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1. Bill	2. Date	3. Pages
S. 1623	Sep 22, 1992 (130-II)	H9029-49

4. Action:

PASSED UNDER SUSPENSION OF THE RULES

Audio home recording: H.R. 3204, amended, to provide emergency unemployment compensation. Subsequently, S. 1623, a similar Senate-passed bill, was passed in lieu after being amended to contain the language of the House bill as passed. H.R. 3204 was laid on the table;

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structions to be used directly or indirectly in order to bring about the perception, reproduction, or communication of the fixed sounds and incidental material.

"(C) For purposes of this paragraph—

"(i) a 'spoken word recording' is a sound recording in which are fixed only a series of spoken words, except that the spoken words may be accompanied by incidental musical or other sounds, and

"(ii) the term 'incidental' means related to and relatively minor by comparison.

"(6) 'Distribute' means to sell, lease, or assign a product to consumers in the United States, or to sell, lease, or assign a product in the United States for ultimate transfer to consumers in the United States.

"(7) An 'interested copyright party' is—

"(A) the owner of the exclusive right under section 106(1) of this title to reproduce a sound recording of a musical work that has been embodied in a digital musical recording or analog musical recording lawfully made under this title that has been distributed;

"(B) the legal or beneficial owner of, or the person that controls, the right to reproduce in a digital musical recording or analog musical recording a musical work that has been embodied in a digital musical recording or analog musical recording lawfully made under this title that has been distributed;

"(C) a featured recording artist who performs on a sound recording that has been distributed; or

"(D) any association or other organization—

"(i) representing persons specified in subparagraph (A), (B), or (C), or

"(ii) engaged in licensing rights in musical works to music users on behalf of writers and publishers.

"(8) To 'manufacture' means to produce or assemble a product in the United States. A 'manufacturer' is a person who manufactures.

"(9) A 'music publisher' is a person that is authorized to license the reproduction of a particular musical work in a sound recording.

"(10) A 'professional model product' is an audio recording device that is designed, manufactured, marketed, and intended for use by recording professionals in the ordinary course of a lawful business, in accordance with such requirements as the Secretary of Commerce shall establish by regulation.

"(11) The term 'serial copying' means the duplication in a digital format of a copyrighted musical work or sound recording from a digital reproduction of a digital musical recording. The term 'digital reproduction of a digital musical recording' does not include a digital musical recording as distributed, by authority of the copyright owner, for ultimate sale to consumers.

"(12) The 'transfer price' of a digital audio recording device or a digital audio recording medium—

"(A) is, subject to subparagraph (B)—

"(i) in the case of an imported product, the actual entered value at United States Customs (exclusive of any freight, insurance, and applicable duty), and

"(ii) in the case of a domestic product, the manufacturer's transfer price (FOB the manufacturer, and exclusive of any direct sales taxes or excise taxes incurred in connection with the sale); and

"(B) shall, in a case in which the transferor and transferee are related entities or within a single entity, not be less than a reasonable arms-length price under the principles of the regulations adopted pursuant to section 482 of the Internal Revenue Code of 1986, or any successor provision to such section.

"(13) A 'writer' is the composer or lyricist of a particular musical work.

"SUBCHAPTER B—COPYING CONTROLS

"§ 1002. Incorporation of copying controls

"(a) PROHIBITION ON IMPORTATION, MANUFACTURE, AND DISTRIBUTION.—No person shall import, manufacture, or distribute any digital audio recording device or digital audio interface device that does not conform to—

"(1) the Serial Copy Management System;

"(2) a system that has the same functional characteristics as the Serial Copy Management System and requires that copyright and generation status information be accurately sent, received, and acted upon between devices using the system's method of serial copying regulation and devices using the Serial Copy Management System; or

"(3) any other system certified by the Secretary of Commerce as prohibiting unauthorized serial copying.

"(b) DEVELOPMENT OF VERIFICATION PROCEDURE.—The Secretary of Commerce shall establish a procedure to verify, upon the petition of an interested party, that a system meets the standards set forth in subsection (a)(2).

"(c) PROHIBITION ON CIRCUMVENTION OF THE SYSTEM.—No person shall import, manufacture, or distribute any device, or offer or perform any service, the primary purpose or effect of which is to avoid, bypass, remove, deactivate, or otherwise circumvent any program or circuit which implements, in whole or in part, a system described in subsection (a).

"(d) ENCODING OF INFORMATION ON DIGITAL MUSICAL RECORDINGS.—

"(1) PROHIBITION ON ENCODING INACCURATE INFORMATION.—No person shall encode a digital musical recording of a sound recording with inaccurate information relating to the category code, copyright status, or generation status of the source material for the recording.

"(2) ENCODING OF COPYRIGHT STATUS NOT REQUIRED.—Nothing in this chapter requires any person engaged in the importation or manufacture of digital musical recordings to encode any such digital musical recording with respect to its copyright status.

"(e) INFORMATION ACCOMPANYING TRANSMISSIONS IN DIGITAL FORMAT.—Any person who transmits or otherwise communicates to the public any sound recording in digital format is not required under this chapter to transmit or otherwise communicate the information relating to the copyright status of the sound recording. Any such person who does transmit or otherwise communicate such copyright status information shall transmit or communicate such information accurately.

"SUBCHAPTER C—ROYALTY PAYMENTS

"§ 1003. Obligation to make royalty payments

"(a) PROHIBITION ON IMPORTATION AND MANUFACTURE.—No person shall import into and distribute, or manufacture and distribute, any digital audio recording device or digital audio recording medium unless such person records the notice specified by this section and subsequently deposits the statements of account and applicable royalty payments for such device or medium specified in section 1004.

"(b) FILING OF NOTICE.—The importer or manufacturer of any digital audio recording device or digital audio recording medium, within a product category or utilizing a technology with respect to which such manufacturer or importer has not previously filed a notice under this subsection, shall file with the Register of Copyrights a notice with respect to such device or medium, in such form and content as the Register shall prescribe by regulation.

"(c) FILING OF QUARTERLY AND ANNUAL STATEMENTS OF ACCOUNT.—

"(1) GENERALLY.—Any importer or manufacturer that distributes any digital audio recording device or digital audio recording medium that it manufactured or imported shall file with the Register of Copyrights, in such form and content as the Register shall prescribe by regulation, such quarterly and annual statements of account with respect to such distribution as the Register shall prescribe by regulation.

"(2) CERTIFICATION, VERIFICATION, AND CONFIDENTIALITY.—Each such statement shall be certified as accurate by an authorized officer or principal of the importer or manufacturer. The Register shall issue regulations to provide for the verification and audit of such statements and to protect the confidentiality of the information contained in such statements. Such regulations shall provide for the disclosure, in confidence, of such statements to interested copyright parties.

"(3) ROYALTY PAYMENTS.—Each such statement shall be accompanied by the royalty payments specified in section 1004.

"§ 1004. Royalty payments

"(a) DIGITAL AUDIO RECORDING DEVICES.—

"(1) AMOUNT OF PAYMENT.—The royalty payment due under section 1003 for each digital audio recording device imported into and distributed in the United States, or manufactured and distributed in the United States, shall be 2 percent of the transfer price. Only the first person to manufacture and distribute or import and distribute such device shall be required to pay the royalty with respect to such device.

"(2) CALCULATION FOR DEVICES DISTRIBUTED WITH OTHER DEVICES.—With respect to a digital audio recording device first distributed in combination with one or more devices, either as a physically integrated unit or as separate components, the royalty payment shall be calculated as follows:

"(A) If the digital audio recording device and such other devices are part of a physically integrated unit, the royalty payment shall be based on the transfer price of the unit, but shall be reduced by any royalty payment made on any digital audio recording device included within the unit that was not first distributed in combination with the unit.

"(B) If the digital audio recording device is not part of a physically integrated unit and substantially similar devices have been distributed separately at any time during the preceding 4 calendar quarters, the royalty payment shall be based on the average transfer price of such devices during those 4 quarters.

"(C) If the digital audio recording device is not part of a physically integrated unit and substantially similar devices have not been distributed separately at any time during the preceding 4 calendar quarters, the royalty payment shall be based on a constructed price reflecting the proportional value of such device to the combination as a whole.

"(3) LIMITS ON ROYALTIES.—Notwithstanding paragraph (1) or (2), the amount of the royalty payment for each digital audio recording device shall not be less than $1 nor more than the royalty maximum. The royalty maximum shall be $8 per device, except that in the case of a physically integrated unit containing more than 1 digital audio recording device, the royalty maximum for such unit shall be $12. During the 6th year after the effective date of this chapter, and not more than once each year thereafter, any interested copyright party may petition the Copyright Royalty Tribunal to increase the royalty maximum and, if more than 20 percent of the royalty payments are at the relevant royalty maximum, the Tribunal shall prospectively increase such royalty maximum with the goal of having no more

than 10 percent of such payments at the new royalty maximum; however the amount of any such increase as a percentage of the royalty maximum shall in no event exceed the percentage increase in the Consumer Price Index during the period under review.

"(b) DIGITAL AUDIO RECORDING MEDIA.—The royalty payment due under section 1003 for each digital audio recording medium imported into and distributed in the United States, or manufactured and distributed in the United States, shall be 3 percent of the transfer price. Only the first person to manufacture and distribute or import and distribute such medium shall be required to pay the royalty with respect to such medium.

"§ 1005. Deposit of royalty payments and deduction of expenses

"The Register of Copyrights shall receive all royalty payments deposited under this chapter and, after deducting the reasonable costs incurred by the Copyright Office under this chapter, shall deposit the balance in the Treasury of the United States as offsetting receipts, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest under section 1007. The Register may, in the Register's discretion, 4 years after the close of any calendar year, close out the royalty payments account for that calendar year, and may treat any funds remaining in such account and any subsequent deposits that would otherwise be attributable to that calendar year as attributable to the succeeding calendar year. The Register shall submit to the Copyright Royalty Tribunal, on a monthly basis, a financial statement reporting the amount of royalties under this chapter that are available for distribution.

"§ 1006. Entitlement to royalty payments

"(a) INTERESTED COPYRIGHT PARTIES.—The royalty payments deposited pursuant to section 1005 shall, in accordance with the procedures specified in section 1007, be distributed to any interested copyright party—

"(1) whose musical work or sound recording has been—

"(A) embodied in a digital musical recording or an analog musical recording lawfully made under this title that has been distributed, and

"(B) distributed in the form of digital musical recordings or analog musical recordings or disseminated to the public in transmissions, during the period to which such payments pertain; and

"(2) who has filed a claim under section 1007.

"(b) ALLOCATION OF ROYALTY PAYMENTS TO GROUPS.—The royalty payments shall be divided into 2 funds as follows:

"(1) THE SOUND RECORDINGS FUND.—66⅔ percent of the royalty payments shall be allocated to the Sound Recordings Fund. 2½ percent of the royalty payments allocated to the Sound Recordings Fund shall be placed in an escrow account managed by an independent administrator jointly appointed by the interested copyright parties described in section 1001(7)(A) and the American Federation of Musicians (or any successor entity) to be distributed to nonfeatured musicians (whether or not members of the American Federation of Musicians or any successor entity) who have performed on sound recordings distributed in the United States. 1½ percent of the royalty payments allocated to the Sound Recordings Fund shall be placed in an escrow account managed by an independent administrator jointly appointed by the interested copyright parties described in section 1001(7)(A) and the American Federation of Television and Radio Artists (or any successor entity) to be distributed to nonfeatured vocalists (whether or not members of the American Federation Television and Radio Artists or any successor entity) who have performed on sound recordings distributed in the United States. 40 percent of the remaining royalty payments in the Sound Recordings Fund shall be distributed to the interested copyright parties described in section 1001(7)(C), and 60 percent of such remaining royalty payments shall be distributed to the interested copyright parties described in section 1001(7)(A).

"(2) THE MUSICAL WORKS FUND.—

"(A) 33⅓ percent of the royalty payments shall be allocated to the Musical Works Fund for distribution to interested copyright parties described in section 1001(7)(B).

"(B)(i) Music publishers shall be entitled to 50 percent of the royalty payments allocated to the Musical Works Fund.

"(ii) Writers shall be entitled to the other 50 percent of the royalty payments allocated to the Musical Works Fund.

"(c) ALLOCATION OF ROYALTY PAYMENTS WITHIN GROUPS.—If all interested copyright parties within a group specified in subsection (b) do not agree on a voluntary proposal for the distribution of the royalty payments within each group, the Copyright Royalty Tribunal shall, pursuant to the procedures specified under section 1007(c), allocate royalty payments under this section based on the extent to which, during the relevant period—

"(1) for the Sound Recordings Fund, each sound recording was distributed in the form of digital musical recordings or analog musical recordings; and

"(2) for the Musical Works Fund, each musical work was distributed in the form of digital musical recordings or analog musical recordings or disseminated to the public in transmissions.

"§ 1007. Procedures for distributing royalty payments

"(a) FILING OF CLAIMS AND NEGOTIATIONS.—

"(1) FILING OF CLAIMS.—During the first 2 months of each calendar year after the calendar year in which this chapter takes effect, every interested copyright party seeking to receive royalty payments to which such party is entitled under section 1006 shall file with the Copyright Royalty Tribunal a claim for payments collected during the preceding year in such form and manner as the Tribunal shall prescribe by regulation.

"(2) NEGOTIATIONS.—Notwithstanding any provision of the antitrust laws, for purposes of this section interested copyright parties within each group specified in section 1006(b) may agree among themselves to the proportionate division of royalty payments, may lump their claims together and file them jointly or as a single claim, or may designate a common agent, including any organization described in section 1001(7)(D), to negotiate or receive payment on their behalf; except that no agreement under this subsection may modify the allocation of royalties specified in section 1006(b).

"(b) DISTRIBUTION OF PAYMENTS IN THE ABSENCE OF A DISPUTE.—Within 30 days after the period established for the filing of claims under subsection (a), in each year after the year in which this section takes effect, the Copyright Royalty Tribunal shall determine whether there exists a controversy concerning the distribution of royalty payments under section 1006(c). If the Tribunal determines that no such controversy exists, the Tribunal shall, within 30 days after such determination, authorize the distribution of the royalty payments as set forth in the agreements regarding the distribution of royalty payments entered into pursuant to subsection (a), after deducting its reasonable administrative costs under this section.

"(c) RESOLUTION OF DISPUTES.—If the Tribunal finds the existence of a controversy, it shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty payments. During the pendency of such a proceeding, the Tribunal shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall, to the extent feasible, authorize the distribution of any amounts that are not in controversy. The Tribunal shall, before authorizing the distribution of such royalty payments, deduct its reasonable administrative costs under this section.

"SUBCHAPTER D—PROHIBITION ON CERTAIN INFRINGEMENT ACTIONS, REMEDIES, AND ARBITRATION

"§ 1008. Prohibition on certain infringement actions

"No action may be brought under this title alleging infringement of copyright based on the manufacture, importation, or distribution of a digital audio recording device, a digital audio recording medium, an analog recording device, or an analog recording medium, or based on the noncommercial use by a consumer of such a device or medium for making digital musical recordings or analog musical recordings.

"§ 1009. Civil remedies

"(a) CIVIL ACTIONS.—Any interested copyright party injured by a violation of section 1002 or 1003 may bring a civil action in an appropriate United States district court against any person for such violation.

"(b) OTHER CIVIL ACTIONS.—Any person injured by a violation of this chapter may bring a civil action in an appropriate United States district court for actual damages incurred as a result of such violation.

"(c) POWERS OF THE COURT.—In an action brought under subsection (a), the court—

"(1) may grant temporary and permanent injunctions on such terms as it deems reasonable to prevent or restrain such violation;

"(2) in the case of a violation of section 1002, or in the case of an injury resulting from a failure to make royalty payments required by section 1003, shall award damages under subsection (d);

"(3) in its discretion may allow the recovery of costs by or against any party other than the United States or an officer thereof; and

"(4) in its discretion may award a reasonable attorney's fee to the prevailing party.

"(d) AWARD OF DAMAGES.—

"(1) DAMAGES FOR SECTION 1002 OR 1003 VIOLATIONS.—

"(A) ACTUAL DAMAGES.—(i) In an action brought under subsection (a), if the court finds that a violation of section 1002 or 1003 has occurred, the court shall award to the complaining party its actual damages if the complaining party elects such damages at any time before final judgment is entered.

"(ii) In the case of section 1003, actual damages shall constitute the royalty payments that should have been paid under section 1004 and deposited under section 1005. In such a case, the court, in its discretion, may award an additional amount of not to exceed 50 percent of the actual damages.

"(B) STATUTORY DAMAGES FOR SECTION 1002 VIOLATIONS.—

"(i) DEVICE.—A complaining party may recover an award of statutory damages for each violation of section 1002 (a) or (c) in the sum of not more than $2,500 per device involved in such violation or per device on which a service prohibited by section 1002(c) has been performed, as the court considers just.

"(ii) DIGITAL MUSICAL RECORDING.—A complaining party may recover an award of stat-

utory damages for each violation of section 1002(d) in the sum of not more than $25 per digital musical recording involved in such violation, as the court considers just.

"(iii) TRANSMISSION.—A complaining party may recover an award of damages for each transmission or communication that violates section 1002(e) in the sum of not more than $10,000, as the court considers just.

"(2) REPEATED VIOLATIONS.—In any case in which the court finds that a person has violated section 1002 or 1003 within 3 years after a final judgment against that person for another such violation was entered, the court may increase the award of damages to not more than double the amounts that would otherwise be awarded under paragraph (1), as the court considers just.

"(3) *INNOCENT VIOLATIONS OF SECTION 1002.*—The court in its discretion may reduce the total award of damages against a person violating section 1002 to a sum of not less than $250 in any case in which the court finds that the violator was not aware and had no reason to believe that its acts constituted a violation of section 1002.

"(e) PAYMENT OF DAMAGES.—Any award of damages under subsection (d) shall be deposited with the Register pursuant to section 1005 for distribution to interested copyright parties as though such funds were royalty payments made pursuant to section 1003.

"(f) IMPOUNDING OF ARTICLES.—At any time while an action under subsection (a) is pending, the court may order the impounding, on such terms as it deems reasonable, of any digital audio recording device, digital musical recording, or device specified in section 1002(c) that is in the custody or control of the alleged violator and that the court has reasonable cause to believe does not comply with, or was involved in a violation of, section 1002.

