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REPORT
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COPYRIGHT ROYALTY TRIBUNAL REFORM ACT OF 1993

OCTOBER 12, 1993.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BROOKS, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 2840]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2840) to amend title 17, United States Code, to establish copyright arbitration royalty panels to replace the Copyright Royalty Tribunal, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Copyright Royalty Tribunal Reform Act of 1993".

SEC. 2. COPYRIGHT ARBITRATION ROYALTY PANELS.

(a) ESTABLISHMENT AND PURPOSE.—Section 801 of title 17, United States Code, is amended as follows:

(1) The section designation and heading are amended to read as follows:

"§ 801. Copyright arbitration royalty panels: establishment and purpose";

(2) Subsection (a) is amended to read as follows:

"(a) ESTABLISHMENT.—The Librarian of Congress, upon the recommendation of the Register of Copyrights, is authorized to appoint and convene copyright arbitration royalty panels.";

(3) Subsection (b) is amended—

(A) by inserting "PURPOSES.—" after "(b)";

(B) in the matter preceding paragraph (1), by striking "Tribunal" and inserting "copyright arbitration royalty panels";

(C) in paragraph (2)—

(i) in subparagraph (A), by striking "Commission" and inserting "copyright arbitration royalty panels"; and

(ii) in subparagraph (B), by striking "Copyright Royalty Tribunal" and inserting "copyright arbitration royalty panels";

(D) in paragraph (3), by striking "In determining" and all that follows through the end of the paragraph; and

(E) in paragraph (4) by striking "to determine" and all that follows through "chapter 10" and inserting "and to determine the distribution of such payments."; and

(4) by amending subsection (c) to read as follows:

"(c) RULINGS.—The Librarian of Congress, upon the recommendation of the Register of Copyrights, may, before a copyright arbitration royalty panel is convened, make any necessary procedural or evidentiary rulings that would apply to the proceedings conducted by such panel.".

(b) MEMBERSHIP AND PROCEEDINGS.—Section 802 of title 17, United States Code, is amended to read as follows:

"§ 802. Membership and proceedings of copyright arbitration royalty panels

"(a) COMPOSITION OF COPYRIGHT ARBITRATION ROYALTY PANELS.—A copyright arbitration royalty panel shall consist of 3 arbitrators selected by the Librarian of Congress pursuant to subsection (b).

"(b) SELECTION OF ARBITRATION PANEL.—Not later than 10 days after publication of a notice initiating an arbitration proceeding under section 804, and in accordance with procedures specified by the Register of Copyrights, the Librarian of Congress shall, upon the recommendation of the Register of Copyrights, select 2 arbitrators from lists of arbitrators provided to the Librarian by parties participating in the arbitration and by professional arbitration associations or such similar organizations as the Librarian shall select. The 2 arbitrators so selected shall, within 10 days after their selection, choose a third arbitrator from the same lists, who shall serve as the chairperson of the arbitrators. If such 2 arbitrators fail to agree upon the selection of a third arbitrator, the Librarian of Congress shall promptly select the third arbitrator.

"(c) ARBITRATION PROCEEDINGS.—Copyright arbitration royalty panels shall conduct arbitration proceedings, in accordance with such procedures as they may adopt, for the purpose of making their determinations in carrying out the purposes set forth in section 801. The arbitration panels shall act on the basis of a fully documented written record, prior decisions of the Copyright Royalty Tribunal, prior copyright arbitration panel determinations, and rulings by the Librarian of Congress under section 801(c). Any copyright owner who claims to be entitled to royalties under section 111, 116, or 119, or any interested copyright party who claims to be entitled to royalties under section 1006, may submit relevant information and proposals to the arbitration panels in proceedings applicable to such copyright owner or interested copyright party, and any other person participating in arbitration proceedings may submit such relevant information and proposals to the arbitration panel conducting the proceedings. The parties to the proceedings shall bear the entire cost thereof in such manner and proportion as the arbitration panels shall direct.

"(d) REPORT TO THE LIBRARIAN OF CONGRESS.—Not later than 180 days after publication of the notice initiating an arbitration proceeding, the copyright arbitration royalty panel conducting the proceeding shall report to the Librarian of Congress its determination concerning the royalty fee or distribution of royalty fees, as the case may be. Such report shall be accompanied by the written record, and shall set forth the facts that the arbitration panel found relevant to its determination.

"(e) ACTION BY LIBRARIAN OF CONGRESS.—Within 60 days after receiving the report of a copyright arbitration royalty panel under subsection (d), the Librarian of Congress, upon the recommendation of the Register of Copyrights, shall adopt or reject the determination of the arbitration panel. The Librarian shall adopt the determination of the arbitration panel unless the Librarian finds that the determination is arbitrary. If the Librarian rejects the determination of the arbitration panel, the Librarian 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 the royalty fee or distribution of fees, as the case may be. The Librarian shall cause to be published in the Federal Register the determination of the arbitration panel, and the decision of the Librarian (including an order issued under the preceding sentence). The Librarian shall also publicize such determination and decision in such other manner as the Librarian considers appropriate. The Librarian shall also make the report of the arbitration panel and the accompanying record available for public inspection and copying.

"(f) JUDICIAL REVIEW.—Any decision of the Librarian of Congress under subsection (e) with respect to a determination of an arbitration panel may be appealed, by any aggrieved party who would be bound by the determination, 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. If no appeal is brought within such 30-day period, the decision of the Librarian is final, and the royalty fee or determination with respect to the distribution of fees, as the case may be, shall take effect as set forth in the decision. The pendency of an appeal under this paragraph shall not relieve persons obligated to make royalty payments under sections 111, 115, 116, 118, 119, or 1003 who would be affected by the determination on appeal to deposit the statement of account and royalty fees specified in those sections. The court shall have jurisdiction to modify or vacate a decision of the Librarian only if it finds, on the basis of the record before the Librarian, that the Librarian acted in an arbitrary manner. If the court modifies the decision of the Librarian, the court shall have jurisdiction to enter its own determination with respect to the amount or distribution of royalty fees and costs, to order the repayment of any excess fees, and to order the payment of any underpaid fees, and the interest pertaining respectively thereto, in accordance with its final judgment. The court may further vacate the decision of the arbitration panel and remand the case for arbitration proceedings in accordance with subsection (c).

"(g) ADMINISTRATIVE MATTERS.—

"(1) DEDUCTION OF COSTS FROM ROYALTY FEES.—The Librarian of Congress and the Register of Copyrights may, to the extent not otherwise provided under this title, deduct from royalty fees deposited or collected under this title the reasonable costs incurred by the Library of Congress and the Copyright Office under this chapter. Such deduction may be made before the fees are distributed to any copyright claimants.

"(2) POSITIONS REQUIRED FOR ADMINISTRATION OF COMPULSORY LICENSING.—Section 307 of the Legislative Branch Appropriations Act, 1994, shall not apply to employee positions in the Library of Congress that are required to be filled in order to carry out section 111, 115, 116, 118, or 119 or chapter 10.".

(c) ADJUSTMENT OF COMPULSORY LICENSE RATES.—Section 803 of title 17, United States Code, and the item relating to such section in the table of sections at the beginning of chapter 8 of such title, are repealed.

(d) INSTITUTION AND CONCLUSION OF PROCEEDINGS.—Section 804 of title 17, United States Code, is amended as follows:

(1) Subsection (a) is amended to read as follows:

"(a)(1) With respect to proceedings under section 801(b)(1) concerning the adjustment of royalty rates as provided in sections 115 and 116, and with respect to proceedings under subparagraphs (A) and (D) of section 801(b)(2), during the calendar years specified in the schedule set forth in paragraphs (2), (3), and (4), any owner or user of a copyrighted work whose royalty rates are specified by this title, established by the Copyright Royalty Tribunal before the date of the enactment of the Copyright Royalty Tribunal Reform Act of 1993, or established by a copyright arbitration royalty panel after such date of enactment, may file a petition with the Librarian of Congress declaring that the petitioner requests an adjustment of the rate. The Librarian of Congress shall, upon the recommendation of the Register of Copyrights, make a determination as to whether the petitioner has such a significant interest in the royalty rate in which an adjustment is requested. If the Librarian determines that the petitioner has such a significant interest, the Librarian shall cause notice of this determination, with the reasons therefor, to be published in the Federal Register, together with the notice of commencement of proceedings under this chapter.

"(2) In proceedings under section 801(b)(2)(A) and (D), a petition described in paragraph (1) may be filed during 1995 and in each subsequent fifth calendar year.

"(3) In proceedings under section 801(b)(1) concerning the adjustment of royalty rates as provided in section 115, a petition described in paragraph (1) may be filed in 1997 and in each subsequent tenth calendar year.

"(4)(A) In proceedings under section 801(b)(1) concerning the adjustment of royalty rates as provided in section 116, a petition described in paragraph (1) may be filed at any time within 1 year after negotiated licenses authorized by section 116 are terminated or expire and are not replaced by subsequent agreements.

"(B) If a negotiated license authorized by section 116 is terminated or expires and is not replaced by another such license agreement which provides permission to use a quantity of musical works not substantially smaller than the quantity of such works performed on coin-operated phonorecord players during the 1-year period ending March 1, 1989, the Librarian of Congress shall, upon petition filed under paragraph (1) within 1 year after such termination or expiration, convene a copyright arbitration royalty panel. The arbitration panel shall promptly establish an interim royalty rate or rates for the public performance by means of a coin-operated phonorecord player of non-dramatic musical works embodied in phonorecords which had been subject to the terminated or expired negotiated license agreement. Such rate

or rates shall be the same as the last such rate or rates and shall remain in force until the conclusion of proceedings by the arbitration panel, in accordance with section 802, to adjust the royalty rates applicable to such works, or until superseded by a new negotiated license agreement, as provided in section 116(b).".

(2) Subsection (b) is amended—

(A) by striking "subclause" and inserting "subparagraph";

(B) by striking "Tribunal" the first place it appears and inserting "Copyright Royalty Tribunal or the Librarian of Congress";

(C) by striking "Tribunal" the second and third places it appears and inserting "Librarian";

(D) by striking "Tribunal" the last place it appears and inserting "Copyright Royalty Tribunal or the Librarian of Congress"; and

(E) by striking "(a)(2), above" and inserting "subsection (a) of this section".

(3) Subsection (c) is amended by striking "Tribunal" and inserting "Librarian of Congress".

(4) Subsection (d) is amended—

(A) by striking "Chairman of the Tribunal" and inserting "Librarian of Congress"; and

(B) by striking "determination by the Tribunal" and inserting "a determination".

(5) Section 804 is further amended by striking subsection (e).

(e) REPEAL.—Sections 805 through 810 of title 17, United States Code, and the items relating to such sections in the table of sections at the beginning of chapter 8 of such title, are repealed.

(f) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 8 of title 17, United States Code, is amended by striking the items relating to sections 801 and 802 and inserting the following:

"801. Copyright arbitration royalty panels: establishment and purpose.
"802. Membership and proceedings of copyright arbitration royalty panels.".

SEC. 3. JUKEBOX LICENSES.

(a) REPEAL OF COMPULSORY LICENSE.—Section 116 of title 17, United States Code, and the item relating to section 116 in the table of sections at the beginning of chapter 1 of such title, are repealed.

(b) NEGOTIATED LICENSES.—(1) Section 116A of title 17, United States Code, is amended—

(A) by redesignating such section as section 116;

(B) by striking subsection (b) and redesignating subsections (c) and (d) as subsections (b) and (c), respectively;

(C) in subsection (b)(2) (as so redesignated) by striking "Copyright Royalty Tribunal" each place it appears and inserting "Librarian of Congress";

(D) in subsection (c) (as so redesignated)—

(i) in the subsection caption by striking "ROYALTY TRIBUNAL" and inserting "ARBITRATION ROYALTY PANEL";

(ii) by striking "subsection (c)" and inserting "subsection (b)"; and

(iii) by striking "the Copyright Royalty Tribunal" and inserting "a copyright arbitration royalty panel"; and

(E) by striking subsections (e), (f), and (g).

