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(Original Signature of Member)

115TH CONGRESS
1ST SESSION

H. R.

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 Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Music Modernization
5 Act of 2017”.

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

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

5 (1) in subsection (a)—

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

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

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

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

25 “(ii) in the case of a digital music
26 provider seeking to make and distribute

1 digital phonorecord deliveries of a sound
2 recording embodying a musical work under
3 a compulsory license—

4 “(I) the copyright owner of the
5 sound recording first fixed such sound
6 recording under the authority of the
7 copyright owner of the musical work
8 and is further authorized by the copy-
9 right owner of the musical work to
10 make and distribute phonorecords em-
11 bodying such work to the public in the
12 United States; and

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

20 “(B) A person may not obtain a compul-
21 sory license for the use of the work in the mak-
22 ing of phonorecords duplicating a sound record-
23 ing fixed by another, including by means of dig-
24 ital phonorecord delivery, unless—

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

3 “(ii) the making of the phonorecords
4 was authorized by the owner of the copy-
5 right in the sound recording or, if the
6 sound recording was fixed before February
7 15, 1972, by any person who fixed the
8 sound recording pursuant to an express li-
9 cense from the owner of the copyright in
10 the musical work or pursuant to a valid
11 compulsory license for use of such work in
12 a sound recording.”.

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

15 “(b) PROCEDURES TO OBTAIN A COMPULSORY LI-
16 CENSE.—

17 “(1) PHONORECORDS OTHER THAN DIGITAL
18 PHONORECORD DELIVERIES.—A person who seeks to
19 obtain a compulsory license under this section to
20 make and distribute phonorecords of a musical work
21 other than by means of digital phonorecord delivery
22 shall, before or within 30 days after making, and be-
23 fore distributing, any phonorecord of the work, serve
24 notice of intention to do so on the copyright owner.
25 If the registration or other public records of the

1 Copyright Office do not identify the copyright owner
2 and include an address at which notice can be
3 served, it shall be sufficient to file the notice of in-
4 tention in the Copyright Office. The notice shall
5 comply, in form, content, and manner of service,
6 with requirements that the Register of Copyrights
7 shall prescribe by regulation.

8 “(2) DIGITAL PHONORECORD DELIVERIES.—A
9 person who seeks to obtain a compulsory license
10 under this section to make and distribute
11 phonorecords of a musical work by means of digital
12 phonorecord delivery—

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

22 “(B) on or after the license availability
23 date, shall, before making any such digital pho-
24 norecord delivery, follow the procedure set forth

1 in subsection (d)(2), except as provided in para-
2 graph (3).

3 “(3) RECORD COMPANY DOWNLOAD LI-
4 CENSES.—Notwithstanding anything to the contrary
5 in this section, a record company may, on or after
6 the license availability date, obtain a license to make
7 and distribute, or authorize the making and distribu-
8 tion of, digital phonorecord deliveries of musical
9 works in the form of permanent downloads in the
10 manner described in paragraph (2)(A). A record
11 company that obtains a compulsory license for per-
12 manent downloads as permitted under this para-
13 graph shall provide statements of account and pay
14 royalties as provided in subsection (c)(5).

15 “(4) FAILURE TO OBTAIN LICENSE.—

16 “(A) PHONORECORDS OTHER THAN DIG-
17 ITAL PHONORECORD DELIVERIES.—In the case
18 of phonorecords made and distributed other
19 than by means of digital phonorecord delivery,
20 the failure to serve or file the notice of inten-
21 tion required by paragraph (1) forecloses the
22 possibility of a compulsory license under para-
23 graph (1). In the case of phonorecords made
24 and distributed by means of digital phonorecord
25 delivery prior to the license availability date, the

1 failure to serve the notice of intention required
2 by paragraph (2)(A) forecloses the possibility of
3 a compulsory license under paragraph (2)(A).
4 In either case, in the absence of a voluntary li-
5 cense, the failure to obtain a compulsory license
6 renders the making and distribution of
7 phonorecords, including by means of digital
8 phonorecord delivery, actionable as acts of in-
9 fringement under section 501 and subject to the
10 remedies provided by sections 502 through 506.

11 “(B) DIGITAL PHONORECORD DELIV-
12 ERIES.—In the case of phonorecords made and
13 distributed by means of digital phonorecord de-
14 livery on or after the license availability date,
15 the failure to comply with paragraph (2)(B), or,
16 if applicable, paragraph (3), forecloses the pos-
17 sibility of a compulsory license under this sec-
18 tion. In the absence of a voluntary license, the
19 failure to obtain a compulsory license renders
20 the making and distribution of phonorecords by
21 means of digital phonorecord delivery actionable
22 as acts of infringement under section 501 and
23 subject to the remedies provided by sections
24 502 through 506.”;

25 (3) in subsection (c)—

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

3 “(1) To be entitled to receive royalties under a
4 compulsory license obtained under subsection (b)(1)
5 the copyright owner must be identified in the reg-
6 istration or other public records of the Copyright Of-
7 fice. The owner is entitled to royalties for
8 phonorecords made and distributed after being so
9 identified, but is not entitled to recover for any
10 phonorecords previously made and distributed.

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

22 (B) by striking paragraph (3)(A) and in-
23 serting the following:

24 “(3)(A) For every digital phonorecord delivery
25 of a musical work made under a compulsory license

1 under this section, the royalty payable shall be the
2 royalty prescribed under subparagraphs (B) through
3 (E) and chapter 8 of this title.”;

4 (C) in paragraph (3)(C)—

5 (i) by striking the second sentence;

6 and

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

15 (D) by striking paragraph (3)(D) and in-
16 serting the following:

17 “(D) The schedule of reasonable rates and
18 terms determined by the Copyright Royalty Judges
19 shall, subject to subparagraph (E), be binding on all
20 copyright owners of nondramatic musical works and
21 persons entitled to obtain a compulsory license under
22 subsection (a)(1) during the period specified in sub-
23 paragraph (C), such other period as may be deter-
24 mined pursuant to subparagraphs (B) and (C), or
25 such other period as the parties may agree. The

1 Copyright Royalty Judges shall establish rates and
2 terms that most clearly represent the rates and
3 terms that would have been negotiated in the mar-
4 ketplace between a willing buyer and a willing seller.
5 In determining such rates and terms for digital pho-
6 norecord deliveries, the Copyright Royalty Judges
7 shall base their decision on economic, competitive,
8 and programming information presented by the par-
9 ties, including—

10 “(i) whether use of the compulsory licens-
11 ee’s service may substitute for or may promote
12 the sales of phonorecords or otherwise may
13 interfere with or may enhance the musical work
14 copyright owner’s other streams of revenue
15 from its musical works; and

16 “(ii) the relative roles of the copyright
17 owner and the compulsory licensee in the copy-
18 righted work and the service made available to
19 the public with respect to the relative creative
20 contribution, technological contribution, capital
21 investment, cost, and risk.”;

