Provided, That the transmission of selections in excess of the numerical limits provided for in clauses (A) and (B) from multiple phonorecords shall nonetheless qualify as a sound recording performance complement if the programming of the multiple phonorecords was not willfully intended to avoid the numerical limitations prescribed in such clauses.

(14) A "subscription" transmission is a transmission that is controlled and limited to particular recipients, and for which consideration is required to be paid or otherwise given by or on behalf of the recipient to receive the transmission or a package of transmissions including the transmission.

(15) A "transmission" is either an initial transmission or a retransmission.

§ 115 · Scope of exclusive rights in nondramatic musical works: Compulsory license for making and distributing phonorecords[51]

In the case of nondramatic musical works, the exclusive rights provided by clauses (1) and (3) of section 106, to make and to distribute phonorecords of such works, are subject to compulsory licensing under the conditions specified by this section.

(a) Availability and Scope of Compulsory License in General.—

(1) Eligibility for compulsory license.—

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

(i) phonorecords of such musical work have previously been distributed to the public in the United States under the authority of the copyright owner of the work, including by means of digital phonorecord delivery; or

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

(I) the first fixation of such sound recording was made under the authority of the musical work copyright owner, and the sound recording copyright owner has the authority of the musical work copyright owner to make and distribute digital phonorecord deliveries embodying such work to the public in the United States; and

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

(B) Duplication of sound recording.—A person may not obtain a compulsory license for the use of the work in the making of phonorecords duplicating a sound recording fixed by another, including by means of digital phonorecord delivery, unless—

(i) such sound recording was fixed lawfully; and

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

(2) Musical arrangement.—A compulsory license includes the privilege of making a musical arrangement of the work to the extent necessary to conform it to the style or manner of interpretation of the performance involved, but the arrangement shall not change the basic melody or fundamental character of the work, and shall not be subject to protection as a derivative work under this title, except with the express consent of the copyright owner.

(b) Procedures To Obtain a Compulsory License.—

(1) Phonorecords other than digital phonorecord deliveries.—A person who seeks to obtain a compulsory license under subsection (a) to make and distribute phonorecords of a musical work other than by means of digital phonorecord delivery shall, before, or not later than 30 calendar days after, making, and before distributing, any phonorecord of the work, serve notice of intention to do so on the copyright owner. If the registration or other public records of the Copyright Office do not identify the copyright owner and include an address at which notice can be served, it shall be sufficient to file the notice of intention with the Copyright Office. The notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation.

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

(A) prior to the license availability date, shall, before, or not later than 30 calendar days after, first making any such digital phonorecord delivery, serve a notice of intention to do so on the copyright owner (but may not file the notice with the Copyright Office, even if the public records of the Office do not identify the owner or the owner's address), and such notice

shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation; or

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

(3) Record company individual download licenses. — Notwithstanding paragraph (2)(B), a record company may, on or after the license availability date, obtain an individual download license in accordance with the notice requirements described in paragraph (2)(A) (except for the requirement that notice occur prior to the license availability date). A record company that obtains an individual download license as permitted under this paragraph shall provide statements of account and pay royalties as provided in subsection (c)(2)(I).

(4) Failure to obtain license. —

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

(B) Digital phonorecord deliveries. —

(i) In general. — In the case of phonorecords made and distributed by means of digital phonorecord delivery:

(I) The failure to serve the notice of intention required by paragraph (2)(A) or paragraph (3), as applicable, forecloses the possibility of a compulsory license under such paragraph.

(II) The failure to comply with paragraph (2)(B) forecloses the possibility of a blanket license for a period of 3 years after the last calendar day on which the notice of license was required to be submitted to the mechanical licensing collective under such paragraph.

(ii) Effect of failure. — In either case described in subclause (I) or (II) of clause (i), in the absence of a voluntary license, the failure to obtain a compulsory license renders the making and distribution of phonorecords by means of digital phonorecord delivery actionable as acts of infringement under section 501 and subject to the remedies provided by sections 502 through 506.

(c) General Conditions Applicable to Compulsory License. —

(1) Royalty payable under compulsory license.[52] —

(A) Identification requirement. — To be entitled to receive royalties under a compulsory license obtained under subsection (b)(1) the copyright

owner must be identified in the registration or other public records of the Copyright Office. The owner is entitled to royalties for phonorecords made and distributed after being so identified, but is not entitled to recover for any phonorecords previously made and distributed.

(B) Royalty for phonorecords other than digital phonorecord deliveries. — Except as provided by subparagraph (A), for every phonorecord made and distributed under a compulsory license under subsection (a) other than by means of digital phonorecord delivery, with respect to each work embodied in the phonorecord, the royalty shall be the royalty prescribed under subparagraphs (D) through (F), paragraph (2)(A), and chapter 8. For purposes of this subparagraph, a phonorecord is considered "distributed" if the person exercising the compulsory license has voluntarily and permanently parted with its possession.

(C) Royalty for digital phonorecord deliveries. — For every digital phonorecord delivery of a musical work made under a compulsory license under this section, the royalty payable shall be the royalty prescribed under subparagraphs (D) through (F), paragraph (2)(A), and chapter 8.

(D) Authority to negotiate. — Notwithstanding any provision of the antitrust laws, any copyright owners of nondramatic musical works and any persons entitled to obtain a compulsory license under subsection (a) may negotiate and agree upon the terms and rates of royalty payments under this section and the proportionate division of fees paid among copyright owners, and may designate common agents on a nonexclusive basis to negotiate, agree to, pay or receive such royalty payments. Such authority to negotiate the terms and rates of royalty payments includes, but is not limited to, the authority to negotiate the year during which the royalty rates prescribed under this subparagraph, subparagraphs (E) and (F), paragraph (2)(A), and chapter 8 shall next be determined.

(E) Determination of reasonable rates and terms. — Proceedings under chapter 8 shall determine reasonable rates and terms of royalty payments for the activities specified by this section during the period beginning with the effective date of such rates and terms, but not earlier than January 1 of the second year following the year in which the petition requesting the proceeding is filed, and ending on the effective date of successor rates and terms, or such other period as the parties may agree. Any copyright owners of nondramatic musical works and any persons entitled to obtain a compulsory license under subsection (a) may submit to the Copyright Royalty Judges licenses covering such activities. The parties to each proceeding shall bear their own costs.

(F) Schedule of reasonable rates. — The schedule of reasonable rates and terms determined by the Copyright Royalty Judges shall, subject to paragraph (2)(A), be binding on all copyright owners of nondramatic

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

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

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

(2) Additional terms and conditions.—

(A) Voluntary licenses and contractual royalty rates.—

(i) In general.—License agreements voluntarily negotiated at any time between one or more copyright owners of nondramatic musical works and one or more persons entitled to obtain a compulsory license under subsection (a) shall be given effect in lieu of any determination by the Copyright Royalty Judges. Subject to clause (ii), the royalty rates determined pursuant to subparagraphs (E) and (F) of paragraph (1) shall be given effect as to digital phonorecord deliveries in lieu of any contrary royalty rates specified in a contract pursuant to which a recording artist who is the author of a nondramatic musical work grants a license under that person's exclusive rights in the musical work under paragraphs (1) and (3) of section 106 or commits another person to grant a license in that musical work under paragraphs (1) and (3) of section 106, to a person desiring to fix in a tangible medium of expression a sound recording embodying the musical work.

(ii) Applicability.—The second sentence of clause (i) shall not apply to—

(I) a contract entered into on or before June 22, 1995, and not modified thereafter for the purpose of reducing the royalty rates determined pursuant to subparagraphs (E) and (F) of paragraph (1) or of increasing the number of musical works within the scope of the contract covered by the reduced rates, except if a contract entered into on or before June 22, 1995, is modified thereafter for the purpose

of increasing the number of musical works within the scope of the contract, any contrary royalty rates specified in the contract shall be given effect in lieu of royalty rates determined pursuant to subparagraphs (E) and (F) of paragraph (1) for the number of musical works within the scope of the contract as of June 22, 1995; and

(II) a contract entered into after the date that the sound recording is fixed in a tangible medium of expression substantially in a form intended for commercial release, if at the time the contract is entered into, the recording artist retains the right to grant licenses as to the musical work under paragraphs (1) and (3) of section 106.

(B) Sound recording information. — Except as provided in section 1002(e), a digital phonorecord delivery licensed under this paragraph shall be accompanied by the information encoded in the sound recording, if any, by or under the authority of the copyright owner of that sound recording, that identifies the title of the sound recording, the featured recording artist who performs on the sound recording, and related information, including information concerning the underlying musical work and its writer.

