

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

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

S. 2823

To modernize copyright law, and for other purposes.

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. GRASSLEY

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.

TITLE I—MUSIC LICENSING MODERNIZATION

Sec. 101. Short title.

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

Sec. 103. Amendments to section 114.

Sec. 104. Random assignment of rate court proceedings.

Sec. 105. Performing rights society consent decrees.

Sec. 106. Effective date.

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

Sec. 201. Short title.

Sec. 202. Unauthorized digital performance of pre-1972 sound recordings.

Sec. 203. Effective date.

TITLE III—ALLOCATION FOR MUSIC PRODUCERS

Sec. 301. Short title.

Sec. 302. Payment of statutory performance royalties.

Sec. 303. Effective date.

1 **TITLE I—MUSIC LICENSING** 2 **MODERNIZATION**

3 **SEC. 101. SHORT TITLE.**

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

6 **SEC. 102. BLANKET LICENSE FOR DIGITAL USES AND ME-** 7 **CHANICAL LICENSING COLLECTIVE.**

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

10 (1) in subsection (a)—

11 (A) by inserting “IN GENERAL” after
12 “AVAILABILITY AND SCOPE OF COMPULSORY
13 LICENSE”;

14 (B) by striking paragraph (1) and insert-
15 ing the following new paragraph:

16 “(1) ELIGIBILITY FOR COMPULSORY LI-
17 CENSE.—

18 “(A) CONDITIONS FOR COMPULSORY LI-
19 CENSE.—A person may by complying with the
20 provisions of this section obtain a compulsory li-
21 cense to make and distribute phonorecords of a

1 make and distribute digital phono-
2 record deliveries embodying such work
3 to the public in the United States;
4 and

5 “(II) the sound recording copy-
6 right owner or its authorized dis-
7 tributor has authorized the digital
8 music provider to make and distribute
9 digital phonorecord deliveries of the
10 sound recording to the public in the
11 United States.

12 “(B) DUPLICATION OF SOUND RECORD-
13 ING.—A person may not obtain a compulsory li-
14 cense for the use of the work in the making of
15 phonorecords duplicating a sound recording
16 fixed by another, including by means of digital
17 phonorecord delivery, unless—

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

20 “(ii) the making of the phonorecords
21 was authorized by the owner of the copy-
22 right in the sound recording or, if the
23 sound recording was fixed before February
24 15, 1972, by any person who fixed the
25 sound recording pursuant to an express li-

1 cense from the owner of the copyright in
2 the musical work or pursuant to a valid
3 compulsory license for use of such work in
4 a sound recording.”; and

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

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

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

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

1 service, with requirements that the Register of Copy-
2 rights shall prescribe by regulation.

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

8 “(A) prior to the license availability date,
9 shall, before or within 30 calendar days after
10 first making any such digital phonorecord deliv-
11 ery, serve a notice of intention to do so on the
12 copyright owner (but may not file the notice
13 with the Copyright Office, even if the public
14 records of the Office do not identify the owner
15 or the owner’s address), and such notice shall
16 comply, in form, content, and manner of serv-
17 ice, with requirements that the Register of
18 Copyrights shall prescribe by regulation; or

19 “(B) on or after the license availability
20 date, shall, before making any such digital pho-
21 norecord delivery, follow the procedure de-
22 scribed in subsection (d)(2), except as provided
23 in paragraph (3).

24 “(3) RECORD COMPANY INDIVIDUAL DOWNLOAD
25 LICENSES.—Notwithstanding paragraph (2)(B), a

1 record company may, on or after the license avail-
2 ability date, obtain an individual download license in
3 accordance with the notice requirements described in
4 paragraph (2)(A) (except for the requirement that
5 notice occur prior to the license availability date). A
6 record company that obtains an individual download
7 license as permitted under this paragraph shall pro-
8 vide statements of account and pay royalties as pro-
9 vided in subsection (c)(2)(I).

10 “(4) FAILURE TO OBTAIN LICENSE.—

11 “(A) PHONORECORDS OTHER THAN DIG-
12 ITAL PHONORECORD DELIVERIES.—In the case
13 of phonorecords made and distributed other
14 than by means of digital phonorecord delivery,
15 the failure to serve or file the notice of inten-
16 tion required by paragraph (1) forecloses the
17 possibility of a compulsory license under para-
18 graph (1). In the absence of a voluntary license,
19 the failure to obtain a compulsory license ren-
20 ders the making and distribution of
21 phonorecords actionable as acts of infringement
22 under section 501 and subject to the remedies
23 provided by sections 502 through 506.

24 “(B) DIGITAL PHONORECORD DELIV-
25 ERIES.—

1 “(i) In the case of phonorecords made
2 and distributed by means of digital phono-
3 record delivery:

4 “(I) The failure to serve the no-
5 tice of intention required by para-
6 graph (2)(A) or paragraph (3), as ap-
7 plicable, forecloses the possibility of a
8 compulsory license under such para-
9 graph.

10 “(II) The failure to comply with
11 paragraph (2)(B) forecloses the possi-
12 bility of a blanket license for a period
13 of 3 years after the last calendar day
14 on which the notice of license was re-
15 quired to be submitted to the mechan-
16 ical licensing collective under such
17 paragraph.

18 “(ii) In either case described in clause
19 (i), in the absence of a voluntary license,
20 the failure to obtain a compulsory license
21 renders the making and distribution of
22 phonorecords by means of digital phono-
23 record delivery actionable as acts of in-
24 fringement under section 501 and subject

1 to the remedies provided by sections 502
2 through 506.”;

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

5 “(c) GENERAL CONDITIONS APPLICABLE TO COM-
6 PULSORY LICENSE.—

7 “(1) ROYALTY PAYABLE UNDER COMPULSORY
8 LICENSE.—

9 “(A) IDENTIFICATION REQUIREMENT.—To
10 be entitled to receive royalties under a compul-
11 sory license obtained under subsection (b)(1)
12 the copyright owner must be identified in the
13 registration or other public records of the Copy-
14 right Office. The owner is entitled to royalties
15 for phonorecords made and distributed after
16 being so identified, but is not entitled to recover
17 for any phonorecords previously made and dis-
18 tributed.

19 “(B) ROYALTY FOR PHONORECORDS
20 OTHER THAN DIGITAL PHONORECORD DELIV-
21 ERIES.—Except as provided by subparagraph
22 (A), for every phonorecord made and distrib-
23 uted under a compulsory license under sub-
24 section (a) other than by means of digital pho-
25 norecord delivery, with respect to each work

1 embodied in the phonorecord, the royalty shall
2 be the royalty prescribed under subparagraphs
3 (D) through (F) and paragraph (2)(A) and
4 chapter 8 of this title. For purposes of this sub-
5 paragraph, a phonorecord is considered ‘distrib-
6 uted’ if the person exercising the compulsory li-
7 cense has voluntarily and permanently parted
8 with its possession.

9 “(C) ROYALTY FOR DIGITAL PHONO-
10 RECORD DELIVERIES.—For every digital phono-
11 record delivery of a musical work made under
12 a compulsory license under this section, the roy-
13 alty payable shall be the royalty prescribed
14 under subparagraphs (D) through (F) and
15 paragraph (2)(A) and chapter 8 of this title.

16 “(D) AUTHORITY TO NEGOTIATE.—Not-
17 withstanding any provision of the antitrust
18 laws, any copyright owners of nondramatic mu-
19 sical works and any persons entitled to obtain
20 a compulsory license under subsection (a) may
21 negotiate and agree upon the terms and rates
22 of royalty payments under this section and the
23 proportionate division of fees paid among copy-
24 right owners, and may designate common
25 agents on a nonexclusive basis to negotiate,

1 agree to, pay or receive such royalty payments.
2 Such authority to negotiate the terms and rates
3 of royalty payments includes, but is not limited
4 to, the authority to negotiate the year during
5 which the royalty rates prescribed under this
6 subparagraph and subparagraphs (E) and (F)
7 and paragraph (2)(A) and chapter 8 of this
8 title shall next be determined.

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

1 parties to each proceeding shall bear their own
2 costs.

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

23 “(i) whether use of the compulsory li-
24 censee’s service may substitute for or may
25 promote the sales of phonorecords or oth-

1 erwise may interfere with or may enhance
2 the musical work copyright owner's other
3 streams of revenue from its musical works;
4 and

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

12 “(2) ADDITIONAL TERMS AND CONDITIONS.—

13 “(A) VOLUNTARY LICENSES AND CON-
14 TRACTUAL ROYALTY RATES.—

15 “(i) License agreements voluntarily
16 negotiated at any time between one or
17 more copyright owners of nondramatic mu-
18 sical works and one or more persons enti-
19 tled to obtain a compulsory license under
20 subsection (a) shall be given effect in lieu
21 of any determination by the Copyright
22 Royalty Judges. Subject to clause (ii), the
23 royalty rates determined pursuant to sub-
24 paragraphs (E) and (F) of paragraph (1)
25 shall be given effect as to digital phono-

1 record deliveries in lieu of any contrary
2 royalty rates specified in a contract pursu-
3 ant to which a recording artist who is the
4 author of a nondramatic musical work
5 grants a license under that person's exclu-
6 sive rights in the musical work under para-
7 graphs (1) and (3) of section 106 or com-
8 mits another person to grant a license in
9 that musical work under paragraphs (1)
10 and (3) of section 106, to a person desir-
11 ing to fix in a tangible medium of expres-
12 sion a sound recording embodying the mu-
13 sical work.

14 “(ii) The second sentence of clause (i)
15 shall not apply to—

16 “(I) a contract entered into on or
17 before June 22, 1995, and not modi-
18 fied thereafter for the purpose of re-
19 ducing the royalty rates determined
20 pursuant to subparagraphs (E) and
21 (F) of paragraph (1) or of increasing
22 the number of musical works within
23 the scope of the contract covered by
24 the reduced rates, except if a contract
25 entered into on or before June 22,

1 1995, is modified thereafter for the
2 purpose of increasing the number of
3 musical works within the scope of the
4 contract, any contrary royalty rates
5 specified in the contract shall be given
6 effect in lieu of royalty rates deter-
7 mined pursuant to subparagraphs (E)
8 and (F) of paragraph (1) for the
9 number of musical works within the
10 scope of the contract as of June 22,
11 1995; and

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

22 “(B) SOUND RECORDING INFORMATION.—
23 Except as provided in section 1002(e) of this
24 title, a digital phonorecord delivery licensed
25 under this paragraph shall be accompanied by

1 the information encoded in the sound recording,
2 if any, by or under the authority of the copy-
3 right owner of that sound recording, that iden-
4 tifies the title of the sound recording, the fea-
5 tured recording artist who performs on the
6 sound recording, and related information, in-
7 cluding information concerning the underlying
8 musical work and its writer.

9 “(C) INFRINGEMENT REMEDIES.—

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

15 “(I) the digital phonorecord de-
16 livery has been authorized by the
17 sound recording copyright owner; and

18 “(II) the entity making the dig-
19 ital phonorecord delivery has obtained
20 a compulsory license under subsection
21 (a) or has otherwise been authorized
22 by the musical work copyright owner,
23 or by a record company pursuant to
24 an individual download license, to
25 make and distribute phonorecords of

1 each musical work embodied in the
2 sound recording by means of digital
3 phonorecord delivery.

4 “(ii) Any cause of action under this
5 subparagraph shall be in addition to those
6 available to the owner of the copyright in
7 the nondramatic musical work under sub-
8 paragraph (J) and section 106(4) and the
9 owner of the copyright in the sound record-
10 ing under section 106(6).