"(g) REMEDIAL MODIFICATION AND DESTRUCTION OF ARTICLES.—In an action brought under subsection (a), the court may, as part of a final judgment or decree finding a violation of section 1002, order the remedial modification or the destruction of any digital audio recording device, digital musical recording, or device specified in section 1002(c) that—

"(1) does not comply with, or was involved in a violation of, section 1002, and

"(2) is in the custody or control of the violator or has been impounded under subsection (f).

"§ 1010. Arbitration of certain disputes

"(a) SCOPE OF ARBITRATION.—Before the date of first distribution in the United States of a digital audio recording device or a digital audio interface device, any party manufacturing, importing, or distributing such device, and any interested copyright party may mutually agree to binding arbitration for the purpose of determining whether such device is subject to section 1002, or the basis on which royalty payments for such device are to be made under section 1003.

"(b) INITIATION OF ARBITRATION PROCEEDINGS.—Parties agreeing to such arbitration shall file a petition with the Copyright Royalty Tribunal requesting the commencement of an arbitration proceeding. The petition may include the names and qualifications of potential arbitrators. Within 2 weeks after receiving such a petition, the Tribunal shall cause notice to be published in the Federal Register of the initiation of an arbitration proceeding. Such notice shall include the names and qualifications of 3 arbitrators chosen by the Tribunal from a list of available arbitrators obtained from the American Arbitration Association or such similar organization as the Tribunal shall select, and from potential arbitrators listed in the parties' petition. The arbitrators selected under this subsection shall constitute an Arbitration Panel.

"(c) STAY OF JUDICIAL PROCEEDINGS.—Any civil action brought under section 1009 against a party to arbitration under this section shall, on application of one of the parties to the arbitration, be stayed until completion of the arbitration proceeding.

"(d) ARBITRATION PROCEEDING.—The Arbitration Panel shall conduct an arbitration proceeding with respect to the matter concerned, in accordance with such procedures as it may adopt. The Panel shall act on the basis of a fully documented written record. Any party to the arbitration may submit relevant information and proposals to the Panel. The parties to the proceeding shall bear the entire cost thereof in such manner and proportion as the Panel shall direct.

"(e) REPORT TO COPYRIGHT ROYALTY TRIBUNAL.—Not later than 60 days after publication of the notice under subsection (b) of the initiation of an arbitration proceeding, the Arbitration Panel shall report to the Copyright Royalty Tribunal its determination concerning whether the device concerned is subject to section 1002, or the basis on which royalty payments for the device are to be made under section 1003. Such report shall be accompanied by the written record, and shall set forth the facts that the Panel found relevant to its determination.

"(f) ACTION BY THE COPYRIGHT ROYALTY TRIBUNAL.—Within 60 days after receiving the report of the Arbitration Panel under subsection (e), the Copyright Royalty Tribunal shall adopt or reject the determination of the Panel. The Tribunal shall adopt the determination of the Panel unless the Tribunal finds that the determination is clearly erroneous. If the Tribunal rejects the determination of the Panel, the Tribunal shall, before the end of that 60-day period, and after full examination of the record created in the arbitration proceeding, issue an order setting forth its decision and the reasons therefor. The Tribunal shall cause to be published in the Federal Register the determination of the Panel and the decision of the Tribunal under this subsection with respect to the determination (including any order issued under the preceding sentence).

"(g) JUDICIAL REVIEW.—Any decision of the Copyright Royalty Tribunal under subsection (f) with respect to a determination of the Arbitration Panel may be appealed, by a party to the arbitration, to the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the publication of the decision in the Federal Register. The pendency of an appeal under this subsection shall not stay the Tribunal's decision. The court shall have jurisdiction to modify or vacate a decision of the Tribunal only if it finds, on the basis of the record before the Tribunal, that the Arbitration Panel or the Tribunal acted in an arbitrary manner. If the court modifies the decision of the Tribunal, the court shall have jurisdiction to enter its own decision in accordance with its final judgment. The court may further vacate the decision of the Tribunal and remand the case for arbitration proceedings as provided in this section.".

SEC. 3. TECHNICAL AMENDMENTS.

(a) FUNCTIONS OF REGISTER.—Chapter 8 of title 17, United States Code is amended—

(1) in section 801(b)—

(A) by striking "and" at the end of paragraph (2);

(B) by striking the period at the end of paragraph (3) and inserting "; and"; and

(C) by adding the following new paragraph at the end:

"(4) to distribute royalty payments deposited with the Register of Copyrights under section 1003, to determine the distribution of such payments, and to carry out its other responsibilities under chapter 10"; and

(2) in section 804(d)—

(A) by inserting "or (4)" after "801(b)(3)"; and

(B) by striking "or 119" and inserting "119, or 1007".

(b) DEFINITIONS.—Section 101 of title 17, United States Code, is amended by striking "As used" and inserting "Except as otherwise provided in this title, as used".

(c) MASK WORKS.—Section 912 of title 17, United States Code, is amended—

(1) in subsection (a) by inserting "or 10" after "8"; and

(2) in subsection (b) by inserting "or 10" after "8".

(d) CONFORMING AMENDMENT TO SECTION 337 OF THE TARIFF ACT OF 1930.—The second sentence of section 337(b)(3) of the Tariff Act of 1930 (19 U.S.C. 1337(b)(3)) is amended to read as follows: "If the Commission has reason to believe that the matter before it (A) is based solely on alleged acts and effects which are within the purview of section 303, 671, or 673, or (B) relates to an alleged copyright infringement with respect to which action is prohibited by section 1008 of title 17, United States Code, the Commission shall terminate, or not institute, any investigation into the matter.".

SEC. 4. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Texas [Mr. BROOKS] will be recognized for 20 minutes, and the gentleman from California [Mr. MOORHEAD] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas [Mr. BROOKS].

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Mr. BROOKS. Mr. Speaker, I yield myself such time as I may consume.

(Mr. BROOKS asked and was given permission to revise and extend his remarks.)

Mr. BROOKS. Mr. Speaker, I rise in support of H.R. 3204. Of the many people who worked tirelessly on this bill, I first want to single out for praise my very dear friend and distinguished colleague, the gentlewoman from Illinois [Mrs. COLLINS], who chairs the Energy and Commerce Committee's Subcommittee on Commerce, Consumer Protection, and Competitiveness. Without her fine work and her subcommittee's sterling contribution, this compromise bill would never have been possible.

I also want to sincerely compliment the very thoughtful work done by the Judiciary Committee's Subcommittee on Intellectual Property and Judicial Administration. It's chairman, the gentleman from New Jersey [Mr. HUGHES] and its ranking minority member, the gentleman from California [Mr. MOORHEAD], both labored long and hard over this legislation. They can be justifiably proud of the product they have achieved, and the support that it has received from Members and interested parties alike.

I also thank my other fine friends and distinguished colleagues—the gentleman from Michigan [Mr. DINGELL],

chairman of the Energy and Commerce Committee, and the gentleman from Illinois [Mr. ROSTENKOWSKI], chairman of the Ways and Means Committee—for their leadership on this issue.

Everyone involved in H.R. 3204—whether in the private sector or in the Congress—has demonstrated through this legislation their willingness to help this country stay at the forefront of world technological change.

The primary legislative history upon enactment of this legislation will be found in House Report 102-873, part 1. In addition, since the time of passage by the three committees to whom H.R. 3204 was referred, our committees have agreed upon several changes. Those changes are contained in the compromise package on suspension now, and other Members will address them.

I want to address and emphasize the import of just one of those changes. Section 1006 of H.R. 3204 deals with entitlement to royalty payments under two newly created funds—the sound recording fund and the musical works fund. In H.R. 3204 as reported by the judiciary committee, there was a prefatory phrase—"notwithstanding any contractual obligations to the contrary"—found only in one of the funds. However, the allocation of royalties in both funds is set by statute. Thus, that prefatory phrase is being deleted by agreement as unnecessary. We intend the statutory allocation formula for both funds to control the royalty distribution.

As the Judiciary Committee stated on this point in House Report 102-873, part 1, which remains applicable to our agreement today:

> The committee intends the statutory allocations to fix the percentage of royalties that the various groups of interested copyright parties are to receive from the two funds. Contractual provisions, whether existing or future, that would alter these allocations are preempted by this bill. On the other hand, once the distribution of the royalty payment has been made according to the statutory allocation, the bill does not seek to place restrictions on how the recipients may spend their royalties.

Mr. Speaker, H.R. 3204 resolves over a decade of bitter disputes between the electronics and the music industries—with both sides willing to fight indefinitely because of the economic stakes involved in this issue. I recommended that they sue for peace. I am happy and proud that peace, not war, is now the order of the day. I urge my colleagues to vote "aye" on H.R. 3204.

Mr. Speaker, I reserve the balance of my time.

Mr. MOORHEAD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 3204.

I would like to commend our Judiciary Committee chairman, the gentleman from Texas [Mr. JACK BROOKS] and our subcommittee chairman, the gentleman from New Jersey [Mr. BILL HUGHES] and their staff for their thorough and painstaking analysis of these important but difficult issues. I also would like to commend our ranking member, the gentleman from New York Mr. HAMILTON FISH for his leadership and support of this issue.

Mr. Speaker, H.R. 3204 would make it clear that noncommercial taping of music by consumers is not a violation of copyright law. The debate over home taping of records goes back to 1970 when Congress first extended copyright protection for records but this legislation will end the 22-year-old debate and make it clear that home taping does not constitute copyright infringement.

The problem is that Japanese manufacturers are about to begin importing into the United States copying equipment making it possible to make quality copies of music discs. The compromise contained in H.R. 3204 provides that such new equipment will have a chip that will prevent any copying of the copies made by the new equipment. In other words, you can make as many noncommercial copies as you wish from the new machine but you will not be able, mechanically, to make a copy of the copy.

The bill also sets up a royalty fund by charging a fee for the sale of blank discs, not blank tapes, and sets a fee on each piece of new disc equipment sold in the United States. For the new equipment the royalty is 2 percent of the transfer price with a minimum fee of $1 and a maximum fee of $8 a machine. For blank discs the royalty fee is 3 percent of transfer price. Video recording equipment would not be affected, nor would dictation machines, telephone answering machines or professional recording equipment.

American music is the music of choice all over the world. However, pirating and taping have become an enormous problem for the American music community. Taping presently displaces sales amounting to about $1.5 billion a year, about one-third of the industry's annual revenues, and sales are the only means by which record companies are paid. The impact of displaced sales is obviously felt first by copyright owners and creators who earn their income from the sale of their prerecorded music. But it hurts everyone in the end because less music is produced. The releases of new albums have declined by 43 percent since 1978.

After months of debate with the interested parties I believe we have legislation that is good for all the industries involved and it is also good for the consumer and the country.

These new taping machines that are about to be shipped to this country will revolutionize existing taping technology. The new machines will capture and preserve recordings with near perfect fidelity. If this legislation is not enacted the displacement of sales caused by taping is sure to experience a quantum leap.

I am not aware of any opposition to this bill. It has the support of industry, the Copyright Office, the consumers and the administration.

I urge your support.

Mr. Speaker, I reserve the balance of my time.

Mr. BROOKS. Mr. Speaker, I yield 4 minutes to the gentleman from New Jersey [Mr. HUGHES], chairman of the Subcommittee on Intellectual Property and Judicial Administration.

(Mr. HUGHES asked and was given permission to revise and extend his remarks.)

Mr. HUGHES. Mr. Speaker, I rise in support of H.R. 3204, the Audio Home Recording Act of 1992, which I introduced along with the gentleman from Texas [Mr BROOKS], chairman of the Judiciary Committee. H.R. 3204 is cosponsored by the gentleman from California [Mr. MOOREHEAD], the ranking Republican on the Subcommittee on Intellectual Property and Judicial Administration, which I chair, and by 90 other Members. H.R. 3204 enjoys widespread support because it protects the interests of consumers, copyright owners, and manufacturers and distributors of audio equipment. H.R. 3204 will facilitate the introduction of exciting new digital audio technologies whose entry into the U.S. market has been blocked by litigation. With the holiday season just around the corner, H.R. 3204 will create new manufacturing jobs and give retailers exciting new consumer electronics to market, important benefits in these difficult economic times.

H.R. 3204 is also landmark intellectual property legislation, placing the United States squarely in line with the growing international consensus on how to resolve the difficult issues of new technological uses of copyrighted works. One of those issues—home taping of music—has been of great concern to U.S. consumers. For more than two decades, a legal cloud has hovered over copying by consumers for private use. This was true even though the Supreme Court's 1984 Betamax decision permitted time-shifting of free broadcast television programming.

H.R. 3204 removes the legal cloud over home copying of prerecorded music in the most proconsumer way possible: It gives consumers a complete exemption for noncommercial home copying of both digital and analog music, even though the royalty obligations under the bill apply only to digitally formatted music. No longer will consumers be branded copyright pirates for making a tape for their car or for their children.

H.R. 3204 was introduced on August 11, 1991. Hearings were held by our subcommittee on February 19, 1992. H.R. 3204 as reported by our subcommittee and the full Judiciary Committee reflected months of hard work devoted to original rethinking and original redrafting in order to develop the best possible legislation. These labors paid off. H.R. 3204 in its current form preserves the essentials of the compromise agreement reached by record companies, hardware manufacturers, and mu-

sical interests, while protecting the broader public interest, in particular consumers and performers.

I would like to explain, briefly, the essential elements of H.R. 3204.

EXEMPTIONS FROM LIABILITY

One of the cornerstones of the bill is section 1008. This provision provides an exemption to consumers for noncommercial copying of both digital and analog musical recordings and an exemption from contributory copyright infringement for manufacturers and distributors of digital and analog audio recording devices and media. These exemptions are complete, notwithstanding the somewhat indirect phrasing of the section, which is couched in terms of a prohibition on the bringing of infringement actions.

INCORPORATION OF SERIAL COPYING CONTROLS

In order to protect the interests of copyright owners from widespread copying that would harm investment, the bill requires that digital audio recording devices and digital audio interface devices contain systems to prevent unauthorized serial copying of copyrighted works. The serial copy management system is one such system. Other systems may also be developed, though, and the bill provides criteria by which these systems may meet the legislation's requirements.

The purpose of these systems is to permit consumers to make copies directly from an authorized, prerecorded musical recording, but to prevent them from making copies from copies. This approach has the benefit of preserving consumers' right under the bill to make home copies and of preventing distribution of copies that might displace sales.

ROYALTY PAYMENTS

Modest royalty payments are required under the bill to compensate copyright owners from the obvious loss of some sales due to home copying. In the case of machines, this royalty is set at 2 percent of the transfer price of the machine, with a general cap of $8. In the case of blank tapes, the royalty is set at 2 percent of the transfer price of the tape. Only one royalty payment is made.

I am keenly aware of the concerns of computer users that due to the prevalence of digital media, they may have to pay a royalty for blank computer tapes. This will not happen. The bill excludes computer programs from the coverage of the legislation and through the definition of digital audio recording medium," it carefully requires royalties only for tapes and the like that are primarily marketed or most commonly used by consumers for the purpose of making copies of digitally formatted music by digital audio recording devices.

There are many other important provisions in the bill, and I refer members to the Judiciary Committee report, House Report 102-873, part 1 for a full discussion of the details of the legislation. I will only point out here the differences between the bill as reported out by the Judiciary Committee and as taken up today.

DEFINITIONS

A number of definitions have been refined.

The definition of "digital audio interface device" has been revised to ensure that what is required is the communication of digital audio information and related interface data.

The definition of "digital audio recording device" has been revised to insert the phrase "of a type commonly distributed to individuals for use by individuals." This amendment clarifies that the defined term "digital audio recording device" refers to individual devices rather than a class of such devices.

The definition of "digital musical recording" has been revised to make clear that the exclusion for incidental material applies to both digital musical recordings and spoken work recordings.

The important definition of "serial copying" has been carefully revised so that there is no ambiguity about Congress' intention regarding when the prohibitions on multiple copying apply. The legislation is the result of concerns over the fidelity of digital to digital copying. At the same time, technology will shortly be introduced permitting the copying of an analog-formatted work onto digital format. Once in digital format, the work is susceptible to the same ease of copying found in works originally produced in digital format, albeit with a diminished fidelity.

H.R. 3024 addresses these issues in the following way through the definition of "serial copying." Consumers may make copies directly from a digital musical recording as distributed by the authority of the copyright owner for ultimate sale to consumers. However, by virtue of serial copy prevention systems mandated in section 1002 of the bill, copies from these copies may not be made. Where the work has been distributed by the copyright owner in analog format, but is copied by a consumer onto a digital format, no serial copy prevention encoding takes place. Thus, consumers may make two authorized copies, one in making the analog to digital transfer, and the second in making the first digital to digital copy. Copying from this second, digital copy would be prohibited by virtue of the serial copying prevention controls.

INCORPORATION OF COPYING CONTROLS

The bill as taken up today creates a three-tier approach: First, the serial copy management system [SCMS] automatically qualifies as satisfying section 1002's requirements for regulating the serial copying of copyrighted works; second, any future system that has the same functional characteristics as SCMS and which requires that copyright and generation status information be accurately sent, received, and acted upon between devices using that system's method or serial copying regulation and devices using scms also automatically qualifies as satisfying section 1002; third, other future systems that purport to regulate serial copying of copyrighted works must be certified in advance by the Secretary of Commerce before being distributed in digital audio recording devices.

DEPOSIT OF ROYALTY PAYMENTS

Section 1005 has been amended to make clear that all royalties are to be deposited in the Treasury as off-setting receipts.

ENTITLEMENT TO ROYALTY PAYMENTS

The bill taken up today eliminates the phrase "notwithstanding any contractual obligation to the contrary" from section 1006(B)(2)(B) of the bill as reported by the Judiciary Committee. This language, concerning distribution of royalties from the musical works fund, was not found in the parallel provision in section 1006(b)(1) concerning distribution of royalties from the sound recording fund. Pages 22-23 of the Judiciary Committee's report, House Report 102-873, part 1, discussed this inconsistency, and stated an intention that:

> The statutory allocations * * * fix the percentage of royalties that the various groups of interested copyright parties are to receive from the two funds. Contractual provisions, whether existing or future, that would alter these allocations are preempted by this bill. On the other hand, once the distribution of the royalty payment has been made according to the statutory allocation, the bill does not seek to place restrictions on how the recipients may spend their royalties. The presence of the prefatory language in the musical works fund, and its absence in the sound recording fund, is not intended to indicate a different result at either the distribution or post-distribution steps.

In order for there to be no ambiguity that the intention stated in report is carried out, the bill has been amendment to delete the language from the musical works fund.

