

phonorecords, and is aimed at solving problems that have arisen under the present statute. Since the United States Customs Service is often in no position to make determinations as to whether particular articles are "piratical," section 603(b) would permit the Customs regulations to require the person seeking exclusion either to obtain a court order enjoining importation, or to furnish proof of his claim and to post bond.

REFERENCES IN TEXT

The customs revenue laws, referred to in subsec. (c), are classified generally to Title 19, Customs Duties.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104-153 substituted a period at end for "; however, the articles may be returned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury that the importer had no reasonable grounds for believing that his or her acts constituted a violation of law."

CHAPTER 7—COPYRIGHT OFFICE

- Sec.
701. The Copyright Office: General responsibilities and organization.
702. Copyright Office regulations.
703. Effective date of actions in Copyright Office.
704. Retention and disposition of articles deposited in Copyright Office.
705. Copyright Office records: Preparation, maintenance, public inspection, and searching.
706. Copies of Copyright Office records.
707. Copyright Office forms and publications.
708. Copyright Office fees.
709. Delay in delivery caused by disruption of postal or other services.
710. Reproductions¹ for use of the blind and physically handicapped: Voluntary licensing forms and procedures.

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94-1476

Chapter 7 entitled "Copyright Office," sets forth the administrative and housekeeping provisions of the bill.

Administrative Procedure Act. Under an amendment to section 701 adopted by the Committee, the Copyright Office is made fully subject to the Administrative Procedure Act [5 U.S.C. 551 et seq. and 701 et seq.] with one exception: under section 706(b), reproduction and distribution of copyright deposit copies would be made under the Freedom of Information Act [5 U.S.C. 552] only to the extent permitted by the Copyright Office regulations.

Retention and Disposition of Deposited Articles. A recurring problem in the administration of the copyright law has been the need to reconcile the storage limitations of the Copyright Office with the continued value of deposits in identifying copyrighted works. Aside from its indisputable utility to future historians and scholars, a substantially complete collection of both published and unpublished deposits, other than those selected by the Library of Congress, would avoid the many difficulties encountered when copies needed for identification in connection with litigation or other purposes have been destroyed. The basic policy behind section 704 is that copyright deposits should be retained as long as possible, but that the Register of Copyrights and the Librarian of Congress should be empowered to dispose of them under appropriate safeguards when they decide that it has become necessary to do so.

Under subsection (a) of section 704, any copy, phonorecord, or identifying material deposited for registration, whether registered or not, becomes "the property of the United States Government." This means that

the copyright owner or person who made the deposit cannot demand its return as a matter of right, even in rejection cases, although the provisions of section 407 and 408 are flexible enough to allow for special arrangements in exceptional cases. On the other hand, Government ownership of deposited articles under section 704(a) carries with it no privileges under the copyright itself; use of a deposited article in violation of the copyright owner's exclusive rights would be infringement.

With respect to published works, section 704(b) makes all deposits available to the Library of Congress "for its collections, or for exchanges or transfer to any other library"; where the work is unpublished, the Library is authorized to select any deposit for its own collections or for transfer to the National Archives of the United States or to a Federal records center.

Motion picture producers have expressed some concern lest the right to transfer copies of works, such as motion pictures, that have been published under rental, lease, or loan arrangements, might lead to abuse. However, the Library of Congress has not knowingly transferred works of this sort to other libraries in the past, and there is no reason to expect it to do so in the future.

The Committee added a new subsection (c) to section 704, under which the Register is authorized to make microfilm or other record copies of copyright deposits before transferring or otherwise disposing of them.

For deposits not selected by the Library, subsection (d) provides that they, or "identifying portions or reproductions of them," are to be retained under Copyright Office control "for the longest period considered practicable and desirable" by the Register and the Librarian. When and if they ultimately decide that retention of certain deposited articles is no longer "practicable and desirable," the Register and Librarian have joint discretion to order their "destruction or other disposition." Because of the unique value and irreplaceable nature of unpublished deposits, the subsection prohibits their intentional destruction during their copyright term, unless a facsimile reproduction has been made.

Subsection (e) of section 704 establishes a new procedure under which a copyright owner can request retention of deposited material for the full term of copyright. The Register of Copyrights is authorized to issue regulations prescribing the fees for this service and the "conditions under which such requests are to be made and granted."

Catalog of Copyright Entries. Section 707(a) of the bill retains the present statute's basis requirement that the Register compile and publish catalogs of all copyright registrations at periodic intervals, but provides for "discretion to determine, on the basis of practicability and usefulness the form and frequency of publication of each particular part". This provision will in no way diminish the utility or value of the present catalogs, and the flexibility of approach, coupled with use of the new mechanical and electronic devices now becoming available, will avoid waste and result in a better product.

Copyright Office Fees. The schedule of fees set out in section 708 reflects a general increase in the fees of the Copyright Office from those established by the Congress in 1965. The basic fees are \$10 for registration, \$6 for renewal registration, \$10 for recordation of documents and \$10 per hour for searching. The section also contains new fee provisions needed because of new requirements or services established under the bill, and subsection (a)(11) authorizes the Register to fix additional fees, on the "basis of the cost of providing the service," "for any other special services requiring a substantial amount of time or expense." Subsection (b) makes clear that, except for the possibility of waivers in "occasional or isolated cases involving relatively small amounts," the Register is to charge fees for services rendered to other Government agencies.

Postal Interruptions. Section 709 authorizes the Register of Copyrights to issue regulation to permit the acceptance by the Copyright Office of documents which

¹ So in original. Does not conform to section catchline.

are delivered after the close of the prescribed period if the delay was caused by a general disruption or suspension of postal or other transportation or communications services.

Reproductions for the Blind and Handicapped. Section 710 directs the Register of Copyrights to establish by regulation forms and procedures by which the copyright owners of certain categories of works may voluntarily grant to the Library of Congress a license to reproduce and distribute copies or phonorecords of the work solely for the use of the blind and physically handicapped.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 908, 912 of this title.

§ 701. The Copyright Office: General responsibilities and organization

(a) All administrative functions and duties under this title, except as otherwise specified, are the responsibility of the Register of Copyrights as director of the Copyright Office of the Library of Congress. The Register of Copyrights, together with the subordinate officers and employees of the Copyright Office, shall be appointed by the Librarian of Congress, and shall act under the Librarian's general direction and supervision.

(b) The Register of Copyrights shall adopt a seal to be used on and after January 1, 1978, to authenticate all certified documents issued by the Copyright Office.

(c) The Register of Copyrights shall make an annual report to the Librarian of Congress of the work and accomplishments of the Copyright Office during the previous fiscal year. The annual report of the Register of Copyrights shall be published separately and as a part of the annual report of the Librarian of Congress.

(d) Except as provided by section 706(b) and the regulations issued thereunder, all actions taken by the Register of Copyrights under this title are subject to the provisions of the Administrative Procedure Act of June 11, 1946, as amended (c. 324, 60 Stat. 237, title 5, United States Code, Chapter 5, Subchapter II and Chapter 7).

(e) The Register of Copyrights shall be compensated at the rate of pay in effect for level IV of the Executive Schedule under section 5315 of title 5. The Librarian of Congress shall establish not more than four positions for Associate Registers of Copyrights, in accordance with the recommendations of the Register of Copyrights. The Librarian shall make appointments to such positions after consultation with the Register of Copyrights. Each Associate Register of Copyrights shall be paid at a rate not to exceed the maximum annual rate of basic pay payable for GS-18 of the General Schedule under section 5332 of title 5.

