

In the Senate of the United States,

October 6, 2004.

Resolved, That the bill from the House of Representatives (H.R. 1417) entitled “An Act to amend title 17, United States Code, to replace copyright arbitration royalty panels with Copyright Royalty Judges, and for other purposes.”, do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE.***

2 *This Act may be cited as the “Copyright Royalty and*

3 *Distribution Reform Act of 2004”.*

1 **SEC. 2. REFERENCE.**

2 *Except as otherwise expressly provided, whenever in*
 3 *this Act an amendment or repeal is expressed in terms of*
 4 *an amendment to, or repeal of, a section or other provision,*
 5 *the reference shall be considered to be made to a section or*
 6 *other provision of title 17, United States Code.*

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

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

10 **“CHAPTER 8—PROCEEDINGS BY**
 11 **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.

12 **“§ 801. Copyright Royalty Judges; appointment and**
 13 **functions**

14 *“(a) APPOINTMENT.—The Librarian of Congress shall*
 15 *appoint 3 full-time Copyright Royalty Judges, and shall*
 16 *appoint 1 of the 3 as the Chief Copyright Royalty Judge.*
 17 *The Librarian shall make appointments to such positions*
 18 *after consultation with the Register of Copyrights.*

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

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

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

9 “(B) To afford the copyright owner a fair
10 return for his or her creative work and the copy-
11 right user a fair income under existing economic
12 conditions.

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

21 “(D) To minimize any disruptive impact
22 on the structure of the industries involved and on
23 generally prevailing industry practices.

24 “(2) To make determinations concerning the ad-
25 justment of the copyright royalty rates under section

1 *111 solely in accordance with the following provi-*
2 *sions:*

3 “(A) *The rates established by section*
4 *111(d)(1)(B) may be adjusted to reflect—*

5 “(i) *national monetary inflation or de-*
6 *flation; or*

7 “(ii) *changes in the average rates*
8 *charged cable subscribers for the basic serv-*
9 *ice of providing secondary transmissions to*
10 *maintain the real constant dollar level of*
11 *the royalty fee per subscriber which existed*
12 *as of the date of October 19, 1976,*

13 *except that—*

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

21 “(II) *no increase in the royalty fee*
22 *shall be permitted based on any reduction*
23 *in the average number of distant signal*
24 *equivalents per subscriber.*

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

8 “(B) *In the event that the rules and regula-*
9 *tions of the Federal Communications Commis-*
10 *sion are amended at any time after April 15,*
11 *1976, to permit the carriage by cable systems of*
12 *additional television broadcast signals beyond*
13 *the local service area of the primary transmitters*
14 *of such signals, the royalty rates established by*
15 *section 111(d)(1)(B) may be adjusted to ensure*
16 *that the rates for the additional distant signal*
17 *equivalents resulting from such carriage are rea-*
18 *sonable in the light of the changes effected by the*
19 *amendment to such rules and regulations. In de-*
20 *termining the reasonableness of rates proposed*
21 *following an amendment of Federal Communica-*
22 *tions Commission rules and regulations, the*
23 *Copyright Royalty Judges shall consider, among*
24 *other factors, the economic impact on copyright*
25 *owners and users; except that no adjustment in*

1 *royalty rates shall be made under this subpara-*
2 *graph with respect to any distant signal equiva-*
3 *lent or fraction thereof represented by—*

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

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

17 “(C) *In the event of any change in the rules*
18 *and regulations of the Federal Communications*
19 *Commission with respect to syndicated and*
20 *sports program exclusivity after April 15, 1976,*
21 *the rates established by section 111(d)(1)(B) may*
22 *be adjusted to assure that such rates are reason-*
23 *able in light of the changes to such rules and reg-*
24 *ulations, but any such adjustment shall apply*

1 *only to the affected television broadcast signals*
2 *carried on those systems affected by the change.*

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

13 “(3)(A) *To authorize the distribution, under sec-*
14 *tions 111, 119, and 1007, of those royalty fees col-*
15 *lected under sections 111, 119, and 1005, as the case*
16 *may be, to the extent that the Copyright Royalty*
17 *Judges have found that the distribution of such fees*
18 *is not subject to controversy.*

19 “(B) *In cases where the Copyright Royalty*
20 *Judges determine that controversy exists, the Copy-*
21 *right Royalty Judges shall determine the distribution*
22 *of such fees, including partial distributions, in ac-*
23 *cordance with section 111, 119, or 1007, as the case*
24 *may be.*

1 “(C) *The Copyright Royalty Judges may make a*
2 *partial distribution of such fees during the pendency*
3 *of the proceeding under subparagraph (B) if all par-*
4 *ticipants under section 803(b)(2) in the proceeding*
5 *that are entitled to receive those fees that are to be*
6 *partially distributed—*

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

8 “(ii) *sign an agreement obligating them to*
9 *return any excess amounts to the extent nec-*
10 *essary to comply with the final determination on*
11 *the distribution of the fees made under subpara-*
12 *graph (B);*

13 “(iii) *file the agreement with the Copyright*
14 *Royalty Judges; and*

15 “(iv) *agree that such funds are available for*
16 *distribution.*

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

24 “(4) *To accept or reject royalty claims filed*
25 *under sections 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 *pate 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 a 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 those that would be bound by the*
18 *terms, rates, or other determination set by any*
19 *agreement in a proceeding to determine royalty*
20 *rates an opportunity to comment on the agree-*
21 *ment and shall provide to the other participants*
22 *in the proceeding under section 803(b)(2) that*
23 *would be bound by the terms, rates, or other de-*
24 *termination set by the agreement an opportunity*
25 *to comment on the agreement and object to its*

1 *adoption as a basis for statutory terms and*
2 *rates; and*

3 “(i) the Copyright Royalty Judges may de-
4 cline to adopt the agreement as a basis for statu-
5 tory terms and rates for participants that are
6 not parties to the agreement, if any other partic-
7 ipant described in subparagraph (A) objects to
8 the agreement and the Copyright Royalty Judges
9 conclude, based on the record before them if one
10 exists, that the agreement does not provide a rea-
11 sonable basis for setting statutory terms or rates.

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) or (3) that do
15 not result in statutory terms and rates shall not be
16 subject to clauses (i) and (ii) of subparagraph (A).

17 “(C) Interested parties may negotiate and agree
18 to, and the Copyright Royalty Judges may adopt, an
19 agreement that specifies as terms notice and record-
20 keeping requirements that apply in lieu of those that
21 would otherwise apply under regulations.

22 “(8) To perform other duties, as assigned by the
23 Register of Copyrights within the Library of Con-
24 gress, except as provided in section 802(g) at times

1 *when Copyright Royalty Judges are not engaged in*
2 *performing the other duties set forth in this section.*

3 “(c) *RULINGS.—As provided in section 802(f)(1), the*
4 *Copyright Royalty Judges may make any necessary proce-*
5 *dural or evidentiary rulings in any proceeding under this*
6 *chapter and may, before commencing a proceeding under*
7 *this chapter, make any such rulings that would apply to*
8 *the proceedings conducted by the Copyright Royalty Judges.*

9 “(d) *ADMINISTRATIVE SUPPORT.—The Librarian of*
10 *Congress shall provide the Copyright Royalty Judges with*
11 *the necessary administrative services related to proceedings*
12 *under this chapter.*

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

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

17 “(a) *QUALIFICATIONS OF COPYRIGHT ROYALTY*
18 *JUDGES.—*

19 “(1) *IN GENERAL.—Each Copyright Royalty*
20 *Judge shall be an attorney who has at least 7 years*
21 *of legal experience. The Chief Copyright Royalty*
22 *Judge shall have at least 5 years of experience in ad-*
23 *judications, arbitrations, or court trials. Of the other*
24 *two Copyright Royalty Judges, one shall have signifi-*
25 *cant knowledge of copyright law, and the other shall*

1 *have significant knowledge of economics. An indi-*
2 *vidual may serve as a Copyright Royalty Judge only*
3 *if the individual is free of any financial conflict of*
4 *interest under subsection (h).*

5 “(2) *DEFINITION.*—*In this subsection, the term*
6 *‘adjudication’ has the meaning given that term in*
7 *section 551 of title 5, but does not include mediation.*

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

11 “(c) *TERMS.*—*The individual first appointed the Chief*
12 *Copyright Royalty Judge shall be appointed to a term of*
13 *6 years, and of the remaining individuals first appointed*
14 *Copyright Royalty Judges, 1 shall be appointed to a term*
15 *of 4 years, and the other shall be appointed to a term of*
16 *2 years. Thereafter, the terms of succeeding Copyright Roy-*
17 *alty Judges shall each be 6 years. An individual serving*
18 *as a Copyright Royalty Judge may be reappointed to subse-*
19 *quent terms. The term of a Copyright Royalty Judge shall*
20 *begin when the term of the predecessor of that Copyright*
21 *Royalty Judge ends. When the term of office of a Copyright*
22 *Royalty Judge ends, the individual serving that term may*
23 *continue to serve until a successor is selected.*

24 “(d) *VACANCIES OR INCAPACITY.*—

1 “(1) *VACANCIES.*—*If a vacancy should occur in*
2 *the position of Copyright Royalty Judge, the Librarian*
3 *of Congress shall act expeditiously to fill the va-*
4 *cancy, and may appoint an interim Copyright Roy-*
5 *alty Judge to serve until another Copyright Royalty*
6 *Judge is appointed under this section. An individual*
7 *appointed to fill the vacancy occurring before the ex-*
8 *piration of the term for which the predecessor of that*
9 *individual was appointed shall be appointed for the*
10 *remainder of that term.*

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

16 “(e) *COMPENSATION.*—

17 “(1) *JUDGES.*—*The Chief Copyright Royalty*
18 *Judge shall receive compensation at the rate of basic*
19 *pay payable for level AL-1 for administrative law*
20 *judges pursuant to section 5372(b) of title 5, and each*
21 *of the other two Copyright Royalty Judges shall re-*
22 *ceive compensation at the rate of basic pay payable*
23 *for level AL-2 for administrative law judges pursuant*
24 *to such section. The compensation of the Copyright*
25 *Royalty Judges shall not be subject to any regulations*

1 *adopted by the Office of Personnel Management pur-*
2 *suant to its authority under section 5376(b)(1) of title*
3 5.

