

(b) DEVELOPMENT OF VERIFICATION PROCEDURE.—The Secretary of Commerce shall establish a procedure to verify, upon the petition of an interested party, that a system meets the standards set forth in subsection (a)(2).

(c) PROHIBITION ON CIRCUMVENTION OF THE SYSTEM.—No person shall import, manufacture, or distribute any device, or offer or perform any service, the primary purpose or effect of which is to avoid, bypass, remove, deactivate, or otherwise circumvent any program or circuit which implements, in whole or in part, a system described in subsection (a).

(d) ENCODING OF INFORMATION ON DIGITAL MUSICAL RECORDINGS.—

(1) PROHIBITION ON ENCODING INACCURATE INFORMATION.—No person shall encode a digital musical recording of a sound recording with inaccurate information relating to the category code, copyright status, or generation status of the source material for the recording.

(2) ENCODING OF COPYRIGHT STATUS NOT REQUIRED.—Nothing in this chapter requires any person engaged in the importation or manufacture of digital musical recordings to encode any such digital musical recording with respect to its copyright status.

(e) INFORMATION ACCOMPANYING TRANSMISSIONS IN DIGITAL FORMAT.—Any person who transmits or otherwise communicates to the public any sound recording in digital format is not required under this chapter to transmit or otherwise communicate the information relating to the copyright status of the sound recording. Any such person who does transmit or otherwise communicate such copyright status information shall transmit or communicate such information accurately.

(Added Pub. L. 102-563, § 2, Oct. 28, 1992, 106 Stat. 4240.)

#### SUBCHAPTER C—ROYALTY PAYMENTS

##### **§ 1003. Obligation to make royalty payments**

(a) PROHIBITION ON IMPORTATION AND MANUFACTURE.—No person shall import into and distribute, or manufacture and distribute, any digital audio recording device or digital audio recording medium unless such person records the notice specified by this section and subsequently deposits the statements of account and applicable royalty payments for such device or medium specified in section 1004.

(b) FILING OF NOTICE.—The importer or manufacturer of any digital audio recording device or digital audio recording medium, within a product category or utilizing a technology with respect to which such manufacturer or importer has not previously filed a notice under this subsection, shall file with the Register of Copyrights a notice with respect to such device or medium, in such form and content as the Register shall prescribe by regulation.

(c) FILING OF QUARTERLY AND ANNUAL STATEMENTS OF ACCOUNT.—

(1) GENERALLY.—Any importer or manufacturer that distributes any digital audio recording device or digital audio recording medium that it manufactured or imported shall

file with the Register of Copyrights, in such form and content as the Register shall prescribe by regulation, such quarterly and annual statements of account with respect to such distribution as the Register shall prescribe by regulation.

(2) CERTIFICATION, VERIFICATION, AND CONFIDENTIALITY.—Each such statement shall be certified as accurate by an authorized officer or principal of the importer or manufacturer. The Register shall issue regulations to provide for the verification and audit of such statements and to protect the confidentiality of the information contained in such statements. Such regulations shall provide for the disclosure, in confidence, of such statements to interested copyright parties.

(3) ROYALTY PAYMENTS.—Each such statement shall be accompanied by the royalty payments specified in section 1004.

(Added Pub. L. 102-563, § 2, Oct. 28, 1992, 106 Stat. 4240.)

##### **§ 1004. Royalty payments**

(a) DIGITAL AUDIO RECORDING DEVICES.—

(1) AMOUNT OF PAYMENT.—The royalty payment due under section 1003 for each digital audio recording device imported into and distributed in the United States, or manufactured and distributed in the United States, shall be 2 percent of the transfer price. Only the first person to manufacture and distribute or import and distribute such device shall be required to pay the royalty with respect to such device.

(2) CALCULATION FOR DEVICES DISTRIBUTED WITH OTHER DEVICES.—With respect to a digital audio recording device first distributed in combination with one or more devices, either as a physically integrated unit or as separate components, the royalty payment shall be calculated as follows:

(A) If the digital audio recording device and such other devices are part of a physically integrated unit, the royalty payment shall be based on the transfer price of the unit, but shall be reduced by any royalty payment made on any digital audio recording device included within the unit that was not first distributed in combination with the unit.

