAL REPORT.—*

5 “(I) *IN GENERAL.—Not later than*
6 *June 30 of each year commencing after*
7 *the license availability date, the me-*
8 *chanical licensing collective shall post,*
9 *and make available online for a period*
10 *of not less than 3 years, an annual re-*
11 *port that sets forth information regard-*
12 *ing—*

13 “(aa) *the operational and li-*
14 *censing practices of the collective;*

15 “(bb) *how royalties are col-*
16 *lected and distributed;*

17 “(cc) *budgeting and expendi-*
18 *tures;*

19 “(dd) *the collective total costs*
20 *for the preceding calendar year;*

21 “(ee) *the projected annual*
22 *mechanical licensing collective*
23 *budget;*

24 “(ff) *aggregated royalty re-*
25 *ceipts and payments;*

1 “(gg) expenses that are more
2 than 10 percent of the annual me-
3 chanical licensing collective budg-
4 et; and

5 “(hh) the efforts of the collec-
6 tive to locate and identify copy-
7 right owners of unmatched musi-
8 cal works (and shares of works).

9 “(II) SUBMISSION.—On the date
10 on which the mechanical licensing col-
11 lective posts each report required under
12 subclause (I), the collective shall pro-
13 vide a copy of the report to the Reg-
14 ister of Copyrights.

15 “(viii) INDEPENDENT OFFICERS.—An
16 individual serving as an officer of the me-
17 chanical licensing collective may not, at the
18 same time, also be an employee or agent of
19 any member of the board of directors of the
20 collective or any entity represented by a
21 member of the board of directors, as de-
22 scribed in clause (i).

23 “(ix) OVERSIGHT AND ACCOUNT-
24 ABILITY.—

1 “(I) *IN GENERAL.*—*The mechanical*
2 *licensing collective shall—*

3 “(aa) *ensure that the policies*
4 *and practices of the collective are*
5 *transparent and accountable;*

6 “(bb) *identify a point of con-*
7 *tact for publisher inquiries and*
8 *complaints with timely redress;*
9 *and*

10 “(cc) *establish an anti-co-*
11 *mingling policy for funds not col-*
12 *lected under this section and roy-*
13 *alties collected under this section.*

14 “(II) *AUDITS.*—

15 “(aa) *IN GENERAL.*—*Begin-*
16 *ning in the fourth full calendar*
17 *year that begins after the initial*
18 *designation of the mechanical li-*
19 *censing collective by the Register*
20 *of Copyrights under subparagraph*
21 *(B)(i), and in every fifth calendar*
22 *year thereafter, the collective shall*
23 *retain a qualified auditor that*
24 *shall—*

1 “(AA) examine the
2 books, records, and oper-
3 ations of the collective;

4 “(BB) prepare a report
5 for the board of directors of
6 the collective with respect to
7 the matters described in item
8 (bb); and

9 “(CC) not later than
10 December 31 of the year in
11 which the qualified auditor is
12 retained, deliver the report
13 described in subitem (BB) to
14 the board of directors of the
15 collective.

16 “(bb) MATTERS AD-
17 DRESSED.—Each report prepared
18 under item (aa) shall address the
19 implementation and efficacy of
20 procedures of the mechanical li-
21 censing collective—

22 “(AA) for the receipt,
23 handling, and distribution of
24 royalty funds, including any

1 *amounts held as unclaimed*
2 *royalties;*

3 *“(BB) to guard against*
4 *fraud, abuse, waste, and the*
5 *unreasonable use of funds;*
6 *and*

7 *“(CC) to protect the*
8 *confidentiality of financial,*
9 *proprietary, and other sen-*
10 *sitive information.*

11 *“(cc) PUBLIC AVAIL-*
12 *ABILITY.—With respect to each re-*
13 *port prepared under item (aa),*
14 *the mechanical licensing collective*
15 *shall—*

16 *“(AA) submit the report*
17 *to the Register of Copyrights;*
18 *and*

19 *“(BB) make the report*
20 *available to the public.*

21 *“(E) MUSICAL WORKS DATABASE.—*

22 *“(i) ESTABLISHMENT AND MAINTEN-*
23 *NANCE OF DATABASE.—The mechanical li-*
24 *censing collective shall establish and main-*
25 *tain a database containing information re-*

1 *lating to musical works (and shares of such*
2 *works) and, to the extent known, the iden-*
3 *tity and location of the copyright owners of*
4 *such works (and shares thereof) and the*
5 *sound recordings in which the musical*
6 *works are embodied. In furtherance of*
7 *maintaining such database, the mechanical*
8 *licensing collective shall engage in efforts to*
9 *identify the musical works embodied in par-*
10 *ticular sound recordings, as well as to iden-*
11 *tify and locate the copyright owners of such*
12 *works (and shares thereof), and update such*
13 *data as appropriate.*

14 *“(ii) MATCHED WORKS.—With respect*
15 *to musical works (and shares thereof) that*
16 *have been matched to copyright owners, the*
17 *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 the owner-*
21 *ship percentage of that owner;*

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

1 “(IV) to the extent reasonably
2 available to the mechanical licensing
3 collective—

4 “(aa) the international
5 standard musical work code for
6 the work; and

7 “(bb) identifying information
8 for sound recordings in which the
9 musical work is embodied, includ-
10 ing the name of the sound record-
11 ing, featured artist, sound record-
12 ing copyright owner, producer,
13 international standard recording
14 code, and other information com-
15 monly used to assist in associ-
16 ating sound recordings with musi-
17 cal works; and

18 “(V) such other information as the
19 Register of Copyrights may prescribe
20 by regulation.

21 “(iii) UNMATCHED WORKS.—With re-
22 spect to unmatched musical works (and
23 shares of works) in the database, the musi-
24 cal works database shall include—

1 “(I) to the extent reasonably
2 available to the mechanical licensing
3 collective—

4 “(aa) the title of the musical
5 work;

6 “(bb) the ownership percent-
7 age for which an owner has not
8 been identified;

9 “(cc) if a copyright owner
10 has been identified but not lo-
11 cated, the identity of such owner
12 and the ownership percentage of
13 that owner;

14 “(dd) identifying informa-
15 tion for sound recordings in which
16 the work is embodied, including
17 sound recording name, featured
18 artist, sound recording copyright
19 owner, producer, international
20 standard recording code, and
21 other information commonly used
22 to assist in associating sound re-
23 cordings with musical works; and

24 “(ee) any additional infor-
25 mation reported to the mechanical

1 *licensing collective that may assist*
2 *in identifying the work; and*

3 “(II) *such other information relat-*
4 *ing to the identity and ownership of*
5 *musical works (and shares of such*
6 *works) as the Register of Copyrights*
7 *may prescribe by regulation.*

8 “(iv) *SOUND RECORDING INFORMA-*
9 *TION.—Each musical work copyright owner*
10 *with any musical work listed in the musical*
11 *works database shall engage in commer-*
12 *cially reasonable efforts to deliver to the me-*
13 *chanical licensing collective, including for*
14 *use in the musical works database, to the*
15 *extent such information is not then avail-*
16 *able in the database, information regarding*
17 *the names of the sound recordings in which*
18 *that copyright owner’s musical works (or*
19 *shares thereof) are embodied, to the extent*
20 *practicable.*

21 “(v) *ACCESSIBILITY OF DATABASE.—*
22 *The musical works database shall be made*
23 *available to members of the public in a*
24 *searchable, online format, free of charge.*
25 *The mechanical licensing collective shall*

1 *make such database available in a bulk,*
2 *machine-readable format, through a widely*
3 *available software application, to the fol-*
4 *lowing entities:*

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

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

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

15 “(IV) *The Register of Copyrights,*
16 *free of charge (but the Register shall*
17 *not treat such database or any infor-*
18 *mation therein as a Government*
19 *record).*

20 “(V) *Any other person or entity*
21 *for a fee not to exceed the marginal*
22 *cost to the mechanical licensing collec-*
23 *tive of providing the database to such*
24 *person or entity.*

1 “(vi) *ADDITIONAL REQUIREMENTS.—*
2 *The Register of Copyrights shall establish*
3 *requirements by regulations to ensure the*
4 *usability, interoperability, and usage re-*
5 *strictions of the musical works database.*

6 “(F) *NOTICES OF LICENSE AND NON-*
7 *BLANKET ACTIVITY.—*

8 “(i) *NOTICES OF LICENSES.—The me-*
9 *chanical licensing collective shall receive, re-*
10 *view, and confirm or reject notices of license*
11 *from digital music providers, as provided*
12 *in paragraph (2)(A). The collective shall*
13 *maintain a current, publicly accessible list*
14 *of blanket licenses that includes contact in-*
15 *formation for the licensees and the effective*
16 *dates of such licenses.*

17 “(ii) *NOTICES OF NONBLANKET ACTIV-*
18 *ITY.—The mechanical licensing collective*
19 *shall receive notices of nonblanket activity*
20 *from significant nonblanket licensees, as*
21 *provided in paragraph (6)(A). The collective*
22 *shall maintain a current, publicly accessible*
23 *list of notices of nonblanket activity that in-*
24 *cludes contact information for significant*

1 *nonblanket licensees and the dates of receipt*
2 *of such notices.*

3 “(G) *COLLECTION AND DISTRIBUTION OF*
4 *ROYALTIES.—*

5 “(i) *IN GENERAL.—Upon receiving re-*
6 *ports of usage and payments of royalties*
7 *from digital music providers for covered ac-*
8 *tivities, the mechanical licensing collective*
9 *shall—*

10 “(I) *engage in efforts to—*

11 “(aa) *identify the musical*
12 *works embodied in sound record-*
13 *ings reflected in such reports, and*
14 *the copyright owners of such mu-*
15 *sical works (and shares thereof);*

16 “(bb) *confirm uses of musical*
17 *works subject to voluntary licenses*
18 *and individual download licenses,*
19 *and the corresponding pro rata*
20 *amounts to be deducted from roy-*
21 *alties that would otherwise be due*
22 *under the blanket license; and*

23 “(cc) *confirm proper pay-*
24 *ment of royalties due;*

1 “(II) distribute royalties to copy-
2 right owners in accordance with the
3 usage and other information contained
4 in such reports, as well as the owner-
5 ship and other information contained
6 in the records of the collective; and

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

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

14 “(bb) a pending dispute be-
15 fore the dispute resolution com-
16 mittee of the mechanical licensing
17 collective.

18 “(ii) OTHER COLLECTION EFFORTS.—
19 Any royalties recovered by the mechanical
20 licensing collective as a result of efforts to
21 enforce rights or obligations under a blanket
22 license, including through a bankruptcy
23 proceeding or other legal action, shall be
24 distributed to copyright owners based on
25 available usage information and in accord-

1 *ance with the procedures described in sub-*
2 *clauses (I) and (II) of clause (i), on a pro*
3 *rata basis in proportion to the overall per-*
4 *centage recovery of the total royalties owed,*
5 *with any pro rata share of royalties that*
6 *cannot be distributed deposited in an inter-*
7 *est-bearing account as provided in subpara-*
8 *graph (H)(ii).*

9 *“(H) HOLDING OF ACCRUED ROYALTIES.—*

10 *“(i) HOLDING PERIOD.—The mechan-*
11 *ical licensing collective shall hold accrued*
12 *royalties associated with particular musical*
13 *works (and shares of works) that remain*
14 *unmatched for a period of not less than 3*
15 *years after the date on which the funds were*
16 *received by the mechanical licensing collec-*
17 *tive, or not less than 3 years after the date*
18 *on which the funds were accrued by a dig-*
19 *ital music provider that subsequently trans-*
20 *ferred such funds to the mechanical licens-*
21 *ing collective pursuant to paragraph*
22 *(10)(B), whichever period expires sooner.*

23 *“(ii) INTEREST-BEARING ACCOUNT.—*

24 *Accrued royalties for unmatched works (and*
25 *shares thereof) shall be maintained by the*

1 *mechanical licensing collective in an inter-*
2 *est-bearing account that earns monthly in-*
3 *terest—*

4 “(I) *at the Federal, short-term*
5 *rate; and*

6 “(II) *that accrues for the benefit*
7 *of copyright owners entitled to pay-*
8 *ment of such accrued royalties.*

9 “(I) *MUSICAL WORKS CLAIMING PROCESS.—*

10 *When a copyright owner of an unmatched work*
11 *(or share of a work) has been identified and lo-*
12 *cated in accordance with the procedures of the*
13 *mechanical licensing collective, the collective*
14 *shall—*

15 “(i) *update the musical works database*
16 *and the other records of the collective ac-*
17 *cordingly; and*

18 “(ii) *provided that accrued royalties*
19 *for the musical work (or share thereof) have*
20 *not yet been included in a distribution pur-*
21 *suant to subparagraph (J)(i), pay such ac-*
22 *crued royalties and a proportionate amount*
23 *of accrued interest associated with that*
24 *work (or share thereof) to the copyright*
25 *owner, accompanied by a cumulative state-*

1 *ment of account reflecting usage of such*
2 *work and accrued royalties based on infor-*
3 *mation provided by digital music providers*
4 *to the mechanical licensing collective.*

5 “(J) *DISTRIBUTION OF UNCLAIMED AC-*
6 *CRUED ROYALTIES.—*

7 “(i) *DISTRIBUTION PROCEDURES.—*
8 *After the expiration of the prescribed hold-*
9 *ing period for accrued royalties provided in*
10 *subparagraph (H)(i), the mechanical licens-*
11 *ing collective shall distribute such accrued*
12 *royalties, along with a proportionate share*
13 *of accrued interest, to copyright owners*
14 *identified in the records of the collective,*
15 *subject to the following requirements, and in*
16 *accordance with the policies and procedures*
17 *established under clause (ii):*

18 “(I) *The first such distribution*
19 *shall occur on or after January 1 of*
20 *the second full calendar year to com-*
21 *mence after the license availability*
22 *date, with not less than 1 such dis-*
23 *tribution to take place during each cal-*
24 *endar year thereafter.*

1 “(II) *Copyright owners’ payment*
2 *shares for unclaimed accrued royalties*
3 *for particular reporting periods shall*
4 *be determined in a transparent and eq-*
5 *uitable manner based on data indi-*
6 *cating the relative market shares of*
7 *such copyright owners as reflected in*
8 *reports of usage provided by digital*
9 *music providers for covered activities*
10 *for the periods in question, including,*
11 *in addition to usage data provided to*
12 *the mechanical licensing collective,*
13 *usage data provided to copyright own-*
14 *ers under voluntary licenses and indi-*
15 *vidual download licenses for covered*
16 *activities, to the extent such informa-*
17 *tion is available to the mechanical li-*
18 *censing collective. In furtherance of the*
19 *determination of equitable market*
20 *shares under this subparagraph—*

21 “(aa) *the mechanical licens-*
22 *ing collective may require copy-*
23 *right owners seeking distributions*
24 *of unclaimed accrued royalties to*
25 *provide, or direct the provision of,*

1 *information concerning the usage*
2 *of musical works under voluntary*
3 *licenses and individual download*
4 *licenses for covered activities; and*

5 *“(bb) the mechanical licens-*
6 *ing collective shall take appro-*
7 *priate steps to safeguard the con-*
8 *fidentiality and security of usage,*
9 *financial, and other sensitive data*
10 *used to compute market shares in*
11 *accordance with the confiden-*
12 *tiality provisions prescribed by*
13 *the Register of Copyrights under*
14 *paragraph (12)(C).*

15 *“(ii) ESTABLISHMENT OF DISTRIBU-*
16 *TION POLICIES.—The unclaimed royalties*
17 *oversight committee established under sub-*
18 *paragraph (D)(v) shall establish policies*
19 *and procedures for the distribution of un-*
20 *claimed accrued royalties and accrued in-*
21 *terest in accordance with this subpara-*
22 *graph, including the provision of usage data*
23 *to copyright owners to allocate payments*
24 *and credits to songwriters pursuant to*
25 *clause (iv), subject to the approval of the*

1 *board of directors of the mechanical licens-*
2 *ing collective.*

3 “(iii) *PUBLIC NOTICE OF UNCLAIMED*
4 *ACCRUED ROYALTIES.—The mechanical li-*
5 *censing collective shall—*

6 “(I) *maintain a publicly acces-*
7 *sible online facility with contact infor-*
8 *mation for the collective that lists un-*
9 *matched musical works (and shares of*
10 *works), through which a copyright*
11 *owner may assert an ownership claim*
12 *with respect to such a work (and a*
13 *share of such a work);*

14 “(II) *engage in diligent, good-*
15 *faith efforts to publicize, throughout the*
16 *music industry—*