PROHIBITIONS ON CERTAIN INFRINGEMENT ACTIONS

The bill as reported by the committee deletes the reference to section 337 of the Tariff Act of 1930 in favor of placing the provision in a separate section at the end of the bill.

This concludes my discussion of the changes between the bill we take up today and the bill reported by the Judiciary Committee on August 11, 1992. I urge my colleagues to vote for H.R. 3204.

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Mr. Speaker, the legislation has been described both by the distinguished chairman and by the ranking Republican. I will not explain anymore in detail what is in the bill, but it is a major breakthrough that we have been trying for the better part of 10 years to resolve these very difficult issues. That would not be possible without the cooperation of the gentlewoman from Illinois [Mrs. COLLINS], the subcommittee chairman, who worked diligently on this legislation, my colleague, the

gentleman from California [Mr. MOORHEAD], our staffs, Hayden Gregory and Bill Patry, who comes to us from the Copyright Office and has been very helpful, Tom Mooney and Joe Wolfe. They worked very hard and they should be congratulated on a very fine, well-balanced piece of legislation.

Mr. BROOKS. Mr. Speaker, I yield 3 minutes to the distinguished gentlewoman from Chicago [Mrs. COLLINS], the chairman of the Subcommittee on Commerce, Consumer Protection, and Competitiveness, of the Committee on Energy and Commerce.

(Mrs. COLLINS of Illinois asked and was given permission to revise and extend her remarks.)

Mrs. COLLINS of Illinois. Mr. Speaker, I thank the gentleman for yielding me this time.

Let me say that we have worked tirelessly and for a very long time on this piece of legislation. I especially want to thank the chairman of the Committee on the Judiciary, the gentleman from Texas [Mr. BROOKS], and of the subcommittee, the gentleman from New Jersey [Mr. HUGHES], and the gentleman from California [Mr. MOORHEAD], the ranking minority member, and the gentleman from North Carolina [Mr. MCMILLAN], the ranking member of the Subcommittee on Commerce, Consumer Protection, and Competitiveness of the Committee on Energy and Commerce, for all the work that they have done on this in a spirit of comity. This is a piece of legislation that certainly needs to be done. I think it is a wonderful thing that we are able to move it now.

Mr. Speaker, digital audio recording technology is not new and neither is the bitter debate that persists between the recording industry, electronic industry and consumers regarding the legality of home taping. The Audio Home Recording Act of 1992 is designed to put an end to these debates and facilitates the wide scale introduction of digital audio recording technology to the American consumer. The substitute amendment to H.R. 3204 is a reflection of the work of the Energy and Commerce, Judiciary, and Ways and Means Committees on this important issue. I support the final passage of this legislation and urge the support of my colleagues.

Compact discs and compact disc players are examples of digital technology. In the mid-1980's, consumer electronics companies decided to market a new wave of digital audio technology to American consumers—the digital audio recorder. Unlike the familiar analog audio recorder, the digital audio recorder is capable of making virtually perfect copies of source music. With analog recorders, as one continues to make copies from copies, the sound quality deteriorates. With digital audio recorders, on the other hand, multigenerational copies—from the 1st generation to the 15th generation—maintain virtually perfect sound quality.

This remarkable, innovative digital audio technology was showcased in my district at the 1992 International Summer Consumer Electronics Show.

Due to the precision of digital audio recording technology, the recording companies, music publishers, artists, musicians and others in the recording industry have been afraid that the digital audio recorders will increase copying by consumers and illegal bootleg companies and thereby reduce sales and royalties. For this reason, the recording industry has threatened lawsuits against manufacturers that consider making digital audio recorders available to American consumers. The music publishers and songwriters eventually did sue a manufacturer. This has had a chilling effect on the manufacturers, who have not made digital audio recording technology widely available to American consumers.

Of course, the ultimate loser in this standoff has been the American consumer, having been denied wide access to revolutionary digital audio recording technology. This year, for the first time, the consumer electronics show was open to the public. To demonstrate their desire to have access to this technology, scores of consumers signed petitions at the show in support of the three song solution to the stalemate, which is embodied in this bill.

This compromise solution was reached through difficult negotiations by a coalition of the recording industry; songwriters and music publishers; electronics industry and groups that want consumers to continue to enjoy the benefits of private home taping.

There are three basic provisions of the legislation. First, it guarantees consumers the legal right to make analog or digital copies of musical recordings for noncommercial use. Also it prohibits lawsuits being brought against those that manufacture, import, or distribute a digital or analog audio recorder or medium.

Second, it requires all manufacturers and importers to pay a small royalty fee for every digital audio recorder and digital audio recording medium made available to American consumers. This money eventually will be distributed to copyright holders and creative artists.

Third, it requires all digital audio recorders to incorporate the serial copy management system, a system that has the same functional characteristics as the Serial Copy Management System or any other system certified by the Secretary of Commerce as prohibiting unauthorized serial copying. These systems will allow unlimited recording of original material, but will prevent recording of copied material.

Earlier this year, I introduced H.R. 4567, which embodied the compromise. I introduced the legislation to finally put an end to this most recent and potent dispute in the seemingly neverending battle between the music and electronic industries regarding home taping: the pending introduction of the most advanced audio recording technology to date—the digital audio recorder—to the American consumer. Further, I wanted to make sure that songwriters, creative artists and American consumers did not end up with the short end of the stick in the resolution of this ongoing dispute.

H.R. 4567 was referred to three committees: Energy and Commerce, Judiciary, and Ways and Means. This is the first Congress in which audio home recording legislation has been referred jointly. Prior legislation, which only included serial copying limitation systems, was referred to the Energy and Commerce Committee.

The Subcommittee on Commerce, Consumer Protection and Competitiveness, which I chair, held hearings shortly after the bill's introduction. H.R. 4567 was reported out of the Energy and Commerce Committee on August 4, 1992, thus becoming the first audio home recording bill to be reported to the full House.

More recently, the Judiciary Committee and Ways and Means Committee reported a similar bill, H.R. 3204. The substitute amendment to H.R. 3204 before us today reflects a compromise between the three committees, and was introduced today by the chairs and ranking minority members of the Energy and Commerce Committee and Judiciary Committee and their legislative subcommittees. It reflects the work of the committees on H.R. 4567 and H.R. 3204. The legislative history of H.R. 4567 as well as H.R. 3204 is intended to apply to this bill as well.

In short, this bill combines benefits for creative artists, consumers and industry. It can lead the way in improving industry while providing songwriters and creative artists with deserved compensation and consumers with access to exciting technology.

Mr. Speaker, the substitute amendment before us is a combination of H.R. 4567, as reported out of the Energy and Commerce Committee, and H.R. 3204, as reported out of the Judiciary and Ways and Means Committees.

The amendment has the three-prong substantive element and the same spirit as H.R. 4567, some of the language between the bills are different. At this point, I would like to address some pertinent issues.

The scope of this legislation must remain clear. In review, and as clearly stated in the report to H.R. 4567, the audio home legislation before us is designed specifically to respond to the threat that the perfect copying capability of the digital audio recorder presents to those engaged in the professions of creating and introducing music into the American stream of commerce. The legislation would only cover digital audio recording technology, except to the extent that it specifically refers to analog recording in the provisions that deal with the prohibition of certain copyright infringement actions.

Concerning interface devices, the legislation is not meant to cover tele-

communications systems and general purpose computers either directly or indirectly through their general purpose interfaces. Further, the legislation only applies to those interface devices that are generally marketed to and used by individuals.

In terms of recorders, the legislation applies only to digital audio recorders that are designed or marketed primarily for the making of digital audio copied recordings for private use. The recorder must be of a type that is commonly distributed to individuals for use by individuals. The legislation does not cover professional model devices or audio recording equipment designed and marketed primarily for the creation of recording resulting from the fixation of nonmusical sounds, such as dictation machines and answering machines. Also, it does not cover general purpose computers.

Spoken word recordings, such as audio books and books on tape are not covered by the legislation, even if they use ancillary music, such as any music that may be used to link chapters or as occasional background to the spoken words. However, in the case of music genre that frequently rely on spoken phrases, the provisions of the legislation apply.

With respect to recording media, the legislation is only intended to cover those media products primarily marketed or most commonly used by consumers in making digital audio recordings. The legislation would not cover any media products primarily marketed and most commonly used by consumers in making copies of other digitally stored material, including general purpose computer programs.

Also, the legislation does not cover products primarily marketed by the computer industry or most commonly used by its consumers to make copies of computer programs and data or products primarily marketed or most commonly used by consumers to make things other than digital audio copied recordings, such as recording media used to make copies of motion pictures or other audio-visual works or used in telecommunications. systems.

Finally, the reported legislation would not cover multimedia products or general purpose computer programs.

The committee compromise requires all digital audio recorders and interface devices imported, manufactured or distributed in commerce in the United Stated to conform to the serial copy management system, a system that has the same functional characteristics as the serial copy management system or any other system certified by the Secretary of Commerce as prohibiting unauthorized serial copying.

H.R. 4567 as reported by Energy and Commerce Committee, provided similar requirements. In addition to the incorporation of the serial copy management system, H.R. 4567 specifically allowed the Secretary of Commerce to issue additional orders to implement the serial copy management system, if petitioned by an interested manufacturing or copyright party and the Secretary determined that to do so would be in accordance with the purposes of the legislation. The Secretary would have had to consult with the Register of Copyrights in the process of deciding whether or not to issue an order. There were several categories in which the Secretary would have been able to issue an order. They cover functionally equivalent alternatives, revised general standards, and standards for new devices.

The substitute amendment before us has streamlined the provisions of H.R. 4567, but still allows for the same result: a manufacturer will have several options from which to select to ensure compliance with the requirements of this act.

Mr. Speaker, with the exception of H.R. 3204 as reported by the House Judiciary Committee, all versions of the audio home taping bills this Congress—including H.R. 4567 as reported by Energy and Commerce Committee, H.R. 3204 as introduced and S. 1623 as passed by the Senate—were accompanied by the technical reference document, which sets forth the standards and specifications to provide for the incorporation of the serial copy management system.

The serial copy management system permits the recording of original source material, but does not allow recording from copies.

The Subcommittee on Commerce, Consumer Protection and Competitiveness is the only congressional forum this year to receive testimony specifically on the serial copy management system as defined in the technical reference document. Testimony was received from a variety of witnesses about the serial copy management system most notably Dr. Robert Hebner, Deputy Director, Electronics and Electrical Engineering Laboratory of the National Institute of Standards and Technology.

In addition, the National Institute of Standards and Technology has certified to both the Senate Judiciary and House Energy and Commerce Committees that the serial copy management system as defined in the Technical Reference Document does indeed set forth standards and specifications that adequately incorporate the intended functional characteristics to regulate serial copying and that are not incompatible with existing international digital audio interface standards and existing digital audio technology.

Hearings and subsequent correspondence indicated that the requirements of the serial copy management system would not represent a burden to American and smaller consumer-electronics manufacturers.

While our committee's work indicates that certain fears were unfounded, as a compromise to these concerned about the serial copy management system, the committee compromise does not specifically include the Technical Reference Document, but the serial copy management system is still defined in the legislative history via the reports filed by the Energy and Commerce Committee, House Judiciary Committee and Senate Judiciary Committee. It is our expectation that digital audio recorders will be manufactured in compliance with Technical Reference Document.

Mr. Speaker, the prohibition against certain copyright infringement suits is a significant prong in this legislation. While the language of H.R. 4567 and this substitute amendment are somewhat different, both pieces of legislation clearly establish that consumers cannot be sued for making analog or digital audio copies of musical recordings for noncommercial use.

Mr. MOORHEAD. Mr. Speaker, I yield myself one-half minute.

Mr. Speaker, I just want to join the others who are commending the members of the Committee on Energy and Commerce for the work they did on this bill also.

The gentlewoman from Illinois [Mrs. COLLINS] did an outstanding job as the chairman of the subcommittee.

The gentleman from New York [Mr. LENT] and the gentleman from North Carolina [Mr. MCMILLAN] have done excellent work, and one of the members of the staff that I did not mention was Marie McGlone, who did an outstanding job on the Judiciary Committee staff.

Mr. FISH. Mr. Speaker, I too would like to commend our chairman, the gentleman from Texas for his leadership in bringing this important legislation to the floor and the Copyright Subcommittee, especially the gentleman from New Jersey [Mr. HUGHES] and the gentleman from California [Mr. MOORHEAD] for all of the time and effort they put into the consideration and drafting of this legislation.

H.R. 3204 will facilitate the release into the U.S. market of new recording equipment used to copy musical discs. The introduction into the U.S. consumer market of this new equipment has been blocked due to disputes among hardware manufacturers, record companies, composers, and music publishers. The legislation before us today resolves those disputes by requiring that this equipment contain a new technology that prevents making a copy of a copy and by establishing a system of royalty payments on the new machines and on the blank discs.

At the same time, the bill resolves an issue that has been of great concern to consumers for the last two decades and that is the home taping of music. The bill makes clear that the home taping of music is not a violation of copyright law.

This legislation is sound, fair and workable. Although a number of substantial changes have been made, the basic compromise of the parties remains intact. All creative and proprietary interests are accommodated. Consumers will benefit both from the diversity of creative works and from new recording technologies. The record companies will sell more records. The American creators will share the profits from this new technology. The public will have more music to enjoy.

Mr. Speaker, in my opinion, this legislation represents a historic compromise and will have a positive impact on protection for U.S. authors and copyright owners worldwide. It enjoys wide support with over 100 cosponsors from this House and the other body.

I urge its adoption.

Mr. McMILLAN of North Carolina. Mr. Speaker, I rise today in strong support of H.R. 3204, the Digital Audio House Recording Act of 1991. This bill has been a long time in coming, and we have all worked very hard to see that this compromise agreement reached the floor.

This bill has a number of constructive provisions which can only help to bring this exciting new technology to the marketplace.

First, it implements the serial copy management system which is the fairest system I have seen for ensuring that consumers have the ability to make copies of recordings, while guaranteeing that this privilege is not abused. Second, it establishes a royalty fund on digital recorders and recording media to ensure that artists, composers, writers, and publishers are compensated for any abuse that does occur. Finally, it ensures that this technology will be available to the public by preventing the manufacturers or distributors of digital audio recorders from being sued for providing products the public wants.

This is landmark legislation which clears the way for the next generation of home audio equipment and it was only worked out after years of negotiation.

I would like to offer my thanks to everyone who worked so hard on this bill, especially the distinguished chairman from Illinois, Mrs. COLLINS, who demonstrated her leadership on this issue in the Energy and Commerce Committee.

Mr. Speaker, the consumers of America have waited long enough—I urge my colleagues to support this important measure.

Mr. LENT. Mr. Speaker, I join my colleagues in expressing support for H.R. 3204, the Audio Home Recording Act of 1991. At a time when we are concerned about additional barriers to our recovery from the recession, it is good to see a bill come forward that will bring a new technology to the marketplace, and with it, new jobs.

This compromise bill benefits everyone concerned—the manufacturers, the recording companies and artists, and, most importantly, the consumers. My distinguished colleague from North Carolina once referred to this bill as a win-win-win proposition, and I am inclined to agree.

H.R. 3204's requirements of the installation of the 'serial copy management system,' coupled with the royalty payment funds ensures that the consumer will have access to both current and future generations of digital recording technology. This opens new markets and opportunities for manufacturers, sellers, artists, and producers involved in the rapidly expanding digital audio marketplace.

I would like to thank all of those involved with crafting this compromise agreement, especially the ranking minority member of the Subcommittee on Commerce, Mr. MCMILLAN, and the chairman, Mrs. COLLINS. They deserve much thanks for their efforts in bringing this landmark legislation to the floor.

I urge all of my colleagues to support this legislation and yield back the balance of my time.

Mr. ROSTENKOWSKI. Mr. Speaker, I rise in support of H.R. 3204, as amended, the Audio Home Recording Act of 1992. Passage of this bill will create the necessary legal environment for digital audio technology [DAT] to be commercialized in the United States.

Although DAT technology has been known since 1986, it has not generally been commercialized in this country because of legal uncertainties surrounding its use. DAT technology will allow consumers to make virtually perfect copies of sound recordings, both from the commercial originals and from copies of the originals. While this presents exciting new possibilities for the consumer at home, it also poses the threat that, without regulation, this technology could also lead to large numbers of illegal perfect copies of sound recordings being in circulation, thereby depressing legitimate commercial sales.

H.R. 3204 deals with these issues by providing for an intellectual property-based system regulating the use of DAT technology. It is a sound piece of legislation that is the culmination of nearly 6 years of work by three different Congresses. It has the support of the music recording industry, the electronic hardware industry, and all potentially affected copyright owners from music writers to music performers. The administration also supports this bill.

Finally, there is broad bipartisan support for this bill in the House, as evidenced by the overwhelming support this bill received in the three committees to which it was referred—Energy and Commerce, Judiciary, and Ways and Means.

Mr. Speaker, I urge my colleagues to support passage of this important bill.

Mr. MOORHEAD. Mr. Speaker, I yield back the balance of my time.

Mr. BROOKS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. SANGMEISTER). The question is on the motion offered by the gentleman from Texas [Mr. BROOKS] to suspend the rules and pass the bill, H.R. 3204, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

Mr. BROOKS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 1623) to amend title XVII, United States Code, to implement a royalty payment system and a serial copy management system for digital audio recording, to prohibit certain copyright infringement actions, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1623

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Audio Home Recording Act of 1991".

SEC. 2. IMPORTATION, MANUFACTURE, AND DISTRIBUTION OF DIGITAL AUDIO RECORDING DEVICES AND MEDIA.

Title 17, United States Code, is amended by adding at the end the following:

"CHAPTER 10—DIGITAL AUDIO RECORDING DEVICES AND MEDIA

"SUBCHAPTER A—DEFINITIONS, PROHIBITION OF CERTAIN INFRINGEMENT ACTIONS, AND RULES OF CONSTRUCTION

"Sec.
"1001. Definitions.
"1002. Prohibition on certain infringement actions.
"1003. Effect on other rights and remedies with respect to private home copying or otherwise.

"SUBCHAPTER B—ROYALTY PAYMENTS

"1011. Obligation to make royalty payments.
"1012. Royalty payments.
"1013. Deposit of royalty payments and deduction of expenses.
"1014. Entitlement to royalty payments.
"1015. Procedures for distributing royalty payments.
"1016. Negotiated collection and distribution arrangements.

