105TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { 105–25

COPYRIGHT TECHNICAL AMENDMENTS ACT

MARCH 17, 1997.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. COBLE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 672]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 672) to make technical amendments to certain provisions of title 17, United States Code, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. TECHNICAL CORRECTIONS TO THE SATELLITE HOME VIEWER ACT OF 1994.

The Satellite Home Viewer Act of 1994 (Public Law 103–369) is amended as follows:

(1) Section 2(3)(A) is amended to read as follows:

"(A) in clause (i) by striking '12 cents' and inserting '17.5 cents per subscriber in the case of superstations that as retransmitted by the satellite

carrier include any program which, if delivered by any cable system in the United States, would be subject to the syndicated exclusivity rules of the Federal Communications Commission, and 14 cents per subscriber in the case of superstations that are syndex-proof as defined in section 258.2 of title 37, Code of Federal Regulations'; and ".

(2) Section 2(4) is amended to read as follows:

"(4) Subsection (c) is amended—

"(A) in paragraph (1)—

"(i) by striking 'until December 31, 1992,';

"(ii) by striking '(2), (3) or (4)' and inserting '(2) or (3)'; and

"(iii) by striking the second sentence;

"(B) in paragraph (2)—

"(i) in subparagraph (A) by striking 'July 1, 1991' and inserting 'July 1, 1996'; and

"(ii) in subparagraph (D) by striking 'December 31, 1994' and inserting 'December 31, 1999, or in accordance with the terms of the agreement, whichever is later'; and

"(C) in paragraph (3)—

"(i) in subparagraph (A) by striking 'December 31, 1991' and inserting 'January 1, 1997';

"(ii) by amending subparagraph (B) to read as follows:

"'(B) ESTABLISHMENT OF ROYALTY FEES.—In determining royalty fees under this paragraph, the copyright arbitration royalty panel appointed under chapter 8 shall establish fees for the retransmission of network stations and superstations that most clearly represent the fair market value of secondary transmissions. In determining the fair market value, the panel shall base its decision on economic, competitive, and programming information presented by the parties, including—

"'(i) the competitive environment in which such programming is distributed, the cost of similar signals in similar private and compulsory license marketplaces, and any special features and conditions of the retransmission marketplace;

"'(ii) the economic impact of such fees on copyright owners and satellite carriers; and

"'(iii) the impact on the continued availability of secondary transmissions to the public.'; and

"(iii) in subparagraph (C), by inserting 'or July 1, 1997, whichever is later' after 'section 802(g)'.".

(3) Section 2(5)(A) is amended to read as follows:

"(A) in paragraph (5)(C) by striking 'the date of the enactment of the Satellite Home Viewer Act of 1988' and inserting 'November 16, 1988'; and".

SEC. 2. COPYRIGHT IN RESTORED WORKS.

Section 104A of title 17, United States Code, is amended as follows:

(1) Subsection (d)(3)(A) is amended to read as follows:

"(3) EXISTING DERIVATIVE WORKS.—(A) In the case of a derivative work that is based upon a restored work and is created—

"(i) before the date of the enactment of the Uruguay Round Agreements Act, if the source country of the restored work is an eligible country on such date, or

"(ii) before the date on which the source country of the restored work becomes an eligible country, if that country is not an eligible country on such date of enactment,

a reliance party may continue to exploit that derivative work for the duration of the restored copyright if the reliance party pays to the owner of the restored copyright reasonable compensation for conduct which would be subject to a remedy for infringement but for the provisions of this paragraph.".

(2) Subsection (e)(1)(B)(ii) is amended by striking the last sentence.

(3) Subsection (h)(2) is amended to read as follows:

"(2) The 'date of restoration' of a restored copyright is—

"(A) January 1, 1996, if the source country of the restored work is a nation adhering to the Berne Convention or a WTO member country on such date, or

"(B) the date of adherence or proclamation, in the case of any other source country of the restored work.".

(4) Subsection (h)(3) is amended to read as follows:

"(3) The term 'eligible country' means a nation, other than the United States, that—

"(A) becomes a WTO member country after the date of the enactment of the Uruguay Round Agreements Act;

"(B) on such date of enactment is, or after such date of enactment becomes, a member of the Berne Convention; or

"(C) after such date of enactment becomes subject to a proclamation under subsection (g).

For purposes of this section, a nation that is a member of the Berne Convention on the date of the enactment of the Uruguay Round Agreements Act shall be construed to become an eligible country on such date of enactment.".

SEC. 3. LICENSES FOR NONEXEMPT SUBSCRIPTION TRANSMISSIONS.

Section 114(f) of title 17, United States Code, is amended—

(1) in paragraph (1), by inserting ", or, if a copyright arbitration royalty panel is convened, ending 30 days after the Librarian issues and publishes in the Federal Register an order adopting the determination of the copyright arbitration royalty panel or an order setting the terms and rates (if the Librarian rejects the panel's determination)" after "December 31, 2000"; and

(2) in paragraph (2), by striking "and publish in the Federal Register".

SEC. 4. ROYALTY PAYABLE UNDER COMPULSORY LICENSE.

Section 115(c)(3)(D) of title 17, United States Code, is amended by striking "and publish in the Federal Register".

SEC. 5. NEGOTIATED LICENSE FOR JUKEBOXES.

Section 116 of title 17, United States Code, is amended—

(1) by amending subsection (b)(2) to read as follows:

"(2) ARBITRATION.—Parties not subject to such a negotiation may determine, by arbitration in accordance with the provisions of chapter 8, the terms and rates and the division of fees described in paragraph (1).";

and

(2) by adding at the end the following new subsection:

"(d) DEFINITIONS.—As used in this section, the following terms mean the following:

"(1) A 'coin-operated phonorecord player' is a machine or device that—

"(A) is employed solely for the performance of nondramatic musical works by means of phonorecords upon being activated by the insertion of coins, currency, tokens, or other monetary units or their equivalent;

"(B) is located in an establishment making no direct or indirect charge for admission;

"(C) is accompanied by a list which is comprised of the titles of all the musical works available for performance on it, and is affixed to the phonorecord player or posted in the establishment in a prominent position where it can be readily examined by the public; and

"(D) affords a choice of works available for performance and permits the choice to be made by the patrons of the establishment in which it is located.

"(2) An 'operator' is any person who, alone or jointly with others—

"(A) owns a coin-operated phonorecord player;

"(B) has the power to make a coin-operated phonorecord player available for placement in an establishment for purposes of public performance; or

"(C) has the power to exercise primary control over the selection of the musical works made available for public performance on a coin-operated phonorecord player.".

SEC. 6. REGISTRATION AND INFRINGEMENT ACTIONS.

Section 411(b)(1) of title 17, United States Code, is amended to read as follows:

"(1) serves notice upon the infringer, not less than 48 hours before such fixation, identifying the work and the specific time and source of its first transmission, and declaring an intention to secure copyright in the work; and".

SEC. 7. COPYRIGHT OFFICE FEES.

(a) FEE INCREASES.—Section 708(b) of title 17, United States Code, is amended to read as follows:

"(b) In calendar year 1997 and in any subsequent calendar year, the Register of Copyrights, by regulation, may increase the fees specified in subsection (a) in the following manner:

"(1) The Register shall conduct a study of the costs incurred by the Copyright Office for the registration of claims, the recordation of documents, and the provision of services. The study shall also consider the timing of any increase in fees and the authority to use such fees consistent with the budget.

"(2) The Register may, on the basis of the study under paragraph (1), and subject to paragraph (5), increase fees to not more than that necessary to cover

the reasonable costs incurred by the Copyright Office for the services described in paragraph (1), plus a reasonable inflation adjustment to account for any estimated increase in costs.

"(3) Any fee established under paragraph (2) shall be rounded off to the nearest dollar, or for a fee less than $12, rounded off to the nearest 50 cents.

"(4) Fees established under this subsection shall be fair and equitable and give due consideration to the objectives of the copyright system.

"(5) If the Register determines under paragraph (2) that fees should be increased, the Register shall prepare a proposed fee schedule and submit the schedule with the accompanying economic analysis to the Congress. The fees proposed by the Register may be instituted after the end of 120 days after the schedule is submitted to the Congress unless, within that 120-day period, a law is enacted stating in substance that the Congress does not approve the schedule.".

(b) DEPOSIT OF FEES.—Section 708(d) of such title is amended to read as follows:

"(d)(1) Except as provided in paragraph (2), all fees received under this section shall be deposited by the Register of Copyrights in the Treasury of the United States and shall be credited to the appropriations for necessary expenses of the Copyright Office. Such fees that are collected shall remain available until expended. The Register may, in accordance with regulations that he or she shall prescribe, refund any sum paid by mistake or in excess of the fee required by this section.

"(2) In the case of fees deposited against future services, the Register of Copyrights shall request the Secretary of the Treasury to invest in interest-bearing securities in the United States Treasury any portion of the fees that, as determined by the Register, is not required to meet current deposit account demands. Funds from such portion of fees shall be invested in securities that permit funds to be available to the Copyright Office at all times if they are determined to be necessary to meet current deposit account demands. Such investments shall be in public debt securities with maturities suitable to the needs of the Copyright Office, as determined by the Register of Copyrights, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

"(3) The income on such investments shall be deposited in the Treasury of the United States and shall be credited to the appropriations for necessary expenses of the Copyright Office.".

SEC. 8. COPYRIGHT ARBITRATION ROYALTY PANELS.