17 “(aa) *the existence of the col-*
18 *lective and the ability to claim*
19 *unclaimed accrued royalties for*
20 *unmatched musical works (and*
21 *shares of such works) held by the*
22 *collective;*

23 “(bb) *the procedures by*
24 *which copyright owners may iden-*
25 *tify themselves and provide con-*

1 *tact, ownership, and other rel-*
2 *evant information to the collective*
3 *in order to receive payments of*
4 *accrued royalties;*

5 *“(cc) any transfer of accrued*
6 *royalties for musical works under*
7 *paragraph (10)(B), not later than*
8 *180 days after the date on which*
9 *the transfer is received; and*

10 *“(dd) any pending distribu-*
11 *tion of unclaimed accrued royal-*
12 *ties and accrued interest, not less*
13 *than 90 days before the date on*
14 *which the distribution is made;*
15 *and*

16 *“(III) as appropriate, participate*
17 *in music industry conferences and*
18 *events for the purpose of publicizing*
19 *the matters described in subclause (II).*

20 *“(iv) SONGWRITER PAYMENTS.—Copy-*
21 *right owners that receive a distribution of*
22 *unclaimed accrued royalties and accrued*
23 *interest shall pay or credit a portion to*
24 *songwriters (or the authorized agents of*
25 *songwriters) on whose behalf the copyright*

1 *owners license or administer musical works*
2 *for covered activities, in accordance with*
3 *applicable contractual terms, but notwith-*
4 *standing any agreement to the contrary—*

5 *“(I) such payments and credits to*
6 *songwriters shall be allocated in pro-*
7 *portion to reported usage of individual*
8 *musical works by digital music pro-*
9 *viders during the reporting periods*
10 *covered by the distribution from the*
11 *mechanical licensing collective; and*

12 *“(II) in no case shall the payment*
13 *or credit to an individual songwriter*
14 *be less than 50 percent of the payment*
15 *received by the copyright owner attrib-*
16 *utable to usage of musical works (or*
17 *shares of works) of that songwriter.*

18 *“(K) DISPUTE RESOLUTION.—The dispute*
19 *resolution committee established under subpara-*
20 *graph (D)(vi) shall establish policies and proce-*
21 *dures—*

22 *“(i) for copyright owners to address in*
23 *a timely and equitable manner disputes re-*
24 *lating to ownership interests in musical*
25 *works licensed under this section and allo-*

1 *cation and distribution of royalties by the*
2 *mechanical licensing collective, subject to*
3 *the approval of the board of directors of the*
4 *mechanical licensing collective;*

5 *“(ii) that shall include a mechanism to*
6 *hold disputed funds in accordance with the*
7 *requirements described in subparagraph*
8 *(H)(ii) pending resolution of the dispute;*
9 *and*

10 *“(iii) except as provided in paragraph*
11 *(11)(D), that shall not affect any legal or*
12 *equitable rights or remedies available to any*
13 *copyright owner or songwriter concerning*
14 *ownership of, and entitlement to royalties*
15 *for, a musical work.*

16 *“(L) VERIFICATION OF PAYMENTS BY ME-*
17 *CHANICAL LICENSING COLLECTIVE.—*

18 *“(i) VERIFICATION PROCESS.—A copy-*
19 *right owner entitled to receive payments of*
20 *royalties for covered activities from the me-*
21 *chanical licensing collective may, individ-*
22 *ually or with other copyright owners, con-*
23 *duct an audit of the mechanical licensing*
24 *collective to verify the accuracy of royalty*

1 *payments by the mechanical licensing col-*
2 *lective to such copyright owner, as follows:*

3 “(I) *A copyright owner may audit*
4 *the mechanical licensing collective only*
5 *once in a year for any or all of the 3*
6 *calendar years preceding the year in*
7 *which the audit is commenced, and*
8 *may not audit records for any cal-*
9 *endar year more than once.*

10 “(II) *The audit shall be conducted*
11 *by a qualified auditor, who shall per-*
12 *form the audit during the ordinary*
13 *course of business by examining the*
14 *books, records, and data of the mechan-*
15 *ical licensing collective, according to*
16 *generally accepted auditing standards*
17 *and subject to applicable confiden-*
18 *tiality requirements prescribed by the*
19 *Register of Copyrights under para-*
20 *graph (12)(C).*

21 “(III) *The mechanical licensing*
22 *collective shall make such books,*
23 *records, and data available to the*
24 *qualified auditor and respond to rea-*
25 *sonable requests for relevant informa-*

1 *tion, and shall use commercially rea-*
2 *sonable efforts to facilitate access to rel-*
3 *evant information maintained by third*
4 *parties.*

5 *“(IV) To commence the audit, any*
6 *copyright owner shall file with the*
7 *Copyright Office a notice of intent to*
8 *conduct an audit of the mechanical li-*
9 *censing collective, identifying the pe-*
10 *riod of time to be audited, and shall si-*
11 *multaneously deliver a copy of such*
12 *notice to the mechanical licensing col-*
13 *lective. The Register of Copyrights*
14 *shall cause the notice of audit to be*
15 *published in the Federal Register not*
16 *later than 45 calendar days after the*
17 *date on which the notice is received.*

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

1 *right owner, the qualified auditor shall*
2 *provide a tentative draft of the report*
3 *to the mechanical licensing collective*
4 *and allow the mechanical licensing col-*
5 *lective a reasonable opportunity to re-*
6 *spond to the findings, including by*
7 *clarifying issues and correcting factual*
8 *errors.*

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

1 “(i) *ALTERNATIVE VERIFICATION PRO-*
2 *CEDURES.—Nothing in this subparagraph*
3 *shall preclude a copyright owner and the*
4 *mechanical licensing collective from agree-*
5 *ing to audit procedures different from those*
6 *described in this subparagraph, except that*
7 *a notice of the audit shall be provided to*
8 *and published by the Copyright Office as*
9 *described in clause (i)(IV).*

10 “(M) *RECORDS OF MECHANICAL LICENSING*
11 *COLLECTIVE.—*

12 “(i) *RECORDS MAINTENANCE.—The*
13 *mechanical licensing collective shall ensure*
14 *that all material records of the operations of*
15 *the mechanical licensing collective, includ-*
16 *ing those relating to notices of license, the*
17 *administration of the claims process of the*
18 *mechanical licensing collective, reports of*
19 *usage, royalty payments, receipt and main-*
20 *tenance of accrued royalties, royalty dis-*
21 *tribution processes, and legal matters, are*
22 *preserved and maintained in a secure and*
23 *reliable manner, with appropriate commer-*
24 *cially reasonable safeguards against unau-*
25 *thorized access, copying, and disclosure, and*

1 *subject to the confidentiality requirements*
2 *prescribed by the Register of Copyrights*
3 *under paragraph (12)(C) for a period of not*
4 *less than 7 years after the date of creation*
5 *or receipt, whichever occurs later.*

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

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

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

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

1 *than 20 calendar days, after the end of the*
2 *monthly reporting period.*

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

12 “(I) *with respect to each sound re-*
13 *coding embodying a musical work—*

14 “(aa) *provide identifying in-*
15 *formation for the sound recording,*
16 *including sound recording name,*
17 *featured artist, and, to the extent*
18 *acquired by the digital music pro-*
19 *vider in connection with its use of*
20 *sound recordings of musical works*
21 *to engage in covered activities, in-*
22 *cluding pursuant to subparagraph*
23 *(B), sound recording copyright*
24 *owner, producer, international*
25 *standard recording code, and*

1 *other information commonly used*
2 *in the industry to identify sound*
3 *recordings and match them to the*
4 *musical works the sound record-*
5 *ings embody;*

6 *“(bb) to the extent acquired*
7 *by the digital music provider in*
8 *the metadata provided by sound*
9 *recording copyright owners or*
10 *other licensors of sound recordings*
11 *in connection with the use of*
12 *sound recordings of musical works*
13 *to engage in covered activities, in-*
14 *cluding pursuant to subparagraph*
15 *(B), provide information con-*
16 *cerning authorship and ownership*
17 *of the applicable rights in the mu-*
18 *sical work embodied in the sound*
19 *recording (including each song-*
20 *writer, publisher name, and re-*
21 *spective ownership share) and the*
22 *international standard musical*
23 *work code; and*

24 *“(cc) provide the number of*
25 *digital phonorecord deliveries of*

1 the sound recording, including
2 limited downloads and interactive
3 streams;

4 “(II) identify and provide contact
5 information for all musical work copy-
6 right owners for works embodied in
7 sound recordings as to which a vol-
8 untary license, rather than the blanket
9 license, is in effect with respect to the
10 uses being reported; and

11 “(III) provide such other informa-
12 tion as the Register of Copyrights shall
13 require by regulation.

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

1 *chanical licensing collective by digital*
2 *music providers engaged in covered activi-*
3 *ties under a blanket license.*

4 “(iv) *ADOPTION OF REGULATIONS.—*
5 *The Register of Copyrights shall adopt regu-*
6 *lations—*

7 “(I) *setting forth requirements*
8 *under which records of use shall be*
9 *maintained and made available to the*
10 *mechanical licensing collective by dig-*
11 *ital music providers engaged in cov-*
12 *ered activities under a blanket license;*
13 *and*

14 “(II) *regarding adjustments to re-*
15 *ports of usage by digital music pro-*
16 *viders, including mechanisms to ac-*
17 *count for overpayment and under-*
18 *payment of royalties in prior periods.*

19 “(B) *COLLECTION OF SOUND RECORDING*
20 *INFORMATION.—A digital music provider shall*
21 *engage in good-faith, commercially reasonable ef-*
22 *forts to obtain from sound recording copyright*
23 *owners and other licensors of sound recordings*
24 *made available through the service of such dig-*
25 *ital music provider information concerning—*

1 “(i) sound recording copyright owners,
2 producers, international standard recording
3 codes, and other information commonly
4 used in the industry to identify sound re-
5 cordings and match them to the musical
6 works the sound recordings embody; and

7 “(ii) the authorship and ownership of
8 musical works, including songwriters, pub-
9 lisher names, ownership shares, and inter-
10 national standard musical work codes.

11 “(C) *PAYMENT OF ADMINISTRATIVE ASSESS-*
12 *MENT.*—A digital music provider and any sig-
13 nificant nonblanket licensee shall pay the admin-
14 istrative assessment established under paragraph
15 (7)(D) in accordance with this subsection and
16 applicable regulations.

17 “(D) *VERIFICATION OF PAYMENTS BY DIG-*
18 *ITAL MUSIC PROVIDERS.*—

19 “(i) *VERIFICATION PROCESS.*—The me-
20 chanical licensing collective may conduct an
21 audit of a digital music provider operating
22 under the blanket license to verify the accu-
23 racy of royalty payments by the digital
24 music provider to the mechanical licensing
25 collective as follows:

1 “(I) *The mechanical licensing col-*
2 *lective may commence an audit of a*
3 *digital music provider not more fre-*
4 *quently than once in any 3-calendar-*
5 *year period to cover a verification pe-*
6 *riod of not more than the 3 full cal-*
7 *endar years preceding the date of com-*
8 *mencement of the audit, and such*
9 *audit may not audit records for any*
10 *such 3-year verification period more*
11 *than once.*

12 “(II) *The audit shall be conducted*
13 *by a qualified auditor, who shall per-*
14 *form the audit during the ordinary*
15 *course of business by examining the*
16 *books, records, and data of the digital*
17 *music provider, according to generally*
18 *accepted auditing standards and sub-*
19 *ject to applicable confidentiality re-*
20 *quirements prescribed by the Register*
21 *of Copyrights under paragraph*
22 *(12)(C).*

23 “(III) *The digital music provider*
24 *shall make such books, records, and*
25 *data available to the qualified auditor*

1 and respond to reasonable requests for
2 relevant information, and shall use
3 commercially reasonable efforts to pro-
4 vide access to relevant information
5 maintained with respect to a digital
6 music provider by third parties.

7 “(IV) To commence the audit, the
8 mechanical licensing collective shall
9 file with the Copyright Office a notice
10 of intent to conduct an audit of the
11 digital music provider, identifying the
12 period of time to be audited, and shall
13 simultaneously deliver a copy of such
14 notice to the digital music provider.
15 The Register of Copyrights shall cause
16 the notice of audit to be published in
17 the Federal Register not later than 45
18 calendar days after the date on which
19 notice is received.

20 “(V) The qualified auditor shall
21 determine the accuracy of royalty pay-
22 ments, including whether an under-
23 payment or overpayment of royalties
24 was made by the digital music pro-
25 vider to the mechanical licensing col-

1 lective, except that, before providing a
2 final audit report to the mechanical li-
3 censing collective, the qualified auditor
4 shall provide a tentative draft of the
5 report to the digital music provider
6 and allow the digital music provider a
7 reasonable opportunity to respond to
8 the findings, including by clarifying
9 issues and correcting factual errors.

10 “(VI) The mechanical licensing
11 collective shall pay the cost of the
12 audit, unless the qualified auditor de-
13 termines that there was an under-
14 payment by the digital music provider
15 of not less than 10 percent, in which
16 case the digital music provider shall
17 bear the reasonable costs of the audit,
18 in addition to paying the amount of
19 any underpayment to the mechanical
20 licensing collective. In case of an over-
21 payment by the digital music provider,
22 the mechanical licensing collective shall
23 provide a credit to the account of the
24 digital music provider.

1 “(VII) *A digital music provider*
2 *may not assert section 507 or any*
3 *other Federal or State statute of limi-*
4 *tations, doctrine of laches or estoppel,*
5 *or similar provision as a defense to a*
6 *legal action arising from an audit*
7 *under this subparagraph if such legal*
8 *action is commenced not more than 6*
9 *years after the commencement of the*
10 *audit that is the basis for such action.*

11 “(ii) *ALTERNATIVE VERIFICATION PRO-*
12 *CEDURES.—Nothing in this subparagraph*
13 *shall preclude the mechanical licensing col-*
14 *lective and a digital music provider from*
15 *agreeing to audit procedures different from*
16 *those described in this subparagraph, except*
17 *that a notice of the audit shall be provided*
18 *to and published by the Copyright Office as*
19 *described in clause (i)(IV).*

20 “(E) *DEFAULT UNDER BLANKET LI-*
21 *CENSE.—*

22 “(i) *CONDITIONS OF DEFAULT.—A dig-*
23 *ital music provider shall be in default*
24 *under a blanket license if the digital music*
25 *provider—*

1 “(I) fails to provide 1 or more
2 monthly reports of usage to the me-
3 chanical licensing collective when due;

4 “(II) fails to make a monthly roy-
5 alty or late fee payment to the mechan-
6 ical licensing collective when due, in
7 all or material part;

8 “(III) provides 1 or more monthly
9 reports of usage to the mechanical li-
10 censing collective that, on the whole, is
11 or are materially deficient as a result
12 of inaccurate, missing, or unreadable
13 data, where the correct data was avail-
14 able to the digital music provider and
15 required to be reported under this sec-
16 tion and applicable regulations;

17 “(IV) fails to pay the administra-
18 tive assessment as required under this
19 subsection and applicable regulations;
20 or

21 “(V) after being provided written
22 notice by the mechanical licensing col-
23 lective, refuses to comply with any
24 other material term or condition of the
25 blanket license under this section for a

1 *period of not less than 60 calendar*
2 *days.*

3 “(ii) *NOTICE OF DEFAULT AND TERMI-*
4 *NATION.—In case of a default by a digital*
5 *music provider, the mechanical licensing*
6 *collective may proceed to terminate the*
7 *blanket license of the digital music provider*
8 *as follows:*

9 “(I) *The mechanical licensing col-*
10 *lective shall provide written notice to*
11 *the digital music provider describing*
12 *with reasonable particularity the de-*
13 *fault and advising that unless such de-*
14 *fault is cured not later than 60 cal-*
15 *endar days after the date of the notice,*
16 *the blanket license will automatically*
17 *terminate at the end of that period.*

18 “(II) *If the digital music provider*
19 *fails to remedy the default before the*
20 *end of the 60-day period described in*
21 *subclause (I), the license shall termi-*
22 *nate without any further action on the*
23 *part of the mechanical licensing collec-*
24 *tive. Such termination renders the*
25 *making of all digital phonorecord de-*

1 *liveries of all musical works (and*
2 *shares thereof) covered by the blanket*
3 *license for which the royalty or admin-*
4 *istrative assessment has not been paid*
5 *actionable as acts of infringement*
6 *under section 501 and subject to the*
7 *remedies provided by sections 502*
8 *through 506.*