(B) If the digital audio recording device is not part of a physically integrated unit and substantially similar devices have been distributed separately at any time during the preceding 4 calendar quarters, the royalty payment shall be based on the average transfer price of such devices during those 4 quarters.

(C) If the digital audio recording device is not part of a physically integrated unit and substantially similar devices have not been distributed separately at any time during the preceding 4 calendar quarters, the royalty payment shall be based on a constructed price reflecting the proportional value of such device to the combination as a whole.

(3) LIMITS ON ROYALTIES.—Notwithstanding paragraph (1) or (2), the amount of the royalty

payment for each digital audio recording device shall not be less than \$1 nor more than the royalty maximum. The royalty maximum shall be \$8 per device, except that in the case of a physically integrated unit containing more than 1 digital audio recording device, the royalty maximum for such unit shall be \$12. During the 6th year after the effective date of this chapter, and not more than once each year thereafter, any interested copyright party may petition the Copyright Royalty Judges to increase the royalty maximum and, if more than 20 percent of the royalty payments are at the relevant royalty maximum, the Copyright Royalty Judges shall prospectively increase such royalty maximum with the goal of having no more than 10 percent of such payments at the new royalty maximum; however the amount of any such increase as a percentage of the royalty maximum shall in no event exceed the percentage increase in the Consumer Price Index during the period under review.

(b) DIGITAL AUDIO RECORDING MEDIA.—The royalty payment due under section 1003 for each digital audio recording medium imported into and distributed in the United States, or manufactured and distributed in the United States, shall be 3 percent of the transfer price. Only the first person to manufacture and distribute or import and distribute such medium shall be required to pay the royalty with respect to such medium.

(Added Pub. L. 102-563, § 2, Oct. 28, 1992, 106 Stat. 4241; amended Pub. L. 103-198, § 6(b)(1), Dec. 17, 1993, 107 Stat. 2312; Pub. L. 108-419, § 5(i)(1), Nov. 30, 2004, 118 Stat. 2368.)

#### Editorial Notes

##### REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (a)(3), is Oct. 28, 1992. See Effective Date note set out under section 1001 of this title.

##### AMENDMENTS

2004—Subsec. (a)(3). Pub. L. 108-419 substituted “Copyright Royalty Judges” for “Librarian of Congress” in two places.

1993—Subsec. (a)(3). Pub. L. 103-198 substituted “Librarian of Congress” for “Copyright Royalty Tribunal”, after “may petition the” and for “Tribunal” before “shall prospectively”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-419 effective 6 months after Nov. 30, 2004, subject to transition provisions, see section 6 of Pub. L. 108-419, set out as an Effective Date; Transition Provisions note under section 801 of this title.

#### § 1005. Deposit of royalty payments and deduction of expenses

The Register of Copyrights shall receive all royalty payments deposited under this chapter and, after deducting the reasonable costs incurred by the Copyright Office under this chapter, shall deposit the balance in the Treasury of the United States as offsetting receipts, in such

manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest under section 1007. The Register may, in the Register’s discretion, 4 years after the close of any calendar year, close out the royalty payments account for that calendar year, and may treat any funds remaining in such account and any subsequent deposits that would otherwise be attributable to that calendar year as attributable to the succeeding calendar year.

(Added Pub. L. 102-563, § 2, Oct. 28, 1992, 106 Stat. 4242; amended Pub. L. 103-198, § 6(b)(2), Dec. 17, 1993, 107 Stat. 2312.)

#### Editorial Notes

##### AMENDMENTS

1993—Pub. L. 103-198 struck out at end “The Register shall submit to the Copyright Royalty Tribunal, on a monthly basis, a financial statement reporting the amount of royalties under this chapter that are available for distribution.”

