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(Original Signature of Member)

109TH CONGRESS  
2D SESSION

# H. R. \_\_\_\_\_

To amend section 115 of title 17, United States Code, to provide for licensing of digital delivery of musical works, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

Mr. SMITH of Texas (for himself and Mr. BERMAN) introduced the following bill; which was referred to the Committee on

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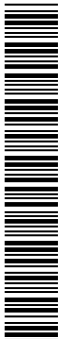
# A BILL

To amend section 115 of title 17, United States Code, to provide for licensing of digital delivery of musical works, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Section 115 Reform  
5 Act of 2006”.



1 **SEC. 2. STATUTORY LICENSES FOR DIGITAL DELIVERY OF**  
2 **MUSICAL WORKS.**

3 Section 115 of title 17, United States Code, is  
4 amended by adding at the end the following new sub-  
5 section:

6 “(e) LICENSES FOR DIGITAL USES OF MUSICAL  
7 WORKS.—

8 “(1) IN GENERAL.—The compulsory license for  
9 digital phonorecord deliveries and hybrid offerings  
10 shall be governed by this subsection, in addition to  
11 subsections (a), (c), and (d). The license under this  
12 subsection covers—

13 “(A) the making and distribution of gen-  
14 eral and incidental digital phonorecord deliv-  
15 eries in the form of full downloads, limited  
16 downloads, interactive streams, and any other  
17 form constituting a digital phonorecord delivery  
18 or hybrid offering; and

19 “(B) all reproduction and distribution  
20 rights necessary to engage in activities de-  
21 scribed in subparagraph (A), solely for the pur-  
22 pose of engaging in such activities under the li-  
23 cense, including—

24 “(i) the making of reproductions by  
25 and for end users;



1 “(ii) reproductions made on servers  
2 under the authority of the licensee; and

3 “(iii) incidental reproductions made  
4 under the authority of the license in the  
5 normal course of engaging in activities de-  
6 scribed in subparagraph (A), including  
7 cached, network, and RAM buffer repro-  
8 ductions.

9 “(2) BLANKET LICENSES.—A person may ob-  
10 tain a compulsory license to engage in activities sub-  
11 ject to this subsection only from a designated agent  
12 under paragraph (4) and only if the person is a dig-  
13 ital music provider. A person may engage in activi-  
14 ties subject to this subsection under authority of a  
15 compulsory license only—

16 “(A) if the license was obtained by a dig-  
17 ital music provider; and

18 “(B) with respect to end users with which  
19 the digital music provider meets the require-  
20 ments of paragraph (14)(C).

21 “(3) ROYALTY-FREE LICENSE.—

22 “(A) IN GENERAL.—A compulsory license  
23 shall be available for the making of server and  
24 incidental reproductions to facilitate noninter-  
25 active streaming.



1           “(B) ACTIVITIES COVERED.—Each des-  
2           signed agent shall grant a license under this  
3           subsection for the making of server and inci-  
4           dental reproductions to facilitate noninteractive  
5           streaming at a royalty-free rate. The designated  
6           agent may charge only a filing fee of not more  
7           than \$30 to administer the issuance of the li-  
8           cense. The license shall cover reproductions  
9           made on servers under authority of the licensee  
10          and incidental reproductions made under the  
11          authority of the licensee in the course of the  
12          noninteractive streaming, including cached, net-  
13          work, and RAM buffer reproductions, to the ex-  
14          tent reasonably necessary for, and solely for the  
15          purpose of, engaging in noninteractive stream-  
16          ing under the license in a technologically rea-  
17          sonable and efficient matter.

18          “(C) EXCLUDED ACTIVITIES.—The license  
19          under subparagraph (A) does not extend to any  
20          server or incidental reproductions used to en-  
21          able a streaming service (or any other type of  
22          service) that takes affirmative steps to author-  
23          ize, enable, cause, or induce the making of re-  
24          productions of musical works by or for end  
25          users that are accessible by those end users for



1 future listening, unless a valid license for repro-  
2 duction and distribution rights has otherwise  
3 been obtained by the streaming or other type of  
4 service permitting the server or incidental re-  
5 productions to be used for that activity.

6 “(4) APPLICATIONS FOR LICENSES.—Any dig-  
7 ital music provider seeking a license under this sub-  
8 section may apply to a designated agent for the li-  
9 cense, identifying in the application each type of  
10 qualifying activity for which the license is sought.  
11 Any digital music provider that has a license under  
12 this subsection and seeks to engage in any activity  
13 covered by this subsection that is not identified in  
14 the license may engage in that activity only upon fil-  
15 ing a new application identifying the additional ac-  
16 tivity.

17 “(5) LICENSES.—All activities specified in an  
18 application filed under paragraph (4) for which a li-  
19 cense is available under this subsection shall be li-  
20 censed by the designated agent. The license shall be  
21 effective, upon the filing of the application, for all  
22 copyrighted nondramatic musical works (or shares of  
23 such musical works) represented by the designated  
24 agent.

25 “(6) RETROACTIVE ROYALTY PAYMENTS.—



1           “(A) RETROACTIVE PAYMENTS.—A digital  
2 music provider that has obtained a license from  
3 a designated agent under this subsection for—  
4           “(i) the making and distribution of  
5           limited downloads, or  
6           “(ii) the making or distribution of  
7           interactive streams,  
8 may report to the designated agent activity au-  
9 thorized by the license that the digital music  
10 provider engaged in during the period beginning  
11 January 1, 2001, and ending on January 1,  
12 2008, and pay to the designated agent royalties  
13 applicable to that activity. Such reporting and  
14 payments shall be made not later than March  
15 1, 2008, in accordance with the regulations  
16 issued under paragraph (10) regarding report-  
17 ing and payments.

18           “(B) LIMITATION ON LIABILITY.—A dig-  
19 ital music provider that reports activity and  
20 makes payments under this paragraph for an  
21 activity under this paragraph shall not be sub-  
22 ject to an action for copyright infringement al-  
23 leging violation of reproduction or distribution  
24 rights to the extent such action is based on ac-



1           tivity so reported for which all payments due  
2           have been made.

3           “(C) EFFECT ON ROYALTY-FREE LI-  
4           CENSE.—A digital music provider that complies  
5           with the requirements of this paragraph is enti-  
6           tled to a royalty-free license under paragraph  
7           (3)(A) for the activity reported under subpara-  
8           graph (A), retroactive to January 1, 2001.

9           “(7) LICENSE NOT TRANSFERABLE.—A license  
10          granted to a digital music provider under this sub-  
11          section may not be transferred to any other person  
12          or entity.

13          “(8) ROYALTY RATES AND TERMS.—

14                 “(A) IN GENERAL.—Except as provided in  
15                 this paragraph, the Copyright Royalty Judges  
16                 shall determine reasonable rates and terms for  
17                 digital phonorecord deliveries and hybrid offer-  
18                 ings as provided under subsection (c) and chap-  
19                 ter 8, except for server and incidental reproduc-  
20                 tions for noninteractive streaming that are eligi-  
21                 ble for royalty-free licenses under this sub-  
22                 section.

23                 “(B) RATES AND TERMS IN EFFECT.—  
24                 Rates and terms in effect under subsection (c)  
25                 on the effective date of the Section 115 Reform



1 Act of 2006 for any activity for which a license  
2 is available under this section shall continue to  
3 apply to that activity on and after that date  
4 until a new rate is determined under subsection  
5 (c) and chapter 8.

