

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.

---

## IN THE HOUSE OF REPRESENTATIVES

Mr. SMITH of Texas 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 gen-  
8 eral and incidental digital phonorecord deliv-  
9 eries in the form of full downloads, limited  
10 downloads, interactive streams, and any other  
11 form constituting a digital phonorecord delivery;  
12 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 under the li-  
17 cense, including—

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

20           “(ii) reproductions made on servers  
21 under the authority of the licensee; and

22           “(iii) incidental reproductions made  
23 under the authority of the license in the  
24 normal course of engaging in activities de-  
25 scribed in subparagraph (A), including



1           cached, network, and RAM buffer repro-  
2           ductions.

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

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

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

15           “(3) ROYALTY-FREE LICENSE.—

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

20           “(B) ACTIVITIES COVERED.—Each des-  
21           ignated agent shall grant a license under this  
22           subsection for the making of server and inci-  
23           dental reproductions to facilitate noninteractive  
24           streaming at a royalty-free rate. The designated  
25           agent may charge only a filing fee of not more



1 than \$30 to administer the issuance of the li-  
2 cense. The license shall cover reproductions  
3 made on servers under authority of the licensee  
4 and incidental reproductions made under the  
5 authority of the licensee in the course of the  
6 noninteractive streaming, including cached, net-  
7 work, and RAM buffer reproductions, to the ex-  
8 tent reasonably necessary for, and solely for the  
9 purpose of, engaging in noninteractive stream-  
10 ing under the license in a technologically rea-  
11 sonable and efficient matter.

12 “(C) EXCLUDED ACTIVITIES.—The license  
13 under subparagraph (A) does not extend to any  
14 server or incidental reproductions used to en-  
15 able a streaming service (or any other type of  
16 service) that takes affirmative steps to author-  
17 ize, enable, cause, or induce the making of re-  
18 productions of musical works by or for end  
19 users that are accessible by those end users for  
20 future listening, unless a valid license for repro-  
21 duction and distribution rights has otherwise  
22 been obtained by the streaming or other type of  
23 service permitting the server or incidental re-  
24 productions to be used for that activity.



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

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

20          “(6) RETROACTIVE ROYALTY PAYMENTS.—

21                 “(A) RETROACTIVE PAYMENTS.—A digital  
22                 music provider that has obtained a license from  
23                 a designated agent under this subsection for—

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



1                   “(ii) the making or distribution of  
2                   interactive streams,  
3                   may report to the designated agent activity au-  
4                   thorized by the license that the digital music  
5                   provider engaged in during the period beginning  
6                   January 1, 2001, and ending on January 1,  
7                   2008, and pay to the designated agent royalties  
8                   applicable to that activity. Such reporting and  
9                   payments shall be made not later than March  
10                  1, 2008, in accordance with the regulations  
11                  issued under paragraph (10) regarding report-  
12                  ing and payments.

13                  “(B) LIMITATION ON LIABILITY.—A dig-  
14                  ital music provider that reports activity and  
15                  makes payments under this paragraph for an  
16                  activity under this paragraph shall not be sub-  
17                  ject to an action for copyright infringement al-  
18                  leging violation of reproduction or distribution  
19                  rights to the extent such action is based on ac-  
20                  tivity so reported for which all payments due  
21                  have been made.

22                  “(C) EFFECT ON ROYALTY-FREE LI-  
23                  CENSE.—A digital music provider that complies  
24                  with the requirements of this paragraph is enti-



1           tled to a royalty-free license for the activity re-  
2           ported under subparagraph (A).

3           “(7) LICENSE NOT TRANSFERABLE.—A license  
4           granted to a digital music provider under this sub-  
5           section may not be transferred to any other person  
6           or entity.