(a) ESTABLISHMENT AND PURPOSE.—Section 801 of title 17, United States Code, is amended—

(1) in subsection (b)(1) by striking "and 116" in the first sentence and inserting "116, and 119";

(2) in subsection (c) by inserting after "panel" at the end of the sentence the following:

", including—

"(1) authorizing the distribution of those royalty fees collected under sections 111, 119, and 1005 that the Librarian has found are not subject to controversy; and

"(2) accepting or rejecting royalty claims filed under sections 111, 119, and 1007 on the basis of timeliness or the failure to establish the basis for a claim"; and

(3) by amending subsection (d) to read as follows:

"(d) SUPPORT AND REIMBURSEMENT OF ARBITRATION PANELS.—The Librarian of Congress, upon the recommendation of the Register of Copyrights, shall provide the copyright arbitration royalty panels with the necessary administrative services related to proceedings under this chapter, and shall reimburse the arbitrators presiding in distribution proceedings at such intervals and in such manner as the Librarian shall provide by regulation. Each such arbitrator is an independent contractor acting on behalf of the United States, and shall be hired pursuant to a signed agreement between the Library of Congress and the arbitrator. Payments to the arbitrators shall be considered reasonable costs incurred by the Library of Congress and the Copyright Office for purposes of section 802(h)(1).".

(b) PROCEEDINGS.—Section 802 of title 17, United States Code, is amended—

(1) in subsection (c) by striking the last sentence; and

(2) in subsection (h) by amending paragraph (1) to read as follows:

"(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).".

SEC. 9. DIGITAL AUDIO RECORDING DEVICES AND MEDIA.

Section 1007(b) of title 17, United States Code, is amended by striking "Within 30 days after" in the first sentence and inserting "After".

SEC. 10. CONFORMING AMENDMENT.

Section 4 of the Digital Performance Right in Sound Recordings Act of 1995 (Public Law 104–39) is amended by redesignating paragraph (5) as paragraph (4).

SEC. 11. MISCELLANEOUS TECHNICAL AMENDMENTS.

(a) AMENDMENTS TO TITLE 17, UNITED STATES CODE.—Title 17, United States Code, is amended as follows:

(1) The table of chapters at the beginning of title 17, United States Code, is amended—

(A) in the item relating to chapter 6, by striking "**Requirement**" and inserting "**Requirements**";

(B) in the item relating to chapter 8, by striking "**Royalty Tribunal**" and inserting "**Arbitration Royalty Panels**";

(C) in the item relating to chapter 9, by striking "**semiconductor chip products**" and inserting "**Semiconductor Chip Products**"; and

(D) by inserting after the item relating to chapter 9 the following:

"**10. Digital Audio Recording Devices and Media** ..... **1001**".

(2) The item relating to section 117 in the table of sections at the beginning of chapter 1 is amended to read as follows:

"117. Limitations on exclusive rights: Computer programs.".

(3) Section 101 is amended in the definition of to perform or display a work "publicly" by striking "processs" and inserting "process".

(4) Section 108(e) is amended by striking "pair" and inserting "fair".

(5) Section 109(b)(2)(B) is amended by striking "Copyright" and inserting "Copyrights".

(6) Section 110 is amended—

(A) in paragraph (8) by striking the period at the end and inserting a semicolon;

(B) in paragraph (9) by striking the period at the end and inserting "; and"; and

(C) in paragraph (10) by striking "4 above" and inserting "(4)".

(7) Section 115(c)(3)(E) is amended—

(A) in clause (i) by striking "sections 106(1) and (3)" each place it appears and inserting "paragraphs (1) and (3) of section 106"; and

(B) in clause (ii)(II) by striking "sections 106(1) and 106(3)" and inserting "paragraphs (1) and (3) of section 106".

(8) Section 119(c)(1) is amended by striking "until unless" and inserting "unless".

(9) Section 304(c) is amended in the matter preceding paragraph (1) by striking "the subsection (a)(1)(C)" and inserting "subsection (a)(1)(C)".

(10) Section 405(b) is amended by striking "condition or" and inserting "condition for".

(11) Section 407(d)(2) is amended by striking "cost of" and inserting "cost to".

(12) The item relating to section 504 in the table of sections at the beginning of chapter 5 is amended by striking "Damage" and inserting "Damages".

(13) Section 504(c)(2) is amended by striking "court it" and inserting "court in".

(14) Section 509(b) is amended by striking "merchandise; and baggage" and inserting "merchandise, and baggage".

(15) Section 601(a) is amended by striking "nondramtic" and inserting "nondramatic".

(16) Section 601(b)(1) is amended by striking "subsustantial" and inserting "substantial".

(17) The item relating to section 710 in the table of sections at the beginning of chapter 7 is amended by striking "Reproductions" and inserting "Reproduction".

(18) The item relating to section 801 in the table of sections at the beginning of chapter 8 is amended by striking "establishment" and inserting "Establishment".

(19) Section 801(b) is amended—

(A) by striking "shall be—" and inserting "shall be as follows:";

(B) in paragraph (1) by striking "to make" and inserting "To make";

(C) in paragraph (2)—

(i) by striking "to make" and inserting "To make"; and

(ii) in subparagraph (D) by striking "adjustment; and" and inserting "adjustment."; and

(D) in paragraph (3) by striking "to distribute" and inserting "To distribute".

(20) Section 803(b) is amended in the second sentence by striking "subsection subsection" and inserting "subsection".

(21) The item relating to section 903 in the table of sections at the beginning of chapter 9 is amended to read as follows:

"903. Ownership, transfer, licensure, and recordation.".

(22) Section 909(b)(1) is amended—

(A) by striking "force" and inserting "work"; and

(B) by striking "sumbol" and inserting "symbol".

(23) Section 910(a) is amended in the second sentence by striking "as used" and inserting "As used".

(24) Section 1006(b)(1) is amended by striking "Federation Television" and inserting "Federation of Television".

(25) Section 1007 is amended—

(A) in subsection (a)(1) by striking "the calendar year in which this chapter takes effect" and inserting "calendar year 1992"; and

(B) in subsection (b) by striking "the year in which this section takes effect" and inserting "1992".

(b) RELATED PROVISIONS.—

(1) Section 1(a)(1) of the Act entitled "An Act to amend chapter 9 of title 17, United States Code, regarding protection extended to semiconductor chip products of foreign entities", approved November 9, 1987 (17 U.S.C. 914 note), is amended by striking "orginating" and inserting "originating".

(2) Section 2319(b)(1) of title 18, United States Code, is amended by striking "last 10" and inserting "least 10".

SEC. 12. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsections (b) and (c), the amendments made by this Act shall take effect on the date of the enactment of this Act.

(b) SATELLITE HOME VIEWER ACT.—The amendments made by section 1 shall be effective as if enacted as part of the Satellite Home Viewer Act of 1994 (Public Law 103–369).

(c) TECHNICAL AMENDMENT.—The amendment made by section 11(b)(1) shall be effective as if enacted on November 9, 1987.

PURPOSE AND SUMMARY

H.R. 672 accomplishes many purposes. Some of its provisions will assist the U.S. Copyright Office in carrying out its duties, including giving the Office the ability to set reasonable fees for basic services, subject to congressional approval. Others correct or clarify the language in several recent amendments to the law so that Congress' original intent can be better achieved. None of the amendments contained in H.R. 672 change substantive copyright law. All of the amendments are non-controversial and technical or clarifying in nature.

BACKGROUND AND NEED FOR THE LEGISLATION

The Copyright Act was last generally revised in 1976, in response to the many technological changes that had occurred since

the enactment of the 1909 Act. Since 1976, Congress regularly has had to address new issues, especially those raised by new technologies or new methods of exploitation. Each session of Congress has produced at least one major amendment to the Copyright Act.

HEARINGS

The Committee's Subcommittee on Courts and Intellectual Property held a hearing on H.R. 1861, a technical corrections bill containing almost all of the provisions contained in H.R. 672 on November 9, 1995. Testimony was received from Ms. Marybeth Peters, Register of Copyrights, United States Copyright Office, The Library of Congress (Serial 32). No hearings were held on H.R. 672 in the 105th Congress.

COMMITTEE CONSIDERATION

On March 5, 1997, the Subcommittee held a markup on H.R. 672. The Subcommittee adopted, by voice vote, en bloc amendments to H.R. 672 offered by Chairman Coble, and favorably reported, by voice vote, a quorum being present, a single amendment in the nature of a substitute to H.R. 672 to the full Committee. On March 12, 1997, the Committee adopted, by voice vote, en bloc amendments offered by Mr. Coble to the amendment in the nature of a substitute, and favorably reported, by voice vote, a quorum being present, the amendment in the nature of a substitute, as amended, to the House.

VOTE OF THE COMMITTEE

There were no recorded votes.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(C)(3) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 672, the following estimate and comparison prepared

by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 17, 1997.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 672, a bill to make technical amendments to certain provisions of Title 17, United States Code.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Rachel Forward.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

H.R. 672—A bill to make technical amendments to certain provisions of Title 17, United States Code

SUMMARY

H.R. 672 would amend the United States Copyright Act to make a numerous technical corrections and clarifications. Specifically, the bill would eliminate certain reporting requirements, enable the Librarian of Congress to distribute uncontested royalties without convening a copyright arbitration royalty panel (CARP), and authorize the Librarian of Congress to deduct expenses for CARPs from the royalties collected and distributed by the government. The bill also would authorize the Register of Copyrights to adjust the current Copyright Office fees to reflect the fair cost of registering claims and providing services. The bill specifies that the fees would be credited as offsetting collections to the office's appropriations account.

By allowing for increases in fees, H.R. 672 would eliminate the need for appropriations to fund the Copyright Office, thus reducing discretionary spending by about $11 million a year over the 1999–2002 period. In addition, CBO estimates that enacting this bill would result in direct spending of $5 million over the 1998–2002 period and would increase revenues by $5 million over the same period. Because the legislation would affect direct spending and receipts in fiscal year 1998, pay-as-you-go procedures would apply. CBO estimates a net pay-as-you-go impact of zero for 1998.