9 “(iii) *NOTICE TO COPYRIGHT OWN-*
10 *ERS.—The mechanical licensing collective*
11 *shall provide written notice of any termi-*
12 *nation under this subparagraph to copy-*
13 *right owners of affected works.*

14 “(iv) *REVIEW BY FEDERAL DISTRICT*
15 *COURT.—A digital music provider that be-*
16 *lieves a blanket license was improperly ter-*
17 *minated by the mechanical licensing collec-*
18 *tive may seek review of such termination in*
19 *an appropriate district court of the United*
20 *States. The district court shall determine*
21 *the matter de novo based on the record be-*
22 *fore the mechanical licensing collective and*
23 *any additional supporting evidence pre-*
24 *sented by the parties.*

25 “(5) *DIGITAL LICENSEE COORDINATOR.—*

1 “(A) *IN GENERAL.*—*The digital licensee co-*
2 *ordinator shall be a single entity that—*

3 “(i) *is a nonprofit, not owned by any*
4 *other entity, that is created to carry out re-*
5 *sponsibilities under this subsection;*

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

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

19 “(iv) *has been designated by the Reg-*
20 *ister of Copyrights, with the approval of the*
21 *Librarian of Congress pursuant to section*
22 *702, in accordance with subparagraph (B).*

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

1 “(i) *INITIAL DESIGNATION.*—*The Register of Copyrights shall initially designate*
2 *the digital licensee coordinator not later*
3 *than 270 days after the enactment date, in*
4 *accordance with the same procedure de-*
5 *scribed for designation of the mechanical li-*
6 *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 Register*
11 *of Copyrights shall, every 5 years, begin-*
12 *ning with the fifth full calendar year to*
13 *commence after the initial designation, de-*
14 *termine whether the existing designation*
15 *should be continued, or a different entity*
16 *meeting the criteria described in clauses (i)*
17 *through (iii) of subparagraph (A) should be*
18 *designated, in accordance with the same*
19 *procedure described for the mechanical li-*
20 *censing collective in paragraph (3)(B)(ii).*

21 “(iii) *INABILITY TO DESIGNATE.*—*If*
22 *the Register of Copyrights is unable to iden-*
23 *tify an entity that fulfills each of the quali-*
24 *fications described in clauses (i) through*
25 *(iii) of subparagraph (A) to serve as the*

1 *digital licensee coordinator, the Register*
2 *may decline to designate a digital licensee*
3 *coordinator. The determination of the Reg-*
4 *ister not to designate a digital licensee coor-*
5 *dinator shall not negate or otherwise affect*
6 *any provision of this subsection except to*
7 *the limited extent that a provision ref-*
8 *erences the digital licensee coordinator. In*
9 *such case, the reference to the digital li-*
10 *cence coordinator shall be without effect*
11 *unless and until a new digital licensee coor-*
12 *dinator is designated.*

13 “(C) *AUTHORITIES AND FUNCTIONS.*—

14 “(i) *IN GENERAL.*—*The digital licensee*
15 *coordinator is authorized to perform the fol-*
16 *lowing functions, subject to more particular*
17 *requirements as described in this subsection:*

18 “(I) *Establish a governance struc-*
19 *ture, criteria for membership, and any*
20 *dues to be paid by its members.*

21 “(II) *Engage in efforts to enforce*
22 *notice and payment obligations with*
23 *respect to the administrative assess-*
24 *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 Office*
10 *with respect to activities under this*
11 *subsection.*

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

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

18 *“(VII) Assist in publicizing the*
19 *existence of the mechanical licensing*
20 *collective and the ability of copyright*
21 *owners to claim royalties for un-*
22 *matched musical works (and shares of*
23 *works) through the collective.*

24 *“(VIII) Engage in such other ac-*
25 *tivities as may be necessary or appro-*

1 *priate to fulfill its responsibilities*
2 *under this subsection.*

3 “(ii) *RESTRICTION ON LOBBYING.—The*
4 *digital licensee coordinator may not engage*
5 *in government lobbying activities, but may*
6 *engage in the activities described in sub-*
7 *clauses (III), (IV), and (V) of clause (i).*

8 “(iii) *ASSISTANCE WITH PUBLICITY*
9 *FOR UNCLAIMED ROYALTIES.—The digital*
10 *licensee coordinator shall make reasonable,*
11 *good-faith efforts to assist the mechanical li-*
12 *censing collective in the efforts of the collec-*
13 *tive to locate and identify copyright owners*
14 *of unmatched musical works (and shares of*
15 *such works) by encouraging digital music*
16 *providers to publicize the existence of the*
17 *collective and the ability of copyright own-*
18 *ers to claim unclaimed accrued royalties,*
19 *including by—*

20 “(I) *posting contact information*
21 *for the collective at reasonably promi-*
22 *nent locations on digital music pro-*
23 *vider websites and applications; and*

24 “(II) *conducting in-person out-*
25 *reach activities with songwriters.*

1 “(6) *REQUIREMENTS FOR SIGNIFICANT NON-*
2 *BLANKET LICENSEES.—*

3 “(A) *IN GENERAL.—*

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

18 “(ii) *REPORTING AND PAYMENT OBLI-*
19 *GATIONS.—The notice of nonblanket activity*
20 *submitted to the mechanical licensing collec-*
21 *tive shall be accompanied by a report of*
22 *usage that contains the information de-*
23 *scribed in paragraph (4)(A)(ii), as well as*
24 *any payment of the administrative assess-*
25 *ment required under this subsection and ap-*

1 *plicable regulations. Thereafter, subject to*
2 *clause (iii), a significant nonblanket li-*
3 *icensee shall continue to provide monthly re-*
4 *ports of usage, accompanied by any re-*
5 *quired payment of the administrative as-*
6 *essment, to the mechanical licensing collec-*
7 *tive. Such reports and payments shall be*
8 *submitted not later than 45 calendar days*
9 *after the end of the calendar month being*
10 *reported.*

11 *“(iii) DISCONTINUATION OF OBLIGA-*
12 *TIONS.—An entity that has submitted a no-*
13 *tice of nonblanket activity to the mechanical*
14 *licensing collective that has ceased to qual-*
15 *ify as a significant nonblanket licensee may*
16 *so notify the collective in writing. In such*
17 *case, as of the calendar month in which*
18 *such notice is provided, such entity shall no*
19 *longer be required to provide reports of*
20 *usage or pay the administrative assessment,*
21 *but if such entity later qualifies as a sig-*
22 *nificant nonblanket licensee, such entity*
23 *shall again be required to comply with*
24 *clauses (i) and (ii).*

1 “(B) *REPORTING BY MECHANICAL LICENS-*
2 *ING COLLECTIVE TO DIGITAL LICENSEE COORDI-*
3 *NATOR.*—

4 “(i) *MONTHLY REPORTS OF NON-*
5 *COMPLIANT LICENSEES.*—*The mechanical*
6 *licensing collective shall provide monthly re-*
7 *ports to the digital licensee coordinator set-*
8 *ting forth any significant nonblanket licens-*
9 *ees of which the collective is aware that have*
10 *failed to comply with subparagraph (A).*

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

21 “(C) *LEGAL ENFORCEMENT EFFORTS.*—

22 “(i) *FEDERAL COURT ACTION.*—*Should*
23 *the mechanical licensing collective or digital*
24 *licensee coordinator become aware that a*
25 *significant nonblanket licensee has failed to*

1 *comply with subparagraph (A), either may*
2 *commence an action in an appropriate dis-*
3 *trict court of the United States for damages*
4 *and injunctive relief. If the significant non-*
5 *blanket licensee is found liable, the court*
6 *shall, absent a finding of excusable neglect,*
7 *award damages in an amount equal to*
8 *three times the total amount of the unpaid*
9 *administrative assessment and, notwith-*
10 *standing anything to the contrary in sec-*
11 *tion 505, reasonable attorney’s fees and*
12 *costs, as well as such other relief as the*
13 *court determines appropriate. In all other*
14 *cases, the court shall award relief as appro-*
15 *priate. Any recovery of damages shall be*
16 *payable to the mechanical licensing collec-*
17 *tive as an offset to the collective total costs.*

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

23 “(iii) *OTHER RIGHTS AND REMEDIES*
24 *PRESERVED.—The ability of the mechanical*
25 *licensing collective or digital licensee coordi-*

1 nator to bring an action under this sub-
2 paragraph shall in no way alter, limit or
3 negate any other right or remedy that may
4 be available to any party at law or in eq-
5 uity.

6 “(7) *FUNDING OF MECHANICAL LICENSING COL-*
7 *LECTIVE.*—

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

10 “(i) *an administrative assessment, as*
11 *such assessment is established by the Copy-*
12 *right Royalty Judges pursuant to subpara-*
13 *graph (D) from time to time, to be paid*
14 *by—*

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

19 “(II) *significant nonblanket li-*
20 *cencees; and*

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

25 “(B) *VOLUNTARY CONTRIBUTIONS.*—

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

8 “(I) *The date and amount of each*
9 *voluntary contribution to the mechan-*
10 *ical licensing collective shall be docu-*
11 *mented in a writing signed by an au-*
12 *thorized agent of the mechanical licens-*
13 *ing collective and the contributing*
14 *party.*

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

23 “(ii) *TREATMENT OF CONTRIBU-*
24 *TIONS.—Each voluntary contribution de-*
25 *scribed in clause (i) shall be treated for pur-*

1 *poses of an administrative assessment pro-*
2 *ceeding as an offset to the collective total*
3 *costs that would otherwise be recovered*
4 *through the administrative assessment. Any*
5 *allocation or reallocation of voluntary con-*
6 *tributions between or among individual dig-*
7 *ital music providers or significant non-*
8 *blanket licensees shall be a matter of private*
9 *negotiation and agreement among such par-*
10 *ties and outside the scope of the administra-*
11 *tive assessment proceeding.*

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

23 *“(D) DETERMINATION OF ADMINISTRATIVE*
24 *ASSESSMENT.—*

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

6 “(ii) *SEPARATE PROCEEDING BEFORE*
7 *COPYRIGHT ROYALTY JUDGES.*—*The amount*
8 *and terms of the administrative assessment*
9 *shall be determined and established in a*
10 *separate and independent proceeding before*
11 *the Copyright Royalty Judges, according to*
12 *the procedures described in clauses (iii) and*
13 *(iv). The administrative assessment deter-*
14 *mined in such proceeding shall—*

15 “(I) *be wholly independent of roy-*
16 *alty rates and terms applicable to dig-*
17 *ital music providers, which shall not be*
18 *taken into consideration in any man-*
19 *ner in establishing the administrative*
20 *assessment;*

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

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

6 “(IV) may be in the form of a
7 percentage of royalties payable under
8 this section for usage of musical works
9 in covered activities (regardless of
10 whether a different rate applies under
11 a voluntary license), or any other
12 usage-based metric reasonably cal-
13 culated to equitably allocate the collec-
14 tive total costs across digital music
15 providers and significant nonblanket
16 licensees engaged in covered activities,
17 and shall include as a component a
18 minimum fee for all digital music pro-
19 viders and significant nonblanket li-
20 censees; and

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

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

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

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

22 “(iii) INITIAL ADMINISTRATIVE AS-
23 SESSMENT.—The procedure for establishing
24 the initial administrative assessment shall
25 be as follows:

1 “(I) Not later than 270 days after
2 the enactment date, the Copyright Roy-
3 alty Judges shall commence a pro-
4 ceeding to establish the initial admin-
5 istrative assessment by publishing a
6 notice in the Federal Register seeking
7 petitions to participate.

8 “(II) The mechanical licensing
9 collective and digital licensee coordi-
10 nator shall participate in the pro-
11 ceeding described in subclause (I),
12 along with any interested copyright
13 owners, digital music providers or sig-
14 nificant nonblanket licensees that have
15 notified the Copyright Royalty Judges
16 of their desire to participate.

17 “(III) The Copyright Royalty
18 Judges shall establish a schedule for
19 submission by the parties of informa-
20 tion that may be relevant to estab-
21 lishing the administrative assessment,
22 including actual and anticipated col-
23 lective total costs of the mechanical li-
24 censing collective, actual and antici-
25 pated collections from digital music

1 *providers and significant nonblanket*
2 *licensees, and documentation of vol-*
3 *untary contributions, as well as a*
4 *schedule for further proceedings, which*
5 *shall include a hearing, as the Copy-*
6 *right Royalty Judges determine appro-*
7 *priate.*

8 *“(IV) The initial administrative*
9 *assessment shall be determined, and*
10 *such determination shall be published*
11 *in the Federal Register by the Copy-*
12 *right Royalty Judges, not later than 1*
13 *year after commencement of the pro-*
14 *ceeding described in this clause. The*
15 *determination shall be supported by a*
16 *written record. The initial administra-*
17 *tive assessment shall be effective as of*
18 *the license availability date, and shall*
19 *continue in effect unless and until an*
20 *adjusted administrative assessment is*
21 *established pursuant to an adjustment*
22 *proceeding under clause (iv).*

23 *“(iv) ADJUSTMENT OF ADMINISTRA-*
24 *TIVE ASSESSMENT.—The administrative as-*
25 *essment may be adjusted by the Copyright*

1 *Royalty Judges periodically, in accordance*
2 *with the following procedures:*

3 “(I) Not earlier than 1 year after
4 the most recent publication of a deter-
5 mination of the administrative assess-
6 ment by the Copyright Royalty Judges,
7 the mechanical licensing collective, the
8 digital licensee coordinator, or one or
9 more interested copyright owners, dig-
10 ital music providers, or significant
11 nonblanket licensees, may file a peti-
12 tion with the Copyright Royalty
13 Judges in the month of May to com-
14 mence a proceeding to adjust the ad-
15 ministrative assessment.

16 “(II) Notice of the commencement
17 of such proceeding shall be published in
18 the Federal Register in the month of
19 June following the filing of any peti-
20 tion, with a schedule of requested infor-
21 mation and additional proceedings, as
22 described in clause (iii)(III). The me-
23 chanical licensing collective and digital
24 licensee coordinator shall participate
25 in such proceeding, along with any in-

1 *terested copyright owners, digital*
2 *music providers, or significant non-*
3 *blanket licensees that have notified the*
4 *Copyright Royalty Judges of their de-*
5 *sire to participate.*

6 *“(III) The determination of the*
7 *adjusted administrative assessment,*
8 *which shall be supported by a written*
9 *record, shall be published in the Fed-*
10 *eral Register during June of the cal-*
11 *endar year following the commence-*
12 *ment of the proceeding. The adjusted*
13 *administrative assessment shall take ef-*
14 *fect January 1 of the year following*
15 *such publication.*

16 *“(v) ADOPTION OF VOLUNTARY AGREE-*
17 *MENTS.—In lieu of reaching their own de-*
18 *termination based on evaluation of relevant*
19 *data, the Copyright Royalty Judges shall*
20 *approve and adopt a negotiated agreement*
21 *to establish the amount and terms of the ad-*
22 *ministrative assessment that has been*
23 *agreed to by the mechanical licensing collec-*
24 *tive and the digital licensee coordinator (or*
25 *if none has been designated, interested dig-*

1 *ital music providers and significant non-*
2 *blanket licensees representing more than*
3 *half of the market for uses of musical works*
4 *in covered activities), except that the Copy-*
5 *right Royalty Judges shall have the discre-*
6 *tion to reject any such agreement for good*
7 *cause shown. An administrative assessment*
8 *adopted under this clause shall apply to all*
9 *digital music providers and significant*
10 *nonblanket licensees engaged in covered ac-*
11 *tivities during the period the administrative*
12 *assessment is in effect.*

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

22 “(vii) APPEAL OF ADMINISTRATIVE AS-
23 SESSMENT.—*The determination of an ad-*
24 *ministrative assessment by the Copyright*
25 *Royalty Judges shall be appealable, not*

1 *later than 30 calendar days after publica-*
2 *tion in the Federal Register, to the Court of*
3 *Appeals for the District of Columbia Circuit*
4 *by any party that fully participated in the*
5 *proceeding. The administrative assessment*
6 *as established by the Copyright Royalty*
7 *Judges shall remain in effect pending the*
8 *final outcome of any such appeal, and the*
9 *mechanical licensing collective, digital li-*
10 *censee coordinator, digital music providers,*
11 *and significant nonblanket licensees shall*
12 *implement appropriate financial or other*
13 *measures not later than 90 days after any*
14 *modification of the assessment to reflect and*
15 *account for such outcome.*

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

20 “(8) *ESTABLISHMENT OF RATES AND TERMS*
21 *UNDER BLANKET LICENSE.—*

22 “(A) *RESTRICTIONS ON RATESETTING PAR-*
23 *TICIPATION.—Neither the mechanical licensing*
24 *collective nor the digital licensee coordinator*
25 *shall be a party to a proceeding described in sub-*

