

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—115th Cong., 2d Sess.

H. R. 1551

To amend the Internal Revenue Code of 1986 to modify the credit for production from advanced nuclear power facilities.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. HATCH (for himself, Mr. GRASSLEY, Mr. WHITEHOUSE, Mr. ALEXANDER, and Mr. COONS)

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Music Modernization Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Customs user fees.

TITLE I—MUSIC LICENSING MODERNIZATION

- Sec. 101. Short title.
- Sec. 102. Blanket license for digital uses and mechanical licensing collective.

2

- Sec. 103. Amendments to section 114.
 Sec. 104. Random assignment of rate court proceedings.
 Sec. 105. Performing rights society consent decrees.
 Sec. 106. Effective date.

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

- Sec. 201. Short title.
 Sec. 202. Unauthorized use of pre-1972 sound recordings.

TITLE III—ALLOCATION FOR MUSIC PRODUCERS

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

TITLE IV—SEVERABILITY

- Sec. 401. Severability.

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

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

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

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

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

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

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

15 (1) in subsection (a)—

1 (A) in the subsection heading, by inserting
2 “IN GENERAL” after “AVAILABILITY AND
3 SCOPE OF COMPULSORY LICENSE”;

4 (B) by striking paragraph (1) and insert-
5 ing the following:

6 “(1) ELIGIBILITY FOR COMPULSORY LI-
7 CENSE.—

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

19 “(i) phonorecords of such musical
20 work have previously been distributed to
21 the public in the United States under the
22 authority of the copyright owner of the
23 work, including by means of digital phono-
24 record delivery; or

1 “(ii) in the case of a digital music
2 provider seeking to make and distribute
3 digital phonorecord deliveries of a sound
4 recording embodying a musical work under
5 a compulsory license for which clause (i)
6 does not apply—

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

17 “(II) the sound recording copy-
18 right owner, or the authorized dis-
19 tributor of the sound recording copy-
20 right owner, has authorized the digital
21 music provider to make and distribute
22 digital phonorecord deliveries of the
23 sound recording to the public in the
24 United States.

1 “(B) DUPLICATION OF SOUND RECORD-
2 ING.—A person may not obtain a compulsory li-
3 cense for the use of the work in the making of
4 phonorecords duplicating a sound recording
5 fixed by another, including by means of digital
6 phonorecord delivery, unless—

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

9 “(ii) the making of the phonorecords
10 was authorized by the owner of the copy-
11 right in the sound recording or, if the
12 sound recording was fixed before February
13 15, 1972, by any person who fixed the
14 sound recording pursuant to an express li-
15 cense from the owner of the copyright in
16 the musical work or pursuant to a valid
17 compulsory license for use of such work in
18 a sound recording.”; and

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

22 (2) by striking subsection (b) and inserting the
23 following:

24 “(b) PROCEDURES TO OBTAIN A COMPULSORY LI-
25 CENSE.—

1 “(1) PHONORECORDS OTHER THAN DIGITAL
2 PHONORECORD DELIVERIES.—A person who seeks to
3 obtain a compulsory license under subsection (a) to
4 make and distribute phonorecords of a musical work
5 other than by means of digital phonorecord delivery
6 shall, before, or not later than 30 calendar days
7 after, making, and before distributing, any phono-
8 record of the work, serve notice of intention to do
9 so on the copyright owner. If the registration or
10 other public records of the Copyright Office do not
11 identify the copyright owner and include an address
12 at which notice can be served, it shall be sufficient
13 to file the notice of intention with the Copyright Of-
14 fice. The notice shall comply, in form, content, and
15 manner of service, with requirements that the Reg-
16 ister of Copyrights shall prescribe by regulation.

17 “(2) DIGITAL PHONORECORD DELIVERIES.—A
18 person who seeks to obtain a compulsory license
19 under subsection (a) to make and distribute
20 phonorecords of a musical work by means of digital
21 phonorecord delivery—

22 “(A) prior to the license availability date,
23 shall, before, or not later than 30 calendar days
24 after, first making any such digital phonorecord
25 delivery, serve a notice of intention to do so on

1 the copyright owner (but may not file the notice
2 with the Copyright Office, even if the public
3 records of the Office do not identify the owner
4 or the owner's address), and such notice shall
5 comply, in form, content, and manner of serv-
6 ice, with requirements that the Register of
7 Copyrights shall prescribe by regulation; or

8 “(B) on or after the license availability
9 date, shall, before making any such digital pho-
10 norecord delivery, follow the procedure de-
11 scribed in subsection (d)(2), except as provided
12 in paragraph (3).

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

24 “(4) FAILURE TO OBTAIN LICENSE.—

1 “(A) PHONORECORDS OTHER THAN DIG-
2 ITAL PHONORECORD DELIVERIES.—In the case
3 of phonorecords made and distributed other
4 than by means of digital phonorecord delivery,
5 the failure to serve or file the notice of inten-
6 tion required by paragraph (1) forecloses the
7 possibility of a compulsory license under para-
8 graph (1). In the absence of a voluntary license,
9 the failure to obtain a compulsory license ren-
10 ders the making and distribution of
11 phonorecords actionable as acts of infringement
12 under section 501 and subject to the remedies
13 provided by sections 502 through 506.

14 “(B) DIGITAL PHONORECORD DELIV-
15 ERIES.—

16 “(i) IN GENERAL.—In the case of
17 phonorecords made and distributed by
18 means of digital phonorecord delivery:

19 “(I) The failure to serve the no-
20 tice of intention required by para-
21 graph (2)(A) or paragraph (3), as ap-
22 plicable, forecloses the possibility of a
23 compulsory license under such para-
24 graph.

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

9 “(ii) EFFECT OF FAILURE.—In either
10 case described in subclause (I) or (II) of
11 clause (i), in the absence of a voluntary li-
12 cense, the failure to obtain a compulsory li-
13 cense renders the making and distribution
14 of phonorecords by means of digital phono-
15 record delivery actionable as acts of in-
16 fringement under section 501 and subject
17 to the remedies provided by sections 502
18 through 506.”;

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

21 “(c) GENERAL CONDITIONS APPLICABLE TO COM-
22 PULSORY LICENSE.—

23 “(1) ROYALTY PAYABLE UNDER COMPULSORY
24 LICENSE.—

1 “(A) IDENTIFICATION REQUIREMENT.—To
2 be entitled to receive royalties under a compul-
3 sory license obtained under subsection (b)(1)
4 the copyright owner must be identified in the
5 registration or other public records of the Copy-
6 right Office. The owner is entitled to royalties
7 for phonorecords made and distributed after
8 being so identified, but is not entitled to recover
9 for any phonorecords previously made and dis-
10 tributed.

11 “(B) ROYALTY FOR PHONORECORDS
12 OTHER THAN DIGITAL PHONORECORD DELIV-
13 ERIES.—Except as provided by subparagraph
14 (A), for every phonorecord made and distrib-
15 uted under a compulsory license under sub-
16 section (a) other than by means of digital pho-
17 norecord delivery, with respect to each work
18 embodied in the phonorecord, the royalty shall
19 be the royalty prescribed under subparagraphs
20 (D) through (F), paragraph (2)(A), and chap-
21 ter 8. For purposes of this subparagraph, a
22 phonorecord is considered ‘distributed’ if the
23 person exercising the compulsory license has
24 voluntarily and permanently parted with its
25 possession.

1 “(C) ROYALTY FOR DIGITAL PHONO-
2 RECORD DELIVERIES.—For every digital phono-
3 record delivery of a musical work made under
4 a compulsory license under this section, the roy-
5 alty payable shall be the royalty prescribed
6 under subparagraphs (D) through (F), para-
7 graph (2)(A), and chapter 8.

8 “(D) AUTHORITY TO NEGOTIATE.—Not-
9 withstanding any provision of the antitrust
10 laws, any copyright owners of nondramatic mu-
11 sical works and any persons entitled to obtain
12 a compulsory license under subsection (a) may
13 negotiate and agree upon the terms and rates
14 of royalty payments under this section and the
15 proportionate division of fees paid among copy-
16 right owners, and may designate common
17 agents on a nonexclusive basis to negotiate,
18 agree to, pay or receive such royalty payments.
19 Such authority to negotiate the terms and rates
20 of royalty payments includes, but is not limited
21 to, the authority to negotiate the year during
22 which the royalty rates prescribed under this
23 subparagraph, subparagraphs (E) and (F),
24 paragraph (2)(A), and chapter 8 shall next be
25 determined.

1 “(E) DETERMINATION OF REASONABLE
2 RATES AND TERMS.—Proceedings under chap-
3 ter 8 shall determine reasonable rates and
4 terms of royalty payments for the activities
5 specified by this section during the period be-
6 ginning with the effective date of such rates
7 and terms, but not earlier than January 1 of
8 the second year following the year in which the
9 petition requesting the proceeding is filed, and
10 ending on the effective date of successor rates
11 and terms, or such other period as the parties
12 may agree. Any copyright owners of nondra-
13 matic musical works and any persons entitled
14 to obtain a compulsory license under subsection
15 (a) may submit to the Copyright Royalty
16 Judges licenses covering such activities. The
17 parties to each proceeding shall bear their own
18 costs.

19 “(F) SCHEDULE OF REASONABLE
20 RATES.—The schedule of reasonable rates and
21 terms determined by the Copyright Royalty
22 Judges shall, subject to paragraph (2)(A), be
23 binding on all copyright owners of nondramatic
24 musical works and persons entitled to obtain a
25 compulsory license under subsection (a) during

1 the period specified in subparagraph (E), such
2 other period as may be determined pursuant to
3 subparagraphs (D) and (E), or such other pe-
4 riod as the parties may agree. The Copyright
5 Royalty Judges shall establish rates and terms
6 that most clearly represent the rates and terms
7 that would have been negotiated in the market-
8 place between a willing buyer and a willing sell-
9 er. In determining such rates and terms for dig-
10 ital phonorecord deliveries, the Copyright Roy-
11 alty Judges shall base their decision on eco-
12 nomic, competitive, and programming informa-
13 tion presented by the parties, including—

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

21 “(ii) the relative roles of the copyright
22 owner and the compulsory licensee in the
23 copyrighted work and the service made
24 available to the public with respect to the
25 relative creative contribution, technological

1 contribution, capital investment, cost, and
2 risk.

3 “(2) ADDITIONAL TERMS AND CONDITIONS.—

4 “(A) VOLUNTARY LICENSES AND CON-
5 TRACTUAL ROYALTY RATES.—

6 “(i) IN GENERAL.—License agree-
7 ments voluntarily negotiated at any time
8 between one or more copyright owners of
9 nondramatic musical works and one or
10 more persons entitled to obtain a compul-
11 sory license under subsection (a) shall be
12 given effect in lieu of any determination by
13 the Copyright Royalty Judges. Subject to
14 clause (ii), the royalty rates determined
15 pursuant to subparagraphs (E) and (F) of
16 paragraph (1) shall be given effect as to
17 digital phonorecord deliveries in lieu of any
18 contrary royalty rates specified in a con-
19 tract pursuant to which a recording artist
20 who is the author of a nondramatic musi-
21 cal work grants a license under that per-
22 son’s exclusive rights in the musical work
23 under paragraphs (1) and (3) of section
24 106 or commits another person to grant a
25 license in that musical work under para-

1 graphs (1) and (3) of section 106, to a
2 person desiring to fix in a tangible medium
3 of expression a sound recording embodying
4 the musical work.

5 “(ii) APPLICABILITY.—The second
6 sentence of clause (i) shall not apply to—

7 “(I) a contract entered into on or
8 before June 22, 1995, and not modi-
9 fied thereafter for the purpose of re-
10 ducing the royalty rates determined
11 pursuant to subparagraphs (E) and
12 (F) of paragraph (1) or of increasing
13 the number of musical works within
14 the scope of the contract covered by
15 the reduced rates, except if a contract
16 entered into on or before June 22,
17 1995, is modified thereafter for the
18 purpose of increasing the number of
19 musical works within the scope of the
20 contract, any contrary royalty rates
21 specified in the contract shall be given
22 effect in lieu of royalty rates deter-
23 mined pursuant to subparagraphs (E)
24 and (F) of paragraph (1) for the
25 number of musical works within the

1 scope of the contract as of June 22,
2 1995; and

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

13 “(B) SOUND RECORDING INFORMATION.—
14 Except as provided in section 1002(e), a digital
15 phonorecord delivery licensed under this para-
16 graph shall be accompanied by the information
17 encoded in the sound recording, if any, by or
18 under the authority of the copyright owner of
19 that sound recording, that identifies the title of
20 the sound recording, the featured recording art-
21 ist who performs on the sound recording, and
22 related information, including information con-
23 cerning the underlying musical work and its
24 writer.

25 “(C) INFRINGEMENT REMEDIES.—

1 “(i) IN GENERAL.—A digital phono-
2 record delivery of a sound recording is ac-
3 tionable as an act of infringement under
4 section 501, and is fully subject to the
5 remedies provided by sections 502 through
6 506, unless—

7 “(I) the digital phonorecord de-
8 livery has been authorized by the
9 sound recording copyright owner; and

10 “(II) the entity making the dig-
11 ital phonorecord delivery has obtained
12 a compulsory license under subsection
13 (a) or has otherwise been authorized
14 by the musical work copyright owner,
15 or by a record company pursuant to
16 an individual download license, to
17 make and distribute phonorecords of
18 each musical work embodied in the
19 sound recording by means of digital
20 phonorecord delivery.

21 “(ii) OTHER REMEDIES.—Any cause
22 of action under this subparagraph shall be
23 in addition to those available to the owner
24 of the copyright in the nondramatic musi-
25 cal work under subparagraph (J) and sec-

1 tion 106(4) and the owner of the copyright
2 in the sound recording under section
3 106(6).

4 “(D) LIABILITY OF SOUND RECORDING
5 OWNERS.—The liability of the copyright owner
6 of a sound recording for infringement of the
7 copyright in a nondramatic musical work em-
8 bodied in the sound recording shall be deter-
9 mined in accordance with applicable law, except
10 that the owner of a copyright in a sound re-
11 cording shall not be liable for a digital phono-
12 record delivery by a third party if the owner of
13 the copyright in the sound recording does not
14 license the distribution of a phonorecord of the
15 nondramatic musical work.

16 “(E) RECORDING DEVICES AND MEDIA.—
17 Nothing in section 1008 shall be construed to
18 prevent the exercise of the rights and remedies
19 allowed by this paragraph, subparagraph (J),
20 and chapter 5 in the event of a digital phono-
21 record delivery, except that no action alleging
22 infringement of copyright may be brought
23 under this title against a manufacturer, im-
24 porter or distributor of a digital audio recording
25 device, a digital audio recording medium, an

1 analog recording device, or an analog recording
2 medium, or against a consumer, based on the
3 actions described in such section.

4 “(F) PRESERVATION OF RIGHTS.—Noth-
5 ing in this section annuls or limits—

6 “(i) the exclusive right to publicly per-
7 form a sound recording or the musical
8 work embodied therein, including by means
9 of a digital transmission, under paragraphs
10 (4) and (6) of section 106;

11 “(ii) except for compulsory licensing
12 under the conditions specified by this sec-
13 tion, the exclusive rights to reproduce and
14 distribute the sound recording and the mu-
15 sical work embodied therein under para-
16 graphs (1) and (3) of section 106, includ-
17 ing by means of a digital phonorecord de-
18 livery; or

19 “(iii) any other rights under any other
20 provision of section 106, or remedies avail-
21 able under this title, as such rights or rem-
22 edies exist before, on, or after the date of
23 enactment of the Digital Performance
24 Right in Sound Recordings Act of 1995.

1 “(G) EXEMPT TRANSMISSIONS AND RE-
2 TRANSMISSIONS.—The provisions of this section
3 concerning digital phonorecord deliveries shall
4 not apply to any exempt transmissions or re-
5 transmissions under section 114(d)(1). The ex-
6 emptions created in section 114(d)(1) do not
7 expand or reduce the rights of copyright owners
8 under paragraphs (1) through (5) of section
9 106 with respect to such transmissions and re-
10 transmissions.

11 “(H) DISTRIBUTION BY RENTAL, LEASE,
12 OR LENDING.—A compulsory license obtained
13 under subsection (b)(1) to make and distribute
14 phonorecords includes the right of the maker of
15 such a phonorecord to distribute or authorize
16 distribution of such phonorecord, other than by
17 means of a digital phonorecord delivery, by
18 rental, lease, or lending (or by acts or practices
19 in the nature of rental, lease, or lending). With
20 respect to each nondramatic musical work em-
21 bodied in the phonorecord, the royalty shall be
22 a proportion of the revenue received by the
23 compulsory licensee from every such act of dis-
24 tribution of the phonorecord under this clause
25 equal to the proportion of the revenue received

1 by the compulsory licensee from distribution of
2 the phonorecord under subsection
3 (a)(1)(A)(ii)(II) that is payable by a compulsory
4 licensee under that clause and under chapter 8.
5 The Register of Copyrights shall issue regula-
6 tions to carry out the purpose of this subpara-
7 graph.

