

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.

(Added Pub. L. 108–419, §3(a), Nov. 30, 2004, 118 Stat. 2341.)

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.

EFFECTIVE DATE; TRANSITION PROVISIONS

Pub. L. 108–419, §6, Nov. 30, 2004, 118 Stat. 2369, 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 date of enactment of this Act [Nov. 30, 2004] 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 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 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 114(f)(2) or 112(e) of title 17, United States Code, for new subscription services and eligible nonsubscription 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 3 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 predecessor 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.—Of the staff members appointed under subsection (b)—

(A) the rate of pay of 1 staff member shall be not more than the basic rate of pay payable for level 10 of GS-15 of the General Schedule;

(B) the rate of pay of 1 staff member shall be not less than the basic rate of pay pay-

able for GS-13 of the General Schedule and not more than the basic rate of pay payable for level 10 of GS-14 of such Schedule; and

(C) the rate of pay for the third staff member shall be not less than the basic rate of pay payable for GS-8 of the General Schedule and not more than the basic rate of pay payable for level 10 of GS-11 of such 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 clause (ii) of this subparagraph and subparagraph (B), 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) A Copyright Royalty Judge or Judges, or, by motion to the Copyright Royalty Judge or Judges, any participant in a proceeding may request an interpretation by the Register of Copyrights concerning any material question of substantive law (not including questions of procedure before the Copyright Royalty Judges, the ultimate adjustments and determinations of copyright royalty rates and terms, the ultimate distribution of copyright royalties, or the acceptance or rejection of royalty claims, rate adjustment petitions, or petitions to participate) concerning an interpretation or construction of those provisions of this title that are the subject of the proceeding. Any such request for a written interpretation by the Register of Copyrights shall be on the record. Reasonable provision shall be made for comment by the participants in the proceeding on the material question of substantive law in such a way as to minimize duplication and delay. Except as provided in subparagraph (B), the Register of Copyrights shall deliver to the Copyright Royalty Judges a response within 14 days after the Register of Copyrights¹ receives all of the briefs or comments of the participants. Such decision shall be in writing and shall be included by the Copyright Royalty Judges in the record that accompanies their final determination. If such a decision is timely delivered to the Copyright Royalty Judges, the Copyright Royalty Judges shall apply the legal interpretation embodied in the response of the Register of Copyrights in resolving material questions of substantive law.

(B) NOVEL QUESTIONS.—(i) In any case in which a novel material question of sub-

¹ So in original. Probably should be “Copyrights”.

stantive law concerning an interpretation of those provisions of this title that are the subject of the proceeding is presented, the Copyright Royalty Judges shall request a decision of the Register of Copyrights, in writing, to resolve such novel question. Reasonable provision shall be made for comment on such request by the participants in the proceeding, in such a way as to minimize duplication and delay. The Register of Copyrights shall transmit his or her decision to the Copyright Royalty Judges within 30 days after the Register of Copyrights receives all of the briefs or comments of the participants. Such decision shall be in writing and included by the Copyright Royalty Judges in the record that accompanies their final determination. If such a decision is timely delivered to the Copyright Royalty Judges, the Copyright Royalty Judges shall apply the legal determinations embodied in the decision of the Register of Copyrights in resolving material questions of substantive law.

(ii) In clause (i), a “novel question of law” is a question of law that has not been determined in prior decisions, determinations, and rulings described in section 803(a).

(C) CONSULTATION.—Notwithstanding the provisions of subparagraph (A), the Copyright Royalty Judges shall consult with the Register of Copyrights with respect to any determination or ruling that would require that any act be performed by the Copyright Office, and any such determination or ruling shall not be binding upon the Register of Copyrights.

