

the time it was agreed to or determined by the court. Such presumption shall in no way affect a determination of whether the rate is being correctly applied to the individual proprietor.

(5) Pending the completion of such proceeding, the individual proprietor shall have the right to perform publicly the copyrighted musical compositions in the repertoire of the performing rights society by paying an interim license rate or fee into an interest bearing escrow account with the clerk of the court, subject to retroactive adjustment when a final rate or fee has been determined, in an amount equal to the industry rate, or, in the absence of an industry rate, the amount of the most recent license rate or fee agreed to by the parties.

(6) Any decision rendered in such proceeding by a special master or magistrate judge named under paragraph (3) shall be reviewed by the judge of the court with jurisdiction over the consent decree governing the performing rights society. Such proceeding, including such review, shall be concluded within 6 months after its commencement.

(7) Any such final determination shall be binding only as to the individual proprietor commencing the proceeding, and shall not be applicable to any other proprietor or any other performing rights society, and the performing rights society shall be relieved of any obligation of nondiscrimination among similarly situated music users that may be imposed by the consent decree governing its operations.

(8) An individual proprietor may not bring more than one proceeding provided for in this section for the determination of a reasonable license rate or fee under any license agreement with respect to any one performing rights society.

(9) For purposes of this section, the term “industry rate” means the license fee a performing rights society has agreed to with, or which has been determined by the court for, a significant segment of the music user industry to which the individual proprietor belongs.

(Added Pub. L. 105-298, title II, §203(a), Oct. 27, 1998, 112 Stat. 2831, §512; renumbered §513, Pub. L. 106-44, §1(c)(1), Aug. 5, 1999, 113 Stat. 221.)

#### AMENDMENTS

1999—Pub. L. 106-44 renumbered section 512 of this title as this section.

#### EFFECTIVE DATE

Section effective 90 days after Oct. 27, 1998, see section 207 of Pub. L. 105-298, set out as an Effective Date of 1998 Amendment note under section 101 of this title.

### CHAPTER 6—IMPORTATION AND EXPORTATION

|                   |   |
|-------------------|---|
| Sec.              |   |
| [601.             | Repealed.]  |
| 602. <sup>1</sup> | Infringing importation of copies or phonorecords.                           |
| 603.              | Importation prohibitions: Enforcement and disposition of excluded articles. |

<sup>1</sup> So in original. Does not conform to section catchline.

#### AMENDMENTS

2010—Pub. L. 111-295, §4(a), (b)(1)(A), Dec. 9, 2010, 124 Stat. 3180, substituted “IMPORTATION AND EXPORTATION” for “MANUFACTURING REQUIREMENTS, IMPORTATION, AND EXPORTATION” in chapter heading and struck out item 601 “Manufacture, importation, and public distribution of certain copies”.

2008—Pub. L. 110-403, title I, §105(a), Oct. 13, 2008, 122 Stat. 4259, substituted “MANUFACTURING REQUIREMENTS, IMPORTATION, AND EXPORTATION” for “MANUFACTURING REQUIREMENTS AND IMPORTATION” in chapter heading.

#### § 601. Repealed. Pub. L. 111-295, §4(a), Dec. 9, 2010, 124 Stat. 3180

Section, Pub. L. 94-553, title I, §101, Oct. 19, 1976, 90 Stat. 2588; Pub. L. 97-215, July 13, 1982, 96 Stat. 178; Pub. L. 105-80, §12(a)(15), (16), Nov. 13, 1997, 111 Stat. 1535; Pub. L. 110-403, title I, §105(c)(2), Oct. 13, 2008, 122 Stat. 4260, related to manufacture, importation, and public distribution of certain copies of nondramatic English-language literary material protected under this title.

#### § 602. Infringing importation or exportation of copies or phonorecords

(a) INFRINGING IMPORTATION OR EXPORTATION.—

(1) IMPORTATION.—Importation into the United States, without the authority of the owner of copyright under this title, of copies or phonorecords of a work that have been acquired outside the United States is an infringement of the exclusive right to distribute copies or phonorecords under section 106, actionable under section 501.

(2) IMPORTATION OR EXPORTATION OF INFRINGING ITEMS.—Importation into the United States or exportation from the United States, without the authority of the owner of copyright under this title, of copies or phonorecords, the making of which either constituted an infringement of copyright, or which would have constituted an infringement of copyright if this title had been applicable, is an infringement of the exclusive right to distribute copies or phonorecords under section 106, actionable under sections 501 and 506.

(3) EXCEPTIONS.—This subsection does not apply to—

(A) importation or exportation of copies or phonorecords under the authority or for the use of the Government of the United States or of any State or political subdivision of a State, but not including copies or phonorecords for use in schools, or copies of any audiovisual work imported for purposes other than archival use;

(B) importation or exportation, for the private use of the importer or exporter and not for distribution, by any person with respect to no more than one copy or phonorecord of any one work at any one time, or by any person arriving from outside the United States or departing from the United States with respect to copies or phonorecords forming part of such person’s personal baggage; or

(C) importation by or for an organization operated for scholarly, educational, or religious purposes and not for private gain, with respect to no more than one copy of an audiovisual work solely for its archival purposes, and no more than five copies or