

Union Calendar No. 234

108TH CONGRESS
2D SESSION

H. R. 1417

[Report No. 108-408]

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 25, 2003

Mr. SMITH of Texas (for himself, Mr. BERMAN, and Mr. CONYERS) introduced the following bill; which was referred to the Committee on the Judiciary

JANUARY 30, 2004

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on March 25, 2003]

A BILL

To amend title 17, United States Code, to replace copyright arbitration royalty panels with a Copyright Royalty Judge, 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 2003”.*

4 **SEC. 2. REFERENCE.**

5 *Except as otherwise expressly provided, whenever in*
 6 *this Act an amendment or repeal is expressed in terms of*
 7 *an amendment to, or repeal of, a section or other provision,*
 8 *the reference shall be considered to be made to a section or*
 9 *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 shall*
 18 *appoint 3 full-time Copyright Royalty Judges, and shall*
 19 *appoint one of the three as the Chief Copyright Royalty*
 20 *Judge. In making such appointments, the Librarian shall*
 21 *consult with the Register of Copyrights.*

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

4 “(1) *To make determinations and adjustments of*
5 *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 copy-*
14 *right user a fair income under existing economic*
15 *conditions.*

16 “(C) *To reflect the relative roles of the copy-*
17 *right owner and the copyright user in the prod-*
18 *uct made available to the public with respect to*
19 *relative creative contribution, technological con-*
20 *tribution, capital investment, cost, risk, and con-*
21 *tribution to the opening of new markets for cre-*
22 *ative expression and media for their communica-*
23 *tion.*

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

4 “(2) To make determinations concerning the ad-
5 justment of the copyright royalty rates under section
6 111 solely in accordance with the following provi-
7 sions:

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 serv-
14 ice of providing secondary transmissions to
15 maintain the real constant dollar level of
16 the royalty fee per subscriber which existed
17 as of the date of October 19, 1976,

18 except that—

19 “(I) if the average rates charged cable
20 system subscribers for the basic service of
21 providing secondary transmissions are
22 changed so that the average rates exceed na-
23 tional monetary inflation, no change in the
24 rates established by section 111(d)(1)(B)
25 shall be permitted; and

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

5 *The Copyright Royalty Judges may consider all*
6 *factors relating to the maintenance of such level*
7 *of payments, including, as an extenuating factor,*
8 *whether the industry has been restrained by sub-*
9 *scriber rate regulating authorities from increas-*
10 *ing the rates for the basic service of providing*
11 *secondary transmissions.*

12 “(B) *In the event that the rules and regula-*
13 *tions of the Federal Communications Commis-*
14 *sion are amended at any time after April 8,*
15 *1976, to permit the carriage by cable systems of*
16 *additional television broadcast signals beyond*
17 *the local service area of the primary transmitters*
18 *of such signals, the royalty rates established by*
19 *section 111(d)(1)(B) may be adjusted to insure*
20 *that the rates for the additional distant signal*
21 *equivalents resulting from such carriage are rea-*
22 *sonable in the light of the changes effected by the*
23 *amendment to such rules and regulations. In de-*
24 *termining the reasonableness of rates proposed*
25 *following an amendment of Federal Communica-*

1 *tions Commission rules and regulations, the*
2 *Copyright Royalty Judges shall consider, among*
3 *other factors, the economic impact on copyright*
4 *owners and users; except that no adjustment in*
5 *royalty rates shall be made under this subpara-*
6 *graph with respect to any distant signal equiva-*
7 *lent or fraction thereof represented by—*

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

15 *“(ii) a television broadcast signal first*
16 *carried after April 15, 1976, pursuant to an*
17 *individual waiver of the rules and regula-*
18 *tions of the Federal Communications Com-*
19 *mission, as such rules and regulations were*
20 *in effect on April 15, 1976.*

21 *“(C) In the event of any change in the rules*
22 *and regulations of the Federal Communications*
23 *Commission with respect to syndicated and*
24 *sports program exclusivity after April 15, 1976,*
25 *the rates established by section 111(d)(1)(B) may*

1 *be adjusted to assure that such rates are reason-*
2 *able in light of the changes to such rules and reg-*
3 *ulations, but any such adjustment shall apply*
4 *only to the affected television broadcast signals*
5 *carried on those systems affected by the change.*

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

16 “(3) *To authorize the distribution, under sections*
17 *111, 119, and 1007, of those royalty fees collected*
18 *under sections 111, 119, and 1005, as the case may*
19 *be, to the extent that the Copyright Royalty Judges*
20 *have found that the distribution of such fees is not*
21 *subject to controversy. In cases where the Copyright*
22 *Royalty Judges determine that controversy exists—*

23 “(A) *the Copyright Royalty Judges shall de-*
24 *termine the distribution of such fees, in accord-*

1 *ance with section 111, 119, or 1007, as the case*
2 *may be; and*

3 *“(B) the Copyright Royalty Judges shall*
4 *make a partial distribution of such fees during*
5 *the pendency of the proceeding under subpara-*
6 *graph (A) if all participants under section*
7 *803(b)(2) in the proceeding—*

8 *“(i) agree to such partial distribution;*

9 *“(ii) sign an agreement obligating*
10 *them to return any excess amounts to the*
11 *extent necessary to comply with the final*
12 *determination on the distribution of the fees*
13 *made under subparagraph (A); and*

14 *“(iii) file the agreement with the Copy-*
15 *right Royalty Judges.*

16 *The Copyright Royalty Judges and any other officer*
17 *or employee acting in good faith in distributing funds*
18 *under subparagraph (B) shall not be held liable for*
19 *the payment of any excess fees under subparagraph*
20 *(B). The Copyright Royalty Judges shall, at the time*
21 *the final determination is made, calculate any such*
22 *excess amounts.*

23 *“(4) To accept or reject royalty claims filed*
24 *under section 111, 119, and 1007, on the basis of*

1 *timeliness or the failure to establish the basis for a*
2 *claim.*

3 “(5) *To accept or reject rate adjustment petitions*
4 *as provided in section 804 and petitions to partici-*
5 *rate as provided in section 803(b)(1) and (2).*

6 “(6) *To determine the status of a digital audio*
7 *recording device or a digital audio interface device*
8 *under sections 1002 and 1003, as provided in section*
9 *1010.*

10 “(7)(A) *To adopt as the basis for statutory terms*
11 *and rates or as a basis for the distribution of statu-*
12 *tory royalty payments, an agreement concerning such*
13 *matters reached among some or all of the participants*
14 *in a proceeding at any time during the proceeding,*
15 *except that—*

16 “(i) *the Copyright Royalty Judges shall*
17 *provide to the other participants in the pro-*
18 *ceeding under section 803(b)(2) that would be*
19 *bound by the terms, rates, distribution, or other*
20 *determination set by the agreement an oppor-*
21 *tunity to comment on the agreement and object*
22 *to its adoption as the basis for statutory terms*
23 *and rates or as a basis for the distribution of*
24 *statutory royalty payments, as the case may be;*
25 *and*

1 “(i) the Copyright Royalty Judges may de-
2 cline to adopt the agreement as the basis for stat-
3 utory terms and rates or as the basis for the dis-
4 tribution of statutory royalty payments, as the
5 case may be, if any other participant described
6 in subparagraph (A) objects to the agreement
7 and the Copyright Royalty Judges find, based on
8 the record before them, that the agreement is not
9 likely to meet the statutory standard for setting
10 the terms and rates, or for distributing the roy-
11 alty payments, as the case may be.

12 “(B) License agreements voluntarily negotiated
13 pursuant to section 112(e)(5), 114(f)(3),
14 115(c)(3)(E)(i), 116(c), or 118(b)(2) that do not re-
15 sult in statutory terms and rates shall not be subject
16 to clauses (i) and (ii) of subparagraph (A).

17 “(c) *RULINGS.*—The Copyright Royalty Judges may
18 make any necessary procedural or evidentiary rulings in
19 any proceeding under this chapter and may, before com-
20 mencing a proceeding under this chapter, make any such
21 rulings that would apply to the proceedings conducted by
22 the Copyright Royalty Judges. The Copyright Royalty
23 Judges may consult with the Register of Copyrights in mak-
24 ing any rulings under section 802(f)(1).