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

23 “(E) RECORDING DEVICES AND MEDIA.—
24 Nothing in section 1008 shall be construed to
25 prevent the exercise of the rights and remedies

1 allowed by this paragraph, subparagraph (J),
2 and chapter 5 in the event of a digital phono-
3 record delivery, except that no action alleging
4 infringement of copyright may be brought
5 under this title against a manufacturer, im-
6 porter or distributor of a digital audio recording
7 device, a digital audio recording medium, an
8 analog recording device, or an analog recording
9 medium, or against a consumer, based on the
10 actions described in such section.

11 “(F) PRESERVATION OF RIGHTS.—Noth-
12 ing in this section annuls or limits (i) the exclu-
13 sive right to publicly perform a sound recording
14 or the musical work embodied therein, including
15 by means of a digital transmission, under sec-
16 tions 106(4) and 106(6), (ii) except for compul-
17 sory licensing under the conditions specified by
18 this section, the exclusive rights to reproduce
19 and distribute the sound recording and the mu-
20 sical work embodied therein under sections
21 106(1) and 106(3), including by means of a
22 digital phonorecord delivery, or (iii) any other
23 rights under any other provision of section 106,
24 or remedies available under this title, as such
25 rights or remedies exist either before or after

1 the date of enactment of the Digital Perform-
2 ance Right in Sound Recordings Act of 1995.

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

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

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

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 subsection
5 (b)(1), (b)(2)(A), or (b)(3), 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 within 30 days from the date of the
11 notice, the compulsory license will be automati-
12 cally terminated. Such termination renders ei-
13 ther the making or the distribution, or both, of
14 all phonorecords for which the royalty has not
15 been paid, actionable as acts of infringement
16 under section 501 and fully subject to the rem-
17 edies provided by sections 502 through 506. In
18 the case of a license obtained under subsection
19 (b)(2)(B), license authority under the compul-
20 sory license may be terminated as provided in
21 subsection (d)(4)(E).”;

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

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 one or more copyright
10 owners and one 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 within 30
20 calendar days after receipt, the blanket li-
21 cense shall be effective as of the date the
22 notice of license was sent by the digital
23 music provider as shown by a physical or
24 electronic record.

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

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

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

16 “(iv) If a notice of license is rejected
17 under clause (iii)(I), the digital music pro-
18 vider shall have 30 calendar days after re-
19 ceipt of the notice of rejection to cure any
20 deficiency and submit an amended notice
21 of license to the mechanical licensing col-
22 lective. If the deficiency has been cured,
23 the mechanical licensing collective shall so
24 confirm in writing, and the license shall be
25 effective as of the date that the original

1 notice of license was provided by the dig-
2 ital music provider.

3 “(v) A digital music provider that be-
4 lieves a notice of license was improperly re-
5 jected by the mechanical licensing collec-
6 tive may seek review of such rejection in
7 Federal district court. The district court
8 shall determine the matter de novo based
9 on the record before the mechanical licens-
10 ing collective and any additional evidence
11 presented by the parties.

12 “(B) BLANKET LICENSE EFFECTIVE
13 DATE.—Blanket licenses shall be made available
14 by the mechanical licensing collective on and
15 after the license availability date. No such li-
16 cense shall be effective prior to the license avail-
17 ability date.

18 “(3) MECHANICAL LICENSING COLLECTIVE.—

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

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

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

8 “(iii) is able to demonstrate to the
9 Register of Copyrights that it has, or will
10 have prior to the license availability date,
11 the administrative and technological capa-
12 bilities to perform the required functions of
13 the mechanical licensing collective under
14 this subsection and that is governed by a
15 board of directors in accordance with sub-
16 paragraph (D)(i); and

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

22 “(B) DESIGNATION OF MECHANICAL LI-
23 CENSING COLLECTIVE.—

24 “(i) INITIAL DESIGNATION.—The
25 Register of Copyrights shall initially des-

1 tion to be effective as of the first day
2 of a month that is no less than 6
3 months and no longer than 9 months
4 after the date of publication of such
5 notice, as specified by the Register.

6 “(II) If a new entity is des-
7 ignated as a mechanical licensing col-
8 lective, the Register shall adopt regu-
9 lations to govern the transfer of li-
10 censes, funds, records, data, and ad-
11 ministrative responsibilities from the
12 existing mechanical licensing collective
13 to the new entity.

14 “(iii) CLOSEST ALTERNATIVE DES-
15 IGNATION.—If the Register is unable to
16 identify an entity that fulfills each of the
17 qualifications set forth in clauses (i)
18 through (iii) of subparagraph (A), the Reg-
19 ister shall designate the entity that most
20 nearly fulfills such qualifications for pur-
21 poses of carrying out the responsibilities of
22 the mechanical licensing collective.

23 “(C) AUTHORITIES AND FUNCTIONS.—

24 “(i) IN GENERAL.—The mechanical li-
25 censing collective is authorized to perform

1 the following functions, subject to more
2 particular requirements as described in
3 this subsection:

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

8 “(II) Collect and distribute roy-
9 ties from digital music providers for
10 covered activities.

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

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

21 “(V) Administer a process by
22 which copyright owners can claim
23 ownership of musical works (and
24 shares of such works), and a process
25 by which royalties for works for which

1 the owner is not identified or located
2 are equitably distributed to known
3 copyright owners.

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

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

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

20 “(IX) Initiate and participate in
21 proceedings before the Copyright Roy-
22 alty Judges to establish the adminis-
23 trative assessment under this sub-
24 section.

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

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

9 “(XII) Maintain records of its
10 activities and engage in and respond
11 to audits described under this sub-
12 section.

13 “(XIII) Engage in such other ac-
14 tivities as may be necessary or appro-
15 priate to fulfill its responsibilities
16 under this subsection.

17 “(ii) ADDITIONAL ADMINISTRATIVE
18 ACTIVITIES.—Subject to paragraph
19 (11)(C) and clause (iii), the mechanical li-
20 censing collective may also administer, or
21 assist in administering, voluntary licenses
22 issued by or individual download licenses
23 obtained from copyright owners for uses of
24 musical works, for which the mechanical li-

1 censing collective shall charge reasonable
2 fees for such services.

3 “(iii) RESTRICTION CONCERNING PUB-
4 LIC PERFORMANCE RIGHTS.—The mechan-
5 ical licensing collective may, pursuant to
6 clause (ii), provide administration services
7 with respect to voluntary licenses that in-
8 clude the right of public performance in
9 musical works, but may not itself negotiate
10 or grant licenses for the right of public
11 performance in musical works, and may
12 not be the exclusive or nonexclusive as-
13 signee or grantee of the right of public per-
14 formance in musical works.

15 “(iv) RESTRICTION ON LOBBYING.—
16 The mechanical licensing collective may
17 not engage in government lobbying activi-
18 ties, but may engage in the activities de-
19 scribed in subclauses (IX), (X), and (XI)
20 of clause (i).

21 “(D) GOVERNANCE.—

22 “(i) BOARD OF DIRECTORS.—The me-
23 chanical licensing collective shall have a
24 board of directors consisting of 14 voting

1 members and 3 nonvoting members, as fol-
2 lows:

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

12 “(II) Four voting members shall
13 be professional songwriters who have
14 retained and exercise exclusive rights
15 of reproduction and distribution with
16 respect to covered activities with re-
17 spect to musical works they have au-
18 thored.

19 “(III) One nonvoting member
20 shall be a representative of the non-
21 profit trade association of music pub-
22 lishers that represents the greatest
23 percentage of the licensor market for
24 uses of musical works in covered ac-

1 activities, as measured over the pre-
2 ceding 3 full calendar years.

3 “(IV) One nonvoting member
4 shall be a representative of the digital
5 licensee coordinator, provided that a
6 digital licensee coordinator has been
7 designated pursuant to paragraph
8 (5)(B). Otherwise, the nonvoting
9 member shall be the nonprofit trade
10 association of digital licensees that
11 represents the greatest percentage of
12 the licensee market for uses of musi-
13 cal works in covered activities, as
14 measured over the preceding 3 full
15 calendar years.

16 “(V) One nonvoting member
17 shall be a representative of a nation-
18 ally recognized nonprofit trade asso-
19 ciation whose primary mission is advo-
20 cacy on behalf of songwriters in the
21 United States.

22 “(ii) BYLAWS.—

23 “(I) ESTABLISHMENT.—Not
24 later than 1 year after the date on
25 which the mechanical licensing collec-

1 tive is initially designated by the Reg-
2 ister of Copyrights under subpara-
3 graph (B)(i), the collective shall estab-
4 lish bylaws to determine issues relat-
5 ing to the governance of the collective,
6 including, but not limited to—

7 “(aa) the length of the term
8 for each member of the board of
9 directors;

10 “(bb) the staggering of the
11 terms of the members of the
12 board of directors;

13 “(cc) a process for filling a
14 seat on the board of directors
15 that is vacated before the end of
16 the term with respect to that
17 seat;

18 “(dd) a process for electing
19 a member to the board of direc-
20 tors; and

21 “(ee) a management struc-
22 ture for daily operation of the
23 collective.

24 “(II) PUBLIC AVAILABILITY.—

25 The mechanical licensing collective

1 shall make the bylaws established
2 under subclause (I) available to the
3 public.

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

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

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

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

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

13 “(vi) DISPUTE RESOLUTION COM-
14 MITTEE.—The board of directors of the
15 mechanical licensing collective shall estab-
16 lish and appoint a dispute resolution com-
17 mittee consisting of no fewer than six
18 members, which committee shall include an
19 equal number of representatives of musical
20 work copyright owners and professional
21 songwriters.

22 “(vii) MECHANICAL LICENSING COL-
23 LECTIVE ANNUAL REPORT.—

24 “(I) IN GENERAL.—Not later
25 than June 30 of each year com-

1 mencing after the license availability
2 date, the mechanical licensing collec-
3 tive shall post, and make available on-
4 line for a period of at least 3 years,
5 an annual report that sets forth infor-
6 mation regarding—

7 “(aa) the operation and li-
8 censing practices of the collective;

9 “(bb) how royalties are col-
10 lected and distributed;

11 “(cc) budgeting and expend-
12 itures;

13 “(dd) the collective total
14 costs for the preceding calendar
15 year;

16 “(ee) the projected annual
17 mechanical licensing collective
18 budget;

19 “(ff) aggregated royalty re-
20 ceipts and payments;

21 “(gg) expenses that are
22 more than 10 percent of the an-
23 nual mechanical licensing collec-
24 tive budget; and

1 “(hh) the efforts of the col-
2 lective to locate and identify
3 copyright owners of unmatched
4 musical works (and shares of
5 works).

6 “(II) SUBMISSION.—On the date
7 on which the mechanical licensing col-
8 lective posts each report required
9 under subclause (I), the collective
10 shall provide a copy of the report to
11 the Register of Copyrights.

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

20 “(ix) OVERSIGHT AND ACCOUNT-
21 ABILITY.—

22 “(I) IN GENERAL.—The mechan-
23 ical licensing collective shall—

1 “(aa) ensure that the poli-
2 cies and practices of the collective
3 are transparent and accountable;

4 “(bb) identify a point of
5 contact for publisher inquiries
6 and complaints with timely re-
7 dress; and

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

12 “(II) AUDITS.—

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

23 “(AA) examine the
24 books, records, and oper-
25 ations of the collective;

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

6 “(CC) not later than
7 December 31 of the year in
8 which the qualified auditor
9 is retained, deliver the re-
10 port described in subitem
11 (BB) to the board of direc-
12 tors of the collective.

