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

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IN THE HOUSE OF REPRESENTATIVES

MARCH 25, 2003

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

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A BILL

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

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3
4 SECTION 1. SHORT TITLE.
5 This Act may be cited as the “Copyright Royalty and
6 Distribution Reform Act of 2003”.
7
8 SEC. 2. REFERENCE.
9 Except as otherwise expressly provided, whenever in
10 this Act an amendment or repeal is expressed in terms
11 of an amendment to, or repeal of, a section or other provi-
sion, the reference shall be considered to be made to a
section or other provision of title 17, United States Code.

SEC. 3. COPYRIGHT ROYALTY JUDGE AND STAFF.
(a) IN GENERAL.—Chapter 8 is amended to read as
follows:

CHAPTER 8—PROCEEDINGS BY
COPYRIGHT ROYALTY JUDGE

“Sec.
801. Copyright Royalty Judge; appointment and functions.
802. Copyright Royalty Judgeship; professional staff.
804. Institution and conclusion of proceedings.

§801. Copyright Royalty Judge; appointment and
functions
“(a) APPOINTMENT.—The Librarian of Congress
shall appoint a full-time Copyright Royalty Judge. In
making the appointment, the Librarian may consult with
the Register of Copyrights.
“(b) FUNCTIONS.—Subject to the provisions of this
chapter, the functions of the Copyright Royalty Judge
shall be as follows:
“(1) To make determinations concerning the
adjustment of reasonable copyright royalty rates as
provided in sections 111, 114, 115, 119, and 1004.
“(2) To make determinations as to reasonable
terms and rates of royalty payments as provided in
sections 112(e), 114, 115, 116, and 118. The rates
applicable under sections 114(f)(1)(B), 115, and
shall be calculated to achieve the following objectives:

“(A) To maximize the availability of creative works to the public.

“(B) To afford the copyright owner a fair return for his or her creative work and the copyright user a fair income under existing economic conditions.

“(C) To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication.

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

“(3) To make determinations concerning the adjustment of the copyright royalty rates under section 111 solely in accordance with the following provisions:

“(A) The rates established by section 111(d)(1)(B) may be adjusted to reflect—
“(i) national monetary inflation or deflation; or

“(ii) changes in the average rates charged cable subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar level of the royalty fee per subscriber which existed as of the date of October 19, 1976, except that—

“(I) if the average rates charged cable system subscribers for the basic service of providing secondary transmissions are changed so that the average rates exceed national monetary inflation, no change in the rates established by section 111(d)(1)(B) shall be permitted; and

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

The Copyright Royalty Judge may consider all factors relating to the maintenance of such level of payments, including, as an extenuating factor, whether the industry has been restrained
by subscriber rate regulating authorities from increasing the rates for the basic service of providing secondary transmissions.

“(B) In the event that the rules and regulations of the Federal Communications Commission are amended at any time after April 8, 1976, to permit the carriage by cable systems of additional television broadcast signals beyond the local service area of the primary transmitters of such signals, the royalty rates established by section 111(d)(1)(B) may be adjusted to insure that the rates for the additional distant signal equivalents resulting from such carriage are reasonable in the light of the changes effected by the amendment to such rules and regulations. In determining the reasonableness of rates proposed following an amendment of Federal Communications Commission rules and regulations, the Copyright Royalty Judge shall consider, among other factors, the economic impact on copyright owners and users; except that no adjustment in royalty rates shall be made under this subparagraph with respect to any distant signal equivalent or fraction thereof represented by—
“(i) carriage of any signal permitted under the rules and regulations of the Federal Communications Commission in effect on April 15, 1976, or the carriage of a signal of the same type (that is, independent, network, or noncommercial educational) substituted for such permitted signal; or

“(ii) a television broadcast signal first carried after April 15, 1976, pursuant to an individual waiver of the rules and regulations of the Federal Communications Commission, as such rules and regulations were in effect on April 15, 1976.

“(C) In the event of any change in the rules and regulations of the Federal Communications Commission with respect to syndicated and sports program exclusivity after April 15, 1976, the rates established by section 111(d)(1)(B) may be adjusted to assure that such rates are reasonable in light of the changes to such rules and regulations, but any such adjustment shall apply only to the affected television broadcast signals carried on those systems affected by the change.
“(D) The gross receipts limitations established by section 111(d)(1)(C) and (D) shall be adjusted to reflect national monetary inflation or deflation or changes in the average rates charged cable system subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar value of the exemption provided by such section, and the royalty rate specified therein shall not be subject to adjustment.

