

place outside the presence of the Copyright Royalty Judges.”

Subsec. (c)(2)(B). Pub. L. 109-303, §3(7), struck out “concerning rates and terms” before period at end.

Subsec. (c)(4). Pub. L. 109-303, §3(8), struck out “, with the approval of the Register of Copyrights,” before “issue an amendment”.

Subsec. (c)(7). Pub. L. 109-303, §3(9), substituted “of the Copyright” for “of Copyright”.

Subsec. (d)(2)(C)(i)(I). Pub. L. 109-303, §3(10), substituted “applicable statements of account and reports of use” for “statements of account and any report of use”.

Subsec. (d)(3). Pub. L. 109-303, §3(11), substituted “Section 706 of title 5 shall apply with respect to review by the court of appeals under this subsection. If the court modifies” for “If the court, pursuant to section 706 of title 5, modifies”.

2004—Subsec. (b)(1)(A)(i)(V). Pub. L. 108-447 inserted “, except that in the case of proceedings under section 111 that are scheduled to commence in 2005, such notice may not be published.” before period at end.

EFFECTIVE DATE OF 2006 AMENDMENT

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

§ 804. Institution of proceedings

(a) **FILING OF PETITION.**—With respect to proceedings referred to in paragraphs (1) and (2) of section 801(b) concerning the determination or adjustment of royalty rates as provided in sections 111, 112, 114, 115, 116, 118, 119, and 1004, during the calendar years specified in the schedule set forth in subsection (b), any owner or user of a copyrighted work whose royalty rates are specified by this title, or are established under this chapter before or after the enactment of the Copyright Royalty and Distribution Reform Act of 2004, may file a petition with the Copyright Royalty Judges declaring that the petitioner requests a determination or adjustment of the rate. The Copyright Royalty Judges shall make a determination as to whether the petitioner has such a significant interest in the royalty rate in which a determination or adjustment is requested. If the Copyright Royalty Judges determine that the petitioner has such a significant interest, the Copyright Royalty Judges shall cause notice of this determination, with the reasons for such determination, to be published in the Federal Register, together with the notice of commencement of proceedings under this chapter. With respect to proceedings under paragraph (1) of section 801(b) concerning the determination or adjustment of royalty rates as provided in sections 112 and 114, during the calendar years specified in the schedule set forth in subsection (b), the Copyright Royalty Judges shall cause notice of commencement of proceedings under this chapter to be published in the Federal Register as provided in section 803(b)(1)(A).

(b) **TIMING OF PROCEEDINGS.**—

(1) **SECTION 111 PROCEEDINGS.**—(A) A petition described in subsection (a) to initiate proceedings under section 801(b)(2) concerning the adjustment of royalty rates under section 111 to which subparagraph (A) or (D) of section 801(b)(2) applies may be filed during the year 2015 and in each subsequent fifth calendar year.

(B) In order to initiate proceedings under section 801(b)(2) concerning the adjustment of royalty rates under section 111 to which subparagraph (B) or (C) of section 801(b)(2) applies, within 12 months after 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 under this chapter before or after the enactment of the Copyright Royalty and Distribution Reform Act of 2004, may file a petition with the Copyright Royalty Judges declaring that the petitioner requests an adjustment of the rate. The Copyright Royalty Judges shall then proceed as set forth in subsection (a) of this section. Any change in royalty rates made under this chapter pursuant to this subparagraph may be reconsidered in the year 2015, and each fifth calendar year thereafter, in accordance with the provisions in section 801(b)(2)(B) or (C), as the case may be. A petition for adjustment of rates established by section 111(d)(1)(B) as a result of a change in the rules and regulations of the Federal Communications Commission shall set forth the change on which the petition is based.

(C) Any adjustment of royalty rates under section 111 shall take effect as of the first accounting period commencing after the publication of the determination of the Copyright Royalty Judges in the Federal Register, or on such other date as is specified in that determination.

(2) **CERTAIN SECTION 112 PROCEEDINGS.**—Proceedings under this chapter shall be commenced in the year 2007 to determine reasonable terms and rates of royalty payments for the activities described in section 112(e)(1) relating to the limitation on exclusive rights specified by section 114(d)(1)(C)(iv), to become effective on January 1, 2009. Such proceedings shall be repeated in each subsequent fifth calendar year.

