

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> 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 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”.

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

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



1       “(e) LICENSES FOR DIGITAL USES OF MUSICAL  
2 WORKS.—

3               “(1) IN GENERAL.—Subject to paragraph (13),  
4 the compulsory license for digital phonorecord deliv-  
5 eries shall be governed by this subsection, in addi-  
6 tion to subsections (a), (c), and (d). The license  
7 under this subsection covers—

8               “(A) the making and distribution of digital  
9 phonorecord deliveries in the form of full  
10 downloads, limited downloads, interactive  
11 streams, [and any other form constituting a  
12 digital phonorecord delivery]; and

13               “(B) all reproduction and distribution  
14 rights necessary to engage in activities de-  
15 scribed in subparagraph (A), solely for the pur-  
16 pose of engaging in such activities, including—

17                       “(i) the making of reproductions by  
18 and for end users;

19                       “(ii) reproductions made on servers  
20 owned or controlled by the licensee; and

21                       “(iii) incidental reproductions made in  
22 the normal course of engaging in activities  
23 described in subparagraph (A), including  
24 cached, network, and RAM buffer repro-  
25 ductions.



1           “(2) BLANKET LICENSES.—A person may ob-  
2           tain a compulsory license to engage in activities sub-  
3           ject to this subsection only from a designated agent  
4           under paragraph (4) and only if the person is a dig-  
5           ital music provider. A person may engage in activi-  
6           ties subject to this subsection under authority of a  
7           compulsory license only—

8                   “(A) if such license was obtained by a dig-  
9                   ital music provider; and

10                   “(B) with respect to end users with which  
11                   such digital music provider contracts or has a  
12                   direct economic relationship.

13           “(3) ROYALTY-FREE LICENSE.—

14                   “(A) IN GENERAL.—A compulsory license  
15                   shall be available for the making of server and  
16                   incidental reproductions to facilitate noninter-  
17                   active streaming.

18                   “(B) ACTIVITIES COVERED.—Each des-  
19                   ignated agent shall grant a license under this  
20                   subsection for the making of server and inci-  
21                   dental reproductions to facilitate noninteractive  
22                   streaming at a royalty-free rate. The designated  
23                   agent may charge only a filing fee in an amount  
24                   not to exceed the actual reasonable costs of ad-  
25                   ministering the issuance of the license. The li-



1           cense shall cover reproductions made on servers  
2           under authority of the licensee and incidental  
3           reproductions made in the course of the non-  
4           interactive streaming provided by the licensee,  
5           including cached, network, and RAM buffer re-  
6           productions, to the extent reasonably necessary  
7           for, and solely for the purpose of, engaging in  
8           noninteractive streaming in a technologically  
9           reasonable and efficient matter.

10           “(C) EXCLUDED ACTIVITIES.—The license  
11           under subparagraph (A) does not extend to any  
12           server or incidental reproductions used to en-  
13           able a streaming service (or any other type of  
14           service) that takes affirmative steps to author-  
15           ize, enable, cause, or induce the making of re-  
16           productions of musical works by or for end  
17           users that are accessible by such end users for  
18           future listening, unless a valid license [for re-  
19           production and distribution rights] has other-  
20           wise been obtained by such service for such ac-  
21           tivity.

22           “(4) APPLICATIONS FOR LICENSES.—Any dig-  
23           ital music provider seeking a license under this sub-  
24           section may apply to a designated agent for the li-  
25           cense, identifying in the application each type of ac-



1 tivity for which the license is sought. Any digital  
2 music provider that has a license under this sub-  
3 section and seeks to engage in any activity covered  
4 by this subsection that is not identified in the license  
5 may engage in that activity only after filing a new  
6 application identifying such additional activity.

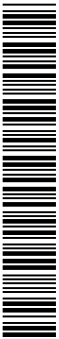
7 “(5) LICENSES.—A designated agent shall  
8 grant a license for all activities specified in an appli-  
9 cation filed under paragraph (4) for which a license  
10 is available under this subsection. The license shall  
11 be effective, upon the filing of the application, for all  
12 copyrighted nondramatic musical works (or portions  
13 of such musical works) represented by the des-  
14 ignated agent.

15 “(6) RETROACTIVE ROYALTY PAYMENTS.—

16 “(A) RETROACTIVE PAYMENTS.—During  
17 the period described in subparagraph (B), a  
18 digital music provider that has obtained a li-  
19 cense from a designated agent under this sub-  
20 section for—

21 “(i) the making and distribution of  
22 limited downloads, or

23 “(ii) the making or distribution of  
24 interactive streams,



1 may report to the designated agent activity au-  
2 thorized by the license that the digital music  
3 provider engaged in during the period beginning  
4 January 1, 2001, and ending on the effective  
5 date of the license, and pay to the designated  
6 agent royalties applicable to that activity. Such  
7 reporting and payments shall be made in ac-  
8 cordance with the regulations issued under  
9 paragraph (10) regarding reporting and pay-  
10 ments.

11 “(B) PERIOD DESCRIBED.—The period re-  
12 ferred to in subparagraph (A) for reporting and  
13 payment is the period beginning on the effective  
14 date of the Section 115 Reform Act of 2006  
15 and ending on the later of the date that is—

16 “(i) 1 year after such effective date;

17 or

18 “(ii) 6 months after the effective date

19 of—

20 “(I) the first interim rate estab-  
21 lished by the Copyright Royalty  
22 Judges under paragraph (8)(D)(ii)(II)  
23 for the activity described in clause (i)  
24 or (ii) of subparagraph (A), as the  
25 case may be, or



1                   “(II) the first final statutory roy-  
2                   alty rate established by the Copyright  
3                   Royalty Board for the activity de-  
4                   scribed in clause (i) or (ii) of subpara-  
5                   graph (A),

6                   whichever occurs first.