“(4) To authorize the distribution of those royalty fees collected under sections 111, 119, and 1005 that the judge has found are not subject to controversy.

“(5) To authorize the distribution of royalty fees deposited with the Register of Copyrights under sections 111, 116, 119(b), and 1003, and to determine, in cases where controversy exists, the distribution of such fees.

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

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

“(c) RULINGS.—The Copyright Royalty Judge may make any necessary procedural or evidentiary rulings in any proceeding under this chapter and may, before commencing a proceeding under this chapter, make any such rulings that would apply to the proceedings conducted by the Copyright Royalty Judge. The Copyright Royalty Judge may consult with the Register of Copyrights in making any rulings under this subsection.

“(d) ADMINISTRATIVE SUPPORT.—The Librarian of Congress shall provide the Copyright Royalty Judge with the necessary administrative services related to proceedings under this chapter.

§802. Copyright Royalty Judgeship; professional staff

“(a) QUALIFICATIONS OF COPYRIGHT ROYALTY JUDGE.—The Copyright Royalty Judge shall be an attorney with 10 or more years of legal practice with demonstrated experience in administrative hearings or court trials and demonstrated knowledge of copyright law who is free of any financial conflict of interest under subsection (h).

“(b) PROFESSIONAL STAFF.—The Copyright Royalty Judge shall appoint 2 full-time staff members to assist
the Copyright Royalty Judge in performing the functions of the Copyright Royalty Judge. Each staff member shall be an individual with expertise in copyright law and in the business and economics of industries affected by the actions taken by the Copyright Royalty Judge under this chapter.

“(c) TERMS.—The term of the Copyright Royalty Judge shall be 5 years. An individual serving as a Copyright Royalty Judge may be reappointed to subsequent terms as such judge. The term of the Copyright Royalty Judge shall begin when the term of the predecessor of that Judge ends. When the term of office of a Copyright Royalty Judge ends, the individual serving that term may continue to serve until a successor is selected.

“(d) VACANCIES.—If a vacancy should occur in the position of Copyright Royalty Judge, the Librarian of Congress shall act expeditiously to fill the vacancy, and may appoint an interim Copyright Royalty Judge to serve until another Copyright Royalty Judge is appointed under this section. An individual appointed to fill the vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed shall be appointed for the remainder of that term.

“(e) COMPENSATION.—The Copyright Royalty Judge shall receive compensation at the rate of basic pay payable
for level AL–2 for administrative law judges pursuant to section 5372(b) of title 5, and the staff members appointed under subsection (b) shall each be paid at a rate of pay determined by the Librarian of Congress which shall be not less than the basic rate of pay payable for GS–14 of the General Schedule and not more than the basic rate of pay payable for GS–15 of such Schedule. The compensation of the Copyright Royalty Judge and such staff members shall not be subject to any regulations adopted by the Office of Personnel Management pursuant to its authority under section 5376(b)(1) of title 5.

“(f) INDEPENDENCE OF COPYRIGHT ROYALTY JUDGE.—

“(1) IN GENERAL.—The Copyright Royalty Judge shall have full independence in making determinations concerning adjustments and determinations of copyright royalty rates and terms, the distribution of copyright royalties, the acceptance or rejection of royalty claims and rate adjustment petitions, and in issuing rulings under this title, except that the Copyright Royalty Judge may consult with the Register of Copyrights in making such determinations.

“(2) PERFORMANCE APPRAISALS.—
“(A) IN GENERAL.—Notwithstanding any other provision of law or any regulation of the Library of Congress, the Copyright Royalty Judge shall not receive an annual performance appraisal.

“(B) RELATING TO SANCTION OR REMOVAL.—To the extent that the Librarian of Congress adopts regulations under subsection (h) relating to the sanction or removal of a Copyright Royalty Judge and such regulations require documentation to establish the cause of such sanction or removal, the Copyright Royalty Judge may receive an appraisal related specifically to the cause of the sanction or removal.

“(g) INCONSISTENT DUTIES BARRED.—The Copyright Royalty Judge may not undertake duties inconsistent with his or her duties and responsibilities as Copyright Royalty Judge.

“(h) STANDARDS OF CONDUCT.—The Librarian of Congress shall adopt regulations regarding the standards of conduct, including financial conflict of interest and restrictions against ex parte communications, which shall govern the Copyright Royalty Judge and the proceedings under this chapter.
“(i) Removal or Sanction.—The Librarian of Congress may sanction or remove a Copyright Royalty Judge for violation of the standards of conduct adopted under subsection (h), misconduct, neglect of duty, or any disqualifying physical or mental disability. Any such sanction or removal may be made only after notice and opportunity for a hearing, but the Librarian of Congress may suspend the Copyright Royalty Judge during the pendency of such hearing. The Librarian shall appoint an interim Copyright Royalty Judge during the period of any such suspension.