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

24 (F) in paragraph (3)(G)(i)(II)—

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

3 (ii) by striking “to distribute or au-
4 thorize the distribution, by means of a dig-
5 ital phonorecord delivery” and inserting “,
6 or by a record company pursuant to an in-
7 dividual download license, to make and dis-
8 tribute phonorecords by means of digital
9 phonorecord delivery”;” ;

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

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

24 (I) in paragraph (6)—

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

6 (ii) by adding at the end the following
7 sentence: “In the case of a license obtained
8 under subsection (b)(2)(B), license author-
9 ity under the compulsory license may be
10 terminated as provided in subsection
11 (d)(4)(E).”;

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

14 “(d) BLANKET LICENSE FOR DIGITAL USES, ME-
15 CHANICAL LICENSING COLLECTIVE, AND DIGITAL LI-
16 CENSEE COORDINATOR.—

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

18 A digital music provider that qualifies for a compul-
19 sory license under subsection (a) may, by complying
20 with the terms and conditions of this subsection, ob-
21 tain a blanket license from copyright owners through
22 the mechanical licensing collective designated under
23 paragraph (3)(B) to make and distribute digital
24 phonorecord deliveries of musical works through one
25 or more covered activities.

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

3 “(i) covers all musical works (or
4 shares of such works) available for compul-
5 sory licensing under this section for pur-
6 poses of engaging in covered activities, ex-
7 cept as provided in subparagraph (B);

8 “(ii) includes the making and dis-
9 tribution of server, intermediate, archival,
10 and incidental reproductions of musical
11 works that are reasonable and necessary
12 for the digital music provider to engage in
13 covered activities licensed under this sub-
14 section, solely for the purpose of engaging
15 in such covered activities; and

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

19 “(B) OTHER LICENSES.—A voluntary li-
20 cense for covered activities entered into between
21 one or more copyright owners and one or more
22 digital music providers, or authority to make
23 and distribute permanent downloads of a musi-
24 cal work obtained by a digital music provider
25 from the copyright owner of a sound recording

1 pursuant to an individual download license,
2 shall be given effect in lieu of a blanket license
3 under this subsection with respect to the musi-
4 cal works (or shares thereof) covered by such
5 voluntary license or individual download author-
6 ity; provided, however, that—

7 “(i) where a voluntary or individual
8 download license applies, the license au-
9 thority provided under the blanket license
10 shall exclude any musical works (or shares
11 thereof) subject to the voluntary or indi-
12 vidual download license;

13 “(ii) an entity engaged in covered ac-
14 tivities under a voluntary license or author-
15 ity obtained pursuant to an individual
16 download license that is a significant non-
17 blanket licensee shall comply with para-
18 graph (6)(A); and

19 “(iii) the rates and terms of any vol-
20 untary license shall be subject to the sec-
21 ond sentence of clause (i) and clause (ii) of
22 subsection (c)(3)(E) and paragraph (9)(C)
23 as applicable.

24 “(C) PROTECTION AGAINST INFRINGE-
25 MENT ACTIONS.—A digital music provider that

1 obtains and complies with the terms of a valid
2 blanket license under this subsection shall not
3 be subject to an action for infringement of the
4 exclusive rights provided by paragraphs (1) and
5 (3) of section 106 under this title arising from
6 use of a musical work (or share thereof) to en-
7 gage in covered activities authorized by such li-
8 cense, subject to paragraph (4)(E).

9 “(D) OTHER REQUIREMENTS AND CONDI-
10 TIONS APPLY.—Except as expressly provided in
11 this subsection, each requirement, limitation,
12 condition, privilege, right, and remedy otherwise
13 applicable to compulsory licenses under this sec-
14 tion shall apply to compulsory blanket licenses
15 under this subsection.

16 “(2) AVAILABILITY OF BLANKET LICENSE.—

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

1 “(i) The notice of license shall comply
2 in form and substance with requirements
3 that the Register of Copyrights shall estab-
4 lish by regulation.

5 “(ii) Unless rejected in writing by the
6 mechanical licensing collective within 30
7 days after receipt, the blanket license shall
8 be effective as of the date the notice of li-
9 cense was provided by the digital music
10 provider.

11 “(iii) A notice of license shall not be
12 rejected by the mechanical licensing collec-
13 tive unless—

14 “(I) the digital music provider or
15 notice of license does not meet all re-
16 quirements of this section or applica-
17 ble regulations, in which case the re-
18 quirements at issue shall be specified
19 with reasonable particularity in the
20 notice of rejection, or

21 “(II) the digital music provider
22 has had a license under this sub-
23 section terminated by the mechanical
24 licensing collective within the past 3
25 years pursuant to paragraph (4)(E).

1 “(iv) If a notice of license is rejected
2 under clause (iii), the digital music pro-
3 vider shall have 30 days after receipt of
4 the notice of rejection to cure any defi-
5 ciency and submit an amended notice of li-
6 cense to the mechanical licensing collective.
7 If the deficiency has been cured, the me-
8 chanical licensing collective shall so con-
9 firm in writing, and the license shall be ef-
10 fective as of the date that the original no-
11 tice of license was provided by the digital
12 music provider.

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

20 “(3) MECHANICAL LICENSING COLLECTIVE.—

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

23 “(i) is a not-for-profit entity, not
24 owned by any other entity, that is created

1 by copyright owners to carry out respon-
2 sibilities under this subsection;

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

10 “(iii) is able to demonstrate to the
11 Register of Copyrights that it has, or will
12 have prior to the license availability date,
13 the administrative and technological capa-
14 bilities to perform the required functions of
15 the mechanical licensing collective under
16 this subsection; and

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

20 “(B) DESIGNATION OF MECHANICAL LI-
21 CENSING COLLECTIVE.—

22 “(i) INITIAL DESIGNATION.—The
23 Register of Copyrights shall initially des-
24 ignate the mechanical licensing collective

1 within 9 months of the enactment date as
2 follows:

3 “(I) Within 90 days of the enact-
4 ment date, the Register shall publish
5 notice in the Federal Register solie-
6 iting information to assist in identi-
7 fying the appropriate entity to serve
8 as the mechanical licensing collective.

9 “(II) After reviewing the infor-
10 mation requested under subclause (I)
11 and making a designation, the Reg-
12 ister shall publish notice in the Fed-
13 eral Register setting forth the identity
14 of and contact information for the me-
15 chanical licensing collective.

16 “(ii) PERIODIC REVIEW OF DESIGNA-
17 TION.—Following the initial designation of
18 the mechanical licensing collective, the
19 Register shall, every 5 years, beginning
20 with the fifth full calendar year to com-
21 mence after the initial designation, publish
22 notice in the Federal Register in the
23 month of January soliciting information
24 concerning whether the existing designa-
25 tion should be continued, or a different en-

1 tity meeting the criteria set forth in sub-
2 paragraph (A) should be designated. Fol-
3 lowing publication of such notice:

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

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

25 “(C) AUTHORITIES AND FUNCTIONS.—

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

6 “(I) Offer and administer blanket
7 licenses for covered activities, includ-
8 ing receipt of notices of license and
9 reports of usage from digital music
10 providers.