1 *section (c)(1)(E), except that the mechanical li-*
2 *ensing collective or the digital licensee coordi-*
3 *nator may gather and provide financial and*
4 *other information for the use of a party to such*
5 *a proceeding and comply with requests for infor-*
6 *mation as required under applicable statutory*
7 *and regulatory provisions and rulings of the*
8 *Copyright Royalty Judges.*

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

16 *“(i) Late fees for past due royalty pay-*
17 *ments shall accrue from the due date for*
18 *payment until payment is received by the*
19 *mechanical licensing collective.*

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

1 *censing collective may be entitled under this*
2 *title.*

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

11 *“(i) shall be treated as nonprecedential*
12 *and not cited or relied upon in any rate-*
13 *setting proceeding before the Copyright Roy-*
14 *alty Judges or any other tribunal; and*

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

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

1 *cense. In such case, not later than 90 days after*
2 *the effective date of the rate and terms estab-*
3 *lished by the Copyright Royalty Judges—*

4 *“(i) if the rate established by the Copy-*
5 *right Royalty Judges exceeds the interim*
6 *rate, the digital music provider shall pay to*
7 *the mechanical licensing collective the*
8 *amount of any underpayment of royalties*
9 *due; or*

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

16 “(9) *TRANSITION TO BLANKET LICENSES.—*

17 “(A) *SUBSTITUTION OF BLANKET LI-*
18 *CENSE.—On the license availability date, a blan-*
19 *ket license shall, without any interruption in li-*
20 *cence authority enjoyed by such digital music*
21 *provider, be automatically substituted for and*
22 *supersede any existing compulsory license pre-*
23 *viously obtained under this section by the digital*
24 *music provider from a copyright owner to engage*
25 *in 1 or more covered activities with respect to a*

1 *musical work, except that such substitution shall*
2 *not apply to any authority obtained from a*
3 *record company pursuant to a compulsory li-*
4 *cence to make and distribute permanent*
5 *downloads unless and until such record company*
6 *terminates such authority in writing to take ef-*
7 *fect at the end of a monthly reporting period,*
8 *with a copy to the mechanical licensing collec-*
9 *tive.*

10 “(B) *EXPIRATION OF EXISTING LICENSES.—*
11 *Except to the extent provided in subparagraph*
12 *(A), on and after the license availability date, li-*
13 *censes other than individual download licenses*
14 *obtained under this section for covered activities*
15 *prior to the license availability date shall no*
16 *longer continue in effect.*

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

1 *date incorporates the terms of this section by ref-*
2 *erence, the terms so incorporated (but not the*
3 *rates) shall be those in effect immediately prior*
4 *to the license availability date, and those terms*
5 *shall continue to apply unless and until such*
6 *voluntary license is terminated or amended, or*
7 *the parties enter into a new voluntary license.*

8 “(D) *FURTHER ACCEPTANCE OF NOTICES*
9 *FOR COVERED ACTIVITIES BY COPYRIGHT OF-*
10 *FICE.—On and after the enactment date—*

11 “(i) *the Copyright Office shall no*
12 *longer accept notices of intention with re-*
13 *spect to covered activities; and*

14 “(ii) *notices of intention filed before*
15 *the enactment date will no longer be effec-*
16 *tive or provide license authority with re-*
17 *spect to covered activities, except that, before*
18 *the license availability date, there shall be*
19 *no liability under section 501 for the repro-*
20 *duction or distribution of a musical work*
21 *(or share thereof) in covered activities if a*
22 *valid notice of intention was filed for such*
23 *work (or share) before the enactment date.*

24 “(10) *PRIOR UNLICENSED USES.—*

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

20 “(B) *REQUIREMENTS FOR LIMITATION ON*
21 *LIABILITY.—The following requirements shall*
22 *apply on the enactment date and through the*
23 *end of the period that expires 90 days after the*
24 *license availability date to digital music pro-*

1 *viders seeking to avail themselves of the limita-*
2 *tion on liability described in subparagraph (A):*

3 *“(i) Not later than 30 calendar days*
4 *after first making a particular sound re-*
5 *ording of a musical work available through*
6 *its service via one or more covered activi-*
7 *ties, or 30 calendar days after the enact-*
8 *ment date, whichever occurs later, a digital*
9 *music provider shall engage in good-faith,*
10 *commercially reasonable efforts to identify*
11 *and locate each copyright owner of such*
12 *musical work (or share thereof). Such re-*
13 *quired matching efforts shall include the fol-*
14 *lowing:*

15 *“(I) Good-faith, commercially rea-*
16 *sonable efforts to obtain from the owner*
17 *of the corresponding sound recording*
18 *made available through the digital*
19 *music provider’s service the following*
20 *information:*

21 *“(aa) Sound recording name,*
22 *featured artist, sound recording*
23 *copyright owner, producer, inter-*
24 *national standard recording code,*
25 *and other information commonly*

1 *used in the industry to identify*
2 *sound recordings and match them*
3 *to the musical works they embody.*

4 “(bb) *Any available musical*
5 *work ownership information, in-*
6 *cluding each songwriter and pub-*
7 *lisher name, percentage ownership*
8 *share, and international standard*
9 *musical work code.*

10 “(II) *Employment of 1 or more*
11 *bulk electronic matching processes that*
12 *are available to the digital music pro-*
13 *vider through a third-party vendor on*
14 *commercially reasonable terms, except*
15 *that a digital music provider may rely*
16 *on its own bulk electronic matching*
17 *process if that process has capabilities*
18 *comparable to or better than those*
19 *available from a third-party vendor on*
20 *commercially reasonable terms.*

21 “(ii) *The required matching efforts*
22 *shall be repeated by the digital music pro-*
23 *vider not less than once per month for so*
24 *long as the copyright owner remains un-*
25 *identified or has not been located.*

1 “(iii) *If the required matching efforts*
2 *are successful in identifying and locating a*
3 *copyright owner of a musical work (or share*
4 *thereof) by the end of the calendar month in*
5 *which the digital music provider first makes*
6 *use of the work, the digital music provider*
7 *shall provide statements of account and pay*
8 *royalties to such copyright owner in accord-*
9 *ance with this section and applicable regu-*
10 *lations.*

11 “(iv) *If the copyright owner is not*
12 *identified or located by the end of the cal-*
13 *endar month in which the digital music*
14 *provider first makes use of the work, the*
15 *digital music provider shall accrue and hold*
16 *royalties calculated under the applicable*
17 *statutory rate in accordance with usage of*
18 *the work, from initial use of the work until*
19 *the accrued royalties can be paid to the*
20 *copyright owner or are required to be trans-*
21 *ferred to the mechanical licensing collective,*
22 *as follows:*

23 “(I) *Accrued royalties shall be*
24 *maintained by the digital music pro-*

1 *vider in accordance with generally ac-*
2 *cepted accounting principles.*

3 *“(II) If a copyright owner of an*
4 *unmatched musical work (or share*
5 *thereof) is identified and located by or*
6 *to the digital music provider before the*
7 *license availability date, the digital*
8 *music provider shall—*

9 *“(aa) not later than 45 cal-*
10 *endar days after the end of the*
11 *calendar month during which the*
12 *copyright owner was identified*
13 *and located, pay the copyright*
14 *owner all accrued royalties, such*
15 *payment to be accompanied by a*
16 *cumulative statement of account*
17 *that includes all of the informa-*
18 *tion that would have been pro-*
19 *vided to the copyright owner had*
20 *the digital music provider been*
21 *providing monthly statements of*
22 *account to the copyright owner*
23 *from initial use of the work in ac-*
24 *cordance with this section and ap-*
25 *plicable regulations, including the*

1 *requisite certification under sub-*
2 *section (c)(2)(I);*

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

14 *“(cc) beginning with the*
15 *monthly royalty reporting period*
16 *commencing on the license avail-*
17 *ability date, report usage and pay*
18 *royalties for such musical work*
19 *(or share thereof) for such report-*
20 *ing period and reporting periods*
21 *thereafter to the mechanical li-*
22 *ensing collective, as required*
23 *under this subsection and applica-*
24 *ble regulations.*

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

6 “(aa) not later than 45 cal-
7 endar days after the license avail-
8 ability date, transfer all accrued
9 royalties to the mechanical licens-
10 ing collective, such payment to be
11 accompanied by a cumulative
12 statement of account that includes
13 all of the information that would
14 have been provided to the copy-
15 right owner had the digital music
16 provider been serving monthly
17 statements of account on the copy-
18 right owner from initial use of the
19 work in accordance with this sec-
20 tion and applicable regulations,
21 including the requisite certifi-
22 cation under subsection (c)(2)(I),
23 and accompanied by an addi-
24 tional certification by a duly au-
25 thorized officer of the digital

1 *music provider that the digital*
2 *music provider has fulfilled the*
3 *requirements of clauses (i) and*
4 *(ii) of subparagraph (B) but has*
5 *not been successful in locating or*
6 *identifying the copyright owner;*
7 *and*

8 *“(bb) beginning with the*
9 *monthly royalty reporting period*
10 *commencing on the license avail-*
11 *ability date, report usage and pay*
12 *royalties for such musical work*
13 *(or share thereof) for such period*
14 *and reporting periods thereafter to*
15 *the mechanical licensing collective,*
16 *as required under this subsection*
17 *and applicable regulations.*

18 *“(v) A digital music provider that*
19 *complies with the requirements of this sub-*
20 *paragraph with respect to unmatched musi-*
21 *cal works (or shares of works) shall not be*
22 *liable for or accrue late fees for late pay-*
23 *ments of royalties for such works until such*
24 *time as the digital music provider is re-*
25 *quired to begin paying monthly royalties to*

1 *the copyright owner or the mechanical li-*
2 *censing collective, as applicable.*

3 “(C) *ADJUSTED STATUTE OF LIMITA-*
4 *TIONS.—Notwithstanding anything to the con-*
5 *trary in section 507(b), with respect to any*
6 *claim of infringement of the exclusive rights pro-*
7 *vided by paragraphs (1) and (3) of section 106*
8 *against a digital music provider arising from*
9 *the unauthorized reproduction or distribution of*
10 *a musical work by such digital music provider*
11 *in the course of engaging in covered activities*
12 *that accrued not more than 3 years prior to the*
13 *license availability date, such action may be*
14 *commenced not later than the later of—*

15 “(i) *3 years after the date on which the*
16 *claim accrued; or*

17 “(ii) *2 years after the license avail-*
18 *ability date.*

19 “(D) *OTHER RIGHTS AND REMEDIES PRE-*
20 *SERVED.—Except as expressly provided in this*
21 *paragraph, nothing in this paragraph shall be*
22 *construed to alter, limit, or negate any right or*
23 *remedy of a copyright owner with respect to un-*
24 *authorized use of a musical work.*

1 “(11) *LEGAL PROTECTIONS FOR LICENSING AC-*
2 *TIVITIES.—*—

3 “(A) *EXEMPTION FOR COMPULSORY LI-*
4 *CENSE ACTIVITIES.—*The antitrust exemption de-
5 scribed in subsection (c)(1)(D) shall apply to ne-
6 gotiations and agreements between and among
7 copyright owners and persons entitled to obtain
8 a compulsory license for covered activities, and
9 common agents acting on behalf of such copy-
10 right owners or persons, including with respect
11 to the administrative assessment established
12 under this subsection.

13 “(B) *LIMITATION ON COMMON AGENT EX-*
14 *EMPTION.—*Notwithstanding the antitrust ex-
15 emption provided in subsection (c)(1)(D) and
16 subparagraph (A) of this paragraph (except for
17 the administrative assessment referenced in such
18 subparagraph (A) and except as provided in
19 paragraph (8)(C)), neither the mechanical licens-
20 ing collective nor the digital licensee coordinator
21 shall serve as a common agent with respect to the
22 establishment of royalty rates or terms under
23 this section.

24 “(C) *ANTITRUST EXEMPTION FOR ADMINIS-*
25 *TRATIVE ACTIVITIES.—*Notwithstanding any pro-

1 *vision of the antitrust laws, copyright owners*
2 *and persons entitled to obtain a compulsory li-*
3 *cence under this section may designate the me-*
4 *chanical licensing collective to administer vol-*
5 *untary licenses for the reproduction or distribu-*
6 *tion of musical works in covered activities on be-*
7 *half of such copyright owners and persons, sub-*
8 *ject to the following conditions:*

9 *“(i) Each copyright owner shall estab-*
10 *lish the royalty rates and material terms of*
11 *any such voluntary license individually and*
12 *not in agreement, combination, or concert*
13 *with any other copyright owner.*

14 *“(ii) Each person entitled to obtain a*
15 *compulsory license under this section shall*
16 *establish the royalty rates and material*
17 *terms of any such voluntary license individ-*
18 *ually and not in agreement, combination,*
19 *or concert with any other digital music pro-*
20 *vider.*

21 *“(iii) The mechanical licensing collec-*
22 *tive shall maintain the confidentiality of*
23 *the voluntary licenses in accordance with*
24 *the confidentiality provisions prescribed by*

1 the Register of Copyrights under paragraph
2 (12)(C).

3 “(D) *LIABILITY FOR GOOD-FAITH ACTIVITIES.*—The mechanical licensing collective shall
4 not be liable to any person or entity based on a
5 claim arising from its good-faith administration
6 of policies and procedures adopted and imple-
7 mented to carry out the responsibilities described
8 in subparagraphs (J) and (K) of paragraph (3),
9 except to the extent of correcting an under-
10 payment or overpayment of royalties as provided
11 in paragraph (3)(L)(i)(VI), but the collective
12 may participate in a legal proceeding as a stake-
13 holder party if the collective is holding funds
14 that are the subject of a dispute between copy-
15 right owners. For purposes of this subparagraph,
16 the term ‘good-faith administration’ means ad-
17 ministration in a manner that is not grossly
18 negligent.

19 “(E) *PREEMPTION OF STATE PROPERTY*
20 *LAWS.*—The holding and distribution of funds by
21 the mechanical licensing collective in accordance
22 with this subsection shall supersede and preempt
23 any State law (including common law) con-
24 cerning escheatment or abandoned property, or
25

1 *any analogous provision, that might otherwise*
2 *apply.*

3 “(F) *RULE OF CONSTRUCTION.*—*Except as*
4 *expressly provided in this subsection, nothing in*
5 *this subsection shall negate or limit the ability*
6 *of any person to pursue an action in Federal*
7 *court against the mechanical licensing collective*
8 *or any other person based upon a claim arising*
9 *under this title or other applicable law.*

10 “(12) *REGULATIONS.*—

11 “(A) *ADOPTION BY REGISTER OF COPY-*
12 *RIGHTS AND COPYRIGHT ROYALTY JUDGES.*—*The*
13 *Register of Copyrights may conduct such pro-*
14 *ceedings and adopt such regulations as may be*
15 *necessary or appropriate to effectuate the provi-*
16 *sions of this subsection, except for regulations*
17 *concerning proceedings before the Copyright Roy-*
18 *alty Judges to establish the administrative as-*
19 *essment, which shall be adopted by the Copy-*
20 *right Royalty Judges.*

21 “(B) *JUDICIAL REVIEW OF REGULATIONS.*—
22 *Except as provided in paragraph (7)(D)(vii),*
23 *regulations adopted under this subsection shall*
24 *be subject to judicial review pursuant to chapter*
25 *7 of title 5.*

1 “(C) *PROTECTION OF CONFIDENTIAL INFOR-*
2 *MATION.—The Register of Copyrights shall adopt*
3 *regulations to provide for the appropriate proce-*
4 *dures to ensure that confidential, private, pro-*
5 *prietary, or privileged information contained in*
6 *the records of the mechanical licensing collective*
7 *and digital licensee coordinator is not impropr-*
8 *perly disclosed or used, including through any*
9 *disclosure or use by the board of directors or per-*
10 *sonnel of either entity, and specifically including*
11 *the unclaimed royalties oversight committee and*
12 *the dispute resolution committee of the mechan-*
13 *ical licensing collective.*

14 “(13) *SAVINGS CLAUSES.—*

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

1 *rights not covered by this section on the day be-*
2 *fore the enactment date.*

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

11 *(5) by adding at the end the following:*

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

13 “(1) *ACCRUED INTEREST.*—*The term ‘accrued*
14 *interest’ means interest accrued on accrued royalties,*
15 *as described in subsection (d)(3)(H)(ii).*

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

21 “(3) *ADMINISTRATIVE ASSESSMENT.*—*The term*
22 *‘administrative assessment’ means the fee established*
23 *pursuant to subsection (d)(7)(D).*

24 “(4) *AUDIT.*—*The term ‘audit’ means a royalty*
25 *compliance examination to verify the accuracy of roy-*

1 *alty payments, or the conduct of such an examina-*
2 *tion, as applicable.*

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

6 “(6) *COLLECTIVE TOTAL COSTS.*—*The term ‘col-*
7 *lective total costs’—*

8 “(A) *means the total costs of establishing,*
9 *maintaining, and operating the mechanical li-*
10 *ensing collective to fulfill its statutory functions,*
11 *including—*

12 “(i) *startup costs;*

13 “(ii) *financing, legal, audit, and in-*
14 *surance costs;*

15 “(iii) *investments in information tech-*
16 *nology, infrastructure, and other long-term*
17 *resources;*

18 “(iv) *outside vendor costs;*

19 “(v) *costs of licensing, royalty admin-*
20 *istration, and enforcement of rights;*

21 “(vi) *costs of bad debt; and*

22 “(vii) *costs of automated and manual*
23 *efforts to identify and locate copyright own-*
24 *ers of musical works (and shares of such*
25 *musical works) and match sound recordings*

1 to the musical works the sound recordings
2 embody; and

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

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

12 “(8) DIGITAL MUSIC PROVIDER.—The term ‘dig-
13 ital music provider’ means a person (or persons oper-
14 ating under the authority of that person) that, with
15 respect to a service engaged in covered activities—

16 “(A) 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 pro-
20 vision of the service to end users;

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

23 “(C) is able to fully report on usage of
24 sound recordings of musical works by the service
25 (or procure such reporting).