7                   “(C) LIMITATION ON LIABILITY.—A digital  
8                   music provider that reports activity and makes  
9                   payments under this paragraph shall not be  
10                  subject to an action for copyright infringement  
11                  [alleging violation of reproduction or distribu-  
12                  tion rights] to the extent such action is based  
13                  on activity so reported for which payment has  
14                  been made.

15                  “(7) LICENSE NOT TRANSFERABLE.—A license  
16                  granted to a digital music provider under this sub-  
17                  section may not be transferred to any other person  
18                  or entity.

19                  “(8) ROYALTY RATES.—

20                  “(A) IN GENERAL.—Except as provided in  
21                  this paragraph, the Copyright Royalty Judges  
22                  shall determine reasonable rates and terms for  
23                  digital phonorecord deliveries as provided under  
24                  subsection (c) and chapter 8, except for server  
25                  and incidental reproductions for noninteractive



1 streaming that are eligible for royalty-free li-  
2 censes under this subsection.

3 “(B) RATES IN EFFECT.—Rates in effect  
4 under subsection (c) on the effective date of the  
5 Section 115 Reform Act of 2006 for any activ-  
6 ity for which a license is available under this  
7 section shall continue to apply to that activity  
8 on and after that date until a new rate is deter-  
9 mined under subsection (c) and chapter 8.

10 “(C) RATES FOR NEW LICENSE ACTIVI-  
11 TIES.—

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

20 “(I) rates have not been estab-  
21 lished for the activity; or

22 “(II) the activity is not the sub-  
23 ject of a proceeding to set final rates  
24 under subsection (c) that is pending



1 before the Copyright Royalty Judges  
2 on the effective date of that Act.

3 “(ii) PENDING PROCEEDINGS.—In  
4 any case in which a proceeding is pending  
5 before the Copyright Royalty Judges, on  
6 the effective date of the Section 115 Re-  
7 form Act of 2006, to determine final rates  
8 and terms under subsection (c), the Copy-  
9 right Royalty Judges may expand the pro-  
10 ceeding to cover rates and terms for any  
11 activity described in clause (i), in lieu of  
12 initiating a proceeding under clause (i)  
13 with respect to that activity, if so expand-  
14 ing the proceeding will not unduly preju-  
15 dice any party to the proceeding.

16 “(iii) PARTICIPATION OF DESIGNATED  
17 AGENTS.—All designated agents, and any  
18 copyright owners and users of copyrighted  
19 works who have a significant interest,  
20 within the meaning of section 804(a), in  
21 the applicable royalty rate, are entitled to  
22 participate in a proceeding under this sub-  
23 paragraph relating to activities licensed  
24 under this subsection.

25 “(D) INTERIM RATES.—



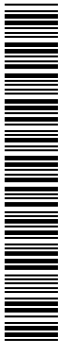
1           “(i) IN GENERAL.—For any activity  
2 for which a license is available under this  
3 subsection and for which a rate has not  
4 been determined under subsection (c), a  
5 digital music provider shall, upon filing a  
6 valid application with the relevant des-  
7 ignated agent, have a license under this  
8 subsection to engage in the activity, sub-  
9 ject to clause (ii).

10           “(ii) INTERIM RATES.—Upon the fil-  
11 ing of an application under clause (i)—

12           “(I) the digital music provider  
13 and the designated agent may nego-  
14 tiate an interim rate that will apply to  
15 the activity under the license; or

16           “(II) the digital music provider  
17 or the designated agent, or both, may  
18 apply to the Copyright Royalty  
19 Judges for an interim rate, in which  
20 case—

21           “(aa) the Copyright Royalty  
22 Judges shall, not later than 15  
23 days after the application is  
24 made, publish notice of an expe-



1 dited proceeding to determine the  
2 interim rate; and

3 “(bb) the Judges shall de-  
4 termine the interim rate not less  
5 than 30 days and not more than  
6 60 days after publishing the no-  
7 tice, through the expedited pro-  
8 ceeding.

9 “(iii) APPLICABILITY OF INTERIM  
10 RATES.—(I) Interim rates negotiated  
11 under clause (ii)(I) or established under  
12 clause (ii)(II) shall apply to the activity  
13 under the license concerned until a rate for  
14 the activity is determined under subpara-  
15 graph (C), or as otherwise agreed by the  
16 parties.

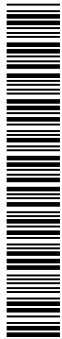
17 “(II) Interim rates described in clause  
18 (i) with respect to an activity by a digital  
19 music provider shall not be treated as  
20 precedent in a final ratemaking pro-  
21 ceeding. If the Copyright Royalty Judges  
22 have established an interim rate under  
23 clause (ii)(II), subject to clause (iv), that  
24 rate shall apply to the same activity en-



1 gaged in by any digital music provider, ex-  
2 cept as otherwise agreed to by the parties.

3 “(iv) SINGLE PROCEEDING FOR EACH  
4 ACTIVITY.—Unless the Copyright Royalty  
5 Judges determine that there is good cause  
6 to review an interim rate established under  
7 clause (ii)(II), the Judges may conduct  
8 only 1 proceeding to determined an interim  
9 rate for an activity for which a license is  
10 available under this subsection.

