

Calendar No. 389102D CONGRESS
1ST SESSION**S. 1623**

To amend title 17, United States Code, to implement a royalty payment system and a serial copy management system for digital audio recording, to prohibit certain copyright infringement actions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 1 (legislative day, JULY 8), 1991

Mr. DECONCINI (for himself, Mr. INOUE, Mr. HATCH, Mr. KENNEDY, Mr. LEAHY, Mr. BURNS, Mr. GORTON, Mr. GORE, Mr. GRASSLEY, Mr. D'AMATO, Mr. CRANSTON, Mr. BREAUX, Mr. WIRTH, Mr. KASTEN, Mr. MCCAIN, Mr. SIMON, Mr. BENTSEN, Mr. SASSER, Mr. MOYNIHAN, Mr. BURDICK, Mr. FOWLER, Mr. DODD, Mr. ADAMS, Mr. BINGAMAN, Mr. KERRY, Mr. SANFORD, Mr. DASCHLE, Mr. AKAKA, Mr. PACKWOOD, Mr. PELL, Mr. SEYMOUR, Mr. JEFFORDS, Mr. RIEGLE, Mr. METZENBAUM, and Mr. LAUTENBERG) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

NOVEMBER 27 (legislative day, NOVEMBER 23), 1991

Reported by Mr. BIDEN, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To amend title 17, United States Code, to implement a royalty payment system and a serial copy management system for digital audio recording, to prohibit certain copyright infringement actions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Audio Home Recording
 5 Act of 1991".

6 **SEC. 2. IMPORTATION, MANUFACTURE, AND DISTRIBUTION**
 7 **OF DIGITAL AUDIO RECORDING DEVICES**
 8 **AND MEDIA.**

9 Title 17, United States Code, is amended by adding
 10 at the end the following:

11 **"CHAPTER 10—DIGITAL AUDIO RECORDING**
 12 **DEVICES AND MEDIA**

"SUBCHAPTER A—DEFINITIONS, PROHIBITION OF CERTAIN
INFRINGEMENT ACTIONS, AND RULES OF CONSTRUCTION

"Sec.

"1001. Definitions.

"1002. Prohibition on certain infringement actions.

"1003. Effect on other rights and remedies with respect to private home copy-
 ing or otherwise.

"SUBCHAPTER B—ROYALTY PAYMENTS

"1011. Obligation to make royalty payments.

"1012. Royalty payments.

"1013. Deposit of royalty payments and deduction of expenses.

"1014. Entitlement to royalty payments.

"1015. Procedures for distributing royalty payments.

"1016. Negotiated collection and distribution arrangements.

"SUBCHAPTER C—THE SERIAL COPY MANAGEMENT SYSTEM

"1021. Incorporation of the serial copy management system.

"1022. Implementing the serial copy management system.

"SUBCHAPTER D—REMEDIES

"1031. Civil remedies.

"1032. Binding arbitration.

1 ~~“SUBCHAPTER A—DEFINITIONS, PROHIBITION~~
2 ~~OF CERTAIN INFRINGEMENT ACTIONS, AND~~
3 ~~RULES OF CONSTRUCTION~~

4 ~~“§ 1001. Definitions~~

5 “As used in this chapter, the following terms and
6 their variant forms mean the following:

7 “(1) A ‘digital audio copied recording’ is a re-
8 production in a digital recording format of a phono-
9 record, whether that reproduction is made directly
10 from another phonorecord or indirectly from a trans-
11 mission:

12 “(2) A ‘digital audio interface device’ is any
13 machine or device, now known or later developed,
14 whether or not included with or as part of some
15 other machine or device, that supplies a digital audio
16 signal through a nonprofessional interface, as the
17 term ‘nonprofessional interface’ is used in the Digi-
18 tal Audio Interface Standard in part I of the tech-
19 nical reference document or as otherwise defined by
20 the Secretary of Commerce under section 1022(b).

21 “(3) A ‘digital audio recording device’ is any
22 machine or device, now known or later developed,
23 whether or not included with or as part of some
24 other machine or device, the recording function of
25 which is designed or marketed for the primary pur-

1 pose of, and that is capable of, making a digital
2 audio copied recording for private use, except for—

3 “(A) professional model products, and

4 “(B) dictation machines, answering ma-
5 chines, and other audio recording equipment
6 that is designed and marketed primarily for the
7 creation of sound recordings resulting from the
8 fixation of nonmusical sounds.

9 “(4)(A) A ‘digital audio recording medium’ is
10 any material object, now known or later developed,
11 in a form commonly distributed for use by individ-
12 uals (such as magnetic digital audio tape cassettes,
13 optical discs, and magneto-optical discs), that is pri-
14 marily marketed or most commonly used by consum-
15 ers for the purpose of making digital audio copied
16 recordings by use of a digital audio recording device.

17 “(B) Such term does not include any material
18 object—

19 “(i) that embodies a sound recording at
20 the time it is first distributed by the importer
21 or manufacturer, unless the sound recording
22 has been so embodied in order to evade the obli-
23 gations of section 1011 of this title; or

24 “(ii) that is primarily marketed and most
25 commonly used by consumers either for the

1 purpose of making copies of motion pictures or
2 other audiovisual works or for the purpose of
3 making copies of nonmusical literary works, in-
4 cluding, without limitation, computer programs
5 or data bases.

6 “(5) ‘Distribute’ means to sell, resell, lease, or
7 assign a product to consumers in the United States,
8 or to sell, resell, lease, or assign a product in the
9 United States for ultimate transfer to consumers in
10 the United States.