6 “(C) PAYMENT.—Licensees under this  
7 subsection shall make payments of royalty rates  
8 and terms to the designated agents as directed  
9 by the Copyright Royalty Judges.

10 “(D) RATES AND TERMS FOR NEW LI-  
11 CENSE ACTIVITIES.—

12 “(i) IN GENERAL.—Not later than  
13 December 1, 2007, the Copyright Royalty  
14 Judges shall initiate a ratemaking pro-  
15 ceeding, pursuant to the procedures set  
16 forth in chapter 8, to determine a final  
17 rate and terms for any activity for which  
18 a license is available under this subsection  
19 if—

20 “(I) a final rate and terms have  
21 not been established for the activity as  
22 of that date; or

23 “(II) the activity is not the sub-  
24 ject of a proceeding to set a final rate  
25 and terms under subsection (c) that is





1 pending before the Copyright Royalty  
2 Judges on that date.

3 “(ii) PENDING PROCEEDINGS.—In  
4 any case in which a proceeding is pending  
5 before the Copyright Royalty Judges, on  
6 December 1, 2007, to determine final rates  
7 and terms under subsection (c) for any ac-  
8 tivity for which a license is available under  
9 this subsection, the Copyright Royalty  
10 Judges may expand and adjust the sched-  
11 ule of the proceeding to cover rates and  
12 terms for any activity described in clause  
13 (i), in lieu of initiating a proceeding under  
14 clause (i) with respect to that activity, if so  
15 expanding and adjusting the schedule of  
16 the proceeding will not unduly prejudice  
17 any party to the proceeding and will not  
18 delay the final determination of rates and  
19 terms by the Copyright Royalty Judges by  
20 more than 90 days.

21 “(iii) PARTICIPATION OF DESIGNATED  
22 AGENTS.—All designated agents, and any  
23 other parties who have a significant inter-  
24 est, within the meaning of section 804(a),  
25 in the applicable royalty rate, are entitled



1 to participate in a proceeding under this  
2 subparagraph relating to activities licensed  
3 under this subsection.

4 “(E) INTERIM RATES.—

5 “(i) IN GENERAL.—For any activity  
6 for which a license is available under this  
7 subsection and for which a rate and terms  
8 have not been determined under subsection  
9 (c), a digital music provider shall, upon fil-  
10 ing a valid application with the relevant  
11 designated agent, have a license under this  
12 subsection to engage in the activity, sub-  
13 ject to clause (ii).

14 “(ii) INTERIM RATES AND TERMS.—  
15 Upon the filing of an application under  
16 clause (i)—

17 “(I) the digital music provider  
18 and the designated agent may nego-  
19 tiate an interim rate and terms that  
20 will apply to the activity under the li-  
21 cense; or

22 “(II) the digital music provider  
23 or the designated agent, or both, may  
24 apply to the Copyright Royalty



1 Judges for an interim rate and terms,  
2 in which case—

3 “(aa) the Copyright Royalty  
4 Judges shall, not later than 15  
5 days after the application is  
6 made, publish notice of an expedited proceeding to determine the  
7 interim rate and terms; and

8 “(bb) the Judges shall determine the interim rate and  
9 terms not less than 30 days and  
10 not more than 60 days after publishing the notice, through the  
11 expedited proceeding.

12 “(iii) APPLICABILITY OF INTERIM  
13 RATES AND TERMS.—(I) An interim rate  
14 and terms negotiated under clause (ii)(I)  
15 or established under clause (ii)(II) shall  
16 apply to the activity under the license concerned until a final rate and terms for the  
17 activity are determined under subparagraph (D), or as otherwise agreed by the  
18 parties.

19 “(II) An interim rate and terms described in clause (i) with respect to an ac-



1 tivity by a digital music provider shall not  
2 be treated as precedent in a final rate-  
3 making proceeding. If the Copyright Roy-  
4 alty Judges have established an interim  
5 rate and terms under clause (ii)(II), sub-  
6 ject to clause (iv), that rate and those  
7 terms shall apply to the same activity en-  
8 gaged in by any digital music provider, ex-  
9 cept as otherwise agreed to by the parties.

10 “(iv) SINGLE PROCEEDING FOR EACH  
11 ACTIVITY.—Unless the Copyright Royalty  
12 Judges determine that there is good cause  
13 to review an interim rate established under  
14 clause (ii)(II), the Judges may conduct  
15 only 1 proceeding to determine an interim  
16 rate and terms for an activity for which a  
17 license is available under this subsection.

18 “(v) ADJUSTMENT OF INTERIM  
19 RATES.—After a determination of a final  
20 rate and terms that will apply to an activ-  
21 ity for which a license is available under  
22 this subsection has been made under sub-  
23 paragraph (D), the final rate and terms  
24 shall be retroactive to the inception of the  
25 activity under all licenses to which such



1 rate and terms apply, unless an agreement  
2 between the parties to a license provides  
3 otherwise. Not later than 60 days after the  
4 determination of the final rate becomes  
5 effective—

6 “(I) the digital music provider  
7 shall pay to the designated agent any  
8 amounts due from underpayment of  
9 fees by the digital music provider be-  
10 cause the final rate exceeds the in-  
11 terim rate; or

12 “(II) the designated agent shall  
13 refund to the digital music provider  
14 the amounts of any overpayment of  
15 fees by the digital music provider be-  
16 cause the interim rate exceed the final  
17 rate, or, at the election of the digital  
18 music provider, the designated agent  
19 shall credit such overpayment against  
20 future payments by the digital music  
21 provider to the designated agent  
22 under this subsection.

23 “(9) DESIGNATED AGENTS.—



1           “(A) IN GENERAL.—Designated agents  
2 under this subsection are the General Des-  
3 igned Agent and additional designated agents.

4           “(B) GENERAL DESIGNATED AGENT.—

5           “(i) DESIGNATION AND PURPOSE.—

6           (I) Not later than August 1, 2007, the  
7 Register of Copyrights shall designate a  
8 mechanical licensing and collection agency  
9 representing music publishing entities that  
10 represent the greatest share of the music  
11 publishing market, as measured by the  
12 amount of royalties collected during the  
13 preceding 3 full calendar years with re-  
14 spect to the use of copyrighted musical  
15 works pursuant to this section, to establish  
16 and operate the General Designated Agent.

17           “(II) The General Designated Agent  
18 shall grant and administer licenses and col-  
19 lect and distribute royalties payable for the  
20 use of musical works licensed under this  
21 subsection.

22           “(III) The General Designated Agent  
23 shall be governed by a board of directors  
24 consisting of representatives of at least 5  
25 music publishing entities.

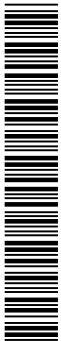


1           “(ii) DECERTIFICATION.—The Reg-  
2           ister of Copyrights may disqualify the Gen-  
3           eral Designated Agent upon a showing  
4           that it fails to meet the qualifications  
5           under this subparagraph or otherwise fails  
6           to meet the requirements under this para-  
7           graph. In such a case, the Register of  
8           Copyrights shall designate another General  
9           Designated Agent that most closely meets  
10          the requirements of clause (i)(I).

