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(Original Signature of Member)

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R.** \_\_\_\_\_

To amend title 17, United States Code, to provide for licensing of digital delivery of musical works and to provide for limitation of remedies in cases in which the copyright owner cannot be located, and for other purposes.

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**IN THE HOUSE OF REPRESENTATIVES**

Mr. SMITH of Texas introduced the following bill; which was referred to the Committee on \_\_\_\_\_

\_\_\_\_\_  
**A BILL**

To amend title 17, United States Code, to provide for licensing of digital delivery of musical works and to provide for limitation of remedies in cases in which the copyright owner cannot be located, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Copyright Modernization Act of 2006”.

1 (b) TABLE OF CONTENTS.—The table of contents of  
 2 this Act is the following:

Sec. 1. Short title; table of contents.

#### TITLE I—MUSIC LICENSING

Sec. 101. Short title.  
 Sec. 102. Statutory Licenses for digital delivery of musical works.  
 Sec. 103. Performance right preserved.  
 Sec. 104. Interim rate process.  
 Sec. 105. Technical amendments.  
 Sec. 106. Effective date.  
 Sec. 107. Savings clauses.  
 Sec. 108. Staying of infringement actions.

#### TITLE II—ORPHAN WORKS

Sec. 201. Short title.  
 Sec. 202. Limitation on remedies in cases involving orphan works.  
 Sec. 203. Report to Congress on amendments.  
 Sec. 204. Inquiry on remedies for small copyright claims.

#### TITLE III—COPYRIGHT PROTECTION RESOURCES

Sec. 301. Short title.  
 Sec. 302. Registration in civil infringement actions.  
 Sec. 303. Statutory damages.  
 Sec. 304. Improved investigative and forensic resources for enforcement of laws  
 related to intellectual property crimes.

## 3 **TITLE I—MUSIC LICENSING**

### 4 **SEC. 101. SHORT TITLE.**

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

### 7 **SEC. 102. STATUTORY LICENSES FOR DIGITAL DELIVERY** 8 **OF MUSICAL WORKS.**

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

12 “(e) LICENSES FOR DIGITAL USES OF MUSICAL  
 13 WORKS.—

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

6           “(A) the making and distribution of gen-  
7 eral and incidental digital phonorecord deliv-  
8 eries in the form of full downloads, limited  
9 downloads, interactive streams, and any other  
10 form constituting a digital phonorecord delivery  
11 or hybrid offering; and

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

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

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

21           “(iii) incidental reproductions made  
22 under the authority of the licensee in the  
23 normal course of engaging in activities de-  
24 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. Except as provided in paragraph  
8           (9)(E)(v), a person may engage in activities subject  
9           to this subsection under authority of a compulsory  
10          license only—

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

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

16          “(3) EXEMPTION FOR NONINTERACTIVE SERV-  
17          ER AND INCIDENTAL REPRODUCTIONS.—

18           “(A) IN GENERAL.—Notwithstanding sec-  
19          tion 106, it shall not be an infringement of the  
20          exclusive right of reproduction or distribution in  
21          a copyrighted musical work, as described in sec-  
22          tion 106(1) and (3), for a digital music provider  
23          or a transmitting entity to make server and in-  
24          cidental reproductions to facilitate noninter-  
25          active streaming or terrestrial radio analog

1 broadcasts of that musical work, subject to the  
2 following:

3 “(i) The exemption under this sub-  
4 paragraph is limited to reproductions on  
5 servers and incidental reproductions made  
6 under authority of the digital music pro-  
7 vider or transmitting entity and incident to  
8 noninteractive streaming or terrestrial  
9 radio analog broadcasting, including  
10 cached, network, and RAM buffer repro-  
11 ductions, to the extent reasonably nec-  
12 essary for, and only to the extent that such  
13 reporductions are used for the purpose of,  
14 engaging in noninteractive streaming or  
15 terrestrial radio analog broadcasting.

16 “(ii) The exemption under this sub-  
17 paragraph does not apply to any server or  
18 incidental reproductions made to facilitate  
19 noninteractive streaming or terrestrial  
20 radio analog broadcasts by a digital music  
21 provider or a transmitting entity that takes  
22 affirmative steps to intentionally induce,  
23 cause, or promote the making of reproduc-  
24 tions of musical works by or for end users  
25 that are accessible by those end users for

1 future listening, unless valid license au-  
2 thority for reproduction and distribution  
3 rights otherwise exists permitting the serv-  
4 ice to use such server or incidental repro-  
5 ductions for that activity. For purposes of  
6 this clause, none of the following shall in  
7 itself be considered an affirmative step to  
8 intentionally induce, cause, or promote the  
9 making of reproductions of musical works:

10 “(I) The transmission of  
11 metadata to identify sound recordings.

12 “(II) The transmission of  
13 unencrypted streams.

14 “(III) A transmitting entity’s an-  
15 nouncement of a particular song to be  
16 broadcast.

17 “(B) RETROACTIVE EFFECT.—The exemp-  
18 tion from liability provided under subparagraph  
19 (A) shall apply to actions taken on or after  
20 January 1, 2001.

21 “(C) SAVINGS CLAUSE REGARDING IN-  
22 FRINGEMENT.—Neither the exemption provided  
23 under subparagraph (A), nor the limitations on  
24 such exemption set forth in subparagraph  
25 (A)(ii), shall be construed to imply that the

1 making of server or incidental reproductions not  
2 covered by the exemption does or does not con-  
3 stitute copyright infringement. In evaluating a  
4 claim of infringement based on the making by  
5 a service of server or incidental reproductions in  
6 a case in which the use of such server or inci-  
7 dental reproductions is not within the scope of  
8 the exemption set forth in subparagraph (A), a  
9 court shall not take into account the exemption,  
10 or the activities that are excluded from the  
11 scope of the exemption under subparagraph  
12 (A)(ii).

13 “(D) RIGHTS WITH RESPECT TO SOUND  
14 RECORDINGS.—The exemption under this para-  
15 graph does not limit or otherwise affect any  
16 rights with respect to sound recordings under  
17 this title.

18 “(4) APPLICATIONS FOR LICENSES.—Any dig-  
19 ital music provider seeking a license under this sub-  
20 section may apply to a designated agent for the li-  
21 cense, identifying in the application each type of  
22 qualifying activity for which the license is sought.  
23 Any digital music provider that has a license under  
24 this subsection and seeks to engage in any activity  
25 covered by this subsection that is not identified in

1 the license may engage in that activity only upon fil-  
2 ing a new application identifying the additional ac-  
3 tivity.

4 “(5) LICENSE SCOPE AND EFFECTIVE DATE.—  
5 All activities specified in an application filed under  
6 paragraph (4) for which a license is available under  
7 this subsection shall be licensed by the designated  
8 agent. The license shall be effective, upon the filing  
9 of the application, for all copyrighted nondramatic  
10 musical works (or shares of such musical works)  
11 represented by the designated agent.

12 “(6) RETROACTIVE ROYALTY PAYMENTS.—

13 “(A) RETROACTIVE PAYMENTS.—A digital  
14 music provider that has obtained a license from  
15 a designated agent under this subsection for—

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

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

20 may report to the designated agent activity au-  
21 thorized by the license that the digital music  
22 provider engaged in during the period beginning  
23 on January 1, 2001, and ending on January 1,  
24 2008, and pay to the designated agent royalties  
25 applicable to that activity. Such reporting and



1 payments shall be made not later than March  
2 1, 2008, in accordance with the regulations  
3 issued under paragraph (10) regarding report-  
4 ing and payments.

5 “(B) LIMITATION ON LIABILITY.—A dig-  
6 ital music provider that reports activity and  
7 makes payments under this paragraph for an  
8 activity under this paragraph shall not be sub-  
9 ject to an action for copyright infringement al-  
10 leging violation of reproduction or distribution  
11 rights to the extent such action is based on ac-  
12 tivity so reported for which all payments due  
13 have been made.

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

18 “(8) ROYALTY RATES AND TERMS.—

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

1           until a new rate is determined under subsection  
2           (c) and chapter 8.

3           “(B) PAYMENT.—Licensees under this  
4           subsection shall make payments of royalties to  
5           the designated agents at rates and terms as di-  
6           rected by the Copyright Royalty Judges.

7           “(C) RATES AND TERMS FOR NEW LI-  
8           CENSE ACTIVITIES.—

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

17               “(I) a final rate and terms have  
18               not been established for the activity as  
19               of that date; or

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

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

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

1 subparagraph relating to activities licensed  
2 under this subsection.

3 “(D) INTERIM RATES.—

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

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

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

21 “(II) the digital music provider  
22 or the designated agent, or both, may  
23 apply to the Copyright Royalty  
24 Judges for an interim rate and terms,  
25 in which case—

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

7                   “(bb) the Judges shall de-  
8 termine the interim rate and  
9 terms not less than 30 days and  
10 not more than 60 days after pub-  
11 lishing the notice, through the  
12 expedited proceeding.

13                   “(iii) APPLICABILITY OF INTERIM  
14 RATES AND TERMS.—(I) An interim rate  
15 and terms negotiated under clause (ii)(I)  
16 or established under clause (ii)(II) shall  
17 apply to the activity under the license con-  
18 cerned, retroactive to the inception of the  
19 activity, until a final rate and terms for  
20 the activity are determined under subpara-  
21 graph (C), or as otherwise agreed by the  
22 parties.