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

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

20 “(IV) Maintain a publicly acces-
21 sible database of musical works (and
22 shares of such works) and copyright
23 owners, and other information rel-
24 evant to the administration of licens-
25 ing activities under this section.

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

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

14 “(VII) Invest in relevant re-
15 sources, and arrange for services of
16 outside vendors and others, to support
17 its activities.

18 “(VIII) Engage in efforts to en-
19 force rights and obligations under this
20 subsection, including in coordination
21 with the digital licensee coordinator.

22 “(IX) Initiate and participate in
23 proceedings before the Copyright Roy-
24 alty Judges to establish the adminis-

1 trative assessment under this sub-
2 section.

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

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

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

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

19 “(ii) ADDITIONAL ADMINISTRATIVE
20 ACTIVITIES.—Subject to paragraph
21 (11)(C) and subsection (e)(31), the me-
22 chanical licensing collective may also ad-
23 minister, or assist in administering, vol-
24 untary or individual download licenses
25 issued by copyright owners for uses of mu-

1 sical works, for which the mechanical li-
2 censing collective shall charge reasonable
3 fees for such services.

4 “(iii) RESTRICTION ON LOBBYING.—
5 The mechanical licensing collective shall
6 not engage in government lobbying activi-
7 ties; provided, however, that it may engage
8 in the activities set forth in clause [(i)(IX),
9 (X) and (XI)].

10 “(D) GOVERNANCE.—

11 “(i) BOARD OF DIRECTORS.—The me-
12 chanical licensing collective shall have a
13 board of directors consisting of 10 voting
14 members and 3 nonvoting members, as fol-
15 lows:

16 “(I) Eight voting members shall
17 be music publishers to which song-
18 writers have assigned exclusive rights
19 of reproduction and distribution of
20 musical works with respect to covered
21 activities; provided, however, that no
22 such music publisher member may be
23 owned by, or under common control
24 with, any other board member.

1 “(II) Two voting members shall
2 be professional songwriters who have
3 retained and exercise exclusive rights
4 of reproduction and distribution with
5 respect to covered activities with re-
6 spect to musical works they have au-
7 thored.

8 “(III) One nonvoting member
9 shall be a representative of the non-
10 profit trade association of music pub-
11 lishers that represents the greatest
12 share of the licensor market for uses
13 of musical works in covered activities,
14 as measured over the preceding 3 full
15 calendar years.

16 “(IV) One nonvoting member
17 shall be a representative of the digital
18 licensee coordinator, provided that a
19 digital licensee coordinator has been
20 designated pursuant to subsection
21 (d)(5)(B). Otherwise, the nonvoting
22 member shall be the nonprofit trade
23 association of digital licensees that
24 represents the greatest share of the li-
25 censee market for uses of musical

1 works in covered activities, as meas-
2 ured over the preceding 3 full cal-
3 endar years.

4 “(V) One nonvoting member
5 shall be a representative of a nation-
6 ally recognized nonprofit trade asso-
7 ciation whose primary mission is advo-
8 cacy on behalf of American song-
9 writers.

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

15 “(iii) OPERATIONS ADVISORY COM-
16 MITTEE.—The board of directors of the
17 mechanical licensing collective shall estab-
18 lish an operations advisory committee con-
19 sisting of no fewer than 6 members to
20 make recommendations to the board of di-
21 rectors concerning the operations of the
22 mechanical licensing collective, including
23 the efficient investment in and deployment
24 of information technology and data re-

1 sources. Such committee shall have an
2 equal number of—

3 “(I) copyright owners of musical
4 works who are appointed by the board
5 of directors of the mechanical licens-
6 ing collective; and

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

10 “(iv) UNCLAIMED ROYALTIES OVER-
11 SIGHT COMMITTEE.—The board of direc-
12 tors of the mechanical licensing collective
13 shall establish and appoint an unclaimed
14 royalties oversight committee consisting of
15 10 members, 6 of which shall be copyright
16 owners of musical works and 4 of which
17 shall be professional songwriters whose
18 works are used in covered activities.

19 “(v) DISPUTE RESOLUTION COM-
20 MITTEE.—The board of directors of the
21 mechanical licensing collective shall estab-
22 lish and appoint a dispute resolution com-
23 mittee consisting of no fewer than 6 mem-
24 bers, which committee shall include an
25 equal number of representatives of copy-

1 right owners of musical works and profes-
2 sional songwriters.

3 “(E) MUSICAL WORKS DATABASE.—

4 “(i) ESTABLISHMENT AND MAINTEN-
5 NANCE OF DATABASE.—The mechanical li-
6 censing collective shall establish and main-
7 tain a database of musical works (and
8 shares of such works) and, to the extent
9 known, the identity and location of the
10 copyright owners of such works (and
11 shares thereof) and the sound recordings
12 in which they are embodied. In furtherance
13 of maintaining such database, the mechan-
14 ical licensing collective shall engage in ef-
15 forts to identify the musical works em-
16 bodied in particular sound recordings, as
17 well as to identify and locate the copyright
18 owners of such works (and shares thereof),
19 and update such data as appropriate.

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

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

1 “(II) the copyright owner of the
2 work (or share thereof), and such
3 owner’s ownership percentage;

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

6 “(IV) to the extent available—

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

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

20 “(V) such other information as
21 the Register of Copyrights may pre-
22 scribe by regulation.

23 “(iii) UNMATCHED WORKS.—With re-
24 spect to unmatched works (and shares of

1 works) in the database, the musical works
2 database shall include—

3 “(I) to the extent available—

4 “(aa) the title of the musical
5 work;

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

9 “(cc) if a copyright owner
10 has been identified but not lo-
11 cated, the identity of such owner
12 and such owner’s ownership per-
13 centage;

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

24 “(ee) any additional infor-
25 mation reported to the mechan-

1 ical licensing collective that may
2 assist in identifying the work;
3 and

4 “(II) such other information re-
5 lating to the identity and ownership of
6 musical works (and shares of such
7 works) as the Register of Copyrights
8 may prescribe by regulation.

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

21 “(v) ACCESSIBILITY OF DATABASE.—
22 The musical work database shall be acces-
23 sible to the public in a searchable, online
24 format free of charge. The mechanical li-
25 censing collective shall also make such

1 database available free of charge in a bulk,
2 machine-readable format, via a widely
3 available software application, to—

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

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

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

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

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

18 “(i) IN GENERAL.—The mechanical li-
19 censing collective shall receive, review, and
20 confirm or reject notices of license from
21 digital music providers, as provided in sub-
22 section (d)(2)(A). The collective shall
23 maintain a current, publicly accessible list
24 of blanket licenses obtained by digital
25 music providers under this subsection that

1 includes contact information for the licens-
2 ees and the effective dates of such licenses.

