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.

IN THE HOUSE OF REPRESENTATIVES

M. ___________ introduced the following bill; which was referred to the Committee on ____________________

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

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

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

section:
“(c) LICENSES FOR DIGITAL USES OF MUSICAL WORKS.—

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

“(A) the making and distribution of digital phonorecord deliveries in the form of full downloads, limited downloads, and interactive streams;

“(B) all reproduction and distribution rights necessary to engage in activities described in subparagraph (A), solely for the purpose of engaging in such activities, including—

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

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

“(iii) incidental reproductions made in the normal course of engaging in activities described in subparagraph (A), including cached, network, and RAM buffer reproductions; and

“(C) other activities constituting a digital phonorecord delivery.
“(2) BLANKET LICENSES.—A person may obtain a compulsory license to engage in activities subject to this subsection only from a designated agent under paragraph (4) and only if the person is a digital music provider. A person may engage in activities subject to this subsection under authority of a compulsory license only—

“(A) if such license was obtained by a digital music provider and

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

“(3) ROYALTY-FREE LICENSE.—

“(A) IN GENERAL.—A compulsory license shall be available for the making of server and incidental reproductions to facilitate noninteractive streaming.

“(B) ACTIVITIES COVERED.—Each designated agent shall grant a license under this subsection for the making of server and incidental reproductions to facilitate noninteractive streaming at a royalty-free rate. The designated agent may charge only a filing fee in an amount not to exceed the actual reasonable costs of administering the issuance of the license. The li-
license shall cover reproductions made on servers under authority of the licensee and incidental reproductions made in the course of the non-interactive streaming provided by the licensee, including cached, network, and RAM buffer reproductions, to the extent reasonably necessary for, and solely for the purpose of, engaging in noninteractive streaming in a technologically reasonable and efficient matter.

“(C) EXCLUDED ACTIVITIES.—The license under subparagraph (A) does not extend to any server or incidental reproductions used to enable a streaming service (or any other type of service) that takes affirmative steps to authorize, enable, cause, or induce the making of reproductions of musical works by or for end users that are accessible by such end users for future listening, unless a valid license has otherwise been obtained by such service for such activity.

“(4) APPLICATIONS FOR LICENSES.—Any digital music provider seeking a license under this subsection may apply to a designated agent for the license, identifying in the application each type of activity for which the license is sought. Any digital
music provider that has a license under this subsection and seeks to engage in any activity covered by this subsection that is not identified in the license may engage in that activity only after filing a new application identifying such additional activity.

“(5) LICENSES.—A designated agent shall grant a license for all activities specified in an application filed under paragraph (4) for which a license is available under this subsection. The license shall be effective, upon the filing of the application, for all copyrighted nondramatic musical works (or portions of such musical works) represented by the designated agent.

“(6) RETROACTIVE ROYALTY PAYMENTS.—

“(A) RETROACTIVE PAYMENTS.—During the period described in subparagraph (B), a digital music provider that has obtained a license from a designated agent under this subsection for—

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

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

may report to the designated agent activity authorized by the license that the digital music
provider engaged in during the period beginning January 1, 2001, and ending on the effective date of the license, and pay to the designated agent royalties applicable to that activity. Such reporting and payments shall be made in accordance with the regulations issued under paragraph (10) regarding reporting and payments.

“(B) PERIOD DESCRIBED.—The period referred to in subparagraph (A) for reporting and payment is the period beginning on the effective date of the Section 115 Reform Act of 2006 and ending on the later of the date that is—

“(i) 1 year after such effective date;

or

“(ii) 6 months after the effective date of—

“(I) the first interim rate established by the Copyright Royalty Judges under paragraph (8)(D)(ii)(II) for the activity described in clause (i) or (ii) of subparagraph (A), as the case may be, or

“(II) the first final statutory royalty rate established by the Copyright
Royalty Board for the activity described in clause (i) or (ii) of subparagraph (A), whichever occurs first.

“(C) LIMITATION ON LIABILITY.—A digital music provider that reports activity and makes payments under this paragraph shall not be subject to an action for copyright infringement to the extent such action is based on activity so reported for which payment has been made.

“(7) LICENSE NOT TRANSFERABLE.—A license granted to a digital music provider under this subsection may not be transferred to any other person or entity.