(3) **SECTION 114 AND CORRESPONDING 112 PROCEEDINGS.**—

(A) **FOR ELIGIBLE NONSUBSCRIPTION SERVICES AND NEW SUBSCRIPTION SERVICES.**—Proceedings under this chapter shall be commenced as soon as practicable after the date of enactment of the Copyright Royalty and Distribution Reform Act of 2004 to determine reasonable terms and rates of royalty payments under sections 114 and 112 for the activities of eligible nonsubscription transmission services and new subscription services, to be effective for the period beginning on January 1, 2006, and ending on December 31, 2010. Such proceedings shall next be commenced in January 2009 to determine reasonable terms and rates of royalty payments, to become effective on January 1, 2011. Thereafter, such proceedings shall be repeated in each subsequent fifth calendar year.

(B) **FOR PREEXISTING SUBSCRIPTION AND SATELLITE DIGITAL AUDIO RADIO SERVICES.**—Proceedings under this chapter shall be commenced in January 2006 to determine reasonable terms and rates of royalty payments under sections 114 and 112 for the activities of preexisting subscription services, to be ef-

fective during the period beginning on January 1, 2008, and ending on December 31, 2012, and preexisting satellite digital audio radio services, to be effective during the period beginning on January 1, 2007, and ending on December 31, 2012. Such proceedings shall next be commenced in 2011 to determine reasonable terms and rates of royalty payments, to become effective on January 1, 2013. Thereafter, such proceedings shall be repeated in each subsequent fifth calendar year.

(C)(i) Notwithstanding any other provision of this chapter, this subparagraph shall govern proceedings commenced pursuant to section 114(f)(1)(C) and 114(f)(2)(C) concerning new types of services.

(ii) Not later than 30 days after a petition to determine rates and terms for a new type of service is filed by any copyright owner of sound recordings, or such new type of service, indicating that such new type of service is or is about to become operational, the Copyright Royalty Judges shall issue a notice for a proceeding to determine rates and terms for such service.

(iii) The proceeding shall follow the schedule set forth in subsections (b), (c), and (d) of section 803, except that—

(I) the determination shall be issued by not later than 24 months after the publication of the notice under clause (ii); and

(II) the decision shall take effect as provided in subsections (c)(2) and (d)(2) of section 803 and section 114(f)(4)(B)(ii) and (C).

(iv) The rates and terms shall remain in effect for the period set forth in section 114(f)(1)(C) or 114(f)(2)(C), as the case may be.

(4) SECTION 115 PROCEEDINGS.—A petition described in subsection (a) to initiate proceedings under section 801(b)(1) concerning the adjustment or determination of royalty rates as provided in section 115 may be filed in the year 2006 and in each subsequent fifth calendar year, or at such other times as the parties have agreed under section 115(c)(3)(B) and (C).

(5) SECTION 116 PROCEEDINGS.—(A) A petition described in subsection (a) to initiate proceedings under section 801(b) concerning the determination of royalty rates and terms as provided in section 116 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 Copyright Royalty Judges shall, upon petition filed under paragraph (1) within 1 year after such termination or expiration, commence a proceeding to promptly establish an interim royalty rate or rates for the public performance by means of a coin-operated phonorecord player of nondramatic 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 Copyright Royalty Judges, in accordance with section 803, to adjust the royalty rates applicable to such works, or until superseded by a new negotiated license agreement, as provided in section 116(b).

(6) SECTION 118 PROCEEDINGS.—A petition described in subsection (a) to initiate proceedings under section 801(b)(1) concerning the determination of reasonable terms and rates of royalty payments as provided in section 118 may be filed in the year 2006 and in each subsequent fifth calendar year.

(7) SECTION 1004 PROCEEDINGS.—A petition described in subsection (a) to initiate proceedings under section 801(b)(1) concerning the adjustment of reasonable royalty rates under section 1004 may be filed as provided in section 1004(a)(3).

(8) PROCEEDINGS CONCERNING DISTRIBUTION OF ROYALTY FEES.—With respect to proceedings under section 801(b)(3) concerning the distribution of royalty fees in certain circumstances under section 111, 119, or 1007, the Copyright Royalty Judges 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.

(Added Pub. L. 108–419, §3(a), Nov. 30, 2004, 118 Stat. 2357; amended Pub. L. 109–303, §3(12), (13), Oct. 6, 2006, 120 Stat. 1481; Pub. L. 111–175, title I, §104(f), May 27, 2010, 124 Stat. 1238.)

REFERENCES IN TEXT

The enactment of and the date of enactment of the Copyright Royalty and Distribution Reform Act of 2004, referred to in subsecs. (a) and (b)(1)(B), (3)(A), mean the date of enactment of Pub. L. 108–419, which was approved Nov. 30, 2004.