11 “(v) ADJUSTMENT OF INTERIM  
12 RATES.—After a final determination of  
13 rates that will apply to an activity for  
14 which a license is available under this sub-  
15 section has been made under subparagraph  
16 (C), any difference between the final rate  
17 and an interim rate determined under  
18 clause (ii) with respect to a license between  
19 a digital music provider and a designated  
20 agent shall be retroactive to the date on  
21 which the license was first effective under  
22 clause (i), unless an agreement between  
23 the parties to the license provides other-  
24 wise. Not later than 60 days after the de-



1 termination of the final rate becomes  
2 effective—

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

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

20 “(9) DESIGNATED AGENTS.—

21 “(A) IN GENERAL.—Designated agents  
22 under this subsection are the General Des-  
23 ignated Agent and additional designated agents.

24 “(B) GENERAL DESIGNATED AGENT.—



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

13           “(II) The General Designated Agent  
14          shall grant and administer licenses and col-  
15          lect and distribute royalties payable for the  
16          use of musical works licensed under this  
17          subsection.

18           “(III) The General Designated Agent  
19          shall be governed by a board of directors  
20          consisting of representatives of at least 5  
21          music publishing entities.

22           “(ii) DECERTIFICATION.—The Reg-  
23          ister of Copyrights may disqualify the Gen-  
24          eral Designated Agent upon a showing  
25          that it fails to meet the qualifications



1 under this subparagraph or otherwise fails  
2 to meet the requirements under this para-  
3 graph. In such a case, the Register of  
4 Copyrights shall designate another General  
5 Designated Agent that most closely meets  
6 the requirements of clause (i)(I).

7 “(C) ADDITIONAL DESIGNATED AGENTS.—

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

14 “(I) upon certification, it will  
15 represent music publishing entities  
16 that represent at least a 15 percent  
17 share of the music publishing market,  
18 as measured by the amount of royal-  
19 ties collected during the preceding 3  
20 full calendar years with respect to the  
21 use of copyrighted musical works pur-  
22 suant to this section; and

23 “(II) it has the capability to per-  
24 form the required functions of a des-  
25 ignated agent under this subsection.



1           “(ii) DUTIES.—(I) Upon certification  
2           under clause (i), an additional designated  
3           agent shall represent any copyright owners  
4           of musical works who elect to have the ad-  
5           ditional designated agent represent them  
6           and the musical works (or portions of mu-  
7           sical works) owned or controlled by such  
8           copyright owners for purposes of the li-  
9           censes under this subsection.

10           “(II) Each additional designated  
11           agent shall notify the General Designated  
12           Agent and any other additional designated  
13           agent of each copyright owner, and the  
14           musical works (or portions of musical  
15           works) owned or controlled by the copy-  
16           right owner, that the additional designated  
17           agent represents pursuant to subclause (I).

18           “(III) Any election under subclause  
19           (I) is effective only if it is made in writing,  
20           a copy of which shall be made available to  
21           any other designated agent upon a reason-  
22           able request therefor.

23           “(iii) DECERTIFICATION.—The Reg-  
24           ister of Copyrights may remove the certifi-  
25           cation of any additional designated agent



1 upon a showing that it fails to meet the  
2 qualifications under this subparagraph or  
3 otherwise fails to meet the requirements  
4 under this paragraph.

5 “(D) ADDITIONAL AUTHORITIES OF DES-  
6 IGNATED AGENTS.—A designated agent may—

7 “(i) engage in such additional activi-  
8 ties in the interest of music publishers and  
9 songwriters as the designated agent con-  
10 sidered appropriate, including industry ne-  
11 gotiations, ratesetting proceedings, litiga-  
12 tion, and legislative efforts; and

13 “(ii) apply any administrative fees or  
14 other funds it collects to support such ad-  
15 ditional activities.

16 “(E) ELECTIONS BY COPYRIGHT OWN-  
17 ERS.—

18 “(i) REPRESENTATION BY SINGLE  
19 DESIGNATED AGENT.—Each copyright  
20 owner may choose only one designated  
21 agent (which may be the General Des-  
22 ignated Agent) to represent the copyright  
23 owner, and the musical works (or portions  
24 of musical works) that the copyright owner  
25 owns or controls, during any calendar year.

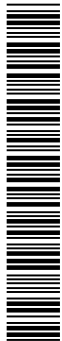


1           “(ii) ANNUAL ENROLLMENT PE-  
2           RIOD.—

3                   “(I) IN GENERAL.—Each copy-  
4                   right owner may, during the month of  
5                   September of each year, elect to  
6                   change the designated agent to rep-  
7                   resent the owner and the musical  
8                   works (or portions) referred to in  
9                   clause (i), beginning on January 1 of  
10                  the succeeding calendar year.

11                   [“(II) SELECTION.—A copyright  
12                   owner may only choose a single des-  
13                   ignated agent during the month of  
14                   September of each year. If such des-  
15                   ignated agent is not certified pursuant  
16                   to subparagraph (C)(i) or is decerti-  
17                   fied pursuant to subparagraph  
18                   (C)(iii), the copyright owner and the  
19                   musical works (or portions) referred  
20                   to in clause (i) shall be represented by  
21                   the General Designated Agent for the  
22                   succeeding calendar year.]

23                   “(iii) EFFECT ON LICENSES.—A des-  
24                   ignated agent’s representation of the musi-  
25                   cal works (and portions of musical works)



1 of any copyright owner who elects to  
2 change designated agents under clause (ii)  
3 shall terminate on December 31 of the  
4 year in which the election is made, after  
5 which the musical works (and portions of  
6 musical works) of the copyright owner will  
7 become subject to the licenses in effect  
8 with the designated agent selected under  
9 clause (ii).