The legislation also contains a private-sector mandate but the amount of the mandate would not exceed the $100 million threshold specified in the Unfunded Mandates Reform Act of 1995 (UMRA). The bill contains no intragovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

Under current law, the Copyright Office has the authority to collect and spend user fees; H.R. 672 would enable the office to in-

crease the amount of such fees to cover its expenses, thus eliminating the need for an annual appropriation starting in 1999. The 1997 appropriation—net of offsetting collections—is $11 million. Because H.R. 672 would enable the Copyright Office to collect and spend the fees without further authorization, the net impact of these fees on direct spending would be roughly zero.

H.R. 672 would make a number of changes affecting the administration of the copyright arbitration royalty panels and the distribution of royalties. Most of the changes would not affect the federal budget because they would either codify current practice or would not apply within the foreseeable future. CBO estimates, however, that authorizing the Library of Congress to collect and spend fees to cover the cost of ratemaking proceedings conducted by the CARPs would increase federal receipts and outlays by about $1 million in each of fiscal years 1998 through 2002.

For the purposes of this estimate, CBO has assumed that H.R. 672 would be enacted by the end of fiscal year 1997 and that outlays would follow the historical spending patterns for the Copyright Office. The following table shows the estimated impact of this bill on direct spending and revenues.

[In millions of dollars]

	Fiscal year—					
	1997	1998	1999	2000	2001	2002
CHANGES TO DIRECT SPENDING AND REVENUES						
Estimated Budget Authority	0	1	1	1	1	1
Estimated Outlays	0	1	1	1	1	1
Estimated Revenues	0	1	1	1	1	1

The costs of this legislation fall within budget function 370 (commerce and housing credit).

BASIS OF ESTIMATE

Direct spending and revenues

Enacting H.R. 672 would result in increases in Copyright Office fees (which are recorded as offsetting collections) and royalty fees (which are recorded as governmental receipts). As a result, direct spending would also increase—by the amounts of additional fee collections.

Copyright Office Fees.—Under current law, the Copyright Office is authorized to collect and spend about $22 million in fees each year. In fiscal year 1997 the Copyright Office received an additional $11 million in appropriations for total budget authority of $33 million. H.R. 672 would authorize the Copyright Office to set fees according to the fair cost of registering copyright claims and providing services. CBO expects that the Copyright Office would conduct a study on fees in 1998 and would become fully fee-funded in fiscal year 1999, eliminating the need for appropriations.

Under current law, the Copyright Office assesses most of its fees on copyright registration claims. In order to recover the direct cost of the copyright registration process, fees would need to be increased from $20 per registration to an estimated $35 to $40 per registration. Such an increase in the copyright registration fee could cause a drop in demand, but CBO expects that the number

of copyright registrations would not fall sharply below the current level. CBO estimates that the office would raise an additional $12 million to $13 million in fees per year by increasing the registration fee and other user fees over the 1999–2002 period. Although the Copyright Office could collect and spend the fees without further authorization, we would expect the appropriations acts to specify in advance the amount of fees that could be spent in any fiscal year.

Changes to Royalty Fees.—H.R. 672 would change certain statutory royalty payments for carriage of network signals by satellite carriers. These royalty payments are collected by the federal government as governmental receipts (revenues) and are distributed without appropriation as direct spending. Because H.R. 672 would raise the statutory rates to the amounts currently in effect as a result of a 1992 arbitration ruling, CBO estimates that this provision would cause no change in direct spending or receipts.

Under current law, the Copyright Office convenes a copyright arbitration royalty panel to arbitrate disputes between copyright owners and users. The members of CARPs, who are not government employees, bill the parties to the arbitration directly for their expenses. H.R. 672 would allow the Librarian of Congress to deduct the expenses of such CARPs from the royalties held in escrow by the government. CBO estimates that this provision would have no budgetary impact because it would not affect the amount of royalties collected or the amount of money disbursed by the government.

The Copyright Office also convenes a CARP to set royalty rates. H.R. 672 would authorize the Librarian of Congress to collect fees from parties to a ratemaking proceeding and distribute those fees to members of CARPs to cover their expenses. Based on information from the Copyright Office, CBO estimates that the Librarian would collect and distribute fees of about $1 million each year. These fees would increase governmental receipts and outlays by about $1 million each year. The net budgetary impact of such fees would be roughly zero over time.

H.R. 672 would require the Librarian of Congress to convene a CARP to establish royalty rates if copyright owners and jukebox operators fail to negotiate an agreement on rates. If a CARP were to be convened when the current licensing agreement expires in 1999, the office would likely collect and distribute disputed royalties of about $7 million a year. Based on information from the Copyright Office, CBO expects that the jukebox owners will successfully negotiate another agreement with copyright owners in 1999 and that the royalty payments will not be collected and distributed by the office. Therefore, we do not expect that this provision would affect direct spending or receipts.

Spending subject to appropriation

CBO estimates that eliminating certain reporting requirements would save the Copyright Office about $150,000 in fiscal year 1998. Because additional fee income would be available to cover the office's expenses, net outlays from appropriations would decline from $11 million in 1997 to close to zero in 1999 and subsequent years.

PAY-AS-YOU-GO CONSIDERATIONS

Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. CBO estimates that enactment of H.R. 672 would increase both direct spending and governmental receipts (revenues) by about $1 million each in 1998 from the collection and spending of fees to cover the expenses of the CARPs.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 672 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA) and would impose no costs on state, local, or tribal governments.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

This bill would impose a new private-sector mandate by authorizing the Register of Copyrights to increase the fees charged by the Copyright Office. CBO has determined that increases to Copyright Office fees are mandates as defined in UMRA. The direct costs of the new mandate would total about $12 million a year, which is significantly below the $100 million threshold specified in UMRA.

Estimate prepared by: Federal cost: Rachel Forward; impact on State, local, and tribal governments: Leo Lex; and impact on the private sector: Matthew Eyles.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY

Pursuant to rule XI, clause 2(l)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, clause 8, section 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS

Section 1. Technical Corrections to Section 119 of the Act.

Section 119 contains certain drafting errors which were the result of amending the Copyright Act without taking into account changes made by the Copyright Royalty Tribunal Reform Act of 1993.

Subsection (1) clarifies the royalty rates that are paid by satellite carriers for retransmission of network and superstation broadcast signals to satellite dish owners for private home viewing. Congress intended that the rates adopted in the law should be the same as the rates that were set by arbitration in 1992. However, the Satellite Home Viewer Act of 1994 reversed the rates; the current law states that 17.5 cents should be paid for signals not subject to the FCC's syndicated exclusivity blackout rules, and 14 cents per subscriber for signals subject to such rules. Subsection (1) corrects that reversal.

Subsection (2) corrects the section numbers, and accompanying references, to take into account the changes made to title 17 by the Copyright Royalty Tribunal Reform Act of 1993.

Subsection (3) deletes reference to the effective date of the Satellite Home Viewer Act of 1988 to avoid any confusion that might result from two Acts of the same name, and inserts the effective date of the Satellite Home Viewer Act of 1988, which was November 16, 1988.

Section 2. Copyright in Restored Works.

In 1994, a new Section 104A was created to restore copyright protection to certain preexisting works from other World Trade Organization ("WTO") and Berne Convention member countries that had fallen into the public domain in the United States. During the drafting process, some inadvertent errors were made. These errors alter the intended meaning of the statute or create accidental ambiguities. In order to avoid constitutional challenges and unnecessary litigation, the amendments to Section 104A in H.R. 672 correct the errors.

1. Provision for already-created derivative works

The first part of the amendment to section 104A deals with establishing special treatment for already-created derivative works. The problem with this subsection was created by a word change in the bill during technical and conforming revisions. This change inadvertently altered the effect of the subsection and in large part nullified its purpose. The amendment in H.R. 672 substitutes the word "restored" for the word "derivative" in two places in subsection (3), entitled "Existing Derivative Works," in order to reverse that mistaken change, and inserts the word "derivative" in one other place in that subsection in order to ensure clarity.

In enacting section 104A, Congress considered the fact that restoring copyright in works that are currently in the public domain creates a potential problem: people may have used these works as the basis for new derivative works, such as motion pictures made from novels. At the time the new derivative work was created, the use of the underlying work was completely lawful, since it was in the public domain. Once copyright in the underlying work is restored, however, the continued use of the derivative work without the consent of the owner of the copyright in the underlying work would constitute copyright infringement. *See Stewart* v. *Abend,* 495 U.S. 207 (1990).

Witnesses at the hearings on the bill testified that preventing the creators of derivative works from making use of those works might raise Constitutional problems under both the Copyright Clause and the Takings Clause of the Fifth Amendment. Accordingly, Congress included a special provision for derivative works based on restored works where the derivative work was created before the date of restoration, allowing the owner of the derivative work to continue to use it even after the one-year sell-off period provided to all reliance parties, upon payment of reasonable compensation to the copyright owner of the restored work. *See* SAA at paragraph B.1.c.(3), 1994 U.S.C.C.A.N. 4040, 4292.

In a drafting error, the phrase "if the source country of the restored work is an eligible country" was changed to "if the source country of the *derivative* work is an eligible country." Since "eligible country" is defined in the statute to exclude the United States,

the effect of this word change was to exclude all U.S. derivative works from the benefit of this provision—the major constituency of works that the provision was meant to protect. In other words, U.S. derivative works based on now-restored foreign works that were in the public domain at the time the derivative works were created can no longer legally be exploited in this country without the consent of the owner of the foreign work. The amendment corrects that unintended inequity.

2. Publication of list of notices of intent

The second part of the amendment deletes the requirement for the Copyright Office to publish in the Federal Register a cumulative annual list of notices of intent to enforce restored copyrights filed with the Office. The Office is already required to publish a list of such notices every four months, and publication of a cumulative annual list would be expensive and duplicative.

3. Date of copyright restoration

The third part of the amendment specifies the date "January 1, 1996" in the statute's definition of "date of restoration" to make explicit the date on which these foreign copyrights were restored.

