

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

# H. R. 1417

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IN THE SENATE OF THE UNITED STATES

MARCH 4, 2004

Received; read twice and referred to the Committee on the Judiciary

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## AN ACT

To amend title 17, United States Code, to replace copyright arbitration royalty panels with Copyright Royalty Judges, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Copyright Royalty and  
3 Distribution Reform Act of 2004”.

4 **SEC. 2. REFERENCE.**

5 Except as otherwise expressly provided, whenever in  
6 this Act an amendment or repeal is expressed in terms  
7 of an amendment to, or repeal of, a section or other provi-  
8 sion, the reference shall be considered to be made to a  
9 section or other provision of title 17, United States Code.

10 **SEC. 3. COPYRIGHT ROYALTY JUDGE AND STAFF.**

11 (a) IN GENERAL.—Chapter 8 is amended to read as  
12 follows:

13 **“CHAPTER 8—PROCEEDINGS BY**  
14 **COPYRIGHT ROYALTY JUDGES**

“Sec.

“801. Copyright Royalty Judges; appointment and functions.

“802. Copyright Royalty Judgeships; staff.

“803. Proceedings of Copyright Royalty Judges.

“804. Institution of proceedings.

“805. General rule for voluntarily negotiated agreements.

15 **“§ 801. Copyright Royalty Judges; appointment and**  
16 **functions**

17 “(a) APPOINTMENT.—The Librarian of Congress  
18 shall appoint 3 full-time Copyright Royalty Judges, and  
19 shall appoint one of the three as the Chief Copyright Roy-  
20 alty Judge. In making such appointments, the Librarian  
21 shall consult with the Register of Copyrights.

1       “(b) FUNCTIONS.—Subject to the provisions of this  
2 chapter, the functions of the Copyright Royalty Judges  
3 shall be as follows:

4           “(1) To make determinations and adjustments  
5 of reasonable terms and rates of royalty payments as  
6 provided in sections 112(e), 114, 115, 116, 118, 119  
7 and 1004. The rates applicable under sections  
8 114(f)(1)(B), 115, and 116 shall be calculated to  
9 achieve the following objectives:

10           “(A) To maximize the availability of cre-  
11 ative works to the public.

12           “(B) To afford the copyright owner a fair  
13 return for his or her creative work and the  
14 copyright user a fair income under existing eco-  
15 nomic conditions.

16           “(C) To reflect the relative roles of the  
17 copyright owner and the copyright user in the  
18 product made available to the public with re-  
19 spect to relative creative contribution, techno-  
20 logical contribution, capital investment, cost,  
21 risk, and contribution to the opening of new  
22 markets for creative expression and media for  
23 their communication.

1           “(D) To minimize any disruptive impact  
2           on the structure of the industries involved and  
3           on generally prevailing industry practices.

4           “(2) To make determinations concerning the  
5           adjustment of the copyright royalty rates under sec-  
6           tion 111 solely in accordance with the following pro-  
7           visions:

8           “(A) The rates established by section  
9           111(d)(1)(B) may be adjusted to reflect—

10           “(i) national monetary inflation or de-  
11           flation; or

12           “(ii) changes in the average rates  
13           charged cable subscribers for the basic  
14           service of providing secondary trans-  
15           missions to maintain the real constant dol-  
16           lar level of the royalty fee per subscriber  
17           which existed as of the date of October 19,  
18           1976,

19           except that—

20           “(I) if the average rates charged cable  
21           system subscribers for the basic service of  
22           providing secondary transmissions are  
23           changed so that the average rates exceed  
24           national monetary inflation, no change in

1 the rates established by section  
2 111(d)(1)(B) shall be permitted; and

3 “(II) no increase in the royalty fee  
4 shall be permitted based on any reduction  
5 in the average number of distant signal  
6 equivalents per subscriber.

7 The Copyright Royalty Judges may consider all  
8 factors relating to the maintenance of such level  
9 of payments, including, as an extenuating fac-  
10 tor, whether the industry has been restrained  
11 by subscriber rate regulating authorities from  
12 increasing the rates for the basic service of pro-  
13 viding secondary transmissions.

14 “(B) In the event that the rules and regu-  
15 lations of the Federal Communications Com-  
16 mission are amended at any time after April 8,  
17 1976, to permit the carriage by cable systems  
18 of additional television broadcast signals beyond  
19 the local service area of the primary transmit-  
20 ters of such signals, the royalty rates estab-  
21 lished by section 111(d)(1)(B) may be adjusted  
22 to insure that the rates for the additional dis-  
23 tant signal equivalents resulting from such car-  
24 riage are reasonable in the light of the changes  
25 effected by the amendment to such rules and

1 regulations. In determining the reasonableness  
2 of rates proposed following an amendment of  
3 Federal Communications Commission rules and  
4 regulations, the Copyright Royalty Judges shall  
5 consider, among other factors, the economic im-  
6 pact on copyright owners and users; except that  
7 no adjustment in royalty rates shall be made  
8 under this subparagraph with respect to any  
9 distant signal equivalent or fraction thereof rep-  
10 resented by—

11 “(i) carriage of any signal permitted  
12 under the rules and regulations of the Fed-  
13 eral Communications Commission in effect  
14 on April 15, 1976, or the carriage of a sig-  
15 nal of the same type (that is, independent,  
16 network, or noncommercial educational)  
17 substituted for such permitted signal; or

18 “(ii) a television broadcast signal first  
19 carried after April 15, 1976, pursuant to  
20 an individual waiver of the rules and regu-  
21 lations of the Federal Communications  
22 Commission, as such rules and regulations  
23 were in effect on April 15, 1976.

24 “(C) In the event of any change in the  
25 rules and regulations of the Federal Commu-

1           communications Commission with respect to syn-  
2           dicated and sports program exclusivity after  
3           April 15, 1976, the rates established by section  
4           111(d)(1)(B) may be adjusted to assure that  
5           such rates are reasonable in light of the  
6           changes to such rules and regulations, but any  
7           such adjustment shall apply only to the affected  
8           television broadcast signals carried on those  
9           systems affected by the change.

10           “(D) The gross receipts limitations estab-  
11           lished by section 111(d)(1)(C) and (D) shall be  
12           adjusted to reflect national monetary inflation  
13           or deflation or changes in the average rates  
14           charged cable system subscribers for the basic  
15           service of providing secondary transmissions to  
16           maintain the real constant dollar value of the  
17           exemption provided by such section, and the  
18           royalty rate specified therein shall not be sub-  
19           ject to adjustment.

20           “(3)(A) To authorize the distribution, under  
21           sections 111, 119, and 1007, of those royalty fees  
22           collected under sections 111, 119, and 1005, as the  
23           case may be, to the extent that the Copyright Roy-  
24           alty Judges have found that the distribution of such  
25           fees is not subject to controversy.

1           “(B) In cases where the Copyright Royalty  
2 Judges determine that controversy exists, the Copy-  
3 right Royalty Judges shall determine the distribu-  
4 tion of such fees, including partial distributions, in  
5 accordance with section 111, 119, or 1007, as the  
6 case may be.

7           “(C) the Copyright Royalty Judges shall make  
8 a partial distribution of such fees during the pend-  
9 ency of the proceeding under subparagraph (B) if all  
10 participants under section 803(b)(2) in the pro-  
11 ceeding that are entitled to receive those fees that  
12 are to be partially distributed—

13                   “(i) agree to such partial distribution;

14                   “(ii) sign an agreement obligating them to  
15 return any excess amounts to the extent nec-  
16 essary to comply with the final determination  
17 on the distribution of the fees made under sub-  
18 paragraph (B); and

19                   “(iii) file the agreement with the Copyright  
20 Royalty Judges.

21           “(D) The Copyright Royalty Judges and any  
22 other officer or employee acting in good faith in dis-  
23 tributing funds under subparagraph (C) shall not be  
24 held liable for the payment of any excess fees under  
25 subparagraph (C). The Copyright Royalty Judges

1 shall, at the time the final determination is made,  
2 calculate any such excess amounts.

3 “(4) To accept or reject royalty claims filed  
4 under section 111, 119, and 1007, on the basis of  
5 timeliness or the failure to establish the basis for a  
6 claim.

7 “(5) To accept or reject rate adjustment peti-  
8 tions as provided in section 804 and petitions to par-  
9 ticipate as provided in section 803(b)(1) and (2).

10 “(6) To determine the status of a digital audio  
11 recording device or a digital audio interface device  
12 under sections 1002 and 1003, as provided in sec-  
13 tion 1010.

14 “(7)(A) To adopt as the basis for statutory  
15 terms and rates or as a basis for the distribution of  
16 statutory royalty payments, an agreement con-  
17 cerning such matters reached among some or all of  
18 the participants in a proceeding at any time during  
19 the proceeding, except that—

20 “(i) the Copyright Royalty Judges shall  
21 provide to the other participants in the pro-  
22 ceeding under section 803(b)(2) that would be  
23 bound by the terms, rates, distribution, or other  
24 determination set by the agreement an oppor-  
25 tunity to comment on the agreement and object

1 to its adoption as the basis for statutory terms  
2 and rates or as a basis for the distribution of  
3 statutory royalty payments, as the case may be;  
4 and

5 “(ii) the Copyright Royalty Judges may  
6 decline to adopt the agreement as the basis for  
7 statutory terms and rates or as the basis for  
8 the distribution of statutory royalty payments,  
9 as the case may be, if any other participant de-  
10 scribed in subparagraph (A) objects to the  
11 agreement and the Copyright Royalty Judges  
12 find, based on the record before them, that the  
13 agreement is not likely to meet the statutory  
14 standard for setting the terms and rates, or for  
15 distributing the royalty payments, as the case  
16 may be.

17 “(B) License agreements voluntarily negotiated  
18 pursuant to section 112(e)(5), 114(f)(3),  
19 115(c)(3)(E)(i), 116(e), or 118(b)(2) that do not re-  
20 sult in statutory terms and rates shall not be subject  
21 to clauses (i) and (ii) of subparagraph (A).