10 “(iv) DEFAULT REPRESENTATION BY  
11 GENERAL DESIGNATED AGENT.—If a copy-  
12 right owner does not choose to be rep-  
13 resented by an additional designated agent,  
14 the General Designated Agent shall rep-  
15 resent the copyright owner and musical  
16 works (or portions of musical works)  
17 owned or controlled by the copyright  
18 owner.

19 “(v) VOLUNTARY AGREEMENTS.—A  
20 copyright owner and a digital music pro-  
21 vider may enter into a voluntary license  
22 agreement pursuant to subsection  
23 (c)(3)(E)(i) to cover activities licensed  
24 under this subsection. Any such agreement  
25 shall cover all musical works (and portions



1 of musical works) owned or controlled by  
2 the copyright owner and all activities under  
3 this subsection engaged in by the digital  
4 music provider during the period the  
5 agreement is in effect. The Register of  
6 Copyrights shall establish procedures by  
7 which copyright owners and licensees shall  
8 notify designated agents of the existence of  
9 a voluntary license agreement.

10 “(F) NOTICE OF DESIGNATION OF DES-  
11 IGNATED AGENTS.—At least 90 days before be-  
12 ginning operations, the General Designated  
13 Agent and each additional designated agent  
14 shall file with the Copyright Office a notice of  
15 designation as a designated agent under this  
16 subsection. The notice shall contain such con-  
17 tact information, and such information con-  
18 cerning applications for licenses under this sub-  
19 section and access to the electronic database of  
20 the designated agent (described in subpara-  
21 graph (H)(i)) identifying musical works (or por-  
22 tions of musical works) represented by the des-  
23 igned agent, as required in regulations issued  
24 to carry out this subsection. The Copyright Of-



1           fice shall publish each notice filed under this  
2           subparagraph in the Federal Register.

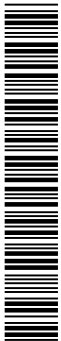
3           “(G)   TERMINATION   OF   DESIGNATED  
4           AGENT.—

5           “(i)   NOTICE   AND   TRANSFER   OF  
6           RECORDS.—At least 180 days before termi-  
7           nating operations, a designated agent  
8           shall—

9                   “(I) notify the Copyright Office,  
10                   all of its licensees under this sub-  
11                   section, and all other designated  
12                   agents of its intent to terminate oper-  
13                   ations; and

14                   “(II) transfer electronic and  
15                   other copies of all relevant records to  
16                   the existing General Designated Agent  
17                   or, in the case of the termination of  
18                   the General Designated Agent, to the  
19                   successor General Designated Agent.

20           “(ii)   ASSUMPTION   OF   DUTIES   BY  
21           GDA.—Upon the termination of operations  
22           of a designated agent, the General Des-  
23           ignated Agent or successor General Des-  
24           ignated Agent, as the case may be, shall  
25           assume the administration of the musical



1 works and rights previously administered  
2 by the terminated designated agent, re-  
3 gardless of whether the terminated agent  
4 has complied with clause (i).

5 “(H) MUSICAL WORKS DATA.—

6 “(i) AVAILABILITY.—The General  
7 Designated Agent and each additional des-  
8 ignated agent shall maintain and make  
9 available to licensees, free of charge, a  
10 searchable electronic database of informa-  
11 tion from which licensees can determine  
12 which musical works (or portions of musi-  
13 cal works) are available for licensing under  
14 this subsection through that designated  
15 agent. The General Designated Agent and  
16 each additional designated agent shall also  
17 make such database available to the gen-  
18 eral public to access information on spe-  
19 cific musical works, free of charge. Any  
20 musical work (or portions of a musical  
21 work) not identified as being represented  
22 by the General Designated Agent or any  
23 additional designated agent in any such  
24 database may be presumed by licensees to



1 be represented by the General Designated  
2 Agent.

3 “(ii) USE OF DATABASE.—The data-  
4 base required by clause (i) may be used  
5 only for purposes of determining the iden-  
6 tity and availability of musical works for li-  
7 censes under this subsection, obtaining  
8 such licenses, reporting of use of musical  
9 works, payment of royalties, and otherwise  
10 to comply with licenses under this sub-  
11 section. The use of any such database shall  
12 be subject to reasonable confidentiality and  
13 security standards prescribed in regula-  
14 tions issued to carry out this subsection.

15 “(10) ROYALTY REPORTING AND COMPLI-  
16 ANCE.—

17 “(A) REQUIREMENTS.—

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

25 “(ii) LIMITATION ON DISCLOSURE.—



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

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

17                   “(aa) on a confidential  
18 basis, to the legal and financial  
19 advisors of the designated agent  
20 or to an accountant or auditor  
21 rendering services relating to this  
22 subsection; or

23                   “(bb) [on a confidential  
24 basis,] to the extent necessary in



1 connection with a bona fide dis-  
2 pute or legal claim or proceeding.

3 “(iii) INTEREST.—

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

21 [“(II) DEFINITION.—In this  
22 clause, the term ‘Federal funds rate’  
23 means the interest rate established by  
24 the Federal Reserve at which deposi-  
25 tory institutions lend balances at the



1 Federal Reserve to other depository  
 2 institutions overnight. The Federal  
 3 funds rate for any 1-month period  
 4 during which interest accrues under  
 5 clause (i) is the Federal funds rate in  
 6 effect on the first day of that 1-month  
 7 period.]