PRIOR PROVISIONS

A prior section 804 was renumbered section 803 of this title prior to the general amendment of this chapter by Pub. L. 108–419.

AMENDMENTS

2010—Subsec. (b)(1)(A), (B). Pub. L. 111–175 substituted “2015” for “2005”.

2006—Subsec. (b)(1)(B). Pub. L. 109–303, §3(12), substituted “801(b)(2)(B) or (C)” for “801(b)(3)(B) or (C)” and “change in” for “change is”.

Subsec. (b)(3)(A). Pub. L. 109–303, §3(13)(A), substituted “date of enactment” for “effective date”.

Subsec. (b)(3)(C)(ii). Pub. L. 109–303, §3(13)(B)(i), substituted “is filed” for “that is filed”.

Subsec. (b)(3)(C)(iii). Pub. L. 109–303, §3(13)(B)(ii), substituted “subsections (b)” for “such subsections (b)”.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–175 effective Feb. 27, 2010, see section 307(a) of Pub. L. 111–175, set out as a note under section 111 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

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

§ 805. General rule for voluntarily negotiated agreements

Any rates or terms under this title that—

(1) are agreed to by participants to a proceeding under section 803(b)(3),

(2) are adopted by the Copyright Royalty Judges as part of a determination under this chapter, and

(3) are in effect for a period shorter than would otherwise apply under a determination pursuant to this chapter,

shall remain in effect for such period of time as would otherwise apply under such determination, except that the Copyright Royalty Judges shall adjust the rates pursuant to the voluntary negotiations to reflect national monetary inflation during the additional period the rates remain in effect.

(Added Pub. L. 108-419, §3(a), Nov. 30, 2004, 118 Stat. 2360.)

PRIOR PROVISIONS

Prior sections 805 to 810 were repealed by 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

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AMENDMENTS

2002—Pub. L. 107-273, div. C, title III, §13210(11), Nov. 2, 2002, 116 Stat. 1910, substituted “licensing” for “licensure” in item 903.

1997—Pub. L. 105-80, §12(a)(21), Nov. 13, 1997, 111 Stat. 1535, substituted “Ownership, transfer, licensure, and recordation” for “Ownership and transfer” in item 903.

§ 901. Definitions

(a) As used in this chapter—

(1) a “semiconductor chip product” is the final or intermediate form of any product—

(A) having two or more layers of metallic, insulating, or semiconductor material, deposited or otherwise placed on, or etched away or otherwise removed from, a piece of semiconductor material in accordance with a predetermined pattern; and

(B) intended to perform electronic circuitry functions;

(2) a “mask work” is a series of related images, however fixed or encoded—

(A) having or representing the predetermined, three-dimensional pattern of metallic, insulating, or semiconductor material present or removed from the layers of a semiconductor chip product; and

(B) in which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product;

(3) a mask work is “fixed” in a semiconductor chip product when its embodiment in the product is sufficiently permanent or stable to permit the mask work to be perceived or reproduced from the product for a period of more than transitory duration;

(4) to “distribute” means to sell, or to lease, bail, or otherwise transfer, or to offer to sell, lease, bail, or otherwise transfer;

(5) to “commercially exploit” a mask work is to distribute to the public for commercial purposes a semiconductor chip product embodying the mask work; except that such term includes an offer to sell or transfer a semiconductor chip product only when the offer is in writing and occurs after the mask work is fixed in the semiconductor chip product;

(6) the “owner” of a mask work is the person who created the mask work, the legal representative of that person if that person is deceased or under a legal incapacity, or a party to whom all the rights under this chapter of such person or representative are transferred in accordance with section 903(b); except that, in the case of a work made within the scope of a person’s employment, the owner is the employer for whom the person created the mask work or a party to whom all the rights under this chapter of the employer are transferred in accordance with section 903(b);

(7) an “innocent purchaser” is a person who purchases a semiconductor chip product in good faith and without having notice of protection with respect to the semiconductor chip product;

(8) having “notice of protection” means having actual knowledge that, or reasonable grounds to believe that, a mask work is protected under this chapter; and

(9) an “infringing semiconductor chip product” is a semiconductor chip product which is made, imported, or distributed in violation of the exclusive rights of the owner of a mask work under this chapter.

(b) For purposes of this chapter, the distribution or importation of a product incorporating a semiconductor chip product as a part thereof is a distribution or importation of that semiconductor chip product.