(2) The table of sections at the beginning of chapter 1 of title 17, United States Code, is amended by striking "116A" and inserting "116".

SEC. 4. PUBLIC BROADCASTING COMPULSORY LICENSE.

Section 118 of title 17, United States Code, is amended—

(1) in subsection (b)—

(A) by striking the first 2 sentences;

(B) in the third sentence by striking "works specified by this subsection" and inserting "published nondramatic musical works and published pictorial, graphic, and sculptural works";

(C) in paragraph (1)—

(i) in the first sentence by striking ", within one hundred and twenty days after publication of the notice specified in this subsection,"; and

(ii) by striking "Copyright Royalty Tribunal" each place it appears and inserting "Librarian of Congress";

(D) in paragraph (2) by striking "Tribunal" and inserting "Librarian of Congress";

(E) in paragraph (3)—

(i) by striking the first sentence and inserting the following: "In the absence of license agreements negotiated under paragraph (2), the Li-

brarian of Congress shall, pursuant to chapter 8, convene a copyright arbitration royalty panel to determine and publish in the Federal Register a schedule of rates and terms which, subject to paragraph (2), shall be binding on all owners of copyright in works specified by this subsection and public broadcasting entities, regardless of whether such copyright owners have submitted proposals to the Librarian of Congress.";

(ii) in the second sentence—

(I) by striking "Copyright Royalty Tribunal" and inserting "copyright arbitration royalty panel"; and

(II) by striking "clause (2) of this subsection" and inserting "paragraph (2)"; and

(iii) in the last sentence by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress"; and

(F) by striking paragraph (4);

(2) in subsection (c)—

(A) by striking "1982" and inserting "1997"; and

(B) by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress";

(3) in subsection (d)—

(A) by striking "to the transitional provisions of subsection (b)(4), and";

(B) by striking "the Copyright Royalty Tribunal" and inserting "a copyright arbitration royalty panel"; and

(C) in paragraphs (2) and (3) by striking "clause" each place it appears and inserting "paragraph"; and

(4) in subsection (g) by striking "clause" and inserting "paragraph".

SEC. 5. SECONDARY TRANSMISSIONS BY SUPERSTATIONS AND NETWORK STATIONS FOR PRIVATE VIEWING.

Section 119 of title 17, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (1) by striking ", after consultation with the Copyright Royalty Tribunal," each place it appears;

(B) in paragraph (2) by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress";

(C) in paragraph (3) by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress"; and

(D) in paragraph (4)—

(i) by striking "Copyright Royalty Tribunal" each place it appears and inserting "Librarian of Congress";

(ii) by striking "Tribunal" each place it appears and inserting "Librarian of Congress"; and

(iii) in subparagraph (B) by striking "conduct a proceeding" in the last sentence and inserting "convene a copyright arbitration royalty panel"; and

(2) in subsection (c)—

(A) in the subsection caption by striking "DETERMINATION" and inserting "ADJUSTMENT";

(B) in paragraph (2) by striking "Copyright Royalty Tribunal" each place it appears and inserting "Librarian of Congress";

(C) in paragraph (3)—

(i) in subparagraph (A)—

(I) by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress"; and

(II) by striking the last sentence and inserting the following: "Such arbitration proceeding shall be conducted under chapter 8.";

(ii) by striking subparagraphs (B) and (C);

(iii) in subparagraph (D)—

(I) by redesignating such subparagraph as subparagraph (B); and

(II) by striking "Arbitration Panel" and inserting "copyright arbitration royalty panel appointed under chapter 8";

(iv) by striking subparagraphs (E) and (F);

(v) by amending subparagraph (G) to read as follows:

"(C) PERIOD DURING WHICH DECISION OF ARBITRATION PANEL OR ORDER OF LIBRARIAN EFFECTIVE.—The obligation to pay the royalty fee established under a determination which—

"(i) is made by a copyright arbitration royalty panel in an arbitration proceeding under this paragraph and is adopted by the Librarian of Congress under section 802(e), or

"(ii) is established by the Librarian of Congress under section 802(e), shall become effective as provided in section 802(f).''; and

(vi) in subparagraph (H)—

(I) by redesignating such subparagraph as subparagraph (D); and

(II) by striking "adopted or ordered under subparagraph (F)" and inserting "referred to in subparagraph (C)"; and

(D) by striking paragraph (4).

SEC. 6. CONFORMING AMENDMENTS.

(a) CABLE COMPULSORY LICENSE.—Section 111(d) of title 17, United States Code, is amended as follows:

(1) Paragraph (1) is amended by striking ", after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted),".

(2) Paragraph (1)(A) is amended by striking ", after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted), from time to time prescribe" and inserting "from time to time prescribe".

(3) Paragraph (2) is amended by striking the second and third sentences and by inserting the following: "All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest by the Librarian of Congress in the event no controversy over distribution exists, or by a copyright arbitration royalty panel in the event a controversy over such distribution exists.".

(4) Paragraph (4)(A) is amended—

(A) by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress"; and

(B) by striking "Tribunal" and inserting "Librarian of Congress".

(5) Paragraph (4)(B) is amended to read as follows:

"(B) After the first day of August of each year, the Librarian of Congress shall, upon the recommendation of the Register of Copyrights, determine whether there exists a controversy concerning the distribution of royalty fees. If the Librarian determines that no such controversy exists, the Librarian shall, after deducting reasonable administrative costs under this section, distribute such fees to the copyright owners entitled to such fees, or to their designated agents. If the Librarian finds the existence of a controversy, the Librarian shall, pursuant to chapter 8 of this title, convene a copyright arbitration royalty panel to determine the distribution of royalty fees.".

(6) Paragraph (4)(C) is amended by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress".

(b) AUDIO HOME RECORDING ACT.—

(1) ROYALTY PAYMENTS.—Section 1004(a)(3) of title 17, United States Code, is amended—

(A) by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress"; and

(B) by striking "Tribunal" and inserting "Librarian of Congress".

(2) DEPOSIT OF ROYALTY PAYMENTS.—Section 1005 of title 17, United States Code, is amended by striking the last sentence.

(3) ENTITLEMENT TO ROYALTY PAYMENTS.—Section 1006(c) of title 17, United States Code, is amended by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress shall convene a copyright arbitration royalty panel which".

(4) PROCEDURES FOR DISTRIBUTING ROYALTY PAYMENTS.—Section 1007 of title 17, United States Code, is amended—

(A) in subsection (a)(1)—

(i) by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress"; and

(ii) by striking "Tribunal" and inserting "Librarian of Congress";

(B) in subsection (b)—

(i) by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress"; and

(ii) by striking "Tribunal" each place it appears and inserting "Librarian of Congress"; and

(C) in subsection (c)—

(i) by striking the first sentence and inserting "If the Librarian of Congress finds the existence of a controversy, the Librarian shall, pur-

suant to chapter 8 of this title, convene a copyright arbitration royalty panel to determine the distribution of royalty payments.";

(ii) by striking "Tribunal" each place it appears and inserting "Librarian of Congress"; and

(iii) in the last sentence by striking "its reasonable administrative costs" and inserting "the reasonable administrative costs incurred by the Librarian".

(5) ARBITRATION OF CERTAIN DISPUTES.—Section 1010 of title 17, United States Code, is amended—

(A) in subsection (b)—

(i) by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress"; and

(ii) by striking "Tribunal" each place it appears and inserting "Librarian of Congress";

(B) in subsection (e)—

(i) in the subsection caption by striking "COPYRIGHT ROYALTY TRIBUNAL" and inserting "LIBRARIAN OF CONGRESS"; and

(ii) by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress";

(C) in subsection (f)—

(i) in the subsection caption by striking "COPYRIGHT ROYALTY TRIBUNAL" and inserting "LIBRARIAN OF CONGRESS";

(ii) by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress";

(iii) by striking "Tribunal" each place it appears and inserting "Librarian of Congress"; and

(iv) in the third sentence by striking "its" and inserting "the Librarian's"; and

(D) in subsection (g)—

(i) by striking "Copyright Royalty Tribunal" and inserting "Librarian of Congress";

(ii) by striking "Tribunal's decision" and inserting "decision of the Librarian of Congress"; and

(iii) by striking "Tribunal" each place it appears and inserting "Librarian of Congress".

SEC. 7. EFFECTIVE DATE AND TRANSITION PROVISIONS.

(a) IN GENERAL.—This Act and the amendments made by this Act shall take effect on January 1, 1994.

(b) EFFECTIVENESS OF EXISTING RATES AND DISTRIBUTIONS.—All royalty rates and all determinations with respect to the proportionate division of compulsory license fees among copyright claimants, whether made by the Copyright Royalty Tribunal, or by voluntary agreement, before the effective date set forth in subsection (a) shall remain in effect until modified by voluntary agreement or pursuant to the amendments made by this Act.

(c) TRANSFER OF APPROPRIATIONS.—All unexpended balances of appropriations made to the Copyright Royalty Tribunal, as of the effective date of this Act, are transferred on such effective date to the Copyright Office for use by the Copyright Office for the purposes for which such appropriations were made.

EXPLANATION OF AMENDMENT

Inasmuch as H.R. 2840 was reported with an amendment in the nature of a substitute, as amended, the contents of this report constitute an explanation of the amendment in the nature of a substitute and both amendments.

SUMMARY AND PURPOSE

The purpose of H.R. 2840 is to abolish the Copyright Royalty Tribunal and reassign its duties to ad hoc arbitration panels, the Copyright Office, and the Librarian of Congress.

COMMITTEE ACTION AND VOTE

H.R. 2840 was considered by the committee on the Judiciary on October 6, 1993. A reporting quorum being present, the Committee ordered H.R. 2840 reported to the full House by voice vote, with an amendment in the nature of a substitute, as amended.

HEARINGS

On March 3 and 4, 1993, the Subcommittee on Intellectual Property and Judicial Administration held hearings on H.R. 897, Title II of which contained provisions abolishing the Copyright Royalty Tribunal. Testimony on Title II was received from James H. Billington, the Librarian of Congress; Ralph Oman, the Register of Copyrights; Cindy Daub, Commissioner, Copyright Royalty Tribunal; Bruce Goodman, Commissioner, Copyright Royalty Tribunal; and, Edward Damich, Commissioner, Copyright Royalty Tribunal. On August 3, 1993, Title II of H.R. 897 was reintroduced as H.R. 2840.

LEGISLATIVE HISTORY

On February 16, 1993, Mr. Hughes and Mr. Frank introduced H.R. 897, the Copyright Reform Act of 1993.[1] Title II of this Act contained provisions abolishing the Copyright Royalty Tribunal. Hearings were held on H.R. 897 on March 3 and 4, 1993.

Subsequently, H.R. 2840 was introduced on August 3, 1993 by Mr. Hughes and Mr. Frank and was referred to the Committee on the Judiciary the same day.[2] H.R. 2840 was, in substance, substantially similar to Title II of H.R. 897. On August 5, 1993, the Subcommittee on Intellectual Property and Judicial Administration marked up H.R. 2840 with a single amendment in the nature of a substitute.

On October 6, 1993, the full Committee marked up H.R. 2840, and a quorum of Members being present, approved the amendment in the nature of a substitute with two amendments offered en bloc by Mr. Hughes, and favorably reported the bill as amended by voice vote.

DISCUSSION

BACKGROUND

The Copyright Royalty Tribunal is an independent agency in the legislative branch. It is currently comprised of three presidentially-appointed Commissioners (compensated at the level of pay in effect for level V of the Senior Executive Schedule), a General Counsel, and a five person support staff. The Tribunal was established in the 1976 Act for the purpose of periodically adjusting the compulsory license royalty rates in Sections 111, 115, 116, and 118 of title 17, United States Code, and, distributing royalties paid under sections 111 and 116 in the absence of agreement of the parties.

