(1) that such a new copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner, or

(2) that such new copy or adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful.

(b) LEASE, SALE, OR OTHER TRANSFER OF ADDITIONAL COPY OR ADAPTATION.—Any exact copies prepared in accordance with the provisions of this section may be leased, sold, or otherwise transferred, along with the copy from which such copies were prepared, only as part of the lease, sale, or other transfer of all rights in the program. Adaptations so prepared may be transferred only with the authorization of the copyright owner.

(c) MACHINE MAINTENANCE OR REPAIR.—Notwithstanding the provisions of section 106, it is not an infringement for the owner or lessee of a machine to make or authorize the making of a copy of a computer program if such copy is made solely by virtue of the activation of a machine that lawfully contains an authorized copy of the computer program, for purposes only of maintenance or repair of that machine, if—

(1) such new copy is used in no other manner and is destroyed immediately after the maintenance or repair is completed; and

(2) with respect to any computer program or part thereof that is not necessary for that machine to be activated, such program or part thereof is not accessed or used other than to make such new copy by virtue of the activation of the machine.

(d) DEFINITIONS.—For purposes of this section—

(1) the ''maintenance'' of a machine is the servicing of the machine in order to make it work in accordance with its original specifications and any changes to those specifications authorized for that machine; and

(2) the ''repair'' of a machine is the restoring of the machine to the state of working in accordance with its original specifications and any changes to those specifications authorized for that machine.

(Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2565; Pub. L. 96–517, § 10(b), Dec. 12, 1980, 94 Stat. 3028; Pub. L. 105–304, title III, § 302, Oct. 28, 1998, 112 Stat. 2887.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94–1476

As the program for general revision of the copyright law has evolved, it has become increasingly apparent that in one major area the problems are not sufficiently developed for a definitive legislative solution. This is the area of computer uses of copyrighted works: the use of a work ''in conjunction with automatic systems capable of storing, processing, retrieving, or transferring information.'' The Commission on New Technological Uses is, among other things, now engaged in making a thorough study of the emerging patterns in this field and it will, on the basis of its findings, recommend definitive copyright provisions to deal with the situation.

Since it would be premature to change existing law on computer uses at present, the purpose of section 117 is to preserve the status quo. It is intended neither to cut off any rights that may now exist, nor to create new rights that might be denied under the Act of 1909 or under common law principles currently applicable.

The provision deals only with the exclusive rights of a copyright owner with respect to computer uses, that is, the bundle of rights specified for other types of uses in section 106 and qualified in sections 107 through 116 and 118. With respect to the copyright-ability of computer programs, the ownership of copyrights in them, the term of protection, and the formal requirements of the remainder of the bill, the new statute would apply.

Under section 117, an action for infringement of a copyrighted work by means of a computer would necessarily be a federal action brought under the new title 17. The court, in deciding the scope of exclusive rights in the computer area, would first need to determine the applicable law, whether State statutory or common law or the Act of 1909. Having determined what law was applicable, its decision would depend upon its interpretation of what that law was on the point on the day before the effective date of the new statute.

AMENDMENTS

1998—Pub. L. 105–304 designated existing provisions as subsecs. (a) and (b), inserted headings, and added subsecs. (c) and (d).

1980—Pub. L. 96–517 substituted provision respecting limitations on exclusive rights in connection with computer programs for prior provision enunciating scope of exclusive rights and use of the work in conjunction with computers and similar information systems and declaring owner of copyright in a work without any greater or lesser rights with respect to the use of the work in conjunction with automatic systems capable of storing, processing, retrieving, or transferring information, or in conjunction with any similar device, machine, or process, than those afforded to works under the law, whether this title or the common law or statutes of a State, in effect on Dec. 31, 1977, as held applicable and construed by the court in an action brought under this title.

§ 118. Scope of exclusive rights: Use of certain works in connection with noncommercial broadcasting

(a) The exclusive rights provided by section 106 shall, with respect to the works specified by subsection (b) and the activities specified by subsection (d),[1] be subject to the conditions and limitations prescribed by this section.

