

109TH CONGRESS
2D SESSION

H. R. _____

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

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.

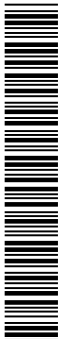
1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

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

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

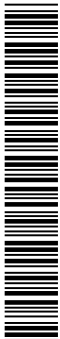
11 “(B) all reproduction and distribution
12 rights necessary to engage in activities de-
13 scribed in subparagraph (A), solely for the pur-
14 pose of engaging in such activities, including—

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

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

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

24 “(C) other activities constituting a digital
25 phonorecord delivery.



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—

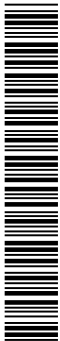
8 “(A) if such license was obtained by a dig-
9 ital music provider and

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 has oth-
19 erwise been obtained by such service for such
20 activity.

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



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

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

14 “(6) RETROACTIVE ROYALTY PAYMENTS.—

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

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

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

24 may report to the designated agent activity au-
25 thorized by the license that the digital music



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

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

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

15 or

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

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

24 “(II) the first final statutory roy-
25 alty rate established by the Copyright



1 Royalty Board for the activity de-
2 scribed in clause (i) or (ii) of subpara-
3 graph (A),

4 whichever occurs first.

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

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

15 “(8) ROYALTY RATES.—

16 “(A) IN GENERAL.—Except as provided in
17 this paragraph, the Copyright Royalty Judges
18 shall determine reasonable rates and terms for
19 digital phonorecord deliveries as provided under
20 subsection (c) and chapter 8, except for server
21 and incidental reproductions for noninteractive
22 streaming that are eligible for royalty-free li-
23 censes under this subsection.

24 “(B) RATES IN EFFECT.—Rates in effect
25 under subsection (c) on the effective date of the



1 Section 115 Reform Act of 2006 for any activ-
2 ity for which a license is available under this
3 section shall continue to apply to that activity
4 on and after that date until a new rate is deter-
5 mined under subsection (c) and chapter 8.

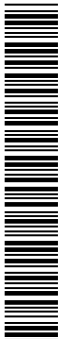
6 “(C) RATES FOR NEW LICENSE ACTIVI-
7 TIES.—

8 “(i) IN GENERAL.—Not later than 90
9 days after the effective date of the Section
10 115 Reform Act of 2006, the Copyright
11 Royalty Judges shall initiate a ratemaking
12 proceeding pursuant to the procedures set
13 forth in chapter 8, to determine final rates
14 and terms for any activity for which a li-
15 cense is available under this subsection
16 if—

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

19 “(II) the activity is not the sub-
20 ject of a proceeding to set final rates
21 under subsection (c) that is pending
22 before the Copyright Royalty Judges
23 on the effective date of that Act.

24 “(ii) PENDING PROCEEDINGS.—In
25 any case in which a proceeding is pending



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

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

21 “(D) INTERIM RATES.—

22 “(i) IN GENERAL.—For any activity
23 for which a license is available under this
24 subsection and for which a rate has not
25 been determined under subsection (c), a



1 digital music provider shall, upon filing a
2 valid application with the relevant des-
3 ignated agent, have a license under this
4 subsection to engage in the activity, sub-
5 ject to clause (ii).

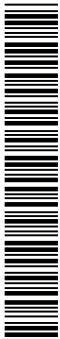
6 “(ii) INTERIM RATES.—Upon the fil-
7 ing of an application under clause (i)—

8 “(I) the digital music provider
9 and the designated agent may nego-
10 tiate an interim rate that will apply to
11 the activity under the license; or

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

17 “(aa) the Copyright Royalty
18 Judges shall, not later than 15
19 days after the application is
20 made, publish notice of an expe-
21 dited proceeding to determine the
22 interim rate; and

23 “(bb) the Judges shall de-
24 termine the interim rate not less
25 than 30 days and not more than



1 60 days after publishing the no-
2 tice, through the expedited pro-
3 ceeding.

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

12 “(II) Interim rates described in clause
13 (i) with respect to an activity by a digital
14 music provider shall not be treated as
15 precedent in a final ratemaking pro-
16 ceeding. If the Copyright Royalty Judges
17 have established an interim rate under
18 clause (ii)(II), subject to clause (iv), that
19 rate shall apply to the same activity en-
20 gaged in by any digital music provider, ex-
21 cept as otherwise agreed to by the parties.

