''(11) for any other special services requiring a substantial amount of time or expense, such fees as the Register of Copyrights may fix on the basis of the cost of providing the service.''

Subsecs. (b) to (d). Pub. L. 101–318, § 2(b), added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

1982—Subsec. (a)(1). Pub. L. 97–366, § 1(1), substituted provision for a $10 fee on filing each application for registration of a copyright claim or a supplementary registration under section 408, including the issuance of a certificate of registration if registration is made, for provision for a $10 fee for the registration of a copyright claim or a supplementary registration under section 408, including the issuance of a certificate of registration.

Subsec. (a)(2). Pub. L. 97–366, § 1(1), substituted provision for a $6 fee on filing each application for registration of a claim to renewal of a subsisting copyright in its first term under section 304(a), including the issuance of a certificate of registration if registration is made, for provision for a $6 fee for the registration of a claim to renewal of a subsisting copyright in its first term under section 304(a), including the issuance of a certificate of registration.

Subsec. (c). Pub. L. 97–366, § 1(2), struck out provision that, before making a refund in any case involving a refusal to register a claim under section 410(b), the Register could deduct all or any part of the prescribed registration fee to cover the reasonable administrative costs of processing the claim.

1977—Subsec. (c). Pub. L. 95–94 substituted provisions relating to crediting of all fees received, to the appropriation for necessary expenses of the Copyright Office, for provisions relating to crediting of all fees received in the manner directed by the Secretary of the Treasury.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–379, § 3(c)(1), Oct. 27, 2000, 114 Stat. 1445, provided that: ''The amendments made by this section [amending this section and sections 121 and 705 of this title and repealing section 710 of this title] shall take effect on the date of the enactment of this Act [Oct. 27, 2000].''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–307 effective June 26, 1992, but applicable only to copyrights secured between January 1, 1964, and December 31, 1977, and not affecting court proceedings pending on June 26, 1992, with copyrights secured before January 1, 1964, governed by section 304(a) of this title as in effect on the day before June 26, 1992, except each reference to forty-seven years in such provisions deemed to be 67 years, see section 102(g) of Pub. L. 102–307, as amended, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 2(d) of Pub. L. 101–318 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 704 of this title] shall take effect 6 months after the date of the enactment of this Act [July 3, 1990] and shall apply to—

''(A) claims to original, supplementary, and renewal copyright received for registration, and to items received for recordation in the Copyright Office, on or after such effective date, and

''(B) other requests for services received on or after such effective date, or received before such effective date for services not yet rendered as of such date.

''(2) PRIOR CLAIMS.—Claims to original, supplementary, and renewal copyright received for registration and items received for recordation in acceptable form in the Copyright Office before the effective date set forth in paragraph (1), and requests for services which are rendered before such effective date shall be governed by section 708 of title 17, United States Code, as in effect before such effective date.''

EFFECTIVE DATE OF 1982 AMENDMENT; TRANSITIONAL RULE

Section 2 of Pub. L. 97–366 provided that: ''This Act [amending this section, section 110 of this title, and section 3 of Title 35, Patents] shall take effect thirty days after its enactment [Oct. 25, 1982] and shall apply to claims to original, supplementary, and renewal copyright received for registration in the Copyright Office on or after the effective date. Claims to original, supplementary, and renewal copyright received for registration in acceptable form in the Copyright Office before the effective date shall be governed by the provisions of section 708(a)(1) and (2) in effect prior to this enactment.''

EFFECTIVE DATE OF 1977 AMENDMENT

Section 406(b) of Pub. L. 95–94 provided that the amendment made by that section is effective Jan. 1, 1978.

CARRY-OVER OF EXISTING FEES

Pub. L. 106–379, § 3(c)(2), Oct. 27, 2000, 114 Stat. 1446, provided that: ''The fees under section 708(a) of title 17, United States Code, on the date of the enactment of this Act [Oct. 27, 2000] shall be the fees in effect under section 708(a) of such title on the day before such date of enactment.''

§ 709. Delay in delivery caused by disruption of postal or other services

In any case in which the Register of Copyrights determines, on the basis of such evidence as the Register may by regulation require, that a deposit, application, fee, or any other material to be delivered to the Copyright Office by a particular date, would have been received in the Copyright Office in due time except for a general disruption or suspension of postal or other transportation or communications services, the actual receipt of such material in the Copyright Office within one month after the date on which the Register determines that the disruption or suspension of such services has terminated, shall be considered timely.

(Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2594.)

[§ 710. Repealed. Pub. L. 106–379, § 3(a)(1), Oct. 27, 2000, 114 Stat. 1445]

Section, Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2594, related to forms and procedures for granting the Library of Congress licenses to reproduce works for the blind and physically handicapped.

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.

PRIOR PROVISIONS

This chapter consisted of sections 801 to 803, related to proceedings by copyright arbitration royalty panels, prior to being amended generally by Pub. L. 108–419.

AMENDMENTS

2004—Pub. L. 108–419, § 3(a), Nov. 30, 2004, 118 Stat. 2341, amended chapter heading and analysis generally,

substituting chapter heading and items 801 to 805 for chapter heading ''COPYRIGHT ARBITRATION ROYALTY PANELS'', and items 801 ''Copyright arbitration royalty panels: Establishment and purpose'', 802 ''Membership and proceedings of copyright arbitration royalty panels'', and 803 ''Institution and conclusion of proceedings''.

1997—Pub. L. 105–80, § 12(a)(18), Nov. 13, 1997, 111 Stat. 1535, substituted ''Establishment'' for ''establishment'' in item 801.

