The SPEAKER pro tempore (Mr. SHAW). The question is on the motion offered by the gentlewoman from Pennsylvania (Ms. HART) that the House suspend the rules and pass the bill, H.R. 3389.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Ms. HART. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

COPYRIGHT ROYALTY AND DISTRIBUTION REFORM ACT OF 2004

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1417) to amend title 17, United States Code, to replace copyright arbitration royalty panels with a Copyright Royalty Judge, and for other purposes, as amended.

The Clerk read as follows:

H.R. 1417

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Copyright Royalty and Distribution Reform Act of 2004''.

SEC. 2. REFERENCE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, 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 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.

''§ 801. Copyright Royalty Judges; appointment and functions

''(a) APPOINTMENT.—The Librarian of Congress shall appoint 3 full-time Copyright Royalty Judges, and shall appoint one of the three as the Chief Copyright Royalty Judge. In making such appointments, the Librarian shall consult with the Register of Copyrights.

''(b) FUNCTIONS.—Subject to the provisions of this chapter, the functions of the Copyright Royalty Judges shall be as follows:

''(1) To make determinations and adjustments of reasonable terms and rates of royalty payments as provided in sections 112(e), 114, 115, 116, 118, 119 and 1004. The rates applicable under sections 114(f)(1)(B), 115, and 116 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.

''(2) 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 Judges 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 Judges 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.

''(3)(A) To authorize the distribution, under sections 111, 119, and 1007, of those royalty fees collected under sections 111, 119, and 1005, as the case may be, to the extent that the Copyright Royalty Judges have found that the distribution of such fees is not subject to controversy.

''(B) In cases where the Copyright Royalty Judges determine that controversy exists, the Copyright Royalty Judges shall determine the distribution of such fees, including partial distributions, in accordance with section 111, 119, or 1007, as the case may be.

''(C) the Copyright Royalty Judges shall make a partial distribution of such fees during the pendency of the proceeding under subparagraph (B) if all participants under section 803(b)(2) in the proceeding that are entitled to receive those fees that are to be partially distributed—

''(i) agree to such partial distribution;

''(ii) sign an agreement obligating them to return any excess amounts to the extent necessary to comply with the final determination on the distribution of the fees made under subparagraph (B); and

''(iii) file the agreement with the Copyright Royalty Judges.

''(D) The Copyright Royalty Judges and any other officer or employee acting in good faith in distributing funds under subparagraph (C) shall not be held liable for the payment of any excess fees under subparagraph (C). The Copyright Royalty Judges shall, at the time the final determination is made, calculate any such excess amounts.

''(4) 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.

''(5) To accept or reject rate adjustment petitions as provided in section 804 and petitions to participate as provided in section 803(b)(1) and (2).

''(6) 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.

''(7)(A) To adopt as the basis for statutory terms and rates or as a basis for the distribution of statutory royalty payments, an agreement concerning such matters reached among some or all of the participants in a proceeding at any time during the proceeding, except that—

''(i) the Copyright Royalty Judges shall provide to the other participants in the proceeding under section 803(b)(2) that would be bound by the terms, rates, distribution, or other determination set by the agreement an opportunity to comment on the agreement and object to its adoption as the basis for statutory terms and rates or as a basis for the distribution of statutory royalty payments, as the case may be; and

''(ii) the Copyright Royalty Judges may decline to adopt the agreement as the basis for statutory terms and rates or as the basis

for the distribution of statutory royalty payments, as the case may be, if any other participant described in subparagraph (A) objects to the agreement and the Copyright Royalty Judges find, based on the record before them, that the agreement is not likely to meet the statutory standard for setting the terms and rates, or for distributing the royalty payments, as the case may be.

''(B) License agreements voluntarily negotiated pursuant to section 112(e)(5), 114(f)(3), 115(c)(3)(E)(i), 116(c), or 118(b)(2) that do not result in statutory terms and rates shall not be subject to clauses (i) and (ii) of subparagraph (A).

''(c) RULINGS.—The Copyright Royalty Judges 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 Judges. The Copyright Royalty Judges may consult with the Register of Copyrights in making any rulings under section 802(f)(1).

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

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

''§ 802. Copyright Royalty Judgeships; staff

''(a) QUALIFICATIONS OF COPYRIGHT ROYALTY JUDGES.—Each Copyright Royalty Judge shall be an attorney who has at least 7 years of legal experience. The Chief Copyright Royalty Judge shall have at least 5 years of experience in adjudications, arbitrations, or court trials. Of the other two Copyright Royalty Judges, one shall have significant knowledge of copyright law, and the other shall have significant knowledge of economics. An individual may serve as a Copyright Royalty Judge only if the individual is free of any financial conflict of interest under subsection (h). In this subsection, 'adjudication' has the meaning given that term in section 551 of title 5, but does not include mediation.

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

''(c) TERMS.—The terms of the Copyright Royalty Judges shall each be 6 years, except of the individuals first appointed, the Chief Copyright Royalty Judge shall be appointed to a term of 6 years, and of the remaining Copyright Royalty Judges, one shall be appointed to a term of 2 years, and the other shall be appointed to a term of 4 years. An individual serving as a Copyright Royalty Judge may be reappointed to subsequent terms. The term of a Copyright Royalty Judge shall begin when the term of the predecessor of that Copyright Royalty 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 OR INCAPACITY.—

''(1) 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.

''(2) INCAPACITY.—In the case in which a Copyright Royalty Judge is temporarily unable to perform his or her duties, the Librarian of Congress may appoint an interim Copyright Royalty Judge to perform such duties during the period of such incapacity.

''(e) COMPENSATION.—

''(1) JUDGES.—The Chief Copyright Royalty Judge shall receive compensation at the rate of basic pay payable for level AL–1 for administrative law judges pursuant to section 5372(b) of title 5, and each of the other two Copyright Royalty Judges shall receive compensation at the rate of basic pay payable for level AL–2 for administrative law judges pursuant to such section. The compensation of the Copyright Royalty Judges 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.

''(2) STAFF MEMBERS.—Of the staff members appointed under subsection (b)—

''(A) the rate of pay of one staff member shall be not more than the basic rate of pay payable for GS–15 of the General Schedule;

''(B) the rate of pay of one staff member shall be not less than the basic rate of pay payable for GS–13 of the General Schedule and not more than the basic rate of pay payable for GS–14 of such Schedule; and

''(C) the rate of pay for the third staff member shall be not less than the basic rate of pay payable for GS–8 of the General Schedule and not more than the basic rate of pay payable for GS–11 of such Schedule.

''(f) INDEPENDENCE OF COPYRIGHT ROYALTY JUDGE.—

''(1) IN MAKING DETERMINATIONS.—

''(A) IN GENERAL.—Subject to subparagraph (B), the Copyright Royalty Judges 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, rate adjustment petitions, and petitions to participate, and in issuing other rulings under this title, except that the Copyright Royalty Judges may consult with the Register of Copyrights on any matter other than a question of fact. Any such consultations between the Copyright Royalty Judges and the Register of Copyright on any question of law shall be in writing or on the record.

''(B) NOVEL QUESTIONS.—(i) Notwithstanding the provisions of subparagraph (A), in any case in which the Copyright Royalty Judges in a proceeding under this title are presented with a novel question of law concerning an interpretation of those provisions of this title that are the subject of the proceeding, the Copyright Royalty Judges shall request the Register of Copyrights, in writing, to submit a written opinion on the resolution of such novel question. The Register shall submit and make public that opinion within such time period as the Copyright Royalty Judges may prescribe. Any consultations under this subparagraph between the Copyright Royalty Judges and the Register of Copyrights shall be in writing or on the record. The opinion of the Register shall not be binding on the Copyright Royalty Judges, but the Copyright Royalty Judges shall take the opinion of the Register into account in making the judges' determination on the question concerned.

''(ii) In clause (i), a 'novel question of law' is a question of law that has not been determined in prior decisions, determinations, and rulings described in section 803(a).

''(2) PERFORMANCE APPRAISALS.—

''(A) IN GENERAL.—Notwithstanding any other provision of law or any regulation of the Library of Congress, and subject to subparagraph (B), the Copyright Royalty Judges shall not receive performance appraisals.

''(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.—No Copyright Royalty Judge may 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 Judges 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.—

''(1) IN GENERAL.—The Copyright Royalty Judges shall act in accordance with this title, and to the extent not inconsistent with this title, in accordance with subchapter II of chapter 5 of title 5, in carrying out the purposes set forth in section 801. The Copyright Royalty Judges shall act in accordance with regulations issued by the Copyright Royalty Judges and on the basis of a fully documented written record, prior decisions of the Copyright Royalty Tribunal, prior copyright arbitration royalty panel determinations, rulings by the Librarian of Congress before the effective date of the Copyright Royalty and Distribution Reform Act of 2004, prior determinations of Copyright Royalty Judges under this chapter, and decisions of the court in appeals under this chapter before, on, or after such effective date. Any participant in a proceeding under subsection (b)(2) may submit relevant information and proposals to the Copyright Royalty Judges.