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

19 “(AA) for the receipt,
20 handling, and distribution of
21 royalty funds, including any
22 amounts held as unclaimed
23 royalties;

24 “(BB) to guard against
25 fraud, abuse, waste, and the

1 unreasonable use of funds;
2 and

3 “(CC) to protect the
4 confidentiality of financial,
5 proprietary, and other sen-
6 sitive information.

7 “(cc) PUBLIC AVAIL-
8 ABILITY.—With respect to each
9 report prepared under item (aa),
10 the mechanical licensing collective
11 shall—

12 “(AA) submit the re-
13 port to the Register of Copy-
14 rights; and

15 “(BB) make the report
16 available to the public.

17 “(E) MUSICAL WORKS DATABASE.—

18 “(i) ESTABLISHMENT AND MAINTEN-
19 NANCE OF DATABASE.—The mechanical li-
20 censing collective shall establish and main-
21 tain a database containing information re-
22 lating to musical works (and shares of
23 such works) and, to the extent known, the
24 identity and location of the copyright own-
25 ers of such works (and shares thereof) and

1 the sound recordings in which the musical
2 works are embodied. In furtherance of
3 maintaining such database, the mechanical
4 licensing collective shall engage in efforts
5 to identify the musical works embodied in
6 particular sound recordings, as well as to
7 identify and locate the copyright owners of
8 such works (and shares thereof), and up-
9 date such data as appropriate.

10 “(ii) MATCHED WORKS.—With respect
11 to musical works (and shares thereof) that
12 have been matched to copyright owners,
13 the musical works database shall include—

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

15 “(II) the copyright owner of the
16 work (or share thereof), and such
17 owner’s ownership percentage;

18 “(III) contact information for
19 such copyright owner;

20 “(IV) to the extent reasonably
21 available to the mechanical licensing
22 collective—

23 “(aa) the international
24 standard musical work code for
25 the work; and

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

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

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

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

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

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

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

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

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

1 “(II) such other information re-
2 relating to the identity and ownership of
3 musical works (and shares of such
4 works) as the Register of Copyrights
5 may prescribe by regulation.

6 “(iv) SOUND RECORDING INFORMA-
7 TION.—Each musical work copyright
8 owner with any musical work listed in the
9 musical works database shall engage in
10 commercially reasonable efforts to deliver
11 to the mechanical licensing collective, in-
12 cluding for use in the musical works data-
13 base, to the extent such information is not
14 then available in the database, information
15 regarding the names of the sound record-
16 ings in which that copyright owner’s musi-
17 cal works (or shares thereof) are embodied,
18 to the extent practicable.

19 “(v) ACCESSIBILITY OF DATABASE.—
20 The musical works database shall be made
21 available to members of the public in a
22 searchable, online format, free of charge.
23 The mechanical licensing collective shall
24 make such database available in a bulk,
25 machine-readable format, through a widely

1 available software application, to the fol-
2 lowing entities:

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

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

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

13 “(IV) The Register of Copy-
14 rights, free of charge (but the Reg-
15 ister shall not treat such database or
16 any information therein as a Govern-
17 ment record).

18 “(V) Any member of the public,
19 for a fee not to exceed the marginal
20 cost to the mechanical licensing collec-
21 tive of providing the database to such
22 person.

23 “(vi) ADDITIONAL REQUIREMENTS.—
24 The Register of Copyrights shall establish
25 requirements by regulations to ensure the

1 usability, interoperability, and usage re-
2 strictions of the musical works database.

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

5 “(i) NOTICES OF LICENSES.—The me-
6 chanical licensing collective shall receive,
7 review, and confirm or reject notices of li-
8 cense from digital music providers, as pro-
9 vided in paragraph (2)(A). The collective
10 shall maintain a current, publicly acces-
11 sible list of blanket licenses that includes
12 contact information for the licensees and
13 the effective dates of such licenses.

14 “(ii) NOTICES OF NONBLANKET AC-
15 TIVITY.—The mechanical licensing collec-
16 tive shall receive notices of nonblanket ac-
17 tivity from significant nonblanket licensees,
18 as provided in paragraph (6)(A). The col-
19 lective shall maintain a current, publicly
20 accessible list of notices of nonblanket ac-
21 tivity that includes contact information for
22 significant nonblanket licensees and the
23 dates of receipt of such notices.

24 “(G) COLLECTION AND DISTRIBUTION OF
25 ROYALTIES.—

1 in such reports, as well as the owner-
2 ship and other information contained
3 in the records of the collective; and

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

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

12 “(bb) a pending dispute be-
13 fore the dispute resolution com-
14 mittee of the mechanical licens-
15 ing collective.

16 “(ii) OTHER COLLECTION EFFORTS.—
17 Any royalties recovered by the mechanical
18 licensing collective as a result of efforts to
19 enforce rights or obligations under a blan-
20 ket license, including through a bankruptcy
21 proceeding or other legal action, shall be
22 distributed to copyright owners based on
23 available usage information and in accord-
24 ance with the procedures described in sub-
25 clauses (I) and (II) of clause (i), on a pro

1 rata basis in proportion to the overall per-
2 centage recovery of the total royalties
3 owed, with any pro rata share of royalties
4 that cannot be distributed deposited in an
5 interest-bearing account as provided in
6 subparagraph (H)(ii).

7 “(H) HOLDING OF ACCRUED ROYAL-
8 TIES.—

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

22 “(ii) INTEREST-BEARING ACCOUNT.—
23 Accrued royalties for unmatched works
24 (and shares thereof) shall be maintained
25 by the mechanical licensing collective in an

1 interest-bearing account that earns month-
2 ly interest at the Federal, short-term rate,
3 such interest to accrue for the benefit of
4 copyright owners entitled to payment of
5 such accrued royalties.

6 “(I) MUSICAL WORKS CLAIMING PROC-
7 ESS.—When a copyright owner of an un-
8 matched work (or share of a work) has been
9 identified and located in accordance with the
10 procedures of the mechanical licensing collec-
11 tive, the collective shall—

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

14 “(ii) provided that accrued royalties
15 for the musical work (or share thereof)
16 have not yet been included in a distribution
17 pursuant to subparagraph (J)(i), pay such
18 accrued royalties and a proportionate
19 amount of accrued interest associated with
20 that work (or share thereof) to the copy-
21 right owner, accompanied by a cumulative
22 statement of account reflecting usage of
23 such work and accrued royalties based on
24 information provided by digital music pro-

1 viders to the mechanical licensing collec-
2 tive.

3 “(J) DISTRIBUTION OF UNCLAIMED AC-
4 CRUED ROYALTIES.—

5 “(i) DISTRIBUTION PROCEDURES.—

6 After the expiration of the prescribed hold-
7 ing period for accrued royalties provided in
8 paragraph (H)(i), the mechanical licensing
9 collective shall distribute such accrued roy-
10 alties, along with a proportionate share of
11 accrued interest, to copyright owners iden-
12 tified in the records of the collective, sub-
13 ject to the following requirements, and in
14 accordance with the policies and proce-
15 dures established under clause (ii):

16 “(I) The first such distribution
17 shall occur on or after January 1 of
18 the second full calendar year to com-
19 mence after the license availability
20 date, with at least one such distribu-
21 tion to take place during each cal-
22 endar year thereafter.

23 “(II) Copyright owners’ payment
24 shares for unclaimed accrued royalties
25 for particular reporting periods shall

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

18 “(aa) the mechanical licens-
19 ing collective may require copy-
20 right owners seeking distribu-
21 tions of unclaimed accrued royals-
22 ties to provide, or direct the pro-
23 vision of, information concerning
24 the usage of musical works under
25 voluntary licenses and individual

1 download licenses for covered ac-
2 tivities; and

3 “(bb) the mechanical licens-
4 ing collective shall take appro-
5 priate steps to safeguard the con-
6 fidentiality and security of usage,
7 financial, and other sensitive
8 data used to compute market
9 shares in accordance with the
10 confidentiality provisions pre-
11 scribed by the Register of Copy-
12 rights under paragraph (12)(C).

13 “(ii) ESTABLISHMENT OF DISTRIBUTION POLICIES.—The unclaimed royalties
14 oversight committee established under
15 paragraph (3)(D)(iv) shall establish poli-
16 cies and procedures for the distribution of
17 unclaimed accrued royalties and accrued
18 interest in accordance with this subpara-
19 graph, including the provision of usage
20 data to copyright owners to allocate pay-
21 ments and credits to songwriters pursuant
22 to clause (iv), subject to the approval of
23 the board of directors of the mechanical li-
24 censing collective.
25

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

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

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

15 “(aa) the existence of the
16 collective and the ability to claim
17 unclaimed accrued royalties for
18 unmatched musical works (and
19 shares of such works) held by the
20 collective;

21 “(bb) the procedures by
22 which copyright owners may
23 identify themselves and provide
24 contact, ownership, and other rel-
25 evant information to the collec-

1 tive in order to receive payments
2 of accrued royalties;

3 “(cc) any transfer of ac-
4 crued royalties for musical works
5 under paragraph (10)(B), not
6 later than 180 days after the
7 date on which the transfer is re-
8 ceived; and

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

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

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

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

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

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

19 “(K) DISPUTE RESOLUTION.—The dispute
20 resolution committee established under para-
21 graph (3)(D)(v) shall establish policies and pro-
22 cedures—

23 “(i) for copyright owners to address in
24 a timely and equitable manner disputes re-
25 lating to ownership interests in musical

1 works licensed under this section and allo-
2 cation and distribution of royalties by the
3 mechanical licensing collective, subject to
4 the approval of the board of directors of
5 the mechanical licensing collective;

6 “(ii) that shall include a mechanism
7 to hold disputed funds in accordance with
8 the requirements described in subpara-
9 graph (H)(ii) pending resolution of the dis-
10 pute; and

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

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

19 “(i) VERIFICATION PROCESS.—A
20 copyright owner entitled to receive pay-
21 ments of royalties for covered activities
22 from the mechanical licensing collective
23 may, individually or with other copyright
24 owners, conduct an audit of the mechanical
25 licensing collective to verify the accuracy of

1 royalty payments by the mechanical licens-
2 ing collective to such copyright owner, as
3 follows:

4 “(I) A copyright owner may
5 audit the mechanical licensing collec-
6 tive only once in a year for any or all
7 of the prior 3 calendar years, and may
8 not audit records for any calendar
9 year more than once.

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

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

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

5 “(IV) To commence the audit,
6 any copyright owner shall file with the
7 Copyright Office a notice of intent to
8 conduct an audit of the mechanical li-
9 censing collective, identifying the pe-
10 riod of time to be audited, and shall
11 simultaneously deliver a copy of such
12 notice to the mechanical licensing col-
13 lective. The Register of Copyrights
14 shall cause the notice of audit to be
15 published in the Federal Register
16 within 45 calendar days after receipt.

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

1 vide a tentative draft of the report to
2 the mechanical licensing collective and
3 allow the mechanical licensing collec-
4 tive a reasonable opportunity to re-
5 spond to the findings, including by
6 clarifying issues and correcting factual
7 errors.