Despite Congressional intent that the restoration date be January 1, 1996, the statutory language is potentially ambiguous on this point. The "date of restoration" is defined as the date on which the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPs") entered into force with respect to the United States for works from countries that are members of the Berne Convention or the WTO on that date. The reference to when the TRIPs agreement entered into force is subject to interpretation. TRIPs is part of the overall WTO agreement, which entered into force with respect to the United States on January 1, 1995. The TRIPS agreement granted to the United States and other developed countries one year, or until January 1, 1996, to fully implement its provisions. The TRIPs obligation to restore copyrights therefore became effective on January 1, 1996.

In enacting new section 104A, Congress intended the restoration of foreign copyrights to take place on January 1, 1996. The statute itself requires the Copyright Office to issue regulations governing restored copyrights no later than 90 days before the TRIPs agreement entered into force with respect to the United States. § 104A(e)(1)(D)(I). If the restoration date were January 1, 1995, the statute did not become law until 3 weeks prior to that date, making it impossible for the Copyright Office to comply with a deadline of 90 days in advance.

The Statement of Administrative Action ("SAA"), approved by Congress and the statute's legislative history both confirm this interpretation. The SAA unambiguously states that the foreign copyrights will be restored on the date "when the TRIPs Agreement's obligations take effect for the United States." The Joint Report on the Senate version makes this explicit, stating that the "bill would automatically restore copyright protection for qualifying works * * * one year after the WTO comes into being." Joint Report of the Committee on Finance, Committee on Agriculture, Nutrition and Forestry, and Committee on Governmental Affairs of the Unit-

ed States Senate to accompany the Uruguay Round Agreements Act, S. 2467, S. Rep. No. 412, 103d Cong., 2d Sess. 225 (1994).

Since enactment of the TRIPs Agreement, the Copyright Office and the White House have attempted to resolve any ambiguity. The Copyright Office published a notice of policy decision concluding that January 1, 1996 is the date of restoration. 60 Fed. Reg. 7793 (February 9, 1995). The President issued a proclamation clarifying that January 1, 1996 is the date on which all the TRIPs obligations take effect for the United States. Proclamation 6780 of March 23, 1995, 60 Fed. Reg. 15845 (1995).

Nevertheless, some commentators have concluded that the language of the statute requires a restoration date of January 1, 1995. *See, e.g.,* William F. Patry, Copyright and the GATT: An Interpretation and Legislative History of the Uruguay Round Agreements Act, 31–36 (1995). Apart from the inconsistency with legislative intent, this reading causes problems. First, since the Copyright Office did not (and could not administratively) start to accept notices of intent to enforce restored copyrights until January 1,1996, it would effectively reduce the window of opportunity to file such notices from two years to one. Second, it would expand the group of foreign works for which copyright would be restored, and therefore made unavailable for free use by the American public.

4. Definition of "eligible country" for purposes of determining who qualifies as "reliance party"

Finally, the definition of "eligible country" creates a potential unintended problem when read in the context of the definition of who qualifies as a "reliance party." The amendment revises the definition of "eligible country" to resolve this problem.

A "reliance party" is given certain limited rights to continue exploiting restored works. In order to qualify as a reliance party, the time period of when one engaged in acts with respect to the restored work is critical. Ordinarily, these acts must have begun prior to the date of the statute's enactment (December 8, 1994). If the source country of the work has become an "eligible country" after that date, however, the acts must have begun prior to the date it became an eligible country. The problem is that "eligible country" is defined as "a nation, other than the United States, that is a WTO member country, adheres to the Berne Convention, or is subject to a presidential proclamation." In the context of determining whether someone is a reliance party, this could be read to mean that the party's acts must have begun prior to the date that the source country became an eligible country by joining the Berne Convention. Some countries joined the Berne Convention when it was established in 1886; others joined at subsequent points between that date and December 8, 1994. Obviously, no one will be able to qualify as a reliance party if his or her use of a work had to begin before 1886.

The amendment therefore amends the definition of "eligible country" to clarify the relevant dates of the events leading to eligibility. The reference to a country that "is a WTO member" is changed to refer to a country that becomes a WTO member country after the date of the enactment of the Uruguay Round Agreements Act"; the reference to a country that "adheres to the Berne Convention" is

changed to refer to a country that "on such date of enactment is, or after such date of enactment becomes, a member of the Berne Convention"; and the relevant presidential proclamation is defined as one that takes place "after such date of enactment."

Section 3. Licenses for Nonexempt Subscription Transmissions.

Subsection (1) is intended to avoid the possibility of a gap in the effective dates of the royalty rates established in 1996 and 2000–2001 for the public performance of sound recordings by nonexempt subscription digital transmission services. The Digital Performance Right in Sound Recordings Act of 1995 directed that the rates established in 1996 are to expire on December 31, 2000. New rates are to be established during 2000. However, it is possible that the work of the copyright arbitration royalty panel ("CARP") and of the Librarian of Congress in reviewing the CARP's report will not be concluded by December 31, 2000, thereby creating a period in which no rates apply. Subsection (1) avoids this result by stating that the effective date of the rates set in 1996 last until December 31, 2000, or until 30 days after the Librarian has published in the Federal Register his or her decision to adopt or reject the CARP's rate adjustment decision. Resorting to this second option will be unnecessary if a CARP is not convened, or if the CARP and the Librarian conclude their functions before December 31, 2000.

Subsection (2) deletes the phrase from Section 114(f) which authorizes a copyright arbitration royalty panel to publish its decision in the Federal Register. This was an inadvertent mistake, since only government agencies may publish in the Federal Register. Any decision of a CARP will be published by the Librarian of Congress pursuant to the provisions of chapter 8 of the Copyright Act.

Section 4. Royalty Payable Under Compulsory License.

This section deletes the phrase from Section 115(c) which authorizes a copyright arbitration royalty panel to publish its decision in the Federal Register. Since only agencies may publish in the Federal Register, the decision of the CARP will be published by the Librarian of Congress pursuant to the provisions of chapter 8 of the Copyright Act.

Section 5. Negotiated License for Jukeboxes.

The Copyright Royalty Tribunal Reform Act of 1993 eliminated the old § 116 jukebox compulsory license and replaced it with the § 116A negotiated jukebox license adopted in the Berne Convention implementing legislation in 1988. This produced two unintended results. It eliminated the definitions of a "jukebox" and a "jukebox operator," and it sanctioned the possibility of an arbitration proceeding which is not a copyright arbitration royalty panel (CARP) arbitration. This section restores the original definitions as they appeared in the Copyright Act in 1978, and it clarifies that any jukebox negotiated license which requires arbitration is to be a CARP proceeding.

Section 6. Registration and Infringement Actions.

This section amends section 411(b) of the Copyright Act, which covers works that are being transmitted "live" at the same time that they are being fixed in tangible form for the first time. Cur-

rently, copyright owners must give the would-be infringer at least a 10-day advance notice that a copyright is being claimed in the work. When notice is given, an injunction can be obtained to prevent the unauthorized use of the work.

This provision has proven problematic when applied to a number of sporting events, especially elimination play-offs. In many instances the teams and the times of the games are not known 10 days in advance. Therefore, this notice provision is amended to provide for notice of not less than 48 hours.

Section 7. Studies on Copyright and Other Matters.

This section allows the Copyright Office to continue its current practice of conducting studies and programs on copyright law and on other matters on which it possesses expertise such as semiconductor chip protection and database protection.

Section 8. Copyright Office Fees.

The Copyright Fees and Technical Amendments Act of 1989 established a fee schedule for Copyright Office services which could be adjusted in 1995 and every fifth year thereafter according to changes in the Consumer Price Index.

Actual experience with the fee adjustment mechanism, however, has highlighted certain problems that underscore the need for reform. Because of the relatively low inflation of the early 1990s, the change in the Consumer Price Index was not great enough to justify incurring the costs associated with publicizing and administering a new fee schedule. Therefore, the Copyright Office did not publish a new fee schedule in 1995, and is required by the current statute to wait until 2000 to modify its fees.

However, it is not clear from the current wording of the law whether, if the Copyright Office were to adopt a new fee schedule in 2000, it could take into account the inflation of the entire ten-year period since the last fee schedule was adopted, 1990–2000, or whether it could only take into account the inflation of the period 1995–2000. The fee schedule adopted in 1989 is not based on a cost recovery model. Consequently, merely adjusting fees based on rises in the Consumer Price Index will not solve all of the problems. Therefore, subsection (a) gives the Register the authority to set the basic fees.

Subsection (a) allows fees to be raised beginning in 1996 and in any subsequent year. Based on a study to determine the costs incurred by the Copyright Office, the Register may increase fees up to the reasonable costs incurred by the Copyright Office plus a reasonable inflation adjustment to account for future increases in costs. The fees shall be rounded off to the nearest dollar, or, if the fee is less than $12, to the nearest half-dollar. The fees must be fair and equitable and give due consideration to the objectives of the copyright system. This allows the Register to decide that fees may be less than the costs of the services provided, if that furthers the objectives of the copyright system.

If the Register wants to increase fees, he or she shall submit the proposed fee schedule with the study and its economic analysis to Congress. The fees proposed by the Register may be instituted after the end of 120 days after the schedule is submitted to the Congress

unless, within that 120-day period, a law is enacted stating in substance that the Congress does not approve the schedule.

Subsection (b) of this section gives the Register of Copyrights the discretion to invest funds from the Copyright Office's prepaid fees ("Deposit Accounts") that are not needed to meet current demands for services in interest-bearing securities in the United States Treasury, and to use the income from such investments for necessary expenses of the Copyright Office. The Copyright Office is currently engaged in developing its new electronic registration, recordation and deposit system, CORDS (Copyright Office Registration, Recordation and Deposit System), and the Committee expects that the Copyright Office will, where feasible, use the interest on deposit account funds for the development and operation of CORDS.