(D) REVIEW OF LEGAL CONCLUSIONS BY THE REGISTER OF COPYRIGHTS.—The Register of Copyrights may review for legal error the resolution by the Copyright Royalty Judges of a material question of substantive law under this title that underlies or is contained in a final determination of the Copyright Royalty Judges. If the Register of Copyrights concludes, after taking into consideration the views of the participants in the proceeding, that any resolution reached by the Copyright Royalty Judges was in material error, the Register of Copyrights shall issue a written decision correcting such legal error, which shall be made part of the record of the proceeding. The Register of Copyrights shall issue such written decision not later than 60 days after the date on which the final determination by the Copyright Royalty Judges is issued. Additionally, the Register of Copyrights shall cause to be published in the Federal Register such written decision, together with a specific identification of the legal conclusion of the Copyright Royalty Judges that is determined to be erroneous. As to conclusions of substantive law involving an interpretation of the statutory provisions of this title, the decision of the Register of Copyrights shall be binding as precedent upon the Copyright Royalty Judges in subsequent proceedings under this chapter. When a decision has been rendered pursuant to this subparagraph, the Register of Copyrights may, on the basis of and in accordance with such decision, inter-

vene as of right in any appeal of a final determination of the Copyright Royalty Judges pursuant to section 803(d) in the United States Court of Appeals for the District of Columbia Circuit. If, prior to intervening in such an appeal, the Register of Copyrights gives notification to, and undertakes to consult with the Attorney General with respect to such intervention, and the Attorney General fails, within a reasonable period after receiving such notification, to intervene in such appeal, the Register of Copyrights may intervene in such appeal in his or her own name by any attorney designated by the Register of Copyrights for such purpose. Intervention by the Register of Copyrights in his or her own name shall not preclude the Attorney General from intervening on behalf of the United States in such an appeal as may be otherwise provided or required by law.

(E) EFFECT ON JUDICIAL REVIEW.—Nothing in this section shall be interpreted to alter the standard applied by a court in reviewing legal determinations involving an interpretation or construction of the provisions of this title or to affect the extent to which any construction or interpretation of the provisions of this title shall be accorded deference by a reviewing court.

(2) PERFORMANCE APPRAISALS.—

(A) IN GENERAL.—Notwithstanding any other provision of law or any regulation of the Library of Congress, and subject to subparagraph (B), the Copyright Royalty Judges shall not receive performance appraisals.

(B) RELATING TO SANCTION OR REMOVAL.—To the extent that the Librarian of Congress adopts regulations under subsection (h) relating to the sanction or removal of a Copyright Royalty Judge and such regulations require documentation to establish the cause of such sanction or removal, the Copyright Royalty Judge may receive an appraisal related specifically to the cause of the sanction or removal.

(g) INCONSISTENT DUTIES BARRED.—No Copyright Royalty Judge may undertake duties that conflict with his or her duties and responsibilities as a Copyright Royalty Judge.

(h) STANDARDS OF CONDUCT.—The Librarian of Congress shall adopt regulations regarding the standards of conduct, including financial conflict of interest and restrictions against ex parte communications, which shall govern the Copyright Royalty Judges and the proceedings under this chapter.

(i) REMOVAL OR SANCTION.—The Librarian of Congress may sanction or remove a Copyright Royalty Judge for violation of the standards of conduct adopted under subsection (h), misconduct, neglect of duty, or any disqualifying physical or mental disability. Any such sanction or removal may be made only after notice and opportunity for a hearing, but the Librarian of Congress may suspend the Copyright Royalty Judge during the pendency of such hearing. The Librarian shall appoint an interim Copyright Royalty Judge during the period of any such suspension.

(Added Pub. L. 108-419, §3(a), Nov. 30, 2004, 118 Stat. 2345.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (e)(2), is set out under section 5332 of Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 802, 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, related to membership and proceedings of copyright arbitration royalty panels, prior to the general amendment of this chapter by Pub. L. 108-419.