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

5 “(10) *DIGITAL PHONORECORD DELIVERY.*—*The*
6 *term ‘digital phonorecord delivery’ means each indi-*
7 *vidual delivery of a phonorecord by digital trans-*
8 *mission of a sound recording that results in a specifi-*
9 *cally identifiable reproduction by or for any trans-*
10 *mission recipient of a phonorecord of that sound re-*
11 *recording, regardless of whether the digital transmission*
12 *is also a public performance of the sound recording*
13 *or any musical work embodied therein, and includes*
14 *a permanent download, a limited download, or an*
15 *interactive stream. A digital phonorecord delivery*
16 *does not result from a real-time, noninteractive sub-*
17 *scription transmission of a sound recording where no*
18 *reproduction of the sound recording or the musical*
19 *work embodied therein is made from the inception of*
20 *the transmission through to its receipt by the trans-*
21 *mission recipient in order to make the sound record-*
22 *ing audible. A digital phonorecord delivery does not*
23 *include the digital transmission of sounds accom-*
24 *panying a motion picture or other audiovisual work*
25 *as defined in section 101.*

1 “(11) *ENACTMENT DATE*.—The term ‘enactment
2 *date*’ means the date of the enactment of the *Musical*
3 *Works Modernization Act*.

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

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

19 “(14) *INTERESTED*.—The term ‘interested’, as
20 applied to a party seeking to participate in a pro-
21 ceeding under subsection (d)(7)(D), is a party as to
22 which the Copyright Royalty Judges have not deter-
23 mined that the party lacks a significant interest in
24 such proceeding.

1 “(15) *LICENSE AVAILABILITY DATE*.—The term
2 *‘license availability date’* means January 1 following
3 the expiration of the 2-year period beginning on the
4 enactment date.

5 “(16) *LIMITED DOWNLOAD*.—The term *‘limited*
6 *download’* means a digital transmission of a sound
7 recording of a musical work in the form of a
8 download, where such sound recording is accessible for
9 listening only for a limited amount of time or speci-
10 fied number of times.

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

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

19 “(19) *MECHANICAL LICENSING COLLECTIVE*
20 *BUDGET*.—The term *‘mechanical licensing collective*
21 *budget’* means a statement of the financial position of
22 the mechanical licensing collective for a fiscal year or
23 quarter thereof based on estimates of expenditures
24 during the period and proposals for financing those

1 *expenditures, including a calculation of the collective*
2 *total costs.*

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

6 “(21) *NONPROFIT.*—*The term ‘nonprofit’ means*
7 *a nonprofit created or organized in a State.*

8 “(22) *NOTICE OF LICENSE.*—*The term ‘notice of*
9 *license’ means a notice from a digital music provider*
10 *provided under subsection (d)(2)(A) for purposes of*
11 *obtaining a blanket license.*

12 “(23) *NOTICE OF NONBLANKET ACTIVITY.*—*The*
13 *term ‘notice of nonblanket activity’ means a notice*
14 *from a significant nonblanket licensee provided under*
15 *subsection (d)(6)(A) for purposes of notifying the me-*
16 *chanical licensing collective that the licensee has been*
17 *engaging in covered activities.*

18 “(24) *PERMANENT DOWNLOAD.*—*The term ‘per-*
19 *manent download’ means a digital transmission of a*
20 *sound recording of a musical work in the form of a*
21 *download, where such sound recording is accessible for*
22 *listening without restriction as to the amount of time*
23 *or number of times it may be accessed.*

24 “(25) *QUALIFIED AUDITOR.*—*The term ‘qualified*
25 *auditor’ means an independent, certified public ac-*

1 *countant with experience performing music royalty*
2 *audits.*

3 “(26) *RECORD COMPANY.*—*The term ‘record com-*
4 *pany’ means an entity that invests in, produces, and*
5 *markets sound recordings of musical works, and dis-*
6 *tributes such sound recordings for remuneration*
7 *through multiple sales channels, including a corporate*
8 *affiliate of such an entity engaged in distribution of*
9 *sound recordings.*

10 “(27) *REPORT OF USAGE.*—*The term ‘report of*
11 *usage’ means a report reflecting an entity’s usage of*
12 *musical works in covered activities described in sub-*
13 *section (d)(4)(A).*

14 “(28) *REQUIRED MATCHING EFFORTS.*—*The*
15 *term ‘required matching efforts’ means efforts to iden-*
16 *tify and locate copyright owners of musical works as*
17 *described in subsection (d)(10)(B)(i).*

18 “(29) *SERVICE.*—*The term ‘service’, as used in*
19 *relation to covered activities, means any site, facility,*
20 *or offering by or through which sound recordings of*
21 *musical works are digitally transmitted to members of*
22 *the public.*

23 “(30) *SHARE.*—*The term ‘share’, as applied to a*
24 *musical work, means a fractional ownership interest*
25 *in such work.*

1 “(31) *SIGNIFICANT NONBLANKET LICENSEE.*—

2 *The term ‘significant nonblanket licensee’—*

3 “(A) *means an entity, including a group of*
4 *entities under common ownership or control*
5 *that, acting under the authority of one or more*
6 *voluntary licenses or individual download li-*
7 *licenses, offers a service engaged in covered activi-*
8 *ties, and such entity or group of entities—*

9 “(i) *is not currently operating under a*
10 *blanket license and is not obligated to pro-*
11 *vide reports of usage reflecting covered ac-*
12 *tivities under subsection (d)(4)(A);*

13 “(ii) *has a direct contractual, subscrip-*
14 *tion, or other economic relationship with*
15 *end users of the service or, if no such rela-*
16 *tionship with end users exists, exercises di-*
17 *rect control over the provision of the service*
18 *to end users; and*

19 “(iii) *either—*

20 “(I) *on any day in a calendar*
21 *month, makes more than 5,000 dif-*
22 *ferent sound recordings of musical*
23 *works available through such service;*
24 *or*

1 “(II) derives revenue or other con-
2 sideration in connection with such cov-
3 ered activities greater than \$50,000 in
4 a calendar month, or total revenue or
5 other consideration greater than
6 \$500,000 during the preceding 12 cal-
7 endar months; and

8 “(B) does not include—

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

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

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

23 “(33) STATE.—The term ‘State’ means each
24 State of the United States, the District of Columbia,
25 and each territory or possession of the United States.

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

5 “(35) *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 there-*
8 *of) has not been identified or located.*”

9 “(36) *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 *cence 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) *by redesignating paragraph (8) as para-*
17 *graph (9); and*

18 (2) *by inserting after paragraph (7) the fol-*
19 *lowing:*

20 “(8) *To determine the administrative assessment*
21 *to be paid by digital music providers under section*
22 *115(d). The provisions of section 115(d) shall apply*
23 *to the conduct of proceedings by the Copyright Roy-*
24 *alty Judges under section 115(d) and not the proce-*

1 dures described in this section, or section 803, 804, or
2 805.”.

3 (c) *EFFECTIVE DATE OF AMENDED RATE SETTING*
4 *STANDARD.*—The amendments made by subsection (a)(3)
5 and section 103(g)(2) shall apply to any proceeding before
6 the Copyright Royalty Judges that is commenced on or after
7 the date of the enactment of this Act.

8 (d) *TECHNICAL AND CONFORMING AMENDMENTS TO*
9 *TITLE 37, PART 385 OF THE CODE OF FEDERAL REGULA-*
10 *TIONS.*—Not later than 270 days after the date of enactment
11 of this Act, the Copyright Royalty Judges shall amend the
12 regulations for section 115 of title 17, United States Code,
13 in part 385 of title 37, Code of Federal Regulations, to con-
14 form the definitions used in such part to the definitions
15 of the same terms described in section 115(e) of title 17,
16 United States Code, as added by subsection (a). In so doing,
17 the Copyright Royalty Judges shall make adjustments to
18 the language of the regulations as necessary to achieve the
19 same purpose and effect as the original regulations with
20 respect to the rates and terms previously adopted by the
21 Copyright Royalty Judges.

22 (e) *COPYRIGHT OFFICE ACTIVITIES.*—The Register of
23 Copyrights shall engage in public outreach and educational
24 activities—

1 (1) *regarding the amendments made by sub-*
2 *section (a) to section 115 of title 17, United States*
3 *Code, including the responsibilities of the mechanical*
4 *licensing collective designated under those amend-*
5 *ments;*

6 (2) *which shall include educating songwriters*
7 *and other interested parties with respect to the process*
8 *established under section 115(d)(3)(C)(i)(V) of title*
9 *17, United States Code, as added by subsection (a),*
10 *by which—*

11 (A) *a copyright owner may claim owner-*
12 *ship of musical works (and shares of such*
13 *works); and*

14 (B) *royalties for works for which the owner*
15 *is not identified or located shall be equitably dis-*
16 *tributed to known copyright owners; and*

17 (3) *which the Register shall make available on-*
18 *line.*

19 (f) *UNCLAIMED ROYALTIES STUDY AND RECOMMENDA-*
20 *TIONS.—*

21 (1) *IN GENERAL.—Not later than 2 years after*
22 *the date on which the Register of Copyrights initially*
23 *designates the mechanical licensing collective under*
24 *section 115(d)(3)(B)(i) of title 17, United States*
25 *Code, as added by subsection (a)(4), the Register, in*

1 *consultation with the Comptroller General of the*
2 *United States, and after soliciting and reviewing*
3 *comments and relevant information from music in-*
4 *dustry participants and other interested parties, shall*
5 *submit to the Committee on the Judiciary of the Sen-*
6 *ate and the Committee on the Judiciary of the House*
7 *of Representatives a report that recommends best*
8 *practices that the collective may implement in order*
9 *to—*

10 *(A) identify and locate musical work copy-*
11 *right owners with unclaimed accrued royalties*
12 *held by the collective;*

13 *(B) encourage musical work copyright own-*
14 *ers to claim the royalties of those owners; and*

15 *(C) reduce the incidence of unclaimed roy-*
16 *alties.*

17 *(2) CONSIDERATION OF RECOMMENDATIONS.—*

18 *The mechanical licensing collective shall carefully*
19 *consider, and give substantial weight to, the rec-*
20 *ommendations submitted by the Register of Copy-*
21 *rights under paragraph (1) when establishing the pro-*
22 *cedures of the collective with respect to the—*

23 *(A) identification and location of musical*
24 *work copyright owners; and*

25 *(B) distribution of unclaimed royalties.*

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

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

4 (1) by striking paragraphs (1) and (2) and in-
5 serting the following:

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

16 “(B) The schedule of reasonable rates and terms
17 determined by the Copyright Royalty Judges shall,
18 subject to paragraph (2), be binding on all copyright
19 owners of sound recordings and entities performing
20 sound recordings affected by this paragraph during
21 the 5-year period specified in subparagraph (A), or
22 such other period as the parties may agree. Such rates
23 and terms shall distinguish among the different types
24 of services then in operation and shall include a min-
25 imum fee for each such type of service, such dif-
26 ferences to be based on criteria including the quantity

1 *and nature of the use of sound recordings and the de-*
2 *gree to which use of the service may substitute for or*
3 *may promote the purchase of phonorecords by con-*
4 *sumers. The Copyright Royalty Judges shall establish*
5 *rates and terms that most clearly represent the rates*
6 *and terms that would have been negotiated in the*
7 *marketplace between a willing buyer and a willing*
8 *seller. In determining such rates and terms, the Copy-*
9 *right Royalty Judges—*

10 *“(i) shall base their decision on economic,*
11 *competitive, and programming information pre-*
12 *sented by the parties, including—*

13 *“(I) whether use of the service may*
14 *substitute for or may promote the sales of*
15 *phonorecords or otherwise may interfere*
16 *with or may enhance the sound recording*
17 *copyright owner’s other streams of revenue*
18 *from the copyright owner’s sound record-*
19 *ings; and*

20 *“(II) the relative roles of the copyright*
21 *owner and the transmitting entity in the*
22 *copyrighted work and the service made*
23 *available to the public with respect to rel-*
24 *ative creative contribution, technological*

1 *contribution, capital investment, cost, and*
2 *risk; and*

3 “(i) *may consider the rates and terms for*
4 *comparable types of audio transmission services*
5 *and comparable circumstances under voluntary*
6 *license agreements.*

7 “(C) *The procedures under subparagraphs (A)*
8 *and (B) shall also be initiated pursuant to a petition*
9 *filed by any sound recording copyright owner or any*
10 *transmitting entity indicating that a new type of*
11 *service on which sound recordings are performed is or*
12 *is about to become operational, for the purpose of de-*
13 *termining reasonable terms and rates of royalty pay-*
14 *ments with respect to such new type of service for the*
15 *period beginning with the inception of such new type*
16 *of service and ending on the date on which the roy-*
17 *alty rates and terms for eligible nonsubscription serv-*
18 *ices and new subscription services, or preexisting sub-*
19 *scription services and preexisting satellite digital*
20 *audio radio services, as the case may be, most re-*
21 *cently determined under subparagraph (A) or (B)*
22 *and chapter 8 expire, or such other period as the par-*
23 *ties may agree.”; and*

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

1 **(b) REPEAL.**—*Subsection (i) of section 114 of title 17,*
2 *United States Code, is repealed.*

3 **(c) USE IN MUSICAL WORK PROCEEDINGS.**—

4 **(1) IN GENERAL.**—*License fees payable for the*
5 *public performance of sound recordings under section*
6 *106(6) of title 17, United States Code, shall not be*
7 *taken into account in any administrative, judicial, or*
8 *other governmental proceeding to set or adjust the*
9 *royalties payable to musical work copyright owners*
10 *for the public performance of their works except in*
11 *such a proceeding to set or adjust royalties for the*
12 *public performance of musical works by means of a*
13 *digital audio transmission other than a transmission*
14 *by a broadcaster, and may be taken into account only*
15 *with respect to such digital audio transmission.*

16 **(2) DEFINITIONS.**—*In this subsection:*

17 **(A) TRANSMISSION BY A BROADCASTER.**—
18 *The term “transmission by a broadcaster” means*
19 *a nonsubscription digital transmission made by*
20 *a terrestrial broadcast station on its own behalf,*
21 *or on the behalf of a terrestrial broadcast station*
22 *under common ownership or control, that is not*
23 *part of an interactive service or a music-inten-*
24 *sive service comprising the transmission of sound*

1 *recordings customized for or customizable by re-*
2 *ipients or service users.*

3 (B) *TERRESTRIAL BROADCAST STATION.*—

4 *The term “terrestrial broadcast station” means a*
5 *terrestrial, over-the-air radio or television broad-*
6 *cast station, including an FM translator (as de-*
7 *fined in section 74.1201 of title 47, Code of Fed-*
8 *eral Regulations, and licensed as such by the*
9 *Federal Communications Commission) whose*
10 *primary business activities are comprised of,*
11 *and whose revenues are generated through, ter-*
12 *restrial, over-the-air broadcast transmissions, or*
13 *the simultaneous or substantially-simultaneous*
14 *digital retransmission by the terrestrial, over-*
15 *the-air broadcast station of its over-the-air*
16 *broadcast transmissions.*

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

20 (e) *USE IN SOUND RECORDING PROCEEDINGS.*—*The*
21 *repeal of section 114(i) of title 17, United States Code, by*
22 *subsection (b) shall not be taken into account in any pro-*
23 *ceeding to set or adjust the rates and fees payable for the*
24 *use of sound recordings under section 112(e) or 114(f) of*

1 *such title that is pending on, or commenced on or after,*
2 *the date of enactment of this Act.*

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

10 (g) *TECHNICAL AND CONFORMING AMENDMENTS.—*

11 (1) *SECTION 114.—Section 114(f) of title 17,*
12 *United States Code, as amended by subsection (a), is*
13 *further amended in paragraph (4)(C), as so redesign-*
14 *ated, in the first sentence, by striking “under para-*
15 *graph (4)” and inserting “under paragraph (3)”.*

16 (2) *SECTION 801.—Section 801(b) of title 17,*
17 *United States Code, is amended—*

18 (A) *in paragraph (1), by striking “The*
19 *rates applicable” and all that follows though*
20 *“prevailing industry practices.”; and*

21 (B) *in paragraph (7)(B), by striking*
22 *“114(f)(3)” and inserting “114(f)(2)”.*

23 (3) *SECTION 803.—Section 803(c)(2)(E)(i)(II) of*
24 *title 17, United States Code, is amended—*

25 (A) *by striking “or 114(f)(2)(C)”;* and

1 (B) by striking “114(f)(4)(B)” and insert-
2 ing “114(f)(3)(B)”.