(C) Infringement remedies. —

(i) In general. — A digital phonorecord delivery of a sound recording is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506,[53] unless —

(I) the digital phonorecord delivery has been authorized by the sound recording copyright owner; and

(II) the entity making the digital phonorecord delivery has obtained a compulsory license under subsection (a) or has otherwise been authorized by the musical work copyright owner, or by a record company pursuant to an individual download license, to make and distribute phonorecords of each musical work embodied in the sound recording by means of digital phonorecord delivery.

(ii) Other remedies. — Any cause of action under this subparagraph shall be in addition to those available to the owner of the copyright in the nondramatic musical work under subparagraph (J) and section 106(4) and the owner of the copyright in the sound recording under section 106(6).

(D) Liability of sound recording owners. — The liability of the copyright owner of a sound recording for infringement of the copyright in a nondramatic musical work embodied in the sound recording shall be determined in accordance with applicable law, except that the owner of a copyright in a sound recording shall not be liable for a digital phonorecord delivery by a third party if the owner of the copyright in the sound recording does not license the distribution of a phonorecord of the nondramatic musical work.

(E) Recording devices and media.—Nothing in section 1008 shall be construed to prevent the exercise of the rights and remedies allowed by this paragraph, subparagraph (J), and chapter 5 in the event of a digital phonorecord delivery, except that no action alleging infringement of copyright may be brought under this title against a manufacturer, importer or distributor of a digital audio recording device, a digital audio recording medium, an analog recording device, or an analog recording medium, or against a consumer, based on the actions described in such section.

(F) Preservation of rights.—Nothing in this section annuls or limits—

(i) the exclusive right to publicly perform a sound recording or the musical work embodied therein, including by means of a digital transmission, under paragraphs (4) and (6) of section 106;

(ii) except for compulsory licensing under the conditions specified by this section, the exclusive rights to reproduce and distribute the sound recording and the musical work embodied therein under paragraphs (1) and (3) of section 106, including by means of a digital phonorecord delivery; or

(iii) any other rights under any other provision of section 106, or remedies available under this title, as such rights or remedies exist before, on, or after the date of enactment of the Digital Performance Right in Sound Recordings Act of 1995.

(G) Exempt transmissions and retransmissions.—The provisions of this section concerning digital phonorecord deliveries shall not apply to any exempt transmissions or retransmissions under section 114(d)(1). The exemptions created in section 114(d)(1) do not expand or reduce the rights of copyright owners under paragraphs (1) through (5) of section 106 with respect to such transmissions and retransmissions.

(H) Distribution by rental, lease, or lending.—A compulsory license obtained under subsection (b)(1) to make and distribute phonorecords includes the right of the maker of such a phonorecord to distribute or authorize distribution of such phonorecord, other than by means of a digital phonorecord delivery, by rental, lease, or lending (or by acts or practices in the nature of rental, lease, or lending). With respect to each nondramatic musical work embodied in the phonorecord, the royalty shall be a proportion of the revenue received by the compulsory licensee from every such act of distribution of the phonorecord under this clause equal to the proportion of the revenue received by the compulsory licensee from distribution of the phonorecord under subsection (a)(1)(A)(ii)(II) that is payable by a compulsory licensee under that clause and under chapter 8. The Register of Copyrights shall issue regulations to carry out the purpose of this subparagraph.

(I) Payment of royalties and statements of account. — Except as provided in paragraphs (4)(A)(i) and (10)(B) of subsection (d), royalty payments shall be made on or before the twentieth day of each month and shall include all royalties for the month next preceding. Each monthly payment shall be made under oath and shall comply with requirements that the Register of Copyrights shall prescribe by regulation. The Register shall also prescribe regulations under which detailed cumulative annual statements of account, certified by a certified public accountant, shall be filed for every compulsory license under subsection (a). The regulations covering both the monthly and the annual statements of account shall prescribe the form, content, and manner of certification with respect to the number of records made and the number of records distributed.

(J) Notice of default and termination of compulsory license. — In the case of a license obtained under paragraph (1), (2)(A), or (3) of subsection (b), if the copyright owner does not receive the monthly payment and the monthly and annual statements of account when due, the owner may give written notice to the licensee that, unless the default is remedied not later than 30 days after the date on which the notice is sent, the compulsory license will be automatically terminated. Such termination renders either the making or the distribution, or both, of all phonorecords for which the royalty has not been paid, actionable as acts of infringement under section 501 and fully subject to the remedies provided by sections 502 through 506. In the case of a license obtained under subsection (b)(2)(B), license authority under the compulsory license may be terminated as provided in subsection (d)(4)(E).

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

(1) Blanket license for digital uses. —

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

(B) Included activities. — A blanket license —

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

(ii) includes the making and distribution of server, intermediate, archival, and incidental reproductions of musical works that are reasonable and necessary for the digital music provider to engage in covered

activities licensed under this subsection, solely for the purpose of engaging in such covered activities; and

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

(C) Other licenses.—A voluntary license for covered activities entered into by or under the authority of 1 or more copyright owners and 1 or more digital music providers, or authority to make and distribute permanent downloads of a musical work obtained by a digital music provider from a sound recording copyright owner pursuant to an individual download license, shall be given effect in lieu of a blanket license under this subsection with respect to the musical works (or shares thereof) covered by such voluntary license or individual download authority and the following conditions apply:

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

(ii) An entity engaged in covered activities under a voluntary license or authority obtained pursuant to an individual download license that is a significant nonblanket licensee shall comply with paragraph (6)(A).

(iii) The rates and terms of any voluntary license shall be subject to the second sentence of clause (i) and clause (ii) of subsection (c)(2)(A) and paragraph (9)(C), as applicable.

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

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

(2) Availability of blanket license.—

(A) Procedure for obtaining license.—A digital music provider may obtain a blanket license by submitting a notice of license to the mechanical licensing collective that specifies the particular covered activities in which the digital music provider seeks to engage, as follows:

(i) The notice of license shall comply in form and substance with requirements that the Register of Copyrights shall establish by regulation.

(ii) Unless rejected in writing by the mechanical licensing collective not later than 30 calendar days after the date on which the mechanical licensing collective receives the notice, the blanket license shall be effective as of the date on which the notice of license was sent by the digital music provider, as shown by a physical or electronic record.

(iii) A notice of license may only be rejected by the mechanical licensing collective if—

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

(II) the digital music provider has had a blanket license terminated by the mechanical licensing collective during the 3-year period preceding the date on which the mechanical licensing collective receives the notice pursuant to paragraph (4)(E).

(iv) If a notice of license is rejected under clause (iii)(I), the digital music provider shall have 30 calendar days after receipt of the notice of rejection to cure any deficiency and submit an amended notice of license to the mechanical licensing collective. If the deficiency has been cured, the mechanical licensing collective shall so confirm in writing, and the license shall be effective as of the date that the original notice of license was provided by the digital music provider.

(v) A digital music provider that believes a notice of license was improperly rejected by the mechanical licensing collective may seek review of such rejection in an appropriate district court of the United States. The district court shall determine the matter de novo based on the record before the mechanical licensing collective and any additional evidence presented by the parties.

(B) Blanket license effective date.—Blanket licenses shall be made available by the mechanical licensing collective on and after the license availability date. No such license shall be effective prior to the license availability date.

(3) Mechanical licensing collective.—

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

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

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

(iii) is able to demonstrate to the Register of Copyrights that the entity has, or will have prior to the license availability date, the administrative and technological capabilities to perform the required functions of the mechanical licensing collective under this subsection and that is governed by a board of directors in accordance with subparagraph (D)(i); and

(iv) has been designated by the Register of Copyrights, with the approval of the Librarian of Congress pursuant to section 702, in accordance with subparagraph (B).

(B) Designation of mechanical licensing collective.—

(i) Initial designation.—Not later than 270 days after the enactment date, the Register of Copyrights shall initially designate the mechanical licensing collective as follows:

(I) Not later than 90 calendar days after the enactment date, the Register shall publish notice in the Federal Register soliciting information to assist in identifying the appropriate entity to serve as the mechanical licensing collective, including the name and affiliation of each member of the board of directors described under subparagraph (D)(i) and each committee established pursuant to clauses (iii), (iv), and (v) of subparagraph (D).

(II) After reviewing the information requested under subclause (I) and making a designation, the Register shall publish notice in the Federal Register setting forth—

(aa) the identity of and contact information for the mechanical licensing collective; and

(bb) the reasons for the designation.