23                   “(II) An interim rate and terms de-  
24 scribed in clause (ii) with respect to an ac-  
25 tivity by a digital music provider shall not

1 be treated as precedent in a final rate-  
2 making proceeding. If the Copyright Roy-  
3 alty Judges have established an interim  
4 rate and terms under clause (ii)(II), sub-  
5 ject to clause (iv), that rate and those  
6 terms shall apply to the same activity en-  
7 gaged in by any digital music provider, ex-  
8 cept as otherwise agreed to by the parties.

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

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

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

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

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

23 “(9) DESIGNATED AGENTS.—

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

4           “(B) GENERAL DESIGNATED AGENT.—

5           “(i) DESIGNATION AND PURPOSE.—

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

17          “(II) The General Designated Agent  
18          shall grant and administer licenses and col-  
19          lect and distribute royalties payable for the  
20          use of musical works licensed under this  
21          subsection, but only for copyright owners  
22          who do not choose to be represented by an  
23          additional designated agent, and to the ex-  
24          tent provided in subparagraphs (E)(ii)(II)  
25          and (G)(ii).



1                   “(III)(aa) The General Designated  
2 Agent shall be governed by a board of di-  
3 rectors consisting of 5 members, 2 of  
4 whom shall be professional songwriters.

5                   “(bb) The mechanical licensing and  
6 collection agency described in subclause (I)  
7 shall select the representatives of music  
8 publishing entities that will serve on the  
9 board of directors of the General Des-  
10 ignated Agent.

11                   “(cc) The Register of Copyrights shall  
12 select the 2 songwriter directors, after con-  
13 sulting with the songwriter community.  
14 Each of the 2 songwriter directors shall  
15 have—

16                   “(AA) significant artistic experi-  
17 ence in the songwriting profession, in-  
18 cluding by deriving the major portion  
19 of his or her income from songwriter  
20 activities such as mechanical, per-  
21 formance, and synchronization rights,  
22 whether online or terrestrial; and

23                   “(BB) significant business experi-  
24 ence in the songwriting profession so  
25 that he or she can fully understand

1                   and participate in the deliberations of  
2                   the board of directors.

3                   The 2 songwriter directors shall serve stag-  
4                   gered 3-year terms.

5                   “(dd) All members of the board of di-  
6                   rectors of the General Designated Agent  
7                   have a fiduciary duty to the publishing en-  
8                   tities and songwriters that the board rep-  
9                   resents.

10                  “(ii) DECERTIFICATION.—Upon a  
11                  showing that the General Designated  
12                  Agent fails to meet the qualifications  
13                  under this subparagraph or otherwise fails  
14                  to meet the requirements under this para-  
15                  graph, the Register of Copyrights may,  
16                  after providing the General Designated  
17                  Agent a reasonable opportunity to respond,  
18                  disqualify the General Designated Agent.  
19                  In such a case, the Register of Copyrights  
20                  shall designate another General Designated  
21                  Agent.

22                  “(C) ADDITIONAL DESIGNATED AGENTS.—

23                  “(i) CERTIFICATION.—The Register of  
24                  Copyrights shall certify as an additional  
25                  designated agent to represent copyright

1 owners for purposes of licenses under this  
2 subsection any entity that demonstrates  
3 that—

4 “(I) upon certification, it will  
5 represent 1 or more music publishing  
6 entities that represent at least a 15  
7 percent share of the music publishing  
8 market, as measured by the amount  
9 of royalties collected during the pre-  
10 ceding 3 full calendar years with re-  
11 spect to the use of copyrighted musi-  
12 cal works pursuant to this section;  
13 and

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

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

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

9           “(III) Any election under subclause  
10 (I) is effective only if it is made in writing.  
11 The additional designated agent elected  
12 shall make a copy of the election available  
13 to any other designated agent upon a rea-  
14 sonable request for such a copy.

15           “(iii) DECERTIFICATION.—Upon a  
16 showing that an additional designated  
17 agent fails to meet the qualifications under  
18 this subparagraph or otherwise fails to  
19 meet the requirements under this para-  
20 graph, the Register of Copyrights may,  
21 after providing the additional designated  
22 agent a reasonable opportunity to respond,  
23 remove the certification of the additional  
24 designated agent.

1                   “(D)   AUTHORITIES   OF   DESIGNATED  
2                   AGENTS.—A designated agent may—

3                   “(i) engage in activities pursuant to  
4                   this subsection;

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

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

14                  “(E)   ELECTIONS   BY   COPYRIGHT   OWN-  
15                  ERS.—

16                  “(i)   REPRESENTATION   BY   SINGLE  
17                  DESIGNATED   AGENT.—Each   copyright  
18                  owner, and the musical works (or shares of  
19                  musical works) that the copyright owner  
20                  owns or controls, may choose an additional  
21                  designated agent to represent the owner,  
22                  except that a copyright owner may be rep-  
23                  resented by only 1 designated agent during  
24                  any calendar year.

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

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

12                  “(II) SELECTION.— If the addi-  
13                  tional designated agent chosen by a  
14                  copyright owner is not certified pursu-  
15                  ant to subparagraph (C)(i) or is de-  
16                  certified pursuant to subparagraph  
17                  (C)(iii), the copyright owner and the  
18                  musical works (or shares) referred to  
19                  in clause (i) shall be represented by  
20                  the General Designated Agent for the  
21                  succeeding calendar year.

22                  “(iii) EFFECT ON LICENSES.—A des-  
23                  ignated agent’s representation of the musi-  
24                  cal works (and shares of musical works) of  
25                  any copyright owner who elects to change

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

9 “(iv) VOLUNTARY AGREEMENTS.—A  
10 copyright owner and a digital music pro-  
11 vider may enter into a voluntary license  
12 agreement to cover activities licensed under  
13 this subsection. Any such agreement shall  
14 apply in lieu of a blanket license under this  
15 subsection, to the extent permissible under  
16 subsection (c)(3)(E), with respect to those  
17 musical works (or shares of musical works)  
18 and activities covered by the agreement  
19 during the period that the agreement is in  
20 effect. The royalty fees due for usage of  
21 musical works (or shares of musical works)  
22 under a blanket license under this sub-  
23 section shall be reduced in proportion to  
24 the usage covered under such a voluntary  
25 license agreement. Each designated agent

1 shall establish procedures by which copy-  
2 right owners and licensees shall be re-  
3 quired to notify the designated agent of  
4 the existence of voluntary license agree-  
5 ments upon which they are relying in lieu  
6 of the blanket license. Such procedures  
7 shall include appropriate measures to pro-  
8 tect confidential information of licensees.

9 “(F) NOTICE OF DESIGNATED AGENTS.—

10 At least 90 days before beginning operations,  
11 any interested party wishing to serve as an ad-  
12 ditional designated agent shall file with the  
13 Copyright Office a notice of intent to operate as  
14 a designated agent under this subsection. The  
15 notice shall contain such contact information,  
16 and such information concerning applications  
17 for licenses under this subsection and access to  
18 the electronic database of the additional des-  
19 igned agent (described in subparagraph  
20 (H)(i)) identifying musical works (or shares of  
21 musical works) represented by the additional  
22 designated agent, as required in regulations  
23 issued to carry out this subsection. The Copy-  
24 right Office shall make each notice filed under



1 this subparagraph available to the public on the  
2 Internet.

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

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

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

16 “(II) transfer to the existing  
17 General Designated Agent or, in the  
18 case of the termination of the General  
19 Designated Agent, to the successor  
20 General Designated Agent, electronic  
21 and other copies of all records that  
22 are necessary to determine copyright  
23 ownership and payment of royalties.

24 “(ii) ASSUMPTION OF DUTIES BY  
25 GENERAL DESIGNATED AGENT.—Upon the

1 termination of operations of a designated  
2 agent, the General Designated Agent or  
3 successor General Designated Agent, as  
4 the case may be, shall assume the adminis-  
5 tration of the musical works and rights  
6 previously administered by the terminated  
7 designated agent, regardless of whether the  
8 terminated agent has complied with clause  
9 (i).

10 “(H) MUSICAL WORKS DATABASE.—

11 “(i) AVAILABILITY.—The General  
12 Designated Agent and each additional des-  
13 ignated agent shall maintain and make  
14 available to licensees, free of charge, a  
15 searchable electronic database of informa-  
16 tion from which licensees can determine  
17 which musical works (or shares of musical  
18 works) are available for licensing under  
19 this subsection through that designated  
20 agent. Any musical work (or shares of a  
21 musical work) not identified as being rep-  
22 resented by the General Designated Agent  
23 or any additional designated agent in any  
24 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 additional designated agent shall  
6 make relevant portions of the database re-  
7 quired by clause (i) available free of charge  
8 to the general public to access information  
9 concerning 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, taking into account reason-  
14 able protection of proprietary data.

15 “(I) LETTERS OF DIRECTION.—

16 “(i) RECOUPMENT OF ADVANCE.—

17 “(I) LETTER OF DIRECTION.—  
18 Subject to subclauses (II), (III), (IV),  
19 and (V), a copyright owner may sub-  
20 mit a letter of direction to a des-  
21 ignated agent instructing the des-  
22 ignated agent to pay royalties other-  
23 wise payable to the copyright owner to  
24 the sound recording company in order  
25 to allow the sound recording company

1 to recoup an advance payment made  
2 to the copyright owner under a con-  
3 tract entered into between the copy-  
4 right owner and the sound recording  
5 company.

6 “(II) CONTRACTS ENTERED INTO  
7 BEFORE OCTOBER 1, 2006.—In the  
8 case of a contract described in sub-  
9 clause (I) that is entered into before  
10 October 1, 2006, a letter of direction  
11 is valid only if it is submitted to the  
12 General Designated Agent by March  
13 30, 2008.