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

6 “(A) *the rate of pay of 1 staff member shall*
7 *be not more than the basic rate of pay payable*
8 *for level 10 of GS–15 of the General Schedule;*

9 “(B) *the rate of pay of 1 staff member shall*
10 *be not less than the basic rate of pay payable for*
11 *GS–13 of the General Schedule and not more*
12 *than the basic rate of pay payable for level 10*
13 *of GS–14 of such Schedule; and*

14 “(C) *the rate of pay for the third staff mem-*
15 *ber shall be not less than the basic rate of pay*
16 *payable for GS–8 of the General Schedule and*
17 *not more than the basic rate of pay payable for*
18 *level 10 of GS–11 of such Schedule.*

19 “(3) *LOCALITY PAY.*—*All rates of pay referred to*
20 *under this subsection shall include locality pay.*

21 “(f) *INDEPENDENCE OF COPYRIGHT ROYALTY*
22 *JUDGE.*—

23 “(1) *IN MAKING DETERMINATIONS.*—

24 “(A) *IN GENERAL.*—(i) *Subject to clause*
25 (ii) *of this subparagraph and subparagraph (B),*

1 *the Copyright Royalty Judges shall have full*
2 *independence in making determinations con-*
3 *cerning adjustments and determinations of copy-*
4 *right royalty rates and terms, the distribution of*
5 *copyright royalties, the acceptance or rejection of*
6 *royalty claims, rate adjustment petitions, and*
7 *petitions to participate, and in issuing other rul-*
8 *ings under this title, except that the Copyright*
9 *Royalty Judges may consult with the Register of*
10 *Copyrights on any matter other than a question*
11 *of fact.*

12 “(i) A Copyright Royalty Judge or Judges,
13 or, by motion to the Copyright Royalty Judge or
14 Judges, any participant in a proceeding may re-
15 quest an interpretation by the Register of Copy-
16 rights concerning any material question of sub-
17 stantive law (not including questions of proce-
18 dure before the Copyright Royalty Judges, the ul-
19 timate adjustments and determinations of copy-
20 right royalty rates and terms, the ultimate dis-
21 tribution of copyright royalties, or the accept-
22 ance or rejection of royalty claims, rate adjust-
23 ment petitions, or petitions to participate) con-
24 cerning an interpretation or construction of
25 those provisions of this title that are the subject

1 *of the proceeding. Any such request for a written*
2 *interpretation by the Register of Copyrights shall*
3 *be on the record. Reasonable provision shall be*
4 *made for comment by the participants in the*
5 *proceeding on the material question of sub-*
6 *stantive law in such a way as to minimize du-*
7 *plication and delay. Except as provided in sub-*
8 *paragraph (B), the Register of Copyrights shall*
9 *deliver to the Copyright Royalty Judges a re-*
10 *sponse within 14 days of receipt by the Register*
11 *of Copyrights of all of the briefs or comments of*
12 *the participants. Such decision shall be in writ-*
13 *ing and shall be included by the Copyright Roy-*
14 *alty Judges in the record that accompanies their*
15 *final determination. If such a decision is timely*
16 *delivered to the Copyright Royalty Judges, the*
17 *Copyright Royalty Judges shall apply the legal*
18 *interpretation embodied in the response of the*
19 *Register of Copyrights in resolving material*
20 *questions of substantive law.*

21 “(B) *NOVEL QUESTIONS.—(i) In any case*
22 *in which a novel material question of substantive*
23 *law concerning an interpretation of those provi-*
24 *sions of this title that are the subject of the pro-*
25 *ceeding is presented, the Copyright Royalty*

1 *Judges shall request a decision of the Register of*
2 *Copyrights, in writing, to resolve such novel*
3 *question. Reasonable provision shall be made for*
4 *comment on such request by the participants in*
5 *the proceeding, in such a way as to minimize*
6 *duplication and delay. The Register shall trans-*
7 *mit his or her decision to the Copyright Royalty*
8 *Judges within 30 days of receipt by the Register*
9 *of Copyrights of all of the briefs or comments of*
10 *the participants. Such decision shall be in writ-*
11 *ing and included by the Copyright Royalty*
12 *Judges in the record that accompanies their final*
13 *determination. If such a decision is timely deliv-*
14 *ered, the Copyright Royalty Judges shall apply*
15 *the legal determinations embodied in the decision*
16 *of the Register of Copyrights in resolving mate-*
17 *rial questions of substantive law.*

18 *“(i) In clause (i), a ‘novel question of law’*
19 *is a question of law that has not been determined*
20 *in prior decisions, determinations, and rulings*
21 *described in section 803(a).*

22 *“(C) CONSULTATION.—Notwithstanding the*
23 *provisions of subparagraph (A), the Copyright*
24 *Royalty Judges shall consult with the Register of*
25 *Copyrights with respect to any determination or*

1 *ruling that would require that any act be per-*
2 *formed by the Copyright Office, and any such de-*
3 *termination or ruling shall not be binding upon*
4 *the Register of Copyrights.*

5 “(D) *REVIEW OF LEGAL CONCLUSIONS BY*
6 *THE REGISTER OF COPYRIGHTS.—The Register*
7 *of Copyrights may review for legal error the reso-*
8 *lution by the Copyright Royalty Judges of a ma-*
9 *terial question of substantive law under this title*
10 *that underlies or is contained in a final deter-*
11 *mination of the Copyright Royalty Judges. If the*
12 *Register of Copyrights concludes, after taking*
13 *into consideration the views of the participants*
14 *in the proceeding, that any resolution reached by*
15 *the Copyright Royalty Judges was in material*
16 *error, the Register of Copyrights shall issue a*
17 *written decision correcting such legal error,*
18 *which shall be made part of the record of the*
19 *proceeding. Additionally, the Register of Copy-*
20 *rights shall cause to be published in the Federal*
21 *Register such written decision together with a*
22 *specific identification of the legal conclusion of*
23 *the Copyright Royalty Judges that is determined*
24 *to be erroneous. As to conclusions of substantive*
25 *law involving an interpretation of the statutory*

1 provisions of this title, the decision of the Reg-
2 ister of Copyrights shall be binding as precedent
3 upon the Copyright Royalty Judges in subse-
4 quent proceedings under this chapter. When a
5 decision has been rendered pursuant to section
6 802(f)(1)(D), the Register of Copyrights may, on
7 the basis of and in accordance with such deci-
8 sion, intervene as of right in any appeal of a
9 final determination of the Copyright Royalty
10 Judges pursuant to section 803(d) in the United
11 States Court of Appeals for the District of Co-
12 lumbia Circuit. If, prior to intervening in such
13 an appeal, the Register of Copyrights gives noti-
14 fication and undertakes to consult with the At-
15 torney General with respect to such intervention,
16 and the Attorney General fails within reasonable
17 period after receipt of such notification to inter-
18 vene in such appeal, the Register of Copyrights
19 may intervene in such appeal in his or her own
20 name by any attorney designated by the Register
21 of Copyrights for such purpose. Intervention by
22 the Register of Copyrights in his or her own
23 name shall not preclude the Attorney General
24 from intervening on behalf of the United States

1 *in such an appeal as may be otherwise provided*
2 *or required by law.*

3 “(E) *EFFECT ON JUDICIAL REVIEW.*—*Nothing*
4 *in this section shall be interpreted to alter*
5 *the standard applied by a court in reviewing*
6 *legal determinations involving an interpretation*
7 *or construction of the provisions of this title or*
8 *to affect the extent to which any construction or*
9 *interpretation of the provisions of this title shall*
10 *be accorded deference by a reviewing court.*