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2591; Pub. L. 101-319, § 2(b), July 3, 1990, 104 Stat. 290.)

REFERENCES IN TEXT

The Administrative Procedure Act of June 11, 1946, referred to in subsec. (d), was repealed and the provisions thereof were reenacted as subchapter II of chapter 5, and chapter 7, of Title 5, Government Organization and Employees, by Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 278.

AMENDMENTS

1990—Subsec. (e). Pub. L. 101-319 added subsec. (e).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5 of Pub. L. 101-319 provided that:

“(a) EFFECTIVE DATE.—The amendments made by this Act [amending this section and section 802 of this title and sections 5315 and 5316 of Title 5, Government Organization and Employees, and enacting provisions set out as a note under section 101 of this title] shall take effect on the date of the enactment of this Act [July 3, 1990].

“(b) BUDGET ACT.—Any new spending authority (within the meaning of section 401 of the Congressional Budget Act of 1974 [2 U.S.C. 651]) which is provided under this Act shall be effective for any fiscal year only to the extent or in such amounts as are provided in appropriations Acts.”

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

NATIONAL COMMISSION ON NEW TECHNOLOGICAL USES OF COPYRIGHTED WORKS

Pub. L. 93-573, title II, §§ 201-208, Dec. 31, 1974, 88 Stat. 1873-1875, as amended by Pub. L. 94-314, June 21, 1976, 90 Stat. 692; Pub. L. 95-146, Oct. 28, 1977, 91 Stat. 1226, created in the Library of Congress a National Commission on New Technological Uses of Copyrighted Works to study and compile data on (1) the reproduction and use of copyrighted works of authorship (A) in conjunction with automatic systems capable of storing, processing, retrieving, and transferring information, and (B) by various forms of machine reproduction, not including reproduction by or at the request of instructors for use in face-to-face teaching activities, and (2) the creation of new works by the application or intervention of such automatic systems or machine reproduction, required the Commission to submit a final report to the President and Congress on or before July 31, 1978, and provided that the Commission terminated the sixtieth day after submitting the final report.

FEDERAL RULES OF CIVIL PROCEDURE

Proof of official record, see rule 44, Title 28, Appendix, Judiciary and Judicial Procedure.

FEDERAL RULES OF EVIDENCE

Hearsay exception, public records and reports, see rule 803, Title 28, Appendix, Judiciary and Judicial Procedure.

Self-authentication, domestic public documents under seal, see rule 902.

CROSS REFERENCES

Authenticated copies of records and papers of department or agency admissible, see section 1733 of Title 28, Judiciary and Judicial Procedure.

§ 702. Copyright Office regulations

The Register of Copyrights is authorized to establish regulations not inconsistent with law for the administration of the functions and duties made the responsibility of the Register under this title. All regulations established by the Register under this title are subject to the approval of the Librarian of Congress.

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2591.)

§ 703. Effective date of actions in Copyright Office

In any case in which time limits are prescribed under this title for the performance of an action in the Copyright Office, 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.

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2591.)

§ 704. Retention and disposition of articles deposited in Copyright Office

(a) Upon their deposit in the Copyright Office under sections 407 and 408, all copies, phonorecords, and identifying material, including those deposited in connection with claims that have been refused registration, are the property of the United States Government.

(b) In the case of published works, all copies, phonorecords, and identifying material deposited are available to the Library of Congress for its collections, or for exchange or transfer to any other library. In the case of unpublished works, the Library is entitled, under regulations that the Register of Copyrights shall prescribe, to select any deposits for its collections or for transfer to the National Archives of the United States or to a Federal records center, as defined in section 2901 of title 44.

(c) The Register of Copyrights is authorized, for specific or general categories of works, to make a facsimile reproduction of all or any part of the material deposited under section 408, and to make such reproduction a part of the Copyright Office records of the registration, before transferring such material to the Library of Congress as provided by subsection (b), or before destroying or otherwise disposing of such material as provided by subsection (d).

(d) Deposits not selected by the Library under subsection (b), or identifying portions or reproductions of them, shall be retained under the control of the Copyright Office, including retention in Government storage facilities, for the longest period considered practicable and desirable by the Register of Copyrights and the Librarian of Congress. After that period it is within the joint discretion of the Register and the Librarian to order their destruction or other disposition; but, in the case of unpublished works, no deposit shall be knowingly or intentionally destroyed or otherwise disposed of during its term of copyright unless a facsimile reproduction of the entire deposit has been made a part of the Copyright Office records as provided by subsection (c).

(e) The depositor of copies, phonorecords, or identifying material under section 408, or the copyright owner of record, may request retention, under the control of the Copyright Office, of one or more of such articles for the full term of copyright in the work. The Register of Copyrights shall prescribe, by regulation, the conditions under which such requests are to be made and granted, and shall fix the fee to be charged under section 708(a)(10) if the request is granted.

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2591; Pub. L. 101-318, § 2(c), July 3, 1990, 104 Stat. 288.)

AMENDMENTS

1990—Subsec. (e). Pub. L. 101-318 substituted “708(a)(10)” for “708(a)(11)”.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-318 effective 6 months after July 3, 1990, and applicable to (A) claims to original, supplementary, and renewal copyright received for registration, and to items received for recordation in 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, and with claims to original, supplementary, and renewal copyright received for registration and items received for recordation in acceptable form in Copyright Office before such effective date, and requests for services which are rendered before such effective date, to be governed by section 708 of this title as in effect before such effective date, see section 2(d) of Pub. L. 101-318, set out as a note under section 708 of this title.

§ 705. Copyright Office records: Preparation, maintenance, public inspection, and searching

(a) The Register of Copyrights shall provide and keep in the Copyright Office records of all deposits, registrations, recordations, and other actions taken under this title, and shall prepare indexes of all such records.

(b) Such records and indexes, as well as the articles deposited in connection with completed copyright registrations and retained under the control of the Copyright Office, shall be open to public inspection.

(c) Upon request and payment of the fee specified by section 708, the Copyright Office shall make a search of its public records, indexes, and deposits, and shall furnish a report of the information they disclose with respect to any particular deposits, registrations, or recorded documents.

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2592.)

FEDERAL RULES OF EVIDENCE

Hearsay exception, public records and reports, see rule 803, Title 28, Appendix, Judiciary and Judicial Procedure.

CROSS REFERENCES

Certificate of registration under seal as prima facie evidence of facts stated therein, see section 410 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 104A, 708 of this title.

§ 706. Copies of Copyright Office records

(a) Copies may be made of any public records or indexes of the Copyright Office; additional certificates of copyright registration and copies of any public records or indexes may be furnished upon request and payment of the fees specified by section 708.

(b) Copies or reproductions of deposited articles retained under the control of the Copyright Office shall be authorized or furnished only

under the conditions specified by the Copyright Office regulations.

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2592.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 701, 708 of this title.

§ 707. Copyright Office forms and publications

(a) CATALOG OF COPYRIGHT ENTRIES.—The Register of Copyrights shall compile and publish at periodic intervals catalogs of all copyright registrations. These catalogs shall be divided into parts in accordance with the various classes of works, and the Register has discretion to determine, on the basis of practicability and usefulness, the form and frequency of publication of each particular part.

(b) OTHER PUBLICATIONS.—The Register shall furnish, free of charge upon request, application forms for copyright registration and general informational material in connection with the functions of the Copyright Office. The Register also has the authority to publish compilations of information, bibliographies, and other material he or she considers to be of value to the public.