8 “(I) PAYMENT OF ROYALTIES AND STATE-
9 MENTS OF ACCOUNT.—Except as provided in
10 paragraphs (4)(A)(i) and (10)(B) of subsection
11 (d), royalty payments shall be made on or be-
12 fore the twentieth day of each month and shall
13 include all royalties for the month next pre-
14 ceeding. Each monthly payment shall be made
15 under oath and shall comply with requirements
16 that the Register of Copyrights shall prescribe
17 by regulation. The Register shall also prescribe
18 regulations under which detailed cumulative an-
19 nual statements of account, certified by a cer-
20 tified public accountant, shall be filed for every
21 compulsory license under subsection (a). The
22 regulations covering both the monthly and the
23 annual statements of account shall prescribe
24 the form, content, and manner of certification

1 with respect to the number of records made and
2 the number of records distributed.

3 “(J) NOTICE OF DEFAULT AND TERMINATION OF COMPULSORY LICENSE.—In the
4 case of a license obtained under paragraph (1),
5 (2)(A), or (3) of subsection (b), if the copyright
6 owner does not receive the monthly payment
7 and the monthly and annual statements of ac-
8 count when due, the owner may give written no-
9 tice to the licensee that, unless the default is
10 remedied not later than 30 days after the date
11 on which the notice is sent, the compulsory li-
12 cense will be automatically terminated. Such
13 termination renders either the making or the
14 distribution, or both, of all phonorecords for
15 which the royalty has not been paid, actionable
16 as acts of infringement under section 501 and
17 fully subject to the remedies provided by sec-
18 tions 502 through 506. In the case of a license
19 obtained under subsection (b)(2)(B), license au-
20 thority under the compulsory license may be
21 terminated as provided in subsection
22 (d)(4)(E).”;

23 (4) by amending subsection (d) to read as fol-
24 lows:
25

1 “(d) BLANKET LICENSE FOR DIGITAL USES, ME-
2 CHANICAL LICENSING COLLECTIVE, AND DIGITAL LI-
3 CENSEE COORDINATOR.—

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

5 “(A) IN GENERAL.—A digital music pro-
6 vider that qualifies for a compulsory license
7 under subsection (a) may, by complying with
8 the terms and conditions of this subsection, ob-
9 tain a blanket license from copyright owners
10 through the mechanical licensing collective to
11 make and distribute digital phonorecord deliv-
12 eries of musical works through one or more cov-
13 ered activities.

14 “(B) INCLUDED ACTIVITIES.—A blanket li-
15 cense—

16 “(i) covers all musical works (or
17 shares of such works) available for compul-
18 sory licensing under this section for pur-
19 poses of engaging in covered activities, ex-
20 cept as provided in subparagraph (C);

21 “(ii) includes the making and dis-
22 tribution of server, intermediate, archival,
23 and incidental reproductions of musical
24 works that are reasonable and necessary
25 for the digital music provider to engage in

1 covered activities licensed under this sub-
2 section, solely for the purpose of engaging
3 in such covered activities; and

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

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

21 “(i) Where a voluntary license or indi-
22 vidual download license applies, the license
23 authority provided under the blanket li-
24 cense shall exclude any musical works (or

1 shares thereof) subject to the voluntary li-
2 cense or individual download license.

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

9 “(iii) The rates and terms of any vol-
10 untary license shall be subject to the sec-
11 ond sentence of clause (i) and clause (ii) of
12 subsection (c)(2)(A) and paragraph (9)(C),
13 as applicable.

14 “(D) PROTECTION AGAINST INFRINGE-
15 MENT ACTIONS.—A digital music provider that
16 obtains and complies with the terms of a valid
17 blanket license under this subsection shall not
18 be subject to an action for infringement of the
19 exclusive rights provided by paragraphs (1) and
20 (3) of section 106 under this title arising from
21 use of a musical work (or share thereof) to en-
22 gage in covered activities authorized by such li-
23 cense, subject to paragraph (4)(E).

24 “(E) OTHER REQUIREMENTS AND CONDI-
25 TIONS APPLY.—Except as expressly provided in

1 this subsection, each requirement, limitation,
2 condition, privilege, right, and remedy otherwise
3 applicable to compulsory licenses under this sec-
4 tion shall apply to compulsory blanket licenses
5 under this subsection.

6 “(2) AVAILABILITY OF BLANKET LICENSE.—

7 “(A) PROCEDURE FOR OBTAINING LI-
8 CENSE.—A digital music provider may obtain a
9 blanket license by submitting a notice of license
10 to the mechanical licensing collective that speci-
11 fies the particular covered activities in which
12 the digital music provider seeks to engage, as
13 follows:

14 “(i) The notice of license shall comply
15 in form and substance with requirements
16 that the Register of Copyrights shall estab-
17 lish by regulation.

18 “(ii) Unless rejected in writing by the
19 mechanical licensing collective not later
20 than 30 calendar days after the date on
21 which the mechanical licensing collective
22 receives the notice, the blanket license shall
23 be effective as of the date on which the no-
24 tice of license was sent by the digital music

1 provider, as shown by a physical or elec-
2 tronic record.

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

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

13 “(II) the digital music provider
14 has had a blanket license terminated
15 by the mechanical licensing collective
16 during the 3-year period preceding the
17 date on which the mechanical licens-
18 ing collective receives the notice pur-
19 suant to paragraph (4)(E).

20 “(iv) If a notice of license is rejected
21 under clause (iii)(I), the digital music pro-
22 vider shall have 30 calendar days after re-
23 ceipt of the notice of rejection to cure any
24 deficiency and submit an amended notice
25 of license to the mechanical licensing col-

1 lective. If the deficiency has been cured,
2 the mechanical licensing collective shall so
3 confirm in writing, and the license shall be
4 effective as of the date that the original
5 notice of license was provided by the dig-
6 ital music provider.

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

17 “(B) BLANKET LICENSE EFFECTIVE
18 DATE.—Blanket licenses shall be made available
19 by the mechanical licensing collective on and
20 after the license availability date. No such li-
21 cense shall be effective prior to the license avail-
22 ability date.

23 “(3) MECHANICAL LICENSING COLLECTIVE.—

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

1 “(i) is a nonprofit entity, not owned
2 by any other entity, that is created by
3 copyright owners to carry out responsibil-
4 ities under this subsection;

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

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

21 “(iv) has been designated by the Reg-
22 ister of Copyrights, with the approval of
23 the Librarian of Congress pursuant to sec-
24 tion 702, in accordance with subparagraph
25 (B).

1 “(B) DESIGNATION OF MECHANICAL LI-
2 CENSING COLLECTIVE.—

3 “(i) INITIAL DESIGNATION.—Not later
4 than 270 days after the enactment date,
5 the Register of Copyrights shall initially
6 designate the mechanical licensing collec-
7 tive as follows:

8 “(I) Not later than 90 calendar
9 days after the enactment date, the
10 Register shall publish notice in the
11 Federal Register soliciting informa-
12 tion to assist in identifying the appro-
13 priate entity to serve as the mechan-
14 ical licensing collective, including the
15 name and affiliation of each member
16 of the board of directors described
17 under subparagraph (D)(i) and each
18 committee established pursuant to
19 clauses (iii), (iv), and (v) of subpara-
20 graph (D).

21 “(II) After reviewing the infor-
22 mation requested under subclause (I)
23 and making a designation, the Reg-
24 ister shall publish notice in the Fed-
25 eral Register setting forth—

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

4 “(bb) the reasons for the
5 designation.

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

20 “(I) after reviewing the informa-
21 tion submitted and conducting addi-
22 tional proceedings as appropriate,
23 publish notice in the Federal Register
24 of a continuing designation or new
25 designation of the mechanical licens-

1 ing collective, as the case may be, and
2 the reasons for such a designation,
3 with any new designation to be effective
4 as of the first day of a month
5 that is not less than 6 months and
6 not longer than 9 months after the
7 date on which the Register publishes
8 the notice, as specified by the Register;
9 and

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

17 “(iii) CLOSEST ALTERNATIVE DESIGNATION.—If the Register is unable to
18 identify an entity that fulfills each of the
19 qualifications set forth in clauses (i)
20 through (iii) of subparagraph (A), the Register
21 shall designate the entity that most
22 nearly fulfills such qualifications for purposes
23 of carrying out the responsibilities of
24 the mechanical licensing collective.
25

1 “(C) AUTHORITIES AND FUNCTIONS.—

2 “(i) IN GENERAL.—The mechanical li-
3 censing collective is authorized to perform
4 the following functions, subject to more
5 particular requirements as described in
6 this subsection:

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

11 “(II) Collect and distribute royal-
12 ties from digital music providers for
13 covered activities.

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

20 “(IV) Maintain the musical
21 works database and other information
22 relevant to the administration of li-
23 censing activities under this section.

24 “(V) Administer a process by
25 which copyright owners can claim

1 ownership of musical works (and
2 shares of such works), and a process
3 by which royalties for works for which
4 the owner is not identified or located
5 are equitably distributed to known
6 copyright owners.

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

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

17 “(VIII) Engage in legal and
18 other efforts to enforce rights and ob-
19 ligations under this subsection, includ-
20 ing by filing bankruptcy proofs of
21 claims for amounts owed under li-
22 censes, and acting in coordination
23 with the digital licensee coordinator.

24 “(IX) Initiate and participate in
25 proceedings before the Copyright Roy-

1 alty Judges to establish the adminis-
2 trative assessment under this sub-
3 section.

4 “(X) Initiate and participate in
5 proceedings before the Copyright Of-
6 fice with respect to activities under
7 this subsection.

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

12 “(XII) Maintain records of the
13 activities of the mechanical licensing
14 collective and engage in and respond
15 to audits described in this subsection.

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

21 “(ii) RESTRICTIONS CONCERNING LI-
22 CENSING AND ADMINISTRATIVE ACTIVI-
23 TIES.—With respect to the administration
24 of licenses, except as provided in clauses (i)

1 and (iii) and subparagraph (E)(v), the me-
2 chanical licensing collective may only—

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

5 “(II) administer blanket licenses
6 for reproduction or distribution rights
7 in musical works for covered activi-
8 ties, including collecting and distrib-
9 uting royalties, pursuant to blanket li-
10 censes.

11 “(iii) ADDITIONAL ADMINISTRATIVE
12 ACTIVITIES.—Subject to paragraph
13 (11)(C), the mechanical licensing collective
14 may also administer, including by col-
15 lecting and distributing royalties, voluntary
16 licenses issued by, or individual download
17 licenses obtained from, copyright owners
18 only for reproduction or distribution rights
19 in musical works for covered activities, for
20 which the mechanical licensing collective
21 shall charge reasonable fees for such serv-
22 ices.

23 “(iv) RESTRICTION ON LOBBYING.—
24 The mechanical licensing collective may
25 not engage in government lobbying activi-

1 ties, but may engage in the activities de-
2 scribed in subclauses (IX), (X), and (XI)
3 of clause (i).

4 “(D) GOVERNANCE.—

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

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

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

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

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

1 spect to musical works they have au-
2 thored.

3 “(III) One nonvoting member
4 shall be a representative of the non-
5 profit trade association of music pub-
6 lishers that represents the greatest
7 percentage of the licensor market for
8 uses of musical works in covered ac-
9 tivities, as measured for the 3-year
10 period preceding the date on which
11 the member is appointed.

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

1 “(V) One nonvoting member
2 shall be a representative of a nation-
3 ally recognized nonprofit trade asso-
4 ciation whose primary mission is advo-
5 cacy on behalf of songwriters in the
6 United States.

7 “(ii) BYLAWS.—

8 “(I) ESTABLISHMENT.—Not
9 later than 1 year after the date on
10 which the mechanical licensing collec-
11 tive is initially designated by the Reg-
12 ister of Copyrights under subpara-
13 graph (B)(i), the collective shall estab-
14 lish bylaws to determine issues relat-
15 ing to the governance of the collective,
16 including, but not limited to—

17 “(aa) the length of the term
18 for each member of the board of
19 directors;

20 “(bb) the staggering of the
21 terms of the members of the
22 board of directors;

23 “(cc) a process for filling a
24 seat on the board of directors
25 that is vacated before the end of

1 the term with respect to that
2 seat;

3 “(dd) a process for electing
4 a member to the board of direc-
5 tors; and

6 “(ee) a management struc-
7 ture for daily operation of the
8 collective.

9 “(II) PUBLIC AVAILABILITY.—
10 The mechanical licensing collective
11 shall make the bylaws established
12 under subclause (I) available to the
13 public.

14 “(iii) BOARD MEETINGS.—The board
15 of directors shall meet not less frequently
16 than biannually and discuss matters perti-
17 nent to the operations of the mechanical li-
18 censing collective, including the mechanical
19 licensing collective budget.

20 “(iv) OPERATIONS ADVISORY COM-
21 MITTEE.—The board of directors of the
22 mechanical licensing collective shall estab-
23 lish an operations advisory committee con-
24 sisting of not fewer than 6 members to
25 make recommendations to the board of di-

1 mechanical licensing collective shall estab-
2 lish and appoint a dispute resolution com-
3 mittee that shall—

4 “(I) consist of not fewer than 6
5 members; and

6 “(II) include an equal number of
7 representatives of musical work copy-
8 right owners and professional song-
9 writers.

10 “(vii) MECHANICAL LICENSING COL-
11 LECTIVE ANNUAL REPORT.—

12 “(I) IN GENERAL.—Not later
13 than June 30 of each year com-
14 mencing after the license availability
15 date, the mechanical licensing collec-
16 tive shall post, and make available on-
17 line for a period of not less than 3
18 years, an annual report that sets forth
19 information regarding—

20 “(aa) the operational and li-
21 censing practices of the collective;

22 “(bb) how royalties are col-
23 lected and distributed;

24 “(cc) budgeting and expend-
25 itures;

1 “(dd) the collective total
2 costs for the preceding calendar
3 year;

4 “(ee) the projected annual
5 mechanical licensing collective
6 budget;

7 “(ff) aggregated royalty re-
8 cepts and payments;

9 “(gg) expenses that are
10 more than 10 percent of the an-
11 nual mechanical licensing collec-
12 tive budget; and

13 “(hh) the efforts of the col-
14 lective to locate and identify
15 copyright owners of unmatched
16 musical works (and shares of
17 works).

18 “(II) SUBMISSION.—On the date
19 on which the mechanical licensing col-
20 lective posts each report required
21 under subclause (I), the collective
22 shall provide a copy of the report to
23 the Register of Copyrights.

24 “(viii) INDEPENDENT OFFICERS.—An
25 individual serving as an officer of the me-

1 chanical licensing collective may not, at the
2 same time, also be an employee or agent of
3 any member of the board of directors of
4 the collective or any entity represented by
5 a member of the board of directors, as de-
6 scribed in clause (i).

7 “(ix) OVERSIGHT AND ACCOUNT-
8 ABILITY.—

9 “(I) IN GENERAL.—The mechan-
10 ical licensing collective shall—

11 “(aa) ensure that the poli-
12 cies and practices of the collective
13 are transparent and accountable;

14 “(bb) identify a point of
15 contact for publisher inquiries
16 and complaints with timely re-
17 dress; and

18 “(cc) establish an anti-co-
19 mingling policy for funds not col-
20 lected under this section and roy-
21 alties collected under this section.

22 “(II) AUDITS.—

23 “(aa) IN GENERAL.—Begin-
24 ning in the fourth full calendar
25 year that begins after the initial

1 designation of the mechanical li-
2 censing collective by the Register
3 of Copyrights under subpara-
4 graph (B)(i), and in every fifth
5 calendar year thereafter, the col-
6 lective shall retain a qualified
7 auditor that shall—

8 “(AA) examine the
9 books, records, and oper-
10 ations of the collective;

11 “(BB) prepare a report
12 for the board of directors of
13 the collective with respect to
14 the matters described in
15 item (bb); and

16 “(CC) not later than
17 December 31 of the year in
18 which the qualified auditor
19 is retained, deliver the re-
20 port described in subitem
21 (BB) to the board of direc-
22 tors of the collective.

23 “(bb) MATTERS AD-
24 DRESSED.—Each report prepared
25 under item (aa) shall address the

1 implementation and efficacy of
2 procedures of the mechanical li-
3 censing collective—

4 “(AA) for the receipt,
5 handling, and distribution of
6 royalty funds, including any
7 amounts held as unclaimed
8 royalties;

9 “(BB) to guard against
10 fraud, abuse, waste, and the
11 unreasonable use of funds;
12 and

13 “(CC) to protect the
14 confidentiality of financial,
15 proprietary, and other sen-
16 sitive information.