''(2) JUDGES ACTING AS PANEL AND INDIVIDUALLY.—The Copyright Royalty Judges shall preside over hearings in proceedings under this chapter en banc. The Chief Copyright Royalty Judge may designate a Copyright Royalty Judge to preside individually over such collateral and administrative proceedings, and over such proceedings under paragraphs (1) through (5) of subsection (b), as the Chief Judge considers appropriate.

''(3) DETERMINATIONS.—Final determinations of the Copyright Royalty Judges in proceedings under this chapter shall be made by majority vote. A Copyright Royalty Judge dissenting from the majority on any determination under this chapter may issue his or her dissenting opinion, which shall be included with the determination.

''(b) PROCEDURES.—

''(1) INITIATION.—

''(A) CALL FOR PETITIONS TO PARTICIPATE.—(i) Promptly upon the filing of a petition for a rate adjustment or determination under section 804(a) or 804(b)(8), or by no later than January 5 of a year specified in section 804 for the commencement of a proceeding if a petition has not been filed by that date, the Copyright Royalty Judges shall cause to be

published in the Federal Register notice of commencement of proceedings under this chapter calling for the filing of petitions to participate in a proceeding under this chapter for the purpose of making the relevant determination under section 111, 112, 114, 115, 116, 118, 119, 1004 or 1007, as the case may be.

''(ii) Petitions to participate shall be filed by no later than 30 days after publication of notice of commencement of a proceeding, under clause (i), except that the Copyright Royalty Judges may, for substantial good cause shown and if there is no prejudice to the participants that have already filed petitions, accept late petitions to participate at any time up to the date that is 90 days before the date on which participants in the proceeding are to file their written direct statements.

''(B) PETITIONS TO PARTICIPATE.—Each petition to participate in a proceeding shall describe the petitioner's interest in the subject matter of the proceeding. Parties with similar interests may file a single petition to participate.

''(2) PARTICIPATION IN GENERAL.—Subject to paragraph (4), a person may participate in a proceeding under this chapter, including through the submission of briefs or other information, only if—

''(A) that person has filed a petition to participate in accordance with paragraph (1) (either individually or as a group under paragraph (1)(B)), together with a filing fee of $150;

''(B) the Copyright Royalty Judges have not determined that the petition to participate is facially invalid; and

''(C) the Copyright Royalty Judges have not determined, sua sponte or on the motion of another participant in the proceeding, that the person lacks a significant interest in the proceeding.

''(3) VOLUNTARY NEGOTIATION PERIOD.—

''(A) IN GENERAL.—Promptly after the date for filing of petitions to participate in a proceeding, the Copyright Royalty Judges shall make available to all participants in the proceeding a list of such participants and shall initiate a voluntary negotiation period among the participants.

''(B) LENGTH OF PROCEEDINGS.—The voluntary negotiation period initiated under subparagraph (A) shall be 3 months.

''(C) DETERMINATION OF SUBSEQUENT PROCEEDINGS.—At the close of the voluntary negotiation proceedings, the Copyright Royalty Judges shall, if further proceedings under this chapter are necessary, determine whether and to what extent paragraphs (4) and (5) will apply to the parties.

''(4) SMALL CLAIMS PROCEDURE IN DISTRIBUTION PROCEEDINGS.—

''(A) IN GENERAL.—If, in a proceeding under this chapter to determine the distribution of royalties, a participant in the proceeding asserts that the contested amount of the claim is $10,000 or less, the Copyright Royalty Judges shall decide the controversy on the basis of the filing in writing of the initial claim, the initial response by any opposing participant, and one additional response by each such party. The participant asserting the claim shall not be required to pay the filing fee under paragraph (2).

''(B) BAD FAITH INFLATION OF CLAIM.—If the Copyright Royalty Judges determine that a participant asserts in bad faith an amount in controversy in excess of $10,000 for the purpose of avoiding a determination under the procedure set forth in subparagraph (A), the Copyright Royalty Judges shall impose a fine on that participant in an amount not to exceed the difference between the actual amount distributed and the amount asserted by the participant.

''(5) PAPER PROCEEDINGS IN RATEMAKING PROCEEDINGS.—The Copyright Royalty Judges in proceedings under this chapter to determine royalty rates may decide, sua sponte or upon motion of a participant, to determine issues on the basis of initial filings in writing, initial responses by any opposing participant, and one additional response by each such participant. Prior to making such decision to proceed on such a paper record only, the Copyright Royalty Judges shall offer to all parties to the proceeding the opportunity to comment on the decision. The procedure under this paragraph—

''(A) shall be applied in cases in which there is no genuine issue of material fact, there is no need for evidentiary hearings, and all participants in the proceeding agree in writing to the procedure; and

''(B) may be applied under such other circumstances as the Copyright Royalty Judges consider appropriate.

''(6) REGULATIONS.—

''(A) IN GENERAL.—The Copyright Royalty Judges may issue regulations to carry out their functions under this title. Not later than 120 days after Copyright Royalty Judges or interim Copyright Royalty Judges, as the case may be, are first appointed after the enactment of the Copyright Royalty and Distribution Reform Act of 2004, such judges shall issue regulations to govern proceedings under this chapter.

''(B) INTERIM REGULATIONS.—Until regulations are adopted under subparagraph (A), the Copyright Royalty Judges shall apply the regulations in effect under this chapter on the day before the effective date of the Copyright Royalty and Distribution Reform Act of 2004, to the extent such regulations are not inconsistent with this chapter, 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 Judges under this chapter, shall be carried out by the Copyright Royalty Judges under such regulations.

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

''(i) The written direct statements of all participants in a proceeding under paragraph (2) shall be filed by a date specified by the Copyright Royalty Judges, which may be no earlier than four months, and no later than five months, after the end of the voluntary negotiation period under paragraph (3). Notwithstanding the preceding sentence, a participant in a proceeding may, within 15 days after the end of the discovery period specified in clause (iii), file an amended written direct statement based on new information received during the discovery process.

''(ii)(I) Following the submission to the Copyright Royalty Judges of written direct statements by the participants in a proceeding under paragraph (2), the judges shall meet with the participants for the purpose of setting a schedule for conducting and completing discovery. Such schedule shall be determined by the Copyright Royalty Judges.

''(II) In this chapter, the term 'written direct statements' means witness statements, testimony, and exhibits to be presented in the proceedings, and such other information that is necessary to establish terms and rates, or the distribution of royalty payments, as the case may be, as set forth in regulations issued by the Copyright Royalty Judges.

''(iii) Hearsay may be admitted in proceedings under this chapter to the extent deemed appropriate by the Copyright Royalty Judges.

''(iv) Discovery in such proceedings shall be permitted for a period of 60 days, except for discovery ordered by the Copyright Royalty Judges in connection with the resolution of motions, orders and disputes pending at the end of such period.

''(v) Any participant under paragraph (2) in a proceeding under this chapter to determine royalty rates may, upon written notice, seek discovery of information and materials relevant and material to the proceeding. Any objection to any such discovery request shall be resolved by a motion or request to compel discovery made to the Copyright Royalty Judges. Each motion or request to compel discovery shall be determined by the Copyright Royalty Judges, or by a Copyright Royalty Judge when permitted under subsection (a)(2), who may approve the request only if the evidence that would be produced is relevant and material. A Copyright Royalty Judge may refuse a request to compel discovery of evidence that has been found to be relevant and material, only upon good cause shown. For purposes of the preceding sentence, the basis for 'good cause' may only be that—

''(I) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from another source that is more convenient, less burdensome, or less expensive;

''(II) the participant seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

''(III) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs and resources of the participants, the importance of the issues at stake, and the importance of the proposed discovery in resolving the issues.

''(vi) The rules in effect on the day before the effective date of the Copyright Royalty and Distribution Reform Act of 2004, relating to discovery in proceedings under this title to determine the distribution of royalty fees, shall continue to apply to such proceedings on and after such effective date.

''(vii) The Copyright Royalty Judges may issue subpoenas requiring the production of evidence or witnesses, but only if the evidence requested to be produced or that would be proffered by the witness is relevant and material.

''(viii) The Copyright Royalty Judges shall order a settlement conference among the participants in the proceeding to facilitate the presentation of offers of settlement among the participants. The settlement conference shall be held during a 21-day period following the end of the discovery period.