22 “(c) RULINGS.—The Copyright Royalty Judges may  
23 make any necessary procedural or evidentiary rulings in  
24 any proceeding under this chapter and may, before com-  
25 mencing a proceeding under this chapter, make any such

1 rulings that would apply to the proceedings conducted by  
2 the Copyright Royalty Judges. The Copyright Royalty  
3 Judges may consult with the Register of Copyrights in  
4 making any rulings under section 802(f)(1).

5 “(d) ADMINISTRATIVE SUPPORT.—The Librarian of  
6 Congress shall provide the Copyright Royalty Judges with  
7 the necessary administrative services related to pro-  
8 ceedings under this chapter.

9 “(e) LOCATION IN LIBRARY OF CONGRESS.—The of-  
10 fices of the Copyright Royalty Judges and staff shall be  
11 in the Library of Congress.

12 **“§ 802. Copyright Royalty Judgeships; staff**

13 “(a) QUALIFICATIONS OF COPYRIGHT ROYALTY  
14 JUDGES.—Each Copyright Royalty Judge shall be an at-  
15 torney who has at least 7 years of legal experience. The  
16 Chief Copyright Royalty Judge shall have at least 5 years  
17 of experience in adjudications, arbitrations, or court trials.  
18 Of the other two Copyright Royalty Judges, one shall have  
19 significant knowledge of copyright law, and the other shall  
20 have significant knowledge of economics. An individual  
21 may serve as a Copyright Royalty Judge only if the indi-  
22 vidual is free of any financial conflict of interest under  
23 subsection (h). In this subsection, ‘adjudication’ has the  
24 meaning given that term in section 551 of title 5, but does  
25 not include mediation.

1           “(b) STAFF.—The Chief Copyright Royalty Judge  
2 shall hire 3 full-time staff members to assist the Copyright  
3 Royalty Judges in performing their functions.

4           “(c) TERMS.—The terms of the Copyright Royalty  
5 Judges shall each be 6 years, except of the individuals first  
6 appointed, the Chief Copyright Royalty Judge shall be ap-  
7 pointed to a term of 6 years, and of the remaining Copy-  
8 right Royalty Judges, one shall be appointed to a term  
9 of 2 years, and the other shall be appointed to a term  
10 of 4 years. An individual serving as a Copyright Royalty  
11 Judge may be reappointed to subsequent terms. The term  
12 of a Copyright Royalty Judge shall begin when the term  
13 of the predecessor of that Copyright Royalty Judge ends.  
14 When the term of office of a Copyright Royalty Judge  
15 ends, the individual serving that term may continue to  
16 serve until a successor is selected.

17           “(d) VACANCIES OR INCAPACITY.—

18           “(1) VACANCIES.—If a vacancy should occur in  
19 the position of Copyright Royalty Judge, the Librar-  
20 ian of Congress shall act expeditiously to fill the va-  
21 cancy, and may appoint an interim Copyright Roy-  
22 alty Judge to serve until another Copyright Royalty  
23 Judge is appointed under this section. An individual  
24 appointed to fill the vacancy occurring before the ex-  
25 piration of the term for which the predecessor of

1 that individual was appointed shall be appointed for  
2 the remainder of that term.

3 “(2) INCAPACITY.—In the case in which a  
4 Copyright Royalty Judge is temporarily unable to  
5 perform his or her duties, the Librarian of Congress  
6 may appoint an interim Copyright Royalty Judge to  
7 perform such duties during the period of such inca-  
8 pacity.

9 “(e) COMPENSATION.—

10 “(1) JUDGES.—The Chief Copyright Royalty  
11 Judge shall receive compensation at the rate of basic  
12 pay payable for level AL–1 for administrative law  
13 judges pursuant to section 5372(b) of title 5, and  
14 each of the other two Copyright Royalty Judges  
15 shall receive compensation at the rate of basic pay  
16 payable for level AL–2 for administrative law judges  
17 pursuant to such section. The compensation of the  
18 Copyright Royalty Judges shall not be subject to  
19 any regulations adopted by the Office of Personnel  
20 Management pursuant to its authority under section  
21 5376(b)(1) of title 5.

22 “(2) STAFF MEMBERS.—Of the staff members  
23 appointed under subsection (b)—

1           “(A) the rate of pay of one staff member  
2 shall be not more than the basic rate of pay  
3 payable for GS–15 of the General Schedule;

4           “(B) the rate of pay of one staff member  
5 shall be not less than the basic rate of pay pay-  
6 able for GS–13 of the General Schedule and not  
7 more than the basic rate of pay payable for  
8 GS–14 of such Schedule; and

9           “(C) the rate of pay for the third staff  
10 member shall be not less than the basic rate of  
11 pay payable for GS–8 of the General Schedule  
12 and not more than the basic rate of pay payable  
13 for GS–11 of such Schedule.

14       “(f) INDEPENDENCE OF COPYRIGHT ROYALTY  
15 JUDGE.—

16           “(1) IN MAKING DETERMINATIONS.—

17           “(A) IN GENERAL.—Subject to subpara-  
18 graph (B), the Copyright Royalty Judges shall  
19 have full independence in making determina-  
20 tions concerning adjustments and determina-  
21 tions of copyright royalty rates and terms, the  
22 distribution of copyright royalties, the accept-  
23 ance or rejection of royalty claims, rate adjust-  
24 ment petitions, and petitions to participate, and  
25 in issuing other rulings under this title, except

1 that the Copyright Royalty Judges may consult  
2 with the Register of Copyrights on any matter  
3 other than a question of fact. Any such con-  
4 sultations between the Copyright Royalty  
5 Judges and the Register of Copyright on any  
6 question of law shall be in writing or on the  
7 record.

8 “(B) NOVEL QUESTIONS.—(i) Notwith-  
9 standing the provisions of subparagraph (A), in  
10 any case in which the Copyright Royalty Judges  
11 in a proceeding under this title are presented  
12 with a novel question of law concerning an in-  
13 terpretation of those provisions of this title that  
14 are the subject of the proceeding, the Copyright  
15 Royalty Judges shall request the Register of  
16 Copyrights, in writing, to submit a written  
17 opinion on the resolution of such novel question.  
18 The Register shall submit and make public that  
19 opinion within such time period as the Copy-  
20 right Royalty Judges may prescribe. Any con-  
21 sultations under this subparagraph between the  
22 Copyright Royalty Judges and the Register of  
23 Copyrights shall be in writing or on the record.  
24 The opinion of the Register shall not be binding  
25 on the Copyright Royalty Judges, but the Copy-

1 right Royalty Judges shall take the opinion of  
2 the Register into account in making the judges'  
3 determination on the question concerned.

4 “(ii) In clause (i), a ‘novel question of law’  
5 is a question of law that has not been deter-  
6 mined in prior decisions, determinations, and  
7 rulings described in section 803(a).

8 “(2) PERFORMANCE APPRAISALS.—

9 “(A) IN GENERAL.—Notwithstanding any  
10 other provision of law or any regulation of the  
11 Library of Congress, and subject to subpara-  
12 graph (B), the Copyright Royalty Judges shall  
13 not receive performance appraisals.

14 “(B) RELATING TO SANCTION OR RE-  
15 MOVAL.—To the extent that the Librarian of  
16 Congress adopts regulations under subsection  
17 (h) relating to the sanction or removal of a  
18 Copyright Royalty Judge and such regulations  
19 require documentation to establish the cause of  
20 such sanction or removal, the Copyright Roy-  
21 alty Judge may receive an appraisal related  
22 specifically to the cause of the sanction or re-  
23 moval.

24 “(g) INCONSISTENT DUTIES BARRED.—No Copy-  
25 right Royalty Judge may undertake duties inconsistent

1 with his or her duties and responsibilities as Copyright  
2 Royalty Judge.

3 “(h) STANDARDS OF CONDUCT.—The Librarian of  
4 Congress shall adopt regulations regarding the standards  
5 of conduct, including financial conflict of interest and re-  
6 strictions against ex parte communications, which shall  
7 govern the Copyright Royalty Judges and the proceedings  
8 under this chapter.

9 “(i) REMOVAL OR SANCTION.—The Librarian of Con-  
10 gress may sanction or remove a Copyright Royalty Judge  
11 for violation of the standards of conduct adopted under  
12 subsection (h), misconduct, neglect of duty, or any dis-  
13 qualifying physical or mental disability. Any such sanction  
14 or removal may be made only after notice and opportunity  
15 for a hearing, but the Librarian of Congress may suspend  
16 the Copyright Royalty Judge during the pendency of such  
17 hearing. The Librarian shall appoint an interim Copyright  
18 Royalty Judge during the period of any such suspension.

19 **“§ 803. Proceedings of Copyright Royalty Judges**

20 “(a) PROCEEDINGS.—

21 “(1) IN GENERAL.—The Copyright Royalty  
22 Judges shall act in accordance with this title, and to  
23 the extent not inconsistent with this title, in accord-  
24 ance with subchapter II of chapter 5 of title 5, in  
25 carrying out the purposes set forth in section 801.

1 The Copyright Royalty Judges shall act in accord-  
2 ance with regulations issued by the Copyright Roy-  
3 alty Judges and on the basis of a fully documented  
4 written record, prior decisions of the Copyright Roy-  
5 alty Tribunal, prior copyright arbitration royalty  
6 panel determinations, rulings by the Librarian of  
7 Congress before the effective date of the Copyright  
8 Royalty and Distribution Reform Act of 2004, prior  
9 determinations of Copyright Royalty Judges under  
10 this chapter, and decisions of the court in appeals  
11 under this chapter before, on, or after such effective  
12 date. Any participant in a proceeding under sub-  
13 section (b)(2) may submit relevant information and  
14 proposals to the Copyright Royalty Judges.