17 “(cc) PUBLIC AVAIL-
18 ABILITY.—With respect to each
19 report prepared under item (aa),
20 the mechanical licensing collective
21 shall—

22 “(AA) submit the re-
23 port to the Register of Copy-
24 rights; and

1 “(II) the copyright owner of the
2 work (or share thereof), and the own-
3 ership percentage of that owner;

4 “(III) contact information for
5 such copyright owner;

6 “(IV) to the extent reasonably
7 available to the mechanical licensing
8 collective—

9 “(aa) the international
10 standard musical work code for
11 the work; and

12 “(bb) identifying informa-
13 tion for sound recordings in
14 which the musical work is em-
15 bodied, including the name of the
16 sound recording, featured artist,
17 sound recording copyright owner,
18 producer, international standard
19 recording code, and other infor-
20 mation commonly used to assist
21 in associating sound recordings
22 with musical works; and

23 “(V) such other information as
24 the Register of Copyrights may pre-
25 scribe by regulation.

1 used to assist in associating
2 sound recordings with musical
3 works; and

4 “(ee) any additional infor-
5 mation reported to the mechan-
6 ical licensing collective that may
7 assist in identifying the work;
8 and

9 “(II) such other information re-
10 lating to the identity and ownership of
11 musical works (and shares of such
12 works) as the Register of Copyrights
13 may prescribe by regulation.

14 “(iv) SOUND RECORDING INFORMA-
15 TION.—Each musical work copyright
16 owner with any musical work listed in the
17 musical works database shall engage in
18 commercially reasonable efforts to deliver
19 to the mechanical licensing collective, in-
20 cluding for use in the musical works data-
21 base, to the extent such information is not
22 then available in the database, information
23 regarding the names of the sound record-
24 ings in which that copyright owner’s musi-

1 cal works (or shares thereof) are embodied,
2 to the extent practicable.

3 “(v) ACCESSIBILITY OF DATABASE.—
4 The musical works database shall be made
5 available to members of the public in a
6 searchable, online format, free of charge.
7 The mechanical licensing collective shall
8 make such database available in a bulk,
9 machine-readable format, through a widely
10 available software application, to the fol-
11 lowing entities:

12 “(I) Digital music providers oper-
13 ating under the authority of valid no-
14 tices of license, free of charge.

15 “(II) Significant nonblanket li-
16 censees in compliance with their obli-
17 gations under paragraph (6), free of
18 charge.

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

22 “(IV) The Register of Copy-
23 rights, free of charge (but the Reg-
24 ister shall not treat such database or

1 any information therein as a Govern-
2 ment record).

3 “(V) Any other person or entity
4 for a fee not to exceed the marginal
5 cost to the mechanical licensing collec-
6 tive of providing the database to such
7 person or entity.

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

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

15 “(i) NOTICES OF LICENSES.—The me-
16 chanical licensing collective shall receive,
17 review, and confirm or reject notices of li-
18 cense from digital music providers, as pro-
19 vided in paragraph (2)(A). The collective
20 shall maintain a current, publicly acces-
21 sible list of blanket licenses that includes
22 contact information for the licensees and
23 the effective dates of such licenses.

24 “(ii) NOTICES OF NONBLANKET AC-
25 TIVITY.—The mechanical licensing collec-

1 licenses, and the corresponding
2 pro rata amounts to be deducted
3 from royalties that would other-
4 wise be due under the blanket li-
5 cense; and

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

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

14 “(III) deposit into an interest-
15 bearing account, as provided in sub-
16 paragraph (H)(ii), royalties that can-
17 not be distributed due to—

18 “(aa) an inability to identify
19 or locate a copyright owner of a
20 musical work (or share thereof);
21 or

22 “(bb) a pending dispute be-
23 fore the dispute resolution com-
24 mittee of the mechanical licens-
25 ing collective.

1 “(ii) OTHER COLLECTION EFFORTS.—

2 Any royalties recovered by the mechanical
3 licensing collective as a result of efforts to
4 enforce rights or obligations under a blan-
5 ket license, including through a bankruptcy
6 proceeding or other legal action, shall be
7 distributed to copyright owners based on
8 available usage information and in accord-
9 ance with the procedures described in sub-
10 clauses (I) and (II) of clause (i), on a pro
11 rata basis in proportion to the overall per-
12 centage recovery of the total royalties
13 owed, with any pro rata share of royalties
14 that cannot be distributed deposited in an
15 interest-bearing account as provided in
16 subparagraph (H)(ii).

17 “(H) HOLDING OF ACCRUED ROYAL-
18 TIES.—

19 “(i) HOLDING PERIOD.—The mechan-
20 ical licensing collective shall hold accrued
21 royalties associated with particular musical
22 works (and shares of works) that remain
23 unmatched for a period of not less than 3
24 years after the date on which the funds
25 were received by the mechanical licensing

1 collective, or not less than 3 years after the
2 date on which the funds were accrued by
3 a digital music provider that subsequently
4 transferred such funds to the mechanical
5 licensing collective pursuant to paragraph
6 (10)(B), whichever period expires sooner.

7 “(ii) INTEREST-BEARING ACCOUNT.—
8 Accrued royalties for unmatched works
9 (and shares thereof) shall be maintained
10 by the mechanical licensing collective in an
11 interest-bearing account that earns month-
12 ly interest—

13 “(I) at the Federal, short-term
14 rate; and

15 “(II) that accrues for the benefit
16 of copyright owners entitled to pay-
17 ment of such accrued royalties.

18 “(I) MUSICAL WORKS CLAIMING PROC-
19 ESS.—When a copyright owner of an un-
20 matched work (or share of a work) has been
21 identified and located in accordance with the
22 procedures of the mechanical licensing collec-
23 tive, the collective shall—

1 “(i) update the musical works data-
2 base and the other records of the collective
3 accordingly; and

4 “(ii) provided that accrued royalties
5 for the musical work (or share thereof)
6 have not yet been included in a distribution
7 pursuant to subparagraph (J)(i), pay such
8 accrued royalties and a proportionate
9 amount of accrued interest associated with
10 that work (or share thereof) to the copy-
11 right owner, accompanied by a cumulative
12 statement of account reflecting usage of
13 such work and accrued royalties based on
14 information provided by digital music pro-
15 viders to the mechanical licensing collec-
16 tive.

17 “(J) DISTRIBUTION OF UNCLAIMED AC-
18 CRUED ROYALTIES.—

19 “(i) DISTRIBUTION PROCEDURES.—
20 After the expiration of the prescribed hold-
21 ing period for accrued royalties provided in
22 subparagraph (H)(i), the mechanical li-
23 censing collective shall distribute such ac-
24 crued royalties, along with a proportionate
25 share of accrued interest, to copyright

1 owners identified in the records of the col-
2 lective, subject to the following require-
3 ments, and in accordance with the policies
4 and procedures established under clause
5 (ii):

6 “(I) The first such distribution
7 shall occur on or after January 1 of
8 the second full calendar year to com-
9 mence after the license availability
10 date, with not less than 1 such dis-
11 tribution to take place during each
12 calendar year thereafter.

13 “(II) Copyright owners’ payment
14 shares for unclaimed accrued royalties
15 for particular reporting periods shall
16 be determined in a transparent and
17 equitable manner based on data indi-
18 cating the relative market shares of
19 such copyright owners as reflected in
20 reports of usage provided by digital
21 music providers for covered activities
22 for the periods in question, including,
23 in addition to usage data provided to
24 the mechanical licensing collective,
25 usage data provided to copyright own-

1 ers under voluntary licenses and indi-
2 vidual download licenses for covered
3 activities, to the extent such informa-
4 tion is available to the mechanical li-
5 censing collective. In furtherance of
6 the determination of equitable market
7 shares under this subparagraph—

8 “(aa) the mechanical licens-
9 ing collective may require copy-
10 right owners seeking distribu-
11 tions of unclaimed accrued royals-
12 ties to provide, or direct the pro-
13 vision of, information concerning
14 the usage of musical works under
15 voluntary licenses and individual
16 download licenses for covered ac-
17 tivities; and

18 “(bb) the mechanical licens-
19 ing collective shall take appro-
20 priate steps to safeguard the con-
21 fidentiality and security of usage,
22 financial, and other sensitive
23 data used to compute market
24 shares in accordance with the
25 confidentiality provisions pre-

1 with respect to such a work (and a
2 share of such a work);

3 “(II) engage in diligent, good-
4 faith efforts to publicize, throughout
5 the music industry—

6 “(aa) the existence of the
7 collective and the ability to claim
8 unclaimed accrued royalties for
9 unmatched musical works (and
10 shares of such works) held by the
11 collective;

12 “(bb) the procedures by
13 which copyright owners may
14 identify themselves and provide
15 contact, ownership, and other rel-
16 evant information to the collec-
17 tive in order to receive payments
18 of accrued royalties;

19 “(cc) any transfer of ac-
20 crued royalties for musical works
21 under paragraph (10)(B), not
22 later than 180 days after the
23 date on which the transfer is re-
24 ceived; and

1 “(dd) any pending distribu-
2 tion of unclaimed accrued royalti-
3 ties and accrued interest, not less
4 than 90 days before the date on
5 which the distribution is made;
6 and

7 “(III) as appropriate, participate
8 in music industry conferences and
9 events for the purpose of publicizing
10 the matters described in subclause
11 (II).

12 “(iv) SONGWRITER PAYMENTS.—
13 Copyright owners that receive a distribu-
14 tion of unclaimed accrued royalties and ac-
15 crued interest shall pay or credit a portion
16 to songwriters (or the authorized agents of
17 songwriters) on whose behalf the copyright
18 owners license or administer musical works
19 for covered activities, in accordance with
20 applicable contractual terms, but notwith-
21 standing any agreement to the contrary—

22 “(I) such payments and credits
23 to songwriters shall be allocated in
24 proportion to reported usage of indi-
25 vidual musical works by digital music

1 providers during the reporting periods
2 covered by the distribution from the
3 mechanical licensing collective; and

4 “(II) in no case shall the pay-
5 ment or credit to an individual song-
6 writer be less than 50 percent of the
7 payment received by the copyright
8 owner attributable to usage of musical
9 works (or shares of works) of that
10 songwriter.

11 “(K) DISPUTE RESOLUTION.—The dispute
12 resolution committee established under subpara-
13 graph (D)(vi) shall establish policies and proce-
14 dures—

15 “(i) for copyright owners to address in
16 a timely and equitable manner disputes re-
17 lating to ownership interests in musical
18 works licensed under this section and allo-
19 cation and distribution of royalties by the
20 mechanical licensing collective, subject to
21 the approval of the board of directors of
22 the mechanical licensing collective;

23 “(ii) that shall include a mechanism
24 to hold disputed funds in accordance with
25 the requirements described in subpara-

1 graph (H)(ii) pending resolution of the dis-
2 pute; and

3 “(iii) except as provided in paragraph
4 (11)(D), that shall not affect any legal or
5 equitable rights or remedies available to
6 any copyright owner or songwriter con-
7 cerning ownership of, and entitlement to
8 royalties for, a musical work.

9 “(L) VERIFICATION OF PAYMENTS BY ME-
10 CHANICAL LICENSING COLLECTIVE.—

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

21 “(I) A copyright owner may
22 audit the mechanical licensing collec-
23 tive only once in a year for any or all
24 of the 3 calendar years preceding the
25 year in which the audit is commenced,

1 and may not audit records for any
2 calendar year more than once.

3 “(II) The audit shall be con-
4 ducted by a qualified auditor, who
5 shall perform the audit during the or-
6 dinary course of business by exam-
7 ining the books, records, and data of
8 the mechanical licensing collective, ac-
9 cording to generally accepted auditing
10 standards and subject to applicable
11 confidentiality requirements pre-
12 scribed by the Register of Copyrights
13 under paragraph (12)(C).

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

23 “(IV) To commence the audit,
24 any copyright owner shall file with the
25 Copyright Office a notice of intent to

1 conduct an audit of the mechanical li-
2 censing collective, identifying the pe-
3 riod of time to be audited, and shall
4 simultaneously deliver a copy of such
5 notice to the mechanical licensing col-
6 lective. The Register of Copyrights
7 shall cause the notice of audit to be
8 published in the Federal Register not
9 later than 45 calendar days after the
10 date on which the notice is received.

11 “(V) The qualified auditor shall
12 determine the accuracy of royalty pay-
13 ments, including whether an under-
14 payment or overpayment of royalties
15 was made by the mechanical licensing
16 collective to each auditing copyright
17 owner, except that, before providing a
18 final audit report to any such copy-
19 right owner, the qualified auditor
20 shall provide a tentative draft of the
21 report to the mechanical licensing col-
22 lective and allow the mechanical li-
23 censing collective a reasonable oppor-
24 tunity to respond to the findings, in-

1 including by clarifying issues and cor-
2 recting factual errors.

3 “(VI) The auditing copyright
4 owner or owners shall bear the cost of
5 the audit. In case of an underpayment
6 to any copyright owner, the mechan-
7 ical licensing collective shall pay the
8 amounts of any such underpayment to
9 such auditing copyright owner, as ap-
10 propriate. In case of an overpayment
11 by the mechanical licensing collective,
12 the mechanical licensing collective
13 may debit the account of the auditing
14 copyright owner or owners for such
15 overpaid amounts, or such owner or
16 owners shall refund overpaid amounts
17 to the mechanical licensing collective,
18 as appropriate.

19 “(ii) ALTERNATIVE VERIFICATION
20 PROCEDURES.—Nothing in this subpara-
21 graph shall preclude a copyright owner and
22 the mechanical licensing collective from
23 agreeing to audit procedures different from
24 those described in this subparagraph, ex-
25 cept that a notice of the audit shall be pro-

1 vided to and published by the Copyright
2 Office as described in clause (i)(IV).

3 “(M) RECORDS OF MECHANICAL LICENS-
4 ING COLLECTIVE.—

5 “(i) RECORDS MAINTENANCE.—The
6 mechanical licensing collective shall ensure
7 that all material records of the operations
8 of the mechanical licensing collective, in-
9 cluding those relating to notices of license,
10 the administration of the claims process of
11 the mechanical licensing collective, reports
12 of usage, royalty payments, receipt and
13 maintenance of accrued royalties, royalty
14 distribution processes, and legal matters,
15 are preserved and maintained in a secure
16 and reliable manner, with appropriate com-
17 mercially reasonable safeguards against
18 unauthorized access, copying, and disclo-
19 sure, and subject to the confidentiality re-
20 quirements prescribed by the Register of
21 Copyrights under paragraph (12)(C) for a
22 period of not less than 7 years after the
23 date of creation or receipt, whichever oc-
24 curs later.

1 “(ii) RECORDS ACCESS.—The mechan-
2 ical licensing collective shall provide
3 prompt access to electronic and other
4 records pertaining to the administration of
5 a copyright owner’s musical works upon
6 reasonable written request of the owner or
7 the authorized representative of the owner.

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

11 “(A) ROYALTY REPORTING AND PAY-
12 MENTS.—

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

23 “(ii) DATA TO BE REPORTED.—In re-
24 porting usage of musical works to the me-
25 chanical licensing collective, a digital music

1 provider shall provide usage data for musi-
2 cal works used under the blanket license
3 and usage data for musical works used in
4 covered activities under voluntary licenses
5 and individual download licenses. In the re-
6 port of usage, the digital music provider
7 shall—

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

11 “(aa) provide identifying in-
12 formation for the sound record-
13 ing, including sound recording
14 name, featured artist, and, to the
15 extent acquired by the digital
16 music provider in connection with
17 its use of sound recordings of
18 musical works to engage in cov-
19 ered activities, including pursu-
20 ant to subparagraph (B), sound
21 recording copyright owner, pro-
22 ducer, international standard re-
23 cording code, and other informa-
24 tion commonly used in the indus-
25 try to identify sound recordings

1 and match them to the musical
2 works the sound recordings em-
3 body;

4 “(bb) to the extent acquired
5 by the digital music provider in
6 the metadata provided by sound
7 recording copyright owners or
8 other licensors of sound record-
9 ings in connection with the use of
10 sound recordings of musical
11 works to engage in covered activi-
12 ties, including pursuant to sub-
13 paragraph (B), provide informa-
14 tion concerning authorship and
15 ownership of the applicable rights
16 in the musical work embodied in
17 the sound recording (including
18 each songwriter, publisher name,
19 and respective ownership share)
20 and the international standard
21 musical work code; and

22 “(cc) provide the number of
23 digital phonorecord deliveries of
24 the sound recording, including

1 limited downloads and interactive
2 streams;

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

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

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

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

3 “(iv) ADOPTION OF REGULATIONS.—
4 The Register of Copyrights shall adopt
5 regulations—

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

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

18 “(B) COLLECTION OF SOUND RECORDING
19 INFORMATION.—A digital music provider shall
20 engage in good-faith, commercially reasonable
21 efforts to obtain from sound recording copy-
22 right owners and other licensors of sound re-
23 cordings made available through the service of
24 such digital music provider information con-
25 cerning—

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

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

11 “(C) PAYMENT OF ADMINISTRATIVE AS-
12 SESSMENT.—A digital music provider and any
13 significant nonblanket licensee shall pay the ad-
14 ministrative assessment established under para-
15 graph (7)(D) in accordance with this subsection
16 and applicable regulations.

