

transferred on such effective date to the Copyright Office for use by the Copyright Office for the purposes for which such appropriations were made.”

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-318 effective Aug. 27, 1986, see section 3(e)(1) of Pub. L. 101-318, set out as a note under section 111 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100-667 effective Jan. 1, 1989, see section 206 of Pub. L. 100-667, set out as an Effective Date note under section 119 of this title.

Amendment by Pub. L. 100-568 effective Mar. 1, 1989, with any cause of action arising under this title before such date being governed by provisions in effect when cause of action arose, see section 13 of Pub. L. 100-568, set out as a note under section 101 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 104A, 114, 115, 802, 803 of this title; title 47 section 545.

### § 802. Membership and proceedings of copyright arbitration royalty panels

(a) COMPOSITION OF COPYRIGHT ARBITRATION ROYALTY PANELS.—A copyright arbitration royalty panel shall consist of 3 arbitrators selected by the Librarian of Congress pursuant to subsection (b).

(b) SELECTION OF ARBITRATION PANEL.—Not later than 10 days after publication of a notice in the Federal Register initiating an arbitration proceeding under section 803, and in accordance with procedures specified by the Register of Copyrights, the Librarian of Congress shall, upon the recommendation of the Register of Copyrights, select 2 arbitrators from lists provided by professional arbitration associations. Qualifications of the arbitrators shall include experience in conducting arbitration proceedings and facilitating the resolution and settlement of disputes, and any qualifications which the Librarian of Congress, upon the recommendation of the Register of Copyrights, shall adopt by regulation. The 2 arbitrators so selected shall, within 10 days after their selection, choose a third arbitrator from the same lists, who shall serve as the chairperson of the arbitrators. If such 2 arbitrators fail to agree upon the selection of a third arbitrator, the Librarian of Congress shall promptly select the third arbitrator. The Librarian of Congress, upon the recommendation of the Register of Copyrights, shall adopt regulations regarding standards of conduct which shall govern arbitrators and the proceedings under this chapter.

(c) ARBITRATION PROCEEDINGS.—Copyright arbitration royalty panels shall conduct arbitration proceedings, subject to subchapter II of chapter 5 of title 5, for the purpose of making their determinations in carrying out the purposes set forth in section 801. The arbitration panels shall act on the basis of a fully documented written record, prior decisions of the Copyright Royalty Tribunal, prior copyright arbitration panel determinations, and rulings by the Librarian of Congress under section 801(c). Any copyright owner who claims to be entitled to royalties under section 111, 112, 114, 116, or 119, any transmitting organization entitled to a statutory license under section 112(g), any per-

son entitled to a statutory license under section 114(d), any person entitled to a compulsory license under section 115, or any interested copyright party who claims to be entitled to royalties under section 1006, may submit relevant information and proposals to the arbitration panels in proceedings applicable to such copyright owner or interested copyright party, and any other person participating in arbitration proceedings may submit such relevant information and proposals to the arbitration panel conducting the proceedings. In ratemaking proceedings, the parties to the proceedings shall bear the entire cost thereof in such manner and proportion as the arbitration panels shall direct. In distribution proceedings, the parties shall bear the cost in direct proportion to their share of the distribution.

(d) PROCEDURES.—Effective on the date of the enactment of the Copyright Royalty Tribunal Reform Act of 1993, the Librarian of Congress shall adopt the rules and regulations set forth in chapter 3 of title 37 of the Code of Federal Regulations to govern proceedings under this chapter. Such rules and regulations shall remain in effect unless and until the Librarian, upon the recommendation of the Register of Copyrights, adopts supplemental or superseding regulations under subchapter II of chapter 5 of title 5.

(e) REPORT TO THE LIBRARIAN OF CONGRESS.—Not later than 180 days after publication of the notice in the Federal Register initiating an arbitration proceeding, the copyright arbitration royalty panel conducting the proceeding shall report to the Librarian of Congress its determination concerning the royalty fee or distribution of royalty fees, as the case may be. Such report shall be accompanied by the written record, and shall set forth the facts that the arbitration panel found relevant to its determination.