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

24 “(ii) ALTERNATIVE VERIFICATION
25 PROCEDURES.—Nothing in this subpara-

1 graph shall preclude a copyright owner and
2 the mechanical licensing collective from
3 agreeing to audit procedures different from
4 those described herein, but a notice of the
5 audit shall be provided to and published by
6 the Copyright Office as described in clause
7 (i)(IV).

8 “(M) RECORDS OF MECHANICAL LICENS-
9 ING COLLECTIVE.—

10 “(i) RECORDS MAINTENANCE.—The
11 mechanical licensing collective shall ensure
12 that all material records of its operations,
13 including those relating to notices of li-
14 cense, the administration of its claims
15 process, reports of usage, royalty pay-
16 ments, receipt and maintenance of accrued
17 royalties, royalty distribution processes,
18 and legal matters, are preserved and main-
19 tained in a secure and reliable manner,
20 with appropriate commercially reasonable
21 safeguards against unauthorized access,
22 copying, and disclosure, and subject to the
23 confidentiality requirements prescribed by
24 the Register of Copyrights under para-
25 graph (12)(C) for a period of no less than

1 7 years after the date of creation or re-
2 ceipt, whichever occurs later.

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

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

13 “(A) ROYALTY REPORTING AND PAY-
14 MENTS.—

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

24 “(ii) DATA TO BE REPORTED.—In re-
25 porting usage of musical works to the me-

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

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

23 “(cc) provide the number of
24 digital phonorecord deliveries of
25 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 shall adopt regulations—

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

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

17 “(B) COLLECTION OF SOUND RECORDING
18 INFORMATION.—A digital music provider shall
19 engage in good-faith, commercially reasonable
20 efforts to obtain from sound recording copy-
21 right owners and other licensors of sound re-
22 cordings made available through the service of
23 such digital music provider information con-
24 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 no more than
4 once in any 3-calendar-year period to
5 cover a verification period of no more
6 than the 3 full calendar years pre-
7 ceding the date of commencement of
8 the audit, and such audit may not
9 audit records for any such 3-year
10 verification period more than once.

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

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

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

6 “(IV) To commence the audit,
7 the mechanical licensing collective
8 shall file with the Copyright Office a
9 notice of intent to conduct an audit of
10 the digital music provider, identifying
11 the period of time to be audited, and
12 shall simultaneously deliver a copy of
13 such notice to the digital music pro-
14 vider. The Register of Copyrights
15 shall cause the notice of audit to be
16 published in the Federal Register
17 within 45 calendar days after receipt.

18 “(V) The qualified auditor shall
19 determine the accuracy of royalty pay-
20 ments, including whether an under-
21 payment or overpayment of royalties
22 was made by the digital music pro-
23 vider to the mechanical licensing col-
24 lective, but before providing a final
25 audit report to the mechanical licens-

1 ing collective, the qualified auditor
2 shall provide a tentative draft of the
3 report to the digital music provider
4 and allow the digital music provider a
5 reasonable opportunity to respond to
6 the findings, including by clarifying
7 issues and correcting factual errors.

8 “(VI) The mechanical licensing
9 collective shall pay the cost of the
10 audit, unless the qualified auditor de-
11 termines that there was an under-
12 payment by the digital music provider
13 of 10 percent or more, in which case
14 the digital music provider shall bear
15 the reasonable costs of the audit, in
16 addition to paying the amount of any
17 underpayment to the mechanical li-
18 censing collective. In case of an over-
19 payment by the digital music provider,
20 the mechanical licensing collective
21 shall provide a credit to the account
22 of the digital music provider.

23 “(VII) A digital music provider
24 may not assert section 507 or any
25 other Federal or State statute of limi-

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

5 “(III) provides one or more
6 monthly reports of usage to the me-
7 chanical licensing collective that, on
8 the whole, is or are materially defi-
9 cient as a result of inaccurate, miss-
10 ing, or unreadable data, where the
11 correct data was available to the dig-
12 ital music provider and required to be
13 reported under this section and appli-
14 cable regulations;

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

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

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

7 “(I) The mechanical licensing
8 collective shall provide written notice
9 to the digital music provider describ-
10 ing with reasonable particularity the
11 default and advising that unless such
12 default is cured within 60 calendar
13 days after the date of the notice, the
14 blanket license will automatically ter-
15 minate at the end of that period.

16 “(II) If the digital music provider
17 fails to remedy the default within the
18 60-day period referenced in subclause
19 (I), the license shall terminate without
20 any further action on the part of the
21 mechanical licensing collective. Such
22 termination renders the making of all
23 digital phonorecord deliveries of all
24 musical works (and shares thereof)
25 covered by the blanket license for

1 which the royalty or administrative
2 assessment has not been paid action-
3 able as acts of infringement under
4 section 501 and subject to the rem-
5 edies provided by sections 502
6 through 506.

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

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

22 “(5) DIGITAL LICENSEE COORDINATOR.—

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

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

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

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

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

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

1 “(i) INITIAL DESIGNATION.—The
2 Register of Copyrights shall initially des-
3 ignate the digital licensee coordinator with-
4 in 9 months after the enactment date, in
5 accordance with the same procedure de-
6 scribed for designation of the mechanical
7 licensing collective in paragraph (3)(B)(i).

8 “(ii) PERIODIC REVIEW OF DESIGNA-
9 TION.—Following the initial designation of
10 the digital licensee coordinator, the Reg-
11 ister shall, every 5 years, beginning with
12 the fifth full calendar year to commence
13 after the initial designation, determine
14 whether the existing designation should be
15 continued, or a different entity meeting the
16 criteria described in clauses (i) through
17 (iii) of subparagraph (A) should be des-
18 ignated, in accordance with the same pro-
19 cedure described for the mechanical licens-
20 ing collective in paragraph (3)(B)(ii).

21 “(iii) INABILITY TO DESIGNATE.—If
22 the Register is unable to identify an entity
23 that fulfills each of the qualifications de-
24 scribed in clauses (i) through (iii) of sub-
25 paragraph (A) to serve as the digital li-

1 ment, including by receiving informa-
2 tion from and coordinating with the
3 mechanical licensing collective.

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

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

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

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

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

1 ment locations on digital music pro-
2 vider websites and applications; and

3 “(II) conducting in-person out-
4 reach activities with songwriters.

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

7 “(A) IN GENERAL.—

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

23 “(ii) REPORTING AND PAYMENT OBLI-
24 GATIONS.—The notice of nonblanket activ-
25 ity submitted to the mechanical licensing

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

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

1 assessment, but if such entity later quali-
2 fies as a significant nonblanket licensee,
3 such entity shall again be required to com-
4 ply with clauses (i) and (ii).

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

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

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

1 “(C) LEGAL ENFORCEMENT EFFORTS.—

2 “(i) FEDERAL COURT ACTION.—

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

24 “(ii) STATUTE OF LIMITATIONS FOR
25 ENFORCEMENT ACTION.—Any action de-

1 scribed in this subparagraph shall be com-
2 menced within the time period described in
3 section 507(b).

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

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

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

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

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

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

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

7 “(B) VOLUNTARY CONTRIBUTIONS.—

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

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

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

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

5 “(ii) TREATMENT OF CONTRIBU-
6 TIONS.—Each such voluntary contribution
7 shall be treated for purposes of an admin-
8 istrative assessment proceeding as an off-
9 set to the collective total costs that would
10 otherwise be recovered through the admin-
11 istrative assessment. Any allocation or re-
12 allocation of voluntary contributions be-
13 tween or among individual digital music
14 providers or significant nonblanket licens-
15 ees shall be a matter of private negotiation
16 and agreement among such parties and
17 outside the scope of the administrative as-
18 sessment proceeding.

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

1 unclaimed accrued royalties on an interim basis
2 to defray such costs, subject to future reim-
3 bursement of such royalties from future collec-
4 tions of the assessment.

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

7 “(i) ADMINISTRATIVE ASSESSMENT TO
8 COVER COLLECTIVE TOTAL COSTS.—The
9 administrative assessment shall be used
10 solely and exclusively to fund the collective
11 total costs.

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

22 “(I) be wholly independent of
23 royalty rates and terms applicable to
24 digital music providers, which shall
25 not be taken into consideration in any

1 manner in establishing the adminis-
2 trative assessment;

3 “(II) be established by the Copy-
4 right Royalty Judges in an amount
5 that is calculated to defray the rea-
6 sonable collective total costs;

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

13 “(IV) may be in the form of a
14 percentage of royalties payable under
15 this section for usage of musical
16 works in covered activities (regardless
17 of whether a different rate applies
18 under a voluntary license), or any
19 other usage-based metric reasonably
20 calculated to equitably allocate the
21 collective total costs across digital
22 music providers and significant non-
23 blanket licensees engaged in covered
24 activities, but shall include as a com-
25 ponent a minimum fee for all digital

1 music providers and significant non-
2 blanket licensees; and

3 “(V) take into consideration an-
4 ticipated future collective total costs
5 and collections of the administrative
6 assessment, but also, as applicable—

7 “(aa) any portion of past ac-
8 tual collective total costs of the
9 mechanical licensing collective
10 not funded by previous collections
11 of the administrative assessment
12 or voluntary contributions be-
13 cause such collections or con-
14 tributions together were insuffi-
15 cient to fund such costs;

16 “(bb) any past collections of
17 the administrative assessment
18 and voluntary contributions that
19 exceeded past actual collective
20 total costs, resulting in a surplus;
21 and

22 “(cc) the amount of any vol-
23 untary contributions by digital
24 music providers or significant
25 nonblanket licensees in relevant

1 periods, described in subpara-
2 graphs (A) and (B) of paragraph
3 (7).

4 “(iii) INITIAL ADMINISTRATIVE AS-
5 SESSMENT.—The procedure for estab-
6 lishing the initial administrative assess-
7 ment shall be as follows:

8 “(I) The Copyright Royalty
9 Judges shall commence a proceeding
10 to establish the initial administrative
11 assessment within 9 months after the
12 enactment date by publishing a notice
13 in the Federal Register seeking peti-
14 tions to participate.

15 “(II) The mechanical licensing
16 collective and digital licensee coordi-
17 nator shall participate in such pro-
18 ceeding, along with any interested
19 copyright owners, digital music pro-
20 viders or significant nonblanket licens-
21 ees that have notified the Copyright
22 Royalty Judges of their desire to par-
23 ticipate.

24 “(III) The Copyright Royalty
25 Judges shall establish a schedule for

1 submission by the parties of informa-
2 tion that may be relevant to estab-
3 lishing the administrative assessment,
4 including actual and anticipated col-
5 lective total costs of the mechanical li-
6 censing collective, actual and antici-
7 pated collections from digital music
8 providers and significant nonblanket
9 licensees, and documentation of vol-
10 untary contributions, as well as a
11 schedule for further proceedings,
12 which shall include a hearing, as they
13 deem appropriate.

14 “(IV) The initial administrative
15 assessment shall be determined, and
16 such determination shall be published
17 in the Federal Register by the Copy-
18 right Royalty Judges, within 1 year
19 after commencement of the proceeding
20 described in this clause. The deter-
21 mination shall be supported by a writ-
22 ten record. The initial administrative
23 assessment shall be effective as of the
24 license availability date, and shall con-
25 tinue in effect unless and until an ad-

1 justed administrative assessment is
2 established pursuant to an adjustment
3 proceeding under clause (iii).