"SUBCHAPTER C—THE SERIAL COPY MANAGEMENT SYSTEM

"1021. Incorporation of the serial copy management system.
"1022. Implementing the serial copy management system.

"SUBCHAPTER D—REMEDIES

"1031. Civil remedies.
"1032. Binding arbitration.

"SUBCHAPTER A—DEFINITIONS, PROHIBITION OF CERTAIN INFRINGEMENT ACTIONS, AND RULES OF CONSTRUCTION

"§ 1001. Definitions

"As used in this chapter, the following terms and their variant forms mean the following:

"(1) An 'audiogram' is a material object (i) in which are fixed, by any method now known or later developed, only sounds (and not, for example, a motion picture or other audiovisual work even though it may be accompanied by sounds), and material, statements or instructions incidental to those fixed sounds, if any, and (ii) from which the sounds and material can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

"(2) A 'digital audio copied recording' is a reproduction in a digital recording format of an audiogram, whether that reproduction is made directly from another audiogram or indirectly from a transmission.

"(3) A 'digital audio interface device' is any machine or device, now known or later developed, whether or not included with or as part of some other machine or device, that supplies a digital audio signal through a nonprofessional interface, as the term 'nonprofessional interface' is used in the Digital Audio Interface Standard in part I of the technical reference document or as otherwise defined by the Secretary of Commerce under section 1022(b).

"(4) A 'digital audio recording device' is any machine or device, now known or later developed, of a type commonly distributed to individuals for use by individuals, whether or not included with or as part of some other machine or device, the recording function of which is designed or marketed for the primary purpose of, and that is capable of, making a digital audio copied recording for private use, except for—

"(A) professional model products and

"(B) dictation machines, answering machines, and other audio recording equipment that is designed and marketed primarily for the creation of sound recordings resulting from the fixation of nonmusical sounds.

"(5)(A) A 'digital audio recording medium' is any material object in which sounds may be fixed, now known or later developed, in a form commonly distributed for ultimate sale to individuals for use by individuals (such as magnetic digital audio tape cassettes, optical discs, and magneto-optical discs), that is primarily marketed or most commonly used by consumers for the purpose of making digital audio copied recordings by use of a digital audio recording device.

"(B) Such term does not include any material object—

"(i) that embodies a sound recording at the time it is first distributed by the importer or manufacturer, unless the sound recording has been so embodied in order to evade the obligations of section 1011 of this title; or

"(ii) that is primarily marketed and most commonly used by consumers either for the purpose of making copies of motion pictures or other audiovisual works or for the purpose of making copies of nonmusical library works, including, without limitation, computer programs or data bases.

"(6) 'Distribute' means to sell, resell, lease, or assign a product to consumers in the United States, or to sell, resell, lease, or assign a product in the United States for ultimate transfer to consumers in the United States.

"(7) An 'interested copyright party' is—

"(A) the owner of the exclusive right under section 106(1) of this title to reproduce a sound recording of a musical work that has been embodied in an audiogram lawfully made under this title that has been distributed to the public;

"(B) the legal or beneficial owner of, or the person that controls, the right to reproduce in an audiogram a musical work that has been embodied in an audiogram lawfully made under this title that has been distributed to the public; or

"(C) any association or other organization—

"(i) representing persons specified in subparagraph (A) or (B), or

"(ii) engaged in licensing rights in musical works to music users on behalf of writers and publishers.

"(8) An 'interested manufacturing party' is any person that imports or manufacturers any digital audio recording device or digital audio recording medium in the United States, or any association of such persons.

"(9) 'Manufacture' includes the production or assembly of a product in the United States.

"(10) A 'music publisher' is a person that is authorized to license the reproduction of a particular musical work in a sound recording.

"(11)(A) A 'professional model product' is an audio recording device—

"(i) that is capable of sending a digital audio interface signal in which the channel status block flag is set as a 'professional' interface, in accordance with the standards and specifications set forth in the technical reference document or established under an order issued by the Secretary of Commerce under section 1022(b);

"(ii) that is clearly, prominently, and permanently marked with the letter 'P' or the word 'professional' on the outside of its packaging, and in all advertising, promotional, and descriptive literature, with respect to the device, that is available or provided to persons other than the manufacturer or importer, its employees, or its agents; and

"(iii) that is designed, manufactured, marketed, and intended for use by recording professionals in the ordinary course of a lawful business.

"(B) In determining whether an audio recording device meets the requirements of subparagraph (A)(iii), factors to be considered shall include—

"(i) whether it has features used by recording professionals in the course of a lawful business, including features such as—

"(I) a data collection and reporting system of error codes during recording and playback;

"(II) a record and reproduce format providing 'read after write' and 'read after read';

"(III) a time code reader and generator conforming to the standards set by the Society of Motion Picture and Television Engineers for such readers and generators; and

"(IV) a professional input/output interface, both digital and analog, conforming to standards set by audio engineering organizations for connectors, signaling formats, levels, and impedances;

"(ii) the nature of the promotional materials used to market the audio recording device;

"(iii) the media used for the dissemination of the promotional materials, including the intended audience;

"(iv) the distribution channels and retail outlets through which the device is disseminated;

"(v) the manufacturer's or importer's price for the device as compared to the manufacturer's or importer's price for digital audio recording devices implementing the Serial Copy Management System;

"(vi) the relative quantity of the device manufactured or imported as compared to the size of the manufacturer's or importer's market for professional model products;

"(vii) the occupations of the purchasers of the device; and

"(viii) the uses to which the device is put.

"(12) The 'Register' is the Register of Copyrights.

"(13) The 'Serial Copy Management System' means the system for regulating serial copying by digital audio recording devices that is set forth in the technical reference document or in an order of the Secretary of Commerce under section 1022(b), or that conforms to the requirements of section 1021(a)(1)(C).

"(14) The 'technical reference document' is the document entitled 'Technical Reference Document for Audio Home Recording Act of 1991' in section 5 of this Act.

"(15)(A) The 'transfer price' of a digital audio recording device or a digital audio recording medium is—

"(i) in the case of an imported product, the actual entered value at United States Customs (exclusive of any freight, insurance, and applicable duty), and

"(ii) in the case of a domestic product, the manufacturer's transfer price (FOB the manufacturer, and exclusive of any direct sales taxes or excise taxes incurred in connection with the sale).

"(B) Where the transferor and transferee are related entities or within a single entity, the transfer price shall not be less than a reasonable arms-length price under the principles of the regulations adopted pursuant to section 482 of the Internal Revenue Code of 1986, or any successor provision to such section 482.

"(16) A 'transmission' is any audio or audiovisual transmission, now known or later developed, whether by a broadcast station, cable system, multipoint distribution service, subscription service, direct broadcast satellite, or other form of analog or digital communication.

"(17) The 'Tribunal' is the Copyright Royalty Tribunal.

"(18) A 'writer' is the composer or lyricist of a particular musical work.

"(19) The terms 'analog format', 'copyright status', 'category code', 'generation status', and 'source material', mean those terms as they are used in the technical reference document.

"§ 1002. Prohibition on certain infringement actions

"(a) CERTAIN ACTIONS PROHIBITED.—

"(1) GENERALLY.—No action may be brought under this title, or under section 337 of the Tariff Act of 1930, alleging infringement of copyright based on the manufacture, importation, or distribution of a digital audio recording device or a digital audio recording medium, or an analog audio recording device or analog audio recording medium, or the use of such a device or medium for making audiograms. However, this subsection does not apply with respect to any claim against a person for infringement by virtue of the making of one or more audiograms, or other material objects in which works are fixed, for direct or indirect commercial advantage.

"(2) EXAMPLE.—For purposes of this section, the copying of an audiogram by a consumer for private, noncommercial use is not for direct or indirect commercial advantage, and is therefore not actionable.

"(b) EFFECT OF THIS SECTION.—Nothing in this section shall be construed to create or expand a cause of action for copyright infringement except to the extent such a cause of action otherwise exists under other chapters of this title or under section 337 of the Tariff Act of 1930, or to limit any defenses that may be available to such causes of action.

"§ 1003. Effect on other rights and remedies with respect to private home copying or otherwise

"Except as expressly provided in this chapter with respect to audio recording devices and media, neither the enactment of this chapter nor anything contained in this chapter shall be construed to expand, limit, or otherwise affect the rights of any person with respect to private home copying of copyrighted works, or to expand, limit, create, or otherwise affect any other right or remedy that may be held by or available to any person under chapters 1 through 9 of this title.

"SUBCHAPTER B—ROYALTY PAYMENTS

"§ 1011. Obligation to make royalty payments

"(a) PROHIBITION ON IMPORTATION AND MANUFACTURE.—No person shall import into and distribute in the United States, or manufacture and distribute in the United States, any digital audio recording device or digital audio recording medium unless such person—

"(1) records the notice specified by this section and subsequently deposits the statements of account and applicable royalty payments for such device or medium specified by this section and section 1012 of this title, or

"(2) complies with the applicable notice, statement of account, and payment obligations under a negotiated arrangement authorized pursuant to section 1016 of this title.

"(b) FILING OF NOTICE.—

"(1) GENERALLY.—The importer or manufacturer of any digital audio recording device or digital audio recording medium, within a product category or utilizing a technology with respect to which such manufacturer or importer has not previously filed a notice under this subsection, shall file a notice with the Register, no later than 45 days after the commencement of the first distribution in the United States of such device or medium, in such form as the Register shall prescribe by regulation; provided, however, that no notice shall be required with respect to any distribution occurring prior to the effective date of this chapter.

"(2) CONTENTS.—Such notice shall—

"(A) set forth the manufacturer's or importer's identity and address,

"(B) identify such product category and technology, and

"(C) identify any trade or business names, trademarks, or like indicia of origin that the importer or manufacturer uses or intends to use in connection with the importation, manufacture, or distribution of such device or medium in the United States.

"(c) FILING OF QUARTERLY STATEMENTS OF ACCOUNT.—

"(1) GENERALLY.—Any importer or manufacturer that distributed during a given quarter any digital audio recording device or digital audio recording medium that it manufactured or imported shall file with the Register, in such form as the Register shall prescribe by regulation, a quarterly statement of account specifying, by product category, technology, and

model, the number and transfer price of all digital audio recording devices and digital audio recording media that it distributed during such quarter.

"(2) PERIOD COVERED.—The quarterly statements of account may be filed on either a calendar or fiscal year basis, at the election of the manufacturer or importer.

"(3) STATEMENTS OF ACCOUNT FOR THE FIRST THREE QUARTERS.—For the first three quarters of any calendar or fiscal year, such statement shall—

"(A) be filed no later than 45 days after the close of the period covered by the statement; provided, however, that any quarterly statement that would be due within three months and 45 days of the effective date of this chapter shall not be filed until the next quarterly statement is due, at which time a statement shall be filed covering the entire period since the effective date of this chapter;

"(B) be certified as accurate by an authorized officer or principal of the importer or manufacturer;

"(C) be accompanied by the total royalty payment due for such period pursuant to section 1012 of this title.

"(4) STATEMENT OF ACCOUNT FOR THE FOURTH QUARTER.—The quarterly statement for the final quarter of any calendar or fiscal year shall be incorporated into the annual statement required under subsection (d) of this section, which shall be accompanied by the royalty payment due for such quarter.

"(d) FILING OF ANNUAL STATEMENTS OF ACCOUNT.—

"(1) GENERALLY.—Any importer or manufacturer that distributed during a given calendar or fiscal year (as applicable) any digital audio recording device or digital audio recording medium that it manufactured or imported shall also file with the Register a cumulative annual statement of account, in such form as the Register shall prescribe by regulation.

"(2) TIMING AND CERTIFICATION.—Such statement shall be filed no later than 60 days after the close of such calendar or fiscal year, and shall be certified as accurate by an authorized officer or principal of the importer or manufacturer.

"(3) INDEPENDENT REVIEW AND CERTIFICATION.—The annual statement of account shall be reviewed and, pursuant to generally accepted auditing standards, certified by an independent certified public accountant selected by the manufacturer or importer as fairly presenting the information contained therein, on a consistent basis and in accordance with the requirements of this chapter.

"(4) RECONCILIATION OF ROYALTY PAYMENT.—The cumulative annual statement of account shall be accompanied by any royalty payment due under section 1012 of this title that was not previously paid under subsection (c) of this section.

"(e) VERIFICATION.—

"(1) GENERALLY.—

"(A) The Register shall, after consulting with interested copyright parties and interested manufacturing parties, prescribe regulations specifying procedures for the verification of statements of account filed pursuant to this section.

"(B) Such regulations shall permit interested copyright parties to select independent certified public accountants to conduct audits in order to verify the accuracy of the information contained in the statements of account filed by manufacturers and importers.

"(C) Such regulations shall also—

"(i) specify the scope of such independent audits; and

"(ii) establish a procedure by which interested copyright parties will coordinate the engagement of such independent certified public accountants, in order to ensure that no manufacturer or importer is audited more than once per year.

"(D) All such independent audits shall be conducted at reasonable times, with reasonable advance notice, and shall be no broader in scope than is reasonably necessary to carry out the purposes of this subsection in accordance with generally accepted auditing standards.

"(2) INDEPENDENT CERTIFICATION.—The results of all such independent audits shall be certified as fairly presenting the information contained therein, on a consistent basis and in accordance with the requirements of this chapter and generally accepted auditing standards, by the certified public accountant responsible for the audit. The certification and results shall be filed with the Register.

"(3) ACCESS TO DOCUMENTS IN EVENT OF DISPUTE.—In the event of a dispute concerning the amount of the royalty payment due from a manufacturer or importer resulting from a verification audit conducted under this section—

"(A) any interested manufacturing party audited pursuant to this subsection, and its authorized representatives, shall be entitled to have access to all documents upon which the audit results under this subsection were based; and

"(B) any representative of an interested copyright party that has been approved by the Register under subsection (h)(2) of this section shall be entitled to have access to all documents upon which the audit results under subsection (d) of this section were based, subject to the limitations of subsection (h)(2) of this section.

"(f) COSTS OF VERIFICATION.—

"(1) The costs of all verification audits that are conducted pursuant to subsection (e) of this section shall be borne by interested copyright parties, except that, in the case of a verification audit of a manufacturer or importer that leads ultimately to recovery of an annual royalty underpayment of 5 percent or more of the annual payment made, the importer or manufacturer shall provide reimbursement for the reasonable costs of such audit.

"(2) Except as may otherwise be agreed by interested copyright parties, the costs of a verification audit conducted pursuant to subsection (e) of this section shall be borne by the party engaging the certified public accountant. Any recovery of royalty underpayments as a result of the audit shall be used first to provide reimbursement for the reasonable costs of such audit to the extent such costs have not otherwise been reimbursed by the manufacturer or importer pursuant to this subsection. Any remaining recovery shall be deposited with the Register pursuant to section 1013 of this title, or as may otherwise be provided by a negotiated arrangement authorized under section 1016 of this title, for distribution to interested copyright parties as though such funds were royalty payments made pursuant to this section.

"(g) INDEPENDENCE OF ACCOUNTANTS.—Each certified public accountant used by interested copyright parties or interested manufacturing parties pursuant to this section shall be in good standing and shall not be financially dependent upon interested copyright parties or interested manufacturing parties, respectively. The Register may, upon petition by any interested copyright party or interested manufacturing party, prevent the use of a particular certified public accountant on the ground that such accountant does not meet the requirements of this subsection.

"(h) CONFIDENTIALITY.—

"(1) GENERALLY.—The quarterly and annual statements of account filed pursuant to subsections (c) and (d) of this section, and information disclosed or generated during verification audits conducted pursuant to subsection (e) of this section, shall be presumed to contain confidential trade secret information within the meaning of section 1905 of title 18 of the United States Code. Except as provided in paragraphs (2), (3), and (4) of this subsection, neither the Register nor any member, officer, or employee of the Copyright Office or the Tribunal, may—

"(A) publicly disclose audit information furnished under this section or information contained in quarterly or annual statements of account, except that aggregate information that does not disclose, directly or indirectly, company-specific information may be made available to the public;

"(B) use such information for any purpose other than to carry out responsibilities under this chapter; or

"(C) permit anyone (other than members, officers, and employees of the Copyright Office and the Tribunal who require such information in the performance of duties under this chapter) to examine such information.

"(2) PROCEDURES FOR ACCESS TO BE PRESCRIBED BY REGISTER.—(A) The Register, after consulting with interested manufacturing parties and interested copyright parties, shall prescribe procedures for disclosing, in confidence, to representatives of interested copyright parties and representatives of interested manufacturing parties information contained in quarterly and annual statements of account and information generated as a result of verification audits.

"(B) Such procedures shall provide that only those representatives of interested copyright parties and interested manufacturing parties who have been approved by the Register shall have access to such information, and that all such representatives shall be required to sign a certification limiting the use of the information to—

"(i) verification functions under this section, and

"(ii) any enforcement actions that may result from such verification procedures.

"(3) ACCESS BY AUDITED MANUFACTURER.—Any interested manufacturing party that is audited pursuant to subsections (e) of this section, and its authorized representatives, shall be entitled to have access to all documents filed with the Register as a result of such audit.

"(4) ACCESS BY CONGRESS.—Nothing in this section shall authorize the withholding of information from the Congress.

"§ 1012. Royalty payments

"(a) DIGITAL AUDIO RECORDING DEVICES.—

"(1) The royalty payment due under section 1011 of this title for each digital audio recording device imported into and distributed in the United States, or manufactured and distributed in the United States, shall be 2 percent of the transfer price. However, only the first person to manufacture and distribute or import and distribute such device shall be required to pay the royalty with respect to such device.

"(2) With respect to a digital audio recording device first distributed in combination with one or more devices, either as a physically integrated unit or as separate components, the royalty payment shall be calculated as follows:

"(A) If the digital audio recording device and such other devices are part of a physically integrated unit, the royalty payment shall be based on the transfer price of the unit, but shall be reduced by any royalty payment made on any digital audio recording device included within the unit that was not first distributed in combination with the unit.

"(B) If the digital audio recording device is not part of a physically integrated unit and substantially similar devices have been distributed separately at any time during the preceding 4 quarters, the royalty payment shall be based on the average transfer price of such devices during those 4 quarters.

"(C) If the digital audio recording device is not part of a physically integrated unit and substantially similar devices have not been distributed separately at any time during the preceding 4 quarters, the royalty payment shall be based on a constructed price reflecting the proportional value of such device to the combination as a whole.