14 “(III) CONTRACTS ENTERED  
15 INTO AFTER SEPTEMBER 30, 2006.—In  
16 the case of a contract described in  
17 subclause (I) that is entered into be-  
18 fore on or after October 1, 2006, a  
19 letter of direction is valid only if it  
20 uses the terms ‘letter of direction’ and  
21 ‘designated agent’ within the meaning  
22 of this subsection.

23 “(IV) VALIDITY OF LETTERS OF  
24 DIRECTION.—A letter of direction that  
25 complies with subclauses (II) and

1 (III) is valid (subject to the resolution  
2 of any dispute with respect to the let-  
3 ter that is resolved under subclause  
4 (VI)) with respect to any designated  
5 agent who is or may become respon-  
6 sible for payment of royalties that are  
7 the subject of the contract between  
8 the copyright owner and the sound re-  
9 cording company.

10 “(V) EXCEPTION.—A copyright  
11 owner may not submit a letter of di-  
12 rection under subclause (I) if another  
13 person who is not a party to the con-  
14 tract described in subclause (I) owns  
15 a share of the copyright in the musi-  
16 cal work covered by the contract and  
17 is due royalties for that musical work.

18 “(VI) DISPUTES.—If the copy-  
19 right owner and the sound recording  
20 company disagree on whether the con-  
21 tract described in subclause (I) re-  
22 quires the artist to allow recoupment,  
23 either party may bring an action to  
24 resolve the dispute only in the court  
25 specified in the contract. If the con-

1                   tract does not specify such a court, ei-  
2                   ther party may bring an action to re-  
3                   solve the dispute only in the United  
4                   States district court for the judicial  
5                   district in which the General Des-  
6                   ignated Agent is located.

7                   “(ii) IN GENERAL.—A designated  
8                   agent shall comply with a valid letter of di-  
9                   rection submitted under clause (i)(I) that  
10                  instructs the designated agent to pay all or  
11                  part of the royalties otherwise payable to  
12                  the copyright owner to another person.

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

15                  “(A) REQUIREMENTS.—

16                  “(i) IN GENERAL.—Each licensee  
17                  under this subsection shall, not later than  
18                  30 days after the end of each calendar  
19                  quarter, report to the applicable designated  
20                  agent, in electronic format, the licensee’s  
21                  usage of musical works under the license,  
22                  and make royalty payments by reason of  
23                  such usage,.

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, in which case the des-



1                   ignated agent shall make reason-  
2                   able efforts to obtain confidential  
3                   treatment of such information  
4                   and, unless precluded by oper-  
5                   ation of law, shall provide written  
6                   notice to the licensee of any im-  
7                   pending disclosure of the infor-  
8                   mation.

9                   “(iii) INTEREST.—

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

1 due until the date payment is received  
2 by the designated agent.

3 “(II) DEFINITION.—In this  
4 clause, the term ‘Federal funds rate’  
5 means the interest rate established by  
6 the Federal Reserve at which deposi-  
7 tory institutions lend balances at the  
8 Federal Reserve to other depository  
9 institutions overnight. The Federal  
10 funds rate for any 1-month period  
11 during which interest accrues under  
12 clause (i) is the Federal funds rate in  
13 effect on the first day of that 1-month  
14 period.

15 “(iv) PROMOTIONAL USE EXEMP-  
16 TIONS.—

17 “(I) FREE PROMOTIONAL USES  
18 BY DIGITAL MUSIC PROVIDERS.—A  
19 digital music provider shall not be re-  
20 quired to pay royalties under this sub-  
21 section for a free promotional use of  
22 a musical work in the form of an  
23 interactive stream or limited  
24 download, if the digital music provider  
25 is authorized to do so by the owner or

1 licensee of the applicable sound re-  
2 cording, and reports to all appropriate  
3 designated agents such use as a free  
4 promotional use in its quarterly re-  
5 ports under subparagraph (A)(i).

6 “(II) OTHER FREE PRO-  
7 MOTIONAL USES BY SOUND RECORD-  
8 ING OWNERS.—

9 “(aa) AUTHORITY.—The  
10 owner or licensee of a sound re-  
11 cording who seeks to offer free  
12 promotional uses of the sound re-  
13 cording in the form of an inter-  
14 active stream or limited download  
15 through a third party not li-  
16 censed as a digital music pro-  
17 vider under this subsection may  
18 offer such free promotional uses  
19 if the owner or licensee (as the  
20 case may be)—

21 “(AA) files a notice of  
22 such free promotional use,  
23 at the same time that a re-  
24 port under subparagraph  
25 (A)(i) is filed for each quar-

1                   terly reporting period in  
2                   which such free promotional  
3                   use is provided, with the  
4                   designated agent that rep-  
5                   resents the musical work (or  
6                   share thereof) embodied in  
7                   the sound recording;

8                   “(BB) includes in the  
9                   notice the identity of the  
10                  work in question, the date or  
11                  dates of the free promotional  
12                  uses, the types of uses being  
13                  offered, the third party that  
14                  is distributing the uses to  
15                  end users, the street and  
16                  internet addresses of the  
17                  third party, and such other  
18                  information as the Register  
19                  of Copyrights may prescribe  
20                  by regulation.

21                  “(bb) REQUEST FOR DOCU-  
22                  MENTATION.—By written notice,  
23                  a designated agent may request  
24                  the owner or licensee of the  
25                  sound recording to provide docu-

1                   mentation demonstrating that a  
2                   use of a musical work qualifies as  
3                   a free promotional use under this  
4                   clause. If the owner or licensee  
5                   fails to provide such documenta-  
6                   tion within 30 days after the date  
7                   of such notice, the free pro-  
8                   motional use shall be considered  
9                   not to have been authorized  
10                  under this subclause.

11                  “(III) 30-SECOND PROMOTIONAL  
12                  STREAMS.—

13                         “(aa) IN GENERAL.—Not-  
14                         withstanding subsection (a) or  
15                         any other provision of this sec-  
16                         tion, but subject to subsection  
17                         (f), a digital music provider li-  
18                         censed under this subsection to  
19                         distribute a full download of a  
20                         sound recording, or authorized to  
21                         distribute a physical phonorecord  
22                         of a sound recording, shall, if the  
23                         digital music provider is author-  
24                         ized to do so by the owner or li-  
25                         censee of the sound recording,

1 has the right to create, repro-  
2 duce, and transmit, including the  
3 making of all server and inci-  
4 dental reproductions that are  
5 necessary, an excerpt of the  
6 sound recording of up to 30 sec-  
7 onds in length to be made avail-  
8 able directly to end users in the  
9 form of an interactive stream—

10 “(AA) solely for pur-  
11 poses of promoting the law-  
12 ful sale or paid use of the  
13 sound recording, or the paid  
14 use of a subscription service  
15 offering the sound recording;  
16 and

17 “(BB) only if such  
18 stream is a free promotional  
19 use.

20 “(bb) REPORTING NOT RE-  
21 QUIRED.—A digital music pro-  
22 vider is not required to report to  
23 the designated agent free pro-  
24 motional uses of 30-second ex-

1 excerpts authorized under this sub-  
2 clause.

3 “(cc) CONSTRUCTION.—  
4 (AA) The authority granted  
5 under this subclause does not in-  
6 clude or extend to any other  
7 right to create, reproduce, or dis-  
8 tribute an excerpt of a musical  
9 work for any purpose other than  
10 that expressly authorized under  
11 this subclause, including for use  
12 as, or to promote, a ringtone or  
13 mastertone.

14 “(BB) Nothing in this sub-  
15 clause shall be cited, relied upon,  
16 interpreted, or construed for pur-  
17 poses of evaluating or deter-  
18 mining whether the creation or  
19 use of an excerpt of a musical  
20 work other than as expressly au-  
21 thorized under this subclause  
22 does or does not qualify for a  
23 compulsory license under this  
24 section.

1                   “(IV) REGULATIONS.—The Reg-  
2                   ister of Copyrights shall promulgate  
3                   regulations detailing reporting and  
4                   recordkeeping requirements for free  
5                   promotional uses.

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 1  
17                  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) less than 2 years if—

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

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

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

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

20 “(iii) At the conclusion of the exam-  
21 ination, the designated agent shall, after  
22 considering any written rebuttal provided  
23 by the licensee during the examination,  
24 provide a written notice to the licensee set-  
25 ting forth the designated agent’s final

1 claim, if any, resulting from the examina-  
2 tion.

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

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

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

23 “(i) SUBSTANTIAL FAILURE.—If a li-  
24 censee under this subsection—

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

5                   “(II) fails to make all quarterly  
6                   royalty payments when due or fails to  
7                   pay royalties due for reported usage,  
8                   the designated agent may provide written  
9                   notice to the licensee describing the default  
10                  under subclause (I) or (II) and providing  
11                  that if the default is not remedied within  
12                  30 days after receipt of the notice, the li-  
13                  cense will automatically terminate upon the  
14                  expiration of that 30-day period. If the de-  
15                  fault is not remedied within that 30-day  
16                  period, the license terminates upon the ex-  
17                  piration of that 30-day period. Such termi-  
18                  nation makes the uses of the musical  
19                  works that are the subject of the default  
20                  actionable as acts of infringement under  
21                  section 501 and fully subject to the rem-  
22                  edies provided by sections 502 through 506  
23                  and 509.