15 “(2) JUDGES ACTING AS PANEL AND INDIVID-  
16 UALLY.—The Copyright Royalty Judges shall pre-  
17 side over hearings in proceedings under this chapter  
18 en banc. The Chief Copyright Royalty Judge may  
19 designate a Copyright Royalty Judge to preside indi-  
20 vidualy over such collateral and administrative pro-  
21 ceedings, and over such proceedings under para-  
22 graphs (1) through (5) of subsection (b), as the  
23 Chief Judge considers appropriate.

24 “(3) DETERMINATIONS.—Final determinations  
25 of the Copyright Royalty Judges in proceedings

1 under this chapter shall be made by majority vote.  
2 A Copyright Royalty Judge dissenting from the ma-  
3 jority on any determination under this chapter may  
4 issue his or her dissenting opinion, which shall be in-  
5 cluded with the determination.

6 “(b) PROCEDURES.—

7 “(1) INITIATION.—

8 “(A) CALL FOR PETITIONS TO PARTICI-  
9 PATE.—(i) Promptly upon the filing of a peti-  
10 tion for a rate adjustment or determination  
11 under section 804(a) or 804(b)(8), or by no  
12 later than January 5 of a year specified in sec-  
13 tion 804 for the commencement of a proceeding  
14 if a petition has not been filed by that date, the  
15 Copyright Royalty Judges shall cause to be  
16 published in the Federal Register notice of com-  
17 mencement of proceedings under this chapter  
18 calling for the filing of petitions to participate  
19 in a proceeding under this chapter for the pur-  
20 pose of making the relevant determination  
21 under section 111, 112, 114, 115, 116, 118,  
22 119, 1004 or 1007, as the case may be.

23 “(ii) Petitions to participate shall be filed  
24 by no later than 30 days after publication of  
25 notice of commencement of a proceeding, under

1 clause (i), except that the Copyright Royalty  
2 Judges may, for substantial good cause shown  
3 and if there is no prejudice to the participants  
4 that have already filed petitions, accept late pe-  
5 titions to participate at any time up to the date  
6 that is 90 days before the date on which par-  
7 ticipants in the proceeding are to file their writ-  
8 ten direct statements.

9 “(B) PETITIONS TO PARTICIPATE.—Each  
10 petition to participate in a proceeding shall de-  
11 scribe the petitioner’s interest in the subject  
12 matter of the proceeding. Parties with similar  
13 interests may file a single petition to partici-  
14 pate.

15 “(2) PARTICIPATION IN GENERAL.—Subject to  
16 paragraph (4), a person may participate in a pro-  
17 ceeding under this chapter, including through the  
18 submission of briefs or other information, only if—

19 “(A) that person has filed a petition to  
20 participate in accordance with paragraph (1)  
21 (either individually or as a group under para-  
22 graph (1)(B)), together with a filing fee of  
23 \$150;

1           “(B) the Copyright Royalty Judges have  
2 not determined that the petition to participate  
3 is facially invalid; and

4           “(C) the Copyright Royalty Judges have  
5 not determined, sua sponte or on the motion of  
6 another participant in the proceeding, that the  
7 person lacks a significant interest in the pro-  
8 ceeding.

9           “(3) VOLUNTARY NEGOTIATION PERIOD.—

10           “(A) IN GENERAL.—Promptly after the  
11 date for filing of petitions to participate in a  
12 proceeding, the Copyright Royalty Judges shall  
13 make available to all participants in the pro-  
14 ceeding a list of such participants and shall ini-  
15 tiate a voluntary negotiation period among the  
16 participants.

17           “(B) LENGTH OF PROCEEDINGS.—The vol-  
18 untary negotiation period initiated under sub-  
19 paragraph (A) shall be 3 months.

20           “(C) DETERMINATION OF SUBSEQUENT  
21 PROCEEDINGS.—At the close of the voluntary  
22 negotiation proceedings, the Copyright Royalty  
23 Judges shall, if further proceedings under this  
24 chapter are necessary, determine whether and

1 to what extent paragraphs (4) and (5) will  
2 apply to the parties.

3 “(4) SMALL CLAIMS PROCEDURE IN DISTRIBUTION PROCEEDINGS.—  
4

5 “(A) IN GENERAL.—If, in a proceeding  
6 under this chapter to determine the distribution  
7 of royalties, a participant in the proceeding as-  
8 serts that the contested amount of the claim is  
9 \$10,000 or less, the Copyright Royalty Judges  
10 shall decide the controversy on the basis of the  
11 filing in writing of the initial claim, the initial  
12 response by any opposing participant, and one  
13 additional response by each such party. The  
14 participant asserting the claim shall not be re-  
15 quired to pay the filing fee under paragraph  
16 (2).

17 “(B) BAD FAITH INFLATION OF CLAIM.—  
18 If the Copyright Royalty Judges determine that  
19 a participant asserts in bad faith an amount in  
20 controversy in excess of \$10,000 for the pur-  
21 pose of avoiding a determination under the pro-  
22 cedure set forth in subparagraph (A), the Copy-  
23 right Royalty Judges shall impose a fine on  
24 that participant in an amount not to exceed the  
25 difference between the actual amount distrib-

1           uted and the amount asserted by the partici-  
2           pant.

3           “(5) PAPER PROCEEDINGS IN RATEMAKING  
4           PROCEEDINGS.—The Copyright Royalty Judges in  
5           proceedings under this chapter to determine royalty  
6           rates may decide, sua sponte or upon motion of a  
7           participant, to determine issues on the basis of ini-  
8           tial filings in writing, initial responses by any oppos-  
9           ing participant, and one additional response by each  
10          such participant. Prior to making such decision to  
11          proceed on such a paper record only, the Copyright  
12          Royalty Judges shall offer to all parties to the pro-  
13          ceeding the opportunity to comment on the decision.  
14          The procedure under this paragraph—

15                 “(A) shall be applied in cases in which  
16                 there is no genuine issue of material fact, there  
17                 is no need for evidentiary hearings, and all par-  
18                 ticipants in the proceeding agree in writing to  
19                 the procedure; and

20                 “(B) may be applied under such other cir-  
21                 cumstances as the Copyright Royalty Judges  
22                 consider appropriate.

23          “(6) REGULATIONS.—

24                 “(A) IN GENERAL.—The Copyright Roy-  
25                 alty Judges may issue regulations to carry out

1           their functions under this title. Not later than  
2           120 days after Copyright Royalty Judges or in-  
3           terim Copyright Royalty Judges, as the case  
4           may be, are first appointed after the enactment  
5           of the Copyright Royalty and Distribution Re-  
6           form Act of 2004, such judges shall issue regu-  
7           lations to govern proceedings under this chap-  
8           ter.

9           “(B) INTERIM REGULATIONS.—Until regu-  
10          lations are adopted under subparagraph (A),  
11          the Copyright Royalty Judges shall apply the  
12          regulations in effect under this chapter on the  
13          day before the effective date of the Copyright  
14          Royalty and Distribution Reform Act of 2004,  
15          to the extent such regulations are not incon-  
16          sistent with this chapter, except that functions  
17          carried out under such regulations by the Li-  
18          brarian of Congress, the Register of Copyrights,  
19          or copyright arbitration royalty panels that, as  
20          of such date of enactment, are to be carried out  
21          by the Copyright Royalty Judges under this  
22          chapter, shall be carried out by the Copyright  
23          Royalty Judges under such regulations.

1           “(C) REQUIREMENTS.—Regulations issued  
2           under subparagraph (A) shall include the fol-  
3           lowing:

4           “(i) The written direct statements of  
5           all participants in a proceeding under  
6           paragraph (2) shall be filed by a date spec-  
7           ified by the Copyright Royalty Judges,  
8           which may be no earlier than four months,  
9           and no later than five months, after the  
10          end of the voluntary negotiation period  
11          under paragraph (3). Notwithstanding the  
12          preceding sentence, a participant in a pro-  
13          ceeding may, within 15 days after the end  
14          of the discovery period specified in clause  
15          (iii), file an amended written direct state-  
16          ment based on new information received  
17          during the discovery process.

18          “(ii)(I) Following the submission to  
19          the Copyright Royalty Judges of written  
20          direct statements by the participants in a  
21          proceeding under paragraph (2), the  
22          judges shall meet with the participants for  
23          the purpose of setting a schedule for con-  
24          ducting and completing discovery. Such

1 schedule shall be determined by the Copy-  
2 right Royalty Judges.

3 “(II) In this chapter, the term ‘writ-  
4 ten direct statements’ means witness state-  
5 ments, testimony, and exhibits to be pre-  
6 sented in the proceedings, and such other  
7 information that is necessary to establish  
8 terms and rates, or the distribution of roy-  
9 alty payments, as the case may be, as set  
10 forth in regulations issued by the Copy-  
11 right Royalty Judges.

12 “(iii) Hearsay may be admitted in  
13 proceedings under this chapter to the ex-  
14 tent deemed appropriate by the Copyright  
15 Royalty Judges.

16 “(iv) Discovery in such proceedings  
17 shall be permitted for a period of 60 days,  
18 except for discovery ordered by the Copy-  
19 right Royalty Judges in connection with  
20 the resolution of motions, orders and dis-  
21 putes pending at the end of such period.