As established in the 1976 Copyright Act, the Tribunal was comprised of five Commissioners. An amendment in 1990 reduced the

[1] An identical bill, S. 373, was introduced that same day by Senators DeConcini and Hatch.
[2] An identical bill, S. 1346 was introduced on the same day by Senators DeConcini and Hatch.

number of Commissioners to three. In 1988, the Tribunal was assigned the duties of reviewing the determination of an ad hoc arbitration panel to be empaneled to adjust the compulsory royalty license rate for the Section 119 satellite carrier license, and distributing the royalty fees paid under that license in the absence of an agreement of the parties. In 1992, the Audio Home Recording Act gave the Tribunal the additional responsibilities of distributing royalties in the absence of agreement of the parties, and, beginning in 1998 and no more often than once each year thereafter, adjusting the maximum royalty rate for digital audio recording devices according to statutory criteria.

The Tribunal's origins lie in Congress's experience with the single compulsory license under the 1909 Act. Section 1(e) of that Act set a statutory rate of 2 cents on each part manufactured for the mechanical reproduction of nondramatic musical compositions. The statutory rate stayed in the law until January 1, 1976 Act became effective. The drafters of the 1976 Act wished to develop a non-legislative alternative to compulsory license rate adjustment, a desire that was heightened by the 1976 Act's addition of new compulsory licenses in section 111 (cable), section 116 (jukeboxes), and section 118 (public broadcasting).

The original proposals for the Tribunal were for ad hoc arbitration panels convened by the Register of Copyrights. The revision legislation passed by the Senate in 1976 adopted this approach. In reporting the revision bill out in September 1976, the House Judiciary Committee, concerned about the separation of powers issues raised by *Buckley* v. *Valeo*,[3] altered the bill to provide for three Commissioners appointed by the President for a term of five years. In conference with the Senate, this provision was changed to five commissioners appointed for a term of seven years. In 1990, the number of Commissioners was reduced to three.

H.R. 2840 is not the first proposal to abolish the Copyright Royalty Tribunal. In 1981, the Chairman of the Tribunal testified before Congress and urged its abolition.[4] In 1985, Mr. Synar introduced H.R. 2752, "the Copyright Royalty Tribunal Sunset Act," which, similar to H.R. 2840, proposed to move the functions of the Tribunal to the Copyright Office. That same year Mr. Kastenmeier introduced H.R. 2784, to replace the Tribunal with a Copyright Royalty Court.

With 15 years experience, a clear record of the Tribunal's workload has been established. That workload is episodic and not sufficient to justify three full-time highly paid Commissioners. The following data, provided by the Tribunal amply bears this out. Specifically, the data is gathered from the CRT's "Summary Fact Sheet," from submissions to the Committee by Commissioners Damich and Daub, and by the CRT's General Counsel. Thus, all the data are from the CRT itself. The data cannot, of course, capture all of the activities of the commissioners, but it can establish the type of workload that ad hoc panels could be expected to handle.

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[3] 424 U.S. 1 (1976).

[4] See Copyright Office, the U.S. Patent & Trademark Office, and the Copyright Royalty Tribunal: Oversight Hearings before the Subcomm. on Courts, Civil Liberties, and the Administration of Justice of the House Judiciary Comm., 97th Cong., 1st Sess. 67–74 (1981) (testimony of Chairman James).

Although given in number of days, the figures are generous since they count a half-hour hearing as one day.

1. Sunshine meetings

Data on meeting required to be identified publicly by the Sunshine Act were provided by the CRT's General Counsel. The data are for 1987 to 1992. The data include both rate setting and distribution proceedings.

1987, 18 days; 1988, 8 days; 1989, 18 days; 1990, 11 days; 1991, 36 days; 1992s; 5 days, total: 96 days.

Average days per year: 13.7 days.

If the jukebox license figures of 13 days are removed from this data (since the license is no longer administered by the CRT), the total is 83 days of hearings in six years for an average per year of 11.8 days. (This reduction might be off-set slightly by increased responsibilities under the Audio Home Recording Act of 1992.)

2. Daub data for hearings in 1990–1992

Commissioner Daub submitted data regarding the number of days of hearings for 1990–1992. According to Commissioner Daub, there were 52 days of such hearings. This results in an average of 17.33 days of such hearings per year.

3. Damich data for 1978 to 1992

Commissioner Damich submitted data for the years 1978 to 1992. Two types of charts were relevant for our purposes: (1) evidentiary hearings; and (2) formal meetings and evidentiary hearings. (The category contains all of the data for the first plus meetings).

A. Hearings

The Damich data reveal a total of 390 days of hearings for the entire 15 year period of 1978 to 1992, for an average of 26 days per year. If jukeboxes are deleted (since the license is no longer administered by the CRT), the figure drops to 359 days for an average of 23.9 days per year. (Another figure that skews that data upward is the mechanical license. There has only been one year out of fifteen in which there was any proceeding under this license, 1980. In that year, there were 47 days of hearings. If this figure is deleted and jukeboxes are deleted (in order to better gauge the future), the total is 312, or an average of 20.8 days per year.

The figures per year are: 1978, 10 days; 1979, 0 days; 1980, 75 days; 1981, 48 days; 1982, 74 days; 1983, 6 days; 1984, 16 days; 1985, 57 days; 1986, 29 days; 1987, 13 days; 1988, 4 days; 1989, 17 days; 1990, 6 days; 1991, 35 days; 1992, 0 days; Total, 390 days.

These figures clearly demonstrate an episodic workload.

B. Formal meetings and evidentiary hearings

(These figures include all of the days of hearings given in (a) above, plus meetings. The figures for meetings are overly generous because they count any meeting, no matter how short, as an entire day).

1978, 12 days; 1979, 2 days; 1980, 91 days; 1981, 64 days; 1982, 87 days; 1983, 13 days; 1984, 21 days; 1985, 69 days; 1986, 39

days; 1987, 29 days; 1988, 12 days; 1989, 30 days; 1990, 19 days; 1991, 44 days; 1992, 14 days; Total, 546 days.

Average number of days per year: 36.4

If the jukebox license is deleted from this, the total is 477 days for all fifteen years, or an average of 31.8 days per year.

Given this episodic workload, the Committee concluded that ad hoc arbitration panels are better suited to handle the functions currently handled by the Tribunal. The experience with arbitration under the Section 119 satellite compulsory license was positive, and indicates that this approach can work for the other royalty schemes in title 17. Testimony of witnesses before both Houses on the proposal supports this conclusion.

H.R. 2840 makes no substantive changes in the existing compulsory licenses, with one exception. Section 126, covering performance of nondramatic works by jukeboxes, is repealed. Section 116A effectively superseded section 116 in the Berne Implementation Act of 1988, is renumbered section 116, and as elsewhere in the bill, the Copyright Royalty Tribunal's functions are assigned to the Copyright Office and the Register of Copyrights, as well as to the ad hoc arbitration panels. The Committee believes that the availability of arbitration will provide a sufficient safety net for jukebox operators in the event that voluntary negotiations are unsuccessful.

The Register of Copyrights and the Librarian of Congress will play important roles in convening and reviewing the decisions of the arbitration panels. The Copyright Office is currently the "front end" of the compulsory license system. Statements of Account for the section 111, 119, and 1005 licenses are filed with the Office. The royalties paid in under these licenses are then deposited by the Copyright Office into the United States Treasury. Notices of Intention to use the section 115 mechanical license are filed with the Office, as are voluntary agreements entered into under the section 118 noncommercial broadcasting license. The Copyright Office also has authority to promulgate regulations for the administration of these functions.[5] Section 806 of the Copyright Act requires the Library of Congress to provide the Copyright Royalty Tribunal with necessary administrative services, including those related to budgeting, accounting, financial reporting, travel, personnel, and procurement.

In short, the Copyright Office and the Library of Congress already have considerable involvement in the administration of the compulsory licenses and in the work of the Tribunal. When combined with the Copyright Office's almost 100 year experience in copyright issues, assigning some of the duties formally carried out by the Tribunal to the Office and the Library makes good sense.

AMENDMENTS

As ordered reported by the Committee on October 6, 1993, two amendments, offered by Mr. Hughes, Chairman of the Subcommittee on Intellectual Property and Judicial Administration, were agreed to. The first amendment transfers to the Copyright Office any unexpended funds retained by the Copyright Royalty Tribunal on December 31, 1993. The second amendment ensures that the Li-

[5] 17 U.S.C. § 702 (1978).

brary of Congress and the Copyright Office will be able to deduct 100% of their costs of fulfilling their duties under the Act and will be able to fill any necessary positions.

SECTION-BY-SECTION ANALYSIS OF THE COMMITTEE SUBSTITUTE

SECTION 1. SHORT TITLE

Section 1 of the bill sets forth the title of the Act, the "Copyright Royalty Tribunal Reform Act of 1993."

SECTION 2. COPYRIGHT ARBITRATION ROYALTY PANELS

Section 2 amends Chapter 8 of title 17, United States Code, which currently governs the Copyright Royalty Tribunal.

Section 801 of title 17, United States Code, is amended to provide for ad hoc copyright arbitration royalty panels in lieu of the Copyright Royalty Tribunal. The panels are to be convened by the Librarian of Congress upon the recommendation of the Register of Copyrights. The remainder of current Section 801, which governs the factors to be taken into account in adjusting compulsory license rates and the circumstances under which the section 111 cable license rates may be adjusted, is not amended, consistent with the approach of the bill: to make only those procedural changes necessary to substitute arbitration panels for the Tribunal, and not to make any substantive changes in the compulsory licenses themselves.

Section 802 is amended to substitute provisions relating to the membership and proceedings of arbitration panels for provisions relating to the composition of the Copyright Royalty Tribunal. Section 802(a) as amended provides that a copyright arbitration panel shall consist of three arbitrators selected by the Librarian of Congress upon the recommendation of the Register of Copyrights according to the procedures set forth in section 802(b) as amended. Section 802(b) is patterned after current section 119(a)(c)(3). Not later than 10 days after the Librarian of Congress publishes in the Federal Register a notice initiating an arbitration panel convened under section 804 as amended, the Librarian of Congress, upon the recommendation of the Register of Copyrights, shall select two arbitrators from lists of arbitrators provided to the Librarian by the parties participating in the arbitration and from lists provided by professional arbitration associations or similar organizations. The two arbitrators so selected shall, within 10 days of their selection, choose a third arbitrator from the same lists. This third arbitrator shall serve as the chairperson of the arbitration panel. If the first two arbitrators cannot agree upon the selection of the third arbitrator, the Librarian of Congress shall select the third arbitrator.

It is the Committee's expectation that the arbitrators selected will be individuals with considerable experience in the field of copyright or communications. There may, however, be circumstances where an arbitrator does not have such experience, but nevertheless has considerable experience with arbitration. The Committee does not wish to exclude such individuals from serving on a copyright arbitration panel. Given that many arbitrations will involve multiple parties, the Librarian of Congress and the Register of Copyrights must be scrupulous to avoid even the appearance of se-

lecting arbitrators that may be believed, incorrectly or not, to favor one party. Smaller claimants have expressed concern to the Committee that their interests be protected in the arbitration selection process. The purpose of providing a broad pool of potential arbitrators is to assist the Register and the Librarian in achieving a fair process.

Section 802(c) as amended concerns the conduct of the arbitration process. Section 803(a) of the current statute subjects the Copyright Royalty Tribunal to the Administrative Procedures Act. While copyright arbitration royalty panels are not agencies within the meaning of the APA, the Committee expects that all arbitration panel proceedings will be open to the public. Section 802(c), patterned after section 119(c)(3)(C), permits the arbitration panels to adopt their own procedures. The Committee does not contemplate that the panels will strictly follow the Federal Rules of Civil Procedure and Evidence, however the panels, with the assistance of the Copyright Office, must promulgate and be governed by clear procedural and evidentiary guidelines designed to ensure fundamental fairness. Rules of discovery that can expedite the parties' presentation of their cases are particularly important in this respect, since early discovery and clear evidentiary rulings can go far in facilitating settlements and a more streamlined arbitration process.