24                  “(ii) FAILURE WITH RESPECT TO IN-  
25                  DIVIDUAL WORK.—

1                   “(I) EXCLUSION FROM LI-  
2                   CENSE.—If a licensee with an other-  
3                   wise valid license under this sub-  
4                   section—

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

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

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

1 censee all royalty payments for the  
2 work that are past due.

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

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

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

17 “(cc) 30 days, during any  
18 period thereafter.

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

1                   tion that, notwithstanding a diligent  
2                   search by the licensee, is actually and  
3                   objectively unobtainable by the li-  
4                   censee from any known source, then  
5                   the license shall not be invalidated  
6                   with respect to that work, if all royal-  
7                   ties due for that work have been paid.

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

1                   pliance with this subsection before obtain-  
2                   ing a new license.

3                   “(D) INFORMATION PROVIDED TO COPY-  
4                   RIGHT OWNERS.—Each designated agent shall,  
5                   on an annual basis, provide to copyright own-  
6                   ers, free of charge, the information, regarding  
7                   the musical works of those copyright owners,  
8                   that the designated agent receives from digital  
9                   music providers in the quarterly reports under  
10                  subparagraph (A). A copyright owner may re-  
11                  quest such information more frequently, but in  
12                  such a case the designated agent may charge  
13                  the copyright owner the costs borne by the des-  
14                  ignated agent in providing the information.  
15                  Designated agents may provide the information  
16                  under this subparagraph in electronic or paper  
17                  format.

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

20                  “(A) DISTRIBUTION OF ROYALTIES.—Each  
21                  designated agent shall be responsible for dis-  
22                  tributing, on a quarterly basis, royalties col-  
23                  lected from licensees under this subsection to  
24                  any copyright owner whom the designated agent  
25                  represents and who has provided the designated

1 agent with sufficient information to identify  
2 and pay that copyright owner (or the copyright  
3 owner's designee). Distributions under the pre-  
4 ceding sentence shall be made not later than 60  
5 days after the end of each calendar quarter.

6 “(B) UNCLAIMED FUNDS.—

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

23 “(ii) HOLDING AND DISTRIBUTION.—

24 “(I) HOLDING.—A designated  
25 agent with unclaimed funds shall hold



1 the funds for a period of at least 3  
2 years after the date on which the li-  
3 censee paid the funds. The designated  
4 agent shall make reasonably diligent  
5 efforts to publicize the existence of the  
6 unclaimed funds and the procedures  
7 by which copyright owners may claim  
8 such funds from the designated agent.

9 “(II) LICENSING ADMINISTRATIVE COSTS.—At the end of the pe-  
10 riod in which funds are held under  
11 subclause (I), the designated agent  
12 may apply the funds to offset licens-  
13 ing administrative costs.

14 “(III) DISTRIBUTION OF RE-  
15 MAINDER.—Any unclaimed funds not  
16 applied to offset licensing administra-  
17 tive costs under subclause (II) shall  
18 be distributed as follows:

19 “(aa) The designated agent  
20 shall pay to every other des-  
21 ignated agent its pro rata share  
22 of the unclaimed funds as deter-  
23 mined on the basis of the propor-  
24 tionate distribution of royalties  
25

1 by each designated agent to copy-  
2 right owners for the reporting pe-  
3 riods during which the funds  
4 were collected.

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

13 “(iii) PREEMPTION.—This subpara-  
14 graph preempts any State claim to un-  
15 claimed funds.

16 “(C) DISPUTES.—

17 “(i) DISPUTE RESOLUTION COM-  
18 MITTEE.—Each designated agent shall es-  
19 tablish a dispute resolution committee con-  
20 sisting of—

21 “(I) at least 6 representatives of  
22 different music publishing entities  
23 represented by the designated agent,  
24 and

1                   “(II) an equal number of song-  
2                   writers who are legally and financially  
3                   independent of the designated agent,  
4                   who shall be appointed under clause (iii).

5                   “(ii) PURPOSE.—The purpose of each  
6                   dispute resolution committee is to address  
7                   any disputes raised by a copyright owner  
8                   or songwriter whose works are represented  
9                   by the designated agent relating to license  
10                  rates or terms, the expenditure of fees and  
11                  other funds by the designated agent, and  
12                  the allocation and payment by the des-  
13                  ignated agent of royalties among individual  
14                  copyright owners under licenses granted by  
15                  the designated agent under this subsection.

16                  “(iii) APPOINTMENT.—The Register  
17                  of Copyrights shall appoint the members of  
18                  each dispute resolution committee based  
19                  upon nominees provided by music pub-  
20                  lishers and songwriters. Of the music pub-  
21                  lishing representatives, at least 2 shall be  
22                  appointed from among large music pub-  
23                  lishing companies, and at least 2 shall be  
24                  appointed from among small music pub-  
25                  lishing companies. Of the songwriter rep-

1           representatives, at least 3 shall be representa-  
2           tives, affiliates, or members of each of the  
3           performing rights organizations. The mem-  
4           bers of the dispute resolution committee  
5           shall serve staggered 3-year terms. In  
6           making appointments under this clause,  
7           the Register shall give preference to the  
8           nominees that have the greatest support  
9           among the interested parties.

10           “(iv) PROCEDURES.— The Register of  
11           Copyrights shall establish procedures to  
12           govern the conduct of meetings by the dis-  
13           pute resolution committees to assure that  
14           the proceedings are fair and that decisions  
15           are reached in a timely manner. The Reg-  
16           ister shall include in such procedures a  
17           mechanism to resolve cases in which an  
18           equal number of members of the dispute  
19           resolution committee vote for and against  
20           a proposed solution to a dispute. The dis-  
21           pute resolution process shall not affect any  
22           other legal or equitable rights or remedies  
23           available to any copyright owner, song-  
24           writer, or designated agent.

1           “(D) PROCEDURES FOR HOLDING FUNDS  
2           AND ROYALTIES SUBJECT TO LEGAL PRO-  
3           CEEDINGS.—The Register of Copyrights shall  
4           establish by regulation the procedures for the  
5           holding by a designated agent of unclaimed  
6           funds and royalties paid under this subsection  
7           that are attributable to musical works that are  
8           the subject of a legal dispute or proceeding. A  
9           designated agent that complies with the re-  
10          quirements of this paragraph and such regula-  
11          tions shall not be subject to a legal claim based  
12          upon or arising from unclaimed funds or funds  
13          that are the subject of an ownership dispute or  
14          legal proceeding, nor shall a copyright owner be  
15          subject to a legal claim based upon or arising  
16          from a designated agent’s compliance with this  
17          paragraph.

18           “(E) SONGWRITER ACCESS TO INFORMA-  
19          TION.—

20           “(i) IN GENERAL.—Subject to clause  
21           (ii), a songwriter whose musical works (or  
22           shares thereof) are administered by a  
23           music publisher for licensing under this  
24           subsection (including those music pub-  
25           lishers represented through default rep-

1           resentation pursuant to paragraph  
2           (9)(E)(iv)) may request from a designated  
3           agent a copy of the relevant portions of  
4           any royalty statement that the designated  
5           agent provided, within the preceding 4 cal-  
6           endar years, to that publisher, and that  
7           shows all data provided by the designated  
8           agent to the publisher regarding the use  
9           and royalties distributed to the publisher  
10          in connection with those works (or shares  
11          thereof). A designated agent shall provide  
12          the information requested by the song-  
13          writer within a reasonable time after re-  
14          ceiving the request. A songwriter may  
15          make such a request of a particular des-  
16          ignated agent not more than once each cal-  
17          endar year.

18                 “(ii) EXCEPTION.—If a designated  
19                 agent, on an annual basis or more fre-  
20                 quently, provides to all songwriters whose  
21                 works the designated agent represents in-  
22                 formation on royalty statements provided  
23                 to music publishers, the designated agent  
24                 is not required to provide such information  
25                 pursuant to a request under clause (i).

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

11           “(12) COST SHARING FEES.—

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

1 mechanism or cost-sharing amount under this  
2 paragraph, the Copyright Royalty Judges shall  
3 consider—

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

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

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

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

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

22 “(B) COST-SHARING NOT A FACTOR IN  
23 ROYALTY RATES.—The Copyright Royalty  
24 Judges, in establishing royalty rates for statu-  
25 tory licenses, may not take into account the



1 cost-sharing mechanism or cost-sharing  
2 amounts under subparagraph (A).

3 “(13) EXCEPTION UNDER BLANKET LI-  
4 CENSES.—

5 “(A) IN GENERAL.—

6 “(i) ELECTION TO RETAIN RIGHT TO  
7 BE PAID BY LICENSEE.—A sound record-  
8 ing company may elect to retain the right  
9 to be paid, by any licensee under this sub-  
10 section with which the sound recording  
11 company has a contract for the distribu-  
12 tion of digital phonorecord deliveries or hy-  
13 brid offerings, the applicable royalties  
14 under a compulsory license under para-  
15 graph (2) for the use a musical work as  
16 embodied in a particular sound recording  
17 in the form of such digital phonorecord de-  
18 liveries or hybrid offerings, and to dis-  
19 tribute such royalties as appropriate to  
20 copyright owners, if the following condi-  
21 tions are met:

22 “(I) The sound recording com-  
23 pany notifies the appropriate des-  
24 ignated agent and each such licensee  
25 in writing of the election.

1                   “(II) The use of the musical  
2 work as embodied in the sound re-  
3 cording—

4                   “(aa) is a digital phono-  
5 record delivery that is subject to  
6 a contract to which the second  
7 sentence of subsection  
8 (c)(3)(E)(i) is inapplicable by op-  
9 eration of subsection  
10 (c)(3)(E)(ii); or

11                   “(bb) is not a digital phono-  
12 record delivery and is subject to  
13 a contract to which subsection  
14 (c)(3)(E)(i) applies.

