

Subsec. (c). Pub. L. 109-303, §4(f)(2), struck out “by the Librarian” after “administrative costs incurred” in last sentence.

2004—Subsec. (a)(1). Pub. L. 108-419, §5(i)(3)(A), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “During the first 2 months of each calendar year after calendar year 1992, every interested copyright party seeking to receive royalty payments to which such party is entitled under section 1006 shall file with the Librarian of Congress a claim for payments collected during the preceding year in such form and manner as the Librarian of Congress shall prescribe by regulation.”

Subsec. (b). Pub. L. 108-419, §5(i)(3)(B), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “After the period established for the filing of claims under subsection (a), in each year after 1992, the Librarian of Congress shall determine whether there exists a controversy concerning the distribution of royalty payments under section 1006(c). If the Librarian of Congress determines that no such controversy exists, the Librarian of Congress 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), after deducting its reasonable administrative costs under this section.”

Subsec. (c). Pub. L. 108-419, §5(i)(3)(B), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “If the Librarian of Congress finds the existence of a controversy, the Librarian shall, pursuant to chapter 8 of this title, convene a copyright arbitration royalty panel to determine the distribution of royalty payments. During the pendency of such a proceeding, the Librarian of Congress 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 authorizing the distribution of such royalty payments, deduct the reasonable administrative costs incurred by the Librarian under this section.”

1997—Subsec. (a)(1). Pub. L. 105-80, §12(a)(25)(A), substituted “calendar year 1992” for “the calendar year in which this chapter takes effect”.

Subsec. (b). Pub. L. 105-80, §§9, 12(a)(25)(B), substituted “After the period established” for “Within 30 days after the period established” and “each year after 1992” for “each year after the year in which this section takes effect”.

1993—Subsec. (a)(1). Pub. L. 103-198, §6(b)(4)(A), substituted “Librarian of Congress” for “Copyright Royalty Tribunal” before “a claim for” and for “Tribunal” before “shall prescribe”.

Subsec. (b). Pub. L. 103-198, §6(b)(4)(B), substituted “Librarian of Congress” for “Copyright Royalty Tribunal” before “shall determine whether” and for “Tribunal” wherever appearing.

Subsec. (c). Pub. L. 103-198, §6(b)(4)(C), substituted first sentence for “If the Tribunal finds the existence of a controversy, it shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty payments.”, substituted “Librarian of Congress” for “Tribunal” wherever appearing in second and third sentences, and “the reasonable administrative costs incurred by the Librarian” for “its reasonable administrative costs” in last sentence.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-303 effective as if included in the Copyright Royalty and Distribution Reform Act of 2004, Pub. L. 108-419, see section 6 of Pub. L. 109-303, set out as a note under section 111 of this title.

##### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-419 effective 6 months after Nov. 30, 2004, subject to transition provisions, see

section 6 of Pub. L. 108-419, set out as an Effective Date; Transition Provisions note under section 801 of this title.

#### SUBCHAPTER D—PROHIBITION ON CERTAIN INFRINGEMENT ACTIONS, REMEDIES, AND ARBITRATION

##### § 1008. Prohibition on certain infringement actions

No action may be brought under this title alleging infringement of copyright based on the manufacture, importation, or distribution of a digital audio recording device, a digital audio recording medium, an analog recording device, or an analog recording medium, or based on the noncommercial use by a consumer of such a device or medium for making digital musical recordings or analog musical recordings.

(Added Pub. L. 102-563, §2, Oct. 28, 1992, 106 Stat. 4244.)

##### § 1009. Civil remedies

(a) CIVIL ACTIONS.—Any interested copyright party injured by a violation of section 1002 or 1003 may bring a civil action in an appropriate United States district court against any person for such violation.

(b) OTHER CIVIL ACTIONS.—Any person injured by a violation of this chapter may bring a civil action in an appropriate United States district court for actual damages incurred as a result of such violation.

(c) POWERS OF THE COURT.—In an action brought under subsection (a), the court—

(1) may grant temporary and permanent injunctions on such terms as it deems reasonable to prevent or restrain such violation;

(2) in the case of a violation of section 1002, or in the case of an injury resulting from a failure to make royalty payments required by section 1003, shall award damages under subsection (d);

(3) in its discretion may allow the recovery of costs by or against any party other than the United States or an officer thereof; and

(4) in its discretion may award a reasonable attorney's fee to the prevailing party.

(d) AWARD OF DAMAGES.—

(1) DAMAGES FOR SECTION 1002 OR 1003 VIOLATIONS.—

(A) ACTUAL DAMAGES.—(i) In an action brought under subsection (a), if the court finds that a violation of section 1002 or 1003 has occurred, the court shall award to the complaining party its actual damages if the complaining party elects such damages at any time before final judgment is entered.