(ii) Periodic review of designation.—Following the initial designation of the mechanical licensing collective, the Register shall, every 5 years, beginning with the fifth full calendar year to commence after the initial designation, publish notice in the Federal Register in the month of January soliciting information concerning whether the existing designation should be continued, or a different entity meeting the criteria described in clauses (i) through (iii) of subparagraph (A) shall be designated. Following publication of such notice, the Register shall—

(I) after reviewing the information submitted and conducting additional proceedings as appropriate, publish notice in the Federal Register of a continuing designation or new designation of the mechanical licensing collective, as the case may be, and the reasons for such a designation, with any new designation to be effective as of the first day of a month that is not less than 6 months and not longer than 9 months after the date on which the Register publishes the notice, as specified by the Register; and

(II) if a new entity is designated as the mechanical licensing collective, adopt regulations to govern the transfer of licenses, funds, records, data, and administrative responsibilities from the existing mechanical licensing collective to the new entity.

(iii) Closest alternative designation.—If the Register is unable to identify an entity that fulfills each of the qualifications set forth in clauses (i) through (iii) of subparagraph (A), the Register shall designate the entity that most nearly fulfills such qualifications for purposes of carrying out the responsibilities of the mechanical licensing collective.

(C) Authorities and functions.—

(i) In general.—The mechanical licensing collective is authorized to perform the following functions, subject to more particular requirements as described in this subsection:

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

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

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

(IV) Maintain the musical works database and other information relevant to the administration of licensing activities under this section.

(V) Administer a process by which copyright owners can claim ownership of musical works (and shares of such works), and a process by which royalties for works for which the owner is not identified or located are equitably distributed to known copyright owners.

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

(VII) Invest in relevant resources, and arrange for services of outside vendors and others, to support the activities of the mechanical licensing collective.

(VIII) Engage in legal and other efforts to enforce rights and obligations under this subsection, including by filing bankruptcy proofs of claims for amounts owed under licenses, and acting in coordination with the digital licensee coordinator.

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

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

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

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

(XIII) Engage in such other activities as may be necessary or appropriate to fulfill the responsibilities of the mechanical licensing collective under this subsection.

(ii) Restrictions concerning licensing and administrative activities.—With respect to the administration of licenses, except as provided in clauses (i) and (iii) and subparagraph (E)(v), the mechanical licensing collective may only—

(I) issue blanket licenses pursuant to subsection (d)(1); and

(II) administer blanket licenses for reproduction or distribution rights in musical works for covered activities, including collecting and distributing royalties, pursuant to blanket licenses.

(iii) Additional administrative activities.—Subject to paragraph (11)(C), the mechanical licensing collective may also administer, including by collecting and distributing royalties, voluntary licenses issued by, or individual download licenses obtained from, copyright owners only for reproduction or distribution rights in musical works for covered activities, for which the mechanical licensing collective shall charge reasonable fees for such services.

(iv) Restriction on lobbying.—The mechanical licensing collective may not engage in government lobbying activities, but may engage in the activities described in subclauses (IX), (X), and (XI) of clause (i).

(D) Governance.—

(i) Board of directors.—The mechanical licensing collective shall have a board of directors consisting of 14 voting members and 3 nonvoting members, as follows:

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

(aa) to which songwriters have assigned exclusive rights of reproduction and distribution of musical works with respect to covered activities; and

(bb) none of which may be owned by, or under common control with, any other board member.

(II) Four voting members shall be professional songwriters who have retained and exercise exclusive rights of reproduction and

distribution with respect to covered activities with respect to musical works they have authored.

(III) One nonvoting member shall be a representative of the nonprofit trade association of music publishers that represents the greatest percentage of the licensor market for uses of musical works in covered activities, as measured for the 3-year period preceding the date on which the member is appointed.

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

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

(ii) Bylaws.—

(I) Establishment.—Not later than 1 year after the date on which the mechanical licensing collective is initially designated by the Register of Copyrights under subparagraph (B)(i), the collective shall establish bylaws to determine issues relating to the governance of the collective, including, but not limited to—

(aa) the length of the term for each member of the board of directors;

(bb) the staggering of the terms of the members of the board of directors;

(cc) a process for filling a seat on the board of directors that is vacated before the end of the term with respect to that seat;

(dd) a process for electing a member to the board of directors; and

(ee) a management structure for daily operation of the collective.

(II) Public availability.—The mechanical licensing collective shall make the bylaws established under subclause (I) available to the public.

(iii) Board meetings.—The board of directors shall meet not less frequently than biannually and discuss matters pertinent to the operations of the mechanical licensing collective, including the mechanical licensing collective budget.

(iv) Operations advisory committee.—The board of directors of the mechanical licensing collective shall establish an operations

advisory committee consisting of not fewer than 6 members to make recommendations to the board of directors concerning the operations of the mechanical licensing collective, including the efficient investment in and deployment of information technology and data resources. Such committee shall have an equal number of members of the committee who are—

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

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

(v) Unclaimed royalties oversight committee.—The board of directors of the mechanical licensing collective shall establish and appoint an unclaimed royalties oversight committee consisting of 10 members, 5 of which shall be musical work copyright owners and 5 of which shall be professional songwriters whose works are used in covered activities.

(vi) Dispute resolution committee.—The board of directors of the mechanical licensing collective shall establish and appoint a dispute resolution committee that shall—

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

(II) include an equal number of representatives of musical work copyright owners and professional songwriters.

(vii) Mechanical licensing collective annual report.—

(I) In general.—Not later than June 30 of each year commencing after the license availability date, the mechanical licensing collective shall post, and make available online for a period of not less than 3 years, an annual report that sets forth information regarding—

(aa) the operational and licensing practices of the collective;

(bb) how royalties are collected and distributed;

(cc) budgeting and expenditures;

(dd) the collective total costs for the preceding calendar year;

(ee) the projected annual mechanical licensing collective budget;

(ff) aggregated royalty receipts and payments;

(gg) expenses that are more than 10 percent of the annual mechanical licensing collective budget; and

(hh) the efforts of the collective to locate and identify copyright owners of unmatched musical works (and shares of works).

(II) Submission.—On the date on which the mechanical licensing collective posts each report required under subclause (I), the collective shall provide a copy of the report to the Register of Copyrights.

(viii) Independent officers.—An individual serving as an officer of the mechanical licensing collective may not, at the same time, also be an employee or agent of any member of the board of directors of the collective or any entity represented by a member of the board of directors, as described in clause (i).

(ix) Oversight and accountability.—

(I) In general.—The mechanical licensing collective shall—

(aa) ensure that the policies and practices of the collective are transparent and accountable;

(bb) identify a point of contact for publisher inquiries and complaints with timely redress; and

(cc) establish an anti-comingling policy for funds not collected under this section and royalties collected under this section.

(II) Audits.—

(aa) In general.—Beginning in the fourth full calendar year that begins after the initial designation of the mechanical licensing collective by the Register of Copyrights under subparagraph (B)(i), and in every fifth calendar year thereafter, the collective shall retain a qualified auditor that shall—

(AA) examine the books, records, and operations of the collective;

(BB) prepare a report for the board of directors of the collective with respect to the matters described in item (bb); and

(CC) not later than December 31 of the year in which the qualified auditor is retained, deliver the report described in subitem (BB) to the board of directors of the collective.

(bb) Matters addressed.—Each report prepared under item (aa) shall address the implementation and efficacy of procedures of the mechanical licensing collective—

(AA) for the receipt, handling, and distribution of royalty funds, including any amounts held as unclaimed royalties;

(BB) to guard against fraud, abuse, waste, and the unreasonable use of funds; and

(CC) to protect the confidentiality of financial, proprietary, and other sensitive information.

(cc) Public availability.—With respect to each report prepared under item (aa), the mechanical licensing collective shall—

(AA) submit the report to the Register of Copyrights; and

(BB) make the report available to the public.

(E) Musical works database.—

(i) Establishment and maintenance of database.—The mechanical licensing collective shall establish and maintain a database

containing information relating to musical works (and shares of such works) and, to the extent known, the identity and location of the copyright owners of such works (and shares thereof) and the sound recordings in which the musical works are embodied. In furtherance of maintaining such database, the mechanical licensing collective shall engage in efforts to identify the musical works embodied in particular sound recordings, as well as to identify and locate the copyright owners of such works (and shares thereof), and update such data as appropriate.

