

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, except each reference to forty-seven years in such provisions deemed to be 67 years, see section 102(g) of Pub. L. 102-307, as amended, set out as a note under section 101 of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENT

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

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

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

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

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

#### EFFECTIVE DATE OF 1982 AMENDMENT; TRANSITIONAL RULE

Section 2 of Pub. L. 97-366 provided that: “This Act [amending this section, section 110 of this title, and

section 3 of Title 35, Patents] shall take effect thirty days after its enactment [Oct. 25, 1982] and shall apply to claims to original, supplementary, and renewal copyright received for registration in the Copyright Office on or after the effective date. Claims to original, supplementary, and renewal copyright received for registration in acceptable form in the Copyright Office before the effective date shall be governed by the provisions of section 708(a)(1) and (2) in effect prior to this enactment.”

#### EFFECTIVE DATE OF 1977 AMENDMENT

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

#### 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.

- Sec.  
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.
- (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 re-