

1002(c) has been performed, as the court considers just.

(ii) DIGITAL MUSICAL RECORDING.—A complaining party may recover an award of statutory damages for each violation of section 1002(d) in the sum of not more than \$25 per digital musical recording involved in such violation, as the court considers just.

(iii) TRANSMISSION.—A complaining party may recover an award of damages for each transmission or communication that violates section 1002(e) in the sum of not more than \$10,000, as the court considers just.

(2) REPEATED VIOLATIONS.—In any case in which the court finds that a person has violated section 1002 or 1003 within 3 years after a final judgment against that person for another such violation was entered, the court may increase the award of damages to not more than double the amounts that would otherwise be awarded under paragraph (1), as the court considers just.

(3) INNOCENT VIOLATIONS OF SECTION 1002.—The court in its discretion may reduce the total award of damages against a person violating section 1002 to a sum of not less than \$250 in any case in which the court finds that the violator was not aware and had no reason to believe that its acts constituted a violation of section 1002.

(e) PAYMENT OF DAMAGES.—Any award of damages under subsection (d) shall be deposited with the Register pursuant to section 1005 for distribution to interested copyright parties as though such funds were royalty payments made pursuant to section 1003.

(f) IMPOUNDING OF ARTICLES.—At any time while an action under subsection (a) is pending, the court may order the impounding, on such terms as it deems reasonable, of any digital audio recording device, digital musical recording, or device specified in section 1002(c) that is in the custody or control of the alleged violator and that the court has reasonable cause to believe does not comply with, or was involved in a violation of, section 1002.

(g) REMEDIAL MODIFICATION AND DESTRUCTION OF ARTICLES.—In an action brought under subsection (a), the court may, as part of a final judgment or decree finding a violation of section 1002, order the remedial modification or the destruction of any digital audio recording device, digital musical recording, or device specified in section 1002(c) that—

(1) does not comply with, or was involved in a violation of, section 1002, and

(2) is in the custody or control of the violator or has been impounded under subsection (f).

(Added Pub. L. 102-563, § 2, Oct. 28, 1992, 106 Stat. 4245.)

#### § 1010. Determination of certain disputes

(a) SCOPE OF DETERMINATION.—Before the date of first distribution in the United States of a digital audio recording device or a digital audio interface device, any party manufacturing, im-

porting, or distributing such device, and any interested copyright party may mutually agree to petition the Copyright Royalty Judges to determine whether such device is subject to section 1002, or the basis on which royalty payments for such device are to be made under section 1003.

(b) INITIATION OF PROCEEDINGS.—The parties under subsection (a) shall file the petition with the Copyright Royalty Judges requesting the commencement of a proceeding. Within 2 weeks after receiving such a petition, the Chief Copyright Royalty Judge shall cause notice to be published in the Federal Register of the initiation of the proceeding.

(c) STAY OF JUDICIAL PROCEEDINGS.—Any civil action brought under section 1009 against a party to a proceeding under this section shall, on application of one of the parties to the proceeding, be stayed until completion of the proceeding.

(d) PROCEEDING.—The Copyright Royalty Judges shall conduct a proceeding with respect to the matter concerned, in accordance with such procedures as the Copyright Royalty Judges may adopt. The Copyright Royalty Judges shall act on the basis of a fully documented written record. Any party to the proceeding may submit relevant information and proposals to the Copyright Royalty Judges. The parties to the proceeding shall each bear their respective costs of participation.

(e) JUDICIAL REVIEW.—Any determination of the Copyright Royalty Judges under subsection (d) may be appealed, by a party to the proceeding, in accordance with section 803(d) of this title. The pendency of an appeal under this subsection shall not stay the determination of the Copyright Royalty Judges. If the court modifies the determination of the Copyright Royalty Judges, the court shall have jurisdiction to enter its own decision in accordance with its final judgment. The court may further vacate the determination of the Copyright Royalty Judges and remand the case for proceedings as provided in this section.

(Added Pub. L. 102-563, § 2, Oct. 28, 1992, 106 Stat. 4246; amended Pub. L. 103-198, § 6(b)(5), Dec. 17, 1993, 107 Stat. 2312; Pub. L. 108-419, § 5(i)(4)(A), Nov. 30, 2004, 118 Stat. 2368.)

#### AMENDMENTS

2004—Pub. L. 108-419 amended section catchline and text generally, substituting provisions relating to determination of certain disputes for provisions relating to arbitration of certain disputes.

1993—Subsec. (b). Pub. L. 103-198, § 6(b)(5)(A), substituted “Librarian of Congress” for “Copyright Royalty Tribunal” before “requesting the commencement” and for “Tribunal” wherever appearing.

Subsec. (e). Pub. L. 103-198, § 6(b)(5)(B), substituted “Librarian of Congress” for “Copyright Royalty Tribunal” in heading and text.

Subsec. (f). Pub. L. 103-198, § 6(b)(5)(C), substituted “Librarian of Congress” for “Copyright Royalty Tribunal” in heading and before “shall adopt or reject” in text, substituted “Librarian of Congress” for “Tribunal” wherever appearing, and substituted “the Librarian’s” for “its”.

Subsec. (g). Pub. L. 103-198, § 6(b)(5)(D), substituted “Librarian of Congress” for “Copyright Royalty Tribunal” after “Any decision of the”, “decision of the Librarian of Congress” for “Tribunal’s decision” in second sentence, and “Librarian of Congress” for “Tri-