4 “(iv) ADJUSTMENT OF ADMINISTRA-
5 TIVE ASSESSMENT.—The administrative
6 assessment may be adjusted by the Copy-
7 right Royalty Judges periodically, in ac-
8 cordance with the following procedures:

9 “(I) No earlier than 1 year after
10 the most recent publication of a deter-
11 mination of the administrative assess-
12 ment by the Copyright Royalty
13 Judges, the mechanical licensing col-
14 lective, the digital licensee coordi-
15 nator, or one or more interested copy-
16 right owners, digital music providers,
17 or significant nonblanket licensees,
18 may file a petition with the Copyright
19 Royalty Judges in the month of May
20 to commence a proceeding to adjust
21 the administrative assessment.

22 “(II) Notice of the commence-
23 ment of such proceeding shall be pub-
24 lished in the Federal Register in the
25 month of June following the filing of

1 any petition, with a schedule of re-
2 requested information and additional
3 proceedings, as described in clause
4 (iii)(III). The mechanical licensing
5 collective and digital licensee coordi-
6 nator shall participate in such pro-
7 ceeding, along with any interested
8 copyright owners, digital music pro-
9 viders, or significant nonblanket li-
10 censees that have notified the Copy-
11 right Royalty Judges of their desire to
12 participate.

13 “(III) The determination of the
14 adjusted administrative assessment,
15 which shall be supported by a written
16 record, shall be published in the Fed-
17 eral Register during June of the cal-
18 endar year following the commence-
19 ment of the proceeding. The adjusted
20 administrative assessment shall take
21 effect January 1 of the year following
22 such publication.

23 “(v) ADOPTION OF VOLUNTARY
24 AGREEMENTS.—In lieu of reaching their
25 own determination based on evaluation of

1 relevant data, the Copyright Royalty
2 Judges shall approve and adopt a nego-
3 tiated agreement to establish the amount
4 and terms of the administrative assessment
5 that has been agreed to by the mechanical
6 licensing collective and the digital licensee
7 coordinator (or if none has been des-
8 ignated, interested digital music providers
9 and significant nonblanket licensees rep-
10 resenting more than half of the market for
11 uses of musical works in covered activi-
12 ties), but the Copyright Royalty Judges
13 shall have the discretion to reject any such
14 agreement for good cause shown. An ad-
15 ministrative assessment adopted under this
16 clause shall apply to all digital music pro-
17 viders and significant nonblanket licensees
18 engaged in covered activities during the pe-
19 riod it is in effect.

20 “(vi) CONTINUING AUTHORITY TO
21 AMEND.—The Copyright Royalty Judges
22 shall retain continuing authority to amend
23 a determination of an administrative as-
24 sessment to correct technical or clerical er-
25 rors, or modify the terms of implementa-

1 tion, for good cause, with any such amend-
2 ment to be published in the Federal Reg-
3 ister.

4 “(vii) APPEAL OF ADMINISTRATIVE
5 ASSESSMENT.—The determination of an
6 administrative assessment by the Copy-
7 right Royalty Judges shall be appealable,
8 within 30 calendar days after publication
9 in the Federal Register, to the Court of
10 Appeals for the District of Columbia Cir-
11 cuit by any party that fully participated in
12 the proceeding. The administrative assess-
13 ment as established by the Copyright Roy-
14 alty Judges shall remain in effect pending
15 the final outcome of any such appeal, and
16 the mechanical licensing collective, digital
17 licensee coordinator, digital music pro-
18 viders, and significant nonblanket licensees
19 shall implement appropriate financial or
20 other measures within 3 months after any
21 modification of the assessment to reflect
22 and account for such outcome.

23 “(viii) REGULATIONS.—The Copyright
24 Royalty Judges may adopt regulations to

1 govern the conduct of proceedings under
2 this paragraph.

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

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

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

23 “(i) Late fees for past due royalty
24 payments shall accrue from the due date

1 for payment until payment is received by
2 the mechanical licensing collective.

3 “(ii) The availability of late fees shall
4 in no way prevent a copyright owner or the
5 mechanical licensing collective from assert-
6 ing any other rights or remedies to which
7 such copyright owner or the mechanical li-
8 censing collective may be entitled under
9 this title.

10 “(C) INTERIM RATE AGREEMENTS IN GEN-
11 ERAL.—For any covered activity for which no
12 rate or terms have been established by the
13 Copyright Royalty Judges, the mechanical li-
14 censing collective and any digital music provider
15 may agree to an interim rate and terms for
16 such activity under the blanket license, and any
17 such rate and terms—

18 “(i) shall be treated as nonpreceden-
19 tial and not cited or relied upon in any
20 ratesetting proceeding before the Copyright
21 Royalty Judges or any other tribunal; and

22 “(ii) shall automatically expire upon
23 the establishment of a rate and terms for
24 such covered activity by the Copyright

1 Royalty Judges, under subsection
2 (c)(1)(E).

3 “(D) ADJUSTMENTS FOR INTERIM
4 RATES.—The rate and terms established by the
5 Copyright Royalty Judges for a covered activity
6 to which an interim rate and terms have been
7 agreed under subparagraph (C) shall supersede
8 the interim rate and terms and apply retro-
9 actively to the inception of the activity under
10 the blanket license. In such case, within 3
11 months after the rate and terms established by
12 the Copyright Royalty Judges become effec-
13 tive—

14 “(i) if the rate established by the
15 Copyright Royalty Judges exceeds the in-
16 terim rate, the digital music provider shall
17 pay to the mechanical licensing collective
18 the amount of any underpayment of royalti-
19 es due; or

20 “(ii) if the interim rate exceeds the
21 rate established by the Copyright Royalty
22 Judges, the mechanical licensing collective
23 shall credit the account of the digital music
24 provider for the amount of any overpay-
25 ment of royalties due.

1 “(9) TRANSITION TO BLANKET LICENSES.—

2 “(A) SUBSTITUTION OF BLANKET LI-
3 CENSE.—On the license availability date, a
4 blanket license shall, without any interruption
5 in license authority enjoyed by such digital
6 music provider, be automatically substituted for
7 and supersede any existing compulsory license
8 previously obtained under this section by the
9 digital music provider from a copyright owner
10 to engage in one or more covered activities with
11 respect to a musical work, but the foregoing
12 shall not apply to any authority obtained from
13 a record company pursuant to a compulsory li-
14 cense to make and distribute permanent
15 downloads unless and until such record com-
16 pany terminates such authority in writing to
17 take effect at the end of a monthly reporting
18 period, with a copy to the mechanical licensing
19 collective.

20 “(B) EXPIRATION OF EXISTING LI-
21 CENSES.—Except to the extent provided in sub-
22 paragraph (A), on and after the license avail-
23 ability date, licenses other than individual
24 download licenses obtained under this section

1 for covered activities prior to the license avail-
2 ability date shall no longer continue in effect.

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

20 “(D) FURTHER ACCEPTANCE OF NOTICES
21 FOR COVERED ACTIVITIES BY COPYRIGHT OF-
22 FICE.—On and after the enactment date—

23 “(i) the Copyright Office shall no
24 longer accept notices of intention with re-
25 spect to covered activities; and

1 “(ii) previously filed notices of inten-
2 tion will no longer be effective or provide
3 license authority with respect to covered
4 activities, but before the license availability
5 date there shall be no liability under sec-
6 tion 501 for the reproduction or distribu-
7 tion of a musical work (or share thereof)
8 in covered activities if a valid notice of in-
9 tention was filed for such work (or share)
10 before the enactment date.

11 “(10) PRIOR UNLICENSED USES.—

12 “(A) LIMITATION ON LIABILITY IN GEN-
13 ERAL.—A copyright owner that commences an
14 action under section 501 on or after January 1,
15 2018, against a digital music provider for the
16 infringement of the exclusive rights provided by
17 paragraph (1) or (3) of section 106 arising
18 from the unauthorized reproduction or distribu-
19 tion of a musical work by such digital music
20 provider in the course of engaging in covered
21 activities prior to the license availability date,
22 shall, as the copyright owner’s sole and exclu-
23 sive remedy against the digital music provider,
24 be eligible to recover the royalty prescribed
25 under subsection (c)(1)(C) and chapter 8 of

1 this title, from the digital music provider, pro-
2 vided that such digital music provider can dem-
3 onstrate compliance with the requirements of
4 subparagraph (B), as applicable. In all other
5 cases the limitation on liability under this sub-
6 paragraph shall not apply.

7 “(B) REQUIREMENTS FOR LIMITATION ON
8 LIABILITY.—The following requirements shall
9 apply on the enactment date and through the
10 end of the period that expires 90 days after the
11 license availability date to digital music pro-
12 viders seeking to avail themselves of the limita-
13 tion on liability described in subparagraph (A):

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

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

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

16 “(bb) Any available musical
17 work ownership information, in-
18 cluding each songwriter and pub-
19 lisher name, percentage owner-
20 ship share, and international
21 standard musical work code.

22 “(II) Employment of one or more
23 bulk electronic matching processes
24 that are available to the digital music
25 provider through a third-party vendor

1 on commercially reasonable terms, but
2 a digital music provider may rely on
3 its own bulk electronic matching proc-
4 ess if it has capabilities comparable to
5 or better than those available from a
6 third-party vendor on commercially
7 reasonable terms.

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

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

23 “(iv) If the copyright owner is not
24 identified or located by the end of the cal-
25 endar month in which the digital music

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

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

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

20 “(aa) within 45 calendar
21 days after the end of the cal-
22 endar month during which the
23 copyright owner was identified
24 and located, pay the copyright
25 owner all accrued royalties, such

1 payment to be accompanied by a
2 cumulative statement of account
3 that includes all of the informa-
4 tion that would have been pro-
5 vided to the copyright owner had
6 the digital music provider been
7 providing monthly statements of
8 account to the copyright owner
9 from initial use of the work in
10 accordance with this section and
11 applicable regulations, including
12 the requisite certification under
13 subsection (c)(2)(I);

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

1 “(cc) beginning with the
2 monthly royalty reporting period
3 commencing on the license avail-
4 ability date, report usage and pay
5 royalties for such musical work
6 (or share thereof) for such re-
7 porting period and reporting pe-
8 riods thereafter to the mechanical
9 licensing collective, as required
10 under this subsection and appli-
11 cable regulations.

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

17 “(aa) within 45 calendar
18 days after the license availability
19 date, transfer all accrued royal-
20 ties to the mechanical licensing
21 collective, such payment to be ac-
22 companied by a cumulative state-
23 ment of account that includes all
24 of the information that would
25 have been provided to the copy-

1 right owner had the digital music
2 provider been serving monthly
3 statements of account on the
4 copyright owner from initial use
5 of the work in accordance with
6 this section and applicable regu-
7 lations, including the requisite
8 certification under subsection
9 (c)(2)(I), and accompanied by an
10 additional certification by a duly
11 authorized officer of the digital
12 music provider that the digital
13 music provider has fulfilled the
14 requirements of clauses (i) and
15 (ii) of subparagraph (B) but has
16 not been successful in locating or
17 identifying the copyright owner;
18 and

19 “(bb) beginning with the
20 monthly royalty reporting period
21 commencing on the license avail-
22 ability date, report usage and pay
23 royalties for such musical work
24 (or share thereof) for such period
25 and reporting periods thereafter

1 to the mechanical licensing collec-
2 tive, as required under this sub-
3 section and applicable regula-
4 tions.

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

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

1 availability date, such action may be com-
2 menced within 3 years of the date the claim ac-
3 crued, or up to 2 years after the license avail-
4 ability date, whichever is later.