''(c) DETERMINATION OF COPYRIGHT ROYALTY JUDGES.—

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

''(2) REHEARINGS.—

''(A) IN GENERAL.—The Copyright Royalty Judges may, in exceptional cases, upon motion of a participant under subsection (b)(2), order a rehearing, after the determination in a proceeding is issued under paragraph (1), on such matters as the Copyright Royalty Judges determine to be appropriate.

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

''(C) PARTICIPATION BY OPPOSING PARTY NOT REQUIRED.—In any case in which a rehearing is ordered, any opposing party shall not be required to participate in the rehearing.

''(D) NO NEGATIVE INFERENCE.—No negative inference shall be drawn from lack of participation in a rehearing.

''(E) CONTINUITY OF RATES AND TERMS.—(i) If the decision of the Copyright Royalty Judges on any motion for a rehearing is not rendered before the expiration of the statutory rates and terms that were previously in effect, in the case of a proceeding to determine successors to rates and terms that expire on a specified date, then—

''(I) the initial determination of the Copyright Royalty Judges that is the subject of the rehearing motion shall be effective as of the day following the date on which the rates and terms that were previously in effect expire; and

''(II) in the case of a proceeding under section 114(f)(1)(C) or 114(f)(2)(C), royalty rates and terms shall, for purposes of section 114(f)(4)(B), be deemed to have been set at those rates and terms contained in the initial determination of the Copyright Royalty Judges that is the subject of the rehearing motion, as of the date of that determination.

''(ii) The pendency of a motion for a rehearing under this paragraph shall not relieve persons obligated to make royalty payments who would be affected by the determination on that motion from providing the statements of account and any reports of use, to the extent required, and paying the royalties required under the relevant determination or regulations.

''(iii) Notwithstanding clause (ii), whenever royalties described in clause (ii) are paid to a person other than the Copyright Office, the entity designated by the Copyright Royalty Judges to which such royalties are paid by the copyright user (and any successor thereto) shall, within 60 days after the motion for rehearing is resolved or, if the motion is granted, within 60 days after the rehearing is concluded, return any excess amounts previously paid to the extent necessary to comply with the final determination of royalty rates by the Copyright Royalty Judges.

''(3) CONTENTS OF DETERMINATION.—A determination of the Copyright Royalty Judges shall be accompanied by the written record, and shall set forth the facts that the Copyright Royalty Judges found relevant to their determination. Among other terms adopted in a determination, the Copyright Royalty Judges may specify notice and recordkeeping requirements of users of the copyrights at issue that apply in lieu of those that would otherwise apply under regulations.

''(4) CONTINUING JURISDICTION.—The Copyright Royalty Judges may amend the determination or the regulations issued pursuant to the determination in order to correct any technical errors in the determination or to respond to unforeseen circumstances that preclude the proper effectuation of the determination.

''(5) PROTECTIVE ORDER.—The Copyright Royalty Judges may issue such orders as may be appropriate to protect confidential information, including orders excluding confidential information from the record of the determination that is published or made available to the public, except that any terms or rates of royalty payments or distributions may not be excluded.

''(6) PUBLICATION OF DETERMINATION.—The Librarian of Congress shall cause the determination, and any corrections thereto, to be published in the Federal Register. The Librarian of Congress shall also publicize the determination and corrections in such other manner as the Librarian considers appropriate, including, but not limited to, publication on the Internet. The Librarian of Congress shall also make the determination, corrections, and the accompanying record available for public inspection and copying.

''(d) JUDICIAL REVIEW.—

''(1) APPEAL.—Any determination of the Copyright Royalty Judges under subsection (c) may, within 30 days after the publication of the determination in the Federal Register, be appealed, to the United States Court of Appeals for the District of Columbia Circuit, by any aggrieved participant in the proceeding under subsection (b)(2) who fully participated in the proceeding and who would be bound by the determination. If no appeal is brought within that 30-day period, the determination of the Copyright Royalty Judges shall be final, and the royalty fee or determination with respect to the distribution of fees, as the case may be, shall take effect as set forth in paragraph (2).

''(2) EFFECT OF RATES.—

''(A) EXPIRATION ON SPECIFIED DATE.—When this title provides that the royalty rates and terms that were previously in effect are to expire on a specified date, any adjustment or determination by the Copyright Royalty Judges of successor rates and terms for an ensuing statutory license period shall be effective as of the day following the date of expiration of the rates and terms that were previously in effect, even if the determination of the Copyright Royalty Judges is rendered on a later date.

''(B) OTHER CASES.—In cases where rates and terms do not expire on a specified date or have not yet been established, successor or new rates or terms shall take effect on the first day of the second month that begins after the publication of the determination of the Copyright Royalty Judges in the Federal Register, except as otherwise provided in this title, and the rates and terms previously in effect, to the extent applicable, shall remain in effect until such successor rates and terms become effective.

''(C) OBLIGATION TO MAKE PAYMENTS.—(i) The pendency of an appeal under this subsection 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, from providing the statements of account (and any report of use, to the extent required) and paying the royalties required under the relevant determination or regulations.

''(ii) Notwithstanding clause (i), whenever royalties described in clause (i) are paid to a person other than the Copyright Office, the entity designated by the Copyright Royalty Judges to which such royalties are paid by the copyright user (and any successor thereto) shall, within 60 days after the final resolution of the appeal, return any excess amounts previously paid (and interest thereon, if ordered pursuant to paragraph (3)) to the extent necessary to comply with the final determination of royalty rates on appeal.

''(3) JURISDICTION OF COURT.—If the court, pursuant to section 706 of title 5, modifies or vacates a determination of the Copyright Royalty Judges, the court may enter its own determination with respect to the amount or distribution of royalty fees and costs, and order the repayment of any excess fees, the payment of any underpaid fees, and the payment of interest pertaining respectively thereto, in accordance with its final judgment. The court may also vacate the determination of the Copyright Royalty Judges and remand the case to the Copyright Royalty Judges for further proceedings in accordance with subsection (a).

''(e) ADMINISTRATIVE MATTERS.—

''(1) DEDUCTION OF COSTS OF LIBRARY OF CONGRESS AND COPYRIGHT OFFICE FROM FILING FEES.—

''(A) DEDUCTION FROM FILING 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 Librarian of Congress, the Copyright Office, and the Copyright Royalty Judges in conducting that proceeding, other than the salaries of the Copyright Royalty Judges and the 3 staff members appointed under section 802(b).

''(B) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to pay the costs of proceedings under this chapter not covered by the filing fees collected under subsection (b). All funds made available pursuant to this subparagraph 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 of proceedings

''(a) FILING OF PETITION.—With respect to proceedings referred to in 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 2004, may file a petition with the Copyright Royalty Judges declaring that the petitioner requests a determination or adjustment of the rate. The Copyright Royalty Judges 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 Judges determine that the petitioner has such a significant interest, the Copyright Royalty Judges 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. With respect to proceedings under paragraph (1) of section 801(b) concerning the determination or adjustment of royalty rates as provided in sections 112 and 114, during the calendar years specified in the schedule set forth in subsection (b), the Copyright Royalty Judges shall cause notice of commencement of proceedings under this chapter to be published in the Federal Register as provided in section 803(b)(1)(A).

''(b) TIMING OF PROCEEDINGS.—

''(1) SECTION 111 PROCEEDINGS.—(A) A petition described in subsection (a) to initiate proceedings under section 801(b)(2) concerning the adjustment of royalty rates under section 111 to which subparagraph (A) or (D) of section 801(b)(2) applies may be filed during the year 2005 and in each subsequent fifth calendar year.

''(B) In order to initiate proceedings under section 801(b)(2) concerning the adjustment of royalty rates under section 111 to which subparagraph (B) or (C) of section 801(b)(2) 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 2004, may file a petition with the Copyright Royalty Judges declaring that the petitioner requests an adjustment of the rate. The Copyright Royalty Judges 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. A petition for adjustment of rates under section 11(d)(1)(B) as a result of a change is the rules and regulations of the Federal Communications Commission shall set forth the change on which the petition is based.

''(C) Any adjustment of royalty rates under section 111 shall take effect as of the first accounting period commencing after the publication of the determination of the Copyright Royalty Judges in the Federal Register, or on such other date as is specified in that determination.

''(2) CERTAIN SECTION 112 PROCEEDINGS.—Proceedings under this chapter shall be commenced in the year 2007 to determine reasonable terms and rates of royalty payments for the activities described in section 112(e)(1) relating to the limitation on exclusive rights specified by section 114(d)(1)(C)(iv), to become effective on January 1, 2009. Such proceedings shall be repeated in each subsequent fifth calendar year.