"(3) Notwithstanding paragraph (1) or (2) of this subsection, the amount of the royalty payment for each digital audio recording device or physically integrated unit containing a digital

audio recording device shall not be less than $1 nor more than the royalty maximum. The royalty maximum shall be $8 per device, except that for a physically integrated unit containing more than one digital audio recording device, the royalty maximum for such unit shall be $12. During the 6th year after the effective date of this chapter, and no more than once each year thereafter, any interested copyright party may petition the Tribunal to increase the royalty maximum and, if more than 20 percent of the royalty payments are at the relevant royalty maximum, the Tribunal shall prospectively increase such royalty maximum with the goal of having no more than 10 percent of such payments at the new royalty maximum; provided, however, that the amount of any such increase as a percentage of the royalty maximum shall in no event exceed the percentage increase in the Consumer Price Index during the period under review.

"(b) DIGITAL AUDIO RECORDING MEDIA.—The royalty payment due under section 1011 of this title for each digital audio recording medium imported into and distributed in the United States, or manufactured and distributed in the United States, shall be 3 percent of the transfer price. However, only the first person to manufacture and distribute or import and distribute such medium shall be required to pay the royalty with respect to such medium.

"(c) RETURNED OR EXPORTED MERCHANDISE.—

"(1) In calculating the amount of royalty payments due under subsections (a) and (b) of this section, manufacturers and importers may deduct the amount of any royalty payments already made on digital audio recording devices or media that are—

"(A) returned to the manufacturer or importer as unsold or defective merchandise; or

"(B) exported by the manufacturer or importer or a related person—

within two years following the date royalties are paid on such devices or media.

"(2) Any such credit shall be taken during the period when such devices or media are returned or exported, and the basis for any such credit shall be set forth in the statement of account for such period filed under section 1011(c) of this title.

"(3) Any such credit that is not fully used during such period may be carried forward to subsequent periods. If any returned or exported merchandise for which a credit has been taken is subsequently distributed, a royalty payment shall be made as specified under subsection (a) or (b) of this section, based on the transfer price applicable to such distribution.

"§ 1013. Deposit of royalty payments and deduction of expenses

"The Register shall receive all royalty payments deposited under this chapter and, after deducting the reasonable costs incurred by the Copyright Office under this chapter, shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest under section 1014, 1015, or 1016 of this title. The Register may, in the Register's discretion, four years after the close of any calendar year, close out the royalty payments account for that calendar year, and may treat any funds remaining in such account and any subsequent deposits that would otherwise be attributable to that calendar year as attributable to the next succeeding calendar year. The Register shall submit to the Copyright Royalty Tribunal, on a monthly basis, a financial statement reporting the amount of royalties available for distribution.

"§ 1014. Entitlement to royalty payments

"(a) INTERESTED COPYRIGHT PARTIES.—The royalty payments deposited pursuant to section 1013 of this title shall, in accordance with the procedures specified in section 1015 or 1016 of this title, be distributed to any interested copyright party—

"(1) whose musical work or sound recording has been—

"(A) embodied in audiograms lawfully made under this title that have been distributed to the public, and

"(B) distributed to the public in the form of audiograms or disseminated to the public in transmissions, during the period to which such payments pertain; and

"(2) who has filed a claim under section 1015 or 1016 of this title.

"(b) ALLOCATION OF ROYALTY PAYMENTS TO GROUPS.—The royalty payments shall be divided into two funds as follows:

"(1) THE SOUND RECORDINGS FUND.—66⅔ percent of the royalty payments shall be allocated to the Sound Recordings Fund. The American Federation of Musicians (or any successor entity) shall receive 2⅔ percent of the royalty payments allocated to the Sound Recordings Fund for the benefit of nonfeatured musicians who have performed on sound recordings distributed in the United States. The American Federation of Television and Radio Artists (or any successor entity) shall receive 1⅓ percent of the royalty payments allocated to the Sound Recordings Fund for the benefit of nonfeatured vocalists who have performed on sound recordings distributed in the United States. The remaining royalty payments in the Sound Recordings Fund shall be distributed to claimants under subsection (a) of this section who are interested copyright parties under section 1001(7)(A) of this title. Such claimants shall allocate such royalty payments, on a per sound recording basis, in the following manner: 40 percent to the recording artist or artists featured on such sound recordings (or the persons conveying rights in the artists' performances in the sound recordings), and 60 percent to the interested copyright parties.

"(2) THE MUSICAL WORKS FUND.—

"(A) 33⅓ percent of the royalty payments shall be allocated to the Musical Works Fund for distribution to interested copyright parties whose entitlement is based on legal or beneficial ownership or control of a copyright in a musical work.

"(B) Notwithstanding any contractual obligation to the contrary—

"(i) music publishers shall be entitled to 50 percent of the royalty payments allocated to the Musical Works Fund, and

"(ii) writers shall be entitled to the other 50 percent of the royalty payments allocated to the Musical Works Fund.

"(c) DISTRIBUTION OF ROYALTY PAYMENTS WITHIN GROUPS.—If all interested copyright parties within a group specified in subsection (b) of this section do not agree on a voluntary proposal for the distribution of the royalty payments within such group, the Tribunal shall, pursuant to the procedures specified in section 1015(c) of this title, allocate such royalty payments based on the extent to which, during the relevant period—

"(1) for the Sound Recording Fund, each sound recording was distributed to the public in the form of audiograms; and

"(2) for the Musical Works Fund, each musical work was distributed to the public in the form of audiograms or disseminated to the public in transmissions.

"§ 1015. Procedures for distributing royalty payments

"(a) FILING OF CLAIMS AND NEGOTIATIONS.—

"(1) During the first 2 months of each calendar year after the calendar year in which this chapter takes effect, every interested copyright party that is entitled to royalty payments under section 1014 of this title shall file with the Tribunal a claim for payments collected during the preceding year in such form and manner as the Tribunal shall prescribe by regulation.

"(2) All interested copyright parties within each group specified in section 1014(b) of this title shall negotiate in good faith among themselves in an effort to agree to a voluntary proposal for the distribution of royalty payments. Notwithstanding any provision of the antitrust laws, for purposes of this section such interested copyright parties may agree among themselves to the proportionate division of royalty payments, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf; except that no agreement under this subsection may vary the allocation of royalties specified in section 1014(b) of this title.

"(b) DISTRIBUTION OF PAYMENTS IN THE ABSENCE OF A DISPUTE.—Within 30 days after the period established for the filing of claims under subsection (a) of this section, in each year after the year in which this section takes effect, the Tribunal shall determine whether there exists a controversy concerning the distribution of royalty payments under section 1014(c) of this title. If the Tribunal determines that no such controversy exists, it shall, within 30 days after such determination, authorize the distribution of the royalty payments as set forth in the agreements regarding the distribution of royalty payments entered into pursuant to subsection (a) of this section, after deducting its reasonable administrative costs under this section.

"(c) RESOLUTION OF DISPUTES.—If the Tribunal finds the existence of a controversy, it shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty payments. During the pendency of such a proceeding, the Tribunal shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall, to the extent feasible, authorize the distribution of any amounts that are not in controversy.

"§ 1016. Negotiated collection and distribution arrangements

"(a) SCOPE OF PERMISSIBLE NEGOTIATED ARRANGEMENTS.—

"(1) Interested copyright parties and interested manufacturing parties may at any time negotiate among or between themselves a single alternative system for the collection, distribution, or verification of royalty payments provided for in this chapter.

"(2) Such a negotiated arrangement may vary the collection, distribution, and verification procedures and requirements that would otherwise apply under sections 1011 through 1015 of this title, including the time periods for payment and distribution of royalties, but shall not alter the requirements of section 1011(a), (b), or (h)(4), section 1012 (a) or (b), or section 1014 (a) or (b) of this title.

"(3) Such a negotiated arrangement may also provide that specified types of disputes that cannot be resolved among the parties to the arrangement shall be resolved by binding arbitration or other agreed upon means of dispute resolution.

"(4) Notwithstanding any provision of the antitrust laws, for purposes of this section interested manufacturing parties and interested copyright parties may negotiate in good faith and voluntarily agree among themselves as to the collection, distribution, and verification of royalty payments, and may designate common agents to negotiate and carry out such activities on their behalf.

"(b) IMPLEMENTATION OF A NEGOTIATED ARRANGEMENT.—

"(1) No negotiated arrangement shall go into effect under this section until the Tribunal has approved the arrangement, after full opportunity for comment, as meeting the following requirements.

"(A) The participants in the negotiated arrangement shall include—

"(i) at least two-thirds of all individual interested copyright parties that are entitled to receive royalty payments from the Sound Recording Fund,

"(ii) at least two-thirds of all individual interested copyright parties that are entitled to re-

ceive royalty payments from the Musical Works Fund as music publishers, and

"(iii) at least two-thirds of all individual interested copyright parties that are entitled to receive royalty payments from the Musical Works Fund as writers.

"(B) For purposes of subparagraph (A) of this paragraph, the determination as to two-thirds participation shall be based on annual retail sales of audiograms in which musical works or sound recordings of musical works are embodied. One or more organizations representing any of the types of individual interested copyright parties specified in the first sentence of this subsection shall be presumed to represent two-thirds of that type of interested copyright party if the membership of, or other participation in, such organization or organizations includes two-thirds of that type of interested copyright party based on annual retail sales of audiograms in which musical works or sound recordings of musical works are embodied.

"(C) The implementation of the arrangement shall include all necessary safeguards, as determined by the Tribunal, which ensure that all interested copyright parties who are not participants in the arrangement receive the royalty payments to which they would be entitled in the absence of such an arrangement under sections 1013 and either 1014(c) or 1015(b), whichever is applicable. Such safeguards may include accounting procedures, reports and any other information determined to be necessary to ensure the proper collection and distribution of royalty payments.

"(2) Notwithstanding the existence of a negotiated arrangement that has gone into effect under this section, any interested manufacturing party that is not a party to such negotiated arrangement shall remain subject to the requirements of sections 1011 and 1012 and may fully satisfy its obligations under this subchapter by complying with the procedures set forth therein.

"(c) MAINTENANCE OF JURISDICTION BY TRIBUNAL.—Where a negotiated arrangement has gone into effect under this section, the Tribunal shall maintain jurisdiction and shall (1) hear and address any objections to the arrangement that may arise while it is in effect, (2) ensure the availability of alternative procedures for any interested manufacturing party or interested copyright party that is not a participant in the negotiated arrangement, (3) ensure that all interested copyright parties who are not participants in the arrangement receive the royalty payments to which they would be entitled in the absence of such an arrangement under sections 1013 and either 1014(c) or 1015(b), whichever is applicable, (4) ensure that it has adequate funds at its disposal, received either through the Copyright Office or through the entity administering the negotiated arrangement, to distribute to interested copyright parties not participating in the arrangement the royalty payments to which they are entitled under section 1014(c) or 1015(b), including applicable interest, and (5) ensure that the requirements of section 1016(b)(1)(C) are met.

"(d) JUDICIAL ENFORCEMENT.—The Tribunal may seek injunctive relief in an appropriate United States district court to secure compliance with the requirements of subsection (c).

"SUBCHAPTER C—THE SERIAL COPY MANAGEMENT SYSTEM

"§ 1021. Incorporation of the serial copy management system

"(a) PROHIBITION ON IMPORTATION, MANUFACTURE, AND DISTRIBUTION.—

"(1) No person shall import, manufacture, or distribute any digital audio recording device or any digital audio interface device that does not conform to the standards and specifications to implement the Serial Copy Management System that are—

"(A) set forth in the technical reference document;

"(B) set forth in an order by the Secretary of Commerce under section 1022(b) (1), (2), or (3) of this title; or

"(C) in the case of a digital audio recording device other than a device defined in part II of the technical reference document or in an order issued by the Secretary pursuant to section 1022(b) of this title, established by the manufacturer (or, in the case of a proprietary technology, the proprietor of such technology) so as to achieve the same functional characteristics with respect to regulation of serial copying as, and to be compatible with the prevailing method for implementation of, the Serial Copy Management System set forth in the technical reference document or in any order of the Secretary issued under section 1022 of this title.

"(2) If the Secretary of Commerce approves standards and specifications under section 1022(b)(4) of this title, then no person shall import, manufacture, or distribute any digital audio recording device or any digital audio interface device that does not conform to such standards and specifications.

"(b) PROHIBITION ON CIRCUMVENTION OF THE SERIAL COPY MANAGEMENT SYSTEM.—No person shall import, manufacture, or distribute any device, or offer or perform any service, the primary purpose or effect of which is to avoid, bypass, remove, deactivate, or otherwise circumvent any program or circuit which implements, in whole or in part, the Serial Copy Management System in a digital audio recording device or a digital audio interface device.

"(c) ENCODING OF INFORMATION ON AUDIOGRAMS.—

"(1) No person shall encode an audiogram of a sound recording with inaccurate information relating to the category code, copyright status, or generation status of the source material so as improperly to affect the operation of the Serial Copy Management System.

"(2) Nothing in this subchapter requires any person engaged in the importation, manufacture, or assembly of audiograms to encode any such audiogram with respect to its copyright status.

"(d) INFORMATION ACCOMPANYING TRANSMISSIONS IN DIGITAL FORMAT.—Any person who transmits or otherwise communicates to the public any sound recording in digital format is not required under this subchapter to transmit or otherwise communicate the information relating to the copyright status of the sound recording. However, any such person who does transmit or otherwise communicate such copyright status information shall transmit or communicate such information accurately.

"§ 1022. Implementing the serial copy management system

"(a) PUBLICATION OF TECHNICAL REFERENCE DOCUMENT AND CERTIFICATION.—Within 10 days after the date of enactment of this chapter, the Secretary of Commerce shall cause to be published in the Federal Register the technical reference document along with the certification from the National Institute of Standards and Technology, as such certification appears in the report of the Committee on the Judiciary to the Senate on the Audio Home Recording Act of 1991, that the technical reference document sets forth standards and specifications that adequately incorporate the intended functional characteristics to regulate serial copying and are not incompatible with existing international digital audio interface standards and existing digital audio technology.

"(b) ORDERS OF SECRETARY OF COMMERCE.—The Secretary of Commerce, upon petition by an interested manufacturing party or an interested copyright party, and after consultation with the Register, may, if the Secretary determines that to do so is in accordance with the purposes of this chapter, issue an order to implement the Serial Copy Management System set forth in the technical reference document as follows:

"(1) FUNCTIONALLY EQUIVALENT ALTERNATIVES.—The Secretary may issue an order for the purpose of permitting in commerce devices that do not conform to all of the standards and specifications set forth in the technical reference document, if the Secretary determines that such devices possess the same functional characteristics with respect to regulation of serial copying as, and are compatible with the prevailing method for implementation of, the Serial Copy Management System set forth in the technical reference document.

"(2) REVISED GENERAL STANDARDS.—The Secretary may issue an order for the purpose of permitting in commerce devices that do not conform to all of the standards and specifications set forth in the technical reference document, if the Secretary determines that—

"(A) the standards and specifications relating generally to digital audio recording devices and digital audio interface devices have been or are being revised or otherwise amended or modified such that the standards and specifications set forth in the technical reference document are not or would no longer be applicable or appropriate; and

"(B) such devices conform to such new standards and specifications and possess the same functional characteristics with respect to regulation of serial copying as the Serial Copy Management System set forth in the technical reference document.

"(3) STANDARDS FOR NEW DEVICES.—The Secretary may issue an order for the purpose of—

"(A) establishing whether the standards and specifications established by a manufacturer or proprietor for digital audio recording devices other than devices defined in part II of the technical reference document or a prior order of the Secretary under paragraph (1) or (2) of this subsection comply with the requirements of subparagraph (C) of section 1021(a)(1) of this title; or

"(B) establishing alternative standards or specifications in order to ensure compliance with such requirements.

"(4) MATERIAL INPUT TO DIGITAL DEVICE THROUGH ANALOG CONVERTER.—

"(A) GENERALLY.—Except as provided in subparagraphs (B) through (D), the Secretary, after publication of notice in the Federal Register and reasonable opportunity for public comment, may issue an order for the purpose of approving standards and specifications for a technical method implementing in a digital audio recording device the same functional characteristics as the Serial Copy Management System so as to regulate the serial copying of source material input through an analog converter in a manner equivalent to source material input in the digital format.

"(B) COST LIMITATION.—The order may not impose a total cost burden on manufacturers of digital audio recording devices, for implementing the Serial Copy Management System and the technical method prescribed in such order, in excess of 125 percent of the cost of implementing the Serial Copy Management System before the issuance of such order.

"(C) CONSIDERATION OF OTHER OBJECTIONS.—The Secretary shall consider other reasoned objections from any interested manufacturing party or interested copyright party.

"(D) LIMITATIONS TO DIGITAL AUDIO DEVICES.—The order shall not affect the recording of any source material on analog recording equipment and the order shall not impose any restrictions or requirements that must be implemented in any device other than a digital audio recording device or digital audio interface device.

"SUBCHAPTER D—REMEDIES

"§ 1031. Civil remedies

"(a) CIVIL ACTIONS.—Any interested copyright party or interested manufacturing party that is or would be injured by a violation of section 1011 or 1021 of this title, or the Attorney General of the United States, may bring a civil action in an appropriate United States district court against any person for such violation.

"(b) POWERS OF THE COURT.—In an action brought under subsection (a) of this section, the court—

"(1) except as provided in subsection (h) of this section, may grant temporary and permanent injunctions on such terms as it deems reasonable to prevent or restrain such violation;

"(2) in the case of a violation of section 1011 (a) through (d) or 1021 of this title, shall award damages under subsection (d) of this section;

"(3) in its discretion may allow the recovery of full costs by or against any party other than the United States or an officer thereof;

"(4) in its discretion may award a reasonable attorney's fee to the prevailing party as part of the costs awarded under paragraph (3) if the court finds that the nonprevailing party has not proceeded in good faith; and

"(5) may grant such other equitable relief as it deems reasonable.

"(c) RECOVERY OF OVERDUE ROYALTY PAYMENTS.—In any case in which the court finds that a violation of section 1011 of this title involving nonpayment or underpayment of royalty payments has occurred, the violator shall be directed to pay, in addition to damages awarded under subsection (d) of this section, any such royalties due, plus interest calculated as provided under section 1961 of title 28, United States Code.

"(d) AWARD OF DAMAGES.—

"(1) SECTION 1011.—

"(A) DEVICE.—In the case of a violation of section 1011 (a) through (d) of this title involving a digital audio recording device, the court shall award statutory damages in an amount between a nominal level and $100 per device, as the court considers just.

