H. R. 1

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

IN THE HOUSE OF REPRESENTATIVES

Mr. COLLINS of Georgia introduced the following bill; which was referred to the Committee on _______________________

A BILL

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

1 Be it enacted by the Senate and House of Represen-
2 tatives of the United States of America in Congress assembled,
3 SECTION 1. SHORT TITLE.
4 This Act may be cited as the “Music Modernization
5 Act of 2017”.

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SECTION 1. SHORT TITLE.

This Act may be cited as the “Music Modernization Act of 2017”.
SEC. 2. BLANKET LICENSE FOR DIGITAL USES AND MECHANICAL LICENSING COLLECTIVE.

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

(1) in subsection (a)—

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

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

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

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

“(ii) in the case of a digital music provider seeking to make and distribute
digital phonorecord deliveries of a sound recording embodying a musical work under a compulsory license—

“(I) the copyright owner of the sound recording first fixed such sound recording under the authority of the copyright owner of the musical work and is further authorized by the copyright owner of the musical work to make and distribute phonorecords embodying such work to the public in the United States; and

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

“(B) A person may not obtain a compulsory license for the use of the work in the making of phonorecords duplicating a sound recording fixed by another, including by means of digital phonorecord delivery, unless—
“(i) such sound recording was fixed lawfully; and

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

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

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

“(1) PHONORECORDS OTHER THAN DIGITAL PHONORECORD DELIVERIES.—A person who seeks to obtain a compulsory license under this section to make and distribute phonorecords of a musical work other than by means of digital phonorecord delivery shall, before or within 30 days after making, and before distributing, any phonorecord of the work, serve notice of intention to do so on the copyright owner.

If the registration or other public records of the
Copyright Office do not identify the copyright owner and include an address at which notice can be served, it shall be sufficient to file the notice of intention in the Copyright Office. The notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation.

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

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

“(B) on or after the license availability date, shall, before making any such digital phonorecord delivery, follow the procedure set forth
in subsection (d)(2), except as provided in paragraph (3).

“(3) Record company download licenses.—Notwithstanding anything to the contrary in this section, a record company may, on or after the license availability date, obtain a license to make and distribute, or authorize the making and distribution of, digital phonorecord deliveries of musical works in the form of permanent downloads in the manner described in paragraph (2)(A). A record company that obtains a compulsory license for permanent downloads as permitted under this paragraph shall provide statements of account and pay royalties as provided in subsection (c)(5).

“(4) Failure to obtain license.—

“(A) Phonorecords other than digital phonorecord deliveries.—In the case of phonorecords made and distributed other than by means of digital phonorecord delivery, the failure to serve or file the notice of intention required by paragraph (1) forecloses the possibility of a compulsory license under paragraph (1). In the case of phonorecords made and distributed by means of digital phonorecord delivery prior to the license availability date, the
failure to serve the notice of intention required by paragraph (2)(A) forecloses the possibility of a compulsory license under paragraph (2)(A). In either case, in the absence of a voluntary license, the failure to obtain a compulsory license renders the making and distribution of phonorecords, including by means of digital phonorecord delivery, actionable as acts of infringement under section 501 and subject to the remedies provided by sections 502 through 506.

“(B) Digital phonorecord deliveries.—In the case of phonorecords made and distributed by means of digital phonorecord delivery on or after the license availability date, the failure to comply with paragraph (2)(B), or, if applicable, paragraph (3), forecloses the possibility of a compulsory license under this section. In the absence of a voluntary license, the failure to obtain a compulsory license renders the making and distribution of phonorecords by means of digital phonorecord delivery actionable as acts of infringement under section 501 and subject to the remedies provided by sections 502 through 506.”;

(3) in subsection (c)—
(A) by striking paragraphs (1) and (2) and inserting the following:

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

“(2) Except as provided by paragraph (1), for every phonorecord made and distributed under a compulsory license under this section other than by means of digital phonorecord delivery, with respect to each work embodied in the phonorecord, the royalty shall be the royalty prescribed under subparagraphs (B) through (E) of paragraph (3) and chapter 8 of this title. For purposes of this paragraph, a phonorecord is considered ‘distributed’ if the person exercising the compulsory license has voluntarily and permanently parted with its possession.”;

(B) by striking paragraph (3)(A) and inserting the following:

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

(C) in paragraph (3)(C)—

(i) by striking the second sentence;

and

(ii) by adding at the end the following new sentence: “The administrative assessment to be paid by digital music providers and significant nonblanket licensees under subsection (d) shall be established in separate proceedings before the Copyright Royalty Judges as provided in subsection (d)(7).”;

(D) by striking paragraph (3)(D) and inserting the following:

“(D) The schedule of reasonable rates and terms determined by the Copyright Royalty Judges shall, subject to subparagraph (E), be binding on all copyright owners of nondramatic musical works and persons entitled to obtain a compulsory license under subsection (a)(1) during the period specified in subparagraph (C), such other period as may be determined pursuant to subparagraphs (B) and (C), or such other period as the parties may agree. The
Copyright Royalty Judges shall establish rates and terms that most clearly represent the rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller. In determining such rates and terms for digital phonorecord deliveries, the Copyright Royalty Judges shall base their decision on economic, competitive, and programming information presented by the parties, including—

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

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

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

(F) in paragraph (3)(G)(i)(II)—
(i) by striking "owner of the copyright in the sound recording or the’’; and

(ii) by striking “to distribute or authorize the distribution, by means of a digital phonorecord delivery” and inserting “,
or by a record company pursuant to an individual download license, to make and distribute phonorecords by means of digital phonorecord delivery”;” ;

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

(H) in paragraph (5), by striking “Royalty payments shall” and inserting “Except as provided in paragraphs (4)(A)(i) and (10)(B) of subsection (d), royalty payments shall”; and