(c) DISTRIBUTION OF PUBLICATIONS.—All publications of the Copyright Office shall be furnished to depository libraries as specified under section 1905 of title 44, and, aside from those furnished free of charge, shall be offered for sale to the public at prices based on the cost of reproduction and distribution.

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2592.)

§ 708. Copyright Office fees

(a) The following fees shall be paid to the Register of Copyrights:

(1) on filing each application under section 408 for registration of a copyright claim or for a supplementary registration, including the issuance of a certificate of registration if registration is made, \$20;

(2) on filing each application for registration of a claim for renewal of a subsisting copyright under section 304(a), including the issuance of a certificate of registration if registration is made, \$20;

(3) for the issuance of a receipt for a deposit under section 407, \$4;

(4) for the recordation, as provided by section 205, of a transfer of copyright ownership or other document covering not more than one title, \$20; for additional titles, \$10 for each group of not more than 10 titles;

(5) for the filing, under section 115(b), of a notice of intention to obtain a compulsory license, \$12;

(6) for the recordation, under section 302(c), of a statement revealing the identity of an author of an anonymous or pseudonymous work, or for the recordation, under section 302(d), of a statement relating to the death of an author, \$20 for a document covering not more than one title; for each additional title, \$2;

(7) for the issuance, under section 706, of an additional certificate of registration, \$8;

(8) for the issuance of any other certification, \$20 for each hour or fraction of an hour consumed with respect thereto;

(9) for the making and reporting of a search as provided by section 705, and for any related services, \$20 for each hour or fraction of an hour consumed with respect thereto; and

(10) 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.

The Register of Copyrights is authorized to fix the fees for preparing copies of Copyright Office records, whether or not such copies are certified, on the basis of the cost of such preparation.

(b) In calendar year 1995 and in each subsequent fifth calendar year, the Register of Copyrights, by regulation, may increase the fees specified in subsection (a) by the percent change in the annual average, for the preceding calendar year, of the Consumer Price Index published by the Bureau of Labor Statistics, over the annual average of the Consumer Price Index for the fifth calendar year preceding the calendar year in which such increase is authorized.

(c) The fees prescribed by or under this section are applicable to the United States Government and any of its agencies, employees, or officers, but the Register of Copyrights has discretion to waive the requirement of this subsection in occasional or isolated cases involving relatively small amounts.

(d) All fees received under this section shall be deposited by the Register of Copyrights in the Treasury of the United States and shall be credited to the appropriation for necessary expenses of the Copyright Office. The Register may, in accordance with regulations that he or she shall prescribe, refund any sum paid by mistake or in excess of the fee required by this section.

(Pub. L. 94-553, title I, § 101, Oct. 19, 1976, 90 Stat. 2593; Pub. L. 95-94, title IV, § 406(b), Aug. 5, 1977, 91 Stat. 682; Pub. L. 97-366, § 1, Oct. 25, 1982, 96 Stat. 1759; Pub. L. 101-318, § 2(a), (b), July 3, 1990, 104 Stat. 287, 288; Pub. L. 102-307, title I, § 102(f), June 26, 1992, 106 Stat. 266.)

AMENDMENTS

1992—Subsec. (a)(2). Pub. L. 102-307 struck out “in its first term” after “copyright” and substituted “\$20” for “\$12”.

1990—Subsec. (a). Pub. L. 101-318, § 2(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “The following fees shall be paid to the Register of Copyrights:

“(1) 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, \$10;

“(2) 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, \$6;

“(3) for the issuance of a receipt for a deposit under section 407, \$2;

“(4) for the recordation, as provided by section 205, of a transfer of copyright ownership or other document of six pages or less, covering no more than one title, \$10; for each page over six and each title over one, 50 cents additional;

“(5) for the filing, under section 115(b), of a notice of intention to make phonorecords, \$6;

“(6) for the recordation, under section 302(c), of a statement revealing the identity of an author of an

anonymous or pseudonymous work, or for the recodation, under section 302(d), of a statement relating to the death of an author, \$10 for a document of six pages or less, covering no more than one title; for each page over six and for each title over one, \$1 additional;

“(7) for the issuance, under section 601, of an import statement, \$3;

“(8) for the issuance, under section 706, of an additional certificate of registration, \$4;

“(9) for the issuance of any other certification, \$4; the Register of Copyrights has discretion, on the basis of their cost, to fix the fees for preparing copies of Copyright Office records, whether they are to be certified or not;

“(10) for the making and reporting of a search as provided by section 705, and for any related services, \$10 for each hour or fraction of an hour consumed;

“(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 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, see section 102(g) of Pub. L. 102-307, 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 recodation 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 recodation 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 104A, 205, 407, 408, 704, 705, 706, 908 of this title.

§ 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. Reproduction for use of the blind and physically handicapped: Voluntary licensing forms and procedures

The Register of Copyrights shall, after consultation with the Chief of the Division for the Blind and Physically Handicapped and other appropriate officials of the Library of Congress, establish by regulation standardized forms and procedures by which, at the time applications covering certain specified categories of nondramatic literary works are submitted for registration under section 408 of this title, the copyright owner may voluntarily grant to the Library of Congress a license to reproduce the copyrighted work by means of Braille or similar tactile symbols, or by fixation of a reading of the work in a phonorecord, or both, and to distribute the resulting copies or phonorecords solely for the use of the blind and physically handicapped and under limited conditions to be specified in the standardized forms.

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 121 of this title.

**CHAPTER 8—COPYRIGHT ARBITRATION
ROYALTY PANELS**

Sec.	
801.	Copyright arbitration royalty panels: establishment and purpose. ¹
802.	Membership and proceedings of copyright arbitration royalty panels.
803.	Institution and conclusion of proceedings.

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94-1476

Chapter 8 [this chapter] establishes a Copyright Royalty Commission for the purpose of periodically reviewing and adjusting statutory royalty rates for use of copyrighted materials pursuant to compulsory licenses provided in sections 111 (secondary transmissions by cable systems), 115 (mechanical royalties) and 116 (jukebox) of the bill. In addition, the Commission will make determinations as to reasonable terms and rates of royalty payments as provided in section 118 (public broadcasting), and to resolve disputes over the distribution of royalties paid pursuant to the statutory licenses in sections 111 and 116.

The Committee recognizes that the industries affected by the royalty rates over which the Commission has jurisdiction are very different, and it is therefore expected that any adjustment of a rate by the Commission shall be based on the economic conditions peculiar to the industries affected by that rate. Likewise, the Committee recognizes the fact that the cable television industry is a developing industry in transition, whereas the recording and jukebox industries are long-established. Therefore, the Committee has chosen periods of different lengths in which the Commission is to review the rates affecting those industries. Rates for retransmission of copyrighted works by cable television systems will be reviewed in 1980 and each subsequent fifth year. Rates established for mechanical reproduction will be reviewed in 1980, 1987, and in each subsequent 10th year. Rates for performance by jukebox will be reviewed in 1980, and in each subsequent 10th year. Rates and terms under section 118 will be reviewed in 1982 and in each subsequent fifth year. The Committee does not intend that rate changes, whether up or down, should necessarily be made as the result of such periodic reviews.

The Committee has chosen to stagger the times for review of the various rates established under the bill so as to balance the workload of the Commission. Cable and copyright owners agreed to a set of standards for the adjustment of rates which the Committee in large measure has accepted. No specific standards governing the establishment or adjustment of rates by the Commission, other than rates for cable transmissions, have been detailed in the legislation, because the Committee did not wish to limit the factors that the Commission might consider in a world of constantly changing economics and technology. However, it is anticipated that the Commission will consider the following objectives in determining a reasonable rate under sections 115 and 116:

- (1) The rate should maximize the availability of diverse creative works to the public.
- (2) The rate should afford the copyright owner a fair income, or if the owner is not a person, a fair profit, under existing economic conditions, in order to encourage creative activity.

