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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, Sec. 101, Oct. 19, 1976, 90 Stat. 2596; Pub. L. 101-319, Sec. 2(a), July 3, 1990, 104 Stat. 290; Pub. L. 103-198, Sec. 2(b), Dec. 17, 1993, 107 Stat. 2305.)

17 U.S.C. 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

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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 subsection (a) of 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, Sec. 101, Oct. 19, 1976, 90 Stat. 2597, Sec. 804; Pub. L. 100-568, Sec. 11(2), Oct. 31, 1988, 102 Stat. 2860; Pub. L. 100-667, title II, Sec. 202(5), Nov. 16, 1988, 102 Stat. 3958; Pub. L. 101-318, Sec. 3(c), July 3, 1990, 104 Stat. 288; Pub. L. 102-563, Sec. 3(a)(2), Oct. 28, 1992, 106 Stat. 4248; renumbered Sec. 803 and amended Pub. L. 103-198, Sec. 2(d), Dec. 17, 1993, 107 Stat. 2307.) (Sec. 804. Renumbered Sec. 803) (Sec. 805 to 819. Repealed. Pub. L. 103-198, Sec. 2(e), Dec. 17, 1993, 107 Stat. 2308)

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CHAPTER 10—DIGITAL AUDIO RECORDING DEVICES AND MEDIA

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17 U.S.C. 1001 Definitions

As used in this chapter, the following terms have the following meanings:

- (1) A "digital audio copied recording" is a reproduction in a digital recording format of a digital musical recording, whether that reproduction is made directly from another digital musical recording or indirectly from a transmission.
- (2) A "digital audio interface device" is any machine or device that is designed specifically to communicate digital audio information and related interface data to a digital audio recording device through a nonprofessional interface.
- (3) A "digital audio recording device" is any machine or device of a type commonly distributed to individuals for use by individuals, whether or not included with or as part of some other machine or device, the digital recording function of which is designed or marketed for the primary purpose of, and that is capable of, making a digital audio copied recording for private use, except for -
 - (A) professional model products, and
 - (B) dictation machines, answering machines, and other audio recording equipment that is designed and marketed primarily for the creation of sound recordings resulting from the fixation of nonmusical sounds.
- (4)(A) A "digital audio recording medium" is any material object in a form commonly distributed for use by individuals, that is primarily marketed or most commonly used by consumers for the purpose of making digital audio copied recordings by use of a digital audio recording device.
 - (B) Such term does not include any material object -
 - (i) that embodies a sound recording at the time it is first distributed by the importer or manufacturer; or
 - (ii) that is primarily marketed and most commonly used by consumers either for the purpose of making copies of motion pictures or other

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audiovisual works or for the purpose of making copies of nonmusical literary works, including computer programs or data bases.

- (5)(A) A "digital musical recording" is a material object -
- (i) in which are fixed, in a digital recording format, only sounds, and material, statements, or instructions incidental to those fixed sounds, if any, and
 - (ii) from which the sounds and material can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.
- (B) A "digital musical recording" does not include a material object -
- (i) in which the fixed sounds consist entirely of spoken word recordings, or
 - (ii) in which one or more computer programs are fixed, except that a digital musical recording may contain statements or instructions constituting the fixed sounds and incidental material, and statements or instructions to be used directly or indirectly in order to bring about the perception, reproduction, or communication of the fixed sounds and incidental material.
- (C) For purposes of this paragraph -
- (i) a "spoken word recording" is a sound recording in which are fixed only a series of spoken words, except that the spoken words may be accompanied by incidental musical or other sounds, and
 - (ii) the term "incidental" means related to and relatively minor by comparison.
- (6) "Distribute" means to sell, lease, or assign a product to consumers in the United States, or to sell, lease, or assign a product in the United States for ultimate transfer to consumers in the United States.
- (7) An "interested copyright party" is -
- (A) the owner of the exclusive right under section 106(1) of this title to reproduce a sound recording of a musical work that has been embodied in a digital musical recording or analog musical recording lawfully made under this title that has been distributed;
 - (B) the legal or beneficial owner of, or the person that controls, the right to reproduce in a digital musical recording or analog musical recording a musical work that has been embodied in a digital musical recording or analog musical recording lawfully made under this title that has been distributed;
 - (C) a featured recording artist who performs on a sound recording that has been distributed; or
 - (D) any association or other organization -
 - (i) representing persons specified in subparagraph (A), (B), or (C), or
 - (ii) engaged in licensing rights in musical works to music users on behalf of writers and publishers.
- (8) To "manufacture" means to produce or assemble a product in the United States. A "manufacturer" is a person who manufactures.
- (9) A "music publisher" is a person that is authorized to license the reproduction of a particular musical work in a sound recording.
- (10) A "professional model product" is an audio recording device that is designed, manufactured, marketed, and intended for use by recording professionals in the ordinary course of a lawful business, in accordance with such requirements as the

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Secretary of Commerce shall establish by regulation.

- (11) The term "serial copying" means the duplication in a digital format of a copyrighted musical work or sound recording from a digital reproduction of a digital musical recording. The term "digital reproduction of a digital musical recording" does not include a digital musical recording as distributed, by authority of the copyright owner, for ultimate sale to consumers.
- (12) The "transfer price" of a digital audio recording device or a digital audio recording medium -
- (A) is, subject to subparagraph (B) -
- (i) in the case of an imported product, the actual entered value at United States Customs (exclusive of any freight, insurance, and applicable duty), and
- (ii) in the case of a domestic product, the manufacturer's transfer price (FOB the manufacturer, and exclusive of any direct sales taxes or excise taxes incurred in connection with the sale); and
- (B) shall, in a case in which the transferor and transferee are related entities or within a single entity, not be less than a reasonable arms-length price under the principles of the regulations adopted pursuant to section 482 of the Internal Revenue Code of 1986, or any successor provision to such section.
- (13) A "writer" is the composer or lyricist of a particular musical work.

(Added Pub. L. 102-563, Sec. 2, Oct. 28, 1992, 106 Stat. 4237.)

SUBCHAPTER B-COPYING CONTROLS

17 U.S.C. 1002 Incorporation of copying controls

(a) Prohibition on Importation, Manufacture, and Distribution. - No person shall import, manufacture, or distribute any digital audio recording device or digital audio interface device that does not conform to -

- (1) the Serial Copy Management System;
- (2) a system that has the same functional characteristics as the Serial Copy Management System and requires that copyright and generation status information be accurately sent, received, and acted upon between devices using the system's method of serial copying regulation and devices using the Serial Copy Management System; or
- (3) any other system certified by the Secretary of Commerce as prohibiting unauthorized serial copying.

(b) Development of Verification Procedure. - The Secretary of Commerce shall establish a procedure to verify, upon the petition of an interested party, that a system meets the standards set forth in subsection (a)(2).

(c) Prohibition on Circumvention of the System. - No person shall import, manufacture, or distribute any device, or offer or perform any service, the primary purpose or effect of which is to avoid, bypass, remove, deactivate, or otherwise circumvent any program or circuit which implements, in whole or in part, a system described in subsection (a).

(d) Encoding of Information on Digital Musical Recordings. -

- (1) Prohibition on encoding inaccurate information. - No person shall encode a digital musical recording of a sound recording with inaccurate information relating to the category code, copyright status, or generation status of the source material for the recording.
- (2) Encoding of copyright status not required. - Nothing in this chapter requires any