1 “(d) *ADMINISTRATIVE SUPPORT.*—*The Librarian of*
2 *Congress shall provide the Copyright Royalty Judges with*
3 *the necessary administrative services related to proceedings*
4 *under this chapter.*

5 “(e) *LOCATION IN LIBRARY OF CONGRESS.*—*The offices*
6 *of the Copyright Royalty Judges and staff shall be in the*
7 *Library of Congress.*

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

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

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

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

14 “(d) *VACANCIES OR INCAPACITY.*—

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

1 “(2) *INCAPACITY.*—*In the case in which a Copy-*
2 *right Royalty Judge is temporarily unable to perform*
3 *his or her duties, the Librarian of Congress may ap-*
4 *point an interim Copyright Royalty Judge to perform*
5 *such duties during the period of such incapacity.*

6 “(e) *COMPENSATION.*—

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

19 “(2) *STAFF MEMBERS.*—*Of the staff members ap-*
20 *pointed under subsection (b)—*

21 “(A) *the rate of pay of one staff member*
22 *shall be not more than the basic rate of pay pay-*
23 *able for GS-15 of the General Schedule;*

24 “(B) *the rate of pay of one staff member*
25 *shall be not less than the basic rate of pay pay-*

1 *able for GS–13 of the General Schedule and not*
2 *more than the basic rate of pay payable for GS–*
3 *14 of such Schedule; and*

4 *“(C) the rate of pay for the third staff mem-*
5 *ber shall be not less than the basic rate of pay*
6 *payable for GS–8 of the General Schedule and*
7 *not more than the basic rate of pay payable for*
8 *GS–11 of such Schedule.*

9 “(f) *INDEPENDENCE OF COPYRIGHT ROYALTY*
10 *JUDGE.—*

11 “(1) *IN MAKING DETERMINATIONS.—*

12 “(A) *IN GENERAL.—Subject to subpara-*
13 *graph (B), the Copyright Royalty Judges shall*
14 *have full independence in making determinations*
15 *concerning adjustments and determinations of*
16 *copyright royalty rates and terms, the distribu-*
17 *tion of copyright royalties, the acceptance or re-*
18 *jection of royalty claims, rate adjustment peti-*
19 *tions, and petitions to participate, and in*
20 *issuing other rulings under this title, except that*
21 *the Copyright Royalty Judges may consult with*
22 *the Register of Copyrights on any matter other*
23 *than a question of fact. Any such consultations*
24 *between the Copyright Royalty Judges and the*

1 *Register of Copyright on any question of law*
2 *shall be in writing or on the record.*

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

24 “(ii) *In clause (i), a ‘novel question of law’*
25 *is a question of law that has not been determined*

1 *in prior decisions, determinations, and rulings*
2 *described in section 803(a).*

3 “(2) *PERFORMANCE APPRAISALS.*—

4 “(A) *IN GENERAL.*—*Notwithstanding any*
5 *other provision of law or any regulation of the*
6 *Library of Congress, and subject to subpara-*
7 *graph (B), the Copyright Royalty Judges shall*
8 *not receive performance appraisals.*

9 “(B) *RELATING TO SANCTION OR RE-*
10 *MOVAL.*—*To the extent that the Librarian of*
11 *Congress adopts regulations under subsection (h)*
12 *relating to the sanction or removal of a Copy-*
13 *right Royalty Judge and such regulations re-*
14 *quire documentation to establish the cause of*
15 *such sanction or removal, the Copyright Royalty*
16 *Judge may receive an appraisal related specifi-*
17 *cally to the cause of the sanction or removal.*

18 “(g) *INCONSISTENT DUTIES BARRED.*—*No Copyright*
19 *Royalty Judge may undertake duties inconsistent with his*
20 *or her duties and responsibilities as Copyright Royalty*
21 *Judge.*

22 “(h) *STANDARDS OF CONDUCT.*—*The Librarian of*
23 *Congress shall adopt regulations regarding the standards*
24 *of conduct, including financial conflict of interest and re-*
25 *strictions against ex parte communications, which shall*

1 *govern the Copyright Royalty Judges and the proceedings*
2 *under this chapter.*

3 “(i) *REMOVAL OR SANCTION.*—*The Librarian of Con-*
4 *gress may sanction or remove a Copyright Royalty Judge*
5 *for violation of the standards of conduct adopted under sub-*
6 *section (h), misconduct, neglect of duty, or any disquali-*
7 *fying physical or mental disability. Any such sanction or*
8 *removal may be made only after notice and opportunity*
9 *for a hearing, but the Librarian of Congress may suspend*
10 *the Copyright Royalty Judge during the pendency of such*
11 *hearing. The Librarian shall appoint an interim Copyright*
12 *Royalty Judge during the period of any such suspension.*

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

14 “(a) *PROCEEDINGS.*—

15 “(1) *IN GENERAL.*—*The Copyright Royalty*
16 *Judges shall act in accordance with this title, and to*
17 *the extent not inconsistent with this title, in accord-*
18 *ance with subchapter II of chapter 5 of title 5, in car-*
19 *rying out the purposes set forth in section 801. The*
20 *Copyright Royalty Judges shall act in accordance*
21 *with regulations issued by the Copyright Royalty*
22 *Judges and on the basis of a fully documented written*
23 *record, prior decisions of the Copyright Royalty Tri-*
24 *bunal, prior copyright arbitration royalty panel de-*
25 *terminations, rulings by the Librarian of Congress be-*

1 *fore the effective date of the Copyright Royalty and*
2 *Distribution Reform Act of 2003, prior determina-*
3 *tions of Copyright Royalty Judges under this chapter,*
4 *and decisions of the court in appeals under this chap-*
5 *ter before, on, or after such effective date. Any partici-*
6 *part in a proceeding under subsection (b)(2) may*
7 *submit relevant information and proposals to the*
8 *Copyright Royalty Judges.*

9 “(2) *JUDGES ACTING AS PANEL AND INDIVID-*
10 *UALLY.—The Copyright Royalty Judges shall preside*
11 *over hearings in proceedings under this chapter en*
12 *banc. The Chief Copyright Royalty Judge may des-*
13 *ignate a Copyright Royalty Judge to preside individ-*
14 *ually over such collateral and administrative pro-*
15 *ceedings, and over such proceedings under paragraphs*
16 *(1) through (5) of subsection (b), as the Chief Judge*
17 *considers appropriate.*

18 “(3) *DETERMINATIONS.—Final determinations*
19 *of the Copyright Royalty Judges in proceedings under*
20 *this chapter shall be made by majority vote. A Copy-*
21 *right Royalty Judge dissenting from the majority on*
22 *any determination under this chapter may issue his*
23 *or her dissenting opinion, which shall be included*
24 *with the determination.*

25 “(b) *PROCEDURES.—*

1 “(1) *INITIATION.*—

2 “(A) *CALL FOR PETITIONS TO PARTICI-*
3 *PATE.*—(i) *Promptly upon the filing of a peti-*
4 *tion for a rate adjustment or determination*
5 *under section 804(a) or 804(b)(8), or by no later*
6 *than January 5 of a year specified in section*
7 *804 for the commencement of a proceeding if a*
8 *petition has not been filed by that date, the*
9 *Copyright Royalty Judges shall cause to be pub-*
10 *lished in the Federal Register notice of com-*
11 *mencement of proceedings under this chapter*
12 *calling for the filing of petitions to participate*
13 *in a proceeding under this chapter for the pur-*
14 *pose of making the relevant determination under*
15 *section 111, 112, 114, 115, 116, 118, 119, 1004*
16 *or 1007, as the case may be.*

17 “(ii) *Petitions to participate shall be filed*
18 *by no later than 30 days after publication of no-*
19 *tice of commencement of a proceeding, under*
20 *clause (i), except that the Copyright Royalty*
21 *Judges may, for substantial good cause shown*
22 *and if there is no prejudice to the participants*
23 *that have already filed petitions, accept late peti-*
24 *tions to participate at any time up to the date*
25 *that is 90 days before the date on which partici-*

1 *pants in the proceeding are to file their written*
2 *direct statements.*

3 “(B) *PETITIONS TO PARTICIPATE.—Each*
4 *petition to participate in a proceeding shall de-*
5 *scribe the petitioner’s interest in the subject mat-*
6 *ter of the proceeding. Parties with similar inter-*
7 *ests may file a single petition to participate.*

8 “(2) *PARTICIPATION IN GENERAL.—Subject to*
9 *paragraph (4), a person may participate in a pro-*
10 *ceeding under this chapter, including through the sub-*
11 *mission of briefs or other information, only if—*