11          “(C) ADDITIONAL DESIGNATED AGENTS.—

12                 “(i) CERTIFICATION.—The Register of  
13                 Copyrights shall certify as an additional  
14                 designated agent to represent copyright  
15                 owners for purposes of licenses under this  
16                 subsection any entity that demonstrates  
17                 that—

18                         “(I) upon certification, it will  
19                         represent music publishing entities  
20                         that represent at least a 15 percent  
21                         share of the music publishing market,  
22                         as measured by the amount of royal-  
23                         ties collected during the preceding 3  
24                         full calendar years with respect to the



1 use of copyrighted musical works pur-  
2 suant to this section; and

3 “(II) it has the capability to per-  
4 form the required functions of a des-  
5 ignated agent under this subsection.

6 “(ii) DUTIES.—(I) Upon certification  
7 under clause (i), an additional designated  
8 agent shall represent any copyright owners  
9 of musical works who elect to have the ad-  
10 ditional designated agent represent them  
11 and the musical works (or shares of musi-  
12 cal works) owned or controlled by such  
13 copyright owners for purposes of the li-  
14 censes under this subsection.

15 “(II) Each additional designated  
16 agent shall notify the General Designated  
17 Agent and any other additional designated  
18 agent of each copyright owner, and the  
19 musical works (or shares of musical works)  
20 owned or controlled by the copyright  
21 owner, that the additional designated agent  
22 represents pursuant to subclause (I).

23 “(III) Any election under subclause  
24 (I) is effective only if it is made in writing,  
25 a copy of which shall be made available to





1 any other designated agent upon a reason-  
2 able request therefor.

3 “(iii) DECERTIFICATION.—The Reg-  
4 ister of Copyrights may remove the certifi-  
5 cation of any additional designated agent  
6 upon a showing that it fails to meet the  
7 qualifications under this subparagraph or  
8 otherwise fails to meet the requirements  
9 under this paragraph.

10 “(D) AUTHORITIES OF DESIGNATED  
11 AGENTS.—A designated agent may—

12 “(i) engage in activities pursuant to  
13 this subsection;

14 “(ii) engage in such additional activi-  
15 ties in the interest of music publishers and  
16 songwriters as the designated agent con-  
17 sidered appropriate, including industry ne-  
18 gotiations, ratesetting proceedings, litiga-  
19 tion, and legislative efforts; and

20 “(iii) apply any administrative fees or  
21 other funds it collects to support the activi-  
22 ties described in clauses (i) and (ii).

23 “(E) ELECTIONS BY COPYRIGHT OWN-  
24 ERS.—



1           “(i) REPRESENTATION BY SINGLE  
2 DESIGNATED AGENT.—Each copyright  
3 owner, and the musical works (or shares of  
4 musical works) that the copyright owner  
5 owns or controls, may be represented by  
6 only one designated agent during any cal-  
7 endar year.

8           “(ii) ANNUAL ENROLLMENT PE-  
9 RIOD.—

10           “(I) IN GENERAL.—Each copy-  
11 right owner may, during the month of  
12 September of each year, elect to  
13 change the designated agent to rep-  
14 resent the owner and the musical  
15 works (or shares of musical works) re-  
16 ferred to in clause (i), beginning on  
17 January 1 of the succeeding calendar  
18 year.

19           “(II) SELECTION.—A copyright  
20 owner may choose only one designated  
21 agent during the month of September  
22 of each year. If the designated agent  
23 chosen is not certified pursuant to  
24 subparagraph (C)(i) or is decertified  
25 pursuant to subparagraph (C)(iii), the



1 copyright owner and the musical  
2 works (or shares) referred to in clause  
3 (i) shall be represented by the General  
4 Designated Agent for the succeeding  
5 calendar year.

6 “(iii) EFFECT ON LICENSES.—A des-  
7 ignated agent’s representation of the musi-  
8 cal works (and shares of musical works) of  
9 any copyright owner who elects to change  
10 designated agents under clause (ii) shall  
11 terminate on December 31 of the year in  
12 which the election is made, after which the  
13 musical works (and shares of musical  
14 works) of the copyright owner will become  
15 subject to the licenses in effect with the  
16 designated agent selected under clause (ii).

17 “(iv) DEFAULT REPRESENTATION BY  
18 GENERAL DESIGNATED AGENT.—If a copy-  
19 right owner does not choose to be rep-  
20 resented by an additional designated agent,  
21 the General Designated Agent shall rep-  
22 resent the copyright owner and musical  
23 works (or shares of musical works) owned  
24 or controlled by the copyright owner.



1                   “(v) VOLUNTARY AGREEMENTS.—A  
2                   copyright owner and a digital music pro-  
3                   vider may enter into a voluntary license  
4                   agreement pursuant to subsection  
5                   (c)(3)(E)(i) to cover activities licensed  
6                   under this subsection. Any such agreement  
7                   shall apply in lieu of a blanket license  
8                   under this subsection with respect to those  
9                   musical works (or shares of musical works)  
10                  and activities covered by the agreement  
11                  during the period that the agreement is in  
12                  effect. The royalty fees due for usage of  
13                  musical works (or shares of musical works)  
14                  under a blanket license under this sub-  
15                  section shall be reduced in proportion to  
16                  the usage covered under such a voluntary  
17                  license agreement. Each designated agent  
18                  shall establish procedures by which copy-  
19                  right owners and licensees shall be re-  
20                  quired to notify the designated agent of  
21                  the existence of voluntary license agree-  
22                  ments upon which they are relying in lieu  
23                  of the blanket license. Such procedures  
24                  shall include appropriate measures to pro-  
25                  tect confidential information of licensees.



1           “(F) NOTICE OF DESIGNATED AGENTS.—  
2           At least 90 days before beginning operations,  
3           the General Designated Agent and any inter-  
4           ested party wishing to serve as a designated  
5           agent shall file with the Copyright Office a no-  
6           tice of intent to operate as a designated agent  
7           under this subsection. The notice shall contain  
8           such contact information, and such information  
9           concerning applications for licenses under this  
10          subsection and access to the electronic database  
11          of the designated agent (described in subpara-  
12          graph (H)(i)) identifying musical works (or  
13          shares of musical works) represented by the  
14          designated agent, as required in regulations  
15          issued to carry out this subsection. The Copy-  
16          right Office shall make each notice filed under  
17          this subparagraph available to the public on the  
18          Internet.

19           “(G) TERMINATION OF DESIGNATED  
20          AGENT.—

21           “(i) NOTICE AND TRANSFER OF  
22          RECORDS.—At least 180 days before termi-  
23          nating operations, a designated agent  
24          shall—



1                   “(I) notify the Copyright Office,  
2                   all of its licensees under this sub-  
3                   section, all of the copyright owners  
4                   represented by the designated agent  
5                   for the purposes of this subsection,  
6                   and all other designated agents of its  
7                   intent to terminate operations; and

8                   “(II) transfer electronic and  
9                   other copies of all relevant records to  
10                  the existing General Designated Agent  
11                  or, in the case of the termination of  
12                  the General Designated Agent, to the  
13                  successor General Designated Agent.