(I) in paragraph (6)—
(i) by striking “If the copyright owner” and inserting “In the case of a license obtained under subsection (b)(1), (b)(2)(A), or (b)(3), if the copyright owner”; and

(ii) by adding at the end the following sentence: “In the case of a license obtained under subsection (b)(2)(B), license authority under the compulsory license may be terminated as provided in subsection (d)(4)(E).”;

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

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

“(1) Blanket license for digital uses.—

A digital music provider that qualifies for a compulsory license under subsection (a) may, by complying with the terms and conditions of this subsection, obtain a blanket license from copyright owners through the mechanical licensing collective designated under paragraph (3)(B) to make and distribute digital phonorecord deliveries of musical works through one or more covered activities.
“(A) INCLUDED ACTIVITIES.—A blanket license obtained under this subsection—

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

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

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

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

“(i) where a voluntary or individual download license applies, the license authority provided under the blanket license shall exclude any musical works (or shares thereof) subject to the voluntary or individual download license;

“(ii) an entity engaged in covered activities under a voluntary license or authority obtained pursuant to an individual download license that is a significant non-blanket licensee shall comply with paragraph (6)(A); and

“(iii) the rates and terms of any voluntary license shall be subject to the second sentence of clause (i) and clause (ii) of subsection (c)(3)(E) and paragraph (9)(C) as applicable.

“(C) PROTECTION AGAINST INFRINGEMENT ACTIONS.—A digital music provider that
obtains and complies with the terms of a valid blanket license under this subsection shall not be subject to an action for infringement of the exclusive rights provided by paragraphs (1) and (3) of section 106 under this title arising from use of a musical work (or share thereof) to engage in covered activities authorized by such license, subject to paragraph (4)(E).

“(D) Other requirements and conditions apply.—Except as expressly provided in this subsection, each requirement, limitation, condition, privilege, right, and remedy otherwise applicable to compulsory licenses under this section shall apply to compulsory blanket licenses under this subsection.

“(2) Availability of blanket license.—

“(A) Procedure for obtaining license.—A digital music provider may obtain a blanket license under this subsection to engage in one or more covered activities by submitting a notice of license to the mechanical licensing collective described in paragraph (3) that specifies the particular covered activities in which the digital music provider seeks to engage, as follows:
“(i) The notice of license shall comply in form and substance with requirements that the Register of Copyrights shall establish by regulation.

“(ii) Unless rejected in writing by the mechanical licensing collective within 30 days after receipt, the blanket license shall be effective as of the date the notice of license was provided by the digital music provider.

“(iii) A notice of license shall not be rejected by the mechanical licensing collective unless—

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

“(II) the digital music provider has had a license under this subsection terminated by the mechanical licensing collective within the past 3 years pursuant to paragraph (4)(E).
“(iv) If a notice of license is rejected under clause (iii), the digital music provider shall have 30 days after receipt of the notice of rejection to cure any deficiency and submit an amended notice of license to the mechanical licensing collective. If the deficiency has been cured, the mechanical licensing collective shall so confirm in writing, and the license shall be effective as of the date that the original notice of license was provided by the digital music provider.

“(B) Blanket License Effective Date.—Blanket licenses under this subsection shall be made available by the mechanical licensing collective as of the license availability date specified in subsection (e)(15). No such license shall be effective prior to the license availability date.

“(3) Mechanical Licensing Collective.—

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

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

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

“(iii) is able to demonstrate to the Register of Copyrights that it has, or will have prior to the license availability date, the administrative and technological capabilities to perform the required functions of the mechanical licensing collective under this subsection; and

“(iv) has been designated by the Register of Copyrights in accordance with subparagraph (B).

“(B) DESIGNATION OF MECHANICAL LICENSING COLLECTIVE.—

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

“(I) Within 90 days of the enactment date, the Register shall publish notice in the Federal Register soliciting information to assist in identifying the appropriate entity to serve as the mechanical licensing collective.

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

“(ii) PERIODIC REVIEW OF DESIGNATION.—Following the initial designation of the mechanical licensing collective, the Register shall, every 5 years, beginning with the fifth full calendar year to commence after the initial designation, publish notice in the Federal Register in the month of January soliciting information concerning whether the existing designation should be continued, or a different en-
tity meeting the criteria set forth in sub-
paragraph (A) should be designated. Fol-
lowing publication of such notice:

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

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

“(C) AUTHORITIES AND FUNCTIONS.—
“(i) IN GENERAL.—The mechanical licensing collective is authorized to perform the following functions, subject to more particular requirements as set forth in this subsection:

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

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

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

“(IV) Maintain a publicly accessible database of musical works (and shares of such works) and copyright owners, and other information relevant to the administration of licensing activities under this section.
“(V) Administer a process by which copyright owners can claim ownership of musical works (and shares of such works), and a process by which royalties for works for which the owner is not identified or located are equitably distributed to known copyright owners.

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

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

“(VIII) Engage in efforts to enforce rights and obligations under this subsection, including in coordination with the digital licensee coordinator.

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

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

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

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

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

“(ii) ADDITIONAL ADMINISTRATIVE ACTIVITIES.—Subject to paragraph (11)(C) and subsection (e)(31), the mechanical licensing collective may also administer, or assist in administering, voluntary or individual download licenses issued by copyright owners for uses of mu-
sical works, for which the mechanical li-

censing collective shall charge reasonable

fees for such services.

“(iii) Restriction on lobbying.—

The mechanical licensing collective shall

not engage in government lobbying activi-
ties; provided, however, that it may engage

in the activities set forth in clause [(i)(IX),

(X) and (XI)].