“(8) ROYALTY RATES.—

“(A) IN GENERAL.—Except as provided in this paragraph, the Copyright Royalty Judges shall determine reasonable rates and terms for digital phonorecord deliveries as provided under subsection (e) and chapter 8, except for server and incidental reproductions for noninteractive streaming that are eligible for royalty-free licenses under this subsection.

“(B) RATES IN EFFECT.—Rates in effect under subsection (e) on the effective date of the
Section 115 Reform Act of 2006 for any activity for which a license is available under this section shall continue to apply to that activity on and after that date until a new rate is determined under subsection (c) and chapter 8.

“(C) RATES FOR NEW LICENSE ACTIVITIES.—

“(i) IN GENERAL.—Not later than 90 days after the effective date of the Section 115 Reform Act of 2006, the Copyright Royalty Judges shall initiate a ratemaking proceeding pursuant to the procedures set forth in chapter 8, to determine final rates and terms for any activity for which a license is available under this subsection if—

“(I) rates have not been established for the activity; or

“(II) the activity is not the subject of a proceeding to set final rates under subsection (c) that is pending before the Copyright Royalty Judges on the effective date of that Act.

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

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

“(D) INTERIM RATES.—

“(i) IN GENERAL.—For any activity
for which a license is available under this
subsection and for which a rate has not
been determined under subsection (c), a
digital music provider shall, upon filing a valid application with the relevant designated agent, have a license under this subsection to engage in the activity, subject to clause (ii).

“(ii) INTERIM RATES.—Upon the filing of an application under clause (i)—

“(I) the digital music provider and the designated agent may negotiate an interim rate that will apply to the activity under the license; or

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

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

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

"(iii) APPLICABILITY OF INTERIM RATES.—(I) Interim rates negotiated under clause (ii)(I) or established under clause (ii)(II) shall apply to the activity under the license concerned until a rate for the activity is determined under subparagraph (C), or as otherwise agreed by the parties.

"(II) Interim rates described in clause (i) with respect to an activity by a digital music provider shall not be treated as precedent in a final ratemaking proceeding. If the Copyright Royalty Judges have established an interim rate under clause (ii)(II), subject to clause (iv), that rate shall apply to the same activity engaged in by any digital music provider, except as otherwise agreed to by the parties.

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

“(v) ADJUSTMENT OF INTERIM RATES.—After a final determination of rates that will apply to an activity for which a license is available under this subsection has been made under subparagraph (C), any difference between the final rate and an interim rate determined under clause (ii) with respect to a license between a digital music provider and a designated agent shall be retroactive to the date on which the license was first effective under clause (i), unless an agreement between the parties to the license provides other- wise. Not later than 60 days after the determination of the final rate becomes effective—

“(I) the digital music provider shall pay to the designated agent any amounts due from underpayment of fees by the digital music provider be-
cause the final rate exceeds the interim rate; or

“(II) the designated agent shall refund to the digital music provider the amounts of any overpayment of fees by the digital music provider because the interim rate exceed the final rate, or, at the election of the digital music provider, the designated agent shall credit such overpayment against future payments by the digital music provider to the designated agent under this subsection.

“(9) DESIGNATED AGENTS.—

“(A) IN GENERAL.—Designated agents under this subsection are the General Designated Agent and additional designated agents.

“(B) GENERAL DESIGNATED AGENT.—

“(i) DESIGNATION AND PURPOSE.—

(I) Not later than 21 days after the date of the enactment of the Section 115 Reform Act of 2006, the Register of Copyrights shall designate a mechanical licensing and collection agency representing music publishing entities that represent
the greatest share of the music publishing market, as measured by the amount of royalties collected during the preceding 3 full calendar years with respect to the use of copyrighted musical works pursuant to this section, to establish and operate the General Designated Agent.

“(II) The General Designated Agent shall grant and administer licenses and collect and distribute royalties payable for the use of musical works licensed under this subsection.

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

“(ii) Decertification.—The Register of Copyrights may disqualify the General Designated Agent upon a showing that it fails to meet the qualifications under this subparagraph or otherwise fails to meet the requirements under this paragraph. In such a case, the Register of Copyrights shall designate another General
Designated Agent that most closely meets the requirements of clause (i)(I).