14                  “(ii) ASSUMPTION OF DUTIES BY  
15                  GDA.—Upon the termination of operations  
16                  of a designated agent, the General Des-  
17                  ignated Agent or successor General Des-  
18                  ignated Agent, as the case may be, shall  
19                  assume the administration of the musical  
20                  works and rights previously administered  
21                  by the terminated designated agent, re-  
22                  gardless of whether the terminated agent  
23                  has complied with clause (i).

24                  “(H) MUSICAL WORKS DATA.—



1                   “(i) AVAILABILITY.—The General  
2                   Designated Agent and each additional des-  
3                   ignated agent shall maintain and make  
4                   available to licensees, free of charge, a  
5                   searchable electronic database of informa-  
6                   tion from which licensees can determine  
7                   which musical works (or shares of musical  
8                   works) are available for licensing under  
9                   this subsection through that designated  
10                  agent. Any musical work (or shares of a  
11                  musical work) not identified as being rep-  
12                  resented by the General Designated Agent  
13                  or any additional designated agent in any  
14                  such database may be presumed by licens-  
15                  ees to be represented by the General Des-  
16                  ignated Agent.

17                  “(ii) USE OF DATABASE BY DES-  
18                  IGNATED AGENTS AND LICENSEES.—Sub-  
19                  ject to the public access described under  
20                  clause (iii), the database required by clause  
21                  (i) may be used by designated agents and  
22                  licensees only for purposes of determining  
23                  the identity and availability of musical  
24                  works for licenses under this subsection,  
25                  obtaining such licenses, reporting of use of



1 musical works, payment of royalties, and  
2 otherwise to comply with licenses under  
3 this subsection, except that a designated  
4 agent may use or make the database it  
5 maintains available for other purposes re-  
6 lating to musical works or music pub-  
7 lishers. The Copyright Royalty Judges  
8 shall, in establishing cost-sharing amounts  
9 pursuant to paragraph (12), consider the  
10 value and benefit of any such other pur-  
11 poses to the designated agent and the  
12 copyright owners it represents. The use of  
13 any such database shall be subject to rea-  
14 sonable confidentiality and security stand-  
15 ards prescribed in regulations to carry out  
16 this subsection.

17 “(iii) PUBLIC ACCESS TO DATA-  
18 BASE.—The General Designated Agent  
19 and each designated agent shall make rel-  
20 evant portions of the database required by  
21 clause (i) available free of charge to the  
22 general public to access information con-  
23 cerning specific musical works that are  
24 represented by the designated agent, sub-  
25 ject to reasonable terms and conditions of





1 use as may be prescribed by the Register  
2 of Copyrights.

3 “(I) LETTERS OF DIRECTION.—

4 “(i) IN GENERAL.—A designated  
5 agent shall comply with a letter of direc-  
6 tion submitted under clause (ii) or (iii)  
7 which instructs the designated agent to  
8 pay all or part of the royalties otherwise  
9 payable to the copyright owner to another  
10 person.

11 “(ii) RECOUPMENT OF ADVANCE.—A  
12 copyright owner that receives an advance  
13 payment from a sound recording company  
14 under a contract entered into before June  
15 1, 2006, that has not been recouped by the  
16 sound recording company shall, at the re-  
17 quest of the sound recording company,  
18 submit a letter of direction to a designated  
19 agent instructing the designated agent to  
20 pay royalties otherwise payable to the  
21 copyright owner to the sound recording  
22 company until such time as the advance  
23 payment made by the sound recording  
24 company to the copyright owner is re-  
25 couped by the sound recording company.



1 “(iii) MISSING COPYRIGHT OWNER.—

2 In any case in which a sound recording  
3 company is, after reasonable efforts, un-  
4 able to locate a copyright owner that re-  
5 ceived an advance payment from the sound  
6 recording company that has not fully been  
7 recouped by the sound recording company,  
8 the sound recording company may submit  
9 a letter of direction to a designated agent  
10 directing the designated agent to pay roy-  
11 alties that would be due the copyright  
12 owner to the sound recording company.

13 “(10) ROYALTY REPORTING AND COMPLI-  
14 ANCE.—

15 “(A) REQUIREMENTS.—

16 “(i) IN GENERAL.—Each licensee  
17 under this subsection shall, on a quarterly  
18 basis and in electronic format, report its  
19 usage of musical works under the license,  
20 and make royalty payments by reason of  
21 such usage, to the applicable designated  
22 agent.

23 “(ii) LIMITATION ON DISCLOSURE.—

24 “(I) IN GENERAL.—A designated  
25 agent may disclose information re-



1 received under clause (i) to a recipient  
2 of royalty payments made by a li-  
3 censee only with respect to musical  
4 works owned or controlled by the re-  
5 cipient. The designated agent may not  
6 disclose such information to any other  
7 person in a form that can be readily  
8 associated with a licensee except to  
9 the extent permitted by written agree-  
10 ment of the licensee.

11 “(II) EXCEPTION.—Subclause (I)  
12 does not prevent a designated agent  
13 from providing information with re-  
14 spect to a licensee—

15 “(aa) to the legal and finan-  
16 cial advisors of the designated  
17 agent or to an accountant or  
18 auditor rendering services relat-  
19 ing to this subsection; or

20 “(bb) to the extent nec-  
21 essary in connection with a bona  
22 fide dispute or legal claim or pro-  
23 ceeding.

24 “(iii) INTEREST.—



1                   “(I) IN GENERAL.—A licensee  
2                   who has failed to make a payment re-  
3                   quired under this subsection by the  
4                   due date to a designated agent (in-  
5                   cluding as specified in a notice of pay-  
6                   ment deficiency or default, as deter-  
7                   mined in a royalty compliance exam-  
8                   ination under subparagraph (B), or as  
9                   required by a determination of the  
10                  Copyright Royalty Judges), shall pay  
11                  to the designated agent interest on  
12                  the overdue amount, at the Federal  
13                  funds rate plus 5 percent, such inter-  
14                  est to accrue monthly from the date  
15                  payment was due until the date pay-  
16                  ment is received by the designated  
17                  agent.

18                  “(II) DEFINITION.—In this  
19                  clause, the term ‘Federal funds rate’  
20                  means the interest rate established by  
21                  the Federal Reserve at which deposi-  
22                  tory institutions lend balances at the  
23                  Federal Reserve to other depository  
24                  institutions overnight. The Federal  
25                  funds rate for any 1-month period



1           during which interest accrues under  
2           clause (i) is the Federal funds rate in  
3           effect on the first day of that 1-month  
4           period.

5           “(iv) PROMOTIONAL USE.—A licensee  
6           under this subsection shall not be required  
7           to report or pay under this subsection for  
8           a free promotional use of a musical work  
9           that is authorized by the copyright owner  
10          of the musical work.

11          “(B) ROYALTY COMPLIANCE EXAMINA-  
12          TIONS.—A designated agent may, upon pro-  
13          viding written notice to its licensee under this  
14          subsection, conduct a royalty compliance exam-  
15          ination of the licensee, subject to the following:

16               “(i) A designated agent may conduct  
17               only 1 examination of any licensee in a cal-  
18               endar year, and may conduct an examina-  
19               tion of a licensee with respect to a report-  
20               ing period only once. A designated agent  
21               may conduct an examination jointly with  
22               one or more other designated agents.