1993—Pub. L. 103–198, § 2(f), Dec. 17, 1993, 107 Stat. 2308, amended table of sections generally, substituting chapter heading and items 801 to 803 for chapter heading ''COPYRIGHT ROYALTY TRIBUNAL'', item 801 ''Copyright Royalty Tribunal: Establishment and purpose'', item 802 ''Membership of the Tribunal'', item 804 ''Institution and conclusion of proceedings'', item 805 ''Staff of the Tribunal'', item 806 ''Administrative support of the Tribunal'', item 807 ''Deduction of costs of proceedings'', item 808 ''Reports'', item 809 ''Effective date of final determinations'', and item 810 ''Judicial review''.

Pub. L. 103–198, § 2(c), Dec. 17, 1993, 107 Stat. 2307, struck out item 803 ''Procedures of the Tribunal.''

§ 801. Copyright Royalty Judges; appointment and functions

(a) APPOINTMENT.—The Librarian of Congress shall appoint 3 full-time Copyright Royalty Judges, and shall appoint 1 of the 3 as the Chief Copyright Royalty Judge. The Librarian shall make appointments to such positions after consultation 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 15, 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 ensure 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 infla-

tion 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) Notwithstanding section 804(b)(8), the Copyright Royalty Judges, at any time after the filing of claims under section 111, 119, or 1007, may, upon motion of one or more of the claimants and after publication in the Federal Register of a request for responses to the motion from interested claimants, make a partial distribution of such fees, if, based upon all responses received during the 30-day period beginning on the date of such publication, the Copyright Royalty Judges conclude that no claimant entitled to receive such fees has stated a reasonable objection to the partial distribution, and all such claimants—

(i) agree to the 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);

(iii) file the agreement with the Copyright Royalty Judges; and

(iv) agree that such funds are available for distribution.

(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 sections 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 a 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 those that would be bound by the terms, rates, or other determination set by any agreement in a proceeding to determine royalty rates an opportunity to comment on the agreement and shall provide to participants in the proceeding under section 803(b)(2) that would be bound by the terms, rates, or other determination set by the agreement an opportunity to comment on the agreement and object to its adoption as a basis for statutory terms and rates; and

(ii) the Copyright Royalty Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement, if any participant described in clause (i) objects to the agreement and the Copyright Royalty Judges conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates.

(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) Interested parties may negotiate and agree to, and the Copyright Royalty Judges may adopt, an agreement that specifies as terms notice and recordkeeping requirements that apply in lieu of those that would otherwise apply under regulations.

(8) To perform other duties, as assigned by the Register of Copyrights within the Library of Congress, except as provided in section 802(g), at times when Copyright Royalty Judges are not engaged in performing the other duties set forth in this section.

(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.

(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.

(f) EFFECTIVE DATE OF ACTIONS.—On and after the date of the enactment of the Copyright Royalty and Distribution Reform Act of 2004, in any case in which time limits are prescribed under this title for performance of an action with or by the Copyright Royalty Judges, and in which the last day of the prescribed period falls on a Saturday, Sunday, holiday, or other nonbusiness day within the District of Columbia or the Federal Government, the action may be taken on the next succeeding business day, and is effective as of the date when the period expired.

(Added Pub. L. 108–419, § 3(a), Nov. 30, 2004, 118 Stat. 2341; amended Pub. L. 109–303, §§ 3(1), (2), 5, Oct. 6, 2006, 120 Stat. 1478, 1483.)

REFERENCES IN TEXT

The date of the enactment of the Copyright Royalty and Distribution Reform Act of 2004, referred to in subsec. (f), is the date of the enactment of Pub. L. 108–419, which was approved Nov. 30, 2004.

PRIOR PROVISIONS

A prior section 801, Pub. L. 94–553, title I, §101, Oct. 19, 1976, 90 Stat. 2594; Pub. L. 99–397, §2(c), (d), Aug. 27, 1986, 100 Stat. 848; Pub. L. 100–568, §11(1), Oct. 31, 1988, 102 Stat. 2860; Pub. L. 100–667, title II, §202(4), Nov. 16, 1988, 102 Stat. 3958; Pub. L. 101–318, §3(b), July 3, 1990, 104 Stat. 288; Pub. L. 102–563, §3(a)(1), Oct. 28, 1992, 106 Stat. 4247; Pub. L. 103–198, §2(a), Dec. 17, 1993, 107 Stat. 2304; Pub. L. 104–39, §5(d)(1), Nov. 1, 1995, 109 Stat. 348; Pub. L. 105–80, §§8(a), 12(a)(19), Nov. 13, 1997, 111 Stat. 1533, 1535; Pub. L. 105–304, title IV, §405(e)(1), Oct. 28, 1998, 112 Stat. 2902, related to the establishment and purpose of copyright arbitration royalty panels, prior to the general amendment of this chapter by Pub. L. 108–419.

AMENDMENTS

2006—Subsec. (b)(1). Pub. L. 109–303, §3(1), substituted ''119, and 1004'' for ''119 and 1004''.

Subsec. (b)(3)(C). Pub. L. 109–303, §5(1), added introductory provisions and struck out former introductory provisions which read as follows: ''The Copyright Royalty Judges may 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—''.

Subsec. (b)(3)(C)(i). Pub. L. 109–303, §5(2), substituted ''the'' for ''such''.