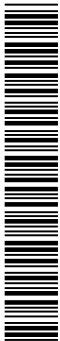
22 “(iv) SINGLE PROCEEDING FOR EACH
23 ACTIVITY.—Unless the Copyright Royalty
24 Judges determine that there is good cause
25 to review an interim rate established under



1 clause (ii)(II), the Judges may conduct
2 only 1 proceeding to determined an interim
3 rate for an activity for which a license is
4 available under this subsection.

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

21 “(I) the digital music provider
22 shall pay to the designated agent any
23 amounts due from underpayment of
24 fees by the digital music provider be-



1 cause the final rate exceeds the in-
2 terim rate; or

3 “(II) the designated agent shall
4 refund to the digital music provider
5 the amounts of any overpayment of
6 fees by the digital music provider be-
7 cause the interim rate exceed the final
8 rate, or, at the election of the digital
9 music provider, the designated agent
10 shall credit such overpayment against
11 future payments by the digital music
12 provider to the designated agent
13 under this subsection.

14 “(9) DESIGNATED AGENTS.—

15 “(A) IN GENERAL.—Designated agents
16 under this subsection are the General Des-
17 ignated Agent and additional designated agents.

18 “(B) GENERAL DESIGNATED AGENT.—

19 “(i) DESIGNATION AND PURPOSE.—

20 (I) Not later than 21 days after the date
21 of the enactment of the Section 115 Re-
22 form Act of 2006, the Register of Copy-
23 rights shall designate a mechanical licens-
24 ing and collection agency representing
25 music publishing entities that represent



1 the greatest share of the music publishing
2 market, as measured by the amount of roy-
3 alties collected during the preceding 3 full
4 calendar years with respect to the use of
5 copyrighted musical works pursuant to this
6 section, to establish and operate the Gen-
7 eral Designated Agent.

8 “(II) The General Designated Agent
9 shall grant and administer licenses and col-
10 lect and distribute royalties payable for the
11 use of musical works licensed under this
12 subsection.

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

17 “(ii) DECERTIFICATION.—The Reg-
18 ister of Copyrights may disqualify the Gen-
19 eral Designated Agent upon a showing
20 that it fails to meet the qualifications
21 under this subparagraph or otherwise fails
22 to meet the requirements under this para-
23 graph. In such a case, the Register of
24 Copyrights shall designate another General



1 Designated Agent that most closely meets
2 the requirements of clause (i)(I).

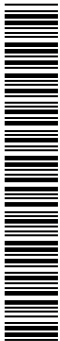
3 “(C) ADDITIONAL DESIGNATED AGENTS.—

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

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

19 “(II) it has the capability to per-
20 form the required functions of a des-
21 ignated agent under this subsection.

22 “(ii) DUTIES.—(I) Upon certification
23 under clause (i), an additional designated
24 agent shall represent any copyright owners
25 of musical works who elect to have the ad-



ditional designated agent represent them
and the musical works (or portions of musical
works) owned or controlled by such
copyright owners for purposes of the licenses
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 copyright
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 reasonable
request therefor.

“(iii) DECERTIFICATION.—The Register
of Copyrights may remove the certification
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.



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

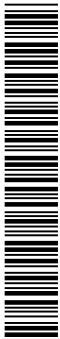
3 “(i) engage in such additional activities in
4 the interest of music publishers and songwriters
5 as the designated agent considers appropriate,
6 including industry negotiations, ratesetting pro-
7 ceedings, litigation, and legislative efforts; and

8 “(ii) apply any administrative fees or other
9 funds it collects to support such additional ac-
10 tivities.

11 “(E) ELECTIONS BY COPYRIGHT OWN-
12 ERS.—

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

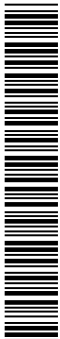
21 “(ii) ANNUAL ENROLLMENT PE-
22 RIOD.—Each copyright owner may, during
23 the month of September of each year, elect
24 to change the designated agent to rep-
25 resent the owner and the musical works



1 (or portions) referred to in clause (i), be-
2 ginning on January 1 of the succeeding
3 calendar year.