22 “(v) Any participant under paragraph  
23 (2) in a proceeding under this chapter to  
24 determine royalty rates may, upon written  
25 notice, seek discovery of information and

1 materials relevant and material to the pro-  
2 ceeding. Any objection to any such dis-  
3 covery request shall be resolved by a mo-  
4 tion or request to compel discovery made  
5 to the Copyright Royalty Judges. Each  
6 motion or request to compel discovery shall  
7 be determined by the Copyright Royalty  
8 Judges, or by a Copyright Royalty Judge  
9 when permitted under subsection (a)(2),  
10 who may approve the request only if the  
11 evidence that would be produced is relevant  
12 and material. A Copyright Royalty Judge  
13 may refuse a request to compel discovery  
14 of evidence that has been found to be rel-  
15 evant and material, only upon good cause  
16 shown. For purposes of the preceding sen-  
17 tence, the basis for ‘good cause’ may only  
18 be that—

19 “(I) the discovery sought is un-  
20 reasonably cumulative or duplicative,  
21 or is obtainable from another source  
22 that is more convenient, less burden-  
23 some, or less expensive;

24 “(II) the participant seeking dis-  
25 covery has had ample opportunity by

1 discovery in the action to obtain the  
2 information sought; or

3 “(III) the burden or expense of  
4 the proposed discovery outweighs its  
5 likely benefit, taking into account the  
6 needs and resources of the partici-  
7 pants, the importance of the issues at  
8 stake, and the importance of the pro-  
9 posed discovery in resolving the  
10 issues.

11 “(vi) The rules in effect on the day  
12 before the effective date of the Copyright  
13 Royalty and Distribution Reform Act of  
14 2004, relating to discovery in proceedings  
15 under this title to determine the distribu-  
16 tion of royalty fees, shall continue to apply  
17 to such proceedings on and after such ef-  
18 fective date.

19 “(vii) The Copyright Royalty Judges  
20 may issue subpoenas requiring the produc-  
21 tion of evidence or witnesses, but only if  
22 the evidence requested to be produced or  
23 that would be proffered by the witness is  
24 relevant and material.

1           “(viii) The Copyright Royalty Judges  
2           shall order a settlement conference among  
3           the participants in the proceeding to facili-  
4           tate the presentation of offers of settle-  
5           ment among the participants. The settle-  
6           ment conference shall be held during a 21-  
7           day period following the end of the dis-  
8           covery period.

9           “(c) DETERMINATION OF COPYRIGHT ROYALTY  
10 JUDGES.—

11           “(1) TIMING.—The Copyright Royalty Judges  
12           shall issue their determination in a proceeding not  
13           later than 11 months after the conclusion of the 21-  
14           day settlement conference period under subsection  
15           (b)(3)(C)(vi), but, in the case of a proceeding to de-  
16           termine successors to rates or terms that expire on  
17           a specified date, in no event later than 15 days be-  
18           fore the expiration of the then current statutory  
19           rates and terms.

20           “(2) REHEARINGS.—

21           “(A) IN GENERAL.—The Copyright Roy-  
22           alty Judges may, in exceptional cases, upon mo-  
23           tion of a participant under subsection (b)(2),  
24           order a rehearing, after the determination in a  
25           proceeding is issued under paragraph (1), on

1 such matters as the Copyright Royalty Judges  
2 determine to be appropriate.

3 “(B) TIMING FOR FILING MOTION.—Any  
4 motion for a rehearing under subparagraph (A)  
5 may only be filed within 15 days after the date  
6 on which the Copyright Royalty Judges deliver  
7 their initial determination concerning rates and  
8 terms to the participants in the proceeding.

9 “(C) PARTICIPATION BY OPPOSING PARTY  
10 NOT REQUIRED.—In any case in which a re-  
11 hearing is ordered, any opposing party shall not  
12 be required to participate in the rehearing.

13 “(D) NO NEGATIVE INFERENCE.—No neg-  
14 ative inference shall be drawn from lack of par-  
15 ticipation in a rehearing.

16 “(E) CONTINUITY OF RATES AND  
17 TERMS.—(i) If the decision of the Copyright  
18 Royalty Judges on any motion for a rehearing  
19 is not rendered before the expiration of the  
20 statutory rates and terms that were previously  
21 in effect, in the case of a proceeding to deter-  
22 mine successors to rates and terms that expire  
23 on a specified date, then—

24 “(I) the initial determination of the  
25 Copyright Royalty Judges that is the sub-

1           ject of the rehearing motion shall be effec-  
2           tive as of the day following the date on  
3           which the rates and terms that were pre-  
4           viously in effect expire; and

5           “(II) in the case of a proceeding  
6           under section 114(f)(1)(C) or 114(f)(2)(C),  
7           royalty rates and terms shall, for purposes  
8           of section 114(f)(4)(B), be deemed to have  
9           been set at those rates and terms con-  
10          tained in the initial determination of the  
11          Copyright Royalty Judges that is the sub-  
12          ject of the rehearing motion, as of the date  
13          of that determination.

14          “(ii) The pendency of a motion for a re-  
15          hearing under this paragraph shall not relieve  
16          persons obligated to make royalty payments  
17          who would be affected by the determination on  
18          that motion from providing the statements of  
19          account and any reports of use, to the extent  
20          required, and paying the royalties required  
21          under the relevant determination or regulations.

22          “(iii) Notwithstanding clause (ii), whenever  
23          royalties described in clause (ii) are paid to a  
24          person other than the Copyright Office, the en-  
25          tity designated by the Copyright Royalty

1 Judges to which such royalties are paid by the  
2 copyright user (and any successor thereto)  
3 shall, within 60 days after the motion for re-  
4 hearing is resolved or, if the motion is granted,  
5 within 60 days after the rehearing is concluded,  
6 return any excess amounts previously paid to  
7 the extent necessary to comply with the final  
8 determination of royalty rates by the Copyright  
9 Royalty Judges.

10 “(3) CONTENTS OF DETERMINATION.—A deter-  
11 mination of the Copyright Royalty Judges shall be  
12 accompanied by the written record, and shall set  
13 forth the facts that the Copyright Royalty Judges  
14 found relevant to their determination. Among other  
15 terms adopted in a determination, the Copyright  
16 Royalty Judges may specify notice and record-  
17 keeping requirements of users of the copyrights at  
18 issue that apply in lieu of those that would otherwise  
19 apply under regulations.

20 “(4) CONTINUING JURISDICTION.—The Copy-  
21 right Royalty Judges may amend the determination  
22 or the regulations issued pursuant to the determina-  
23 tion in order to correct any technical errors in the  
24 determination or to respond to unforeseen cir-

1       cumstances that preclude the proper effectuation of  
2       the determination.

3               “(5) PROTECTIVE ORDER.—The Copyright Roy-  
4       alty Judges may issue such orders as may be appro-  
5       priate to protect confidential information, including  
6       orders excluding confidential information from the  
7       record of the determination that is published or  
8       made available to the public, except that any terms  
9       or rates of royalty payments or distributions may  
10      not be excluded.

11              “(6) PUBLICATION OF DETERMINATION.—The  
12      Librarian of Congress shall cause the determination,  
13      and any corrections thereto, to be published in the  
14      Federal Register. The Librarian of Congress shall  
15      also publicize the determination and corrections in  
16      such other manner as the Librarian considers appro-  
17      priate, including, but not limited to, publication on  
18      the Internet. The Librarian of Congress shall also  
19      make the determination, corrections, and the accom-  
20      panying record available for public inspection and  
21      copying.

22              “(d) JUDICIAL REVIEW.—

23              “(1) APPEAL.—Any determination of the Copy-  
24      right Royalty Judges under subsection (c) may,  
25      within 30 days after the publication of the deter-

1       mination in the Federal Register, be appealed, to the  
2       United States Court of Appeals for the District of  
3       Columbia Circuit, by any aggrieved participant in  
4       the proceeding under subsection (b)(2) who fully  
5       participated in the proceeding and who would be  
6       bound by the determination. If no appeal is brought  
7       within that 30-day period, the determination of the  
8       Copyright Royalty Judges shall be final, and the  
9       royalty fee or determination with respect to the dis-  
10      tribution of fees, as the case may be, shall take ef-  
11      fect as set forth in paragraph (2).

12             “(2) EFFECT OF RATES.—

13                     “(A) EXPIRATION ON SPECIFIED DATE.—

14             When this title provides that the royalty rates  
15             and terms that were previously in effect are to  
16             expire on a specified date, any adjustment or  
17             determination by the Copyright Royalty Judges  
18             of successor rates and terms for an ensuing  
19             statutory license period shall be effective as of  
20             the day following the date of expiration of the  
21             rates and terms that were previously in effect,  
22             even if the determination of the Copyright Roy-  
23             alty Judges is rendered on a later date.

24                     “(B) OTHER CASES.—In cases where rates  
25             and terms do not expire on a specified date or

1 have not yet been established, successor or new  
2 rates or terms shall take effect on the first day  
3 of the second month that begins after the publi-  
4 cation of the determination of the Copyright  
5 Royalty Judges in the Federal Register, except  
6 as otherwise provided in this title, and the rates  
7 and terms previously in effect, to the extent ap-  
8 plicable, shall remain in effect until such suc-  
9 cessor rates and terms become effective.

10 “(C) OBLIGATION TO MAKE PAYMENTS.—

11 (i) The pendency of an appeal under this sub-  
12 section shall not relieve persons obligated to  
13 make royalty payments under section 111, 112,  
14 114, 115, 116, 118, 119, or 1003, who would  
15 be affected by the determination on appeal,  
16 from providing the statements of account (and  
17 any report of use, to the extent required) and  
18 paying the royalties required under the relevant  
19 determination or regulations.

20 “(ii) Notwithstanding clause (i), whenever  
21 royalties described in clause (i) are paid to a  
22 person other than the Copyright Office, the en-  
23 tity designated by the Copyright Royalty  
24 Judges to which such royalties are paid by the  
25 copyright user (and any successor thereto)

1 shall, within 60 days after the final resolution  
2 of the appeal, return any excess amounts pre-  
3 viously paid (and interest thereon, if ordered  
4 pursuant to paragraph (3)) to the extent nec-  
5 essary to comply with the final determination of  
6 royalty rates on appeal.