15                   “(ii) REQUIREMENTS OF NOTICE.—  
16 The notice required by clause (i)(I) may be  
17 provided electronically at any time and  
18 shall be effective beginning with payment  
19 for the reporting quarter following the  
20 quarter during which the notice is pro-  
21 vided. The notice shall include sufficient  
22 data to identify the applicable sound re-  
23 cording, the musical work embodied in the  
24 sound recording and relevant shares there-  
25 of, and the digital music provider and spe-

1 cific activities that are the subject of the  
2 election under clause (i).

3 “(iii) ACTIONS BY DESIGNATED  
4 AGENT.—A designated agent receiving a  
5 notice of an election under clause (i)(I)  
6 shall indicate that election in its database  
7 maintained under paragraph (9)(H) and  
8 shall take such other steps as may be re-  
9 quired, in view of its payment arrange-  
10 ments with digital music providers, to im-  
11 plement the election.

12 “(iv) PAYMENTS.—For any musical  
13 work or share thereof that with respect to  
14 which a sound recording company makes  
15 an election under this subparagraph, the  
16 digital music provider shall make the ap-  
17 propriate payments to the sound recording  
18 company in accordance with the contracts  
19 between the digital music provider and the  
20 sound recording company, and the sound  
21 recording company shall make the appro-  
22 priate payments to copyright owners in ac-  
23 cordance with its contracts for use of the  
24 musical work.

25 “(B) ERRORS.—

1                   “(i) BY DESIGNATED AGENTS.—In  
2                   any case in which a designated agent ac-  
3                   cepts in error payments for a use of a mu-  
4                   sical work with respect to which a sound  
5                   recording company makes an election  
6                   under subparagraph (A), the sound record-  
7                   ing company may provide written notice of  
8                   the error to the designated agent. If the  
9                   designated agent fails to remedy the error  
10                  by sending to the sound recording com-  
11                  pany, within 30 days after the date of the  
12                  notice, the erroneously accepted funds,  
13                  with interest calculated as provided in  
14                  paragraph (10)(A)(iii), the designated  
15                  agent shall be liable to the sound recording  
16                  company in a civil action for the payment  
17                  of the erroneously accepted funds, with in-  
18                  terest calculated as provided in paragraph  
19                  (10)(A)(iii). The United States district  
20                  courts shall have exclusive jurisdiction of  
21                  such a civil action. The remedy provided in  
22                  section 505 shall be available in such an  
23                  action only if the designated agent did not  
24                  act in good faith.

1           “(ii) BY SOUND RECORDING COMPA-  
2 NIES.—In any case in which a sound re-  
3 cording company makes an election under  
4 subparagraph (A) with respect to the use  
5 of a musical work in error, the copyright  
6 owner of the work may provide written no-  
7 tice of the error to the sound recording  
8 company. If the sound recording company  
9 fails to remedy the error by correcting the  
10 erroneous notice and sending to the copy-  
11 right owner the difference between the roy-  
12 alties that the copyright owner should have  
13 received from the designated agent and the  
14 royalties paid by the sound recording com-  
15 pany based upon the erroneous election,  
16 with interest calculated as provided in  
17 paragraph (10)(A)(iii), the sound recording  
18 company shall be liable to the copyright  
19 owner in a civil action for the payment of  
20 the difference in royalties, with interest  
21 calculated as provided in paragraph  
22 (10)(A)(iii). The United States district  
23 courts shall have exclusive jurisdiction of  
24 such a civil action. The remedy provided in  
25 section 505 shall be available in such an

1 action only if the sound recording company  
2 did not act in good faith.

3 “(iii) DESIGNATED AGENTS PRO-  
4 TECTED.—A designated agent that acts in  
5 accordance with a notice provided under  
6 subparagraph (A)(i)(I), even if the notice  
7 was erroneously provided, shall not be sub-  
8 ject to a legal claim by a copyright owner  
9 based upon or arising out of the actions of  
10 the designated agent with respect to the  
11 notice.

12 “(iv) CONSEQUENCES FOR DIGITAL  
13 MUSIC PROVIDERS AND SOUND RECORDING  
14 COMPANIES.—Any digital music provider  
15 that has a valid license under this sub-  
16 section with the appropriate designated  
17 agent, that acts in good faith with respect  
18 to an election under subparagraph (A) by  
19 a sound recording company, and that re-  
20 ports activity and makes payments under  
21 this subsection to the designated agent or  
22 sound recording company in accordance  
23 with the notice of the election under sub-  
24 paragraph (A)(i)(I), shall not be subject to  
25 any liability, including any action for copy-

1 right infringement of musical works alleg-  
2 ing the violation of reproduction or dis-  
3 tribution rights, to the extent such action  
4 is based on activity so reported for which  
5 all payments due have been made. In any  
6 case in which a digital music provider or a  
7 sound recording company does not make  
8 the required payments for the use of a mu-  
9 sical work, this paragraph neither expands  
10 nor limits the rights of any person under  
11 the applicable contracts, this title, or other  
12 applicable law.

13 “(C) EXCLUSION ERRORS.—

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

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

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

10 “(I) a sound recording company  
11 acting in good faith with regard to the  
12 exclusion shall only be liable for the  
13 payment of amounts that otherwise  
14 would have been payable under this  
15 subsection, plus interest as described  
16 in paragraph (10)(A)(iii)(II); and

17 “(II) a licensee acting in good  
18 faith with regard to the exclusion  
19 shall not be liable because of such  
20 error.

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

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



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

3 “(B) COPYRIGHT OWNER.—The term  
4 ‘copyright owner’ means a copyright owner, as  
5 defined in section 101, that is a natural person  
6 or legally recognized entity that owns or con-  
7 trols an interest or share in 1 or more copy-  
8 righted nondramatic musical works subject to  
9 licensing under this section.

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

13 “(i) with respect to a service engaging  
14 in activities licensed under this sub-  
15 section—

16 “(I) contracts with or has a di-  
17 rect relationship with the end users of  
18 the service, and controls what, if any,  
19 consideration is received from end  
20 users or others for the service;

21 “(II) controls how musical con-  
22 tent is bundled with other musical or  
23 nonmusical content and offered  
24 through the service;

1                   “(III) is able to fully report on  
2 all revenues and consideration re-  
3 ceived by or credited to the service;  
4 and

5                   “(IV) is able to fully report on all  
6 elements of music usage by the service  
7 (or procure such reporting); or

8                   “(ii) with respect to hybrid offerings  
9 only, makes and distributes a hybrid offer-  
10 ing, and—

11                   “(I) controls how musical content  
12 is bundled with other musical and  
13 nonmusical content in the hybrid of-  
14 fering;

15                   “(II) is able to fully report on all  
16 revenues and consideration received  
17 by or credited to such person with re-  
18 spect to the hybrid offering; and

19                   “(III) is able to fully report on  
20 all elements of music usage in the hy-  
21 brid offering (or procure such report-  
22 ing).

23                   “(D) ERROR TOLERANCE STANDARD.—  
24 The term ‘error tolerance standard’ means the  
25 maximum percentage, of all data that a licensee

1 is required to report under this subsection  
2 under its license in any statutory reporting pe-  
3 riod, that is permitted to be inaccurate,  
4 unreadable, or missing, or any combination  
5 thereof, as determined under regulations issued  
6 to carry out this subsection.

7 “(E) FREE PROMOTIONAL USE.—The term  
8 ‘free promotional use’ means the audio-only use  
9 of a musical work if—

10 “(i) with respect to the owner or ex-  
11 clusive licensee of the sound recording that  
12 is authorizing the use, or, as applicable,  
13 the digital music provider making the use,  
14 the primary purpose of the use is to pro-  
15 mote either the lawful sale or paid use of  
16 a sound recording embodying the musical  
17 work or other sound recordings by the  
18 same featured recording artist, or the paid  
19 use of a subscription service offering the  
20 sound recording, but the primary purpose  
21 is not to promote any other product, offer-  
22 ing, or entity;

23 “(ii) the sound recording is made  
24 available to end users free of charge;

1           “(iii) (I) no cash or non-cash consid-  
2           eration of any kind is received by the  
3           owner or exclusive licensee of the sound re-  
4           cording, a digital music provider, third  
5           party distributor, or any other person, in  
6           connection with such use of the musical  
7           work or sound recording, except for—

8                   “(aa) the promotion of the lawful  
9                   sale or paid use of the sound record-  
10                  ing or paid use of a subscription serv-  
11                  ice offering the sound recording; or

12                   “(bb) the lawful collection of con-  
13                  tact information from end users to ac-  
14                  cess the work, either directly or  
15                  through the third party user, solely  
16                  for the purposes permitted by clause  
17                  (i); and

18                   “(II) the limited consideration per-  
19                  mitted under items (aa) and (bb) of sub-  
20                  clause (I) is not received in connection  
21                  with, or used to support, any other prod-  
22                  uct, offering, or entity.