Section 9. Copyright Arbitration Royalty Panels.

Subsection (1) makes clear that the 1997 satellite carrier rate adjustment is a CARP proceeding. That proceeding was left out of section 801 when the Copyright Royalty Tribunal Reform Act of 1993 was passed, because, at that time, the satellite carrier compulsory license was set to expire in 1994 without any further rate adjustment. With the passage of the Satellite Home Viewer Act of 1994, the satellite carrier compulsory license is extended to December 31, 1999, and the rate adjustment proceeding which has been scheduled for 1997 needs to be reflected in section 801.

Subsection (2) gives two concrete examples of the procedural and evidentiary rulings the Librarian of Congress may render related to CARP proceedings. They include the authority to determine the amount and distribute the royalty fees that are not in controversy, and the authority to reject royalty claims that are untimely or do not establish the basis for a claim as required by the Copyright Office's regulations. By setting out these examples, the Committee does not intend to abridge the authority of the Librarian to make other procedural and evidentiary rulings that would apply to a CARP proceeding, such as precontroversy discovery rulings.

Subsection (3) gives the Librarian of Congress the authority to pay the CARP arbitrators directly according to a signed agreement and any regulations that the Librarian may adopt. Currently, the parties to an arbitration proceeding pay the arbitrators.

Subsection (3) further provides that in distribution proceedings, the payments made to the arbitrators by the Librarian, as well as the costs of the Library and the Copyright Office, come from the relevant royalty pool. In ratemaking proceedings, the costs are paid by assessing the parties to the proceeding subject to the discretion of the arbitrators.

Subsection (3) also clarifies the status of the arbitrators. They are independent contractors acting on behalf of the United States. The phrase "acting on behalf of the United States" is intended to make clear that the laws governing the conduct and standards of behavior of government employees and those who deal with them in a professional capacity apply to the CARP arbitrators.

Section 10. Digital Audio Recording Devices and Media.

The Audio Home Recording Act of 1992 requires the Librarian to determine by March 30th of each year whether there are any controversies among the claimants in the distribution of digital audio recording technology (DART) royalties. However, DART royalty claimants file their claims, in person or by mail, in January and February of each year. Because claims mailed in February may not reach the Copyright Office until early March, there is very little time for the Office to compile its official claimant list and for the claimants to negotiate with each other to determine whether they can settle their differences before the March 30th deadline. The March 30th deadline has proved to be impracticable. This section removes the deadline, and gives the Librarian the flexibility to reasonably set the length of the negotiation period in order to promote settlements.

Section 11. Conforming Amendment.

This section corrects a numbering mistake in the Digital Performance Right in Sound Recordings Act of 1995.

Section 12. Miscellaneous Technical Amendments.

This section corrects spelling and typographical errors existing in title 17.

Section 13. Effective Dates.

All amendments to the Copyright Act included in this bill take effect on the date of enactment of the legislation, with the exception of Section 2, the satellite carrier provisions, which are effective on the date of enactment of the Satellite Home Viewer Act of 1994, October 18, 1994.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SATELLITE HOME VIEWER ACT OF 1994

* * * * * * *

SEC. 2. STATUTORY LICENSE FOR SATELLITE CARRIERS.

Section 119 of title 17, United States Code, is amended as follows:

(1) * * *

* * * * * * *

(3) Subsection (b)(1)(B) is amended—

[(A) in clause (i) by striking "12 cents" and inserting "17.5 cents per subscriber in the case of superstations not subject to syndicated exclusivity under the regulations of the Federal Communications Commission, and 14 cents per subscriber in the case of superstations subject to such syndicated exclusivity"; and]

(A) in clause (i) by striking "12 cents" and inserting "17.5 cents per subscriber in the case of superstations that as re-

transmitted by the satellite carrier include any program which, if delivered by any cable system in the United States, would be subject to the syndicated exclusivity rules of the Federal Communications Commission, and 14 cents per subscriber in the case of superstations that are syndex-proof as defined in section 258.2 of title 37, Code of Federal Regulations"; and

* * * * * * *

[(4) Subsection (c) is amended—

[(A) in paragraph (1) by striking "December 31, 1992,";

[(B) in paragraph (2)—

[(i) in subparagraph (A) by striking "July 1, 1991" and inserting "July 1, 1996"; and

[(ii) in subparagraph (D) by striking "December 31, 1994" and inserting "December 31, 1999, or in accordance with the terms of the agreement, whichever is later"; and

[(C) in paragraph (3)—

[(i) in subparagraph (A) by striking "December 31, 1991" and inserting "January 1, 1997";

[(ii) by amending subparagraph (D) to read as follows:

[(D) ESTABLISHMENT OF ROYALTY FEES.—In determining royalty fees under this paragraph, the Copyright Arbitration Panel shall establish fees for the retransmission of network stations and superstations that most clearly represent the fair market value of secondary transmissions. In determining the fair market value, the Panel shall base its decision on economic, competitive, and programming information presented by the parties, including—

["(i) the competitive environment in which such programming is distributed, the cost for similar signals in similar private and compulsory license marketplaces, and any special features and conditions of the retransmission marketplace;

["(ii) the economic impact of such fees on copyright owners and satellite carriers; and

["(iii) the impact on the continued availability of secondary transmissions to the public.";

[(iii) in subparagraph (E) by striking "60" and inserting "180"; and

[(iv) in subparagraph (C)—

[(I) by striking ", or until December 31, 1994"; and

[(II) by inserting "or July 1, 1997, whichever is later" after "section 802(g)".]

(4) Subsection (c) is amended—

(A) in paragraph (1)—

(i) by striking "until December 31, 1992,";

(ii) by striking "(2), (3) or (4)" and inserting "(2) or (3)"; and

(iii) by striking the second sentence;

(B) in paragraph (2)—

(i) in subparagraph (A) by striking "July 1, 1991" and inserting "July 1, 1996"; and

(ii) in subparagraph (D) by striking "December 31, 1994" and inserting "December 31,1999, or in accordance with the terms of the agreement, whichever is later"; and

(C) in paragraph (3)—

(i) in subparagraph (A) by striking "December 31, 1991" and inserting "January 1, 1997";

[(ii) by amending subparagraph (D) to read as follows:

["(D) ESTABLISHMENT OF ROYALTY FEES.—In determining royalty fees under this paragraph, the Copyright Arbitration Panel shall establish fees for the retransmission of network stations and superstations that most clearly represent the fair market value of secondary transmissions. In determining the fair market value, the Panel shall base its decision on economic, competitive, and programming information presented by the parties, including—

["(i) the competitive environment in which such programming is distributed, the cost for similar signals in similar private and compulsory license marketplaces, and any special features and conditions of the retransmission marketplace;

["(ii) the economic impact of such fees on copyright owners and satellite carriers; and

["(iii) the impact on the continued availability of secondary transmissions to the public.";

[(iii) in subparagraph (E) by striking "60" and inserting "180"; and

[(iv) in subparagraph (C)—

[(I) by striking ", or until December 31, 1994"; and

[(II) by inserting "or July 1, 1997, whichever is later" after "section 802(g)".]

(4) Subsection (c) is amended—

(A) in paragraph (1)—

(i) by striking "until December 31, 1992,";

(ii) by striking "(2), (3) or (4)" and inserting "(2) or (3)"; and

(iii) by striking the second sentence;

(B) in paragraph (2)—

(i) in subparagraph (A) by striking "July 1, 1991" and inserting "July 1, 1996"; and

(ii) in subparagraph (D) by striking "December 31, 1994" and inserting "December 31, 1999, or in accordance with the terms of the agreement, whichever is later"; and

(C) in paragraph (3)—

(i) in subparagraph (A) by striking "December 31, 1991" and inserting "January 1, 1997";

(ii) by amending subparagraph (B) to read as follows:

"(B) ESTABLISHMENT OF ROYALTY FEES.—In determining royalty fees under this paragraph, the copyright arbitration royalty panel appointed under chapter 8 shall establish fees for the retransmission of network stations and superstations that most clearly represent the fair market value of secondary transmissions. In determining the fair market value, the panel shall base its decision on economic, competitive, and programming information presented by the parties, including—

"(i) the competitive environment in which such programming is distributed, the cost of similar signals in similar private and compulsory license marketplaces, and any special features and conditions of the retransmission marketplace;

"(ii) the economic impact of such fees on copyright owners and satellite carriers; and

"(iii) the impact on the continued availability of secondary transmissions to the public."; and

(iii) in subparagraph (C), by inserting "or July 1, 1997, whichever is later" after "section 802(g)".

(5) Subsection (a) is amended—

[(A) in paragraph (5)(C) by striking "the Satellite Home Viewer Act of 1988" and inserting "this section"; and]

(A) in paragraph (5)(C) by striking "the date of the enactment of the Satellite Home Viewer Act of 1988" and inserting "November 16, 1988"; and

* * * * * * *

TITLE 17, UNITED STATES CODE

CHAPTER 1—SUBJECT MATTER AND SCOPE OF COPYRIGHT

§ 101. Definitions

Except as otherwise provided in this title, as used in this title, the following terms and their variant forms mean the following:

An "anonymous work" is a work on the copies or phonorecords of which no natural person is identified as author.

An "architectural work" is the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design, but does not include individual standard features.

* * * * * * *

To perform or display a work "publicly" means—

(1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or

(2) to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or [processs] *process*, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.