7 “(3) JURISDICTION OF COURT.—If the court,  
8 pursuant to section 706 of title 5, modifies or va-  
9 cates a determination of the Copyright Royalty  
10 Judges, the court may enter its own determination  
11 with respect to the amount or distribution of royalty  
12 fees and costs, and order the repayment of any ex-  
13 cess fees, the payment of any underpaid fees, and  
14 the payment of interest pertaining respectively there-  
15 to, in accordance with its final judgment. The court  
16 may also vacate the determination of the Copyright  
17 Royalty Judges and remand the case to the Copy-  
18 right Royalty Judges for further proceedings in ac-  
19 cordance with subsection (a).

20 “(e) ADMINISTRATIVE MATTERS.—

21 “(1) DEDUCTION OF COSTS OF LIBRARY OF  
22 CONGRESS AND COPYRIGHT OFFICE FROM FILING  
23 FEES.—

24 “(A) DEDUCTION FROM FILING FEES.—

25 The Librarian of Congress may, to the extent

1 not otherwise provided under this title, deduct  
2 from the filing fees collected under subsection  
3 (b) for a particular proceeding under this chap-  
4 ter the reasonable costs incurred by the Librar-  
5 ian of Congress, the Copyright Office, and the  
6 Copyright Royalty Judges in conducting that  
7 proceeding, other than the salaries of the Copy-  
8 right Royalty Judges and the 3 staff members  
9 appointed under section 802(b).

10 “(B) AUTHORIZATION OF APPROPRIA-  
11 TIONS.—There are authorized to be appro-  
12 priated such sums as may be necessary to pay  
13 the costs of proceedings under this chapter not  
14 covered by the filing fees collected under sub-  
15 section (b). All funds made available pursuant  
16 to this subparagraph shall remain available  
17 until expended.

18 “(2) POSITIONS REQUIRED FOR ADMINISTRA-  
19 TION OF COMPULSORY LICENSING.—Section 307 of  
20 the Legislative Branch Appropriations Act, 1994,  
21 shall not apply to employee positions in the Library  
22 of Congress that are required to be filled in order  
23 to carry out section 111, 112, 114, 115, 116, 118,  
24 or 119 or chapter 10.

1 **“§ 804. Institution of proceedings**

2       “(a) FILING OF PETITION.—With respect to pro-  
3 ceedings referred to in paragraphs (1) and (2) of section  
4 801(b) concerning the determination or adjustment of roy-  
5 alty rates as provided in sections 111, 112, 114, 115, 116,  
6 118, and 1004, during the calendar years specified in the  
7 schedule set forth in subsection (b), any owner or user  
8 of a copyrighted work whose royalty rates are specified  
9 by this title, or are established under this chapter before  
10 or after the enactment of the Copyright Royalty and Dis-  
11 tribution Reform Act of 2004, may file a petition with the  
12 Copyright Royalty Judges declaring that the petitioner re-  
13 quests a determination or adjustment of the rate. The  
14 Copyright Royalty Judges shall make a determination as  
15 to whether the petitioner has such a significant interest  
16 in the royalty rate in which a determination or adjustment  
17 is requested. If the Copyright Royalty Judges determine  
18 that the petitioner has such a significant interest, the  
19 Copyright Royalty Judges shall cause notice of this deter-  
20 mination, with the reasons therefor, to be published in the  
21 Federal Register, together with the notice of commence-  
22 ment of proceedings under this chapter. With respect to  
23 proceedings under paragraph (1) of section 801(b) con-  
24 cerning the determination or adjustment of royalty rates  
25 as provided in sections 112 and 114, during the calendar  
26 years specified in the schedule set forth in subsection (b),

1 the Copyright Royalty Judges shall cause notice of com-  
2 mencement of proceedings under this chapter to be pub-  
3 lished in the Federal Register as provided in section  
4 803(b)(1)(A).

5 “(b) TIMING OF PROCEEDINGS.—

6 “(1) SECTION 111 PROCEEDINGS.—(A) A peti-  
7 tion described in subsection (a) to initiate pro-  
8 ceedings under section 801(b)(2) concerning the ad-  
9 justment of royalty rates under section 111 to which  
10 subparagraph (A) or (D) of section 801(b)(2) ap-  
11 plies may be filed during the year 2005 and in each  
12 subsequent fifth calendar year.

13 “(B) In order to initiate proceedings under sec-  
14 tion 801(b)(2) concerning the adjustment of royalty  
15 rates under section 111 to which subparagraph (B)  
16 or (C) of section 801(b)(2) applies, within 12  
17 months after an event described in either of those  
18 subsections, any owner or user of a copyrighted  
19 work whose royalty rates are specified by section  
20 111, or by a rate established under this chapter be-  
21 fore or after the enactment of the Copyright Royalty  
22 and Distribution Reform Act of 2004, may file a pe-  
23 tition with the Copyright Royalty Judges declaring  
24 that the petitioner requests an adjustment of the  
25 rate. The Copyright Royalty Judges shall then pro-

1       ceed as set forth in subsection (a) of this section.  
2       Any change in royalty rates made under this chapter  
3       pursuant to this subparagraph may be reconsidered  
4       in the year 2005, and each fifth calendar year there-  
5       after, in accordance with the provisions in section  
6       801(b)(3)(B) or (C), as the case may be. A petition  
7       for adjustment of rates under section 11(d)(1)(B) as  
8       a result of a change is the rules and regulations of  
9       the Federal Communications Commission shall set  
10      forth the change on which the petition is based.

11           “(C) Any adjustment of royalty rates under sec-  
12      tion 111 shall take effect as of the first accounting  
13      period commencing after the publication of the de-  
14      termination of the Copyright Royalty Judges in the  
15      Federal Register, or on such other date as is speci-  
16      fied in that determination.

17           “(2) CERTAIN SECTION 112 PROCEEDINGS.—  
18      Proceedings under this chapter shall be commenced  
19      in the year 2007 to determine reasonable terms and  
20      rates of royalty payments for the activities described  
21      in section 112(e)(1) relating to the limitation on ex-  
22      clusive rights specified by section 114(d)(1)(C)(iv),  
23      to become effective on January 1, 2009. Such pro-  
24      ceedings shall be repeated in each subsequent fifth  
25      calendar year.

1           “(3) SECTION 114 AND CORRESPONDING 112  
2 PROCEEDINGS.—

3           “(A) FOR ELIGIBLE NONSUBSCRIPTION  
4 SERVICES AND NEW SUBSCRIPTION SERVICES.—

5 Proceedings under this chapter shall be com-  
6 menced as soon as practicable after the effective  
7 date of the Copyright Royalty and Distribution  
8 Reform Act of 2004 to determine reasonable  
9 terms and rates of royalty payments under sec-  
10 tions 114 and 112 for the activities of eligible  
11 nonsubscription transmission services and new  
12 subscription services, to be effective for the pe-  
13 riod beginning on January 1, 2006, and ending  
14 on December 31, 2010. Such proceedings shall  
15 next be commenced in January 2009 to deter-  
16 mine reasonable terms and rates of royalty pay-  
17 ments, to become effective on January 1, 2011.  
18 Thereafter, such proceedings shall be repeated  
19 in each subsequent fifth calendar year.

20           “(B) FOR PREEXISTING SUBSCRIPTION  
21 AND SATELLITE DIGITAL AUDIO RADIO SERV-  
22 ICES.—Proceedings under this chapter shall be  
23 commenced in January 2006 to determine rea-  
24 sonable terms and rates of royalty payments  
25 under sections 114 and 112 for the activities of

1 preexisting subscription services, to be effective  
2 during the period beginning on January 1,  
3 2008, and ending on December 31, 2012, and  
4 preexisting satellite digital audio radio services,  
5 to be effective during the period beginning on  
6 January 1, 2007, and ending on December 31,  
7 2012. Such proceedings shall next be com-  
8 menced in 2011 to determine reasonable terms  
9 and rates of royalty payments, to become effec-  
10 tive on January 1, 2013. Thereafter, such pro-  
11 ceedings shall be repeated in each subsequent  
12 fifth calendar year.

13 “(C)(i) Notwithstanding any other provi-  
14 sion of this chapter, this subparagraph shall  
15 govern proceedings commenced pursuant to sec-  
16 tions 114(f)(1)(C) and 114(f)(2)(C) concerning  
17 new types of services.

18 “(ii) Not later than 30 days after a peti-  
19 tion to determine rates and terms for a new  
20 type of service that is filed by any copyright  
21 owner of sound recordings, or such new type of  
22 service, indicating that such new type of service  
23 is or is about to become operational, the Copy-  
24 right Royalty Judges shall issue a notice for a

1 proceeding to determine rates and terms for  
2 such service.

3 “(iii) The proceeding shall follow the  
4 schedule set forth in such subsections (b), (c),  
5 and (d) of section 803, except that—

6 “(I) the determination shall be issued  
7 by not later than 24 months after the pub-  
8 lication of the notice under clause (ii); and

9 “(II) the decision shall take effect as  
10 provided in subsections (c)(2) and (d)(2) of  
11 section 803 and section 114(f)(4)(B)(ii)  
12 and (C).

13 “(iv) The rates and terms shall remain in  
14 effect for the period set forth in section  
15 114(f)(1)(C) or 114(f)(2)(C), as the case may  
16 be.

17 “(4) SECTION 115 PROCEEDINGS.—A petition  
18 described in subsection (a) to initiate proceedings  
19 under section 801(b)(1) concerning the adjustment  
20 or determination of royalty rates as provided in sec-  
21 tion 115 may be filed in the year 2006 and in each  
22 subsequent fifth calendar year, or at such other  
23 times as the parties have agreed under section  
24 115(c)(3)(B) and (C).

1           “(5) SECTION 116 PROCEEDINGS.—(A) A peti-  
2           tion described in subsection (a) to initiate pro-  
3           ceedings under section 801(b) concerning the deter-  
4           mination of royalty rates and terms as provided in  
5           section 116 may be filed at any time within 1 year  
6           after negotiated licenses authorized by section 116  
7           are terminated or expire and are not replaced by  
8           subsequent agreements.

