

115TH CONGRESS
2D SESSION

S. 2334

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

IN THE SENATE OF THE UNITED STATES

JANUARY 24, 2018

Mr. HATCH (for himself, Mr. WHITEHOUSE, Mr. ALEXANDER, Ms. HARRIS, Mr. CORKER, Mr. DURBIN, Mr. ISAKSON, Mr. COONS, and Mr. JONES) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Music Modernization
5 Act of 2018”.

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

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

5 (1) in subsection (a)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 “(4) FAILURE TO OBTAIN LICENSE.—

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

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

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

19 (3) in subsection (c)—

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

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

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

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

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

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

23 (C) in paragraph (3)(C)—

24 (i) by striking the second sentence;

25 and

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

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

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

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

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

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

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

18 (F) in paragraph (3)(G)(i)(II)—

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

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

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

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

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

17 (I) in paragraph (6)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 “(2) AVAILABILITY OF BLANKET LICENSE.—

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

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

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

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

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

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

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

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

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

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

14 “(3) MECHANICAL LICENSING COLLECTIVE.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 “(C) AUTHORITIES AND FUNCTIONS.—

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

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

1 reports of usage from digital music
2 providers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 “(D) GOVERNANCE.—

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

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

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

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

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

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

1 cacy on behalf of American song-
2 writers.

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

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

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

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

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

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

22 “(E) MUSICAL WORKS DATABASE.—

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

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

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

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

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

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

24 “(IV) to the extent available—

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

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

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

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

21 “(I) to the extent available—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 “(I) engage in efforts to—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 “(iv) SONGWRITER PAYMENTS.—
3 Copyright owners that receive a distribu-
4 tion of unclaimed accrued royalties and ac-
5 crued interest shall pay or credit a portion
6 to songwriters (or the authorized agents of
7 songwriters) on whose behalf they license
8 or administer musical works for covered
9 activities, in accordance with applicable
10 contractual terms; provided, however, that
11 notwithstanding any agreement to the con-
12 trary—

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

20 “(II) in no case shall the pay-
21 ment or credit to an individual song-
22
23
24
25

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 downloads and interactive
2 streams;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 “(5) DIGITAL LICENSEE COORDINATOR.—

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

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

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

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

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

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

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

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

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

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

12 “(C) AUTHORITIES AND FUNCTIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

5 “(A) IN GENERAL.—

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

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

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

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

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

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

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

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

24 “(C) LEGAL ENFORCEMENT EFFORTS.—

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

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

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

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

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

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

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

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

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

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

7 “(B) VOLUNTARY CONTRIBUTIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 administrative assessment by the
2 Copyright Royalty Judges.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 “(9) TRANSITION TO BLANKET LICENSES.—

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

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

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

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

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

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

13 “(10) PRIOR UNLICENSED USES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 section and applicable regula-
2 tions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 “(12) REGULATIONS.—

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

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

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

14 “(13) SAVINGS CLAUSES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 “(11) ENACTMENT DATE.—The term ‘enact-
17 ment date’ means the date of enactment of the
18 Music Modernization Act of 2018.

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

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

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

16 “(15) LICENSE AVAILABILITY DATE.—The term
17 ‘license availability date’ means January 1 following
18 the second anniversary of the enactment of Music
19 Modernization Act of 2018.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 “(C) either—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 rights society for any performing rights society consent
2 decree is assigned or has previously been assigned, or (B)
3 a judge to whom another proceeding concerning an appli-
4 cation for the determination of a reasonable license fee
5 is assigned at the time of the filing of the application. This
6 provision does not apply to applications to determine rea-
7 sonable license fees made by individual proprietors under
8 section 513 of title 17.

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

○