7           “(8) ROYALTY RATES AND TERMS.—

8           “(A) IN GENERAL.—Except as provided in  
9           this paragraph, the Copyright Royalty Judges  
10          shall determine reasonable rates and terms for  
11          digital phonorecord deliveries as provided under  
12          subsection (c) and chapter 8, except for server  
13          and incidental reproductions for noninteractive  
14          streaming that are eligible for royalty-free li-  
15          censes under this subsection.

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

24          “(C) PAYMENT.—Licensees under this  
25          subsection shall make payments of royalty rates



1 and terms to the designated agents as directed  
2 by the Copyright Royalty Judges.

3 “(D) RATES AND TERMS FOR NEW LI-  
4 CENSE ACTIVITIES.—

5 “(i) IN GENERAL.—Not later than  
6 December 1, 2007, the Copyright Royalty  
7 Judges shall initiate a ratemaking pro-  
8 ceeding, pursuant to the procedures set  
9 forth in chapter 8, to determine a final  
10 rate and terms for any activity for which  
11 a license is available under this subsection  
12 if—

13 “(I) a final rate and terms have  
14 not been established for the activity as  
15 of that date; or

16 “(II) the activity is not the sub-  
17 ject of a proceeding to set a final rate  
18 and terms under subsection (c) that is  
19 pending before the Copyright Royalty  
20 Judges on that date.

21 “(ii) PENDING PROCEEDINGS.—In  
22 any case in which a proceeding is pending  
23 before the Copyright Royalty Judges, on  
24 December 1, 2007, to determine final rates  
25 and terms under subsection (c), the Copy-





1 right Royalty Judges may expand and ad-  
2 just the schedule of the proceeding to cover  
3 rates and terms for any activity described  
4 in clause (i), in lieu of initiating a pro-  
5 ceeding under clause (i) with respect to  
6 that activity, if so expanding and adjusting  
7 the schedule of the proceeding will not un-  
8 duly prejudice any party to the proceeding  
9 and will not delay the final determination  
10 of rates and terms by the Copyright Roy-  
11 alty Judges by more than 90 days.

12 “(iii) PARTICIPATION OF DESIGNATED  
13 AGENTS.—All designated agents, and any  
14 other parties who have a significant inter-  
15 est, within the meaning of section 804(a),  
16 in the applicable royalty rate, are entitled  
17 to participate in a proceeding under this  
18 subparagraph relating to activities licensed  
19 under this subsection.

20 “(E) INTERIM RATES.—

21 “(i) IN GENERAL.—For any activity  
22 for which a license is available under this  
23 subsection and for which a rate and terms  
24 have not been determined under subsection  
25 (c), a digital music provider shall, upon fil-



1 ing a valid application with the relevant  
2 designated agent, have a license under this  
3 subsection to engage in the activity, sub-  
4 ject to clause (ii).

5 “(ii) INTERIM RATES AND TERMS.—  
6 Upon the filing of an application under  
7 clause (i)—

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

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

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

24 “(bb) the Judges shall de-  
25 termine the interim rate and



1 terms not less than 30 days and  
2 not more than 60 days after pub-  
3 lishing the notice, through the  
4 expedited proceeding.

5 “(iii) APPLICABILITY OF INTERIM  
6 RATES AND TERMS.—(I) An interim rate  
7 and terms negotiated under clause (ii)(I)  
8 or established under clause (ii)(II) shall  
9 apply to the activity under the license con-  
10 cerned until a final rate and terms for the  
11 activity are determined under subpara-  
12 graph (D), or as otherwise agreed by the  
13 parties.

14 “(II) An interim rate and terms de-  
15 scribed in clause (i) with respect to an ac-  
16 tivity by a digital music provider shall not  
17 be treated as precedent in a final rate-  
18 making proceeding. If the Copyright Roy-  
19 alty Judges have established an interim  
20 rate and terms under clause (ii)(II), sub-  
21 ject to clause (iv), that rate and those  
22 terms shall apply to the same activity en-  
23 gaged in by any digital music provider, ex-  
24 cept as otherwise agreed to by the parties.