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

(I) the title of the musical work;

(II) the copyright owner of the work (or share thereof), and the ownership percentage of that owner;

(III) contact information for such copyright owner;

(IV) to the extent reasonably available to the mechanical licensing collective—

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

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

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

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

(I) to the extent reasonably available to the mechanical licensing collective—

(aa) the title of the musical work;

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

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

(dd) identifying information for sound recordings in which the work is embodied, including sound recording name, featured artist, sound recording copyright owner, producer, international

standard recording code, and other information commonly used to assist in associating sound recordings with musical works; and

(ee) any additional information reported to the mechanical licensing collective that may assist in identifying the work; and

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

(iv) Sound recording information.—Each musical work copyright owner with any musical work listed in the musical works database shall engage in commercially reasonable efforts to deliver to the mechanical licensing collective, including for use in the musical works database, to the extent such information is not then available in the database, information regarding the names of the sound recordings in which that copyright owner's musical works (or shares thereof) are embodied, to the extent practicable.

(v) Accessibility of database.—The musical works database shall be made available to members of the public in a searchable, online format, free of charge. The mechanical licensing collective shall make such database available in a bulk, machine-readable format, through a widely available software application, to the following entities:

(I) Digital music providers operating under the authority of valid notices of license, free of charge.

(II) Significant nonblanket licensees in compliance with their obligations under paragraph (6), free of charge.

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

(IV) The Register of Copyrights, free of charge (but the Register shall not treat such database or any information therein as a Government record).

(V) Any other person or entity for a fee not to exceed the marginal cost to the mechanical licensing collective of providing the database to such person or entity.

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

(F) Notices of license and nonblanket activity.—

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

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

(G) Collection and distribution of royalties.—

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

(I) engage in efforts to—

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

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

(cc) confirm proper payment of royalties due;

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

(III) deposit into an interest-bearing account, as provided in subparagraph (H)(ii), royalties that cannot be distributed due to—

(aa) an inability to identify or locate a copyright owner of a musical work (or share thereof); or

(bb) a pending dispute before the dispute resolution committee of the mechanical licensing collective.

(ii) Other collection efforts.—Any royalties recovered by the mechanical licensing collective as a result of efforts to enforce rights or obligations under a blanket license, including through a bankruptcy proceeding or other legal action, shall be distributed to copyright owners based on available usage information and in accordance with the procedures described in subclauses (I) and (II) of clause (i), on a pro rata basis in proportion to the overall percentage recovery of the total royalties owed, with any pro rata share of royalties that cannot be distributed deposited in an interest-bearing account as provided in subparagraph (H)(ii).

(H) Holding of accrued royalties.—

(i) Holding period.—The mechanical licensing collective shall hold accrued royalties associated with particular musical works (and

shares of works) that remain unmatched for a period of not less than 3 years after the date on which the funds were received by the mechanical licensing collective, or not less than 3 years after the date on which the funds were accrued by a digital music provider that subsequently transferred such funds to the mechanical licensing collective pursuant to paragraph (10)(B), whichever period expires sooner.

(ii) Interest-bearing account.—Accrued royalties for unmatched works (and shares thereof) shall be maintained by the mechanical licensing collective in an interest-bearing account that earns monthly interest—

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

(II) that accrues for the benefit of copyright owners entitled to payment of such accrued royalties.

(I) Musical works claiming process.—When a copyright owner of an unmatched work (or share of a work) has been identified and located in accordance with the procedures of the mechanical licensing collective, the collective shall—

(i) update the musical works database and the other records of the collective accordingly; and

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

(J) Distribution of unclaimed accrued royalties.—

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

(I) The first such distribution shall occur on or after January 1 of the second full calendar year to commence after the license availability date, with not less than 1 such distribution to take place during each calendar year thereafter.

(II) Copyright owners' payment shares for unclaimed accrued royalties for particular reporting periods shall be determined in a transparent and equitable manner based on data indicating the relative

market shares of such copyright owners as reflected in reports of usage provided by digital music providers for covered activities for the periods in question, including, in addition to usage data provided to the mechanical licensing collective, usage data provided to copyright owners under voluntary licenses and individual download licenses for covered activities, to the extent such information is available to the mechanical licensing collective. In furtherance of the determination of equitable market shares under this subparagraph—

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

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

(ii) Establishment of distribution policies.—The unclaimed royalties oversight committee established under subparagraph (D)(v) shall establish policies and procedures for the distribution of unclaimed accrued royalties and accrued interest in accordance with this subparagraph, including the provision of usage data to copyright owners to allocate payments and credits to songwriters pursuant to clause (iv), subject to the approval of the board of directors of the mechanical licensing collective.

(iii) Public notice of unclaimed accrued royalties.—The mechanical licensing collective shall—

(I) maintain a publicly accessible online facility with contact information for the collective that lists unmatched musical works (and shares of works), through which a copyright owner may assert an ownership claim with respect to such a work (and a share of such a work);

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

(aa) the existence of the collective and the ability to claim unclaimed accrued royalties for unmatched musical works (and shares of such works) held by the collective;

(bb) the procedures by which copyright owners may identify themselves and provide contact, ownership, and other relevant information to the collective in order to receive payments of accrued royalties;

(cc) any transfer of accrued royalties for musical works under paragraph (10)(B), not later than 180 days after the date on which the transfer is received; and

(dd) any pending distribution of unclaimed accrued royalties and accrued interest, not less than 90 days before the date on which the distribution is made; and

(III) as appropriate, participate in music industry conferences and events for the purpose of publicizing the matters described in subclause (II).

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

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

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

(K) Dispute resolution.—The dispute resolution committee established under subparagraph (D)(vi) shall establish policies and procedures—

(i) for copyright owners to address in a timely and equitable manner disputes relating to ownership interests in musical works licensed under this section and allocation and distribution of royalties by the mechanical licensing collective, subject to the approval of the board of directors of the mechanical licensing collective;

(ii) that shall include a mechanism to hold disputed funds in accordance with the requirements described in subparagraph (H)(ii) pending resolution of the dispute; and

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

(L) Verification of payments by mechanical licensing collective.—

(i) Verification process.—A copyright owner entitled to receive payments of royalties for covered activities from the mechanical licensing collective may, individually or with other copyright owners, conduct

an audit of the mechanical licensing collective to verify the accuracy of royalty payments by the mechanical licensing collective to such copyright owner, as follows:

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

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

(III) The mechanical licensing collective shall make such books, records, and data available to the qualified auditor and respond to reasonable requests for relevant information, and shall use commercially reasonable efforts to facilitate access to relevant information maintained by third parties.

(IV) To commence the audit, any copyright owner shall file with the Copyright Office a notice of intent to conduct an audit of the mechanical licensing collective, identifying the period of time to be audited, and shall simultaneously deliver a copy of such notice to the mechanical licensing collective. The Register of Copyrights shall cause the notice of audit to be published in the Federal Register not later than 45 calendar days after the date on which the notice is received.

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

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

owner or owners shall refund overpaid amounts to the mechanical licensing collective, as appropriate.

(ii) Alternative verification procedures.—Nothing in this subparagraph shall preclude a copyright owner and the mechanical licensing collective from agreeing to audit procedures different from those described in this subparagraph, except that a notice of the audit shall be provided to and published by the Copyright Office as described in clause (i)(IV).

(M) Records of mechanical licensing collective.—

(i) Records maintenance.—The mechanical licensing collective shall ensure that all material records of the operations of the mechanical licensing collective, including those relating to notices of license, the administration of the claims process of the mechanical licensing collective, reports of usage, royalty payments, receipt and maintenance of accrued royalties, royalty distribution processes, and legal matters, are preserved and maintained in a secure and reliable manner, with appropriate commercially reasonable safeguards against unauthorized access, copying, and disclosure, and subject to the confidentiality requirements prescribed by the Register of Copyrights under paragraph (12)(C) for a period of not less than 7 years after the date of creation or receipt, whichever occurs later.

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

(4) Terms and conditions of blanket license.—A blanket license is subject to, and conditioned upon, the following requirements:

(A) Royalty reporting and payments.—

(i) Monthly reports and payment.—A digital music provider shall report and pay royalties to the mechanical licensing collective under the blanket license on a monthly basis in accordance with clause (ii) and subsection (c)(2)(I), except that the monthly reporting shall be due on the date that is 45 calendar days, rather than 20 calendar days, after the end of the monthly reporting period.