''(3) SECTION 114 AND CORRESPONDING 112 PROCEEDINGS.—

''(A) FOR ELIGIBLE NONSUBSCRIPTION SERVICES AND NEW SUBSCRIPTION SERVICES.—Proceedings under this chapter shall be commenced as soon as practicable after the effective date of the Copyright Royalty and Distribution Reform Act of 2004 to determine reasonable terms and rates of royalty payments under sections 114 and 112 for the activities of eligible nonsubscription transmission services and new subscription services, to be effective for the period beginning on January 1, 2006, and ending on December 31, 2010. Such proceedings shall next be commenced in January 2009 to determine reasonable terms and rates of royalty payments, to become effective on January 1, 2011. Thereafter, such proceedings shall be repeated in each subsequent fifth calendar year.

''(B) FOR PREEXISTING SUBSCRIPTION AND SATELLITE DIGITAL AUDIO RADIO SERVICES.—Proceedings under this chapter shall be commenced in January 2006 to determine reasonable terms and rates of royalty payments under sections 114 and 112 for the activities of preexisting subscription services, to be effective during the period beginning on January 1, 2008, and ending on December 31, 2012, and preexisting satellite digital audio radio services, to be effective during the period beginning on January 1, 2007, and ending on December 31, 2012. Such proceedings shall next be commenced in 2011 to determine reasonable terms and rates of royalty payments, to become effective on January 1, 2013. Thereafter, such proceedings shall be repeated in each subsequent fifth calendar year.

''(C)(i) Notwithstanding any other provision of this chapter, this subparagraph shall govern proceedings commenced pursuant to sections 114(f)(1)(C) and 114(f)(2)(C) concerning new types of services.

''(ii) Not later than 30 days after a petition to determine rates and terms for a new type of service that is filed by any copyright owner of sound recordings, or such new type of service, indicating that such new type of service is or is about to become operational, the Copyright Royalty Judges shall issue a notice for a proceeding to determine rates and terms for such service.

''(iii) The proceeding shall follow the schedule set forth in such subsections (b), (c), and (d) of section 803, except that—

''(I) the determination shall be issued by not later than 24 months after the publication of the notice under clause (ii); and

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

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

''(4) SECTION 115 PROCEEDINGS.—A petition described in subsection (a) to initiate proceedings under section 801(b)(1) concerning the adjustment or determination of royalty rates as provided in section 115 may be filed in the year 2006 and in each subsequent fifth calendar year, or at such other times as the parties have agreed under section 115(c)(3)(B) and (C).

''(5) SECTION 116 PROCEEDINGS.—(A) A petition described in subsection (a) to initiate proceedings under section 801(b) concerning the determination of royalty rates and terms as provided in section 116 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 Judges 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 Judges, in accordance with section 803, to adjust the royalty rates applicable to such works, or until superseded by a new negotiated license agreement, as provided in section 116(b).

''(6) SECTION 118 PROCEEDINGS.—A petition described in subsection (a) to initiate proceedings under section 801(b)(1) concerning the determination of reasonable terms and rates of royalty payments as provided in section 118 may be filed in the year 2006 and in each subsequent fifth calendar year.

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

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

''§ 805. General rule for voluntarily negotiated agreements

''Any rates or terms under this title that—

''(1) are agreed to by participants to a proceeding under section 803(b)(2),

''(2) are adopted by the Copyright Royalty Judges as part of a determination under this chapter, and

''(3) are in effect for a period shorter than would otherwise apply under a determination pursuant to this chapter,

shall remain in effect for such period of time as would otherwise apply under such determination, except that the Copyright Royalty Judges shall adjust the rates pursuant to the voluntary negotiations to reflect national monetary inflation during the additional period the rates remain in effect.''.

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

''8. Proceedings by Copyright Royalty Judges ..... 801''.

SEC. 4. DEFINITION.

Section 101 is amended by inserting after the definition of ''copies'' the following:

''A 'Copyright Royalty Judge' is a Copyright Royalty Judge appointed under section 802 of this title, and includes any individual serving as an interim Copyright Royalty Judge under such section.''.

SEC. 5. TECHNICAL AMENDMENTS.

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

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

(2) in paragraph (4)—

(A) in subparagraph (A), by striking ''Librarian of Congress'' each place it appears and inserting ''Copyright Royalty Judges'';

(B) in subparagraph (B)—

(i) in the first sentence, by striking ''Librarian of Congress shall, upon the recommendation of the Register of Copyrights,'' and inserting ''Copyright Royalty Judges shall'';

(ii) in the second sentence, by striking ''Librarian determines'' and inserting ''Copyright Royalty Judges determine''; and

(iii) in the third sentence—

(I) by striking ''Librarian'' each place it appears and inserting ''Copyright Royalty Judges''; and

(II) by striking ''convene a copyright arbitration royalty panel'' and inserting ''conduct a proceeding''; and

(C) in subparagraph (C), by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges''.

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

(1) in paragraph (3)—

(A) by amending the first sentence to read as follows: ''Voluntary negotiation proceedings initiated pursuant to section 804(a) for the purpose of determining reasonable terms and rates of royalty payments for the activities specified by paragraph (1) shall cover the 5-year period beginning on January 1 of the second year following the year in which the proceedings are commenced, or such other period as the parties may agree.''; and

(B) in the third sentence, by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges'';

(2) in paragraph (4)—

(A) by amending the first sentence to read as follows: ''In the absence of license agreements negotiated under paragraphs (2) and (3), the Copyright Royalty Judges shall commence a proceeding 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 period as the parties may agree.'';

(B) by striking ''copyright arbitration royalty panel'' each subsequent place it appears and inserting ''Copyright Royalty Judges'';

(C) in the fourth sentence, by striking ''its decision'' and inserting ''their decision''; and

(D) in the last sentence, by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges'';

(3) in paragraph (5), by striking ''or decision by the Librarian of Congress'' and inserting '', decision by the Librarian of Congress, or determination by the Copyright Royalty Judges'';

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

(5) in paragraph (6)(A), as so redesignated, by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges''.

(c) SCOPE OF EXCLUSIVE RIGHTS IN SOUND RECORDINGS.—Section 114(f) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A)—

(i) by amending the first sentence to read as follows: ''Voluntary negotiation proceedings initiated pursuant to section 804(a) 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 shall cover the 5-year period beginning on January 1 of the year following the second year in which the proceedings are commenced, except where differential transitional periods are provided in section 804(b)(3), or such other period as the parties may agree.''; and

(ii) in the third sentence, by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges'';

(B) in subparagraph (B)—

(i) by amending the first sentence to read as follows: ''In the absence of license agreements negotiated under subparagraph (A), the Copyright Royalty Judges shall commence a proceeding 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 during the 5-year period specified in subparagraph (A), or such other date as the parties may agree.''; and

(ii) in the second sentence, by striking ''copyright arbitration royalty panel'' and inserting ''Copyright Royalty Judges''; and

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

''(C) The procedures under subparagraphs (A) and (B) also shall be initiated pursuant to a petition filed by any copyright owners of sound recordings, any preexisting subscription services, or any preexisting satellite digital audio radio services indicating that a new type of subscription digital audio transmission service on which sound recordings are performed is or is about to become operational, for the purpose of determining reasonable terms and rates of royalty payments with respect to such new type of transmission service for the period beginning with the inception of such new type of service and ending on the date on which the royalty rates and terms for subscription digital audio transmission services most recently determined under subparagraph (A) or (B) and chapter 8 expire, or such other period as the parties may agree.'';

(2) in paragraph (2)—

(A) in subparagraph (A)—

(i) by amending the first sentence to read as follows: ''Voluntary negotiation proceedings initiated pursuant to section 804(a) for the purpose of determining reasonable terms and rates of royalty payments for public performances of sound recordings by means of eligible nonsubscription transmissions and transmissions by new subscription services specified by subsection (d)(2) shall cover the 5-year period beginning on January 1 of the second year following the year in which the proceedings are commenced, except where different transitional periods are provided in section 804(b)(3)(A), or such other period as the parties may agree.''; and

(ii) in the third sentence, by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges'';

(B) in subparagraph (B)—

(i) by amending the first sentence to read as follows: ''In the absence of license agreements negotiated under subparagraph (A), the Copyright Royalty Judges shall commence a proceeding 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 during the period specified in subparagraph (A), or such other period as the parties may agree.''; and

(ii) by striking ''copyright arbitration royalty panel'' each subsequent place it appears and inserting ''Copyright Royalty Judges''; and

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

''(C) The procedures under subparagraphs (A) and (B) shall also be initiated pursuant to a petition filed by any copyright owners of sound recordings or any eligible nonsubscription service or new subscription service indicating that a new type of eligible nonsubscription service or new subscription service on which sound recordings are performed is or is about to become operational, for the purpose of determining reasonable terms and rates of royalty payments with respect to such new type of service for the period beginning with the inception of such new type of service and ending on the date on which the royalty rates and terms for preexisting subscription digital audio transmission services or preexisting satellite digital radio audio services, as the case may be, most recently determined under subparagraph (A) or (B) and chapter 8 expire, or such other period as the parties may agree.'';

(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 Judges''; and

(4) in paragraph (4), by striking ''Librarian of Congress'' each place it appears and inserting ''Copyright Royalty Judges''.