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

9           “(v) ADJUSTMENT OF INTERIM  
10          RATES.—After a determination of a final  
11          rate and terms that will apply to an activ-  
12          ity for which a license is available under  
13          this subsection has been made under sub-  
14          paragraph (D), the final rate and terms  
15          shall be retroactive to the inception of the  
16          activity under all licenses to which such  
17          rate and terms apply, unless an agreement  
18          between the parties to a license provides  
19          otherwise. Not later than 60 days after the  
20          determination of the final rate becomes  
21          effective—

22                 “(I) the digital music provider  
23                 shall pay to the designated agent any  
24                 amounts due from underpayment of  
25                 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 August 1, 2007, the  
21 Register of Copyrights shall designate a  
22 mechanical licensing and collection agency  
23 representing music publishing entities that  
24 represent the greatest share of the music  
25 publishing market, as measured by the



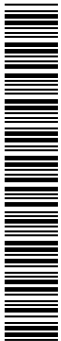
1 amount of royalties collected during the  
2 preceding 3 full calendar years with re-  
3 spect to the use of copyrighted musical  
4 works pursuant to this section, to establish  
5 and operate the General Designated Agent.

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

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

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

25 “(C) ADDITIONAL DESIGNATED AGENTS.—



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

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

16                   “(II) it has the capability to per-  
17 form the required functions of a des-  
18 igned agent under this subsection.

19           “(ii) DUTIES.—(I) Upon certification  
20 under clause (i), an additional designated  
21 agent shall represent any copyright owners  
22 of musical works who elect to have the ad-  
23 ditional designated agent represent them  
24 and the musical works (or shares of musi-  
25 cal works) owned or controlled by such



1 copyright owners for purposes of the li-  
2 censes under this subsection.

3 “(II) Each additional designated  
4 agent shall notify the General Designated  
5 Agent and any other additional designated  
6 agent of each copyright owner, and the  
7 musical works (or shares of musical works)  
8 owned or controlled by the copyright  
9 owner, that the additional designated agent  
10 represents pursuant to subclause (I).

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

16 “(iii) DECERTIFICATION.—The Reg-  
17 ister of Copyrights may remove the certifi-  
18 cation of any additional designated agent  
19 upon a showing that it fails to meet the  
20 qualifications under this subparagraph or  
21 otherwise fails to meet the requirements  
22 under this paragraph.

23 “(D) AUTHORITIES OF DESIGNATED  
24 AGENTS.—A designated agent may—





1 “(i) engage in activities pursuant to  
2 this subsection;

3 “(ii) engage in such additional activi-  
4 ties in the interest of music publishers and  
5 songwriters as the designated agent con-  
6 siderers appropriate, including industry ne-  
7 gotiations, ratesetting proceedings, litiga-  
8 tion, and legislative efforts; and

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

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

14 “(i) REPRESENTATION BY SINGLE  
15 DESIGNATED AGENT.—Each copyright  
16 owner, and the musical works (or shares of  
17 musical works) that the copyright owner  
18 owns or controls, may be represented by  
19 only one designated agent during any cal-  
20 endar year.

21 “(ii) ANNUAL ENROLLMENT PE-  
22 RIOD.—

23 “(I) IN GENERAL.—Each copy-  
24 right owner may, during the month of  
25 September of each year, elect to



1 change the designated agent to rep-  
2 resent the owner and the musical  
3 works (or shares of musical works) re-  
4 ferred to in clause (i), beginning on  
5 January 1 of the succeeding calendar  
6 year.

7 “(II) SELECTION.—A copyright  
8 owner may choose only one designated  
9 agent during the month of September  
10 of each year. If the designated agent  
11 chosen is not certified pursuant to  
12 subparagraph (C)(i) or is decertified  
13 pursuant to subparagraph (C)(iii), the  
14 copyright owner and the musical  
15 works (or shares) referred to in clause  
16 (i) shall be represented by the General  
17 Designated Agent for the succeeding  
18 calendar year.