9           “(B) If a negotiated license authorized by sec-  
10          tion 116 is terminated or expires and is not replaced  
11          by another such license agreement which provides  
12          permission to use a quantity of musical works not  
13          substantially smaller than the quantity of such  
14          works performed on coin-operated phonorecord play-  
15          ers during the 1-year period ending March 1, 1989,  
16          the Copyright Royalty Judges shall, upon petition  
17          filed under paragraph (1) within 1 year after such  
18          termination or expiration, commence a proceeding to  
19          promptly establish an interim royalty rate or rates  
20          for the public performance by means of a coin-oper-  
21          ated phonorecord player of nondramatic musical  
22          works embodied in phonorecords which had been  
23          subject to the terminated or expired negotiated li-  
24          cense agreement. Such rate or rates shall be the  
25          same as the last such rate or rates and shall remain

1 in force until the conclusion of proceedings by the  
2 Copyright Royalty Judges, in accordance with sec-  
3 tion 803, to adjust the royalty rates applicable to  
4 such works, or until superseded by a new negotiated  
5 license agreement, as provided in section 116(b).

6 “(6) SECTION 118 PROCEEDINGS.—A petition  
7 described in subsection (a) to initiate proceedings  
8 under section 801(b)(1) concerning the determina-  
9 tion of reasonable terms and rates of royalty pay-  
10 ments as provided in section 118 may be filed in the  
11 year 2006 and in each subsequent fifth calendar  
12 year.

13 “(7) SECTION 1004 PROCEEDINGS.—A petition  
14 described in subsection (a) to initiate proceedings  
15 under section 801(b)(1) concerning the adjustment  
16 of reasonable royalty rates under section 1004 may  
17 be filed as provided in section 1004(a)(3).

18 “(8) PROCEEDINGS CONCERNING DISTRIBUTION  
19 OF ROYALTY FEES.—With respect to proceedings  
20 under section 801(b)(3) concerning the distribution  
21 of royalty fees in certain circumstances under sec-  
22 tion 111, 116, 119, or 1007, the Copyright Royalty  
23 Judges shall, upon a determination that a con-  
24 troversy exists concerning such distribution, cause to

1 be published in the Federal Register notice of com-  
 2 mencement of proceedings under this chapter.

3 **“§ 805. General rule for voluntarily negotiated agree-  
 4 ments**

5 “Any rates or terms under this title that—

6 “(1) are agreed to by participants to a pro-  
 7 ceeding under section 803(b)(2),

8 “(2) are adopted by the Copyright Royalty  
 9 Judges as part of a determination under this chap-  
 10 ter, and

11 “(3) are in effect for a period shorter than  
 12 would otherwise apply under a determination pursu-  
 13 ant to this chapter,

14 shall remain in effect for such period of time as would  
 15 otherwise apply under such determination, except that the  
 16 Copyright Royalty Judges shall adjust the rates pursuant  
 17 to the voluntary negotiations to reflect national monetary  
 18 inflation during the additional period the rates remain in  
 19 effect.”.

20 (b) CONFORMING AMENDMENT.—The table of chap-  
 21 ters for title 17, United States Code, is amended by strik-  
 22 ing the item relating to chapter 8 and inserting the fol-  
 23 lowing:

**“8. Proceedings by Copyright Royalty Judges ..... 801”.**

1 **SEC. 4. DEFINITION.**

2 Section 101 is amended by inserting after the defini-  
3 tion of “copies” the following:

4 “A ‘Copyright Royalty Judge’ is a Copyright  
5 Royalty Judge appointed under section 802 of this  
6 title, and includes any individual serving as an in-  
7 terim Copyright Royalty Judge under such section.”.

8 **SEC. 5. TECHNICAL AMENDMENTS.**

9 (a) CABLE RATES.—Section 111(d) is amended—

10 (1) in paragraph (2), in the second sentence, by  
11 striking “a copyright arbitration royalty panel” and  
12 inserting “the Copyright Royalty Judges.”; and

13 (2) in paragraph (4)—

14 (A) in subparagraph (A), by striking “Li-  
15 brarian of Congress” each place it appears and  
16 inserting “Copyright Royalty Judges”;

17 (B) in subparagraph (B)—

18 (i) in the first sentence, by striking  
19 “Librarian of Congress shall, upon the rec-  
20 ommendation of the Register of Copy-  
21 rights,” and inserting “Copyright Royalty  
22 Judges shall”;

23 (ii) in the second sentence, by striking  
24 “Librarian determines” and inserting  
25 “Copyright Royalty Judges determine”;  
26 and

1 (iii) in the third sentence—

2 (I) by striking “Librarian” each  
3 place it appears and inserting “Copy-  
4 right Royalty Judges”; and

5 (II) by striking “convene a copy-  
6 right arbitration royalty panel” and  
7 inserting “conduct a proceeding”; and

8 (C) in subparagraph (C), by striking “Li-  
9 brarian of Congress” and inserting “Copyright  
10 Royalty Judges”.

11 (b) EPHEMERAL RECORDINGS.—Section 112(e) is  
12 amended—

13 (1) in paragraph (3)—

14 (A) by amending the first sentence to read  
15 as follows: “Voluntary negotiation proceedings  
16 initiated pursuant to section 804(a) for the pur-  
17 pose of determining reasonable terms and rates  
18 of royalty payments for the activities specified  
19 by paragraph (1) shall cover the 5-year period  
20 beginning on January 1 of the second year fol-  
21 lowing the year in which the proceedings are  
22 commenced, or such other period as the parties  
23 may agree.”; and

1 (B) in the third sentence, by striking “Li-  
2 brarian of Congress” and inserting “Copyright  
3 Royalty Judges”;

4 (2) in paragraph (4)—

5 (A) by amending the first sentence to read  
6 as follows: “In the absence of license agree-  
7 ments negotiated under paragraphs (2) and (3),  
8 the Copyright Royalty Judges shall commence a  
9 proceeding pursuant to chapter 8 to determine  
10 and publish in the Federal Register a schedule  
11 of reasonable rates and terms which, subject to  
12 paragraph (5), shall be binding on all copyright  
13 owners of sound recordings and transmitting  
14 organizations entitled to a statutory license  
15 under this subsection during the 5-year period  
16 specified in paragraph (3), or such other period  
17 as the parties may agree.”;

18 (B) by striking “copyright arbitration roy-  
19 alty panel” each subsequent place it appears  
20 and inserting “Copyright Royalty Judges”;

21 (C) in the fourth sentence, by striking “its  
22 decision” and inserting “their decision”; and

23 (D) in the last sentence, by striking “Li-  
24 brarian of Congress” and inserting “Copyright  
25 Royalty Judges”;

1           (3) in paragraph (5), by striking “or decision  
2           by the Librarian of Congress” and inserting “, deci-  
3           sion by the Librarian of Congress, or determination  
4           by the Copyright Royalty Judges”;

5           (4) by striking paragraph (6) and redesignating  
6           paragraphs (7), (8), and (9), as paragraphs (6), (7),  
7           and (8), respectively; and

8           (5) in paragraph (6)(A), as so redesignated, by  
9           striking “Librarian of Congress” and inserting  
10          “Copyright Royalty Judges”.

11          (c) SCOPE OF EXCLUSIVE RIGHTS IN SOUND RE-  
12          CORDINGS.—Section 114(f) is amended—

13                 (1) in paragraph (1)—

14                         (A) in subparagraph (A)—

15                                 (i) by amending the first sentence to  
16                                 read as follows: “Voluntary negotiation  
17                                 proceedings initiated pursuant to section  
18                                 804(a) for the purpose of determining rea-  
19                                 sonable terms and rates of royalty pay-  
20                                 ments for subscription transmissions by  
21                                 preexisting subscription services and trans-  
22                                 missions by preexisting satellite digital  
23                                 audio radio services shall cover the 5-year  
24                                 period beginning on January 1 of the year  
25                                 following the second year in which the pro-

1 proceedings are commenced, except where dif-  
2 ferential transitional periods are provided  
3 in section 804(b)(3), or such other period  
4 as the parties may agree.”; and

5 (ii) in the third sentence, by striking  
6 “Librarian of Congress” and inserting  
7 “Copyright Royalty Judges”;  
8 (B) in subparagraph (B)—

9 (i) by amending the first sentence to  
10 read as follows: “In the absence of license  
11 agreements negotiated under subparagraph  
12 (A), the Copyright Royalty Judges shall  
13 commence a proceeding pursuant to chap-  
14 ter 8 to determine and publish in the Fed-  
15 eral Register a schedule of rates and terms  
16 which, subject to paragraph (3), shall be  
17 binding on all copyright owners of sound  
18 recordings and entities performing sound  
19 recordings affected by this paragraph dur-  
20 ing the 5-year period specified in subpara-  
21 graph (A), or such other date as the par-  
22 ties may agree.”; and

23 (ii) in the second sentence, by striking  
24 “copyright arbitration royalty panel” and  
25 inserting “Copyright Royalty Judges”; and

1 (C) by amending subparagraph (C) to read  
2 as follows:

3 “(C) The procedures under subparagraphs (A)  
4 and (B) also shall be initiated pursuant to a petition  
5 filed by any copyright owners of sound recordings,  
6 any preexisting subscription services, or any pre-  
7 existing satellite digital audio radio services indi-  
8 cating that a new type of subscription digital audio  
9 transmission service on which sound recordings are  
10 performed is or is about to become operational, for  
11 the purpose of determining reasonable terms and  
12 rates of royalty payments with respect to such new  
13 type of transmission service for the period beginning  
14 with the inception of such new type of service and  
15 ending on the date on which the royalty rates and  
16 terms for subscription digital audio transmission  
17 services most recently determined under subpara-  
18 graph (A) or (B) and chapter 8 expire, or such other  
19 period as the parties may agree.”;

20 (2) in paragraph (2)—

21 (A) in subparagraph (A)—

22 (i) by amending the first sentence to  
23 read as follows: “Voluntary negotiation  
24 proceedings initiated pursuant to section  
25 804(a) for the purpose of determining rea-

