

**CHAPTER 8—PROCEEDINGS BY COPYRIGHT
ROYALTY JUDGES**

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PRIOR PROVISIONS

This chapter consisted of sections 801 to 803, related to proceedings by copyright arbitration royalty panels, prior to being amended generally by Pub. L. 108-419.

AMENDMENTS

2004—Pub. L. 108-419, §3(a), Nov. 30, 2004, 118 Stat. 2341, amended chapter heading and analysis generally, substituting chapter heading and items 801 to 805 for chapter heading “COPYRIGHT ARBITRATION ROYALTY PANELS”, and items 801 “Copyright arbitration royalty panels: Establishment and purpose”, 802 “Membership and proceedings of copyright arbitration royalty panels”, and 803 “Institution and conclusion of proceedings”.

1997—Pub. L. 105-80, §12(a)(18), Nov. 13, 1997, 111 Stat. 1535, substituted “Establishment” for “establishment” in item 801.

1993—Pub. L. 103-198, §2(f), Dec. 17, 1993, 107 Stat. 2308, amended table of sections generally, substituting chapter heading and items 801 to 803 for chapter heading “COPYRIGHT ROYALTY TRIBUNAL”, item 801 “Copyright Royalty Tribunal: Establishment and purpose”, item 802 “Membership of the Tribunal”, item 804 “Institution and conclusion of proceedings”, item 805 “Staff of the Tribunal”, item 806 “Administrative support of the Tribunal”, item 807 “Deduction of costs of proceedings”, item 808 “Reports”, item 809 “Effective date of final determinations”, and item 810 “Judicial review”.

Pub. L. 103-198, §2(c), Dec. 17, 1993, 107 Stat. 2307, struck out item 803 “Procedures of the Tribunal.”

§ 801. Copyright Royalty Judges; appointment and functions

(a) **APPOINTMENT.**—The Librarian of Congress shall appoint 3 full-time Copyright Royalty Judges, and shall appoint 1 of the 3 as the Chief Copyright Royalty Judge. The Librarian shall make appointments to such positions after consultation with the Register of Copyrights.

(b) **FUNCTIONS.**—Subject to the provisions of this chapter, the functions of the Copyright Royalty Judges shall be as follows:

(1) To make determinations and adjustments of reasonable terms and rates of royalty payments as provided in sections 112(e), 114, 115, 116, 118, 119, and 1004.

(2) To make determinations concerning the adjustment of the copyright royalty rates under section 111 solely in accordance with the following provisions:

(A) The rates established by section 111(d)(1)(B) may be adjusted to reflect—

(i) national monetary inflation or deflation; or

(ii) changes in the average rates charged cable subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar level of the royalty fee per subscriber which existed as of the date of October 19, 1976,

except that—

(I) if the average rates charged cable system subscribers for the basic service of providing secondary transmissions are changed so that the average rates exceed national monetary inflation, no change in the rates established by section 111(d)(1)(B) shall be permitted; and

(II) no increase in the royalty fee shall be permitted based on any reduction in the average number of distant signal equivalents per subscriber.

The Copyright Royalty Judges may consider all factors relating to the maintenance of such level of payments, including, as an extenuating factor, whether the industry has been restrained by subscriber rate regulating authorities from increasing the rates for the basic service of providing secondary transmissions.

(B) In the event that the rules and regulations of the Federal Communications Commission are amended at any time after April 15, 1976, to permit the carriage by cable systems of additional television broadcast signals beyond the local service area of the primary transmitters of such signals, the royalty rates established by section 111(d)(1)(B) may be adjusted to ensure that the rates for the additional distant signal equivalents resulting from such carriage are reasonable in the light of the changes effected by the amendment to such rules and regulations. In determining the reasonableness of rates proposed following an amendment of Federal Communications Commission rules and regulations, the Copyright Royalty Judges shall consider, among other factors, the economic impact on copyright owners and users; except that no adjustment in royalty rates shall be made under this subparagraph with respect to any distant signal equivalent or fraction thereof represented by—

(i) carriage of any signal permitted under the rules and regulations of the Federal Communications Commission in effect on April 15, 1976, or the carriage of a signal of the same type (that is, independent, network, or noncommercial educational) substituted for such permitted signal; or

(ii) a television broadcast signal first carried after April 15, 1976, pursuant to an individual waiver of the rules and regulations of the Federal Communications Commission, as such rules and regulations were in effect on April 15, 1976.