23                   “(F) FULL DOWNLOAD.—The term ‘full  
24                  download’ means a digital phonorecord delivery  
25                  of a sound recording of a musical work that is

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

4 “(G) HYBRID OFFERING.—The term ‘hy-  
5 brid offering’ means—

6 “(i) a reproduction or distribution of  
7 a phonorecord in physical form subject to  
8 a compulsory license under this section if  
9 a digital transmission of data by or under  
10 the authority of the licensee is required to  
11 render the sound recording embodied on  
12 the phonorecord audible to the end user, or  
13 to enable the continued rendering of the  
14 sound recording audible after a finite pe-  
15 riod of time or a specified number of times  
16 rendered; or

17 “(ii) a reproduction or distribution of  
18 a phonorecord subject to a compulsory li-  
19 cense under this section that is custom-  
20 made by or under the authority of the li-  
21 censee—

22 “(I) using a device located at a  
23 physical retail establishment based  
24 upon the specific request of an end  
25 user for distribution as a digital pho-

1 norecord delivery or in physical form  
2 to that end user at such retail estab-  
3 lishment; or

4 “(II) based upon the specific re-  
5 quest of an end user for distribution  
6 in physical form to that end user (or  
7 the end user’s designee) through a  
8 mail order or private delivery service.

9 “(H) INTERACTIVE STREAM.—

10 “(i) IN GENERAL.—The term ‘inter-  
11 active stream’ means an audio-only stream  
12 of a sound recording of a musical work  
13 that—

14 “(I) is made by an interactive  
15 service;

16 “(II) is made by a service if more  
17 than 7 percent of the programming of  
18 the service, on a per channel basis, as  
19 measured over a period of 168 hours  
20 of broadcasting, consists of—

21 “(aa) selections of sound re-  
22 cordings from any single com-  
23 mercially released phonorecord;  
24 or

1                   “(bb) selections of sound re-  
2                   cordings by the same featured re-  
3                   cording artist, that are either  
4                   played consecutively or constitute  
5                   more than 50 percent of the pro-  
6                   gramming in any given hour, ex-  
7                   cept in unique and isolated cir-  
8                   cumstances such as a memorial  
9                   tribute program for a particular  
10                  artist lasting no more than 24  
11                  hours that is broadcast within a  
12                  week of the honoree’s death or  
13                  upon the anniversary of the hon-  
14                  oree’s death; or

15                  “(III) is made by a service that  
16                  publishes or publicizes, in advance,  
17                  the titles of sound recordings to be  
18                  transmitted at specified times or dur-  
19                  ing specific blocks of time in the fu-  
20                  ture, other than a schedule of classical  
21                  music programming, except that this  
22                  subclause does not include the an-  
23                  nouncement by a transmitting entity  
24                  of a particular song to be broadcast.

1           If an entity offers both interactive and  
2           noninteractive services (either concu-  
3           rently, through different channels or offer-  
4           ings, or at different times), the noninter-  
5           active component shall not be treated as  
6           part of an interactive service.

7           “(ii) INTERACTIVE SERVICE.—In this  
8           subparagraph, the term ‘interactive service’  
9           means a service that enables a member of  
10          the public to receive a transmission of a  
11          program specially created for the recipient,  
12          or on request, a transmission of a par-  
13          ticular sound recording, whether or not as  
14          part of a program, which is selected by or  
15          on behalf of the recipient; except that the  
16          ability of individuals to request that par-  
17          ticular sound recordings be performed for  
18          reception by the public at large, or in the  
19          case of a subscription service, by all sub-  
20          scribers of the service, does not make a  
21          service interactive, if the programming on  
22          each channel of the service does not sub-  
23          stantially consist of sound recordings that  
24          are performed within 1 hour of the request  
25          or at a time designated by either the trans-



1                   mitting entity or the individual making the  
2                   request.

3                   “(I) LICENSING ADMINISTRATIVE COSTS.—

4                   The term ‘licensing administrative costs’ means  
5                   the actual costs to a designated agent that are  
6                   attributable to the issuance and administration  
7                   of licenses under this subsection, including—

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

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

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

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

20                  “(J) LIMITED DOWNLOAD.—The term  
21                  ‘limited download’ means a digital phonorecord  
22                  delivery to an end user of a sound recording of  
23                  a musical work that is only available for listen-  
24                  ing for—

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

5 “(ii) a specified number of times.

6 “(K) NONINTERACTIVE STREAMING.—The  
7 term ‘noninteractive streaming’ means the mak-  
8 ing of any audio-only stream of a sound record-  
9 ings of musical work—

10 “(i) that is not an interactive stream;

11 “(ii) that, except as may otherwise be  
12 authorized by the copyright owner, consists  
13 of a transmission of a musical work that—

14 “(I) has previously been distrib-  
15 uted to the public in the United  
16 States under authority of the copy-  
17 right owner or pre-released under au-  
18 thority of the sound recording owner  
19 for promotional purposes; and

20 “(II) is embodied in a lawfully  
21 made sound recording;

22 “(iii) that does not violate the condi-  
23 tions that apply to compulsory licensing of  
24 musical works set forth in subsection  
25 (a)(2); and

1                   “(iv) for which all necessary licenses  
2                   have been obtained to perform the musical  
3                   work publicly.

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

11                  “(M) SONGWRITER.—The term ‘song-  
12                  writer’ means the author of a musical work.

13                  “(N) SOUND RECORDING COMPANY.—The  
14                  term ‘sound recording company’ means a per-  
15                  son who—

16                         “(i) is a copyright owner of a sound  
17                         recording of a musical work;

18                         “(ii) in the case of a sound recording  
19                         of a musical fixed before February 15,  
20                         1972, has rights to the sound recording,  
21                         under the common law or statutes of any  
22                         State, that are similar to the rights under  
23                         this title of a copyright owner of a sound  
24                         recording of a musical work;

1                   “(iii) is an exclusive licensee of a  
2                   sound recording of a musical work; or

3                   “(iv) performs the functions of mar-  
4                   keting and authorizing the distribution of  
5                   a sound recording of a musical work under  
6                   its own label, under the authority of the  
7                   copyright owner of the sound recording.

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

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

21                  “(15) REGULATIONS.—

22                  “(A) IN GENERAL.—The Register of Copy-  
23                  rights shall issue such regulations as are nec-  
24                  essary to carry out this subsection, including—

1 “(i) specifying the requirements and  
2 procedures for reporting and making pay-  
3 ments, and conducting royalty compliance  
4 examinations, under paragraph (10), in-  
5 cluding provisions for the protection of  
6 confidential information and the effect of  
7 settlements with respect to royalty compli-  
8 ance examinations;

9 “(ii) specifying the procedures for ex-  
10 pedited proceedings under paragraph  
11 (8)(E)(ii)(II)(bb) and subsection  
12 (c)(7)(B)(ii)(II);

13 “(iii) specifying the form of a letter of  
14 direction under paragraph (9)(I)(i); and

15 “(iv) facilitating exclusions from the  
16 blanket license under paragraph (13).

17 “(B) RESOLUTION OF DISPUTES.—If a  
18 copyright owner or user of nondramatic musical  
19 works wishes to have the Register of Copyrights  
20 resolve a dispute concerning whether an activity  
21 or offering subject to compulsory licensing  
22 under this section is licensable under this sub-  
23 section or under subsection (b), the copyright  
24 owner or user may petition the Register for  
25 such a determination. If it appears to the Reg-

1           ister from the petition that the issue presented  
2           is likely to be material to multiple copyright  
3           owners or users, then the Register shall decide  
4           the issue by rulemaking within 6 months after  
5           the date of the petition.

6           “(16) APPLICATION OF SUBSECTION TO PRE-  
7           EXISTING LICENSES.—This subsection shall apply to  
8           digital phonorecord deliveries and hybrid offerings in  
9           lieu of any compulsory license under this section  
10          that applied to such digital phonorecord deliveries  
11          and hybrid offerings before the enactment of the  
12          Section 115 Reform Act of 2006.”.

13 **SEC. 103. PERFORMANCE RIGHT PRESERVED.**

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

17          “(f) PERFORMANCE RIGHT PRESERVED.—The  
18          rights, exemptions, and licenses granted under, and the  
19          definitions contained in, subsection (e) shall not include,  
20          limit, or otherwise affect any right of public performance  
21          of a musical work. The third sentence of subsection  
22          (e)(9)(E)(iv) and the definitions contained in paragraph  
23          (14) of subsection (e) shall not be taken into account in  
24          any administrative, judicial, or other governmental pro-  
25          ceeding to set or adjust the royalties payable to copyright

1 owners of musical works for, the right of public perform-  
2 ance of their works.”.

3 **SEC. 104. INTERIM RATE PROCESS.**

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

7 “(7) INTERIM RATES.—

8 “(A) IN GENERAL.—For any new type of  
9 phonorecord configuration for which a license is  
10 available under this section (other than an ac-  
11 tivity for which a license is available under sub-  
12 section (e)) for which a rate and terms have not  
13 been determined, any person shall, upon serving  
14 notice in accordance with subsection (b)(1),  
15 have a license to make and distribute such  
16 phonorecords, subject to subparagraph (B).

17 “(B) INTERIM RATES.—Upon serving no-  
18 tice as described in subparagraph (A) with re-  
19 spect to a phonorecord configuration—

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

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

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

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

12                   “(C) APPLICABILITY OF INTERIM  
13 RATES.—(i) Interim rates and terms negotiated  
14 under subparagraph (B)(i) or established under  
15 subparagraph (B)(ii) shall be retroactive to the  
16 inception of the activity under the license con-  
17 cerned and shall apply until a rate and terms  
18 for the phonorecord configuration are deter-  
19 mined under paragraph (3)(C) and chapter 8,  
20 or as otherwise agreed by the parties.