(ii) Data to be reported.—In reporting usage of musical works to the mechanical licensing collective, a digital music provider shall provide usage data for musical works used under the blanket license and usage data for musical works used in covered activities under voluntary licenses and individual download licenses. In the report of usage, the digital music provider shall—

(I) with respect to each sound recording embodying a musical work—

(aa) provide identifying information for the sound recording, including sound recording name, featured artist, and, to the extent acquired by the digital music provider in connection with its use of sound recordings of musical works to engage in covered activities, including pursuant to subparagraph (B), sound recording copyright owner, producer, international standard recording code, and other information commonly used in the industry to identify sound recordings and match them to the musical works the sound recordings embody;

(bb) to the extent acquired by the digital music provider in the metadata provided by sound recording copyright owners or other licensors of sound recordings in connection with the use of sound recordings of musical works to engage in covered activities, including pursuant to subparagraph (B), provide information concerning authorship and ownership of the applicable rights in the musical work embodied in the sound recording (including each songwriter, publisher name, and respective ownership share) and the international standard musical work code; and

(cc) provide the number of digital phonorecord deliveries of the sound recording, including limited downloads and interactive streams;

(II) identify and provide contact information for all musical work copyright owners for works embodied in sound recordings as to which a voluntary license, rather than the blanket license, is in effect with respect to the uses being reported; and

(III) provide such other information as the Register of Copyrights shall require by regulation.

(iii) Format and maintenance of reports.—Reports of usage provided by digital music providers to the mechanical licensing collective shall be in a machine-readable format that is compatible with the information technology systems of the mechanical licensing collective and meets the requirements of regulations adopted by the Register of Copyrights. The Register shall also adopt regulations setting forth requirements under which records of use shall be maintained and made available to the mechanical licensing collective by digital music providers engaged in covered activities under a blanket license.

(iv) Adoption of regulations.—The Register of Copyrights shall adopt regulations—

(I) setting forth requirements under which records of use shall be maintained and made available to the mechanical licensing collective

by digital music providers engaged in covered activities under a blanket license; and

(II) regarding adjustments to reports of usage by digital music providers, including mechanisms to account for overpayment and underpayment of royalties in prior periods.

(B) Collection of sound recording information.—A digital music provider shall engage in good-faith, commercially reasonable efforts to obtain from sound recording copyright owners and other licensors of sound recordings made available through the service of such digital music provider information concerning—

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

(ii) the authorship and ownership of musical works, including songwriters, publisher names, ownership shares, and international standard musical work codes.

(C) Payment of administrative assessment.—A digital music provider and any significant nonblanket licensee shall pay the administrative assessment established under paragraph (7)(D) in accordance with this subsection and applicable regulations.

(D) Verification of payments by digital music providers.—

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

(I) The mechanical licensing collective may commence an audit of a digital music provider not more frequently than once in any 3-calendar-year period to cover a verification period of not more than the 3 full calendar years preceding the date of commencement of the audit, and such audit may not audit records for any such 3-year verification period more than once.

(II) The audit shall be conducted by a qualified auditor, who shall perform the audit during the ordinary course of business by examining the books, records, and data of the digital music provider, according to generally accepted auditing standards and subject to applicable confidentiality requirements prescribed by the Register of Copyrights under paragraph (12)(C).

(III) The digital music provider shall make such books, records, and data available to the qualified auditor and respond to reasonable requests for relevant information, and shall use commercially

reasonable efforts to provide access to relevant information maintained with respect to a digital music provider by third parties.

(IV) To commence the audit, the mechanical licensing collective shall file with the Copyright Office a notice of intent to conduct an audit of the digital music provider, identifying the period of time to be audited, and shall simultaneously deliver a copy of such notice to the digital music provider. The Register of Copyrights shall cause the notice of audit to be published in the Federal Register not later than 45 calendar days after the date on which notice is received.

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

(VI) The mechanical licensing collective shall pay the cost of the audit, unless the qualified auditor determines that there was an underpayment by the digital music provider of not less than 10 percent, in which case the digital music provider shall bear the reasonable costs of the audit, in addition to paying the amount of any underpayment to the mechanical licensing collective. In case of an overpayment by the digital music provider, the mechanical licensing collective shall provide a credit to the account of the digital music provider.

(VII) A digital music provider may not assert section 507 or any other Federal or State statute of limitations, doctrine of laches or estoppel, or similar provision as a defense to a legal action arising from an audit under this subparagraph if such legal action is commenced not more than 6 years after the commencement of the audit that is the basis for such action.

(ii) Alternative verification procedures.—Nothing in this subparagraph shall preclude the mechanical licensing collective and a digital music provider from agreeing to audit procedures different from those described in this subparagraph, except that a notice of the audit shall be provided to and published by the Copyright Office as described in clause (i)(IV).

(E) Default under blanket license.—

(i) Conditions of default.—A digital music provider shall be in default under a blanket license if the digital music provider—

(I) fails to provide 1 or more monthly reports of usage to the mechanical licensing collective when due;

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

(III) provides 1 or more monthly reports of usage to the mechanical licensing collective that, on the whole, is or are materially deficient as a result of inaccurate, missing, or unreadable data, where the correct data was available to the digital music provider and required to be reported under this section and applicable regulations;

(IV) fails to pay the administrative assessment as required under this subsection and applicable regulations; or

(V) after being provided written notice by the mechanical licensing collective, refuses to comply with any other material term or condition of the blanket license under this section for a period of not less than 60 calendar days.

(ii) Notice of default and termination.—In case of a default by a digital music provider, the mechanical licensing collective may proceed to terminate the blanket license of the digital music provider as follows:

(I) The mechanical licensing collective shall provide written notice to the digital music provider describing with reasonable particularity the default and advising that unless such default is cured not later than 60 calendar days after the date of the notice, the blanket license will automatically terminate at the end of that period.

(II) If the digital music provider fails to remedy the default before the end of the 60-day period described in subclause (I), the license shall terminate without any further action on the part of the mechanical licensing collective. Such termination renders the making of all digital phonorecord deliveries of all musical works (and shares thereof) covered by the blanket license for which the royalty or administrative assessment has not been paid actionable as acts of infringement under section 501 and subject to the remedies provided by sections 502 through 506.

(iii) Notice to copyright owners.—The mechanical licensing collective shall provide written notice of any termination under this subparagraph to copyright owners of affected works.

(iv) Review by federal district court.—A digital music provider that believes a blanket license was improperly terminated by the mechanical licensing collective may seek review of such termination in an appropriate district court of the United States. The district court shall determine the matter de novo based on the record before the mechanical licensing collective and any additional supporting evidence presented by the parties.

(5) Digital licensee coordinator.—

(A) In general.—The digital licensee coordinator shall be a single entity that—

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

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

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

(iv) has been designated by the Register of Copyrights, with the approval of the Librarian of Congress pursuant to section 702, in accordance with subparagraph (B).

(B) Designation of digital licensee coordinator.—

(i) Initial designation.—The Register of Copyrights shall initially designate the digital licensee coordinator not later than 270 days after the enactment date, in accordance with the same procedure described for designation of the mechanical licensing collective in paragraph (3)(B)(i).

(ii) Periodic review of designation.—Following the initial designation of the digital licensee coordinator, the Register of Copyrights shall, every 5 years, beginning with the fifth full calendar year to commence after the initial designation, determine whether the existing designation should be continued, or a different entity meeting the criteria described in clauses (i) through (iii) of subparagraph (A) should be designated, in accordance with the same procedure described for the mechanical licensing collective in paragraph (3)(B)(ii).

(iii) Inability to designate.—If the Register of Copyrights is unable to identify an entity that fulfills each of the qualifications described in clauses (i) through (iii) of subparagraph (A) to serve as the digital licensee coordinator, the Register may decline to designate a digital licensee coordinator. The determination of the Register not to designate a digital licensee coordinator shall not negate or otherwise affect any provision of this subsection except to the limited extent that a provision references the digital licensee coordinator. In such case, the reference to the digital licensee coordinator shall be without effect unless and until a new digital licensee coordinator is designated.

(C) Authorities and functions.—

(i) In general.—The digital licensee coordinator is authorized to perform the following functions, subject to more particular requirements as described in this subsection:

(I) Establish a governance structure, criteria for membership, and any dues to be paid by its members.

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

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

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

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

(VI) Maintain records of its activities.

(VII) Assist in publicizing the existence of the mechanical licensing collective and the ability of copyright owners to claim royalties for unmatched musical works (and shares of works) through the collective.

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

(ii) Restriction on lobbying.—The digital licensee coordinator may not engage in government lobbying activities, but may engage in the activities described in subclauses (III), (IV), and (V) of clause (i).