(f) ACTION BY LIBRARIAN OF CONGRESS.—Within 90 days after receiving the report of a copyright arbitration royalty panel under subsection (e), the Librarian of Congress, upon the recommendation of the Register of Copyrights, shall adopt or reject the determination of the arbitration panel. The Librarian shall adopt the determination of the arbitration panel unless the Librarian finds that the determination is arbitrary or contrary to the applicable provisions of this title. If the Librarian rejects the determination of the arbitration panel, the Librarian shall, before the end of an additional 30-day period, and after full examination of the record created in the arbitration proceeding, issue an order setting the royalty fee or distribution of fees, as the case may be. The Librarian shall cause to be published in the Federal Register the determination of the arbitration panel, and the decision of the Librarian (including an order issued under the preceding sentence). The Librarian shall also publicize such determination and decision in such other manner as the Librarian considers appropriate. The Librarian shall also make the report of the arbitration panel and the accompanying record available for public inspection and copying.

(g) JUDICIAL REVIEW.—Any decision of the Librarian of Congress under subsection (f) with respect to a determination of an arbitration panel may be appealed, by any aggrieved party who

would be bound by the determination, to the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the publication of the decision in the Federal Register. If no appeal is brought within such 30-day period, the decision of the Librarian is final, and the royalty fee or determination with respect to the distribution of fees, as the case may be, shall take effect as set forth in the decision. When this title provides that the royalty rates or terms that were previously in effect are to expire on a specified date, any adjustment by the Librarian of those rates or terms shall be effective as of the day following the date of expiration of the rates or terms that were previously in effect, even if the Librarian's decision is rendered on a later date. The pendency of an appeal under this paragraph shall not relieve persons obligated to make royalty payments under sections 111, 112, 114, 115, 116, 118, 119, or 1003 who would be affected by the determination on appeal to deposit the statement of account and royalty fees 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 OF LIBRARY OF CONGRESS AND COPYRIGHT OFFICE 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. In addition, all funds made available by an appropriations Act as offsetting collections and available for deductions under this subsection shall remain available until expended. In ratemaking proceedings, the reasonable costs of the Librarian of Congress and the Copyright Office shall be borne by the parties to the proceedings as directed by the arbitration panels under subsection (c).

(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, 112, 114, 115, 116, 118, or 119 or chapter 10.

(Pub. L. 94-553, title I, §101, Oct. 19, 1976, 90 Stat. 2596; Pub. L. 101-319, §2(a), July 3, 1990, 104 Stat. 290; Pub. L. 103-198, §2(b), Dec. 17, 1993, 107 Stat. 2305; Pub. L. 104-39, §5(d)(2)-(4), Nov. 1, 1995, 109

Stat. 349; Pub. L. 105-80, §8(b), Nov. 13, 1997, 111 Stat. 1533; Pub. L. 105-304, title IV, §405(d), (e)(2)-(4), Oct. 28, 1998, 112 Stat. 2902; Pub. L. 107-273, div. C, title III, §13301(c)(2), Nov. 2, 2002, 116 Stat. 1912.)

REFERENCES IN TEXT

The date of the enactment of the Copyright Royalty Tribunal Reform Act of 1993, referred to in subsec. (d), is the date of enactment of Pub. L. 103-198, which was approved Dec. 17, 1993.

Section 307 of the Legislative Branch Appropriations Act, 1994, referred to in subsec. (h)(2), is section 307 of Pub. L. 103-69 which is set out as a note under section 60-1 of Title 2, The Congress.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107-273 substituted “section 112(g)” for “section 112(f)”.

1998—Subsec. (c). Pub. L. 105-304, §405(e)(2), substituted “section 111, 112, 114, 116, or 119, any transmitting organization entitled to a statutory license under section 112(f), any person entitled to a statutory license” for “section 111, 114, 116, or 119, any person entitled to a compulsory license”.