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

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

20 “(ii) The examination may begin only  
 21 within 18 months after the end of the pe-  
 22 riod being examined and may only cover a  
 23 period of not less than 2 and not more  
 24 than 4 consecutive years, except that an



1 examination may cover a period of less  
2 than 2 years if—

3 “(I) the licensee’s license has  
4 been terminated;

5 “(II) the licensee has defaulted  
6 in its reporting or payments under  
7 this paragraph;

8 “(III) the licensee has terminated  
9 or is about to terminate operations,  
10 has filed or indicated an intent to file  
11 for bankruptcy, or has transferred or  
12 indicated an intent to transfer its as-  
13 sets to a third party; or

14 “(IV) for other good cause due to  
15 which the examination cannot reason-  
16 ably cover a period of at least 2 years.

17 “(iii) At the conclusion of the exam-  
18 ination, the designated agent shall, after  
19 considering any written rebuttal provided  
20 by the licensee during the examination,  
21 provide a written notice to the licensee set-  
22 ting forth the final determination of the  
23 claim, if any, resulting from the examina-  
24 tion.



1           “(iv) The designated agent shall bear  
2           the costs of the examination, except that if  
3           in the final determination under clause (iii)  
4           the designated agent finds that the licensee  
5           underpaid royalty fees by 10 percent or  
6           more, the licensee shall bear the reasonable  
7           costs of the examination.

8           “(v) A licensee may not assert section  
9           507 of this title or any other Federal or  
10          State statute of limitations, doctrine of  
11          laches or estoppel, or similar provision to  
12          avoid a royalty examination under this  
13          subparagraph, or as a defense to a legal  
14          action arising from such a royalty exam-  
15          ination, if the legal action is commenced  
16          within 18 months after the final deter-  
17          mination by the designated agent of the  
18          claim (as stated in the written notice under  
19          clause (iii)) resulting from the examination  
20          that is the basis for such action.

21          “(C) FAILURE TO REPORT OR PAY ROYAL-  
22          TIES.—

23                 “(i) IN GENERAL.—If a licensee under  
24                 this subsection—



1                   “(I) fails to provide a monthly  
 2                   report when due or fails to provide a  
 3                   monthly report in compliance with the  
 4                   error tolerance standard, or

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

20                   “(ii) FAILURE WITH RESPECT TO IN-  
 21                   DIVIDUAL WORK.—

22                   “(I) EXCLUSION FROM LI-  
 23                   CENSE.—If a licensee with an other-  
 24                   wise valid license under this  
 25                   subsection—



1                   “(aa) has not made the re-  
 2                   quired reports or royalty pay-  
 3                   ments under subparagraph (A)(i)  
 4                   for a musical work covered by the  
 5                   license, or

6                   “(bb) upon being sent writ-  
 7                   ten notice from the designated  
 8                   agent of a valid reporting or pay-  
 9                   ment deficiency with respect to  
 10                  the use of a musical work, fails  
 11                  to remedy that deficiency within  
 12                  the specified cure period,

13                  that work is excluded from the scope  
 14                  of the license until such time as the li-  
 15                  censee provides all the reports that  
 16                  are past due, and makes all royalty  
 17                  payments that are past due, to the  
 18                  designated agent for that work, or the  
 19                  designated agent otherwise identifies  
 20                  the work, determines the usage of the  
 21                  work, and has received from the li-  
 22                  censee all the royalty payments due  
 23                  for the work.

24                  “(II) SPECIFIED CURE PE-  
 25                  RIOD.—For purposes of subclause



1 (I)(bb), the “specified cure period”  
2 means, with respect to a licensee—

3 “(aa) 90 days, during the  
4 first 12 month-period in which  
5 the licensee engages in activities  
6 under a license under this sub-  
7 section;

8 “(bb) 60 days, during the  
9 succeeding 12-month period in  
10 which a licensee engages in activi-  
11 ties under a license under this  
12 subsection; and

13 “(cc) 30 days, during any  
14 period thereafter.

15 “(III) EXCEPTION.—If the li-  
16 censee demonstrates to the designated  
17 agent with respect to a musical work  
18 that is the subject of a notice of defi-  
19 ciency described in subclause (I)(bb)  
20 that the deficiency cannot be remedied  
21 because it is due to missing informa-  
22 tion that, notwithstanding a diligent  
23 search by the licensee, is actually and  
24 objectively unobtainable by the li-  
25 censee from any known source, then



1 the license shall not be invalidated  
2 with respect to that work.

3 “(iii) OBTAINING SUBSEQUENT LI-  
4 CENSES.—A licensee whose license is ter-  
5 minated by a designated agent under  
6 clause (i) and who fully remedies the de-  
7 fault within 60 days after the date on  
8 which the license terminates, may apply for  
9 and obtain a new license from that des-  
10 ignated agent, if, during the 5-year period  
11 ending on the date of such termination, the  
12 licensee has not previously had a license  
13 terminated by the designated agent. In any  
14 other case in which a license is validly ter-  
15 minated by a designated agent, the des-  
16 ignated agent may require the licensee to  
17 meet reasonable credit or advance require-  
18 ments or to demonstrate the capability to  
19 report and make royalty payments in com-  
20 pliance with this subsection before obtain-  
21 ing a new license.