12 “(A) *that person has filed a petition to par-*
13 *ticipate in accordance with paragraph (1) (ei-*
14 *ther individually or as a group under paragraph*
15 *(1)(B)), together with a filing fee of \$150;*

16 “(B) *the Copyright Royalty Judges have not*
17 *determined that the petition to participate is*
18 *facially invalid; and*

19 “(C) *the Copyright Royalty Judges have not*
20 *determined, sua sponte or on the motion of an-*
21 *other participant in the proceeding, that the per-*
22 *son lacks a significant interest in the proceeding.*

23 “(3) *VOLUNTARY NEGOTIATION PERIOD.—*

24 “(A) *IN GENERAL.—Promptly after the date*
25 *for filing of petitions to participate in a pro-*

1 *ceeding, the Copyright Royalty Judges shall*
2 *make available to all participants in the pro-*
3 *ceeding a list of such participants and shall ini-*
4 *tiate a voluntary negotiation period among the*
5 *participants.*

6 “(B) *LENGTH OF PROCEEDINGS.*—*The vol-*
7 *untary negotiation period initiated under sub-*
8 *paragraph (A) shall be 3 months.*

9 “(C) *DETERMINATION OF SUBSEQUENT*
10 *PROCEEDINGS.*—*At the close of the voluntary ne-*
11 *gotiation proceedings, the Copyright Royalty*
12 *Judges shall, if further proceedings under this*
13 *chapter are necessary, determine whether and to*
14 *what extent paragraphs (4) and (5) will apply*
15 *to the parties.*

16 “(4) *SMALL CLAIMS PROCEDURE IN DISTRIBUTION*
17 *PROCEEDINGS.*—

18 “(A) *IN GENERAL.*—*If, in a proceeding*
19 *under this chapter to determine the distribution*
20 *of royalties, a participant in the proceeding as-*
21 *serts that the contested amount of the claim is*
22 *\$10,000 or less, the Copyright Royalty Judges*
23 *shall decide the controversy on the basis of the*
24 *filing in writing of the initial claim, the initial*
25 *response by any opposing participant, and one*

1 *additional response by each such party. The par-*
2 *ticipant asserting the claim shall not be required*
3 *to pay the filing fee under paragraph (2).*

4 “(B) *BAD FAITH INFLATION OF CLAIM.—If*
5 *the Copyright Royalty Judges determine that a*
6 *participant asserts in bad faith an amount in*
7 *controversy in excess of \$10,000 for the purpose*
8 *of avoiding a determination under the procedure*
9 *set forth in subparagraph (A), the Copyright*
10 *Royalty Judges shall impose a fine on that par-*
11 *ticipant in an amount not to exceed the dif-*
12 *ference between the actual amount distributed*
13 *and the amount asserted by the participant.*

14 “(5) *PAPER PROCEEDINGS IN RATEMAKING PRO-*
15 *CEEDINGS.—The Copyright Royalty Judges in pro-*
16 *ceedings under this chapter to determine royalty rates*
17 *may decide, sua sponte or upon motion of a partici-*
18 *part, to determine issues on the basis of initial filings*
19 *in writing, initial responses by any opposing partici-*
20 *part, and one additional response by each such par-*
21 *ticipant. Prior to making such decision to proceed on*
22 *such a paper record only, the Copyright Royalty*
23 *Judges shall offer to all parties to the proceeding the*
24 *opportunity to comment on the decision. The proce-*
25 *dure under this paragraph—*

1 “(A) shall be applied in cases in which
2 there is no genuine issue of material fact, there
3 is no need for evidentiary hearings, and all par-
4 ticipants in the proceeding agree in writing to
5 the procedure; and

6 “(B) may be applied under such other cir-
7 cumstances as the Copyright Royalty Judges
8 consider appropriate.

9 “(6) REGULATIONS.—

10 “(A) IN GENERAL.—The Copyright Royalty
11 Judges may issue regulations to carry out their
12 functions under this title. Not later than 120
13 days after Copyright Royalty Judges or interim
14 Copyright Royalty Judges, as the case may be,
15 are first appointed after the enactment of the
16 Copyright Royalty and Distribution Reform Act
17 of 2003, such judges shall issue regulations to
18 govern proceedings under this chapter.

19 “(B) INTERIM REGULATIONS.—Until regu-
20 lations are adopted under subparagraph (A), the
21 Copyright Royalty Judges shall apply the regu-
22 lations in effect under this chapter on the day
23 before the effective date of the Copyright Royalty
24 and Distribution Reform Act of 2003, to the ex-
25 tent such regulations are not inconsistent with

1 *this chapter, except that functions carried out*
2 *under such regulations by the Librarian of Con-*
3 *gress, the Register of Copyrights, or copyright ar-*
4 *bitration royalty panels that, as of such date of*
5 *enactment, are to be carried out by the Copy-*
6 *right Royalty Judges under this chapter, shall*
7 *be carried out by the Copyright Royalty Judges*
8 *under such regulations.*

9 “(C) *REQUIREMENTS.*—*Regulations issued*
10 *under subparagraph (A) shall include the fol-*
11 *lowing:*

12 “(i) *The written direct statements of*
13 *all participants in a proceeding under*
14 *paragraph (2) shall be filed by a date speci-*
15 *fied by the Copyright Royalty Judges,*
16 *which may be no earlier than four months,*
17 *and no later than five months, after the end*
18 *of the voluntary negotiation period under*
19 *paragraph (3). Notwithstanding the pre-*
20 *ceding sentence, a participant in a pro-*
21 *ceeding may, within 15 days after the end*
22 *of the discovery period specified in clause*
23 *(iii), file an amended written direct state-*
24 *ment based on new information received*
25 *during the discovery process.*

1 “(ii)(I) *Following the submission to*
2 *the Copyright Royalty Judges of written di-*
3 *rect statements by the participants in a*
4 *proceeding under paragraph (2), the judges*
5 *shall meet with the participants for the pur-*
6 *pose of setting a schedule for conducting*
7 *and completing discovery. Such schedule*
8 *shall be determined by the Copyright Roy-*
9 *alty Judges.*

10 “(II) *In this chapter, the term ‘written*
11 *direct statements’ means witness statements,*
12 *testimony, and exhibits to be presented in*
13 *the proceedings, and such other information*
14 *that is necessary to establish terms and*
15 *rates, or the distribution of royalty pay-*
16 *ments, as the case may be, as set forth in*
17 *regulations issued by the Copyright Royalty*
18 *Judges.*

19 “(iii) *Hearsay may be admitted in*
20 *proceedings under this chapter to the extent*
21 *deemed appropriate by the Copyright Roy-*
22 *alty Judges.*

23 “(iv) *Discovery in such proceedings*
24 *shall be permitted for a period of 60 days,*
25 *except for discovery ordered by the Copy-*

1 *right Royalty Judges in connection with the*
2 *resolution of motions, orders and disputes*
3 *pending at the end of such period.*

4 “(v) *Any participant under paragraph*
5 *(2) in a proceeding under this chapter to*
6 *determine royalty rates may, upon written*
7 *notice, seek discovery of information and*
8 *materials relevant and material to the pro-*
9 *ceeding. Any objection to any such discovery*
10 *request shall be resolved by a motion or re-*
11 *quest to compel discovery made to the Copy-*
12 *right Royalty Judges. Each motion or re-*
13 *quest to compel discovery shall be deter-*
14 *mined by the Copyright Royalty Judges, or*
15 *by a Copyright Royalty Judge when per-*
16 *mitted under subsection (a)(2), who may*
17 *approve the request only if the evidence that*
18 *would be produced is relevant and material.*
19 *A Copyright Royalty Judge may refuse a*
20 *request to compel discovery of evidence that*
21 *has been found to be relevant and material,*
22 *only upon good cause shown. For purposes*
23 *of the preceding sentence, the basis for ‘good*
24 *cause’ may only be that—*

1 “(I) *the discovery sought is unrea-*
2 *sonably cumulative or duplicative, or*
3 *is obtainable from another source that*
4 *is more convenient, less burdensome, or*
5 *less expensive;*

6 “(II) *the participant seeking dis-*
7 *covery has had ample opportunity by*
8 *discovery in the action to obtain the*
9 *information sought; or*

10 “(III) *the burden or expense of the*
11 *proposed discovery outweighs its likely*
12 *benefit, taking into account the needs*
13 *and resources of the participants, the*
14 *importance of the issues at stake, and*
15 *the importance of the proposed dis-*
16 *covery in resolving the issues.*