“(C) ADDITIONAL DESIGNATED AGENTS.—

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

“(I) upon certification, it will represent music publishing entities that represent at least a 15 percent share of the music publishing market, as measured by the amount of royalties collected during the preceding 3 full calendar years with respect to the use of copyrighted musical works pursuant to this section; and

“(II) it has the capability to perform the required functions of a designated agent under this subsection.

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

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

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

“(iii) DECERTIFICATION.—The Reg-
ister of Copyrights may remove the certifi-
cation of any additional designated agent
upon a showing that it fails to meet the
qualifications under this subparagraph or
otherwise fails to meet the requirements
under this paragraph.
“(D) ADDITIONAL AUTHORITIES OF DESIGNATED AGENTS.—A designated agent may—

“(i) engage in such additional activities in the interest of music publishers and songwriters as the designated agent considers appropriate, including industry negotiations, ratesetting proceedings, litigation, and legislative efforts; and

“(ii) apply any administrative fees or other funds it collects to support such additional activities.

“(E) ELECTIONS BY COPYRIGHT OWNERS.—

“(i) REPRESENTATION BY SINGLE DESIGNATED AGENT.—Each copyright owner may choose only one designated agent (which may be the General Designated Agent) to represent the copyright owner, and the musical works (or portions of musical works) that the copyright owner owns or controls, during any calendar year.

“(ii) ANNUAL ENROLLMENT PERIOD.—Each copyright owner may, during the month of September of each year, elect to change the designated agent to represent the owner and the musical works
(or portions) referred to in clause (i), begin-
ning on January 1 of the succeeding
calendar year.

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

“(iv) DEFAULT REPRESENTATION BY
GENERAL DESIGNATED AGENT.—If a copy-
right owner does not choose to be rep-
resented by an additional designated agent,
the General Designated Agent shall rep-
resent the copyright owner and musical
works (or portions of musical works)
owned or controlled by the copyright
owner.
“(v) VOLUNTARY AGREEMENTS.—A copyright owner and a digital music provider may enter into a voluntary license agreement pursuant to subsection (c)(3)(E)(i) to cover activities licensed under this subsection. Any such agreement shall cover all musical works (and portions of musical works) owned or controlled by the copyright owner and all activities under this subsection engaged in by the digital music provider during the period the agreement is in effect. [The Register of Copyrights shall establish procedures by which copyright owners and licensees shall notify designated agents of the existence of a voluntary license agreement.]

“(F) NOTICE OF DESIGNATION OF DESIGNATED AGENTS.—At least 90 days before beginning operations, the General Designated Agent and each additional designated agent shall file with the Copyright Office a notice of designation as a designated agent under this subsection. The notice shall contain such contact information, and such information concerning applications for licenses under this subsection.
section and access to the electronic database of
the designated agent (described in subpara-
graph (H)(i)) identifying musical works (or por-
tions of musical works) represented by the des-
ignated agent, as required in regulations issued
to carry out this subsection. The Copyright Of-
office shall publish each notice filed under this
subsection in the Federal Register.

“(G) Termination of Designated
Agent.—

“(i) Notice and Transfer of
Records.—At least 180 days before termi-
nating operations, a designated agent
shall—

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

“(II) transfer electronic and
other copies of all relevant records to
the existing General Designated Agent
or, in the case of the termination of
the General Designated Agent, to the
successor General Designated Agent.
“(ii) ASSUMPTION OF DUTIES BY GDA.—Upon the termination of operations of a designated agent, the General Designated Agent or successor General Designated Agent, as the case may be, shall assume the administration of the musical works and rights previously administered by the terminated designated agent, regardless of whether the terminated agent has complied with clause (i).

“(H) MUSICAL WORKS DATA.—

“(i) AVAILABILITY.—The General Designated Agent and each additional designated agent shall maintain and make available to licensees, free of charge, a searchable electronic database of information from which licensees can determine which musical works (or portions of musical works) are available for licensing under this subsection through that designated agent. The General Designated Agent and each additional designated agent shall also make such database available to the general public to access information on specific musical works, free of charge. Any
musical work (or portions of a musical work) not identified as being represented by the General Designated Agent or any additional designated agent in any such database may be presumed by licensees to be represented by the General Designated Agent.