Any party participating in an arbitration proceeding may submit relevant information and proposals to the arbitrators. The entire costs of the arbitration are to be borne by the parties to the arbitration. The arbitration panel is empowered to apportion those costs as it deems appropriate in order to take into account the parties' ability to bear the costs and the parties' interest in the arbitration.

No later than 180 days after notice of the arbitration proceeding is published by the Librarian of Congress in the Federal Register, the panel shall report to the Librarian its determination of the appropriate royalty fee or distribution, as the case may be. The arbitrator's determination shall be accompanied by the written record and shall set forth the facts that the panel found relevant to its determination. A clear report setting forth the panel's reasoning and findings will greatly assist the Librarian of Congress, who upon the recommendation of the Register of Copyrights, shall adopt or reject the panel's determination within 60 days of receiving the report. The Librarian is to accept the panel's determination unless he or she finds that it is arbitrary. If the Librarian rejects the panel's determination, he or she shall, within the aforementioned 60-day period, issue an order setting the royalty fee or distribution formula. The order shall be published in the Federal Register.

Appeal of the Librarian's determination may be made to the United States Court of Appeals for the District of Columbia Circuit within 30 days of its publication in the Federal Register. If no appeal is brought within the 30-day appeals period, the Librarian's determination shall be final and the determination with respect to royalty fees or distribution of fees shall take effect as set forth in the Librarian's determination. If an appeal is made within the 30-day period, the pendency of the appeal shall not relieve any party obligated to make royalty payments under sections 111, 115, 116, 118, 119, or 1003 from making those payments.

The court of appeals is given the authority to modify or vacate the Librarian's determination only if it finds, on the basis of the record before the Librarian, that the Librarian acted in an arbitrary manner. If the court so finds, it may either modify the determination directly, or vacate the determination and remand the matter to the original arbitration panel for further proceedings.

Section 804 of the Copyright Act, which governs the time periods for the institution of proceedings, has been amended to substitute arbitration panels for the Tribunal.

Sections 805 through 810 of the Copyright Act, which govern various administrative issues with respect to the Tribunal and review of Tribunal decisions, are repealed.

SECTION 3. JUKEBOX LICENSES

Section 3 repeals existing section 116 and renumbers existing section 116A to be section 116. Section 116 contains provisions relating to the jukebox compulsory license as enacted in 1976. Section 116A contains provisions relating to the voluntary jukebox license enacted as part of the Berne Implementation Act of 1988. The parties affected by the license have voluntarily agreed to a license that is currently scheduled to expire on December 31, 1999. The agreement has provisions for automatic renewal and the Committee expects that the parties will continue the agreement in 1999, perhaps for another 10 years. In the event no such agreement is reached, however, the bill provides that copyright arbitration panels will be convened. The criteria to be used by the panels is that set forth in current section 116A (renumbered in the bill as section 116). The Committee believes this will provide an adequate safeguard to jukebox operators that they will be able to continue to perform nondramatic musical works as in the past.

SECTION 4. PUBLIC BROADCASTING LICENSE

Section 4 makes necessary technical changes to substitute arbitration panels for the Copyright Royalty Tribunal.

SECTION 5. SECONDARY TRANSMISSION BY SUPERSTATIONS AND NETWORK STATIONS FOR PRIVATE VIEWING

Section 5 makes necessary technical changes to substitute arbitration panels for the Copyright Royalty Tribunal.

SECTION 6. CONFORMING AMENDMENTS

Section 6 contains conforming amendments to take into account the substitution of arbitration panels for the Copyright Royalty Tribunal.

SECTION 7. EFFECTIVE DATE AND TRANSITIONAL PROVISIONS

Section 7(a) establishes an effective date of January 1, 1994.

Section 7(b) states that all royalty rates and distribution determinations in existence on the effective date, whether made by the Copyright Royalty Tribunal or by voluntary agreement will remain in effect until modified by voluntary agreement or pursuant to amendments made by this Act. The purpose of this provision is to ensure that there is no disruption of existing business expectations.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of the report.

STATEMENT OF THE COMMITTEE ON GOVERNMENT OPERATIONS

No findings of recommendations of the Committee on Government Operations were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of the rule XI of the Rules of the House of Representatives is inapplicable because the proposed legislation does not provide new budgetary authority or increase tax expenditures.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the bill will have no significant inflationary impact on prices or costs in the national economy.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(C)(3) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill H.R. 2840, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 12, 1993.

Hon. JACK BROOKS,
Chairman, Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 2840, the Copyright Royalty Tribunal Reform Act of 1993, as ordered reported by the House Committee on the Judiciary on October 6, 1993. CBO estimates that implementation of H.R. 2840 would result in savings to the federal government of approximately $100,000 annually. The bill would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

H.R. 2840 would abolish the Copyright Royalty Tribunal (CRT) and transfer its duties to arbitration panels appointed by the Librarian of Congress. The parties to the arbitration proceedings would be required to pay the costs of those proceedings. The bill would provide for judicial review of decisions by the arbitration panels and the librarian. The bill also would transfer to the Copyright Office all unexpended balances of appropriations and would

permit the Librarian of Congress and the Copyright Office to deduct from royalty payments the costs incurred in arbitrating and distributing those payments.

The federal government collects royalty payments from cable television stations, jukebox operators, satellite carriers, and digital audio services, and distributes them to copyright owners. Under current law, the CRT receives an appropriation of approximately $1 million for this purpose, of which $900,000 is reimbursed from royalty payments prior to their distribution. Thus, the net cost to the federal government for operating the CRT is about $100,000 a year. Under H.R. 2840, the CRT would be eliminated. The costs of distributing copyright royalties would be borne by the Copyright Office and would be paid out of the royalty collections before they are disbursed. The net costs to the government of operating the new system would be zero. Therefore, CBO estimates that implementation of H.R. 2840 would result in a savings to the federal government of approximately $100,000 annually.

CBO estimates that enactment of H.R. 2840 would result in no cost to state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is John Webb.

Sincerely,

ROBERT D. REISCHAUER, *Director.*

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Title 17, United States Code

* * * * * * *

CHAPTER 1—SUBJECT MATTER AND SCOPE OF COPYRIGHT

Sec.
101. Definitions.
* * * * * * *
[116. Scope of exclusive rights in nondramatic musical works: Compulsory licenses for public performances by means of coin-operated phonorecord players.
[116A.] *116.* Negotiated licenses for public performances by means of coin-operated phonorecord players.

* * * * * * *

111. LIMITATIONS ON EXCLUSIVE RIGHTS: SECONDARY TRANSMISSIONS

(a) * * *

* * * * * * *

(d) COMPULSORY LICENSE FOR SECONDARY TRANSMISSIONS BY CABLE SYSTEMS.—

(1) A cable system whose secondary transmissions have been subject to compulsory licensing under subsection (c) shall, on a semiannual basis, deposit with the Register of Copyrights, in

accordance with requirements that the Register shall[, after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted),] prescribe by regulation—

(A) a statement of account, covering the six months next preceding, specifying the number of channels on which the cable system made secondary transmissions to its subscribers, the names and locations of all primary transmitters whose transmissions were further transmitted by the cable system, the total number of subscribers, the gross amounts paid to the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters, and such other data as the Register of Copyrights may[, after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted),] from time to time prescribe by regulation. In determining the total number of subscribers and the gross amounts paid to the cable system for the basic service of providing secondary transmissions of primary broadcast transmitters, the system shall not include subscribers and amounts collected from subscribers receiving secondary transmissions for private home viewing pursuant to section 119. Such statement shall also include a special statement of account covering any nonnetwork television programming that was carried by the cable system in whole or in part beyond the local service area of the primary transmitter, under rules, regulations, or authorizations of the Federal Communications Commission permitting the substitution or addition of signals under certain circumstances, together with logs showing the times, dates, stations, and programs involved in such substituted or added carriage; and

(B) * * *

* * * * * * *

(2) The Register of Copyrights shall receive all fees deposited under this section and, after deducting the reasonable costs incurred by the Copyright Office under this section, 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 by the Copyright Royalty Tribunal as provided by this title. The Register shall submit to the Copyright Royalty Tribunal, on a semiannual basis, a compilation of all statements of account covering the relevant six-month period provided by clause (1) of this subsection.] *All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest by the Librarian of Congress in the event no controversy over distribution exists, or by a copyright arbitration royalty panel in the event a controversy over such distribution exists.*

* * * * * * *

(4) The royalty fees thus deposited shall be distributed in accordance with the following procedures:

(A) During the month of July in each year, every person claiming to be entitled to compulsory license fees for secondary transmissions shall file a claim with the [Copyright Royalty Tribunal] *Librarian of Congress*, in accordance with requirements that the [Tribunal] *Librarian of Congress* shall prescribe by regulation. Notwithstanding any provisions of the antitrust laws, for purposes of this clause any claimants may agree among themselves as to the proportionate division of compulsory licensing fees among them, 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.

[(B) After the first day of August of each year, the Copyright Royalty Tribunal shall determine whether there exists a controversy concerning the distribution of royalty fees. If the Tribunal determines that no such controversy exists, it shall, after deducting its reasonable administrative costs under this section, distribute such fees to the copyright owners entitled, or to their designated agents. 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 fees.]

(B) After the first day of August of each year, the Librarian of Congress shall, upon the recommendation of the Register of Copyrights, determine whether there exists a controversy concerning the distribution of royalty fees. If the Librarian determines that no such controversy exists, the Librarian shall, after deducting reasonable administrative costs under this section, distribute such fees to the copyright owners entitled to such fees, or to their designated agents. If the Librarian finds the existence of a controversy, the Librarian shall, pursuant to chapter 8 of this title, convene a copyright arbitration royalty panel to determine the distribution of royalty fees.

(C) During the pendency of any proceeding under this subsection, the [Copyright Royalty Tribunal] *Librarian of Congress* shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have discretion to proceed to distribute any amounts that are not in controversy.

* * * * * * *

[§ 116. Scope of exclusive rights in nondramatic musical works; Compulsory license for public performances by means of coin-operated phonorecord players

[(a) LIMITATION ON EXCLUSIVE RIGHTS.—In the case of a nondramatic musical work embodied in a phonorecord, the performance of which is subject to this section as provided in section 116A, the exclusive right under clause (4) of section 106 to perform the work publicly by means of a coin-operated phonorecord player is limited as follows:

[(1) The proprietor of the establishment in which the public performance takes place is not liable for infringement with respect to such public performance unless—

[(A) such proprietor is the operator of the phonorecord player; or

[(B) such proprietor refuses or fails, within one month after receipt by registered or certified mail of a request, at a time during which the certificate required by clause (1)(C) of subsection (b) is not affixed to the phonorecord player, by the copyright owner, to make full disclosure, by registered or certified mail, of the identity of the operator of the phonorecord player.

[(2) The operator of the coin-operated phonorecord player may obtain a compulsory license to perform the work publicly on that phonorecord player by filing the application, affixing the certificate, and paying the royalties provided by subsection (b).

[(b) RECORDATION OF COIN-OPERATED PHONORECORD PLAYER, AFFIXATION OF CERTIFICATE, AND ROYALTY PAYABLE UNDER COMPULSORY LICENSE.—

[(1) Any operator who wishes to obtain a compulsory license for the public performance of works on a coin-operated phonorecord player shall fulfill the following requirements:

[(A) Before or within one month after such performances are made available on a particular phonorecord player, and during the month of January in each succeeding year that such performances are made available on that particular phonorecord player, the operator shall file in the Copyright Office, in accordance with requirements that the Register of Copyrights, after consultation with the Copyright Royalty Tribunal (if and when the Tribunal has been constituted), shall prescribe by regulation, an application containing the name and address of the operator of the phonorecord player and the manufacturer and serial number or other explicit identification of the phonorecord player, and deposit with the Register of Copyrights a royalty fee for the current calendar year of $8 for that particular phonorecord player. If such performances are made available on a particular phonorecord player for the first time after July 1 of any year, the royalty fee to be deposited for the remainder of that year shall be $4.