23               “(ii) The examination may begin only  
24               within 18 months after the end of the pe-  
25               riod being examined and may only cover a



1 period of not less than 2 and not more  
2 than 4 consecutive years, except that an  
3 examination may cover a period of—

4 “(I) more than 4 years if the ex-  
5 amination includes activities subject  
6 to retroactive payments under para-  
7 graph (6);

8 “(II) a period of less than 2  
9 years if—

10 “(aa) the licensee’s license  
11 has been terminated;

12 “(bb) the licensee has de-  
13 faulted in its reporting or pay-  
14 ments under this paragraph; or

15 “(cc) the licensee has termi-  
16 nated or is about to terminate  
17 operations, has filed or indicated  
18 an intent to file for bankruptcy,  
19 or has transferred or indicated  
20 an intent to transfer its assets to  
21 a third party; or

22 “(III) a period of less than 2  
23 years or more than 4 years, if for  
24 other good cause the examination can-



1 not reasonably cover a period of 2 to  
2 4 years.

3 “(iii) At the conclusion of the exam-  
4 ination, the designated agent shall, after  
5 considering any written rebuttal provided  
6 by the licensee during the examination,  
7 provide a written notice to the licensee set-  
8 ting forth the designated agent’s final de-  
9 termination of the claim, if any, resulting  
10 from the examination.

11 “(iv) The designated agent shall bear  
12 the costs of the examination, except that,  
13 if the licensee underpaid royalty fees by 10  
14 percent or more, the licensee shall bear the  
15 reasonable costs of the examination.

16 “(v) A licensee may not assert section  
17 507 of this title or any other Federal or  
18 State statute of limitations, doctrine of  
19 laches or estoppel, or similar provision to  
20 avoid a royalty examination under this  
21 subparagraph, or as a defense to a legal  
22 action arising from such a royalty exam-  
23 ination, if the legal action is commenced  
24 within 18 months after the final deter-  
25 mination by the designated agent of the



1 claim (as stated in the written notice under  
2 clause (iii)) resulting from the examination  
3 that is the basis for such action.

4 “(C) FAILURE TO REPORT OR PAY ROYAL-  
5 TIES.—

6 “(i) IN GENERAL.—If a licensee under  
7 this subsection—

8 “(I) fails to provide a quarterly  
9 report when due or fails to provide a  
10 quarterly report in compliance with  
11 the error tolerance standard, or

12 “(II) fails to make all quarterly  
13 royalty payments when due or fails to  
14 pay royalties due for reported usage,  
15 the designated agent may provide written  
16 notice to the licensee describing the default  
17 under subclause (I) or (II) and providing  
18 that if the default is not remedied within  
19 30 days after receipt of the notice, the li-  
20 cense will automatically terminate upon the  
21 expiration of that 30-day period. Upon  
22 such termination, the licensee will be sub-  
23 ject to an infringement action as provided  
24 in subsection (c)(6) with respect to the





1 uses of the musical works that are the sub-  
2 ject of the default.

3 “(ii) FAILURE WITH RESPECT TO IN-  
4 DIVIDUAL WORK.—

5 “(I) EXCLUSION FROM LI-  
6 CENSE.—If a licensee with an other-  
7 wise valid license under this  
8 subsection—

9 “(aa) has not made the re-  
10 quired reports or royalty pay-  
11 ments under subparagraph (A)(i)  
12 for a musical work covered by the  
13 license, or

14 “(bb) upon being sent writ-  
15 ten notice from the designated  
16 agent of a valid reporting or pay-  
17 ment deficiency with respect to  
18 the use of a musical work, fails  
19 to remedy that deficiency within  
20 the specified cure period,

21 that work is excluded from the scope  
22 of the license until such time as the li-  
23 censee provides all the reports that  
24 are past due, and makes all royalty  
25 payments that are past due, to the



1 designated agent for that work, or the  
 2 designated agent otherwise identifies  
 3 the work, determines the usage of the  
 4 work, and has received from the li-  
 5 censee all royalty payments for the  
 6 work that are past due.

7 “(II) SPECIFIED CURE PE-  
 8 RIOD.—For purposes of subclause  
 9 (I)(bb), the “specified cure period”  
 10 means, with respect to a licensee—

11 “(aa) 90 days, during the  
 12 first 12 month-period in which  
 13 the licensee engages in activities  
 14 under a license under this sub-  
 15 section;

16 “(bb) 60 days, during the  
 17 succeeding 12-month period in  
 18 which a licensee engages in ac-  
 19 tivities under a license under this  
 20 subsection; and

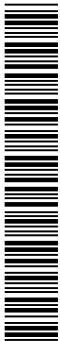
21 “(cc) 30 days, during any  
 22 period thereafter.

23 “(III) EXCEPTION.—If the li-  
 24 censee demonstrates to the designated  
 25 agent with respect to a musical work



1 that is the subject of a notice of defi-  
2 ciency described in subclause (I)(bb)  
3 that the deficiency cannot be remedied  
4 because it is due to missing informa-  
5 tion that, notwithstanding a diligent  
6 search by the licensee, is actually and  
7 objectively unobtainable by the li-  
8 censee from any known source, then  
9 the license shall not be invalidated  
10 with respect to that work, if all royal-  
11 ties due for that work have been paid.

12 “(iii) OBTAINING SUBSEQUENT LI-  
13 CENSES.—A licensee whose license is ter-  
14 minated by a designated agent under  
15 clause (i) and who fully remedies the de-  
16 fault within 60 days after the date on  
17 which the license terminates, may apply for  
18 and obtain a new license from that des-  
19 ignated agent, if, during the 5-year period  
20 ending on the date of such termination, the  
21 licensee has not previously had a license  
22 terminated by the designated agent. In any  
23 other case in which a license is validly ter-  
24 minated by a designated agent, the des-  
25 ignated agent may require the licensee to



1 meet reasonable credit or advance require-  
2 ments or to demonstrate the capability to  
3 report and make royalty payments in com-  
4 pliance with this subsection before obtain-  
5 ing a new license.

6 “(11) DISTRIBUTION OF ROYALTIES, UN-  
7 CLAIMED FUNDS, AND DISPUTE RESOLUTION.—

8 “(A) DISTRIBUTION OF ROYALTIES.—Each  
9 designated agent shall be responsible for dis-  
10 tributing royalties collected from licensees  
11 under this subsection to any copyright owner  
12 whom the designated agent represents and who  
13 has provided the designated agent with suffi-  
14 cient information to identify and pay that copy-  
15 right owner (or the copyright owner’s designee).

16 “(B) UNCLAIMED FUNDS.—

17 “(i) IN GENERAL.—If a designated  
18 agent is unable, after a reasonably diligent  
19 search, to identify or locate a copyright  
20 owner entitled to receive royalties under  
21 subparagraph (A), the designated agent  
22 may deposit the undistributed royalties (in  
23 this subparagraph referred to as ‘un-  
24 claimed funds’) into an unclaimed funds  
25 account that earns interest, accrued

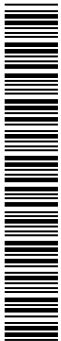


1 monthly, at the Federal short term rate  
2 determined under section 1274(d)(1)(C)(i)  
3 of the Internal Revenue Code of 1986. In-  
4 terest accrued on unclaimed funds shall be  
5 payable to a copyright owner upon dis-  
6 tribution of the unclaimed funds to such  
7 copyright owner.