(iii) Assistance with publicity for unclaimed royalties.—The digital licensee coordinator shall make reasonable, good-faith efforts to assist the mechanical licensing collective in the efforts of the collective to locate and identify copyright owners of unmatched musical works (and shares of such works) by encouraging digital music providers to publicize the existence of the collective and the ability of copyright owners to claim unclaimed accrued royalties, including by—

(I) posting contact information for the collective at reasonably prominent locations on digital music provider websites and applications; and

(II) conducting in-person outreach activities with songwriters.

(6) Requirements for significant nonblanket licensees.—

(A) In general.—

(i) Notice of activity.—Not later than 45 calendar days after the license availability date, or 45 calendar days after the end of the first full calendar month in which an entity initially qualifies as a significant nonblanket licensee, whichever occurs later, a significant nonblanket licensee shall submit a notice of nonblanket activity to the mechanical

licensing collective. The notice of nonblanket activity shall comply in form and substance with requirements that the Register of Copyrights shall establish by regulation, and a copy shall be made available to the digital licensee coordinator.

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

(iii) Discontinuation of obligations.—An entity that has submitted a notice of nonblanket activity to the mechanical licensing collective that has ceased to qualify as a significant nonblanket licensee may so notify the collective in writing. In such case, as of the calendar month in which such notice is provided, such entity shall no longer be required to provide reports of usage or pay the administrative assessment, but if such entity later qualifies as a significant nonblanket licensee, such entity shall again be required to comply with clauses (i) and (ii).

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

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

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

(C) Legal enforcement efforts.—

(i) Federal court action.—Should the mechanical licensing collective or digital licensee coordinator become aware that a significant nonblanket licensee has failed to comply with subparagraph (A), either may commence an action in an appropriate district court of the United States for damages and injunctive relief. If the significant nonblanket

licensee is found liable, the court shall, absent a finding of excusable neglect, award damages in an amount equal to three times the total amount of the unpaid administrative assessment and, notwithstanding anything to the contrary in section 505, reasonable attorney's fees and costs, as well as such other relief as the court determines appropriate. In all other cases, the court shall award relief as appropriate. Any recovery of damages shall be payable to the mechanical licensing collective as an offset to the collective total costs.

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

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

(7) Funding of mechanical licensing collective.—

(A) In general.—The collective total costs shall be funded by—

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

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

(II) significant nonblanket licensees; and

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

(B) Voluntary contributions.—

(i) Agreements concerning contributions.—Except as provided in clause (ii), voluntary contributions by digital music providers and significant nonblanket licensees shall be determined by private negotiation and agreement, and the following conditions apply:

(I) The date and amount of each voluntary contribution to the mechanical licensing collective shall be documented in a writing signed by an authorized agent of the mechanical licensing collective and the contributing party.

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

(ii) Treatment of contributions.—Each voluntary contribution described in clause (i) shall be treated for purposes of an administrative

assessment proceeding as an offset to the collective total costs that would otherwise be recovered through the administrative assessment. Any allocation or reallocation of voluntary contributions between or among individual digital music providers or significant nonblanket licensees shall be a matter of private negotiation and agreement among such parties and outside the scope of the administrative assessment proceeding.

(C) Interim application of accrued royalties.—In the event that the administrative assessment, together with any funding from voluntary contributions as provided in subparagraphs (A) and (B), is inadequate to cover current collective total costs, the collective, with approval of its board of directors, may apply unclaimed accrued royalties on an interim basis to defray such costs, subject to future reimbursement of such royalties from future collections of the assessment.

(D) Determination of administrative assessment.—

(i) Administrative assessment to cover collective total costs.—The administrative assessment shall be used solely and exclusively to fund the collective total costs.

(ii) Separate proceeding before copyright royalty judges.—The amount and terms of the administrative assessment shall be determined and established in a separate and independent proceeding before the Copyright Royalty Judges, according to the procedures described in clauses (iii) and (iv). The administrative assessment determined in such proceeding shall—

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

(II) be established by the Copyright Royalty Judges in an amount that is calculated to defray the reasonable collective total costs;

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

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

(V) take into consideration anticipated future collective total costs and collections of the administrative assessment, including, as applicable—

(aa) any portion of past actual collective total costs of the mechanical licensing collective not funded by previous collections of the administrative assessment or voluntary contributions because such collections or contributions together were insufficient to fund such costs;

(bb) any past collections of the administrative assessment and voluntary contributions that exceeded past actual collective total costs, resulting in a surplus; and

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

(iii) Initial administrative assessment.—The procedure for establishing the initial administrative assessment shall be as follows:

(I) Not later than 270 days after the enactment date, the Copyright Royalty Judges shall commence a proceeding to establish the initial administrative assessment by publishing a notice in the Federal Register seeking petitions to participate.

(II) The mechanical licensing collective and digital licensee coordinator shall participate in the proceeding described in subclause (I), along with any interested copyright owners, digital music providers or significant nonblanket licensees that have notified the Copyright Royalty Judges of their desire to participate.

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

(IV) The initial administrative assessment shall be determined, and such determination shall be published in the Federal Register by the Copyright Royalty Judges, not later than 1 year after commencement of the proceeding described in this clause. The determination shall be supported by a written record. The initial administrative assessment shall be effective as of the license availability date, and shall continue in effect unless and until an adjusted administrative assessment is established pursuant to an adjustment proceeding under clause (iv).

(iv) Adjustment of administrative assessment.—The administrative assessment may be adjusted by the Copyright Royalty Judges periodically, in accordance with the following procedures:

(I) Not earlier than 1 year after the most recent publication of a determination of the administrative assessment by the Copyright Royalty Judges, the mechanical licensing collective, the digital licensee coordinator, or one or more interested copyright owners, digital music providers, or significant nonblanket licensees, may file a petition with the Copyright Royalty Judges in the month of May to commence a proceeding to adjust the administrative assessment.

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

(III) The determination of the adjusted administrative assessment, which shall be supported by a written record, shall be published in the Federal Register during June of the calendar year following the commencement of the proceeding. The adjusted administrative assessment shall take effect January 1 of the year following such publication.

(v) Adoption of voluntary agreements.—In lieu of reaching their own determination based on evaluation of relevant data, the Copyright Royalty Judges shall approve and adopt a negotiated agreement to establish the amount and terms of the administrative assessment that has been agreed to by the mechanical licensing collective and the digital licensee coordinator (or if none has been designated, interested digital music providers and significant nonblanket licensees representing more than half of the market for uses of musical works in covered activities), except that the Copyright Royalty Judges shall have the discretion to reject any such agreement for good cause shown. An administrative assessment adopted under this clause shall apply to all digital music providers and significant nonblanket licensees engaged in covered activities during the period the administrative assessment is in effect.

(vi) Continuing authority to amend.—The Copyright Royalty Judges shall retain continuing authority to amend a determination of an administrative assessment to correct technical or clerical errors, or modify the terms of implementation, for good cause, with any such amendment to be published in the Federal Register.

(vii) Appeal of administrative assessment.—The determination of an administrative assessment by the Copyright Royalty Judges shall be appealable, not later than 30 calendar days after publication in the Federal Register, to the Court of Appeals for the District of Columbia

Circuit by any party that fully participated in the proceeding. The administrative assessment as established by the Copyright Royalty Judges shall remain in effect pending the final outcome of any such appeal, and the mechanical licensing collective, digital licensee coordinator, digital music providers, and significant nonblanket licensees shall implement appropriate financial or other measures not later than 90 days after any modification of the assessment to reflect and account for such outcome.

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

(8) Establishment of rates and terms under blanket license.—

(A) Restrictions on ratesetting participation.—Neither the mechanical licensing collective nor the digital licensee coordinator shall be a party to a proceeding described in subsection (c)(1)(E), except that the mechanical licensing collective or the digital licensee coordinator may gather and provide financial and other information for the use of a party to such a proceeding and comply with requests for information as required under applicable statutory and regulatory provisions and rulings of the Copyright Royalty Judges.

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

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

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

(C) Interim rate agreements in general.—For any covered activity for which no rate or terms have been established by the Copyright Royalty Judges, the mechanical licensing collective and any digital music provider may agree to an interim rate and terms for such activity under the blanket license, and any such rate and terms—

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

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

(D) Adjustments for interim rates.—The rate and terms established by the Copyright Royalty Judges for a covered activity to which an

interim rate and terms have been agreed under subparagraph (C) shall supersede the interim rate and terms and apply retroactively to the inception of the activity under the blanket license. In such case, not later than 90 days after the effective date of the rate and terms established by the Copyright Royalty Judges—

(i) if the rate established by the Copyright Royalty Judges exceeds the interim rate, the digital music provider shall pay to the mechanical licensing collective the amount of any underpayment of royalties due; or

(ii) if the interim rate exceeds the rate established by the Copyright Royalty Judges, the mechanical licensing collective shall credit the account of the digital music provider for the amount of any overpayment of royalties due.