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

(1) in subparagraph (A)(ii), by striking ''(F)'' and inserting ''(E)'';

(2) in subparagraph (B)—

(A) by striking ''under this paragraph'' and inserting ''under this section''; and

(B) by striking ''subparagraphs (B) through (F)'' and inserting ''this subparagraph and subparagraphs (B) through (E)'';

(3) in subparagraph (C)—

(A) by amending the first sentence to read as follows: ''Voluntary negotiation proceedings initiated pursuant to a petition filed under section 804(a) for the purpose of determining reasonable terms and rates of royalty payments for the activities specified by this section shall cover the period beginning with the effective date of such terms and rates, but not earlier than January 1 of the second year following the year in which the petition is filed, and ending on the effective date of successor terms and rates, or such other period as the parties may agree.''; and

(B) in the third sentence, by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges'';

(4) 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), the Copyright Royalty Judges shall commence proceedings pursuant to chapter 8 to determine and publish in the Federal Register a schedule of 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 specified in subparagraph (C) or such other period as may be determined pursuant to subparagraphs (B) and (C), or such other period as the parties may agree.'';

(B) in the third sentence, by striking ''copyright arbitration royalty panel'' and inserting ''Copyright Royalty Judges''; and

(C) in the last sentence, by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges'';

(5) in subparagraph (E)—

(A) in clause (i)—

(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 Judges''; and

(ii) in the second sentence, by striking ''(C), (D) or (F) shall be given effect'' and inserting ''(C) or (D) shall be given effect as to digital phonorecord deliveries''; and

(B) in clause (ii)(I), by striking ''(C), (D) or (F)'' each place it appears and inserting ''(C) or (D)''; and

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

(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 JUDGES''; and

(B) by striking ''a copyright arbitration royalty panel'' and inserting ''the Copyright Royalty Judges''.

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

(1) in subsection (b)—

(A) in paragraph (1)—

(i) in the first sentence, by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges''; and

(ii) by striking the second and third sentences;

(B) in paragraph (2), by striking ''the Librarian of Congress:'' and all that follows through the end of the sentence and inserting ''a copyright arbitration royalty panel, the Librarian of Congress, or the Copyright Royalty Judge, if copies of such agreements are filed with the Copyright Royalty Judges within 30 days of execution in accordance with regulations that the Copyright Royalty Judges shall issue.''; and

(C) in paragraph (3)—

(i) in the second sentence—

(I) by striking ''copyright arbitration royalty panel'' and inserting ''Copyright Royalty Judges''; and

(II) by striking ''paragraph (2).'' and inserting ''paragraph (2) or (3).'';

(ii) in the last sentence, by striking '''Librarian of Congress'' and inserting ''Copyright Royalty Judges''; and

(iii) by striking ''(3) In'' and all that follows through the end of the first sentence and inserting the following:

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

''(4) In the absence of license agreements negotiated under paragraph (2) or (3), the Copyright Royalty Judges 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 submitted proposals to the Copyright Royalty Judges.'';

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

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

(A) by striking ''(b)(2)'' and inserting ''(b)(2) or (3)'';

(B) by striking ''(b)(3)'' and inserting ''(b)(4)''; and

(C) by striking ''a copyright arbitration royalty panel'' and inserting ''the Copyright Royalty Judges'';

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

(A) by striking ''in the Copyright Office'' and inserting ''with the Copyright Royalty Judges''; and

(B) by striking ''Register of Copyrights'' and inserting ''Copyright Royalty Judges''; and

(5) in subsection (f), as so redesignated, by striking ''(d)'' and inserting ''(c)''.

(g) SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS.—Section 119(b) is amended—

(1) in paragraph (3), by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges''; and

(2) in paragraph (4)—

(A) in subparagraph (A), by striking ''Librarian of Congress'' each place it appears and inserting ''Copyright Royalty Judges''; and

(B) 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 Judges shall determine whether there exists a controversy concerning the distribution of royalty fees. If the Copyright Royalty Judges determine that no such controversy exists, the Librarian of Congress shall, after deducting reasonable administrative costs under this paragraph, distribute such fees to the copyright owners entitled to receive them, or to their designated agents. If the Copyright Royalty Judges find the existence of a controversy, the Copyright Royalty Judges 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 Judges shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, subject to any distributions made under section 801(b)(3).''.

(h) DIGITAL AUDIO RECORDING DEVICES.—

(1) ROYALTY PAYMENTS.—Section 1004(a)(3) is amended by striking ''Librarian of Congress'' each place it appears and inserting ''Copyright Royalty Judges''.

(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 Judges''.

(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 Judges a claim for payments collected during the preceding year in such form and manner as the Copyright Royalty Judges shall prescribe by regulation.''; and

(B) 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 Judges shall determine whether there exists a controversy concerning the distribution of royalty payments under section 1006(c). If the Copyright Royalty Judges determine 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). The Librarian of Congress shall, before such royalty payments are distributed, deduct the reasonable administrative costs incurred by the Librarian under this section.

''(c) RESOLUTION OF DISPUTES.—If the Copyright Royalty Judges find the existence of a controversy, the Copyright Royalty Judges 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 Judges 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 distributed, deduct the reasonable administrative costs incurred by the Librarian under this section.''.

(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 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.''.

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

''1010. Determination of certain disputes.''.

SEC. 6. EFFECTIVE DATE AND TRANSITION PROVISIONS.

(a) EFFECTIVE DATE.—This Act and the amendments made by this Act shall take effect 6 months after the date of the enactment of this Act, except that the Librarian of Congress shall appoint interim Copyright Royalty Judges under section 802(d) of title 17, United States Code, as amended by this Act, within 90 days after such date of enactment to carry out the functions of the Copyright Royalty Judges under title 17, United States Code, to the extent that Copyright Royalty Judges provided for in section 801(a) of title 17, United States Code, as amended by this Act, have not been appointed before the end of that 90-day period.

(b) TRANSITION PROVISIONS.—

(1) IN GENERAL.—Subject to paragraph (2), the amendments made by this Act shall not affect any proceedings commenced, petitions filed, or voluntary agreements entered into 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 enactment. 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. Such petitions filed and voluntary agreements entered into shall remain in effect as if this Act had not been enacted.

(2) EFFECTIVE PERIODS FOR CERTAIN RATE-MAKING PROCEEDINGS.—Notwithstanding paragraph (1), terms and rates in effect under section 114(f)(2) or 112(e) of title 17, United States Code, for new subscription services, eligible nonsubscription services, and services exempt under section 114(d)(1)(C)(iv) of such title for the period 2003 through 2004, and any rates published in the Federal Register under the authority of the Small Webcaster Settlement Act of 2002 for the years 2003 through 2004, shall be effective until the first applicable effective date for successor terms and rates specified in section 804(b)(2) or (3)(A) of title 17, United States Code, or until such later date as the parties may agree. Any proceeding commenced before the enactment of this Act

pursuant to section 114(f)(2) and chapter 8 of title 17, United States Code, to adjust or determine such rates and terms for periods following 2004 shall be terminated upon the enactment of this Act and shall be null and void.

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

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from California (Mr. BERMAN) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 1417.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of H.R. 1417, legislation to reform the rate-making and royalty distribution system for compulsory and statutory licenses.

Mr. Speaker, I would like to take this time to thank the ranking member of the Committee on the Judiciary, the gentleman from Michigan (Mr. CONYERS), as well as the gentleman from Texas (Mr. SMITH) and the gentleman from California (Mr. BERMAN), the chairman and ranking minority member of the Subcommittee on the Courts, the Internet and Intellectual Property, for their support in making CARP reform a priority.

By way of background, with the creation of three copyright compulsory licenses in 1976, Congress contemplated the need for an administrative body that would be responsible for adjusting the rates of the statutory licenses from time to time, as well as acting as the distributors of the royalties subject to these licenses.