(C) In the event of any change in the rules and regulations of the Federal Communications Commission with respect to syndicated and sports program exclusivity after April 15, 1976, the rates established by section 111(d)(1)(B) may be adjusted to assure that such rates are reasonable in light of the changes to such rules and regulations, but any such adjustment shall apply only to the affected television broadcast signals carried on those systems affected by the change.

(D) The gross receipts limitations established by section 111(d)(1)(C) and (D)¹ shall

¹ See References in Text note below.

be adjusted to reflect national monetary inflation or deflation or changes in the average rates charged cable system subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar value of the exemption provided by such section, and the royalty rate specified therein shall not be subject to adjustment.

(3)(A) To authorize the distribution, under sections 111, 119, and 1007, of those royalty fees collected under sections 111, 119, and 1005, as the case may be, to the extent that the Copyright Royalty Judges have found that the distribution of such fees is not subject to controversy.

(B) In cases where the Copyright Royalty Judges determine that controversy exists, the Copyright Royalty Judges shall determine the distribution of such fees, including partial distributions, in accordance with section 111, 119, or 1007, as the case may be.

(C) Notwithstanding section 804(b)(8), the Copyright Royalty Judges, at any time after the filing of claims under section 111, 119, or 1007, may, upon motion of one or more of the claimants and after publication in the Federal Register of a request for responses to the motion from interested claimants, make a partial distribution of such fees, if, based upon all responses received during the 30-day period beginning on the date of such publication, the Copyright Royalty Judges conclude that no claimant entitled to receive such fees has stated a reasonable objection to the partial distribution, and all such claimants—

- (i) agree to the partial distribution;
- (ii) sign an agreement obligating them to return any excess amounts to the extent necessary to comply with the final determination on the distribution of the fees made under subparagraph (B);
- (iii) file the agreement with the Copyright Royalty Judges; and
- (iv) agree that such funds are available for distribution.

(D) The Copyright Royalty Judges and any other officer or employee acting in good faith in distributing funds under subparagraph (C) shall not be held liable for the payment of any excess fees under subparagraph (C). The Copyright Royalty Judges shall, at the time the final determination is made, calculate any such excess amounts.

(4) To accept or reject royalty claims filed under sections 111, 119, and 1007, on the basis of timeliness or the failure to establish the basis for a claim.

(5) To accept or reject rate adjustment petitions as provided in section 804 and petitions to participate as provided in section 803(b) (1) and (2).

(6) To determine the status of a digital audio recording device or a digital audio interface device under sections 1002 and 1003, as provided in section 1010.

(7)(A) To adopt as a basis for statutory terms and rates or as a basis for the distribution of statutory royalty payments, an agreement concerning such matters reached among some or all of the participants in a proceeding

at any time during the proceeding, except that—

(i) the Copyright Royalty Judges shall provide to those that would be bound by the terms, rates, or other determination set by any agreement in a proceeding to determine royalty rates an opportunity to comment on the agreement and shall provide to participants in the proceeding under section 803(b)(2) that would be bound by the terms, rates, or other determination set by the agreement an opportunity to comment on the agreement and object to its adoption as a basis for statutory terms and rates; and

(ii) the Copyright Royalty Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement, if any participant described in clause (i) objects to the agreement and the Copyright Royalty Judges conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates.

(B) License agreements voluntarily negotiated pursuant to section 112(e)(5), 114(f)(2), 115(c)(3)(E)(i), 116(c), or 118(b)(2) that do not result in statutory terms and rates shall not be subject to clauses (i) and (ii) of subparagraph (A).

(C) Interested parties may negotiate and agree to, and the Copyright Royalty Judges may adopt, an agreement that specifies as terms notice and recordkeeping requirements that apply in lieu of those that would otherwise apply under regulations.

(8) To determine the administrative assessment to be paid by digital music providers under section 115(d). The provisions of section 115(d) shall apply to the conduct of proceedings by the Copyright Royalty Judges under section 115(d) and not the procedures described in this section, or section 803, 804, or 805.

(9) To perform other duties, as assigned by the Register of Copyrights within the Library of Congress, except as provided in section 802(g), at times when Copyright Royalty Judges are not engaged in performing the other duties set forth in this section.

(c) **RULINGS.**—The Copyright Royalty Judges may make any necessary procedural or evidentiary rulings in any proceeding under this chapter and may, before commencing a proceeding under this chapter, make any such rulings that would apply to the proceedings conducted by the Copyright Royalty Judges.

(d) **ADMINISTRATIVE SUPPORT.**—The Librarian of Congress shall provide the Copyright Royalty Judges with the necessary administrative services related to proceedings under this chapter.