11 “(2) *PERFORMANCE APPRAISALS.*—

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

17 “(B) *RELATING TO SANCTION OR RE-*
18 *MOVAL.*—*To the extent that the Librarian of*
19 *Congress adopts regulations under subsection (h)*
20 *relating to the sanction or removal of a Copy-*
21 *right Royalty Judge and such regulations re-*
22 *quire documentation to establish the cause of*
23 *such sanction or removal, the Copyright Royalty*
24 *Judge may receive an appraisal related specifi-*
25 *cally to the cause of the sanction or removal.*

1 “(g) *INCONSISTENT DUTIES BARRED.*—No Copyright
2 *Royalty Judge may undertake duties that conflict with his*
3 *or her duties and responsibilities as a Copyright Royalty*
4 *Judge.*

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

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

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

22 “(a) *PROCEEDINGS.*—

23 “(1) *IN GENERAL.*—The Copyright Royalty
24 Judges shall act in accordance with regulations issued
25 by the Copyright Royalty Judges and the Librarian

1 of Congress, and on the basis of a written record,
2 prior determinations and interpretations of the Copy-
3 right Royalty Tribunal, Librarian of Congress, copy-
4 right arbitration royalty panels, the Register of Copy-
5 rights, and the Copyright Royalty Judges (to the ex-
6 tent those determinations are not inconsistent with a
7 decision of the Register of Copyrights that was timely
8 delivered to the Copyright Royalty Judges pursuant
9 to section 802(f)(1) (A) or (B), or with a decision of
10 the Register of Copyrights pursuant to section
11 802(f)(1)(D)), under this chapter, and decisions of the
12 court of appeals under this chapter before, on, or after
13 the effective date of the Copyright Royalty and Dis-
14 tribution Reform Act of 2004.

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

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

1 *this chapter shall be made by majority vote. A Copy-*
2 *right Royalty Judge dissenting from the majority on*
3 *any determination under this chapter may issue his*
4 *or her dissenting opinion, which shall be included*
5 *with the determination.*

6 “(b) *PROCEDURES.*—

7 “(1) *INITIATION.*—

8 “(A) *CALL FOR PETITIONS TO PARTICI-*
9 *PATE.—(i) Promptly upon a determination*
10 *made under section 804(a), or no later than Jan-*
11 *uary 5 of a year specified in section 804(b) (2)*
12 *or (3), or as provided under section 804(b)(8), or*
13 *by no later than January 5 of a year specified*
14 *in section 804 for the commencement of a pro-*
15 *ceeding if a petition has not been filed by that*
16 *date, the Copyright Royalty Judges shall cause*
17 *to be published in the Federal Register notice of*
18 *commencement of proceedings under this chapter*
19 *calling for the filing of petitions to participate*
20 *in a proceeding under this chapter for the pur-*
21 *pose of making the relevant determination under*
22 *section 111, 112, 114, 115, 116, 118, 119, 1004,*
23 *or 1007, as the case may be.*

24 “(ii) *Petitions to participate shall be filed*
25 *by no later than 30 days after publication of no-*

1 *tice of commencement of a proceeding, under*
2 *clause (i), except that the Copyright Royalty*
3 *Judges may, for substantial good cause shown*
4 *and if there is no prejudice to the participants*
5 *that have already filed petitions, accept late peti-*
6 *tions to participate at any time up to the date*
7 *that is 90 days before the date on which partici-*
8 *pants in the proceeding are to file their written*
9 *direct statements. Notwithstanding the preceding*
10 *sentence, petitioners whose petitions are filed*
11 *more than 30 days after publication of notice of*
12 *commencement of a proceeding are not eligible to*
13 *object to a settlement reached during the vol-*
14 *untary negotiation period under section*
15 *803(b)(3), and any objection filed by such a peti-*
16 *tioner shall not be taken into account by the*
17 *Copyright Royalty Judges.*

18 “(B) *PETITIONS TO PARTICIPATE.*—*Each*
19 *petition to participate in a proceeding shall de-*
20 *scribe the petitioner’s interest in the subject mat-*
21 *ter of the proceeding. Parties with similar inter-*
22 *ests may file a single petition to participate.*

23 “(2) *PARTICIPATION IN GENERAL.*—*Subject to*
24 *paragraph (4), a person may participate in a pro-*

1 *ceeding under this chapter, including through the sub-*
2 *mission of briefs or other information, only if—*

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

7 *“(B) the Copyright Royalty Judges have not*
8 *determined that the petition to participate is*
9 *facially invalid; and*

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

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

15 *“(A) IN GENERAL.—Promptly after the date*
16 *for filing of petitions to participate in a pro-*
17 *ceeding, the Copyright Royalty Judges shall*
18 *make available to all participants in the pro-*
19 *ceeding a list of such participants and shall ini-*
20 *tiate a voluntary negotiation period among the*
21 *participants.*

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

1 “(C) *DETERMINATION OF SUBSEQUENT*
2 *PROCEEDINGS.—At the close of the voluntary ne-*
3 *gotiation proceedings, the Copyright Royalty*
4 *Judges shall, if further proceedings under this*
5 *chapter are necessary, determine whether and to*
6 *what extent paragraphs (4) and (5) will apply*
7 *to the parties.*

8 “(4) *SMALL CLAIMS PROCEDURE IN DISTRIBUTION*
9 *PROCEEDINGS.—*

10 “(A) *IN GENERAL.—If, in a proceeding*
11 *under this chapter to determine the distribution*
12 *of royalties, a participant in the proceeding as-*
13 *serts a claim in the amount of \$10,000 or less,*
14 *the Copyright Royalty Judges shall decide the*
15 *controversy on the basis of the filing of the writ-*
16 *ten direct statement by the participant, the re-*
17 *sponse by any opposing participant, and 1 addi-*
18 *tional response by each such party. The partici-*
19 *part asserting the claim shall not be required to*
20 *pay the filing fee under paragraph (2).*

21 “(B) *BAD FAITH INFLATION OF CLAIM.—If*
22 *the Copyright Royalty Judges determine that a*
23 *participant asserts in bad faith an amount in*
24 *controversy in excess of \$10,000 for the purpose*
25 *of avoiding a determination under the procedure*

1 *set forth in subparagraph (A), the Copyright*
2 *Royalty Judges shall impose a fine on that par-*
3 *ticipant in an amount not to exceed the dif-*
4 *ference between the actual amount distributed*
5 *and the amount asserted by the participant.*

6 “(5) *PAPER PROCEEDINGS.*—*The Copyright Roy-*
7 *alty Judges in proceedings under this chapter may*
8 *decide, sua sponte or upon motion of a participant,*
9 *to determine issues on the basis of the filing of the*
10 *written direct statement by the participant, the re-*
11 *sponse by any opposing participant, and one addi-*
12 *tional response by each such participant. Prior to*
13 *making such decision to proceed on such a paper*
14 *record only, the Copyright Royalty Judges shall offer*
15 *to all parties to the proceeding the opportunity to*
16 *comment on the decision. The procedure under this*
17 *paragraph—*

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

23 “(B) *may be applied under such other cir-*
24 *cumstances as the Copyright Royalty Judges*
25 *consider appropriate.*

1 “(6) *REGULATIONS.*—

2 “(A) *IN GENERAL.*—*The Copyright Royalty*
3 *Judges may issue regulations to carry out their*
4 *functions under this title. All regulations issued*
5 *by the Copyright Royalty Judges are subject to*
6 *the approval of the Librarian of Congress. Not*
7 *later than 120 days after Copyright Royalty*
8 *Judges or interim Copyright Royalty Judges, as*
9 *the case may be, are first appointed after the en-*
10 *actment of the Copyright Royalty and Distribu-*
11 *tion Reform Act of 2004, such judges shall issue*
12 *regulations to govern proceedings under this*
13 *chapter.*

14 “(B) *INTERIM REGULATIONS.*—*Until regu-*
15 *lations are adopted under subparagraph (A), the*
16 *Copyright Royalty Judges shall apply the regu-*
17 *lations in effect under this chapter on the day*
18 *before the effective date of the Copyright Royalty*
19 *and Distribution Reform Act of 2004, to the ex-*
20 *tent such regulations are not inconsistent with*
21 *this chapter, except that functions carried out*
22 *under such regulations by the Librarian of Con-*
23 *gress, the Register of Copyrights, or copyright ar-*
24 *bitration royalty panels that, as of such date of*
25 *enactment, are to be carried out by the Copy-*

1 *right Royalty Judges under this chapter, shall be*
2 *carried out by the Copyright Royalty Judges*
3 *under such regulations.*

4 “(C) *REQUIREMENTS.*—*Regulations issued*
5 *under subparagraph (A) shall include the fol-*
6 *lowing:*

7 “(i) *The written direct statements of*
8 *all participants in a proceeding under*
9 *paragraph (2) shall be filed by a date speci-*
10 *fied by the Copyright Royalty Judges,*
11 *which may be not earlier than 4 months,*
12 *and not later than 5 months, after the end*
13 *of the voluntary negotiation period under*
14 *paragraph (3). Notwithstanding the pre-*
15 *ceding sentence, the Copyright Royalty*
16 *Judges may allow a participant in a pro-*
17 *ceeding to file an amended written direct*
18 *statement based on new information re-*
19 *ceived during the discovery process, within*
20 *15 days after the end of the discovery period*
21 *specified in clause (iii).*