19 “(iii) EFFECT ON LICENSES.—A des-  
20 ignated agent’s representation of the musi-  
21 cal works (and shares of musical works) of  
22 any copyright owner who elects to change  
23 designated agents under clause (ii) shall  
24 terminate on December 31 of the year in  
25 which the election is made, after which the



1 musical works (and shares of musical  
2 works) of the copyright owner will become  
3 subject to the licenses in effect with the  
4 designated agent selected under clause (ii).

5 “(iv) DEFAULT REPRESENTATION BY  
6 GENERAL DESIGNATED AGENT.—If a copy-  
7 right owner does not choose to be rep-  
8 resented by an additional designated agent,  
9 the General Designated Agent shall rep-  
10 resent the copyright owner and musical  
11 works (or shares of musical works) owned  
12 or controlled by the copyright owner.

13 “(v) VOLUNTARY AGREEMENTS.—A  
14 copyright owner and a digital music pro-  
15 vider may enter into a voluntary license  
16 agreement pursuant to subsection  
17 (c)(3)(E)(i) to cover activities licensed  
18 under this subsection. Any such agreement  
19 shall apply in lieu of a blanket license  
20 under this subsection with respect to those  
21 musical works (or shares of musical works)  
22 and activities covered by the agreement  
23 during the period that the agreement is in  
24 effect. The royalty fees due for usage of  
25 musical works (or shares of musical works)



1 under a blanket license under this sub-  
2 section shall be reduced in pro to the usage  
3 covered under such a voluntary license  
4 agreement. Each designated agent shall es-  
5 tablish procedures by which copyright own-  
6 ers and licensees shall be required to notify  
7 the designated agent of the existence of  
8 voluntary license agreements upon which  
9 they are relying in lieu of the blanket li-  
10 cense. Such procedures shall include appro-  
11 priate measures to protect confidential in-  
12 formation of licensees.

13 “(F) NOTICE OF DESIGNATED AGENTS.—  
14 At least 90 days before beginning operations,  
15 the General Designated Agent and any inter-  
16 ested party wishing to serve as a designated  
17 agent shall file with the Copyright Office a no-  
18 tice of intent to operate as a designated agent  
19 under this subsection. The notice shall contain  
20 such contact information, and such information  
21 concerning applications for licenses under this  
22 subsection and access to the electronic database  
23 of the designated agent (described in subpara-  
24 graph (H)(i)) identifying musical works (or  
25 shares of musical works) represented by the



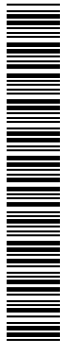
1 designated agent, as required in regulations  
2 issued to carry out this subsection. The Copy-  
3 right Office shall make each notice filed under  
4 this subparagraph available to the public on the  
5 Internet.

6 “(G) TERMINATION OF DESIGNATED  
7 AGENT.—

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

12 “(I) notify the Copyright Office,  
13 all of its licensees under this sub-  
14 section, all of the copyright owners  
15 represented by the designated agent  
16 for the purposes of this subsection,  
17 and all other designated agents of its  
18 intent to terminate operations; and

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

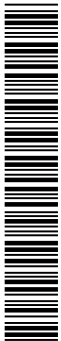
11          “(H) MUSICAL WORKS DATA.—

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 shares of musical  
19                 works) are available for licensing under  
20                 this subsection through that designated  
21                 agent. Any musical work (or shares of a  
22                 musical work) not identified as being rep-  
23                 resented by the General Designated Agent  
24                 or any additional designated agent in any  
25                 such database may be presumed by licens-



1           ees to be represented by the General Des-  
2           ignated Agent.