Subsec. (f). Pub. L. 109–303, §3(2), added subsec. (f).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 3 of Pub. L. 109–303 effective as if included in the Copyright Royalty and Distribution Reform Act of 2004, Pub. L. 108–419, and amendment by section 5 of Pub. L. 109–303 effective October 6, 2004, see section 6 of Pub. L. 109–303, set out as a note under section 111 of this title.

EFFECTIVE DATE; TRANSITION PROVISIONS

Pub. L. 108–419, §6, Nov. 30, 2004, 118 Stat. 2369, as amended by Pub. L. 109–303, §4(h), Oct. 6, 2006, 120 Stat. 1483, provided that:

''(a) EFFECTIVE DATE.—This Act [see Short Title of 2004 Amendment note set out under section 101 of this title] and the amendments made by this Act shall take effect 6 months after the date of enactment of this Act [Nov. 30, 2004], except that the Librarian of Congress shall appoint 1 or more 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 paragraphs (2) and (3), the amendments made by this Act shall not affect any proceedings commenced, petitions filed, or voluntary agreements entered into before the effective date provided in subsection (a) under the provisions of title 17, United States Code, as amended by this Act, and pending on such effective date. 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. For purposes of this paragraph, the Librarian of Congress may determine whether a proceeding has commenced. The Librarian of Congress may terminate any proceeding commenced before the effective date provided in subsection (a) pursuant to chapter 8 of title 17, United States Code, and any proceeding so terminated shall become null and void. In such cases, the Copyright Royalty Judges may initiate a new proceeding in accordance with regulations adopted pursuant to section 803(b)(6) of title 17, United States Code.

''(2) CERTAIN ROYALTY RATE PROCEEDINGS.—Notwithstanding paragraph (1), the amendments made by this Act shall not affect proceedings to determine royalty rates pursuant to section 119(c) of title 17, United States Code, that are commenced before January 31, 2006.

''(3) PENDING PROCEEDINGS.—Notwithstanding paragraph (1), any proceedings to establish or adjust rates and terms for the statutory licenses under section 114(f)(2) or 112(e) of title 17, United States Code, for a statutory period commencing on or after January 1, 2005, shall be terminated upon the date of enactment of this Act and shall be null and void. The rates and terms in effect under section 114(f)(2) or 112(e) of title 17, United States Code, on December 31, 2004, for new subscription services, eligible nonsubscription services, and services exempt under section 114(d)(1)(C)(iv) of such title, and the rates and terms published in the Federal Register under the authority of the Small Webcaster Settlement Act of 2002 (17 U.S.C. 114 note; Public Law 107–321) (including the amendments made by that Act) for the years 2003 through 2004, as well as any notice and recordkeeping provisions adopted pursuant thereto, shall remain in effect until the later of 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 such later date as the parties may agree or the Copyright Royalty Judges may establish. For the period commencing January 1, 2005, an eligible small webcaster or a noncommercial webcaster, as defined in the regulations published by the Register of Copyrights pursuant to the Small Webcaster Settlement Act of 2002 (17 U.S.C. 114 note; Public Law 107–321) (including the amendments made by that Act) [amending section 114 of this title and enacting provisions set out as notes under sections 101 and 114 of this title], may elect to be subject to the rates and terms published in those regulations by complying with the procedures governing the election process set forth in those regulations not later than the first date on which the webcaster would be obligated to make a royalty payment for such period. Until successor terms and rates have been established for the period commencing January 1, 2006, licensees shall continue to make royalty payments at the rates and on the terms previously in effect, subject to retroactive adjustment when successor rates and terms for such services are established.

''(4) INTERIM PROCEEDINGS.—Notwithstanding subsection (a), as soon as practicable after the date of enactment of this Act, the Copyright Royalty Judges or interim Copyright Royalty Judges shall publish the notice described in section 803(b)(1)(A) of title 17, United States Code, as amended by this Act, to initiate a proceeding to establish or adjust rates and terms for the statutory licenses under section 114(f)(2) or 112(e) of title 17, United States Code, for new subscription services and eligible nonsubscription services for the period commencing January 1, 2006. The Copyright Royalty Judges or Interim Copyright Royalty Judges are authorized to cause that proceeding to take place as provided in subsection (b) of section 803 of that title within the time periods set forth in that subsection. Notwithstanding section 803(c)(1) of that title, the Copyright Royalty Judges shall not be required to issue their determination in that proceeding before the expiration of the statutory rates and terms in effect on December 31, 2004.

''(c) EXISTING APPROPRIATIONS.—Any funds made available in an appropriations Act to carry out chapter

8 of title 17, United States Code, shall be available to the extent necessary to carry out this section.''

§ 802. Copyright Royalty Judgeships; staff

(a) QUALIFICATIONS OF COPYRIGHT ROYALTY JUDGES.—

(1) IN GENERAL.—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 2 Copyright Royalty Judges, 1 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).

(2) DEFINITION.—In this subsection, the term ''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 individual first appointed as the Chief Copyright Royalty Judge shall be appointed to a term of 6 years, and of the remaining individuals first appointed as Copyright Royalty Judges, 1 shall be appointed to a term of 4 years, and the other shall be appointed to a term of 2 years. Thereafter, the terms of succeeding Copyright Royalty Judges shall each be 6 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 1 staff member shall be not more than the basic rate of pay payable for level 10 of GS–15 of the General Schedule;

(B) the rate of pay of 1 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 level 10 of 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 level 10 of GS–11 of such Schedule.

