

108TH CONGRESS
2D SESSION

H. R. 1417

AN ACT

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

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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 nications 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 “(e)”.

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:

Clerk.