8 “(ii) HOLDING AND DISTRIBUTION.—

9 “(I) HOLDING.— A designated  
10 agent with unclaimed funds shall hold  
11 the funds for a period of at least 3  
12 years after the date on which the li-  
13 censee paid the funds. The designated  
14 agent shall make reasonably diligent  
15 efforts to publicize the existence of the  
16 unclaimed funds and the procedures  
17 by which copyright owners may claim  
18 such funds from the designated agent.

19 “(II) LICENSING ADMINISTRA-  
20 TIVE COSTS.—At the end of the pe-  
21 riod in which funds are held under  
22 subclause (I), the designated agent  
23 may apply the funds to offset licens-  
24 ing administrative costs.



1                   “(III) DISTRIBUTION OF RE-  
2 MAINDER.—Any unclaimed funds not  
3 applied to offset licensing administra-  
4 tive costs under subclause (II) shall  
5 be distributed as follows:

6                   “(aa) The designated agent  
7 shall pay to every other des-  
8 ignated agent its pro rata share  
9 of the unclaimed funds as deter-  
10 mined on the basis of the propor-  
11 tionate distribution of royalties  
12 by each designated agent to copy-  
13 right owners for the reporting pe-  
14 riods during which the funds  
15 were collected.

16                   “(bb) Each designated agent  
17 shall distribute, on an equitable  
18 basis, its pro rata share of the  
19 unclaimed funds to the copyright  
20 owners that the designated agent  
21 represents under this subsection  
22 (other than those that cannot be  
23 identified or located).

24                   “(iii) PREEMPTION.—This subpara-  
25 graph preempts any State law (including



1 common law) that would otherwise apply  
2 concerning escheatment or abandoned or  
3 unclaimed property.

4 “(C) DISPUTES.—Each designated agent  
5 shall establish a committee that includes an  
6 equal number of—

7 “(i) representatives of music pub-  
8 lishing entities represented by the des-  
9 ignated agent, and

10 “(ii) songwriters with musical works  
11 represented by the designated agent who  
12 are not members of the board of directors,  
13 governing body, or management of the des-  
14 ignated agent,

15 for the purpose of addressing any dispute raised  
16 by a copyright owner relating to the allocation  
17 and payment by the designated agent of royal-  
18 ties to such copyright owner under a license ob-  
19 tained from the designated agent under this  
20 subsection. The dispute resolution process shall  
21 not affect any other legal or equitable rights or  
22 remedies available to any copyright owner or  
23 the designated agent.

24 “(D) PROCEDURES.—The Register of  
25 Copyrights shall establish by regulation the pro-



1           cedures for the holding by a designated agent  
2           of unclaimed funds and royalties paid under  
3           this subsection that are attributable to musical  
4           works that are the subject of a legal dispute or  
5           proceeding. A designated agent that complies  
6           with the requirements of this paragraph and  
7           such regulations shall not be subject to a legal  
8           claim based upon or arising from unclaimed  
9           funds or an ownership dispute or legal pro-  
10          ceeding.

11           “(E) DOCUMENTATION.—A songwriter  
12          whose musical works (or shares thereof) are ad-  
13          ministered by a music publisher for licensing  
14          under this subsection (including those rep-  
15          resented through default representation pursu-  
16          ant to paragraph (9)(E)(iv)) may request from  
17          a designated agent a copy of the relevant por-  
18          tions of any royalty statement that the des-  
19          ignated agent provided, within the preceding 4  
20          calendar years, to that publisher, and that  
21          shows all data provided by the designated agent  
22          to the publisher regarding the use and royalties  
23          distributed to the publisher in connection with  
24          those works (or shares thereof). A designated  
25          agent shall provide the information requested





1 by the songwriter within a reasonable time after  
2 receiving the request. A songwriter may make  
3 such a request of a particular designated agent  
4 not more than once each calendar year.

5 “(F) WITHHOLDING OF INTERIM ROYAL-  
6 TIES.—Each designated agent may withhold  
7 reasonable reserves from the distribution of in-  
8 terim royalties collected under this subsection  
9 to allow for the possibility of a lower final stat-  
10 utory rate. Upon final determination of the  
11 statutory rate, to the extent such reserves are  
12 not required to be returned or credited to the  
13 licensee, the designated agent shall distribute to  
14 copyright owners such reserves with interest.

15 “(12) COST SHARING FEES.—

16 “(A) IN GENERAL.—The Copyright Roy-  
17 alty Judges shall determine, under such proce-  
18 dures as they may establish, an appropriate  
19 cost-sharing mechanism and cost-sharing  
20 amounts to be paid by licensees under this sub-  
21 section to designated agents. Not later than  
22 February 1, 2007, the Copyright Royalty  
23 Judges shall initiate a proceeding to determine,  
24 not later than May 1, 2007, appropriate interim  
25 cost-sharing amounts to apply pending the es-



1           tablishment of final cost-sharing amounts. Any  
2           cost-sharing mechanism or cost-sharing  
3           amounts shall be equitably applied to all des-  
4           ignated agents. In determining a cost-sharing  
5           mechanism or cost-sharing amount under this  
6           paragraph, the Copyright Royalty Judges shall  
7           consider—

8                   “(i)(I) the actual, reasonable costs of  
9                   creating and maintaining an infrastructure  
10                  for activities of designated agents under  
11                  this subsection;

12                  “(II) any nonmonetary contributions  
13                  by the parties to such infrastructures, in-  
14                  cluding contributions of data and services;

15                  “(III) the actual, reasonable costs to  
16                  designated agents specifically associated  
17                  with the administration of licenses under  
18                  this subsection;

19                  “(IV) the nature and value of any col-  
20                  lateral benefits that any party may realize  
21                  from the blanket license and blanket li-  
22                  cense system created by this subsection;  
23                  and

24                  “(V) any other factors deemed rel-  
25                  evant by the Copyright Royalty Judges.



1           “(B) COST-SHARING NOT A FACTOR IN  
2 ROYALTY RATES.—The Copyright Royalty  
3 Judges, in establishing royalty rates for statu-  
4 tory licenses, may not take into account the  
5 cost-sharing mechanism or cost-sharing  
6 amounts under subparagraph (A).

7           “(13) EXCLUSION FROM BLANKET LICENSES.—

8           “(A) IN GENERAL.—A sound recording  
9 company may, by written notice to the appro-  
10 priate designated agent, exclude a musical work  
11 from a compulsory license under paragraph (2)  
12 if the musical work is the subject of a contract  
13 described in subsection (c)(3)(E)(ii).

14           “(B) EXCLUSION ERRORS.—

15           “(i) NOT EXCLUDED.—In any case in  
16 which a musical work could have been ex-  
17 cluded pursuant to subparagraph (A) but  
18 was not due to uncertainty concerning  
19 ownership of the copyright of the musical  
20 work or the application of a contract de-  
21 scribed in subsection (c)(3)(E)(ii), or in  
22 any case in which a digital music provider  
23 makes payments to a designated agent for  
24 use of a musical work excluded under sub-  
25 paragraph (A), the designated agent shall



1 make payments to the appropriate person  
2 as if the exclusion under subparagraph (A)  
3 had applied on the date of the enactment  
4 of the Section 115 Reform Act of 2006,  
5 unless an agreement between the des-  
6 ignated agent and the appropriate person  
7 provides otherwise.