“(D) Governance.—

“(i) Board of directors.—The me-

chanical licensing collective shall have a

board of directors consisting of 10 voting

members and 3 nonvoting members, as fol-

lows:

“(I) Eight voting members shall

be music publishers to which song-

writers have assigned exclusive rights

of reproduction and distribution of

musical works with respect to covered

activities; provided, however, that no

such music publisher member may be

owned by, or under common control

with, any other board member.
“(II) Two voting members shall be professional songwriters who have retained and exercise exclusive rights of reproduction and distribution with respect to covered activities with respect to musical works they have authored.

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

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

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

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

“(iii) OPERATIONS ADVISORY COMMITTEE.—The board of directors of the mechanical licensing collective shall establish an operations advisory committee consisting of no fewer than 6 members to make recommendations to the board of directors concerning the operations of the mechanical licensing collective, including the efficient investment in and deployment of information technology and data re-
sources. Such committee shall have an equal number of—

“(I) copyright owners of musical works who are appointed by the board of directors of the mechanical licensing collective; and

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

“(iv) Unclaimed Royalties Oversight Committee.—The board of directors of the mechanical licensing collective shall establish and appoint an unclaimed royalties oversight committee consisting of 10 members, 6 of which shall be copyright owners of musical works and 4 of which shall be professional songwriters whose works are used in covered activities.

“(v) Dispute Resolution Committee.—The board of directors of the mechanical licensing collective shall establish and appoint a dispute resolution committee consisting of no fewer than 6 members, which committee shall include an equal number of representatives of copy-
right owners of musical works and professional songwriters.

“(E) MUSICAL WORKS DATABASE.—

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

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

“(I) the title of the musical work;
“(II) the copyright owner of the work (or share thereof), and such owner’s ownership percentage;

“(III) contact information for such copyright owner;

“(IV) to the extent available—

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

“(bb) identifying information for sound recordings in which the musical work is embodied, including the name of the sound recording, featured artist, producer, international standard recording code, and other information commonly used to assist in associating sound recordings with musical works; and

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

“(iii) UNMATCHED WORKS.—With respect to unmatched works (and shares of
works) in the database, the musical works database shall include—

“(I) to the extent available—

“(aa) the title of the musical work;

“(bb) the ownership percentage for which an owner has not been identified;

“(cc) if a copyright owner has been identified but not located, the identity of such owner and such owner’s ownership percentage;

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

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

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

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

“(v) ACCESSIBILITY OF DATABASE.—The musical work database shall be accessible to the public in a searchable, online format free of charge. The mechanical licensing collective shall also make such
database available free of charge in a bulk, machine-readable format, via a widely available software application, to—

“(I) digital music providers operating under valid notices of license;

“(II) significant nonblanket licensees; and

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

“(vi) ADDITIONAL REQUIREMENTS.—

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

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

“(i) IN GENERAL.—The mechanical licensing collective shall receive, review, and confirm or reject notices of license from digital music providers, as provided in subsection (d)(2)(A). The collective shall maintain a current, publicly accessible list of blanket licenses obtained by digital music providers under this subsection that
includes contact information for the licensees and the effective dates of such licenses.

“(ii) Public list of notices.—The mechanical licensing collective shall receive notices of nonblanket activity from significant nonblanket licensees, as provided in subsection (d)(6)(A). The collective shall maintain a current, publicly accessible list of notices of nonblanket activity submitted by significant nonblanket licensees that includes contact information for such licensees and the dates of receipt of such notices.

“(G) Collection and distribution of royalties.—

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

“(I) engage in efforts to—

“(aa) identify the musical works embodied in sound recordings reflected in such reports, and the copyright owners of such
musical works (and shares thereof);

“(bb) confirm uses of musical works subject to voluntary and individual download licenses, and the corresponding pro rata amounts to be deducted from royalties that would otherwise be due under the blanket license; and

“(cc) confirm proper payment of royalties due;

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

“(III) deposit royalties that cannot be distributed due to an inability to identify or locate a copyright owner of a musical work (or share thereof), or due to a pending dispute before the dispute resolution committee of the mechanical licensing collective, in an
interest-bearing account as provided in subparagraph (H)(ii).

“(ii) REGULATIONS REQUIRED.—The Register of Copyrights shall adopt regulations regarding adjustments to reports of usage by digital music providers, including establishing mechanisms to account for overpayments and underpayments made in prior periods.

“(H) HOLDING OF ACCRUED ROYALTIES.—

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

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

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

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

“(J) DISTRIBUTION OF UNCLAIMED ACCRUED ROYALTIES.—

“(i) DISTRIBUTION PROCEDURES.—

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

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

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

“(aa) the mechanical licensing collective may require copyright owners seeking distributions of unclaimed accrued royalties to provide, or direct the provision of, information concerning royalties received under voluntary and individual download licenses for covered activities, and

“(bb) the mechanical licensing collective shall take appropriate steps to safeguard the confidentiality and security of financial and other sensitive data used to compute market shares in accordance with the confidentiality provisions prescribed by the Register of Copyrights under subsection (d)(12)(C).

“(ii) E

STABLISHMENT OF DISTRIBUTION POLICIES.—The unclaimed royalties oversight committee established under
paragraph (3)(D)(iv) shall establish policies and procedures for the distribution of unclaimed accrued royalties in accordance with this subparagraph, subject to the approval of the board of directors of the mechanical licensing collective.