17 “(vi) *The rules in effect on the day be-*
18 *fore the effective date of the Copyright Roy-*
19 *alty and Distribution Reform Act of 2003,*
20 *relating to discovery in proceedings under*
21 *this title to determine the distribution of*
22 *royalty fees, shall continue to apply to such*
23 *proceedings on and after such effective date.*

24 “(vii) *The Copyright Royalty Judges*
25 *may issue subpoenas requiring the produc-*

1 *tion of evidence or witnesses, but only if the*
2 *evidence requested to be produced or that*
3 *would be proffered by the witness is relevant*
4 *and material.*

5 *“(viii) The Copyright Royalty Judges*
6 *shall order a settlement conference among*
7 *the participants in the proceeding to facili-*
8 *tate the presentation of offers of settlement*
9 *among the participants. The settlement con-*
10 *ference shall be held during a 21-day period*
11 *following the end of the discovery period.*

12 *“(c) DETERMINATION OF COPYRIGHT ROYALTY*
13 *JUDGES.—*

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

23 *“(2) REHEARINGS.—*

24 *“(A) IN GENERAL.—The Copyright Royalty*
25 *Judges may, in exceptional cases, upon motion*

1 of a participant under subsection (b)(2), order
2 a rehearing, after the determination in a pro-
3 ceeding is issued under paragraph (1), on such
4 matters as the Copyright Royalty Judges deter-
5 mine to be appropriate.

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

12 “(C) *PARTICIPATION BY OPPOSING PARTY*
13 *NOT REQUIRED.*—In any case in which a rehear-
14 ing is ordered, any opposing party shall not be
15 required to participate in the rehearing.

16 “(D) *NO NEGATIVE INFERENCE.*—No nega-
17 tive inference shall be drawn from lack of par-
18 ticipation in a rehearing.

19 “(E) *CONTINUITY OF RATES AND TERMS.*—
20 (i) If the decision of the Copyright Royalty
21 Judges on any motion for a rehearing is not ren-
22 dered before the expiration of the statutory rates
23 and terms that were previously in effect, in the
24 case of a proceeding to determine successors to

1 *rates and terms that expire on a specified date,*
2 *then—*

3 *“(I) the initial determination of the*
4 *Copyright Royalty Judges that is the sub-*
5 *ject of the rehearing motion shall be effective*
6 *as of the day following the date on which*
7 *the rates and terms that were previously in*
8 *effect expire; and*

9 *“(II) in the case of a proceeding under*
10 *section 114(f)(1)(C) or 114(f)(2)(C), royalty*
11 *rates and terms shall, for purposes of sec-*
12 *tion 114(f)(4)(B), be deemed to have been*
13 *set at those rates and terms contained in the*
14 *initial determination of the Copyright Roy-*
15 *alty Judges that is the subject of the rehear-*
16 *ing motion, as of the date of that deter-*
17 *mination.*

18 *“(i) The pendency of a motion for a re-*
19 *hearing under this paragraph shall not relieve*
20 *persons obligated to make royalty payments who*
21 *would be affected by the determination on that*
22 *motion from providing the statements of account*
23 *and any reports of use, to the extent required,*
24 *and paying the royalties required under the rel-*
25 *evant determination or regulations.*

1 “(iii) Notwithstanding clause (ii), whenever
2 royalties described in clause (ii) are paid to a
3 person other than the Copyright Office, the entity
4 designated by the Copyright Royalty Judges to
5 which such royalties are paid by the copyright
6 user (and any successor thereto) shall, within 60
7 days after the motion for rehearing is resolved
8 or, if the motion is granted, within 60 days after
9 the rehearing is concluded, return any excess
10 amounts previously paid to the extent necessary
11 to comply with the final determination of roy-
12 alty rates by the Copyright Royalty Judges.

13 “(3) CONTENTS OF DETERMINATION.—A deter-
14 mination of the Copyright Royalty Judges shall be
15 accompanied by the written record, and shall set forth
16 the facts that the Copyright Royalty Judges found rel-
17 evant to their determination. Among other terms
18 adopted in a determination, the Copyright Royalty
19 Judges may specify notice and recordkeeping require-
20 ments of users of the copyrights at issue that apply
21 in lieu of those that would otherwise apply under reg-
22 ulations.

23 “(4) CONTINUING JURISDICTION.—The Copyright
24 Royalty Judges may amend the determination or the
25 regulations issued pursuant to the determination in

1 *order to correct any technical errors in the determina-*
2 *tion or to respond to unforeseen circumstances that*
3 *preclude the proper effectuation of the determination.*

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

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

22 *“(d) JUDICIAL REVIEW.—*

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

1 *in the Federal Register, be appealed, to the United*
2 *States Court of Appeals for the District of Columbia*
3 *Circuit, by any aggrieved participant in the pro-*
4 *ceeding under subsection (b)(2) who fully participated*
5 *in the proceeding and who would be bound by the de-*
6 *termination. If no appeal is brought within that 30-*
7 *day period, the determination of the Copyright Roy-*
8 *alty Judges shall be final, and the royalty fee or de-*
9 *termination with respect to the distribution of fees, as*
10 *the case may be, shall take effect as set forth in para-*
11 *graph (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 de-*
17 *termination by the Copyright Royalty Judges of*
18 *successor rates and terms for an ensuing statu-*
19 *tory license period shall be effective as of the day*
20 *following the date of expiration of the rates and*
21 *terms that were previously in effect, even if the*
22 *determination of the Copyright Royalty Judges*
23 *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 publica-*
4 *tion of the determination of the Copyright Roy-*
5 *alty Judges in the Federal Register, except as*
6 *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.—(i)*
11 *The pendency of an appeal under this subsection*
12 *shall not relieve persons obligated to make roy-*
13 *alty payments under section 111, 112, 114, 115,*
14 *116, 118, 119, or 1003, who would be affected by*
15 *the determination on appeal, from providing the*
16 *statements of account (and any report of use, to*
17 *the extent required) and paying the royalties re-*
18 *quired under the relevant determination or regu-*
19 *lations.*

20 “(i) *Notwithstanding clause (i), whenever*
21 *royalties described in clause (i) are paid to a*
22 *person other than the Copyright Office, the entity*
23 *designated by the Copyright Royalty Judges to*
24 *which such royalties are paid by the copyright*
25 *user (and any successor thereto) shall, within 60*

1 *days after the final resolution of the appeal, re-*
2 *turn any excess amounts previously paid (and*
3 *interest thereon, if ordered pursuant to para-*
4 *graph (3)) to the extent necessary to comply with*
5 *the final determination of royalty rates on ap-*
6 *peal.*

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

20 “(e) *ADMINISTRATIVE MATTERS.*—

21 “(1) *DEDUCTION OF COSTS OF LIBRARY OF CON-*
22 *GRESS AND COPYRIGHT OFFICE FROM FILING FEES.*—

23 “(A) *DEDUCTION FROM FILING FEES.*—*The*
24 *Librarian of Congress may, to the extent not oth-*
25 *erwise provided under this title, deduct from the*

1 *filing fees collected under subsection (b) for a*
2 *particular proceeding under this chapter the rea-*
3 *sonable costs incurred by the Librarian of Con-*
4 *gress, the Copyright Office, and the Copyright*
5 *Royalty Judges in conducting that proceeding,*
6 *other than the salaries of the Copyright Royalty*
7 *Judges and the 3 staff members appointed under*
8 *section 802(b).*

9 “(B) *AUTHORIZATION OF APPROPRIA-*
10 *TIONS.—There are authorized to be appropriated*
11 *such sums as may be necessary to pay the costs*
12 *of proceedings under this chapter not covered by*
13 *the filing fees collected under subsection (b). All*
14 *funds made available pursuant to this subpara-*
15 *graph shall remain available until expended.*

16 “(2) *POSITIONS REQUIRED FOR ADMINISTRATION*
17 *OF COMPULSORY LICENSING.—Section 307 of the Leg-*
18 *islative Branch Appropriations Act, 1994, shall not*
19 *apply to employee positions in the Library of Con-*
20 *gress that are required to be filled in order to carry*
21 *out section 111, 112, 114, 115, 116, 118, or 119 or*
22 *chapter 10.*

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

24 “(a) *FILING OF PETITION.—With respect to pro-*
25 *ceedings referred to in paragraphs (1) and (2) of section*