(9) Transition to blanket licenses.—

(A) Substitution of blanket license.—On the license availability date, a blanket license shall, without any interruption in license authority enjoyed by such digital music provider, be automatically substituted for and supersede any existing compulsory license previously obtained under this section by the digital music provider from a copyright owner to engage in 1 or more covered activities with respect to a musical work, except that such substitution shall not apply to any authority obtained from a record company pursuant to a compulsory license to make and distribute permanent downloads unless and until such record company terminates such authority in writing to take effect at the end of a monthly reporting period, with a copy to the mechanical licensing collective.

(B) Expiration of existing licenses.—Except to the extent provided in subparagraph (A), on and after the license availability date, licenses other than individual download licenses obtained under this section for covered activities prior to the license availability date shall no longer continue in effect.

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

(D) Further acceptance of notices for covered activities by copyright office.—On and after the enactment date—

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

(ii) notices of intention filed before the enactment date will no longer be effective or provide license authority with respect to covered activities, except that, before the license availability date, there shall be no liability under section 501 for the reproduction or distribution of a musical work (or share thereof) in covered activities if a valid notice of intention was filed for such work (or share) before the enactment date.

(10) Prior unlicensed uses.—

(A) Limitation on liability in general.—A copyright owner that commences an action under section 501 on or after January 1, 2018, against a digital music provider for the infringement of the exclusive rights provided by paragraph (1) or (3) of section 106 arising from the unauthorized reproduction or distribution of a musical work by such digital music provider in the course of engaging in covered activities prior to the license availability date, shall, as the copyright owner's sole and exclusive remedy against the digital music provider, be eligible to recover the royalty prescribed under subsection (c)(1)(C) and chapter 8, from the digital music provider, provided that such digital music provider can demonstrate compliance with the requirements of subparagraph (B), as applicable. In all other cases the limitation on liability under this subparagraph shall not apply.

(B) Requirements for limitation on liability.—The following requirements shall apply on the enactment date and through the end of the period that expires 90 days after the license availability date to digital music providers seeking to avail themselves of the limitation on liability described in subparagraph (A):

(i) Not later than 30 calendar days after first making a particular sound recording of a musical work available through its service via one or more covered activities, or 30 calendar days after the enactment date, whichever occurs later, a digital music provider shall engage in good-faith, commercially reasonable efforts to identify and locate each copyright owner of such musical work (or share thereof). Such required matching efforts shall include the following:

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

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

(bb) Any available musical work ownership information, including each songwriter and publisher name, percentage ownership share, and international standard musical work code.

(II) Employment of 1 or more bulk electronic matching processes that are available to the digital music provider through a third-party vendor on commercially reasonable terms, except that a digital music provider may rely on its own bulk electronic matching process if that process has capabilities comparable to or better than those available from a third-party vendor on commercially reasonable terms.

(ii) The required matching efforts shall be repeated by the digital music provider not less than once per month for so long as the copyright owner remains unidentified or has not been located.

(iii) If the required matching efforts are successful in identifying and locating a copyright owner of a musical work (or share thereof) by the end of the calendar month in which the digital music provider first makes use of the work, the digital music provider shall provide statements of account and pay royalties to such copyright owner in accordance with this section and applicable regulations.

(iv) If the copyright owner is not identified or located by the end of the calendar month in which the digital music provider first makes use of the work, the digital music provider shall accrue and hold royalties calculated under the applicable statutory rate in accordance with usage of the work, from initial use of the work until the accrued royalties can be paid to the copyright owner or are required to be transferred to the mechanical licensing collective, as follows:

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

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

(aa) not later than 45 calendar days after the end of the calendar month during which the copyright owner was identified and located, pay the copyright owner all accrued royalties, such payment to be accompanied by a cumulative statement of account that includes all of the information that would have been provided to the copyright owner had the digital music provider been providing monthly statements of account to the copyright owner from initial use of the work in accordance with this section and applicable regulations, including the requisite certification under subsection (c)(2)(I);

(bb) beginning with the accounting period following the calendar month in which the copyright owner was identified and

located, and for all other accounting periods prior to the license availability date, provide monthly statements of account and pay royalties to the copyright owner as required under this section and applicable regulations; and

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

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

(aa) not later than 45 calendar days after the license availability date, transfer all accrued royalties to the mechanical licensing collective, such payment to be accompanied by a cumulative statement of account that includes all of the information that would have been provided to the copyright owner had the digital music provider been serving monthly statements of account on the copyright owner from initial use of the work in accordance with this section and applicable regulations, including the requisite certification under subsection (c)(2)(I), and accompanied by an additional certification by a duly authorized officer of the digital music provider that the digital music provider has fulfilled the requirements of clauses (i) and (ii) of subparagraph (B) but has not been successful in locating or identifying the copyright owner; and

(bb) beginning with the monthly royalty reporting period commencing on the license availability date, report usage and pay royalties for such musical work (or share thereof) for such period and reporting periods thereafter to the mechanical licensing collective, as required under this subsection and applicable regulations.

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

(C) Adjusted statute of limitations.—Notwithstanding anything to the contrary in section 507(b), with respect to any claim of infringement of the exclusive rights provided by paragraphs (1) and (3) of section 106 against a digital music provider arising from the unauthorized reproduction or distribution of a musical work by such digital music provider in the

course of engaging in covered activities that accrued not more than 3 years prior to the license availability date, such action may be commenced not later than the later of—

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

(ii) 2 years after the license availability date.

(D) Other rights and remedies preserved.—Except as expressly provided in this paragraph, nothing in this paragraph shall be construed to alter, limit, or negate any right or remedy of a copyright owner with respect to unauthorized use of a musical work.

(11) Legal protections for licensing activities.—

(A) Exemption for compulsory license activities.—The antitrust exemption described in subsection (c)(1)(D) shall apply to negotiations and agreements between and among copyright owners and persons entitled to obtain a compulsory license for covered activities, and common agents acting on behalf of such copyright owners or persons, including with respect to the administrative assessment established under this subsection.

(B) Limitation on common agent exemption.—Notwithstanding the antitrust exemption provided in subsection (c)(1)(D) and subparagraph (A) of this paragraph (except for the administrative assessment referenced in such subparagraph (A) and except as provided in paragraph (8)(C)), neither the mechanical licensing collective nor the digital licensee coordinator shall serve as a common agent with respect to the establishment of royalty rates or terms under this section.

(C) Antitrust exemption for administrative activities.—Notwithstanding any provision of the antitrust laws, copyright owners and persons entitled to obtain a compulsory license under this section may designate the mechanical licensing collective to administer voluntary licenses for the reproduction or distribution of musical works in covered activities on behalf of such copyright owners and persons, subject to the following conditions:

(i) Each copyright owner shall establish the royalty rates and material terms of any such voluntary license individually and not in agreement, combination, or concert with any other copyright owner.

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

(iii) The mechanical licensing collective shall maintain the confidentiality of the voluntary licenses in accordance with the confidentiality provisions prescribed by the Register of Copyrights under paragraph (12)(C).

(D) Liability for good-faith activities.—The mechanical licensing collective shall not be liable to any person or entity based on a claim

arising from its good-faith administration of policies and procedures adopted and implemented to carry out the responsibilities described in subparagraphs (J) and (K) of paragraph (3), except to the extent of correcting an underpayment or overpayment of royalties as provided in paragraph (3)(L)(i)(VI), but the collective may participate in a legal proceeding as a stakeholder party if the collective is holding funds that are the subject of a dispute between copyright owners. For purposes of this subparagraph, the term "good-faith administration" means administration in a manner that is not grossly negligent.

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

(F) Rule of construction.—Except as expressly provided in this subsection, nothing in this subsection shall negate or limit the ability of any person to pursue an action in Federal court against the mechanical licensing collective or any other person based upon a claim arising under this title or other applicable law.

(12) Regulations.—

(A) Adoption by register of copyrights and copyright royalty judges.—The Register of Copyrights may conduct such proceedings and adopt such regulations as may be necessary or appropriate to effectuate the provisions of this subsection, except for regulations concerning proceedings before the Copyright Royalty Judges to establish the administrative assessment, which shall be adopted by the Copyright Royalty Judges.