The resulting entity was the Copyright Royalty Tribunal or the CRT. In 1993, in response to criticisms voiced against the CRT, Congress reassessed the rate-making and royalty distribution system and created the current system, the Copyright Royalty Arbitration Panel, otherwise known as CARPs.

Among other things, H.R. 1417 addresses the uniform complaints that the CARP decisions are unpredictable and inconsistent by changing the structure from ad hoc arbitration panels to three permanent copyright royalty judges. To justify the need for these full-time judges, as well as to alleviate the overwhelming workloads at given periods of time, the bill staggers the timing at which the three various statutory licenses can be heard.

The bill also addresses the complaint that the process is unnecessarily expensive by eliminating the costs of arbitration upon private parties. It does so by creating a specific process designed to give small claimants a more balanced ability to participate. The bill discourages persons or entities from disrupting the process at the 11th hour by requiring potential participants to show that they have a significant interest in the proceedings. In furtherance of marketplace negotiations, the measure establishes a cooling-off period during which time parties are to focus on reaching their own agreements.

Finally, Mr. Speaker, the substitute before us incorporates certain noncontroversial amendments written to accommodate legitimate concerns that evolve after our committee reported the bill out.

Mr. Speaker, H.R. 1417 was painstakingly negotiated among the various congressional, executive, and industry stakeholders. We worked in a bipartisan manner and developed a consensus product that will effectively address an arcane, but important, manner. I urge its adoption.

Mr. Speaker, I reserve the balance of my time.

Mr. BERMAN. Mr. Speaker, I yield myself such time as I may consume.

(Mr. BERMAN asked and was given permission to revise and extend his remarks.)

Mr. BERMAN. Mr. Speaker, I rise in strong support of H.R. 1417, and I ask all of my colleagues to support what I think is fundamentally noncontroversial legislation.

H.R. 1417 has been subjected to an exhaustive review process. It emerged from a hearing before the Subcommittee on the Courts, the Internet, and Intellectual Property during the 107th Congress and from a series of open roundtable discussions convened at the U.S. Copyright Office. Early drafts were shaped by several rounds of written comments from all affected stakeholders.

After introduction of H.R. 1417 early this Congress, the subcommittee held another hearing. The subcommittee then reported by voice vote a substantially refined amendment, and the full Committee on the Judiciary made further significant revisions before also reporting its amendment by voice vote. Thus, the version of H.R. 1417 before us today has been forged through an extensive and open process.

Both the chairman of the Committee on the Judiciary, the gentleman from Wisconsin (Mr. SENSENBRENNER), and the chairman of the Subcommittee on the Courts, the Internet, and Intellectual Property, the gentleman from Texas (Mr. SMITH), are to be commended for pushing H.R. 1417 forward. They have devoted significant time and energy to crafting both the substance of this bill and organizing the widespread support behind it. I thank both of them for working so closely with me and my staff, Alec French, in drafting this bill and its various iterations.

The chairmen are also to be commended for ensuring that the bill remedies the procedural effects of the CARP process without straining into substantive copyright law issues that would surely doom its prospects for passage.

H.R. 1417 focuses on a narrow, but complex, goal. It significantly reforms the system for copyright arbitration royalty panels. The U.S. copyright law contains a half dozen statutory licenses that require copyright owners to make their works available to certain users under government-set rates and terms. For instance, the section 114 statutory license allows Webcasters to perform sound recordings under government-set rates and terms. The royalty rates and terms are established by CARPs, which also determine the appropriate distribution of royalties among copyright owners.

There is widespread agreement among copyright owners and users alike that the CARP process is broken. The costs involved are often so high that parties cannot either afford to participate or find that the costs outweigh any potential royalties or efficiencies. The decisions often take too long to issue and thus create uncertainty and confusion among licensers and licensees alike. Finally, even when decisions do issue, they are often overturned or modified, are inconsistent with precedents, and cannot be effectively implemented until corresponding rule-makings are completed.

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H.R. 1417 will go a long way to remedying the defects of the CARP process. While the changes are too copious to list in total, I would like to highlight a few of the improvements made by the bill.

The primary flaw of the CARPs is they are conducted by private arbitrators who often have no prior experience in conducting a statutory license rate-setting or distribution, much less any prior familiarity with the substantive law or industry economics involved. Because the CARP arbitrators have neither the experience nor authority to do so, the Copyright Office is often called on to issue regulations resolving substantive legal issues that arise during CARPs, and all too often, as we saw in the 2002 webcasting CARP, the Copyright Office is called upon to overturn a CARP decision.

H.R. 1417 replaces the part-time arbitrators with a panel of three full-time copyright royalty judges. These three CRJs will be appointed by the Librarian of Congress to serve staggered 6-year terms. Each panel will bring at least 6 years of experience to every rate-setting and distribution proceeding. Further, the Librarian is required to appoint CRJs with a breadth of experience in copyright law, economics and adjudications.

Mr. Speaker, rather than list a number of the key changes in this bill, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas (Mr. SMITH), the chairman of the subcommittee.

Mr. SMITH of Texas. Mr. Speaker, I thank the gentleman from Wisconsin, the chairman of the Committee on the Judiciary, for yielding time.

Mr. Speaker, our country has long worked to support and protect copyright holders to ensure they receive fair compensation for their creative works.

Over the last 20 years, Congress has attempted to develop the appropriate mechanism to govern royalties; that is, how to distribute royalties to those who create and how to adjust royalties when necessary. In other words, we have tried to find a compromise that allows for the fair distribution of royalties when two parties cannot agree on the value of a creative work.

When I say ''fair distribution of royalties'' that could mean many things to different parties, particularly the creators of copyrighted works themselves. It is a major reason why this issue is again before Congress.

Congress established the first entity to deal with this in 1976. Ten years ago, that system was abolished to create the current Copyright Arbitration Royalty Panel, or CARP, system.

This legislation that I authored addresses the main problem: frivolous royalty claims, which is a growing trend, as well as decisions made by the copyright panel that are unpredictable and inconsistent.

Much like another intellectual property rights bill that reforms the Patent and Trademark Office, this legislation is critical to the entertainment industry and a growing economy. It is of great importance to artists, songwriters, music publishers and webcasters.

For example, take the case of a songwriter and a webcaster. If a songwriter cannot reach an agreement with a webcaster about the value of a song in the marketplace, the matter is brought to the copyright royalty and distribution system. The private parties involved, of course, pay for the process.

What happens now is the songwriter or the webcaster, or both, often are not left with much of a royalty payment because the process is too lengthy and too costly. If the songwriter cannot make enough on his creations to support himself, then he will no longer be able to create, and our economy and our society will be the loser.

This is the central reason why we are here today: to ensure that the songwriter has the incentive to create and the webcaster has the benefit of distributing enjoyable musical creations.

Unfortunately, American songwriters and webcasters today are caught up in a royalty system that is anything but fair. The current proceedings to establish royalty rates are long, laborious and costly. They harm our economy and take a tremendous toll on the businesses and persons involved. Congress must reform this broken system, which is exactly what this bill does.

I urge my colleagues to support a balanced and fair process that will, for example, help songwriters and bring a little more melody into the lives of the American people.

Mr. BERMAN. Mr. Speaker, I yield myself such time as I may consume.

(Mr. BERMAN asked and was given permission to revise and extend his remarks.)

Mr. BERMAN. Mr. Speaker, I am not going to detail all the different provisions contained in this bill. There are many and they are important. They deal with a problem in the past of setting rates retroactively and how under these reforms rates will be set prospectively, and they deal with the integration of the Copyright Office and its role in providing advice and opinions on matters of law into the process.

They create mechanisms for small participants to participate at much less cost than they now participate through all paper rate-setting proceedings, make some changes in evidentiary rules and discovery rules, and at the same time, they enable the copyright owners to negotiate voluntary agreements rather than go through the whole full blown rate-setting and distribution proceedings.

I do want to call the attention of the body to one particular provision which I think is very important. We rationalize in this bill, H.R. 1417, the ability of the parties to engage in voluntary negotiations in the context of the Section 115 statutory license for reproductions of musical compositions. The Section 115 license currently provides copyright owners and users a limited antitrust exemption to collectively negotiate rates and terms for Digital Phonorecord Deliveries of musical compositions. With the acquiescence of the Justice Department, H.R. 1417 extends this narrow antitrust exemption to all of Section 115, so that it now covers similar negotiations for mechanical reproductions of musical compositions, as well as the digital deliveries.

Mr. Speaker, I rise in strong support of H.R. 1417. I ask all my colleagues to support this non-controversial legislation.