(ii) In the case of section 1003, actual damages shall constitute the royalty payments that should have been paid under section 1004 and deposited under section 1005. In such a case, the court, in its discretion, may award an additional amount of not to exceed 50 percent of the actual damages.

(B) STATUTORY DAMAGES FOR SECTION 1002 VIOLATIONS.—

(i) DEVICE.—A complaining party may recover an award of statutory damages for each violation of section 1002(a) or (c) in

the sum of not more than \$2,500 per device involved in such violation or per device on which a service prohibited by section 1002(c) has been performed, as the court considers just.

(ii) **DIGITAL MUSICAL RECORDING.**—A complaining party may recover an award of statutory damages for each violation of section 1002(d) in the sum of not more than \$25 per digital musical recording involved in such violation, as the court considers just.

(iii) **TRANSMISSION.**—A complaining party may recover an award of damages for each transmission or communication that violates section 1002(e) in the sum of not more than \$10,000, as the court considers just.

(2) **REPEATED VIOLATIONS.**—In any case in which the court finds that a person has violated section 1002 or 1003 within 3 years after a final judgment against that person for another such violation was entered, the court may increase the award of damages to not more than double the amounts that would otherwise be awarded under paragraph (1), as the court considers just.

(3) **INNOCENT VIOLATIONS OF SECTION 1002.**—The court in its discretion may reduce the total award of damages against a person violating section 1002 to a sum of not less than \$250 in any case in which the court finds that the violator was not aware and had no reason to believe that its acts constituted a violation of section 1002.

(e) **PAYMENT OF DAMAGES.**—Any award of damages under subsection (d) shall be deposited with the Register pursuant to section 1005 for distribution to interested copyright parties as though such funds were royalty payments made pursuant to section 1003.

(f) **IMPOUNDING OF ARTICLES.**—At any time while an action under subsection (a) is pending, the court may order the impounding, on such terms as it deems reasonable, of any digital audio recording device, digital musical recording, or device specified in section 1002(c) that is in the custody or control of the alleged violator and that the court has reasonable cause to believe does not comply with, or was involved in a violation of, section 1002.

(g) **REMEDIAL MODIFICATION AND DESTRUCTION OF ARTICLES.**—In an action brought under subsection (a), the court may, as part of a final judgment or decree finding a violation of section 1002, order the remedial modification or the destruction of any digital audio recording device, digital musical recording, or device specified in section 1002(c) that—

(1) does not comply with, or was involved in a violation of, section 1002, and

(2) is in the custody or control of the violator or has been impounded under subsection (f).

(Added Pub. L. 102-563, § 2, Oct. 28, 1992, 106 Stat. 4245.)

### § 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 device, and any interested copyright party may mutually agree to petition the Copyright Royalty Judges to determine 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 Copyright Royalty Judges requesting the commencement of a proceeding. Within 2 weeks after receiving such a petition, the Chief Copyright Royalty Judge shall cause notice to be published in the Federal Register of the initiation of the proceeding.

(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 Judges shall conduct a proceeding with respect to the matter concerned, in accordance with such procedures as the Copyright Royalty Judges may adopt. The Copyright Royalty Judges 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 Judges. The parties to the proceeding shall each bear their respective costs of participation.

(e) **JUDICIAL REVIEW.**—Any determination of the Copyright Royalty Judges 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 Judges. If the court modifies the determination of the Copyright Royalty Judges, 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 Judges and remand the case for proceedings as provided in this section.

(Added Pub. L. 102-563, § 2, Oct. 28, 1992, 106 Stat. 4246; amended Pub. L. 103-198, § 6(b)(5), Dec. 17, 1993, 107 Stat. 2312; Pub. L. 108-419, § 5(i)(4)(A), Nov. 30, 2004, 118 Stat. 2368.)

### Editorial Notes

#### AMENDMENTS

2004—Pub. L. 108-419 amended section catchline and text generally, substituting provisions relating to determination of certain disputes for provisions relating to arbitration of certain disputes.

1993—Subsec. (b). Pub. L. 103-198, § 6(b)(5)(A), substituted “Librarian of Congress” for “Copyright Royalty Tribunal” before “requesting the commencement” and for “Tribunal” wherever appearing.

Subsec. (e). Pub. L. 103-198, § 6(b)(5)(B), substituted “Librarian of Congress” for “Copyright Royalty Tribunal” in heading and text.

Subsec. (f). Pub. L. 103-198, § 6(b)(5)(C), substituted “Librarian of Congress” for “Copyright Royalty Tribunal” in heading and before “shall adopt or reject” in text, substituted “Librarian of Congress” for “Tribunal” wherever appearing, and substituted “the Librarian’s” for “its”.