“§ 803. Proceedings of Copyright Royalty Judges

“(a) Proceedings.—The Copyright Royalty Judge shall conduct proceedings in accordance with subchapter II of chapter 5 of title 5, for the purpose of making determinations in carrying out the purposes set forth in section 801. The Copyright Royalty Judge shall act on the basis of a fully documented written record, prior decisions of the Copyright Royalty Tribunal, prior copyright arbitration panel determinations, and rulings by the Librarian of Congress before the effective date of the Copyright Royalty and Distribution Reform Act of 2003. Any person participating in proceedings under this chapter may submit relevant information and proposals to the Copyright Royalty Judge in such proceedings.

“(b) Procedures.—
“(1) Participation in general.—Subject to paragraph (2), a person may participate in proceedings under this chapter, including through the submission of briefs or other information, only if that person files with the Copyright Royalty Judge, in such form and manner as the Librarian of Congress may by regulation prescribe, a notice of intent to participate in the proceedings, together with a filing fee of $150, before the proceedings commence.

“(2) Small claims proceedings.—If the amount in controversy that a party to a proceeding under this chapter to determine the distribution of royalties asserts is $500 or less, that party may elect to have the controversy decided by the Copyright Royalty Judge on the basis of the filing in writing of the initial claim, initial response by any opposing party, and one additional response by each of such party. The party making such election shall not be required to pay the filing fee under paragraph (1).

“(3) Regulations.—

“(A) In general.—The Register of Copyrights shall, not later than 60 days after the date of the enactment of the Copyright Royalty and Distribution Reform Act of 2003, issue
regulations to govern proceedings under this chapter, subject to section 801(e).

“(B) INTERIM REGULATIONS.—Until such regulations are adopted, the regulations in effect under this chapter on the day before such date of enactment shall continue to apply, except that functions carried out under such regulations by the Librarian of Congress, the Register of Copyrights, or copyright arbitration royalty panels that, as of such date of enactment, are to be carried out by the Copyright Royalty Judge under this chapter, shall be carried out by the Copyright Royalty Judge under such regulations.

“(C) REQUIREMENTS.—Regulations issued under subparagraph (A) shall include the following:

“(i) The Federal Rules of Evidence with respect to hearsay shall apply to proceedings under this chapter.

“(ii) Discovery in such proceedings shall be permitted for a period of 60 days. Final witness lists for the proceedings shall not be required until the end of the discovery period.
“(iii) A defending party to a claim in a proceeding may serve upon an adverse party an offer to allow for a determination to be made against the adverse party for the claimed money or property or other specified amount up to the day on which hearings in the proceeding begin. If before the day on which hearings in the proceeding begin an offer under this clause is accepted, either party may file the offer and notice of acceptance of the offer with the Copyright Royalty Judge, who shall enter his or her determination pursuant thereto.

“(c) Decision of Copyright Royalty Judge.—Not later than 6 months after the date of publication of the notice in the Federal Register initiating a proceeding under this chapter, the Copyright Royalty Judge shall issue his or her determination in the proceeding, except that the Copyright Royalty Judge may extend that 6-month period to 1 year for that proceeding if the Copyright Royalty Judge determines such extension to be necessary. The Copyright Royalty Judge’s determination shall be accompanied by the written record, and shall set forth the facts that the Copyright Royalty Judge found relevant.
to his or her determination. The Librarian of Congress
shall cause such determination to be published in the Fed-
eral Register. The Librarian shall also publicize the deter-
mination in such other manner as the Librarian considers
appropriate, including, but not limited to, publication on
the official website of the Copyright Office. The Librarian
shall also make the determination and the accompanying
record available for public inspection and copying.