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

(f) INDEPENDENCE OF COPYRIGHT ROYALTY JUDGE.—

(1) IN MAKING DETERMINATIONS.—

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

(ii) One or more Copyright Royalty Judges may, or by motion to the Copyright Royalty Judges, any participant in a proceeding may, request from the Register of Copyrights an interpretation of any material questions of substantive law that relate to the construction of provisions of this title and arise in the course of the proceeding. Any request for a written interpretation shall be in writing and on the record, and reasonable provision shall be made to permit participants in the proceeding to comment on the material questions of substantive law in a manner that minimizes duplication and delay. Except as provided in subparagraph (B), the Register of Copyrights shall deliver to the Copyright Royalty Judges a written response within 14 days after the receipt of all briefs and comments from the participants. The Copyright Royalty Judges shall apply the legal interpretation embodied in the response of the Register of Copyrights if it is timely delivered, and the response shall be included in the record that accompanies the final determination. The authority under this clause shall not be construed to authorize the Register of Copyrights to provide an interpretation of questions of proce-

dure before the Copyright Royalty Judges, the ultimate adjustments and determinations of copyright royalty rates and terms, the ultimate distribution of copyright royalties, or the acceptance or rejection of royalty claims, rate adjustment petitions, or petitions to participate in a proceeding.

(B) NOVEL QUESTIONS.—(i) In any case in which a novel material question of substantive law concerning an interpretation of those provisions of this title that are the subject of the proceeding is presented, the Copyright Royalty Judges shall request a decision of the Register of Copyrights, in writing, to resolve such novel question. Reasonable provision shall be made for comment on such request by the participants in the proceeding, in such a way as to minimize duplication and delay. The Register of Copyrights shall transmit his or her decision to the Copyright Royalty Judges within 30 days after the Register of Copyrights receives all of the briefs or comments of the participants. Such decision shall be in writing and included by the Copyright Royalty Judges in the record that accompanies their final determination. If such a decision is timely delivered to the Copyright Royalty Judges, the Copyright Royalty Judges shall apply the legal determinations embodied in the decision of the Register of Copyrights in resolving material questions of substantive law.

(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).

(C) CONSULTATION.—Notwithstanding the provisions of subparagraph (A), the Copyright Royalty Judges shall consult with the Register of Copyrights with respect to any determination or ruling that would require that any act be performed by the Copyright Office, and any such determination or ruling shall not be binding upon the Register of Copyrights.

(D) REVIEW OF LEGAL CONCLUSIONS BY THE REGISTER OF COPYRIGHTS.—The Register of Copyrights may review for legal error the resolution by the Copyright Royalty Judges of a material question of substantive law under this title that underlies or is contained in a final determination of the Copyright Royalty Judges. If the Register of Copyrights concludes, after taking into consideration the views of the participants in the proceeding, that any resolution reached by the Copyright Royalty Judges was in material error, the Register of Copyrights shall issue a written decision correcting such legal error, which shall be made part of the record of the proceeding. The Register of Copyrights shall issue such written decision not later than 60 days after the date on which the final determination by the Copyright Royalty Judges is issued. Additionally, the Register of Copyrights shall cause to be published in the Federal Register such written decision, together with a specific identification of the legal conclusion of the Copyright Royalty Judges that is determined to be erroneous. As to conclusions of substantive law involving an interpretation of the statutory provisions of this title, the decision of the Register of Copyrights shall be binding as precedent upon the Copyright Royalty Judges in subsequent proceedings under this chapter. When a decision has been rendered pursuant to this subparagraph, the Register of Copyrights may, on the basis of and in accordance with such decision, intervene as of right in any appeal of a final determination of the Copyright Royalty Judges pursuant to section 803(d) in the United States Court of Appeals for the District of Columbia Circuit. If, prior to intervening in such an appeal, the Register of Copyrights gives notification to, and undertakes to consult with, the Attorney General with respect to such intervention, and the Attorney General fails, within a reasonable period after receiving such notification, to intervene in such appeal, the Register of Copyrights may intervene in such appeal in his or her own name by any attorney designated by the Register of Copyrights for such purpose. Intervention by the Register of Copyrights in his or her own name shall not preclude the Attorney General from intervening on behalf of the United States in such an appeal as may be otherwise provided or required by law.

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

(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 that conflict with his or her duties and responsibilities as a 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), mis-

conduct, 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.

(Added Pub. L. 108–419, § 3(a), Nov. 30, 2004, 118 Stat. 2345; amended Pub. L. 109–303, § 3(3), (4), Oct. 6, 2006, 120 Stat. 1478, 1479.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (e)(2), is set out under section 5332 of Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 802, Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2596; Pub. L. 101–319, § 2(a), July 3, 1990, 104 Stat. 290; Pub. L. 103–198, § 2(b), Dec. 17, 1993, 107 Stat. 2305; Pub. L. 104–39, § 5(d)(2)–(4), Nov. 1, 1995, 109 Stat. 349; Pub. L. 105–80, § 8(b), Nov. 13, 1997, 111 Stat. 1533; Pub. L. 105–304, title IV, § 405(d), (e)(2)–(4), Oct. 28, 1998, 112 Stat. 2902; Pub. L. 107–273, div. C, title III, § 13301(c)(2), Nov. 2, 2002, 116 Stat. 1912, related to membership and proceedings of copyright arbitration royalty panels, prior to the general amendment of this chapter by Pub. L. 108–419.