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

19 “(i) VERIFICATION PROCESS.—The
20 mechanical licensing collective may conduct
21 an audit of a digital music provider oper-
22 ating under the blanket license to verify
23 the accuracy of royalty payments by the
24 digital music provider to the mechanical li-
25 censing collective as follows:

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

12 “(II) The audit shall be con-
13 ducted by a qualified auditor, who
14 shall perform the audit during the or-
15 dinary course of business by exam-
16 ining the books, records, and data of
17 the digital music provider, according
18 to generally accepted auditing stand-
19 ards and subject to applicable con-
20 fidentiality requirements prescribed by
21 the Register of Copyrights under
22 paragraph (12)(C).

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

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

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

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

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

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

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

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

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

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

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

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

8 “(III) provides 1 or more month-
9 ly reports of usage to the mechanical
10 licensing collective that, on the whole,
11 is or are materially deficient as a re-
12 sult of inaccurate, missing, or
13 unreadable data, where the correct
14 data was available to the digital music
15 provider and required to be reported
16 under this section and applicable reg-
17 ulations;

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

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

1 the blanket license under this section
2 for a period of not less than 60 cal-
3 endar days.

4 “(ii) NOTICE OF DEFAULT AND TER-
5 MINATION.—In case of a default by a dig-
6 ital music provider, the mechanical licens-
7 ing collective may proceed to terminate the
8 blanket license of the digital music pro-
9 vider as follows:

10 “(I) The mechanical licensing
11 collective shall provide written notice
12 to the digital music provider describ-
13 ing with reasonable particularity the
14 default and advising that unless such
15 default is cured not later than 60 cal-
16 endar days after the date of the no-
17 tice, the blanket license will automati-
18 cally terminate at the end of that pe-
19 riod.

20 “(II) If the digital music provider
21 fails to remedy the default before the
22 end of the 60-day period described in
23 subclause (I), the license shall termi-
24 nate without any further action on the
25 part of the mechanical licensing col-

1 lective. Such termination renders the
2 making of all digital phonorecord de-
3 liveries of all musical works (and
4 shares thereof) covered by the blanket
5 license for which the royalty or ad-
6 ministrative assessment has not been
7 paid actionable as acts of infringe-
8 ment under section 501 and subject to
9 the remedies provided by sections 502
10 through 506.

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

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

1 any additional supporting evidence pre-
2 sented by the parties.

3 “(5) DIGITAL LICENSEE COORDINATOR.—

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

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

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

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

23 “(iv) has been designated by the Reg-
24 ister of Copyrights, with the approval of
25 the Librarian of Congress pursuant to sec-

1 tion 702, in accordance with subparagraph
2 (B).

3 “(B) DESIGNATION OF DIGITAL LICENSEE
4 COORDINATOR.—

5 “(i) INITIAL DESIGNATION.—The
6 Register of Copyrights shall initially des-
7 ignate the digital licensee coordinator not
8 later than 270 days after the enactment
9 date, in accordance with the same proce-
10 dure described for designation of the me-
11 chanical licensing collective in paragraph
12 (3)(B)(i).

13 “(ii) PERIODIC REVIEW OF DESIGNA-
14 TION.—Following the initial designation of
15 the digital licensee coordinator, the Reg-
16 ister of Copyrights shall, every 5 years, be-
17 ginning with the fifth full calendar year to
18 commence after the initial designation, de-
19 termine whether the existing designation
20 should be continued, or a different entity
21 meeting the criteria described in clauses (i)
22 through (iii) of subparagraph (A) should
23 be designated, in accordance with the same
24 procedure described for the mechanical li-
25 censing collective in paragraph (3)(B)(ii).

1 and any dues to be paid by its mem-
2 bers.

3 “(II) Engage in efforts to enforce
4 notice and payment obligations with
5 respect to the administrative assess-
6 ment, including by receiving informa-
7 tion from and coordinating with the
8 mechanical licensing collective.

9 “(III) Initiate and participate in
10 proceedings before the Copyright Roy-
11 alty Judges to establish the adminis-
12 trative assessment under this sub-
13 section.

14 “(IV) Initiate and participate in
15 proceedings before the Copyright Of-
16 fice with respect to activities under
17 this subsection.

18 “(V) Gather and provide docu-
19 mentation for use in proceedings be-
20 fore the Copyright Royalty Judges to
21 set rates and terms under this section.

22 “(VI) Maintain records of its ac-
23 tivities.

24 “(VII) Assist in publicizing the
25 existence of the mechanical licensing

1 collective and the ability of copyright
2 owners to claim royalties for un-
3 matched musical works (and shares of
4 works) through the collective.

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

9 “(ii) RESTRICTION ON LOBBYING.—
10 The digital licensee coordinator may not
11 engage in government lobbying activities,
12 but may engage in the activities described
13 in subclauses (III), (IV), and (V) of clause
14 (i).

15 “(iii) ASSISTANCE WITH PUBLICITY
16 FOR UNCLAIMED ROYALTIES.—The digital
17 licensee coordinator shall make reasonable,
18 good-faith efforts to assist the mechanical
19 licensing collective in the efforts of the col-
20 lective to locate and identify copyright
21 owners of unmatched musical works (and
22 shares of such works) by encouraging dig-
23 ital music providers to publicize the exist-
24 ence of the collective and the ability of

1 copyright owners to claim unclaimed ac-
2 crued royalties, including by—

3 “(I) posting contact information
4 for the collective at reasonably promi-
5 nent locations on digital music pro-
6 vider websites and applications; and

7 “(II) conducting in-person out-
8 reach activities with songwriters.

9 “(6) REQUIREMENTS FOR SIGNIFICANT NON-
10 BLANKET LICENSEES.—

11 “(A) IN GENERAL.—

12 “(i) NOTICE OF ACTIVITY.—Not later
13 than 45 calendar days after the license
14 availability date, or 45 calendar days after
15 the end of the first full calendar month in
16 which an entity initially qualifies as a sig-
17 nificant nonblanket licensee, whichever oc-
18 curs later, a significant nonblanket licensee
19 shall submit a notice of nonblanket activity
20 to the mechanical licensing collective. The
21 notice of nonblanket activity shall comply
22 in form and substance with requirements
23 that the Register of Copyrights shall estab-
24 lish by regulation, and a copy shall be

1 made available to the digital licensee coordi-
2 nator.

3 “(ii) REPORTING AND PAYMENT OBLI-
4 GATIONS.—The notice of nonblanket activ-
5 ity submitted to the mechanical licensing
6 collective shall be accompanied by a report
7 of usage that contains the information de-
8 scribed in paragraph (4)(A)(ii), as well as
9 any payment of the administrative assess-
10 ment required under this subsection and
11 applicable regulations. Thereafter, subject
12 to clause (iii), a significant nonblanket li-
13 censee shall continue to provide monthly
14 reports of usage, accompanied by any re-
15 quired payment of the administrative as-
16 sessment, to the mechanical licensing col-
17 lective. Such reports and payments shall be
18 submitted not later than 45 calendar days
19 after the end of the calendar month being
20 reported.

21 “(iii) DISCONTINUATION OF OBLIGA-
22 TIONS.—An entity that has submitted a
23 notice of nonblanket activity to the me-
24 chanical licensing collective that has ceased
25 to qualify as a significant nonblanket li-

1 censee may so notify the collective in writ-
2 ing. In such case, as of the calendar month
3 in which such notice is provided, such enti-
4 ty shall no longer be required to provide
5 reports of usage or pay the administrative
6 assessment, but if such entity later quali-
7 fies as a significant nonblanket licensee,
8 such entity shall again be required to com-
9 ply with clauses (i) and (ii).

10 “(B) REPORTING BY MECHANICAL LICENS-
11 ING COLLECTIVE TO DIGITAL LICENSEE COOR-
12 DINATOR.—

13 “(i) MONTHLY REPORTS OF NON-
14 COMPLIANT LICENSEES.—The mechanical
15 licensing collective shall provide monthly
16 reports to the digital licensee coordinator
17 setting forth any significant nonblanket li-
18 censees of which the collective is aware
19 that have failed to comply with subpara-
20 graph (A).

21 “(ii) TREATMENT OF CONFIDENTIAL
22 INFORMATION.—The mechanical licensing
23 collective and digital licensee coordinator
24 shall take appropriate steps to safeguard
25 the confidentiality and security of financial

1 and other sensitive data shared under this
2 subparagraph, in accordance with the con-
3 fidentiality requirements prescribed by the
4 Register of Copyrights under paragraph
5 (12)(C).

6 “(C) LEGAL ENFORCEMENT EFFORTS.—

7 “(i) FEDERAL COURT ACTION.—

8 Should the mechanical licensing collective
9 or digital licensee coordinator become
10 aware that a significant nonblanket li-
11 censee has failed to comply with subpara-
12 graph (A), either may commence an action
13 in an appropriate district court of the
14 United States for damages and injunctive
15 relief. If the significant nonblanket licensee
16 is found liable, the court shall, absent a
17 finding of excusable neglect, award dam-
18 ages in an amount equal to three times the
19 total amount of the unpaid administrative
20 assessment and, notwithstanding anything
21 to the contrary in section 505, reasonable
22 attorney’s fees and costs, as well as such
23 other relief as the court determines appro-
24 priate. In all other cases, the court shall
25 award relief as appropriate. Any recovery

1 of damages shall be payable to the me-
2 chanical licensing collective as an offset to
3 the collective total costs.

4 “(ii) STATUTE OF LIMITATIONS FOR
5 ENFORCEMENT ACTION.—Any action de-
6 scribed in this subparagraph shall be com-
7 menced within the time period described in
8 section 507(b).

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

17 “(7) FUNDING OF MECHANICAL LICENSING
18 COLLECTIVE.—

19 “(A) IN GENERAL.—The collective total
20 costs shall be funded by—

21 “(i) an administrative assessment, as
22 such assessment is established by the
23 Copyright Royalty Judges pursuant to sub-
24 paragraph (D) from time to time, to be
25 paid by—

1 “(I) digital music providers that
2 are engaged, in all or in part, in cov-
3 ered activities pursuant to a blanket
4 license; and

5 “(II) significant nonblanket li-
6 censees; and

7 “(ii) voluntary contributions from dig-
8 ital music providers and significant non-
9 blanket licensees as may be agreed with
10 copyright owners.

11 “(B) VOLUNTARY CONTRIBUTIONS.—

12 “(i) AGREEMENTS CONCERNING CON-
13 TRIBUTIONS.—Except as provided in
14 clause (ii), voluntary contributions by dig-
15 ital music providers and significant non-
16 blanket licensees shall be determined by
17 private negotiation and agreement, and the
18 following conditions apply:

19 “(I) The date and amount of
20 each voluntary contribution to the me-
21 chanical licensing collective shall be
22 documented in a writing signed by an
23 authorized agent of the mechanical li-
24 censing collective and the contributing
25 party.

1 “(II) Such agreement shall be
2 made available as required in pro-
3 ceedings before the Copyright Royalty
4 Judges to establish or adjust the ad-
5 ministrative assessment in accordance
6 with applicable statutory and regu-
7 latory provisions and rulings of the
8 Copyright Royalty Judges.

9 “(ii) TREATMENT OF CONTRIBU-
10 TIONS.—Each voluntary contribution de-
11 scribed in clause (i) shall be treated for
12 purposes of an administrative assessment
13 proceeding as an offset to the collective
14 total costs that would otherwise be recov-
15 ered through the administrative assess-
16 ment. Any allocation or reallocation of vol-
17 untary contributions between or among in-
18 dividual digital music providers or signifi-
19 cant nonblanket licensees shall be a matter
20 of private negotiation and agreement
21 among such parties and outside the scope
22 of the administrative assessment pro-
23 ceeding.

24 “(C) INTERIM APPLICATION OF ACCRUED
25 ROYALTIES.—In the event that the administra-

1 tive assessment, together with any funding from
2 voluntary contributions as provided in subpara-
3 graphs (A) and (B), is inadequate to cover cur-
4 rent collective total costs, the collective, with
5 approval of its board of directors, may apply
6 unclaimed accrued royalties on an interim basis
7 to defray such costs, subject to future reim-
8 bursement of such royalties from future collec-
9 tions of the assessment.

10 “(D) DETERMINATION OF ADMINISTRA-
11 TIVE ASSESSMENT.—

12 “(i) ADMINISTRATIVE ASSESSMENT TO
13 COVER COLLECTIVE TOTAL COSTS.—The
14 administrative assessment shall be used
15 solely and exclusively to fund the collective
16 total costs.

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

1 administrative assessment determined in such
2 proceeding shall—

3 “(I) be wholly independent of
4 royalty rates and terms applicable to
5 digital music providers, which shall
6 not be taken into consideration in any
7 manner in establishing the adminis-
8 trative assessment;

9 “(II) be established by the Copy-
10 right Royalty Judges in an amount
11 that is calculated to defray the rea-
12 sonable collective total costs;

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

19 “(IV) may be in the form of a
20 percentage of royalties payable under
21 this section for usage of musical
22 works in covered activities (regardless
23 of whether a different rate applies
24 under a voluntary license), or any
25 other usage-based metric reasonably

1 total costs, resulting in a surplus;
2 and

3 “(cc) the amount of any vol-
4 untary contributions by digital
5 music providers or significant
6 nonblanket licensees in relevant
7 periods, described in subpara-
8 graphs (A) and (B) of paragraph
9 (7).

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

14 “(I) Not later than 270 days
15 after the enactment date, the Copy-
16 right Royalty Judges shall commence
17 a proceeding to establish the initial
18 administrative assessment by pub-
19 lishing a notice in the Federal Reg-
20 ister seeking petitions to participate.

21 “(II) The mechanical licensing
22 collective and digital licensee coordi-
23 nator shall participate in the pro-
24 ceeding described in subclause (I),
25 along with any interested copyright

1 owners, digital music providers or sig-
2 nificant nonblanket licensees that
3 have notified the Copyright Royalty
4 Judges of their desire to participate.

5 “(III) The Copyright Royalty
6 Judges shall establish a schedule for
7 submission by the parties of informa-
8 tion that may be relevant to estab-
9 lishing the administrative assessment,
10 including actual and anticipated col-
11 lective total costs of the mechanical li-
12 censing collective, actual and antici-
13 pated collections from digital music
14 providers and significant nonblanket
15 licensees, and documentation of vol-
16 untary contributions, as well as a
17 schedule for further proceedings,
18 which shall include a hearing, as the
19 Copyright Royalty Judges determine
20 appropriate.

21 “(IV) The initial administrative
22 assessment shall be determined, and
23 such determination shall be published
24 in the Federal Register by the Copy-
25 right Royalty Judges, not later than 1

1 year after commencement of the pro-
2 ceeding described in this clause. The
3 determination shall be supported by a
4 written record. The initial administra-
5 tive assessment shall be effective as of
6 the license availability date, and shall
7 continue in effect unless and until an
8 adjusted administrative assessment is
9 established pursuant to an adjustment
10 proceeding under clause (iv).

11 “(iv) ADJUSTMENT OF ADMINISTRA-
12 TIVE ASSESSMENT.—The administrative
13 assessment may be adjusted by the Copy-
14 right Royalty Judges periodically, in ac-
15 cordance with the following procedures:

16 “(I) Not earlier than 1 year after
17 the most recent publication of a deter-
18 mination of the administrative assess-
19 ment by the Copyright Royalty
20 Judges, the mechanical licensing col-
21 lective, the digital licensee coordi-
22 nator, or one or more interested copy-
23 right owners, digital music providers,
24 or significant nonblanket licensees,
25 may file a petition with the Copyright

1 Royalty Judges in the month of May
2 to commence a proceeding to adjust
3 the administrative assessment.

4 “(II) Notice of the commence-
5 ment of such proceeding shall be pub-
6 lished in the Federal Register in the
7 month of June following the filing of
8 any petition, with a schedule of re-
9 quested information and additional
10 proceedings, as described in clause
11 (iii)(III). The mechanical licensing
12 collective and digital licensee coordi-
13 nator shall participate in such pro-
14 ceeding, along with any interested
15 copyright owners, digital music pro-
16 viders, or significant nonblanket li-
17 censees that have notified the Copy-
18 right Royalty Judges of their desire to
19 participate.

20 “(III) The determination of the
21 adjusted administrative assessment,
22 which shall be supported by a written
23 record, shall be published in the Fed-
24 eral Register during June of the cal-
25 endar year following the commence-

1 ment of the proceeding. The adjusted
2 administrative assessment shall take
3 effect January 1 of the year following
4 such publication.

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

1 ing the period the administrative assess-
2 ment is in effect.