[(ii) USE OF DATABASE.—The database required by clause (i) may be used only for purposes of determining the identity and availability of musical works for licenses under this subsection, obtaining such licenses, reporting of use of musical works, payment of royalties, and otherwise to comply with licenses under this subsection. The use of any such database shall be subject to reasonable confidentiality and security standards prescribed in regulations issued to carry out this subsection.]

“(10) Royalty reporting and compliance.—

“(A) REQUIREMENTS.—

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

“(ii) LIMITATION ON DISCLOSURE.—

“(I) IN GENERAL.—A designated agent may disclose information received under clause (i) to a recipient of royalty payments made by a licensee only with respect to musical works owned or controlled by the recipient. The designated agent may not disclose such information to any other person in a form that can be readily associated with a licensee except to the extent permitted by written agreement of the licensee.

“(II) EXCEPTION.—Subclause (I) does not prevent a designated agent from providing information with respect to a licensee—

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

“(bb) [on a confidential basis.] to the extent necessary in connection with a bona fide dispute or legal claim or proceeding.

“(iii) INTEREST.—A licensee who has failed to make a payment required under this subsection by the due date to a designated agent (including as specified in a notice of payment deficiency or default, as determined in a royalty compliance examination under subparagraph (B), or as required by a determination of the Copyright Royalty Judges), shall pay to the designated agent interest on the overdue amount, at a rate [determined in the manner set forth in ________________], such interest to accrue from the date payment was due until the date payment is received by the designated agent.

“(B) ROYALTY COMPLIANCE EXAMINATIONS.—A designated agent may, upon providing written notice to its licensee under this
subsection, conduct a royalty compliance examination of the licensee, subject to the following:

“(i) A designated agent may conduct only 1 examination of any licensee in a calendar year, and may conduct an examination of a licensee with respect to a reporting period only once. A designated agent may conduct an examination jointly with one or more other designated agents.

“(ii) The examination may begin only within 18 months after the end of the period being examined and may only cover a period of not less than 2 and not more than 4 consecutive years, except that an examination may cover a period of less than 2 years if—

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

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

“(III) the licensee has terminated or is about to terminate operations, has filed or indicated an intent to file for bankruptcy, or has transferred or
indicated an intent to transfer its assets to a third party; or

“(IV) for other good cause due to which the examination cannot reasonably cover a period of at least 2 years.

“(iii) At the conclusion of the examination, the designated agent shall, after considering any written rebuttal provided by the licensee during the examination, provide a written notice to the licensee setting forth the final determination of the claim, if any, resulting from the examination.

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

“(v) A licensee may not assert section 507 of this title or any other Federal or State statute of limitations, doctrine of laches or estoppel, or similar provision to avoid a royalty examination under this
subparagraph, or as a defense to a legal action arising from such a royalty examination, if the legal action is commenced within 18 months after the final determination by the designated agent of the claim (as stated in the written notice under clause (iii)) resulting from the examination that is the basis for such action.

“(C) FAILURE TO REPORT OR PAY ROYALTIES.—

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

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

“(II) fails to make all monthly royalty payments when due or fails to pay royalties due for reported usage, the designated agent may provide written notice to the licensee describing the default under subclause (I) or (II) and providing that if the default is not remedied within 30 days after receipt of the notice, the license will automatically terminate upon the
expiration of that 30-day period. Upon such termination, the licensee will be subject to an infringement action as provided in subsection (c)(6) with respect to the uses of the musical works that are the subject of the default.

“(ii) Failure with respect to individual work.—

“(I) Exclusion from license.—If a licensee with an otherwise valid license under this subsection—

“(aa) has not made the required reports or royalty payments under subparagraph (A)(i) for a musical work covered by the license, or

“(bb) upon being sent written notice from the designated agent of a valid reporting or payment deficiency with respect to the use of a musical work, fails to remedy that deficiency within the specified cure period,
that work is excluded from the scope of the license until such time as the licensee provides all the reports that are past due, and makes all royalty payments that are past due, to the designated agent for that work, or the designated agent otherwise identifies the work, determines the usage of the work, and has received from the licensee all the royalty payments due for the work.

“(II) Specified cure period.—For purposes of subclause (I)(bb), the “specified cure period” means, with respect to a licensee—

“(aa) 90 days, during the first 12 month-period in which the licensee engages in activities under a license under this subsection;

“(bb) 60 days, during the succeeding 12-month period in which a license engages in activities under a license under this subsection; and
“(cc) 30 days, during any period thereafter.