#### § 1006. Entitlement to royalty payments

(a) INTERESTED COPYRIGHT PARTIES.—The royalty payments deposited pursuant to section 1005 shall, in accordance with the procedures specified in section 1007, be distributed to any interested copyright party—

(1) whose musical work or sound recording has been—

(A) embodied in a digital musical recording or an analog musical recording lawfully made under this title that has been distributed, and

(B) distributed in the form of digital musical recordings or analog musical recordings or disseminated to the public in transmissions, during the period to which such payments pertain; and

(2) who has filed a claim under section 1007.

(b) ALLOCATION OF ROYALTY PAYMENTS TO GROUPS.—The royalty payments shall be divided into 2 funds as follows:

(1) THE SOUND RECORDINGS FUND.—66½ percent of the royalty payments shall be allocated to the Sound Recordings Fund. 2½ percent of the royalty payments allocated to the Sound Recordings Fund shall be placed in an escrow account managed by an independent administrator jointly appointed by the interested copyright parties described in section 1001(7)(A) and the American Federation of Musicians (or any successor entity) to be distributed to nonfeatured musicians (whether or not members of the American Federation of Musicians or any successor entity) who have performed on sound recordings distributed in the United States. 1% percent of the royalty payments allocated to the Sound Recordings Fund shall be placed in an escrow account managed by an independent administrator jointly appointed by the interested copyright parties described in section 1001(7)(A) and the American Federation of Television and Radio Artists (or any successor entity) to be distributed to non-featured vocalists (whether or not members of the American Federation of Television and

Radio Artists or any successor entity) who have performed on sound recordings distributed in the United States. 40 percent of the remaining royalty payments in the Sound Recordings Fund shall be distributed to the interested copyright parties described in section 1001(7)(C), and 60 percent of such remaining royalty payments shall be distributed to the interested copyright parties described in section 1001(7)(A).

(2) THE MUSICAL WORKS FUND.—

(A) 33½ percent of the royalty payments shall be allocated to the Musical Works Fund for distribution to interested copyright parties described in section 1001(7)(B).

(B)(i) Music publishers shall be entitled to 50 percent of the royalty payments allocated to the Musical Works Fund.

(ii) Writers shall be entitled to the other 50 percent of the royalty payments allocated to the Musical Works Fund.

(c) ALLOCATION OF ROYALTY PAYMENTS WITHIN GROUPS.—If all interested copyright parties within a group specified in subsection (b) do not agree on a voluntary proposal for the distribution of the royalty payments within each group, the Copyright Royalty Judges shall, pursuant to the procedures specified under section 1007(c), allocate royalty payments under this section based on the extent to which, during the relevant period—

(1) for the Sound Recordings Fund, each sound recording was distributed in the form of digital musical recordings or analog musical recordings; and

(2) for the Musical Works Fund, each musical work was distributed in the form of digital musical recordings or analog musical recordings or disseminated to the public in transmissions.

(Added Pub. L. 102-563, § 2, Oct. 28, 1992, 106 Stat. 4242; amended Pub. L. 103-198, § 6(b)(3), Dec. 17, 1993, 107 Stat. 2312; Pub. L. 105-80, § 12(a)(24), Nov. 13, 1997, 111 Stat. 1535; Pub. L. 108-419, § 5(i)(2), Nov. 30, 2004, 118 Stat. 2368.)

#### Editorial Notes

##### AMENDMENTS

2004—Subsec. (c). Pub. L. 108-419 substituted “Copyright Royalty Judges” for “Librarian of Congress shall convene a copyright arbitration royalty panel which” in introductory provisions.

1997—Subsec. (b)(1). Pub. L. 105-80 substituted “Federation of Television” for “Federation Television” before “and Radio Artists or any successor entity”.

1993—Subsec. (c). Pub. L. 103-198 substituted “Librarian of Congress shall convene a copyright arbitration royalty panel which” for “Copyright Royalty Tribunal” in introductory provisions.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-419 effective 6 months after Nov. 30, 2004, subject to transition provisions, see section 6 of Pub. L. 108-419, set out as an Effective Date; Transition Provisions note under section 801 of this title.