(b) Notwithstanding any provision of the antitrust laws, any owners of copyright in published nondramatic musical works and published pictorial, graphic, and sculptural works and any public broadcasting entities, respectively, may negotiate and agree upon the terms and rates of royalty payments and the proportionate division of fees paid among various copyright owners, and may designate common agents to negotiate, agree to, pay, or receive payments.

(1) Any owner of copyright in a work specified in this subsection or any public broadcasting entity may submit to the Copyright Royalty Judges proposed licenses covering such activities with respect to such works.

(2) License agreements voluntarily negotiated at any time between one or more copyright owners and one or more public broadcasting entities shall be given effect in lieu of any determination by the Librarian of Congress or the Copyright Royalty Judges, if copies of such agreements are filed with the Copy-

[1] See References in Text note below.

right Royalty Judges within 30 days of execution in accordance with regulations that the Copyright Royalty Judges shall issue.

(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 owners of copyright 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. In establishing such rates and terms the Copyright Royalty Judges may consider the rates for comparable circumstances under voluntary license agreements negotiated as provided in paragraph (2) or (3). The Copyright Royalty Judges shall also establish requirements by which copyright owners may receive reasonable notice of the use of their works under this section, and under which records of such use shall be kept by public broadcasting entities.

(c) Subject to the terms of any voluntary license agreements that have been negotiated as provided by subsection (b)(2) or (3), a public broadcasting entity may, upon compliance with the provisions of this section, including the rates and terms established by the Copyright Royalty Judges under subsection (b)(4), engage in the following activities with respect to published nondramatic musical works and published pictorial, graphic, and sculptural works:

(1) performance or display of a work by or in the course of a transmission made by a noncommercial educational broadcast station referred to in subsection (f); and

(2) production of a transmission program, reproduction of copies or phonorecords of such a transmission program, and distribution of such copies or phonorecords, where such production, reproduction, or distribution is made by a nonprofit institution or organization solely for the purpose of transmissions specified in paragraph (1); and

(3) the making of reproductions by a governmental body or a nonprofit institution of a transmission program simultaneously with its transmission as specified in paragraph (1), and the performance or display of the contents of such program under the conditions specified by paragraph (1) of section 110, but only if the reproductions are used for performances or displays for a period of no more than seven days from the date of the transmission specified in paragraph (1), and are destroyed before or at the end of such period. No person supplying, in accordance with paragraph (2), a reproduction of a transmission program to governmental bodies or nonprofit institutions under this paragraph shall have any liability as a result of failure of such body or institution to destroy such reproduction: *Provided*, That it shall have notified such body or institution of the requirement for such destruction pursuant to this paragraph: *And provided further*, That if such body or institution itself fails to destroy such reproduction it shall be deemed to have infringed.

(d) Except as expressly provided in this subsection, this section shall have no applicability to works other than those specified in subsection (b). Owners of copyright in nondramatic literary works and public broadcasting entities may, during the course of voluntary negotiations, agree among themselves, respectively, as to the terms and rates of royalty payments without liability under the antitrust laws. Any such terms and rates of royalty payments shall be effective upon filing with the Copyright Royalty Judges, in accordance with regulations that the Copyright Royalty Judges shall prescribe as provided in section 803(b)(6).

(e) Nothing in this section shall be construed to permit, beyond the limits of fair use as provided by section 107, the unauthorized dramatization of a nondramatic musical work, the production of a transmission program drawn to any substantial extent from a published compilation of pictorial, graphic, or sculptural works, or the unauthorized use of any portion of an audiovisual work.

(f) As used in this section, the term ''public broadcasting entity'' means a noncommercial educational broadcast station as defined in section 397 of title 47 and any nonprofit institution or organization engaged in the activities described in paragraph (2) of subsection (c).

