To modernize copyright law, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 10, 2018

Mr. Hatch (for himself, Mr. Grassley, Mr. Whitehouse, Mr. Alexander, Mr. Coons, Mr. Kennedy, Ms. Harris, Mr. Corker, Mr. Durbin, Mr. Isakson, Mr. Leahy, Mr. Crapo, Mr. Jones, Mr. Tillis, Mr. Perdue, Mrs. Capito, Mr. Nelson, and Mr. Blunt) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To modernize copyright law, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “Music Modernization Act”.

(b) Table of Contents.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Rescission of unobligated balances in the Department of Justice Assets Forfeiture Fund.

TITLE I—MUSIC LICENSING MODERNIZATION

Sec. 101. Short title.
Sec. 102. Blanket license for digital uses and mechanical licensing collective.
Sec. 103. Amendments to section 114.
Sec. 104. Random assignment of rate court proceedings.

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

Sec. 201. Short title.
Sec. 203. Effective date.

TITLE III—ALLOCATION FOR MUSIC PRODUCERS

Sec. 301. Short title.
Sec. 302. Payment of statutory performance royalties.
Sec. 303. Effective date.

SEC. 2. RESCISSION OF UNOBLIGATED BALANCES IN THE DEPARTMENT OF JUSTICE ASSETS FORFEITURE FUND.

Of the unobligated balances available under the Department of Justice Assets Forfeiture Fund, $47,000,000 is hereby permanently rescinded.

TITLE I—MUSIC LICENSING MODERNIZATION

SEC. 101. SHORT TITLE.

This title may be cited as the “Musical Works Modernization Act”.

SEC. 102. BLANKET LICENSE FOR DIGITAL USES AND MECHANICAL LICENSING COLLECTIVE.

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

(1) in subsection (a)—
(A) by inserting “IN GENERAL” after “AVAILABILITY AND SCOPE OF COMPULSORY LICENSE”;

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

“(1) ELIGIBILITY FOR COMPULSORY LICENSE.—

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

“(i) phonorecords of such musical work have previously been distributed to the public in the United States under the authority of the copyright owner of the work, including by means of digital phonorecord delivery; or
“(ii) in the case of a digital music provider seeking to make and distribute digital phonorecord deliveries of a sound recording embodying a musical work under a compulsory license for which clause (i) does not apply—

“(I) the first fixation of such sound recording was made under the authority of the musical work copyright owner, and sound recording copyright owner has the authority of the musical work copyright owner to make and distribute digital phonorecord deliveries embodying such work to the public in the United States; and

“(II) the sound recording copyright owner or its authorized distributor has authorized the digital music provider to make and distribute digital phonorecord deliveries of the sound recording to the public in the United States.

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

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

“(ii) the making of the phonorecords was authorized by the owner of the copyright in the sound recording or, if the sound recording was fixed before February 15, 1972, by any person who fixed the sound recording pursuant to an express license from the owner of the copyright in the musical work or pursuant to a valid compulsory license for use of such work in a sound recording.”; and

(C) in paragraph (2), by striking “A compulsory license” and inserting “MUSICAL ARRANGEMENT.—A compulsory license”; (2) by striking subsection (b) and inserting the following:

“(b) PROCEDURES TO OBTAIN A COMPULSORY LICENSE.—

“(1) PHONORECORDS OTHER THAN DIGITAL PHONORECORD DELIVERIES.—A person who seeks to
obtain a compulsory license under subsection (a) to
make and distribute phonorecords of a musical work
other than by means of digital phonorecord delivery
shall, before or within 30 calendar days after mak-
ing, and before distributing, any phonorecord of the
work, serve notice of intention to do so on the copy-
right owner. If the registration or other public
records of the Copyright Office do not identify the
copyright owner and include an address at which no-
tice can be served, it shall be sufficient to file the
notice of intention with the Copyright Office. The
notice shall comply, in form, content, and manner of
service, with requirements that the Register of Copy-
rights shall prescribe by regulation.

“(2) Digital phonorecord deliveries.—A
person who seeks to obtain a compulsory license
under subsection (a) to make and distribute
phonorecords of a musical work by means of digital
phonorecord delivery—

“(A) prior to the license availability date,
shall, before or within 30 calendar days after
first making any such digital phonorecord deliv-
ery, serve a notice of intention to do so on the
copyright owner (but may not file the notice
with the Copyright Office, even if the public
records of the Office do not identify the owner
or the owner's address), and such notice shall
comply, in form, content, and manner of serv-

ice, with requirements that the Register of
Copyrights shall prescribe by regulation; or

 ``(B) on or after the license availability
date, shall, before making any such digital pho-

norecord delivery, follow the procedure de-
scribed in subsection (d)(2), except as provided
in paragraph (3).

 ``(3) RECORD COMPANY INDIVIDUAL DOWNLOAD
LICENSES.—Notwithstanding paragraph (2)(B), a
record company may, on or after the license avail-
ability date, obtain an individual download license in
accordance with the notice requirements described in
paragraph (2)(A) (except for the requirement that
notice occur prior to the license availability date). A
record company that obtains an individual download
license as permitted under this paragraph shall pro-
vide statements of account and pay royalties as pro-
vided in subsection (c)(2)(I).

 ``(4) FAILURE TO OBTAIN LICENSE.—

 ``(A) PHONORECORDS OTHER THAN DIG-
ITAL PHONORECORD DELIVERIES.—In the case
of phonorecords made and distributed other
than by means of digital phonorecord delivery, the failure to serve or file the notice of intention required by paragraph (1) forecloses the possibility of a compulsory license under paragraph (1). In the absence of a voluntary license, the failure to obtain a compulsory license renders the making and distribution of phonorecords actionable as acts of infringement under section 501 and subject to the remedies provided by sections 502 through 506.

“(B) Digital phonorecord deliveries.—

“(i) In the case of phonorecords made and distributed by means of digital phonorecord delivery:

“(I) The failure to serve the notice of intention required by paragraph (2)(A) or paragraph (3), as applicable, forecloses the possibility of a compulsory license under such paragraph.

“(II) The failure to comply with paragraph (2)(B) forecloses the possibility of a blanket license for a period of 3 years after the last calendar day
on which the notice of license was re-
quired to be submitted to the mechan-
ical licensing collective under such 
paragraph.

“(ii) In either case described in clause (i), in the absence of a voluntary license, the failure to obtain a compulsory license renders the making and distribution of phonorecords by means of digital phonorecord delivery actionable as acts of in-
fringement under section 501 and subject to the remedies provided by sections 502 through 506.”;

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

“(c) General Conditions Applicable to Com-
pulsory License.—

“(1) Royalty payable under compulsory 
license.—

“(A) Identification requirement.—To be entitled to receive royalties under a compul-
sory license obtained under subsection (b)(1) the copyright owner must be identified in the registration or other public records of the Copy-
right Office. The owner is entitled to royalties
for phonorecords made and distributed after being so identified, but is not entitled to recover for any phonorecords previously made and distributed.

“(B) Royalty for phonorecords other than digital phonorecord deliveries.—Except as provided by subparagraph (A), for every phonorecord made and distributed under a compulsory license under subsection (a) other than by means of digital phonorecord delivery, with respect to each work embodied in the phonorecord, the royalty shall be the royalty prescribed under subparagraphs (D) through (F) and paragraph (2)(A) and chapter 8 of this title. For purposes of this subparagraph, a phonorecord is considered ‘distributed’ if the person exercising the compulsory license has voluntarily and permanently parted with its possession.

“(C) Royalty for digital phonorecord deliveries.—For every digital phonorecord delivery of a musical work made under a compulsory license under this section, the royalty payable shall be the royalty prescribed
under subparagraphs (D) through (F) and paragraph (2)(A) and chapter 8 of this title.

“(D) Authority to negotiate.—Notwithstanding any provision of the antitrust laws, any copyright owners of nondramatic musical works and any persons entitled to obtain a compulsory license under subsection (a) may negotiate and agree upon the terms and rates of royalty payments under this section and the proportionate division of fees paid among copyright owners, and may designate common agents on a nonexclusive basis to negotiate, agree to, pay or receive such royalty payments. Such authority to negotiate the terms and rates of royalty payments includes, but is not limited to, the authority to negotiate the year during which the royalty rates prescribed under this subparagraph and subparagraphs (E) and (F) and paragraph (2)(A) and chapter 8 of this title shall next be determined.

“(E) Determination of reasonable rates and terms.—Proceedings under chapter 8 shall determine reasonable rates and terms of royalty payments for the activities specified by this section during the period be-
ginning with the effective date of such rates and terms, but not earlier than January 1 of the second year following the year in which the petition requesting the proceeding is filed, and ending on the effective date of successor rates and terms, or such other period as the parties may agree. Any copyright owners of nondramatic musical works and any persons entitled to obtain a compulsory license under subsection (a) may submit to the Copyright Royalty Judges licenses covering such activities. The parties to each proceeding shall bear their own costs.

“(F) SCHEDULE OF REASONABLE RATES.—The schedule of reasonable rates and terms determined by the Copyright Royalty Judges shall, subject to paragraph (2)(A), be binding on all copyright owners of nondramatic musical works and persons entitled to obtain a compulsory license under subsection (a) during the period specified in subparagraph (E), such other period as may be determined pursuant to subparagraphs (D) and (E), or such other period as the parties may agree. The Copyright Royalty Judges shall establish rates and terms
that most clearly represent the rates and terms
that would have been negotiated in the market-
place between a willing buyer and a willing sell-
er. In determining such rates and terms for dig-
ital phonorecord deliveries, the Copyright Roy-
alty Judges shall base their decision on eco-
nomic, competitive, and programming informa-
tion presented by the parties, including—

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

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

“(2) ADDITIONAL TERMS AND CONDITIONS.—

“(A) VOLUNTARY LICENSES AND CON-
TRACTUAL ROYALTY RATES.—
“(i) License agreements voluntarily negotiated at any time between one or more copyright owners of nondramatic musical works and one or more persons entitled to obtain a compulsory license under subsection (a) shall be given effect in lieu of any determination by the Copyright Royalty Judges. Subject to clause (ii), the royalty rates determined pursuant to subparagraphs (E) and (F) of paragraph (1) shall be given effect as to digital phonorecord deliveries in lieu of any contrary royalty rates specified in a contract pursuant to which a recording artist who is the author of a nondramatic musical work grants a license under that person’s exclusive rights in the musical work under paragraphs (1) and (3) of section 106 or commits another person to grant a license in that musical work under paragraphs (1) and (3) of section 106, to a person desiring to fix in a tangible medium of expression a sound recording embodying the musical work.
“(ii) The second sentence of clause (i) shall not apply to—

“(I) a contract entered into on or before June 22, 1995, and not modified thereafter for the purpose of reducing the royalty rates determined pursuant to subparagraphs (E) and (F) of paragraph (1) or of increasing the number of musical works within the scope of the contract covered by the reduced rates, except if a contract entered into on or before June 22, 1995, is modified thereafter for the purpose of increasing the number of musical works within the scope of the contract, any contrary royalty rates specified in the contract shall be given effect in lieu of royalty rates determined pursuant to subparagraphs (E) and (F) of paragraph (1) for the number of musical works within the scope of the contract as of June 22, 1995; and

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

“(B) Sound recording information.—Except as provided in section 1002(e) of this title, a digital phonorecord delivery licensed under this paragraph shall be accompanied by the information encoded in the sound recording, if any, by or under the authority of the copyright owner of that sound recording, that identifies the title of the sound recording, the featured recording artist who performs on the sound recording, and related information, including information concerning the underlying musical work and its writer.

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

“(I) the digital phonorecord delivery has been authorized by the sound recording copyright owner; and

“(II) the entity making the digital phonorecord delivery has obtained a compulsory license under subsection (a) or has otherwise been authorized by the musical work copyright owner, or by a record company pursuant to an individual download license, to make and distribute phonorecords of each musical work embodied in the sound recording by means of digital phonorecord delivery.

“(ii) Any cause of action under this subparagraph shall be in addition to those available to the owner of the copyright in the nondramatic musical work under subparagraph (J) and section 106(4) and the owner of the copyright in the sound recording under section 106(6).

“(D) LIABILITY OF SOUND RECORDING OWNERS.—The liability of the copyright owner
of a sound recording for infringement of the copyright in a nondramatic musical work embodied in the sound recording shall be determined in accordance with applicable law, except that the owner of a copyright in a sound recording shall not be liable for a digital phonorecord delivery by a third party if the owner of the copyright in the sound recording does not license the distribution of a phonorecord of the nondramatic musical work.