8 “(ii) EXCLUDED.—In any case in  
9 which a musical work was excluded pursu-  
10 ant to subparagraph (A) in error—

11 “(I) a sound recording company  
12 acting in good faith with regards to  
13 the exclusion shall only be liable for  
14 the payment of amounts that other-  
15 wise would have been payable under  
16 this subsection plus interest as de-  
17 scribed in (10)(A)(iii)(II); and

18 “(II) a licensee acting in good  
19 faith with regards to the exclusion  
20 shall not be liable.

21 “(14) DEFINITIONS.—In this subsection:

22 “(A) ADMINISTRATIVE FEES.—The term  
23 ‘administrative fees’ means any fees that are  
24 collected or deducted by a designated agent to



1 cover licensing administrative costs or other ad-  
2 ministrative costs.

3 “(B) COPYRIGHT OWNER.—The term  
4 ‘copyright owner’ means a natural person or le-  
5 gally recognized entity that owns or controls an  
6 interest in one or more copyrighted nondra-  
7 matic musical works subject to licensing under  
8 this section.

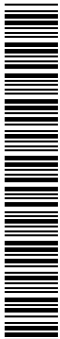
9 “(C) DIGITAL MUSIC PROVIDER.—The  
10 term ‘digital music provider’ means a person  
11 that—

12 “(i) with respect to a service engaging  
13 in activities licensed under this  
14 subsection—

15 “(I) contracts with or has a di-  
16 rect economic relationship with the  
17 end users of the service, and controls  
18 what end users pay for the service;

19 “(II) controls how content is  
20 bundled and offered through the serv-  
21 ice;

22 “(III) is able to fully report on  
23 all revenues and consideration gen-  
24 erated by the service; and



1                   “(IV) is able to fully report on all  
2                   elements of music usage by the service  
3                   (or procure such reporting); or

4                   “(ii) makes and distributes a hybrid  
5                   offering.

6                   “(D) ERROR TOLERANCE STANDARD.—  
7                   The term ‘error tolerance standard’ means the  
8                   maximum percentage, of all data that a licensee  
9                   is required to report under this subsection  
10                  under its license in any statutory reporting pe-  
11                  riod, that is permitted to be inaccurate,  
12                  unreadable, or missing, or any combination  
13                  thereof, as determined under regulations issued  
14                  to carry out this subsection.

15                  “(E) FULL DOWNLOAD.—The term ‘full  
16                  download’ means a digital phonorecord delivery  
17                  of a sound recording of a musical work that is  
18                  not limited in availability for listening by the  
19                  end user either to a period of time or a number  
20                  of times the sound recording can be played.

21                  “(F) HYBRID OFFERING.—The term ‘hy-  
22                  brid offering’ means a reproduction or distribu-  
23                  tion of a phonorecord in physical form subject  
24                  to a compulsory license under this section  
25                  where—



1           “(i) a digital transmission of data by  
2           or under the authority of the licensee is re-  
3           quired to render the sound recording em-  
4           bodied on the phonorecord audible to the  
5           end user or to enable the continued ren-  
6           dering of the sound recording after a finite  
7           period of time or a specified number of  
8           times rendered; or

9           “(ii) the phonorecord is made by or  
10          under the authority of the licensee at the  
11          request of a user for distribution to that  
12          user or the user’s designee.

13          “(G) INTERACTIVE STREAM.—The term  
14          ‘interactive stream’—

15               “(i) means a stream of a sound re-  
16               cording of a musical work that does not  
17               qualify for a statutory license under sec-  
18               tion 114(d)(2) with respect to the sound  
19               recording embodied therein; and

20               “(ii) subject to clause (i), includes a  
21               stream of a particular sound recording of  
22               a musical work that an end user has se-  
23               lected, and is transmitted to such end user,  
24               to listen to at or substantially at the time  
25               of making such selection or at some future



1 time, whether or not as a part of a pro-  
2 gram specially created for the end user.

3 “(H) LICENSING ADMINISTRATIVE  
4 COSTS.—The term ‘licensing administrative  
5 costs’ means the actual costs to a designated  
6 agent that are attributable to the issuance and  
7 administration of licenses under this subsection,  
8 including—

9 “(i) costs in connection with the col-  
10 lection and distribution of royalties under  
11 this subsection;

12 “(ii) the costs of identifying and locat-  
13 ing copyright owners and administering a  
14 claims system for unidentified copyright  
15 owners;

16 “(iii) the costs of royalty examinations  
17 and other royalty compliance efforts; and

18 “(iv) the costs of creating and main-  
19 taining an infrastructure for the activities  
20 described in clauses (i), (ii), and (iii).

21 “(I) LIMITED DOWNLOAD.—the term ‘lim-  
22 ited download’ means a digital phonorecord de-  
23 livery of a sound recording of a musical work  
24 that is only available for listening for—





1           “(i) a definite period of time (includ-  
2           ing a period of time defined by ongoing  
3           subscription payments made by an end  
4           user); or

5           “(ii) a specified number of times.

6           “(J) NONINTERACTIVE STREAMING.—The  
7           term ‘noninteractive streaming’ means the  
8           radio-style streaming of sound recordings of  
9           musical works for which a statutory license is  
10          available with respect to the sound recordings  
11          under section 114(d)(2).

12          “(K) OTHER ADMINISTRATIVE COSTS.—  
13          The term ‘Other administrative costs’ means all  
14          expenses, expenditures, retained earnings, and  
15          reserves of a designated agent, other than li-  
16          censing administrative costs, that are author-  
17          ized by the board of directors of the designated  
18          agent.

19          “(L) SONGWRITER.—The term ‘songwriter’  
20          means the author of a musical work.

21          “(M) SOUND RECORDING COMPANY.—The  
22          term ‘sound recording company’ means a per-  
23          son who is—

24                 “(i) a copyright owner or who has  
25                 similar rights to a sound recording of a



1 musical work under the common law or  
2 statues of any State with respect to a  
3 sound recording fixed before February 15,  
4 1972;

5 “(ii) an exclusive licensee of a sound  
6 recording of a musical work; or

7 “(iii) performing the functions of mar-  
8 keting and authorizing the distribution of  
9 a sound recording of a musical work under  
10 the authority of the copyright owner of the  
11 musical work.

12 “(N) STREAM.—(i) The term ‘stream’  
13 means the digital transmission of a sound re-  
14 cording embodying a musical work for one-time  
15 listening by the end user using technology such  
16 that the transmission is not intended or de-  
17 signed to result in a substantially complete re-  
18 production of the sound recording, other than  
19 an incidental reproduction made in the normal  
20 course of such activity, including a cached, net-  
21 work, or RAM buffer reproduction, to permit  
22 such one-time listening.

23 “(ii) The term ‘streaming’ means the proc-  
24 ess of making and distributing streams.



1           “(15) REGULATIONS.—The Register of Copy-  
2 rights shall issue such regulations as are necessary  
3 to carry out this subsection, including—

4           “(A) specifying the requirements and pro-  
5 cedures for reporting and making payments,  
6 and conducting royalty compliance examina-  
7 tions, under paragraph (10);

8           “(B) specifying the procedures for expe-  
9 dited proceedings under paragraph  
10 (8)(D)(ii)(II)(bb);

11           “(C) specifying the form of a letter of di-  
12 rection under paragraph (9)(I)(i); and

13           “(D) facilitating exclusions from the blan-  
14 ket license under paragraph (13).”.