22 “(ii)(I) *Following the submission to*
23 *the Copyright Royalty Judges of written di-*
24 *rect statements by the participants in a*
25 *proceeding under paragraph (2), the judges*

1 *shall meet with the participants for the pur-*
2 *pose of setting a schedule for conducting*
3 *and completing discovery. Such schedule*
4 *shall be determined by the Copyright Roy-*
5 *alty Judges.*

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

15 “(iii) *Hearsay may be admitted in*
16 *proceedings under this chapter to the extent*
17 *deemed appropriate by the Copyright Roy-*
18 *alty Judges.*

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

1 “(v) Any participant under paragraph
2 (2) in a proceeding under this chapter to
3 determine royalty rates may request of an
4 opposing participant nonprivileged docu-
5 ments directly related to the written direct
6 statement or written rebuttal statement of
7 that participant. Any objection to such a
8 request shall be resolved by a motion or re-
9 quest to compel production made to the
10 Copyright Royalty Judges according to reg-
11 ulations adopted by the Copyright Royalty
12 Judges. Each motion or request to compel
13 discovery shall be determined by the Copy-
14 right Royalty Judges, or by a Copyright
15 Royalty Judge when permitted under sub-
16 section (a)(2). Upon such motion, the Copy-
17 right Royalty Judges may order discovery
18 pursuant to regulations established under
19 this paragraph.

20 “(vi)(I) Any participant under para-
21 graph (2) in a proceeding under this chap-
22 ter to determine royalty rates may, by
23 means of written motion or on the record,
24 request of an opposing participant or wit-
25 ness other relevant information and mate-

1 *rials if absent the discovery sought the*
2 *Copyright Royalty Judges’ resolution of the*
3 *proceeding would be substantially impaired.*
4 *In determining whether discovery will be*
5 *granted under this clause, the Copyright*
6 *Royalty Judges may consider—*

7 *“(aa) whether the burden or ex-*
8 *pense of producing the requested infor-*
9 *mation or materials outweighs the like-*
10 *ly benefit, taking into account the*
11 *needs and resources of the participants,*
12 *the importance of the issues at stake,*
13 *and the probative value of the re-*
14 *quested information or materials in re-*
15 *solving such issues;*

16 *“(bb) whether the requested infor-*
17 *mation or materials would be unrea-*
18 *sonably cumulative or duplicative, or*
19 *are obtainable from another source that*
20 *is more convenient, less burdensome, or*
21 *less expensive; and*

22 *“(cc) whether the participant seek-*
23 *ing discovery has had ample oppor-*
24 *tunity by discovery in the proceeding*

1 or by other means to obtain the infor-
2 mation sought.

3 “(II) This clause shall not apply to
4 any proceeding scheduled to commence after
5 December 31, 2010.

6 “(vii) In a proceeding under this chap-
7 ter to determine royalty rates, the partici-
8 pants entitled to receive royalties shall col-
9 lectively be permitted to take no more than
10 10 depositions and secure responses to no
11 more than 25 interrogatories and the par-
12 ticipants obligated to pay royalties shall
13 collectively be permitted to take no more
14 than 10 depositions and secure responses to
15 no more than 25 interrogatories. The Copy-
16 right Royalty Judges shall resolve any dis-
17 putes among similarly aligned participants
18 to allocate the number of depositions or in-
19 terrogatories permitted under this clause.

20 “(viii) The rules and practices in effect
21 on the day before the effective date of the
22 Copyright Royalty and Distribution Reform
23 Act of 2004, relating to discovery in pro-
24 ceedings under this chapter to determine the
25 distribution of royalty fees, shall continue to

1 *apply to such proceedings on and after such*
2 *effective date.*

3 “(ix) *In proceedings to determine roy-*
4 *alty rates, the Copyright Royalty Judges*
5 *may issue a subpoena commanding a par-*
6 *ticipant or witness to appear and give testi-*
7 *mony or to produce and permit inspection*
8 *of documents or tangible things if the Copy-*
9 *right Royalty Judges’ resolution of the pro-*
10 *ceeding would be substantially impaired by*
11 *the absence of such testimony or production*
12 *of documents or tangible things. Such sub-*
13 *poena shall specify with reasonable particu-*
14 *larity the materials to be produced or the*
15 *scope and nature of the required testimony.*
16 *Nothing in this subparagraph shall preclude*
17 *the Copyright Royalty Judges from request-*
18 *ing the production by a nonparticipant of*
19 *information or materials relevant to the res-*
20 *olution by the Copyright Royalty Judges of*
21 *a material issue of fact.*

22 “(x) *The Copyright Royalty Judges*
23 *shall order a settlement conference among*
24 *the participants in the proceeding to facili-*
25 *tate the presentation of offers of settlement*

1 *among the participants. The settlement con-*
2 *ference shall be held during a 21-day period*
3 *following the end of the discovery period*
4 *and shall take place outside the presence of*
5 *the Copyright Royalty Judges.*

6 “(xi) *No evidence, including exhibits,*
7 *may be submitted in the written direct*
8 *statement or written rebuttal statement of a*
9 *participant without a sponsoring witness,*
10 *except where the Copyright Royalty Judges*
11 *have taken official notice, or in the case of*
12 *incorporation by reference of past records,*
13 *or for good cause shown.*

14 “(c) *DETERMINATION OF COPYRIGHT ROYALTY*
15 *JUDGES.—*

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

25 “(2) *REHEARINGS.—*

1 “(A) *IN GENERAL.*—*The Copyright Royalty*
2 *Judges may, in exceptional cases, upon motion*
3 *of a participant under subsection (b)(2), order a*
4 *rehearing, after the determination in a pro-*
5 *ceeding is issued under paragraph (1), on such*
6 *matters as the Copyright Royalty Judges deter-*
7 *mine to be appropriate.*

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

14 “(C) *PARTICIPATION BY OPPOSING PARTY*
15 *NOT REQUIRED.*—*In any case in which a rehear-*
16 *ing is ordered, any opposing party shall not be*
17 *required to participate in the rehearing, except*
18 *as provided under subsection (d)(1).*

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

22 “(E) *CONTINUITY OF RATES AND TERMS.*—
23 *(i) If the decision of the Copyright Royalty*
24 *Judges on any motion for a rehearing is not ren-*
25 *dered before the expiration of the statutory rates*

1 *and terms that were previously in effect, in the*
2 *case of a proceeding to determine successors to*
3 *rates and terms that expire on a specified date,*
4 *then—*

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

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

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

1 *and paying the royalties required under the rel-*
2 *evant determination or regulations.*

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

17 “(3) *CONTENTS OF DETERMINATION.—A deter-*
18 *mination of the Copyright Royalty Judges shall be*
19 *supported by the written record and shall set forth the*
20 *findings of fact relied on by the Copyright Royalty*
21 *Judges. Among other terms adopted in a determina-*
22 *tion, the Copyright Royalty Judges may specify no-*
23 *tice and recordkeeping requirements of users of the*
24 *copyrights at issue that apply in lieu of those that*
25 *would otherwise apply under regulations.*

1 “(4) *CONTINUING JURISDICTION.*—*The Copyright*
2 *Royalty Judges may, with the approval of the Reg-*
3 *ister of Copyrights, issue an amendment to a written*
4 *determination to correct any technical or clerical er-*
5 *rors in the determination or to modify the terms, but*
6 *not the rates, of royalty payments in response to un-*
7 *foreseen circumstances that would frustrate the proper*
8 *implementation of such determination. Such amend-*
9 *ment shall be set forth in a written addendum to the*
10 *determination that shall be distributed to the partici-*
11 *pants of the proceeding and shall be published in the*
12 *Federal Register.*

13 “(5) *PROTECTIVE ORDER.*—*The Copyright Roy-*
14 *alty Judges may issue such orders as may be appro-*
15 *priate to protect confidential information, including*
16 *orders excluding confidential information from the*
17 *record of the determination that is published or made*
18 *available to the public, except that any terms or rates*
19 *of royalty payments or distributions may not be ex-*
20 *cluded.*

21 “(6) *PUBLICATION OF DETERMINATION.*—*Fol-*
22 *lowing review of the determination by the Register of*
23 *Copyrights under section 802(f)(1)(D), the Librarian*
24 *of Congress shall cause the determination, and any*
25 *corrections thereto, to be published in the Federal*

1 *Register. The Librarian of Congress shall also pub-*
2 *licize the determination and corrections in such other*
3 *manner as the Librarian considers appropriate, in-*
4 *cluding, but not limited to, publication on the Inter-*
5 *net. The Librarian of Congress shall also make the de-*
6 *termination, corrections, and the accompanying*
7 *record available for public inspection and copying.*