3           “(ii) USE OF DATABASE BY DES-  
4           IGNATED AGENTS AND LICENSEES.—Sub-  
5           ject to the public access described under  
6           clause (iii), the database required by clause  
7           (i) may be used by designated agents and  
8           licensees only for purposes of determining  
9           the identity and availability of musical  
10          works for licenses under this subsection,  
11          obtaining such licenses, reporting of use of  
12          musical works, payment of royalties, and  
13          otherwise to comply with licenses under  
14          this subsection, except that a designated  
15          agent may use or make the database it  
16          maintains available for other purposes re-  
17          lating to musical works or music pub-  
18          lishers. The Copyright Royalty Judges  
19          shall, in establishing cost-sharing amounts  
20          pursuant to paragraph (12), consider the  
21          value and benefit of any such other pur-  
22          poses to the designated agent and the  
23          copyright owners it represents. The use of  
24          any such database shall be subject to rea-  
25          sonable confidentiality and security stand-



1 ards prescribed in regulations to carry out  
2 this subsection.

3 “(iii) PUBLIC ACCESS TO DATA-  
4 BASE.—The General Designated Agent  
5 and each designated agent shall make rel-  
6 evant portions of the database required by  
7 clause (i) available free of charge to the  
8 general public to access information con-  
9 cerning specific musical works that are  
10 represented by the designated agent, sub-  
11 ject to reasonable terms and conditions of  
12 use as may be prescribed by the Register  
13 of Copyrights.

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

16 “(A) REQUIREMENTS.—

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

24 “(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) to the legal and finan-  
18 cial advisors of the designated  
19 agent or to an accountant or  
20 auditor rendering services relat-  
21 ing to this subsection; or

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



1 “(iii) INTEREST.—

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

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



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

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

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

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

24 “(I) more than 4 years if the ex-  
25 amination includes activities subject



1 to retroactive payments under para-  
2 graph (6);

3 “(II) a period of less than 2  
4 years if—

5 “(aa) the licensee’s license  
6 has been terminated;

7 “(bb) the licensee has de-  
8 faulted in its reporting or pay-  
9 ments under this paragraph; or

10 “(cc) the licensee has termi-  
11 nated or is about to terminate  
12 operations, has filed or indicated  
13 an intent to file for bankruptcy,  
14 or has transferred or indicated  
15 an intent to transfer its assets to  
16 a third party; or

17 “(III) a period of less than 2  
18 years or more than 4 years, if for  
19 other good cause the examination can-  
20 not reasonably cover a period of 2 to  
21 4 years.

22 “(iii) At the conclusion of the exam-  
23 ination, the designated agent shall, after  
24 considering any written rebuttal provided  
25 by the licensee during the examination,



1 provide a written notice to the licensee set-  
2 ting forth the designated agent’s final de-  
3 termination of the claim, if any, resulting  
4 from the examination.

5 “(iv) The designated agent shall bear  
6 the costs of the examination, except that,  
7 if the licensee underpaid royalty fees by 10  
8 percent or more, the licensee shall bear the  
9 reasonable costs of the examination.

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

23 “(C) FAILURE TO REPORT OR PAY ROYAL-  
24 TIES.—



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

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

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

22                   “(ii) FAILURE WITH RESPECT TO IN-  
23 DIVIDUAL WORK.—

24                   “(I) EXCLUSION FROM LI-  
25 CENSE.—If a licensee with an other-



1 wise valid license under this  
2 subsection—

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

8 “(bb) upon being sent writ-  
9 ten notice from the designated  
10 agent of a valid reporting or pay-  
11 ment deficiency with respect to  
12 the use of a musical work, fails  
13 to remedy that deficiency within  
14 the specified cure period,  
15 that work is excluded from the scope  
16 of the license until such time as the li-  
17 censee provides all the reports that  
18 are past due, and makes all royalty  
19 payments that are past due, to the  
20 designated agent for that work, or the  
21 designated agent otherwise identifies  
22 the work, determines the usage of the  
23 work, and has received from the li-  
24 censee all royalty payments for the  
25 work that are past due.