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

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



1 “(v) VOLUNTARY AGREEMENTS.—A
2 copyright owner and a digital music pro-
3 vider may enter into a voluntary license
4 agreement pursuant to subsection
5 (c)(3)(E)(i) to cover activities licensed
6 under this subsection. Any such agreement
7 shall cover all musical works (and portions
8 of musical works) owned or controlled by
9 the copyright owner and all activities under
10 this subsection engaged in by the digital
11 music provider during the period the
12 agreement is in effect. [The Register of
13 Copyrights shall establish procedures by
14 which copyright owners and licensees shall
15 notify designated agents of the existence of
16 a voluntary license agreement.]

17 “(F) NOTICE OF DESIGNATION OF DES-
18 IGNATED AGENTS.—At least 90 days before be-
19 ginning operations, the General Designated
20 Agent and each additional designated agent
21 shall file with the Copyright Office a notice of
22 designation as a designated agent under this
23 subsection. The notice shall contain such con-
24 tact information, and such information con-
25 cerning applications for licenses under this sub-



1 section and access to the electronic database of
2 the designated agent (described in subpara-
3 graph (H)(i)) identifying musical works (or por-
4 tions of musical works) represented by the des-
5 ignated agent, as required in regulations issued
6 to carry out this subsection. The Copyright Of-
7 fice shall publish each notice filed under this
8 subparagraph in the Federal Register.

9 “(G) TERMINATION OF DESIGNATED
10 AGENT.—

11 “(i) NOTICE AND TRANSFER OF
12 RECORDS.—At least 180 days before termi-
13 nating operations, a designated agent
14 shall—

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

20 “(II) transfer electronic and
21 other copies of all relevant records to
22 the existing General Designated Agent
23 or, in the case of the termination of
24 the General Designated Agent, to the
25 successor General Designated Agent.



1 “(ii) ASSUMPTION OF DUTIES BY
2 GDA.—Upon the termination of operations
3 of a designated agent, the General Des-
4 ignated Agent or successor General Des-
5 ignated Agent, as the case may be, shall
6 assume the administration of the musical
7 works and rights previously administered
8 by the terminated designated agent, re-
9 gardless of whether the terminated agent
10 has complied with clause (i).

11 “(H) MUSICAL WORKS DATA.—

12 “(i) AVAILABILITY.—The General
13 Designated Agent and each additional des-
14 ignated agent shall maintain and make
15 available to licensees, free of charge, a
16 searchable electronic database of informa-
17 tion from which licensees can determine
18 which musical works (or portions of musi-
19 cal works) are available for licensing under
20 this subsection through that designated
21 agent. The General Designated Agent and
22 each additional designated agent shall also
23 make such database available to the gen-
24 eral public to access information on spe-
25 cific musical works, free of charge. Any



1 musical work (or portions of a musical
2 work) not identified as being represented
3 by the General Designated Agent or any
4 additional designated agent in any such
5 database may be presumed by licensees to
6 be represented by the General Designated
7 Agent.

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

20 “(10) ROYALTY REPORTING AND COMPLI-
21 ANCE.—

22 “(A) REQUIREMENTS.—

23 “(i) IN GENERAL.—Each licensee
24 under this subsection shall, on a monthly
25 basis and in electronic format, report its



1 usage of musical works under the license,
2 and make royalty payments by reason of
3 such usage, to the applicable designated
4 agent.

5 “(ii) LIMITATION ON DISCLOSURE.—

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

18 “(II) EXCEPTION.—Subclause (I)
19 does not prevent a designated agent
20 from providing information with re-
21 spect to a licensee—

22 “(aa) on a confidential
23 basis, to the legal and financial
24 advisors of the designated agent
25 or to an accountant or auditor

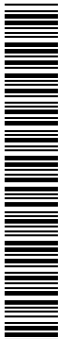


1 rendering services relating to this
2 subsection; or

3 “(bb) [on a confidential
4 basis,] to the extent necessary in
5 connection with a bona fide dis-
6 pute or legal claim or proceeding.