H.R. 1417 has received exhaustive process. It emerged from a hearing before the Intellectual Property Subcommittee during the 107th Congress, and from series of open roundtable discussions convened at the U.S. Copyright Office. Early drafts were shaped by several rounds of written comments from all affected stakeholders. After introduction of H.R. 1417 early this Congress, the subcommittee held another hearing. The subcommittee then reported by voice vote a substantially refined amendment, and the full Judiciary Committee made further significant revisions before also reporting its amendment by voice vote. Thus, the version of H.R. 1417 before us today has been forged through an extensive and open process.

Both the chairman of the Judiciary Committee and the chairman of the Intellectual Property Subcommittee are to be commended for pushing H.R. 1417 forward. They have devoted significant time and energy to crafting both the substance of this bill and the widespread support behind it. I thank them both for working so closely with me in drafting this bill and its various iterations.

The chairmen are also to be commended for ensuring that the bill remedies the procedural defects of the CARP process without straying into substantive copyright law issues that would surely doom its prospects for passage.

H.R. 1417 focuses on a narrow but complex goal: It significantly reforms the system for Copyright Arbitration Royalty Panels—or CARP.

U.S. copyright law contains a half-dozen statutory licenses that require copyright owners to make their works available to certain users under Government-set rates and terms. For instance, the section 114 statutory license allows webcasters to perform sound recordings under Government-set rates and terms. The royalty rates and terms are established by CARPs, which also determine the appropriate distribution of royalties among copyright owners.

There is widespread agreement among copyright owners and users alike that the CARP process is broken. The costs involved are often so high that parties either cannot afford to participate, or find that the costs outweigh any potential royalties or efficiencies. The decisions often take too long to issue, and thus create uncertainty and confusion among licensors and licensees alike. Finally, even when decisions do issue, they are often overturned or modified, are inconsistent with precedents, and cannot be effectively implemented until corresponding rule-makings are completed.

H.R. 1417 will go a long way to remedying the defects of the CARP process. While the changes are too copious to list in total, I would like to highlight a few of the improvements made by this bill.

The primary flaw with CARPs is that they are conducted by private arbitrators who often have no prior experience in conducting a statutory license rate-setting or distribution, much less any prior familiarity with the substantive law or industry economics involved. Because the CARP arbitrators have neither the expertise nor authority to do so, the Copyright Office is often called on to issue regulations resolving substantive legal issue that arise during CARPs. And all too often, as we saw in the 2002 webcasting CARP, the Copyright Office is called upon to overturn a CARP decision.

H.R. 1417 replaces the part-time arbitrators with a panel of three full-time Copyright Royalty Judges. These three CRJs will be appointed by the Librarian of Congress to serve staggered 6-year terms. Thus, each panel will bring at least 6 years of collective experience to every rate-setting and distribution proceeding. Further, the Librarian is required to appoint CRJs with a breadth of experience in copyright law, economics, and adjudications.

The bill contains a number of other provisions that further consolidate and strength the authority of the CRJs. For instance, the bill gives CRJs continuing jurisdiction to ensure

that they have the ability ''to respond to unforeseen circumstances that preclude the proper effectuation of the determination.''

The continuity, experience, and enhanced authority of the CRJs should lead to decisions that are quicker, more consistent, more likely to withstand appeal, and in the long run, far less expensive to secure.

While the new CRJs will have requisite authority and expertise to make good decisions, H.R. 1417 ensures they will be able to draw on, and benefit from, from the substantial expertise of the Copyright Office in this area. H.R. 1417 requires that the Librarian consult with the Register of Copyrights when appointing CRJs. Furthermore, the bill requires the CRJs to solicit the written opinion of the Copyright Office on novel questions of law, and allows the CRJs to consult—on the record—with the Register of Copyrights on all matters other than questions of fact.

H.R. 1417 addresses another major flaw of the current CARP process—the fact that the rates for several statutory licenses are set retroactively. The webcasting CARP concluded in 2002 demonstrates the problems with retroactive rate-setting. When rates were set in 2002 for webcasting that occurred between 1998 and 2002, many small webcasters found their viability threatened because they had not set aside enough money to defray the royalty obligations they had already incurred.

H.R. 1417 addresses this problem through a series of interrelated changes to the various statutory licenses. H.R. 1417 ensures that all rates and terms for statutory licenses will be set prospectively, and eliminates the possibility that a time period covered by a statutory license will commence before the establishment of rates and terms.

H.R. 1417 also addresses a variety of concerns about how CARPs gather evidence, conduct hearings, determine participation, requires parties to present their cases, and treat negotiated settlements. In addressing these concerns, H.R. 1417 hews closely to the overall objective of promoting expeditious, well-reasoned, and widely-supported outcomes.

The bill substantially improves the CARP process from the perspective of small participants. H.R. 1417 allows CRJs to conduct an all-paper, rate-setting proceeding, which in many circumstances, should substantially reduce the barriers to participation for small copyright owners and users. H.R. 1417 also creates an expedited small-claims process to facilitate the distribution of royalties to small claimants.

The bill substantially alters some evidentiary rules, while retaining others used by previous CARPs. It allows admission of hearsay ''to the extent deemed appropriate'' by the CRJs, rather than according to the Federal Rules of Evidence, and allows CRJs to issue subpoenas for relevant and material information. It directs the CRJs to conduct discovery conferences for the purpose of setting a schedule for completing discovery.

The bill retains the discovery rules currently used in CARP distribution proceedings because distribution participants expressed general satisfaction with those rules. In rate-setting proceedings, the amendment limits discovery to relevant and material information, and allows the CRJs to deny discovery for good cause. The circumstances that constitute ''good cause'' include where the discovery requests are unreasonably cumulative or duplicative, easily obtainable from another source, the burden or expense outweighs its likely benefit, and other circumstances.

H.R. 1417 clarifies the rules regarding participation on CARP proceedings. It also ensures that only parties who have fully participated in the proceeding, and are bound by its determination, will have the right to appeal that determination.

H.R. 1417 also retains the ability of copyright owners and users, under a number of statutory licenses, to negotiate voluntary agreements rather than suffer through full-blown rate-setting and distribution proceedings. While H.R. 1417 maintains the ability of various statutory licensors and licensees to agree to out-of-cycle rate determinations through voluntary agreements adopted by the CRJs, it allows the CRJs to reject such out-of-cycle determinations if workload concerns so merit.

H.R. 1417 also rationalizes the ability to engage in voluntary negotiations in the context of the section 115 statutory license for reproductions of musical compositions. The section 115 license currently provides copyright owners and users a limited antitrust exemption to collectively negotiate rates and terms for Digital Phonorecord Deliveries of musical compositions. With the acquiescence of the Justice Department, H.R. 1417 extends this narrow antitrust exemption to all of section 115, so that it now covers similar negotiations for mechanical reproductions of musical compositions.

A comprehensive description of this seventy-page bill would take more time than I am allotted, so I will leave off there. However, I will note that adoption of the CARP reform bill is not the end of the story for reforming the CARP system.

Unlike the current CARP system, the bill requires appropriated funds to pay for the new CRJ process. Since Congress has decided the public interest is served by the creation of compulsory licenses in certain instances, it is entirely appropriate that Congress should provide the funds necessary to make the licenses work. CARP costs should not dissipate the meager Government-set royalties received by copyright owners, nor make participation by licensees uneconomical. However, if adequate appropriations are not secured, this legislation will only create further chaos. In this time of record budget deficits, it will take a concerted effort by all interested parties to ensure sufficient appropriations are forthcoming.

In conclusion, Mr. Speaker, I think H.R. 1417 will substantially improve the CARP process, and I ask my colleagues to support it.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise in support of this legislation, H.R. 1417, the Copyright Royalty and Distribution Reform Act. In September 2003, I offered my support during a full Judiciary Committee markup hearing. Mr. SMITH, Mr. BERMAN, and Ranking Member CONYERS are to be commended for their hard work in crafting this legislation.

The bill would replace the existing administrative procedures within the U.S. Copyright Office that determine copyright royalty rates and the distribution of related royalties under various compulsory licenses.

Under the Copyright Royalty Tribunal Reform Act of 1993, the Librarian of Congress has the authority to convene Copyright Arbitration Royalty Panels, or ''CARPs,'' to resolve failed private negotiations between parties that fail to establish rates or to distribute royalties regarding the commercial use of movies, music and other specified copyrighted works.

For years, the CARP system has been criticized for rendering unpredictable and inconsistent decisions, employing arbitrators lacking the expertise to render sound decisions, and for being unnecessarily expensive.

H.R. 1417 is a reasonable bill to cure these concerns and is based on the input and recommendations of Government and industry experts.