“(E) RECORDING DEVICES AND MEDIA.—Nothing in section 1008 shall be construed to prevent the exercise of the rights and remedies allowed by this paragraph, subparagraph (J), and chapter 5 in the event of a digital phonorecord delivery, except that no action alleging infringement of copyright may be brought under this title against a manufacturer, importer or distributor of a digital audio recording device, a digital audio recording medium, an analog recording device, or an analog recording medium, or against a consumer, based on the actions described in such section.

“(F) PRESERVATION OF RIGHTS.—Nothing in this section annuls or limits (i) the exclud—
sive right to publicly perform a sound recording
or the musical work embodied therein, including
by means of a digital transmission, under sec-
tions 106(4) and 106(6), (ii) except for compul-
sory licensing under the conditions specified by
this section, the exclusive rights to reproduce
and distribute the sound recording and the mu-
sical work embodied therein under sections
106(1) and 106(3), including by means of a
digital phonorecord delivery, or (iii) any other
rights under any other provision of section 106,
or remedies available under this title, as such
rights or remedies exist either before or after
the date of enactment of the Digital Perform-

“(G) EXEMPT TRANSMISSIONS AND RE-
TRANSMISSIONS.—The provisions of this section
concerning digital phonorecord deliveries shall
not apply to any exempt transmissions or re-
transmissions under section 114(d)(1). The ex-
emptions created in section 114(d)(1) do not
expand or reduce the rights of copyright owners
under section 106(1) through (5) with respect
to such transmissions and retransmissions.
“(H) Distribution by rental, lease, or lending.—A compulsory license obtained under subsection (b)(1) to make and distribute phonorecords includes the right of the maker of such a phonorecord to distribute or authorize distribution of such phonorecord, other than by means of a digital phonorecord delivery, by rental, lease, or lending (or by acts or practices in the nature of rental, lease, or lending). With respect to each nondramatic musical work embodied in the phonorecord, the royalty shall be a proportion of the revenue received by the compulsory licensee from every such act of distribution of the phonorecord under this clause equal to the proportion of the revenue received by the compulsory licensee from distribution of the phonorecord under subsection (a)(1)(A)(ii)(II) that is payable by a compulsory licensee under that clause and under chapter 8. The Register of Copyrights shall issue regulations to carry out the purpose of this clause.

“(I) Payment of royalties and statements of account.—Except as provided in paragraphs (4)(A)(i) and (10)(B) of subsection (d), royalty payments shall be made on or be-
fore the twentieth day of each month and shall
include all royalties for the month next pre-
ceding. Each monthly payment shall be made
under oath and shall comply with requirements
that the Register of Copyrights shall prescribe
by regulation. The Register shall also prescribe
regulations under which detailed cumulative an-
nual statements of account, certified by a cer-
tified public accountant, shall be filed for every
compulsory license under subsection (a). The
regulations covering both the monthly and the
annual statements of account shall prescribe
the form, content, and manner of certification
with respect to the number of records made and
the number of records distributed.

“(J) NOTICE OF DEFAULT AND TERMIN-
ATION OF COMPULSORY LICENSE.—In the
case of a license obtained under subsection
(b)(1), (b)(2)(A), or (b)(3), if the copyright
owner does not receive the monthly payment
and the monthly and annual statements of ac-
count when due, the owner may give written no-
tice to the licensee that, unless the default is
remedied within 30 days from the date of the
notice, the compulsory license will be automati-
cally terminated. Such termination renders either the making or the distribution, or both, of all phonorecords for which the royalty has not been paid, actionable as acts of infringement under section 501 and fully subject to the remedies provided by sections 502 through 506. In the case of a license obtained under subsection (b)(2)(B), license authority under the compulsory license may be terminated as provided in subsection (d)(4)(E).”;

(4) by amending subsection (d) to read as follows:

“(d) Blanket License for Digital Uses, Mechanical Licensing Collective, and Digital Licensee Coordinator.—

“(1) Blanket license for digital uses.—

“(A) In general.—A digital music provider that qualifies for a compulsory license under subsection (a) may, by complying with the terms and conditions of this subsection, obtain a blanket license from copyright owners through the mechanical licensing collective to make and distribute digital phonorecord deliveries of musical works through one or more covered activities.
“(B) INCLUDED ACTIVITIES.—A blanket license—

“(i) covers all musical works (or shares of such works) available for compulsory licensing under this section for purposes of engaging in covered activities, except as provided in subparagraph (C);

“(ii) includes the making and distribution of server, intermediate, archival, and incidental reproductions of musical works that are reasonable and necessary for the digital music provider to engage in covered activities licensed under this subsection, solely for the purpose of engaging in such covered activities; and

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

“(C) OTHER LICENSES.—A voluntary license for covered activities entered into by or under the authority of one or more copyright owners and one or more digital music providers, or authority to make and distribute permanent downloads of a musical work obtained by a digital music provider from a sound recording
copyright owner pursuant to an individual
download license, shall be given effect in lieu of
a blanket license under this subsection with re-
spect to the musical works (or shares thereof)
covered by such voluntary license or individual
download authority and the following conditions
apply:

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

“(ii) An entity engaged in covered ac-
tivities under a voluntary license or author-
ity obtained pursuant to an individual
download license that is a significant non-
blanket licensee shall comply with para-
graph (6)(A).

“(iii) The rates and terms of any vol-
untary license shall be subject to the sec-
ond sentence of clause (i) and clause (ii) of
subsection (e)(2)(A) and paragraph (9)(C),
as applicable.
“(D) PROTECTION AGAINST INFRINGEMENT ACTIONS.—A digital music provider that obtains and complies with the terms of a valid blanket license under this subsection shall not be subject to an action for infringement of the exclusive rights provided by paragraphs (1) and (3) of section 106 under this title arising from use of a musical work (or share thereof) to engage in covered activities authorized by such license, subject to paragraph (4)(E).

“(E) OTHER REQUIREMENTS AND CONDITIONS APPLY.—Except as expressly provided in this subsection, each requirement, limitation, condition, privilege, right, and remedy otherwise applicable to compulsory licenses under this section shall apply to compulsory blanket licenses under this subsection.

“(2) AVAILABILITY OF BLANKET LICENSE.—

“(A) PROCEDURE FOR OBTAINING LICENSE.—A digital music provider may obtain a blanket license by submitting a notice of license to the mechanical licensing collective that specifies the particular covered activities in which the digital music provider seeks to engage, as follows:
“(i) The notice of license shall comply in form and substance with requirements that the Register of Copyrights shall establish by regulation.

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

“(iii) A notice of license may only be rejected by the mechanical licensing collective if—

“(I) the digital music provider or notice of license does not meet the requirements of this section or applicable regulations, in which case the requirements at issue shall be specified with reasonable particularity in the notice of rejection; or

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

“(iv) If a notice of license is rejected under clause (iii)(I), the digital music provider shall have 30 calendar days after receipt of the notice of rejection to cure any deficiency and submit an amended notice of license to the mechanical licensing collective. If the deficiency has been cured, the mechanical licensing collective shall so confirm in writing, and the license shall be effective as of the date that the original notice of license was provided by the digital music provider.

“(v) A digital music provider that believes a notice of license was improperly rejected by the mechanical licensing collective may seek review of such rejection in Federal district court. The district court shall determine the matter de novo based on the record before the mechanical licensing collective and any additional evidence presented by the parties.

“(B) Blanket license effective date.—Blanket licenses shall be made available
by the mechanical licensing collective on and after the license availability date. No such license shall be effective prior to the license availability date.

“(3) MECHANICAL LICENSING COLLECTIVE.—

“(A) IN GENERAL.—The mechanical licensing collective shall be a single entity that—

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

“(ii) is endorsed by and enjoys substantial support from musical work copyright owners that together represent the greatest percentage of the licensor market for uses of such works in covered activities, as measured over the preceding 3 full calendar years;

“(iii) is able to demonstrate to the Register of Copyrights that it has, or will have prior to the license availability date, the administrative and technological capabilities to perform the required functions of the mechanical licensing collective under this subsection; and
“(iv) has been designated by the Register of Copyrights in accordance with subparagraph (B).

“(B) DESIGNATION OF MECHANICAL LICENSING COLLECTIVE.—

“(i) INITIAL DESIGNATION.—The Register of Copyrights shall initially designate the mechanical licensing collective within 9 months after the enactment date as follows:

“(I) Within 90 calendar days after the enactment date, the Register shall publish notice in the Federal Register soliciting information to assist in identifying the appropriate entity to serve as the mechanical licensing collective, including the name and affiliation of each member of the board of directors described under subparagraph (D)(i) and each committee established pursuant to clauses (iii), (iv), and (v) of subparagraph (D).

“(II) After reviewing the information requested under subclause (I)
and making a designation, the Register shall publish notice in the Federal Register setting forth the identity of and contact information for the mechanical licensing collective.

“(ii) Periodic review of designation.—Following the initial designation of the mechanical licensing collective, the Register shall, every 5 years, beginning with the fifth full calendar year to commence after the initial designation, publish notice in the Federal Register in the month of January soliciting information concerning whether the existing designation should be continued, or a different entity meeting the criteria described in clauses (i) through (iii) of subparagraph (A) shall be designated. Following publication of such notice:

“(I) The Register shall, after reviewing the information submitted and conducting additional proceedings as appropriate, publish notice in the Federal Register of a continuing designation or new designation of the me-
chanical licensing collective, as the case may be, with any new designation to be effective as of the first day of a month that is no less than 6 months and no longer than 9 months after the date of publication of such notice, as specified by the Register.

“(II) If a new entity is designated as a mechanical licensing collective, the Register shall adopt regulations to govern the transfer of licenses, funds, records, data, and administrative responsibilities from the existing mechanical licensing collective to the new entity.

“(iii) Closest Alternative Designation.—If the Register is unable to identify an entity that fulfills each of the qualifications set forth in clauses (i) through (iii) of subparagraph (A), the Register shall designate the entity that most nearly fulfills such qualifications for purposes of carrying out the responsibilities of the mechanical licensing collective.

“(C) Authorities and Functions.—
“(i) IN GENERAL.—The mechanical licensing collective is authorized to perform the following functions, subject to more particular requirements as described in this subsection:

“(I) Offer and administer blanket licenses, including receipt of notices of license and reports of usage from digital music providers.

“(II) Collect and distribute royalties from digital music providers for covered activities.

“(III) Engage in efforts to identify musical works (and shares of such works) embodied in particular sound recordings, and to identify and locate the copyright owners of such musical works (and shares of such works).

“(IV) Maintain the musical works database and other information relevant to the administration of licensing activities under this section.

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

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

“(VII) Invest in relevant resources, and arrange for services of outside vendors and others, to support its activities.

“(VIII) Engage in legal and other efforts to enforce rights and obligations under this subsection, including by filing bankruptcy proofs of claims for amounts owed under licenses, and acting in coordination with the digital licensee coordinator.

“(IX) Initiate and participate in proceedings before the Copyright Royalty Judges to establish the adminis-
trative assessment under this subsection.

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

“(XI) Gather and provide documentation for use in proceedings before the Copyright Royalty Judges to set rates and terms under this section.

“(XII) Maintain records of its activities and engage in and respond to audits described under this subsection.

“(XIII) Engage in such other activities as may be necessary or appropriate to fulfill its responsibilities under this subsection.

“(ii) ADDITIONAL ADMINISTRATIVE ACTIVITIES.—Subject to paragraph (11)(C) and clause (iii), the mechanical licensing collective may also administer, or assist in administering, voluntary licenses issued by or individual download licenses obtained from copyright owners for uses of
musical works, for which the mechanical licensing collective shall charge reasonable fees for such services.

“(iii) Restriction concerning public performance rights.—The mechanical licensing collective may, pursuant to clause (ii), provide administration services with respect to voluntary licenses that include the right of public performance in musical works, but may not itself negotiate or grant licenses for the right of public performance in musical works, and may not be the exclusive or nonexclusive assignee or grantee of the right of public performance in musical works.

“(iv) Restriction on lobbying.—
The mechanical licensing collective may not engage in government lobbying activities, but may engage in the activities described in subclauses (IX), (X), and (XI) of clause (i).

“(D) Governance.—

“(i) Board of directors.—The mechanical licensing collective shall have a board of directors consisting of 14 voting
members and 3 nonvoting members, as fol-
lows:

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

“(II) Four voting members shall
be professional songwriters who have
retained and exercise exclusive rights
of reproduction and distribution with
respect to covered activities with re-
pect to musical works they have au-
thored.