(Pub. L. 94–553, title I, §101, Oct. 19, 1976, 90 Stat. 2565; Pub. L. 103–198, §4, Dec. 17, 1993, 107 Stat. 2309; Pub. L. 106–44, §1(g)(3), Aug. 5, 1999, 113 Stat. 222; Pub. L. 107–273, div. C, title III, §13210(7), Nov. 2, 2002, 116 Stat. 1909; Pub. L. 108–419, §5(f), Nov. 30, 2004, 118 Stat. 2365; Pub. L. 109–303, §4(d), Oct. 6, 2006, 120 Stat. 1482.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94–1476

General Background. During its consideration of revision legislation in 1975, the Senate Judiciary Committee adopted an amendment offered by Senator Charles McC. Mathias. The amendment, now section 118 of the Senate bill [this section], grants to public broadcasting a compulsory license for use of nondramatic literary and musical works, as well as pictorial, graphic, and sculptural works, subject to payment of reasonable royalty fees to be set by the Copyright Royalty Tribunal established by that bill. The Mathias amendment requires that public broadcasters, at periodic intervals, file a notice with the Copyright Office containing information required by the Register of Copyrights and deposit a statement of account and the total royalty fees for the period covered by the statement. In July of each year all persons having a claim to such fees are to file their claims with the Register of Copyrights. If no controversy exists, the Register would distribute the royalties to the various copyright owners and their agents after deducting reasonable administrative costs; controversies are to be settled by the Tribunal.

On July 10, 1975, the House Subcommittee heard testimony on the Mathias amendment from representa-

tives of public broadcasters, authors, publishers, and music performing rights societies. The public broadcasters pointed to Congressional concern for the development of their activities as evidenced by the Public Broadcasting Act [47 U.S.C. 390 et seq.]. They urged that a compulsory license was essential to assure public broadcasting broad access to copyrighted materials at reasonable royalties and without administratively cumbersome and costly ''clearance'' problems that would impair the vitality of their operations. The opponents of the amendment argued that the nature of public broadcasting has changed significantly in the past decade, to the extent that it now competes with commercial broadcasting as a national entertainment and cultural medium. They asserted that the performing rights society arrangements under which copyrighted music is licensed for performance removed any problem in clearing music for broadcasting, and that voluntary agreements could adequately resolve the copyright problems feared by public broadcasters, at less expense and burden than the compulsory license, for synchronization and literary rights. The authors of literary works stressed that a compulsory licensing system would deny them the fundamental right to control the use of their works and protect their reputation in a major communications medium.

General Policy Considerations. The Committee is cognizant of the intent of Congress, in enacting the Public Broadcasting Act on November 7, 1967 [47 U.S.C. 390 et seq.], that encouragement and support of noncommercial broadcasting is in the public interest. It is also aware that public broadcasting may encounter problems not confronted by commercial broadcasting enterprises, due to such factors as the special nature of programming, repeated use of programs, and, of course, limited financial resources. Thus, the Committee determined that the nature of public broadcasting does warrant special treatment in certain areas. However, the Committee did not feel that the broad compulsory license provided in the Senate bill is necessary to the continued successful operation of public broadcasting. In addition, the Committee believes that the system provided in the Senate bill for the deposit of royalty fees with the Copyright Office for distribution to claimants, and the resolution of disputes over such distribution by a statutory tribunal, can be replaced by payments directly between the parties, without the intervention of government machinery and its attendant administrative costs.

In general, the Committee amended the public broadcasting provisions of the Senate bill toward attainment of the objective clearly stated in the Report of the Senate Judiciary Committee, namely, that copyright owners and public broadcasters be encouraged to reach voluntary private agreements.

Procedures. Not later than thirty days following the publication by the President of the notice announcing the initial appointments to the Copyright Royalty Commission (specified in Chapter 8 [§ 801 et seq. of this title]), the Chairman of the Commission is to publish notice in the Federal Register of the initiation of proceedings to determine ''reasonable terms and rates'' for certain uses of published nondramatic musical works and published pictorial, graphic and sculptural works, during a period ending on December 31, 1982.