Subsec. (f). Pub. L. 105-304, §405(d)(1), substituted “90” for “60” in first sentence and “an additional 30-day period” for “that 60-day period” in third sentence.

Subsec. (g). Pub. L. 105-304, §405(d)(2), (e)(3), inserted after second sentence “When this title provides that the royalty rates or terms that were previously in effect are to expire on a specified date, any adjustment by the Librarian of those rates or terms shall be effective as of the day following the date of expiration of the rates or terms that were previously in effect, even if the Librarian's decision is rendered on a later date.” and substituted “sections 111, 112, 114” for “sections 111, 114”.

Subsec. (h)(2). Pub. L. 105-304, §405(e)(4), substituted “section 111, 112, 114” for “section 111, 114”.

1997—Subsec. (h)(1). Pub. L. 105-80 amended par. (1) generally. Prior to amendment, par. (1) read as follows:

“(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.”

1995—Subsec. (c). Pub. L. 104-39, §5(d)(2), substituted “section 111, 114, 116, or 119, any person entitled to a compulsory license under section 114(d), any person entitled to a compulsory license under section 115,” for “section 111, 116, or 119,” in third sentence.

Subsec. (g). Pub. L. 104-39, §5(d)(3), inserted “114,” after “111,” in third sentence.

Subsec. (h)(2). Pub. L. 104-39, §5(d)(4), inserted “114,” after “111,”.

1993—Pub. L. 103-198 amended section generally, substituting present provisions for provisions relating to the membership of the Copyright Royalty Tribunal, chairman of the Tribunal, and filling of vacancies in the Tribunal.

1990—Subsec. (a). Pub. L. 101-319 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “The Tribunal shall be composed of five commissioners appointed by the President with the advice and consent of the Senate for a term of seven years each; of the first five members appointed, three shall be designated to serve for seven years from the date of the notice specified in section 801(c), and two shall be designated to serve for five years from such date, respectively. Commissioners shall be compensated at the highest rate now or hereafter prescribe for grade 18 of the General Schedule pay rates (5 U.S.C. 5332).”

## EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-39 effective 3 months after Nov. 1, 1995, see section 6 of Pub. L. 104-39, set out as a note under section 101 of this title.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 112, 114, 119, 801, 803 of this title.

**§ 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 112, 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 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 112 or 114, the Librarian of Congress shall proceed when and as provided by those sections.

(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 (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, §101, Oct. 19, 1976, 90 Stat. 2597, §804; Pub. L. 100-568, §11(2), Oct. 31, 1988, 102 Stat. 2860; Pub. L. 100-667, title II, §202(5), Nov. 16, 1988, 102 Stat. 3958; Pub. L. 101-318, §3(c), July 3, 1990, 104 Stat. 288; Pub. L. 102-563, §3(a)(2), Oct. 28, 1992, 106 Stat. 4248; renumbered §803 and amended Pub. L. 103-198, §2(d), Dec. 17, 1993, 107 Stat. 2307; Pub. L. 104-39, §5(d)(5)-(7), Nov. 1, 1995, 109 Stat. 349; Pub. L. 105-80, §12(a)(20), Nov. 13, 1997, 111 Stat. 1535; Pub. L. 105-304, title IV, §405(e)(5), (6), Oct. 28, 1998, 112 Stat. 2902.)

## REFERENCES IN TEXT

The date of the enactment of the Copyright Royalty Tribunal Reform Act of 1993, referred to in subsec. (a)(1), is the date of enactment of Pub. L. 103-198, which was approved Dec. 17, 1993.

## PRIOR PROVISIONS

A prior section 803, Pub. L. 94-553, title I, §101, Oct. 19, 1976, 90 Stat. 2596, related to procedures of the Copyright Royalty Tribunal, prior to repeal by Pub. L. 103-198, §2(c), Dec. 17, 1993, 107 Stat. 2307.

## AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105-304, §405(e)(5), substituted “sections 112, 114, 115” for “sections 114, 115”.