“(d) JUDICIAL REVIEW.—Any determination of the
Copyright Royalty Judge under subsection (c) may, within
30 days after the publication of the determination in the
Federal Register, be appealed, by any aggrieved party who
would be bound by the determination, to the United States
Court of Appeals for the District of Columbia Circuit. If
no appeal is brought within that 30-day period, the deter-
mination of the Copyright Royalty Judge is final, and the
royalty fee or determination with respect to the distribu-
tion of fees, as the case may be, shall take effect as set
forth in the determination of the Copyright Royalty
Judge. When this title provides that the royalty rates or
terms that were previously in effect are to expire on a
specified date, any adjustment by the Copyright Royalty
Judge of those rates or terms shall be effective as of the
day following the date of expiration of the rates or terms
that were previously in effect, even if the Copyright Roy-
alty Judge’s determination is rendered on a later date. The pendency of an appeal under this paragraph shall not relieve persons obligated to make royalty payments under section 111, 112, 114, 115, 116, 118, 119, or 1003 who would be affected by the determination on appeal to deposit the statement of account and royalty fees specified in those sections. The court shall have jurisdiction to modify or vacate a determination of the Copyright Royalty Judge only if it finds, on the basis of the record before the Copyright Royalty Judge, that the Copyright Royalty Judge acted in an arbitrary or capricious manner. If the court modifies the determination of the Copyright Royalty Judge, the court shall have jurisdiction to enter its own determination with respect to the amount or distribution of royalty fees and costs, to order the repayment of any excess fees, and to order the payment of any underpaid fees, and the interest pertaining respectively thereto, in accordance with its final judgment. The court may further vacate the determination of the Copyright Royalty Judge and remand the case to the Copyright Royalty Judge for proceedings in accordance with subsection (a).

“(e) ADMINISTRATIVE MATTERS.—

“(1) DEDUCTION OF COSTS OF LIBRARY OF CONGRESS AND COPYRIGHT OFFICE FROM ROYALTY FEES.—
“(A) Deduction from filing fees and royalty fees.—The Librarian of Congress may, to the extent not otherwise provided under this title, deduct from the filing fees collected under subsection (b) for a particular proceeding under this chapter the reasonable costs incurred by the Library of Congress, the Copyright Office, and the Copyright Royalty Judge in conducting that proceeding, other than the salaries of the Copyright Royalty Judge and the two professional staff members appointed under section 802(b). To the extent that such costs exceed the amount of such filing fees, the Librarian of Congress may, after making the deduction from such filing fees, deduct the balance of such costs from not more than 1 percent of the royalty fees deposited or collected under this title that relate to that proceeding. Such deduction may be made before the fees are distributed to any copyright claimants.

“(B) Remaining costs.—Any costs described in subparagraph (A) that remain after the deductions under subparagraph (A)—
“(i) in ratemaking proceedings, shall be borne by the parties to the proceedings in equal proportions; and
“(ii) in distribution proceedings, shall be borne by the parties to the proceedings in equal proportions.
“(C) Appropriations.—All funds made available by an appropriations Act as offsetting collections and available for deductions under this subsection shall remain available until expended.
“(2) Positions required for administration of compulsory licensing.—Section 307 of the Legislative Branch Appropriations Act, 1994, shall not apply to employee positions in the Library of Congress that are required to be filled in order to carry out section 111, 112, 114, 115, 116, 118, or 119 or chapter 10.

§804. Institution and conclusion of proceedings
“(a) Filing of Petition.—With respect to proceedings under paragraphs (1) and (2) of section 801(b) concerning the determination or adjustment of royalty rates as provided in sections 111, 112, 114, 115, 116, 118, and 1004, during the calendar years specified in the schedule set forth in subsection (b), any owner or user
of a copyrighted work whose royalty rates are specified by this title, or are established under this chapter before or after the enactment of the Copyright Royalty and Distribution Reform Act of 2003, may file a petition with the Copyright Royalty Judge declaring that the petitioner requests a determination or adjustment of the rate. The Copyright Royalty Judge shall make a determination as to whether the petitioner has such a significant interest in the royalty rate in which a determination or adjustment is requested. If the Copyright Royalty Judge determines that the petitioner has such a significant interest, the Copyright Royalty Judge shall cause notice of this determination, with the reasons therefor, to be published in the Federal Register, together with the notice of commencement of proceedings under this chapter.

“(b) TIMING OF PETITIONS.—

“(1) SECTION 111 PROCEEDINGS.—(A) In proceedings under section 801(b)(1) concerning the adjustment of royalty rates under section 111 to which subparagraph (A) or (D) of section 801(b)(3) applies, a petition described in subsection (a) may be filed during the year 2005 and in each subsequent fifth calendar year.