* * * * * * *

§ 104A. Copyright in restored works

(a) * * *

* * * * * * *

(d) REMEDIES FOR INFRINGEMENT OF RESTORED COPYRIGHTS.—

(1) * * *

* * * * * * *

[(3) EXISTING DERIVATIVE WORKS.—(A) In the case of a derivative work that is based upon a restored work and is created—

[(i) before the date of the enactment of the Uruguay Round Agreements Act, if the source country of the derivative work is an eligible country on such date, or

[(ii) before the date of adherence or proclamation, if the source country of the derivative work is not an eligible country on such date of enactment, a reliance party may continue to exploit that work for the duration of the restored copyright if the reliance party pays to the owner of the restored copyright reasonable compensation for conduct which would be subject to a remedy for infringement but for the provisions of this paragraph.]

(3) EXISTING DERIVATIVE WORKS.—(A) In the case of a derivative work that is based upon a restored work and is created—

(i) before the date of the enactment of the Uruguay Round Agreements Act, if the source country of the restored work is an eligible country on such date, or

(ii) before the date on which the source country of the restored work becomes an eligible country, if that country is not an eligible country on such date of enactment,

a reliance party may continue to exploit that derivative work for the duration of the restored copyright if the reliance party pays

to the owner of the restored copyright reasonable compensation for conduct which would be subject to a remedy for infringement but for the provisions of this paragraph.

* * * * * * *

(e) NOTICES OF INTENT TO ENFORCE A RESTORED COPYRIGHT.—

(1) NOTICES OF INTENT FILED WITH THE COPYRIGHT OFFICE.—

(A) * * *

(B)(i) * * *

(ii) Not less than 1 list containing all notices of intent to enforce shall be maintained in the Public Information Office of the Copyright Office and shall be available for public inspection and copying during regular business hours pursuant to sections 705 and 708. [Such list shall also be published in the Federal Register on an annual basis for the first 2 years after the applicable date of restoration.]

* * * * * * *

(h) DEFINITIONS.—For purposes of this section and section 109(a):

(1) * * *

[(2) The "date of restoration" of a restored copyright is the later of—

[(A) the date on which the Agreement on Trade-Related Aspects of Intellectual Property referred to in section 101(d)(15) of the Uruguay Round Agreements Act enters into force with respect to the United States, if the source country of the restored work is a nation adhering to the Berne Convention or a WTO member country on such date; or

[(B) the date of adherence or proclamation, in the case of any other source country of the restored work.

[(3) The term "eligible country" means a nation, other than the United States, that is a WTO member country, adheres to the Berne Convention, or is subject to a proclamation under subsection (g).]

(2) The "date of restoration" of a restored copyright is—

(A) January 1, 1996, if the source country of the restored work is a nation adhering to the Berne Convention or a WTO member country on such date, or

(B) the date of adherence or proclamation, in the case of any other source country of the restored work.

(3) The term "eligible country" means a nation, other than the United States, that—

(A) becomes a WTO member country after the date of the enactment of the Uruguay Round Agreements Act;

(B) on such date of enactment is, or after such date of enactment becomes, a member of the Berne Convention; or

(C) after such date of enactment becomes subject to a proclamation under subsection (g).

For purposes of this section, a nation that is a member of the Berne Convention on the date of the enactment of the Uruguay Round Agreements Act shall be construed to become an eligible country on such date of enactment.

* * * * * * *

§ 108. Limitations on exclusive rights: Reproduction by libraries and archives

(a) * * *

* * * * * * *

(e) The rights of reproduction and distribution under this section apply to the entire work, or to a substantial part of it, made from the collection of a library or archives where the user makes his or her request or from that of another library or archives, if the library or archives has first determined, on the basis of a reasonable investigation, that a copy or phonorecord of the copyrighted work cannot be obtained at a [pair] *fair* price, if—

(1) * * *

* * * * * * *

§ 109. Limitations on exclusive rights: Effect of transfer of particular copy or phonorecord

(a) * * *

(b)(1) * * *

(2)(A) * * *

(B) Not later than three years after the date of the enactment of the Computer Software Rental Amendments Act of 1990, and at such times thereafter as the Register of [Copyright] *Copyrights* considers appropriate, the Register of Copyrights, after consultation with representatives of copyright owners and librarians, shall submit to the Congress a report stating whether this paragraph has achieved its intended purpose of maintaining the integrity of the copyright system while providing nonprofit libraries the capability to fulfill their function. Such report shall advise the Congress as to any information or recommendations that the Register of Copyrights considers necessary to carry out the purposes of this subsection.

* * * * * * *

§ 110. Limitations on exclusive rights: Exemption of certain performances and displays

Notwithstanding the provisions of section 106, the following are not infringements of copyright:

(1) * * *

* * * * * * *

(8) performance of a nondramatic literary work, by or in the course of a transmission specifically designed for and primarily directed to blind or other handicapped persons who are unable to read normal printed material as a result of their handicap, or deaf or other handicapped persons who are unable to hear the aural signals accompanying a transmission of visual signals, if the performance is made without any purpose of direct or indirect commercial advantage and its transmission is made through the facilities of: (i) a governmental body; or (ii) a noncommercial educational broadcast station (as defined in section 397 of title 47); or (iii) a radio subcarrier authorization (as de-

fined in 47 CFR 73.293–73.295 and 73.593–73.595); or (iv) a cable system (as defined in section 111(f))[.]*;*

(9) performance on a single occasion of a dramatic literary work published at least ten years before the date of the performance, by or in the course of a transmission specifically designed for and primarily directed to blind or other handicapped persons who are unable to read normal printed material as a result of their handicap, if the performance is made without any purpose of direct or indirect commercial advantage and its transmission is made through the facilities of a radio subcarrier authorization referred to in clause (8)(iii), Provided, That the provisions of this clause shall not be applicable to more than one performance of the same work by the same performers or under the auspices of the same organization[.]*; and*

(10) notwithstanding paragraph [4 above] *(4)*, the following is not an infringement of copyright: performance of a nondramatic literary or musical work in the course of a social function which is organized and promoted by a nonprofit veterans' organization or a nonprofit fraternal organization to which the general public is not invited, but not including the invitees of the organizations, if the proceeds from the performance, after deducting the reasonable costs of producing the performance, are used exclusively for charitable purposes and not for financial gain. For purposes of this section the social functions of any college or university fraternity or sorority shall not be included unless the social function is held solely to raise funds for a specific charitable purpose.

* * * * * * *

§ 114. Scope of exclusive rights in sound recordings

(a) * * *

* * * * * * *

(f) LICENSES FOR NONEXEMPT SUBSCRIPTION TRANSMISSIONS.—

(1) No later than 30 days after the enactment of the Digital Performance Right in Sound Recordings Act of 1995, the Librarian of Congress shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining reasonable terms and rates of royalty payments for the activities specified by subsection (d)(2) of this section during the period beginning on the effective date of such Act and ending on December 31, 2000*, or, if a copyright arbitration royalty panel is convened, ending 30 days after the Librarian issues and publishes in the Federal Register an order adopting the determination of the copyright arbitration royalty panel or an order setting the terms and rates (if the Librarian rejects the panel's determination)*. Such terms and rates shall distinguish among the different types of digital audio transmission services then in operation. Any copyright owners of sound recordings or any entities performing sound recordings affected by this section may submit to the Librarian of Congress licenses covering such activities with respect to such sound recordings. The parties to each negotiation proceeding shall bear their own costs.

(2) In the absence of license agreements negotiated under paragraph (1), during the 60-day period commencing 6 months after publication of the notice specified in paragraph (1), and upon the filing of a petition in accordance with section 803(a)(1), the Librarian of Congress shall, pursuant to chapter 8, convene a copyright arbitration royalty panel to determine [and publish in the Federal Register] a schedule of rates and terms which, subject to paragraph (3), shall be binding on all copyright owners of sound recordings and entities performing sound recordings. In addition to the objectives set forth in section 801(b)(1), in establishing such rates and terms, the copyright arbitration royalty panel may consider the rates and terms for comparable types of digital audio transmission services and comparable circumstances under voluntary license agreements negotiated as provided in paragraph (1). The Librarian of Congress shall also establish requirements by which copyright owners may receive reasonable notice of the use of their sound recordings under this section, and under which records of such use shall be kept and made available by entities performing sound recordings.

* * * * * * *

§ 115. Scope of exclusive rights in nondramatic musical works: Compulsory license for making and distributing phonorecords

In the case of nondramatic musical works, the exclusive rights provided by clauses (1) and (3) of section 106, to make and to distribute phonorecords of such works, are subject to compulsory licensing under the conditions specified by this section.

(a) * * *

* * * * * * *

(c) ROYALTY PAYABLE UNDER COMPULSORY LICENSE.—

(1) * * *

* * * * * * *

(3)(A) * * *

* * * * * * *

(D) In the absence of license agreements negotiated under subparagraphs (B) and (C), upon the filing of a petition in accordance with section 803(a)(1), the Librarian of Congress shall, pursuant to chapter 8, convene a copyright arbitration royalty panel to determine [and publish in the Federal Register] a schedule of rates and terms which, subject to subparagraph (E), shall be binding on all copyright owners of nondramatic musical works and persons entitled to obtain a compulsory license under subsection (a)(1) during the period beginning January 1, 1998, and ending on the effective date of any new terms and rates established pursuant to subparagraph (C), (D) or (F), or such other date (regarding digital phonorecord deliveries) as may be determined pursuant to subparagraphs (B) and (C). Such terms and rates shall distinguish between (i) digital phonorecord deliveries where the reproduction or distribution of a phonorecord is incidental to the trans-

mission which constitutes the digital phonorecord delivery, and (ii) digital phonorecord deliveries in general. In addition to the objectives set forth in section 801(b)(1), in establishing such rates and terms, the copyright arbitration royalty panel may consider rates and terms under voluntary license agreements negotiated as provided in subparagraphs (B) and (C). The royalty rates payable for a compulsory license for a digital phonorecord delivery under this section shall be established de novo and no precedential effect shall be given to the amount of the royalty payable by a compulsory licensee for digital phonorecord deliveries on or before December 31, 1997. The Librarian of Congress shall also establish requirements by which copyright owners may receive reasonable notice of the use of their works under this section, and under which records of such use shall be kept and made available by persons making digital phonorecord deliveries.