Copyright owners and public broadcasting entities that do not reach voluntary agreement are bound by the terms and rates established by the Commission, which are to be published in the Federal Register within six months of the notice of initiation of proceedings. During the period between the effective date of the Act [Jan. 1, 1978] and the publication of the rates and terms, the Committee has preserved the status quo by providing, in section 118(b)(4), that the Act does not afford to copyright owners or public broadcasting entities any greater or lesser rights with respect to the relevant uses of nondramatic musical works and pictorial, graphic, and sculptural works than those afforded under the law in effect on December 31, 1977.

License agreements that have been voluntarily negotiated supersede, as between the parties to the agreement, the terms and rates established by the Commission, provided that copies of the agreements are properly filed with the Copyright Office within 30 days of execution. Under clause (2) of section 118(b), the agreements may be negotiated ''at any time''—whether before, during, or after determinations by the Commission.

Under section 118(c), the procedures for the Commission's establishing such rates and terms are to be repeated in the last half of 1982 and every five years thereafter.

Establishment of Reasonable Terms and Rates. In establishing reasonable terms and rates for public broadcasting use of the specified works, the Commission, under clause (b)(1) of section 118 is to consider proposals timely submitted to it, as well as ''any other relevant information'', including that put forward for its consideration ''by any interested party.''

The Committee does not intend that owners of copyrighted material be required to subsidize public broadcasting. It is intended that the Commission assure a fair return to copyright owners without unfairly burdening public broadcasters. Section 118(b)(3) provides that ''the Commission may consider the rates for comparable circumstances under voluntary license agreements.'' The Commission is also expected to consider both the general public interest in encouraging the growth and development of public broadcasting, and the ''promotion of science and the useful arts'' through the encouragement of musical and artistic creation.

The Committee anticipates that the ''terms'' established by the Commission shall include provisions as to acceptable methods of payment of royalties by public broadcasting entities to copyright owners. For example, where the whereabouts of the copyright owner may not be readily known, the terms should specify the nature of the obligation of the public broadcasting entity to locate the owner, or to set aside or otherwise assure payment of appropriate royalties, should he or she appear and make a claim. Section 118(b)(3) requires the Commission ''to establish requirements by which copyright owners may receive reasonable notice of the use of their works.'' The Committee intends that these requirements shall not impose undue hardships on public broadcasting entities and, in the above illustration, shall provide for the specific termination of any period during which the public broadcasting entity is required to set aside payments. It is expected that, in some cases, especially in the area of pictorial, graphic, and sculptural works, the whereabouts of the owners of copyright may not be known and they may never appear to claim payment of royalties.

The Commission is also to establish record keeping requirements for public broadcasting entities in order to facilitate the identification, calculation, allocation and payment of claims and royalties.

Works Affected. Under sections 118(b) and (e) of the Committee's amendment, the establishment of rates and terms by the Copyright Royalty Commission pertains only to the use of published nondramatic musical works, and published pictorial, graphic, and sculptural works. As under the Senate bill; rights in plays, operas, ballet and other stage presentations, motion pictures, and other audiovisual works are not affected.

Section 118(f) is intended to make clear that this section does not permit unauthorized use, beyond the limits of section 107, of individual frames from a filmstrip or any other portion of any audiovisual work. Additionally, the application of this section to pictorial, graphic, and sculptural works does not extend to the production of transmission programs drawn to any substantial extent from a compilation of such works.

The Committee also concluded that the performance of nondramatic literary works should not be subject to Commission determination. It was particularly concerned that a compulsory license for literary works would result in loss of control by authors over the use of their work in violation of basic principles of artistic and creative freedom. It is recognized that copyright not only provides compensation to authors, but also

protection as to how and where their works are used. The Committee was assured by representatives of authors and publishers that licensing arrangements for readings from their books, poems, and other works on public broadcasting programs for reasonable compensation and under reasonable safeguards for authors' rights could be worked out in private negotiation. The Committee strongly urges the parties to work toward mutually acceptable licenses; to facilitate their negotiations and aid in the possible establishment of clearance mechanisms and rates, the Committee's amendment provides the parties, in section 118(e)(1), with an appropriately limited exemption from the antitrust laws [15 U.S.C. 1 et seq.].