H.R. 1417 addresses the problem of lack of arbitrator expertise by appointing a ''Copyright Judge'' to preside over the new process. The Copyright Judge will be appointed by the Librarian of Congress, have full adjudicatory responsibility, and have the authority to make rulings on both the law and rates. The Copyright Judge will select two professional staff members with knowledge of economics, business, and finance. These staff qualifications will also improve the quality of the decisions rendered.

H.R. 1417 redefines the role of the Copyright Office. Presently, acts as an intake agency answering initial case intake questions, as well as an appellate court for CARP decisions by advising the Librarian on cases. This dual role forces the Copyright Office to often decline to answer threshold intake questions for fear of having to review its own decisions at the appellate stage. Under H.R. 1417, the Copyright Office's appellate responsibilities will be removed and the Office will only act in an administrative and advisory capacity by counseling the Copyright Judge on substantive issues as requested.

For small claimants who participate in the CARP process, the substantial expenses are practically preclusive. H.R. 1417 contains provisions to make the process more accessible. First, claimants must declare an ''amount in controversy'' during a distribution determination phase of the proceedings. If the dollar figure is $500 or less, the claimant will be assigned to the small claims process which is a less expensive, ''all-paper'' claim resolution method.

Another provision of H.R. 1417, that benefits both large and small claimants requires the filing of a ''notice of intent to participate'' in either a rate-making or distribution proceeding. This notice requirement will discourage entities from disrupting the process by participating at the last minute. If a party failure to file in a timely manner or fails to pay the required fee, they will be an exclusion of either written or oral participation in that determination. Those exempted as small claimants would not be affected by this requirement.

H.R. contains several procedural changes to make the claim resolution process more convenient for the parties. H.R. 1417 expands the duration of the discovery phase from 45 to 60 days to give parties more time to file their claims. Additionally, the 180-day time-frame for completing the CARP hearing process is amended to require parties complete the hearing phase of a rate-making or distribution determination in six months. The Copyright Judge, at their discretion, could extend this period up to a maximum of 6 additional months.

Mr. Speaker, H.R. 1417 will make changes to the CARP system that promise to benefit

the parties as well as the agents of the copyright adjudication system. I support H.R. 1417, and I urge my colleagues to do likewise.

Mr. CONYERS. Mr. Speaker, I rise in support of this legislation. In the past 2 years, the Committee has held two hearings on concerns with the CARP, the system that sets royalty rates for copyrighted content. People on both sides, the owners and buyers, agree that the current system needs changes. Based on that, subcommittee Chairman SMITH, subcommittee Ranking Member BERMAN, and I introduced legislation, H.R. 1417, that would make substantial procedural changes.

We heard the current system is costly because the copyright owners and users have to pay for the arbitrators. Because copyright law subjects copyright owners and users to a compulsory process, we believe the law should not place this additional financial burden on them. Our bill creates three Copyright Royalty Judges who would be paid from appropriated funds to set royalty rates and distribute royalty fees.

Another complaint was that the CARP does not have adequate rules on how to address hearsay evidence. This bill explicitly requires that the Judges treat hearsay evidence in the same manner that it is treated in Federal court. This will bring uniformity to the proceedings for parties on both sides of royalty disputes.

This bill also alters the terms for which certain royalty rates are in effect. Rates that are determined by the Judges will be in effect for 5 years. This should create some predictability and uniformity for those who rely on the Judges' determinations.

Finally, parties on both sides argued that the substantive standards that the CARP uses to set royalty rates should be changed somehow. In an effort to reach a compromise and pass a bill that does not alter any substantive rights, this bill changes only the procedure for rate settings and distributions.

There will be a substitute amendment to the bill that was worked out by the majority, minority, and all groups interested in the CARP process. I hope we can continue to work on resolving any outstanding issues and moving this bill through the other body.

I urge my colleagues to vote "yes" on this bill as amended.

Mr. BERMAN. Mr. Speaker, seeing no other speakers seeking recognition on my side of the aisle, I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time as well.

The SPEAKER pro tempore (Mr. SHAW). The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the bill, H.R. 1417, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. SENSENBRENNER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Ms. Wanda Evans, one of his secretaries.

HONORING THE MEN AND WOMEN OF THE DRUG ENFORCEMENT ADMINISTRATION ON ITS 30TH ANNIVERSARY

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 412) honoring the men and women of the Drug Enforcement Administration on the occasion of its 30th anniversary.

The Clerk read as follows:

H. RES. 412

Whereas the Drug Enforcement Administration (DEA) was first created by executive order on July 6, 1973, merging the previously separate law enforcement and intelligence agencies responsible for narcotics control;

Whereas the first Administrator of the DEA, John R. Bartels, Jr., was confirmed by the Senate on October 4, 1973;

Whereas since 1973 the men and women of the DEA have served our Nation with courage, vision and determination, protecting all Americans from the scourge of drug trafficking, abuse, and related violence;

Whereas between 1986 and 2002 alone, DEA agents seized over 10,000 kilograms of heroin, 900,000 kilograms of cocaine, 4,600,000 kilograms of marijuana, 113,000,000 dosage units of hallucinogens, and 1,500,000,000 dosage units of methamphetamine, and made over 443,000 arrests of drug traffickers;

Whereas DEA agents continue to lead task forces of Federal, State, and local law enforcement officials throughout the Nation, in a cooperative effort to stop drug trafficking and put drug gangs behind bars;

Whereas throughout its history many DEA employees and members of DEA task forces have given their lives in the defense of our Nation, including: Emir Benitez, Gerald Sawyer, Leslie S. Grosso, Nickolas Fragos, Mary M. Keehan, Charles H. Mann, Anna Y. Mounger, Anna J. Pope, Martha D. Skeels, Mary P. Sullivan, Larry D. Wallace, Ralph N. Shaw, James T. Lunn, Octavio Gonzalez, Francis J. Miller, Robert C. Lightfoot, Thomas J. Devine, Larry N. Carwell, Marcellus Ward, Enrique S. Camarena, James A. Avant, Charles M. Bassing, Kevin L. Brosch, Susan M. Hoefler, William Ramos, Raymond J. Stastny, Arthur L. Cash, Terry W. McNett, George M. Montoya, Paul S. Seema, Everett E. Hatcher, Rickie C. Finley, Joseph T. Aversa, Wallie Howard, Jr., Eugene T. McCarthy, Alan H. Winn, George D. Althouse, Becky L. Dwojeski, Stephen J. Strehl, Richard E. Fass, Juan C. Vars, Jay W. Seale, Meredith Thompson, Frank S. Wallace, Jr., Frank Fernandez, Jr., Kenneth G. McCullough, Carrol June Fields, Rona L. Chafey, Shelly D. Bland, Carrie A. Lenz, Shaun E. Curl, Royce D. Tramel, Alice Faye Hall-Walton, and Elton Armstead;

Whereas many other employees and task force officers of the DEA have been wounded or injured in the line of duty; and

Whereas in its 173 domestic offices and 78 foreign offices worldwide the over 8,800 employees of the DEA continue to hunt down and bring to justice the drug trafficking cartels that seek to poison our citizens with dangerous narcotics: Now, therefore, be it

Resolved, That the House of Representatives—

(1) congratulates the DEA on the occasion of its 30th Anniversary;

(2) honors the heroic sacrifice of those of its employees who have given their lives or been wounded or injured in the service of our Nation; and

(3) thanks all the men and women of the DEA for their past and continued efforts to defend the American people from the scourge of illegal drugs.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Virginia (Mr. SCOTT) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

Mr. PAUL. Mr. Speaker, I want to inquire on whether or not the gentleman on the other side is in opposition to the bill.

The SPEAKER pro tempore. The Chair asks the gentleman from Virginia (Mr. SCOTT), is he opposed to the motion?

Mr. SCOTT of Virginia. Mr. Speaker, I am not opposed to the motion.

Mr. PAUL. In that case, Mr. Speaker, I request the time in opposition.

The SPEAKER pro tempore. Under clause 1(c) of rule XV, the Chair recognizes the gentleman from Texas (Mr. PAUL) to control the time in opposition to the motion.

The Chair now recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous materials on H. Res. 412, the resolution currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield 10 minutes, half my time, to the gentleman from Virginia (Mr. SCOTT), and I ask unanimous consent that he be allowed to yield portions of that time as he sees fit.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, on July 6, 1973, President Richard Nixon first created the Drug Enforcement Administration. The agency was created to address a growing drug problem in the United States. The DEA was the merger of separate law enforcement and intelligence agencies that shared responsibility for enforcing controlled substance laws. At the time, Congress and the administration recognized an increase in the use and the availability of illegal drugs in this country. According to DEA statistics in 1960, only 4 million Americans had ever tried drugs. That number is currently over 74 million.