21                   “(ii) Interim rates and terms described in  
22 subparagraph (B) with respect to a configura-  
23 tion shall not be treated as precedent in a final  
24 ratemaking proceeding. If the Copyright Roy-  
25 alty Judges have established an interim rate



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

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

14 “(E) ADJUSTMENT OF INTERIM RATES.—  
15 After a final determination of rates and terms  
16 that will apply to a configuration for which a li-  
17 cense is available under this subsection has  
18 been made under paragraph (3)(C) and chapter  
19 8, the final rate and terms shall be retroactive  
20 to the inception of the making and distribution  
21 of phonorecords under all licenses to which such  
22 rate and terms apply, unless an agreement be-  
23 tween the parties to a license provides other-  
24 wise. Not later than 60 days after the deter-

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

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

7                   “(ii) the copyright owner shall refund  
8                   to the licensee the amounts of any overpay-  
9                   ment of fees by the licensee because the in-  
10                  terim rate exceeds the final rate, or, at the  
11                  election of the licensee, the copyright  
12                  owner shall credit such overpayment  
13                  against future payments by the licensee to  
14                  the copyright owner under this sub-  
15                  section.”.

16 **SEC. 105. TECHNICAL AMENDMENTS.**

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

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

21                   “(1) IN GENERAL.—As used”;

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

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

1           “(2) INTERACTIVE STREAMS.—The term ‘dig-  
2           ital phonorecord delivery’ includes an interactive  
3           stream (as such term is defined in subsection  
4           (e)(14)(H)) of nondramatic musical works, on the  
5           following terms:

6                   “(A) An interactive stream is an incidental  
7                   digital phonorecord delivery as described in sub-  
8                   section (c)(3)(C)(i) and (D)(i). An interactive  
9                   stream is not a general digital phonorecord de-  
10                  livery as described in subsection (c)(3)(C)(ii)  
11                  and (D)(ii).

12                   “(B) The Copyright Royalty Judges, in es-  
13                   tablishing royalty rates or terms for digital pho-  
14                   norecord deliveries, shall not consider the char-  
15                   acterization, in this section or regulations  
16                   issued under this section, of a digital phono-  
17                   record delivery as general or incidental. The  
18                   preceding sentence does not limit the ability of  
19                   the Copyright Royalty Judges to refer to the  
20                   actual nature or functionality of the particular  
21                   type of digital phonorecord delivery in a rate-  
22                   making proceeding.”.

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

25                   (1) in paragraph (3)—

1 (A) in the first sentence of subparagraph  
2 (A), by striking “or authorize the distribution  
3 of”;

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

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

11 (D) in subparagraph (E)(i), by inserting  
12 after “License agreements,” the following: “to  
13 make and distribute phonorecords other than  
14 digital phonorecord deliveries and hybrid offer-  
15 ings” ; 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. 106. EFFECTIVE DATE.**

2 (a) IN GENERAL.—Subject to subsection (b), this  
3 title and the amendments made by this title take effect  
4 on the date of the enactment of this Act.

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

8 **SEC. 107. SAVINGS CLAUSES.**

9 (a) SCOPE OF RIGHTS COVERED.—This title and the  
10 amendments made by this title are limited to the exclusive  
11 rights to reproduce and distribute musical works as pro-  
12 vided by paragraphs (1) and (3) of section 106 of title  
13 17, United States Code, and do not create any new exclu-  
14 sive rights under section 106 of title 17, United States  
15 Code.

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

19 (c) PROTECTIONS OF SERVICE PROVIDERS.—This  
20 title and the amendments made by this title shall not be  
21 construed to limit in any manner the protections afforded  
22 to service providers under section 512 of title 17, United  
23 States Code.

24 **SEC. 108. STAYING OF INFRINGEMENT ACTIONS.**

25 If an action for infringement is brought against a dig-  
26 ital music provider (as defined in section 115(e)(14) of

1 title 17, United States Code) for activities engaged in be-  
2 fore January 1, 2008, that may be covered by a license  
3 under section 115(e) of title 17, United States Code, the  
4 court may stay the action until not later than March 1,  
5 2008, if the digital music provider makes the payments  
6 required under section 115(e)(6) of such title, for such  
7 activities.

## 8 **TITLE II—ORPHAN WORKS**

### 9 **SEC. 201. SHORT TITLE.**

10 This title may be cited as the “Orphan Works Act  
11 of 2006”

### 12 **SEC. 202. LIMITATION ON REMEDIES IN CASES INVOLVING** 13 **ORPHAN WORKS.**

14 (a) **LIMITATION ON REMEDIES.**—Chapter 5 of title  
15 17, United States Code, is amended by adding at the end  
16 the following new section:

#### 17 **“§ 514. Limitation on remedies in cases involving or-** 18 **phan works**

19 “(a) **CONDITIONS FOR ELIGIBILITY.**—

20 “(1) **CONDITIONS.**—Notwithstanding sections  
21 502 through 505, in an action brought under this  
22 title for infringement of copyright in a work, the  
23 remedies for infringement shall be limited under  
24 subsection (b) if the infringer sustains the burden of  
25 proving, and the court finds, that—

1           “(A) before the infringing use of the work  
2 began, the infringer, a person acting on behalf  
3 of the infringer, or any person jointly and sev-  
4 erally liable with the infringer for the infringe-  
5 ment of the work—

6           “(i) performed and documented a rea-  
7 sonably diligent search in good faith to  
8 identify and locate the owner of the in-  
9 fringed copyright; but

10           “(ii) was unable to locate the owner;  
11 and

12           “(B) the infringing use of the work pro-  
13 vided attribution, in a manner reasonable under  
14 the circumstances, to the author and owner of  
15 the copyright, if known with a reasonable de-  
16 gree of certainty based on information obtained  
17 in performing the reasonably diligent search.

18           “(2) DEFINITIONS; REQUIREMENTS FOR  
19 SEARCHES.—

20           “(A) OWNER OF INFRINGED COPYRIGHT.—  
21 For purposes of paragraph (1)(A), the ‘owner’  
22 of an infringed copyright in a work is the legal  
23 or beneficial owner of, or any party with au-  
24 thority to grant or license, an exclusive right

1 under section 106 applicable to the infringe-  
2 ment.

3 “(B) REQUIREMENTS FOR REASONABLY  
4 DILIGENT SEARCH.—(i) For purposes of para-  
5 graph (1), a search to locate the owner of an  
6 infringed copyright in a work—

7 “(I) is ‘reasonably diligent’ only if it  
8 includes such steps that are reasonable  
9 under the circumstances to locate that  
10 owner in order to obtain permission for the  
11 use of the work; and

12 “(II) is not ‘reasonably diligent’ solely  
13 by reference to the lack of identifying in-  
14 formation with respect to the copyright on  
15 the copy or phonorecord of the work.

16 “(ii) The steps referred to in clause (i)(I)  
17 shall ordinarily include, at a minimum, review  
18 of the information maintained by the Register  
19 of Copyrights under subparagraph (C).

20 “(iii) A reasonably diligent search includes  
21 the use of such expertise and technology as are  
22 reasonably available and appropriate under the  
23 circumstances, and may include, if reasonable  
24 under the circumstances, resources for which a  
25 charge or subscription fee is imposed.



1                   “(C)       INFORMATION       TO       GUIDE  
2                   SEARCHES.—The Register of Copyrights shall  
3                   receive, maintain, and make available to the  
4                   public, including through the Internet, informa-  
5                   tion from authoritative sources, such as indus-  
6                   try guidelines, statements of best practices, and  
7                   other relevant documents, that is designed to  
8                   assist users in conducting and documenting a  
9                   reasonably diligent search under this sub-  
10                  section. Such information may include—

11                   “(i) the records of the Copyright Of-  
12                   fice that are relevant to identifying and lo-  
13                   cating copyright owners;

14                   “(ii) other sources of copyright owner-  
15                   ship information reasonably available to  
16                   users;

17                   “(iii) methods to identify copyright  
18                   ownership information associated with a  
19                   work;

20                   “(iv) sources of reasonably available  
21                   technology tools and reasonably available  
22                   expert assistance; and

23                   “(v) best practices for documenting a  
24                   reasonably diligent search.

1           “(b) LIMITATIONS ON REMEDIES.—The limitations  
2 on remedies in a case to which subsection (a) applies are  
3 the following:

4           “(1) MONETARY RELIEF.—

5           “(A) GENERAL RULE.—Subject to sub-  
6 paragraph (B), an award for monetary relief  
7 (including actual damages, statutory damages,  
8 costs, and attorney’s fees) may not be made,  
9 other than an order requiring the infringer to  
10 pay reasonable compensation for the use of the  
11 infringed work.

12           “(B) EXCEPTIONS.—(i) An order requiring  
13 the infringer to pay reasonable compensation  
14 for the use of the infringed work may not be  
15 made under subparagraph (A) if—

16           “(I) the infringement is performed  
17 without any purpose of direct or indirect  
18 commercial advantage and primarily for a  
19 charitable, religious, scholarly, or edu-  
20 cational purpose, and

21           “(II) the infringer ceases the infringe-  
22 ment expeditiously after receiving notice of  
23 the claim for infringement,  
24 unless the copyright owner proves, and the  
25 court finds, that the infringer has earned

1           proceeds directly attributable to the in-  
2           fringement.

3           “(ii) If, after receiving notice of the claim  
4           for infringement, the infringer fails to negotiate  
5           in good faith with the owner of the infringed  
6           work regarding the amount of reasonable com-  
7           pensation for the use of the infringed work, the  
8           court may award full costs, including a reason-  
9           able attorney’s fee, against the infringer under  
10          section 505, subject to section 412.