"(B) MEDIUM.—In the case of a violation of section 1011 (a) through (d) of this title involving a digital audio recording medium, the court shall award statutory damages in an amount between a nominal level and $4 per medium, as the court considers just.

"(2) SECTION 1021.—In any case in which the court finds that a violation of section 1021 of this title has occurred, the court shall award damages calculated, at the election of the complaining party at any time before final judgment is rendered, pursuant to subparagraph (A) or (B) of this paragraph, but in no event shall the judgment (excluding any award of actual damages to an interested manufacturing party) exceed a total of $1,000,000:

"(A) ACTUAL DAMAGES.—A complaining party may recover its actual damages suffered as a result of the violation and any profits of the violator that are attributable to the violation that are not taken into account in computing the actual damages. In determining the violator's profits, the complaining party is required to prove only the violator's gross revenue, and the violator is required to prove its deductible expenses and the elements of profit attributable to factors other than the violation.

"(B) STATUTORY DAMAGES.—

"(i) DEVICE.—A complaining party may recover an award of statutory damages for each violation of section 1021 (a) or (b) of this title in the sum of not less than $1,000 nor more than $10,000 per device involved in such violation or per device on which a service prohibited by section 1021(b) of this title has been performed, as the court considers just.

"(ii) AUDIOGRAM.—A complaining party may recover an award of statutory damages for each violation of section 1021(c) of this title in the sum of not less than $10 nor more than $100 per audiogram involved in such violation, as the court considers just.

"(iii) TRANSMISSION.—A complaining party may recover an award of damages for each transmission or communication that violates section 1021(d) of this title in the sum of not less than $10,000 nor more than $100,000, as the court considers just.

"(3) WILLFUL VIOLATIONS.—

"(A) In any case in which the court finds that a violation of section 1011 (a) through (d) of this title was committed willfully and for purposes of direct or indirect commercial advantage, the court shall increase statutory damages—

"(i) for a violation involving a digital audio recording device, to a sum of not less than $100 nor more than $500 per device; and

"(ii) for a violation involving a digital audio recording medium, to a sum of not less than $4 nor more than $15 per medium, as the court considers just.

"(B) In any case in which the court finds that a violation of section 1021 of this title was committed willfully and for purposes of direct or indirect commercial advantage, the court in its discretion may increase the award of damages by an additional amount of not more than $5,000,000, as the court considers just.

"(4) INNOCENT VIOLATIONS OF SECTION 1021.—The court in its discretion may reduce the total award of damages against a person violating section 1021 of this title to a sum of not less than $250 in any case in which the court finds that—

"(A) the violator was not aware and had no reason to believe that its acts constituted a violation of section 1021 of this title, or

"(B) in the case of a violation of section 1021(a) of this title involving a digital audio recording device, the violator believed in good faith that the device complied with section 1021(a)(1)(C) of this title, except that this subparagraph shall not apply to any damages awarded under subsection (d)(2)(A) of this section.

"(e) MULTIPLE ACTIONS.—

"(1) GENERALLY.—No more than one action shall be brought against any party and no more than one award of statutory damages under subsection (d) of this section shall be permitted—

"(A) for any violations of section 1011 of this title involving the same digital audio recording device or digital audio recording medium; or

"(B) for any violations of section 1021 of this title involving digital audio recording devices or digital audio interface devices of the same model, except that this subparagraph shall not bar an action or an award of damages with respect to digital audio recording devices or digital audio interface devices that are imported, manufactured, or distributed subsequent to a final judgment in a prior action.

"(2) NOTICE AND INTERVENTION.—Any complaining party who brings an action under this section shall serve a copy of the complaint upon the Register within 10 days after the complaining party's service of a summons upon a defendant. The Register shall cause a notice of such action to be published in the Federal Register within 10 days after receipt of such complaint. The court shall permit any other interested copyright party or interested manufacturing party entitled to bring the action under section 1031(a) of this title who moves to intervene within 30 days after the publication of such notice to intervene in the action.

"(3) AWARD.—

"(A) GENERALLY.—Except as provided in subparagraph (B), the court may award recovery of actual damages for a violation of section 1021 of this title pursuant to subsection (d)(2)(A) of this section to each complaining party in an action who elects to recover actual damages.

"(B) LIMITATIONS.—

"(i) If more than one complaining party elects to recover actual damages pursuant to subsection (d)(2)(A) of this section, only a single award of the violator's profits shall be made, which shall be allocated as the court considers just.

"(ii) If any complaining interested copyright party or parties elect to recover statutory damages pursuant to subsection (d)(2) of this section in an action in which one or more other complaining interested copyright parties have elected to recover actual damages, the single award of statutory damages permitted pursuant to paragraph (1) of this subsection shall be reduced by the total amount of actual damages awarded to interested copyright parties pursuant to subsection (d)(2)(A) of this section.

"(f) PAYMENT OF OVERDUE ROYALTIES AND DAMAGES.—The court may allocate any award of damages under subsection (d) of this section between or among complaining parties as it considers just. Any award of damages that is allocated to an interested copyright party and any award of overdue royalties and interest under subsection (c) of this section shall be deposited with the Register pursuant to section 1013 of this title, or as may otherwise be provided pursuant to a negotiated arrangement authorized under section 1016 of this title, for distribution to interested copyright parties as though such funds were royalty payments made pursuant to section 1011 of this title.

"(g) IMPOUNDING OF ARTICLES.—At any time while an action under this section is pending, the court may order the impounding, on such terms as it deems reasonable, of any digital audio recording device, digital audio interface device, audiogram, or device specified in section 1021(b) of this title that is in the custody or control of the alleged violator and that the court has reasonable cause to believe does not comply with, or was involved in a violation of, section 1021 of this title.

"(h) LIMITATIONS REGARDING PROFESSIONAL MODELS AND OTHER EXEMPT DEVICES.—Unless a court finds that the determination by a manufacturer or importer that a device fits within the exemption of subparagraph (A) or (B) of section 1001(4) of this title was without a reasonable basis or not in good faith, the court shall not grant a temporary or preliminary injunction against the distribution of such device by the manufacturer or importer.

"(i) REMEDIAL MODIFICATION AND DESTRUCTION OF ARTICLES.—As part of a final judgment or decree finding a violation of section 1021 of this title, the court shall order the remedial modification, if possible, or the destruction of any digital audio recording device, digital audio interface device, audiogram, or device specified in section 1021(b) of this title that—

"(1) does not comply with, or was involved in a violation of, section 1021 of this title, and

"(2) is in the custody or control of the violator or has been impounded under subsection (g) of this section.

"(j) DEFINITIONS.—For purposes of this section—

"(1) the term 'complaining party' means an interested copyright party, interested manufacturing party, or the Attorney General of the United States when one of these parties has initiated or intervened as a plaintiff in an action brought under this section; and

"(2) the term 'device' does not include an audiogram.

"§ 1032. Binding arbitration

"(a) DISPUTES TO BE ARBITRATED.—Any dispute between an interested manufacturing party and an interested copyright party shall be resolved through binding arbitration, in accordance with the provisions of this section, if—

"(1) the parties mutually agree; or

"(2) before the date of first distribution in the United States of the product which is the subject of the dispute, an interested manufacturing party or an interested copyright party requests arbitration concerning whether such product is or is not a digital audio recording device, a digital audio recording medium, or a digital audio interface device, or concerning the basis on which royalty payments are to be made with respect to such product.

"(b) ARBITRAL PROCEDURES.—

"(1) REGULATIONS FOR COORDINATION OF ARBITRATION.—The Register shall, after consulting with interested copyright parties, prescribe regulations establishing a procedure by which interested copyright parties will coordinate decisions and representation concerning the arbitration of disputes. No interested copyright party shall have the authority to request, agree to, or (ex-

cept as an intervenor pursuant to subsection (c) of this section) enter into, binding arbitration unless that party shall have been authorized to do so pursuant to the regulations prescribed by the Register.

"(2) PANEL.—Except as otherwise agreed by the parties to a dispute that is to be submitted to binding arbitration under subsection (a) of this section, the dispute shall be heard by a panel of three arbitrators, with one arbitrator selected by each of the two sides to the dispute and the third arbitrator selected by mutual agreement of the first two arbitrators chosen.

"(3) DECISION.—The arbitral panel shall render its final decision concerning the dispute, in a written opinion explaining its reasoning, within 120 days after the date on which the selection of arbitrators has been concluded. The Register shall cause to be published in the Federal Register the written opinion of the arbitral panel within 10 days after receipt thereof.

"(4) TITLE 9 PROVISIONS TO GOVERN.—Except to the extent inconsistent with this section, any arbitration proceedings under this section shall be conducted in the same manner, subject to the same limitations, carried out with the same powers (including the power to summon witnesses), and enforced in the courts of the United States as an arbitration proceeding under title 9, United States Code.

"(5) PRECEDENTS.—In rendering a final decision, the arbitral panel shall take into account any final decisions rendered in prior proceedings under this section that address identical or similar issues; and failure of the arbitral panel to take account of such prior decisions may be considered imperfect execution of arbitral powers under section 10(a)(4) of title 9, United States Code.

"(c) NOTICE AND RIGHT TO INTERVENE.—Any interested copyright party or interested manufacturing party that requests an arbitral proceeding under this section shall provide the Register with notice concerning the parties to the dispute and the nature of the dispute within 10 days after formally requesting arbitration under subsection (a) of this section. The Register shall cause a summary of such notice to be published in the Federal Register within 30 days after receipt of such notice. The arbitral panel shall permit any other interested copyright party or interested manufacturing party who moves to intervene within 20 days after such publication to intervene in the action.

"(d) AUTHORITY OF ARBITRAL PANEL TO ORDER RELIEF.—

"(1) TO PROTECT PROPRIETARY INFORMATION.—The arbitral panel shall issue such orders as are appropriate to protect the proprietary technology and information of parties to the proceeding, including provision for injunctive relief in the event of a violation of such order.

"(2) TO TERMINATE PROCEEDING.—The arbitral panel shall terminate any proceeding that it has good cause to believe has been commenced in bad faith by a competitor in order to gain access to proprietary information. The panel shall also terminate any proceeding that it believes has been commenced before the technology or product at issue has been sufficiently developed or defined to permit an informed decision concerning the applicability of this chapter to such technology or product.

"(3) TO ORDER RELIEF.—In any case in which the arbitral panel finds with respect to devices or media that were the subject of the dispute, that royalty payments have been or will be due under section 1011 of this title through the date of the arbitral decision, the panel shall order the deposit of such royalty payments pursuant to section 1013 of this title, plus interest calculated as provided under section 1961 of title 28, United States Code. The arbitral panel shall not award monetary or injunctive relief, as provided in section 1031 of this title or otherwise, except as is expressly provided in this subsection.

"(e) EFFECT OF ARBITRATION PROCEEDING ON CIVIL ACTIONS AND REMEDIES.—Notwithstanding any provision of section 1031 of this title, no civil action may be brought or relief granted under section 1031 of this title against any party to an ongoing or completed arbitration proceeding under this section, with respect to devices or media that are the subject of such an arbitration proceeding. However, this subsection does not bar—

"(1) an action for injunctive relief at any time based on a violation of section 1021 of this title; or

"(2) an action or any relief with respect to those devices or media distributed by their importer or manufacturer following the conclusion of such arbitration proceeding, or, if so stipulated by the parties, prior to the commencement of such proceedings.

"(f) ARBITRAL COSTS.—Except as otherwise agreed by the parties to a dispute, the costs of an arbitral proceeding under this section shall be divided among the parties in such fashion as is considered just by the arbitral panel at the conclusion of the proceeding. Each party to the dispute shall bear it own attorney fees unless the arbitral panel determines that a nonprevailing party has not proceeded in good faith and that, as a matter of discretion, it is appropriate to award reasonable attorney's fees to the prevailing party.".

SEC. 3. TECHNICAL AMENDMENTS.

(a) FUNCTIONS OF REGISTER.—Chapter 8 of title 17, United States Code is amended—

(1) in section 801(b)—

(A) by striking "and" at the end of paragraph (2);

(B) by striking the period at the end of paragraph (3) and inserting "; and"; and

(C) by adding the following new paragraph at the end:

"(4) to distribute royalty payments deposited with the Register of Copyrights under section 1014, to determine, in cases where controversy exists, the distribution of such payments, and to carry out its other responsibilities under chapter 10"; and

(2) in section 804(d)—

(A) by inserting "or (4)" after "801(b)(3)"; and

(B) by striking "or 119" and inserting "119, 1015, or 1016".

(b) DEFINITIONS.—Section 101 of title 17, United States Code, is amended by striking "As used" and inserting "Except as otherwise provided in this title, as used".

(c) MASK WORKS.—Section 912 of title 17, United States Code, is amended—

(1) in subsection (a) by inserting "or 10" after "8"; and

(2) in subsection (b) by inserting "or 10" after "8".

SEC. 4. EFFECTIVE DATE.

This Act, and the amendments made by this Act, shall take effect on the date of the enactment of this Act or January 1, 1992, whichever date is later.

SEC. 5. TECHNICAL REFERENCE DOCUMENT FOR AUDIO HOME RECORDING ACT OF 1991.

SEC. 6. REPEAL OF SECTION 5.

Effective upon publication of the Technical Reference Document in the Federal Register pursuant to section 1022(a) of this title—

(a) section 5 of this Act shall be repealed, and

(b) section 1001(14) of this title shall be amended by striking "in section 5 of this Act" and inserting "as such document was published in the Federal Register pursuant to section 1022(a) of this title".

TECHNICAL REFERENCE DOCUMENT FOR THE AUDIO HOME RECORDING ACT OF 1991

INTRODUCTION

This Technical Reference Document is provided to facilitate the implementation of legislation relating to digital audio recording ("DAR") devices, known as the "Audio Home Recording Act of 1991" ("the Act").

This Technical Reference Document establishes the standards and specifications that are necessary to implement the Serial Copy Management System ("SCMS") under the Act. It draws in part from specifications proposed to the International Electrotechnical Commission ("IEC") in "IEC 958: Digital Audio Interface" (First edition 1989-03) and "Amendment Number 1 to IEC 958 (1989): Digital Audio Interface, Serial Copy Management System" (Reference 84(CO)126 submitted on June 21, 1991) (collectively, "IEC 958"), and "IEC 60A(CO)136 Part 6: Serial copy management system for consumer audio use DAT recorders". The standards and specifications set forth herein relate only to the implementation of SCMS via digital audio interface signals, DAR devices and digital audio interface devices. The standards and specifications set forth herein, as they may be amended pursuant to an order of the Secretary of Commerce under section 1022(b) of subchapter C of the Act, shall be considered determinative under the Act, regardless of any future action by the IEC or by a manufacturer or by an owner of a proprietary technology.

SCMS is intended to prohibit DAR devices from recording "second-generation" digital copies from "first-generation" digital copies containing audio material over which copyright has been asserted via SCMS. It does not generally restrict the ability of such devices to make "first-generation" digital copies from "original" digital sources such as prerecorded commercially available compact discs, digital transmissions or digital tapes.

Currently, the predominant type of DAR device offered for sale in the United States is the DAT recorder, which records and sends digital signals in accordance with the IEC 958 nonprofessional digital audio interface format. Additional types of DAR devices and interface formats are being or may be developed. The standards and specifications in this Technical Reference Document are not intended to hinder the development of such new technologies but require, in accordance with section 1021(a)(1)(A)-(C) of subchapter C of the Act, that they incorporate the functional characteristics of SCMS protection. In order for a DAR device to be "compatible with the prevailing method of implementing SCMS," to the extent DAR devices are capable of recording signals sent in a particular digital audio interface signal format, the SCMS information must be accurately received and acted upon by the DAR devices so as to correctly implement the same level of SCMS protection provided by that format. "Compatibility" does not require direct bit-for-bit correspondence across every interface signal format; indeed, particular interface signal formats may be recordable by some, but not all, DAR devices. To the extent that any digital audio interface device translates and sends signals in a form that can be recorded by a particular DAR device, however, "compatibility" requires that the SCMS information also be accurately translated and sent by the interface device, and accurately read and acted upon by the DAR device.

This document is in three parts. Part I section A sets forth standards and specifications constituting the functional characteristics for implementing SCMS in digital audio interface signals. Sections B and C then apply these standards and specifications in a specific reference for implementing SCMS in the IEC 958 nonprofessional digital audio interface format. Part II section A similarly first sets forth standards and specifications constituting the functional characteristics for implementing SCMS in DAR devices. Sections B and C then apply these standards and specifications in a specific reference for implementing SCMS with respect to the recording and play-back functions of nonprofessional model DAT recorders. Part III contains a series of charts that apply and correlate those codes that are mandated for implementation in DAT recorders by parts I-C and II-C of this document.

The terms "digital audio interface device," "digital audio recording device," "digital audio recording medium," "distribute," "professional model," and 'transmission" as used in this document have the same meanings as in the Act. "Generation status" means whether the signal emanates from a source that has been produced or published by or with the authority of the owner of the material, such as commercially released pre-recorded compact discs or digital tapes or a digital transmission (referred to herein as "original"); or whether the signal emanates from a recording made from such "original" material.

PART I. IMPLEMENTATION OF SCMS IN DIGITAL AUDIO INTERFACE FORMATS

Various consumer devices are capable of producing digital audio signals. Currently, for example, compact disc players, DAT recorders and analog-to-digital converters can send digital audio signals; future devices may include digital microphones or recordable compact disk devices. To enable communication between these different types of devices and a DAR device, it is necessary and desirable to establish common protocols or "interfaces" that mandate specific information in the digital audio output signal of each device. Digital signal interfaces may enable communication of different types of data. A "digital audio interface signal" communicates audio and related interface data as distinguished from, for example, computer or video data. Digital audio interface signal formats may be established for particular types of devices or uses. For example, interface protocols may exist for broadcast use, or for users of professional model products ("professional interface") or for nonprofessional model products ("nonprofessional interface") or for nonprofessional model products ("nonprofessional interface"). One such set of protocols already has been established in the document IEC 958. Sections B and C of part I summarize and mandate the implementation of SCMS in the IEC 958 nonprofessional interface.

Section A sets forth the standards and specifications for implementing SCMS in digital audio interface signals and devices.

(A) DIGITAL AUDIO INTERFACE STANDARD.—To implement the functional characteristics of SCMS in nonprofessional digital audio interface signal formats, whether presently known or developed in the future, the following conditions must be observed:

(1) The digital audio interface format shall provide a means to indicate—

(a) whether or not copyright protection is being asserted via SCMS over the material being sent via the interface; and

(b) whether or not the generation status of the material being sent via the interface is original.