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

12 “(vii) APPEAL OF ADMINISTRATIVE
13 ASSESSMENT.—The determination of an
14 administrative assessment by the Copy-
15 right Royalty Judges shall be appealable,
16 not later than 30 calendar days after pub-
17 lication in the Federal Register, to the
18 Court of Appeals for the District of Co-
19 lumbia Circuit by any party that fully par-
20 ticipated in the proceeding. The adminis-
21 trative assessment as established by the
22 Copyright Royalty Judges shall remain in
23 effect pending the final outcome of any
24 such appeal, and the mechanical licensing
25 collective, digital licensee coordinator, dig-

1 ital music providers, and significant non-
2 blanket licensees shall implement appro-
3 priate financial or other measures not later
4 than 90 days after any modification of the
5 assessment to reflect and account for such
6 outcome.

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

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

13 “(A) RESTRICTIONS ON RATESETTING
14 PARTICIPATION.—Neither the mechanical li-
15 censing collective nor the digital licensee coordi-
16 nator shall be a party to a proceeding described
17 in subsection (c)(1)(E), except that the mechan-
18 ical licensing collective or the digital licensee co-
19 ordinator may gather and provide financial and
20 other information for the use of a party to such
21 a proceeding and comply with requests for in-
22 formation as required under applicable statu-
23 tory and regulatory provisions and rulings of
24 the Copyright Royalty Judges.

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

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

12 “(ii) The availability of late fees shall
13 in no way prevent a copyright owner or the
14 mechanical licensing collective from assert-
15 ing any other rights or remedies to which
16 such copyright owner or the mechanical li-
17 censing collective may be entitled under
18 this title.

19 “(C) INTERIM RATE AGREEMENTS IN GEN-
20 ERAL.—For any covered activity for which no
21 rate or terms have been established by the
22 Copyright Royalty Judges, the mechanical li-
23 censing collective and any digital music provider
24 may agree to an interim rate and terms for

1 such activity under the blanket license, and any
2 such rate and terms—

3 “(i) shall be treated as nonpreceden-
4 tial and not cited or relied upon in any
5 ratesetting proceeding before the Copyright
6 Royalty Judges or any other tribunal; and

7 “(ii) shall automatically expire upon
8 the establishment of a rate and terms for
9 such covered activity by the Copyright
10 Royalty Judges, under subsection
11 (c)(1)(E).

12 “(D) ADJUSTMENTS FOR INTERIM
13 RATES.—The rate and terms established by the
14 Copyright Royalty Judges for a covered activity
15 to which an interim rate and terms have been
16 agreed under subparagraph (C) shall supersede
17 the interim rate and terms and apply retro-
18 actively to the inception of the activity under
19 the blanket license. In such case, not later than
20 90 days after the effective date of the rate and
21 terms established by the Copyright Royalty
22 Judges—

23 “(i) if the rate established by the
24 Copyright Royalty Judges exceeds the in-
25 terim rate, the digital music provider shall

1 pay to the mechanical licensing collective
2 the amount of any underpayment of roy-
3 ties due; or

4 “(ii) if the interim rate exceeds the
5 rate established by the Copyright Royalty
6 Judges, the mechanical licensing collective
7 shall credit the account of the digital music
8 provider for the amount of any overpay-
9 ment of royalties due.

10 “(9) TRANSITION TO BLANKET LICENSES.—

11 “(A) SUBSTITUTION OF BLANKET LI-
12 CENSE.—On the license availability date, a
13 blanket license shall, without any interruption
14 in license authority enjoyed by such digital
15 music provider, be automatically substituted for
16 and supersede any existing compulsory license
17 previously obtained under this section by the
18 digital music provider from a copyright owner
19 to engage in 1 or more covered activities with
20 respect to a musical work, except that such sub-
21 stitution shall not apply to any authority ob-
22 tained from a record company pursuant to a
23 compulsory license to make and distribute per-
24 manent downloads unless and until such record
25 company terminates such authority in writing

1 to take effect at the end of a monthly reporting
2 period, with a copy to the mechanical licensing
3 collective.

4 “(B) EXPIRATION OF EXISTING LI-
5 CENSES.—Except to the extent provided in sub-
6 paragraph (A), on and after the license avail-
7 ability date, licenses other than individual
8 download licenses obtained under this section
9 for covered activities prior to the license avail-
10 ability date shall no longer continue in effect.

11 “(C) TREATMENT OF VOLUNTARY LI-
12 CENSES.—A voluntary license for a covered ac-
13 tivity in effect on the license availability date
14 will remain in effect unless and until the vol-
15 untary license expires according to the terms of
16 the voluntary license, or the parties agree to
17 amend or terminate the voluntary license. In a
18 case where a voluntary license for a covered ac-
19 tivity entered into before the license availability
20 date incorporates the terms of this section by
21 reference, the terms so incorporated (but not
22 the rates) shall be those in effect immediately
23 prior to the license availability date, and those
24 terms shall continue to apply unless and until
25 such voluntary license is terminated or amend-

1 ed, or the parties enter into a new voluntary li-
2 cense.

3 “(D) FURTHER ACCEPTANCE OF NOTICES
4 FOR COVERED ACTIVITIES BY COPYRIGHT OF-
5 FICE.—On and after the enactment date—

6 “(i) the Copyright Office shall no
7 longer accept notices of intention with re-
8 spect to covered activities; and

9 “(ii) notices of intention filed before
10 the enactment date will no longer be effec-
11 tive or provide license authority with re-
12 spect to covered activities, except that, be-
13 fore the license availability date, there shall
14 be no liability under section 501 for the re-
15 production or distribution of a musical
16 work (or share thereof) in covered activi-
17 ties if a valid notice of intention was filed
18 for such work (or share) before the enact-
19 ment date.

20 “(10) PRIOR UNLICENSED USES.—

21 “(A) LIMITATION ON LIABILITY IN GEN-
22 ERAL.—A copyright owner that commences an
23 action under section 501 on or after January 1,
24 2018, against a digital music provider for the
25 infringement of the exclusive rights provided by

1 paragraph (1) or (3) of section 106 arising
2 from the unauthorized reproduction or distribu-
3 tion of a musical work by such digital music
4 provider in the course of engaging in covered
5 activities prior to the license availability date,
6 shall, as the copyright owner's sole and exclu-
7 sive remedy against the digital music provider,
8 be eligible to recover the royalty prescribed
9 under subsection (c)(1)(C) and chapter 8, from
10 the digital music provider, provided that such
11 digital music provider can demonstrate compli-
12 ance with the requirements of subparagraph
13 (B), as applicable. In all other cases the limita-
14 tion on liability under this subparagraph shall
15 not apply.

16 “(B) REQUIREMENTS FOR LIMITATION ON
17 LIABILITY.—The following requirements shall
18 apply on the enactment date and through the
19 end of the period that expires 90 days after the
20 license availability date to digital music pro-
21 viders seeking to avail themselves of the limita-
22 tion on liability described in subparagraph (A):

23 “(i) Not later than 30 calendar days
24 after first making a particular sound re-
25 cording of a musical work available

1 through its service via one or more covered
2 activities, or 30 calendar days after the en-
3 actment date, whichever occurs later, a
4 digital music provider shall engage in
5 good-faith, commercially reasonable efforts
6 to identify and locate each copyright owner
7 of such musical work (or share thereof).
8 Such required matching efforts shall in-
9 clude the following:

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

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

1 “(bb) Any available musical
2 work ownership information, in-
3 cluding each songwriter and pub-
4 lisher name, percentage owner-
5 ship share, and international
6 standard musical work code.

7 “(II) Employment of 1 or more
8 bulk electronic matching processes
9 that are available to the digital music
10 provider through a third-party vendor
11 on commercially reasonable terms, ex-
12 cept that a digital music provider may
13 rely on its own bulk electronic match-
14 ing process if that process has capa-
15 bilities comparable to or better than
16 those available from a third-party ven-
17 dor on commercially reasonable terms.

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

23 “(iii) If the required matching efforts
24 are successful in identifying and locating a
25 copyright owner of a musical work (or

1 share thereof) by the end of the calendar
2 month in which the digital music provider
3 first makes use of the work, the digital
4 music provider shall provide statements of
5 account and pay royalties to such copy-
6 right owner in accordance with this section
7 and applicable regulations.

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

20 “(I) Accrued royalties shall be
21 maintained by the digital music pro-
22 vider in accordance with generally ac-
23 cepted accounting principles.

24 “(II) If a copyright owner of an
25 unmatched musical work (or share

1 thereof) is identified and located by or
2 to the digital music provider before
3 the license availability date, the digital
4 music provider shall—

5 “(aa) not later than 45 cal-
6 endar days after the end of the
7 calendar month during which the
8 copyright owner was identified
9 and located, pay the copyright
10 owner all accrued royalties, such
11 payment to be accompanied by a
12 cumulative statement of account
13 that includes all of the informa-
14 tion that would have been pro-
15 vided to the copyright owner had
16 the digital music provider been
17 providing monthly statements of
18 account to the copyright owner
19 from initial use of the work in
20 accordance with this section and
21 applicable regulations, including
22 the requisite certification under
23 subsection (c)(2)(I);

24 “(bb) beginning with the ac-
25 counting period following the cal-

1 endar month in which the copy-
2 right owner was identified and lo-
3 cated, and for all other account-
4 ing periods prior to the license
5 availability date, provide monthly
6 statements of account and pay
7 royalties to the copyright owner
8 as required under this section
9 and applicable regulations; and

10 “(cc) beginning with the
11 monthly royalty reporting period
12 commencing on the license avail-
13 ability date, report usage and pay
14 royalties for such musical work
15 (or share thereof) for such re-
16 porting period and reporting pe-
17 riods thereafter to the mechanical
18 licensing collective, as required
19 under this subsection and appli-
20 cable regulations.

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

1 “(aa) not later than 45 cal-
2 endar days after the license avail-
3 ability date, transfer all accrued
4 royalties to the mechanical licens-
5 ing collective, such payment to be
6 accompanied by a cumulative
7 statement of account that in-
8 cludes all of the information that
9 would have been provided to the
10 copyright owner had the digital
11 music provider been serving
12 monthly statements of account on
13 the copyright owner from initial
14 use of the work in accordance
15 with this section and applicable
16 regulations, including the req-
17 uisite certification under sub-
18 section (c)(2)(I), and accom-
19 panied by an additional certifi-
20 cation by a duly authorized offi-
21 cer of the digital music provider
22 that the digital music provider
23 has fulfilled the requirements of
24 clauses (i) and (ii) of subpara-
25 graph (B) but has not been suc-

1 successful in locating or identifying
2 the copyright owner; and

3 “(bb) beginning with the
4 monthly royalty reporting period
5 commencing on the license avail-
6 ability date, report usage and pay
7 royalties for such musical work
8 (or share thereof) for such period
9 and reporting periods thereafter
10 to the mechanical licensing collec-
11 tive, as required under this sub-
12 section and applicable regula-
13 tions.

14 “(v) A digital music provider that
15 complies with the requirements of this sub-
16 paragraph with respect to unmatched mu-
17 sical works (or shares of works) shall not
18 be liable for or accrue late fees for late
19 payments of royalties for such works until
20 such time as the digital music provider is
21 required to begin paying monthly royalties
22 to the copyright owner or the mechanical
23 licensing collective, as applicable.

24 “(C) ADJUSTED STATUTE OF LIMITA-
25 TIONS.—Notwithstanding anything to the con-

1 trary in section 507(b), with respect to any
2 claim of infringement of the exclusive rights
3 provided by paragraphs (1) and (3) of section
4 106 against a digital music provider arising
5 from the unauthorized reproduction or distribu-
6 tion of a musical work by such digital music
7 provider in the course of engaging in covered
8 activities that accrued not more than 3 years
9 prior to the license availability date, such action
10 may be commenced not later than the later of—

11 “(i) 3 years after the date on which
12 the claim accrued; or

13 “(ii) 2 years after the license avail-
14 ability date.

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

21 “(11) LEGAL PROTECTIONS FOR LICENSING AC-
22 TIVITIES.—

23 “(A) EXEMPTION FOR COMPULSORY LI-
24 CENSE ACTIVITIES.—The antitrust exemption
25 described in subsection (c)(1)(D) shall apply to

1 negotiations and agreements between and
2 among copyright owners and persons entitled to
3 obtain a compulsory license for covered activi-
4 ties, and common agents acting on behalf of
5 such copyright owners or persons, including
6 with respect to the administrative assessment
7 established under this subsection.

8 “(B) LIMITATION ON COMMON AGENT EX-
9 EMPTION.—Notwithstanding the antitrust ex-
10 emption provided in subsection (c)(1)(D) and
11 subparagraph (A) of this paragraph (except for
12 the administrative assessment referenced in
13 such subparagraph (A) and except as provided
14 in paragraph (8)(C)), neither the mechanical li-
15 censing collective nor the digital licensee coordi-
16 nator shall serve as a common agent with re-
17 spect to the establishment of royalty rates or
18 terms under this section.

19 “(C) ANTITRUST EXEMPTION FOR ADMIN-
20 ISTRATIVE ACTIVITIES.—Notwithstanding any
21 provision of the antitrust laws, copyright own-
22 ers and persons entitled to obtain a compulsory
23 license under this section may designate the
24 mechanical licensing collective to administer vol-
25 untary licenses for the reproduction or distribu-

1 tion of musical works in covered activities on
2 behalf of such copyright owners and persons,
3 subject to the following conditions:

4 “(i) Each copyright owner shall estab-
5 lish the royalty rates and material terms of
6 any such voluntary license individually and
7 not in agreement, combination, or concert
8 with any other copyright owner.

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

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

22 “(D) LIABILITY FOR GOOD-FAITH ACTIVI-
23 TIES.—The mechanical licensing collective shall
24 not be liable to any person or entity based on
25 a claim arising from its good-faith administra-

1 tion of policies and procedures adopted and im-
2 plemented to carry out the responsibilities de-
3 scribed in subparagraphs (J) and (K) of para-
4 graph (3), except to the extent of correcting an
5 underpayment or overpayment of royalties as
6 provided in paragraph (3)(L)(i)(VI), but the
7 collective may participate in a legal proceeding
8 as a stakeholder party if the collective is hold-
9 ing funds that are the subject of a dispute be-
10 tween copyright owners. For purposes of this
11 subparagraph, the term ‘good-faith administra-
12 tion’ means administration in a manner that is
13 not grossly negligent.

14 “(E) PREEMPTION OF STATE PROPERTY
15 LAWS.—The holding and distribution of funds
16 by the mechanical licensing collective in accord-
17 ance with this subsection shall supersede and
18 preempt any State law (including common law)
19 concerning escheatment or abandoned property,
20 or any analogous provision, that might other-
21 wise apply.

22 “(F) RULE OF CONSTRUCTION.—Except as
23 expressly provided in this subsection, nothing in
24 this subsection shall negate or limit the ability
25 of any person to pursue an action in Federal

1 court against the mechanical licensing collective
2 or any other person based upon a claim arising
3 under this title or other applicable law.

4 “(12) REGULATIONS.—

5 “(A) ADOPTION BY REGISTER OF COPY-
6 RIGHTS AND COPYRIGHT ROYALTY JUDGES.—

7 The Register of Copyrights may conduct such
8 proceedings and adopt such regulations as may
9 be necessary or appropriate to effectuate the
10 provisions of this subsection, except for regula-
11 tions concerning proceedings before the Copy-
12 right Royalty Judges to establish the adminis-
13 trative assessment, which shall be adopted by
14 the Copyright Royalty Judges.

15 “(B) JUDICIAL REVIEW OF REGULA-
16 TIONS.—Except as provided in paragraph
17 (7)(D)(vii), regulations adopted under this sub-
18 section shall be subject to judicial review pursu-
19 ant to chapter 7 of title 5.

20 “(C) PROTECTION OF CONFIDENTIAL IN-
21 FORMATION.—The Register of Copyrights shall
22 adopt regulations to provide for the appropriate
23 procedures to ensure that confidential, private,
24 proprietary, or privileged information contained
25 in the records of the mechanical licensing collec-

1 tive and digital licensee coordinator is not im-
2 properly disclosed or used, including through
3 any disclosure or use by the board of directors
4 or personnel of either entity, and specifically in-
5 cluding the unclaimed royalties oversight com-
6 mittee and the dispute resolution committee of
7 the mechanical licensing collective.

8 “(13) SAVINGS CLAUSES.—

9 “(A) LIMITATION ON ACTIVITIES AND
10 RIGHTS COVERED.—This subsection applies
11 solely to uses of musical works subject to licens-
12 ing under this section. The blanket license shall
13 not be construed to extend or apply to activities
14 other than covered activities or to rights other
15 than the exclusive rights of reproduction and
16 distribution licensed under this section, or serve
17 or act as the basis to extend or expand the
18 compulsory license under this section to activi-
19 ties and rights not covered by this section on
20 the day before the enactment date.

21 “(B) RIGHTS OF PUBLIC PERFORMANCE
22 NOT AFFECTED.—The rights, protections, and
23 immunities granted under this subsection, the
24 data concerning musical works collected and
25 made available under this subsection, and the

1 definitions under subsection (e) shall not extend
2 to, limit, or otherwise affect any right of public
3 performance in a musical work.”; and

4 (5) by adding at the end the following:

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

6 “(1) ACCRUED INTEREST.—The term ‘accrued
7 interest’ means interest accrued on accrued royal-
8 ties, as described in subsection (d)(3)(H)(ii).