8 “(7) *LATE PAYMENT.*—*A determination of Copy-*
9 *right Royalty Judges may include terms with respect*
10 *to late payment, but in no way shall such terms pre-*
11 *vent the copyright holder from asserting other rights*
12 *or remedies provided under this title.*

13 “(d) *JUDICIAL REVIEW.*—

14 “(1) *APPEAL.*—*Any determination of the Copy-*
15 *right Royalty Judges under subsection (c) may, with-*
16 *in 30 days after the publication of the determination*
17 *in the Federal Register, be appealed, to the United*
18 *States Court of Appeals for the District of Columbia*
19 *Circuit, by any aggrieved participant in the pro-*
20 *ceeding under subsection (b)(2) who fully participated*
21 *in the proceeding and who would be bound by the de-*
22 *termination. Any participant that did not partici-*
23 *pate in a rehearing may not raise any issue that was*
24 *the subject of that rehearing at any stage of judicial*
25 *review of the hearing determination. If no appeal is*

1 *brought within that 30-day period, the determination*
2 *of the Copyright Royalty Judges shall be final, and*
3 *the royalty fee or determination with respect to the*
4 *distribution of fees, as the case may be, shall take ef-*
5 *fect as set forth in paragraph (2).*

6 “(2) *EFFECT OF RATES.—*

7 “(A) *EXPIRATION ON SPECIFIED DATE.—*

8 *When this title provides that the royalty rates*
9 *and terms that were previously in effect are to*
10 *expire on a specified date, any adjustment or de-*
11 *termination by the Copyright Royalty Judges of*
12 *successor rates and terms for an ensuing statu-*
13 *tory license period shall be effective as of the day*
14 *following the date of expiration of the rates and*
15 *terms that were previously in effect, even if the*
16 *determination of the Copyright Royalty Judges*
17 *is rendered on a later date. A transmission serv-*
18 *ice shall be obligated to continue making pay-*
19 *ments under the rates and terms previously in*
20 *effect until such time as rates and terms for the*
21 *successor period are established. Whenever royalti-*
22 *ties pursuant to this section are paid to a person*
23 *other than the Copyright Office, the entity des-*
24 *ignated by the Copyright Royalty Judges to*
25 *which such royalties are paid by the copyright*

1 user (and any successor thereto) shall, within 60
2 days after the final determination of the Copy-
3 right Royalty Judges establishing rates and
4 terms for a successor period or the exhaustion of
5 all rehearings or appeals of such determination,
6 if any, return any excess amounts previously
7 paid to the extent necessary to comply with the
8 final determination of royalty rates. Any under-
9 payment of royalties by a copyright user shall be
10 paid to the entity designated by the Copyright
11 Royalty Judges within the same period.

12 “(B) OTHER CASES.—In cases where rates
13 and terms have not, prior to the inception of an
14 activity, been established for that particular ac-
15 tivity under the relevant license, such rates and
16 terms shall be retroactive to the inception of ac-
17 tivity under the relevant license covered by such
18 rates and terms. In other cases where rates and
19 terms do not expire on a specified date, successor
20 rates and terms shall take effect on the first day
21 of the second month that begins after the publica-
22 tion of the determination of the Copyright Roy-
23 alty Judges in the Federal Register, except as
24 otherwise provided in this title, or by the Copy-
25 right Royalty Judges, or as agreed by the par-

1 *ticipants in a proceeding that would be bound by*
2 *the rates and terms. Except as otherwise pro-*
3 *vided in this title, the rates and terms, to the ex-*
4 *tent applicable, shall remain in effect until such*
5 *successor rates and terms become effective.*

6 *“(C) OBLIGATION TO MAKE PAYMENTS.—*

7 *“(i) The pendency of an appeal under*
8 *this subsection shall not relieve persons obli-*
9 *gated to make royalty payments under sec-*
10 *tion 111, 112, 114, 115, 116, 118, 119, or*
11 *1003, who would be affected by the deter-*
12 *mination on appeal, from—*

13 *“(I) providing the statements of*
14 *account and any report of use; and*

15 *“(II) paying the royalties re-*
16 *quired under the relevant determina-*
17 *tion or regulations.*

18 *“(ii) Notwithstanding clause (i), whenever*
19 *royalties described in clause (i) are paid to a*
20 *person other than the Copyright Office, the entity*
21 *designated by the Copyright Royalty Judges to*
22 *which such royalties are paid by the copyright*
23 *user (and any successor thereto) shall, within 60*
24 *days after the final resolution of the appeal, re-*
25 *turn any excess amounts previously paid (and*

1 *interest thereon, if ordered pursuant to para-*
2 *graph (3)) to the extent necessary to comply with*
3 *the final determination of royalty rates on ap-*
4 *peal. Any underpayment of royalties resulting*
5 *from an appeal (and interest thereon, if ordered*
6 *pursuant to paragraph (3)) shall be paid within*
7 *the same period.*

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

21 “(e) *ADMINISTRATIVE MATTERS.*—

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

24 “(A) *DEDUCTION FROM FILING FEES.*—*The*
25 *Librarian of Congress may, to the extent not oth-*

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

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

17 *“(2) POSITIONS REQUIRED FOR ADMINISTRATION*
18 *OF COMPULSORY LICENSING.—Section 307 of the Leg-*
19 *islative Branch Appropriations Act, 1994, shall not*
20 *apply to employee positions in the Library of Con-*
21 *gress that are required to be filled in order to carry*
22 *out section 111, 112, 114, 115, 116, 118, or 119 or*
23 *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, 119, and 1004, during the calendar years specified in
7 the schedule set forth in subsection (b), any owner or user
8 of a copyrighted work whose royalty rates are specified by
9 this title, or are established under this chapter before or
10 after the enactment of the Copyright Royalty and Distribu-
11 tion Reform Act of 2004, may file a petition with the Copy-
12 right Royalty Judges declaring that the petitioner requests
13 a determination or adjustment of the rate. The Copyright
14 Royalty Judges shall make a determination as to whether
15 the petitioner has such a significant interest in the royalty
16 rate in which a determination or adjustment is requested.
17 If the Copyright Royalty Judges determine that the peti-
18 tioner has such a significant interest, the Copyright Roy-
19 alty Judges shall cause notice of this determination, with
20 the reasons for such determination, to be published in the
21 Federal Register, together with the notice of commencement
22 of proceedings under this chapter. With respect to pro-
23 ceedings under paragraph (1) of section 801(b) concerning
24 the determination or adjustment of royalty rates as pro-
25 vided in sections 112 and 114, during the calendar years
26 specified in the schedule set forth in subsection (b), the

1 *Copyright Royalty Judges shall cause notice of commence-*
2 *ment of proceedings under this chapter to be published in*
3 *the Federal Register as provided in section 803(b)(1)(A).*

4 “(b) *TIMING OF PROCEEDINGS.*—

5 “(1) *SECTION 111 PROCEEDINGS.*—(A) *A petition*
6 *described in subsection (a) to initiate proceedings*
7 *under section 801(b)(2) concerning the adjustment of*
8 *royalty rates under section 111 to which subpara-*
9 *graph (A) or (D) of section 801(b)(2) applies may be*
10 *filed during the year 2005 and in each subsequent*
11 *fifth calendar year.*

12 “(B) *In order to initiate proceedings under sec-*
13 *tion 801(b)(2) concerning the adjustment of royalty*
14 *rates under section 111 to which subparagraph (B) or*
15 *(C) of section 801(b)(2) applies, within 12 months*
16 *after an event described in either of those subsections,*
17 *any owner or user of a copyrighted work whose roy-*
18 *alty rates are specified by section 111, or by a rate*
19 *established under this chapter before or after the en-*
20 *actment of the Copyright Royalty and Distribution*
21 *Reform Act of 2004, may file a petition with the*
22 *Copyright Royalty Judges declaring that the peti-*
23 *tioner requests an adjustment of the rate. The Copy-*
24 *right Royalty Judges shall then proceed as set forth*
25 *in subsection (a) of this section. Any change in roy-*

1 *alty rates made under this chapter pursuant to this*
2 *subparagraph may be reconsidered in the year 2005,*
3 *and each fifth calendar year thereafter, in accordance*
4 *with the provisions in section 801(b)(3) (B) or (C),*
5 *as the case may be. A petition for adjustment of rates*
6 *established by section 111(d)(1)(B) as a result of a*
7 *change in the rules and regulations of the Federal*
8 *Communications Commission shall set forth the*
9 *change on which the petition is based.*

10 *“(C) Any adjustment of royalty rates under sec-*
11 *tion 111 shall take effect as of the first accounting pe-*
12 *riod commencing after the publication of the deter-*
13 *mination of the Copyright Royalty Judges in the Fed-*
14 *eral Register, or on such other date as is specified in*
15 *that determination.*