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

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

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

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

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

“(i) shall include a mechanism to hold disputed funds in accordance with the requirements set forth in subparagraph
(H)(ii) pending resolution of the dispute by the committee, written agreement of the affected parties, or pursuant to a binding judicial determination or arbitration; and

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

“(L) VERIFICATION OF PAYMENTS BY MECHANICAL LICENSING COLLECTIVE.—

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

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

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

“(III) The mechanical licensing collective shall make such books, records, and data available to the qualified auditor and respond to reasonable requests for relevant information, and shall use commercially reasonable efforts to facilitate access to relevant information maintained by third parties.
“(IV) To commence the audit, the copyright owner(s) shall file with the Copyright Office a notice of intent to conduct an audit of the mechanical licensing collective, and shall simultaneously deliver a copy of such notice to the mechanical licensing collective. The Register of Copyrights shall cause the notice of audit to be published in the Federal Register within 30 days of receipt.

“(V) The qualified auditor shall determine the accuracy of royalty payments, including whether an underpayment or overpayment of royalties was made by the mechanical licensing collective to the auditing copyright owner(s); provided, however, that before providing a final audit report to such copyright owner(s), the qualified auditor shall provide a tentative draft of the report to the mechanical licensing collective and allow the mechanical licensing collective a reasonable opportunity to respond to the findings, in-
cluding by clarifying issues and correcting factual errors.

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

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

“(M) RECORDS OF MECHANICAL LICENSING COLLECTIVE.—

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

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

“(4) TERMS AND CONDITIONS OF BLANKET LI-
CENSE.—A blanket license obtained under this sub-
section is subject to, and conditioned upon, the fol-
lowing requirements:

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

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

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

“(I) with respect to each musical
work—

“(aa) provide identifying in-
formation for the sound record-
ing embodying such work, includ-
ing sound recording name, fea-
tured artist, producer and, to the
extent available, producer, inter-
national standard recording code,
and other information commonly
used in the industry to identify
sound recordings and match
them to the musical works they
embody;

“(bb) to the extent available,
provide information concerning
authorship and ownership of the
applicable rights in the musical
work, including songwriter(s),
publisher name(s) and respective
ownership share(s), and the
international standard musical
work code; and

“(cc) provide the number of
digital phonorecord deliveries of
such work, including limited
downloads and interactive
streams;

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

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

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

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

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

“(ii) information concerning the au-
thorship and ownership of musical works,
including songwriters, publisher names,
ownership shares, and international stand-
ard musical work codes.
“(C) Payment of Administrative Assessment.—A digital music provider and any significant nonblanket licensee shall pay the administrative assessment established under paragraph (7)(D) in accordance with this subsection and applicable regulations.

“(D) Verification of Payments by Digital Music Providers.—

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

“(I) The mechanical licensing collective may commence an audit of a digital music provider no more than once in any 3-year period to cover a verification period of no more than the 3 preceding full calendar years, and such audit may not audit records for any such 3-year verification period more than once.
“(II) The audit shall be conducted by a qualified auditor, who shall perform the audit during the ordinary course of business by examining the books, records, and systems of the digital music provider, as well as underlying data, according to generally accepted auditing standards and subject to applicable confidentiality requirements prescribed by the Register of Copyrights under subsection (d)(12)(C).

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

“(IV) To commence the audit, the mechanical licensing collective shall file with the Copyright Office a notice of intent to conduct an audit of
the digital music provider, and shall simultaneously deliver a copy of such notice to the digital music provider. The Register of Copyrights shall cause the notice of audit to be published in the Federal Register within 30 days of receipt.

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

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

“(VII) A digital music provider may not assert section 507 or any other Federal or State statute of limitations, doctrine of laches or estoppel, or similar provision as a defense to a legal action arising from an audit under this subparagraph provided that such legal action is commenced no more than 6 years after the commencement of the audit that is the basis for such action.
“(ii) ALTERNATIVE VERIFICATION PROCEDURES.—Nothing in this subpara-
graph shall preclude the mechanical licensing collective and a digital music provider
from agreeing to audit procedures different from those set forth herein; provided, how-
ever, that notice of the audit shall still be provided to and published by the Copyright
Office as set forth in clause (i)(IV).

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

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

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

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

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

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

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

“(ii) NOTICE OF DEFAULT AND TER-
MINATION.—In case of a general default by
a digital music provider, the mechanical li-
censing collective may proceed to terminate
the blanket license of the digital music pro-
vider as follows:
“(I) The mechanical licensing collective shall provide written notice to the digital music provider describing with reasonable particularity the default and advising that unless such default is cured within 60 days from the date of the notice, the blanket license will automatically terminate at the end of that period.

“(II) If the digital music provider fails to remedy the default within the 60-day period referenced in subclause (I), the license shall terminate without any further action on the part of the mechanical licensing collective. Such termination renders the making of all digital phonorecord deliveries of all musical works (and shares thereof) covered by the blanket license for which the royalty or administrative assessment has not been paid actionable as acts of infringement under section 501 and subject to the remedies provided by sections 502 through 506.
(iii) NOTICE TO COPYRIGHT OWNERS.—The mechanical licensing collective shall provide written notice of any termination under this subparagraph to copyright owners of affected works.

(5) DIGITAL LICENSEE COORDINATOR.—

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

(i) is a not-for-profit entity, not owned by any other entity, that is designated by the Register of Copyrights to carry out responsibilities under this subsection;

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

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

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

“(B) Designation of Digital Licensee
Coordinator.—

“(i) Initial Designation.—The
Register of Copyrights shall initially des-
ignate the digital licensee coordinator within 9 months of the enactment date, in ac-
cordance with the same procedure as set
forth for designation of the mechanical li-
censing collective in paragraph (3)(B)(i).

“(ii) Periodic Review of Designation.—Following the initial designation of
the digital licensee coordinator, the Reg-
ister shall, every 5 years, beginning with
the fifth full calendar year to commence
after the initial designation, determine
whether the existing designation should be
continued, or a different entity meeting the
criteria set forth in subparagraph (A)
should be designated, in accordance with
the same procedure as set forth for the
mechanical licensing collective in paragraph (3)(B)(ii).