9 “(2) ACCRUED ROYALTIES.—The term ‘accrued
10 royalties’ means royalties accrued for the reproduc-
11 tion or distribution of a musical work (or share
12 thereof) in a covered activity, calculated in accord-
13 ance with the applicable royalty rate under this sec-
14 tion.

15 “(3) ADMINISTRATIVE ASSESSMENT.—The term
16 ‘administrative assessment’ means the fee estab-
17 lished pursuant to subsection (d)(7)(D).

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

22 “(5) BLANKET LICENSE.—The term ‘blanket li-
23 cense’ means a compulsory license described in sub-
24 section (d)(1)(A) to engage in covered activities.

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

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

7 “(i) startup costs;

8 “(ii) financing, legal, audit, and insur-
9 ance costs;

10 “(iii) investments in information tech-
11 nology, infrastructure, and other long-term
12 resources;

13 “(iv) outside vendor costs;

14 “(v) costs of licensing, royalty admin-
15 istration, and enforcement of rights;

16 “(vi) costs of bad debt; and

17 “(vii) costs of automated and manual
18 efforts to identify and locate copyright
19 owners of musical works (and shares of
20 such musical works) and match sound re-
21 cordings to the musical works the sound
22 recordings embody; and

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

1 “(7) COVERED ACTIVITY.—The term ‘covered
2 activity’ means the activity of making a digital pho-
3 norecord delivery of a musical work, including in the
4 form of a permanent download, limited download, or
5 interactive stream, where such activity qualifies for
6 a compulsory license under this section.

7 “(8) DIGITAL MUSIC PROVIDER.—The term
8 ‘digital music provider’ means a person (or persons
9 operating under the authority of that person) that,
10 with respect to a service engaged in covered activi-
11 ties—

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

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

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

22 “(9) DIGITAL LICENSEE COORDINATOR.—The
23 term ‘digital licensee coordinator’ means the entity
24 most recently designated pursuant to subsection
25 (d)(5).

1 “(10) DIGITAL PHONORECORD DELIVERY.—The
2 term ‘digital phonorecord delivery’ means each indi-
3 vidual delivery of a phonorecord by digital trans-
4 mission of a sound recording that results in a spe-
5 cifically identifiable reproduction by or for any
6 transmission recipient of a phonorecord of that
7 sound recording, regardless of whether the digital
8 transmission is also a public performance of the
9 sound recording or any musical work embodied
10 therein, and includes a permanent download, a lim-
11 ited download, or an interactive stream. A digital
12 phonorecord delivery does not result from a real-
13 time, noninteractive subscription transmission of a
14 sound recording where no reproduction of the sound
15 recording or the musical work embodied therein is
16 made from the inception of the transmission through
17 to its receipt by the transmission recipient in order
18 to make the sound recording audible. A digital pho-
19 norecord delivery does not include the digital trans-
20 mission of sounds accompanying a motion picture or
21 other audiovisual work as defined in section 101.

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

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

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

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

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

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

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

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

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

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

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

3 “(22) NOTICE OF LICENSE.—The term ‘notice
4 of license’ means a notice from a digital music pro-
5 vider provided under subsection (d)(2)(A) for pur-
6 poses of obtaining a blanket license.

7 “(23) NOTICE OF NONBLANKET ACTIVITY.—
8 The term ‘notice of nonblanket activity’ means a no-
9 tice from a significant nonblanket licensee provided
10 under subsection (d)(6)(A) for purposes of notifying
11 the mechanical licensing collective that the licensee
12 has been engaging in covered activities.

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

20 “(25) QUALIFIED AUDITOR.—The term ‘quali-
21 fied auditor’ means an independent, certified public
22 accountant with experience performing music royalty
23 audits.

24 “(26) RECORD COMPANY.—The term ‘record
25 company’ means an entity that invests in, produces,

1 and markets sound recordings of musical works, and
2 distributes such sound recordings for remuneration
3 through multiple sales channels, including a cor-
4 porate affiliate of such an entity engaged in distribu-
5 tion of sound recordings.

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

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

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

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

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

24 “(A) means an entity, including a group of
25 entities under common ownership or control

1 that, acting under the authority of one or more
2 voluntary licenses or individual download li-
3 censes, offers a service engaged in covered ac-
4 tivities, and such entity or group of entities—

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

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

15 “(iii) either—

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

21 “(II) derives revenue or other
22 consideration in connection with such
23 covered activities greater than
24 \$50,000 in a calendar month, or total
25 revenue or other consideration greater

1 than \$500,000 during the preceding
2 12 calendar months; and

3 “(B) does not include—

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

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

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

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

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

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

5 “(36) VOLUNTARY LICENSE.—The term ‘vol-
6 untary license’ means a license for use of a musical
7 work (or share thereof) other than a compulsory li-
8 cense obtained under this section.”.

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

12 (1) by redesignating paragraph (8) as para-
13 graph (9); and

14 (2) by inserting after paragraph (7) the fol-
15 lowing:

16 “(8) To determine the administrative assess-
17 ment to be paid by digital music providers under
18 section 115(d). The provisions of section 115(d)
19 shall apply to the conduct of proceedings by the
20 Copyright Royalty Judges under section 115(d) and
21 not the procedures described in this section, or sec-
22 tion 803, 804, or 805.”.

23 (c) EFFECTIVE DATE OF AMENDED RATE SETTING
24 STANDARD.—The amendments made by subsection (a)(3)
25 and section 103(g)(2) shall apply to any proceeding before

1 the Copyright Royalty Judges that is commenced on or
2 after the date of the enactment of this Act.

3 (d) TECHNICAL AND CONFORMING AMENDMENTS TO
4 TITLE 37, PART 385 OF THE CODE OF FEDERAL REGU-
5 LATIONS.—Not later than 270 days after the date of en-
6 actment of this Act, the Copyright Royalty Judges shall
7 amend the regulations for section 115 of title 17, United
8 States Code, in part 385 of title 37, Code of Federal Reg-
9 ulations, to conform the definitions used in such part to
10 the definitions of the same terms described in section
11 115(e) of title 17, United States Code, as added by sub-
12 section (a). In so doing, the Copyright Royalty Judges
13 shall make adjustments to the language of the regulations
14 as necessary to achieve the same purpose and effect as
15 the original regulations with respect to the rates and
16 terms previously adopted by the Copyright Royalty
17 Judges.

18 (e) COPYRIGHT OFFICE ACTIVITIES.—The Register
19 of Copyrights shall engage in public outreach and edu-
20 cational activities—

21 (1) regarding the amendments made by sub-
22 section (a) to section 115 of title 17, United States
23 Code, including the responsibilities of the mechanical
24 licensing collective designated under those amend-
25 ments;

1 (2) which shall include educating songwriters
2 and other interested parties with respect to the proc-
3 ess established under section 115(d)(3)(C)(i)(V) of
4 title 17, United States Code, as added by subsection
5 (a), by which—

6 (A) a copyright owner may claim owner-
7 ship of musical works (and shares of such
8 works); and

9 (B) royalties for works for which the owner
10 is not identified or located shall be equitably
11 distributed to known copyright owners; and

12 (3) which the Register shall make available on-
13 line.

14 (f) UNCLAIMED ROYALTIES STUDY AND REC-
15 COMMENDATIONS.—

16 (1) IN GENERAL.—Not later than 2 years after
17 the date on which the Register of Copyrights ini-
18 tially designates the mechanical licensing collective
19 under section 115(d)(3)(B)(i) of title 17, United
20 States Code, as added by subsection (a)(4), the Reg-
21 ister, in consultation with the Comptroller General
22 of the United States, and after soliciting and review-
23 ing comments and relevant information from music
24 industry participants and other interested parties,
25 shall submit to the Committee on the Judiciary of

1 the Senate and the Committee on the Judiciary of
2 the House of Representatives a report that rec-
3 ommends best practices that the collective may im-
4 plement in order to—

5 (A) identify and locate musical work copy-
6 right owners with unclaimed accrued royalties
7 held by the collective;

8 (B) encourage musical work copyright
9 owners to claim the royalties of those owners;
10 and

11 (C) reduce the incidence of unclaimed roy-
12 alties.

13 (2) CONSIDERATION OF RECOMMENDATIONS.—

14 The mechanical licensing collective shall carefully
15 consider, and give substantial weight to, the rec-
16 ommendations submitted by the Register of Copy-
17 rights under paragraph (1) when establishing the
18 procedures of the collective with respect to the—

19 (A) identification and location of musical
20 work copyright owners; and

21 (B) distribution of unclaimed royalties.

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

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

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

3 “(1)(A) Proceedings under chapter 8 shall de-
4 termine reasonable rates and terms of royalty pay-
5 ments for transmissions subject to statutory licens-
6 ing under subsection (d)(2) during the 5-year period
7 beginning on January 1 of the second year following
8 the year in which the proceedings are to be com-
9 menced pursuant to subparagraph (A) or (B) of sec-
10 tion 804(b)(3), as the case may be, or such other pe-
11 riod as the parties may agree. The parties to each
12 proceeding shall bear their own costs.

13 “(B) The schedule of reasonable rates and
14 terms determined by the Copyright Royalty Judges
15 shall, subject to paragraph (2), be binding on all
16 copyright owners of sound recordings and entities
17 performing sound recordings affected by this para-
18 graph during the 5-year period specified in subpara-
19 graph (A), or such other period as the parties may
20 agree. Such rates and terms shall distinguish among
21 the different types of services then in operation and
22 shall include a minimum fee for each such type of
23 service, such differences to be based on criteria in-
24 cluding the quantity and nature of the use of sound
25 recordings and the degree to which use of the service

1 may substitute for or may promote the purchase of
2 phonorecords by consumers. The Copyright Royalty
3 Judges shall establish rates and terms that most
4 clearly represent the rates and terms that would
5 have been negotiated in the marketplace between a
6 willing buyer and a willing seller. In determining
7 such rates and terms, the Copyright Royalty
8 Judges—

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

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

19 “(II) the relative roles of the copy-
20 right owner and the transmitting entity in
21 the copyrighted work and the service made
22 available to the public with respect to rel-
23 ative creative contribution, technological
24 contribution, capital investment, cost, and
25 risk; and

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

5 “(C) The procedures under subparagraphs (A)
6 and (B) shall also be initiated pursuant to a petition
7 filed by any sound recording copyright owner or any
8 transmitting entity indicating that a new type of
9 service on which sound recordings are performed is
10 or is about to become operational, for the purpose
11 of determining reasonable terms and rates of royalty
12 payments with respect to such new type of service
13 for the period beginning with the inception of such
14 new type of service and ending on the date on which
15 the royalty rates and terms for eligible nonsubscrip-
16 tion services and new subscription services, or pre-
17 existing subscription services and preexisting sat-
18 ellite digital audio radio services, as the case may be,
19 most recently determined under subparagraph (A) or
20 (B) and chapter 8 expire, or such other period as
21 the parties may agree.”; and

22 (2) by redesignating paragraphs (3), (4), and
23 (5) as paragraphs (2), (3), and (4), respectively.

24 (b) REPEAL.—Subsection (i) of section 114 of title
25 17, United States Code, is repealed.

1 (c) USE IN MUSICAL WORK PROCEEDINGS.—

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

15 (2) DEFINITIONS.—In this subsection:

16 (A) TRANSMISSION BY A BROADCASTER.—

17 The term “transmission by a broadcaster”
18 means a nonsubscription digital transmission
19 made by a terrestrial broadcast station on its
20 own behalf, or on the behalf of a terrestrial
21 broadcast station under common ownership or
22 control, that is not part of an interactive service
23 or a music-intensive service comprising the
24 transmission of sound recordings customized for
25 or customizable by recipients or service users.

1 (B) TERRESTRIAL BROADCAST STATION.—

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

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

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

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

9 (g) TECHNICAL AND CONFORMING AMENDMENTS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

1 the period beginning on January 1, 2023, and ending on
2 December 31, 2027” after “fifth calendar year”.

3 **SEC. 104. RANDOM ASSIGNMENT OF RATE COURT PRO-**
4 **CEEDINGS.**

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

7 (1) by striking “The business” and inserting
8 “(a) IN GENERAL.—The business”; and

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

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

12 “(1) IN GENERAL.—

13 “(A) DEFINITION.—In this paragraph, the
14 term ‘performing rights society’ has the mean-
15 ing given the term in section 101 of title 17.

16 “(B) DETERMINATION OF LICENSE FEE.—

17 Except as provided in subparagraph (C), in the
18 case of any performing rights society subject to
19 a consent decree, any application for the deter-
20 mination of a license fee for the public perform-
21 ance of music in accordance with the applicable
22 consent decree shall be made in the district
23 court with jurisdiction over that consent decree
24 and randomly assigned to a judge of that dis-
25 trict court according to the rules of that court

1 for the division of business among district
2 judges, provided that any such application shall
3 not be assigned to—

4 “(i) a judge to whom continuing juris-
5 diction over any performing rights society
6 for any performing rights society consent
7 decree is assigned or has previously been
8 assigned; or

9 “(ii) a judge to whom another pro-
10 ceeding concerning an application for the
11 determination of a reasonable license fee is
12 assigned at the time of the filing of the ap-
13 plication.

14 “(C) EXCEPTION.—Subparagraph (B) does
15 not apply to an application to determine reason-
16 able license fees made by individual proprietors
17 under section 513 of title 17.

18 “(2) RULE OF CONSTRUCTION.—Nothing in
19 paragraph (1) shall modify the rights of any party
20 to a consent decree or to a proceeding to determine
21 reasonable license fees, to make an application for
22 the construction of any provision of the applicable
23 consent decree. Such application shall be referred to
24 the judge to whom continuing jurisdiction over the
25 applicable consent decree is currently assigned. If

1 any such application is made in connection with a
2 rate proceeding, such rate proceeding shall be stayed
3 until the final determination of the construction ap-
4 plication. Disputes in connection with a rate pro-
5 ceeding about whether a licensee is similarly situated
6 to another licensee shall not be subject to referral to
7 the judge with continuing jurisdiction over the appli-
8 cable consent decree.”.

9 **SEC. 105. PERFORMING RIGHTS SOCIETY CONSENT DE-**
10 **CREES.**

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

14 (b) NOTIFICATION OF REVIEW.—

15 (1) IN GENERAL.—The Department of Justice
16 shall provide timely briefings upon request of any
17 Member of the Committee on the Judiciary of the
18 Senate and the Committee on the Judiciary of the
19 House of Representatives regarding the status of a
20 review in progress of a consent decree between the
21 United States and a performing rights society.

22 (2) CONFIDENTIALITY AND DELIBERATIVE
23 PROCESS.—In accordance with applicable rules relat-
24 ing to confidentiality and agency deliberative proc-
25 ess, the Department of Justice shall share with such

1 Members of Congress detailed and timely informa-
2 tion and pertinent documents related to the consent
3 decree review.

4 (c) ACTION BEFORE MOTION TO TERMINATE.—

5 (1) IN GENERAL.—Before filing with the appro-
6 priate district court of the United States a motion
7 to terminate a consent decree between the United
8 States and a performing rights society, including a
9 motion to terminate a consent decree after the pas-
10 sage of a specified period of time, the Department
11 of Justice shall—

12 (A) notify Members of Congress and com-
13 mittees of Congress described in subsection (b);
14 and

15 (B) provide to such Members of Congress
16 and committees information regarding the im-
17 pact of the proposed termination on the market
18 for licensing the public performance of musical
19 works should the motion be granted.

20 (2) NOTIFICATION.—

21 (A) IN GENERAL.—During the notification
22 described in paragraph (1), and not later than
23 a reasonable time before the date on which the
24 Department of Justice files with the appro-
25 priate district court of the United States a mo-

1 tion to terminate a consent decree between the
2 United States and a performing rights society,
3 the Department of Justice should submit to the
4 chairmen and ranking members of the Com-
5 mittee on the Judiciary of the Senate and the
6 Committee on the Judiciary of the House of
7 Representatives a written notification of the in-
8 tent of the Department of Justice to file the
9 motion.

10 (B) CONTENTS.—The notification provided
11 in subparagraph (A) shall include a written re-
12 port to the chairmen and ranking members of
13 the Committee on the Judiciary of Senate and
14 the Committee on the Judiciary of the House of
15 Representatives setting forth—

16 (i) an explanation of the process used
17 by the Department of Justice to review the
18 consent decree;

19 (ii) a summary of the public com-
20 ments received by the Department of Jus-
21 tice during the review by the Department;
22 and

23 (iii) other information provided to
24 Congress under paragraph (1)(B).

1 (d) SCOPE.—This section applies only to a consent
2 decree between the United States and a performing rights
3 society.