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

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

13 “(A) EXEMPTION FOR COMPULSORY LI-
14 CENSE ACTIVITIES.—The antitrust exemption
15 described in subsection (c)(1)(D) shall apply to
16 negotiations and agreements between and
17 among copyright owners and persons entitled to
18 obtain a compulsory license for covered activi-
19 ties, and common agents acting on behalf of
20 such copyright owners or persons, including
21 with respect to the administrative assessment
22 established under this subsection.

23 “(B) LIMITATION ON COMMON AGENT EX-
24 EMPTION.—Notwithstanding the antitrust ex-
25 emption provided in subsection (c)(1)(D) and

1 terms of any such voluntary license indi-
2 vidually and not in agreement, combina-
3 tion, or concert with any other digital
4 music provider.

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

11 “(D) LIABILITY FOR GOOD-FAITH ACTIVI-
12 TIES.—The mechanical licensing collective shall
13 not be liable to any person or entity based on
14 a claim arising from its good-faith administra-
15 tion of policies and procedures adopted and im-
16 plemented to carry out the responsibilities de-
17 scribed in subparagraphs (J) and (K) of para-
18 graph (3), except to the extent of correcting an
19 underpayment or overpayment of royalties as
20 provided in paragraph (3)(L)(i)(VI), but the
21 collective may participate in a legal proceeding
22 as a stakeholder party if the collective is hold-
23 ing funds that are the subject of a dispute be-
24 tween copyright owners. For purposes of this
25 subparagraph, ‘good-faith administration’

1 means administration in a manner that is not
2 grossly negligent.

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

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

18 “(12) REGULATIONS.—

19 “(A) ADOPTION BY REGISTER OF COPY-
20 RIGHTS AND COPYRIGHT ROYALTY JUDGES.—
21 The Register of Copyrights may conduct such
22 proceedings and adopt such regulations as may
23 be necessary or appropriate to effectuate the
24 provisions of this subsection, except for regula-
25 tions concerning proceedings before the Copy-

1 right Royalty Judges to establish the adminis-
2 trative assessment, which shall be adopted by
3 the Copyright Royalty Judges.

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

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

22 “(13) SAVINGS CLAUSES.—

23 “(A) LIMITATION ON ACTIVITIES AND
24 RIGHTS COVERED.—This subsection applies
25 solely to uses of musical works subject to licens-

1 ing under this section. The blanket license shall
2 not be construed to extend or apply to activities
3 other than covered activities or to rights other
4 than the exclusive rights of reproduction and
5 distribution licensed under this section, or serve
6 or act as the basis to extend or expand the
7 compulsory license under this section to activi-
8 ties and rights not covered by this section on
9 the enactment date.

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

18 (5) by adding at the end the following new sub-
19 section:

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

21 “(1) ACCRUED INTEREST.—The term ‘accrued
22 interest’ means interest accrued on accrued royalti-
23 ties, as described in subsection (d)(3)(H)(ii).

24 “(2) ACCRUED ROYALTIES.—The term ‘accrued
25 royalties’ means royalties accrued for the reproduc-

1 tion or distribution of a musical work (or share
2 thereof) in a covered activity, calculated in accord-
3 ance with the applicable royalty rate under this sec-
4 tion.

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

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

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

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

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

21 “(i) startup costs;

22 “(ii) financing, legal, audit, and insur-
23 ance costs;

1 “(iii) investments in information tech-
2 nology, infrastructure, and other long-term
3 resources;

4 “(iv) outside vendor costs;

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

7 “(vi) costs of bad debt; and

8 “(vii) costs of automated and manual
9 efforts to identify and locate copyright
10 owners of musical works (and shares of
11 such musical works) and match sound re-
12 cordings to the musical works the sound
13 recordings embody; and

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

17 “(7) COVERED ACTIVITY.—The term ‘covered
18 activity’ means the activity of making a digital pho-
19 norecord delivery of a musical work, including in the
20 form of a permanent download, limited download, or
21 interactive stream, where such activity qualifies for
22 a compulsory license under this section.

23 “(8) DIGITAL MUSIC PROVIDER.—The term
24 ‘digital music provider’ means a person (or persons
25 operating under the authority of that person) that,

1 with respect to a service engaged in covered activi-
2 ties—

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

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

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

13 “(9) DIGITAL LICENSEE COORDINATOR.—The
14 term ‘digital licensee coordinator’ means the entity
15 most recently designated pursuant to subsection
16 (d)(5).

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

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

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

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

23 “(13) INTERACTIVE STREAM.—The term ‘inter-
24 active stream’ means a digital transmission of a
25 sound recording of a musical work in the form of a

1 stream, where the performance of the sound record-
2 ing by means of such transmission is not exempt
3 under section 114(d)(1) and does not in itself, or as
4 a result of a program in which it is included, qualify
5 for statutory licensing under section 114(d)(2). An
6 interactive stream is a digital phonorecord delivery.

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

13 “(15) LICENSE AVAILABILITY DATE.—The term
14 ‘license availability date’ means the next January 1
15 following the expiration of the 2-year period begin-
16 ning on the enactment date.

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

23 “(17) MATCHED.—The term ‘matched’, as ap-
24 plied to a musical work (or share thereof), means

1 that the copyright owner of such work (or share
2 thereof) has been identified and located.

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

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

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

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

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

24 “(23) NOTICE OF NONBLANKET ACTIVITY.—
25 The term ‘notice of nonblanket activity’ means a no-

1 tice from a significant nonblanket licensee provided
2 under subsection (d)(6)(A) for purposes of notifying
3 the mechanical licensing collective that the licensee
4 has been engaging in covered activities.

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

12 “(25) QUALIFIED AUDITOR.—The term ‘quali-
13 fied auditor’ means an independent, certified public
14 accountant with experience performing music royalty
15 audits.

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

23 “(27) REPORT OF USAGE.—The term ‘report of
24 usage’ means a report reflecting an entity’s usage of

1 musical works in covered activities described in sub-
2 section (d)(4)(A).

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

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

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

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

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

23 “(i) is not currently operating under a
24 blanket license and is not obligated to pro-

1 vide reports of usage reflecting covered ac-
2 tivities under subsection (d)(4)(A);

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

9 “ (iii) either—

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

15 “ (II) derives revenue or other
16 consideration in connection with such
17 covered activities greater than
18 \$50,000 in a calendar month, or total
19 revenue or other consideration greater
20 than \$500,000 during the preceding
21 12 calendar months; and

22 “ (B) does not include—

23 “ (i) an entity whose covered activity
24 consists solely of free-to-the-user streams
25 of segments of sound recordings of musical

1 works that do not exceed 90 seconds in
2 length, are offered only to facilitate a li-
3 censed use of musical works that is not a
4 covered activity, and have no revenue di-
5 rectly attributable to such streams consti-
6 tuting the covered activity; or

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

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

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

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

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

24 “(36) VOLUNTARY LICENSE.—The term ‘vol-
25 untary license’ means a license for use of a musical

1 work (or share thereof) other than a compulsory li-
2 cense obtained under this section.”.

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

6 (1) by redesignating paragraph (8) as para-
7 graph (9); and

8 (2) by inserting after paragraph (7) the fol-
9 lowing new paragraph:

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

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

22 (d) TECHNICAL AND CONFORMING AMENDMENTS TO
23 TITLE 37, PART 385 OF THE CODE OF FEDERAL REGU-
24 LATIONS.—Within 9 months after the date of the enact-
25 ment of this Act, the Copyright Royalty Judges shall

1 amend the regulations for section 115 in part 385 of title
2 37, Code of Federal Regulations to conform the definitions
3 used in such part to the definitions of the same terms de-
4 scribed in section 115(e) of title 17, United States Code,
5 as amended by subsection (a). In so doing, the Copyright
6 Royalty Judges shall make adjustments to the language
7 of the regulations as necessary to achieve the same pur-
8 pose and effect as the original regulations with respect to
9 the rates and terms previously adopted by the Copyright
10 Royalty Judges.

11 (e) COPYRIGHT OFFICE ACTIVITIES.—The Register
12 of Copyrights shall engage in public outreach and edu-
13 cational activities—

14 (1) regarding the amendments made by sub-
15 section (a) to section 115 of title 17, United States
16 Code, including the responsibilities of the mechanical
17 licensing collective designated under those amend-
18 ments;

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

1 (A) a copyright owner may claim owner-
2 ship of musical works (and shares of such
3 works); and

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

7 (3) which the Register shall make available on-
8 line.

9 (f) UNCLAIMED ROYALTIES STUDY AND REC-
10 OMMENDATIONS.—

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

1 (A) identify and locate musical work copy-
2 right owners with unclaimed accrued royalties
3 held by the collective;

4 (B) encourage musical work copyright
5 owners to claim the royalties of those owners;
6 and

7 (C) reduce the incidence of unclaimed roy-
8 alties.

9 (2) CONSIDERATION OF RECOMMENDATIONS.—

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

15 (A) identification and location of musical
16 work copyright owners; and

17 (B) distribution of unclaimed royalties.

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

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

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

23 “(1)(A) Proceedings under chapter 8 shall de-
24 termine reasonable rates and terms of royalty pay-
25 ments for transmissions subject to statutory licens-

1 ing under subsection (d)(2) during the 5-year period
2 beginning on January 1 of the second year following
3 the year in which the proceedings are to be com-
4 menced pursuant to subparagraph (A) or (B) of sec-
5 tion 804(b)(3), as the case may be, or such other pe-
6 riod as the parties may agree. The parties to each
7 proceeding shall bear their own costs.

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

1 willing buyer and a willing seller. In determining
2 such rates and terms, the Copyright Royalty
3 Judges—

4 “(i) shall base their decision on economic,
5 competitive, and programming information pre-
6 sented by the parties, including—

7 “(I) whether use of the service may
8 substitute for or may promote the sales of
9 phonorecords or otherwise may interfere
10 with or may enhance the sound recording
11 copyright owner’s other streams of revenue
12 from the copyright owner’s sound record-
13 ings; and

14 “(II) the relative roles of the copy-
15 right owner and the transmitting entity in
16 the copyrighted work and the service made
17 available to the public with respect to rel-
18 ative creative contribution, technological
19 contribution, capital investment, cost, and
20 risk; and

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

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

18 (2) by redesignating paragraphs (3), (4), and
19 (5) as paragraphs (2), (3), and (4), respectively.

20 (b) REPEAL.—Subsection (i) of section 114 of title
21 17, United States Code, is repealed.

22 (c) USE IN MUSICAL WORK PROCEEDINGS.—

23 (1) IN GENERAL.—License fees payable for the
24 public performance of sound recordings under sec-
25 tion 106(6) of title 17, United States Code, shall not

1 be taken into account in any administrative, judicial,
2 or other governmental proceeding to set or adjust
3 the royalties payable to musical work copyright own-
4 ers for the public performance of their works except
5 in such a proceeding to set or adjust royalties for
6 the public performance of musical works by means
7 of a digital audio transmission other than a trans-
8 mission by a broadcaster, and may be taken into ac-
9 count only with respect to such digital audio trans-
10 mission.

11 (2) DEFINITIONS.—In this subsection:

12 (A) TRANSMISSION BY A BROADCASTER.—

13 A “transmission by a broadcaster” means a
14 nonsubscription digital transmission made by a
15 terrestrial broadcast station on its own behalf,
16 or on the behalf of a terrestrial broadcast sta-
17 tion under common ownership or control, that
18 is not part of an interactive service or a music-
19 intensive service comprising the transmission of
20 sound recordings customized for or
21 customizable by recipients or service users.