“(B) In proceedings under section 801(b)(1) concerning the adjustment of royalty rates under
section 111 to which subparagraph (B) or (C) of section 801(b)(3) applies, within 12 months after an event described in either of those subsections, any owner or user of a copyrighted work whose royalty rates are specified by section 111, or by a rate established under this chapter before or after the enactment of the Copyright Royalty and Distribution Reform Act of 2003, may file a petition with the Copyright Royalty Judge declaring that the petitioner requests an adjustment of the rate. The Copyright Royalty Judge shall then proceed as set forth in subsection (a) of this section. Any change in royalty rates made under this chapter pursuant to this subparagraph may be reconsidered in the year 2005, and each fifth calendar year thereafter, in accordance with the provisions in section 801(b)(3)(B) or (C), as the case may be.

“(2) Section 115 Proceedings.—In proceedings under section 801(b)(1) or (2) concerning the adjustment or determination of royalty rates as provided in section 115, a petition described in paragraph (1) may be filed in the year 2007 and in each subsequent fifth calendar year or as prescribed in section 115(c)(3)(B), (C), or (D).
“(3) Section 116 proceedings.—(A) In proceedings under section 801(b)(2) concerning the determination of royalty rates and terms as provided in section 116, a petition described in paragraph (1) may be filed at any time within 1 year after negotiated licenses authorized by section 116 are terminated or expire and are not replaced by subsequent agreements.

“(B) If a negotiated license authorized by section 116 is terminated or expires and is not replaced by another such license agreement which provides permission to use a quantity of musical works not substantially smaller than the quantity of such works performed on coin-operated phonorecord players during the 1-year period ending March 1, 1989, the Copyright Royalty Judge shall, upon petition filed under paragraph (1) within 1 year after such termination or expiration, commence a proceeding to promptly establish an interim royalty rate or rates for the public performance by means of a coin-operated phonorecord player of nondramatic musical works embodied in phonorecords which had been subject to the terminated or expired negotiated license agreement. Such rate or rates shall be the same as the last such rate or rates and shall remain
in force until the conclusion of proceedings by the 
Copyright Royalty Judge, in accordance with section 
803, to adjust the royalty rates applicable to such 
works, or until superseded by a new negotiated li-
cense agreement, as provided in section 116(b).

“(4) SECTION 112 AND 114.—With respect to 
proceedings under section 801(b)(2) concerning the 
determination of reasonable terms and rates of roy-
alty payments as provided in section 112 or 114, the 
Librarian of Congress and the Copyright Royalty 
Judge shall proceed when and as provided by those 
sections.

“(5) SECTION 118 PROCEEDINGS.—With respect 
to proceedings under section 801(b)(2) concerning 
the determination of reasonable terms and rates of 
royalty payments as provided in section 118, the Li-
brarian of Congress and the Copyright Royalty 
Judge shall proceed when and as provided by that 
section.

“(6) PROCEEDINGS CONCERNING DISTRIBUTION 
of royalty fees.—With respect to proceedings 
under section 801(b)(5) concerning the distribution 
of royalty fees in certain circumstances under sec-
tion 111, 116, 119, or 1007, the Copyright Royalty 
Judge shall, upon a determination that a con-
trovery exists concerning such distribution, cause to
be published in the Federal Register notice of com-
mencement of proceedings under this chapter.”.

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

“8. PROCEEDINGS OF COPYRIGHT ROYALTY JUDGE .......... 801”.

SEC. 4. DEFINITION.

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

“The ‘Copyright Royalty Judge’ is the Copy-
right Royalty Judge appointed under section 802 of
this title, and includes any individual serving as an
interim Copyright Royalty Judge under such sec-
section.”.

SEC. 5. TECHNICAL AMENDMENTS.

(a) CABLE RATES.—Section 111(d)(4) is amended—

(1) in subparagraph (B)—

(A) by striking “Librarian of Congress
shall, upon the recommendation of the Register
of Copyrights,” and inserting “Copyright Roy-
alty Judge shall”;

(B) by striking “Librarian” each subse-
quent place it appears and inserting “Copyright
Royalty Judge”; and
(C) by striking “convene a copyright arbitration royalty panel” and inserting “conduct a proceeding”; and

(2) in subparagraph (C), by striking “Librarian of Congress” and inserting “Copyright Royalty Judge”.