1 801(b) concerning the determination or adjustment of roy-
2 alty rates as provided in sections 111, 112, 114, 115, 116,
3 118, and 1004, during the calendar years specified in the
4 schedule set forth in subsection (b), any owner or user of
5 a copyrighted work whose royalty rates are specified by this
6 title, or are established under this chapter before or after
7 the enactment of the Copyright Royalty and Distribution
8 Reform Act of 2003, may file a petition with the Copyright
9 Royalty Judges declaring that the petitioner requests a de-
10 termination or adjustment of the rate. The Copyright Roy-
11 alty Judges shall make a determination as to whether the
12 petitioner has such a significant interest in the royalty rate
13 in which a determination or adjustment is requested. If the
14 Copyright Royalty Judges determine that the petitioner has
15 such a significant interest, the Copyright Royalty Judges
16 shall cause notice of this determination, with the reasons
17 therefor, to be published in the Federal Register, together
18 with the notice of commencement of proceedings under this
19 chapter. With respect to proceedings under paragraph (1)
20 of section 801(b) concerning the determination or adjust-
21 ment of royalty rates as provided in sections 112 and 114,
22 during the calendar years specified in the schedule set forth
23 in subsection (b), the Copyright Royalty Judges shall cause
24 notice of commencement of proceedings under this chapter

1 *to be published in the Federal Register as provided in sec-*
2 *tion 803(b)(1)(A).*

3 “(b) *TIMING OF PROCEEDINGS.*—

4 “(1) *SECTION 111 PROCEEDINGS.*—(A) *A petition*
5 *described in subsection (a) to initiate proceedings*
6 *under section 801(b)(2) concerning the adjustment of*
7 *royalty rates under section 111 to which subpara-*
8 *graph (A) or (D) of section 801(b)(2) applies may be*
9 *filed during the year 2004 and in each subsequent*
10 *fifth calendar year.*

11 “(B) *In order to initiate proceedings under sec-*
12 *tion 801(b)(2) concerning the adjustment of royalty*
13 *rates under section 111 to which subparagraph (B) or*
14 *(C) of section 801(b)(2) applies, within 12 months*
15 *after an event described in either of those subsections,*
16 *any owner or user of a copyrighted work whose roy-*
17 *alty rates are specified by section 111, or by a rate*
18 *established under this chapter before or after the en-*
19 *actment of the Copyright Royalty and Distribution*
20 *Reform Act of 2003, may file a petition with the*
21 *Copyright Royalty Judges declaring that the peti-*
22 *tioner requests an adjustment of the rate. The Copy-*
23 *right Royalty Judges shall then proceed as set forth*
24 *in subsection (a) of this section. Any change in roy-*
25 *alty rates made under this chapter pursuant to this*

1 *subparagraph may be reconsidered in the year 2005,*
2 *and each fifth calendar year thereafter, in accordance*
3 *with the provisions in section 801(b)(3)(B) or (C), as*
4 *the case may be. A petition for adjustment of rates*
5 *under section 11(d)(1)(B) as a result of a change is*
6 *the rules and regulations of the Federal Communica-*
7 *tions Commission shall set forth the change on which*
8 *the petition is based.*

9 *“(2) CERTAIN SECTION 112 PROCEEDINGS.—Pro-*
10 *ceedings under this chapter shall be commenced in the*
11 *year 2007 to determine reasonable terms and rates of*
12 *royalty payments for the activities described in sec-*
13 *tion 112(e)(1) relating to the limitation on exclusive*
14 *rights specified by section 114(d)(1)(C)(iv), to become*
15 *effective on January 1, 2009. Such proceedings shall*
16 *be repeated in each subsequent fifth calendar year.*

17 *“(3) SECTION 114 AND CORRESPONDING 112 PRO-*
18 *CEEDINGS.—*

19 *“(A) FOR ELIGIBLE NONSUBSCRIPTION*
20 *SERVICES AND NEW SUBSCRIPTION SERVICES.—*
21 *Proceedings under this chapter shall be com-*
22 *menced as soon as practicable after the effective*
23 *date of the Copyright Royalty and Distribution*
24 *Reform Act of 2003 to determine reasonable*
25 *terms and rates of royalty payments under sec-*

1 *tions 114 and 112 for the activities of eligible*
2 *nonsubscription transmission services and new*
3 *subscription services, to be effective for the period*
4 *beginning on January 1, 2006, and ending on*
5 *December 31, 2010. Such proceedings shall next*
6 *be commenced in January 2009 to determine*
7 *reasonable terms and rates of royalty payments,*
8 *to become effective on January 1, 2011. There-*
9 *after, such proceedings shall be repeated in each*
10 *subsequent fifth calendar year.*

11 *“(B) FOR PREEXISTING SUBSCRIPTION AND*
12 *SATELLITE DIGITAL AUDIO RADIO SERVICES.—*
13 *Proceedings under this chapter shall be com-*
14 *menced in January 2006 to determine reasonable*
15 *terms and rates of royalty payments under sec-*
16 *tions 114 and 112 for the activities of pre-*
17 *existing subscription services, to be effective dur-*
18 *ing the period beginning on January 1, 2008,*
19 *and ending on December 31, 2012, and pre-*
20 *existing satellite digital audio radio services, to*
21 *be effective during the period beginning on Janu-*
22 *ary 1, 2007, and ending on December 31, 2012.*
23 *Such proceedings shall next be commenced in*
24 *2011 to determine reasonable terms and rates of*
25 *royalty payments, to become effective on Janu-*

1 *ary 1, 2013. Thereafter, such proceedings shall be*
2 *repeated in each subsequent fifth calendar year.*

3 *“(C)(i) Notwithstanding any other provi-*
4 *sion of this chapter, this subparagraph shall gov-*
5 *ern proceedings commenced pursuant to sections*
6 *114(f)(1)(C) and 114(f)(2)(C) concerning new*
7 *types of services.*

8 *“(i) Not later than 30 days after a petition*
9 *to determine rates and terms for a new type of*
10 *service that is filed by any copyright owner of*
11 *sound recordings, or such new type of service, in-*
12 *dicating that such new type of service is or is*
13 *about to become operational, the Copyright Roy-*
14 *alty Judges shall issue a notice for a proceeding*
15 *to determine rates and terms for such service.*

16 *“(iii) The proceeding shall follow the sched-*
17 *ule set forth in such subsections (b), (c), and (d)*
18 *of section 803, except that—*

19 *“(I) the determination shall be issued*
20 *by not later than 24 months after the publi-*
21 *cation of the notice under clause (i); and*

22 *“(II) the decision shall take effect as*
23 *provided in subsections (c)(2) and (d)(2) of*
24 *section 803 and section 114(f)(4)(B)(i) and*
25 *(C).*

1 “(iv) *The rates and terms shall remain in*
2 *effect for the period set forth in section*
3 *114(f)(1)(C) or 114(f)(2)(C), as the case may be.*

4 “(4) *SECTION 115 PROCEEDINGS.—A petition de-*
5 *scribed in subsection (a) to initiate proceedings under*
6 *section 801(b)(1) concerning the adjustment or deter-*
7 *mination of royalty rates as provided in section 115*
8 *may be filed in the year 2006 and in each subsequent*
9 *fifth calendar year, or at such other times as the par-*
10 *ties have agreed under section 115(c)(3)(B) and (C).*

11 “(5) *SECTION 116 PROCEEDINGS.—(A) A petition*
12 *described in subsection (a) to initiate proceedings*
13 *under section 801(b) concerning the determination of*
14 *royalty rates and terms as provided in section 116*
15 *may be filed at any time within 1 year after nego-*
16 *tiated licenses authorized by section 116 are termi-*
17 *nated or expire and are not replaced by subsequent*
18 *agreements.*

19 “(B) *If a negotiated license authorized by section*
20 *116 is terminated or expires and is not replaced by*
21 *another such license agreement which provides per-*
22 *mission to use a quantity of musical works not sub-*
23 *stantially smaller than the quantity of such works*
24 *performed on coin-operated phonorecord players dur-*
25 *ing the 1-year period ending March 1, 1989, the*

1 *Copyright Royalty Judges shall, upon petition filed*
2 *under paragraph (1) within 1 year after such termi-*
3 *nation or expiration, commence a proceeding to*
4 *promptly establish an interim royalty rate or rates*
5 *for the public performance by means of a coin-oper-*
6 *ated phonorecord player of nondramatic musical*
7 *works embodied in phonorecords which had been sub-*
8 *ject to the terminated or expired negotiated license*
9 *agreement. Such rate or rates shall be the same as the*
10 *last such rate or rates and shall remain in force until*
11 *the conclusion of proceedings by the Copyright Roy-*
12 *alty Judges, in accordance with section 803, to adjust*
13 *the royalty rates applicable to such works, or until*
14 *superseded by a new negotiated license agreement, as*
15 *provided in section 116(b).*