AMENDMENTS

2006—Subsec. (f)(1)(A)(i). Pub. L. 109–303, § 3(3)(A), substituted ''subparagraph (B) and clause (ii) of this subparagraph'' for ''clause (ii) of this subparagraph and subparagraph (B)''.

Subsec. (f)(1)(A)(ii). Pub. L. 109–303, § 3(3)(B), added cl. (ii) and struck out former cl. (ii) which related to request for interpretation by the Register of Copyrights of material question of substantive law concerning construction of provisions of this title that are the subject of the proceeding.

Subsec. (f)(1)(D). Pub. L. 109–303, § 3(4), inserted a comma after ''undertakes to consult with''.

EFFECTIVE DATE OF 2006 AMENDMENT

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

§ 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 the Librarian of Congress, and on the basis of a written record, prior determinations and interpretations of the Copyright Royalty Tribunal, Librarian of Congress, the Register of Copyrights, copyright arbitration royalty panels (to the extent those determinations are not inconsistent with a decision of the Librarian of Congress or the Register of Copyrights), and the Copyright Royalty Judges (to the extent those determinations are not inconsistent with a decision of the Register of Copyrights that was timely delivered to the Copyright Royalty Judges pursuant to section 802(f)(1)(A) or (B), or with a decision of the Register of Copyrights pursuant to section 802(f)(1)(D)), under this chapter, and decisions of the court of appeals under this chapter before, on, or after the effective date of the Copyright Royalty and Distribution Reform Act of 2004.

(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) 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—

(I) promptly upon a determination made under section 804(a);

(II) by no later than January 5 of a year specified in paragraph (2) of section 804(b) for the commencement of proceedings;

(III) by no later than January 5 of a year specified in subparagraph (A) or (B) of paragraph (3) of section 804(b) for the commencement of proceedings, or as otherwise provided in subparagraph (A) or (C) of such paragraph for the commencement of proceedings;

(IV) as provided under section 804(b)(8); or

(V) by no later than January 5 of a year specified in any other provision of section 804(b) for the filing of petitions for the commencement of proceedings, if a petition has not been filed by that date, except that the publication of notice requirement shall not apply in the case of proceedings under section 111 that are scheduled to commence in 2005.

(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. Notwithstanding the preceding sentence, petitioners whose petitions are filed more than 30 days after publication of notice of commencement of a proceeding are not eligible to object to a settlement reached during the voluntary negotiation period under paragraph (3), and any objection filed by such a petitioner shall not be taken into account by the Copyright Royalty Judges.

(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));

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

(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; and

(D) the petition to participate is accompanied by either—

(i) in a proceeding to determine royalty rates, a filing fee of $150; or

(ii) in a proceeding to determine distribution of royalty fees—

(I) a filing fee of $150; or

(II) a statement that the petitioner (individually or as a group) will not seek a distribution of more than $1000, in which case the amount distributed to the petitioner shall not exceed $1000.

(3) VOLUNTARY NEGOTIATION PERIOD.—

(A) COMMENCEMENT OF PROCEEDINGS.—

(i) RATE ADJUSTMENT PROCEEDING.—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.

(ii) DISTRIBUTION PROCEEDING.—Promptly after the date for filing of petitions to participate in a proceeding to determine the distribution of royalties, the Copyright Royalty Judges shall make available to all participants in the proceeding a list of such participants. The initiation of a voluntary negotiation period among the participants shall be set at a time determined by the Copyright Royalty Judges.

(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, the contested amount of a claim is $10,000 or less, the Copyright Royalty Judges shall decide the controversy on the basis of the filing of the written direct statement by the participant, the response by any opposing participant, and 1 additional response by each such party.

(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.—The Copyright Royalty Judges in proceedings under this chapter may decide, sua sponte or upon motion of a participant, to determine issues on the basis of the filing of the written direct statement by the participant, the response 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. All regulations issued by the Copyright Royalty Judges are subject to the approval of the Librarian of Congress. 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, ex-

cept 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 and written rebuttal statements of all participants in a proceeding under paragraph (2) shall be filed by a date specified by the Copyright Royalty Judges, which, in the case of written direct statements, may be not earlier than 4 months, and not later than 5 months, after the end of the voluntary negotiation period under paragraph (3). Notwithstanding the preceding sentence, the Copyright Royalty Judges may allow a participant in a proceeding to file an amended written direct statement based on new information received during the discovery process, within 15 days after the end of the discovery period specified in clause (iv).

(ii)(I) Following the submission to the Copyright Royalty Judges of written direct statements and written rebuttal statements by the participants in a proceeding under paragraph (2), the Copyright Royalty Judges, after taking into consideration the views of the participants in the proceeding, shall determine a schedule for conducting and completing discovery.

(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 connection with written direct statements 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. The Copyright Royalty Judges may order a discovery schedule in connection with written rebuttal statements.

(v) Any participant under paragraph (2) in a proceeding under this chapter to determine royalty rates may request of an opposing participant nonprivileged documents directly related to the written direct statement or written rebuttal statement of that participant. Any objection to such a request shall be resolved by a motion or request to compel production made to the Copyright Royalty Judges in accordance with regulations adopted by 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). Upon such motion, the Copyright Royalty Judges may order discovery pursuant to regulations established under this paragraph.