The Committee has also provided, in paragraph (2) of clause (e), that on January 3, 1980, the Register of Copyrights, after consultation with the interested parties, shall submit a report to Congress on the extent to which voluntary licensing arrangements have been reached with respect to public broadcast use of nondramatic literary works, and present legislative or other recommendations, if warranted.

The use of copyrighted sound recordings in educational television and radio programs distributed by or through public broadcasting entities is governed by section 114 and is discussed in connection with that section.

Activities Affected. Section 118(d) specifies the activities which may be engaged in by public broadcasting entities under terms and rates established by the Commission. These include the performance or display of published nondramatic musical works, and of published pictorial, graphic, and sculptural works, in the course of transmissions by noncommercial educational broadcast stations; and the production, reproduction, and distribution of transmission programs including such works by nonprofit organizations for the purpose of such transmissions. It is the intent of the Committee that ''interconnection'' activities serving as a technical adjunct to such transmissions, such as the use of satellites or microwave equipment, be included within the specified activities.

Paragraph (3) of clause (d) also includes the reproduction, simultaneously with transmission, of public broadcasting programs by governmental bodies or nonprofit institutions, and the performance or display of the contents of the reproduction under the conditions of section 110(1). However, the reproduction so made must be destroyed at the end of seven days from the transmission.

This limited provision for unauthorized simultaneous or off-the-air reproduction is limited to nondramatic musical works and pictorial, graphic and sculptural works included in public broadcasting transmissions. It does not extend to other works included in the transmissions, or to the entire transmission program.

It is the intent of the Committee that schools be permitted to engage in off-the-air reproduction to the extent and under the conditions provided in [section] 118(d)(3); however, in the event a public broadcasting station or producer makes the reproduction and distributes a copy to the school, the station or producer will not be held liable for the school's failure to destroy the reproduction, provided it has given notice of the requirement of destruction. In such a case the school itself, although it did not engage in the act of reproduction, is deemed an infringer fully subject to the remedies provided in Chapter 5 of the Act [§501 et seq. of this title]. The establishment of standards for adequate notice under this provision should be considered by the Commission.

Section 118(f) makes it clear that the rights of performance and other activities specified in subsection (d) do not extend to the unauthorized dramatization of a nondramatic musical work.

REFERENCES IN TEXT

Subsection (d), referred to in subsec. (a), was redesignated as subsection (c) of this section by Pub. L. 108–419, §5(f)(2), Nov. 30, 2004, 118 Stat. 2366.

AMENDMENTS

2006—Subsec. (b)(3). Pub. L. 109–303, §4(d)(1), substituted ''owners of copyright in works'' for ''copyright owners in works''.

Subsec. (c). Pub. L. 109–303, §4(d)(2), substituted ''established by the Copyright Royalty Judges under subsection (b)(4), engage'' for ''established by the Copyright Royalty Judges under subsection (b)(4), to the extent that they were accepted by the Librarian of Congress, engage'' in introductory provisions and ''(f)'' for ''(g)'' in par. (1).

2004—Subsec. (b)(1). Pub. L. 108–419, §5(f)(1)(A), substituted ''Copyright Royalty Judges'' for ''Librarian of Congress'' in first sentence and struck out at end ''The Librarian of Congress shall proceed on the basis of the proposals submitted as well as any other relevant information. The Librarian of Congress shall permit any interested party to submit information relevant to such proceedings.''

Subsec. (b)(2). Pub. L. 108–419, §5(f)(1)(B), substituted ''Librarian of Congress or the Copyright Royalty Judges, 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'' for ''Librarian of Congress: *Provided*, That copies of such agreements are filed in the Copyright Office within thirty days of execution in accordance with regulations that the Register of Copyrights shall prescribe''.