“(III) EXCEPTION.—If the licensee demonstrates to the designated agent with respect to a musical work that is the subject of a notice of deficiency described in subclause (I)(bb) that the deficiency cannot be remedied because it is due to missing information that, notwithstanding a diligent search by the licensee, is actually and objectively unobtainable by the licensee from any known source, then the license shall not be invalidated with respect to that work.

“(iii) OBTAINING SUBSEQUENT LICENSES.—A licensee whose license is terminated by a designated agent under clause (i) and who fully remedies the default within 60 days after the date on which the license terminates, may apply for and obtain a new license from that designated agent, if, during the 5-year period ending on the date of such termination, the licensee has not previously had a license.
terminated by the designated agent. In any other case in which a license is validly terminated by a designated agent, the designated agent may require the licensee to meet reasonable credit or advance requirements or to demonstrate the capability to report and make royalty payments in compliance with this subsection before obtaining a new license.

“(11) DISTRIBUTION OF ROYALTIES, UNCLAIMED FUNDS, AND DISPUTE RESOLUTION.—

“(A) DISTRIBUTION OF ROYALTIES.—Each designated agent shall be responsible for distributing royalties collected from licensees under this subsection to any copyright owner whom the designated agent represents and who has provided the designated agent with sufficient information to identify and pay that copyright owner (or the copyright owner’s designee).

“(B) UNCLAIMED FUNDS.—

“(i) IN GENERAL.—If a designated agent is unable, after a reasonably diligent search, to identify or locate a copyright owner entitled to receive royalties under subparagraph (A), the designated agent
may deposit the undistributed royalties (in this subparagraph referred to as ‘unclaimed funds’) into an unclaimed funds account.

“(ii) HOLDING AND DISTRIBUTION.—

“(I) HOLDING.— A designated agent with unclaimed funds shall hold the funds for a period of at least 3 years after the date on which the licensee paid the funds. The designated agent shall make reasonably diligent efforts to publicize the existence of the unclaimed funds and the procedures by which copyright owners may claim such funds from the designated agent.

“(II) LICENSING ADMINISTRATIVE COSTS.—At the end of the period in which funds are held under subclause (I), the designated agent may apply the funds to offset licensing administrative costs.

“(III) DISTRIBUTION OF REMAINDER.—Any unclaimed funds not applied to offset licensing administra-
tive costs under subclause (II) shall be distributed as follows:

“(aa) The designated agent shall pay to every other designated agent its pro rata share of the unclaimed funds as determined on the basis of the proportionate distribution of royalties by each designated agent to copyright owners for the reporting periods during which the funds were collected.

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

“(iii) PREEMPTION.—This subparagraph preempts any State law (including common law) that would otherwise apply concerning escheatment or abandoned or unclaimed property.
“(C) DISPUTES.—Each designated agent shall establish a committee that includes an equal number of—

“(i) music publishing entities represented by the designated agent, and

“(ii) representatives of songwriters with musical works represented by the designated agent,

for the purpose of hearing and resolving any disputes relating to the allocation and payment by the designated agent of royalties among individual copyright owners under licenses granted by the designated agent under this subsection. Such dispute resolution process shall not affect any legal or equitable rights or remedies available to any such copyright owner or the designated agent.

“(D) PROCEDURES.—The Register of Copyrights shall establish by regulation the procedures for the holding by a designated agent of unclaimed funds and royalties paid under this subsection that are attributable to musical works that are the subject of an ownership dispute or a legal proceeding. A designated agent that complies with the requirements of this
paragraph and such regulations shall not be subject to a legal claim based upon or arising from unclaimed funds or such an ownership dispute or legal proceeding.

“(E) WITHHOLDING OF INTERIM ROYALTIES.—Each designated agent may withhold reasonable reserves from the distribution of interim royalties collected under this subsection to allow for the possibility of a lower final statutory rate. Upon final determination of the statutory rate, to the extent such reserves are not required to be returned or credited to the licensee, the designated agent shall distribute to copyright owners such reserves with interest.