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

24 “(A) DISTRIBUTION OF ROYALTIES.—Each  
25 designated agent shall be responsible for dis-



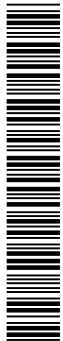
1           tributing royalties collected from licensees  
2           under this subsection to any copyright owner  
3           whom the designated agent represents and who  
4           has provided the designated agent with suffi-  
5           cient information to identify and pay that copy-  
6           right owner (or the copyright owner’s designee).

7           “(B) UNCLAIMED FUNDS.—

8                   “(i) IN GENERAL.—If a designated  
9                   agent is unable, after a reasonably diligent  
10                  search, to identify or locate a copyright  
11                  owner entitled to receive royalties under  
12                  subparagraph (A), the designated agent  
13                  may deposit the undistributed royalties (in  
14                  this subparagraph referred to as ‘un-  
15                  claimed funds’) into an unclaimed funds  
16                  account.

17                  “(ii) HOLDING AND DISTRIBUTION.—

18                          “(I) HOLDING.— A designated  
19                          agent with unclaimed funds shall hold  
20                          the funds for a period of at least 3  
21                          years after the date on which the li-  
22                          censee paid the funds. The designated  
23                          agent shall make reasonably diligent  
24                          efforts to publicize the existence of the  
25                          unclaimed funds and the procedures



1 by which copyright owners may claim  
2 such funds from the designated agent.

3 “(II) LICENSING ADMINISTRATIVE COSTS.—At the end of the pe-  
4 riod in which funds are held under  
5 subclause (I), the designated agent  
6 may apply the funds to offset licens-  
7 ing administrative costs.  
8

9 “(III) DISTRIBUTION OF RE-  
10 MAINDER.—Any unclaimed funds not  
11 applied to offset licensing administra-  
12 tive costs under subclause (II) shall  
13 be distributed as follows:

14 “(aa) The designated agent  
15 shall pay to every other des-  
16 ignated agent its pro rata share  
17 of the unclaimed funds as deter-  
18 mined on the basis of the propor-  
19 tionate distribution of royalties  
20 by each designated agent to copy-  
21 right owners for the reporting pe-  
22 riods during which the funds  
23 were collected.

24 “(bb) Each designated agent  
25 shall distribute, on an equitable



1 basis, its pro rata share of the  
2 unclaimed funds to the copyright  
3 owners that the designated agent  
4 represents under this subsection  
5 (other than those that cannot be  
6 identified or located).

7 “(iii) PREEMPTION.—This subpara-  
8 graph preempts any State law (including  
9 common law) that would otherwise apply  
10 concerning escheatment or abandoned or  
11 unclaimed property.

12 “(C) DISPUTES.—Each designated agent  
13 shall establish a committee that includes an  
14 equal number of—

15 “(i) music publishing entities rep-  
16 resented by the designated agent, and

17 “(ii) representatives of songwriters  
18 with musical works represented by the des-  
19 ignated agent,

20 for the purpose of hearing and resolving any  
21 disputes relating to the allocation and payment  
22 by the designated agent of royalties among indi-  
23 vidual copyright owners under licenses granted  
24 by the designated agent under this subsection.  
25 Such dispute resolution process shall not affect



1 any legal or equitable rights or remedies avail-  
2 able to any such copyright owner or the des-  
3 igned agent.

4 “(D) PROCEDURES.—The Register of  
5 Copyrights shall establish by regulation the pro-  
6 cedures for the holding by a designated agent  
7 of unclaimed funds and royalties paid under  
8 this subsection that are attributable to musical  
9 works that are the subject of an ownership dis-  
10 pute or a legal proceeding. A designated agent  
11 that complies with the requirements of this  
12 paragraph and such regulations shall not be  
13 subject to a legal claim based upon or arising  
14 from unclaimed funds or such an ownership dis-  
15 pute or legal proceeding.

16 “(E) WITHHOLDING OF INTERIM ROYAL-  
17 TIES.—Each designated agent may withhold  
18 reasonable reserves from the distribution of in-  
19 terim royalties collected under this subsection  
20 to allow for the possibility of a lower final stat-  
21 utory rate. Upon final determination of the  
22 statutory rate, to the extent such reserves are  
23 not required to be returned or credited to the  
24 licensee, the designated agent shall distribute to  
25 copyright owners such reserves with interest.



1           “(12) COST SHARING FEES.—The Copyright  
2           Royalty Judges shall determine, under such proce-  
3           dures as they may establish, an appropriate cost-  
4           sharing mechanism and cost-sharing amounts to be  
5           paid by licensees under this subsection to designated  
6           agents. Not later than [February 1, 2007], the  
7           Copyright Royalty Judges shall initiate a proceeding  
8           to determine, not later than [May 1, 2007], appro-  
9           priate interim cost-sharing amounts to apply pend-  
10          ing the establishment of final cost-sharing amounts.  
11          The Copyright Royalty Judges, in establishing roy-  
12          alty rates for statutory licenses, may not take into  
13          account the cost-sharing mechanism or cost-sharing  
14          amounts.

15           “(13) INAPPLICABILITY TO CERTAIN CON-  
16          TRACTS.—

17           “(A) IN GENERAL.—This subsection shall  
18          not apply with respect to contracts referred to  
19          in subsection (c)(3)(E)(ii) of this section.

20           [“(B) NOTICE.—

21           [“(i) INITIAL.—Not later than No-  
22          vember 1, 2007, each person that has ob-  
23          tained a license under a contract described  
24          in subparagraph (A) shall provide notice to  
25          each designated agent (including the Gen-



1 eral Designated Agent) and the [licensor]  
2 under such contract of the existence of  
3 such contract and the inapplicability of  
4 this subsection.