(b) Ephemeral Recordings.—Section 112(e) is amended—

(1) in paragraph (3), by amending the first sentence to read as follows: “During the first week of January 2007, the Librarian of Congress shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining reasonable terms and rates of royalty payments for the activities specified by paragraph (1) during the period beginning on January 1, 2007, and ending on December 31, 2011, or such other date as the parties may agree.”;

(2) in paragraph (4)—

(A) by amending the first sentence to read as follows: “In the absence of license agreements negotiated under paragraph (2), during the 60-day period beginning on the date that is 6 months after publication of the notice specified in paragraph (3), and upon the filing of a
petition in accordance with section 804(a), the
Copyright Royalty Judge shall commence a pro-
ceeding pursuant to chapter 8 to determine and
publish in the Federal Register a schedule of
reasonable rates and terms which, subject to
paragraph (5), shall be binding on all copyright
owners of sound recordings and transmitting
organizations entitled to a statutory license
under this subsection during the 5-year period
specified in paragraph (3), or such other date
as the parties may agree.”;

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

(C) in the fourth sentence, by striking “its
decision” and inserting “his or her decision”;

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

(4) in paragraph (6)—

(A) in the first sentence, by striking “Jan-
uary 2000, and at 2-year” and inserting “January
2012, and at 5-year”;  

(B) in the second sentence—
(i) by striking “803(a)(1)” and inserting “804(a)”; and

(ii) by striking “July 1, 2000, and at 2-year” and inserting “July 1, 2012, and at 5-year”; and

(C) in the last sentence, by striking “802” and inserting “803”.

(c) Scope of Exclusive Rights in Sound Recordings.—Section 114(f) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A), by amending the first sentence to read as follows: “During the first week of January 2006, the Librarian of Congress shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining reasonable terms and rates of royalty payments for subscription transmissions by preexisting subscription services and transmissions by preexisting satellite digital audio radio services specified by subsection (d)(2) during the period beginning on January 1, 2006, and ending on December 31, 2010, or such other date as the parties may agree.”;

(B) in subparagraph (B)—
(i) by amending the first sentence to read as follows: “In the absence of license agreements negotiated under subparagraph (A), during the 60-day period beginning on the date that is 6 months after publication of the notice specified in subparagraph (A), and upon the filing of a petition in accordance with section 804(a), the Copyright Royalty Judge shall commence proceedings pursuant to chapter 8 to determine and publish in the Federal Register a schedule of rates and terms which, subject to paragraph (3), shall be binding on all copyright owners of sound recordings and entities performing sound recordings affected by this paragraph.”; and

(ii) by striking “copyright arbitration royalty panel” and inserting “Copyright Royalty Judge”; and

(C) in subparagraph (C)—

(i) in clause (i)(II), by striking “2001” and inserting “2011”;

(ii) in clause (ii)—

(I) by striking “803(a)(1)” and inserting “804(a)”;}
(II) in subclause (II), by striking “2001” and inserting “2011”; and
(iii) in clause (iii), by striking “802” and inserting “803”;
(2) in paragraph (2)—
(A) in subparagraph (A), by amending the first sentence to read as follows: “During the first week of January 2007, the Librarian of Congress shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining reasonable terms and rates of royalty payments for public performances of sound recordings by means of eligible non-subscription transmissions and transmissions by new subscription services specified by subsection (d)(2) during the period beginning on January 1, 2007, and ending on December 31, 2011, or such other date as the parties may agree.”;
(B) in subparagraph (B)—
(i) by amending the first sentence to read as follows: “In the absence of license agreements negotiated under subparagraph (A), during the 60-day period beginning on
the date that is 6 months after publication
of the notice specified in subparagraph
(A), and upon the filing of a petition in ac-
cordance with section 804(a), the Copy-
right Royalty Judge shall commence pro-
ceedings pursuant to chapter 8 to deter-
mine and publish in the Federal Register
a schedule of rates and terms which, sub-
ject to paragraph (3), shall be binding on
all copyright owners of sound recordings
and entities performing sound recordings
affected by this paragraph during the pe-
riod beginning on January 1, 2007, and
ending on December 31, 2011, or such
other date as the parties may agree.”; and

(ii) by striking “copyright arbitration
royalty panel” each subsequent place it ap-
ppears and inserting “Copyright Royalty
Judge”;

(C) in subparagraph (C)—

(i) in clause (i)(II), by striking “Janu-
ary 2000, and at 2-year” and inserting
“January 2012, and at 5-year”;

(ii) in clause (ii)
(I) by striking “803(a)(1)” and inserting “804(a)”; and

(II) in subclause (II), by striking “July 1, 2000, and at 2-year” and inserting “July 1, 2012, and at 5-year”; and

(iii) in clause (iii), by striking “802” and inserting “803”; and

(3) in paragraph (3), by striking “or decision by the Librarian of Congress” and inserting “, decision by the Librarian of Congress, or determination by the Copyright Royalty Judge”.