¹ So in original. Does not conform to section catchline.

(3) The rate should not jeopardize the ability of the copyright user—

(a) to earn a fair income, or if the user is not a person, a fair profit, under existing economic conditions, and

(b) to charge the consumer a reasonable price for the product.

(4) The rate should 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.

(5) The rate should minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.

Similar considerations are noted in connection with Commission review of rates and terms for public broadcasting in the discussion of section 118, above.

Structure of the Copyright Royalty Commission. The Senate bill provides that, upon certifying the existence of a controversy concerning distribution of statutory royalty fees or upon periodic petition for review of statutory royalty rates by an interested party, the Register of Copyrights, is to convene a three member panel to constitute a Copyright Royalty Tribunal for the purpose of resolving the controversy or reviewing the rates.

The Senate bill provides that the Tribunal be appointed by the Register from among the membership of the American Arbitration Association or similar organization. The Tribunal is to exist within the Library of Congress.

Due to constitutional concern over the provision of the Senate bill that the Register of Copyrights, an employee of the Legislative Branch appoint the members of the Tribunal, the Committee adopted an amendment providing for direct appointment of three individuals by the President. The name of the Tribunal was changed to the Copyright Royalty Commission.

Although under the Committee Amendment, the Commission is to be an independent authority, it is to receive administrative support from the Library of Congress.

The Commission is authorized to appoint a staff to assist it in carrying out its responsibilities. However, it is expected that the staff will consist only of sufficient clerical personnel to provide one full time secretary for each member and one or two additional employees to meet the clerical needs of the entire Commission. Members of the Commission are expected to perform all professional responsibilities themselves, except where it is necessary to employ outside experts on a consulting basis. Assistance in matters of administration, such as payroll and budgeting, will be available from the Library of Congress.

The Committee expects that the President shall appoint members of the Commission from among persons who have demonstrated professional competence in the field of copyright policy.

Adjustment of Cable Television Royalty Rates. Section 801(b)(2) authorizes the Commission to make determinations concerning the adjustment of the copyright royalty rates contained in Section 111. Such determinations are to be made solely in accordance with the provisions contained in Section 801(b)(2)(A), (B), (C), and (D). The time periods when such adjustments may be made are set forth in Section 804.

Under Section 801(b)(2)(A), the Commission may adjust the rates established in Section 111(d)(2)(B) [section 111(d)(2)(B) of this title] to reflect (1) national monetary inflation or deflation, or (2) changes in the average rates charged cable subscribers for the basic service of providing secondary transmission to maintain the real constant dollar level of the royalty fee per subscriber which existed as of the date of enactment of this legislation. The purpose of this provision is to assure that the value of the royalty fees paid by cable systems is not eroded by changes in the value of the

dollar or changes in average rates charged cable subscribers. The Committee recognizes, however, that no royalty fees will be paid by cable systems until the legislation is effective on January 1, 1978, and accordingly that the royalty fee per subscriber base calculated at the time of enactment must necessarily constitute an estimated value. In the Committee's view, and based on projections supplied by the interested parties, the total royalties produced under the fee schedule at the time of enactment should approximate \$8.7 million.

In adjusting the fee the Copyright Royalty Commission is limited to changes reflecting national monetary inflation or deflation or changes in the average rates charged cable subscribers for the basic service of providing secondary transmissions. Concern was expressed during the hearings on the revision legislation that cable systems may reduce the basic charge for the retransmission of broadcast signals as an inducement for individuals to become subscribers to additional services (e.g., pay-cable). Such a shift of revenue sources would have the effect of understating basic subscriber revenues and would deny copyright owners the level of royalty fees for secondary transmission contemplated by this legislation. Accordingly, such shifts of revenue sources, if they do occur, should be taken into account by the Commission in adjusting the basic rates.

There are also two limitations on the power of the Commission to adjust rates under Section 801(b)(2)(A). The first provides that no change in the rates established by Section 111(d)(2)(B) is permitted if the average rates charged cable system subscribers for the basic service of providing secondary transmissions exceeds the change in national monetary inflation. Thus, in the situation where subscriber rates during a particular adjustment period increase 20 percent but national monetary inflation increases only 10 percent no change or reduction in the rates is permitted.

The second limitation provides that no increase in the royalty fee shall be permitted based on any reduction in the average number of distant signal equivalents per subscriber. The purpose of this limitation is to make clear that if the average number of distant signals carried by a cable system is reduced in the future (and thereby the average number of distant signal equivalents per subscriber) no increase in the royalty fee to offset this reduction is permitted. The limitation does not, however, preclude any change in the rates that may be required to maintain the real constant dollar level of royalty fees per subscriber because of national monetary inflation or deflation or changes in the average rates charged subscribers for the basic service of providing secondary transmissions.

The Commission may also consider, in its discretion, any other factor relating to the maintenance of the real constant dollar level of royalty fees per subscriber and need not increase the royalty rates to the full extent, provided it can be demonstrated that the cable industry has been restrained by subscriber rates regulating authorities from increasing the rates for the basic service of providing secondary transmission.

Increase in the Number of Distant Signals. Under Section 801(b)(2)(B), the Commission may adjust the rates established in Section 111(d)(2)(B) if the rules and regulations of the FCC are amended at any time after April 15, 1976, to permit the carriage of additional distant signals. In this event the Commission may ensure that the rates for the additional distant signal equivalents resulting from such carriage are reasonable in light of the changes effected by the amendment to the FCC rules and regulations.

The purpose of this provision is to give the Commission broad discretion to reconsider the royalty rates applicable to (but only to) the carriage of any additional distant signals permitted under the rules and regulations of the FCC after April 15, 1976. The present FCC rules limiting the number of distant signals that may be carried by cable systems have the effect of protecting copyright owners by restricting the amount of television broadcast programming retransmitted into distant markets. If these rules are changed in the fu-

ture to allow additional cable carriage of television programs it is the Committee's judgment that the royalty rates paid by cable systems should be adjusted to reflect such changes. At the same time, Section 801(b)(2)(B) makes clear that the royalty rates may not be adjusted with respect to (1) distant signals permitted under FCC rules and regulations in effect on April 15, 1976; (2) distant signals of the same type (i.e., independent, network or noncommercial educational) substituted for such permitted signals; or (3) distant television broadcast signals first carried after April 15, 1976, pursuant to an individual waiver of the FCC rules and regulations as such rules and regulations were in effect on April 15, 1976. Royalty adjustments with respect to any distant signal equivalent or any fraction thereof represented by the carriage of such distant signals may be made pursuant to Section 801(b)(2)(A).

In determining the reasonableness of rates under this provision, the Commission should consider, among other factors, the economic impact that such adjustment may have on copyright owners and users, including broadcast stations, and the effect of such additional distant signal equivalents, if any, on local broadcasters' ability to serve the public.

Change in the Syndicated and Sports Program Exclusivity Rules. Section 801(b)(2)(C) provides that the Commission may adjust the rates established in Section 111(d)(2)(B) in the event of any change in the FCC rules and regulations with respect to syndicated and sports program exclusivity after April 15, 1976. In this event the rates may be adjusted to assure that such rates are reasonable in light of the changes to such rules and regulations. Any such adjustment, however, shall only apply to the affected television broadcast signals carried on those systems affected by change. For this purpose, the Commission may exercise its discretion to adopt royalty schedules for particular classes of cable systems.