15 **SEC. 3. PERFORMANCE RIGHT PRESERVED.**

16       Section 115 of title 17, United States Code, is  
17 amended by adding at the end the following new sub-  
18 section:

19       “(f) PERFORMANCE RIGHT PRESERVED.—The rights  
20 granted under subsection (e) shall not include, limit, or  
21 otherwise affect any right of public performance of a musi-  
22 cal work. The third sentence of subsection (e)(9)(E)(v)  
23 and the definitions contained in paragraph (14) of sub-  
24 section (e) shall not be taken into account in any adminis-  
25 trative, judicial, or other governmental proceeding to set



1 or adjust the royalties payable to copyright owners of mu-  
2 sical works for, the right of public performance of their  
3 works.”.

4 **SEC. 4. INTERIM RATE PROCESS.**

5 Section 115(e) of title 17, United States Code, is  
6 amended by adding at the end the following new para-  
7 graph:

8 “(7) INTERIM RATES.—

9 “(A) IN GENERAL.—For any activity for  
10 which a license is available under this section,  
11 other than an activity for which a license is  
12 available under subsection (e), for which a rate  
13 and terms have not been determined, any per-  
14 son shall, upon serving notice to the copyright  
15 owner, have a license under this subsection to  
16 engage in the activity, subject to subparagraph  
17 (B).

18 “(B) INTERIM RATES.—Upon the filing of  
19 an application under subparagraph (A)—

20 “(i) the parties may negotiate an in-  
21 terim rate and terms that will apply to the  
22 activity under the license; or

23 “(ii) either party or both parties may  
24 apply to the Copyright Royalty Judges for  
25 an interim rate and terms, in which case—



1                   “(I) the Copyright Royalty  
2 Judges shall, not later than 15 days  
3 after the application is made, publish  
4 notice of an expedited proceeding to  
5 determine the interim rate and terms;  
6 and

7                   “(II) the Judges shall determine  
8 the interim rate and terms not less  
9 than 30 days and not more than 60  
10 days after publishing the notice,  
11 through the expedited proceeding.

12                   “(C) APPLICABILITY OF INTERIM  
13 RATES.—(i) Interim rates and terms negotiated  
14 under subparagraph (B)(i) or established under  
15 subparagraph (B)(ii) shall apply to the activity  
16 under the license concerned until a rate and  
17 terms for the activity are determined under  
18 paragraph (3)(C) and chapter 8, or as other-  
19 wise agreed by the parties.

20                   “(ii) Interim rates and terms described in  
21 subparagraph (A) with respect to an activity by  
22 an applicant shall not be treated as precedent  
23 in a final ratemaking proceeding. If the Copy-  
24 right Royalty Judges have established an in-  
25 terim rate and terms under subparagraph



1 (B)(ii), subject to subparagraph (D), that rate  
2 and those terms shall apply to the same activity  
3 engaged in by any person, except as otherwise  
4 agreed to by the parties.

5 “(D) SINGLE PROCEEDING FOR EACH AC-  
6 TIVITY.—Unless the Copyright Royalty Judges  
7 determine that there is good cause to review an  
8 interim rate or terms established under sub-  
9 paragraph (B)(ii), the Copyright Royalty  
10 Judges may conduct only 1 proceeding to deter-  
11 mine an interim rate and terms for an activity  
12 for which a license is available under this sub-  
13 section.

14 “(E) ADJUSTMENT OF INTERIM RATES.—  
15 After a final determination of rates and terms  
16 that will apply to an activity for which a license  
17 is available under this subsection has been  
18 made under paragraph (3)(C) and chapter 8,  
19 the final rate and terms shall be retroactive to  
20 the inception of the activity under a license be-  
21 tween a person and a copyright owner to which  
22 the rate and terms apply, unless an agreement  
23 between the parties to the license provides oth-  
24 erwise. Not later than 60 days after the deter-



1 mination of the final rate and terms becomes  
2 effective—

3 “(i) the person shall pay to the copy-  
4 right owner any amounts due from under-  
5 payment of fees by the person because the  
6 final rate exceeds the interim rate; or

7 “(ii) the copyright owner shall refund  
8 to the person the amounts of any overpay-  
9 ment of fees by the person because the in-  
10 terim rate exceed the final rate, or, at the  
11 election of the person, the copyright owner  
12 shall credit such overpayment against fu-  
13 ture payments by the person to the copy-  
14 right owner under this subsection.”.

15 **SEC. 5. TECHNICAL AMENDMENTS.**

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

18 (1) in the first sentence, by striking “As used”  
19 and inserting by adding at the end the following: “.”

20 “(1) IN GENERAL.—As used”;

21 (2) by moving the remaining text 2 ems to the  
22 right; and

23 (3) by adding at the end the following:

24 “(2) INCLUDED ACTIVITIES.—The term ‘digital  
25 phonorecord delivery’ includes—



1           “(A) an interactive stream (as such term is  
2 defined in subsection (e)(16)(F)) of nondra-  
3 matic musical works; and

4           “(B) server and incidental reproductions of  
5 nondramatic musical works made to facilitate  
6 the deliveries of phonorecords by digital trans-  
7 mission described in subparagraph (A) and  
8 paragraph (1).”.

9           (b) CONFORMING AMENDMENTS.—Section 115(c) of  
10 title 17, United States Code, is amended—

11           (1) in paragraph (3)—

12           (A) in the first sentence of subparagraph  
13 (A), by striking “or authorize the distribution  
14 of”;

15           (B) in subparagraph (C), by striking  
16 “Such terms and rates shall distinguish” and  
17 all that follows through the end of the sentence;  
18 and

19           (C) in subparagraph (D), by striking  
20 “Such terms and rates shall distinguish” and  
21 all that follows through the end of the sentence;

22 and

23           (2) in paragraph (5)—





1 (A) by striking “(5) Royalty payments”  
2 and inserting “(5)(A) Subject to subparagraph  
3 (B), royalty payments”; and

4 (B) by adding at the end the following:

5 “(B) Payments under the license provided for  
6 under subsection (e) shall be governed by that sub-  
7 section in lieu of subparagraph (A).”.

8 **SEC. 6. EFFECTIVE DATE.**

9 (a) IN GENERAL.—Subject to subsection (b), this Act  
10 and the amendments made by this Act take effect on the  
11 date of the enactment of this Act.

12 (b) DELAY OF LICENSES.—No license under sub-  
13 section (e) of section 115 of title 17, United States Code,  
14 may take effect before January 1, 2008.

15 **SEC. 7. SAVINGS CLAUSES.**

16 (a) LICENSE NOT REQUIRED.—This Act and the  
17 amendments made by this Act shall not be construed to  
18 indicate whether an activity for which a license under sec-  
19 tion 115 of title 17, United States Code, is available, if  
20 not licensed or otherwise authorized by the copyright  
21 owner, would constitute an act of copyright infringement.

22 (b) FAIR USE.—Nothing in this Act shall affect any  
23 right, limitation, or defense to copyright infringement, in-  
24 cluding fair use, under title 17, United States Code.