3 (4) SECTION 804.—Section 804(b)(3)(C) of title
4 17, United States Code, is amended—

5 (A) in clause (i), by striking “and
6 114(f)(2)(C)”;

7 (B) in clause (iii)(II), by striking
8 “114(f)(4)(B)(ii)” and inserting
9 “114(f)(3)(B)(ii)”; and

10 (C) in clause (iv), by striking “or
11 114(f)(2)(C), as the case may be”.

12 (h) EFFECTIVE DATE OF AMENDED RATE SETTING
13 STANDARD.—The amendments made by subsection (a)(1)
14 shall apply to any proceeding before the Copyright Royalty
15 Judges that is commenced on or after the date of the enact-
16 ment of this Act.

17 (i) TIMING OF RATE DETERMINATIONS.—Section
18 804(b)(3)(B) of title 17, United States Code, is amended,
19 in the third sentence, by inserting the following after “fifth
20 calendar year”: “, except that—(i) with respect to pre-
21 existing subscription services, the terms and rates finally
22 determined for the rate period ending on December 31,
23 2022, shall remain in effect through December 31, 2027, and
24 there shall be no proceeding to determine terms and rates
25 for preexisting subscription services for the period begin-

1 ning on January 1, 2023, and ending on December 31,
 2 2027; and” “(i) with respect to pre-existing satellite digital
 3 audio radio services, the terms and rates set forth by the
 4 Copyright Royalty Judges on December 14, 2017, in their
 5 initial determination for the rate period ending on Decem-
 6 ber 31, 2022, shall be in effect through December 31, 2027,
 7 without any change based on a rehearing under section
 8 803(c)(2) and without the possibility of appeal under sec-
 9 tion 803(d), and there shall be no proceeding to determine
 10 terms and rates for preexisting satellite digital audio radio
 11 services for the period beginning on January 1, 2023, and
 12 ending on December 31, 2027”.

13 **SEC. 104. RANDOM ASSIGNMENT OF RATE COURT PRO-**
 14 **CEEDINGS.**

15 Section 137 of title 28, United States Code, is amend-
 16 ed—

17 (1) by striking “The business” and inserting

18 “(a) *IN GENERAL.*—The business”; and

19 (2) by adding at the end the following:

20 “(b) *RANDOM ASSIGNMENT OF RATE COURT PRO-*
 21 *CEEDINGS.*—

22 “(1) *IN GENERAL.*—

23 “(A) *DEFINITION.*—In this paragraph, the
 24 term ‘performing rights society’ has the meaning
 25 given the term in section 101 of title 17.

1 “(B) *DETERMINATION OF LICENSE FEE.*—
2 *Except as provided in subparagraph (C), in the*
3 *case of any performing rights society subject to*
4 *a consent decree, any application for the deter-*
5 *mination of a license fee for the public perform-*
6 *ance of music in accordance with the applicable*
7 *consent decree shall be made in the district court*
8 *with jurisdiction over that consent decree and*
9 *randomly assigned to a judge of that district*
10 *court according to the rules of that court for the*
11 *division of business among district judges, pro-*
12 *vided that any such application shall not be as-*
13 *signed to—*

14 “(i) *a judge to whom continuing juris-*
15 *isdiction over any performing rights society*
16 *for any performing rights society consent*
17 *decree is assigned or has previously been as-*
18 *signed; or*

19 “(ii) *a judge to whom another pro-*
20 *ceeding concerning an application for the*
21 *determination of a reasonable license fee is*
22 *assigned at the time of the filing of the ap-*
23 *plication.*

24 “(C) *EXCEPTION.*—*Subparagraph (B) does*
25 *not apply to an application to determine reason-*

1 *able license fees made by individual proprietors*
2 *under section 513 of title 17.*

3 “(2) *RULE OF CONSTRUCTION.—Nothing in*
4 *paragraph (1) shall modify the rights of any party to*
5 *a consent decree or to a proceeding to determine rea-*
6 *sonable license fees, to make an application for the*
7 *construction of any provision of the applicable con-*
8 *sent decree. Such application shall be referred to the*
9 *judge to whom continuing jurisdiction over the appli-*
10 *cable consent decree is currently assigned. If any such*
11 *application is made in connection with a rate pro-*
12 *ceeding, such rate proceeding shall be stayed until the*
13 *final determination of the construction application.*
14 *Disputes in connection with a rate proceeding about*
15 *whether a licensee is similarly situated to another li-*
16 *cencee shall not be subject to referral to the judge with*
17 *continuing jurisdiction over the applicable consent de-*
18 *cree.”.*

19 **SEC. 105. PERFORMING RIGHTS SOCIETY CONSENT DE-**
20 **CREES.**

21 (a) *DEFINITION.—In this section, the term “per-*
22 *forming rights society” has the meaning given the term in*
23 *section 101 of title 17, United States Code.*

24 (b) *NOTIFICATION OF REVIEW.—*

1 (1) *IN GENERAL.*—*The Department of Justice*
2 *shall provide timely briefings upon request of any*
3 *Member of the Committee on the Judiciary of the*
4 *Senate and the Committee on the Judiciary of the*
5 *House of Representatives regarding the status of a re-*
6 *view in progress of a consent decree between the*
7 *United States and a performing rights society.*

8 (2) *CONFIDENTIALITY AND DELIBERATIVE PROC-*
9 *ESS.*—*In accordance with applicable rules relating to*
10 *confidentiality and agency deliberative process, the*
11 *Department of Justice shall share with such Members*
12 *of Congress detailed and timely information and per-*
13 *tinent documents related to the consent decree review.*

14 (c) *ACTION BEFORE MOTION TO TERMINATE.*—

15 (1) *IN GENERAL.*—*Before filing with the appro-*
16 *priate district court of the United States a motion to*
17 *terminate a consent decree between the United States*
18 *and a performing rights society, including a motion*
19 *to terminate a consent decree after the passage of a*
20 *specified period of time, the Department of Justice*
21 *shall—*

22 (A) *notify Members of Congress and com-*
23 *mittees of Congress described in subsection (b);*
24 *and*

1 (B) provide to such Members of Congress
2 and committees information regarding the im-
3 pact of the proposed termination on the market
4 for licensing the public performance of musical
5 works should the motion be granted.

6 (2) NOTIFICATION.—

7 (A) IN GENERAL.—During the notification
8 described in paragraph (1), and not later than
9 a reasonable time before the date on which the
10 Department of Justice files with the appropriate
11 district court of the United States a motion to
12 terminate a consent decree between the United
13 States and a performing rights society, the De-
14 partment of Justice should submit to the chair-
15 men and ranking members of the Committee on
16 the Judiciary of the Senate and the Committee
17 on the Judiciary of the House of Representatives
18 a written notification of the intent of the De-
19 partment of Justice to file the motion.

20 (B) CONTENTS.—The notification provided
21 in subparagraph (A) shall include a written re-
22 port to the chairmen and ranking members of the
23 Committee on the Judiciary of Senate and the
24 Committee on the Judiciary of the House of Rep-
25 resentatives setting forth—

1 (i) an explanation of the process used
2 by the Department of Justice to review the
3 consent decree;

4 (ii) a summary of the public comments
5 received by the Department of Justice dur-
6 ing the review by the Department; and

7 (iii) other information provided to
8 Congress under paragraph (1)(B).

9 (d) *SCOPE.*—This section applies only to a consent de-
10 cree between the United States and a performing rights soci-
11 ety.

12 **SEC. 106. EFFECTIVE DATE.**

13 This title, and the amendments made by this title,
14 shall take effect on the date of enactment of this Act.

15 **TITLE II—CLASSICS**
16 **PROTECTION AND ACCESS**

17 **SEC. 201. SHORT TITLE.**

18 This title may be cited as the “Classics Protection and
19 Access Act”.

20 **SEC. 202. UNAUTHORIZED USE OF PRE-1972 SOUND RE-**
21 **CORDINGS.**

22 (a) *PREEMPTION OF STATE LAW RIGHTS; PROTEC-*
23 *TION FOR UNAUTHORIZED USE.*—Title 17, United States
24 Code, is amended—

1 (1) *in section 301, by striking subsection (c) and*
2 *inserting the following:*

3 “(c) *Notwithstanding the provisions of section 303,*
4 *and in accordance with chapter 14, no sound recording*
5 *fixed before February 15, 1972, shall be subject to copyright*
6 *under this title. With respect to sound recordings fixed be-*
7 *fore February 15, 1972, the preemptive provisions of sub-*
8 *section (a) shall apply to activities that are commenced on*
9 *and after the date of enactment of the Classics Protection*
10 *and Access Act. Nothing in this subsection may be construed*
11 *to affirm or negate the preemption of rights and remedies*
12 *pertaining to any cause of action arising from the non-*
13 *subscription broadcast transmission of sound recordings*
14 *under the common law or statutes of any State for activities*
15 *that do not qualify as covered activities under chapter 14*
16 *undertaken during the period between the date of enactment*
17 *of the Classics Protection and Access Act and the date on*
18 *which the term of prohibition on unauthorized acts under*
19 *section 1401(a)(2) expires for such sound recordings. Any*
20 *potential preemption of rights and remedies related to such*
21 *activities undertaken during that period shall apply in all*
22 *respects as it did the day before the date of enactment of*
23 *the Classics Protection and Access Act.”; and*

24 (2) *by adding at the end the following:*

1 **“CHAPTER 14—UNAUTHORIZED USE OF**
2 **PRE-1972 SOUND RECORDINGS**

“Sec.

“1401. Unauthorized use of pre-1972 sound recordings.

3 **“§ 1401. Unauthorized use of pre-1972 sound record-**
4 **ings**

5 “(a) *IN GENERAL.*—

6 “(1) *UNAUTHORIZED ACTS.*—*Anyone who, on or*
7 *before the last day of the applicable transition period*
8 *under paragraph (2), and without the consent of the*
9 *rights owner, engages in covered activity with respect*
10 *to a sound recording fixed before February 15, 1972,*
11 *shall be subject to the remedies provided in sections*
12 *502 through 505 and 1203 to the same extent as an*
13 *infringer of copyright or a person that engages in un-*
14 *authorized activity under chapter 12.*

15 “(2) *TERM OF PROHIBITION.*—

16 “(A) *IN GENERAL.*—*The prohibition under*
17 *paragraph (1)—*

18 “(i) *subject to clause (ii), shall apply*
19 *to a sound recording described in that para-*
20 *graph—*

21 “(I) *through December 31 of the*
22 *year that is 95 years after the year of*
23 *first publication; and*

1 “(II) for a further transition pe-
2 riod as prescribed under subparagraph
3 (B) of this paragraph; and

4 “(i) shall not apply to any sound re-
5 cording after February 15, 2067.

6 “(B) TRANSITION PERIODS.—

7 “(i) PRE-1923 RECORDINGS.—In the
8 case of a sound recording first published be-
9 fore January 1, 1923, the transition period
10 described in subparagraph (A)(i)(II) shall
11 end on December 31 of the year that is 3
12 years after the date of enactment of this sec-
13 tion.

14 “(ii) 1923–1946 RECORDINGS.—In the
15 case of a sound recording first published
16 during the period beginning on January 1,
17 1923, and ending on December 31, 1946, the
18 transition period described in subparagraph
19 (A)(i)(II) shall end on the date that is 5
20 years after the last day of the period de-
21 scribed in subparagraph (A)(i)(I).

22 “(iii) 1947–1956 RECORDINGS.—In the
23 case of a sound recording first published
24 during the period beginning on January 1,
25 1947, and ending on December 31, 1956, the

1 *transition period described in subparagraph*
2 *(A)(i)(II) shall end on the date that is 15*
3 *years after the last day of the period de-*
4 *scribed in subparagraph (A)(i)(I).*

5 *“(iv) POST-1956 RECORDINGS.—In the*
6 *case of a sound recording fixed before Feb-*
7 *ruary 15, 1972, that is not described in*
8 *clause (i), (ii), or (iii), the transition period*
9 *described in subparagraph (A)(i)(II) shall*
10 *end on February 15, 2067.*

11 *“(3) RULE OF CONSTRUCTION.—For the purposes*
12 *of this subsection, the term ‘anyone’ includes any*
13 *State, any instrumentality of a State, and any officer*
14 *or employee of a State or instrumentality of a State*
15 *acting in the official capacity of the officer or em-*
16 *ployee, as applicable.*

17 *“(b) CERTAIN AUTHORIZED TRANSMISSIONS AND RE-*
18 *PRODUCTIONS.—A public performance by means of a dig-*
19 *ital audio transmission of a sound recording fixed before*
20 *February 15, 1972, or a reproduction in an ephemeral pho-*
21 *norecord or copy of a sound recording fixed before February*
22 *15, 1972, shall, for purposes of subsection (a), be considered*
23 *to be authorized and made with the consent of the rights*
24 *owner if—*

1 “(1) *the transmission or reproduction would sat-*
2 *isfy the requirements for statutory licensing under*
3 *section 112(e)(1) or section 114(d)(2), or would be ex-*
4 *empt under section 114(d)(1), as the case may be, if*
5 *the sound recording were fixed on or after February*
6 *15, 1972; and*

7 “(2) *the transmitting entity pays the statutory*
8 *royalty for the transmission or reproduction pursuant*
9 *to the rates and terms adopted under sections 112(e)*
10 *and 114(f), and complies with other obligations, in*
11 *the same manner as required by regulations adopted*
12 *by the Copyright Royalty Judges under sections*
13 *112(e) and 114(f) for sound recordings that are fixed*
14 *on or after February 15, 1972, except in the case of*
15 *a transmission that would be exempt under section*
16 *114(d)(1).*

17 “(c) *CERTAIN NONCOMMERCIAL USES OF SOUND RE-*
18 *CORDINGS THAT ARE NOT BEING COMMERCIALY EX-*
19 *PLOITED.—*

20 “(1) *IN GENERAL.—Noncommercial use of a*
21 *sound recording fixed before February 15, 1972, that*
22 *is not being commercially exploited by or under the*
23 *authority of the rights owner shall not violate sub-*
24 *section (a) if—*

1 “(A) the person engaging in the non-
2 commercial use, in order to determine whether
3 the sound recording is being commercially ex-
4 ploited by or under the authority of the rights
5 owner, makes a good faith, reasonable search for,
6 but does not find, the sound recording—

7 “(i) in the records of schedules filed in
8 the Copyright Office as described in sub-
9 section (f)(5)(A); and

10 “(ii) on services offering a comprehen-
11 sive set of sound recordings for sale or
12 streaming;

13 “(B) the person engaging in the non-
14 commercial use files a notice identifying the
15 sound recording and the nature of the use in the
16 Copyright Office in accordance with the regula-
17 tions issued under paragraph (3)(B); and

18 “(C) during the 90-day period beginning on
19 the date on which the notice described in sub-
20 paragraph (B) is indexed into the public records
21 of the Copyright Office, the rights owner of the
22 sound recording does not, in its discretion, opt
23 out of the noncommercial use by filing notice
24 thereof in the Copyright Office in accordance
25 with the regulations issued under paragraph (5).