The purpose of this subclause is similar to that of Section 801(b)(2)(B). The syndicated and sports program exclusivity rules of the FCC have the effect of protecting copyright owners by restricting the cable carriage of certain distant television programming. If these rules are changed in the future to relax or increase the exclusivity restrictions, it is the Committee's judgment that the royalty rates paid by cable systems should be adjusted to reflect such changes.

Adjustment of the Small System Royalty Fees. Section 801(b)(2)(D) provides that the small system gross receipts limitations established in Section 111(d)(2)(C) and (D) may be adjusted to reflect national monetary inflation or deflation or changes in the average rates charged cable system subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar value of the exemptions provided therein. That is, the Commission is directed to look at these two factors to insure that systems of the same size as are now entitled to the exemptions provided for in sections 111(d)(2)(C) and (D) continued to be so entitled. For the purposes of section 111(d)(2)(C) references to the gross receipt limitations of that section mean all of the dollar amount specified therein.

Distribution of Royalty Fees. Section 801(b)(3) provides that the Commission is authorized to distribute the royalty fees deposited with the Register of Copyrights under Sections 111 and 116 and to determine the distribution of such fees where a controversy exists.

Institution and Conclusion of Proceedings. Section 804 establishes the time periods during which the Commission shall institute and conclude proceedings for the adjustment or distribution of royalty fees.

Periodic Adjustment of Certain Rates. Under Section 804(a) proceedings to adjust the royalty rates specified in Sections 115 (mechanical royalty) and 116 (juke-box) and proceedings under Section 801(b)(2)(A) and (D) (cable television rates for certain purposes), are instituted in the following periodic time intervals:

(1) On January 1, 1980, the Chairman of the Commission is required to publish in the Federal Register notice of the commencement of proceedings to adjust all the rates referred to in Section 804(a).

(2) Thereafter, during the calendar years specified below, any owner or user of a copyrighted work whose royalty rates are specified in the legislation, or by a rate established by the Commission, may file a petition with the Commission declaring that the petitioner requests an adjustment of the rate. If the Commission determines that the applicant has a significant interest in the royalty rate for which adjustment is requested, the Chairman of the Commission shall cause notice to be published in the Federal Register of this determination together with notice of the commencement of proceedings to adjust the rate.

(A) In proceedings to adjust the cable television rates for certain purposes under Sections 801(b)(2)(A) and (D), such petitions may be filed during 1985 and in each subsequent fifth calendar year.

(B) In proceedings under Section 801(b)(1) to adjust the mechanical royalty rate as provided in Section 115, such petitions may be filed in 1987 and in each subsequent tenth year.

(C) In proceedings under Section 801(b)(1) to adjust the jukebox royalty rate as provided in Section 116, such petitions may be filed in 1990 and in each subsequent tenth calendar year.

Immediate Review of Cable Television Rates for Certain Purposes. Section 804(b) provides that following an event described in Section 801(b)(2)(B) or (C), any owner or user of a copyrighted work whose royalty rates are specified by Section 111, or by a rate established by the Commission, may, within 12 months, file a petition requesting an adjustment of the rates. In this event the Commission is required to proceed as in Section 804(a)(2). Any change in the royalty rates made by the Commission pursuant to this provision may be reconsidered in 1980, 1985, and each fifth calendar year thereafter in accordance with the provisions in Section 801(b)(2)(B) or (C).

The purpose of this provision is to reflect the Committee's concern about any change in the rules and regulations of the FCC pertaining to cable carriage of distant signals or to syndicated or sports program exclusivity. The Committee believes that if these rules and regulations are revised, amended, or changed in any manner by the FCC, any owner or user of a copyrighted work should have an immediate right, exercisable for a 12 month period following the date such changes are finally effective, to request an adjustment of the royalty rates specified in Section 111. Further, it is the Committee's intent that any change made by the Commission pursuant to such a petition may be reviewed again in 1980, 1985, and each subsequent fifth calendar year, as the case may be, and under the standards established in Sections 801(b)(2)(B) and (C). It is also the Committee's intent that the ability to petition the Commission to adjust the rates pursuant to this subsection is not limited, following the first adjustment, to the subsequent five year periods specified, but may arise at any time as FCC rule changes described above take place.

Institution of Proceedings to Adjust Public Broadcasting Royalty Rates. Section 804(c) provides that the institution of proceedings under Section 801(b)(1) concerning the determination of reasonable terms and rates of royalty payments as provided in Section 118 shall proceed when and as provided in that section.

Institution of Proceedings To Distribute Royalty Fees. Section 804(d) provides that with respect to proceedings under Section 801(b)(3) concerning the distribution of royalty fees in certain circumstances under Section 111 or 116 the Chairman of the Commission shall, upon determination by the Commission that a controversy exists concerning such distribution, publish a notice of commencement of proceedings to distribute the royalty fees in the Federal Register.

Prompt Resolution of Proceedings. Section 804(e) provides that all proceedings instituted by the Commission shall be initiated without delay following publication of the notices specified in this section and that the Commission is required to render a final decision in any such proceeding within one year from the date of publication of the notice.

Judicial Review. The Senate bill provides that, following a final determination in any proceeding with respect to royalty rates, the Copyright Royalty Tribunal is to transmit its decision to the Senate and House of Representatives for review. Within 90 days of such transmittal either House of Congress may nullify the determination of the Tribunal by adoption of a resolution expressing disapproval of such determination. Judicial review of determinations of the Royalty Tribunal under the Senate bill is permitted only where: (1) The determination was procured by corruption, fraud, or undue means; (2) there was evident partiality or corruption in any of the members of the Tribunal; or (3) any member of the Tribunal was guilty of any misconduct by which the rights of any party were prejudiced.

The Committee concluded that determinations of the Copyright Royalty Commission were not appropriate subjects for regular review by Congress and that the provisions of the Senate bill providing for judicial review were far too restrictive. Therefore, it amended the Senate bill to eliminate automatic Congressional review and to broaden the scope of judicial review. The amended bill provides for the full scope of judicial review provided by Chapter 7 of the Administrative Procedure Act [5 U.S.C. 701 et seq.]. Congressional review of the activities of the Copyright Royalty Commission will occur as part of the oversight functions of the Judiciary Committees of the House of Representatives and the Senate. The oversight process will provide the Congress sufficient information to determine whether statutory changes are needed at some time in the future.

The expanded judicial review provided in the Committee amendment will permit much more detailed, thoughtful, and careful review of possibly arbitrary or capricious determinations of the Commission than can be provided by Congressional review.

AMENDMENTS

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."

EFFECTIVE DATE

Chapter effective Oct. 19, 1976, see section 102 of Pub. L. 94-533, set out as a note preceding section 101 of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 111, 114, 115, 118, 119, 912 of this title.

§ 801. Copyright arbitration royalty panels: Establishment and purpose

(a) **ESTABLISHMENT.**—The Librarian of Congress, upon the recommendation of the Register of Copyrights, is authorized to appoint and convene copyright arbitration royalty panels.