(E)(i) License agreements voluntarily negotiated at any time between one or more copyright owners of nondramatic musical works and one or more persons entitled to obtain a compulsory license under subsection (a)(1) shall be given effect in lieu of any determination by the Librarian of Congress. Subject to clause (ii), the royalty rates determined pursuant to subparagraph (C), (D) or (F) shall be given effect in lieu of any contrary royalty rates specified in a contract pursuant to which a recording artist who is the author of a nondramatic musical work grants a license under that person's exclusive rights in the musical work under [sections 106(1) and (3)] *paragraphs (1) and (3) of section 106* or commits another person to grant a license in that musical work under [sections 106(1) and (3)] *paragraphs (1) and (3) of section 106*, to a person desiring to fix in a tangible medium of expression a sound recording embodying the musical work.

(ii) The second sentence of clause (i) shall not apply to—

(I) * * *

(II) a contract entered into after the date that the sound recording is fixed in a tangible medium of expression substantially in a form intended for commercial release, if at the time the contract is entered into, the recording artist retains the right to grant licenses as to the musical work under [sections 106(1) and 106(3)] *paragraphs (1) and (3) of section 106.*

* * * * * * *

§ 116. Negotiated licenses for public performances by means of coin-operated phonorecord players

(a) * * *

* * * * * * *

(b) NEGOTIATED LICENSES.—

(1) * * *

[(2) ARBITRATION.—Parties to such a negotiation, within such time as may be specified by the Librarian of Congress by regulation, may determine the result of the negotiation by arbitration. Such arbitration shall be governed by the provisions of

title 9, to the extent such title is not inconsistent with this section. The parties shall give notice to the Librarian of Congress of any determination reached by arbitration and any such determination shall, as between the parties to the arbitration, be dispositive of the issues to which it relates.]

(2) ARBITRATION.—Parties not subject to such a negotiation may determine, by arbitration in accordance with the provisions of chapter 8, the terms and rates and the division of fees described in paragraph (1).

* * * * * * *

(d) DEFINITIONS.—As used in this section, the following terms mean the following:

(1) A "coin-operated phonorecord player" is a machine or device that—

(A) is employed solely for the performance of nondramatic musical works by means of phonorecords upon being activated by the insertion of coins, currency, tokens, or other monetary units or their equivalent;

(B) is located in an establishment making no direct or indirect charge for admission;

(C) is accompanied by a list which is comprised of the titles of all the musical works available for performance on it, and is affixed to the phonorecord player or posted in the establishment in a prominent position where it can be readily examined by the public; and

(D) affords a choice of works available for performance and permits the choice to be made by the patrons of the establishment in which it is located.

(2) An "operator" is any person who, alone or jointly with others—

(A) owns a coin-operated phonorecord player;

(B) has the power to make a coin-operated phonorecord player available for placement in an establishment for purposes of public performance; or

(C) has the power to exercise primary control over the selection of the musical works made available for public performance on a coin-operated phonorecord player.

* * * * * * *

§ 119. Limitations on exclusive rights: Secondary transmissions of superstations and network stations for private home viewing

(a) * * *

* * * * * * *

(c) ADJUSTMENT OF ROYALTY FEES.—

(1) APPLICABILITY AND DETERMINATION OF ROYALTY FEES.—The rate of the royalty fee payable under subsection (b)(1)(B) shall be effective [until] unless a royalty fee is established under paragraph (2), (3), or (4) of this subsection. After that date, the fee shall be determined either in accordance with the voluntary negotiation procedure specified in paragraph (2) or

in accordance with the compulsory arbitration procedure specified in paragraphs (3) and (4).

* * * * * * *

CHAPTER 3—DURATION OF COPYRIGHT

* * * * * * *

§ 304. Duration of copyright: Subsisting copyrights

(a) * * *

* * * * * * *

(c) TERMINATION OF TRANSFERS AND LICENSES COVERING EXTENDED RENEWAL TERM.—In the case of any copyright subsisting in either its first or renewal term on January 1, 1978, other than a copyright in a work made for hire, the exclusive or nonexclusive grant of a transfer or license of the renewal copyright or any right under it, executed before January 1, 1978, by any of the persons designated by [the] subsection (a)(1)(C) of this section, otherwise than by will, is subject to termination under the following conditions:

(1) * * *

* * * * * * *

CHAPTER 4—COPYRIGHT NOTICE, DEPOSIT, AND REGISTRATION

* * * * * * *

§ 405. Notice of copyright: Omission of notice on certain copies and phonorecords

(a) * * *

(b) EFFECT OF OMISSION ON INNOCENT INFRINGERS.—Any person who innocently infringes a copyright, in reliance upon an authorized copy or phonorecord from which the copyright notice has been omitted and which was publicly distributed by authority of the copyright owner before the effective date of the Berne Convention Implementation Act of 1988, incurs no liability for actual or statutory damages under section 504 for any infringing acts committed before receiving actual notice that registration for the work has been made under section 408, if such person proves that he or she was misled by the omission of notice. In a suit for infringement in such a case the court may allow or disallow recovery of any of the infringer's profits attributable to the infringement, and may enjoin the continuation of the infringing undertaking or may require, as a condition [or] *for* permitting the continuation of the infringing undertaking, that the infringer pay the copyright owner a reasonable license fee in an amount and on terms fixed by the court.

* * * * * * *

§ 407. Deposit of copies or phonorecords for Library of Congress

(a) * * *

* * * * * * *

(d) At any time after publication of a work as provided by subsection (a), the Register of Copyrights may make written demand for the required deposit on any of the persons obligated to make the deposit under subsection (a). Unless deposit is made within three months after the demand is received, the person or persons on whom the demand was made are liable—

(1) to a fine of not more than $250 for each work; and

(2) to pay into a specially designated fund in the Library of Congress the total retail price of the copies or phonorecords demanded, or, if no retail price has been fixed, the reasonable cost [of] *to* the Library of Congress of acquiring them; and

* * * * * * *

§ 411. Registration and infringement actions

(a) * * *

(b) In the case of a work consisting of sounds, images, or both, the first fixation of which is made simultaneously with its transmission, the copyright owner may, either before or after such fixation takes place, institute an action for infringement under section 501, fully subject to the remedies provided by sections 502 through 506 and sections 509 and 510, if, in accordance with requirements that the Register of Copyrights shall prescribe by regulation, the copyright owner—

[(1) serves notice upon the infringer, not less than ten or more than thirty days before such fixation, identifying the work and the specific time and source of its first transmission, and declaring an intention to secure copyright in the work; and]

(1) serves notice upon the infringer, not less than 48 hours before such fixation, identifying the work and the specific time and source of its first transmission, and declaring an intention to secure copyright in the work; and

* * * * * * *

CHAPTER 5—COPYRIGHT INFRINGEMENT AND REMEDIES

Sec.
501. Infringement of copyright.

* * * * * * *

504. Remedies for infringement: [Damage] *Damages* and profits.

* * * * * * *

§ 504. Remedies for infringement: Damages and profits

(a) * * *

* * * * * * *

(c) STATUTORY DAMAGES.—

(1) * * *

(2) In a case where the copyright owner sustains the burden of proving, and the court finds, that infringement was committed willfully, the court in its discretion may increase the award of statutory damages to a sum of not more than $100,000. In a case where the infringer sustains the burden of proving, and

the court finds, that such infringer was not aware and had no reason to believe that his or her acts constituted an infringement of copyright, the court [it] *in* its discretion may reduce the award of statutory damages to a sum of not less than $200. The court shall remit statutory damages in any case where an infringer believed and had reasonable grounds for believing that his or her use of the copyrighted work was a fair use under section 107, if the infringer was: (i) an employee or agent of a nonprofit educational institution, library, or archives acting within the scope of his or her employment who, or such institution, library, or archives itself, which infringed by reproducing the work in copies or phonorecords; or (ii) a public broadcasting entity which or a person who, as a regular part of the nonprofit activities of a public broadcasting entity (as defined in subsection (g) of section 118) infringed by performing a published nondramatic literary work or by reproducing a transmission program embodying a performance of such a work.

* * * * * * *

§ 509. Seizure and forfeiture

(a) * * *

(b) The applicable procedures relating to (i) the seizure, summary and judicial forfeiture, and condemnation of vessels, vehicles, merchandise, and baggage for violations of the customs laws contained in title 19, (ii) the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from the sale thereof, (iii) the remission or mitigation of such forfeiture, (iv) the compromise of claims, and (v) the award of compensation to informers in respect of such forfeitures, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions of this section; except that such duties as are imposed upon any officer or employee of the Treasury Department or any other person with respect to the seizure and forfeiture of vessels, vehicles, [merchandise; and baggage] *merchandise, and baggage* under the provisions of the customs laws contained in title 19 shall be performed with respect to seizure and forfeiture of all articles described in subsection (a) by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General.

* * * * * * *

CHAPTER 6—MANUFACTURING REQUIREMENTS AND IMPORTATION

* * * * * * *

§ 601. Manufacture, importation, and public distribution of certain copies

(a) Prior to July 1, 1986, and except as provided by subsection (b), the importation into or public distribution in the United States of copies of a work consisting preponderantly of [nondramtic] *nondramatic* literary material that is in the English language and is protected under this title is prohibited unless the portions consist-

ing of such material have been manufactured in the United States or Canada.