22 (B) TERRESTRIAL BROADCAST STATION.—

23 A “terrestrial broadcast station” means a ter-
24 restrial, over-the-air radio or television broad-
25 cast station, licensed as such by the Federal

1 Communications Commission, including an FM
2 Translator as defined in section 74.1231 of title
3 47, Code of Federal Regulations, and whose
4 primary business activities are comprised of,
5 and revenues are generated through, terrestrial,
6 over-the-air broadcast transmissions, or the si-
7 multaneous or substantially-simultaneous digital
8 retransmission by the terrestrial, over-the-air
9 broadcast station of its over-the-air broadcast
10 transmissions.

11 (d) RULE OF CONSTRUCTION.—Subsection (c)(2)
12 shall not be given effect in interpreting provisions of title
13 17, United States Code.

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

21 (f) DECISIONS AND PRECEDENTS NOT AFFECTED.—
22 The repeal of section 114(i) of title 17, United States
23 Code, by subsection (b) shall not have any effect upon the
24 decisions, or the precedents established or relied upon, in
25 any proceeding to set or adjust the rates and fees payable

1 for the use of sound recordings under section 112(e) or
2 section 114(f) of such title before the date of the enact-
3 ment of this Act.

4 (g) TECHNICAL AND CONFORMING AMENDMENTS.—

5 (1) SECTION 114.—Section 114(f) of title 17,
6 United States Code, as amended by subsection (a),
7 is further amended in paragraph (4)(C), as so redesi-
8 gnated, by striking “under paragraph (4)” and in-
9 serting “under paragraph (3)”.

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

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

15 (B) in paragraph (7)(B), by striking
16 “114(f)(3)” and inserting “114(f)(2)”.

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

19 (A) by striking “or 114(f)(2)(C)”;

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

22 (4) SECTION 804.—Section 804(b)(3)(C) of title
23 17, United States Code, is amended—

24 (A) in clause (i), by striking “and
25 114(f)(2)(C)”;

1 (B) in clause (iii)(II), by striking
2 “114(f)(4)(B)(ii)” and inserting
3 “114(f)(3)(B)(ii)”; and

4 (C) in clause (iv), by striking “or
5 114(f)(2)(C), as the case may be”.

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

11 **SEC. 104. RANDOM ASSIGNMENT OF RATE COURT PRO-**
12 **CEEDINGS.**

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

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

17 (2) by adding at the end the following new sub-
18 section:

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

21 “(1) IN GENERAL.—

22 “(A) DETERMINATION OF LICENSE FEE.—

23 Except as provided in subparagraph (B), in the
24 case of any performing rights society subject to
25 a consent decree, any application for the deter-

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

17 **SEC. 105. PERFORMING RIGHTS SOCIETY CONSENT DE-**
18 **CREES.**

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

22 (b) NOTIFICATION OF REVIEW.—

23 (1) IN GENERAL.—The Department of Justice
24 shall provide timely briefings upon request of any
25 Member of the Committee on the Judiciary of the

1 Senate and the Committee on the Judiciary of the
2 House of Representatives regarding the status of a
3 review in progress of a consent decree between the
4 United States and a performing rights society.

5 (2) CONFIDENTIALITY AND DELIBERATIVE
6 PROCESS.—In accordance with applicable rules relat-
7 ing to confidentiality and agency deliberative proc-
8 ess, the Department of Justice shall share with such
9 Members of Congress detailed and timely informa-
10 tion and pertinent documents related to the consent
11 decree review.

12 (c) ACTION BEFORE MOTION TO TERMINATE.—

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

20 (A) notify Members of Congress and com-
21 mittees of Congress described in subsection (b);
22 and

23 (B) provide to such Members of Congress
24 and committees information regarding the im-
25 pact of the proposed termination on the market

1 for licensing the public performance of musical
2 works should the motion be granted.

3 (2) NOTIFICATION.—

4 (A) IN GENERAL.—During the notification
5 described in paragraph (1), and not later than
6 90 days before the date on which the Depart-
7 ment of Justice files with the appropriate dis-
8 trict court of the United States a motion to ter-
9minate a consent decree between the United
10 States and a performing rights society, the De-
11 partment of Justice shall submit to the chair-
12 men and ranking members of the Committee on
13 the Judiciary of the Senate and the Committee
14 on the Judiciary of the House of Representa-
15 tives a written notification of the intent of the
16 Department of Justice to file the motion.

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

23 (i) an explanation of the process used
24 by the Department of Justice to review the
25 consent decree;

- 1 (ii) a summary of the public com-
2 ments received by the Department of Jus-
3 tice during the review by the Department;
4 and
5 (iii) other information requested by
6 Congress under paragraph (1).

7 (d) SCOPE.—This section applies only to a consent
8 decree between the United States and a performing rights
9 society.

10 **SEC. 106. EFFECTIVE DATE.**

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

13 **TITLE II—COMPENSATING LEG-**
14 **ACY ARTISTS FOR THEIR**
15 **SONGS, SERVICE, AND IMPOR-**
16 **TANT CONTRIBUTIONS TO SO-**
17 **CIETY**

18 **SEC. 201. SHORT TITLE.**

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

1 **SEC. 202. UNAUTHORIZED DIGITAL PERFORMANCE OF PRE-**
2 **1972 SOUND RECORDINGS.**

3 (a) PROTECTION FOR UNAUTHORIZED DIGITAL PER-
4 FORMANCES.—Title 17, United States Code, is amended
5 by adding at the end the following new chapter:

6 **“CHAPTER 14—UNAUTHORIZED DIGITAL**
7 **PERFORMANCE OF PRE-1972 SOUND**
8 **RECORDINGS**

“Sec.

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

9 **“§ 1401. Unauthorized digital performance of pre-**
10 **1972 sound recordings**

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

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

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

5 “(2) the transmission would satisfy the require-
6 ments for statutory licensing under section
7 114(d)(2), or would be exempt under section
8 114(d)(1), if the sound recording were fixed on or
9 after February 15, 1972;

10 “(3) in the case of a transmission that would
11 not be exempt under section 114(d)(1) as described
12 in paragraph (2), the transmitting entity pays statu-
13 tory royalties and provides notice of its use of the
14 relevant sound recording in the same manner as is
15 required by regulations adopted by the Copyright
16 Royalty Judges for sound recordings fixed on or
17 after February 15, 1972; and

18 “(4) in the case of a transmission that would
19 not be exempt under section 114(d)(1) as described
20 in paragraph (2), the transmitting entity otherwise
21 satisfies the requirements for statutory licensing
22 under section 114(f)(4)(B).

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

1 “(1) IN GENERAL.—A transmission of a sound
2 recording fixed on or after January 1, 1923, and be-
3 fore February 15, 1972, shall, for purposes of sub-
4 section (a), be considered to be authorized and made
5 with the consent of the rights owner if such trans-
6 mission is included in a license agreement volun-
7 tarily negotiated at any time between the rights
8 owner and the entity performing the sound record-
9 ing.

10 “(2) PAYMENT OF ROYALTIES TO NONPROFIT
11 COLLECTIVE.—To the extent that such a license
12 agreement entered into on or after the date of the
13 enactment of this section extends to digital audio
14 transmissions of a sound recording fixed on or after
15 January 1, 1923, and before February 15, 1972,
16 that meet the conditions of subsection (b), the li-
17 censee shall pay, to the collective designated to dis-
18 tribute receipts from the licensing of transmissions
19 in accordance with section 114(f), 50 percent of the
20 performance royalties for the transmissions due
21 under the license, with such royalties fully credited
22 as payments due under the license.

23 “(3) DISTRIBUTION OF ROYALTIES BY COLLEC-
24 TIVE.—The collective described in paragraph (2)
25 shall, in accordance with subparagraphs (B) through

1 (D) of section 114(g)(2), and paragraphs (5) and
2 (6) of section 114(g), distribute the royalties re-
3 ceived under paragraph (2) under the license de-
4 scribed in paragraph (2). Such payments shall be
5 the only payments to which featured and nonfea-
6 tured artists are entitled by virtue of the trans-
7 missions described in paragraph (2) under the li-
8 cense.

9 “(4) RULE OF CONSTRUCTION.—This section
10 does not prohibit any other license from directing
11 the licensee to pay other royalties due to featured
12 and nonfeatured artists for such transmissions to
13 the collective designated to distribute receipts from
14 the licensing of transmissions in accordance with
15 section 114(f).

16 “(d) RELATIONSHIP TO STATE LAW.—

17 “(1) IN GENERAL.—Nothing in this section
18 shall be construed to annul or limit any rights or
19 remedies under the common law or statutes of any
20 State for sound recordings fixed before February 15,
21 1972, except, notwithstanding section 301(c), for the
22 following:

23 “(A) This section preempts any claim of
24 common law copyright or equivalent right under
25 the laws of any State arising from any digital

1 audio transmission that is made, on and after
2 the date of the enactment of this section, of a
3 sound recording fixed on or after January 1,
4 1923, and before February 15, 1972.

5 “(B) This section preempts any claim of
6 common law copyright or equivalent right under
7 the laws of any State arising from any repro-
8 duction that is made, on and after the date of
9 the enactment of this section, of a sound re-
10 cording fixed on or after January 1, 1923, and
11 before February 15, 1972, and that would sat-
12 isfy the requirements for statutory licensing
13 under paragraphs (1) and (6) of section 112(e),
14 if the sound recording were fixed on or after
15 February 15, 1972.

16 “(C) This section preempts any claim of
17 common law copyright or equivalent right under
18 the laws of any State arising from any digital
19 audio transmission or reproduction that is
20 made, before the date of the enactment of this
21 section, of a sound recording fixed on or after
22 January 1, 1923, and before February 15,
23 1972, if—

24 “(i) the digital audio transmission
25 would have satisfied the requirements for

1 statutory licensing under section 114(d)(2)
2 or been exempt under section 114(d)(1), or
3 the reproduction would have satisfied the
4 requirements of section 112(e)(1), as the
5 case may be, if the sound recording were
6 fixed on or after February 15, 1972; and

7 “(ii) either—

8 “(I) except in the case of trans-
9 missions that would have been exempt
10 under section 114(d)(1), the transmit-
11 ting entity, before the end of the 270-
12 day period beginning on the date of
13 enactment of this section, pays statu-
14 tory royalties and provides notice of
15 the use of the relevant sound record-
16 ings in the same manner as is re-
17 quired by regulations adopted by the
18 Copyright Royalty Judges for sound
19 recordings that are protected under
20 this title for all the digital audio
21 transmissions and reproductions satis-
22 fying the requirements for statutory
23 licensing under section 114(d)(2) and
24 section 112(e)(1) during the 3 years

1 before the date of enactment of this
2 section; or

3 “(II) an agreement voluntarily
4 negotiated between the rights owner
5 and the entity performing the sound
6 recording authorizes or waives liability
7 for any such transmission or repro-
8 duction and the transmitting entity
9 has complied with all provisions of
10 such agreement for any such trans-
11 mission or reproduction.

12 “(2) RULE OF CONSTRUCTION FOR COMMON
13 LAW COPYRIGHT.—For purposes of subparagraphs
14 (A) through (C) of paragraph (1), a claim of com-
15 mon law copyright or equivalent right under the
16 laws of any State includes a claim that characterizes
17 conduct subject to such subparagraphs as an unlaw-
18 ful distribution, act of record piracy, or similar viola-
19 tion.