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

24 *“(3) SECTION 114 AND CORRESPONDING 112 PRO-*
25 *CEEDINGS.—*

1 “(A) *FOR ELIGIBLE NONSUBSCRIPTION*
2 *SERVICES AND NEW SUBSCRIPTION SERVICES.—*
3 *Proceedings under this chapter shall be com-*
4 *menced as soon as practicable after the effective*
5 *date of the Copyright Royalty and Distribution*
6 *Reform Act of 2004 to determine reasonable*
7 *terms and rates of royalty payments under sec-*
8 *tions 114 and 112 for the activities of eligible*
9 *nonsubscription transmission services and new*
10 *subscription services, to be effective for the period*
11 *beginning on January 1, 2006, and ending on*
12 *December 31, 2010. Such proceedings shall next*
13 *be commenced in January 2009 to determine*
14 *reasonable terms and rates of royalty payments,*
15 *to become effective on January 1, 2011. There-*
16 *after, such proceedings shall be repeated in each*
17 *subsequent fifth calendar year.*

18 “(B) *FOR PREEXISTING SUBSCRIPTION AND*
19 *SATELLITE DIGITAL AUDIO RADIO SERVICES.—*
20 *Proceedings under this chapter shall be com-*
21 *menced in January 2006 to determine reasonable*
22 *terms and rates of royalty payments under sec-*
23 *tions 114 and 112 for the activities of pre-*
24 *existing subscription services, to be effective dur-*
25 *ing the period beginning on January 1, 2008,*

1 *and ending on December 31, 2012, and pre-*
2 *existing satellite digital audio radio services, to*
3 *be effective during the period beginning on Janu-*
4 *ary 1, 2007, and ending on December 31, 2012.*
5 *Such proceedings shall next be commenced in*
6 *2011 to determine reasonable terms and rates of*
7 *royalty payments, to become effective on Janu-*
8 *ary 1, 2013. Thereafter, such proceedings shall be*
9 *repeated in each subsequent fifth calendar year.*

10 “(C)(i) *Notwithstanding any other provi-*
11 *sion of this chapter, this subparagraph shall gov-*
12 *ern proceedings commenced pursuant to section*
13 *114(f)(1)(C) and 114(f)(2)(C) concerning new*
14 *types of services.*

15 “(ii) *Not later than 30 days after a petition*
16 *to determine rates and terms for a new type of*
17 *service that is filed by any copyright owner of*
18 *sound recordings, or such new type of service, in-*
19 *dicating that such new type of service is or is*
20 *about to become operational, the Copyright Roy-*
21 *alty Judges shall issue a notice for a proceeding*
22 *to determine rates and terms for such service.*

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

1 “(I) the determination shall be issued
2 by not later than 24 months after the publi-
3 cation of the notice under clause (ii); and

4 “(II) the decision shall take effect as
5 provided in subsections (c)(2) and (d)(2) of
6 section 803 and section 114(f)(4)(B)(ii) and
7 (C).

8 “(iv) The rates and terms shall remain in
9 effect for the period set forth in section
10 114(f)(1)(C) or 114(f)(2)(C), as the case may be.

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

18 “(5) SECTION 116 PROCEEDINGS.—(A) A petition
19 described in subsection (a) to initiate proceedings
20 under section 801(b) concerning the determination of
21 royalty rates and terms as provided in section 116
22 may be filed at any time within 1 year after nego-
23 tiated licenses authorized by section 116 are termi-
24 nated or expire and are not replaced by subsequent
25 agreements.

1 “(B) *If a negotiated license authorized by section*
2 *116 is terminated or expires and is not replaced by*
3 *another such license agreement which provides per-*
4 *mission to use a quantity of musical works not sub-*
5 *stantially smaller than the quantity of such works*
6 *performed on coin-operated phonorecord players dur-*
7 *ing the 1-year period ending March 1, 1989, the*
8 *Copyright Royalty Judges shall, upon petition filed*
9 *under paragraph (1) within 1 year after such termi-*
10 *nation or expiration, commence a proceeding to*
11 *promptly establish an interim royalty rate or rates*
12 *for the public performance by means of a coin-oper-*
13 *ated phonorecord player of nondramatic musical*
14 *works embodied in phonorecords which had been sub-*
15 *ject to the terminated or expired negotiated license*
16 *agreement. Such rate or rates shall be the same as the*
17 *last such rate or rates and shall remain in force until*
18 *the conclusion of proceedings by the Copyright Roy-*
19 *alty Judges, in accordance with section 803, to adjust*
20 *the royalty rates applicable to such works, or until*
21 *superseded by a new negotiated license agreement, as*
22 *provided in section 116(b).*

23 “(6) *SECTION 118 PROCEEDINGS.—A petition de-*
24 *scribed in subsection (a) to initiate proceedings under*
25 *section 801(b)(1) concerning the determination of rea-*

1 *sonable terms and rates of royalty payments as pro-*
 2 *vided in section 118 may be filed in the year 2006*
 3 *and in each subsequent fifth calendar year.*

4 “(7) *SECTION 1004 PROCEEDINGS.—A petition*
 5 *described in subsection (a) to initiate proceedings*
 6 *under section 801(b)(1) concerning the adjustment of*
 7 *reasonable royalty rates under section 1004 may be*
 8 *filed as provided in section 1004(a)(3).*

9 “(8) *PROCEEDINGS CONCERNING DISTRIBUTION*
 10 *OF ROYALTY FEES.—With respect to proceedings*
 11 *under section 801(b)(3) concerning the distribution of*
 12 *royalty fees in certain circumstances under section*
 13 *111, 119, or 1007, the Copyright Royalty Judges*
 14 *shall, upon a determination that a controversy exists*
 15 *concerning such distribution, cause to be published in*
 16 *the Federal Register notice of commencement of pro-*
 17 *ceedings under this chapter.*

18 **“§ 805. General rule for voluntarily negotiated agree-**
 19 **ments**

20 “Any rates or terms under this title that—

21 “(1) *are agreed to by participants to a pro-*
 22 *ceeding under section 803(b)(3),*

23 “(2) *are adopted by the Copyright Royalty*
 24 *Judges as part of a determination under this chapter,*
 25 *and*

1 “(3) are in effect for a period shorter than would
 2 otherwise apply under a determination pursuant to
 3 this chapter,
 4 shall remain in effect for such period of time as would other-
 5 wise apply under such determination, except that the Copy-
 6 right Royalty Judges shall adjust the rates pursuant to the
 7 voluntary negotiations to reflect national monetary infla-
 8 tion during the additional period the rates remain in ef-
 9 fect.”.

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

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

13 **SEC. 4. DEFINITION.**

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

16 “A ‘Copyright Royalty Judge’ is a Copyright
 17 Royalty Judge appointed under section 802 of this
 18 title, and includes any individual serving as an in-
 19 terim Copyright Royalty Judge under such section.”.

20 **SEC. 5. TECHNICAL AMENDMENTS.**

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

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

25 (2) in paragraph (4)—

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

4 (B) in subparagraph (B)—

5 (i) in the first sentence, by striking
6 “Librarian of Congress shall, upon the rec-
7 ommendation of the Register of Copy-
8 rights,” and inserting “Copyright Royalty
9 Judges shall”;

10 (ii) in the second sentence, by striking
11 “Librarian determines” and inserting
12 “Copyright Royalty Judges determine”; and

13 (iii) in the third sentence—

14 (I) by striking “Librarian” each
15 place it appears and inserting “Copy-
16 right Royalty Judges”; and

17 (II) by striking “convene a copy-
18 right arbitration royalty panel” and
19 inserting “conduct a proceeding”; and

20 (C) in subparagraph (C), by striking “Li-
21 brarian of Congress” and inserting “Copyright
22 Royalty Judges”.

23 (b) *EPHEMERAL RECORDINGS*.—Section 112(e) is
24 amended—

25 (1) in paragraph (3)—

1 (A) by amending the first sentence to read
2 as follows: “Proceedings under chapter 8 shall
3 determine reasonable rates and terms of royalty
4 payments for the activities specified by para-
5 graph (1) during the 5-year periods beginning
6 on January 1 of the second year following the
7 year in which the proceedings are to be com-
8 menced, or such other periods as the parties may
9 agree.”; and

10 (B) by striking the second sentence;

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

14 (D) in the fourth sentence, by striking “ne-
15 gotiation”;

16 (2) in paragraph (4)—

17 (A) by amending the first sentence to read
18 as follows: “The schedule of reasonable rates and
19 terms determined by the Copyright Royalty
20 Judges shall, subject to paragraph (5), be bind-
21 ing on all copyright owners of sound recordings
22 and transmitting organizations entitled to a
23 statutory license under this subsection during the
24 5-year period specified in paragraph (3), or such
25 other period as the parties may agree.”;

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

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

6 (D) in the fifth sentence, by striking “nego-
7 tiated as provided” and inserting “described”;
8 and

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

12 (3) in paragraph (5), by striking “or decision by
13 the Librarian of Congress” and inserting “, decision
14 by the Librarian of Congress, or determination by the
15 Copyright Royalty Judges”;