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

“(IV) One nonvoting member shall be a representative of the digital licensee coordinator, provided that a digital licensee coordinator has been designated pursuant to paragraph (5)(B). Otherwise, the nonvoting member shall be the nonprofit trade association of digital licensees that represents the greatest percentage of the licensee market for uses of musical works in covered activities, as measured over the preceding 3 full calendar years.

“(V) One nonvoting member shall be a representative of a nationally recognized nonprofit trade association whose primary mission is advocacy on behalf of songwriters in the United States.

“(ii) BOARD MEETINGS.—The board of directors shall meet no less than two times per year and discuss matters perti-
nent to the operations, including the me-
chanical licensing collective budget.

“(iii) OPERATIONS ADVISORY COM-
mittee.—The board of directors of the
mechanical licensing collective shall estab-
lish an operations advisory committee con-
sisting of no fewer than six members to
make recommendations to the board of di-
rectors concerning the operations of the
mechanical licensing collective, including
the efficient investment in and deployment
of information technology and data re-
sources. Such committee shall have an
equal number of members of the committee
who are—

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

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

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

“(v) Dispute resolution committee.—The board of directors of the mechanical licensing collective shall establish and appoint a dispute resolution committee consisting of no fewer than six members, which committee shall include an equal number of representatives of musical work copyright owners and professional songwriters.

“(vi) Mechanical licensing collective annual report.—Not later than June 30 of each year commencing after the license availability date, the mechanical licensing collective shall post, and make available online for a period of at least 3 years, an annual report that sets forth how the collective operates, how royalties are collected and distributed, and the collective total costs for the preceding cal-
endar year. At the time of posting, a copy of the report shall be provided to the Register of Copyrights.

“(E) MUSICAL WORKS DATABASE.—

“(i) Establishment and maintenance of database.—The mechanical licensing collective shall establish and maintain a database containing information relating to musical works (and shares of such works) and, to the extent known, the identity and location of the copyright owners of such works (and shares thereof) and the sound recordings in which the musical works are embodied. In furtherance of maintaining such database, the mechanical licensing collective shall engage in efforts to identify the musical works embodied in particular sound recordings, as well as to identify and locate the copyright owners of such works (and shares thereof), and update such data as appropriate.

“(ii) Matched works.—With respect to musical works (and shares thereof) that have been matched to copyright owners, the musical works database shall include—
“(I) the title of the musical work;
“(II) the copyright owner of the work (or share thereof), and such owner’s ownership percentage;
“(III) contact information for such copyright owner;
“(IV) to the extent reasonably available to the mechanical licensing collective—
“(aa) the international standard musical work code for the work; and
“(bb) identifying information for sound recordings in which the musical work is embodied, including the name of the sound recording, featured artist, sound recording copyright owner, producer, international standard recording code, and other information commonly used to assist in associating sound recordings with musical works; and
“(V) such other information as
the Register of Copyrights may pre-
scribe by regulation.

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

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

“(aa) the title of the musical
work;

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

“(ce) if a copyright owner
has been identified but not lo-
cated, the identity of such owner
and such owner’s ownership per-
centage;

“(dd) identifying informa-
tion for sound recordings in
which the work is embodied, in-
cluding sound recording name,
featured artist, sound recording
copyright owner, producer, international standard recording code, and other information commonly used to assist in associating sound recordings with musical works; and

“(ee) any additional information reported to the mechanical licensing collective that may assist in identifying the work; and

“(II) such other information relating to the identity and ownership of musical works (and shares of such works) as the Register of Copyrights may prescribe by regulation.

“(iv) Sound recording information.—Each musical work copyright owner with any musical work listed in the musical works database shall engage in commercially reasonable efforts to deliver to the mechanical licensing collective, including for use in the musical works database, to the extent such information is not then available in the database, information
regarding the names of the sound recordings in which that copyright owner’s musical works (or shares thereof) are embodied, to the extent practicable.

“(v) ACCESSIBILITY OF DATABASE.—

The musical works database shall be made available to members of the public in a searchable, online format, free of charge. The mechanical licensing collective shall make such database available in a bulk, machine-readable format, through a widely available software application, to the following entities:

“(I) Digital music providers operating under the authority of valid notices of license, free of charge.

“(II) Significant nonblanket licensees in compliance with their obligations under paragraph (6), free of charge.

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

“(IV) The Register of Copyrights, free of charge (but the Reg-
ister shall not treat such database or any information therein as a Government record).

“(V) Any member of the public, for a fee not to exceed the marginal cost to the mechanical licensing collective of providing the database to such person.

“(vi) ADDITIONAL REQUIREMENTS.—

The Register of Copyrights shall establish requirements by regulations to ensure the usability, interoperability, and usage restrictions of the musical works database.

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

“(i) NOTICES OF LICENSES.—The mechanical licensing collective shall receive, review, and confirm or reject notices of license from digital music providers, as provided in paragraph (2)(A). The collective shall maintain a current, publicly accessible list of blanket licenses that includes contact information for the licensees and the effective dates of such licenses.
“(ii) Notices of nonblanket activity.—The mechanical licensing collective shall receive notices of nonblanket activity from significant nonblanket licensees, as provided in paragraph (6)(A). The collective shall maintain a current, publicly accessible list of notices of nonblanket activity that includes contact information for significant nonblanket licensees and the dates of receipt of such notices.

“(G) Collection and distribution of royalties.—

“(i) In general.—Upon receiving reports of usage and payments of royalties from digital music providers for covered activities, the mechanical licensing collective shall—

“(I) engage in efforts to—

“(aa) identify the musical works embodied in sound recordings reflected in such reports, and the copyright owners of such musical works (and shares there-of);
“(bb) confirm uses of musical works subject to voluntary licenses and individual download licenses, and the corresponding pro rata amounts to be deducted from royalties that would otherwise be due under the blanket license; and

“(ce) confirm proper payment of royalties due;

“(II) distribute royalties to copyright owners in accordance with the usage and other information contained in such reports, as well as the ownership and other information contained in the records of the collective; and

“(III) deposit into an interest-bearing account, as provided in subparagraph (H)(ii), royalties that cannot be distributed due to—

“(aa) an inability to identify or locate a copyright owner of a musical work (or share thereof); or
“(bb) a pending dispute before the dispute resolution committee of the mechanical licensing collective.

“(ii) OTHER COLLECTION EFFORTS.—Any royalties recovered by the mechanical licensing collective as a result of efforts to enforce rights or obligations under a blanket license, including through a bankruptcy proceeding or other legal action, shall be distributed to copyright owners based on available usage information and in accordance with the procedures described in subclauses (I) and (II) of clause (i), on a pro rata basis in proportion to the overall percentage recovery of the total royalties owed, with any pro rata share of royalties that cannot be distributed deposited in an interest-bearing account as provided in subparagraph (H)(ii).

“(H) HOLDING OF ACCRUED ROYALTIES.—

“(i) HOLDING PERIOD.—The mechanical licensing collective shall hold accrued royalties associated with particular musical
works (and shares of works) that remain unmatched for a period of at least 3 years after the date on which the funds were received by the mechanical licensing collective, or at least 3 years after the date on which they were accrued by a digital music provider that subsequently transferred such funds to the mechanical licensing collective pursuant to paragraph (10)(B), whichever period expires sooner.

“(ii) INTEREST-BEARING ACCOUNT.—

Accrued royalties for unmatched works (and shares thereof) shall be maintained by the mechanical licensing collective in an interest-bearing account that earns monthly interest at the Federal, short-term rate, such interest to accrue for the benefit of copyright owners entitled to payment of such accrued royalties.

“(I) MUSICAL WORKS CLAIMING PROCESS.—The mechanical licensing collective shall publicize the existence of accrued royalties for unmatched musical works (and shares of such works) within 6 months of receiving a transfer of accrued royalties for such works by publicly
listing the works and the procedures by which copyright owners may identify themselves and provide ownership, contact, and other relevant information to the mechanical licensing collective in order to receive payment of accrued royalties. When a copyright owner of an unmatched work (or share of a work) has been identified and located in accordance with the procedures of the mechanical licensing collective, the collective shall—

“(i) update the musical works database and its other records accordingly; and

“(ii) provided that accrued royalties for the musical work (or share thereof) have not yet been included in a distribution pursuant to subparagraph (J)(i), pay such accrued royalties and a proportionate amount of accrued interest associated with that work (or share thereof) to the copyright owner, accompanied by a cumulative statement of account reflecting usage of such work and accrued royalties based on information provided by digital music providers to the mechanical licensing collective.
“(J) Distribution of unclaimed accrued royalties.—

“(i) Distribution procedures.—

After the expiration of the prescribed holding period for accrued royalties provided in paragraph (H)(i), the mechanical licensing collective shall distribute such accrued royalties, along with a proportionate share of accrued interest, to copyright owners identified in the records of the collective, subject to the following requirements, and in accordance with the policies and procedures established under clause (ii):

“(I) The first such distribution shall occur on or after July 1 of the first full calendar year to commence after the license availability date, with at least one such distribution to take place during each calendar year thereafter.

“(II) Copyright owners’ payment shares for unclaimed accrued royalties for particular reporting periods shall be determined in a transparent and equitable manner based on data indi-
cating the relative market shares of such copyright owners as reflected by royalty payments made by digital music providers for covered activities for the periods in question, including, in addition to royalty payments made to the mechanical licensing collective, royalty payments made to copyright owners under voluntary licenses and individual download licenses for covered activities, to the extent such information is available to the mechanical licensing collective. In furtherance of the determination of equitable market shares under this subparagraph—

“(aa) the mechanical licensing collective may require copyright owners seeking distributions of unclaimed accrued royalties to provide, or direct the provision of, information concerning royalties received under voluntary licenses and individual download licenses for covered activities; and
“(bb) the mechanical licensing collective shall take appropriate steps to safeguard the confidentiality and security of financial and other sensitive data used to compute market shares in accordance with the confidentiality provisions prescribed by the Register of Copyrights under paragraph (12)(C).

“(ii) Establishment of Distribution Policies.—The unclaimed royalties oversight committee established under paragraph (3)(D)(iv) shall establish policies and procedures for the distribution of unclaimed accrued royalties and accrued interest in accordance with this subparagraph, including the provision of usage data to copyright owners to allocate payments and credits to songwriters pursuant to clause (iv), subject to the approval of the board of directors of the mechanical licensing collective.

“(iii) Advance Notice of Distributions.—The mechanical licensing collec-
tive shall publicize a pending distribution of unclaimed accrued royalties and accrued interest at least 90 calendar days in advance of such distribution.

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

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

“(II) in no case shall the payment or credit to an individual songwriter be less than 50 percent of the payment received by the copyright
owner attributable to usage of musical
works (or shares of works) of that
songwriter.

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

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

“(ii) except as provided in paragraph
(11)(D), shall not affect any legal or equi-
table rights or remedies available to any
copyright owner or songwriter concerning
ownership of, and entitlement to royalties
for, a musical work.
“(L) Verification of payments by mechanical licensing collective.—

“(i) Verification process.—A copyright owner entitled to receive payments of royalties for covered activities from the mechanical licensing collective may, individually or with other copyright owners, conduct an audit of the mechanical licensing collective to verify the accuracy of royalty payments by the mechanical licensing collective to such copyright owner, as follows:

“(I) A copyright owner may audit the mechanical licensing collective only once in a year for any or all of the prior 3 calendar years, and may not audit records for any calendar year more than once.

“(II) The audit shall be conducted by a qualified auditor, who shall perform the audit during the ordinary course of business by examining the books, records, and data of the mechanical licensing collective, according to generally accepted auditing
standards and subject to applicable confidentiality requirements prescribed by the Register of Copyrights under paragraph (12)(C).

“(III) The mechanical licensing collective shall make such books, records, and data available to the qualified auditor and respond to reasonable requests for relevant information, and shall use commercially reasonable efforts to facilitate access to relevant information maintained by third parties.

“(IV) To commence the audit, any copyright owner shall file with the Copyright Office a notice of intent to conduct an audit of the mechanical licensing collective, identifying the period of time to be audited, and shall simultaneously deliver a copy of such notice to the mechanical licensing collective. The Register of Copyrights shall cause the notice of audit to be published in the Federal Register within 45 calendar days after receipt.
“(V) The qualified auditor shall determine the accuracy of royalty payments, including whether an under- or overpayment of royalties was made by the mechanical licensing collective to each auditing copyright owner, but before providing a final audit report to any such copyright owner, the qualified auditor shall provide a tentative draft of the report to the mechanical licensing collective and allow the mechanical licensing collective a reasonable opportunity to respond to the findings, including by clarifying issues and correcting factual errors.