1                   “(II) SPECIFIED CURE PE-  
2                   RIOD.—For purposes of subclause  
3                   (I)(bb), the “specified cure period”  
4                   means, with respect to a licensee—

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

10                   “(bb) 60 days, during the  
11                   succeeding 12-month period in  
12                   which a licensee engages in ac-  
13                   tivities under a license under this  
14                   subsection; and

15                   “(cc) 30 days, during any  
16                   period thereafter.

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





1 objectively unobtainable by the li-  
2 censee from any known source, then  
3 the license shall not be invalidated  
4 with respect to that work, if all royal-  
5 ties due for that work have been paid.

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

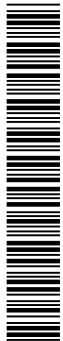


1           “(11) DISTRIBUTION OF ROYALTIES, UN-  
2 CLAIMED FUNDS, AND DISPUTE RESOLUTION.—

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

11           “(B) UNCLAIMED FUNDS.—

12           “(i) IN GENERAL.—If a designated  
13 agent is unable, after a reasonably diligent  
14 search, to identify or locate a copyright  
15 owner entitled to receive royalties under  
16 subparagraph (A), the designated agent  
17 may deposit the undistributed royalties (in  
18 this subparagraph referred to as ‘un-  
19 claimed funds’) into an unclaimed funds  
20 account that earns interest, accrued  
21 monthly, at the Federal short term rate  
22 determined under section 1274(d)(1)(C)(i)  
23 of the Internal Revenue Code of 1986. In-  
24 terest accrued on unclaimed funds shall be  
25 payable to a copyright owner upon dis-



1                   tribution of the unclaimed funds to such  
2                   copyright owner.

3                   “(ii) HOLDING AND DISTRIBUTION.—

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

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

19                  “(III) DISTRIBUTION OF RE-  
20                  MAINDER.—Any unclaimed funds not  
21                  applied to offset licensing administra-  
22                  tive costs under subclause (II) shall  
23                  be distributed as follows:  
24



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

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

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



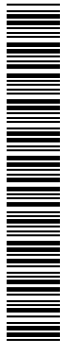
1           “(C) DISPUTES.—Each designated agent  
2 shall establish a committee that includes an  
3 equal number of—

4                   “(i) representatives of music pub-  
5 lishing entities represented by the des-  
6 igned agent, and

7                   “(ii) songwriters with musical works  
8 represented by the designated agent who  
9 are not members of the board of directors,  
10 governing body, or management of the des-  
11 igned agent,

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

21           “(D) PROCEDURES.—The Register of  
22 Copyrights shall establish by regulation the pro-  
23 cedures for the holding by a designated agent  
24 of unclaimed funds and royalties paid under  
25 this subsection that are attributable to musical



1 works that are the subject of a legal dispute or  
2 proceeding. A designated agent that complies  
3 with the requirements of this paragraph and  
4 such regulations shall not be subject to a legal  
5 claim based upon or arising from unclaimed  
6 funds or an ownership dispute or legal pro-  
7 ceeding.

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



1 such a request of a particular designated agent  
2 not more than once each calendar year.

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

13 “(12) COST SHARING FEES.—

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



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

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

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

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

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

22 “(V) any other factors deemed rel-  
23 evant by the Copyright Royalty Judges;  
24 and





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

7           “(13) DEFINITIONS.—In this subsection:

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

13           “(B) COPYRIGHT OWNER.—The term  
14 ‘copyright owner’ means a natural person or le-  
15 gally recognized entity that owns or controls an  
16 interest in one or more copyrighted nondra-  
17 matic musical works subject to licensing under  
18 this section.

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

24           “(i) Contracts with or has a direct  
25 economic relationship with the end users of



1 the service, and controls what end users  
2 pay for the service.

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

5 “(iii) Is able to fully report on all rev-  
6 enues and consideration generated by the  
7 service.