[(B) Within twenty days of receipt of an application and royalty fee pursuant to subclause (A), the Register of Copyrights shall issue to the applicant a certificate for the phonorecord player.

[(C) On or before March 1 of the year in which the certificate prescribed by subclause (B) of this clause is issued, or within ten days after the date of issue of the certificate, the operator shall affix to the particular phonorecord player, in a position where it can be readily examined by the public, the certificate, issued by the Register of Copyrights under subclause (B), of the latest application made by such operator under subclause (A) of this clause with respect to that phonorecord player.

[(2) Failure to file the application, to affix the certificate, or to pay the royalty required by clause (1) of this subsection renders the public performance actionable as an act of infringement under section 501 and fully subject to the remedies provided by sections 502 through 506 and 509.

[(c) DISTRIBUTION OF ROYALTIES.—

[(1) The Register of Copyrights shall receive all fees deposited under this section and, after deducting the reasonable costs incurred by the Copyright Office under this section, 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 by the Copyright Royalty Tribunal as provided by this title. The Register shall submit to the Copyright Royalty Tribunal on an annual basis, a detailed statement of account covering all fees received for the relevant period provided by subsection (b).

[(2) During the month of January in each year, every person claiming to be entitled to compulsory license fees under this section for performances during the preceding twelve-month period shall file a claim with the Copyright Royalty Tribunal, in accordance with requirements that the Tribunal shall prescribe by regulation. Such claim shall include an agreement to accept as final, except as provided in section 810 of this title, the determination of the Copyright Royalty Tribunal in any controversy concerning the distribution of royalty fees deposited under subclause (A) of subsection (b)(1) of this section to which the claimant is a party. Notwithstanding any provisions of the antitrust laws, for purposes of this subsection any claimants may agree among themselves as to the proportionate division of compulsory licensing fees among them, may jump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

[(3) After the first day of October of each year, the Copyright Royalty Tribunal shall determine whether there exists a controversy concerning the distribution of royalty fees deposited under subclause (A) of subsection (b)(1). If the Tribunal determines that no such controversy exists, it shall, after deducting its reasonable administrative costs under this section, distribute such fees to the copyright owners entitled, or to their designated agents. If it finds that such a controversy exists, it shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty fees.

[(4) The fees to be distributed shall be divided as follows:

[(A) to every copyright owner not affiliated with a performing rights society, the pro rata share of the fees to be distributed to which such copyright owner proves entitlement.

[(B) to the performing rights societies, the remainder of the fees to be distributed in such pro rata shares as they shall by agreement stipulate among themselves, or, if they

fail to agree, the pro rata share to which such performing rights societies prove entitlement.

[(C) during the pendency of any proceeding under this section, the Copyright Royalty Tribunal shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have discretion to proceed to distribute any amounts that are not in controversy.

[(5) The Copyright Royalty Tribunal shall promulgate regulations under which persons who can reasonably be expected to have claims may, during the year in which performances take place, without expense to or harassment of operations or proprietors of establishments in which phonorecord players are located, have such access to such establishments and to the phonorecord players located therein and such opportunity to obtain information with respect thereto as may be reasonably necessary to determine, by sampling procedures or otherwise, the proportion of contribution of the musical works of each such person to the earnings of the phonorecord players for which fees shall have been deposited. Any person who alleges that he or she has been denied the access permitted under the regulations prescribed by the Copyright Royalty Tribunal may bring an action in the United States District Court for the District of Columbia for the cancellation of the compulsory license of the phonorecord player to which such access has been denied, and the court shall have the power to declare the compulsory license thereof invalid from the date of issue thereof.

[(d) CRIMINAL PENALTIES.—Any person who knowingly makes a false representation of a material fact in an application filed under clause (1)(A) of subsection (b), or who knowingly alters a certificate issued under clause (1)(B) of subsection (b) or knowingly affixes such a certificate to a phonorecord player other than the one it covers, shall be fined not more than $2,500.

[(e) DEFINITIONS—As used in this section and section 116A, the following terms and their variant forms mean the following:

[(1) A "coin-operated phonorecored player" is a machine or device that—

[(A) is employed solely for the performance of nondramatic musical works by means of phonorecords upon being activated by insertion of coins, currency, tokens, or other monetary units or their equivalent;

[(B) is located in an establishment making no direct or indirect charge for admission;

[(C) is accompanied by a list of the titles of all the musical works available for performance on it, which list is affixed to the phonorecord player or posted in the establishment in a prominent position where it can be readily examined by the public; and

[(D) affords a choice of works available for performance and permits the choice to be made by the patrons of the establishment in which it is located.

[(2) An "operator" is any person who, alone or jointly with others:

[(A) owns a coin-operated phonorecord player; or

[(B) has the power to make a coin-operated phonorecord player available for placement in an establishment for purposes of public performance; or

[(C) has the power to exercise primary control over the selection of the musical works made available for public performance on a coin-operated phonorecord player.

[(3) A "performing rights society" is an association or cooperation that licenses to public performance of nondramatic musical works on behalf of the copyright owners, such as the American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc.

[§ 116A.] *§ 116.* Negotiated licenses for public performances by means of coin-operated phonorecord players

(a) APPLICABILITY OF SECTION.—This section applies to any nondramatic musical work embodied in a phonorecord.

[(b) LIMITATION ON EXCLUSIVE RIGHT IF LICENSES NOT NEGOTIATED.—

[(1) APPLICABILITY.—In the case of a work to which this section applies, the exclusive right under clause (4) of section 106 to perform the work publicly by means of a coin-operated phonorecord player is limited by section 116 to the extent provided in this section.

[(2) DETERMINATION BY COPYRIGHT ROYALTY TRIBUNAL.—The Copyright Royalty Tribunal at the end of the 1-year period beginning on the effective date of the Berne Convention Implementation Act of 1988, and periodically thereafter to the extent necessary to carry out subsection (f), shall determine whether or not negotiated licenses authorized by subsection (c) are in effect so as to provide permission to use a quantity of musical works not substantially smaller than the quantity of such works performed on coin-operated phonorecord players during the 1-year period ending on the effective date of that Act. If the Copyright Royalty Tribunal determines that such negotiated licenses are not so in effect, the Tribunal shall, upon making the determination, publish the determination in the Federal Register. Upon such publication, section 116 shall apply with respect to musical works that are not subject of such negotiated licenses.

[(c)] *(b)* NEGOTIATED LICENSES.—

(1) AUTHORITY OF NEGOTIATIONS.—Any owners of copyright works to which this section applies and any operators of coin-operated phonorecord players may negotiate and agree upon the terms and rates of royalty payments for the performance of such works and the proportionate division of fees paid among copyright owners, and may designate common agents to negotiate, agree to, pay, or receive such royalty payments.

(2) ARBITRATION.—Parties to such a negotiation, within such time as may be specified by the [Copyright Royalty Tribunal] *Librarian of Congress* by regulation, may determine the result of the negotiation by arbitration. Such arbitration shall be governed by the provisions of title 9, to the extent such title is not inconsistent with this section. The parties shall give notice to the [Copyright Royalty Tribunal] *Librarian of Congress* of any

determination reached by arbitration and any such determination shall, as between the parties to the arbitration, be dispositive of the issues to which it relates.

[(d)] *(c)* LICENSE AGREEMENTS SUPERIOR TO COPYRIGHT [ROYALTY TRIBUNAL] *ARBITRATION ROYALTY PANEL* DETERMINATIONS.—License agreements between one or more copyright owners and one or more operators of coin-operated phonorecord players, which are negotiated in accordance with subsection [(c)] *(b)*, shall be given effect in lieu of any otherwise applicable determination by [the Copyright Royalty Tribunal] *a copyright arbitration panel.*

[(e) NEGOTIATION SCHEDULE.—Not later than 60 days after the effective date of the Berne Convention Implementation Act of 1988, if the Chairman of the Copyright Royalty Tribunal has not received notice, from copyright owners and operators of coin-operated phonorecord players referred to in subsection (c)(1), of the date and location of the first meeting between such copyright owners and such operators to commence negotiations authorized by subsection (c), the Chairman shall announce the date and location of such meeting. Such meeting may not be held more than 90 days after the effective date of such Act.

[(f) COPYRIGHT ROYALTY TRIBUNAL TO SUSPEND VARIOUS ACTIVITIES.—The Copyright Royalty Tribunal shall not conduct any ratemaking activity with respect to coin-operated phonorecord players unless, at any time more than one year after the effective date of the Berne Convention Implementation Act of 1988, the negotiated licenses adopted by the parties under this section do not provide permission to use a quantity of musical works not substantially smaller than the quantity of such works performed on the coin-operated phonorecord players during the one-year period ending on the effective date of such Act.

[(g) TRANSITION OF PROVISIONS; RETENTION OF COPYRIGHT ROYALTY TRIBUNAL JURISDICTION.—Until such time as licensing provisions are determined by the parties under this section, the terms of the compulsory license under section 116, with respect to the public performance of nondramatic musical works by means of coin-operated phonerecord players, which is in effect on the day before the effective date of the Berne Convention Implementation Act of 1988, shall remain in force. If a negotiated license authorized by this section comes into force so as to supersede previous determinations of the Copyright Royalty Tribunal, as provided in section (d), but thereafter is terminated or expires and is not replaced by another licensing agreement, then section 116 shall be effective with respect to musical works that were the subject of such terminated or expired licenses.]

* * * * * * *

§ 118. Scope of exclusive rights: Use of certain works in connection with noncommercial broadcasting

(a) * * *

(b) [Not later than thirty days after the Copyright Royalty Tribunal has been constituted in accordance with section 802, the Chairman of the Tribunal shall cause notice to be published in the Federal Register of the initiation of proceedings for the purpose of de-

termining reasonable terms and rates of royalty payments for the activities specified by subsection (d) with respect to published nondramatic musical works and published pictorial, graphic, and sculptural works during a period beginning as provided in clause (3) of this subsection and ending on December 31, 1982. Copyright owners and public broadcasting entities shall negotiate in good faith and cooperate fully with the Tribunal in an effort to reach reasonable and expeditious results.] Notwithstanding any provision of the antitrust laws, any owners of copyright in [works specified by this subsection] *published nondramatic musical works and published pictorial, graphic, and sculptural works* and any public broadcasting entities, respectively, may negotiate and agree upon the terms and rates of royalty payments and the proportionate division of fees paid among various copyright owners, and may designate common agents to negotiate, agree to, pay, or receive payments.

(1) Any owner of copyright in a work specified in this subsection or any public broadcasting entity may[, within one hundred and twenty days after publication of the notice specified in this subsection,] submit to the [Copyright Royalty Tribunal] *Librarian of Congress* proposed licenses covering such activities with respect to such works. The [Copyright Royalty Tribunal] *Librarian of Congress* shall proceed on the basis of the proposals submitted to it as well as any other relevant information. The [Copyright Royalty Tribunal] *Librarian of Congress* shall permit any interested party to submit information relevant to such proceedings.

(2) License agreements, voluntarily negotiated at any time between one or more copyright owners and one or more public broadcasting entities shall be given effect in lieu of any determination by the [Tribunal] *Librarian of Congress*: *Provided,* That copies of such agreements are filed in the Copyright Office within thirty days of execution in accordance with regulations that the Register of Copyrights shall prescribe.

(3) [Within six months, but not earlier than one hundred and twenty days, from the date of publication of the notice specified in this subsection the Copyright Royalty Tribunal shall make a determination and publish in the Federal Register a schedule of rates and terms which, subject to clause (2) of this subsection, shall be binding on all owners of copyright in works specified by this subsection and public broadcasting entities, regardless of whether or not such copyright owners and public broadcasting entities have submitted proposals to the Tribunal.] *In the absence of license agreements negotiated under paragraph (2), the Librarian of Congress shall, pursuant to chapter 8, convene a copyright arbitration royalty panel to determine and publish in the Federal Register a schedule of rates and terms which, subject to paragraph (2), shall be binding on all owners of copyright in works specified by this subsection and public broadcasting entities, regardless of whether such copyright owners have submitted proposals to the Librarian of Congress.* In establishing such rates and terms the [Copyright Royalty Tribunal] *copyright arbitration royalty panel* may consider the rates for comparable circumstances

under voluntary license agreements negotiated as provided in [clause (2) of this subsection] *paragraph (2).* The [Copyright Royalty Tribunal] *Librarian of Congress* shall also establish requirements by which copyright owners may receive reasonable notice of the use of their works under this section, and under which records of such use shall be kept by public broadcasting entities.