“(iii) INABILITY TO DESIGNATE.—If the Register is unable to identify an entity that fulfills the qualifications set forth in paragraph (A) that is willing to serve as digital licensee coordinator, the Register shall decline to designate a digital licensee coordinator. The Register’s inability to designate a digital licensee coordinator shall not negate or otherwise affect any provision of this subsection except to the limited extent that a provision references the digital licensee coordinator. In such case, the reference to the digital licensee coordinator shall be without effect unless and until a new digital licensee coordinator is designated.

“(C) AUTHORITIES AND FUNCTIONS.—

“(i) IN GENERAL.—The digital licensee coordinator is authorized to perform the following functions, subject to more particular requirements as set forth in this subsection:
“(I) Establish a governance structure, criteria for membership, and any dues to be paid by its members.

“(II) Engage in efforts to enforce notice and payment obligations with respect to the administrative assessment, including by receiving information from and coordinating with the mechanical licensing collective.

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

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

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

“(VI) Maintain records of its activities.
“(VII) Engage in such other activities as may be necessary or appropriate to fulfill its responsibilities under this subsection.

“(ii) **Restriction on Lobbying.**—

The digital licensee coordinator shall not engage in government lobbying activities; provided, however, that it may engage in the activities set forth in clause (i)(III), (IV), and (V).

“(6) **Requirements for Significant Nonblanket Licensees.**—

“(A) **In General.**—

“(i) **Notice of Activity.**—Not later than 45 days after the license availability date, or 45 days after the end of the first full calendar month in which an entity initially qualifies as a significant nonblanket licensee as defined in subsection (e)(29), whichever occurs later, a significant nonblanket licensee shall submit a notice of nonblanket activity to the mechanical licensing collective. The notice of nonblanket activity shall comply in form and substance with requirements that the Register of
Copyrights shall establish by regulation, and a copy shall be made available to the digital licensee coordinator.

“(ii) REPORTING AND PAYMENT OBLIGATIONS.—The notice of nonblanket activity submitted to the mechanical licensing collective shall be accompanied by a report of usage that contains the information described in paragraph (4)(A)(ii), as well as payment of the administrative assessment as required under this subsection and applicable regulations. Thereafter, subject to clause (iii), a significant nonblanket licensee shall continue to provide monthly reports of usage, accompanied by payment of the administrative assessment, to the mechanical licensing collective, such reports and payments to be submitted not later than 45 days after the end of the calendar month being reported.

“(iii) DISCONTINUATION OF OBLIGATIONS.—An entity that has submitted a notice of nonblanket activity to the mechanical licensing collective that has ceased to qualify as a significant nonblanket li-
licensee may so notify the collective in writing. In such case, as of the calendar month in which such notice is provided, such entity shall no longer be required to provide reports of usage or pay the administrative assessment; provided, however, that should such entity once again qualify as a significant nonblanket licensee, it shall again be required to comply with clauses (i) and (ii).

“(B) Reporting by mechanical licensing collective to digital licensee coordinator.—

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

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

“(C) Legal enforcement efforts.—

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

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

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

“(7) Funding of mechanical licensing collective.—

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

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

“(I) digital music providers that are engaged, in all or in part, in covered activities pursuant to a blanket license under this subsection; and

“(II) significant nonblanket licensees; and

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

“(B) VOLUNTARY CONTRIBUTIONS.—

“(i) AGREEMENTS CONCERNING CONTRIBUTIONS.—Except as provided in clause (ii), any voluntary contributions by digital music providers and significant nonblanket licensees shall be determined by private negotiation and agreement; provided, however, that—

“(I) the date and amount of any voluntary contribution to the mechanical licensing collective shall be documented in a writing signed by an authorized agent of the mechanical li-
encing collective and the contributing party, and

“(II) such agreement shall be made available as required in proceedings before the Copyright Royalty Judges to establish or adjust the administrative assessment in accordance with applicable statutory and regulatory provisions and rulings of the Copyright Royalty Judges.

“(ii) Treatment of Contributions.—Any such voluntary contribution shall be treated for purposes of an administrative assessment proceeding as a general offset to total costs of the mechanical licensing collective that would otherwise be recovered through the administrative assessment. Any allocation or reallocation of voluntary contributions between or among individual digital music providers or significant nonblanket licensees shall be a matter of private negotiation and agreement among such parties and outside the scope of the administrative assessment proceeding.
“(C) INTERIM APPLICATION OF ACCRUED ROYALTIES.—In the event that the administrative assessment, together with any funding from voluntary contributions as provided in subparagraphs (A) and (B), is inadequate to cover current total costs of the mechanical licensing collective, the collective, with approval of its board of directors, may apply unclaimed accrued royalties on an interim basis to defray such costs, subject to future reimbursement of such royalties from future collections of the assessment.

“(D) DETERMINATION OF ADMINISTRATIVE ASSESSMENT.—

“(i) ADMINISTRATIVE ASSESSMENT TO COVER TOTAL COSTS.—The administrative assessment shall be used solely and exclusively to fund the total costs of the mechanical licensing collective.