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

(1) in subparagraph (C), by amending the first sentence to read as follows: “During the period of June 30, 2006, through December 31, 2006, the Librarian of Congress shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining reasonable terms and rates of royalty payments for the activities specified by subparagraph (A) during the period beginning January 1, 2008, and ending on the effective date of any new terms and rates established pursuant to this sub-
paragraph or subparagraph (D) or (F), or such other date (regarding digital phonorecord deliveries) as the parties may agree.”;

(2) in subparagraph (D)—

(A) by amending the first sentence to read as follows: “In the absence of license agreements negotiated under subparagraphs (B) and (C), upon the filing of a petition in accordance with section 804(a), the Copyright Royalty Judge shall commence proceedings pursuant to chapter 8 to determine and publish in the Federal Register a schedule or rates and terms which, subject to subparagraph (E), shall be binding on all copyright owners of nondramatic musical works and persons entitled to obtain a compulsory license under subsection (a)(1) during the period beginning January 1, 2008, and ending on the effective date of any new terms and rates established pursuant to subparagraph (C) or (F) or this subparagraph, or such other date (regarding digital phonorecord deliveries) as may be determined pursuant to subparagraphs (B) and (C).”; and
(B) in the second sentence, by striking “copyright arbitration royalty panel” and inserting “Copyright Royalty Judge”;

(3) in subparagraph (E)(i), in the first sentence, by striking “the Librarian of Congress” and inserting “a copyright arbitration royalty panel, the Librarian of Congress, or the Copyright Royalty Judge”; and

(4) in subparagraph (F), by striking “1997” and inserting “2007”.

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

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

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

(2) in subsection (c)—

(A) in the subsection heading, by striking “COPYRIGHT ARBITRATION Royalty Panel Determinations” and inserting “Determinations by Copyright Royalty Judge”; and
(B) by striking “a copyright arbitration royalty panel” and inserting “the Copyright Royalty Judge”.

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

(1) in subsection (b)—

(A) in paragraph (1), by striking the second and third sentences;

(B) in paragraph (2), by striking “the Librarian of Congress: Provided, That” and inserting “a copyright arbitration royalty panel, the Librarian of Congress, or the Copyright Royalty Judge, if”; and

(C) in paragraph (3)—

(i) by amending the first sentence to read as follows: “In the absence of license agreements negotiated under paragraph (2), the Copyright Royalty Judge shall, pursuant to chapter 8, conduct a proceeding to determine and publish in the Federal Register a schedule of rates and terms which, subject to paragraph (2), shall be binding on all owners of copyright in works specified by this subsection and
public broadcasting entities, regardless of
whether such copyright owners have sub-
mitted proposals to the Librarian of Con-
gress.”; and

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

(2) in subsection (c), by striking “1997” and
inserting “2007”; and

(3) in subsection (d), by striking “a copyright
arbitration royalty panel” and inserting “the Copy-
right Royalty Judge”.

(g) SECONDARY TRANSMISSIONS BY SATELLITE CAR-
riers.—Section 119(b)(4) is amended—

(1) in subparagraph (A), by striking “Librarian
of Congress” the first place it appears and inserting
“Copyright Royalty Judge”; and

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

“(B) DETERMINATION OF CONTROVERSY;

DISTRIBUTIONS.—After the first day of August
of each year, the Copyright Royalty Judge shall
determine whether there exists a controversy
concerning the distribution of royalty fees. If
the Copyright Royalty Judge determines that
no such controversy exists, the Copyright Roy- 
alty Judge shall, after deducting reasonable ad-
ministrative costs under this paragraph, dis-
tribute such fees to the copyright owners enti-
tled to receive them, or to their designated 
agents. If the Copyright Royalty Judge finds 
the existence of a controversy, the Copyright 
Royalty Judge shall, pursuant to chapter 8 of 
this title, conduct a proceeding to determine the 
distribution of royalty fees.

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

(h) DIGITAL AUDIO RECORDING DEVICES.—

(1) Royalty payments.—Section 1004(a)(3) 
is amended by amending the third sentence to read 
as follows: “Not more than once each year, any in-
terested copyright party may petition the Copyright 
Royalty Judge to increase the royalty maximum and, 
if more than 20 percent of the royalty payments are
at the relevant royalty maximum, the Copyright Royalty Judge shall prospectively increase such royalty maximum with the goal of having no more than 10 percent of such payments at the new royalty maximum; however the amount of any such increase as a percentage of the royalty maximum shall in no event exceed the percentage increase in the Consumer Price Index during the period under review.”.

(2) ENTITLEMENT TO ROYALTY PAYMENTS.—

Section 1006(c) is amended by striking “Librarian of Congress shall convene a copyright arbitration royalty panel which” and inserting “Copyright Royalty Judge”.