3 “(ii) PUBLIC LIST OF NOTICES.—The
4 mechanical licensing collective shall receive
5 notices of nonblanket activity from signifi-
6 cant nonblanket licensees, as provided in
7 subsection (d)(6)(A). The collective shall
8 maintain a current, publicly accessible list
9 of notices of nonblanket activity submitted
10 by significant nonblanket licensees that in-
11 cludes contact information for such licens-
12 ees and the dates of receipt of such no-
13 tices.

14 “(G) COLLECTION AND DISTRIBUTION OF
15 ROYALTIES.—

16 “(i) IN GENERAL.—Upon receiving re-
17 ports of usage and payments of royalties
18 from digital music providers for covered
19 activities, the mechanical licensing collec-
20 tive shall—

21 “(I) engage in efforts to—

22 “(aa) identify the musical
23 works embodied in sound record-
24 ings reflected in such reports,
25 and the copyright owners of such

1 musical works (and shares there-
2 of);
3 “(bb) confirm uses of musi-
4 cal works subject to voluntary
5 and individual download licenses,
6 and the corresponding pro rata
7 amounts to be deducted from
8 royalties that would otherwise be
9 due under the blanket license;
10 and
11 “(cc) confirm proper pay-
12 ment of royalties due;
13 “(II) distribute royalties to copy-
14 right owners in accordance with the
15 usage and other information contained
16 in such reports, as well as the owner-
17 ship and other information contained
18 in its records; and
19 “(III) deposit royalties that can-
20 not be distributed due to an inability
21 to identify or locate a copyright owner
22 of a musical work (or share thereof),
23 or due to a pending dispute before the
24 dispute resolution committee of the
25 mechanical licensing collective, in an

1 interest-bearing account as provided
2 in subparagraph (H)(ii).

3 “(ii) REGULATIONS REQUIRED.—The
4 Register of Copyrights shall adopt regula-
5 tions regarding adjustments to reports of
6 usage by digital music providers, including
7 establishing mechanisms to account for
8 overpayments and underpayments made in
9 prior periods.

10 “(H) HOLDING OF ACCRUED ROYAL-
11 TIES.—

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

1 “(ii) INTEREST-BEARING ACCOUNT.—
2 Accrued royalties for unmatched works
3 (and shares thereof) shall be maintained
4 by the mechanical licensing collective in an
5 interest-bearing account that earns month-
6 ly interest at the Federal, short-term rate,
7 such interest to accrue for the benefit of
8 copyright owners entitled to payment of
9 such accrued royalties.

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

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

3 “(ii) provided that accrued royalties
4 for the musical work (or share thereof)
5 have not yet been included in a distribution
6 pursuant to subparagraph (J)(i), pay such
7 accrued royalties and a proportionate share
8 of accrued interest associated with that
9 work (or share thereof) to the copyright
10 owner, accompanied by a cumulative state-
11 ment of account reflecting usage of such
12 work and accrued royalties based on infor-
13 mation provided by digital music providers
14 to the mechanical licensing collective.

15 “(J) DISTRIBUTION OF UNCLAIMED AC-
16 CRUED ROYALTIES.—

17 “(i) DISTRIBUTION PROCEDURES.—
18 After the expiration of the prescribed hold-
19 ing period for accrued royalties provided in
20 paragraph (H)(i), the mechanical licensing
21 collective shall distribute such accrued roy-
22 alties, along with a proportionate share of
23 accrued interest, to copyright owners iden-
24 tified in its records, subject to the fol-
25 lowing requirements, and in accordance

1 with the policies and procedures estab-
2 lished under clause (ii):

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

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

1 collective. In furtherance of the deter-
2 mination of equitable market shares
3 under this paragraph—

4 “(aa) the mechanical licens-
5 ing collective may require copy-
6 right owners seeking distribu-
7 tions of unclaimed accrued royalti-
8 ties to provide, or direct the pro-
9 vision of, information concerning
10 royalties received under voluntary
11 and individual download licenses
12 for covered activities, and

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

23 “(ii) ESTABLISHMENT OF DISTRIBUTION POLICIES.—The unclaimed royalties
24 oversight committee established under
25

1 paragraph (3)(D)(iv) shall establish poli-
2 cies and procedures for the distribution of
3 unclaimed accrued royalties in accordance
4 with this subparagraph, subject to the ap-
5 proval of the board of directors of the me-
6 chanical licensing collective.

7 “(iii) ADVANCE NOTICE OF DISTRIBUTU-
8 TIONS.—The mechanical licensing collec-
9 tive shall publicize a pending distribution
10 of unclaimed accrued royalties at least 90
11 days in advance of such distribution.

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

23 “(I) such payments and credits
24 to songwriters shall be allocated in
25 proportion to reported usage of indi-

1 vidual musical works by digital music
2 providers during the reporting periods
3 covered by the distribution from the
4 mechanical licensing collective; and

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

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

23 “(i) shall include a mechanism to hold
24 disputed funds in accordance with the re-
25 quirements set forth in subparagraph

1 (H)(ii) pending resolution of the dispute by
2 the committee, written agreement of the
3 affected parties, or pursuant to a binding
4 judicial determination or arbitration; and

5 “(ii) except as provided in paragraph
6 (11)(D), shall not affect any legal or equi-
7 table rights or remedies available to any
8 copyright owner or songwriter concerning
9 ownership of, and entitlement to royalties
10 for, a musical work.

11 “(L) VERIFICATION OF PAYMENTS BY ME-
12 CHANICAL LICENSING COLLECTIVE.—

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

23 “(I) A copyright owner may
24 audit the mechanical licensing collec-
25 tive only once in a year for any or all

1 of the prior 3 calendar years, and may
2 not audit records for any calendar
3 year more than once.

4 “(II) The audit shall be con-
5 ducted by a qualified auditor, who
6 shall perform the audit during the or-
7 dinary course of business by exam-
8 ining the books, records and systems
9 of the mechanical licensing collective,
10 as well as underlying data, according
11 to generally accepted auditing stand-
12 ards and subject to applicable con-
13 fidentiality requirements prescribed by
14 the Register of Copyrights under sub-
15 section (d)(12)(C).

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

1 “(IV) To commence the audit,
2 the copyright owner(s) shall file with
3 the Copyright Office a notice of intent
4 to conduct an audit of the mechanical
5 licensing collective, and shall simulta-
6 neously deliver a copy of such notice
7 to the mechanical licensing collective.
8 The Register of Copyrights shall
9 cause the notice of audit to be pub-
10 lished in the Federal Register within
11 30 days of receipt.

12 “(V) The qualified auditor shall
13 determine the accuracy of royalty pay-
14 ments, including whether an under-
15 payment or overpayment of royalties
16 was made by the mechanical licensing
17 collective to the auditing copyright
18 owner(s); provided, however, that be-
19 fore providing a final audit report to
20 such copyright owner(s), the qualified
21 auditor shall provide a tentative draft
22 of the report to the mechanical licens-
23 ing collective and allow the mechanical
24 licensing collective a reasonable oppor-
25 tunity to respond to the findings, in-

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

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

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

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

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

5 “(i) RECORDS MAINTENANCE.—The
6 mechanical licensing collective shall ensure
7 that all material records of its operations,
8 including those relating to notices of li-
9 cense, the administration of its claims
10 process, reports of usage, royalty pay-
11 ments, receipt and maintenance of accrued
12 royalties, royalty distribution processes,
13 and legal matters, are preserved and main-
14 tained in a secure and reliable manner,
15 with appropriate commercially reasonable
16 safeguards against unauthorized access,
17 copying, and disclosure, and subject to the
18 confidentiality requirements prescribed by
19 the Register of Copyrights under sub-
20 section (d)(12)(C) for a period of no less
21 than 7 years from date of creation or re-
22 ceipt, whichever occurs later.

23 “(ii) RECORDS ACCESS.—The mechan-
24 ical licensing collective shall provide
25 prompt access to electronic and other

1 records pertaining to the administration of
2 a copyright owner's musical works upon
3 reasonable written request of such owner
4 or the owner's authorized representative.

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

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

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

20 “(ii) DATA TO BE REPORTED.—In re-
21 porting usage of musical works to the me-
22 chanical licensing collective, a digital music
23 provider shall provide usage data for musi-
24 cal works used under the blanket license
25 under this subsection as well as usage data

1 for musical works used in covered activities
2 under voluntary and individual download
3 licenses. In its report of usage, the digital
4 music provider shall—

5 “(I) with respect to each musical
6 work—

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

19 “(bb) to the extent available,
20 provide information concerning
21 authorship and ownership of the
22 applicable rights in the musical
23 work, including songwriter(s),
24 publisher name(s) and respective
25 ownership share(s), and the

1 international standard musical
2 work code; and

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

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

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

17 “(iii) **FORMAT AND MAINTENANCE OF**
18 **REPORTS.**—Reports of usage provided by
19 digital music providers to the mechanical
20 licensing collective shall be in a machine-
21 readable format that is compatible with the
22 information technology systems of the me-
23 chanical licensing collective and meets the
24 requirements of regulations adopted by the
25 Register of Copyrights. The Register shall

1 also adopt regulations setting forth re-
2 quirements under which records of use
3 shall be maintained and made available to
4 the mechanical licensing collective by dig-
5 ital music providers engaged in covered ac-
6 tivities under a blanket license.

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

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

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

1 “(C) PAYMENT OF ADMINISTRATIVE AS-
2 SESSMENT.—A digital music provider and any
3 significant nonblanket licensee shall pay the ad-
4 ministrative assessment established under para-
5 graph (7)(D) in accordance with this subsection
6 and applicable regulations.

7 “(D) VERIFICATION OF PAYMENTS BY DIG-
8 ITAL MUSIC PROVIDERS.—

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

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

1 “(II) The audit shall be con-
2 ducted by a qualified auditor, who
3 shall perform the audit during the or-
4 dinary course of business by exam-
5 ining the books, records, and systems
6 of the digital music provider, as well
7 as underlying data, according to gen-
8 erally accepted auditing standards and
9 subject to applicable confidentiality
10 requirements prescribed by the Reg-
11 ister of Copyrights under subsection
12 (d)(12)(C).

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

22 “(IV) To commence the audit,
23 the mechanical licensing collective
24 shall file with the Copyright Office a
25 notice of intent to conduct an audit of

1 the digital music provider, and shall
2 simultaneously deliver a copy of such
3 notice to the digital music provider.
4 The Register of Copyrights shall
5 cause the notice of audit to be pub-
6 lished in the Federal Register within
7 30 days of receipt.

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

24 “(VI) The mechanical licensing
25 collective shall pay the cost of the

1 audit, unless the qualified auditor de-
2 termines that there was an under-
3 payment by the digital music provider
4 of 10 percent or more, in which case
5 the digital music provider shall bear
6 the reasonable costs of the audit, in
7 addition to paying the amount of any
8 underpayment to the mechanical li-
9 censing collective. In case of an over-
10 payment by the digital music provider,
11 the mechanical licensing collective
12 shall provide a credit to the digital
13 music provider.

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

1 “(ii) ALTERNATIVE VERIFICATION
2 PROCEDURES.—Nothing in this subpara-
3 graph shall preclude the mechanical licens-
4 ing collective and a digital music provider
5 from agreeing to audit procedures different
6 from those set forth herein; provided, how-
7 ever, that notice of the audit shall still be
8 provided to and published by the Copyright
9 Office as set forth in clause (i)(IV).

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

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

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

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

24 “(III) provides one or more
25 monthly reports of usage to the me-

1 chanical licensing collective that, on
2 the whole, is or are materially defi-
3 cient as a result of inaccurate, miss-
4 ing, or unreadable data, where the
5 correct data was available to the dig-
6 ital music provider and required to be
7 reported under this section and appli-
8 cable regulations;

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

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

19 “(ii) NOTICE OF DEFAULT AND TER-
20 MINATION.—In case of a general default by
21 a digital music provider, the mechanical li-
22 censing collective may proceed to terminate
23 the blanket license of the digital music pro-
24 vider as follows:

1 “(I) The mechanical licensing
2 collective shall provide written notice
3 to the digital music provider describ-
4 ing with reasonable particularity the
5 default and advising that unless such
6 default is cured within 60 days from
7 the date of the notice, the blanket li-
8 cense will automatically terminate at
9 the end of that period.

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

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

6 “(5) DIGITAL LICENSEE COORDINATOR.—

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

9 “(i) is a not-for-profit entity, not
10 owned by any other entity, that is des-
11 ignated by the Register of Copyrights to
12 carry out responsibilities under this sub-
13 section;

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

21 “(iii) is able to demonstrate that it
22 has, or will have prior to the license avail-
23 ability date, the administrative capabilities
24 to perform the required functions of the

1 digital licensee coordinator under this sub-
2 section; and

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

6 “(B) DESIGNATION OF DIGITAL LICENSEE
7 COORDINATOR.—

8 “(i) INITIAL DESIGNATION.—The
9 Register of Copyrights shall initially des-
10 ignate the digital licensee coordinator with-
11 in 9 months of the enactment date, in ac-
12 cordance with the same procedure as set
13 forth for designation of the mechanical li-
14 censing collective in paragraph (3)(B)(i).

15 “(ii) PERIODIC REVIEW OF DESIGNA-
16 TION.—Following the initial designation of
17 the digital licensee coordinator, the Reg-
18 ister shall, every 5 years, beginning with
19 the fifth full calendar year to commence
20 after the initial designation, determine
21 whether the existing designation should be
22 continued, or a different entity meeting the
23 criteria set forth in subparagraph (A)
24 should be designated, in accordance with
25 the same procedure as set forth for the

1 mechanical licensing collective in para-
2 graph (3)(B)(ii).

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

19 “(C) AUTHORITIES AND FUNCTIONS.—

20 “(i) IN GENERAL.—The digital li-
21 censee coordinator is authorized to perform
22 the following functions, subject to more
23 particular requirements as set forth in this
24 subsection:

1 “(I) Establish a governance
2 structure, criteria for membership,
3 and any dues to be paid by its mem-
4 bers.

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

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

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

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

24 “(VI) Maintain records of its ac-
25 tivities.

1 “(VII) Engage in such other ac-
2 tivities as may be necessary or appro-
3 priate to fulfill its responsibilities
4 under this subsection.

5 “(ii) RESTRICTION ON LOBBYING.—
6 The digital licensee coordinator shall not
7 engage in government lobbying activities;
8 provided, however, that it may engage in
9 the activities set forth in clause (i)(III),
10 (IV), and (V).

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

13 “(A) IN GENERAL.—

14 “(i) NOTICE OF ACTIVITY.—Not later
15 than 45 days after the license availability
16 date, or 45 days after the end of the first
17 full calendar month in which an entity ini-
18 tially qualifies as a significant nonblanket
19 licensee as defined in subsection (e)(29),
20 whichever occurs later, a significant non-
21 blanket licensee shall submit a notice of
22 nonblanket activity to the mechanical li-
23 censing collective. The notice of nonblanket
24 activity shall comply in form and substance
25 with requirements that the Register of

1 Copyrights shall establish by regulation,
2 and a copy shall be made available to the
3 digital licensee coordinator.

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

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

1 censee may so notify the collective in writ-
2 ing. In such case, as of the calendar month
3 in which such notice is provided, such enti-
4 ty shall no longer be required to provide
5 reports of usage or pay the administrative
6 assessment; provided, however, that should
7 such entity once again qualify as a signifi-
8 cant nonblanket licensee, it shall again be
9 required to comply with clauses (i) and
10 (ii).

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

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

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

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

7 “(C) LEGAL ENFORCEMENT EFFORTS.—

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

1 appropriate. Any recovery of damages shall
2 be payable to the mechanical licensing col-
3 lective as an offset to total costs.

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

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

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

19 “(A) IN GENERAL.—The total costs of the
20 mechanical licensing collective shall be funded
21 by—

22 “(i) an administrative assessment, as
23 such assessment is established by the
24 Copyright Royalty Judges pursuant to sub-

1 paragraph (D) from time to time, to be
2 paid by—

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

7 “(II) significant nonblanket li-
8 censees; and

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

13 “(B) VOLUNTARY CONTRIBUTIONS.—

14 “(i) AGREEMENTS CONCERNING CON-
15 TRIBUTIONS.—Except as provided in
16 clause (ii), any voluntary contributions by
17 digital music providers and significant non-
18 blanket licensees shall be determined by
19 private negotiation and agreement; pro-
20 vided, however, that—

21 “(I) the date and amount of any
22 voluntary contribution to the mechan-
23 ical licensing collective shall be docu-
24 mented in a writing signed by an au-
25 thorized agent of the mechanical li-

1 censing collective and the contributing
2 party, and

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

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

1 “(C) INTERIM APPLICATION OF ACCRUED
2 ROYALTIES.—In the event that the administra-
3 tive assessment, together with any funding from
4 voluntary contributions as provided in subpara-
5 graphs (A) and (B), is inadequate to cover cur-
6 rent total costs of the mechanical licensing col-
7 lective, the collective, with approval of its board
8 of directors, may apply unclaimed accrued roy-
9 alties on an interim basis to defray such costs,
10 subject to future reimbursement of such roy-
11 ties from future collections of the assessment.

12 “(D) DETERMINATION OF ADMINISTRA-
13 TIVE ASSESSMENT.—

14 “(i) ADMINISTRATIVE ASSESSMENT TO
15 COVER TOTAL COSTS.—The administrative
16 assessment shall be used solely and exclu-
17 sively to fund the total costs of the me-
18 chanical licensing collective.

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

1 scribed in clauses (iii) and (iv). The admin-
2 istrative assessment determined in such
3 proceeding shall—

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

10 “(II) be established by the Copy-
11 right Royalty Judges in an amount
12 that is calculated to defray the rea-
13 sonable total costs of the mechanical
14 licensing collective, as such total costs
15 are defined in subsection (e)(31);

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

22 “(IV) may be in the form of a
23 percentage of royalties payable under
24 this section for usage of musical
25 works in covered activities (regardless

1 of whether a different rate applies
2 under a voluntary license), or any
3 other usage-based metric reasonably
4 calculated to equitably allocate the
5 costs of the mechanical licensing col-
6 lective across digital music providers
7 and significant nonblanket licensees
8 engaged in covered activities, but shall
9 include as a component a minimum
10 fee for all digital music providers and
11 significant nonblanket licensees; and

12 “(V) take into consideration not
13 only anticipated future total costs and
14 collections of the administrative as-
15 sessment, but also, as applicable—

16 “(aa) any portion of past ac-
17 tual total costs of the mechanical
18 licensing collective not funded by
19 previous collections of the admin-
20 istrative assessment or voluntary
21 contributions because such collec-
22 tions or contributions together
23 were insufficient to fund such
24 costs;

1 “(bb) any past collections of
2 the administrative assessment
3 and voluntary contributions that
4 exceeded past actual total costs
5 of the mechanical licensing collec-
6 tive, resulting in a surplus; and

7 “(cc) the amount of any vol-
8 untary contributions by digital
9 music providers or significant
10 nonblanket licensees in relevant
11 periods, as described in subpara-
12 graphs (A) and (B) of paragraph
13 (7).

14 “(iii) INITIAL ADMINISTRATIVE AS-
15 SESSMENT.—The procedure for estab-
16 lishing the initial administrative assess-
17 ment shall be as follows:

18 “(I) The Copyright Royalty
19 Judges shall commence a proceeding
20 to establish the initial administrative
21 assessment within one year of the en-
22 actment date by publishing a notice in
23 the Federal Register seeking petitions
24 to participate.

1 “(II) The mechanical licensing
2 collective and digital licensee coordi-
3 nator shall participate in such pro-
4 ceeding, along with any interested
5 copyright owners, digital music pro-
6 viders or significant nonblanket licens-
7 ees that have notified the Copyright
8 Royalty Judges of their desire to par-
9 ticipate.

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

24 “(IV) The initial administrative
25 assessment shall be determined, and

1 such determination shall be published
2 in the Federal Register by the Copy-
3 right Royalty Judges, within 9
4 months of commencement of the pro-
5 ceeding contemplated by this clause.
6 The determination shall be supported
7 by a written record. The initial ad-
8 ministrative assessment shall be effec-
9 tive as of the license availability date,
10 and shall continue in effect unless and
11 until an adjusted administrative as-
12 sessment is established pursuant to an
13 adjustment proceeding under clause
14 (iii).

15 “(iv) ADJUSTMENT OF ADMINISTRA-
16 TIVE ASSESSMENT.—The administrative
17 assessment may be adjusted by the Copy-
18 right Royalty Judges in a proceeding to
19 occur no more than once every 2 years, in
20 accordance with the following procedure:

21 “(I) The mechanical licensing
22 collective, digital licensee coordinator,
23 or one or more interested copyright
24 owners, digital music providers or sig-
25 nificant nonblanket licensees may file

1 a petition with the Copyright Royalty
2 Judges in the month of January to
3 commence a proceeding to adjust the
4 administrative assessment, if at least
5 2 years have expired since the date of
6 the most recent determination of the
7 administrative assessment by the
8 Copyright Royalty Judges.

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

24 “(III) The adjusted administra-
25 tive assessment, which shall be sup-

1 ported by a written record, shall be
2 published in the Federal Register no
3 later than 9 months after the publica-
4 tion of the notice of commencement of
5 the adjustment proceeding. The ad-
6 justed administrative assessment shall
7 take effect as of January 1 of the fol-
8 lowing year.

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

1 any such agreement for good cause shown.
2 An administrative assessment adopted
3 under this clause shall apply to all digital
4 music providers and significant nonblanket
5 licensees engaged in covered activities dur-
6 ing the period it is in effect.

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

16 “(vii) APPEAL OF ADMINISTRATIVE
17 ASSESSMENT.—The determination of an
18 administrative assessment by the Copy-
19 right Royalty Judges shall be appealable,
20 within 30 days after publication in the
21 Federal Register, to the Court of Appeals
22 for the District of Columbia Circuit by any
23 party that fully participated in the pro-
24 ceeding. The administrative assessment as
25 established by the Copyright Royalty

1 Judges shall remain in effect pending the
2 final outcome of any such appeal; provided,
3 however, that the mechanical licensing col-
4 lective, digital licensee coordinator, digital
5 music providers, and significant non-
6 blanket licensees shall implement appro-
7 priate financial or other measures within 3
8 months of any modification of the assess-
9 ment to reflect and account for such out-
10 come.

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

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

17 “(A) RESTRICTIONS ON RATESETTING
18 PARTICIPATION.—Neither the mechanical li-
19 censing collective nor the digital licensee coordi-
20 nator shall be a party to a proceeding to deter-
21 mine rates and terms for activities under this
22 section as described in subsection (c)(3)(C);
23 provided, however, that either may gather and
24 provide financial and other information for the
25 use of a party to such a proceeding and comply

1 with requests for information as required under
2 applicable statutory and regulatory provisions
3 and rulings of the Copyright Royalty Judges.

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

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

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

20 “(C) INTERIM RATE AGREEMENTS.—For
21 any covered activity for which no rate or terms
22 have been established by the Copyright Royalty
23 Judges, the mechanical licensing collective and
24 a digital music provider may agree to an in-
25 terim rate and terms for such activity; provided,

1 however, that any such interim rate and
2 terms—

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

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

12 “(9) TRANSITION TO BLANKET LICENSES.—

13 “(A) SUBSTITUTION OF BLANKET LI-
14 CENSE.—As of the license availability date, a
15 blanket license obtained by a digital music pro-
16 vider under this subsection shall, without any
17 interruption in license authority enjoyed by
18 such digital music provider, be automatically
19 substituted for and supersede any existing li-
20 cense previously obtained by the digital music
21 provider from a copyright owner under this sec-
22 tion to engage in one or more covered activities
23 with respect to a musical work; provided, how-
24 ever, that the foregoing shall not apply to au-
25 thority obtained from a record company to

1 make and distribute permanent downloads un-
2 less and until such record company terminates
3 such authority in writing as of the end of a
4 monthly reporting period, with a copy to the
5 mechanical licensing collective.

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

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

1 cense is terminated or amended, or the parties
2 enter into a new voluntary license.

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

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

9 “(ii) previously filed notices of inten-
10 tion will no longer be effective or provide
11 license authority with respect to covered
12 activities; provided, however, that there
13 shall be no liability pursuant to section
14 501 for the reproduction or distribution of
15 a musical work (or share thereof) under a
16 validly filed notice of intention through the
17 license availability date.

18 “(10) PRIOR UNLICENSED USES.—

19 “(A) LIMITATION ON LIABILITY IN GEN-
20 ERAL.—A copyright owner that commences an
21 action pursuant to section 501 on or after Jan-
22 uary 1, 2018, against a digital music provider
23 for the infringement of the exclusive rights pro-
24 vided by paragraph (1) or (3) of section 106
25 arising from the unauthorized reproduction or

1 distribution of a musical work by such digital
2 music provider in the course of engaging in cov-
3 ered activities prior to the license availability
4 date, shall, as the copyright owner's sole and
5 exclusive remedy against the digital music pro-
6 vider, be eligible to recover the royalty pre-
7 scribed under subsection (c)(3)(A) and chapter
8 of this title, from the digital music provider,
9 provided that such digital music provider can
10 demonstrate compliance with the requirements
11 of subparagraph (B), as applicable. In all other
12 cases the limitation on liability under this sub-
13 paragraph shall not apply.

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

20 “(i) No later than 30 days after first
21 making a particular sound recording of a
22 musical work available through its service
23 via one or more covered activities, or 30
24 days after the enactment date, whichever
25 occurs later, a digital music provider shall

1 engage in good-faith, commercially reason-
2 able efforts to identify and locate each
3 copyright owner of such musical work (or
4 share thereof). Such required matching ef-
5 forts shall include:

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

12 “(aa) Sound recording
13 name, featured artist, producer,
14 international standard recording
15 code, and other information com-
16 monly used in the industry to
17 identify sound recordings and
18 match them to the musical works
19 they embody.

20 “(bb) Any available musical
21 work ownership information, in-
22 cluding songwriter and publisher
23 name(s), percentage ownership
24 share(s), and international stand-
25 ard musical work code.

1 “(II) Employment of one or more
2 bulk electronic matching processes
3 that are available to the digital music
4 provider through third-party vendors
5 on commercially reasonable terms;
6 provided, however, that a digital
7 music provider may rely on its own
8 bulk electronic matching process if it
9 has capabilities comparable to or bet-
10 ter than such third-party offerings.

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

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

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

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

17 “(II) If a copyright owner of an
18 unmatched work (or share thereof) is
19 identified and located by or to the dig-
20 ital music provider before the license
21 availability date, the digital music
22 provider shall—

23 “(aa) within 45 days after
24 the end of the calendar month
25 during which the copyright owner

1 was identified and located, pay
2 the copyright owner all accrued
3 royalties, such payment to be ac-
4 companied by a cumulative state-
5 ment of account that includes all
6 of the information that would
7 have been provided to the copy-
8 right owner had the digital music
9 provider been providing monthly
10 statements of account to the
11 copyright owner from initial use
12 of the work in accordance with
13 this section and applicable regu-
14 lations, including the requisite
15 certification under subsection
16 (c)(5);

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

1 as required under this section
2 and applicable regulations; and

3 “(cc) as of the monthly roy-
4 alty reporting period commencing
5 on the license availability date,
6 begin reporting usage and paying
7 royalties for such musical work
8 (or share thereof) for such re-
9 porting period and reporting pe-
10 riods thereafter to the mechanical
11 licensing collective, as required
12 under this subsection and appli-
13 cable regulations.

14 “(III) If a copyright owner of an
15 unmatched work (or share thereof) is
16 not identified and located by the li-
17 cense availability date, the digital
18 music provider shall—

19 “(aa) within 45 days after
20 the license availability date,
21 transfer all accrued royalties to
22 the mechanical licensing collec-
23 tive, such payment to be accom-
24 panied by a cumulative statement
25 of account that includes all of the

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

21 “(bb) as of the monthly roy-
22 alty reporting period commencing
23 on the license availability date,
24 begin reporting usage and paying
25 royalties for such musical work

1 (or share thereof) for such period
2 and reporting periods thereafter
3 to the mechanical licensing collec-
4 tive, as required under this sub-
5 section and applicable regula-
6 tions.

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

18 “(C) ADJUSTED STATUTE OF LIMITA-
19 TIONS.—Notwithstanding anything to the con-
20 trary in section 507(b), with respect to any
21 claim of infringement of the exclusive rights
22 provided by paragraphs (1) and (3) of section
23 106 against a digital music provider arising
24 from the unauthorized reproduction or distribu-
25 tion of a musical work by such digital music

1 provider to engage in covered activities that ac-
2 crued no more than 3 years prior to the license
3 availability date, such action may be com-
4 menced within 3 years of the date the claim ac-
5 crued, or up to 2 years after the license avail-
6 ability date, whichever is later.

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

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

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

1 “(B) LIMITATION ON COMMON AGENT EX-
2 EMPTION.—Notwithstanding the antitrust ex-
3 emption provided in subsection (c)(3)(B) and
4 subparagraph (A), except for the administrative
5 assessment, neither the mechanical licensing
6 collective nor the digital licensee coordinator
7 shall serve as a common agent with respect to
8 the establishment of royalty rates or terms
9 under this section.

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

19 “(i) each copyright owner shall estab-
20 lish the royalty rates and material license
21 terms of any such voluntary license indi-
22 vidually and not in agreement, combina-
23 tion, or concert with any other copyright
24 owner;

1 “(ii) each person entitled to obtain a
2 compulsory license under this section shall
3 establish the royalty rates and material li-
4 cense terms of any such voluntary license
5 individually and not in agreement, com-
6 bination, or concert with any other digital
7 music provider; and

8 “(iii) the mechanical licensing collec-
9 tive shall maintain the confidentiality of
10 the voluntary licenses in accordance with
11 the confidentiality provisions prescribed by
12 the Register of Copyrights under sub-
13 section [(d)(12)(C)].

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

1 holding disputed funds that are the subject of
2 such action. For purposes of this subparagraph,
3 ‘good-faith administration’ means administra-
4 tion in a manner that is not grossly negligent.

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

13 “(12) REGULATIONS.—

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

24 “(B) JUDICIAL REVIEW OF REGULA-
25 TIONS.—Except as provided in paragraph

1 (7)(D)(vii), regulations adopted under this sub-
2 section shall be subject to judicial review pursu-
3 ant to chapter 7 of title 5.

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

17 “(13) SAVINGS CLAUSES.—

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

1 tribution licensed under this section, or serve or
2 act as the basis to extend or expand the com-
3 pulsory license under this section to activities
4 and rights not covered by this section as of the
5 enactment date.

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

14 (5) by adding at the end the following new sub-
15 section:

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

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

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

1 “(3) ADMINISTRATIVE ASSESSMENT.—The term
2 ‘administrative assessment’ means the fee to be paid
3 by digital music providers and significant nonblanket
4 licensees that is established pursuant to subsection
5 (d)(7)(D).

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

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

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

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

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

23 “(7) COVERED ACTIVITY.—The term ‘covered
24 activity’ means the activity of making a digital pho-
25 norecord delivery of a musical work, including in the

1 form of a permanent download, limited download, or
2 interactive stream, where such activity is subject to
3 compulsory licensing under this section.

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

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

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

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

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

22 “(10) DIGITAL PHONORECORD DELIVERY.—The
23 term ‘digital phonorecord delivery’ means each indi-
24 vidual delivery of a phonorecord by digital trans-
25 mission of a sound recording that results in a spe-

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

19 “(11) ENACTMENT DATE.—The term ‘enact-
20 ment date’ means the date of enactment of the
21 Music Modernization Act of 2017.

22 “(12) INDIVIDUAL DOWNLOAD LICENSE.—The
23 term ‘individual download license’ means a license
24 obtained by a record company under subsection
25 (b)(3) to make and distribute, or authorize the mak-

1 ing and distribution of, permanent downloads em-
2 bodying a specific musical work (or share of a work).

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

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

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

22 “(16) LIMITED DOWNLOAD.—The term ‘limited
23 download’ means a digital transmission of a sound
24 recording of a musical work in the form of a
25 download, where such sound recording is accessible

1 for listening only for a limited amount of time or
2 specified number of times.

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

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

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

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

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

24 “(22) PERMANENT DOWNLOAD.—The term
25 ‘permanent download’ means a digital transmission

1 of a sound recording of a musical work in the form
2 of a download, where such sound recording is acces-
3 sible for listening without restriction as to the
4 amount of time or number of times it may be
5 accessed.

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

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

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

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

23 “(27) SERVICE.—The term ‘service’, as used in
24 relation to covered activities, means any site or other
25 facility through which sound recordings of musical

1 works are made available by digital transmission to
2 members of the public.

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

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

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

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

23 “(C) either—

24 “(i) at any time in a calendar month,
25 makes more than 5,000 different sound re-

1 cordings of musical works available
2 through its service; or

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

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

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

1 licensing collective to provide services under vol-
2 untary licenses.

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

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

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

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

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

24 (2) by redesignating paragraph (8) as para-
25 graph (9); and

1 (3) by inserting after paragraph (7) the fol-
2 lowing new paragraph:

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

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

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

1 same purpose and effect as the original regulations with
2 respect to the rates and terms previously adopted by the
3 Copyright Royalty Judges.

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

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

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

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

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

9 **SEC. 4. RANDOM ASSIGNMENT OF RATE COURT PRO-**
10 **CEEDINGS.**

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

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

15 (2) by adding at the end the following new sub-
16 section:

17 “(b)(1) In the case of any performing rights society
18 subject to a consent decree, any application for the deter-
19 mination of a license fee for the public performance of
20 music in accordance with the applicable consent decree
21 shall be made in the district court with jurisdiction over
22 that consent decree and assigned by lot to a judge of that
23 district court according to that court’s rules for the divi-
24 sion of business among district judges currently in effect
25 or as may be amended from time to time, provided that

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

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