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

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

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

24 (1) in paragraph (1)—

25 (A) in subparagraph (A)—

1 (i) by amending the first sentence to
2 read as follows: “Proceedings under chapter
3 8 shall determine reasonable rates and
4 terms of royalty payments for subscription
5 transmissions by preexisting subscription
6 services and transmissions by preexisting
7 satellite digital audio radio services speci-
8 fied by subsection (d)(2) during 5-year peri-
9 ods beginning on January 1 of the second
10 year following the year in which the pro-
11 ceedings are to be commenced, except where
12 different transitional periods are provided
13 in section 804(b), or such periods as the
14 parties may agree.”;

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

18 (iii) in the fourth sentence, by striking
19 “negotiation”;
20 (B) in subparagraph (B)—

21 (i) by amending the first sentence to
22 read as follows: “The schedule of reasonable
23 rates and terms determined by the Copy-
24 right Royalty Judges shall, subject to para-
25 graph (3), be binding on all copyright own-

1 *ers of sound recordings and entities per-*
2 *forming sound recordings affected by this*
3 *paragraph during the 5-year period speci-*
4 *fied in subparagraph (A), a transitional pe-*
5 *riod provided in section 804(b), or such*
6 *other period as the parties may agree.”;*

7 *(ii) in the second sentence, by striking*
8 *“copyright arbitration royalty panel” and*
9 *inserting “Copyright Royalty Judges”; and*

10 *(iii) in the second sentence, by striking*
11 *“negotiated as provided” and inserting “de-*
12 *scribed”; and*

13 *(C) by amending subparagraph (C) to read*
14 *as follows:*

15 *“(C) The procedures under subparagraphs (A)*
16 *and (B) also shall be initiated pursuant to a petition*
17 *filed by any copyright owners of sound recordings,*
18 *any preexisting subscription services, or any pre-*
19 *existing satellite digital audio radio services indi-*
20 *cating that a new type of subscription digital audio*
21 *transmission service on which sound recordings are*
22 *performed is or is about to become operational, for the*
23 *purpose of determining reasonable terms and rates of*
24 *royalty payments with respect to such new type of*
25 *transmission service for the period beginning with the*

1 *inception of such new type of service and ending on*
2 *the date on which the royalty rates and terms for sub-*
3 *scription digital audio transmission services most re-*
4 *cently determined under subparagraph (A) or (B)*
5 *and chapter 8 expire, or such other period as the par-*
6 *ties may agree.”;*

7 (2) *in paragraph (2)—*

8 (A) *in subparagraph (A)—*

9 (i) *by amending the first paragraph to*
10 *read as follows: “Proceedings under chapter*
11 *8 shall determine reasonable rates and*
12 *terms of royalty payments for subscription*
13 *transmissions by eligible nonsubscription*
14 *transmission services and transmissions by*
15 *new subscription services specified by sub-*
16 *section (d)(2) during 5-year periods begin-*
17 *ning on January 1 of the second year fol-*
18 *lowing the year in which the proceedings*
19 *are to be commenced, except where different*
20 *transitional periods are provided in section*
21 *804(b), or such periods as the parties may*
22 *agree.”;*

23 (ii) *in the third sentence, by striking*
24 *“Librarian of Congress” and inserting*
25 *“Copyright Royalty Judges”; and*

1 (iii) in the fourth sentence, by striking
2 “negotiation”;

3 (B) in subparagraph (B)—

4 (i) by amending the first sentence to
5 read as follows: “The schedule of reasonable
6 rates and terms determined by the Copy-
7 right Royalty Judges shall, subject to para-
8 graph (3), be binding on all copyright own-
9 ers of sound recordings and entities per-
10 forming sound recordings affected by this
11 paragraph during the 5-year period speci-
12 fied in subparagraph (A), a transitional pe-
13 riod provided in section 804(b), or such
14 other period as the parties may agree.”;

15 (ii) by striking “copyright arbitration
16 royalty panel” each subsequent place it ap-
17 pears and inserting “Copyright Royalty
18 Judges”; and

19 (iii) in the last sentence by striking
20 “negotiated as provided” and inserting “de-
21 scribed in”; and

22 (C) by amending subparagraph (C) to read
23 as follows:

24 “(C) The procedures under subparagraphs (A)
25 and (B) shall also be initiated pursuant to a petition

1 *filed by any copyright owners of sound recordings or*
2 *any eligible nonsubscription service or new subscrip-*
3 *tion service indicating that a new type of eligible*
4 *nonsubscription service or new subscription service on*
5 *which sound recordings are performed is or is about*
6 *to become operational, for the purpose of determining*
7 *reasonable terms and rates of royalty payments with*
8 *respect to such new type of service for the period be-*
9 *ginning with the inception of such new type of service*
10 *and ending on the date on which the royalty rates*
11 *and terms for preexisting subscription digital audio*
12 *transmission services or preexisting satellite digital*
13 *radio audio services, as the case may be, most re-*
14 *cently determined under subparagraph (A) or (B)*
15 *and chapter 8 expire, or such other period as the par-*
16 *ties may agree.”;*

17 *(3) in paragraph (3), by striking “or decision by*
18 *the Librarian of Congress” and inserting “, decision*
19 *by the Librarian of Congress, or determination by the*
20 *Copyright Royalty Judges”;* and

21 *(4) in paragraph (4)—*

22 *(A) by striking “Librarian of Congress”*
23 *each place it appears and inserting “Copyright*
24 *Royalty Judges”;* and

1 (B) by adding after the first sentence “The
2 notice and recordkeeping rules in effect on the
3 day before the effective date of the Copyright
4 Royalty and Distribution Reform Act of 2004
5 shall remain in effect unless and until new regu-
6 lations are promulgated by the Copyright Roy-
7 alty Judges. If new regulations are promulgated
8 under this subparagraph, the Copyright Royalty
9 Judges shall take into account the substance and
10 effect of the rules in effect on the day before the
11 effective date of the Copyright Royalty and Dis-
12 tribution Reform Act of 2004 and shall, to the
13 extent practicable, avoid significant disruption
14 of the functions of any designated agent author-
15 ized to collect and distribute royalty fees.”.

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

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

20 (2) in subparagraph (B)—

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

23 (B) by inserting “on a nonexclusive basis”
24 after “common agents”; and

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

4 (3) in subparagraph (C)—

5 (A) by amending the first sentence to read
6 as follows: “Proceedings under chapter 8 shall
7 determine reasonable rates and terms of royalty
8 payments for the activities specified by this sec-
9 tion during periods beginning with the effective
10 date of such rates and terms, but not earlier than
11 January 1 of the second year following the year
12 in which the petition requesting the proceeding is
13 filed, and ending on the effective date of successor
14 rates and terms, or such other period as the par-
15 ties may agree.”;

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

19 (C) in the fourth sentence, by striking “ne-
20 gotiation”;

21 (4) in subparagraph (D)—

22 (A) by amending the first sentence to read
23 as follows: “The schedule of reasonable rates and
24 terms determined by the Copyright Royalty
25 Judges shall, subject to subparagraph (E), be

1 *binding on all copyright owners of nondramatic*
2 *musical works and persons entitled to obtain a*
3 *compulsory license under subsection (a)(1) dur-*
4 *ing the period specified in subparagraph (C),*
5 *such other period as may be determined pursu-*
6 *ant to subparagraphs (B) and (C), or such other*
7 *period as the parties may agree.”;*

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

11 *(C) in the third sentence, by striking “nego-*
12 *tiated as provided in subparagraphs (B) and*
13 *(C)” and inserting “described”;*

14 *(5) in subparagraph (E)—*

15 *(A) in clause (i)—*

16 *(i) in the first sentence, by striking*
17 *“Librarian of Congress” and inserting “Li-*
18 *brarian of Congress, Copyright Royalty*
19 *Judges, or a copyright arbitration royalty*
20 *panel to the extent those determinations*
21 *were accepted by the Librarian of Con-*
22 *gress”;* 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
3 *amended—*

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 “Librar-*
12 *ian of Congress:” and all that follows through the*
13 *end of the sentence and inserting “Librarian of*
14 *Congress, a copyright arbitration royalty panel,*
15 *or the Copyright Royalty Judges, to the extent*
16 *that they were accepted by the Librarian of Con-*
17 *gress, if copies of such agreements are filed with*
18 *the Copyright Royalty Judges within 30 days of*
19 *execution in accordance with regulations that the*
20 *Copyright Royalty Judges shall issue.”; and*

21 (C) *in paragraph (3)—*

22 (i) *in the second sentence—*

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

1 (ii) by striking “paragraph (2).”
2 and inserting “paragraph (2) or (3).”;
3 (iii) 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 under subsection (b)(3)” and in-*
16 *serting “the Copyright Royalty Judges under*
17 *subsection (b)(3), to the extent that they were ac-*
18 *cepted by the Librarian of Congress”;*

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

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

23 *(B) by striking “Register of Copyrights*
24 *shall prescribe” and inserting “Copyright Roy-*

1 *ally Judges shall prescribe as provided in section*
2 *803(b)(6)”; and*
3 *(5) in subsection (f), as so redesignated, by strik-*
4 *ing “(d)” and inserting “(c)”.*