“(VI) The auditing copyright owner or owners shall bear the cost of the audit. In case of an underpayment to any copyright owner, the mechanical licensing collective shall pay the amounts of any such underpayment to such auditing copyright owner, as appropriate. In case of an overpayment by the mechanical licensing collective,
the mechanical licensing collective
may debit the account of the auditing
copyright owner or owners for such
overpaid amounts, or such owner(s)
shall refund overpaid amounts to the
mechanical licensing collective, as ap-
propriate.

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

“(M) RECORDS OF MECHANICAL LICEN-
SING COLLECTIVE.—

“(i) RECORDS MAINTENANCE.—The
mechanical licensing collective shall ensure
that all material records of its operations,
including those relating to notices of li-
cense, the administration of its claims
process, reports of usage, royalty pay-
ments, receipt and maintenance of accrued
royalties, royalty distribution processes, and legal matters, are preserved and main-
tained in a secure and reliable manner, with appropriate commercially reasonable safeguards against unauthorized access, copying, and disclosure, and subject to the confidentiality requirements prescribed by the Register of Copyrights under paragraph (12)(C) for a period of no less than 7 years after the date of creation or receipt, whichever occurs later.

“(ii) RECORDS ACCESS.—The mechanical licensing collective shall provide prompt access to electronic and other records pertaining to the administration of a copyright owner’s musical works upon reasonable written request of such owner or the owner’s authorized representative.

“(4) TERMS AND CONDITIONS OF BLANKET LICENSE.—A blanket license is subject to, and conditioned upon, the following requirements:

“(A) ROYALTY REPORTING AND PAYMENTS.—

“(i) MONTHLY REPORTS AND PAYMENT.—A digital music provider shall re-
port and pay royalties to the mechanical licensing collective under the blanket license on a monthly basis in accordance with clause (ii) and subsection (c)(2)(I), but the monthly reporting shall be due 45 calendar days, rather than 20 calendar days, after the end of the monthly reporting period.

“(ii) DATA TO BE REPORTED.—In reporting usage of musical works to the mechanical licensing collective, a digital music provider shall provide usage data for musical works used under the blanket license and usage data for musical works used in covered activities under voluntary licenses and individual download licenses. In the report of usage, the digital music provider shall—

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

“(aa) provide identifying information for the sound recording, including sound recording name, featured artist and, to the extent acquired by the digital
music provider in connection with
its use of sound recordings of
musical works to engage in cov-
ered activities, including pursu-
ant to subparagraph (B), pro-
ducer, international standard re-
cording code, and other informa-
tion commonly used in the indus-
try to identify sound recordings
and match them to the musical
works the sound recordings em-
body;

“(bb) to the extent acquired
by the digital music provider in
the metadata in connection with
its use of sound recordings of
musical works to engage in cov-
ered activities, including pursu-
ant to subparagraph (B), provide
information concerning author-
ship and ownership of the appli-
cable rights in the musical work
embodied in the sound recording
(including each songwriter, pub-
lisher name, and respective own-
ership share) and the international standard musical work code; and

“(ee) provide the number of digital phonorecord deliveries of the sound recording, including limited downloads and interactive streams;

“(II) identify and provide contact information for all musical work copyright owners for works embodied in sound recordings as to which a voluntary license, rather than the blanket license, is in effect with respect to the uses being reported; and

“(III) provide such other information as the Register of Copyrights shall require by regulation.

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

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

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

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

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

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

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

“(C) Payment of Administrative As-
seSSment.—A digital music provider and any
significant nonblanket licensee shall pay the ad-
ministrative assessment established under para-
graph (7)(D) in accordance with this subsection
and applicable regulations.

“(D) Verification of Payments by Dig-
itAl music providers.—

“(i) Verification Process.—The
mechanical licensing collective may conduct
an audit of a digital music provider oper-
ating under the blanket license to verify
the accuracy of royalty payments by the
digital music provider to the mechanical li-
censing collective as follows:

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

“(II) The audit shall be con-
ducted by a qualified auditor, who
shall perform the audit during the or-
dinary course of business by exam-
ining the books, records, and data of
the digital music provider, according
to generally accepted auditing stand-
ards and subject to applicable con-
fidentiality requirements prescribed by
the Register of Copyrights under
paragraph (12)(C).
“(III) The digital music provider shall make such books, records, and data available to the qualified auditor and respond to reasonable requests for relevant information, and shall use commercially reasonable efforts to provide access to relevant information maintained with respect to a digital music provider by third parties.

“(IV) To commence the audit, the mechanical licensing collective shall file with the Copyright Office a notice of intent to conduct an audit of the digital music provider, identifying the period of time to be audited, and shall simultaneously deliver a copy of such notice to the digital music provider. The Register of Copyrights shall cause the notice of audit to be published in the Federal Register within 45 calendar days after receipt.

“(V) The qualified auditor shall determine the accuracy of royalty payments, including whether an underpayment or overpayment of royalties
was made by the digital music provider to the mechanical licensing collective, but before providing a final audit report to the mechanical licensing collective, the qualified auditor shall provide a tentative draft of the report to the digital music provider and allow the digital music provider a reasonable opportunity to respond to the findings, including by clarifying issues and correcting factual errors.

“(VI) The mechanical licensing collective shall pay the cost of the audit, unless the qualified auditor determines that there was an underpayment by the digital music provider of 10 percent or more, in which case the digital music provider shall bear the reasonable costs of the audit, in addition to paying the amount of any underpayment to the mechanical licensing collective. In case of an overpayment by the digital music provider, the mechanical licensing collective
shall provide a credit to the account
of the digital music provider.

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

“(ii) ALTERNATIVE VERIFICATION
PROCEDURES.—Nothing in this subpara-
graph shall preclude the mechanical licens-
ing collective and a digital music provider
from agreeing to audit procedures different
from those described herein, but a notice
of the audit shall be provided to and pub-
lished by the Copyright Office as described
in clause (i)(IV).

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

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

“(I) fails to provide one or more monthly reports of usage to the mechanical licensing collective when due;

“(II) fails to make a monthly royalty or late fee payment to the mechanical licensing collective when due, in all or material part;

“(III) provides one or more monthly reports of usage to the mechanical licensing collective that, on the whole, is or are materially deficient as a result of inaccurate, missing, or unreadable data, where the correct data was available to the digital music provider and required to be reported under this section and applicable regulations;

“(IV) fails to pay the administrative assessment as required under this subsection and applicable regulations; or

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

“(ii) NOTICE OF DEFAULT AND TERMINATION.—In case of a default by a digital music provider, the mechanical licensing collective may proceed to terminate the blanket license of the digital music provider as follows:

“(I) The mechanical licensing collective shall provide written notice to the digital music provider describing with reasonable particularity the default and advising that unless such default is cured within 60 calendar days after the date of the notice, the blanket license will automatically terminate at the end of that period.

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

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

“(iv) REVIEW BY FEDERAL DISTRICT
COURT.—A digital music provider that be-
lieves a blanket license was improperly ter-
minated by the mechanical licensing collec-
tive may seek review of such termination in
Federal district court. The district court
shall determine the matter de novo based
on the record before the mechanical licens-
ing collective and any additional supporting evidence presented by the parties.

“(5) DIGITAL LICENSEE COORDINATOR.—

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

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

“(ii) is endorsed by and enjoys substantial support from digital music providers and significant nonblanket licensees that together represent the greatest percentage of the licensee market for uses of musical works in covered activities, as measured over the preceding 3 calendar years;

“(iii) is able to demonstrate that it has, or will have prior to the license availability date, the administrative capabilities to perform the required functions of the digital licensee coordinator under this subsection; and

“(iv) has been designated by the Register of Copyrights in accordance with subparagraph (B).
“(B) Designation of digital licensee coordinator.—

“(i) Initial designation.—The Register of Copyrights shall initially designate the digital licensee coordinator within 9 months after the enactment date, in accordance with the same procedure described for designation of the mechanical licensing collective in paragraph (3)(B)(i).

“(ii) Periodic review of designation.—Following the initial designation of the digital licensee coordinator, the Register shall, every 5 years, beginning with the fifth full calendar year to commence after the initial designation, determine whether the existing designation should be continued, or a different entity meeting the criteria described in clauses (i) through (iii) of subparagraph (A) should be designated, in accordance with the same procedure described for the mechanical licensing collective in paragraph (3)(B)(ii).

“(iii) Inability to designate.—If the Register is unable to identify an entity that fulfills each of the qualifications de-
scribed in clauses (i) through (iii) of sub-
paragraph (A) to serve as the digital li-
censee coordinator, the Register may de-
cline to designate a digital licensee coordi-
nator. The Register’s determination not to
designate a digital licensee coordinator
shall not negate or otherwise affect any
provision of this subsection except to the
limited extent that a provision references
the digital licensee coordinator. In such
case, the reference to the digital licensee
coordinator shall be without effect unless
and until a new digital licensee coordinator
is designated.

“(C) AUTHORITIES AND FUNCTIONS.—

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

“(I) Establish a governance
structure, criteria for membership,
and any dues to be paid by its mem-
ers.
“(II) Engage in efforts to enforce notice and payment obligations with respect to the administrative assessment, including by receiving information from and coordinating with the mechanical licensing collective.

“(III) Initiate and participate in proceedings before the Copyright Royalty Judges to establish the administrative assessment under this subsection.

“(IV) Initiate and participate in proceedings before the Copyright Office with respect to activities under this subsection.

“(V) Gather and provide documentation for use in proceedings before the Copyright Royalty Judges to set rates and terms under this section.

“(VI) Maintain records of its activities.

“(VII) Engage in such other activities as may be necessary or appropriate to fulfill its responsibilities under this subsection.
“(ii) Restriction on lobbying.—The digital licensee coordinator may not engage in government lobbying activities, but may engage in the activities described in subclauses (III), (IV), and (V) of clause (i).

“(6) Requirements for significant non-blanket licensees.—

“(A) In general.—

“(i) Notice of activity.—Not later than 45 calendar days after the license availability date, or 45 calendar days after the end of the first full calendar month in which an entity initially qualifies as a significant nonblanket licensee, whichever occurs later, a significant nonblanket licensee shall submit a notice of nonblanket activity to the mechanical licensing collective. The notice of nonblanket activity shall comply in form and substance with requirements that the Register of Copyrights shall establish by regulation, and a copy shall be made available to the digital licensee coordinator.
“(ii) Reporting and Payment Obligations.—The notice of nonblanket activity submitted to the mechanical licensing collective shall be accompanied by a report of usage that contains the information described in paragraph (4)(A)(ii), as well as any payment of the administrative assessment required under this subsection and applicable regulations. Thereafter, subject to clause (iii), a significant nonblanket licensee shall continue to provide monthly reports of usage, accompanied by any required payment of the administrative assessment, to the mechanical licensing collective. Such reports and payments shall be submitted not later than 45 calendar days after the end of the calendar month being reported.

“(iii) Discontinuation of Obligations.—An entity that has submitted a notice of nonblanket activity to the mechanical licensing collective that has ceased to qualify as a significant nonblanket licensee may so notify the collective in writing. In such case, as of the calendar month
in which such notice is provided, such entity shall no longer be required to provide reports of usage or pay the administrative assessment, but if such entity later qualifies as a significant nonblanket licensee, such entity shall again be required to comply with clauses (i) and (ii).

“(B) REPORTING BY MECHANICAL LICENSING COLLECTIVE TO DIGITAL LICENSEE COORDINATOR.—

“(i) MONTHLY REPORTS OF NON-COMPLIANT LICENSEES.—The mechanical licensing collective shall provide monthly reports to the digital licensee coordinator setting forth any significant nonblanket licensees of which the collective is aware that have failed to comply with subparagraph (A).

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

“(C) LEGAL ENFORCEMENT EFFORTS.—

“(i) FEDERAL COURT ACTION.—
Should the mechanical licensing collective or digital licensee coordinator become aware that a significant nonblanket licensee has failed to comply with subparagraph (A), either may commence an action in Federal district court for damages and injunctive relief. If the significant nonblanket licensee is found liable, the court shall, absent a finding of excusable neglect, award damages in an amount equal to three times the total amount of the unpaid administrative assessment and, notwithstanding anything to the contrary in section 505, reasonable attorney’s fees and costs, as well as such other relief as the court deems appropriate. In all other cases, the court shall award relief as appropriate. Any recovery of damages shall be payable to the mechanical licensing col-
lective as an offset to the collective total costs.

“(ii) Statute of limitations for enforcement action.—Any action described in this subparagraph shall be commenced within the time period described in section 507(b).