[(4) With respect to the period beginning on the effective date of this title and ending on the date of publication of such rates and terms, this title shall not afford to owners of copyright or public broadcasting entities any greater or lesser rights with respect to the activities specified in subsection (d) as applied to works specified in this subsection than those afforded under the law in effect on December 31, 1977, as held applicable and construed by a court in an action brought under this title.]

(c) The initial procedure specified in subsection (b) shall be repeated and concluded between June 30 and December 31, [1982] *1997,* and at five-year intervals thereafter, in accordance with regulations that the [Copyright Royalty Tribunal] *Librarian of Congress* shall prescribe.

(d) Subject [to the transitional provisions of subsection (b)(4), and] to the terms of any voluntary license agreements that have been negotiated as provided by subsection (b)(2), a public broadcasting entity may, upon compliance with the provisions of this section, including the rates and terms established by [the Copyright Royalty Tribunal] *a copyright arbitration royalty panel* under subsection (b)(3), engage in the following activities with respect to published nondramatic musical works and published pictorial, graphic, and sculptural works:

(1) performance or display of a work by or in the course of a transmission made by a noncommercial educational broadcast station referred to in subsection (g); and

(2) production of a transmission program, reproduction of copies or phonorecords of such a transmission program, an distribution of such copies or phonorecords, where such production, reproduction, or distribution is made by a nonprofit institution or organization solely for the purpose of transmissions specified in [clause] *paragraph* (1); and

(3) the making of reproductions by a governmental body or a nonprofit institution of a transmission program simultaneously with its transmission as specified in [clause] *paragraph* (1), and the performance or display of the contents of such program under the conditions specified by [clause] *paragraph* (1) of section 110, but only if the reproductions are used for performances or displays for a period of no more than seven days from the date of the transmission specified in [clause] *paragraph* (1), and are destroyed before or at the end of such period. No person supplying, in accordance with [clause] *paragraph* (2), a reproduction of a transmission program to governmental bodies or nonprofit institutions under this [clause] *paragraph* shall have any liability as a result of failure of such body or institution to destroy such reproduction: *Provided,* That it shall have notified such body or institution of the re-

quirement for such destruction pursuant to this [clause] *paragraph*: *And provided further,* That if such body or institution itself fails to destroy such reproduction it shall be deemed to have infringed.

* * * * * * *

(g) As used in this section, the term "public broadcasting entity" means a noncommercial educational broadcast station as defined in section 397 of title 47 and any nonprofit institution or organization engaged in the activities described in [clause] *paragraph* (2) of subsection (d).

§ 119. Limitations on exclusive rights: Secondary transmissions of superstations and network stations for private home viewing

(a) * * *

(b) STATUTORY LICENSE FOR SECONDARY TRANSMISSIONS FOR PRIVATE HOME VIEWING.—

(1) DEPOSITS WITH THE REGISTER OF COPY-RIGHTS.—A satellite carrier whose secondary transmissions are subject to statutory licensing under subsection (a) shall, on a semiannual basis, deposit with the Register of Copyrights, in accordance with requirements that the Register shall[, after consultation with the Copyright Royalty Tribunal,] prescribe by regulation—

(A) a statement of account, covering the preceding 6-month period, specifying the names and locations of all superstations and network stations whose signals were transmitted, at any time during that period, to subscribers for private home viewing as described in subsections (a)(1) and (a)(2), the total number of subscribers that received such transmissions, and such other data as the Register of Copyrights may[, after consultation with the Copyright Royalty Tribunal,] from time to time prescribe by regulation; and

(B) * * *

(2) INVESTMENT OF FEES.—The Register of Copyrights shall receive all fees deposited under this section and, after deducting the reasonable costs incurred by the Copyright Office under this section (other than the costs deducted under paragraph (4)), 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 securities of the United States for later distribution with interest by the [Copyright Royalty Tribunal] *Librarian of Congress* as provided by this title.

(3) PERSONS TO WHOM FEES ARE DISTRIBUTED.—The royalty fees deposited under paragraph (2) shall, in accordance with the procedures provided by paragraph (4), be distributed to those copyright owners whose works were included in a secondary transmission for private home viewing made by a satellite carrier during the applicable 6-month accounting period and who file a claim with the [Copyright Royalty Tribunal] *Librarian of Congress* under paragraph (4).

(4) PROCEDURES FOR DISTRIBUTION.—The royalty fees deposited under paragraph (2) shall be distributed in accordance with the following procedures:

(A) FILING OF CLAIMS FOR FEES.—During the month of July in each year, each person claiming to be entitled to statutory license fees for secondary transmissions for private home viewing shall file a claim with the [Copyright Royalty Tribunal] *Librarian of Congress*, in accordance with requirements that the [Tribunal] *Librarian of Congress* shall prescribe by regulation. For purposes of this paragraph, any claimants may agree among themselves as to the proportionate division of statutory license fees among them, 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.

(B) DETERMINATION OF CONTROVERSY; DISTRIBUTIONS.—After the first day of August of each year, the [Copyright Royalty Tribunal] *Librarian of Congress* shall determine whether there exists a controversy concerning the distribution of royalty fees. If the [Tribunal] *Librarian of Congress* determines that no such controversy exists. The [Tribunal] *Librarian of Congress* shall, after deducting reasonable administrative costs under this paragraph, distribute such fees to the copyright owners entitled to receive them, or to their designated agents. If the [Tribunal] *Librarian of Congress* finds the existence of a controversy, the [Tribunal] *Librarian of Congress* shall, pursuant to chapter 8 of this title, [conduct a proceeding] *convene a copyright arbitration royalty panel* to determine the distribution of royalty fees.

(C) WITHHOLDING OF FEES DURING CONTROVERSY.—During the pendency of any proceeding under this subsection, the [Copyright Royalty Tribunal] *Librarian of Congress* shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have discretion to proceed to distribute any amounts that are not in controversy.

(c) [DETERMINATION] *ADJUSTMENT* OF ROYALTY FEES.—

(1) * * *

(2) FEE SET BY VOLUNTARY NEGOTIATION.—

(A) NOTICE OF INITIATION OF PROCEEDINGS.—On or before July 1, 1991, the [Copyright Royalty Tribunal] *Librarian of Congress* shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining the royalty fee to be paid by satellite carriers under subsection (b)(1)(B).

(B) NEGOTIATIONS.—Satellite carriers, distributors, and copyright owners entitled to royalty fees under this section shall negotiate in good faith in an effort to reach a voluntary agreement or voluntary agreements for the payment of royalty fees. Any such satellite carriers, distributors, and copyright owners may at any time negotiate and agree to the royalty fee, and may designate common

agents to negotiate, agree to, or pay such fees. If the parties fail to identify common agents, the [Copyright Royalty Tribunal] *Librarian of Congress* shall do so, after requesting recommendations for the parties to the negotiation proceeding. The parties to each negotiation proceeding shall bear the entire costs thereof.

* * * * * * *

(3) FEE SET BY COMPULSORY ARBITRATION.—

(A) NOTICE OF INITIATION OF PROCEEDINGS.—On or before December 31, 1991, the [Copyright Royalty Tribunal] *Librarian of Congress* shall cause notice to be published in the Federal Register of the initiation of arbitration proceedings for the purpose of determining a reasonable royalty fee to be paid under subsection (b)(1)(B) by satellite carriers who are not parties to a voluntary agreement filed with the copyright Office in accordance with paragraph (2). [Such notice shall include the names and qualifications of potential 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.] *Such arbitration proceeding shall be conducted under chapter 8.*

[(B) SELECTION OF ARBITRATION PANEL.—Not later than 10 days after publication of the notice initiating an arbitration proceeding, and in accordance with procedures to be specified by the Copyright Royalty Tribunal, one arbitrator shall be selected from the published list by copyright owners who claim to be entitled to royalty fees under subsection (b)(4) and who are not party to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2) and one arbitrator shall be selected from the published list by satellite carriers and distributors who are not parties to such a voluntary agreement. The two arbitrators so selected shall, within 10 days after their selection, choose a third arbitrator from the same list, who shall serve as chairperson of the arbitrators. If either group fail to agree upon the selection of an arbitrator, or if the arbitrators selected by such groups fail to agree upon the selection of a chairperson, the Copyright Royalty Tribunal shall promptly select the arbitrator or chairperson, respectively. The arbitrators selected under this subparagraph shall constitute an Arbitration Panel.

[(C) ARBITRATION PROCEEDING.—The Arbitration Panel shall conduct an arbitration proceeding in accordance with such procedures as it may adopt. The Panel shall act on the basis of a fully documented written record. Any copyright owner who claims to be entitled to royalty fees under subsection (b)(4), any satellite carrier, and any distributor, who is not party to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2), 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.

[(D)] (*B*) FACTORS FOR DETERMINING ROYALTY FEES.—In determining royalty fees under this paragraph, the [Arbitration Panel] *copyright arbitration royalty panel appointed under chapter 8* shall consider the approximate average cost to a cable system for the right to secondarily transmit to the public a primary transmission made by a broadcast station, the fee established under any voluntary agreement filed with the Copyright Office in accordance with paragraph (2), and the last fee proposed by the parties, before proceedings under this paragraph, for the secondary transmission of superstations or network stations for private home viewing. The fee shall also be calculated to achieve the following objectives:

(i) * * *

* * * * * * *

[(E) REPORT TO COPYRIGHT ROYALTY TRIBUNAL.—Not later than 60 days after publication of the notice initiating an arbitration proceeding, the Arbitration Panel shall report to the Copyright Royalty Tribunal its determination concerning the royalty fee. Such report shall be accompanied by the written record, and shall set forth the facts that the Panel found relevant to its determination and the reasons why its determination is consistent with the criteria set forth in subparagraph (D).

[(F) ACTION BY COPYRIGHT ROYALTY TRIBUNAL.—Within 60 days after receiving the report of the Arbitration Panel under subparagraph (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 inconsistent with the criteria set forth in subparagraph (D). 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, consistent with the criteria set forth in subparagraph (D), setting the royalty fee under this paragraph. The Tribunal shall cause to be published in the Federal Register the determination of the Panel, and the decision of the Tribunal with respect to the determination (including any order issued under the preceding sentence). The Tribunal shall also publicize such determination and decision in such other manner as the Tribunal considers appropriate. The Tribunal shall also make the report of the Arbitration Panel and the accompanying record available for public inspection and copying.

[(G) PERIOD DURING WHICH DECISION OF PANEL OR ORDER OF TRIBUNAL EFFECTIVE.— The obligation to pay the royalty fee established under a determination of the Arbitration Panel which is confirmed by the Copyright Royalty Tribunal in accordance with this paragraph, or established by any order issued under subparagraph (F), shall become effective on the date when the decision of the Tribunal is published in the Federal Register under subparagraph (F),

and shall remain in effect until modified in accordance with paragraph (4), or until December 31, 1994.]

(C) PERIOD DURING WHICH DECISION OF ARBITRATION PANEL OR ORDER OF LIBRARIAN EFFECTIVE.—The obligation to pay the royalty fee established under a determination which—

(i) is made by a copyright arbitration royalty panel in an arbitration proceeding under this paragraph and is adopted by the Librarian of Congress under section 802(e), or

(ii) is established by the Librarian of Congress under section 802(e),

shall become effective as provided in section 802(f).

[(H)] *(D)* PERSONS SUBJECT TO ROYALTY FEE.—The royalty fee [adopted or ordered under subparagraph (F)] *referred to in subparagraph (C)* shall be binding on all satellite carriers, distributors, and copyright owners, who are not a party to a voluntary agreement filed with the Copyright Office under paragraph (2).