16 *“(6) SECTION 118 PROCEEDINGS.—A petition de-*
17 *scribed in subsection (a) to initiate proceedings under*
18 *section 801(b)(1) concerning the determination of rea-*
19 *sonable terms and rates of royalty payments as pro-*
20 *vided in section 118 may be filed in the year 2006*
21 *and in each subsequent fifth calendar year.*

22 *“(7) SECTION 1004 PROCEEDINGS.—A petition*
23 *described in subsection (a) to initiate proceedings*
24 *under section 801(b)(1) concerning the adjustment of*

1 *reasonable royalty rates under section 1004 may be*
2 *filed as provided in section 1004(a)(3).*

3 “(8) *PROCEEDINGS CONCERNING DISTRIBUTION*
4 *OF ROYALTY FEES.*—*With respect to proceedings*
5 *under section 801(b)(3) concerning the distribution of*
6 *royalty fees in certain circumstances under section*
7 *111, 116, 119, or 1007, the Copyright Royalty Judges*
8 *shall, upon a determination that a controversy exists*
9 *concerning such distribution, cause to be published in*
10 *the Federal Register notice of commencement of pro-*
11 *ceedings under this chapter.*

12 **“§ 805. General rule for voluntarily negotiated agree-**
13 **ments**

14 *“Any rates or terms under this title that—*

15 *“(1) are agreed to by participants to a pro-*
16 *ceeding under section 803(b)(2),*

17 *“(2) are adopted by the Copyright Royalty*
18 *Judges as part of a determination under this chapter,*
19 *and*

20 *“(3) are in effect for a period shorter than would*
21 *otherwise apply under a determination pursuant to*
22 *this chapter,*

23 *shall remain in effect for such period of time as would other-*
24 *wise apply under such determination, except that the Copy-*
25 *right Royalty Judges shall adjust the rates pursuant to the*

1 *voluntary negotiations to reflect national monetary infla-*
 2 *tion during the additional period the rates remain in ef-*
 3 *fect.”.*

4 (b) *CONFORMING AMENDMENT.—The table of chapters*
 5 *for title 17, United States Code, is amended by striking the*
 6 *item relating to chapter 8 and inserting the following:*

“8. Proceedings by Copyright Royalty Judges 801”.

7 **SEC. 4. DEFINITION.**

8 *Section 101 is amended by inserting after the defini-*
 9 *tion of “copies” the following:*

10 *“A ‘Copyright Royalty Judge’ is a Copyright*
 11 *Royalty Judge appointed under section 802 of this*
 12 *title, and includes any individual serving as an in-*
 13 *terim Copyright Royalty Judge under such section.”.*

14 **SEC. 5. TECHNICAL AMENDMENTS.**

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

16 (1) *in paragraph (2), in the second sentence, by*
 17 *striking “a copyright arbitration royalty panel” and*
 18 *inserting “the Copyright Royalty Judges.”; and*

19 (2) *in paragraph (4)—*

20 (A) *in subparagraph (A), by striking “Li-*
 21 *brarian of Congress” each place it appears and*
 22 *inserting “Copyright Royalty Judges”;*

23 (B) *in subparagraph (B)—*

24 (i) *in the first sentence, by striking*
 25 *“Librarian of Congress shall, upon the rec-*

1 *ommendation of the Register of Copy-*
2 *rights,” and inserting “Copyright Royalty*
3 *Judges shall”;*

4 *(ii) in the second sentence, by striking*
5 *“Librarian determines” and inserting*
6 *“Copyright Royalty Judges determine”;* and

7 *(iii) in the third sentence—*

8 *(I) by striking “Librarian” each*
9 *place it appears and inserting “Copy-*
10 *right Royalty Judges”;* and

11 *(II) by striking “convene a copy-*
12 *right arbitration royalty panel” and*
13 *inserting “conduct a proceeding”;* and

14 *(C) in subparagraph (C), by striking “Li-*
15 *brarian of Congress” and inserting “Copyright*
16 *Royalty Judges”.*

17 **(b) EPHEMERAL RECORDINGS.**—*Section 112(e) is*
18 *amended—*

19 *(1) in paragraph (3)—*

20 *(A) by amending the first sentence to read*
21 *as follows: “Voluntary negotiation proceedings*
22 *initiated pursuant to section 804(a) for the pur-*
23 *pose of determining reasonable terms and rates*
24 *of royalty payments for the activities specified*
25 *by paragraph (1) shall cover the 5-year period*

1 *beginning on January 1 of the second year fol-*
2 *lowing the year in which the proceedings are*
3 *commenced, or such other period as the parties*
4 *may agree.”; and*

5 *(B) in the third sentence, by striking “Li-*
6 *brarian of Congress” and inserting “Copyright*
7 *Royalty Judges”;*

8 *(2) in paragraph (4)—*

9 *(A) by amending the first sentence to read*
10 *as follows: “In the absence of license agreements*
11 *negotiated under paragraphs (2) and (3), the*
12 *Copyright Royalty Judges shall commence a pro-*
13 *ceeding pursuant to chapter 8 to determine and*
14 *publish in the Federal Register a schedule of rea-*
15 *sonable rates and terms which, subject to para-*
16 *graph (5), shall be binding on all copyright own-*
17 *ers of sound recordings and transmitting organi-*
18 *zations entitled to a statutory license under this*
19 *subsection during the 5-year period specified in*
20 *paragraph (3), or such other period as the par-*
21 *ties may agree.”;*

22 *(B) by striking “copyright arbitration roy-*
23 *alty panel” each subsequent place it appears and*
24 *inserting “Copyright Royalty Judges”;*

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

3 (D) in the last sentence, by striking “Li-
4 brarian of Congress” and inserting “Copyright
5 Royalty Judges”;

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

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

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

16 (c) SCOPE OF EXCLUSIVE RIGHTS IN SOUND RECORD-
17 INGS.—Section 114(f) is amended—

18 (1) in paragraph (1)—

19 (A) in subparagraph (A)—

20 (i) by amending the first sentence to
21 read as follows: “Voluntary negotiation pro-
22 ceedings initiated pursuant to section
23 804(a) for the purpose of determining rea-
24 sonable terms and rates of royalty payments
25 for subscription transmissions by pre-

1 *existing subscription services and trans-*
2 *missions by preexisting satellite digital*
3 *audio radio services shall cover the 5-year*
4 *period beginning on January 1 of the year*
5 *following the second year in which the pro-*
6 *ceedings are commenced, except where dif-*
7 *ferential transitional periods are provided*
8 *in section 804(b)(3), or such other period as*
9 *the parties may agree.”; and*

10 *(ii) in the third sentence, by striking*
11 *“Librarian of Congress” and inserting*
12 *“Copyright Royalty Judges”;*

13 *(B) in subparagraph (B)—*

14 *(i) by amending the first sentence to*
15 *read as follows: “In the absence of license*
16 *agreements negotiated under subparagraph*
17 *(A), the Copyright Royalty Judges shall*
18 *commence a proceeding pursuant to chapter*
19 *8 to determine and publish in the Federal*
20 *Register a schedule of rates and terms*
21 *which, subject to paragraph (3), shall be*
22 *binding on all copyright owners of sound*
23 *recordings and entities performing sound*
24 *recordings affected by this paragraph dur-*
25 *ing the 5-year period specified in subpara-*

1 *graph (A), or such other date as the parties*
2 *may agree.”; and*

3 *(ii) in the second sentence, by striking*
4 *“copyright arbitration royalty panel” and*
5 *inserting “Copyright Royalty Judges”; and*
6 *(C) by amending subparagraph (C) to read*
7 *as follows:*

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

25 *(2) in paragraph (2)—*

1 (A) in subparagraph (A)—

2 (i) by amending the first sentence to
3 read as follows: “Voluntary negotiation pro-
4 ceedings initiated pursuant to section
5 804(a) for the purpose of determining rea-
6 sonable terms and rates of royalty payments
7 for public performances of sound recordings
8 by means of eligible nonsubscription trans-
9 missions and transmissions by new sub-
10 scription services specified by subsection
11 (d)(2) shall cover the 5-year period begin-
12 ning on January 1 of the second year fol-
13 lowing the year in which the proceedings
14 are commenced, except where different tran-
15 sitional periods are provided in section
16 804(b)(3)(A), or such other period as the
17 parties may agree.”; and