1 “(2) *RULES OF CONSTRUCTION.*—For purposes of
2 *this subsection—*

3 “(A) *merely recovering costs of production*
4 *and distribution of a sound recording resulting*
5 *from a use otherwise permitted under this sub-*
6 *section does not itself necessarily constitute a*
7 *commercial use of the sound recording;*

8 “(B) *the fact that a person engaging in the*
9 *use of a sound recording also engages in commer-*
10 *cial activities does not itself necessarily render*
11 *the use commercial; and*

12 “(C) *the fact that a person files notice of a*
13 *noncommercial use of a sound recording in ac-*
14 *cordance with the regulations issued under para-*
15 *graph (3)(B) does not itself affect any limitation*
16 *on the exclusive rights of a copyright owner de-*
17 *scribed in section 107, 108, 109, 110, or 112(f)*
18 *as applied to a claim under subsection (a) of this*
19 *section pursuant to subsection (f)(1)(A) of this*
20 *section.*

21 “(3) *NOTICE OF COVERED ACTIVITY.*—Not later
22 *than 180 days after the date of enactment of this sec-*
23 *tion, the Register of Copyrights shall issue regulations*
24 *that—*

1 “(A) provide specific, reasonable steps that,
2 if taken by a filer, are sufficient to constitute a
3 good faith, reasonable search under paragraph
4 (1)(A) to determine whether a recording is being
5 commercially exploited, including the services
6 that satisfy the good faith, reasonable search re-
7 quirement under paragraph (1)(A) for purposes
8 of the safe harbor described in paragraph (4)(A);
9 and

10 “(B) establish the form, content, and proce-
11 dures for the filing of notices under paragraph
12 (1)(B).

13 “(4) SAFE HARBOR.—

14 “(A) IN GENERAL.—A person engaging in a
15 noncommercial use of a sound recording other-
16 wise permitted under this subsection who estab-
17 lishes that the person made a good faith, reason-
18 able search under paragraph (1)(A) without
19 finding commercial exploitation of the sound re-
20 cording by or under the authority of the rights
21 owner shall not be found to be in violation of
22 subsection (a).

23 “(B) STEPS SUFFICIENT BUT NOT NEC-
24 CESSARY.—Taking the specific, reasonable steps
25 identified by the Register of Copyrights in the

1 *regulations issued under paragraph (3)(A) shall*
2 *be sufficient, but not necessary, for a filer to sat-*
3 *isfy the requirement to conduct a good faith, rea-*
4 *sonable search under paragraph (1)(A) for pur-*
5 *poses of subparagraph (A) of this paragraph.*

6 *“(5) OPTING OUT OF COVERED ACTIVITY.—*

7 *“(A) IN GENERAL.—Not later than 180*
8 *days after the date of enactment of this section,*
9 *the Register of Copyrights shall issue regulations*
10 *establishing the form, content, and procedures for*
11 *the rights owner of a sound recording that is the*
12 *subject of a notice under paragraph (1)(B) to, in*
13 *its discretion, file notice opting out of the covered*
14 *activity described in the notice under paragraph*
15 *(1)(B) during the 90-day period beginning on*
16 *the date on which the notice under paragraph*
17 *(1)(B) is indexed into the public records of the*
18 *Copyright Office.*

19 *“(B) RULE OF CONSTRUCTION.—The fact*
20 *that a rights holder opts out of a noncommercial*
21 *use of a sound recording by filing notice thereof*
22 *in the Copyright Office in accordance with the*
23 *regulations issued under subparagraph (A) does*
24 *not itself enlarge or diminish any limitation on*
25 *the exclusive rights of a copyright owner de-*

1 *scribed in section 107, 108, 109, 110, or 112(f)*
2 *as applied to a claim under subsection (a) of this*
3 *section pursuant to subsection (f)(1)(A) of this*
4 *section.*

5 “(6) *CIVIL PENALTIES FOR CERTAIN ACTS.—*

6 “(A) *FILING OF NOTICES OF NONCOMMER-*
7 *CIAL USE.—Any person who willfully engages in*
8 *a pattern or practice of filing a notice of non-*
9 *commercial use of a sound recording as described*
10 *in paragraph (1)(B) fraudulently describing the*
11 *use proposed, or knowing that the use proposed*
12 *is not permitted under this subsection, shall be*
13 *assessed a civil penalty in an amount that is not*
14 *less than \$250, and not more than \$1000, for*
15 *each such notice, in addition to any other rem-*
16 *edies that may be available under this title based*
17 *on the actual use made.*

18 “(B) *FILING OF OPT-OUT NOTICES.—*

19 “(i) *IN GENERAL.—Any person who*
20 *files an opt-out notice as described in para-*
21 *graph (1)(C), knowing that the person is*
22 *not the rights owner or authorized to act on*
23 *behalf of the rights owner of the sound re-*
24 *cording to which the notice pertains, shall*
25 *be assessed a civil penalty in an amount*

1 *not less than \$250, and not more than*
2 *\$1,000, for each such notice.*

3 “(ii) *PATTERN OR PRACTICE.*—*Any*
4 *person who engages in a pattern or practice*
5 *of making filings as described in clause (i)*
6 *shall be assessed a civil penalty in an*
7 *amount not less than \$10,000 for each such*
8 *filing.*

9 “(C) *DEFINITION.*—*For purposes of this*
10 *paragraph, the term ‘knowing’—*

11 “(i) *does not require specific intent to*
12 *defraud; and*

13 “(ii) *with respect to information about*
14 *ownership of the sound recording in ques-*
15 *tion, means that the person—*

16 “(I) *has actual knowledge of the*
17 *information;*

18 “(II) *acts in deliberate ignorance*
19 *of the truth or falsity of the informa-*
20 *tion; or*

21 “(III) *acts in grossly negligent*
22 *disregard of the truth or falsity of the*
23 *information.*

1 “(d) *PAYMENT OF ROYALTIES FOR TRANSMISSIONS OF*
2 *PERFORMANCES BY DIRECT LICENSING OF STATUTORY*
3 *SERVICES.*—

4 “(1) *IN GENERAL.*—A public performance by
5 *means of a digital audio transmission of a sound re-*
6 *recording fixed before February 15, 1972, shall, for pur-*
7 *poses of subsection (a), be considered to be authorized*
8 *and made with the consent of the rights owner if the*
9 *transmission is made pursuant to a license agreement*
10 *voluntarily negotiated at any time between the rights*
11 *owner and the entity performing the sound recording.*

12 “(2) *PAYMENT OF ROYALTIES TO NONPROFIT*
13 *COLLECTIVE UNDER CERTAIN LICENSE AGREE-*
14 *MENTS.*—

15 “(A) *LICENSES ENTERED INTO ON OR*
16 *AFTER DATE OF ENACTMENT.*—To the extent that
17 *a license agreement described in paragraph (1)*
18 *entered into on or after the date of enactment of*
19 *this section extends to a public performance by*
20 *means of a digital audio transmission of a sound*
21 *recording fixed before February 15, 1972, that*
22 *meets the conditions of subsection (b)—*

23 “(i) *the licensee shall, with respect to*
24 *such transmission, pay to the collective des-*
25 *ignated to distribute receipts from the li-*

1 *censing of transmissions in accordance with*
2 *section 114(f), 50 percent of the performance*
3 *royalties for that transmission due under*
4 *the license; and*

5 “(i) *the royalties paid under clause (i)*
6 *shall be fully credited as payments due*
7 *under the license.*

8 “(B) *CERTAIN AGREEMENTS ENTERED INTO*
9 *BEFORE ENACTMENT.—To the extent that a li-*
10 *cence agreement described in paragraph (1), en-*
11 *tered into during the period beginning on Janu-*
12 *ary 1 of the year in which this section is enacted*
13 *and ending on the day before the date of enact-*
14 *ment of this section, or a settlement agreement*
15 *with a preexisting satellite digital audio radio*
16 *service (as defined in section 114(j)) entered into*
17 *during the period beginning on January 1, 2015,*
18 *and ending on the day before the date of enact-*
19 *ment of this section, extends to a public perform-*
20 *ance by means of a digital audio transmission of*
21 *a sound recording fixed before February 15,*
22 *1972, that meets the conditions of subsection*
23 *(b)—*

24 “(i) *the rights owner shall, with respect*
25 *to such transmission, pay to the collective*

1 *designated to distribute receipts from the li-*
2 *censing of transmissions in accordance with*
3 *section 114(f) an amount that is equal to*
4 *the difference between—*

5 *“(I) 50 percent of the difference*
6 *between—*

7 *“(aa) the rights owner’s total*
8 *gross performance royalty fee re-*
9 *ceipts or settlement monies re-*
10 *ceived for all such transmissions*
11 *covered under the license or settle-*
12 *ment agreement, as applicable;*
13 *and*

14 *“(bb) the rights owner’s total*
15 *payments for outside legal ex-*
16 *penses, including any payments of*
17 *third-party claims, that are di-*
18 *rectly attributable to the license or*
19 *settlement agreement, as applica-*
20 *ble; and*

21 *“(II) the amount of any royalty*
22 *receipts or settlement monies under the*
23 *agreement that are distributed by the*
24 *rights owner to featured and nonfea-*

1 *tured artists before the date of enact-*
2 *ment of this section; and*

3 “(ii) *the royalties paid under clause (i)*
4 *shall be fully credited as payments due*
5 *under the license or settlement agreement,*
6 *as applicable.*

7 “(3) *DISTRIBUTION OF ROYALTIES AND SETTLE-*
8 *MENT MONIES BY COLLECTIVE.—The collective de-*
9 *scribed in paragraph (2) shall, in accordance with*
10 *subparagraphs (B) through (D) of section 114(g)(2),*
11 *and paragraphs (5) and (6) of section 114(g), dis-*
12 *tribute the royalties or settlement monies received*
13 *under paragraph (2) under a license or settlement de-*
14 *scribed in paragraph (2), which shall be the only pay-*
15 *ments to which featured and nonfeatured artists are*
16 *entitled by virtue of the transmissions described in*
17 *paragraph (2), except for settlement monies described*
18 *in paragraph (2) that are distributed by the rights*
19 *owner to featured and nonfeatured artists before the*
20 *date of enactment of this section.*

21 “(4) *PAYMENT OF ROYALTIES UNDER LICENSE*
22 *AGREEMENTS ENTERED BEFORE ENACTMENT OR NOT*
23 *OTHERWISE DESCRIBED IN PARAGRAPH (2).—*

24 “(A) *IN GENERAL.—To the extent that a li-*
25 *cence agreement described in paragraph (1) en-*

1 *tered into before the date of enactment of this*
2 *section, or any other license agreement not as de-*
3 *scribed in paragraph (2), extends to a public*
4 *performance by means of a digital audio trans-*
5 *mission of a sound recording fixed before Feb-*
6 *ruary 15, 1972, that meets the conditions of sub-*
7 *section (b), the payments made by the licensee*
8 *pursuant to the license shall be made in accord-*
9 *ance with the agreement.*

10 *“(B) ADDITIONAL PAYMENTS NOT RE-*
11 *QUIRED.—To the extent that a licensee has made,*
12 *or will make in the future, payments pursuant*
13 *to a license as described in subparagraph (A),*
14 *the provisions of paragraphs (2) and (3) shall*
15 *not require any additional payments from, or*
16 *additional financial obligations on the part of,*
17 *the licensee.*

18 *“(C) RULE OF CONSTRUCTION.—Nothing in*
19 *this subsection may be construed to prohibit the*
20 *collective designated to distribute receipts from*
21 *the licensing of transmissions in accordance with*
22 *section 114(f) from administering royalty pay-*
23 *ments under any license not described in para-*
24 *graph (2).*

1 “(e) *PREEMPTION WITH RESPECT TO CERTAIN PAST*
2 *ACTS.*—

3 “(1) *IN GENERAL.*—*This section preempts any*
4 *claim of common law copyright or equivalent right*
5 *under the laws of any State arising from a digital*
6 *audio transmission or reproduction that is made be-*
7 *fore the date of enactment of this section of a sound*
8 *recording fixed before February 15, 1972, if—*

9 “(A) *the digital audio transmission would*
10 *have satisfied the requirements for statutory li-*
11 *censing under section 114(d)(2) or been exempt*
12 *under section 114(d)(1), or the reproduction*
13 *would have satisfied the requirements of section*
14 *112(e)(1), as the case may be, if the sound re-*
15 *recording were fixed on or after February 15,*
16 *1972; and*

17 “(B) *either—*

18 “(i) *except in the case of a trans-*
19 *mission that would have been exempt under*
20 *section 114(d)(1), not later than 270 days*
21 *after the date of enactment of this section,*
22 *the transmitting entity pays statutory roy-*
23 *alties and provides notice of the use of the*
24 *relevant sound recordings in the same man-*
25 *ner as required by regulations adopted by*

1 *the Copyright Royalty Judges for sound re-*
2 *cordings that are fixed on or after February*
3 *15, 1972, for all the digital audio trans-*
4 *missions and reproductions satisfying the*
5 *requirements for statutory licensing under*
6 *sections 112(e)(1) and 114(d)(2) during the*
7 *3 years before that date of enactment; or*

8 “(ii) *an agreement voluntarily nego-*
9 *tiated between the rights owner and the en-*
10 *tity performing the sound recording (in-*
11 *cluding a litigation settlement agreement*
12 *entered into before the date of enactment of*
13 *this section) authorizes or waives liability*
14 *for any such transmission or reproduction*
15 *and the transmitting entity has paid for*
16 *and reported such digital audio trans-*
17 *mission under that agreement.*

18 “(2) *RULE OF CONSTRUCTION FOR COMMON LAW*
19 *COPYRIGHT.—For purposes of paragraph (1), a claim*
20 *of common law copyright or equivalent right under*
21 *the laws of any State includes a claim that character-*
22 *izes conduct subject to that paragraph as an unlawful*
23 *distribution, act of record piracy, or similar viola-*
24 *tion.*

1 “(3) *RULE OF CONSTRUCTION FOR PUBLIC PER-*
2 *FORMANCE RIGHTS.*—*Nothing in this section may be*
3 *construed to recognize or negate the existence of public*
4 *performance rights in sound recordings under the*
5 *laws of any State.*

6 “(f) *LIMITATIONS ON REMEDIES.*—

7 “(1) *FAIR USE; USES BY LIBRARIES, ARCHIVES,*
8 *AND EDUCATIONAL INSTITUTIONS.*—

9 “(A) *IN GENERAL.*—*The limitations on the*
10 *exclusive rights of a copyright owner described in*
11 *sections 107, 108, 109, 110, and 112(f) shall*
12 *apply to a claim under subsection (a) with re-*
13 *spect to a sound recording fixed before February*
14 *15, 1972.*

15 “(B) *RULE OF CONSTRUCTION FOR SECTION*
16 *108(H).*—*With respect to the application of sec-*
17 *tion 108(h) to a claim under subsection (a) with*
18 *respect to a sound recording fixed before Feb-*
19 *ruary 15, 1972, the phrase ‘during the last 20*
20 *years of any term of copyright of a published*
21 *work’ in such section 108(h) shall be construed*
22 *to mean at any time after the date of enactment*
23 *of this section.*

24 “(2) *ACTIONS.*—*The limitations on actions de-*
25 *scribed in section 507 shall apply to a claim under*

1 *subsection (a) with respect to a sound recording fixed*
2 *before February 15, 1972.*

3 “(3) *MATERIAL ONLINE.*—Section 512 shall
4 *apply to a claim under subsection (a) with respect to*
5 *a sound recording fixed before February 15, 1972.*

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

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

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

14 “(i) *FILING REQUIREMENT.*—Except in
15 *the case of a transmitting entity that has*
16 *filed contact information for that transmit-*
17 *ting entity under subparagraph (B), in any*
18 *action under this section, an award of stat-*
19 *utory damages or of attorneys’ fees under*
20 *section 504 or 505 may be made with re-*
21 *spect to an unauthorized use of a sound re-*
22 *coding under subsection (a) only if—*

23 “(I) *the rights owner has filed*
24 *with the Copyright Office a schedule*
25 *that specifies the title, artist, and*

1 *rights owner of the sound recording*
2 *and contains such other information,*
3 *as practicable, as the Register of Copy-*
4 *rights prescribes by regulation; and*

5 *“(II) the use occurs after the end*
6 *of the 90-day period beginning on the*
7 *date on which the information de-*
8 *scribed in subclause (I) is indexed into*
9 *the public records of the Copyright Of-*
10 *fice.*