“(ii) SEPARATE PROCEEDING BEFORE COPYRIGHT ROYALTY JUDGES.—The amount and terms of the administrative assessment shall be determined and established in a separate and independent proceeding before the Copyright Royalty Judges, according to the procedures de-
scribed in clauses (iii) and (iv). The administrative assessment determined in such proceeding shall—

“(I) be wholly independent of royalty rates and terms applicable to digital music providers, which shall not be taken into consideration in any manner in establishing the administrative assessment;

“(II) be established by the Copyright Royalty Judges in an amount that is calculated to defray the reasonable total costs of the mechanical licensing collective, as such total costs are defined in subsection (e)(31);

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

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

“(V) take into consideration not only anticipated future total costs and collections of the administrative assessment, but also, as applicable—

“(aa) any portion of past actual total costs of the mechanical licensing collective not funded by previous collections of the administrative assessment or voluntary contributions because such collections or contributions together were insufficient to fund such costs;
“(bb) any past collections of the administrative assessment and voluntary contributions that exceeded past actual total costs of the mechanical licensing collective, resulting in a surplus; and

“(cc) the amount of any voluntary contributions by digital music providers or significant nonblanket licensees in relevant periods, as described in subparagraphs (A) and (B) of paragraph (7).

“(iii) INITIAL ADMINISTRATIVE ASSESSMENT.—The procedure for establishing the initial administrative assessment shall be as follows:

“(I) The Copyright Royalty Judges shall commence a proceeding to establish the initial administrative assessment within one year of the enactment date by publishing a notice in the Federal Register seeking petitions to participate.
“(II) The mechanical licensing collective and digital licensee coordinator shall participate in such proceeding, along with any interested copyright owners, digital music providers or significant nonblanket licensees that have notified the Copyright Royalty Judges of their desire to participate.

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

“(IV) The initial administrative assessment shall be determined, and
such determination shall be published in the Federal Register by the Copyright Royalty Judges, within 9 months of commencement of the proceeding contemplated by this clause. The determination shall be supported by a written record. The initial administrative assessment shall be effective as of the license availability date, and shall continue in effect unless and until an adjusted administrative assessment is established pursuant to an adjustment proceeding under clause (iii).

“(iv) Adjustment of Administrative Assessment.—The administrative assessment may be adjusted by the Copyright Royalty Judges in a proceeding to occur no more than once every 2 years, in accordance with the following procedure:

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

“(II) Notice of the commencement of such proceeding shall be published in the Federal Register in the month of February, along with a schedule of requested information and additional proceedings, as described in clause (iii)(III). The mechanical licensing collective and digital licensee coordinator shall participate in such proceeding, along with any interested copyright owners, digital music providers or significant nonblanket licensees that have notified the Copyright Royalty Judges of their desire to participate.

“(III) The adjusted administrative assessment, which shall be sup-
ported by a written record, shall be published in the Federal Register no later than 9 months after the publication of the notice of commencement of the adjustment proceeding. The adjusted administrative assessment shall take effect as of January 1 of the following year.

“(v) ADOPTION OF VOLUNTARY AGREEMENTS.—In lieu of reaching their own determination based on evaluation of relevant data, the Copyright Royalty Judges shall approve and adopt a negotiated agreement to establish the amount and terms of the administrative assessment that has been agreed to by the mechanical licensing collective, on the one hand, and the digital licensee coordinator (or if none has been designated, interested digital music providers and significant nonblanket licensees representing more than half of the market for uses of musical works in covered activities), on the other; provided, however, that the Copyright Royalty Judges shall have the discretion to reject
any such agreement for good cause shown.

An administrative assessment adopted
under this clause shall apply to all digital
music providers and significant nonblanket
licensees engaged in covered activities dur-
ing the period it is in effect.

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

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

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

“(8) Establishment of Rates and Terms Under Blanket License.—

“(A) Restrictions on Rate Setting Participation.—Neither the mechanical licensing collective nor the digital licensee coordinator shall be a party to a proceeding to determine rates and terms for activities under this section as described in subsection (c)(3)(C); provided, however, that either may gather and provide financial and other information for the use of a party to such a proceeding and comply
with requests for information as required under applicable statutory and regulatory provisions and rulings of the Copyright Royalty Judges.

“(B) Application of Late Fees.—In any proceeding described in subparagraph (A) in which the Copyright Royalty Judges establish a late fee for late payment of royalties for uses of musical works under this section, such fee shall apply to covered activities under blanket licenses under this subsection, as follows:

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

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

“(C) Interim Rate Agreements.—For any covered activity for which no rate or terms have been established by the Copyright Royalty Judges, the mechanical licensing collective and a digital music provider may agree to an interim rate and terms for such activity; provided,
however, that any such interim rate and terms—

“(i) shall be treated as nonprecedential and not cited or relied upon in any ratesetting proceeding before the Copyright Royalty Judges or any other tribunal; and

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

“(9) TRANSITION TO BLANKET LICENSES.—

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

“(B) Expiration of Existing Licenses.—Except to the extent provided in subparagraph (A), as of the license availability date, licenses obtained under this section for covered activities prior to the license availability date shall no longer continue in effect.

“(C) Treatment of Voluntary Licenses.—A voluntary license for a covered activity in effect as of the license availability date will remain in effect unless and until it expires according to its terms, or the parties agree to amend or terminate the license. In a case where a voluntary license for a covered activity entered into before the license availability date incorporates the terms of this section by reference, the terms so incorporated (but not the rates) shall be those in effect immediately prior to the license availability date, and those terms shall continue to apply unless and until such li-
cense is terminated or amended, or the parties enter into a new voluntary license.

“(D) FURTHER ACCEPTANCE OF NOTICES FOR COVERED ACTIVITIES BY COPYRIGHT OFFICE.—As of the enactment date—

“(i) the Copyright Office shall no longer accept notices of intention with respect to covered activities; and

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

“(10) PRIOR UNLICENSED USES.—

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

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

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

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

“(aa) Sound recording name, featured artist, producer, international standard recording code, and other information commonly used in the industry to identify sound recordings and match them to the musical works they embody.