(2) If the digital audio interface format has discrete professional and nonprofessional modes, the interface format and digital audio interface devices shall indicate accurately the professional or nonprofessional status of the interface signal. Such indication is referred to generically as a "channel status block flag".

(3) If the interface format has a discrete mode for sending data other than audio material, the interface format shall indicate accurately whether or not the interface signal contains audio material.

(4) If a digital audio interface device is capable of combining more than one digital audio input signal into a single digital audio output signal, and if copy right is asserted via SCMS over the material being sent in at least one of the input signals, then the device shall indicate in the output signal that copyright is asserted over the entire output signal. If copyright protection is asserted via SCMS over any of the input signals, and the generation status of that copyright-asserted signal is not original, then the entire output signal shall indicate that copyright is asserted and that the generation status is not original.

(5) Devices that are capable of reading original recordings and/or DAR media, and that are capable of sending digital audio signals that can be recorded by a DAR device, shall accurately read the copyright and generation status information from the media and accurately send that information.

(6) Devices having a nonprofessional digital audio interface shall receive and accurately send the copyright and generation status information.

(7) Professional devices that are capable of sending audio information in a nonprofessional digital audio interface format shall send SCMS information as implemented for that format. However, nothing shall prevent professional devices and/or recording professionals engaged in a lawful business from setting SCMS information according to the needs of recording professionals.

(8) If the audio signal is capable of being recorded by a DAR device and the interface format requires an indication of the type of device sending the signal via the interface, then the device shall send the most accurate and specific designation applicable to that device; for example, "Category Codes" as set forth in part I with reference to the IEC 958 nonprofessional interface.

(9) Devices that receive digital audio transmissions sent without copyright and generation status information shall indicate that copyright is asserted over the transmitted audio material and that the generation status is original. If the transmitting entity wishes to transmit copyright status information it shall do so accurately, and the information shall accurately be received and sent unaltered by the receiving device. In the case of Electronic Audio Software Delivery signal transmissions, the receiver shall accurately receive generation status information as sent by the transmitting entity so as to permit or restrict recording of the transmitted signals. "Electronic Audio Software Delivery" refers to a type of transmission whereby the consumer interactively determines what specific work(s) and/or events(s) are received. This includes, for example, "audio on demand" (electronic selection and delivery of sound recordings for copying) or "pay-per-listen" reception, as distinguished from regular broadcast or comparable cable radio programming services.

(10)(a) If the digital audio portion of an interface signal format is recordable by a "preexisting" type of DAR device, that is, one that was distributed prior to the distribution of the interface signal format, then the signal format shall implement the rules of SCMS so that the preexisting DAR device will act upon the rules of SCMS applicable to that DAR device.

(b) If a type of DAR device is capable of recording the digital audio portion of signals sent by a preexisting digital audio interface device, then the DAR device shall implement the rules of SCMS so that the DAR device will act upon the rules of SCMS applicable to that preexisting digital audio interface device's format.

(c) If a digital audio interface device is capable of translating a signal from one interface format to another, then the device also shall accurately translate and send the SCMS information.

(B) SUMMARY OF SCMS IMPLEMENTATION IN THE IEC 958 DIGITAL AUDIO INTERFACE.—Under IEC 958, SCMS is implemented via inaudible information, known as "channel status data", that accompanies a digital audio signal being sent to or by a DAR device via a nonprofessional digital audio interface. Like all digital data, channel status data consist of numerical information encoded as a series of zeros and ones. Each zero or one constitutes a "bit" of data in which both zero and one may impart information concerning the composition of the audio signal being sent to or by a DAR device. Bits represented in this Technical Reference Document as "X", rather than as zero or one, indicate that those bits may be either zero or one without affecting the specifications set forth herein.

Channel status data bits are organized into units of information, known as "blocks," relating to both the left and right stereo audio channels. Each block contains 192 bits of information, numbered consecutively from 0 to 191. Those channel status bits that are significant to the implementation of SCMS via the IEC 958 interface are included within channel status bits 0 through 15. Certain of these 16 bits identify professional or nonprofessional interfaces; some specify copyright assertion; and some identify the generation number of a recording. The remaining bits are "Category Codes" that describe the type of device sending the digital audio signal. More complete descriptions of these channel status bits are set forth in the remaining sections of this part I.

IEC 958 defines professional and nonprofessional interface formats for digital audio signals. An IEC 958 professional interface contains particular types of channel status data for such digital audio recording devices as would be used in professional model products. An IEC 958 nonprofessional interface contains different types of channel status data. The channel status data sent in a nonprofessional interface are incompatible with the channel status data in a professional interface; a DAR device cannot correctly read the channel status data sent in a professional interface.

The specifications summarized herein and mandated in section C apply only to devices that send or read an IEC 958 nonprofessional interface signal. To the extent that a professional device also may have a IEC 958 nonprofessional interface, such a professional device must be capable to sending channel status data via its nonprofessional interface in accordance with the standards set forth herein. However, nothing in this Technical Reference Document shall be interpreted to prevent a professional device having an IEC 958 nonprofessional interface and/or recording professionals engaged in a lawful business from permitting such channel status data bits to be set in accordance with the needs of recording professionals.

All devices having a digital audio output capable of supplying a digital audio signal to a DAR device through an IEC 958 nonprofessional interface must implement five types of codes located between Channel Status Bits 0 and 15. For the IEC 958 interface format, Channel Status Bits 0 through 15 are supplied in a digital audio output signal to a DAR device as follows:

(1) BIT 0.—Bit 0 (the "Channel Status Block Flag"), one of the "Control" bits, shall identify whether the channel status bits are for a professional or nonprofessional interface. Where Bit 0 is set as "1", the signal contains the channel status data required for a professional interface. Where Bit 0 is set as "0", the channel status data is suitable for a nonprofessional interface. The remaining bit assignments are mandated only with respect to a nonprofessional interface, that is, where Bit 0 is set as "0".

(2) BIT 1.—Bit 1, another of the "Control" bits, shall identify whether the signal being sent to or by the DAR device is a digital audio or a digital data signal. Where Bit 1 is set as "0", the signal is a digital audio signal. Where Bit 1 is set as "1", the signal is a digital data signal.

(3) BIT 2.—Bit 2 (the "C" Bit), another of the "Control" bits, shall identify whether copyright protection is asserted for the audio material being sent via the digital audio signal. Where the C Bit is set as "0", copyright protection has been asserted over the material being sent to the digital audio input of the DAR device. Where the C Bit is set as "1", either that material is not protected by copyright or no copyright protection has been asserted by the owner of that material. There are specific applications of the C Bit for three types of devices, as follows:

Compact disc players compatible with the standards set forth in IEC 908 (compact disc standard, Category Code 10000000) in effect as of

the date of enactment of the Act indicate in the C Bit both the copyright and generation status of the signal. (See description of "Bit 15", infra.) Where the signal is original and copyright protection has been asserted, the C Bit ="0". Where no copyright protection has been asserted, the C Bit ="1". Where the signal is first-generation and copyright protection has been asserted, the C Bit will fluctuate between "0" and "1" at a rate of between 4–10 Hz.

Digital Receivers (Category Codes 001XXXXL and 0111XXXL) shall set the C Bit as "0", except that these devices shall send the C Bit as "1" only where the cable operator, broadcaster or other entity specifically transmits information indicating that no copyright protection has been asserted over the material.

Devices that combine digital audio input signals into one digital audio output signal for example, digital signal mixing devices) shall reflect whether copyright protection has been asserted in the C Bit for at least one of the input signals by setting the C bit as "0" in the resulting digital audio output signal.

Devices in the Category Codes for General ("00000000") and Present A/D Converters ("01100XXX") are not capable of sending copyright status information in the C Bit. The C Bit in the channel status data sent by these devices has no meaning.

There is no existing legal requirement that a copyright owner must assert protection over its material (and, therefore, set the C Bit as "0"). However, except as provided herein with respect to implementation in Digital Receivers (category codes 001XXXXL and 0111XXXL), a copyright owner may not set the C Bit as "0" for material that is not copyrighted or is in the public domain.

(4) BITS 3–7.—These bits are sent to and read by a DAR device, but specific bit settings for Bits 3–7 are not necessary for the implementation of SCMS. (Bits 6–7 are Music Production Program Block ("MPPB") flag bits.)

(5) BITS 8–14.—Bits 8–14 shall specify a "Category Code" that identifies the type of device that produces the digital audio signal sent to or by a DAR device. Using various combinations of zeros and ones, Bits 8–14 can define Category Codes for as many as 128 different devices that can provide digital audio signals to a DAR device. According to IEC 958, the first three to five Category Code bits (numbered Bits 8–10 through 8–12) describe general product groups, and the remaining Category Code bits specify particular devices within each product group. IEC 958 has assigned particular Category Codes to existing and anticipated product groups and devices, and has reserved additional Category Codes for future devices.

The Category Code issued by each particular device must reflect the most specific code applicable to that device, with the following exceptions:

Digital signal processing and mixing products receive digital audio signals from one or more sources and either process or combine them with other incoming digital audio signals. If all input signals come from analog-to-digital converters having a Category Code "01100XXX", these devices should issue the Category Code of an analog-to-digital converter rather than of the digital signal processing or mixing device.

Sampling rate converters and digital sound samplers come under the Category Codes for digital-to-digital converters. If an input signal to a sampling rate converter or digital sound sampler comes from an analog-to-digital converter having a Category Code "01100XXX", the sampling rate converter or digital sound sampler should issue the Category Code of the analog-to-digital converter.

These exception cases will permit two generations of digital copies from analog recordings, which currently is permitted under SCMS.

The relevance of these Category Codes to SCMS as implemented for devices having the IEC 958 nonprofessional interface is described in Section C and, specifically as to DAT recorders, in Part II Sections B and C.

(6) BIT 15.—Bit 15 (the "L" Bit) shall indicate the "generation status" of the digital audio signals being sent to or by a DAR device. "Generation status" means whether the signal emanates from a source that has been produced or published by or with the authority of the owner of the material, such as commercially released prerecorded compact discs or digital tapes or a digital transmission (referred to herein as "original"); or where the signal emanates from a recording made from such "original" material. In the latter case, a recording made directly from an "original" source is known as a "first-generation" copy; a recording made from a first-generation copy is a "second-generation" copy; and so forth. Because there is no restriction on the number of copies that can be made from material over which no copyright protection has been asserted, generation status is relevant only where copyright protection has been asserted over the signal. For most products, if the L Bit is set as "0", the source is a recording that is first-generation or higher. If the L Bit is set as "1", the source is "original." There are four specific categories of products which indicate generation status differently, as follows:

Compact disc players compatible with the specifications in IEC 908 (Category Code 10000000) are incapable of controlling the L Bit. These products signal generation status solely by means of the C Bit (Bit 2).

Digital audio output signals from all other laser-optical products (Category Code 100XXXXL) shall send the L Bit as "0" for "original" material and the L Bit as "1" for first-generation or higher recordings.

Digital Receivers (Category Codes 001XXXXL and 0111XXXL) shall set the L Bit as "0"; except in the case of receivers for Electronic Audio Software Delivery, which receivers shall send the L Bit as "1" only where the entity specifically transmits information indicating that the material should be treated as if it were first generation or higher.

Devices that combine more than one digital audio input signal into one digital audio output signal, such as digital signal processors or mixers, shall reflect in the L Bit of the output signal the highest generation status of any input containing material over which copyright protection has been asserted. Thus, where one or more of the constituent input signals contains material that is not original (that is, a first-generation copy) and over which copyright protection is asserted, then the device must reflect in the L Bit of the digital audio output signal a nonoriginal generation status. In all other cases, the device shall reflect in the L Bit that the output signal is original.

(C) MANDATORY SPECIFICATIONS FOR IMPLEMENTING SCMS IN THE IEC 958 DIGITAL AUDIO INTERFACE.—The following bit assignments for channel status data, as referenced in the provisions of IEC 958 paragraph 4.2.2 "Channel status data format for digital equipment for consumer use", shall be mandatory for devices implementing the IEC 958 interface:

(1) BITS 0–2 OF THE "CONTROL" BITS.—

(a) BIT 0 (THE "CHANNEL STATUS BLOCK FLAG"):

Bit 0="0"	Nonprofessional interface.
Bit 0="1"	Professional interface.

(b) BIT 1:

Bit 1="0"	Digital audio signals.
Bit 1="1"	Nonaudio (data) signals.

(c) BIT 2 (THE "C" BIT)—

(i) CASE 1:

Bit 2="0"	Copyright protection asserted.
Bit 2="1"	No copyright protection asserted or not under copyright.

(ii) CASE 2—COMPACT DISC PLAYERS.—For compact disc players compatible with IEC 908 (Category Code 10000000), the C Bit shall indicate:

Bit 2="0"	Copyright protection asserted and generation status is "original".
Bit 2="1"	No copyright protection asserted.

Where the Bit 2 fluctuates between "0" and "1" at a rate between 4–10 Hz, copyright protection has been asserted and the signal is first generation or higher.

(iii) CASE 3—DIGITAL RECEIVERS.—For Digital Receivers (Category Codes 001XXXXL and 0111XXXL), the C Bit shall indicate, where copyright information is transmitted to the digital receiver:

Bit 2="0"	Copyright protection asserted.
Bit 2="1"	No copyright protection asserted

Where no copyright information is transmitted to the receiver, the digital receiver shall set the C Bit as "0".

(iv) CASE 4—DIGITAL SIGNAL MIXERS.—Where a single digital audio output signal results from the combination of more than one digital audio input signal:

Bit 2="0"	Copyright protection asserted over at least one of the constituent digital audio input signals.
Bit 2="1"	For all of the constituent digital audio input signals, no copyright protection asserted or not under copyright.

(v) EXCEPTION CASE.—The C Bit has no meaning for A/D converters for analog signals that do not include status information concerning the C Bit and the L Bit (that is, A/D converters in Category Code 01100XXX).

(2) BITS 3–7.—Specific bit settings for Bits 3–7 are not necessary for the implementation of SCMS.

(3) CATEGORY CODE BITS 8–15:

(a) BITS 8–15.—The Category Codes that follow are established for particular product groups. Where Bit 15 is represented by "L" rather than a zero or one, Bit 15 (the "L" Bit) can be either a zero or one without affecting the Category Code. Where Bit 15 is represented by "X" rather than a zero or one, the device is not capable of issuing status information concerning the L Bit:

00000000	General. This category applies to products that are capable of sending channel status data but are not programmed to send such data in accordance with the specifications set forth in this Technical Reference Document because the products were manufactured before the effective date of the Act. This General Category Code shall not be used for products manufactured after the effective date of the Act.
0000001L	Experimental products not for commercial sale.
100XXXXL	Laser-optical products, such as compact disc players (including recordable and erasable compact disk players) and videodisc players with digital audio outputs.
010XXXXL	Digital-to-digital ("D/D") converters and signal processing products.
110XXXXL	Magnetic tape or disk based products, such as DAT players and recorders.
001XXXXL and 0111XXXL	Receivers of digitally encoded audio transmissions with or without video signals.
101XXXXL	Musical instruments, microphones and other sources that create original digital audio signals.
01100XXX	Analog-to-digital ("A/D") converters for analog signals without status information concerning the C Bit and the L Bit ("Present A/D converters").
01101XXL	A/D converters for analog signals which include status information concerning the C Bit and the L Bit ("Future A/D converters").
0001XXXL	Solid state memory based media products.

Particular devices within each product group defined above shall be assigned specific Category Codes in accordance with IEC 958. Manufacturers of any device that is capable of supplying a digital audio input to a DAR device must use the most specific Category Code applicable to that particular device. However, digital

signal processing or digital signal mixing products in Category Code product group "010XXXXL" shall issue the Category Code for Present A/D converters where all the input signals have the Category Code for a Present A/D converter. Similarly, sampling rate converters in Category Code "0101100L" and digital sound samplers in Category Code "0100010L" shall issue the Category Code for Present A/D converters where the input signal comes from a Present A/D converter.

(b) BIT 15 (THE "L" BIT).—The L Bit shall be used to identify the generation status of the digital audio input signal as emanating from an "original" source or from a nonoriginal (that is, first-generation or higher) recording.

(1) CASE 1—GENERAL CASE.—For all Category Codes (except as explicitly set forth below), the L Bit shall indicate:

Bit 15="0"	First-generation or higher recording.
Bit 15="1"	"Original" source, such as a commercially released prerecorded digital audiogram.

(2) CASE 2.—LASER OPTICAL PRODUCTS.—The reverse situation is valid for laser optical products (Category Code 100XXXXL), other than compact disc players compatible with IEC 908 (Category Code 10000000). For laser optical products in Category Code 100XXXXL, the L Bit shall indicate:

Bit 15 = "1"	First-generation or higher recording.
Bit 15 = "0"	"Original" recording, such as a commercially released prerecorded compact disc.

(3) CASE 3.—DIGITAL RECEIVERS.—For Digital Receivers (Category Codes 001XXXXL and 0111XXXL), Bit 15 always shall be set as "0", except for receivers for Electronic Audio Software Delivery, for which the L Bit shall indicate:

Bit 15 = "0"	Generation status information transmitted as "original" material.
Bit 15 = "1"	Generation status information transmitted as for nonoriginal material, or no generation status information transmitted.

(4) CASE 4.—DIGITAL SIGNAL MIXERS.—Where a single digital audio output signal results from the combination of more than one digital audio input signal:

Bit 15 = "0"	One or more of those constituent digital audio input signals over which copyright protection has been asserted is first-generation or higher.
Bit 15 = "1"	All other cases.

(5) EXCEPTION CASE.—The L Bit has no meaning for A/D converters for analog signals that do not include status information concerning the C Bit and the L Bit (that is, A/D converters in Category Code 01100XXX) and compact disc players in Category Code 10000000.

PART II. SERIAL COPY MANAGEMENT SYSTEM FOR DAR DEVICES AND NONPROFESSIONAL MODEL DAT RECORDERS

The intention of SCMS is generally to prevent DAR devices from making second-generation or higher "serial" digital recordings of "original" digital audio material over which copyright protection has been asserted through SCMS. SCMS does not prevent the making of a first-generation recording of such "original" digital audio material. As future technologies permit, SCMS may limit the digital recording by a DAR device of analog audio material over which copyright protection has been asserted to the making of only first-generation digital copies. However, because present technology does not identify whether analog audio material is protected by copyright, SCMS will not prevent the making of first- and second-generation digital copies of such material. SCMS will not restrict digital recording of material carrying an indication through SCMS that copyright protection has not been asserted. SCMS does not apply to professional model products as defined under the Act.