20 “(3) RULE OF CONSTRUCTION FOR PUBLIC
21 PERFORMANCE RIGHTS.—Nothing in this section
22 shall be construed to recognize or negate the exist-
23 ence of public performance rights in sound record-
24 ings under the laws of any State.

25 “(e) LIMITATIONS ON REMEDIES.—

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

3 “(A) IN GENERAL.—The limitations on the
4 exclusive rights of a copyright owner described
5 in sections 107, 108, and 110 shall apply to a
6 claim under subsection (a) for the unauthorized
7 performance of a sound recording fixed on or
8 after January 1, 1923, and before February 15,
9 1972.

10 “(B) RULE OF CONSTRUCTION FOR SEC-
11 TION 108(H).—With respect to the application of
12 section 108(h) to a claim for unauthorized per-
13 formance of a sound recording first fixed on or
14 after January 1, 1923, and before February 15,
15 1972, under subsection (a), the phrase ‘during
16 the last 20 years of any term of copyright of a
17 published work’ in such section 108(h) shall be
18 construed to mean at any time after the effec-
19 tive date of this section.

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

1 “(3) MATERIAL ONLINE.—Section 512 shall
2 apply to a claim under subsection (a) for the unau-
3 thorized performance of a sound recording fixed on
4 or after January 1, 1923, and before February 15,
5 1972.

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

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

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

14 “(i) FILING REQUIREMENT.—Except
15 in the case of a transmitting entity that
16 has filed contact information for that
17 transmitting entity under subparagraph
18 (B), in any action under this section, an
19 award of statutory damages or of attor-
20 neys’ fees under section 504 or 505 may
21 be made with respect to an unauthorized
22 transmission of a sound recording under
23 subsection (a) only if—

24 “(I) the rights owner has filed
25 with the Copyright Office a schedule

1 that specifies the title, artist, and
2 rights owner of the sound recording
3 and contains such other information,
4 as practicable, as the Register of
5 Copyrights prescribes by regulation;
6 and

7 “(II) the transmission is made
8 after the end of the 90-day period be-
9 ginning on the date on which the in-
10 formation filed under subclause (I) is
11 indexed into the public records of the
12 Copyright Office.

13 “(ii) REGULATIONS.—The Register of
14 Copyrights shall, before the end of the
15 180-day period beginning on the date of
16 the enactment of this section, issue regula-
17 tions establishing the form, content, and
18 procedures for the filing of schedules under
19 clause (i). Such regulations shall provide
20 that persons may request that they receive
21 timely notification of such filings, and shall
22 set forth the manner in which such re-
23 quests may be made.

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

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

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

17 “(iii) LIMITATION ON STATUTORY
18 DAMAGES AND ATTORNEYS’ FEES.—

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

1 entity of a sound recording under sub-
2 section (a) if the transmission is made
3 before the end of the 90-day period
4 beginning on the date on which the
5 entity receives a notice that—

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

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

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

18 “(II) UNDELIVERABLE NO-
19 TICES.—In any case in which a notice
20 under subclause (I) is sent to an enti-
21 ty by mail or courier service and the
22 notice is returned to the sender be-
23 cause the entity either is no longer lo-
24 cated at the address provided in the
25 contact information filed under clause

1 (i) or has refused to accept delivery,
2 or the notice is sent by electronic mail
3 and is undeliverable, the 90-day pe-
4 riod under subclause (I) shall begin
5 on the date of the attempted delivery.

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

11 “(6) APPLICABILITY OF OTHER PROVISIONS.—

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

17 “(B) APPLICABILITY OF DEFINITIONS.—

18 Any term used in this section that is defined in
19 section 101 shall have the meaning given that
20 term in section 101.

21 “(f) APPLICATION OF SECTION 230 SAFE HAR-
22 BOR.—For purposes of section 230 of the Communica-
23 tions Act of 1934 (47 U.S.C. 230), subsection (a) shall
24 be considered to be a ‘law pertaining to intellectual prop-
25 erty’ under subsection (e)(2) of such section.

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

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

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

8 **SEC. 203. EFFECTIVE DATE.**

9 This title and the amendments made by this title
10 shall take effect on the date of the enactment of this Act.

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

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

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

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

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

21 “(5) LETTER OF DIRECTION.—

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

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

14 “(B) ACCEPTANCE OF LETTER.—To the
15 extent that the collective accepts a letter of di-
16 rection under subparagraph (A), the person en-
17 titled to payment pursuant to the letter of di-
18 rection shall, during the period in which the let-
19 ter of direction is in effect and carried out by
20 the collective, be treated for all purposes as the
21 owner of the right to receive such payment, and
22 the payee providing the letter of direction to the
23 collective shall be treated as having no interest
24 in such payment.

1 “(C) AUTHORITY OF COLLECTIVE.—This
2 paragraph shall not be construed in such a
3 manner so that the collective is not authorized
4 to accept or act upon payment instructions in
5 circumstances other than those to which this
6 paragraph applies.”.

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

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

14 “(A) PAYMENT ABSENT LETTER OF DI-
15 RECTION.—A nonprofit collective designated by
16 the Copyright Royalty Judges to distribute re-
17 cepts from the licensing of transmissions in ac-
18 cordance with subsection (f) (in this paragraph
19 referred to as the ‘collective’) shall adopt and
20 reasonably implement a policy that provides, in
21 circumstances determined by the collective to be
22 appropriate, for the deduction of 2 percent of
23 all the receipts that are collected from the li-
24 censing of transmissions of a sound recording
25 fixed before November 1, 1995, but which is

1 withdrawn from the amount otherwise payable
2 under paragraph (2)(D) to the recording artist
3 or artists featured on the sound recording (or
4 the persons conveying rights in the artists' per-
5 formance in the sound recording), and the dis-
6 tribution of such amount to one or more per-
7 sons described in subparagraph (B), after de-
8 duction of costs described in paragraph (3) or
9 (4), as applicable, if each of the following re-
10 quirements is met:

11 “(i) CERTIFICATION OF ATTEMPT TO
12 OBTAIN A LETTER OF DIRECTION.—The
13 person described in subparagraph (B) who
14 is to receive the distribution has certified
15 to the collective, under penalty of perjury,
16 that—

17 “(I) for a period of at least 4
18 months, that person made reasonable
19 efforts to contact the artist payee for
20 such sound recording to request and
21 obtain a letter of direction instructing
22 the collective to pay to that person a
23 portion of the royalties payable to the
24 featured recording artist or artists;
25 and

1 “(II) during the period beginning
2 on the date that person began the rea-
3 sonable efforts described in subclause
4 (I) and ending on the date of that
5 person’s certification to the collective,
6 the artist payee did not affirm or
7 deny in writing the request for a let-
8 ter of direction.

9 “(ii) COLLECTIVE ATTEMPT TO CON-
10 TACT ARTIST.—After receipt of the certifi-
11 cation described in clause (i) and for a pe-
12 riod of at least 4 months before the collec-
13 tive’s first distribution to the person de-
14 scribed in subparagraph (B), the collective
15 attempted, in a reasonable manner as de-
16 termined by the collective, to notify the
17 artist payee of the certification made by
18 the person described in subparagraph (B).

19 “(iii) NO OBJECTION RECEIVED.—The
20 artist payee did not, as of the date that is
21 10 business days before the date on which
22 the first distribution is made, submit to
23 the collective in writing an objection to the
24 distribution.

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

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

6 “(ii) has entered into a written con-
7 tract with a record company involved in
8 the creation or lawful exploitation of the
9 sound recording, or with the recording art-
10 ist or artists featured on the sound record-
11 ing (or the persons conveying rights in the
12 artists’ performance in the sound record-
13 ing), under which the person seeking pay-
14 ment is entitled to participate in royalty
15 payments that are based on the exploi-
16 tation of the sound recording and are pay-
17 able from royalties otherwise payable to
18 the recording artist or artists featured on
19 the sound recording (or the persons con-
20 veying rights in the artists’ performance in
21 the sound recording);

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

24 “(iv) submits a written certification to
25 the collective stating, under penalty of per-

1 jury, that the person meets the require-
2 ments in clauses (i) through (iii) and in-
3 cludes a true copy of the contract de-
4 scribed in clause (ii).

5 “(C) MULTIPLE CERTIFICATIONS.—Sub-
6 ject to subparagraph (D), in a case in which
7 more than one person described in subpara-
8 graph (B) has met the requirements for a dis-
9 tribution under subparagraph (A) with respect
10 to a sound recording as of the date that is 10
11 business days before the date on which a dis-
12 tribution is made, the collective shall divide the
13 2 percent distribution equally among all such
14 persons.

15 “(D) OBJECTION TO PAYMENT.—Not later
16 than 10 business days after the date on which
17 the collective receives from the artist payee a
18 written objection to a distribution made pursu-
19 ant to subparagraph (A), the collective shall
20 cease making any further payment relating to
21 such distribution. In any case in which the col-
22 lective has made one or more distributions pur-
23 suant to subparagraph (A) to a person de-
24 scribed in subparagraph (B) before the date
25 that is 10 business days after the date on which

1 the collective receives from the artist payee an
2 objection to such distribution, the objection
3 shall not affect that person's entitlement to any
4 distribution made before the collective ceases
5 such distribution under this subparagraph.

6 “(E) OWNERSHIP OF THE RIGHT TO RE-
7 CEIVE PAYMENTS.—To the extent that the col-
8 lective determines that a distribution will be
9 made under subparagraph (A) to a person de-
10 scribed in subparagraph (B), such person shall,
11 during the period covered by such distribution,
12 be treated for all purposes as the owner of the
13 right to receive such payments, and the artist
14 payee to whom such payments would otherwise
15 be payable shall be treated as having no inter-
16 est in such payments.

17 “(F) ARTIST PAYEE DEFINED.—In this
18 paragraph, the term ‘artist payee’ means a per-
19 son, other than a person described in subpara-
20 graph (B), who owns the right to receive all or
21 part of the receipts payable under paragraph
22 (2)(D) with respect to a sound recording. In a
23 case in which there are multiple artist payees
24 with respect to a sound recording, an objection
25 by one such payee shall apply only to that pay-

1 ee’s share of the receipts payable under para-
2 graph (2)(D), and does not preclude payment
3 under subparagraph (A) from the share of an
4 artist payee that does not so object.”.

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

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

12 (2) in paragraph (3)—

13 (A) by striking “nonprofit agent des-
14 ignated” and inserting “nonprofit collective des-
15 ignated by the Copyright Royalty Judges”;

16 (B) by striking “another designated agent”
17 and inserting “another designated nonprofit col-
18 lective”; and

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

21 (3) in paragraph (4)—

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

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

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

3 “(7) PREEMPTION OF STATE PROPERTY
4 LAWS.—The holding and distribution of receipts
5 under section 112 and this section by a nonprofit
6 collective designated by the Copyright Royalty
7 Judges in accordance with this subsection and regu-
8 lations adopted by the Copyright Royalty Judges
9 shall supersede and preempt any State law (includ-
10 ing common law) concerning escheatment or aban-
11 doned property, or any analogous provision, that
12 might otherwise apply.”.

13 **SEC. 303. EFFECTIVE DATE.**

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

17 (b) DELAYED EFFECTIVE DATE.—The effective date
18 for paragraphs (5)(B) and (6)(E) of section 114(g) of title
19 17, United States Code, as added by section 302, shall
20 be January 1, 2020.