7 “(iii) INTEREST.—A licensee who has
8 failed to make a payment required under
9 this subsection by the due date to a des-
10 ignated agent (including as specified in a
11 notice of payment deficiency or default, as
12 determined in a royalty compliance exam-
13 ination under subparagraph (B), or as re-
14 quired by a determination of the Copyright
15 Royalty Judges), shall pay to the des-
16 ignated agent interest on the overdue
17 amount, at a rate [determined in the man-
18 ner set forth in _____],
19 such interest to accrue from the date pay-
20 ment was due until the date payment is re-
21 ceived by the designated agent.

22 “(B) ROYALTY COMPLIANCE EXAMINA-
23 TIONS.—A designated agent may, upon pro-
24 viding written notice to its licensee under this



1 subsection, conduct a royalty compliance exam-
2 ination of the licensee, subject to the following:

3 “(i) A designated agent may conduct
4 only 1 examination of any licensee in a cal-
5 endar year, and may conduct an examina-
6 tion of a licensee with respect to a report-
7 ing period only once. A designated agent
8 may conduct an examination jointly with
9 one or more other designated agents.

10 “(ii) The examination may begin only
11 within 18 months after the end of the pe-
12 riod being examined and may only cover a
13 period of not less than 2 and not more
14 than 4 consecutive years, except that an
15 examination may cover a period of less
16 than 2 years if—

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

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

22 “(III) the licensee has terminated
23 or is about to terminate operations,
24 has filed or indicated an intent to file
25 for bankruptcy, or has transferred or



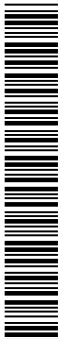
1 indicated an intent to transfer its as-
2 sets to a third party; or

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

6 “(iii) At the conclusion of the exam-
7 ination, the designated agent shall, after
8 considering any written rebuttal provided
9 by the licensee during the examination,
10 provide a written notice to the licensee set-
11 ting forth the final determination of the
12 claim, if any, resulting from the examina-
13 tion.

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

21 “(v) A licensee may not assert section
22 507 of this title or any other Federal or
23 State statute of limitations, doctrine of
24 laches or estoppel, or similar provision to
25 avoid a royalty examination under this



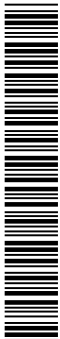
1 subparagraph, or as a defense to a legal
2 action arising from such a royalty exam-
3 ination, if the legal action is commenced
4 within 18 months after the final deter-
5 mination by the designated agent of the
6 claim (as stated in the written notice under
7 clause (iii)) resulting from the examination
8 that is the basis for such action.

9 “(C) FAILURE TO REPORT OR PAY ROYAL-
10 TIES.—

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

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

17 “(II) fails to make all monthly
18 royalty payments when due or fails to
19 pay royalties due for reported usage,
20 the designated agent may provide written
21 notice to the licensee describing the default
22 under subclause (I) or (II) and providing
23 that if the default is not remedied within
24 30 days after receipt of the notice, the li-
25 cense will automatically terminate upon the



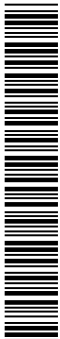
1 expiration of that 30-day period. Upon
2 such termination, the licensee will be sub-
3 ject to an infringement action as provided
4 in subsection (c)(6) with respect to the
5 uses of the musical works that are the sub-
6 ject of the default.

7 “(ii) FAILURE WITH RESPECT TO IN-
8 DIVIDUAL WORK.—

9 “(I) EXCLUSION FROM LI-
10 CENSE.—If a licensee with an other-
11 wise valid license under this
12 subsection—

13 “(aa) has not made the re-
14 quired reports or royalty pay-
15 ments under subparagraph (A)(i)
16 for a musical work covered by the
17 license, or

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

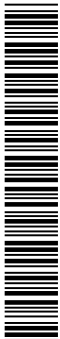


1 that work is excluded from the scope
2 of the license until such time as the li-
3 censee provides all the reports that
4 are past due, and makes all royalty
5 payments that are past due, to the
6 designated agent for that work, or the
7 designated agent otherwise identifies
8 the work, determines the usage of the
9 work, and has received from the li-
10 censee all the royalty payments due
11 for the work.