(vi)(I) Any participant under paragraph (2) in a proceeding under this chapter to determine royalty rates may, by means of written motion or on the record, request of an opposing participant or witness other relevant information and materials if, absent the discovery sought, the Copyright Royalty Judges' resolution of the proceeding would be substantially impaired. In determining whether discovery will be granted under this clause, the Copyright Royalty Judges may consider—

(aa) whether the burden or expense of producing the requested information or materials outweighs the likely benefit, taking into account the needs and resources of the participants, the importance of the issues at stake, and the probative value of the requested information or materials in resolving such issues;

(bb) whether the requested information or materials would be unreasonably cumulative or duplicative, or are obtainable from another source that is more convenient, less burdensome, or less expensive; and

(cc) whether the participant seeking discovery has had ample opportunity by discovery in the proceeding or by other means to obtain the information sought.

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

(vii) In a proceeding under this chapter to determine royalty rates, the participants entitled to receive royalties shall collectively be permitted to take no more than 10 depositions and secure responses to no more than 25 interrogatories, and the participants obligated to pay royalties shall collectively be permitted to take no more than 10 depositions and secure responses to no more than 25 interrogatories. The Copyright Royalty Judges shall resolve any disputes among similarly aligned participants to allocate the number of depositions or interrogatories permitted under this clause.

(viii) The rules and practices 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 chapter to determine the distribution of royalty fees, shall continue to apply to such proceedings on and after such effective date.

(ix) In proceedings to determine royalty rates, the Copyright Royalty Judges may issue a subpoena commanding a participant or witness to appear and give testimony, or to produce and permit inspection of documents or tangible things, if the

Copyright Royalty Judges' resolution of the proceeding would be substantially impaired by the absence of such testimony or production of documents or tangible things. Such subpoena shall specify with reasonable particularity the materials to be produced or the scope and nature of the required testimony. Nothing in this clause shall preclude the Copyright Royalty Judges from requesting the production by a nonparticipant of information or materials relevant to the resolution by the Copyright Royalty Judges of a material issue of fact.

(x) 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 60-day discovery period specified in clause (iv) and shall take place outside the presence of the Copyright Royalty Judges.

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

(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)(6)(C)(x), 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 in a proceeding under subsection (b)(2), order a rehearing, after the determination in the 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 to the participants in the proceeding their initial determination.

(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, except that nonparticipation may give rise to the limitations with respect to judicial review provided for in subsection (d)(1).

(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. Any underpayment of royalties resulting from a rehearing shall be paid within the same period.

(3) CONTENTS OF DETERMINATION.—A determination of the Copyright Royalty Judges shall be supported by the written record and shall set forth the findings of fact relied on by the Copyright Royalty Judges. 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 issue an amendment to a written determination to correct any technical or clerical errors in the determination or to modify the terms, but not the rates, of royalty payments in response to unforeseen circumstances that would frustrate the proper implementation of such determination. Such amendment shall be set forth in a written addendum to the determination that shall be distributed to the participants of the proceeding and shall be published in the Federal Register.

(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.—By no later than the end of the 60-day period provided in section 802(f)(1)(D), 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.

(7) LATE PAYMENT.—A determination of the Copyright Royalty Judges may include terms with respect to late payment, but in no way shall such terms prevent the copyright holder from asserting other rights or remedies provided under this title.

(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. Any participant that did not participate in a rehearing may not raise any issue that was the subject of that rehearing at any stage of judicial review of the hearing 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. A licensee shall be obligated to continue making payments under the rates and terms previously in effect until such time as rates and terms for the successor period are established. Whenever royalties pursuant to this section 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 determination of the Copyright Royalty Judges establishing rates and terms for a successor period or the exhaustion of all rehearings or appeals of such determination, if any, return any excess amounts previously paid to the extent necessary to comply with the final determination of royalty rates. Any underpayment of royalties by a copyright user shall be paid to the entity designated by the Copyright Royalty Judges within the same period.

(B) OTHER CASES.—In cases where rates and terms have not, prior to the inception of an activity, been established for that particular activity under the relevant license, such rates and terms shall be retroactive to the inception of activity under the relevant license covered by such rates and terms. In other cases where rates and terms do not expire on a specified date, successor rates and 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, or by the Copyright Royalty Judges, or as agreed by the participants in a proceeding that would be bound by the rates and terms. Except as otherwise provided in this title, the rates and terms, 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—

(I) providing the applicable statements of account and reports of use; and

(II) 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. Any underpayment of royalties resulting from an appeal (and interest thereon, if ordered pursuant to paragraph (3)) shall be paid within the same period.

(3) JURISDICTION OF COURT.—Section 706 of title 5 shall apply with respect to review by the court of appeals under this subsection. If the court 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 incurred 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.

(Added Pub. L. 108–419, §3(a), Nov. 30, 2004, 118 Stat. 2348; amended Pub. L. 108–447, div. J, title IX [title I, §112], Dec. 8, 2004, 118 Stat. 3409; Pub. L. 109–303, §3(5)–(11), Oct. 6, 2006, 120 Stat. 1479, 1481.)

REFERENCES IN TEXT

The effective date of the Copyright Royalty and Distribution Reform Act of 2004, referred to in subsecs. (a)(1) and (b)(6)(B), (C)(viii), is the effective date of Pub. L. 108–419, which is 6 months after Nov. 30, 2004, subject to transition provisions, see section 6 of Pub. L. 108–419, set out as an Effective Date; Transition Provisions note under section 801 of this title.

The enactment of the Copyright Royalty and Distribution Reform Act of 2004 and such date of enactment, referred to in subsec. (b)(6)(A), (B), probably mean the date of enactment of Pub. L. 108–419, which was approved Nov. 30, 2004.