(b) **PURPOSES.**—Subject to the provisions of this chapter, the purposes of the copyright arbitration royalty panels shall be—

(1) to make determinations concerning the adjustment of reasonable copyright royalty rates as provided in sections 114, 115, and 116, and to make determinations as to reasonable

terms and rates of royalty payments as provided in section 118. The rates applicable under sections 114, 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 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 in 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 enactment of this Act: *Provided*, That 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 provided further*, That 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 arbitration royalty panels may consider all factors relating to the maintenance of such level of payments including, as an extenuating factor, whether the cable 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 insure that the rates for the additional distant signal equivalents resulting from such carriage are reasonable in the light of the changes effected by the amendment to such rules and regulations. In determining the reasonableness of rates proposed following an amendment of Federal Communications Commission rules and regulations, the copyright arbitration royalty panels shall consider, among other factors, the economic impact on copyright owners

and users: *Provided*, That no adjustment in royalty rates shall be made under this subclause with respect to any distant signal equivalent or fraction thereof represented by (i) carriage of any signal permitted under the rules and regulations of the Federal Communications Commission in effect on April 15, 1976, or the carriage of a signal of the same type (that is, independent, network, or noncommercial educational) substituted for such permitted signal, or (ii) a television broadcast signal first carried after April 15, 1976, pursuant to an individual waiver of the rules and regulations of the Federal Communications Commission, as such rules and regulations were in effect on April 15, 1976.

(C) In the event of any change in the rules and regulations of the Federal Communications Commission with respect to syndicated and sports program exclusivity after April 15, 1976, the rates established by section 111(d)(1)(B) may be adjusted to assure that such rates are reasonable in light of the changes to such rules and regulations, but any such adjustment shall apply only to the affected television broadcast signals carried on those systems affected by the change.

(D) The gross receipts limitations established by section 111(d)(1)(C) and (D) shall be adjusted to reflect national monetary inflation or deflation or changes in the average rates charged cable system subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar value of the exemption provided by such section; and the royalty rate specified therein shall not be subject to adjustment; and

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

(c) RULINGS.—The Librarian of Congress, upon the recommendation of the Register of Copyrights, may, before a copyright arbitration royalty panel is convened, make any necessary procedural or evidentiary rulings that would apply to the proceedings conducted by such panel.

(d) ADMINISTRATIVE SUPPORT OF COPYRIGHT ARBITRATION ROYALTY PANELS.—The Library of Congress, upon the recommendation of the Register of Copyrights, shall provide the copyright arbitration royalty panels with the necessary administrative services related to proceedings under this chapter.

(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.)

REFERENCES IN TEXT

The date of enactment of this Act, referred to in subsec. (b)(2)(A), is Oct. 19, 1976.

AMENDMENTS

1995—Subsec. (b)(1). Pub. L. 104-39 substituted “sections 114, 115, and 116” for “sections 115 and 116” in two places in introductory provisions.

1993—Pub. L. 103-198, §2(a)(1), amended section catchline generally. Prior to amendment, catchline read as follows: “Copyright Royalty Tribunal: Establishment and purpose”.

Subsec. (a). Pub. L. 103-198, §2(a)(2), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “There is hereby created an independent Copyright Royalty Tribunal in the legislative branch.”

Subsec. (b). Pub. L. 103-198, §2(a)(3)(A), (B), inserted heading and substituted “copyright arbitration royalty panels” for “Tribunal” in introductory provisions.

Subsec. (b)(2)(A), (B). Pub. L. 103-198, §2(a)(3)(C)(i), (ii), substituted “copyright arbitration royalty panels” for “Commission” in subpar. (A) and for “Copyright Royalty Tribunal” in subpar. (B).

Subsec. (b)(2)(D). Pub. L. 103-198, §2(a)(3)(C)(iii), inserted “and” after semicolon.

Subsec. (b)(3). Pub. L. 103-198, §2(a)(3)(D), substituted “119(b), and 1003,” for “and 119(b),” and struck out at end “In determining whether a return to a copyright owner under section 116 is fair, appropriate weight shall be given to—

“(i) the rates previously determined by the Tribunal to provide a fair return to the copyright owner, and

“(ii) the rates contained in any license negotiated pursuant to section 116A of this title; and”.

Subsec. (b)(4). Pub. L. 103-198, §2(a)(3)(E), struck out par. (4) which read as follows: “to distribute royalty payments deposited with the Register of Copyrights under section 1003, to determine the distribution of such payments, and to carry out its other responsibilities under chapter 10”.

Subsec. (c). Pub. L. 103-198, §2(a)(4), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “As soon as possible after the date of enactment of this Act, and no later than six months following such date, the President shall publish a notice announcing the initial appointments provided in section 802, and shall designate an order of seniority among the initially-appointed commissioners for purposes of section 802(b).”

Subsec. (d). Pub. L. 103-198, §2(a)(5), added subsec. (d). 1992—Subsec. (b)(4). Pub. L. 102-563 added par. (4).

1990—Subsec. (b)(2)(D). Pub. L. 101-318 substituted “111(d)(1)(C) and (D)” for “111(d)(2)(C) and (D)”.

1988—Subsec. (b). Pub. L. 100-568 inserted concluding provisions relating to determination of fairness of a return to a copyright owner under section 116.

Subsec. (b)(3). Pub. L. 100-667 substituted “, 116, and 119(b)” for “and 116”.

1986—Subsec. (b)(2)(A) to (C). Pub. L. 99-397, §2(c), substituted “section 111(d)(1)(B)” for “section 111(d)(2)(B)”.

Subsec. (d)(2)(D). Pub. L. 99-397, §2(d), which directed the amendment of subsec. (d)(2)(D) by substituting “section 111(d)(1)(C) and (D)” for “section 111(d)(2)(C) and (D)”, could not be executed because section did not contain a subsec. (d). See 1990 Amendment note above.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-39 effective 3 months after Nov. 1, 1995, see section 6 of Pub. L. 104-39, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 7 of Pub. L. 103-198 provided that:

“(a) IN GENERAL.—This Act [see Short Title of 1993 Amendment note set out under section 101 of this title] and the amendments made by this Act shall take effect on the date of the enactment of this Act [Dec. 17, 1993].

“(b) EFFECTIVENESS OF EXISTING RATES AND DISTRIBUTIONS.—All royalty rates and all determinations with respect to the proportionate division of compulsory license fees among copyright claimants, whether made

by the Copyright Royalty Tribunal, or by voluntary agreement, before the effective date set forth in subsection (a) shall remain in effect until modified by voluntary agreement or pursuant to the amendments made by this Act.

“(c) TRANSFER OF APPROPRIATIONS.—All unexpended balances of appropriations made to the Copyright Royalty Tribunal, as of the effective date of this Act, are transferred on such effective date to the Copyright Office for use by the Copyright Office for the purposes for which such appropriations were made.”

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-318 effective Aug. 27, 1986, see section 3(e)(1) of Pub. L. 101-318, set out as a note under section 111 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100-667 effective Jan. 1, 1989, see section 206 of Pub. L. 100-667, set out as an Effective Date note under section 119 of this title.

Amendment by Pub. L. 100-568 effective Mar. 1, 1989, with any cause of action arising under this title before such date being governed by provisions in effect when cause of action arose, see section 13 of Pub. L. 100-568, set out as a note under section 101 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Proof of official record, see rule 44, Title 28, Appendix, Judiciary and Judicial Procedure.

FEDERAL RULES OF EVIDENCE

Hearsay exception, public records and reports, see rule 803, Title 28, Appendix, Judiciary and Judicial Procedure.

Self-authentication, domestic public documents under seal, see rule 902.

CROSS REFERENCES

Authenticated copies of records and papers of department or agency admissible, see section 1733 of Title 28, Judiciary and Judicial Procedure.

Patents for designs, see section 171 et seq. of Title 35, Patents.

Trade-marks registrable on principal register, see section 1052 of Title 15, Commerce and Trade.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 104A, 114, 115, 802, 803 of this title; title 47 section 545.