12 “(II) SPECIFIED CURE PE-
13 RIOD.—For purposes of subclause
14 (I)(bb), the “specified cure period”
15 means, with respect to a licensee—

16 “(aa) 90 days, during the
17 first 12 month-period in which
18 the licensee engages in activities
19 under a license under this sub-
20 section;

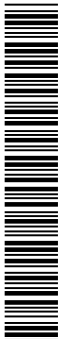
21 “(bb) 60 days, during the
22 succeeding 12-month period in
23 which a licensee engages in activi-
24 ties under a license under this
25 subsection; and



1 “(cc) 30 days, during any
2 period thereafter.

3 “(III) EXCEPTION.—If the li-
4 censee demonstrates to the designated
5 agent with respect to a musical work
6 that is the subject of a notice of defi-
7 ciency described in subclause (I)(bb)
8 that the deficiency cannot be remedied
9 because it is due to missing informa-
10 tion that, notwithstanding a diligent
11 search by the licensee, is actually and
12 objectively unobtainable by the li-
13 censee from any known source, then
14 the license shall not be invalidated
15 with respect to that work.

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



1 terminated by the designated agent. In any
2 other case in which a license is validly ter-
3 minated by a designated agent, the des-
4 ignated agent may require the licensee to
5 meet reasonable credit or advance require-
6 ments or to demonstrate the capability to
7 report and make royalty payments in com-
8 pliance with this subsection before obtain-
9 ing a new license.

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

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

20 “(B) UNCLAIMED FUNDS.—

21 “(i) IN GENERAL.—If a designated
22 agent is unable, after a reasonably diligent
23 search, to identify or locate a copyright
24 owner entitled to receive royalties under
25 subparagraph (A), the designated agent



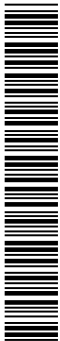
1 may deposit the undistributed royalties (in
2 this subparagraph referred to as ‘un-
3 claimed funds’) into an unclaimed funds
4 account.

5 “(ii) HOLDING AND DISTRIBUTION.—

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

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

22 “(III) DISTRIBUTION OF RE-
23 MAINDER.—Any unclaimed funds not
24 applied to offset licensing administra-

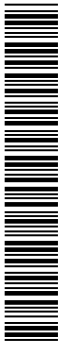


1 tive costs under subclause (II) shall
2 be distributed as follows:

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

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

21 “(iii) PREEMPTION.—This subpara-
22 graph preempts any State law (including
23 common law) that would otherwise apply
24 concerning escheatment or abandoned or
25 unclaimed property.



1 “(C) DISPUTES.—Each designated agent
2 shall establish a committee that includes an
3 equal number of—

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

6 “(ii) representatives of songwriters
7 with musical works represented by the des-
8 ignated agent,
9 for the purpose of hearing and resolving any
10 disputes relating to the allocation and payment
11 by the designated agent of royalties among indi-
12 vidual copyright owners under licenses granted
13 by the designated agent under this subsection.
14 Such dispute resolution process shall not affect
15 any legal or equitable rights or remedies avail-
16 able to any such copyright owner or the des-
17 ignated agent.

18 “(D) PROCEDURES.—The Register of
19 Copyrights shall establish by regulation the pro-
20 cedures for the holding by a designated agent
21 of unclaimed funds and royalties paid under
22 this subsection that are attributable to musical
23 works that are the subject of an ownership dis-
24 pute or a legal proceeding. A designated agent
25 that complies with the requirements of this



1 paragraph and such regulations shall not be
2 subject to a legal claim based upon or arising
3 from unclaimed funds or such an ownership dis-
4 pute or legal proceeding.

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

15 “(12) COST SHARING FEES.—The Copyright
16 Royalty Judges shall determine, under such proce-
17 dures as they may establish, an appropriate cost-
18 sharing mechanism and cost-sharing amounts to be
19 paid by licensees under this subsection to designated
20 agents. Not later than 30 days after the date of en-
21 actment of the Section 115 Reform Act of 2006, the
22 Copyright Royalty Judges shall initiate a proceeding
23 to determine, within 90 days after such date of en-
24 actment , appropriate interim cost-sharing amounts
25 to apply pending the establishment of final cost-



1 sharing amounts. The Copyright Royalty Judges, in
2 establishing royalty rates for statutory licenses, may
3 not take into account the cost-sharing mechanism or
4 cost-sharing amounts.