“(iii) Other rights and remedies preserved.—The ability of the mechanical licensing collective or digital licensee coordinator to bring an action under this subparagraph shall in no way alter, limit or negate any other right or remedy that may be available to any party at law or in equity.

“(7) Funding of mechanical licensing collective.—

“(A) In general.—The collective total costs shall be funded by—

“(i) an administrative assessment, as such assessment is established by the Copyright Royalty Judges pursuant to subparagraph (D) from time to time, to be paid by—
“(I) digital music providers that are engaged, in all or in part, in covered activities pursuant to a blanket license; and

“(II) significant nonblanket licensees; and

“(ii) voluntary contributions from digital music providers and significant nonblanket licensees as may be agreed with copyright owners.

“(B) VOLUNTARY CONTRIBUTIONS.—

“(i) AGREEMENTS CONCERNING CONTRIBUTIONS.—Except as provided in clause (ii), voluntary contributions by digital music providers and significant nonblanket licensees shall be determined by private negotiation and agreement, and the following conditions apply:

“(I) The date and amount of each voluntary contribution to the mechanical licensing collective shall be documented in a writing signed by an authorized agent of the mechanical licensing collective and the contributing party.
“(II) Such agreement shall be made available as required in proceedings before the Copyright Royalty Judges to establish or adjust the administrative assessment in accordance with applicable statutory and regulatory provisions and rulings of the Copyright Royalty Judges.

“(ii) Treatment of Contributions.—Each such voluntary contribution shall be treated for purposes of an administrative assessment proceeding as an offset to the collective total costs that would otherwise be recovered through the administrative assessment. Any allocation or reallocation of voluntary contributions between or among individual digital music providers or significant nonblanket licensees shall be a matter of private negotiation and agreement among such parties and outside the scope of the administrative assessment proceeding.

“(C) Interim Application of Accrued Royalties.—In the event that the administrative assessment, together with any funding from
voluntary contributions as provided in subpara-
graphs (A) and (B), is inadequate to cover cur-
rent collective total costs, the collective, with
approval of its board of directors, may apply
unclaimed accrued royalties on an interim basis
to defray such costs, subject to future reim-
bursement of such royalties from future collec-
tions of the assessment.

“(D) Determination of Administrative Assessment.—

“(i) Administrative Assessment to Cover Collective Total Costs.—The administrative assessment shall be used solely and exclusively to fund the collective total costs.

“(ii) Separate Proceeding before Copyright Royalty Judges.—The amount and terms of the administrative assessment shall be determined and estab-
lished in a separate and independent pro-
ceeding before the Copyright Royalty Judges, according to the procedures de-
scribed in clauses (iii) and (iv). The admin-
istrative assessment determined in such proceeding shall—
“(I) be wholly independent of royalty rates and terms applicable to digital music providers, which shall not be taken into consideration in any manner in establishing the administrative assessment;

“(II) be established by the Copyright Royalty Judges in an amount that is calculated to defray the reasonable collective total costs;

“(III) be assessed based on usage of musical works by digital music providers and significant nonblanket licensees in covered activities under both compulsory and nonblanket licenses;

“(IV) may be in the form of a percentage of royalties payable under this section for usage of musical works in covered activities (regardless of whether a different rate applies under a voluntary license), or any other usage-based metric reasonably calculated to equitably allocate the collective total costs across digital
music providers and significant non-blanket licensees engaged in covered activities, but shall include as a component a minimum fee for all digital music providers and significant non-blanket licensees; and

“(V) take into consideration anticipated future collective total costs and collections of the administrative assessment, but also, as applicable—

“(aa) any portion of past actual collective total costs of the mechanical licensing collective not funded by previous collections of the administrative assessment or voluntary contributions because such collections or contributions together were insufficient to fund such costs;

“(bb) any past collections of the administrative assessment and voluntary contributions that exceeded past actual collective total costs, resulting in a surplus; and
“(cc) the amount of any voluntary contributions by digital music providers or significant nonblanket licensees in relevant periods, described in subparagraphs (A) and (B) of paragraph (7).

“(iii) Initial Administrative Assessment.—The procedure for establishing the initial administrative assessment shall be as follows:

“(I) The Copyright Royalty Judges shall commence a proceeding to establish the initial administrative assessment within 9 months after the enactment date by publishing a notice in the Federal Register seeking petitions to participate.

“(II) The mechanical licensing collective and digital licensee coordinator shall participate in such proceeding, along with any interested copyright owners, digital music providers or significant nonblanket licensees that have notified the Copyright
Royalty Judges of their desire to participate.

"(III) The Copyright Royalty Judges shall establish a schedule for submission by the parties of information that may be relevant to establishing the administrative assessment, including actual and anticipated collective total costs of the mechanical licensing collective, actual and anticipated collections from digital music providers and significant nonblanket licensees, and documentation of voluntary contributions, as well as a schedule for further proceedings, which shall include a hearing, as they deem appropriate.

"(IV) The initial administrative assessment shall be determined, and such determination shall be published in the Federal Register by the Copyright Royalty Judges, within 1 year after commencement of the proceeding described in this clause. The determination shall be supported by a writ-
ten record. The initial administrative assessment shall be effective as of the license availability date, and shall continue in effect unless and until an adjusted administrative assessment is established pursuant to an adjustment proceeding under clause (iii).

“(iv) Adjustment of Administrative Assessment.—The administrative assessment may be adjusted by the Copyright Royalty Judges periodically, in accordance with the following procedures:

“(I) No earlier than 1 year after the most recent publication of a determination of the administrative assessment by the Copyright Royalty Judges, the mechanical licensing collective, the digital licensee coordinator, or one or more interested copyright owners, digital music providers, or significant nonblanket licensees, may file a petition with the Copyright Royalty Judges in the month of October to commence a proceeding to adjust the administrative assessment.
“(II) Notice of the commencement of such proceeding shall be published in the Federal Register in the month of November following the filing of any petition, with a schedule of requested information and additional proceedings, as described in clause (iii)(III). The mechanical licensing collective and digital licensee coordinator shall participate in such proceeding, along with any interested copyright owners, digital music providers, or significant nonblanket licensees that have notified the Copyright Royalty Judges of their desire to participate.

“(III) The determination of the adjusted administrative assessment, which shall be supported by a written record, shall be published in the Federal Register during November of the calendar year following the commencement of the proceeding. The adjusted administrative assessment shall take
effect January 1 of the year following
such publication.

“(v) ADOPTION OF VOLUNTARY
AGREEMENTS.—In lieu of reaching their
own determination based on evaluation of
relevant data, the Copyright Royalty
Judges shall approve and adopt a nego-
tiated agreement to establish the amount
and terms of the administrative assessment
that has been agreed to by the mechanical
licensing collective and the digital licensee
coordinator (or if none has been des-
ignated, interested digital music providers
and significant nonblanket licensees rep-
resenting more than half of the market for
uses of musical works in covered activi-
ties), but the Copyright Royalty Judges
shall have the discretion to reject any such
agreement for good cause shown. An ad-
mministrative assessment adopted under this
clause shall apply to all digital music pro-
viders and significant nonblanket licensees
engaged in covered activities during the pe-
riod it is in effect.
“(vi) CONTINUING AUTHORITY TO AMEND.—The Copyright Royalty Judges shall retain continuing authority to amend a determination of an administrative assessment to correct technical or clerical errors, or modify the terms of implementation, for good cause, with any such amendment to be published in the Federal Register.

“(vii) APPEAL OF ADMINISTRATIVE ASSESSMENT.—The determination of an administrative assessment by the Copyright Royalty Judges shall be appealable, within 30 calendar days after publication in the Federal Register, to the Court of Appeals for the District of Columbia Circuit by any party that fully participated in the proceeding. The administrative assessment as established by the Copyright Royalty Judges shall remain in effect pending the final outcome of any such appeal, and the mechanical licensing collective, digital licensee coordinator, digital music providers, and significant nonblanket licensees shall implement appropriate financial or
other measures within 3 months after any
modification of the assessment to reflect
and account for such outcome.

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

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

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

“(B) APPLICATION OF LATE FEES.—In
any proceeding described in subparagraph (A)
in which the Copyright Royalty Judges estab-
lish a late fee for late payment of royalties for
uses of musical works under this section, such
fee shall apply to covered activities under blanket licenses, as follows:

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

“(ii) The availability of late fees shall in no way prevent a copyright owner or the mechanical licensing collective from asserting any other rights or remedies to which such copyright owner or the mechanical licensing collective may be entitled under this title.

“(C) INTERIM RATE AGREEMENTS IN GENERAL.—For any covered activity for which no rate or terms have been established by the Copyright Royalty Judges, the mechanical licensing collective and any digital music provider may agree to an interim rate and terms for such activity under the blanket license, and any such rate and terms—

“(i) shall be treated as nonprecedential and not cited or relied upon in any ratesetting proceeding before the Copyright Royalty Judges or any other tribunal; and
“(ii) shall automatically expire upon
the establishment of a rate and terms for
such covered activity by the Copyright
Royalty Judges, under subsection
(c)(1)(E).

“(D) Adjustments for interim rates.—The rate and terms established by the
Copyright Royalty Judges for a covered activity
to which an interim rate and terms have been
agreed under subparagraph (C) shall supersede
the interim rate and terms and apply retro-
actively to the inception of the activity under
the blanket license. In such case, within 3
months after the rate and terms established by
the Copyright Royalty Judges become effec-
tive—

“(i) if the rate established by the
Copyright Royalty Judges exceeds the in-
terim rate, the digital music provider shall
pay to the mechanical licensing collective
the amount of any underpayment of royalties due; or

“(ii) if the interim rate exceeds the
rate established by the Copyright Royalty
Judges, the mechanical licensing collective
shall credit the account of the digital music provider for the amount of any overpayment of royalties due.

“(9) TRANSITION TO BLANKET LICENSES.—

“(A) SUBSTITUTION OF BLANKET LICENSE.—On the license availability date, a blanket license shall, without any interruption in license authority enjoyed by such digital music provider, be automatically substituted for and supersede any existing compulsory license previously obtained under this section by the digital music provider from a copyright owner to engage in one or more covered activities with respect to a musical work, but the foregoing shall not apply to any authority obtained from a record company pursuant to a compulsory license to make and distribute permanent downloads unless and until such record company terminates such authority in writing to take effect at the end of a monthly reporting period, with a copy to the mechanical licensing collective.

“(B) EXPIRATION OF EXISTING LICENSES.—Except to the extent provided in subparagraph (A), on and after the license avail-
ability date, licenses other than individual
download licenses obtained under this section
for covered activities prior to the license avail-
ability date shall no longer continue in effect.

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

“(D) FURTHER ACCEPTANCE OF NOTICES
FOR COVERED ACTIVITIES BY COPYRIGHT OF-
FICE.—On and after the enactment date—
“(i) the Copyright Office shall no longer accept notices of intention with respect to covered activities; and

“(ii) previously filed notices of intention will no longer be effective or provide license authority with respect to covered activities, but before the license availability date there shall be no liability under section 501 for the reproduction or distribution of a musical work (or share thereof) in covered activities if a valid notice of intention was filed for such work (or share) before the enactment date.

“(10) PRIOR UNLICENSED USES.—

“(A) LIMITATION ON LIABILITY IN GENERAL.—A copyright owner that commences an action under section 501 on or after January 1, 2018, against a digital music provider for the infringement of the exclusive rights provided by paragraph (1) or (3) of section 106 arising from the unauthorized reproduction or distribution of a musical work by such digital music provider in the course of engaging in covered activities prior to the license availability date, shall, as the copyright owner’s sole and exclu-
sive remedy against the digital music provider, be eligible to recover the royalty prescribed under subsection (c)(1)(C) and chapter 8 of this title, from the digital music provider, provided that such digital music provider can demonstrate compliance with the requirements of subparagraph (B), as applicable. In all other cases the limitation on liability under this subparagraph shall not apply.

“(B) REQUIREMENTS FOR LIMITATION ON LIABILITY.—The following requirements shall apply on the enactment date and through the end of the period that expires 90 days after the license availability date to digital music providers seeking to avail themselves of the limitation on liability described in subparagraph (A):

“(i) No later than 30 calendar days after first making a particular sound recording of a musical work available through its service via one or more covered activities, or 30 calendar days after the enactment date, whichever occurs later, a digital music provider shall engage in good-faith, commercially reasonable efforts to identify and locate each copyright owner
of such musical work (or share thereof).

Such required matching efforts shall in-
clude the following:

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

“(aa) Sound recording
name, featured artist, sound re-
cording copyright owner, pro-
ducer, international standard re-
cording code, and other informa-
tion commonly used in the indus-
try to identify sound recordings
and match them to the musical
works they embody.