(A) GENERAL PRINCIPLES FOR SCMS IMPLEMENTATION IN DAR DEVICES.—To implement the functional characteristics of SCMS in DAR devices, whether presently known or developed in the future, the following conditions must be observed:

(1) A digital audio recording medium shall be capable of storing an indication of—

(a) whether or not copyright protection is being asserted over the audio material being sent via the interface and stored on the DAR medium; and

(b) whether or not the generation status of the audio material being sent via the interface and stored on the DAR medium is original.

(2) If the digital audio interface format being sent to and read by a DAR device has discrete modes for professional as well as nonprofessional purposes, the DAR device shall distinguish accurately the professional or nonprofessional status of the interface signal.

(3) If the interface format has a discrete mode for sending data other than audio material, the DAR device shall distinguish accurately whether or not the interface signal contains audio material.

(4) A DAR device capable of receiving and recording digital audio signals shall observe the following rules:

(a) Audio material over which copyright is asserted via SCMS and whose generation status is original is permitted to be recorded. An indication that copyright is asserted over the audio material contained in the signal and that the generation status of the recording is first generation shall be recorded on the media.

(b) Audio material over which copyright is not asserted via SCMS may be recorded, without regard to generation status. An indication that copyright is not asserted shall be recorded on the media.

(c) Audio material over which copyright is asserted via SCMS and whose generation status is not original shall not be recorded.

(5) DAR media shall store the copyright and generation status information as described herein during recording in a manner that the information can be accurately read.

(6) Devices that are capable of reading original recordings and/or DAR media, and that are capable of sending digital audio signals that can be recorded by a DAR device, shall accurately read the copyright and generation status information from the media and accurately send the information.

(7) DAR devices shall not be capable of recording digital audio signals transmitted in a professional digital audio interface format.

(8) DAR devices having a nonprofessional digital audio interface shall receive and accurately send the copyright and generation status information.

(9) Professional devices that are capable of sending audio information in a nonprofessional digital audio interface format shall send SCMS information as implemented for that format. However, nothing shall prevent professional devices and/or recording professionals engaged in a lawful business from setting SCMS information according to the needs of recording professionals.

(10) Digital audio signals that are capable of being recorded by a DAR device but that have no information concerning copyright and/or generation status shall be recorded by the DAR device so that the digital copy is copyright asserted and original generation status.

(11) If the signal is capable of being recorded by a DAR device and the interface format requires an indication of the type of device sending the signal via the interface, then the device shall send the most accurate and specific designation applicable to that device; for example, "Category Codes" as set forth in part I with reference to the IEC 958 nonprofessional interface.

(12) Except as may be provided pursuant to section 1022(b)(4) of subchapter C of the Act, a DAR device that is capable of converting analog input signals to be recorded in digital format shall indicate that the digital copy is copyright asserted and original generation status.

(13)(a) If the digital audio portion of an interface signal format is recordable by a "preexisting" type of DAR device, that is, one that was distributed prior to the distribution of the interface signal format, then the signal format shall implement the rules of SCMS so that the preexisting DAR device will act upon the rules of SCMS applicable to that DAR device.

(b) If a type of DAR device is capable of recording the digital audio portion of signals sent by a preexisting digital audio interface device, then the DAR device shall implement the rules of SCMS so that the DAR device will act upon the rules of SCMS applicable to the format of that preexisting digital audio interface device.

(c) If a digital audio interface device is capable of translating a signal from one interface format to another, then the device also shall accurately translate and send the SCMS information.

(B) SUMMARY OF MANDATORY SCMS SPECIFICATIONS FOR DAT RECORDERS.—SCMS, to be implemented for DAT machines, requires that a DAT machine must play-back and/or record specific inaudible data in a particular location on a DAT tape. According to IEC documents "IEC 60A(CO)130 part 1: Digital Audio Tape Cassette System (DAT) Dimensions and Characteristics" and "IEC 60A(CO)136 part 6: Serial copy management system for consumer audio use DAT recorders", that particular location on the digital audio tape consists of two bits known as "subcode ID6 in the main ID in the main data area" ("ID6").

(1) SCMS OPERATION WHEN PLAYING A DAT TAPE.—With respect to the play-back function, a DAT machine that is connected to a DAT recorder can provide digital audio output signals via a nonprofessional interface. In that circumstance, the DAT play-back machine functions as a digital audio interface device that must provide channel status data conforming to the general principles and specifications set forth in part I. SCMS as implemented for the IEC 958 nonprofessional interface format requires that when a DAT tape is played back, the DAT play-back machine reads the information from ID6 on the tape and then sends the corresponding channel status data (concerning Bit 2 "the C Bit" and Bit 15 "the L Bit"), along with the Category Code for a DAT machine, in its digital audio output signal. The channel status data to be sent in response to the various settings of ID6 are as follows:

(a) Where ID6 is set as "00", copyright protection has not been asserted over the material under SCMS. In response to ID6, the digital audio signal output of the DAT will provide the C Bit set as "1" and the L Bit set as "0".

(b) Where ID6 is set as "10", copyright protection has been asserted over the material under SCMS and the recording is not "original". In response to ID6, the digital audio output signal of the DAT will provide the C Bit set as "0" and the L Bit set as "0".

(c) Where ID6 is set as "11", copyright protection has been asserted over the material under SCMS and the recording is "original". In response to ID6, the digital audio output signal of the DAT will provide the C Bit set as "0" and the L Bit set as "1".

(2) SCMS OPERATION WHEN RECORDING ON DAT TAPE.—With respect to the recording function, SCMS governs the circumstances and manner in which a DAT recorder may record a digital audio input signal. A DAT recorder implementing SCMS information being sent in the IEC 958 nonprofessional interface format must be capable of acknowledging the presence or absence of specific channel status information being sent to the DAT recorder via its digital audio input. The DAT recorder then responds to that chan-

nel status information by either preventing or permitting the recording of that digital audio input signal. If recording is permitted, the DAT machine records specific codes in ID6 on the tape, so that when the tape is played back, the DAT machine will issue the correct channel status data in its digital audio output signal. The settings of ID6 to be recorded in response to particular IEC 958 channel status bit information are as follows:

(a) Where the C bit of the digital audio input signal is set as "0" (copyright protection asserted), the DAT recorder shall not record the input, except in three circumstances: (a) where the input is original material and the digital audio input signal comes from one of the products on the "Category Code White List" (section D below); (b) where the digital audio input signal contains an undefined Category Code (in which case only one generation of recording is permitted); or, (c) where the digital audio input signal comes from a product with a defined Category Code but the product currently is not capable of transmitting information regarding copyright protection (in which case, two generations of copying are possible). In circumstances (a) and (b) above, the DAT recorder will record "10" in ID6 to prevent further copying. In circumstance (c) above, the DAT recorder will record "11" in ID6 for the first-generation copy.

(b) Where the C Bit of the digital audio input signal is set as "1" (no copyright protection asserted or not copyrighted), the DAT recorder will record "00" in ID6, and unlimited generations of copying will be permitted.

(c) Where the C Bit of the digital audio input signal fluctuates between "0" and "1" at a rate of between 4–10 Hz, the signal is coming from a compact disc player compatible with IEC 908 (Category Code 10000000) which plays back a compact disc that is not an "original" and that contains material over which copyright protection has been asserted. The DAT recorder shall not record in this circumstance.

(d) The condition "01" in ID6 has been assigned no meaning within SCMS. Therefore, to prevent circumvention of SCMS, the DAT recorder shall not record "01" in ID6 on the tape.

(C) MANDATORY SPECIFICATIONS FOR IMPLEMENTING SCMS IN DAT RECORDERS IN THE IEC 958 FORMAT.—

(1) MANDATORY STANDARDS FOR DIGITAL AUDIO OUTPUT SIGNALS.—

(a) CATEGORY CODE BIT 15 (THE "L" BIT).—All nonprofessional model DAT recorders having a IEC 958 interface shall provide the Category Code "1100000L" in the channel status bits of the IEC 958 digital audio output signal. The status of the L Bit of the Category Code shall be provided in the digital audio output signal of the DAT recorder as follows, in accordance with the status of ID6:

When ID6 is "00", the digital audio output signal shall indicate in the L Bit of the Category Code that the output source is either a first-generation or higher DAT tape recorded from an "original" source, or an "original" commercially released prerecorded DAT tape of material over which copyright protection is not being asserted under SCMS. In either of these cases, the L Bit shall be set as "0", and the complete Category Code would be "11000000".

When ID6 is "10", the digital audio output signal shall indicate in the L Bit of the Category Code that the output source is a first-generation or higher DAT tape recorded from an "original" source (that is, L Bit="0"). The complete Category Code in this case would be "11000000".

When ID6 is "11", the digital audio output signal shall indicate in the L Bit of the Category Code that the output source is an "original" source, such as a commercially released prerecorded DAT tape (that is, L Bit="1"). The complete Category Code in this case would be "11000001".

(b) BIT 2 (THE "C" BIT).—All nonprofessional model DAT recorders having an IEC 958 nonprofessional interface shall provide an output code in the C Bit in the channel status bits of the IEC 958 digital audio output signal. The C Bit shall be applied in the digital audio output signal as follows, in accordance with the status of ID6:

When ID6 is "00", the C Bit shall be set as "1".

When ID6 is "10" or "11", the C Bit shall be set as "0".

(2) MANDATORY SPECIFICATIONS FOR RECORDING FUNCTIONS.—SCMS with respect to recording functions performed by a nonprofessional model DAT recorder receiving digital audio input signals in the IEC 958 nonprofessional interface format shall be implemented as follows:

(a) Digital audio input signals in which the C Bit is set as "0" shall not be recorded, except for the cases specified below in paragraphs b, d, and e.

(b) A DAT recorder may record a digital audio input signal in which the C Bit is set as "0", where the Category Code of the signal is listed in the "Category Code White List." The DAT recorder shall record "10" in ID6 on the tape in this case.

(c) For digital audio input signals in which the C Bit is set as "1", the DAT recorder shall record "00" in ID6 on the tape except for those cases specified below in paragraphs d and e.

(d) For digital audio input signals that contain Category Code information that is not defined in this document, the DAT recorder shall record "10" in ID6, regardless of the status of the C Bit or the L Bit.

(e) For digital audio input signals originating from a source identified as an A/D converter with the Category Code "01100XXL", or from other sources such as from A/D converters with the Category Code for "General" ("00000000"), the DAT recorder shall record "11" in ID6, regardless of the status of the C Bit or the L Bit. This requirement shall be applied to digital input signals that do not contain source information of the original signal before digitization, for example, and A/D converter that does not deliver source information.

(f) For digital input signals originating from an A/D converter with the Category Code "01101XXL", which can deliver original source information concerning the C Bit and L Bit even if the source is in analog format, the requirement stated above in paragraph e shall not be applied. The "Category Code White List" includes this Category Code.

(g) A DAT tape of "original" generation status over which copyright protection has been asserted shall contain "11" in ID6. A DAT tape of "original" generation status over which no copyright protection has been asserted shall contain "00" in ID6.

(h) A DAT recorder shall not record digital audio input signals where the C Bit alternates between "0" and "1" at a frequency of between 4 and 10 Hz and the Category Code is for a Compact disc digital audio signal ("10000000"), as in the case of digital audio input signals from recordable or erasable compact discs that are not "original" and that contain material over which copyright protection has been asserted.

(i) A nonprofessional model DAT recorder shall not record digital audio input signals sent from a professional interface, that is, where channel status Bit 0 is set as "1".

(j) The condition "01" in ID6 is not to be used.

(k) Category codes and the C Bit included in the channel status information of digital audio input signals being sent to or by a DAT recorder shall not be deleted or modified and shall be monitored continuously and acted upon accordingly.

(D) "CATEGORY CODE WHITE LIST".—

100XXXX0	Laser optical product.
010XXXX1	Digital-to-digital converter and signal processing devices.
110XXXX1	Magnetic tape and disk based product.
001XXXX0 and 0111XXX0	Receivers of digitally encoded audio transmissions with or without video signals.
101XXXX1	Musical instruments.
01101XX1	Future A/D converter (with status information concerning the C Bit and L Bit).
0001XXX1	Solid state memory based media products.
00000011	Experimental products not for commercial sale.

PART III. APPLICATION OF SCMS IN DAT RECORDERS IMPLEMENTING THE IEC 958 INTERFACE

The following charts apply and correlate those codes that are mandated under the Act to implement SCMS in nonprofessional model DAT recorders having an IEC 958 nonprofessional interface, in those situations contemplated by these standards. The columns in each of these charts identify the following information:

The "Signal Source" column describes the type of product sending the digital audio signal to a DAT recorder.

The three columns under the heading "Digital Audio Input Signal," that is, the signal sent to the DAT recorder, identify the correct channel status information in the C Bit, Category Code Bits 8–14 and the L Bit, respectively, which correspond to each product. (In each case, Bit 0 will be "0" to indicate that the signal is being sent in the IEC 958 nonprofessional interface format, and Bit 1 will be "0" to indicate that the signal consists of audio data.)

The next three columns under the heading "DAT Recorder Response" identify the response of the DAT recorder to the corresponding digital audio input signal. The column "ID6" specifies the code that the DAT recorder will record on the tape in ID6 in response to the digital audio input signal. The last two columns set forth the correct channel status information in the C Bit and L Bit that are sent in the digital audio output signal of a DAT recorder in response to the setting of ID6.

Each of the appropriate codes is set forth in the cases described below:

Case 1: Where copyright protection has been asserted over the digital audio input, and the source of the input is "original" material (Only first-generation recording permitted):

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8–14)	L bit (Bit 15)	ID6	C Bit (Bit 2)	L bit (Bit 15)
Laser Optical	0	100XXXX	0	10	0	0
D/D converter	0	010XXXX	1	10	0	0
Magnetic prod.	0	110XXXX	1	10	0	0
Musical Instrum.	0	101XXXX	1	10	0	0
Future A/D conv.	0	01101XX	1	10	0	0

Case 1: Where copyright protection has been asserted over the digital audio input, and the source of the input is "original" material (Only first-generation recording permitted):—Continued

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8–14)	L bit (Bit 15)	ID6	C Bit (Bit 2)	L bit (Bit 15)
Digital Receiver	0	001XXXX	0	10	0	0
Digital Receiver	0	0111XXX	0	10	0	0
Experimental	0	0000001	1	10	0	0
Solid state dev.	0	0001XXX	1	10	0	0

Case 2: Where copyright protection has not been asserted over the digital audio input, and the source of the input is "original" material (First-generation and above recording permitted):

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8–14)	L bit (Bit 15)	ID6	C Bit (Bit 2)	L bit (Bit 15)
Laser Optical	1	100XXXX	0	00	1	0
D/D converter	1	010XXXX	1	00	1	0
Magnetic prod.	1	110XXXX	1	00	1	0
Musical Instrum.	1	101XXXX	1	00	1	0
Future A/D conv.	1	01101XX	1	00	1	0
Digital Receiver	1	001XXXX	0	00	1	0
Digital Receiver	1	0111XXX	0	00	1	0
Experimental	1	0000001	1	00	1	0
Solid state dev.	1	0001XXX	1	00	1	0

Case 3: Where copyright protection has been asserted over the digital audio input, and the source of the input to the DAT recorder is not "original" material (No recording permitted):

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8–14)	L bit (Bit 15)	ID6	C Bit (Bit 2)	L bit (Bit 15)
Laser Optical	0	100XXXX	1			
D/D converter	0	010XXXX	0			
Magnetic prod.	0	110XXXX	0			
Musical Instrum.	0	101XXXX	0			
Future A/D conv.	0	01101XX	0			
Experimental	0	0000001	0			
Solid state dev.	0	0001XXX	0			

Case 4: Where copyright protection has not been asserted over the digital audio input, and the source of the input to the DAT recorder is not "original" material (Second-generation and above recording permitted):

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8–14)	L bit (Bit 15)	ID6	C Bit (Bit 2)	L bit (Bit 15)
Laser Optical	1	100XXXX	1	00	1	0
D/D converter	1	010XXXX	0	00	1	0
Magnetic prod.	1	110XXXX	0	00	1	0
Musical Instrum.	1	101XXXX	0	00	1	0
Future A/D conv.	1	01101XX	0	00	1	0
Experimental	1	0000001	0	00	1	0
Solid state dev.	1	0001XXX	0	00	1	0

Case 5: Where the digital audio input signal includes Category Code information, but cannot provide information concerning copyright protection of the source (First- and second-generation recording permitted):

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8–14)	L bit (Bit 15)	ID6	C Bit (Bit 2)	L bit (Bit 15)
General	X	0000000	0	11	0	1
Present A/D Con	X	01100XX	X	11	0	1

Case 6: Where the digital input signal does not include a defined Category Code (First-generation recording permitted):

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8–14)	L bit (Bit 15)	ID6	C Bit (Bit 2)	L bit (Bit 15)
Undefined	X		X	10	0	0

Case 7: Where copyright protection has been asserted over the digital audio input from a compact disc that is not an "original" by fluctuating the C Bit at a rate between 4–10 Hz (No recording permitted):

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8–14)	L bit (Bit 15)	ID6	C Bit (Bit 2)	L bit (Bit 15)
CD Player	0/1	1000000	X			

Case 8: Where the digital signal transmitted to a Digital Receiver does not include information concerning copyright protection (Only first-generation recording permitted):

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8–14)	L bit (Bit 15)	ID6	C Bit (Bit 2)	L bit (Bit 15)
Digital Receiver	0	001XXXX	0	10	0	0
Digital Receiver	0	0111XXX	0	10	0	0

Case 9: Where the digital signal transmitted to a receiver for Electronic Audio Software Delivery provides generation status information as if the status were first-generation or higher (No recording permitted):

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8–14)	L bit (Bit 15)	ID6	C Bit (Bit 2)	L bit (Bit 15)
Digital Receiver	0	001XXXX	1			
Digital Receiver	0	0111XXX	1			

MOTION OFFERED BY MR. BROOKS

Mr. BROOKS. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BROOKS moves to strike out all after the enacting clause of the Senate bill, S. 1623, and to insert in lieu thereof the provisions of H.R. 3204, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

A similar House bill (H.R. 3204) was laid on the table.