5 “(13) APPLICABILITY OF OTHER PROVISIONS.—
6 [To be supplied.]

7 “(14) PERFORMANCE RIGHT PRESERVED.—The
8 rights granted under this subsection shall not in-
9 clude, limit, or otherwise affect any right of public
10 performance of a musical work.

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

12 “(A) ADMINISTRATIVE FEES.—The term
13 ‘administrative fees’ means any fees that are
14 collected or deducted by a designated agent to
15 cover licensing administrative costs or other ad-
16 ministrative costs.

17 “(B) COPYRIGHT OWNER.—The term
18 ‘copyright owner’ means a natural person or le-
19 gally recognized business entity that owns or
20 controls copyrighted nondramatic musical works
21 subject to licensing under this section.

22 “(C) DIGITAL MUSIC PROVIDER.—The
23 term ‘digital music provider’ means a person
24 that, with respect to a service engaging in ac-



1 activities licensed under this subsection, meets the
2 following criteria:

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

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

9 “(iii) Is able to fully report on all rev-
10 enues and consideration generated by the
11 service.

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

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

24 “(E) FULL DOWNLOAD.—The term ‘full
25 download’ means a digital phonorecord delivery



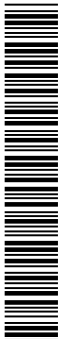
1 of a sound recording of a musical work that is
2 not limited in availability for listening by the
3 end user either to a period of time or a number
4 of times the sound recording can be played.

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

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

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

20 “(G) LICENSING ADMINISTRATIVE
21 COSTS.—The term ‘licensing administrative
22 costs’ means the actual costs to a designated
23 agent that are attributable to the issuance and
24 administration of licenses under this subsection,
25 including—



1 “(i) costs in connection with the col-
2 lection and distribution of royalties under
3 this subsection;

4 “(ii) the costs of identifying and locat-
5 ing copyright owners and administering a
6 claims system for unidentified copyright
7 owners;

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

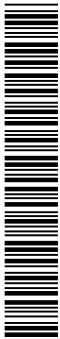
10 “(iv) the costs of creating and main-
11 taining an infrastructure for the activities
12 described in clauses (i), (ii), and (iii).

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

17 “(i) a definite period of time (includ-
18 ing a period of time defined by ongoing
19 subscription payments made by an end
20 user); or

21 “(ii) a specified number of times.

22 “(I) NONINTERACTIVE STREAMING.—The
23 term ‘noninteractive streaming’ means the
24 radio-style streaming of sound recordings of
25 musical works for which a statutory license is



1 available with respect to the sound recordings
2 under section 114(d)(2).

3 “(J) OTHER ADMINISTRATIVE COSTS.—
4 The term ‘Other administrative costs’ means all
5 expenses, expenditures, retained earnings, and
6 reserves of a designated agent, other than li-
7 censing administrative costs, that are author-
8 ized by the board of directors of the designated
9 agent.

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

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

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



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

5 “(B) specifying the procedures for expe-
6 dited proceedings under paragraph
7 (8)(D)(ii)(II)(bb).”.

8 **SEC. 3. TECHNICAL AMENDMENTS.**

9 (a) DEFINITION.—Section 115(d) is amended—
10 (1) in the first sentence, by striking “As used”
11 and inserting by adding at the end the following: “.”

12 “(1) IN GENERAL.—As used”;

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

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

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

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

22 “(B) server and incidental reproductions of
23 nondramatic musical works made to facilitate
24 the deliveries of phonorecords by digital trans-



1 mission described in subparagraph (A) and
2 paragraph (1).”.

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

5 (1) in paragraph (3)—

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

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

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

16 (2) in paragraph (5)—

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

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

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



1 **SEC. 4. EFFECTIVE DATE.**

2 (a) IN GENERAL.—Except as provided in subsection
3 (b), this Act and the amendments made by this Act take
4 effect 180 days after the date of enactment of this Act.

5 (b) EXCEPTIONS.—Paragraphs (9)(B)(ii)(I) and (12)
6 of section 115(e) of title 17, United States Code, as added
7 by section 2 of this Act, take effect on the date of enact-
8 ment of this Act.