“(bb) Any available musical
work ownership information, in-
cluding each songwriter and pub-
lisher name, percentage owner-
ship share, and international
standard musical work code.
“(II) Employment of one or more bulk electronic matching processes that are available to the digital music provider through a third-party vendor on commercially reasonable terms, but a digital music provider may rely on its own bulk electronic matching process if it has capabilities comparable to or better than those available from a third-party vendor on commercially reasonable terms.

“(ii) The required matching efforts shall be repeated by the digital music provider no less than once per month for so long as the copyright owner remains unidentified or has not been located.

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

“(iv) If the copyright owner is not identified or located by the end of the calendar month in which the digital music provider first makes use of the work, the digital music provider shall accrue and hold royalties calculated under the applicable statutory rate in accordance with usage of the work, from initial use of the work until the accrued royalties can be paid to the copyright owner or are required to be transferred to the mechanical licensing collective, as follows:

“(I) Accrued royalties shall be maintained by the digital music provider in accordance with generally accepted accounting principles.

“(II) If a copyright owner of an unmatched musical work (or share thereof) is identified and located by or to the digital music provider before the license availability date, the digital music provider shall—
“(aa) within 45 calendar days after the end of the calendar month during which the copyright owner was identified and located, pay the copyright owner all accrued royalties, such payment to be accompanied by a cumulative statement of account that includes all of the information that would have been provided to the copyright owner had the digital music provider been providing monthly statements of account to the copyright owner from initial use of the work in accordance with this section and applicable regulations, including the requisite certification under subsection (c)(2)(I);

“(bb) beginning with the accounting period following the calendar month in which the copyright owner was identified and located, and for all other accounting periods prior to the license
availability date, provide monthly statements of account and pay royalties to the copyright owner as required under this section and applicable regulations; and

“(cc) beginning with the monthly royalty reporting period commencing on the license availability date, report usage and pay royalties for such musical work (or share thereof) for such reporting period and reporting periods thereafter to the mechanical licensing collective, as required under this subsection and applicable regulations.

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

“(aa) within 45 calendar days after the license availability date, transfer all accrued royalties to the mechanical licensing
collective, such payment to be accompanied by a cumulative statement of account that includes all of the information that would have been provided to the copyright owner had the digital music provider been serving monthly statements of account on the copyright owner from initial use of the work in accordance with this section and applicable regulations, including the requisite certification under subsection (c)(2)(I), and accompanied by an additional certification by a duly authorized officer of the digital music provider that the digital music provider has fulfilled the requirements of clauses (i) and (ii) of subparagraph (B) but has not been successful in locating or identifying the copyright owner; and

“(bb) beginning with the monthly royalty reporting period
commencing on the license availability date, report usage and pay royalties for such musical work (or share thereof) for such period and reporting periods thereafter to the mechanical licensing collective, as required under this subsection and applicable regulations.

“(v) Suspension of late fees.—A digital music provider that complies with the requirements of this paragraph with respect to unmatched musical works (or shares of works) shall not be liable for or accrue late fees for late payments of royalties for such works until such time as the digital music provider is required to begin paying monthly royalties to the copyright owner or the mechanical licensing collective, as applicable.

“(C) Adjusted statute of limitations.—Notwithstanding anything to the contrary in section 507(b), with respect to any claim of infringement of the exclusive rights provided by paragraphs (1) and (3) of section
against a digital music provider arising from the unauthorized reproduction or distribution of a musical work by such digital music provider to engage in covered activities that accrued no more than 3 years prior to the license availability date, such action may be commenced within 3 years of the date the claim accrued, or up to 2 years after the license availability date, whichever is later.

“(D) Other rights and remedies preserved.—Except as expressly provided in this paragraph, nothing in this paragraph shall be construed to alter, limit, or negate any right or remedy of a copyright owner with respect to unauthorized use of a musical work.

“(11) Legal protections for licensing activities.—

“(A) Exemption for compulsory license activities.—The antitrust exemption described in subsection (c)(1)(D) shall apply to negotiations and agreements between and among copyright owners and persons entitled to obtain a compulsory license for covered activities, and common agents acting on behalf of such copyright owners or persons, including
with respect to the administrative assessment established under this subsection.

“(B) LIMITATION ON COMMON AGENT EX-EMPTION.—Notwithstanding the antitrust exemption provided in subsection (c)(1)(D) and subparagraph (A) (except for the administrative assessment referenced therein and except as provided in paragraph (8)(C)), neither the mechanical licensing collective nor the digital licensee coordinator shall serve as a common agent with respect to the establishment of royalty rates or terms under this section.

“(C) ANTITRUST EXEMPTION FOR ADMINISTRATIVE ACTIVITIES.—Notwithstanding any provision of the antitrust laws, copyright owners and persons entitled to obtain a compulsory license under this section may designate the mechanical licensing collective to administer voluntary licenses for the reproduction or distribution of musical works in covered activities on behalf of such copyright owners and persons, but the following conditions apply:

“(i) Each copyright owner shall establish the royalty rates and material terms of any such voluntary license individually and
not in agreement, combination, or concert
with any other copyright owner.

“(ii) Each person entitled to obtain a
compulsory license under this section shall
establish the royalty rates and material
terms of any such voluntary license indi-
vidually and not in agreement, combina-
tion, or concert with any other digital
music provider.

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

“(D) L IABILITY FOR GOOD-FAITH ACTIVI-
ties.—The mechanical licensing collective shall
not be liable to any person or entity based on
a claim arising from its good-faith administra-
tion of policies and procedures adopted and im-
plemented to carry out the responsibilities de-
scribed in subparagraphs (J) and (K) of para-
graph (3), except to the extent of correcting an
underpayment or overpayment of royalties as
provided in paragraph (3)(L)(i)(VI), but the
collective may participate in a legal proceeding as a stakeholder party if the collective is holding funds that are the subject of a dispute between copyright owners. For purposes of this subparagraph, ‘good-faith administration’ means administration in a manner that is not grossly negligent.

“(E) PREEMPTION OF STATE PROPERTY LAWS.—The holding and distribution of funds by the mechanical licensing collective in accordance with this subsection shall supersede and preempt any State law (including common law) concerning escheatment or abandoned property, or any analogous provision, that might otherwise apply.

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

“(12) REGULATIONS.—

“(A) ADOPTION BY REGISTER OF COPYRIGHTS AND COPYRIGHT ROYALTY JUDGES.—
The Register of Copyrights may conduct such proceedings and adopt such regulations as may be necessary or appropriate to effectuate the provisions of this subsection, except for regulations concerning proceedings before the Copyright Royalty Judges to establish the administrative assessment, which shall be adopted by the Copyright Royalty Judges.

“(B) Judicial review of regulations.—Except as provided in paragraph (7)(D)(vii), regulations adopted under this subsection shall be subject to judicial review pursuant to chapter 7 of title 5.

“(C) Protection of confidential information.—The Register of Copyrights shall adopt regulations to provide for the appropriate procedures to ensure that confidential, private, proprietary, or privileged information contained in the records of the mechanical licensing collective and digital licensee coordinator is not improperly disclosed or used, including through any disclosure or use by the board of directors or personnel of either entity, and specifically including the unclaimed royalties oversight com-
mittee and the dispute resolution committee of the mechanical licensing collective.

“(13) SAVINGS CLAUSES.—

“(A) LIMITATION ON ACTIVITIES AND RIGHTS COVERED.—This subsection applies solely to uses of musical works subject to licensing under this section. The blanket license shall not be construed to extend or apply to activities other than covered activities or to rights other than the exclusive rights of reproduction and distribution licensed under this section, or serve or act as the basis to extend or expand the compulsory license under this section to activities and rights not covered by this section on the enactment date.

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

(5) by adding at the end the following new subsection:
“(e) DEFINITIONS.—As used in this section:

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

“(2) ACCRUED ROYALTIES.—The term ‘accrued royalties’ means royalties accrued for the reproduction or distribution of a musical work (or share thereof) in a covered activity, calculated in accordance with the applicable royalty rate under this section.

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

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

“(5) BLANKET LICENSE.—The term ‘blanket license’ means a compulsory license described in subsection (d)(1)(A) to engage in covered activities.

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

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

“(i) startup costs;

“(ii) financing, legal, and insurance

costs;

“(iii) investments in information tech-
nology, infrastructure, and other long-term

resources;

“(iv) outside vendor costs;

“(v) costs of licensing, royalty admin-

istration, and enforcement of rights;

“(vi) costs of bad debt; and

“(vii) costs of automated and manual
efforts to identify and locate copyright

owners of musical works (and shares of

such musical works) and match sound re-
cordings to the musical works the sound

recordings embody; and

“(B) does not include any added costs in-
curred by the mechanical licensing collective to

provide services under voluntary licenses.

“(7) COVERED ACTIVITY.—The term ‘covered

activity’ means the activity of making a digital pho-
norecord delivery of a musical work, including in the
form of a permanent download, limited download, or
interactive stream, where such activity qualified for a compulsory license under this section.

“(8) **Digital music provider.**—The term ‘digital music provider’ means a person (or persons operating under the authority of that person) that, with respect to a service engaged in covered activities—

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

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

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

“(9) **Digital licensee coordinator.**—The term ‘digital licensee coordinator’ means the entity most recently designated pursuant to subsection (d)(5).

“(10) **Digital phonorecord delivery.**—The term ‘digital phonorecord delivery’ means each individual delivery of a phonorecord by digital transmission of a sound recording that results in a spe-
cifically identifiable reproduction by or for any
transmission recipient of a phonorecord of that
sound recording, regardless of whether the digital
transmission is also a public performance of the
sound recording or any musical work embodied
therein, and includes a permanent download, a lim-
ited download, or an interactive stream. A digital
phonorecord delivery does not result from a real-
time, noninteractive subscription transmission of a
sound recording where no reproduction of the sound
recording or the musical work embodied therein is
made from the inception of the transmission through
to its receipt by the transmission recipient in order
to make the sound recording audible. A digital pho-
norecord delivery does not include the digital trans-
mission of sounds accompanying a motion picture or
other audiovisual work as defined in section 101 of
this title.

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

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

“(13) Interactive stream.—The term ‘interactive stream’ means a digital transmission of a sound recording of a musical work in the form of a stream, where the performance of the sound recording by means of such transmission is not exempt under section 114(d)(1) and does not in itself, or as a result of a program in which it is included, qualify for statutory licensing under section 114(d)(2). An interactive stream is a digital phonorecord delivery.

“(14) Interested.—The term ‘interested’, as applied to a party seeking to participate in a proceeding under subsection (d)(7)(D), is a party as to which the Copyright Royalty Judges have not determined that the party lacks a significant interest in such proceeding.

“(15) License availability date.—The term ‘license availability date’ means the next January 1 following the expiration of the 2-year period beginning on the enactment date.

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

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

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

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

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

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

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

“(23) NOTICE OF NONBLANKET ACTIVITY.— The term ‘notice of nonblanket activity’ means a notice from a significant nonblanket licensee provided under subsection (d)(6)(A) for purposes of notifying the mechanical licensing collective that the licensee has been engaging in covered activities.

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

“(25) QUALIFIED AUDITOR.—The term ‘qualified auditor’ means an independent, certified public accountant with experience performing music royalty audits.

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

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

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

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

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

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

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

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

“(ii) has a direct contractual, sub-
scription, or other economic relationship 
with end users of the service or, if no such 
relationship with end users exists, exercises 
direct control over the provision of the 
service to end users; and

“(iii) either—

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

“(II) derives revenue or other 
consideration in connection with such 
covered activities greater than 
$50,000 in a calendar month, or total 
revenue or other consideration greater 
than $500,000 during the preceding 
12 calendar months; and
“(B) does not include—

“(i) an entity whose covered activity consists solely of free-to-the-user streams of segments of sound recordings of musical works that do not exceed 90 seconds in length, are offered only to facilitate a licensed use of musical works that is not a covered activity, and have no revenue directly attributable to such streams constituting the covered activity; or

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

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

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

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

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

“(36) VOLUNTARY LICENSE.—The term ‘voluntary license’ means a license for use of a musical work (or share thereof) other than a compulsory license obtained under this section.”.

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

(1) by redesignating paragraph (8) as paragraph (9); and

(2) by inserting after paragraph (7) the following new paragraph:

“(8) To determine the administrative assessment to be paid by digital music providers under section 115(d). The provisions of section 115(d) shall apply to the conduct of proceedings by the Copyright Royalty Judges under section 115(d) and not the procedures described in this section, or section 803, 804, or 805.”.