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

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

10 *(2) in paragraph (4)—*

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

14 *(B) by amending subparagraphs (B) and*
15 *(C) to read as follows:*

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

1 *ceive them, or to their designated agents. If the*
2 *Copyright Royalty Judges find the existence of a*
3 *controversy, the Copyright Royalty Judges shall,*
4 *pursuant to chapter 8 of this title, conduct a*
5 *proceeding to determine the distribution of roy-*
6 *alty fees.*

7 “(C) *WITHHOLDING OF FEES DURING CON-*
8 *TROVERSY.—During the pendency of any pro-*
9 *ceeding under this subsection, the Copyright*
10 *Royalty Judges shall withhold from distribution*
11 *an amount sufficient to satisfy all claims with*
12 *respect to which a controversy exists, but shall*
13 *have the discretion to proceed to distribute any*
14 *amounts that are not in controversy.”.*

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

16 *(1) ROYALTY PAYMENTS.—Section 1004(a)(3) is*
17 *amended by striking “Librarian of Congress” each*
18 *place it appears and inserting “Copyright Royalty*
19 *Judges”.*

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

1 (3) *PROCEDURES FOR DISTRIBUTING ROYALTY*
2 *PAYMENTS.—Section 1007 is amended—*

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

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

13 (B) *by amending subsections (b) and (c) to*
14 *read as follows:*

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

1 Librarian of Congress shall, before such royalty payments are
 2 distributed, deduct the reasonable administrative costs in-
 3 curred by the Librarian under this section.

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

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

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

19 “**§ 1010. Determination of certain disputes**

20 “(a) *SCOPE OF DETERMINATION.*—Before the date of
 21 first distribution in the United States of a digital audio
 22 recording device or a digital audio interface device, any
 23 party manufacturing, importing, or distributing such de-
 24 vice, and any interested copyright party may mutually
 25 agree to petition the Copyright Royalty Judges to determine

1 *whether such device is subject to section 1002, or the basis*
2 *on which royalty payments for such device are to be made*
3 *under section 1003.*

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

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

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

24 “(e) *JUDICIAL REVIEW.*—*Any determination of the*
25 *Copyright Royalty Judges under subsection (d) may be ap-*

1 *pealed, by a party to the proceeding, in accordance with*
 2 *section 803(d) of this title. The pendency of an appeal under*
 3 *this subsection shall not stay the determination of the Copy-*
 4 *right Royalty Judges. If the court modifies the determina-*
 5 *tion of the Copyright Royalty Judges, the court shall have*
 6 *jurisdiction to enter its own decision in accordance with*
 7 *its final judgment. The court may further vacate the deter-*
 8 *mination of the Copyright Royalty Judges and remand the*
 9 *case for proceedings as provided in this section.”.*

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

“1010. Determination of certain disputes.”.

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

14 (a) *EFFECTIVE DATE.—This Act and the amendments*
 15 *made by this Act shall take effect 6 months after the date*
 16 *of enactment of this Act, except that the Librarian of Con-*
 17 *gress shall appoint 1 or more interim Copyright Royalty*
 18 *Judges under section 802(d) of title 17, United States Code,*
 19 *as amended by this Act, within 90 days after such date*
 20 *of enactment to carry out the functions of the Copyright*
 21 *Royalty Judges under title 17, United States Code, to the*
 22 *extent that Copyright Royalty Judges provided for in sec-*
 23 *tion 801(a) of title 17, United States Code, as amended by*
 24 *this Act, have not been appointed before the end of that 90-*
 25 *day period.*

1 (b) *TRANSITION PROVISIONS.*—

2 (1) *IN GENERAL.*—*Subject to paragraphs (2) and*
3 *(3), the amendments made by this Act shall not affect*
4 *any proceedings commenced, petitions filed, or vol-*
5 *untary agreements entered into before the date of en-*
6 *actment of this Act under the provisions of title 17,*
7 *United States Code, as amended by this Act, and*
8 *pending on such date of enactment. Such proceedings*
9 *shall continue, determinations made in such pro-*
10 *ceedings, and appeals taken therefrom, as if this Act*
11 *had not been enacted, and shall continue in effect*
12 *until modified under title 17, United States Code, as*
13 *amended by this Act. Such petitions filed and vol-*
14 *untary agreements entered into shall remain in effect*
15 *as if this Act had not been enacted. For purposes of*
16 *this paragraph, the Librarian of Congress may deter-*
17 *mine whether a proceeding has commenced. The Li-*
18 *brarian of Congress may terminate any proceeding*
19 *commenced before the date of enactment of this Act*
20 *pursuant to chapter 8 of title 17, United States Code,*
21 *and any proceeding so terminated shall become null*
22 *and void. In such cases, the Copyright Royalty*
23 *Judges may initiate a new proceeding in accordance*
24 *with regulations adopted pursuant to section*
25 *803(b)(6) of title 17, United States Code.*

1 (2) *CERTAIN ROYALTY RATES PROCEEDINGS.*—
2 *Notwithstanding any other provision of law, pro-*
3 *ceedings to determine royalty rates pursuant to sec-*
4 *tion 119(c) of title 17, United States Code, shall be*
5 *conducted pursuant to the provisions of title 17,*
6 *United States Code, and the rules and practices in ef-*
7 *fect under that chapter on the day before any provi-*
8 *sion of this Act takes effect.*

9 (3) *PENDING PROCEEDINGS.*—*Notwithstanding*
10 *paragraph (1), any proceedings to establish or adjust*
11 *rates and terms for the statutory licenses under sec-*
12 *tion 114(f)(2) or 112(e) of title 17, United States*
13 *Code, for a statutory period commencing on or after*
14 *January 1, 2005, shall be terminated upon the date*
15 *of enactment of this Act and shall be null and void.*
16 *The rates and terms in effect under section 114(f)(2)*
17 *or 112(e) of title 17, United States Code, on December*
18 *31, 2004, for new subscription services, eligible non-*
19 *subscription services, and services exempt under sec-*
20 *tion 114(d)(1)(C)(iv) of such title, and the rates and*
21 *terms published in the Federal Register under the au-*
22 *thority of the Small Webcaster Settlement Act of 2002*
23 *(17 U.S.C. 114 note; Public Law 107–321) (including*
24 *the amendments made by that Act) for the years 2003*
25 *through 2004, as well as any notice and record-*

1 *keeping provisions adopted pursuant thereto, shall re-*
2 *main in effect until the later of the first applicable*
3 *effective date for successor terms and rates specified in*
4 *section 804(b) (2) or (3)(A) of title 17, United States*
5 *Code, or such later date as the parties may agree or*
6 *the Copyright Royalty Judges may establish. For the*
7 *period commencing January 1, 2005, an eligible*
8 *small webcaster or a noncommercial webcaster, as de-*
9 *defined in the regulations published by the Register of*
10 *Copyrights pursuant to the Small Webcaster Settle-*
11 *ment Act of 2002 (17 U.S.C. 114 note; Public Law*
12 *107–321) (including the amendments made by that*
13 *Act), may elect to be subject to the rates and terms*
14 *published in those regulations by complying with the*
15 *procedures governing the election process set forth in*
16 *those regulations not later than the first date on*
17 *which the webcaster would be obligated to make a roy-*
18 *alty payment for such period. Until successor terms*
19 *and rates have been established for the period com-*
20 *mencing January 1, 2006, licensees shall continue to*
21 *make royalty payments at the rates and on the terms*
22 *previously in effect, subject to retroactive adjustment*
23 *when successor rates and terms for such services are*
24 *established.*

1 (4) *INTERIM PROCEEDINGS.*—*Notwithstanding*
2 *subsection (a), as soon as practicable after the date of*
3 *enactment of this Act, the Copyright Royalty Judges*
4 *or interim Copyright Royalty Judges shall publish*
5 *the notice described in section 803(b)(1)(A) of title 17,*
6 *United States Code, as amended by this Act, to ini-*
7 *tiate a proceeding to establish or adjust rates and*
8 *terms for the statutory licenses under section 114(f)(2)*
9 *or 112(e) of title 17, United States Code, for new sub-*
10 *scription services and eligible nonsubscription services*
11 *for the period commencing January 1, 2006. The*
12 *Copyright Royalty Judges or Interim Copyright Roy-*
13 *alty Judges are authorized to cause that proceeding to*
14 *take place as provided in subsection (b) of section 803*
15 *of that title within the time periods set forth in that*
16 *subsection. Notwithstanding section 803(c)(1) of that*
17 *title, the Copyright Royalty Judges shall not be re-*
18 *quired to issue their determination in that proceeding*
19 *before the expiration of the statutory rates and terms*
20 *in effect on December 31, 2004.*

21 (c) *EXISTING APPROPRIATIONS.*—*Any funds made*
22 *available in an appropriations Act to carry out chapter 8*

1 *of title 17, United States Code, shall be available to the ex-*
2 *tent necessary to carry out this section.*

Attest:

Secretary.

108TH CONGRESS
2^D SESSION

H. R. 1417

AMENDMENT