[(4) JUDICIAL REVIEW.—Any decision of the Copyright Royalty Tribunal under paragraph (3) with respect to a determination of the Arbitration Panel may be appealed, by any aggrieved party who would be bound by the determination, 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 paragraph shall not relieve satellite carriers of the obligation under subsection (b)(1) to deposit the statement of account and royalty fees specified in that subsection. 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 and the statutory criteria set forth in paragraph (3)(D), that the Arbitration Panel or the Tribunal acted in an arbitrary manner. If the court modified the decision of the Tribunal, the court shall have jurisdiction to enter its own determination with respect to royalty fees, to order the repayment of any excess fees deposited under subsection (b)(1)(B), and to order the payment of any underpaid fees, and the interest pertaining respectively thereto, in accordance with its final judgment. The court may further vacate the decision of the Tribunal and remand the case for arbitration proceedings in accordance with paragraph (3).]

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CHAPTER 8—COPYRIGHT ROYALTY TRIBUNAL

Sec.
[801. Copyright Royalty Tribunal: Establishment and purpose.
[802. Membership of the Tribunal.
[803. Procedures of the Tribunal.]
801. Copyright arbitration royalty panels: establishment and purpose.
802. Membership and proceedings of copyright arbitration royalty panels.
* * * * * * *
[805. Staff of the Tribunal.
[806. Administrative support of the Tribunal.
[807. Deduction of costs of proceedings.
[808. Reports.

[809. Effective date of final determinations.
[810. Judicial review.]

[§ 801. Copyright Royalty Tribunal: Establishment and purpose

[(a) There is hereby created an independent Copyright Royalty Tribunal in the legislative branch.]

§ 801. Copyright arbitration royalty panels: establishment and purpose

(a) ESTABLISHMENT.—The Librarian of Congress, upon the recommendation of the Register of Copyrights, is authorized to appoint and convene copyright arbitration royalty panels.

(b) *PURPOSES.*—Subject to the provisions of this chapter, the purposes of the [Tribunal] *copyright arbitration royalty panels* shall be—

(1) * * *

(2) to make determinations concerning the adjustment of the copyright royalty rates in section 111 solely in accordance with the following provisions:

(A) The rates established by section 111(d)(1)(B) may be adjusted to reflect (i) national monetary inflation or deflation or (ii) changes in the average rates charged cable subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar level of the royalty fee per subscriber which existed as of the date of enactment of this Act: *Provided,* That if the average rates charged cable system subscribers for the basic service of providing secondary transmissions are changed so that the average rates exceed national monetary inflation, no change in the rates established by section 111(d)(1)(B) shall be permitted: *And provided further,* That no increase in the royalty fee shall be permitted based on any reduction in the average number of distant signal equivalents per subscriber. The [Commission] *copyright arbitration royalty panels* may consider all factors relating to the maintenance of such level of payments including, as an extenuating factor, whether the cable industry has been restrained by subscriber rate regulating authorities from increasing the rates for the basic service of providing secondary transmissions.

(B) In the event that the rules and regulations of the Federal Communications Commission are amended at any time after April 15, 1976, to permit the carriage by cable systems of additional television broadcast signals beyond the local service area of the primary transmitters of such signals, the royalty rates established by section 111(d)(1)(B) may be adjusted to insure that the rates for the additional distant signal equivalents resulting from such carriage are reasonable in the light of the changes effected by the amendment to such rules and regulations. In determining the reasonableness of rates proposed following an amendment of Federal Communications Commission rules and regulations, the [Copyright Royalty Tribunal]

copyright arbitration royalty panels shall consider, among other factors, the economic impact on copyright owners and users: *Provided,* That no adjustment in royalty rates shall be made under this subclause with respect to any distant signal equivalent or fraction thereof represented by (i) carriage of any signal permitted under the rules and regulations of the Federal Communications Commission in effect on April 15, 1976, or the carriage of a signal of the same type (that is, independent, network, or noncommercial educational) substituted for such permitted signal, or (ii) a television broadcast signal first carried after April 15, 1976, pursuant to an individual waiver of the rules and regulations of the Federal Communications Commission, as such rules and regulations were in effect on April 15, 1976.

(3) to distribute royalty fees deposited with the Register of Copyrights under sections 111, 116, and 119(b), and to determine, in cases where controversy exists, the distribution of such fees; and

[In determining whether a return to a copyright owner under section 116 is fair, appropriate weight shall be given to—

[(i) the rates previously determined by the Tribunal to provide a fair return to the copyright owner, and

[(ii) the rates contained in any license negotiated pursuant to section 116A of this title.]

(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 to determine the distribution of such payments.*

[(c) As soon as possible after the date of enactment of this Act, and no later than six months following such date, the President shall publish a notice announcing the initial appointments provided in section 802, and shall designate an order of seniority among the initially-appointed commissioners for purposes of section 802(b).]

(c) RULINGS.—The Librarian of Congress, upon the recommendation of the Register of Copyrights, may, before a copyright arbitration royalty panel is convened, make any necessary procedural or evidentiary rulings that would apply to the proceedings conducted by such panel.

[§ 802. Membership of the Tribunal

[(a) The Tribunal shall be composed of three Commissioners appointed by the President, by and with the advice and consent of the Senate. The term of office of any individual appointed as a Commissioner shall be seven years, except that a Commissioner may serve after the expiration of his or her term until a successor has taken office. Each Commissioner shall be compensated at the rate of pay in effect for level V of the Executive Schedule under section 5316 of title 5.

[(b) Upon convening the commissioners shall elect a chairman from among the commissioners appointed for a full seven-year term. Such chairman shall serve for a term of one year. Thereafter, the most senior commissioner who has not previously served as

chairman shall serve as chairman for a period of one year, except that, if all commissioners have served a full term as chairman, the most senior commissioner who has served the least number of terms as chairman shall be designated as chairman.

[(c) Any vacancy in the Tribunal shall not affect its powers and shall be filled, for the unexpired term of the appointment, in the same manner as the original appointment was made.

[§ 803. Procedures of the Tribunal

[(a) The Tribunal shall adopt regulations, not inconsistent with law, governing its procedure and methods of operation. Except as otherwise provided in this chapter, the Tribunal shall be subject to the provisions of the Administrative Procedure Act of June 11, 1946, as amended (c. 324, 60 Stat. 237, title 5, United States Code, chapter 5, subchapter II and chapter 7).

[(b) Every final determination of the Tribunal shall be published in the Federal Register. It shall state in detail the criteria that the Tribunal determined to be applicable to the particular proceeding, the various facts that it found relevant to its determination in that proceeding, and the specific reasons for its determination.]

§ 802. Membership and proceedings of copyright arbitration royalty panels

(a) COMPOSITION OF COPYRIGHT ARBITRATION ROYALTY PANELS.—A copyright arbitration royalty panel shall consist of 3 arbitrators selected by the Librarian of Congress pursuant to subsection (b).

(b) SELECTION OF ARBITRATION PANEL.—Not later than 10 days after publication of a notice initiating an arbitration proceeding under section 804, and in accordance with procedures specified by the Register of Copyrights, the Librarian of Congress shall, upon the recommendation of the Register of Copyrights, select 2 arbitrators from lists of arbitrators provided to the Librarian by parties participating in the arbitration and by professional arbitration associations or such similar organizations as the Librarian shall select. The 2 arbitrators so selected shall, within 10 days after their selection, choose a third arbitrator from the same lists, who shall serve as the chairperson of the arbitrators. If such 2 arbitrators fail to agree upon the selection of a third arbitrator, the Librarian of Congress shall promptly select the third arbitrator.

(c) ARBITRATION PROCEEDINGS.—Copyright arbitration royalty panels shall conduct arbitration proceedings, in accordance with such procedures as they may adopt, for the purpose of making their determinations in carrying out the purposes set forth in section 801. The arbitration panels shall act on the basis of a fully documented written record, prior decisions of the Copyright Royalty Tribunal, prior copyright arbitration panel determinations, and rulings by the Librarian of Congress under section 801(c). Any copyright owner who claims to be entitled to royalties under section 111, 116, or 119, or any interested copyright party who claims to be entitled to royalties under section 1006, may submit relevant information and proposals to the arbitration panels in proceedings applicable to such copyright owner or interested copyright party, and any other person participating in arbitration proceedings may submit such relevant information and proposals to the arbitration panel conducting the

proceedings. The parties to the proceedings shall bear the entire cost thereof in such manner and proportion as the arbitration panels shall direct.

(d) REPORT TO THE LIBRARIAN OF CONGRESS.—Not later than 180 days after publication of the notice initiating an arbitration proceeding, the copyright arbitration royalty panel conducting the proceeding shall report to the Librarian of Congress its determination concerning the royalty fee or distribution of royalty fees, as the case may be. Such report shall be accompanied by the written record, and shall set forth the facts that the arbitration panel found relevant to its determination.

(e) ACTION BY LIBRARIAN OF CONGRESS.—Within 60 days after receiving the report of a copyright arbitration royalty panel under subsection (d), the Librarian of Congress, upon the recommendation of the Register of Copyrights, shall adopt or reject the determination of the arbitration panel. The Librarian shall adopt the determination of the arbitration panel unless the Librarian finds that the determination is arbitrary. If the Librarian rejects the determination of the arbitration panel, the Librarian 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 the royalty fee or distribution of fees, as the case may be. The Librarian shall cause to be published in the Federal Register the determination of the arbitration panel, and the decision of the Librarian (including an order issued under the preceding sentence). The Librarian shall also publicize such determination and decision in such other manner as the Librarian considers appropriate. The Librarian shall also make the report of the arbitration panel and the accompanying record available for public inspection and copying.

(f) JUDICIAL REVIEW.—Any decision of the Librarian of Congress under subsection (e) with respect to a determination of an arbitration panel may be appealed, by any aggrieved party who would be bound by the determination, 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. If no appeal is brought within such 30-day period, the decision of the Librarian is final, and the royalty fee or determination with respect to the distribution of fees, as the case may be, shall take effect as set forth in the decision. The pendency of an appeal under this paragraph shall not relieve persons obligated to make royalty payments under section 111, 115, 116, 118, 119, or 1003 who would be affected by the determination on appeal to deposit the statement of account and royalty fees specified in those sections. The court shall have jurisdiction to modify or vacate a decision of the Librarian only if it finds, on the basis of the record before the Librarian, that the Librarian acted in an arbitrary manner. If the court modifies the decision of the Librarian, the court shall have jurisdiction to enter its own determination with respect to the amount or distribution of royalty fees and costs, to order the repayment of any excess fees, and to order the payment of any underpaid fees, and the interest pertaining respectively thereto, in accordance with its final judgment. The court may further vacate the decision of the arbitration panel and remand the case for arbitration proceedings in accordance with subsection (c).

(g) ADMINISTRATIVE MATTERS.—

(1) DEDUCTION OF COSTS FROM ROYALTY FEES.—The Librarian of Congress and the Register of Copyrights may, to the extend not otherwise provided under this title, deduct from royalty fees deposited or collected under this title the reasonable costs incurred by the Library of Congress and the Copyright Office under this chapter. Such deduction may be made before the fees are distributed to any copyright claimants.

(2) POSITIONS REQUIRED FOR ADMINISTRATION OF COMPULSORY LICENSING.—Section 307 of the Legislative Branch Appropriations Act, 1994, shall not apply to employee positions in the Library of Congress that are required to be filled in order to carry out section 111, 115, 116, 118, or 119 or chapter 10.