18 (ii) in the third sentence, by striking
19 “Librarian of Congress” and inserting
20 “Copyright Royalty Judges”;

21 (B) in subparagraph (B)—

22 (i) by amending the first sentence to
23 read as follows: “In the absence of license
24 agreements negotiated under subparagraph
25 (A), the Copyright Royalty Judges shall

1 *commence a proceeding pursuant to chapter*
2 *8 to determine and publish in the Federal*
3 *Register a schedule of rates and terms*
4 *which, subject to paragraph (3), shall be*
5 *binding on all copyright owners of sound*
6 *recordings and entities performing sound*
7 *recordings affected by this paragraph dur-*
8 *ing the period specified in subparagraph*
9 *(A), or such other period as the parties may*
10 *agree.”; and*

11 *(ii) by striking “copyright arbitration*
12 *royalty panel” each subsequent place it ap-*
13 *pears and inserting “Copyright Royalty*
14 *Judges”;* and

15 *(C) by amending subparagraph (C) to read*
16 *as follows:*

17 *“(C) The procedures under subparagraphs (A)*
18 *and (B) shall also be initiated pursuant to a petition*
19 *filed by any copyright owners of sound recordings or*
20 *any eligible nonsubscription service or new subscrip-*
21 *tion service indicating that a new type of eligible*
22 *nonsubscription service or new subscription service on*
23 *which sound recordings are performed is or is about*
24 *to become operational, for the purpose of determining*
25 *reasonable terms and rates of royalty payments with*

1 *respect to such new type of service for the period be-*
 2 *ginning with the inception of such new type of service*
 3 *and ending on the date on which the royalty rates*
 4 *and terms for preexisting subscription digital audio*
 5 *transmission services or preexisting satellite digital*
 6 *radio audio services, as the case may be, most re-*
 7 *cently determined under subparagraph (A) or (B)*
 8 *and chapter 8 expire, or such other period as the par-*
 9 *ties may agree.”;*

10 (3) in paragraph (3), by striking “or decision by
 11 *the Librarian of Congress” and inserting “, decision*
 12 *by the Librarian of Congress, or determination by the*
 13 *Copyright Royalty Judges”;* and

14 (4) in paragraph (4), by striking “*Librarian of*
 15 *Congress” each place it appears and inserting “Copy-*
 16 *right Royalty Judges”.*

17 (d) *PHONORECORDS OF NONDRAMATIC MUSICAL*
 18 *WORKS.—Section 115(c)(3) is amended—*

19 (1) in subparagraph (A)(ii), by striking “(F)”
 20 *and inserting “(E)”;*

21 (2) in subparagraph (B)—

22 (A) by striking “under this paragraph” and
 23 *inserting “under this section; and*

1 (B) by striking “subparagraphs (B) through
2 (F)” and inserting “this subparagraph and sub-
3 paragraphs (B) through (E)”;

4 (3) in subparagraph (C)—

5 (A) by amending the first sentence to read
6 as follows: “Voluntary negotiation proceedings
7 initiated pursuant to a petition filed under sec-
8 tion 804(a) for the purpose of determining rea-
9 sonable terms and rates of royalty payments for
10 the activities specified by this section shall cover
11 the period beginning with the effective date of
12 such terms and rates, but not earlier than Janu-
13 ary 1 of the second year following the year in
14 which the petition is filed, and ending on the ef-
15 fective date of successor terms and rates, or such
16 other period as the parties may agree.”; and

17 (B) in the third sentence, by striking “Li-
18 brarian of Congress” and inserting “Copyright
19 Royalty Judges”;

20 (4) in subparagraph (D)—

21 (A) by amending the first sentence to read
22 as follows: “In the absence of license agreements
23 negotiated under subparagraphs (B) and (C), the
24 Copyright Royalty Judges shall commence pro-
25 ceedings pursuant to chapter 8 to determine and

1 *publish in the Federal Register a schedule of*
2 *rates and terms which, subject to subparagraph*
3 *(E), shall be binding on all copyright owners of*
4 *nondramatic musical works and persons entitled*
5 *to obtain a compulsory license under subsection*
6 *(a)(1) during the period specified in subpara-*
7 *graph (C) or such other period as may be deter-*
8 *mined pursuant to subparagraphs (B) and (C),*
9 *or such other period as the parties may agree.”;*

10 *(B) in the third sentence, by striking “copy-*
11 *right arbitration royalty panel” and inserting*
12 *“Copyright Royalty Judges”; and*

13 *(C) in the last sentence, by striking “Li-*
14 *brarian of Congress” and inserting “Copyright*
15 *Royalty Judges”;*

16 *(5) in subparagraph (E)—*

17 *(A) in clause (i)—*

18 *(i) in the first sentence, by striking*
19 *“the Librarian of Congress” and inserting*
20 *“a copyright arbitration royalty panel, the*
21 *Librarian of Congress, or the Copyright*
22 *Royalty Judges”; and*

23 *(ii) in the second sentence, by striking*
24 *“(C), (D) or (F) shall be given effect” and*

1 inserting “(C) or (D) shall be given effect as
2 to digital phonorecord deliveries”; and

3 (B) in clause (ii)(I), by striking “(C), (D)
4 or (F)” each place it appears and inserting “(C)
5 or (D)”; and

6 (6) by striking subparagraph (F) and redesignating
7 subparagraphs (G) through (L) as subparagraphs (F) through (K), respectively.

9 (e) COIN-OPERATED PHONORECORD PLAYERS.—Section
10 tion 116 is amended—

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

13 “(2) CHAPTER 8 PROCEEDING.—Parties not sub-
14 ject to such a negotiation may have the terms and
15 rates and the division of fees described in paragraph
16 (1) determined in a proceeding in accordance with
17 the provisions of chapter 8.”; and

18 (2) in subsection (c)—

19 (A) in the subsection heading, by striking
20 “COPYRIGHT ARBITRATION ROYALTY PANEL DE-
21 TERMINATIONS” and inserting “DETERMINA-
22 TIONS BY COPYRIGHT ROYALTY JUDGES”; and

23 (B) by striking “a copyright arbitration
24 royalty panel” and inserting “the Copyright
25 Royalty Judges”.

1 (f) *USE OF CERTAIN WORKS IN CONNECTION WITH*
2 *NONCOMMERCIAL BROADCASTING.*—Section 118 is amend-
3 *ed—*

4 (1) *in subsection (b)—*

5 (A) *in paragraph (1)—*

6 (i) *in the first sentence, by striking*
7 *“Librarian of Congress” and inserting*
8 *“Copyright Royalty Judges”; and*

9 (ii) *by striking the second and third*
10 *sentences;*

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

20 (C) *in paragraph (3)—*

21 (i) *in the second sentence—*

22 (I) *by striking “copyright arbitra-*
23 *tion royalty panel” and inserting*
24 *“Copyright Royalty Judges”; and*

1 (II) by striking “paragraph (2).”
2 and inserting “paragraph (2) or (3).”;
3 (ii) in the last sentence, by striking
4 “Librarian of Congress” and inserting
5 “Copyright Royalty Judges”; and
6 (iii) by striking “(3) In” and all that
7 follows through the end of the first sentence
8 and inserting the following:

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

20 “(4) In the absence of license agreements nego-
21 tiated under paragraph (2) or (3), the Copyright
22 Royalty Judges shall, pursuant to chapter 8, conduct
23 a proceeding to determine and publish in the Federal
24 Register a schedule of rates and terms which, subject
25 to paragraph (2), shall be binding on all owners of

1 *copyright in works specified by this subsection and*
2 *public broadcasting entities, regardless of whether*
3 *such copyright owners have submitted proposals to the*
4 *Copyright Royalty Judges.”;*

5 *(2) by striking subsection (c) and redesignating*
6 *subsections (d) through (g) as subsections (c) through*
7 *(f), respectively;*

8 *(3) in subsection (c), as so redesignated, in the*
9 *matter preceding paragraph (1)—*

10 *(A) by striking “(b)(2)” and inserting*
11 *“(b)(2) or (3)”;*

12 *(B) by striking “(b)(3)” and inserting*
13 *“(b)(4)”;* and

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

17 *(4) in subsection (d), as so redesignated—*

18 *(A) by striking “in the Copyright Office”*
19 *and inserting “with the Copyright Royalty*
20 *Judges”;* and