Section 307 of the Legislative Branch Appropriations Act, 1994, referred to in subsec. (e)(2), is section 307 of Pub. L. 103–69, which is set out as a note under section 60–1 of Title 2, The Congress.

PRIOR PROVISIONS

A prior section 803, Pub. L. 94–553, title I, §101, Oct. 19, 1976, 90 Stat. 2597, §804; Pub. L. 100–568, §11(2), Oct. 31, 1988, 102 Stat. 2860; Pub. L. 100–667, title II, §202(5), Nov. 16, 1988, 102 Stat. 3958; Pub. L. 101–318, §3(c), July 3, 1990, 104 Stat. 288; Pub. L. 102–563, §3(a)(2), Oct. 28, 1992, 106 Stat. 4248; renumbered §803 and amended Pub. L. 103–198, §2(d), Dec. 17, 1993, 107 Stat. 2307; Pub. L. 104–39, §5(d)(5)–(7), Nov. 1, 1995, 109 Stat. 349; Pub. L. 105–80, §12(a)(20), Nov. 13, 1997, 111 Stat. 1535; Pub. L. 105–304, title IV, §405(e)(5), (6), Oct. 28, 1998, 112 Stat. 2902, related to institution and conclusion of proceedings of copyright arbitration royalty panels, prior to the general amendment of this chapter by Pub. L. 108–419.

Another prior section 803, Pub. L. 94–553, title I, §101, Oct. 19, 1976, 90 Stat. 2596, related to procedures of the Copyright Royalty Tribunal, prior to repeal by Pub. L. 103–198, §2(c), Dec. 17, 1993, 107 Stat. 2307.

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–303, §3(5), substituted ''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'' for ''The Copyright'' and inserted ''copyright arbitration royalty panels (to the extent those determinations are not inconsistent with a decision of the Librarian of Congress or the Register of Copyrights),'' after ''Congress, the Register of Copyrights,''.

Subsec. (b)(1)(A)(i)(V). Pub. L. 109–303, §3(6)(A), substituted ''the publication of notice requirement shall not apply in the case of'' for ''in the case of'' and struck out '', such notice may not be published.'' at end.

Subsec. (b)(2). Pub. L. 109–303, §3(6)(B), struck out '', together with a filing fee of $150'' before semicolon at end of subpar. (A) and added subpar. (D).

Subsec. (b)(3)(A). Pub. L. 109–303, §3(6)(C), substituted ''Commencement of proceedings'' for ''In general'' in heading, designated existing provisions as cl. (i), inserted cl. (i) heading, and added cl. (ii).

Subsec. (b)(4)(A). Pub. L. 109–303, §3(6)(D), struck out last sentence which read as follows: ''The participant asserting the claim shall not be required to pay the filing fee under paragraph (2).''

Subsec. (b)(6)(C)(i). Pub. L. 109–303, §3(6)(E)(i), inserted ''and written rebuttal statements'' after ''written direct statements'' and substituted ''which, in the case of written direct statements, may'' for ''which may'' and ''clause (iv)'' for ''clause (iii)''.

Subsec. (b)(6)(C)(ii)(I). Pub. L. 109–303, §3(6)(E)(ii), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''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.''

Subsec. (b)(6)(C)(iv). Pub. L. 109–303, §3(6)(E)(iii), amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows: ''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.''

Subsec. (b)(6)(C)(x). Pub. L. 109–303, §3(6)(E)(iv), amended cl. (x) generally. Prior to amendment, cl. (x) read as follows: ''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 and shall take place outside the presence of the Copyright Royalty Judges.''

Subsec. (c)(2)(B). Pub. L. 109–303, §3(7), struck out ''concerning rates and terms'' before period at end.

Subsec. (c)(4). Pub. L. 109–303, §3(8), struck out '', with the approval of the Register of Copyrights,'' before ''issue an amendment''.

Subsec. (c)(7). Pub. L. 109–303, §3(9), substituted ''of the Copyright'' for ''of Copyright''.

Subsec. (d)(2)(C)(i)(I). Pub. L. 109–303, §3(10), substituted ''applicable statements of account and reports of use'' for ''statements of account and any report of use''.

Subsec. (d)(3). Pub. L. 109–303, §3(11), substituted ''Section 706 of title 5 shall apply with respect to re-

view by the court of appeals under this subsection. If the court modifies'' for ''If the court, pursuant to section 706 of title 5, modifies''.

2004—Subsec. (b)(1)(A)(i)(V). Pub. L. 108–447 inserted '', except that in the case of proceedings under section 111 that are scheduled to commence in 2005, such notice may not be published.'' before period at end.

EFFECTIVE DATE OF 2006 AMENDMENT

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

§ 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, 119, 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 for such determination, 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)(2)(B) or (C), as the case may be. A petition for adjustment of rates established by section 111(d)(1)(B) as a result of a change in 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 date of enactment 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 gov-

ern proceedings commenced pursuant to section 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 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 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, 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.

(Added Pub. L. 108–419, § 3(a), Nov. 30, 2004, 118 Stat. 2357; amended Pub. L. 109–303, § 3(12), (13), Oct. 6, 2006, 120 Stat. 1481.)

REFERENCES IN TEXT

The enactment of and the date of enactment of the Copyright Royalty and Distribution Reform Act of 2004, referred to in subsecs. (a) and (b)(1)(B), (3)(A), mean the date of enactment of Pub. L. 108–419, which was approved Nov. 30, 2004.

PRIOR PROVISIONS

A prior section 804 was renumbered section 803 of this title prior to the general amendment of this chapter by Pub. L. 108–419.