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

(A) in subsection (a), by amending paragraph (1) to read as follows:

“(1) FILING OF CLAIMS.—During the first 2 months of each calendar year, every interested copyright party seeking to receive royalty payments to which such party is entitled under section 1006 shall file with the Copyright Royalty Judge a claim for payments collected during the preceding year in such form and manner as the Librarian of Congress shall prescribe by regulation.”; and
by amending subsections (b) and (c) to read as follows:

“(b) Distribution of Payments in the Absence of a Dispute.—After the period established for the filing of claims under subsection (a), in each year, the Copyright Royalty Judge shall determine whether there exists a controversy concerning the distribution of royalty payments under section 1006(c). If the Copyright Royalty Judge determines that no such controversy exists, the copyright royalty judge shall, within 30 days after such determination, authorize the distribution of the royalty payments as set forth in the agreements regarding the distribution of royalty payments entered into pursuant to subsection (a). The Librarian of Congress shall, before such royalty payments are distributed, deduct the reasonable administrative costs incurred by the Librarian and the Copyright Office under this section.

“(c) Resolution of Disputes.—If the Copyright Royalty Judge finds the existence of a controversy, the Copyright Royalty Judge shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty payments. During the pendency of such a proceeding, the Copyright Royalty Judge shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall, to
the extent feasible, authorize the distribution of any
amounts that are not in controversy. The Librarian of
Congress shall, before such royalty payments are distrib-
uted, deduct the reasonable administrative costs incurred
by the Librarian and the Copyright Office under this sec-
tion.”.

(4) DETERMINATION OF CERTAIN DISPUTES.—

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

“§ 1010. Determination of certain disputes

“(a) Scope of Determination.—Before the date
of first distribution in the United States of a digital audio
recording device or a digital audio interface device, any
party manufacturing, importing, or distributing such de-
vice, and any interested copyright party may mutually
agree to petition the Copyright Royalty Judge to deter-
mine whether such device is subject to section 1002, or
the basis on which royalty payments for such device are
to be made under section 1003.

“(b) Initiation of Proceedings.—The parties
under subsection (a) shall file the petition with the Copy-
right Royalty Judge requesting the commencement of a
proceeding. Within 2 weeks after receiving such a petition,
the Librarian of Congress shall cause notice to be pub-
lished in the Federal Register of the initiation of the pro-
ceeding.
“(c) Stay of Judicial Proceedings.—Any civil action brought under section 1009 against a party to a proceeding under this section shall, on application of one of the parties to the proceeding, be stayed until completion of the proceeding.

“(d) Proceeding.—The Copyright Royalty Judge shall conduct a proceeding with respect to the matter concerned, in accordance with such procedures as the Copyright Royalty Judge may adopt. The Copyright Royalty Judge shall act on the basis of a fully documented written record. Any party to the proceeding may submit relevant information and proposals to the Copyright Royalty Judge. The parties to the proceeding shall bear the entire cost thereof in such manner and proportion as the Copyright Royalty Judge shall direct.

“(e) Judicial Review.—Any determination of the Copyright Royalty Judge under subsection (d) may be appealed, by a party to the proceeding, in accordance with section 803(d) of this title. The pendency of an appeal under this subsection shall not stay the determination of the Copyright Royalty Judge. If the court modifies the determination of the Copyright Royalty Judge, the court shall have jurisdiction to enter its own decision in accordance with its final judgment. The court may further vacate the determination of the Copyright Royalty Judge and re-
mand the case for proceedings as provided in this sec-

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

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1010. Determination of certain disputes.
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6 SEC. 6. TRANSITION PROVISIONS.

(a) IN GENERAL.—Subject to subsection (b), the
amendments made by this Act shall not affect any pro-
ceedings commenced before the enactment of this Act
under the provisions of title 17, United States Code,
amended by this Act, and pending on such date of enact-
ment. Such proceedings shall continue, determinations
made in such proceedings, and appeals taken therefrom,
as if this Act had not been enacted, and shall continue
in effect until modified under title 17, United States Code,
as amended by this Act.

(b) EFFECTIVE PERIODS FOR CERTAIN RATEMAKING
PROCEEDINGS.—Notwithstanding subsection (a), terms
and rates determined under proceedings under section
114(f)(2) or 112(e) of title 17, United States Code, com-
mented in 2002 shall be effective for an additional period
of 3 years, or until such later date as the parties may
agree, in lieu of the 2-year period otherwise provided for
under such sections.