(c) EFFECTIVE DATE OF AMENDED RATE SETTING STANDARD.—The amendments made by subsections (a)(3)(D) and (b)(1) shall apply to any proceeding before the Copyright Royalty Judges that is pending on, or commenced on or after, the date of the enactment of this Act.
(d) Technical and Conforming Amendments to Title 37, Part 385 of the Code of Federal Regulations.—Within 9 months after the date of the enactment of this Act, the Copyright Royalty Judges shall amend the regulations for section 115 in part 385 of title 37, Code of Federal Regulations to conform the definitions used in such part to the definitions of the same terms described in section 115(e) of title 17, United States Code, as amended by subsection (a). In so doing, the Copyright Royalty Judges shall make adjustments to the language of the regulations as necessary to achieve the same purpose and effect as the original regulations with respect to the rates and terms previously adopted by the Copyright Royalty Judges.

SEC. 103. AMENDMENTS TO SECTION 114.

(a) Uniform Rate Standard.—Section 114(f) of title 17, United States Code, is amended—

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

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

“(B) The schedule of reasonable rates and terms determined by the Copyright Royalty Judges shall, subject to paragraph (2), be binding on all copyright owners of sound recordings and entities performing sound recordings affected by this paragraph during the 5-year period specified in subparagraph (A), or such other period as the parties may agree. Such rates and terms shall distinguish among the different types of services then in operation and shall include a minimum fee for each such type of service, such differences to be based on criteria including the quantity and nature of the use of sound recordings and the degree to which use of the service may substitute for or may promote the purchase of phonorecords by consumers. The Copyright Royalty Judges shall establish rates and terms that most clearly represent the rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller. In determining such rates and terms, the Copyright Royalty Judges—
“(i) shall base their decision on economic, competitive, and programming information presented by the parties, including—

“(I) whether use of the service may substitute for or may promote the sales of phonorecords or otherwise may interfere with or may enhance the sound recording copyright owner’s other streams of revenue from the copyright owner’s sound recordings; and

“(II) the relative roles of the copyright owner and the transmitting entity in the copyrighted work and the service made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, and risk; and

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

“(C) The procedures under subparagraphs (A) and (B) shall also be initiated pursuant to a petition filed by any sound recording copyright owner or any transmitting entity indicating that a new type of
service on which sound recordings are performed is
or is about to become operational, for the purpose
of determining reasonable terms and rates of royalty
payments with respect to such new type of service
for the period beginning with the inception of such
new type of service and ending on the date on which
the royalty rates and terms for eligible nonsubscription
services and new subscription services, or pre-existing services, as the case may be, most recently
determined under subparagraph (A) or (B) and
chapter 8 expire, or such other period as the parties
may agree.”; and

(2) by redesignating paragraphs (3), (4), and
(5) as paragraphs (2), (3), and (4), respectively.
(b) REPEAL.—Subsection (i) of section 114 of title
17, United States Code, is repealed.

(c) USE IN MUSICAL WORK PROCEEDINGS.—

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

(2) DEFINITIONS.—In this subsection:

(A) TRANSMISSION BY A BROADCASTER.—
A “transmission by a broadcaster” means a
nonsubscription digital transmission made by a
terrestrial broadcast station on its own behalf,
or on the behalf of a terrestrial broadcast sta-
tion under common ownership or control, that
is not part of an interactive service or a music-
intensive service comprising the transmission of
sound recordings customized for or
customizable by recipients or service users.

(B) TERRESTRIAL BROADCAST STATION.—
A “terrestrial broadcast station” means a ter-
restrial, over-the-air radio or television broad-
cast station, licensed as such by the Federal
Communications Commission, including an FM
Translator as defined in section 74.1231 of title
47, Code of Federal Regulations, and whose
primary business activities are comprised of,
and revenues are generated through, terrestrial,
over-the-air broadcast transmissions, or the simultaneous or substantially-simultaneous digital retransmission by the terrestrial, over-the-air broadcast station of its over-the-air broadcast transmissions.

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

(e) USE IN SOUND RECORDING PROCEEDINGS.—The repeal of section 114(i) of title 17, United States Code, by subsection (b) shall not be taken into account in any proceeding to set or adjust the rates and fees payable for the use of sound recordings under section 112(e) or section 114(f) of such title that is pending on, or commenced on or after, the date of the enactment of this Act.

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

(g) TECHNICAL AND CONFORMING AMENDMENTS.—
(1) Section 114.—Section 114(f) of title 17, United States Code, as amended by subsection (a), is further amended in paragraph (4)(C), as so redesignated, by striking “under paragraph (4)” and inserting “under paragraph (3)”.

(2) Section 801.—Section 801(b)(1) of title 17, United States Code, is amended by striking “The rates applicable” and all that follows though “prevailing industry practices.”.

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

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

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

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

SEC. 104. RANDOM ASSIGNMENT OF RATE COURT PROCEEDINGS.

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

(1) by striking “The business” and inserting “(a) IN GENERAL.—The business”; and
(2) by adding at the end the following new sub-
section:

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

“(1) IN GENERAL.—

“(A) DETERMINATION OF LICENSE FEE.—

Except as provided in subparagraph (B), in the
case of any performing rights society subject to
a consent decree, any application for the deter-
mination of a license fee for the public perform-
ance of music in accordance with the applicable
consent decree shall be made in the district
court with jurisdiction over that consent decree
and randomly assigned to a judge of that dis-
trict court according to that court’s rules for
the division of business among district judges
currently in effect or as may be amended from
time to time, provided that any such application
shall not be assigned to—

“(i) a judge to whom continuing juris-
diction over any performing rights society
for any performing rights society consent
decree is assigned or has previously been
assigned; or
“(ii) a judge to whom another proceeding concerning an application for the
determination of a reasonable license fee is
assigned at the time of the filing of the applica-

“(B) Exception.—Subparagraph (A)
does not apply to an application to determine
reasonable license fees made by individual pro-
prieters under section 513 of title 17.

“(2) Rule of Construction.—Nothing in paragraph (1) shall modify the rights of any party
to a consent decree or to a proceeding to determine
reasonable license fees, to make an application for
the construction of any provision of the applicable
consent decree. Such application shall be referred to
the judge to whom continuing jurisdiction over the
applicable consent decree is currently assigned. If
any such application is made in connection with a rate proceeding, such rate proceeding shall be stayed
until the final determination of the construction ap-
plication. Disputes in connection with a rate pro-
ceeding about whether a licensee is similarly situated
to another licensee shall not be subject to referral to
the judge with continuing jurisdiction over the appli-
cable consent decree.”.
TITLE II—COMPENSATING LEGACY ARTISTS FOR THEIR SONGS, SERVICE, AND IMPORTANT CONTRIBUTIONS TO SOCIETY

SEC. 201. SHORT TITLE.
This title may be cited as the “Compensating Legacy Artists for their Songs, Service, and Important Contributions to Society Act” or the “CLASSICS Act”.

SEC. 202. UNAUTHORIZED DIGITAL PERFORMANCE OF PRE-1972 SOUND RECORDINGS.

(a) PROTECTION FOR UNAUTHORIZED DIGITAL PERFORMANCES.—Title 17, United States Code, is amended by adding at the end the following new chapter:

“CHAPTER 14—UNAUTHORIZED DIGITAL PERFORMANCE OF PRE-1972 SOUND RECORDINGS

“§ 1401. Unauthorized digital performance of pre-1972 sound recordings

“(a) UNAUTHORIZED ACTS.—Anyone who, before February 15, 2067, and without the consent of the rights owner, performs publicly, by means of a digital audio transmission, a sound recording fixed on or after January 1, 1923, and before February 15, 1972, shall be subject
to the remedies provided in sections 502 through 505 to
the same extent as an infringer of copyright.

“(b) CERTAIN AUTHORIZED TRANSMISSIONS.—A
digital audio transmission of a sound recording fixed on
or after January 1, 1923, and before February 15, 1972,
shall, for purposes of subsection (a), be considered to be
authorized and made with the consent of the rights owner
if—

“(1) the transmission is made by a transmitting
entity that is publicly performing sound recordings
fixed on or after February 15, 1972, by means of
digital audio transmissions subject to section 114;

“(2) the transmission would satisfy the require-
ments for statutory licensing under section
114(d)(2), or would be exempt under section
114(d)(1), if the sound recording were fixed on or
after February 15, 1972;

“(3) in the case of a transmission that would
not be exempt under section 114(d)(1) as described
in paragraph (2), the transmitting entity pays statu-
tory royalties and provides notice of its use of the
relevant sound recordings in the same manner as is
required by regulations adopted by the Copyright
Royalty Judges for sound recordings fixed on or
after February 15, 1972; and
“(4) in the case of a transmission that would not be exempt under section 114(d)(1) as described in paragraph (2), the transmitting entity otherwise satisfies the requirements for statutory licensing under section 114(f)(4)(B).

“(c) TRANSMISSIONS BY DIRECT LICENSING OF STATUTORY SERVICES.—

“(1) IN GENERAL.—A transmission of a sound recording fixed on or after January 1, 1923, and before February 15, 1972, shall, for purposes of subsection (a), be considered to be authorized and made with the consent of the rights owner if such transmission is included in a license agreement voluntarily negotiated at any time between the rights owner and the entity performing the sound recording.

“(2) PAYMENT OF ROYALTIES TO NONPROFIT COLLECTIVE.—To the extent that such a license agreement entered into on or after the date of the enactment of this section extends to digital audio transmissions of a sound recording fixed on or after January 1, 1923, and before February 15, 1972, that meet the conditions of subsection (b), the licensee shall pay, to the collective designated to distribute receipts from the licensing of transmissions
in accordance with section 114(f), 50 percent of the
performance royalties for the transmissions due
under the license, with such royalties fully credited
as payments due under the license.

“(3) Distribution of royalties by collective.—The collective described in paragraph (2)
shall, in accordance with subparagraphs (B) through
(D) of section 114(g)(2), and paragraphs (5) and
(6) of section 114(g), distribute the royalties re-
ceived under paragraph (2) under the license de-
scribed in paragraph (2). Such payments shall be
the only payments to which featured and nonfea-
tured artists are entitled by virtue of the trans-
missions described in paragraph (2) under the li-
cense.

“(4) Rule of construction.—This section
does not prohibit any other license from directing
the licensee to pay other royalties due to featured
and nonfeatured artists for such transmissions to
the collective designated to distribute receipts from
the licensing of transmissions in accordance with
section 114(f).

“(d) Relationship to State Law.—

“(1) In general.—Nothing in this section
shall be construed to annul or limit any rights or
remedies under the common law or statutes of any State for sound recordings fixed before February 15, 1972, except, notwithstanding section 301(c), for the following:

“(A) This section preempts any claim of common law copyright or equivalent right under the laws of any State arising from any digital audio transmission that is made, on and after the date of the enactment of this section, of a sound recording fixed on or after January 1, 1923, and before February 15, 1972.

“(B) This section preempts any claim of common law copyright or equivalent right under the laws of any State arising from any reproduction that is made, on and after the date of the enactment of this section, of a sound recording fixed on or after January 1, 1923, and before February 15, 1972, and that would satisfy the requirements for statutory licensing under paragraphs (1) and (6) of section 112(e), if the sound recording were fixed on or after February 15, 1972.

“(C) This section preempts any claim of common law copyright or equivalent right under the laws of any State arising from any digital
audio transmission or reproduction that is
made, before the date of the enactment of this
section, of a sound recording fixed on or after
January 1, 1923, and before February 15, 1972, if—

“(i) the digital audio transmission
would have satisfied the requirements for
statutory licensing under section 114(d)(2)
or been exempt under section 114(d)(1), or
the reproduction would have satisfied the
requirements of section 112(e)(1), as the
case may be, if the sound recording were
fixed on or after February 15, 1972; and

“(ii) except in the case of trans-
missions that would have been exempt
under section 114(d)(1), the transmitting
entity, before the end of the 270-day pe-
period beginning on the date of the enact-
ment of this section, pays statutory royal-
ties and provides notice of the use of the
relevant sound recordings in the same
manner as is required by regulations
adopted by the Copyright Royalty Judges
for sound recordings that are protected
under this title for all the digital audio
transmissions and reproductions satisfying
the requirements for statutory licensing
under section 114(d)(2) and section
112(e)(1) during the 3 years prior to the
date of the enactment of this section.

“(2) Rule of Construction for Common
Law Copyright.—For purposes of subparagraphs
(A) through (C) of paragraph (1), a claim of com-
mon law copyright or equivalent right under the
laws of any State includes a claim that characterizes
conduct subject to such subparagraphs as an unlaw-
ful distribution, act of record piracy, or similar viola-
tion.