(e) **LOCATION IN LIBRARY OF CONGRESS.**—The offices of the Copyright Royalty Judges and staff shall be in the Library of Congress.

(f) **EFFECTIVE DATE OF ACTIONS.**—On and after the date of the enactment of the Copyright Royalty and Distribution Reform Act of 2004, in any case in which time limits are prescribed under this title for performance of an action with or by the Copyright Royalty Judges, and in which the last day of the prescribed period falls on a

Saturday, Sunday, holiday, or other nonbusiness day within the District of Columbia or the Federal Government, the action may be taken on the next succeeding business day, and is effective as of the date when the period expired.

(Added Pub. L. 108-419, §3(a), Nov. 30, 2004, 118 Stat. 2341; amended Pub. L. 109-303, §§3(1), (2), 5, Oct. 6, 2006, 120 Stat. 1478, 1483; Pub. L. 115-264, title I, §§102(b), 103(g)(2), Oct. 11, 2018, 132 Stat. 3721, 3725.)

REFERENCES IN TEXT

Section 111(d)(1)(D) of this title, referred to in subsec. (b)(2)(D), was amended generally by Pub. L. 111-175, title I, §104(c)(1)(C), May 27, 2010, 124 Stat. 1232, and, as so amended, no longer relates to gross receipts limitations.

The date of the enactment of the Copyright Royalty and Distribution Reform Act of 2004, referred to in subsec. (f), is the date of the enactment of Pub. L. 108-419, which was approved Nov. 30, 2004.

PRIOR PROVISIONS

A prior section 801, Pub. L. 94-553, title I, §101, Oct. 19, 1976, 90 Stat. 2594; Pub. L. 99-397, §2(c), (d), Aug. 27, 1986, 100 Stat. 848; Pub. L. 100-568, §11(1), Oct. 31, 1988, 102 Stat. 2860; Pub. L. 100-667, title II, §202(4), Nov. 16, 1988, 102 Stat. 3958; Pub. L. 101-318, §3(b), July 3, 1990, 104 Stat. 288; Pub. L. 102-563, §3(a)(1), Oct. 28, 1992, 106 Stat. 4247; Pub. L. 103-198, §2(a), Dec. 17, 1993, 107 Stat. 2304; Pub. L. 104-39, §5(d)(1), Nov. 1, 1995, 109 Stat. 348; Pub. L. 105-80, §§8(a), 12(a)(19), Nov. 13, 1997, 111 Stat. 1533, 1535; Pub. L. 105-304, title IV, §405(e)(1), Oct. 28, 1998, 112 Stat. 2902, related to the establishment and purpose of copyright arbitration royalty panels, prior to the general amendment of this chapter by Pub. L. 108-419.

AMENDMENTS

2018—Subsec. (b)(1). Pub. L. 115-264, §103(g)(2)(A), struck out “The rates applicable under sections 114(f)(1)(B), 115, and 116 shall be calculated to achieve the following objectives:” at end of introductory provisions and struck out subpars. (A) to (D) which set forth objectives to be achieved.

Subsec. (b)(7)(B). Pub. L. 115-264, §103(g)(2)(B), substituted “114(f)(2)” for “114(f)(3)”.

Subsec. (b)(8), (9). Pub. L. 115-264, §102(b), added par. (8) and redesignated former par. (8) as (9).

2006—Subsec. (b)(1). Pub. L. 109-303, §3(1), substituted “119, and 1004” for “119 and 1004”.

Subsec. (b)(3)(C). Pub. L. 109-303, §5(1), added introductory provisions and struck out former introductory provisions which read as follows: “The Copyright Royalty Judges may make a partial distribution of such fees during the pendency of the proceeding under subparagraph (B) if all participants under section 803(b)(2) in the proceeding that are entitled to receive those fees that are to be partially distributed—”.

Subsec. (b)(3)(C)(i). Pub. L. 109-303, §5(2), substituted “the” for “such”.

Subsec. (f). Pub. L. 109-303, §3(2), added subsec. (f).

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by section 103(g)(2) of Pub. L. 115-264 applicable to any proceeding before the Copyright Royalty Judges that is commenced on or after Oct. 11, 2018, see section 102(c) of Pub. L. 115-264, set out as a note under section 115 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 3 of Pub. L. 109-303 effective as if included in the Copyright Royalty and Distribution Reform Act of 2004, Pub. L. 108-419, and amendment by section 5 of Pub. L. 109-303 effective October 6, 2004, see section 6 of Pub. L. 109-303, set out as a note under section 111 of this title.