§ 804. Institution and conclusion of proceedings

[(a) With respect to proceedings under section 801(b)(1) concerning the adjustment of royalty rates as provided in sections 115 and 116, and with respect to proceedings under section 801(b)(2)(A) and (D)—

[(1) on January 1, 1980, the Chairman of the Tribunal shall cause to be published in the Federal Register notice of commencement of proceedings under this chapter; and

[(2) during the calendar years specified in the following schedule, any owner or user of a copyrighted work whose royalty rates are specified by this title, or by a rate established by the Tribunal, may file a petition with the Tribunal declaring that the petitioner requests an adjustment of the rate. The tribunal shall make a determination as to whether the applicant has a significant interest in the royalty rate in which an adjustment is requested. If the Tribunal determines that the petitioner has a significant interest, the Chairman shall cause notice of this determination, with the reasons therefor, to be published in the Federal Register, together with notice of commencement of proceedings under this chapter.

[(A) In proceedings under section 801(b)(2)(A) and (D), such petition may be filed during 1985 and in each subsequent fifth calendar year.

[(B) In proceedings under section 801(b)(1) concerning the adjustment of royalty rates as provided in section 115, such petition may be filed in 1987 and in each subsequent tenth calendar year.

[(C)(i) In proceedings under section 801(b)(1) concerning the adjustment of royalty rates as provided in section 116, such petition may be filed in 1990 and in each subsequent tenth calendar year, and at any time within 1 year after negotiated licenses authorized by section 116A are terminated or expire and are not replaced by subsequent agreements.

[(ii) If negotiated licenses authorized by section 116A come into force so as to supersede previous determinations of the Tribunal, as provided in section 116A(d), but thereafter are terminated or expire and are not replaced by subsequent agreements, the Tribunal shall, upon petition of any party to such terminated or expired negotiated license

agreement, promptly establish an interim royalty rate or rates for the public performance by means of a coin-operated phonorecord player of nondramatic musical works embodied in phonorecords which had been subject to the terminated or expired negotiated license agreement. Such interim royalty rate or rates shall be the same as the last such rate or rates and shall remain in force until the conclusion of proceedings to adjust the royalty rates applicable to such works, or until superseded by a new negotiated license agreement, as provided in section 116A(d).]

(a)(1) With respect to proceedings under section 801(b)(1) concerning the adjustment of royalty rates as provided in sections 115 and 116, and with respect to proceedings under subparagraphs (A) and (D) of section 801(b)(2), during the calendar years specified in the schedule set forth in paragraphs (2), (3), and (4), any owner or user of a copyrighted work whose royalty rates are specified by this title, established by the Copyright Royalty Tribunal before the date of the enactment of the Copyright Royalty Tribunal Reform Act of 1993, or established by a copyright arbitration royalty panel after such date of enactment, may file a petition with the Librarian of Congress declaring that the petitioner requests an adjustment of the rate. The Librarian of Congress shall, upon the recommendation of the Register of Copyrights, make a determination as to whether the petitioner has such a significant interest in the royalty rate in which an adjustment is requested. If the Librarian determines that the petitioner has such a significant interest, the Librarian shall cause notice of this determination, with the reasons therefor, to be published in the Federal Register, together with the notice of commencement of proceedings under this chapter.

(2) In proceedings under section 801(b)(2)(A) and (D), a petition described in paragraph (1) may be filed during 1995 and in each subsequent fifth calendar year.

(3) In proceedings under section 801(b)(1) concerning the adjustment of royalty rates as provided in section 115, a petition described in paragraph (1) may be filed in 1997 and in each subsequent tenth calendar year.

(4)(A) In proceedings under section 801 (b)(1) concerning the adjustment of royalty rates as provided in section 116, a petition described in paragraph (1) may be filed at any time within 1 year after negotiated licenses authorized by section 116 are terminated or expire and are not replaced by subsequent agreements.

(B) If a negotiated license authorized by section 116 is terminated or expires and is not replaced by another such license agreement which provides permission to use a quantity of musical works not substantially smaller than the quantity of such works performed on coin-operated phonorecord players during the 1-year period ending March 1, 1989, the Librarian of Congress shall, upon petition filed under paragraph (1) within 1 year after such termination or expiration, convene a copyright arbitration royalty panel. The arbitration panel shall promptly establish an interim royalty rate or rates for the public performance by means of a coin-operated phonorecord player of non-dramatic musical works embodied in phonorecords which had been subject to the terminated or expired negotiated license agreement. Such rate or rates shall be the same as the last

such rate or rates and shall remain in force until the conclusion of proceedings by the arbitration panel, in accordance with section 802, to adjust the royalty rates applicable to such works, or until superseded by a new negotiated license agreement, as provided in section 116(b).

(b) With respect to proceedings under [subclause] *subparagraph* (B) or (C) of section 801(b)(2), following an event described in either of those subsections, any owner or user of a copyrighted work whose royalty rates are specified by section 111, or by a rate established by the [Tribunal] *Copyright Royalty Tribunal or the Librarian of Congress*, may, within twelve months, file a petition with the [Tribunal] *Librarian* declaring that the petitioner requests an adjustment of the rate. In this event the [Tribunal] *Librarian* shall proceed as in subsection [(a)(2), above] *(a) of this section*. Any change in royalty rates made by the [Tribunal] *Copyright Royalty Tribunal or the Librarian of Congress* pursuant to this subsection may be reconsidered in 1980, 1985, and each fifth calendar year thereafter, in accordance with the provisions in section 801(b)(2)(B) or (C), as the case may be.

(c) With respect to proceedings under section 801(b)(1), concerning the determination of reasonable terms and rates of royalty payments as provided in section 118, the [Tribunal] *Librarian of Congress* shall proceed when and as provided by that section.

(d) With respect to proceedings under section 801(b)(3) or (4), concerning the distribution of royalty fees in certain circumstances under section 111, 116, 119, or 1007, the [Chairman of the Tribunal] *Librarian of Congress* shall, upon [determination by the Tribunal] *a determination* that a controversy exists concerning such distribution, cause to be published in the Federal Register notice of commencement of proceedings under this chapter.

[(e) All proceedings under this chapter shall be initiated without delay following publication of the notice specified in this section, and the Tribunal shall render its final decision in any such proceeding within one year from the date of such publication.

[§ 805. Staff of the Tribunal

[(a) The Tribunal is authorized to appoint and fix the compensation of such employees as may be necessary to carry out the provisions of this chapter, and to prescribe their functions and duties.

[(b) The Tribunal may procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5.

[§ 806. Administrative support of the Tribunal

[(a) The Library of Congress shall provide the Tribunal with necessary administrative services, including those related to budgeting, accounting, financial reporting, travel, personnel, and procurement. The Tribunal shall pay the Library for such services, either in advance or by reimbursement from the funds of the Tribunal, at amounts to be agreed upon between the Librarian and the Tribunal.

[(b) The Library of Congress is authorized to disburse funds for the Tribunal, under regulations prescribed jointly by the Librarian of Congress and the Tribunal and approved by the Comptroller General. Such regulations shall establish requirements and proce-

dures under which every voucher certified for payment by the Library of Congress under this chapter shall be supported with a certification by a duly authorized officer or employee of the Tribunal, and shall prescribe the responsibilities and accountability of said officers and employees of the Tribunal with respect to such certifications.

[§ 807. Deduction of costs of proceedings

[Before any funds are distributed pursuant to a final decision in a proceeding in question. Where the proceeding involving distribution of royalty fees, the Tribunal shall assess the reasonable costs of such proceeding.

[§ 808. Reports

[In addition to its publication of the reports of all final determinations as provided in section 803(b), the Tribunal shall make an annual report to the President and the Congress concerning the Tribunal's work during the preceding fiscal year, including a detailed fiscal statement of account.

[§ 809. Effective date of final determinations

[Any final determination by the Tribunal under this chapter shall become effective thirty days following its publication in the Federal Register as provided in section 803(b), unless prior to that time an appeal has been filed pursuant to section 810, to vacate, modify, or correct such determination, and notice of such appeal has been served on all parties who appeared before the Tribunal in the proceeding in question. Where the proceeding involves the distribution of royalty fees under sections[3] 111 or 116, the Tribunal shall, upon the expiration of such thirty-day period, distribute any royalty fees not subject to an appeal filed pursuant to section 810.

[§ 810. Judicial review

[Any final decision of the Tribunal in a proceeding under section 801(b) may be appealed to the United States Court of Appeals, within thirty days after its publication in the Federal Register by an aggrieved party. The judicial review of the decision shall be had, in accordance with chapter 7 of title 5, on the basis of the record before the Tribunal. No court shall have jurisdiction to review a final decision of the Tribunal except as provided in this section.]

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CHAPTER 10—DIGITAL AUDIO RECORDING DEVICES AND MEDIA

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Subchapter C—Royalty Payments

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§ 1004. Royalty payments

(a) DIGITAL AUDIO RECORDING DEVICES.—

(1) * * *

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(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] *Librarian of Congress* to increase the royalty maximum and, if more than 20 percent of the royalty payments are at the relevant royalty maximum, the [Tribunal] *Librarian of Congress* 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.

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§ 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 my funds remaining in such account and any subsequent deposits that would other wise 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 account of royalties under this chapter that are available for distribution.]

§ 1006. Entitlement to royalty payments

(a) * * *

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(c) ALLOCATION OF ROYALTY PAYMENT 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] *Librarian of Congress shall convene a copyright arbitration royalty panel which* 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) * * *

* * * * * * *

§ 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] *Librarian of Congress* a claim for payments collected during the preceding year in such form and manner as the [Tribunal] *Librarian of Congress* shall prescribe by regulation.

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(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] *Librarian of Congress* shall determine whether there exists a controversy concerning the distribution of royalty payments under section 1006(c). If the [Tribunal] *Librarian of Congress* determines that no such controversy exists, the [Tribunal] *Librarian of Congress.* 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.] *If the Librarian of Congress finds the existence of a controversy, the Librarian shall, pursuant to chapter 8 of this title, convene a copyright arbitration royalty panel to determine the distribution of royalty payments.* During the pendency of such a proceeding, the [Tribunal] *Librarian of Congress* 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] *Librarian of Congress* shall, before authorizing the distribution of such royalty payments, deduct [its reasonable administrative costs] *the reasonable administrative cost incurred by the Librarian* under this section.

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Subchapter D—Prohibition on Certain Infringement Actions, Remedies, and Arbitration

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§ 1010. Arbitration of certain disputes

(a) * * *

(b) INITIATION OF ARBRITATION PROCEEDINGS.—Parties agreeing to such arbitration shall file a petition with the [Copyright Royalty Tribunal] *Librarian of Congress* 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] *Librarian of Congress* 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] *Librarian of Congress* from a list of available arbitrators obtained from the American Arbitration Association or such similar organization as the [Tribunal] *Librarian of Congress* shall select, and from potential arbitrators listed in the parties' petition. The arbitrators selected under this subsection shall constitute an Arbitration Panel.

* * * * * * *

(e) REPORT TO [COPYRIGHT ROYALTY TRIBUNAL] *LIBRARIAN OF CONGRESS*.—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] *Librarian of Congress* 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] *LIBRARIAN OF CONGRESS*.—Within 60 days after receiving the report of the Arbitration Panel under subsection (e), the [Copyright Royalty Tribunal] *Librarian of Congress* shall adopt or reject the determination of the Panel. The [Tribunal] *Librarian of Congress* shall adopt the determination of the Panel unless the [Tribunal] *Librarian of Congress* finds that the determination is clearly erroneous. If the [Tribunal] *Librarian of Congress* rejects the determination of the Panel, the [Tribunal] *Librarian of Congress* 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] *the Librarian's* decision and the reasons therefor. The [Tribunal] *Librarian of Congress* shall cause to be published in the Federal Register the determination of the Panel and the decision of the [Tribunal] *Librarian of Congress* 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] *Librarian of Congress* 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] *decision of the Librarian of Congress*. The court shall have jurisdiction to modify or vacate a decision of the [Tribunal] *Librarian of Congress* only if it finds, on the basis of the record before the [Tribunal] *Librarian of Congress*, that the Arbitration Panel or the

[Tribunal] *Librarian of Congress* acted in an arbitrary manner. If the court modifies the decision of the [Tribunal] *Librarian of Congress*, 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] *Librarian of Congress* and remand the case for arbitration proceedings as provided in this section.

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