4 **SEC. 106. EFFECTIVE DATE.**

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

7 **TITLE II—COMPENSATING LEG-**
8 **ACY ARTISTS FOR THEIR**
9 **SONGS, SERVICE, AND IMPOR-**
10 **TANT CONTRIBUTIONS TO SO-**
11 **CIETY**

12 **SEC. 201. SHORT TITLE.**

13 This title may be cited as the “Compensating Legacy
14 Artists for their Songs, Service, and Important Contribu-
15 tions to Society Act” or the “CLASSICS Act”.

16 **SEC. 202. UNAUTHORIZED USE OF PRE-1972 SOUND RE-**
17 **CORDINGS.**

18 (a) PREEMPTION OF STATE LAW RIGHTS; PROTEC-
19 TION FOR UNAUTHORIZED USE.—Title 17, United States
20 Code, is amended—

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

23 “(c) Notwithstanding the provisions of section 303,
24 and in accordance with chapter 14, no sound recording
25 fixed before February 15, 1972, shall be subject to copy-

1 right under this title. With respect to sound recordings
 2 fixed before February 15, 1972, the preemptive provisions
 3 of subsection (a) shall apply to activities that are com-
 4 menced on and after the date of enactment of the
 5 CLASSICS Act.”; and

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

7 **“CHAPTER 14—UNAUTHORIZED USE OF**
 8 **PRE-1972 SOUND RECORDINGS**

“Sec.

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

9 **“§ 1401. Unauthorized use of pre-1972 sound record-**
 10 **ings**

11 “(a) IN GENERAL.—

12 “(1) UNAUTHORIZED ACTS.—Anyone who, on
 13 or before the last day of the applicable transition pe-
 14 riod under paragraph (2), and without the consent
 15 of the rights owner, engages in covered activity with
 16 respect to a sound recording fixed before February
 17 15, 1972, shall be subject to the remedies provided
 18 in sections 502 through 505 and 1203 to the same
 19 extent as an infringer of copyright or a person that
 20 engages in unauthorized activity under chapter 12.

21 “(2) TERM OF PROHIBITION.—

22 “(A) IN GENERAL.—The prohibition under
 23 paragraph (1)—

1 “(i) subject to clause (ii), shall apply
2 to a sound recording described in that
3 paragraph—

4 “(I) through December 31 of the
5 year that is 95 years after the year of
6 first publication; and

7 “(II) for a further transition pe-
8 riod as prescribed under subpara-
9 graph (B) of this paragraph; and

10 “(ii) shall not apply to any sound re-
11 cording after February 15, 2067.

12 “(B) TRANSITION PERIODS.—

13 “(i) PRE-1923 RECORDINGS.—In the
14 case of a sound recording first published
15 before January 1, 1923, the transition pe-
16 riod described in subparagraph (A)(i)(II)
17 shall end on December 31 of the year that
18 is 3 years after the date of enactment of
19 this section.

20 “(ii) 1923–1946 RECORDINGS.—In
21 the case of a sound recording first pub-
22 lished during the period beginning on Jan-
23 uary 1, 1923, and ending on December 31,
24 1946, the transition period described in
25 subparagraph (A)(i)(II) shall end on the

1 date that is 5 years after the last day of
2 the period described in subparagraph
3 (A)(i)(I).

4 “(iii) 1947–1956 RECORDINGS.—In
5 the case of a sound recording first pub-
6 lished during the period beginning on Jan-
7 uary 1, 1947, and ending on December 31,
8 1956, the transition period described in
9 subparagraph (A)(i)(II) shall end on the
10 date that is 15 years after the last day of
11 the period described in subparagraph
12 (A)(i)(I).

13 “(iv) POST-1956 RECORDINGS.—In the
14 case of a sound recording fixed before Feb-
15 ruary 15, 1972, that is not described in
16 clause (i), (ii), or (iii), the transition period
17 described in subparagraph (A)(i)(II) shall
18 end on February 15, 2067.

19 “(3) RULE OF CONSTRUCTION.—For the pur-
20 poses of this subsection, the term ‘anyone’ includes
21 any State, any instrumentality of a State, and any
22 officer or employee of a State or instrumentality of
23 a State acting in the official capacity of the officer
24 or employee, as applicable.

1 “(b) CERTAIN AUTHORIZED TRANSMISSIONS AND
2 REPRODUCTIONS.—A public performance by means of a
3 digital audio transmission of a sound recording fixed be-
4 fore February 15, 1972, or a reproduction in an ephem-
5 eral phonorecord or copy of a sound recording fixed before
6 February 15, 1972, shall, for purposes of subsection (a),
7 be considered to be authorized and made with the consent
8 of the rights owner if—

9 “(1) the transmission or reproduction would
10 satisfy the requirements for statutory licensing
11 under section 112(e)(1) or section 114(d)(2), or
12 would be exempt under section 114(d)(1), as the
13 case may be, if the sound recording were fixed on or
14 after February 15, 1972; and

15 “(2) the transmitting entity pays the statutory
16 royalty for the digital audio transmissions and re-
17 production of a sound recording pursuant to the
18 rates and terms adopted under sections 112(e) and
19 114(f), and complies with other obligations, in the
20 same manner as required by regulations adopted by
21 the Copyright Royalty Judges under sections 112(e)
22 and 114(f) for a sound recording that is fixed on or
23 after February 15, 1972, except in the case of a
24 transmission that would be exempt under section
25 114(d)(1).

1 “(c) CERTAIN NONCOMMERCIAL USES OF SOUND
2 RECORDINGS THAT ARE NOT BEING COMMERCIALY EX-
3 PLOITED.—

4 “(1) IN GENERAL.—Noncommercial use of a
5 sound recording fixed before February 15, 1972,
6 that is not being commercially exploited by or under
7 the authority of the rights owner shall not violate
8 subsection (a) if—

9 “(A) the person engaging in the non-
10 commercial use, in order to determine whether
11 the sound recording is being commercially ex-
12 ploited by or under the authority of the rights
13 owner, makes a good faith, reasonable search
14 for, but does not find, the sound recording—

15 “(i) in the records of schedules filed
16 in the Copyright Office as described in
17 subsection (f)(5)(A); and

18 “(ii) on services offering a comprehen-
19 sive set of sound recordings for sale or
20 streaming;

21 “(B) the person engaging in the non-
22 commercial use files a notice identifying the
23 sound recording and the nature of the use in
24 the Copyright Office in accordance with the
25 regulations issued under paragraph (3)(B); and

1 “(C) during the 90-day period beginning
2 on the date on which the notice described in
3 subparagraph (B) is indexed into the public
4 records of the Copyright Office, the rights
5 owner of the sound recording does not, in its
6 discretion, opt out of the noncommercial use by
7 filing notice thereof in the Copyright Office in
8 accordance with the regulations issued under
9 paragraph (5).

10 “(2) RULES OF CONSTRUCTION.—For purposes
11 of this subsection—

12 “(A) merely recovering costs of production
13 and distribution of a sound recording resulting
14 from a use otherwise permitted under this sub-
15 section does not itself necessarily constitute a
16 commercial use of the sound recording;

17 “(B) the fact that a person engaging in
18 the use of a sound recording also engages in
19 commercial activities does not itself necessarily
20 render the use commercial; and

21 “(C) the fact that a person files notice of
22 a noncommercial use of a sound recording in
23 accordance with the regulations issued under
24 paragraph (3)(B) does not itself affect any limi-
25 tation on the exclusive rights of a copyright

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

5 “(3) NOTICE OF COVERED ACTIVITY.—Not
6 later than 180 days after the date of enactment of
7 this section, the Register of Copyrights shall issue
8 regulations that—

9 “(A) provide specific, reasonable steps
10 that, if taken by a filer, are sufficient to con-
11 stitute a good faith, reasonable search under
12 paragraph (1)(A) to determine whether a re-
13 cording is being commercially exploited, includ-
14 ing the services that satisfy the good faith, rea-
15 sonable search requirement under paragraph
16 (1)(A) for purposes of the safe harbor described
17 in paragraph (4)(A); and

18 “(B) establish the form, content, and pro-
19 cedures for the filing of notices under para-
20 graph (1)(B).

21 “(4) SAFE HARBOR.—

22 “(A) IN GENERAL.—A person engaging in
23 a noncommercial use of a sound recording oth-
24 erwise permitted under this subsection who es-
25 tablishes that the person made a good faith,

1 reasonable search under paragraph (1)(A) with-
2 out finding commercial exploitation of the
3 sound recording by or under the authority of
4 the rights owner shall not be found to be in vio-
5 lation of subsection (a).

6 “(B) STEPS SUFFICIENT BUT NOT NEC-
7 ESSARY.—Taking the specific, reasonable steps
8 identified by the Register of Copyrights in the
9 regulations issued under paragraph (3)(A) shall
10 be sufficient, but not necessary, for a filer to
11 satisfy the requirement to conduct a good faith,
12 reasonable search under paragraph (1)(A) for
13 purposes of subparagraph (A) of this para-
14 graph.

15 “(5) OPTING OUT OF COVERED ACTIVITY.—

16 “(A) IN GENERAL.—Not later than 180
17 days after the date of enactment of this section,
18 the Register of Copyrights shall issue regula-
19 tions establishing the form, content, and proce-
20 dures for the rights owner of a sound recording
21 that is the subject of a notice under paragraph
22 (1)(B) to, in its discretion, file notice opting out
23 of the covered activity described in the notice
24 under paragraph (1)(B) during the 90-day pe-
25 riod beginning on the date on which the notice

1 under paragraph (1)(B) is indexed into the
2 public records of the Copyright Office.

3 “(B) RULE OF CONSTRUCTION.—The fact
4 that a rights holder opts out of a noncommer-
5 cial use of a sound recording by filing notice
6 thereof in the Copyright Office in accordance
7 with the regulations issued under subparagraph
8 (A) does not itself enlarge or diminish any limi-
9 tation on the exclusive rights of a copyright
10 owner described in section 107, 108, or 110 as
11 applied to a claim under subsection (a) of this
12 section pursuant to subsection (f)(1)(A) of this
13 section.

14 “(6) CIVIL PENALTIES FOR CERTAIN ACTS.—

15 “(A) FILING OF NOTICES OF NONCOMMER-
16 CIAL USE.—Any person who willfully engages in
17 a pattern or practice of filing a notice of non-
18 commercial use of a sound recording as de-
19 scribed in paragraph (1)(B) fraudulently de-
20 scribing the use proposed, or knowing that the
21 use proposed is not permitted under this sub-
22 section, shall be assessed a civil penalty in an
23 amount that is not less than \$250, and not
24 more than \$1000, for each such notice, in addi-
25 tion to any other remedies that may be avail-

1 able under this title based on the actual use
2 made.

3 “(B) FILING OF OPT-OUT NOTICES.—

4 “(i) IN GENERAL.—Any person who
5 files an opt-out notice as described in para-
6 graph (1)(C), knowing that the person is
7 not the rights owner or authorized to act
8 on behalf of the rights owner of the sound
9 recording to which the notice pertains,
10 shall be assessed a civil penalty in an
11 amount not less than \$250, and not more
12 than \$1,000, for each such notice.

13 “(ii) PATTERN OR PRACTICE.—Any
14 person who engages in a pattern or prac-
15 tice of making filings as described in
16 clause (i) shall be assessed a civil penalty
17 in an amount not less than \$10,000 for
18 each such filing.

19 “(C) DEFINITION.—For purposes of this
20 paragraph, the term ‘knowing’—

21 “(i) does not require specific intent to
22 defraud; and

23 “(ii) with respect to information about
24 ownership of the sound recording in ques-
25 tion, means that the person—

1 “(I) has actual knowledge of the
2 information;

3 “(II) acts in deliberate ignorance
4 of the truth or falsity of the informa-
5 tion; or

6 “(III) acts in grossly negligent
7 disregard of the truth or falsity of the
8 information.

9 “(d) PAYMENT OF ROYALTIES FOR TRANSMISSIONS
10 OF PERFORMANCES BY DIRECT LICENSING OF STATU-
11 TORY SERVICES.—

12 “(1) IN GENERAL.—A public performance by
13 means of a digital audio transmission of a sound re-
14 cording fixed before February 15, 1972, shall, for
15 purposes of subsection (a), be considered to be au-
16 thorized and made with the consent of the rights
17 owner if the transmission is made pursuant to a li-
18 cense agreement voluntarily negotiated at any time
19 between the rights owner and the entity performing
20 the sound recording.

21 “(2) PAYMENT OF ROYALTIES TO NONPROFIT
22 COLLECTIVE UNDER CERTAIN LICENSE AGREE-
23 MENTS.—

24 “(A) LICENSES ENTERED INTO ON OR
25 AFTER DATE OF ENACTMENT.—To the extent

1 that a license agreement described in paragraph
2 (1) entered into on or after the date of enact-
3 ment of this section extends to a public per-
4 formance by means of digital audio trans-
5 missions of a sound recording fixed before Feb-
6 ruary 15, 1972, that meets the conditions of
7 subsection (b)—

8 “(i) the licensee shall pay, to the col-
9 lective designated to distribute receipts
10 from the licensing of transmissions in ac-
11 cordance with section 114(f), 50 percent of
12 the performance royalties for the trans-
13 missions due under the license; and

14 “(ii) the royalties paid under clause
15 (i) shall be fully credited as payments due
16 under the license.

17 “(B) LICENSES ENTERED INTO EARLIER
18 IN YEAR OF ENACTMENT.—To the extent that
19 a license agreement described in paragraph (1),
20 entered into during the period beginning on
21 January 1 of the year in which this section is
22 enacted and ending on the day before the date
23 of enactment of this section, extends to a public
24 performance by means of digital audio trans-
25 missions of a sound recording fixed before Feb-

1 ruary 15, 1972, that meets the conditions of
2 subsection (b)—

3 “(i) the rights owner shall pay, to the
4 collective designated to distribute receipts
5 from the licensing of transmissions in ac-
6 cordance with section 114(f), 50 percent of
7 the amount equal to the difference be-
8 tween—

9 “(I) the rights owner’s perform-
10 ance royalty fee receipts for the trans-
11 missions under the license; and

12 “(II) the rights owner’s legal ex-
13 penses related to the license; and

14 “(ii) the royalties paid under clause
15 (i) shall be fully credited as payments due
16 under the license.

17 “(3) DISTRIBUTION OF ROYALTIES BY COLLEC-
18 TIVE.—The collective described in paragraph (2)
19 shall, in accordance with subparagraphs (B) through
20 (D) of section 114(g)(2), and paragraphs (5) and
21 (6) of section 114(g), distribute the royalties re-
22 ceived under paragraph (2) under the license de-
23 scribed in paragraph (2), which shall be the only
24 payments to which featured and nonfeatured artists

1 are entitled by virtue of the transmissions described
2 in paragraph (2) under the license.

3 “(4) PAYMENT OF ROYALTIES UNDER LICENSE
4 AGREEMENTS ENTERED BEFORE ENACTMENT OR
5 NOT OTHERWISE DESCRIBED IN PARAGRAPH (2).—

6 “(A) IN GENERAL.—To the extent that a
7 license agreement described in paragraph (1)
8 entered into before the date of enactment of
9 this section, or any other license agreement not
10 as described in paragraph (2), extends to a
11 public performance by means of digital audio
12 transmissions of a sound recording fixed before
13 February 15, 1972, that meets the conditions
14 of subsection (b), the payments made by the li-
15 censee pursuant to the license shall be made in
16 accordance with the agreement.

17 “(B) ADDITIONAL PAYMENTS NOT RE-
18 QUIRED.—To the extent that a licensee has
19 made, or will make in the future, payments pur-
20 suant to a license as described in subparagraph
21 (A), the provisions of paragraphs (2) and (3)
22 shall not require any additional payments from,
23 or additional financial obligations on the part
24 of, the licensee.

1 “(C) RULE OF CONSTRUCTION.—Nothing
2 in this subsection may be construed to prohibit
3 the collective designated to distribute receipts
4 from the licensing of transmissions in accord-
5 ance with section 114(f) from administering
6 royalty payments under any license not de-
7 scribed in paragraph (2).

8 “(e) PREEMPTION WITH RESPECT TO CERTAIN PAST
9 ACTS.—

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

16 “(A) the digital audio transmission would
17 have satisfied the requirements for statutory li-
18 censing under section 114(d)(2) or been exempt
19 under section 114(d)(1), or the reproduction
20 would have satisfied the requirements of section
21 112(e)(1), as the case may be, if the sound re-
22 cording were fixed on or after February 15,
23 1972; and

24 “(B) either—

1 “(i) except in the case of a trans-
2 mission that would have been exempt
3 under section 114(d)(1), not later than
4 270 days after the date of enactment of
5 this section, the transmitting entity pays
6 statutory royalties and provides notice of
7 the use of the relevant sound recordings in
8 the same manner as required by regula-
9 tions adopted by the Copyright Royalty
10 Judges for sound recordings that are fixed
11 on or after February 15, 1972, for all the
12 digital audio transmissions and reproduc-
13 tions satisfying the requirements for statu-
14 tory licensing under sections 112(e)(1) and
15 114(d)(2) during the 3 years before that
16 date of enactment; or

17 “(ii) an agreement voluntarily nego-
18 tiated between the rights owner and the
19 entity performing the sound recording (in-
20 cluding a litigation settlement agreement
21 entered into before the date of enactment
22 of this section) authorizes or waives liabil-
23 ity for any such transmission or reproduc-
24 tion and the transmitting entity has paid

1 for and reported such digital audio trans-
2 mission under that agreement.