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

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

(13) Savings clauses.—

(A) Limitation on activities and rights covered.—This subsection applies solely to uses of musical works subject to licensing under this section. The blanket license shall not be construed to extend or apply to

activities other than covered activities or to rights other than the exclusive rights of reproduction and distribution licensed under this section, or serve or act as the basis to extend or expand the compulsory license under this section to activities and rights not covered by this section on the day before the enactment date.

(B) Rights of public performance not affected.—The rights, protections, and immunities granted under this subsection, the data concerning musical works collected and made available under this subsection, and the definitions under subsection (e) shall not extend to, limit, or otherwise affect any right of public performance in a musical work.

(e) Definitions.—As used in this section:

(1) Accrued interest.—The term "accrued interest" means interest accrued on accrued royalties, as described in subsection (d)(3)(H)(ii).

(2) Accrued royalties.—The term "accrued royalties" means royalties accrued for the reproduction or distribution of a musical work (or share thereof) in a covered activity, calculated in accordance with the applicable royalty rate under this section.

(3) Administrative assessment.—The term "administrative assessment" means the fee established pursuant to subsection (d)(7)(D).

(4) Audit.—The term "audit" means a royalty compliance examination to verify the accuracy of royalty payments, or the conduct of such an examination, as applicable.

(5) Blanket license.—The term "blanket license" means a compulsory license described in subsection (d)(1)(A) to engage in covered activities.

(6) Collective total costs.—The term "collective total costs"—

(A) means the total costs of establishing, maintaining, and operating the mechanical licensing collective to fulfill its statutory functions, including—

(i) startup costs;

(ii) financing, legal, audit, and insurance costs;

(iii) investments in information technology, infrastructure, and other long-term resources;

(iv) outside vendor costs;

(v) costs of licensing, royalty administration, and enforcement of rights;

(vi) costs of bad debt; and

(vii) costs of automated and manual efforts to identify and locate copyright owners of musical works (and shares of such musical works) and match sound recordings to the musical works the sound recordings embody; and

(B) does not include any added costs incurred by the mechanical licensing collective to provide services under voluntary licenses.

(7) Covered activity.—The term "covered activity" means the activity of making a digital phonorecord delivery of a musical work, including in the form of a permanent download, limited download, or interactive stream, where such activity qualifies for a compulsory license under this section.

(8) Digital music provider.—The term "digital music provider" means a person (or persons operating under the authority of that person) that, with respect to a service engaged in covered activities—

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

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

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

(9) Digital licensee coordinator.—The term "digital licensee coordinator" means the entity most recently designated pursuant to subsection (d)(5).

(10) Digital phonorecord delivery.—The term "digital phonorecord delivery" means each individual delivery of a phonorecord by digital transmission of a sound recording that results in a specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that sound recording, regardless of whether the digital transmission is also a public performance of the sound recording or any musical work embodied therein, and includes a permanent download, a limited download, or an interactive stream. A digital phonorecord delivery does not result from a real-time, noninteractive subscription transmission of a sound recording where no reproduction of the sound recording or the musical work embodied therein is made from the inception of the transmission through to its receipt by the transmission recipient in order to make the sound recording audible. A digital phonorecord delivery does not include the digital transmission of sounds accompanying a motion picture or other audiovisual work as defined in section 101.

(11) Enactment date.—The term "enactment date" means the date of the enactment of the Musical Works Modernization Act.

(12) Individual download license.—The term "individual download license" means a compulsory license obtained by a record company to make and distribute, or authorize the making and distribution of, permanent downloads embodying a specific individual musical work.

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

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

(15) License availability date.—The term "license availability date" means January 1 following the expiration of the 2-year period beginning on the enactment date.

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

(17) Matched.—The term "matched", as applied to a musical work (or share thereof), means that the copyright owner of such work (or share thereof) has been identified and located.

(18) Mechanical licensing collective.—The term "mechanical licensing collective" means the entity most recently designated as such by the Register of Copyrights under subsection (d)(3).

(19) Mechanical licensing collective budget.—The term "mechanical licensing collective budget" means a statement of the financial position of the mechanical licensing collective for a fiscal year or quarter thereof based on estimates of expenditures during the period and proposals for financing those expenditures, including a calculation of the collective total costs.

(20) Musical works database.—The term "musical works database" means the database described in subsection (d)(3)(E).

(21) Nonprofit.—The term "nonprofit" means a nonprofit created or organized in a State.

(22) Notice of license.—The term "notice of license" means a notice from a digital music provider provided under subsection (d)(2)(A) for purposes of obtaining a blanket license.

(23) Notice of nonblanket activity.—The term "notice of nonblanket activity" means a notice from a significant nonblanket licensee provided under subsection (d)(6)(A) for purposes of notifying the mechanical licensing collective that the licensee has been engaging in covered activities.

(24) Permanent download.—The term "permanent download" means a digital transmission of a sound recording of a musical work in the form of a download, where such sound recording is accessible for listening without restriction as to the amount of time or number of times it may be accessed.

(25) Qualified auditor.—The term "qualified auditor" means an independent, certified public accountant with experience performing music royalty audits.

(26) Record company.—The term "record company" means an entity that invests in, produces, and markets sound recordings of musical works, and

distributes such sound recordings for remuneration through multiple sales channels, including a corporate affiliate of such an entity engaged in distribution of sound recordings.

(27) Report of usage.—The term "report of usage" means a report reflecting an entity's usage of musical works in covered activities described in subsection (d)(4)(A).

(28) Required matching efforts.—The term "required matching efforts" means efforts to identify and locate copyright owners of musical works as described in subsection (d)(10)(B)(i).

(29) Service.—The term "service", as used in relation to covered activities, means any site, facility, or offering by or through which sound recordings of musical works are digitally transmitted to members of the public.

(30) Share.—The term "share", as applied to a musical work, means a fractional ownership interest in such work.

(31) Significant nonblanket licensee.—The term "significant nonblanket licensee"—

(A) means an entity, including a group of entities under common ownership or control that, acting under the authority of one or more voluntary licenses or individual download licenses, offers a service engaged in covered activities, and such entity or group of entities—

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

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

(iii) either—

(I) on any day in a calendar month, makes more than 5,000 different sound recordings of musical works available through such service; or

(II) derives revenue or other consideration in connection with such covered activities greater than $50,000 in a calendar month, or total revenue or other consideration greater than $500,000 during the preceding 12 calendar months; and

(B) does not include—

(i) an entity whose covered activity consists solely of free-to-the-user streams of segments of sound recordings of musical works that do not exceed 90 seconds in length, are offered only to facilitate a licensed use of musical works that is not a covered activity, and have no revenue directly attributable to such streams constituting the covered activity; or

(ii) a 'public broadcasting entity' as defined in section 118(f).

(32) Songwriter. — The term "songwriter" means the author of all or part of a musical work, including a composer or lyricist.

(33) State. — The term "State" means each State of the United States, the District of Columbia, and each territory or possession of the United States.

(34) Unclaimed accrued royalties. — The term "unclaimed accrued royalties" means accrued royalties eligible for distribution under subsection (d)(3)(J).

(35) Unmatched. — The term "unmatched", as applied to a musical work (or share thereof), means that the copyright owner of such work (or share thereof) has not been identified or located.

(36) Voluntary license. — The term "voluntary license" means a license for use of a musical work (or share thereof) other than a compulsory license obtained under this section.

§ 116 · Negotiated licenses for public performances by means of coin-operated phonorecord players[54]

(a) Applicability of Section. — This section applies to any nondramatic musical work embodied in a phonorecord.

(b) Negotiated Licenses. —

(1) Authority for negotiations. — Any owners of copyright in works to which this section applies and any operators of coin-operated phonorecord players may negotiate and agree upon the terms and rates of royalty payments for the performance of such works and the proportionate division of fees paid among copyright owners, and may designate common agents to negotiate, agree to, pay, or receive such royalty payments.

(2) Chapter 8 proceeding. — Parties not subject to such a negotiation may have the terms and rates and the division of fees described in paragraph (1) determined in a proceeding in accordance with the provisions of chapter 8.

(c) License Agreements Superior to Determinations by Copyright Royalty Judges. — License agreements between one or more copyright owners and one or more operators of coin-operated phonorecord players, which are negotiated in accordance with subsection (b), shall be given effect in lieu of any otherwise applicable determination by the Copyright Royalty Judges.

(d) Definitions. — As used in this section, the following terms mean the following:

(1) A "coin-operated phonorecord player" is a machine or device that —

(A) is employed solely for the performance of nondramatic musical works by means of phonorecords upon being activated by the insertion of coins, currency, tokens, or other monetary units or their equivalent;