AMENDMENTS

2006—Subsec. (b)(1)(B). Pub. L. 109–303, § 3(12), substituted ''801(b)(2)(B) or (C)'' for ''801(b)(3)(B) or (C)'' and ''change in'' for ''change is''.

Subsec. (b)(3)(A). Pub. L. 109–303, § 3(13)(A), substituted ''date of enactment'' for ''effective date''.

Subsec. (b)(3)(C)(ii). Pub. L. 109–303, § 3(13)(B)(i), substituted ''is filed'' for ''that is filed''.

Subsec. (b)(3)(C)(iii). Pub. L. 109–303, § 3(13)(B)(ii), substituted ''subsections (b)'' for ''such subsections (b)''.

EFFECTIVE DATE OF 2006 AMENDMENT

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

§ 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)(3),

(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.

(Added Pub. L. 108–419, § 3(a), Nov. 30, 2004, 118 Stat. 2360.)

PRIOR PROVISIONS

Prior sections 805 to 810 were repealed by Pub. L. 103–198, § 2(e), Dec. 17, 1993, 107 Stat. 2308.

Section 805, Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2598, related to staff of Copyright Royalty Tribunal.

Section 806, Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2598, related to administrative support of Tribunal.

Section 807, Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2598, related to deduction of costs of proceedings involving distribution of royalty fees.

Section 808, Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2598, related to reporting requirements of the Tribunal.

Section 809, Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2598, related to effective date of final determinations of Tribunal.

Section 810, Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2598, related to judicial review of final decisions of Tribunal.

CHAPTER 9—PROTECTION OF SEMICONDUCTOR CHIP PRODUCTS

Sec.
901. Definitions.
902. Subject matter of protection.
903. Ownership, transfer, licensing, and recordation.
904. Duration of protection.
905. Exclusive rights in mask works.
906. Limitation on exclusive rights: reverse engineering; first sale.
907. Limitation on exclusive rights: innocent infringement.
908. Registration of claims of protection.
909. Mask work notice.
910. Enforcement of exclusive rights.
911. Civil actions.
912. Relation to other laws.
913. Transitional provisions.
914. International transitional provisions.

AMENDMENTS

2002—Pub. L. 107–273, div. C, title III, § 13210(11), Nov. 2, 2002, 116 Stat. 1910, substituted ''licensing'' for ''licensure'' in item 903.

1997—Pub. L. 105–80, § 12(a)(21), Nov. 13, 1997, 111 Stat. 1535, substituted ''Ownership, transfer, licensure, and recordation'' for ''Ownership and transfer'' in item 903.

§ 901. Definitions

(a) As used in this chapter—

(1) a ''semiconductor chip product'' is the final or intermediate form of any product—

(A) having two or more layers of metallic, insulating, or semiconductor material, deposited or otherwise placed on, or etched away or otherwise removed from, a piece of semiconductor material in accordance with a predetermined pattern; and

(B) intended to perform electronic circuitry functions;

(2) a ''mask work'' is a series of related images, however fixed or encoded—

(A) having or representing the predetermined, three-dimensional pattern of metallic, insulating, or semiconductor material present or removed from the layers of a semiconductor chip product; and

(B) in which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product;

(3) a mask work is ''fixed'' in a semiconductor chip product when its embodiment in the product is sufficiently permanent or stable to permit the mask work to be perceived or reproduced from the product for a period of more than transitory duration;

(4) to ''distribute'' means to sell, or to lease, bail, or otherwise transfer, or to offer to sell, lease, bail, or otherwise transfer;

(5) to ''commercially exploit'' a mask work is to distribute to the public for commercial purposes a semiconductor chip product embodying the mask work; except that such term includes an offer to sell or transfer a semiconductor chip product only when the offer is in writing and occurs after the mask work is fixed in the semiconductor chip product;

(6) the ''owner'' of a mask work is the person who created the mask work, the legal representative of that person if that person is deceased or under a legal incapacity, or a party to whom all the rights under this chapter of such person or representative are transferred in accordance with section 903(b); except that, in the case of a work made within the scope of a person's employment, the owner is the employer for whom the person created the mask work or a party to whom all the rights under this chapter of the employer are transferred in accordance with section 903(b);

(7) an ''innocent purchaser'' is a person who purchases a semiconductor chip product in good faith and without having notice of protection with respect to the semiconductor chip product;

(8) having ''notice of protection'' means having actual knowledge that, or reasonable grounds to believe that, a mask work is protected under this chapter; and

(9) an ''infringing semiconductor chip product'' is a semiconductor chip product which is made, imported, or distributed in violation of the exclusive rights of the owner of a mask work under this chapter.

(b) For purposes of this chapter, the distribution or importation of a product incorporating a semiconductor chip product as a part thereof is a distribution or importation of that semiconductor chip product.

(Added Pub. L. 98–620, title III, § 302, Nov. 8, 1984, 98 Stat. 3347.)

AUTHORIZATION OF APPROPRIATIONS

Section 304 of title III of Pub. L. 98–620 provided that: ''There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this title and the amendments made by this title [enacting this chapter].''

§ 902. Subject matter of protection

(a)(1) Subject to the provisions of subsection (b), a mask work fixed in a semiconductor chip product, by or under the authority of the owner of the mask work, is eligible for protection under this chapter if—

(A) on the date on which the mask work is registered under section 908, or is first commercially exploited anywhere in the world, whichever occurs first, the owner of the mask work is (i) a national or domiciliary of the