11          “(2) INJUNCTIVE RELIEF.—

12           “(A) GENERAL RULE.—Subject to sub-  
13          paragraph (B), the court may impose injunctive  
14          relief to prevent or restrain the infringing use,  
15          except that, if the infringer has met the re-  
16          quirements of subsection (a), the relief shall, to  
17          the extent practicable, account for any harm  
18          that the relief would cause the infringer due to  
19          its reliance on the reasonably diligent search  
20          performed under subsection (a).

21           “(B) SPECIAL RULE FOR NEW WORKS.—In  
22          a case in which a new work of authorship  
23          recasts, transforms, adapts, or integrates the  
24          infringed work with the new work’s original ex-

1           pression, any injunctive relief ordered by the  
2           court—

3                   “(i) may not restrain the infringer’s  
4                   continued preparation or use of that new  
5                   work;

6                   “(ii) shall require that the infringer  
7                   pay reasonable compensation to the owner  
8                   of the infringed copyright for the use of  
9                   the infringed work; and

10                   “(iii) shall require that the infringer  
11                   provide attribution to the owner of the in-  
12                   fringed copyright in a manner that the  
13                   court determines is reasonable under the  
14                   circumstances.

15                   “(C) TREATMENT OF PARTIES NOT SUB-  
16                   JECT TO SUIT.—The limitations on remedies  
17                   under this paragraph shall not be available to  
18                   an infringer that asserts in an action under sec-  
19                   tion 501(b) that neither it nor its representative  
20                   acting in an official capacity is subject to suit  
21                   in Federal court for an award of damages to  
22                   the copyright owner under section 504, unless  
23                   the court finds that the infringer—

1                   “(i) has complied with the require-  
2                   ments of subsection (a) of this section; and

3                   “(ii) pays reasonable compensation to  
4                   the copyright owner as defined under para-  
5                   graph (3).

6                   “(D) CONSTRUCTION.—Nothing in sub-  
7                   paragraph (C) shall be deemed to authorize or  
8                   require, and no action taken pursuant to sub-  
9                   paragraph (C) shall be deemed to constitute, an  
10                  award of damages by the court against the in-  
11                  fringer.

12                  “(E) RIGHTS AND PRIVILEGES NOT  
13                  WAIVED.—No action taken by an infringer pur-  
14                  suant to subparagraph (C) shall be deemed to  
15                  waive any right or privilege that, as a matter of  
16                  law, protects the infringer from being subject to  
17                  suit in Federal court for an award of damages  
18                  to the copyright owner under section 504.

19                  “(3) REASONABLE COMPENSATION.—In estab-  
20                  lishing reasonable compensation under paragraph  
21                  (1) or (2), the owner of the infringed copyright has  
22                  the burden of establishing the amount on which a  
23                  reasonable willing buyer and a reasonable willing  
24                  seller in the positions of the owner and the infringer  
25                  would have agreed with respect to the infringing use

1 of the work immediately before the infringement  
2 began.

3 “(c) PRESERVATION OF OTHER RIGHTS, LIMITA-  
4 TIONS, AND DEFENSES.—This section does not affect any  
5 right, limitation, or defense to copyright infringement, in-  
6 cluding fair use, under this title. If another provision of  
7 this title provides for a statutory license when the copy-  
8 right owner cannot be located, that provision applies in  
9 lieu of this section.

10 “(d) COPYRIGHT FOR DERIVATIVE WORKS AND COM-  
11 PILATIONS.—Notwithstanding section 103(a), the infring-  
12 ing use of a work in accordance with this section shall  
13 not limit or affect the copyright protection for a work that  
14 employs the infringed work.”.

15 (b) CONFORMING AMENDMENT.—The table of sec-  
16 tions for chapter 5 of title 17, United States Code, is  
17 amended by adding at the end the following new item:

“514. Limitation on remedies in cases involving orphan works.”.

18 (c) EFFECTIVE DATE.—The amendments made by  
19 this section shall apply only to infringing uses that com-  
20 mence on or after June 1, 2008.

21 **SEC. 203. REPORT TO CONGRESS ON AMENDMENTS.**

22 The Register of Copyrights shall, not later than De-  
23 cember 12, 2014, report to the Committee on the Judici-  
24 ary of the House of Representatives and the Committee  
25 on the Judiciary of the Senate on the implementation and

1 effects of the amendments made by section 202, including  
2 any recommendations for legislative changes that the Reg-  
3 ister considers appropriate.

4 **SEC. 204. INQUIRY ON REMEDIES FOR SMALL COPYRIGHT**  
5 **CLAIMS.**

6 (a) IN GENERAL.—The Register of Copyrights shall  
7 conduct an inquiry with respect to remedies for copyright  
8 infringement claims by an individual copyright owner or  
9 a related group of copyright owners seeking limited  
10 amounts of monetary relief, including consideration of al-  
11 ternative means of resolving disputes currently heard in  
12 the United States district courts. The inquiry shall cover  
13 infringement claims to which section 514 of title 17,  
14 United States Code (as added by section 202 of this Act),  
15 apply, and other infringement claims under title 17,  
16 United States Code.

17 (b) PROCEDURES.—The Register of Copyrights shall  
18 publish notice of the inquiry under subsection (a), pro-  
19 viding a period during which interested persons may sub-  
20 mit comments on the inquiry, and an opportunity for in-  
21 terested persons to participate in public roundtables on  
22 the inquiry. The Register shall hold the public roundtables  
23 at such times as the Register considers appropriate.

24 (c) REPORT TO CONGRESS.—The Register of Copy-  
25 rights shall, not later than 1 year after the date of the

1 enactment of this Act, prepare and submit to the Com-  
2 mittee on the Judiciary of the House of Representatives  
3 and the Committee on the Judiciary of the Senate a report  
4 on the inquiry conducted under this section, including  
5 such recommendations that the Register considers appro-  
6 priate.

## 7 **TITLE III—COPYRIGHT** 8 **PROTECTION RESOURCES**

### 9 **SEC. 301. SHORT TITLE.**

10 This title may be cited as the “Copyright Protection  
11 Resources Authorization Act of 2006”.

### 12 **SEC. 302. REGISTRATION IN CIVIL INFRINGEMENT AC-** 13 **TIONS.**

14 (a) LIMITATION TO CIVIL ACTIONS; PROTECTION OF  
15 COPYRIGHT CLAIM WITH PENDING APPLICATION; HARM-  
16 LESS ERROR.—Section 411 of title 17, United States  
17 Code, is amended by inserting after subsection (a) the fol-  
18 lowing new subsection:

19 “(b)(1) A certificate of registration satisfies the re-  
20 quirements of this section and section 412, regardless of  
21 whether the certificate contains any inaccurate informa-  
22 tion, unless—

23 “(A) the inaccurate information was included  
24 on the application for copyright registration with  
25 knowledge that it was inaccurate; and





1 vestigation, shall, with respect to crimes related to the  
2 theft of intellectual property—

3 (1) create an operational unit of the Federal  
4 Bureau of Investigation—

5 (A) to work with the Computer Crime and  
6 Intellectual Property section of the Department  
7 of Justice on the investigation and coordination  
8 of intellectual property crimes that are complex,  
9 committed in more than one judicial district, or  
10 international;

11 (B) that consists of at least 10 agents of  
12 the Bureau; and

13 (C) that is located at the headquarters of  
14 the Bureau;

15 (2) ensure that any unit in the Department of  
16 Justice responsible for investigating computer hack-  
17 ing or intellectual property crimes is assigned at  
18 least 2 agents of the Federal Bureau of Investiga-  
19 tion (in addition to any agent assigned, or author-  
20 ized to be assigned, to such unit as of the date of  
21 the enactment of this Act) to support such unit for  
22 the purpose of investigating or prosecuting intellec-  
23 tual property crimes; and

24 (3) implement a comprehensive program—

1 (A) the purpose of which is to train agents  
2 of the Federal Bureau of Investigation in the  
3 investigation and prosecution of such crimes  
4 and the enforcement of laws related to intellec-  
5 tual property crimes;

6 (B) that includes relevant forensic training  
7 related to investigating and prosecuting intellec-  
8 tual property crimes; and

9 (C) that requires such agents who inves-  
10 tigate or prosecute intellectual property crimes  
11 to attend the program annually.

12 (b) INTELLECTUAL PROPERTY LAW ENFORCEMENT  
13 COORDINATORS.—Not later than 120 days after the date  
14 of the enactment of this Act, the Attorney General shall  
15 assign one Federal prosecutor to the appropriate office of  
16 the Department of Justice located in Hong Kong and one  
17 Federal prosecutor to such an office located in Budapest,  
18 Hungary, to assist in the coordination of the enforcement  
19 of intellectual property laws between the United States  
20 and foreign nations.

21 (c) ORGANIZED CRIME TASK FORCE.—Not later  
22 than 120 days after the date of the enactment of this Act,  
23 the Attorney General, through the United States Attor-  
24 neys' Offices, the Computer Crime and Intellectual Prop-  
25 erty section, and the Organized Crime and Racketeering

1 section of the Department of Justice, and in consultation  
2 with the Federal Bureau of Investigation and other Fed-  
3 eral law enforcement agencies, shall create a Task Force  
4 to develop and implement a comprehensive, long-range  
5 plan to investigate and prosecute international organized  
6 crime syndicates engaging in or supporting crimes relating  
7 to the theft of intellectual property.

8 (d) AUTHORIZATION.—There are authorized to be ap-  
9 propriated to carry out this section \$12,000,000 for each  
10 of fiscal years 2007 through 2011.