1 sonable terms and rates of royalty pay-  
2 ments for public performances of sound re-  
3 cordings by means of eligible nonsubscrip-  
4 tion transmissions and transmissions by  
5 new subscription services specified by sub-  
6 section (d)(2) shall cover the 5-year period  
7 beginning on January 1 of the second year  
8 following the year in which the proceedings  
9 are commenced, except where different  
10 transitional periods are provided in section  
11 804(b)(3)(A), or such other period as the  
12 parties may agree.”; and

13 (ii) in the third sentence, by striking  
14 “Librarian of Congress” and inserting  
15 “Copyright Royalty Judges”;

16 (B) in subparagraph (B)—

17 (i) by amending the first sentence to  
18 read as follows: “In the absence of license  
19 agreements negotiated under subparagraph  
20 (A), the Copyright Royalty Judges shall  
21 commence a proceeding pursuant to chap-  
22 ter 8 to determine and publish in the Fed-  
23 eral Register a schedule of rates and terms  
24 which, subject to paragraph (3), shall be  
25 binding on all copyright owners of sound

1 recordings and entities performing sound  
2 recordings affected by this paragraph dur-  
3 ing the period specified in subparagraph  
4 (A), or such other period as the parties  
5 may agree.”; and

6 (ii) by striking “copyright arbitration  
7 royalty panel” each subsequent place it ap-  
8 pears and inserting “Copyright Royalty  
9 Judges”; and

10 (C) by amending subparagraph (C) to read  
11 as follows:

12 “(C) The procedures under subparagraphs (A)  
13 and (B) shall also be initiated pursuant to a petition  
14 filed by any copyright owners of sound recordings or  
15 any eligible nonsubscription service or new subscrip-  
16 tion service indicating that a new type of eligible  
17 nonsubscription service or new subscription service  
18 on which sound recordings are performed is or is  
19 about to become operational, for the purpose of de-  
20 termining reasonable terms and rates of royalty pay-  
21 ments with respect to such new type of service for  
22 the period beginning with the inception of such new  
23 type of service and ending on the date on which the  
24 royalty rates and terms for preexisting subscription  
25 digital audio transmission services or preexisting sat-

1 elite digital radio audio services, as the case may be,  
2 most recently determined under subparagraph (A) or  
3 (B) and chapter 8 expire, or such other period as  
4 the parties may agree.”;

5 (3) in paragraph (3), by striking “or decision  
6 by the Librarian of Congress” and inserting “, deci-  
7 sion by the Librarian of Congress, or determination  
8 by the Copyright Royalty Judges”; and

9 (4) in paragraph (4), by striking “Librarian of  
10 Congress” each place it appears and inserting  
11 “Copyright Royalty Judges”.

12 (d) PHONORECORDS OF NONDRAMATIC MUSICAL  
13 WORKS.—Section 115(c)(3) is amended—

14 (1) in subparagraph (A)(ii), by striking “(F)”  
15 and inserting “(E)”;

16 (2) in subparagraph (B)—

17 (A) by striking “under this paragraph”  
18 and inserting “under this section”; and

19 (B) by striking “subparagraphs (B)  
20 through (F)” and inserting “this subparagraph  
21 and subparagraphs (B) through (E)”;

22 (3) in subparagraph (C)—

23 (A) by amending the first sentence to read  
24 as follows: “Voluntary negotiation proceedings  
25 initiated pursuant to a petition filed under sec-

1           tion 804(a) for the purpose of determining rea-  
2           sonable terms and rates of royalty payments for  
3           the activities specified by this section shall  
4           cover the period beginning with the effective  
5           date of such terms and rates, but not earlier  
6           than January 1 of the second year following the  
7           year in which the petition is filed, and ending  
8           on the effective date of successor terms and  
9           rates, or such other period as the parties may  
10          agree.”; and

11                 (B) in the third sentence, by striking “Li-  
12           brarian of Congress” and inserting “Copyright  
13           Royalty Judges”;

14                 (4) in subparagraph (D)—

15                         (A) by amending the first sentence to read  
16           as follows: “In the absence of license agree-  
17           ments negotiated under subparagraphs (B) and  
18           (C), the Copyright Royalty Judges shall com-  
19           mence proceedings pursuant to chapter 8 to de-  
20           termine and publish in the Federal Register a  
21           schedule of rates and terms which, subject to  
22           subparagraph (E), shall be binding on all copy-  
23           right owners of nondramatic musical works and  
24           persons entitled to obtain a compulsory license  
25           under subsection (a)(1) during the period speci-

1           fied in subparagraph (C) or such other period  
2           as may be determined pursuant to subpara-  
3           graphs (B) and (C), or such other period as the  
4           parties may agree.”;

5           (B) in the third sentence, by striking  
6           “copyright arbitration royalty panel” and in-  
7           serting “Copyright Royalty Judges”; and

8           (C) in the last sentence, by striking “Li-  
9           brarian of Congress” and inserting “Copyright  
10          Royalty Judges”;

11         (5) in subparagraph (E)—

12           (A) in clause (i)—

13                 (i) in the first sentence, by striking  
14                 “the Librarian of Congress” and inserting  
15                 “a copyright arbitration royalty panel, the  
16                 Librarian of Congress, or the Copyright  
17                 Royalty Judges”; and

18                 (ii) in the second sentence, by striking  
19                 “(C), (D) or (F) shall be given effect” and  
20                 inserting “(C) or (D) shall be given effect  
21                 as to digital phonorecord deliveries”; and

22           (B) in clause (ii)(I), by striking “(C), (D)  
23           or (F)” each place it appears and inserting  
24           “(C) or (D)”; and

1           (6) by striking subparagraph (F) and redesignig-  
2           nating subparagraphs (G) through (L) as subpara-  
3           graphs (F) through (K), respectively.

4           (e) COIN-OPERATED PHONORECORD PLAYERS.—Sec-  
5           tion 116 is amended—

6           (1) in subsection (b), by amending paragraph  
7           (2) to read as follows:

8           “(2) CHAPTER 8 PROCEEDING.—Parties not  
9           subject to such a negotiation may have the terms  
10          and rates and the division of fees described in para-  
11          graph (1) determined in a proceeding in accordance  
12          with the provisions of chapter 8.”; and

13          (2) in subsection (c)—

14                 (A) in the subsection heading, by striking  
15                 “COPYRIGHT ARBITRATION ROYALTY PANEL  
16                 DETERMINATIONS” and inserting “DETER-  
17                 MINATIONS BY COPYRIGHT ROYALTY JUDGES”;  
18                 and

19                 (B) by striking “a copyright arbitration  
20                 royalty panel” and inserting “the Copyright  
21                 Royalty Judges”.

22          (f) USE OF CERTAIN WORKS IN CONNECTION WITH  
23          NONCOMMERCIAL BROADCASTING.—Section 118 is  
24          amended—

25          (1) in subsection (b)—

1 (A) in paragraph (1)—

2 (i) in the first sentence, by striking  
3 “Librarian of Congress” and inserting  
4 “Copyright Royalty Judges”; and

5 (ii) by striking the second and third  
6 sentences;

7 (B) in paragraph (2), by striking “the Li-  
8 brarian of Congress:” and all that follows  
9 through the end of the sentence and inserting  
10 “a copyright arbitration royalty panel, the Li-  
11 brarian of Congress, or the Copyright Royalty  
12 Judge, if copies of such agreements are filed  
13 with the Copyright Royalty Judges within 30  
14 days of execution in accordance with regulations  
15 that the Copyright Royalty Judges shall issue.”;  
16 and

17 (C) in paragraph (3)—

18 (i) in the second sentence—

19 (I) by striking “copyright arbi-  
20 tration royalty panel” and inserting  
21 “Copyright Royalty Judges”; and

22 (II) by striking “paragraph (2).”  
23 and inserting “paragraph (2) or (3).”;

1 (ii) in the last sentence, by striking  
2 “Librarian of Congress” and inserting  
3 “Copyright Royalty Judges”; and

4 (iii) by striking “(3) In” and all that  
5 follows through the end of the first sen-  
6 tence and inserting the following:

7 “(3) Voluntary negotiation proceedings initiated  
8 pursuant to a petition filed under section 804(a) for  
9 the purpose of determining a schedule of terms and  
10 rates of royalty payments by public broadcasting en-  
11 tities to copyright owners in works specified by this  
12 subsection and the proportionate division of fees  
13 paid among various copyright owners shall cover the  
14 5-year period beginning on January 1 of the second  
15 year following the year in which the petition is filed.  
16 The parties to each negotiation proceeding shall bear  
17 their own costs.

18 “(4) In the absence of license agreements nego-  
19 tiated under paragraph (2) or (3), the Copyright  
20 Royalty Judges shall, pursuant to chapter 8, con-  
21 duct a proceeding to determine and publish in the  
22 Federal Register a schedule of rates and terms  
23 which, subject to paragraph (2), shall be binding on  
24 all owners of copyright in works specified by this  
25 subsection and public broadcasting entities, regard-

1 less of whether such copyright owners have sub-  
2 mitted proposals to the Copyright Royalty Judges.”;

3 (2) by striking subsection (c) and redesignating  
4 subsections (d) through (g) as subsections (c)  
5 through (f), respectively;

6 (3) in subsection (c), as so redesignated, in the  
7 matter preceding paragraph (1)—

8 (A) by striking “(b)(2)” and inserting  
9 “(b)(2) or (3)”;

10 (B) by striking “(b)(3)” and inserting  
11 “(b)(4)”;

12 (C) by striking “a copyright arbitration  
13 royalty panel” and inserting “the Copyright  
14 Royalty Judges”;

15 (4) in subsection (d), as so redesignated—

16 (A) by striking “in the Copyright Office”  
17 and inserting “with the Copyright Royalty  
18 Judges”;

19 (B) by striking “Register of Copyrights”  
20 and inserting “Copyright Royalty Judges”;

21 (5) in subsection (f), as so redesignated, by  
22 striking “(d)” and inserting “(c)”.