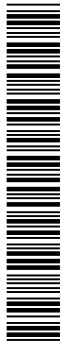
5 [“(ii) SUBSEQUENT.—Not later than  
6 November 1, 2008, and each November 1  
7 thereafter, each person described in clause  
8 (i) shall provide each designated agent (in-  
9 cluding the General Designated Agent) no-  
10 tice of the expiration of any contracts de-  
11 scribed in subparagraph (A) and the status  
12 of the applicability of this subsection.

13 [“(iii) CONFIDENTIALITY.—Notices  
14 provided under this subparagraph shall be  
15 considered confidential and shall not be  
16 made available to the public.

17 [“(C) DISPUTES.—

18 [“(i) IN GENERAL.—Any interested  
19 copyright party injured by a violation of  
20 this paragraph may bring a civil action in  
21 an appropriate United States district court  
22 against any person for such violation.

23 [“(ii) ATTORNEYS’ FEES.—If the pre-  
24 vailing party in an action under clause (i)  
25 demonstrates that the opposing party



1           acted in bad faith, the prevailing party  
2           shall be awarded reasonable attorneys' fees  
3           and costs.]

4           “(14) PERFORMANCE RIGHT PRESERVED.—

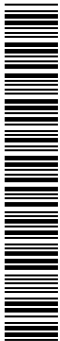
5           “(A) IN GENERAL.—The rights granted  
6           under this subsection shall not include, limit, or  
7           otherwise affect any right of public performance  
8           of a musical work.

9           [“(B) INAPPLICABILITY OF DEFINI-  
10          TIONS.—The definitions in paragraph (15) shall  
11          not be considered in any administrative, judi-  
12          cial, or other proceeding to set or adjust the  
13          royalties payable to copyright owners of musical  
14          works for the right of public performance of  
15          such works.]

16          “(15) DEFINITIONS.—In this subsection:

17          “(A) ADMINISTRATIVE FEES.—The term  
18          ‘administrative fees’ means any fees that are  
19          collected or deducted by a designated agent to  
20          cover licensing administrative costs or other ad-  
21          ministrative costs.

22          “(B) COPYRIGHT OWNER.—The term  
23          ‘copyright owner’ means a natural person or le-  
24          gally recognized business entity that owns or



1 controls copyrighted nondramatic musical works  
2 subject to licensing under this section.

3 “(C) DIGITAL MUSIC PROVIDER.—The  
4 term ‘digital music provider’ means a person  
5 that, with respect to a service engaging in ac-  
6 tivities licensed under this subsection, meets the  
7 following criteria:

8 “(i) Contracts with or has a direct  
9 economic relationship with the end users of  
10 the service, and controls what end users  
11 pay for the service.

12 “(ii) Controls how content is bundled  
13 and offered through the service.

14 “(iii) Is able to fully report on all rev-  
15 enues and consideration generated by the  
16 service.

17 “(iv) Is able to fully report on all ele-  
18 ments of music usage by the service (or  
19 procure such reporting).

20 “(D) ERROR TOLERANCE STANDARD.—  
21 The term ‘error tolerance standard’ means the  
22 maximum percentage, of all data that a licensee  
23 is required to report under this subsection  
24 under its license in any statutory reporting pe-  
25 riod, that is permitted to be inaccurate,



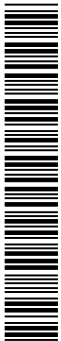
1 unreadable, or missing, or any combination  
2 thereof, as determined under regulations issued  
3 to carry out this subsection.

4 “(E) FULL DOWNLOAD.—The term ‘full  
5 download’ means a digital phonorecord delivery  
6 of a sound recording of a musical work that is  
7 not limited in availability for listening by the  
8 end user either to a period of time or a number  
9 of times the sound recording can be played.

10 “(F) INTERACTIVE STREAM.—The term  
11 ‘interactive stream’—

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

17 “(ii) subject to clause (i), includes a  
18 stream of a particular sound recording of  
19 a musical work that an end user has se-  
20 lected, and is transmitted to such end user,  
21 to listen to at or substantially at the time  
22 of making such selection or at some future  
23 time, whether or not as a part of a pro-  
24 gram specially created for the end user.



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

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

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

14           “(iii) the costs of royalty examinations  
15 and other royalty compliance efforts; and

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

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

23           “(i) a definite period of time (includ-  
24 ing a period of time defined by ongoing



1 subscription payments made by an end  
2 user); or

3 “(ii) a specified number of times.

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

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

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



1 work, or RAM buffer reproduction, to permit  
2 such one-time listening.

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

5 “(16) REGULATIONS.—The Register of Copy-  
6 rights shall issue such regulations as are necessary  
7 to carry out this subsection, including—

8 “(A) specifying the requirements and pro-  
9 cedures for reporting and making payments,  
10 and conducting royalty compliance examina-  
11 tions, under paragraph (10); and

12 “(B) specifying the procedures for expe-  
13 dited proceedings under paragraph  
14 (8)(D)(ii)(II)(bb).”.

15 **[SEC. 3. INTERIM RATE PROCESS.]**

16 Section 115(c) of title 17, United States Code, is  
17 amended by adding at the end the following new para-  
18 graph:

19 [“(7) INTERIM RATES.—

20 [“(A) IN GENERAL.—For any activity for  
21 which a license is available under this sub-  
22 section and for which a rate has not been deter-  
23 mined, any person shall, upon serving notice to  
24 the copyright owner, have a license under this



1 subsection to engage in the activity, subject to  
2 subparagraph (B).