“(bb) Any available musical work ownership information, including songwriter and publisher name(s), percentage ownership share(s), and international standard musical work code.
“(II) Employment of one or more bulk electronic matching processes that are available to the digital music provider through third-party vendors on commercially reasonable terms; provided, however, that a digital music provider may rely on its own bulk electronic matching process if it has capabilities comparable to or better than such third-party offerings.

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

“(iii) If the required matching efforts are successful in identifying and locating a copyright owner of a musical work (or share thereof) by the end of the calendar month in which the digital music provider first makes use of the work, the digital music provider shall provide statements of account and pay royalties to such copyright owner in accordance with this section and applicable regulations.
“(iv) If the copyright owner is not identified or located by the end of the calendar month in which the digital music provider first makes use of the work, the digital music provider shall accrue and hold royalties calculated under the applicable statutory rate in accordance with usage of the work, from initial use of the work until the accrued royalties can be paid to the copyright owner or are required to be transferred to the mechanical licensing collective, as follows:

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

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

“(aa) within 45 days after the end of the calendar month during which the copyright owner
was identified and located, pay the copyright owner all accrued royalties, such payment to be accompanied by a cumulative statement of account that includes all of the information that would have been provided to the copyright owner had the digital music provider been providing monthly statements of account to the copyright owner from initial use of the work in accordance with this section and applicable regulations, including the requisite certification under subsection (c)(5);

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

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

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

“(aa) within 45 days after the license availability date, transfer all accrued royalties to the mechanical licensing collective, such payment to be accompanied by a cumulative statement of account that includes all of the
information that would have been
provided to the copyright owner
had the digital music provider
been serving monthly statements
of account on the copyright
owner from initial use of the
work in accordance with this sec-
tion and applicable regulations,
including the requisite certifi-
cation under subsection (c)(5),
and accompanied by an addi-
tional certification by a duly au-
thorized officer of the digital
music provider that the digital
music provider has fulfilled the
requirements of clauses (i) and
(ii) of subparagraph (B) but has
not been successful in locating or
identifying the copyright owner;
and
“(bb) as of the monthly roy-
alty reporting period commencing
on the license availability date,
begin reporting usage and paying
royalties for such musical work
(or share thereof) for such period and reporting periods thereafter to the mechanical licensing collective, as required under this subsection and applicable regulations.

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

“(C) Adjusted Statute of Limitations.—Notwithstanding anything to the contrary in section 507(b), with respect to any claim of infringement of the exclusive rights provided by paragraphs (1) and (3) of section 106 against a digital music provider arising from the unauthorized reproduction or distribution of a musical work by such digital music
provider to engage in covered activities that accrued no more than 3 years prior to the license availability date, such action may be commenced within 3 years of the date the claim accrued, or up to 2 years after the license availability date, whichever is later.

“(D) OTHER RIGHTS AND REMEDIES PRESERVED.—Except as expressly provided in this paragraph, nothing in this paragraph shall be construed to alter, limit, or negate any right or remedy of a copyright owner with respect to unauthorized use of a musical work.

“(11) LEGAL PROTECTIONS FOR LICENSING ACTIVITIES.—

“(A) EXEMPTION FOR COMPULSORY LICENSE ACTIVITIES.—The antitrust exemption set forth in subsection (c)(3)(B) shall apply to negotiations and agreements between and among copyright owners and persons entitled to obtain a compulsory license for covered activities under this subsection, and common agents acting on their behalf, including with respect to the administrative assessment established under this subsection.
“(B) Limitation on Common Agent Exemption.—Notwithstanding the antitrust exemption provided in subsection (c)(3)(B) and subparagraph (A), except for the administrative assessment, neither the mechanical licensing collective nor the digital licensee coordinator shall serve as a common agent with respect to the establishment of royalty rates or terms under this section.

“(C) Antitrust Exemption for Administrative Activities.—Notwithstanding any provision of the antitrust laws, copyright owners and persons entitled to obtain a compulsory license under this section may designate the mechanical licensing collective to administer voluntary licenses for the reproduction or distribution of musical works in covered activities on their behalf; provided, however, that—

“(i) each copyright owner shall establish the royalty rates and material license terms of any such voluntary license individually and not in agreement, combination, or concert with any other copyright owner;
“(ii) each person entitled to obtain a compulsory license under this section shall establish the royalty rates and material license terms of any such voluntary license individually and not in agreement, combination, or concert with any other digital music provider; and

“(iii) the mechanical licensing collective shall maintain the confidentiality of the voluntary licenses in accordance with the confidentiality provisions prescribed by the Register of Copyrights under subsection [(d)(12)(C)].

“(D) LIABILITY FOR GOOD-FAITH ACTIVITIES.—The mechanical licensing collective shall not be liable to any person or entity based on a claim arising from its good-faith administration of policies and procedures adopted and implemented to carry out the responsibilities set forth in subparagraphs (J) and (K) of paragraph (3), except to the extent of correcting an underpayment or overpayment of royalties as provided in paragraph (3)(L)(i)(VI); provided, however, that it may be named as a stakeholder in an action between copyright owners if it is
holding disputed funds that are the subject of such action. For purposes of this subparagraph, ‘good-faith administration’ means administration in a manner that is not grossly negligent.

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

“(12) REGULATIONS.—

“(A) ADOPTION BY REGISTER OF COPYRIGHTS AND COPYRIGHT ROYALTY JUDGES.—

The Register of Copyrights may conduct such proceedings and adopt such regulations as may be necessary or appropriate to effectuate the provisions of this subsection, except for regulations concerning proceedings before the Copyright Royalty Judges to establish the administrative assessment, which shall be adopted by the Copyright Royalty Judges.