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

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

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



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

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

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

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

22          “(i) costs in connection with the col-  
23          lection and distribution of royalties under  
24          this subsection;



1           “(ii) the costs of identifying and locat-  
2           ing copyright owners and administering a  
3           claims system for unidentified copyright  
4           owners;

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

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

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

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

18               “(ii) a specified number of times.

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



1           “(J) OTHER ADMINISTRATIVE COSTS.—

2           The term ‘Other administrative costs’ means all  
3           expenses, expenditures, retained earnings, and  
4           reserves of a designated agent, other than li-  
5           censing administrative costs, that are author-  
6           ized by the board of directors of the designated  
7           agent.

8           “(K) SONGWRITER.—The term ‘song-  
9           writer’ means the author of a musical work.

10          “(L) 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          “(14) 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. PERFORMANCE RIGHT PRESERVED.**

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

12          “(f) PERFORMANCE RIGHT PRESERVED.—The rights  
13          granted under subsection (e) shall not include, limit, or  
14          otherwise affect any right of public performance of a musi-  
15          cal work. The definitions contained in paragraph (13) of  
16          subsection (e) shall not be taken into account in any ad-  
17          ministrative, judicial, or other governmental proceeding to  
18          set or adjust the royalties payable to copyright owners of  
19          musical works for, the right of public performance of their  
20          works.”.

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

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

25          “(7) INTERIM RATES.—



1           “(A) IN GENERAL.—For any activity for  
2           which a license is not available under subsection  
3           (e) and for which a rate has not been deter-  
4           mined, any person shall, upon serving notice to  
5           the copyright owner, have a license under this  
6           subsection to engage in the activity, subject to  
7           subparagraph (B).

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

10           “(i) the parties may negotiate an in-  
11           terim rate that will apply to the activity  
12           under the license; or

13           “(ii) either party or both parties may  
14           apply to the Copyright Royalty Judges for  
15           an interim rate, in which case—

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

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



1           “(C)    APPLICABILITY    OF    INTERIM  
2           RATES.—(i) Interim rates negotiated under sub-  
3           paragraph (B)(i) or established under subpara-  
4           graph (B)(ii) shall apply to the activity under  
5           the license concerned until a rate for the activ-  
6           ity is determined under subparagraphs (C),  
7           (D), and (F) of paragraph (3), or as otherwise  
8           agreed by the parties.

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

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





1           “(E) ADJUSTMENT OF INTERIM RATES.—  
2           After a final determination of rates that will  
3           apply to an activity for which a license is avail-  
4           able under this subsection has been made under  
5           subparagraphs (C), (D), and (F) of paragraph  
6           (3), the final rate and terms shall be retroactive  
7           to the inception of the activity under a license  
8           between a person and a copyright owner to  
9           which the rate and terms apply, unless an  
10          agreement between the parties to the license  
11          provides otherwise. Not later than 60 days after  
12          the determination of the final rate becomes  
13          effective—

14                   “(i) the person shall pay to the copy-  
15                   right owner any amounts due from under-  
16                   payment of fees by the person because the  
17                   final rate exceeds the interim rate; or

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



1 **SEC. 5. 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.—The term ‘digital  
11 phonorecord delivery’ includes—

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

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

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

22 (1) in paragraph (3)—

23 (A) in the first sentence of subparagraph

24 (A), by striking “or authorize the distribution  
25 of”;



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

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

9 (2) in paragraph (5)—

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

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

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

17 **SEC. 6. EFFECTIVE DATE.**

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

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



1 **SEC. 7. SAVINGS CLAUSES.**

2 (a) LICENSE NOT REQUIRED.—This Act and the  
3 amendments made by this Act shall not be construed to  
4 expand the activities for which a license under section 115  
5 of title 17, United States Code, is required.

6 (b) FAIR USE.—Nothing in this Act shall affect the  
7 fair use, under section 107 of title 17, United States Code,  
8 of nondramatic musical works.