“(3) Rule of Construction for Public
Performance Rights.—Nothing in this section
shall be construed to recognize or negate the exist-
ence of public performance rights in sound record-
ings under the laws of any State.

“(e) Limitations on Remedies.—

“(1) Fair Use; Uses by Libraries, Archives,
and Educational Institutions.—The limitations
on the exclusive rights of a copyright owner de-
scribed in sections 107, 108, and 110(1) and (2)
shall apply to a claim under subsection (a) for the
unauthorized performance of a sound recording fixed
on or after January 1, 1923, and before February 15, 1972.

“(2) ACTIONS.—The limitations on actions described in section 507 shall apply to a claim under subsection (a) for the unauthorized performance of a sound recording fixed on or after January 1, 1923, and before February 15, 1972.

“(3) MATERIAL ONLINE.—Section 512 shall apply to a claim under subsection (a) for the unauthorized performance of a sound recording fixed on or after January 1, 1923, and before February 15, 1972.

“(4) PRINCIPLES OF EQUITY.—Principles of equity apply to remedies for a violation of this section to the same extent as such principles apply to remedies for infringement of copyright.

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

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

“(i) FILING REQUIREMENT.—Except in the case of a transmitting entity that has filed contact information for that transmitting entity under subparagraph (B), in any action under this section, an
award of statutory damages or of attorneys’ fees under section 504 or 505 may be made with respect to an unauthorized transmission of a sound recording under subsection (a) only if—

“(I) the rights owner has filed with the Copyright Office a schedule that specifies the title, artist, and rights owner of the sound recording and contains such other information, as practicable, as the Register of Copyrights prescribes by regulation; and

“(II) the transmission is made after the end of the 90-day period beginning on the date on which the information filed under subclause (I) is indexed into the public records of the Copyright Office.

“(ii) REGULATIONS.—The Register of Copyrights shall, before the end of the 180-day period beginning on the date of the enactment of this section, issue regulations establishing the form, content, and procedures for the filing of schedules under
clause (i). Such regulations shall provide that persons may request that they receive timely notification of such filings, and shall set forth the manner in which such requests may be made.

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

“(i) FILING REQUIREMENT.—The Register of Copyrights shall, before the end of the 30-day period beginning on the date of the enactment of this section, issue regulations establishing the form, content, and procedures for the filing, by any entity that, as of the date of the enactment of this section, performs sound recordings fixed before February 15, 1972, by means of digital audio transmissions, of contact information for such entity.

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

“(iii) LIMITATION ON STATUTORY DAMAGES AND ATTORNEYS’ FEES.—
“(I) LIMITATION.—An award of statutory damages or of attorneys’ fees under section 504 or 505 may not be made, against an entity that has filed contact information for that entity under clause (i), with respect to an unauthorized transmission by that entity of a sound recording under subsection (a) if the transmission is made before the end of the 90-day period beginning on the date on which the entity receives a notice that—

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

“(bb) states that the entity is not legally authorized to transmit that sound recording under subsection (a); and

“(cc) identifies the sound recording in a schedule conforming to the requirements prescribed by the regulations issued under subparagraph (A)(ii).
“(II) UNDELIVERABLE NOTICES.—In any case in which a notice under subclause (I) is sent to an entity by mail or courier service and the notice is returned to the sender because the entity either is no longer located at the address provided in the contact information filed under clause (i) or has refused to accept delivery, or the notice is sent by electronic mail and is undeliverable, the 90-day period under subclause (I) shall begin on the date of the attempted delivery.

“(C) SECTION 412.—Section 412 shall not limit an award of statutory damages under section 504(e) or attorneys’ fees under section 505 with respect to an unauthorized transmission of a sound recording under subsection (a).

“(6) APPLICABILITY OF OTHER PROVISIONS.—

“(A) IN GENERAL.—Subject to subparagraph (B), no provision of this title shall apply to or limit the remedies available under this section except as otherwise provided in this section.
“(B) APPLICABILITY OF DEFINITIONS.—
Any term used in this section that is defined in
section 101 shall have the meaning given that
term in section 101.

“(f) APPLICABILITY OF SECTION 230 SAFE HARBOR.—For purposes of section 230 of the Communications Act of 1934 (47 U.S.C. 230), subsection (a) shall be considered to be a ‘law pertaining to intellectual prop-
erty’ under subsection (e)(2) of such section.

“(g) RIGHTS OWNER DEFINED.—In this section, the
term ‘rights owner’ means the person who has the exclu-
sive right to reproduce a sound recording under the laws
of any State.”.

(b) CONFORMING AMENDMENT.—The table of chap-
ters for title 17, United States Code, is amended by add-
ing at the end the following new chapter:

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

SEC. 203. EFFECTIVE DATE.
This title and the amendments made by this title shall take effect on the date of the enactment of this Act.

TITLE III—ALLOCATION FOR MUSIC PRODUCERS

SEC. 301. SHORT TITLE.
This title may be cited as the “Allocation for Music Producers Act” or the “AMP Act”.

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SEC. 302. PAYMENT OF STATUTORY PERFORMANCE ROYALTIES.

(a) Letter of Direction.—Section 114(g) of title 17, United States Code, is amended by adding at the end the following new paragraph:

“(5) Letter of direction.—

“(A) In general.—A nonprofit collective designated by the Copyright Royalty Judges to distribute receipts from the licensing of transmissions in accordance with subsection (f) shall adopt and reasonably implement a policy that provides, in circumstances determined by the collective to be appropriate, for acceptance of instructions from an artist payee identified under subparagraph (A) or (D) of paragraph (2) to distribute, to a producer, mixer, or sound engineer who was part of the creative process that created a sound recording, a portion of the payments to which the artist payee would otherwise be entitled from the licensing of transmissions of the sound recording. In this section, such instructions shall be referred to as a ‘letter of direction’.

“(B) Acceptance of letter.—To the extent that the collective accepts a letter of direction under subparagraph (A), the person en-
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titled to payment pursuant to the letter of di-
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rection shall, during the period in which the let-
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ter of direction is in effect and carried out by
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the collective, be treated for all purposes as the
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owner of the right to receive such payment, and
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the artist payee providing the letter of direction
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to the collective shall be treated as having no
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interest in such payment.
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“(C) Authority of collective.—This
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paragraph shall not be construed in such a
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manner so that the collective is not authorized
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to accept or act upon payment instructions in
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circumstances other than those to which this
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paragraph applies.”.
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(b) Additional Provisions for Recordings
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Fixed Before November 1, 1995.—Section 114(g) of
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title 17, United States Code, as amended by subsection
17
(a), is further amended by adding at the end the following
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new paragraph:
19
“(6) Sound recordings fixed before no-
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vember 1, 1995.—
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“(A) Payment absent letter of di-
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rection.—A nonprofit collective designated by
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the Copyright Royalty Judges to distribute re-
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ceipts from the licensing of transmissions in ac-
cordance with subsection (f) (in this paragraph referred to as the ‘collective’) shall adopt and reasonably implement a policy that provides, in circumstances determined by the collective to be appropriate, for the deduction of 2 percent of all the receipts that are collected from the licensing of transmissions of a sound recording fixed before November 1, 1995, but which is withdrawn from the amount otherwise payable under paragraph (2)(D) to the recording artist or artists featured on the sound recording (or the persons conveying rights in the artists’ performance in the sound recording), and the distribution of such amount to one or more persons described in subparagraph (B), after deduction of costs described in paragraph (3) or (4), as applicable, if each of the following requirements is met:

“(i) Certification of attempt to obtain a letter of direction.—The person described in subparagraph (B) who is to receive the distribution has certified to the collective, under penalty of perjury, that—
“(I) for a period of at least 4 months, that person made reasonable efforts to contact the artist payee for such sound recording to request and obtain a letter of direction instructing the collective to pay to that person a portion of the royalties payable to the featured recording artist or artists; and

“(II) during the period beginning on the date that person began the reasonable efforts described in subclause (I) and ending on the date of that person’s certification to the collective, the artist payee did not affirm or deny in writing the request for a letter of direction.

“(ii) Collective attempt to contact artist.—After receipt of the certification described in clause (i) and for a period of at least 4 months before the collective’s first distribution to the person described in subparagraph (B), the collective attempted, in a reasonable manner as determined by the collective, to notify the
artist payee of the certification made by
the person described in subparagraph (B).

“(iii) NO OBJECTION RECEIVED.—The
artist payee did not, as of the date that is
10 business days before the date on which
the first distribution is made, submit to
the collective in writing an objection to the
distribution.

“(B) ELIGIBILITY FOR PAYMENT.—A per-
son shall be eligible for payment under subpara-
graph (A) if the person—

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

“(ii) has entered into a written con-
tract with a record company involved in
the creation or lawful exploitation of the
sound recording, or with the recording art-
ist or artists featured on the sound record-
ing (or the persons conveying rights in the
artists’ performance in the sound record-
ing), under which the person seeking pay-
ment is entitled to participate in royalty
payments that are based on the explo-
itation of the sound recording and are pay-
able from royalties otherwise payable to
the recording artist or artists featured on
the sound recording (or the persons con-
veying rights in the artists’ performance in
the sound recording);

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

“(iv) submits a written certification to
the collective stating, under penalty of per-
jury, that the person meets the require-
ments in clauses (i) through (iii) and in-
cludes a true copy of the contract de-
scribed in clause (ii).

“(C) MULTIPLE CERTIFICATIONS.—Sub-
ject to subparagraph (D), in a case in which
more than one person described in subpara-
graph (B) has met the requirements for a dis-
tribution under subparagraph (A) with respect
to a sound recording as of the date that is 10
business days before the date on which a dis-
tribution is made, the collective shall divide the
2 percent distribution equally among all such
persons.

“(D) OBJECTION TO PAYMENT.—Not later
than 10 business days after the date on which
the collective receives from the artist payee a
written objection to a distribution made pursuant to subparagraph (A), the collective shall cease making any further payment relating to such distribution. In any case in which the collective has made one or more distributions pursuant to subparagraph (A) to a person described in subparagraph (B) before the date that is 10 business days after the date on which the collective receives from the artist payee an objection to such distribution, the objection shall not affect that person’s entitlement to any distribution made before the collective ceases such distribution under this subparagraph.

“(E) OWNERSHIP OF THE RIGHT TO RECEIVE PAYMENTS.—To the extent that the collective determines that a distribution will be made under subparagraph (A) to a person described in subparagraph (B), such person shall, during the period covered by such distribution, be treated for all purposes as the owner of the right to receive such payments, and the artist payee to whom such payments would otherwise be payable shall be treated as having no interest in such payments.
“(F) ARTIST PAYEE DEFINED.—In this paragraph, the term ‘artist payee’ means a person, other than a person described in subparagraph (B), who owns the right to receive all or part of the receipts payable under paragraph (2)(D) with respect to a sound recording. In a case in which there are multiple artist payees with respect to a sound recording, an objection by one such payee shall apply only to that payee’s share of the receipts payable under paragraph (2)(D), and does not preclude payment under subparagraph (A) from the share of an artist payee that does not so object.”.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—

Section 114(g) of title 17, United States Code, as amended by subsections (a) and (b), is further amended—

(1) in paragraph (2), by striking “An agent designated” and inserting “Except as provided for in paragraph (6), a nonprofit collective designated by the Copyright Royalty Judges”;

(2) in paragraph (3)—

(A) by striking “nonprofit agent designated” and inserting “nonprofit collective designated by the Copyright Royalty Judges”;

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(B) by striking “another designated agent” and inserting “another designated nonprofit collective”; and

(C) by striking “agent” and inserting “collective” each subsequent place it appears;

(3) in paragraph (4)—

(A) by striking “designated agent” and inserting “nonprofit collective”; and

(B) by striking “agent” and inserting “collective” each subsequent place it appears; and

(4) by adding at the end the following new paragraph:

“(7) PREEMPTION OF STATE PROPERTY LAWS.—The holding and distribution of receipts under section 112 and this section by a nonprofit collective designated by the Copyright Royalty Judges in accordance with this subsection and regulations adopted by the Copyright Royalty Judges shall supersede and preempt any State law (including common law) concerning escheatment or abandoned property, or any analogous provision, that might otherwise apply.”.
SEC. 303. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this title and the amendments made by this title shall take effect on the date of the enactment of this Act.

(b) DELAYED EFFECTIVE DATE.—The effective date for paragraphs (5)(B) and (6)(E) of section 114(g) of title 17, United States Code, as added by section 302, shall be January 1, 2020.