“(12) COST SHARING FEES.—The Copyright Royalty Judges shall determine, under such procedures as they may establish, an appropriate cost-sharing mechanism and cost-sharing amounts to be paid by licensees under this subsection to designated agents. Not later than 30 days after the date of enactment of the Section 115 Reform Act of 2006, the Copyright Royalty Judges shall initiate a proceeding to determine, within 90 days after such date of enactment, appropriate interim cost-sharing amounts to apply pending the establishment of final cost-
sharing amounts. The Copyright Royalty Judges, in establishing royalty rates for statutory licenses, may not take into account the cost-sharing mechanism or cost-sharing amounts.

“(13) APPLICABILITY OF OTHER PROVISIONS.—

[To be supplied.]

“(14) PERFORMANCE RIGHT PRESERVED.—The rights granted under this subsection shall not include, limit, or otherwise affect any right of public performance of a musical work.

“(15) DEFINITIONS.—In this subsection:

“(A) ADMINISTRATIVE FEES.—The term ‘administrative fees’ means any fees that are collected or deducted by a designated agent to cover licensing administrative costs or other administrative costs.

“(B) COPYRIGHT OWNER.—The term ‘copyright owner’ means a natural person or legally recognized business entity that owns or controls copyrighted nondramatic musical works subject to licensing under this section.

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

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

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

“(iii) Is able to fully report on all revenues and consideration generated by the service.

“(iv) Is able to fully report on all elements of music usage by the service (or procure such reporting).

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

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

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

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

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

“(G) LICENSING ADMINISTRATIVE
COSTS.—The term ‘licensing administrative
costs’ means the actual costs to a designated
agent that are attributable to the issuance and
administration of licenses under this subsection,
including—
“(i) costs in connection with the collection and distribution of royalties under this subsection;

“(ii) the costs of identifying and locating copyright owners and administering a claims system for unidentified copyright owners;

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

“(iv) the costs of creating and maintaining an infrastructure for the activities described in clauses (i), (ii), and (iii).

“(H) LIMITED DOWNLOAD.—the term ‘limited download’ means a digital phonorecord delivery of a sound recording of a musical work that is only available for listening for—

“(i) a definite period of time (including a period of time defined by ongoing subscription payments made by an end user); or

“(ii) a specified number of times.

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

“(J) OTHER ADMINISTRATIVE COSTS.—
The term ‘Other administrative costs’ means all expenses, expenditures, retained earnings, and reserves of a designated agent, other than licensing administrative costs, that are authorized by the board of directors of the designated agent.

“(K) STREAM.—(i) The term ‘stream’ means the digital transmission of a sound recording embodying a musical work for one-time listening by the end user using technology such that the transmission is not intended or designed to result in a substantially complete reproduction of the sound recording, other than an incidental reproduction made in the normal course of such activity, including a cached, network, or RAM buffer reproduction, to permit such one-time listening.

“(ii) The term ‘streaming’ means the process of making and distributing streams.

“(16) REGULATIONS.—The Register of Copyrights shall issue such regulations as are necessary to carry out this subsection, including—
“(A) specifying the requirements and procedures for reporting and making payments, and conducting royalty compliance examinations, under paragraph (10); and

“(B) specifying the procedures for expedited proceedings under paragraph (8)(D)(ii)(II)(bb).”.

SEC. 3. TECHNICAL AMENDMENTS.

(a) DEFINITION.—Section 115(d) is amended—

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

“(1) IN GENERAL.—As used”;

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

(3) by adding at the end the following:

“(2) INCLUDED ACTIVITIES.—The term ‘digital phonorecord delivery’ includes, but is not limited to—

“(A) interactive streaming of nondramatic musical works (as defined in subsection (e)(15)); and

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

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

(1) in paragraph (3)—

[(A) in the first sentence of subparagraph (A), by striking “or authorize”; ]

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

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

(2) in paragraph (5)—

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

(B) by adding at the end the following:

“(B) Payments under the license provided for under subsection (e) shall be governed by that sub-
section in lieu of subparagraph (A).”.
SEC. 4. EFFECTIVE DATE.

(a) In general.—Except as provided in subsection (b), this Act and the amendments made by this Act take effect 180 days after the date of enactment of this Act.

(b) Exceptions.—Paragraphs (9)(B)(ii)(I) and (12) of section 115(e) of title 17, United States Code, as added by section 2 of this Act, take effect on the date of enactment of this Act.