#### § 1007. Procedures for distributing royalty payments

(a) FILING OF CLAIMS AND NEGOTIATIONS.—

(1) FILING OF CLAIMS.—During the first 2 months of each calendar year, every interested copyright party seeking to receive royalty payments to which such party is entitled under section 1006 shall file with the Copyright Royalty Judges a claim for payments collected during the preceding year in such form and manner as the Copyright Royalty Judges shall prescribe by regulation.

(2) NEGOTIATIONS.—Notwithstanding any provision of the antitrust laws, for purposes of this section interested copyright parties within each group specified in section 1006(b) may agree among themselves to the proportionate division of royalty payments, may lump their claims together and file them jointly or as a single claim, or may designate a common agent, including any organization described in section 1001(7)(D), to negotiate or receive payment on their behalf; except that no agreement under this subsection may modify the allocation of royalties specified in section 1006(b).

(b) DISTRIBUTION OF PAYMENTS IN THE ABSENCE OF A DISPUTE.—After the period established for the filing of claims under subsection (a), in each year, the Copyright Royalty Judges shall determine whether there exists a controversy concerning the distribution of royalty payments under section 1006(c). If the Copyright Royalty Judges determine that no such controversy exists, the Copyright Royalty Judges shall, within 30 days after such determination, authorize the distribution of the royalty payments as set forth in the agreements regarding the distribution of royalty payments entered into pursuant to subsection (a). The Librarian of Congress shall, before such royalty payments are distributed, deduct the reasonable administrative costs incurred under this section.

(c) RESOLUTION OF DISPUTES.—If the Copyright Royalty Judges find the existence of a controversy, the Copyright Royalty Judges shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty payments. During the pendency of such a proceeding, the Copyright Royalty Judges shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall, to the extent feasible, authorize the distribution of any amounts that are not in controversy. The Librarian of Congress shall, before such royalty payments are distributed, deduct the reasonable administrative costs incurred under this section.

(Added Pub. L. 102-563, § 2, Oct. 28, 1992, 106 Stat. 4244; amended Pub. L. 103-198, § 6(b)(4), Dec. 17, 1993, 107 Stat. 2312; Pub. L. 105-80, §§ 9, 12(a)(25), Nov. 13, 1997, 111 Stat. 1534, 1535; Pub. L. 108-419, § 5(i)(3), Nov. 30, 2004, 118 Stat. 2368; Pub. L. 109-303, § 4(f), Oct. 6, 2006, 120 Stat. 1483.)

#### Editorial Notes

##### AMENDMENTS

2006—Subsec. (b). Pub. L. 109-303, § 4(f)(1), substituted “Copyright Royalty Judges” for “Librarian of Congress” in second sentence and struck out “by the Librarian” after “administrative costs incurred” in last sentence.

Subsec. (c). Pub. L. 109–303, §4(f)(2), struck out “by the Librarian” after “administrative costs incurred” in last sentence.

2004—Subsec. (a)(1). Pub. L. 108–419, §5(i)(3)(A), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “During the first 2 months of each calendar year after calendar year 1992, every interested copyright party seeking to receive royalty payments to which such party is entitled under section 1006 shall file with the Librarian of Congress a claim for payments collected during the preceding year in such form and manner as the Librarian of Congress shall prescribe by regulation.”

Subsec. (b). Pub. L. 108–419, §5(i)(3)(B), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “After the period established for the filing of claims under subsection (a), in each year after 1992, the Librarian of Congress shall determine whether there exists a controversy concerning the distribution of royalty payments under section 1006(c). If the Librarian of Congress determines that no such controversy exists, the Librarian of Congress shall, within 30 days after such determination, authorize the distribution of the royalty payments as set forth in the agreements regarding the distribution of royalty payments entered into pursuant to subsection (a), after deducting its reasonable administrative costs under this section.”