3 [“(B) INTERIM RATES.—Upon the filing of  
4 an application under subparagraph (A)—

5 [“(i) the applicant and the copyright  
6 owner may negotiate an interim rate that  
7 will apply to the activity under the license;  
8 or

9 [“(ii) the applicant or the copyright  
10 owner, or both, may apply to the Copyright  
11 Royalty Judges for an interim rate, in  
12 which case—

13 [“(I) the Copyright Royalty  
14 Judges shall, not later than 15 days  
15 after the application is made, publish  
16 notice of an expedited proceeding to  
17 determine the interim rate; and

18 [“(II) the Judges shall determine  
19 the interim rate not less than 30 days  
20 and not more than 60 days after pub-  
21 lishing the notice, through the expe-  
22 dited proceeding.

23 [“(C) APPLICABILITY OF INTERIM  
24 RATES.—[(i) Interim rates negotiated under  
25 subparagraph (B)(i) or established under sub-



1 paragraph (B)(ii) shall apply to the activity  
2 under the license concerned until a rate for the  
3 activity is determined under subparagraphs (C),  
4 (D), and (F) of paragraph (3), or as otherwise  
5 agreed by the parties.

6 [“(ii) Interim rates described in subpara-  
7 graph (A) with respect to an activity by an ap-  
8 plicant shall not be treated as precedent in a  
9 final ratemaking proceeding. If the Copyright  
10 Royalty Judges have established an interim rate  
11 under subparagraph (B)(ii), subject to subpara-  
12 graph (D), that rate shall apply to the same ac-  
13 tivity engaged in by any person, except as oth-  
14 erwise agreed to by the parties.

15 [“(D) SINGLE PROCEEDING FOR EACH AC-  
16 TIVITY.—Unless the Copyright Royalty Judges  
17 determine that there is good cause to review an  
18 interim rate established under subparagraph  
19 (B)(ii), the Judges may conduct only 1 pro-  
20 ceeding to determined an interim rate for an  
21 activity for which a license is available under  
22 this subsection.

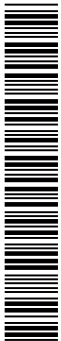
23 [“(E) ADJUSTMENT OF INTERIM RATES.—  
24 After a final determination of rates that will  
25 apply to an activity for which a license is avail-



1           able under this subsection has been made under  
2           subparagraphs (C), (D), and (F) of paragraph  
3           (3), any difference between the final rate and  
4           an interim rate determined under subparagraph  
5           (B) with respect to a license between a person  
6           and a copyright owner shall be retroactive to  
7           the date on which the license was first effective  
8           under subparagraph (A), unless an agreement  
9           between the parties to the license provides oth-  
10          erwise. Not later than 60 days after the deter-  
11          mination of the final rate becomes effective—

12                        ["(i) person shall pay to the copyright  
13                        owner any amounts due from under-  
14                        payment of fees by the person because the  
15                        final rate exceeds the interim rate; or

16                        ["(ii) the copyright owner shall refund  
17                        to the person the amounts of any overpay-  
18                        ment of fees by the person because the in-  
19                        terim rate exceed the final rate, or, at the  
20                        election of the person, the copyright owner  
21                        shall credit such overpayment against fu-  
22                        ture payments by the person to the copy-  
23                        right owner under this subsection.".]



1 **SEC. 4. TECHNICAL AMENDMENTS.**

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

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

6 “(1) IN GENERAL.—As used”;

7 (2) by moving the remaining text 2 ems to the  
8 right; and

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

10 “(2) INCLUDED ACTIVITIES.—

11 “(A) IN GENERAL.—The term ‘digital pho-  
12 norecord delivery’ includes an interactive  
13 stream (as such term is defined in subsection  
14 (e)(16)(F)) of nondramatic musical works.

15 “(B) INCIDENTAL DIGITAL PHONORECORD  
16 DELIVERY.—An interactive stream described in  
17 subparagraph (A) shall be considered a digital  
18 phonorecord delivery where the reproduction or  
19 distribution of a phonorecord is incidental to  
20 the transmission which constitutes the digital  
21 phonorecord delivery.

22 “(C) CHARACTERIZATION OF DIGITAL PHO-  
23 NORECORD DELIVERIES.—The characterization  
24 of a digital phonorecord delivery as general or  
25 incidental shall [not] be considered by the



1 Copyright Royalty Judges in establishing roy-  
2 alty rates or terms. ”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) AMENDMENTS.—Section 115(c) of title 17,  
5 United States Code, is amended—

6 (A) in paragraph (3)—

7 [(i) in the first sentence of subpara-  
8 graph (A), by striking “or authorize [the  
9 distribution of]”; ]

10 (ii) in subparagraph (C), by striking  
11 “Such terms and rates shall distinguish”  
12 and all that follows through the end of the  
13 sentence; and

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

18 (B) in paragraph (5)—

19 (i) by striking “(5) Royalty pay-  
20 ments” and inserting “(5)(A) Subject to  
21 subparagraph (B), royalty payments”; and

22 (ii) by adding at the end the fol-  
23 lowing:



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

4           [(2) CLARIFICATION.—The amendment made  
5           by paragraph (1)(A)(i) shall not apply with respect  
6           to contracts referred to in section 115(c)(3)(E)(ii) of  
7           title 17, United States Code.]

8   **SEC. 5. EFFECTIVE DATE.**

9           [A compulsory license may only be obtained under  
10          section 115(e) of title 17, United States Code, as added  
11          by section 2 of this Act, on or after January 1, 2008.]