23 (g) SECONDARY TRANSMISSIONS BY SATELLITE CAR-  
24 RIERS.—Section 119(b) is amended—

1           (1) in paragraph (3), by striking “Librarian of  
2           Congress” and inserting “Copyright Royalty  
3           Judges”; and

4           (2) in paragraph (4)—

5           (A) in subparagraph (A), by striking “Li-  
6           brarian of Congress” each place it appears and  
7           inserting “Copyright Royalty Judges”; and

8           (B) by amending subparagraphs (B) and  
9           (C) to read as follows:

10           “(B) DETERMINATION OF CONTROVERSY;  
11           DISTRIBUTIONS.—After the first day of August  
12           of each year, the Copyright Royalty Judges  
13           shall determine whether there exists a con-  
14           troversy concerning the distribution of royalty  
15           fees. If the Copyright Royalty Judges determine  
16           that no such controversy exists, the Librarian  
17           of Congress shall, after deducting reasonable  
18           administrative costs under this paragraph, dis-  
19           tribute such fees to the copyright owners enti-  
20           tled to receive them, or to their designated  
21           agents. If the Copyright Royalty Judges find  
22           the existence of a controversy, the Copyright  
23           Royalty Judges shall, pursuant to chapter 8 of  
24           this title, conduct a proceeding to determine the  
25           distribution of royalty fees.

1           “(C) WITHHOLDING OF FEES DURING  
2           CONTROVERSY.—During the pendency of any  
3           proceeding under this subsection, the Copyright  
4           Royalty Judges shall withhold from distribution  
5           an amount sufficient to satisfy all claims with  
6           respect to which a controversy exists, subject to  
7           any distributions made under section  
8           801(b)(3).”.

9           (h) DIGITAL AUDIO RECORDING DEVICES.—

10           (1) ROYALTY PAYMENTS.—Section 1004(a)(3)  
11           is amended by striking “Librarian of Congress”  
12           each place it appears and inserting “Copyright Roy-  
13           alty Judges”.

14           (2) ENTITLEMENT TO ROYALTY PAYMENTS.—  
15           Section 1006(e) is amended by striking “Librarian  
16           of Congress shall convene a copyright arbitration  
17           royalty panel which” and inserting “Copyright Roy-  
18           alty Judges”.

19           (3) PROCEDURES FOR DISTRIBUTING ROYALTY  
20           PAYMENTS.—Section 1007 is amended—

21           (A) in subsection (a), by amending para-  
22           graph (1) to read as follows:

23           “(1) FILING OF CLAIMS.—During the first 2  
24           months of each calendar year, every interested copy-  
25           right party seeking to receive royalty payments to

1       which such party is entitled under section 1006 shall  
2       file with the Copyright Royalty Judges a claim for  
3       payments collected during the preceding year in such  
4       form and manner as the Copyright Royalty Judges  
5       shall prescribe by regulation.”; and

6                       (B) by amending subsections (b) and (c) to  
7       read as follows:

8       “(b) DISTRIBUTION OF PAYMENTS IN THE ABSENCE  
9       OF A DISPUTE.—After the period established for the filing  
10      of claims under subsection (a), in each year, the Copyright  
11      Royalty Judges shall determine whether there exists a con-  
12      troversy concerning the distribution of royalty payments  
13      under section 1006(c). If the Copyright Royalty Judges  
14      determine that no such controversy exists, the Librarian  
15      of Congress shall, within 30 days after such determina-  
16      tion, authorize the distribution of the royalty payments as  
17      set forth in the agreements regarding the distribution of  
18      royalty payments entered into pursuant to subsection (a).  
19      The Librarian of Congress shall, before such royalty pay-  
20      ments are distributed, deduct the reasonable administra-  
21      tive costs incurred by the Librarian under this section.

22       “(c) RESOLUTION OF DISPUTES.—If the Copyright  
23      Royalty Judges find the existence of a controversy, the  
24      Copyright Royalty Judges shall, pursuant to chapter 8 of  
25      this title, conduct a proceeding to determine the distribu-

1 tion of royalty payments. During the pendency of such a  
2 proceeding, the Copyright Royalty Judges shall withhold  
3 from distribution an amount sufficient to satisfy all claims  
4 with respect to which a controversy exists, but shall, to  
5 the extent feasible, authorize the distribution of any  
6 amounts that are not in controversy. The Librarian of  
7 Congress shall, before such royalty payments are distrib-  
8 uted, deduct the reasonable administrative costs incurred  
9 by the Librarian under this section.”.

10 (4) DETERMINATION OF CERTAIN DISPUTES.—

11 (A) Section 1010 is amended to read as follows:

12 **“§ 1010. Determination of certain disputes**

13 “(a) SCOPE OF DETERMINATION.—Before the date  
14 of first distribution in the United States of a digital audio  
15 recording device or a digital audio interface device, any  
16 party manufacturing, importing, or distributing such de-  
17 vice, and any interested copyright party may mutually  
18 agree to petition the Copyright Royalty Judges to deter-  
19 mine whether such device is subject to section 1002, or  
20 the basis on which royalty payments for such device are  
21 to be made under section 1003.

22 “(b) INITIATION OF PROCEEDINGS.—The parties  
23 under subsection (a) shall file the petition with the Copy-  
24 right Royalty Judges requesting the commencement of a  
25 proceeding. Within 2 weeks after receiving such a petition,

1 the Chief Copyright Royalty Judge shall cause notice to  
2 be published in the Federal Register of the initiation of  
3 the proceeding.

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

9 “(d) PROCEEDING.—The Copyright Royalty Judges  
10 shall conduct a proceeding with respect to the matter con-  
11 cerned, in accordance with such procedures as the Copy-  
12 right Royalty Judges may adopt. The Copyright Royalty  
13 Judges shall act on the basis of a fully documented written  
14 record. Any party to the proceeding may submit relevant  
15 information and proposals to the Copyright Royalty  
16 Judges. The parties to the proceeding shall each bear their  
17 respective costs of participation.

18 “(e) JUDICIAL REVIEW.—Any determination of the  
19 Copyright Royalty Judges under subsection (d) may be  
20 appealed, by a party to the proceeding, in accordance with  
21 section 803(d) of this title. The pendency of an appeal  
22 under this subsection shall not stay the determination of  
23 the Copyright Royalty Judges. If the court modifies the  
24 determination of the Copyright Royalty Judges, the court  
25 shall have jurisdiction to enter its own decision in accord-

1   ance with its final judgment. The court may further vacate  
2   the determination of the Copyright Royalty Judges and  
3   remand the case for proceedings as provided in this sec-  
4   tion.”.

5           (B) The item relating to section 1010 in the  
6   table of sections for chapter 10 is amended to read  
7   as follows:

“1010. Determination of certain disputes.”.

8   **SEC. 6. EFFECTIVE DATE AND TRANSITION PROVISIONS.**

9           (a) **EFFECTIVE DATE.**—This Act and the amend-  
10   ments made by this Act shall take effect 6 months after  
11   the date of the enactment of this Act, except that the Li-  
12   brarian of Congress shall appoint interim Copyright Roy-  
13   alty Judges under section 802(d) of title 17, United States  
14   Code, as amended by this Act, within 90 days after such  
15   date of enactment to carry out the functions of the Copy-  
16   right Royalty Judges under title 17, United States Code,  
17   to the extent that Copyright Royalty Judges provided for  
18   in section 801(a) of title 17, United States Code, as  
19   amended by this Act, have not been appointed before the  
20   end of that 90-day period.

21           (b) **TRANSITION PROVISIONS.**—

22           (1) **IN GENERAL.**—Subject to paragraph (2),  
23   the amendments made by this Act shall not affect  
24   any proceedings commenced, petitions filed, or vol-  
25   untary agreements entered into before the enact-

1       ment of this Act under the provisions of title 17,  
2       United States Code, amended by this Act, and pend-  
3       ing on such date of enactment. Such proceedings  
4       shall continue, determinations made in such pro-  
5       ceedings, and appeals taken therefrom, as if this Act  
6       had not been enacted, and shall continue in effect  
7       until modified under title 17, United States Code, as  
8       amended by this Act. Such petitions filed and vol-  
9       untary agreements entered into shall remain in ef-  
10      fect as if this Act had not been enacted.

11           (2) EFFECTIVE PERIODS FOR CERTAIN RATE-  
12      MAKING PROCEEDINGS.—Notwithstanding paragraph  
13      (1), terms and rates in effect under section  
14      114(f)(2) or 112(e) of title 17, United States Code,  
15      for new subscription services, eligible nonsubscrip-  
16      tion services, and services exempt under section  
17      114(d)(1)(C)(iv) of such title for the period 2003  
18      through 2004, and any rates published in the Fed-  
19      eral Register under the authority of the Small  
20      Webcaster Settlement Act of 2002 for the years  
21      2003 through 2004, shall be effective until the first  
22      applicable effective date for successor terms and  
23      rates specified in section 804(b)(2) or (3)(A) of title  
24      17, United States Code, or until such later date as  
25      the parties may agree. Any proceeding commenced

1 before the enactment of this Act pursuant to section  
2 114(f)(2) and chapter 8 of title 17, United States  
3 Code, to adjust or determine such rates and terms  
4 for periods following 2004 shall be terminated upon  
5 the enactment of this Act and shall be null and void.

6 (c) EXISTING APPROPRIATIONS.—Any funds made  
7 available in an appropriations Act before the date of the  
8 enactment of this Act to carry out chapter 8 of title 17,  
9 United States Code, shall be available to the extent nec-  
10 essary to carry out this section.

Passed the House of Representatives March 3,  
2004.

Attest:

JEFF TRANDAHL,

*Clerk.*