Subsec. (c). Pub. L. 108–419, §5(i)(3)(B), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “If the Librarian of Congress finds the existence of a controversy, the Librarian shall, pursuant to chapter 8 of this title, convene a copyright arbitration royalty panel to determine the distribution of royalty payments. During the pendency of such a proceeding, the Librarian of Congress shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall, to the extent feasible, authorize the distribution of any amounts that are not in controversy. The Librarian of Congress shall, before authorizing the distribution of such royalty payments, deduct the reasonable administrative costs incurred by the Librarian under this section.”

1997—Subsec. (a)(1). Pub. L. 105–80, §12(a)(25)(A), substituted “calendar year 1992” for “the calendar year in which this chapter takes effect”.

Subsec. (b). Pub. L. 105–80, §§9, 12(a)(25)(B), substituted “After the period established” for “Within 30 days after the period established” and “each year after 1992” for “each year after the year in which this section takes effect”.

1993—Subsec. (a)(1). Pub. L. 103–198, §6(b)(4)(A), substituted “Librarian of Congress” for “Copyright Royalty Tribunal” before “a claim for” and for “Tribunal” before “shall prescribe”.

Subsec. (b). Pub. L. 103–198, §6(b)(4)(B), substituted “Librarian of Congress” for “Copyright Royalty Tribunal” before “shall determine whether” and for “Tribunal” wherever appearing.

Subsec. (c). Pub. L. 103–198, §6(b)(4)(C), substituted first sentence for “If the Tribunal finds the existence of a controversy, it shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty payments.”, substituted “Librarian of Congress” for “Tribunal” wherever appearing in second and third sentences, and “the reasonable administrative costs incurred by the Librarian” for “its reasonable administrative costs” in last sentence.

#### Statutory Notes and Related Subsidiaries

##### 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.

##### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–419 effective 6 months after Nov. 30, 2004, subject to transition provisions, see

section 6 of Pub. L. 108–419, set out as an Effective Date; Transition Provisions note under section 801 of this title.

#### SUBCHAPTER D—PROHIBITION ON CERTAIN INFRINGEMENT ACTIONS, REMEDIES, AND ARBITRATION

##### § 1008. Prohibition on certain infringement actions

No action may be brought under this title alleging infringement of copyright based on the manufacture, importation, or distribution of a digital audio recording device, a digital audio recording medium, an analog recording device, or an analog recording medium, or based on the noncommercial use by a consumer of such a device or medium for making digital musical recordings or analog musical recordings.

(Added Pub. L. 102–563, §2, Oct. 28, 1992, 106 Stat. 4244.)

##### § 1009. Civil remedies

(a) CIVIL ACTIONS.—Any interested copyright party injured by a violation of section 1002 or 1003 may bring a civil action in an appropriate United States district court against any person for such violation.

(b) OTHER CIVIL ACTIONS.—Any person injured by a violation of this chapter may bring a civil action in an appropriate United States district court for actual damages incurred as a result of such violation.

(c) POWERS OF THE COURT.—In an action brought under subsection (a), the court—

(1) may grant temporary and permanent injunctions on such terms as it deems reasonable to prevent or restrain such violation;

(2) in the case of a violation of section 1002, or in the case of an injury resulting from a failure to make royalty payments required by section 1003, shall award damages under subsection (d);

(3) in its discretion may allow the recovery of costs by or against any party other than the United States or an officer thereof; and

(4) in its discretion may award a reasonable attorney’s fee to the prevailing party.

##### (d) AWARD OF DAMAGES.—

(1) DAMAGES FOR SECTION 1002 OR 1003 VIOLATIONS.—

(A) ACTUAL DAMAGES.—(i) In an action brought under subsection (a), if the court finds that a violation of section 1002 or 1003 has occurred, the court shall award to the complaining party its actual damages if the complaining party elects such damages at any time before final judgment is entered.

(ii) In the case of section 1003, actual damages shall constitute the royalty payments that should have been paid under section 1004 and deposited under section 1005. In such a case, the court, in its discretion, may award an additional amount of not to exceed 50 percent of the actual damages.

(B) STATUTORY DAMAGES FOR SECTION 1002 VIOLATIONS.—

(i) DEVICE.—A complaining party may recover an award of statutory damages for each violation of section 1002(a) or (c) in