21 *(B) by striking “Register of Copyrights”*
22 *and inserting “Copyright Royalty Judges”;* and

23 *(5) in subsection (f), as so redesignated, by strik-*
24 *ing “(d)” and inserting “(c)”.*

1 (g) *SECONDARY TRANSMISSIONS BY SATELLITE CAR-*
2 *RIERS.—Section 119(b) is amended—*

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

6 (2) *in paragraph (4)—*

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

10 (B) *by amending subparagraphs (B) and*
11 *(C) to read as follows:*

12 “(B) *DETERMINATION OF CONTROVERSY;*
13 *DISTRIBUTIONS.—After the first day of August of*
14 *each year, the Copyright Royalty Judges shall*
15 *determine whether there exists a controversy con-*
16 *cerning the distribution of royalty fees. If the*
17 *Copyright Royalty Judges determine that no*
18 *such controversy exists, the Librarian of Con-*
19 *gress shall, after deducting reasonable adminis-*
20 *trative costs under this paragraph, distribute*
21 *such fees to the copyright owners entitled to re-*
22 *ceive them, or to their designated agents. If the*
23 *Copyright Royalty Judges find the existence of a*
24 *controversy, the Copyright Royalty Judges shall,*
25 *pursuant to chapter 8 of this title, conduct a*

1 *proceeding to determine the distribution of roy-*
2 *alty fees.*

3 “(C) *WITHHOLDING OF FEES DURING CON-*
4 *TROVERSY.—During the pendency of any pro-*
5 *ceeding under this subsection, the Copyright*
6 *Royalty Judges shall withhold from distribution*
7 *an amount sufficient to satisfy all claims with*
8 *respect to which a controversy exists, subject to*
9 *any distributions made under section*
10 *801(b)(3).”.*

11 *(h) DIGITAL AUDIO RECORDING DEVICES.—*

12 *(1) ROYALTY PAYMENTS.—Section 1004(a)(3) is*
13 *amended by striking “Librarian of Congress” each*
14 *place it appears and inserting “Copyright Royalty*
15 *Judges”.*

16 *(2) ENTITLEMENT TO ROYALTY PAYMENTS.—Sec-*
17 *tion 1006(c) is amended by striking “Librarian of*
18 *Congress shall convene a copyright arbitration roy-*
19 *alty panel which” and inserting “Copyright Royalty*
20 *Judges”.*

21 *(3) PROCEDURES FOR DISTRIBUTING ROYALTY*
22 *PAYMENTS.—Section 1007 is amended—*

23 *(A) in subsection (a), by amending para-*
24 *graph (1) to read as follows:*

1 “(1) *FILING OF CLAIMS.*—During the first 2
2 months of each calendar year, every interested copy-
3 right party seeking to receive royalty payments to
4 which such party is entitled under section 1006 shall
5 file with the Copyright Royalty Judges a claim for
6 payments collected during the preceding year in such
7 form and manner as the Copyright Royalty Judges
8 shall prescribe by regulation.”; and

9 (B) by amending subsections (b) and (c) to
10 read as follows:

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

1 “(c) *RESOLUTION OF DISPUTES.*—If the Copyright
2 *Royalty Judges find the existence of a controversy, the*
3 *Copyright Royalty Judges shall, pursuant to chapter 8 of*
4 *this title, conduct a proceeding to determine the distribution*
5 *of royalty payments. During the pendency of such a pro-*
6 *ceeding, the Copyright Royalty Judges shall withhold from*
7 *distribution an amount sufficient to satisfy all claims with*
8 *respect to which a controversy exists, but shall, to the extent*
9 *feasible, authorize the distribution of any amounts that are*
10 *not in controversy. The Librarian of Congress shall, before*
11 *such royalty payments are distributed, deduct the reason-*
12 *able administrative costs incurred by the Librarian under*
13 *this section.”.*

14 (4) *DETERMINATION OF CERTAIN DISPUTES.*—

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

16 “**§ 1010. Determination of certain disputes**

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

1 “(b) *INITIATION OF PROCEEDINGS.*—*The parties under*
2 *subsection (a) shall file the petition with the Copyright Roy-*
3 *alty Judges requesting the commencement of a proceeding.*
4 *Within 2 weeks after receiving such a petition, the Chief*
5 *Copyright Royalty Judge shall cause notice to be published*
6 *in the Federal Register of the initiation of the proceeding.*

7 “(c) *STAY OF JUDICIAL PROCEEDINGS.*—*Any civil ac-*
8 *tion brought under section 1009 against a party to a pro-*
9 *ceeding under this section shall, on application of one of*
10 *the parties to the proceeding, be stayed until completion of*
11 *the proceeding.*

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

21 “(e) *JUDICIAL REVIEW.*—*Any determination of the*
22 *Copyright Royalty Judges under subsection (d) may be ap-*
23 *pealed, by a party to the proceeding, in accordance with*
24 *section 803(d) of this title. The pendency of an appeal under*
25 *this subsection shall not stay the determination of the Copy-*

1 *right Royalty Judges. If the court modifies the determina-*
2 *tion of the Copyright Royalty Judges, the court shall have*
3 *jurisdiction to enter its own decision in accordance with*
4 *its final judgment. The court may further vacate the deter-*
5 *mination of the Copyright Royalty Judges and remand the*
6 *case for proceedings as provided in this section.”.*

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

“1010. Determination of certain disputes.”.

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

11 (a) *EFFECTIVE DATE.—This Act and the amendments*
12 *made by this Act shall take effect 6 months after the date*
13 *of the enactment of this Act, except that the Librarian of*
14 *Congress shall appoint interim Copyright Royalty Judges*
15 *under section 802(d) of title 17, United States Code, as*
16 *amended by this Act, within 90 days after such date of en-*
17 *actment to carry out the functions of the Copyright Royalty*
18 *Judges under title 17, United States Code, to the extent that*
19 *Copyright Royalty Judges provided for in section 801(a)*
20 *of title 17, United States Code, as amended by this Act,*
21 *have not been appointed before the end of that 90-day pe-*
22 *riod.*

23 (b) *TRANSITION PROVISIONS.—*

24 (1) *IN GENERAL.—Subject to paragraph (2), the*
25 *amendments made by this Act shall not affect any*

1 *proceedings commenced, petitions filed, or voluntary*
2 *agreements entered into before the enactment of this*
3 *Act under the provisions of title 17, United States*
4 *Code, amended by this Act, and pending on such date*
5 *of enactment. Such proceedings shall continue, deter-*
6 *minations made in such proceedings, and appeals*
7 *taken therefrom, as if this Act had not been enacted,*
8 *and shall continue in effect until modified under title*
9 *17, United States Code, as amended by this Act. Such*
10 *petitions filed and voluntary agreements entered into*
11 *shall remain in effect as if this Act had not been en-*
12 *acted.*

13 (2) *EFFECTIVE PERIODS FOR CERTAIN RATE-*
14 *MAKING PROCEEDINGS.—Notwithstanding paragraph*
15 *(1), terms and rates in effect under section 114(f)(2)*
16 *or 112(e) of title 17, United States Code, for new sub-*
17 *scription services, eligible nonsubscription services,*
18 *and services exempt under section 114(d)(1)(C)(iv) of*
19 *such title for the period 2003 through 2004, and any*
20 *rates published in the Federal Register under the au-*
21 *thority of the Small Webcaster Settlement Act of 2002*
22 *for the years 2003 through 2004, shall be effective*
23 *until the first applicable effective date for successor*
24 *terms and rates specified in section 804(b)(2) or*
25 *(3)(A) of title 17, United States Code, or until such*

1 *later date as the parties may agree. Any proceeding*
2 *commenced before the enactment of this Act pursuant*
3 *to section 114(f)(2) and chapter 8 of title 17, United*
4 *States Code, to adjust or determine such rates and*
5 *terms for periods following 2004 shall be terminated*
6 *upon the enactment of this Act and shall be null and*
7 *void.*

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

Amend the title so as to read: “A bill to amend title 17, United States Code, to replace copyright arbitration royalty panels with Copyright Royalty Judges, and for other purposes.”.

Union Calendar No. 234

108TH CONGRESS
2D SESSION

H. R. 1417

[Report No. 108-408]

A BILL

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

JANUARY 30, 2004

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed