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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.

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IN THE HOUSE OF REPRESENTATIVES

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

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**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 (e)(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 royalti-  
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.

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

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

24            “(13) INTERACTIVE STREAM.—The term ‘inter-  
25        active stream’ means a digital transmission of a

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

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

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

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

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

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

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

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

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

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

20 “(22) PERMANENT DOWNLOAD.—The term  
21 ‘permanent download’ means a digital transmission  
22 of a sound recording of a musical work in the form  
23 of a download, where such sound recording is acces-  
24 sible for listening without restriction as to the

1 amount of time or number of times it may be  
2 accessed.

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

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

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

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

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

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

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

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

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

21           “(C) either—

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

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

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

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



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

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

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

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

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

22           (2) by redesignating paragraph (8) as para-  
23 graph (9); and

24           (3) by inserting after paragraph (7) the fol-  
25 lowing new paragraph:

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

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

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

1 respect to the rates and terms previously adopted by the  
2 Copyright Royalty Judges.

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

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

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

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

24 (c) DECISIONS AND PRECEDENTS NOT AFFECTED.—  
25 The repeal of section 114(i) of title 17, United States

1 Code, by subsection (a) shall not have any effect upon the  
2 decisions, or the precedents established or relied upon, in  
3 any proceeding to set or adjust the rates and fees payable  
4 for the use of sound recordings under section 112(e) or  
5 section 114(f) of such title before the date of the enact-  
6 ment of this Act.

7 **SEC. 4. RANDOM ASSIGNMENT OF RATE COURT PRO-**  
8 **CEEDINGS.**

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

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

13 (2) by adding at the end the following new sub-  
14 section:

15 “(b)(1) In the case of any performing rights society  
16 subject to a consent decree, any application for the deter-  
17 mination of a license fee for the public performance of  
18 music in accordance with the applicable consent decree  
19 shall be made in the district court with jurisdiction over  
20 that consent decree and assigned by lot to a judge of that  
21 district court according to that court’s rules for the divi-  
22 sion of business among district judges currently in effect  
23 or as may be amended from time to time, provided that  
24 any such application shall not be assigned to (A) a judge  
25 to whom continuing jurisdiction over any performing

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

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