Subsec. (b)(3), (4). Pub. L. 108–419, §5(f)(1)(C), added pars. (3) and (4), redesignated second and third sentences of former par. (3) as second and third sentences of par. (4), substituted ''Copyright Royalty Judges'' for ''copyright arbitration royalty panel'' and ''paragraph (2) or (3)'' for ''paragraph (2)'' in second sentence of par. (4), substituted ''Copyright Royalty Judges'' for ''Librarian of Congress'' in last sentence of par. (4), and struck out ''(3) In the absence of license agreements negotiated under paragraph (2), the Librarian of Congress shall, pursuant to chapter 8, convene a copyright arbitration royalty panel 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 Librarian of Congress.''

Subsec. (c). Pub. L. 108–419, §5(f)(3)(C), which directed substitution of ''the Copyright Royalty Judges under subsection (b)(3), to the extent that they were accepted by the Librarian of Congress'' for ''a copyright arbitration royalty panel under subsection (b)(3)'' in introductory provisions, was executed before the amendment by Pub. L. 108–419, §5(f)(3)(B), to reflect the probable intent of Congress. See below.

Pub. L. 108–419, §5(f)(3)(B), substituted ''(b)(4)'' for ''(b)(3)'' in introductory provisions. See above.

Pub. L. 108–419, §5(f)(3)(A), substituted ''(b)(2) or (3)'' for ''(b)(2)'' in introductory provisions.

Pub. L. 108–419, §5(f)(2), redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows: ''The initial procedure specified in subsection (b) shall be repeated and concluded between June 30 and December 31, 1997, and at five-year intervals thereafter, in accordance with regulations that the Librarian of Congress shall prescribe.''

Subsec. (d). Pub. L. 108–419, §5(f)(2), (4), redesignated subsec. (e) as (d) and substituted ''with the Copyright Royalty Judges'' for ''in the Copyright Office'' and ''Copyright Royalty Judges shall prescribe as provided in section 803(b)(6)'' for ''Register of Copyrights shall prescribe''. Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 108–419, §5(f)(2), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 108–419, §5(f)(2), (5), redesignated subsec. (g) as (f) and substituted ''(c)'' for ''(d)''. Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 108–419, §5(f)(2), redesignated subsec. (g) as (f).

2002—Subsec. (b)(1). Pub. L. 107–273 struck out ''to it'' after ''proposals submitted'' in second sentence.

1999—Subsec. (e). Pub. L. 106–44 struck out ''(1)'' before ''Owners of'' and struck out par. (2) which read as follows: ''On January 3, 1980, the Register of Copyrights, after consulting with authors and other owners of copyright in nondramatic literary works and their representatives, and with public broadcasting entities and their representatives, shall submit to the Congress a report setting forth the extent to which voluntary licensing arrangements have been reached with respect to the use of nondramatic literary works by such broadcast stations. The report should also describe any problems that may have arisen, and present legislative or other recommendations, if warranted.''

1993—Subsec. (b). Pub. L. 103–198, § 4(1)(A), (B), struck out first two sentences which read as follows: ''Not later than thirty days after the Copyright Royalty Tribunal has been constituted in accordance with section 802, the Chairman of the Tribunal shall cause notice to be published in the Federal Register of the initiation of proceedings for the purpose of determining reasonable terms and rates of royalty payments for the activities specified by subsection (d) with respect to published nondramatic musical works and published pictorial, graphic, and sculptural works during a period beginning as provided in clause (3) of this subsection and ending on December 31, 1982. Copyright owners and public broadcasting entities shall negotiate in good faith and cooperate fully with the Tribunal in an effort to reach reasonable and expeditious results.'', and in third sentence substituted ''published nondramatic musical works and published pictorial, graphic, and sculptural works'' for ''works specified by this subsection''.

Subsec. (b)(1). Pub. L. 103–198, § 4(1)(C), struck out '', within one hundred and twenty days after publication of the notice specified in this subsection,'' after ''broadcasting entity may'' and substituted ''Librarian of Congress'' for ''Copyright Royalty Tribunal'' wherever appearing.