11 *“(i) REGULATIONS.—Not later than*
12 *180 days after the date of enactment of this*
13 *section, the Register of Copyrights shall*
14 *issue regulations that—*

15 *“(I) establish the form, content,*
16 *and procedures for the filing of sched-*
17 *ules under clause (i);*

18 *“(II) provide that a person may*
19 *request that the person receive timely*
20 *notification of a filing described in*
21 *subclause (I); and*

22 *“(III) set forth the manner in*
23 *which a person may make a request*
24 *under subclause (II).*

1 “(B) *FILING OF CONTACT INFORMATION FOR*
2 *TRANSMITTING ENTITIES.*—

3 “(i) *FILING REQUIREMENT.*—*Not later*
4 *than 30 days after the date of enactment of*
5 *this section, the Register of Copyrights shall*
6 *issue regulations establishing the form, con-*
7 *tent, and procedures for the filing of contact*
8 *information by any entity that, as of the*
9 *date of enactment of this section, performs*
10 *a sound recording fixed before February 15,*
11 *1972, by means of a digital audio trans-*
12 *mission.*

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

17 “(iii) *LIMITATION ON STATUTORY DAM-*
18 *AGES AND ATTORNEYS’ FEES.*—

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

1 *sound recording under subsection (a) if*
2 *the use occurs before the end of the 90-*
3 *day period beginning on the date on*
4 *which the entity receives a notice*
5 *that—*

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

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

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

18 *“(II) UNDELIVERABLE NO-*
19 *TICES.—In any case in which a notice*
20 *under subclause (I) is sent to an entity*
21 *by mail or courier service and the no-*
22 *tice is returned to the sender because*
23 *the entity either is no longer located at*
24 *the address provided in the contact in-*
25 *formation filed under clause (i) or has*

1 *refused to accept delivery, or the notice*
2 *is sent by electronic mail and is un-*
3 *deliverable, the 90-day period under*
4 *subclause (I) shall begin on the date of*
5 *the attempted delivery.*

6 “(C) SECTION 412.—Section 412 shall not
7 *limit an award of statutory damages under sec-*
8 *tion 504(c) or attorneys’ fees under section 505*
9 *with respect to a covered activity in violation of*
10 *subsection (a).*

11 “(6) APPLICABILITY OF OTHER PROVISIONS.—

12 “(A) IN GENERAL.—Subject to subpara-
13 *graph (B), no provision of this title shall apply*
14 *to or limit the remedies available under this sec-*
15 *tion except as otherwise provided in this section.*

16 “(B) APPLICABILITY OF DEFINITIONS.—Any
17 *term used in this section that is defined in sec-*
18 *tion 101 shall have the meaning given that term*
19 *in section 101.*

20 “(g) APPLICATION OF SECTION 230 SAFE HARBOR.—
21 *For purposes of section 230 of the Communications Act of*
22 *1934 (47 U.S.C. 230), subsection (a) shall be considered to*
23 *be a ‘law pertaining to intellectual property’ under sub-*
24 *section (e)(2) of such section 230.*

25 “(h) APPLICATION TO RIGHTS OWNERS.—

1 “(1) *TRANSFERS.*—*With respect to a rights*
2 *owner described in subsection (l)(2)(B)—*

3 “(A) *subsections (d) and (e) of section 201*
4 *and section 204 shall apply to a transfer de-*
5 *scribed in subsection (l)(2)(B) to the same extent*
6 *as with respect to a transfer of copyright owner-*
7 *ship; and*

8 “(B) *notwithstanding section 411, that*
9 *rights owner may institute an action with re-*
10 *spect to a violation of this section to the same ex-*
11 *tent as the owner of an exclusive right under a*
12 *copyright may institute an action under section*
13 *501(b).*

14 “(2) *APPLICATION OF OTHER PROVISIONS.*—*The*
15 *following provisions shall apply to a rights owner*
16 *under this section to the same extent as any copyright*
17 *owner:*

18 “(A) *Section 112(e)(2).*

19 “(B) *Section 112(e)(7).*

20 “(C) *Section 114(e).*

21 “(D) *Section 114(h).*

22 “(i) *EPHEMERAL RECORDINGS.*—*An authorized repro-*
23 *duction made under this section shall be subject to section*
24 *112(g) to the same extent as a reproduction of a sound re-*
25 *production fixed on or after February 15, 1972.*

1 “(j) *RULE OF CONSTRUCTION.*—A rights owner of, or
2 featured recording artist who performs on, a sound record-
3 ing under this chapter shall be deemed to be an interested
4 copyright party, as defined in section 1001, to the same
5 extent as a copyright owner or featured recording artist
6 under chapter 10.

7 “(k) *TREATMENT OF STATES AND STATE INSTRUMEN-*
8 *TALITIES, OFFICERS, AND EMPLOYEES.*—Any State, and
9 any instrumentality, officer, or employee described in sub-
10 section (a)(3), shall be subject to the provisions of this sec-
11 tion in the same manner and to the same extent as any
12 nongovernmental entity.

13 “(l) *DEFINITIONS.*—In this section:

14 “(1) *COVERED ACTIVITY.*—The term ‘covered ac-
15 tivity’ means any activity that the copyright owner
16 of a sound recording would have the exclusive right
17 to do or authorize under section 106 or 602, or that
18 would violate section 1201 or 1202, if the sound re-
19 cording were fixed on or after February 15, 1972.

20 “(2) *RIGHTS OWNER.*—The term ‘rights owner’
21 means—

22 “(A) the person that has the exclusive right
23 to reproduce a sound recording under the laws of
24 any State, as of the day before the date of enact-
25 ment of this section; or

1 “(B) any person to which a right to enforce
2 a violation of this section may be transferred, in
3 whole or in part, after the date of enactment of
4 this section, under—

5 “(i) subsections (d) and (e) of section
6 201; and

7 “(ii) section 204.”.

8 (b) *CONFORMING AMENDMENT.*—The table of chapters
9 for title 17, United States Code, is amended by adding at
10 the end the following:

 “14. Unauthorized use of pre-1972 sound recordings 1401”.

11 **TITLE III—ALLOCATION FOR**
12 **MUSIC PRODUCERS**

13 **SEC. 301. SHORT TITLE.**

14 This title may be cited as the “Allocation for Music
15 Producers Act” or the “AMP Act”.

16 **SEC. 302. PAYMENT OF STATUTORY PERFORMANCE ROYAL-**
17 **TIES.**

18 (a) *LETTER OF DIRECTION.*—Section 114(g) of title
19 17, United States Code, is amended by adding at the end
20 the following:

21 “(5) *LETTER OF DIRECTION.*—

22 “(A) *IN GENERAL.*—A nonprofit collective
23 designated by the Copyright Royalty Judges to
24 distribute receipts from the licensing of trans-
25 missions in accordance with subsection (f) shall

1 *adopt and reasonably implement a policy that*
2 *provides, in circumstances determined by the col-*
3 *lective to be appropriate, for acceptance of in-*
4 *structions from a payee identified under sub-*
5 *paragraph (A) or (D) of paragraph (2) to dis-*
6 *tribute, to a producer, mixer, or sound engineer*
7 *who was part of the creative process that created*
8 *a sound recording, a portion of the payments to*
9 *which the payee would otherwise be entitled from*
10 *the licensing of transmissions of the sound re-*
11 *recording. In this section, such instructions shall*
12 *be referred to as a 'letter of direction'.*

13 *“(B) ACCEPTANCE OF LETTER.—To the ex-*
14 *tent that a collective described in subparagraph*
15 *(A) accepts a letter of direction under that sub-*
16 *paragraph, the person entitled to payment pur-*
17 *suant to the letter of direction shall, during the*
18 *period in which the letter of direction is in effect*
19 *and carried out by the collective, be treated for*
20 *all purposes as the owner of the right to receive*
21 *such payment, and the payee providing the letter*
22 *of direction to the collective shall be treated as*
23 *having no interest in such payment.*

24 *“(C) AUTHORITY OF COLLECTIVE.—This*
25 *paragraph shall not be construed in such a man-*

1 *ner so that the collective is not authorized to ac-*
2 *cept or act upon payment instructions in cir-*
3 *cumstances other than those to which this para-*
4 *graph applies.”.*

5 ***(b) ADDITIONAL PROVISIONS FOR RECORDINGS FIXED***
6 ***BEFORE NOVEMBER 1, 1995.—Section 114(g) of title 17,***
7 ***United States Code, as amended by subsection (a), is further***
8 ***amended by adding at the end the following:***

9 ***“(6) SOUND RECORDINGS FIXED BEFORE NOVEM-***
10 ***BER 1, 1995.—***

11 ***“(A) PAYMENT ABSENT LETTER OF DIREC-***
12 ***TION.—A nonprofit collective designated by the***
13 ***Copyright Royalty Judges to distribute receipts***
14 ***from the licensing of transmissions in accordance***
15 ***with subsection (f) (in this paragraph referred to***
16 ***as the ‘collective’) shall adopt and reasonably***
17 ***implement a policy that provides, in cir-***
18 ***cumstances determined by the collective to be ap-***
19 ***propriate, for the deduction of 2 percent of all***
20 ***the receipts that are collected from the licensing***
21 ***of transmissions of a sound recording fixed be-***
22 ***fore November 1, 1995, but which is withdrawn***
23 ***from the amount otherwise payable under para-***
24 ***graph (2)(D) to the recording artist or artists***
25 ***featured on the sound recording (or the persons***

1 *conveying rights in the artists' performance in*
2 *the sound recording), and the distribution of*
3 *such amount to 1 or more persons described in*
4 *subparagraph (B) of this paragraph, after deduc-*
5 *tion of costs described in paragraph (3) or (4),*
6 *as applicable, if each of the following require-*
7 *ments is met:*

8 “(i) *CERTIFICATION OF ATTEMPT TO*
9 *OBTAIN A LETTER OF DIRECTION.—The per-*
10 *son described in subparagraph (B) who is*
11 *to receive the distribution has certified to*
12 *the collective, under penalty of perjury,*
13 *that—*

14 “(I) *for a period of not less than*
15 *120 days, that person made reasonable*
16 *efforts to contact the artist payee for*
17 *such sound recording to request and*
18 *obtain a letter of direction instructing*
19 *the collective to pay to that person a*
20 *portion of the royalties payable to the*
21 *featured recording artist or artists; and*

22 “(II) *during the period beginning*
23 *on the date on which that person began*
24 *the reasonable efforts described in sub-*
25 *clause (I) and ending on the date of*

1 that person’s certification to the collec-
2 tive, the artist payee did not affirm or
3 deny in writing the request for a letter
4 of direction.

5 “(ii) *COLLECTIVE ATTEMPT TO CON-*
6 *TACT ARTIST.*—After receipt of the certifi-
7 cation described in clause (i) and for a pe-
8 riod of not less than 120 days before the
9 first distribution by the collective to the per-
10 son described in subparagraph (B), the col-
11 lective attempts, in a reasonable manner as
12 determined by the collective, to notify the
13 artist payee of the certification made by the
14 person described in subparagraph (B).

15 “(iii) *NO OBJECTION RECEIVED.*—The
16 artist payee does not, as of the date that
17 was 10 business days before the date on
18 which the first distribution is made, submit
19 to the collective in writing an objection to
20 the distribution.

21 “(B) *ELIGIBILITY FOR PAYMENT.*—A person
22 shall be eligible for payment under subparagraph
23 (A) if the person—

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

1 “(ii) has entered into a written con-
2 tract with a record company involved in the
3 creation or lawful exploitation of the sound
4 recording, or with the recording artist or
5 artists featured on the sound recording (or
6 the persons conveying rights in the artists’
7 performance in the sound recording), under
8 which the person seeking payment is enti-
9 tled to participate in royalty payments that
10 are based on the exploitation of the sound
11 recording and are payable from royalties
12 otherwise payable to the recording artist or
13 artists featured on the sound recording (or
14 the persons conveying rights in the artists’
15 performance in the sound recording);

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

18 “(iv) submits to the collective—

19 “(I) a written certification stat-
20 ing, under penalty of perjury, that the
21 person meets the requirements in
22 clauses (i) through (iii); and

23 “(II) a true copy of the contract
24 described in clause (ii).

1 “(C) *MULTIPLE CERTIFICATIONS.*—Subject
2 to subparagraph (D), in a case in which more
3 than 1 person described in subparagraph (B) has
4 met the requirements for a distribution under
5 subparagraph (A) with respect to a sound re-
6 cording as of the date that is 10 business days
7 before the date on which the distribution is
8 made, the collective shall divide the 2 percent
9 distribution equally among all such persons.

10 “(D) *OBJECTION TO PAYMENT.*—Not later
11 than 10 business days after the date on which
12 the collective receives from the artist payee a
13 written objection to a distribution made pursu-
14 ant to subparagraph (A), the collective shall
15 cease making any further payment relating to
16 such distribution. In any case in which the col-
17 lective has made 1 or more distributions pursu-
18 ant to subparagraph (A) to a person described in
19 subparagraph (B) before the date that is 10 busi-
20 ness days after the date on which the collective
21 receives from the artist payee an objection to
22 such distribution, the objection shall not affect
23 that person’s entitlement to any distribution
24 made before the collective ceases such distribution
25 under this subparagraph.

1 “(E) *OWNERSHIP OF THE RIGHT TO RE-*
2 *CEIVE PAYMENTS.—To the extent that the collec-*
3 *tive determines that a distribution will be made*
4 *under subparagraph (A) to a person described in*
5 *subparagraph (B), such person shall, during the*
6 *period covered by such distribution, be treated*
7 *for all purposes as the owner of the right to re-*
8 *ceive such payments, and the artist payee to*
9 *whom such payments would otherwise be payable*
10 *shall be treated as having no interest in such*
11 *payments.*

12 “(F) *ARTIST PAYEE DEFINED.—In this*
13 *paragraph, the term ‘artist payee’ means a per-*
14 *son, other than a person described in subpara-*
15 *graph (B), who owns the right to receive all or*
16 *part of the receipts payable under paragraph*
17 *(2)(D) with respect to a sound recording. In a*
18 *case in which there are multiple artist payees*
19 *with respect to a sound recording, an objection*
20 *by 1 such payee shall apply only to that payee’s*
21 *share of the receipts payable under paragraph*
22 *(2)(D), and shall not preclude payment under*
23 *subparagraph (A) from the share of an artist*
24 *payee that does not so object.”.*

1 (c) *TECHNICAL AND CONFORMING AMENDMENTS.*—
2 Section 114(g) of title 17, United States Code, as amended
3 by subsections (a) and (b), is further amended—

4 (1) in paragraph (2), by striking “An agent des-
5 ignated” and inserting “Except as provided for in
6 paragraph (6), a nonprofit collective designated by
7 the Copyright Royalty Judges”;

8 (2) in paragraph (3)—

9 (A) by striking “nonprofit agent des-
10 ignated” and inserting “nonprofit collective des-
11 ignated by the Copyright Royalty Judges”;

12 (B) by striking “another designated agent”
13 and inserting “another designated nonprofit col-
14 lective”; and

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

17 (3) in paragraph (4)—

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

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

22 (4) by adding at the end the following:

23 “(7) *PREEMPTION OF STATE PROPERTY LAWS.*—

24 The holding and distribution of receipts under section
25 112 and this section by a nonprofit collective des-

1 *ignated by the Copyright Royalty Judges in accord-*
2 *ance with this subsection and regulations adopted by*
3 *the Copyright Royalty Judges, or by an independent*
4 *administrator pursuant to subparagraphs (B) and*
5 *(C) of section 114(g)(2), shall supersede and preempt*
6 *any State law (including common law) concerning*
7 *escheatment or abandoned property, or any analogous*
8 *provision, that might otherwise apply.”.*

9 **SEC. 303. EFFECTIVE DATE.**

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

13 *(b) DELAYED EFFECTIVE DATE.—Paragraphs (5)(B)*
14 *and (6)(E) of section 114(g) of title 17, United States Code,*
15 *as added by section 302, shall take effect on January 1,*
16 *2020.*

17 **TITLE IV—SEVERABILITY**

18 **SEC. 401. SEVERABILITY.**

19 *If any provision of this Act or any amendment made*
20 *by this Act, or any application of such provision or amend-*
21 *ment to any person or circumstance, is held to be unconsti-*
22 *tutional, the remainder of the provisions of this Act and*
23 *the amendments made by this Act, and the application of*

- 1 *the provision or amendment to any other person or cir-*
- 2 *cumstance, shall not be affected.*

Attest:

Secretary.

115TH CONGRESS
2^D SESSION

H.R. 1551

AMENDMENT