EFFECTIVE DATE; TRANSITION PROVISIONS

Pub. L. 108-419, §6, Nov. 30, 2004, 118 Stat. 2369, as amended by Pub. L. 109-303, §4(h), Oct. 6, 2006, 120 Stat. 1483, provided that:

“(a) EFFECTIVE DATE.—This Act [see Short Title of 2004 Amendment note set out under section 101 of this title] and the amendments made by this Act shall take effect 6 months after the date of enactment of this Act [Nov. 30, 2004], except that the Librarian of Congress shall appoint 1 or more interim Copyright Royalty Judges under section 802(d) of title 17, United States Code, as amended by this Act, within 90 days after such date of enactment to carry out the functions of the Copyright Royalty Judges under title 17, United States Code, to the extent that Copyright Royalty Judges provided for in section 801(a) of title 17, United States Code, as amended by this Act, have not been appointed before the end of that 90-day period.

“(b) TRANSITION PROVISIONS.—

“(1) IN GENERAL.—Subject to paragraphs (2) and (3), the amendments made by this Act shall not affect any proceedings commenced, petitions filed, or voluntary agreements entered into before the effective date provided in subsection (a) under the provisions of title 17, United States Code, as amended by this Act, and pending on such effective date. Such proceedings shall continue, determinations made in such proceedings, and appeals taken therefrom, as if this Act had not been enacted, and shall continue in effect until modified under title 17, United States Code, as amended by this Act. Such petitions filed and voluntary agreements entered into shall remain in effect as if this Act had not been enacted. For purposes of this paragraph, the Librarian of Congress may determine whether a proceeding has commenced. The Librarian of Congress may terminate any proceeding commenced before the effective date provided in subsection (a) pursuant to chapter 8 of title 17, United States Code, and any proceeding so terminated shall become null and void. In such cases, the Copyright Royalty Judges may initiate a new proceeding in accordance with regulations adopted pursuant to section 803(b)(6) of title 17, United States Code.

“(2) CERTAIN ROYALTY RATE PROCEEDINGS.—Notwithstanding paragraph (1), the amendments made by this Act shall not affect proceedings to determine royalty rates pursuant to section 119(c) of title 17, United States Code, that are commenced before January 31, 2006.

“(3) PENDING PROCEEDINGS.—Notwithstanding paragraph (1), any proceedings to establish or adjust rates and terms for the statutory licenses under section [former] 114(f)(2) or 112(e) of title 17, United States Code, for a statutory period commencing on or after January 1, 2005, shall be terminated upon the date of enactment of this Act and shall be null and void. The rates and terms in effect under section [former] 114(f)(2) or 112(e) of title 17, United States Code, on December 31, 2004, for new subscription services, eligible nonsubscription services, and services exempt under section 114(d)(1)(C)(iv) of such title, and the rates and terms published in the Federal Register under the authority of the Small Webcaster Settlement Act of 2002 (17 U.S.C. 114 note; Public Law 107-321) (including the amendments made by that Act) for the years 2003 through 2004, as well as any notice and recordkeeping provisions adopted pursuant thereto, shall remain in effect until the later of the first applicable effective date for successor terms and rates specified in section 804(b) (2) or (3)(A) of title 17, United States Code, or such later date as the parties may agree or the Copyright Royalty Judges may establish. For the period commencing January 1, 2005, an eligible small webcaster or a noncommercial webcaster, as defined in the regulations published by the Register of Copyrights pursuant to the Small Webcaster Settlement Act of 2002 (17 U.S.C. 114 note; Public Law 107-321) (including the amendments made by that Act) [amending section 114 of this title and

enacting provisions set out as notes under sections 101 and 114 of this title], may elect to be subject to the rates and terms published in those regulations by complying with the procedures governing the election process set forth in those regulations not later than the first date on which the webcaster would be obligated to make a royalty payment for such period. Until successor terms and rates have been established for the period commencing January 1, 2006, licensees shall continue to make royalty payments at the rates and on the terms previously in effect, subject to retroactive adjustment when successor rates and terms for such services are established.