Subsec. (b)(2). Pub. L. 103–198, § 4(1)(D), substituted ''Librarian of Congress'' for ''Tribunal''.

Subsec. (b)(3). Pub. L. 103–198, § 4(1)(E)(ii), (iii), in second sentence, substituted ''copyright arbitration royalty panel'' for ''Copyright Royalty Tribunal'' and ''paragraph (2)'' for ''clause (2) of this subsection'', and in last sentence, substituted ''Librarian of Congress'' for ''Copyright Royalty Tribunal''.

Pub. L. 103–198, § 4(1)(E)(i), substituted first sentence for former first sentence which read as follows: ''Within six months, but not earlier than one hundred and twenty days, from the date of publication of the notice specified in this subsection the Copyright Royalty Tribunal shall make a determination and publish in the Federal Register a schedule of rates and terms which, subject to clause (2) of this subsection, shall be binding on all owners of copyright in works specified by this subsection and public broadcasting entities, regardless of whether or not such copyright owners and public broadcasting entities have submitted proposals to the Tribunal.''

Subsec. (b)(4). Pub. L. 103–198, § 4(1)(F), struck out par. (4) which read as follows: ''With respect to the period beginning on the effective date of this title and ending on the date of publication of such rates and terms, this title shall not afford to owners of copyright or public broadcasting entities any greater or lesser rights with respect to the activities specified in subsection (d) as applied to works specified in this subsection than those afforded under the law in effect on December 31, 1977, as held applicable and construed by a court in an action brought under this title.''

Subsec. (c). Pub. L. 103–198, § 4(2), substituted ''1997'' for ''1982'' and ''Librarian of Congress'' for ''Copyright Royalty Tribunal''.

Subsec. (d). Pub. L. 103–198, § 4(3), in introductory provisions, struck out ''to the transitional provisions of subsection (b)(4), and'' after ''Subject'' and substituted ''a copyright arbitration royalty panel'' for ''the Copyright Royalty Tribunal'', and in pars. (2) and (3), substituted ''paragraph'' for ''clause'' wherever appearing.

Subsec. (g). Pub. L. 103–198, § 4(4), substituted ''paragraph'' for ''clause''.

EFFECTIVE DATE OF 2006 AMENDMENT

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

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–419 effective 6 months after Nov. 30, 2004, subject to transition provisions, see section 6 of Pub. L. 108–419, set out as an Effective Date; Transition Provisions note under section 801 of this title.

EFFECTIVE DATE

Section effective Oct. 19, 1976, see section 102 of Pub. L. 94–553, set out as a note preceding section 101 of this title.

§ 119. Limitations on exclusive rights: Secondary transmissions of superstations and network stations for private home viewing

(a) SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS.—

(1) SUPERSTATIONS.—Subject to the provisions of paragraphs (5), (6), and (8) of this subsection and section 114(d), secondary transmissions of a performance or display of a work embodied in a primary transmission made by a superstation shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing or for viewing in a commercial establishment, with regard to secondary transmissions the satellite carrier is in compliance with the rules, regulations, or authorizations of the Federal Communications Commission governing the carriage of television broadcast station signals, and the carrier makes a direct or indirect charge for each retransmission service to each subscriber receiving the secondary transmission or to a distributor that has contracted with the carrier for direct or indirect delivery of the secondary transmission to the public for private home viewing or for viewing in a commercial establishment.

(2) NETWORK STATIONS.—

(A) IN GENERAL.—Subject to the provisions of subparagraphs (B) and (C) of this paragraph and paragraphs (5), (6), (7), and (8) of this subsection and section 114(d), secondary transmissions of a performance or display of a work embodied in a primary transmission made by a network station shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, with regard to secondary transmissions the satellite carrier is in compliance with the rules, regulations, or authorizations of the Federal Communications Commission governing the carriage of television broadcast station signals, and the carrier makes a direct or indirect charge for such retransmission service to each subscriber receiving the secondary transmission.

(B) SECONDARY TRANSMISSIONS TO UNSERVED HOUSEHOLDS.—