§ 802. Membership and proceedings of copyright arbitration royalty panels

(a) COMPOSITION OF COPYRIGHT ARBITRATION ROYALTY PANELS.—A copyright arbitration royalty panel shall consist of 3 arbitrators selected by the Librarian of Congress pursuant to subsection (b).

(b) SELECTION OF ARBITRATION PANEL.—Not later than 10 days after publication of a notice in the Federal Register initiating an arbitration proceeding under section 803, and in accordance with procedures specified by the Register of Copyrights, the Librarian of Congress shall, upon the recommendation of the Register of Copyrights, select 2 arbitrators from lists provided by professional arbitration associations. Qualifications of the arbitrators shall include experience in conducting arbitration proceedings and facilitating the resolution and settlement of disputes, and any qualifications which the Librarian of Congress, upon the recommendation of the Register of Copyrights, shall adopt by regulation. The 2 arbitrators so selected shall, within 10 days after their selection,

choose a third arbitrator from the same lists, who shall serve as the chairperson of the arbitrators. If such 2 arbitrators fail to agree upon the selection of a third arbitrator, the Librarian of Congress shall promptly select the third arbitrator. The Librarian of Congress, upon the recommendation of the Register of Copyrights, shall adopt regulations regarding standards of conduct which shall govern arbitrators and the proceedings under this chapter.

(c) **ARBITRATION PROCEEDINGS.**—Copyright arbitration royalty panels shall conduct arbitration proceedings, subject to subchapter II of chapter 5 of title 5, for the purpose of making their determinations in carrying out the purposes set forth in section 801. The arbitration panels shall act on the basis of a fully documented written record, prior decisions of the Copyright Royalty Tribunal, prior copyright arbitration panel determinations, and rulings by the Librarian of Congress under section 801(c). Any copyright owner who claims to be entitled to royalties under section 111, 114, 116, or 119, any person entitled to a compulsory license under section 114(d), any person entitled to a compulsory license under section 115, or any interested copyright party who claims to be entitled to royalties under section 1006, may submit relevant information and proposals to the arbitration panels in proceedings applicable to such copyright owner or interested copyright party, and any other person participating in arbitration proceedings may submit such relevant information and proposals to the arbitration panel conducting the proceedings. In ratemaking proceedings, the parties to the proceedings shall bear the entire cost thereof in such manner and proportion as the arbitration panels shall direct. In distribution proceedings, the parties shall bear the cost in direct proportion to their share of the distribution.

(d) **PROCEDURES.**—Effective on the date of the enactment of the Copyright Royalty Tribunal Reform Act of 1993, the Librarian of Congress shall adopt the rules and regulations set forth in chapter 3 of title 37 of the Code of Federal Regulations to govern proceedings under this chapter. Such rules and regulations shall remain in effect unless and until the Librarian, upon the recommendation of the Register of Copyrights, adopts supplemental or superseding regulations under subchapter II of chapter 5 of title 5.

(e) **REPORT TO THE LIBRARIAN OF CONGRESS.**—Not later than 180 days after publication of the notice in the Federal Register initiating an arbitration proceeding, the copyright arbitration royalty panel conducting the proceeding shall report to the Librarian of Congress its determination concerning the royalty fee or distribution of royalty fees, as the case may be. Such report shall be accompanied by the written record, and shall set forth the facts that the arbitration panel found relevant to its determination.

(f) **ACTION BY LIBRARIAN OF CONGRESS.**—Within 60 days after receiving the report of a copyright arbitration royalty panel under subsection (e), the Librarian of Congress, upon the recommendation of the Register of Copyrights, shall adopt or reject the determination of the arbitration panel. The Librarian shall adopt the determination of the arbitration panel unless the Li-

brarian finds that the determination is arbitrary or contrary to the applicable provisions of this title. If the Librarian rejects the determination of the arbitration panel, the Librarian shall, before the end of that 60-day period, and after full examination of the record created in the arbitration proceeding, issue an order setting the royalty fee or distribution of fees, as the case may be. The Librarian shall cause to be published in the Federal Register the determination of the arbitration panel, and the decision of the Librarian (including an order issued under the preceding sentence). The Librarian shall also publicize such determination and decision in such other manner as the Librarian considers appropriate. The Librarian shall also make the report of the arbitration panel and the accompanying record available for public inspection and copying.

(g) **JUDICIAL REVIEW.**—Any decision of the Librarian of Congress under subsection (f) with respect to a determination of an arbitration panel may be appealed, by any aggrieved party who would be bound by the determination, to the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the publication of the decision in the Federal Register. If no appeal is brought within such 30-day period, the decision of the Librarian is 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 the decision. The pendency of an appeal under this paragraph shall not relieve persons obligated to make royalty payments under sections 111, 114, 115, 116, 118, 119, or 1003 who would be affected by the determination on appeal to deposit the statement of account and royalty fees specified in those sections. The court shall have jurisdiction to modify or vacate a decision of the Librarian only if it finds, on the basis of the record before the Librarian, that the Librarian acted in an arbitrary manner. If the court modifies the decision of the Librarian, the court shall have jurisdiction to enter its own determination with respect to the amount or distribution of royalty fees and costs, to order the repayment of any excess fees, and to order the payment of any underpaid fees, and the interest pertaining respectively thereto, in accordance with its final judgment. The court may further vacate the decision of the arbitration panel and remand the case to the Librarian for arbitration proceedings in accordance with subsection (c).

(h) **ADMINISTRATIVE MATTERS.**—

(1) **DEDUCTION OF COSTS FROM ROYALTY FEES.**—The Librarian of Congress and the Register of Copyrights may, to the extent not otherwise provided under this title, deduct from royalty fees deposited or collected under this title the reasonable costs incurred by the Library of Congress and the Copyright Office under this chapter. Such deduction may be made before the fees are distributed to any copyright claimants. If no royalty pool exists from which their costs can be deducted, the Librarian of Congress and the Copyright Office may assess their reasonable costs directly to the parties to the most recent relevant arbitration proceeding.

(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, 114, 115, 116, 118, or 119 or chapter 10.

(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.)

REFERENCES IN TEXT

The date of the enactment of the Copyright Royalty Tribunal Reform Act of 1993, referred to in subsec. (d), is the date of enactment of Pub. L. 103-198, which was approved Dec. 17, 1993.

Section 307 of the Legislative Branch Appropriations Act, 1994, referred to in subsec. (h)(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.

AMENDMENTS

1995—Subsec. (c). Pub. L. 104-39, § 5(d)(2), substituted “section 111, 114, 116, or 119, any person entitled to a compulsory license under section 114(d), any person entitled to a compulsory license under section 115,” for “section 111, 116, or 119,” in third sentence.

Subsec. (g). Pub. L. 104-39, § 5(d)(3), inserted “114,” after “111,” in third sentence.

Subsec. (h)(2). Pub. L. 104-39, § 5(d)(4), inserted “114,” after “111.”

1993—Pub. L. 103-198 amended section generally, substituting present provisions for provisions relating to the membership of the Copyright Royalty Tribunal, chairman of the Tribunal, and filling of vacancies in the Tribunal.

1990—Subsec. (a). Pub. L. 101-319 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “The Tribunal shall be composed of five commissioners appointed by the President with the advice and consent of the Senate for a term of seven years each; of the first five members appointed, three shall be designated to serve for seven years from the date of the notice specified in section 801(c), and two shall be designated to serve for five years from such date, respectively. Commissioners shall be compensated at the highest rate now or hereafter prescribe for grade 18 of the General Schedule pay rates (5 U.S.C. 5332).”