“(4) INTERIM PROCEEDINGS.—Notwithstanding subsection (a), as soon as practicable after the date of enactment of this Act, the Copyright Royalty Judges or interim Copyright Royalty Judges shall publish the notice described in section 803(b)(1)(A) of title 17, United States Code, as amended by this Act, to initiate a proceeding to establish or adjust rates and terms for the statutory licenses under section [former] 114(f)(2) or 112(e) of title 17, United States Code, for new subscription services and eligible non-subscription services for the period commencing January 1, 2006. The Copyright Royalty Judges or Interim Copyright Royalty Judges are authorized to cause that proceeding to take place as provided in subsection (b) of section 803 of that title within the time periods set forth in that subsection. Notwithstanding section 803(c)(1) of that title, the Copyright Royalty Judges shall not be required to issue their determination in that proceeding before the expiration of the statutory rates and terms in effect on December 31, 2004.

“(c) EXISTING APPROPRIATIONS.—Any funds made available in an appropriations Act to carry out chapter 8 of title 17, United States Code, shall be available to the extent necessary to carry out this section.”

§ 802. Copyright Royalty Judgeships; staff

(a) QUALIFICATIONS OF COPYRIGHT ROYALTY JUDGES.—

(1) IN GENERAL.—Each Copyright Royalty Judge shall be an attorney who has at least 7 years of legal experience. The Chief Copyright Royalty Judge shall have at least 5 years of experience in adjudications, arbitrations, or court trials. Of the other 2 Copyright Royalty Judges, 1 shall have significant knowledge of copyright law, and the other shall have significant knowledge of economics. An individual may serve as a Copyright Royalty Judge only if the individual is free of any financial conflict of interest under subsection (h).

(2) DEFINITION.—In this subsection, the term “adjudication” has the meaning given that term in section 551 of title 5, but does not include mediation.

(b) STAFF.—The Chief Copyright Royalty Judge shall hire full-time staff members to assist the Copyright Royalty Judges in performing their functions.

(c) TERMS.—The individual first appointed as the Chief Copyright Royalty Judge shall be appointed to a term of 6 years, and of the remaining individuals first appointed as Copyright Royalty Judges, 1 shall be appointed to a term of 4 years, and the other shall be appointed to a term of 2 years. Thereafter, the terms of succeeding Copyright Royalty Judges shall each be 6 years. An individual serving as a Copyright Royalty Judge may be reappointed to subsequent terms. The term of a Copyright Royalty Judge shall begin when the term of the prede-

cessor of that Copyright Royalty Judge ends. When the term of office of a Copyright Royalty Judge ends, the individual serving that term may continue to serve until a successor is selected.

(d) VACANCIES OR INCAPACITY.—

(1) VACANCIES.—If a vacancy should occur in the position of Copyright Royalty Judge, the Librarian of Congress shall act expeditiously to fill the vacancy, and may appoint an interim Copyright Royalty Judge to serve until another Copyright Royalty Judge is appointed under this section. An individual appointed to fill the vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed shall be appointed for the remainder of that term.

(2) INCAPACITY.—In the case in which a Copyright Royalty Judge is temporarily unable to perform his or her duties, the Librarian of Congress may appoint an interim Copyright Royalty Judge to perform such duties during the period of such incapacity.

(e) COMPENSATION.—

(1) JUDGES.—The Chief Copyright Royalty Judge shall receive compensation at the rate of basic pay payable for level AL-1 for administrative law judges pursuant to section 5372(b) of title 5, and each of the other two Copyright Royalty Judges shall receive compensation at the rate of basic pay payable for level AL-2 for administrative law judges pursuant to such section. The compensation of the Copyright Royalty Judges shall not be subject to any regulations adopted by the Office of Personnel Management pursuant to its authority under section 5376(b)(1) of title 5.

(2) STAFF MEMBERS.—Staff members appointed under subsection (b) shall be compensated at a rate not more than the basic rate of pay payable for level 10 of GS-15 of the General Schedule.

(3) LOCALITY PAY.—All rates of pay referred to under this subsection shall include locality pay.

(f) INDEPENDENCE OF COPYRIGHT ROYALTY JUDGE.—

(1) IN MAKING DETERMINATIONS.—

(A) IN GENERAL.—(i) Subject to subparagraph (B) and clause (ii) of this subparagraph, the Copyright Royalty Judges shall have full independence in making determinations concerning adjustments and determinations of copyright royalty rates and terms, the distribution of copyright royalties, the acceptance or rejection of royalty claims, rate adjustment petitions, and petitions to participate, and in issuing other rulings under this title, except that the Copyright Royalty Judges may consult with the Register of Copyrights on any matter other than a question of fact.

(ii) One or more Copyright Royalty Judges may, or by motion to the Copyright Royalty Judges, any participant in a proceeding may, request from the Register of Copyrights an interpretation of any material questions of substantive law that relate to the construction of provisions of this title and arise in the course of the proceeding.