(b) The provisions of subsection (a) do not apply—

(1) where, on the date when importation is sought or public distribution in the United States is made, the author of any substantial part of such material is neither a national nor a domiciliary of the United States or, if such author is a national of the United States, he or she has been domiciled outside the United States for a continuous period of at least one year immediately preceding that date; in the case of a work made for hire, the exemption provided by this clause does not apply unless a [subsustantial] *substantial* part of the work was prepared for an employer or other person who is not a national or domiciliary of the United States or a domestic corporation or enterprise;

* * * * * * *

CHAPTER 7—COPYRIGHT OFFICE

Sec.
701. The Copyright Office: General responsibilities and organization.

* * * * * * *

710. [Reproductions] *Reproduction* for use of the blind and physically handicapped: Voluntary licensing forms and procedures.

* * * * * * *

§ 708. Copyright Office fees

(a) * * *

[(b) In calendar year 1995 and in each subsequent fifth calendar year, the Register of Copyrights, by regulation, may increase the fees specified in subsection (a) by the percent change in the annual average, for the preceding calendar year, of the Consumer Price Index published by the Bureau of Labor Statistics, over the annual average of the Consumer Price Index for the fifth calendar year preceding the calendar year in which such increase is authorized.]

(b) In calendar year 1997 and in any subsequent calendar year, the Register of Copyrights, by regulation, may increase the fees specified in subsection (a) in the following manner:

(1) The Register shall conduct a study of the costs incurred by the Copyright Office for the registration of claims, the recordation of documents, and the provision of services. The study shall also consider the timing of any increase in fees and the authority to use such fees consistent with the budget.

(2) The Register may, on the basis of the study under paragraph (1), and subject to paragraph (5), increase fees to not more than that necessary to cover the reasonable costs incurred by the Copyright Office for the services described in paragraph (1), plus a reasonable inflation adjustment to account for any estimated increase in costs.

(3) Any fee established under paragraph (2) shall be rounded off to the nearest dollar, or for a fee less than $12, rounded off to the nearest 50 cents.

(4) Fees established under this subsection shall be fair and equitable and give due consideration to the objectives of the copyright system.

(5) If the Register determines under paragraph (2) that fees should be increased, the Register shall prepare a proposed fee schedule and submit the schedule with the accompanying economic analysis to the Congress. The fees proposed by the Register may be instituted after the end of 120 days after the schedule is submitted to the Congress unless, within that 120-day period, a law is enacted stating in substance that the Congress does not approve the schedule.

* * * * * * *

[(d) All fees received under this section shall be deposited by the Register of Copyrights in the Treasury of the United States and shall be credited to the appropriation for necessary expenses of the Copyright Office. The Register may, in accordance with regulations that he or she shall prescribe, refund any sum paid by mistake or in excess of the fee required by this section.]

(d)(1) Except as provided in paragraph (2), all fees received under this section shall be deposited by the Register of Copyrights in the Treasury of the United States and shall be credited to the appropriations for necessary expenses of the Copyright Office. Such fees that are collected shall remain available until expended. The Register may, in accordance with regulations that he or she shall prescribe, refund any sum paid by mistake or in excess of the fee required by this section.

(2) In the case of fees deposited against future services, the Register of Copyrights shall request the Secretary of the Treasury to invest in interest-bearing securities in the United States Treasury any portion of the fees that, as determined by the Register, is not required to meet current deposit account demands. Funds from such portion of fees shall be invested in securities that permit funds to be available to the Copyright Office at all times if they are determined to be necessary to meet current deposit account demands. Such investments shall be in public debt securities with maturities suitable to the needs of the Copyright Office, as determined by the Register of Copyrights, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

(3) The income on such investments shall be deposited in the Treasury of the United States and shall be credited to the appropriations for necessary expenses of the Copyright Office.

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CHAPTER 8—COPYRIGHT ARBITRATION ROYALTY PANELS

Sec.
801. Copyright arbitration royalty panels: [establishment] *Establishment* and purpose.

* * * * * * *

§ 801. Copyright arbitration royalty panels: Establishment and purpose

(a) * * *

(b) PURPOSES.—Subject to the provisions of this chapter, the purposes of the copyright arbitration royalty panels [shall be—] *shall be as follows:*

(1) [to] *To* make determinations concerning the adjustment of reasonable copyright royalty rates as provided in sections 114, 115, [and 116] *116, and 119*, and to make determinations as to reasonable terms and rates of royalty payments as provided in section 118. The rates applicable under sections 114, 115, and 116 shall be calculated to achieve the following objectives:

(A) * * *

* * * * * * *

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

(A) * * *

* * * * * * *

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

(3) [to] *To* distribute royalty fees deposited with the Register of Copyrights under sections 111, 116, 119(b), and 1003, and to determine, in cases where controversy exists, the distribution of such fees.

(c) RULINGS.—The Librarian of Congress, upon the recommendation of the Register of Copyrights, may, before a copyright arbitration royalty panel is convened, make any necessary procedural or evidentiary rulings that would apply to the proceedings conducted by such panel, *including—*

(1) authorizing the distribution of those royalty fees collected under sections 111, 119, and 1005 that the Librarian has found are not subject to controversy; and

(2) accepting or rejecting royalty claims filed under sections 111, 119, and 1007 on the basis of timeliness or the failure to establish the basis for a claim.

[(d) ADMINISTRATIVE SUPPORT OF COPYRIGHT ARBITRATION ROYALTY PANELS.—The Library of Congress, upon the recommendation of the Register of Copyrights, shall provide the copyright arbitration royalty panels with the necessary administrative services related to proceedings under this chapter.]

(d) SUPPORT AND REIMBURSEMENT OF ARBITRATION PANELS.—The Librarian of Congress, upon the recommendation of the Register of Copyrights, shall provide the copyright arbitration royalty panels with the necessary administrative services related to proceedings under this chapter, and shall reimburse the arbitrators presid-

ing in distribution proceedings at such intervals and in such manner as the Librarian shall provide by regulation. Each such arbitrator is an independent contractor acting on behalf of the United States, and shall be hired pursuant to a signed agreement between the Library of Congress and the arbitrator. Payments to the arbitrators shall be considered reasonable costs incurred by the Library of Congress and the Copyright Office for purposes of section 802(h)(1).

* * * * * * *

§ 802. Membership and proceedings of copyright arbitration royalty panels

(a) * * *

* * * * * * *

(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, 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, 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.]

* * * * * * *

(h) ADMINISTRATIVE MATTERS.—

[(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.]

(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).

* * * * * * *

§ 803. Institution and conclusion of proceedings

(a) * * *

(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] 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.

* * * * * * *

CHAPTER 9—PROTECTION OF SEMICONDUCTOR CHIP PRODUCTS

§ 909. Mask work notice

(a) * * *

(b) The notice referred to in subsection (a) shall consist of—

(1) the words "mask [force] *work*", the [sumbol] *symbol*, or the symbol M (the letter M in a circle); and

* * * * * * *

§ 910. Enforcement of exclusive rights

(a) Except as otherwise provided in this chapter, any person who violates any of the exclusive rights of the owner of a mask work under this chapter, by conduct in or affecting commerce, shall be liable as an infringer of such rights. [as] *As* used in this subsection, the term "any person" includes any State, any instrumentality of a State, and any officer or employee of a State or instru-

mentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this chapter in the same manner and to the same extent as any nongovernmental entity.

* * * * * * *

CHAPTER 10—DIGITAL AUDIO RECORDING DEVICES AND MEDIA

* * * * * * *

SUBCHAPTER C—ROYALTY PAYMENTS

* * * * * * *

§ 1006. Entitlement to royalty payments

(a) * * *

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

(1) THE SOUND RECORDINGS FUND.—66 ⅔ percent of the royalty payments shall be allocated to the Sound Recordings Fund. 2 ⅝ 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 ⅜ 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 nonfeatured 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).

* * * * * * *

§ 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 after [the calendar year in which this chapter takes effect] *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.

* * * * * * *

(b) DISTRIBUTION OF PAYMENTS IN THE ABSENCE OF A DISPUTE.—[Within 30 days after] *After* the period established for the filing of claims under subsection (a), in each year after [the year in which this section takes effect] *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.

* * * * * * *

SECTION 4 OF THE DIGITAL PERFORMANCE RIGHT IN SOUND RECORDINGS ACT OF 1995

SEC. 4. MECHANICAL ROYALTIES IN DIGITAL PHONORECORD DELIVERIES.

Section 115 of title 17, United States Code, is amended—

(1) * * *

* * * * * * *

[(5)] *(4)* by adding after subsection (c) the following:

"(d) DEFINITION.—As used in this section, the following term has the following meaning: A 'digital phonorecord delivery' is each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that sound recording, regardless of whether the digital transmission is also a public performance of the sound recording or any nondramatic musical work embodied therein. A digital phonorecord delivery does not result from a real-time, non-interactive subscription transmission of a sound recording where no reproduction of the sound recording or the musical work embodied therein is made from the inception of the transmission through to its receipt by the transmission recipient in order to make the sound recording audible.".

ACT OF NOVEMBER 9, 1987

AN ACT To amend chapter 9 of title 17, United States Code, regarding protection extended to semiconductor chip products of foreign entities.

SECTION 1. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) section 914 of title 17, United States Code, which authorizes the Secretary of Commerce to issue orders extending interim protection under chapter 9 of title 17, United States Code, to mask works fixed in semiconductor chip products and [orginating] *originating* in foreign countries that are making

good faith efforts and reasonable progress toward providing protection, by treaty or legislation, to mask works of United States nationals, has resulted in substantial and positive legislative developments in foreign countries regarding protection of mask works;

* * * * * * *

SECTION 2319 OF TITLE 18, UNITED STATES CODE

§ 2319. Criminal infringement of a copyright

(a) * * *

(b) Any person who commits an offense under subsection (a) of this section—

(1) shall be imprisoned not more than 5 years, or fined in the amount set forth in this title, or both, if the offense consists of the reproduction or distribution, during any 180-day period, of at [last] *least* 10 copies or phonorecords, of 1 or more copyrighted works, with a retail value of more than $2,500;

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