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-39 effective 3 months after Nov. 1, 1995, see section 6 of Pub. L. 104-39, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 114, 119, 803 of this title.

§ 803. Institution and conclusion of proceedings

(a)(1) With respect to proceedings under section 801(b)(1) concerning the adjustment of royalty rates as provided in sections 114, 115 and 116, and with respect to proceedings under subparagraphs (A) and (D) of section 801(b)(2), during the calendar years specified in the schedule set forth in paragraphs (2), (3), (4) and (5), any owner or user of a copyrighted work whose royalty rates are specified by this title, established by the Copyright Royalty Tribunal before the date of the enactment of the Copyright Royalty Tribunal Reform Act of 1993, or established by a copyright arbitration royalty panel after such date of enactment, may file a petition with the Librarian of Congress declaring that the petitioner requests an adjustment of the rate. The

Librarian of Congress shall, upon the recommendation of the Register of Copyrights, make a determination as to whether the petitioner has such a significant interest in the royalty rate in which an adjustment is requested. If the Librarian determines that the petitioner has such a significant interest, the Librarian shall cause notice of this determination, with the reasons therefor, to be published in the Federal Register, together with the notice of commencement of proceedings under this chapter.

(2) In proceedings under section 801(b)(2)(A) and (D), a petition described in paragraph (1) may be filed during 1995 and in each subsequent fifth calendar year.

(3) In proceedings under section 801(b)(1) concerning the adjustment of royalty rates as provided in section 115, a petition described in paragraph (1) may be filed in 1997 and in each subsequent tenth calendar year or as prescribed in section 115(c)(3)(D).

(4)(A) In proceedings under section 801(b)(1) concerning the adjustment of royalty rates as provided in section 116, a petition described in paragraph (1) may be filed at any time within 1 year after negotiated licenses authorized by section 116 are terminated or expire and are not replaced by subsequent agreements.

(B) If a negotiated license authorized by section 116 is terminated or expires and is not replaced by another such license agreement which provides permission to use a quantity of musical works not substantially smaller than the quantity of such works performed on coin-operated phonorecord players during the 1-year period ending March 1, 1989, the Librarian of Congress shall, upon petition filed under paragraph (1) within 1 year after such termination or expiration, convene a copyright arbitration royalty panel. The arbitration panel shall promptly establish an interim royalty rate or rates for the public performance by means of a coin-operated phonorecord player of non-dramatic 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 arbitration panel, in accordance with section 802, to adjust the royalty rates applicable to such works, or until superseded by a new negotiated license agreement, as provided in section 116(b).

(5) With respect to proceedings under section 801(b)(1) concerning the determination of reasonable terms and rates of royalty payments as provided in section 114, the Librarian of Congress shall proceed when and as provided by that section.

(b) With respect to proceedings under subparagraph (B) or (C) of section 801(b)(2), following 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 by the Copyright Royalty Tribunal or the Librarian of Congress, may, within twelve months, file a petition with the Librarian declaring that the petitioner requests an adjustment of the rate. In this event the Librarian shall proceed as in subsection subsection¹ (a) of

¹ So in original.

this section. Any change in royalty rates made by the Copyright Royalty Tribunal or the Librarian of Congress pursuant to this subsection may be reconsidered in 1980, 1985, and each fifth calendar year thereafter, in accordance with the provisions in section 801(b)(2)(B) or (C), as the case may be.

(c) With respect to proceedings under section 801(b)(1), concerning the determination of reasonable terms and rates of royalty payments as provided in section 118, the Librarian of Congress shall proceed when and as provided by that section.

(d) With respect to proceedings under section 801(b)(3) or (4), concerning the distribution of royalty fees in certain circumstances under section 111, 116, 119, or 1007, the Librarian of Congress 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.

(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.)

REFERENCES IN TEXT

The date of the enactment of the Copyright Royalty Tribunal Reform Act of 1993, referred to in subsec. (a)(1), is the date of enactment of Pub. L. 103-198, which was approved Dec. 17, 1993.

PRIOR PROVISIONS

A 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

1995—Subsec. (a)(1). Pub. L. 104-39, §5(d)(5), in first sentence substituted “sections 114, 115 and 116” for “sections 115 and 116” and “paragraphs (2), (3), (4) and (5)” for “paragraphs (2), (3), and (4)”.

Subsec. (a)(3). Pub. L. 104-39, §5(d)(6), inserted before period at end “or as prescribed in section 115(c)(3)(D)”.

Subsec. (a)(5). Pub. L. 104-39, §5(d)(7), added par. (5).
1993—Pub. L. 103-198, §2(d)(1), renumbered section 804 of this title as this section.

Subsec. (a). Pub. L. 103-198, §2(d)(2), amended subsec. (a) generally, substituting present provisions for provisions relating to commencement of proceedings concerning the adjustment of rates established by the Copyright Royalty Tribunal, filing of petitions by interested persons seeking adjustments of rates, and publication of notice of such proceedings in the Federal Register.

Subsec. (b). Pub. L. 103-198, §2(d)(3), substituted “subparagraph (B)” for “subclause (B)”, “established by the Copyright Royalty Tribunal or the Librarian of Congress” for “established by the Tribunal”, “petition with the Librarian” for “petition with the Tribunal”, “Librarian shall proceed” for “Tribunal shall proceed”, “subsection (a) of this section” for “(a)(2), above”, and “rates made by the Copyright Royalty Tribunal or the Librarian of Congress” for “rates made by the Tribunal”.

Subsec. (c). Pub. L. 103-198, §2(d)(4), substituted “Librarian of Congress” for “Tribunal”.

Subsec. (d). Pub. L. 103-198, §2(d)(5), substituted “Librarian of Congress” for “Chairman of the Tribunal”

and “a determination” for “determination by the Tribunal”.

Subsec. (e). Pub. L. 103-198, §2(d)(6), struck out subsec. (e) which read as follows: “All proceedings under this chapter shall be initiated without delay following publication of the notice specified in this section, and the Tribunal shall render its final decision in any such proceeding within one year from the date of such publication.”

1992—Subsec. (d). Pub. L. 102-563 inserted “or (4)” after “803(b)(3)” and substituted “119, or 1007” for “or 119”.

1990—Subsec. (a)(2)(C)(i). Pub. L. 101-318 substituted “section 116” for “section 115”.

1988—Subsec. (a)(2)(C). Pub. L. 100-568 amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “In proceedings under section 801(b)(1) concerning the adjustment of royalty rates under section 116, such petition may be filed in 1990 and in each subsequent tenth calendar year.”

Subsec. (d). Pub. L. 100-667 substituted “section 111, 116, or 119” for “sections 111 or 116”.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-39 effective 3 months after Nov. 1, 1995, see section 6 of Pub. L. 104-39, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 3(e)(2) of Pub. L. 101-318 provided that: “The amendment made by subsection (c) [amending this section] shall be effective as of October 31, 1988.”

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100-667 effective Jan. 1, 1989, see section 206 of Pub. L. 100-667, set out as an Effective Date note under section 119 of this title.

Amendment by Pub. L. 100-568 effective Mar. 1, 1989, with any cause of action arising under this title before such date being governed by provisions in effect when cause of action arose, see section 13 of Pub. L. 100-568, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 114, 115, 802 of this title.

[§ 804. Renumbered § 803]

[§§ 805 to 810. Repealed. 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 and transfer. ¹

¹ So in original. Does not conform to section catchline.