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

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

“(13) Savings clauses.—

“(A) Limitation on activities and rights covered.—This subsection applies solely to uses of musical works subject to licensing under this section. The blanket compulsory license established hereunder shall not be construed to extend or apply to activities other than covered activities or to rights other than the exclusive rights of reproduction and dis-
tribution licensed under this section, or serve or
act as the basis to extend or expand the com-
pulsory license under this section to activities
and rights not covered by this section as of the
enactment date.

“(B) RIGHTS OF PUBLIC PERFORMANCE
NOT AFFECTED.—The rights, protections, and
immunities granted under this subsection, the
data concerning musical works collected and
made available under this subsection, and the
definitions set forth in subsection (e) shall not
extend to, limit, or otherwise affect any right of
public performance in a musical work.”; and
(5) by adding at the end the following new sub-
section:

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

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

“(2) ACCRUED ROYALTIES.—The term ‘accrued
royalties’ means royalties accrued for the reproduc-
tion or distribution of a musical work (or share
thereof) in a covered activity, calculated in accord-
ance with the applicable rate under this section.
“(3) ADMINISTRATIVE ASSESSMENT.—The term ‘administrative assessment’ means the fee to be paid by digital music providers and significant nonblanket licensees that is established pursuant to subsection (d)(7)(D).

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

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

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

“(A) means the owner of the exclusive right of reproduction or distribution in a musical work, in all or in part, as provided in section 201 of this title; and

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

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

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

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

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

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

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

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

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

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

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

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

“(15) LICENSE AVAILABILITY DATE.—The term ‘license availability date’ means January 1 following the second anniversary of the enactment of Music Modernization Act of 2017.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“(A) is not currently operating under a blanket license obtained under this subsection and therefore is not obligated to provide reports of usage reflecting covered activities under subsection (d)(4)(A)

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

“(C) either—

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

“(ii) derives revenue or other consideration in connection with such covered activities greater than 50,000 dollars in a calendar month, or total revenue or other consideration greater than 500,000 dollars during the preceding 12 calendar months.

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

“(31) TOTAL COSTS.—The term ‘total costs’ means the total costs of establishing, maintaining, and operating the mechanical licensing collective to fulfill its statutory functions, including startup costs; financing, legal, and insurance costs; investments in information technology, infrastructure, and other long-term resources; outside vendor costs; costs of licensing, royalty administration, and enforcement of rights; costs of bad debt; and costs of automated and manual efforts to identify and locate copyright owners of musical works (and shares thereof) and match sound recordings to the musical works they embody; provided, however, that total costs shall not include any added costs incurred by the mechanical
licensing collective to provide services under voluntary licenses.

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

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

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

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

(1) in paragraph (1), by striking “The rates applicable under sections 114(f)(1)(B), 115, and 116 shall be calculated to achieve the following objectives” and inserting “The rates applicable under sections 114(f)(1)(B) and 116 shall be calculated to achieve the following objectives”;

(2) by redesignating paragraph (8) as paragraph (9); and
(3) by inserting after paragraph (7) the following new paragraph:

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

(c) Effective Date of Amended Rate Setting Standard.—The amendments made by subsections (a)(3)(D) and (b)(1) shall apply to any proceeding before the Copyright Royalty Judges that is pending on, or commenced on or after, the date of the enactment of this Act.

(d) Technical and Conforming Amendments to Title 37, Part 385 of the Code of Federal Regulations.—Within 9 months after the date of the enactment of this Act, the Copyright Royalty Judges shall amend the existing regulations for section 115 in part 385 of title 17, Code of Federal Regulations to conform definitions used in such part to the definitions of the same terms set forth in section 115(e) of title 17, United States Code, as amended by subsection (a). In so doing, the Copyright Royalty Judges shall make adjustments to the language of the regulations as necessary to achieve the
same purpose and effect as the original regulations with respect to the rates and terms previously adopted by the Copyright Royalty Judges.

(e) **BEST PRACTICES WORKING GROUP.**—Not later than 1 year after the date of the enactment of this Act, the Register of Copyrights shall establish a working group consisting of representatives of the mechanical licensing collective, the digital licensee coordinator, copyright owners, digital music providers, sound recording owners, and performing rights societies to consider and advise on best practices to minimize the incidence of unidentified and unmatched musical works and facilitate and encourage the exchange of ownership information and prompt access to such information by and among such parties.

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

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

(b) **PROCEEDINGS NOT AFFECTED.**—The repeal of section 114(i) of title 17, United States Code, by subsection (a) shall not be taken into account in any proceeding to set or adjust the rates and fees payable for the use of sound recordings under section 112(e) or section 114(f) of such title that is pending on, or commenced on or after, the date of the enactment of this Act.
(c) Decisions and Precedents Not Affected.—
The repeal of section 114(i) of title 17, United States Code, by subsection (a) shall not have any effect upon the decisions, or the precedents established or relied upon, in any proceeding to set or adjust the rates and fees payable for the use of sound recordings under section 112(e) or section 114(f) of such title before the date of the enactment of this Act.

SEC. 4. RANDOM ASSIGNMENT OF RATE COURT PROCEEDINGS.

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

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

(2) by adding at the end the following new subsection:

“(b)(1) In the case of any performing rights society subject to a consent decree, any application for the determination of a license fee for the public performance of music in accordance with the applicable consent decree shall be made in the district court with jurisdiction over that consent decree and assigned by lot to a judge of that district court according to that court’s rules for the division of business among district judges currently in effect or as may be amended from time to time, provided that
any such application shall not be assigned to (A) a judge to whom continuing jurisdiction over any performing rights society for any performing rights society consent decree is assigned or has previously been assigned, or (B) a judge to whom another proceeding concerning an application for the determination of a reasonable license fee is assigned at the time of the filing of the application. This provision does not apply to applications to determine reasonable license fees made by individual proprietors under section 513 of title 17.

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