3 “(2) RULE OF CONSTRUCTION FOR COMMON
4 LAW COPYRIGHT.—For purposes of paragraph (1), a
5 claim of common law copyright or equivalent right
6 under the laws of any State includes a claim that
7 characterizes conduct subject to that paragraph as
8 an unlawful distribution, act of record piracy, or
9 similar violation.

10 “(3) RULE OF CONSTRUCTION FOR PUBLIC
11 PERFORMANCE RIGHTS.—Nothing in this section
12 may be construed to recognize or negate the exist-
13 ence of public performance rights in sound record-
14 ings under the laws of any State.

15 “(f) LIMITATIONS ON REMEDIES.—

16 “(1) FAIR USE; USES BY LIBRARIES, ARCHIVES,
17 AND EDUCATIONAL INSTITUTIONS.—

18 “(A) IN GENERAL.—The limitations on the
19 exclusive rights of a copyright owner described
20 in sections 107, 108, 110, and 112(f) shall
21 apply to a claim under subsection (a) with re-
22 spect to a sound recording fixed before Feb-
23 ruary 15, 1972.

24 “(B) RULE OF CONSTRUCTION FOR SEC-
25 TION 108(H).—With respect to the application of

1 section 108(h) to a claim for unauthorized per-
2 formance of a sound recording first fixed before
3 February 15, 1972, under subsection (a), the
4 phrase ‘during the last 20 years of any term of
5 copyright of a published work’ in such section
6 108(h) shall be construed to mean at any time
7 after the date of enactment of this section.

8 “(2) ACTIONS.—The limitations on actions de-
9 scribed in section 507 shall apply to a claim under
10 subsection (a) with respect to a sound recording
11 fixed before February 15, 1972.

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

16 “(4) PRINCIPLES OF EQUITY.—Principles of eq-
17 uity apply to remedies for a violation of this section
18 to the same extent as such principles apply to rem-
19 edies for infringement of copyright.

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

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

24 “(i) FILING REQUIREMENT.—Except
25 in the case of a transmitting entity that

1 has filed contact information for that
2 transmitting entity under subparagraph
3 (B), in any action under this section, an
4 award of statutory damages or of attor-
5 neys' fees under section 504 or 505 may
6 be made with respect to an unauthorized
7 use of a sound recording under subsection
8 (a) only if—

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

17 “(II) the use occurs after the end
18 of the 90-day period beginning on the
19 date on which the information de-
20 scribed in subclause (I) is indexed into
21 the public records of the Copyright
22 Office.

23 “(ii) REGULATIONS.—Not later than
24 180 days after the date of enactment of

1 this section, the Register of Copyrights
2 shall issue regulations that—

3 “(I) establish the form, content,
4 and procedures for the filing of sched-
5 ules under clause (i);

6 “(II) provide that a person may
7 request that the person receive timely
8 notification of a filing described in
9 subclause (I); and

10 “(III) set forth the manner in
11 which a person may make a request
12 under subclause (II).

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

15 “(i) FILING REQUIREMENT.—Not
16 later than 30 days after the date of enact-
17 ment of this section, the Register of Copy-
18 rights shall issue regulations establishing
19 the form, content, and procedures for the
20 filing of contact information by any entity
21 that, as of the date of enactment of this
22 section, performs a sound recording fixed
23 before February 15, 1972, by means of a
24 digital audio transmission.

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

5 “(iii) LIMITATION ON STATUTORY
6 DAMAGES AND ATTORNEYS’ FEES.—

7 “(I) LIMITATION.—An award of
8 statutory damages or of attorneys’
9 fees under section 504 or 505 may
10 not be made against an entity that
11 has filed contact information for that
12 entity under clause (i) with respect to
13 an unauthorized use by that entity of
14 a sound recording under subsection
15 (a) if the use occurs before the end of
16 the 90-day period beginning on the
17 date on which the entity receives a no-
18 tice that—

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

22 “(bb) states that the entity
23 is not legally authorized to use
24 that sound recording under sub-
25 section (a); and

1 “(A) IN GENERAL.—Subject to subpara-
2 graph (B), no provision of this title shall apply
3 to or limit the remedies available under this
4 section except as otherwise provided in this sec-
5 tion.

6 “(B) APPLICABILITY OF DEFINITIONS.—
7 Any term used in this section that is defined in
8 section 101 shall have the meaning given that
9 term in section 101.

10 “(g) APPLICATION OF SECTION 230 SAFE HAR-
11 BOR.—For purposes of section 230 of the Communica-
12 tions Act of 1934 (47 U.S.C. 230), subsection (a) shall
13 be considered to be a ‘law pertaining to intellectual prop-
14 erty’ under subsection (e)(2) of such section 230.

15 “(h) APPLICATION TO RIGHTS OWNERS.—

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

18 “(A) subsections (d) and (e) of section 201
19 and section 204 shall apply to a transfer de-
20 scribed in subsection (l)(2)(B) to the same ex-
21 tent as with respect to a transfer of copyright
22 ownership; and

23 “(B) notwithstanding section 411, that
24 rights owner may institute an action with re-
25 spect to a violation of this section to the same

1 extent as the owner of an exclusive right under
2 a copyright may institute an action under sec-
3 tion 501(b).

4 “(2) APPLICATION OF OTHER PROVISIONS.—

5 The following provisions shall apply to a rights
6 owner under this section to the same extent as any
7 copyright owner:

8 “(A) Section 112(e)(2).

9 “(B) Section 112(e)(7).

10 “(C) Section 114(e).

11 “(D) Section 114(h).

12 “(i) EPHEMERAL RECORDINGS.—An authorized re-
13 production made under this section shall be subject to sec-
14 tion 112(g) to the same extent as a reproduction of a
15 sound recording fixed on or after February 15, 1972.

16 “(j) RULE OF CONSTRUCTION.—A rights owner of,
17 or featured recording artist who performs on, a sound re-
18 cording under this chapter shall be deemed to be an inter-
19 ested copyright party, as defined in section 1001, to the
20 same extent as a copyright owner or featured recording
21 artist under chapter 10.

22 “(k) TREATMENT OF STATES AND STATE INSTRU-
23 MENTALITIES, OFFICERS, AND EMPLOYEES.—Any State,
24 and any instrumentality, officer, or employee described in
25 subsection (a)(3), shall be subject to the provisions of this

1 section in the same manner and to the same extent as
 2 any nongovernmental entity.

3 “(l) DEFINITIONS.—In this section:

4 “(1) COVERED ACTIVITY.—The term ‘covered
 5 activity’ means any activity that the copyright owner
 6 of a sound recording would have the exclusive right
 7 to do or authorize under section 106 or 602, or that
 8 would violate section 1201 or 1202, if the sound re-
 9 cording were fixed on or after February 15, 1972.

10 “(2) RIGHTS OWNER.—The term ‘rights owner’
 11 means—

12 “(A) the person that has the exclusive
 13 right to reproduce a sound recording under the
 14 laws of any State, as of the day before the date
 15 of enactment of this section; or

16 “(B) any person to which a right to en-
 17 force a violation of this section may be trans-
 18 ferred, in whole or in part, after the date of en-
 19 actment of this section, under—

20 “(i) subsections (d) and (e) of section
 21 201; and

22 “(ii) section 204.”.

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

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

1 **TITLE III—ALLOCATION FOR**
2 **MUSIC PRODUCERS**

3 **SEC. 301. SHORT TITLE.**

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

6 **SEC. 302. PAYMENT OF STATUTORY PERFORMANCE ROYAL-**
7 **TIES.**

8 (a) LETTER OF DIRECTION.—Section 114(g) of title
9 17, United States Code, is amended by adding at the end
10 the following:

11 “(5) LETTER OF DIRECTION.—

12 “(A) IN GENERAL.—A nonprofit collective
13 designated by the Copyright Royalty Judges to
14 distribute receipts from the licensing of trans-
15 missions in accordance with subsection (f) shall
16 adopt and reasonably implement a policy that
17 provides, in circumstances determined by the
18 collective to be appropriate, for acceptance of
19 instructions from a payee identified under sub-
20 paragraph (A) or (D) of paragraph (2) to dis-
21 tribute, to a producer, mixer, or sound engineer
22 who was part of the creative process that cre-
23 ated a sound recording, a portion of the pay-
24 ments to which the payee would otherwise be
25 entitled from the licensing of transmissions of

1 the sound recording. In this section, such in-
2 structions shall be referred to as a ‘letter of di-
3 rection’.

4 “(B) ACCEPTANCE OF LETTER.—To the
5 extent that a collective described in subpara-
6 graph (A) accepts a letter of direction under
7 that subparagraph, the person entitled to pay-
8 ment pursuant to the letter of direction shall,
9 during the period in which the letter of direc-
10 tion is in effect and carried out by the collec-
11 tive, be treated for all purposes as the owner of
12 the right to receive such payment, and the
13 payee providing the letter of direction to the
14 collective shall be treated as having no interest
15 in such payment.

16 “(C) AUTHORITY OF COLLECTIVE.—This
17 paragraph shall not be construed in such a
18 manner so that the collective is not authorized
19 to accept or act upon payment instructions in
20 circumstances other than those to which this
21 paragraph applies.”.

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

1 “(6) SOUND RECORDINGS FIXED BEFORE NO-
2 VEMBER 1, 1995.—

3 “(A) PAYMENT ABSENT LETTER OF DI-
4 RECTION.—A nonprofit collective designated by
5 the Copyright Royalty Judges to distribute re-
6 ceipts from the licensing of transmissions in ac-
7 cordance with subsection (f) (in this paragraph
8 referred to as the ‘collective’) shall adopt and
9 reasonably implement a policy that provides, in
10 circumstances determined by the collective to be
11 appropriate, for the deduction of 2 percent of
12 all the receipts that are collected from the li-
13 censing of transmissions of a sound recording
14 fixed before November 1, 1995, but which is
15 withdrawn from the amount otherwise payable
16 under paragraph (2)(D) to the recording artist
17 or artists featured on the sound recording (or
18 the persons conveying rights in the artists’ per-
19 formance in the sound recording), and the dis-
20 tribution of such amount to 1 or more persons
21 described in subparagraph (B) of this para-
22 graph, after deduction of costs described in
23 paragraph (3) or (4), as applicable, if each of
24 the following requirements is met:

1 “(i) CERTIFICATION OF ATTEMPT TO
2 OBTAIN A LETTER OF DIRECTION.—The
3 person described in subparagraph (B) who
4 is to receive the distribution has certified
5 to the collective, under penalty of perjury,
6 that—

7 “(I) for a period of not less than
8 120 days, that person made reason-
9 able efforts to contact the artist payee
10 for such sound recording to request
11 and obtain a letter of direction in-
12 structing the collective to pay to that
13 person a portion of the royalties pay-
14 able to the featured recording artist
15 or artists; and

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

24 “(ii) COLLECTIVE ATTEMPT TO CON-
25 TACT ARTIST.—After receipt of the certifi-

1 cation described in clause (i) and for a pe-
2 riod of not less than 120 days before the
3 first distribution by the collective to the
4 person described in subparagraph (B), the
5 collective attempts, in a reasonable manner
6 as determined by the collective, to notify
7 the artist payee of the certification made
8 by the person described in subparagraph
9 (B).

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

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

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

21 “(ii) has entered into a written con-
22 tract with a record company involved in
23 the creation or lawful exploitation of the
24 sound recording, or with the recording art-
25 ist or artists featured on the sound record-

1 ing (or the persons conveying rights in the
2 artists' performance in the sound record-
3 ing), under which the person seeking pay-
4 ment is entitled to participate in royalty
5 payments that are based on the exploi-
6 tation of the sound recording and are pay-
7 able from royalties otherwise payable to
8 the recording artist or artists featured on
9 the sound recording (or the persons con-
10 veying rights in the artists' performance in
11 the sound recording);

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

14 “(iv) submits to the collective—

15 “(I) a written certification stat-
16 ing, under penalty of perjury, that the
17 person meets the requirements in
18 clauses (i) through (iii); and

19 “(II) a true copy of the contract
20 described in clause (ii).

21 “(C) MULTIPLE CERTIFICATIONS.—Sub-
22 ject to subparagraph (D), in a case in which
23 more than 1 person described in subparagraph
24 (B) has met the requirements for a distribution
25 under subparagraph (A) with respect to a

1 sound recording as of the date that is 10 busi-
2 ness days before the date on which the distribu-
3 tion is made, the collective shall divide the 2
4 percent distribution equally among all such per-
5 sons.

6 “(D) OBJECTION TO PAYMENT.—Not later
7 than 10 business days after the date on which
8 the collective receives from the artist payee a
9 written objection to a distribution made pursu-
10 ant to subparagraph (A), the collective shall
11 cease making any further payment relating to
12 such distribution. In any case in which the col-
13 lective has made 1 or more distributions pursu-
14 ant to subparagraph (A) to a person described
15 in subparagraph (B) before the date that is 10
16 business days after the date on which the col-
17 lective receives from the artist payee an objec-
18 tion to such distribution, the objection shall not
19 affect that person’s entitlement to any distribu-
20 tion made before the collective ceases such dis-
21 tribution under this subparagraph.

22 “(E) OWNERSHIP OF THE RIGHT TO RE-
23 CEIVE PAYMENTS.—To the extent that the col-
24 lective determines that a distribution will be
25 made under subparagraph (A) to a person de-

1 scribed in subparagraph (B), such person shall,
2 during the period covered by such distribution,
3 be treated for all purposes as the owner of the
4 right to receive such payments, and the artist
5 payee to whom such payments would otherwise
6 be payable shall be treated as having no inter-
7 est in such payments.

8 “(F) ARTIST PAYEE DEFINED.—In this
9 paragraph, the term ‘artist payee’ means a per-
10 son, other than a person described in subpara-
11 graph (B), who owns the right to receive all or
12 part of the receipts payable under paragraph
13 (2)(D) with respect to a sound recording. In a
14 case in which there are multiple artist payees
15 with respect to a sound recording, an objection
16 by 1 such payee shall apply only to that payee’s
17 share of the receipts payable under paragraph
18 (2)(D), and shall not preclude payment under
19 subparagraph (A) from the share of an artist
20 payee that does not so object.”.

21 (c) TECHNICAL AND CONFORMING AMENDMENTS.—
22 Section 114(g) of title 17, United States Code, as amend-
23 ed by subsections (a) and (b), is further amended—

24 (1) in paragraph (2), by striking “An agent
25 designated” and inserting “Except as provided for in

1 paragraph (6), a nonprofit collective designated by
2 the Copyright Royalty Judges”;

3 (2) in paragraph (3)—

4 (A) by striking “nonprofit agent des-
5 igned” and inserting “nonprofit collective des-
6 igned by the Copyright Royalty Judges”;

7 (B) by striking “another designated agent”
8 and inserting “another designated nonprofit col-
9 lective”; and

10 (C) by striking “agent” and inserting “col-
11 lective” each subsequent place it appears;

12 (3) in paragraph (4)—

13 (A) by striking “designated agent” and in-
14 serting “nonprofit collective”; and

15 (B) by striking “agent” and inserting “col-
16 lective” each subsequent place it appears; and

17 (4) by adding at the end the following:

18 “(7) PREEMPTION OF STATE PROPERTY
19 LAWS.—The holding and distribution of receipts
20 under section 112 and this section by a nonprofit
21 collective designated by the Copyright Royalty
22 Judges in accordance with this subsection and regu-
23 lations adopted by the Copyright Royalty Judges, or
24 by that nonprofit collective under subparagraphs (B)
25 and (C) of section 114(g)(2), shall supersede and

1 preempt any State law (including common law) con-
2 cerning escheatment or abandoned property, or any
3 analogous provision, that might otherwise apply.”.

4 **SEC. 303. EFFECTIVE DATE.**

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

8 (b) DELAYED EFFECTIVE DATE.—Paragraphs
9 (5)(B) and (6)(E) of section 114(g) of title 17, United
10 States Code, as added by section 302, shall take effect
11 on January 1, 2020.

12 **TITLE IV—SEVERABILITY**

13 **SEC. 401. SEVERABILITY.**

14 If any provision of this Act or any amendment made
15 by this Act, or any application of such provision or amend-
16 ment to any person or circumstance, is held to be uncon-
17 stitutional, the remainder of the provisions of this Act and
18 the amendments made by this Act, and the application of
19 the provision or amendment to any other person or cir-
20 cumstance, shall not be affected.