§ 803. Proceedings of Copyright Royalty Judges

(a) PROCEEDINGS.—

(1) IN GENERAL.—The Copyright Royalty Judges shall act in accordance with regulations issued by the Copyright Royalty Judges and the Librarian of Congress, and on the basis of a written record, prior determinations and interpretations of the Copyright Royalty Tribunal, Librarian of Congress, the Register of Copyrights, and the Copyright Royalty Judges (to the extent those determinations are not inconsistent with a decision of the Register of Copyrights that was timely delivered to the Copyright Royalty Judges pursuant to section 802(f)(1)(A) or (B), or with a decision of the Register of Copyrights pursuant to section 802(f)(1)(D)), under this chapter, and decisions of the court of appeals under this chapter before, on, or after the effective date of the Copyright Royalty and Distribution Reform Act of 2004.

(2) JUDGES ACTING AS PANEL AND INDIVIDUALLY.—The Copyright Royalty Judges shall preside over hearings in proceedings under this chapter en banc. The Chief Copyright Royalty Judge may designate a Copyright Royalty Judge to preside individually over such collateral and administrative proceedings, and over such proceedings under paragraphs (1) through (5) of subsection (b), as the Chief Judge considers appropriate.

(3) DETERMINATIONS.—Final determinations of the Copyright Royalty Judges in proceedings under this chapter shall be made by majority vote. A Copyright Royalty Judge dissenting from the majority on any determination under this chapter may issue his or her dissenting opinion, which shall be included with the determination.

(b) PROCEDURES.—

(1) INITIATION.—

(A) CALL FOR PETITIONS TO PARTICIPATE.—

(i) The Copyright Royalty Judges shall cause to be published in the Federal Register notice of commencement of proceedings under this chapter, calling for the filing of petitions to participate in a proceeding under this chapter for the purpose of making the relevant determination under section 111, 112, 114, 115, 116, 118, 119, 1004, or 1007, as the case may be—

(I) promptly upon a determination made under section 804(a);

(II) by no later than January 5 of a year specified in paragraph (2) of section 804(b) for the commencement of proceedings;

(III) by no later than January 5 of a year specified in subparagraph (A) or (B) of paragraph (3) of section 804(b) for the commencement of proceedings, or as otherwise provided in subparagraph (A) or (C) of such paragraph for the commencement of proceedings;

(IV) as provided under section 804(b)(8); or

(V) by no later than January 5 of a year specified in any other provision of section 804(b) for the filing of petitions for the commencement of proceedings, if a petition has not been filed by that date, except that in the case of proceedings under section 111 that are scheduled to commence in 2005, such notice may not be published.

(ii) Petitions to participate shall be filed by no later than 30 days after publication of notice of commencement of a proceeding under clause (i), except that the Copyright Royalty Judges may, for substantial good cause shown and if there is no prejudice to the participants that have already filed petitions, accept late petitions to participate at any time up to the date that is 90 days before the date on which participants in the proceeding are to file their written direct statements. Notwithstanding the preceding sentence, petitioners whose petitions are filed more than 30 days after publication of notice of commencement of a proceeding are not eligible to object to a settlement reached during the voluntary negotiation period under paragraph (3), and any objection filed by such a petitioner shall not be taken into account by the Copyright Royalty Judges.

(B) PETITIONS TO PARTICIPATE.—Each petition to participate in a proceeding shall describe the petitioner's interest in the subject matter of the proceeding. Parties with similar interests may file a single petition to participate.

(2) PARTICIPATION IN GENERAL.—Subject to paragraph (4), a person may participate in a proceeding under this chapter, including through the submission of briefs or other information, only if—

(A) that person has filed a petition to participate in accordance with paragraph (1) (either individually or as a group under paragraph (1)(B)), together with a filing fee of \$150;

(B) the Copyright Royalty Judges have not determined that the petition to participate is facially invalid; and

(C) the Copyright Royalty Judges have not determined, sua sponte or on the motion of another participant in the proceeding, that the person lacks a significant interest in the proceeding.

(3) VOLUNTARY NEGOTIATION PERIOD.—

(A) IN GENERAL.—Promptly after the date for filing of petitions to participate in a pro-