11 “(6) An ‘interested copyright party’ is—

12 “(A) the owner of the exclusive right under
13 section 106(1) of this title to reproduce a sound
14 recording of a musical work that has been em-
15 bodied in a phonorecord lawfully made under
16 this title that has been distributed to the public;

17 “(B) the legal or beneficial owner of, or
18 the person that controls, the right to reproduce
19 in a phonorecord a musical work that has been
20 embodied in a phonorecord lawfully made under
21 this title that has been distributed to the public;

22 or

23 “(C) any association or other
24 organization—

1 “(i) representing persons specified in
2 subparagraph (A) or (B); or

3 “(ii) engaged in licensing rights in
4 musical works to music users on behalf of
5 writers and publishers.

6 “(7) An ‘interested manufacturing party’ is any
7 person that imports or manufactures any digital
8 audio recording device or digital audio recording me-
9 dium in the United States, or any association of
10 such persons.

11 “(8) ‘Manufacture’ includes the production or
12 assembly of a product in the United States.

13 “(9) A ‘music publisher’ is a person that is au-
14 thorized to license the reproduction of a particular
15 musical work in a sound recording.

16 “(10)(A) A ‘professional model product’ is an
17 audio recording device—

18 “(i) that is capable of sending a digital
19 audio interface signal in which the channel sta-
20 tus block flag is set as a ‘professional’ interface,
21 in accordance with the standards and specifica-
22 tions set forth in the technical reference docu-
23 ment or established under an order issued by
24 the Secretary of Commerce under section
25 1022(b);

1 “(ii) that is clearly, prominently, and per-
2 manently marked with the letter ‘P’ or the word
3 ‘professional’ on the outside of its packaging,
4 and in all advertising, promotional, and descrip-
5 tive literature, with respect to the device, that
6 is available or provided to persons other than
7 the manufacturer or importer, its employees, or
8 its agents; and

9 “(iii) that is designed, manufactured, mar-
10 keted, and intended for use by recording profes-
11 sionals in the ordinary course of a lawful busi-
12 ness.

13 “(B) In determining whether an audio record-
14 ing device meets the requirements of subparagraph
15 (A)(iii), factors to be considered shall include—

16 “(i) whether it has features used by re-
17 cording professionals in the course of a lawful
18 business, including features such as—

19 “(I) a data collection and reporting
20 system of error codes during recording and
21 playback;

22 “(II) a record and reproduce format
23 providing ‘read after write’ and ‘read after
24 read’;

1 “(III) a time code reader and genera-
2 tor conforming to the standards set by the
3 Society of Motion Picture and Television
4 Engineers for such readers and generators;
5 and

6 “(IV) a professional input/output
7 interface, both digital and analog, conform-
8 ing to standards set by audio engineering
9 organizations for connectors, signaling for-
10 mats, levels, and impedances;

11 “(ii) the nature of the promotional mate-
12 rials used to market the audio recording device;

13 “(iii) the media used for the dissemination
14 of the promotional materials, including the in-
15 tended audience;

16 “(iv) the distribution channels and retail
17 outlets through which the device is dissemi-
18 nated;

19 “(v) the manufacturer's or importer's price
20 for the device as compared to the manufactur-
21 er's or importer's price for digital audio record-
22 ing devices implementing the Serial Copy Man-
23 agement System;

24 “(vi) the relative quantity of the device
25 manufactured or imported as compared to the

1 size of the manufacturer's or importer's market
2 for professional model products;

3 “(vii) the occupations of the purchasers of
4 the device; and

5 “(viii) the uses to which the device is put;

6 “(11) The ‘Register’ is the Register of Copy-
7 rights.

8 “(12) The ‘Serial Copy Management System’
9 means the system for regulating serial copying by
10 digital audio recording devices that is set forth in
11 the technical reference document or in an order of
12 the Secretary of Commerce under section 1022(b),
13 or that conforms to the requirements of section
14 1021(a)(1)(C).

15 “(13) The ‘technical reference document’ is the
16 document entitled ‘Technical Reference Document
17 for Audio Home Recording Act of 1991,’ as such
18 document appears in the report of the Committee on
19 the Judiciary to the Senate reporting favorably the
20 bill which upon enactment made the amendment
21 adding this chapter.

22 “(14)(A) The ‘transfer price’ of a digital audio
23 recording device or a digital audio recording medium
24 is—

1 “(i) in the case of an imported product,
2 the actual entered value at United States Cus-
3 toms (exclusive of any freight, insurance, and
4 applicable duty); and

5 “(ii) in the case of a domestic product, the
6 manufacturer’s transfer price (FOB the manu-
7 facturer, and exclusive of any direct sales taxes
8 or excise taxes incurred in connection with the
9 sale).

10 “(B) Where the transferor and transferee are
11 related entities or within a single entity, the transfer
12 price shall not be less than a reasonable arms-length
13 price under the principles of the regulations adopted
14 pursuant to section 482 of the Internal Revenue
15 Code of 1986, or any successor provision to such
16 section 482.

17 “(15) A ‘transmission’ is any audio or audio-
18 visual transmission, now known or later developed,
19 whether by a broadcast station, cable system,
20 multipoint distribution service, subscription service,
21 direct broadcast satellite, or other form of analog or
22 digital communication.

23 “(16) The ‘Tribunal’ is the Copyright Royalty
24 Tribunal.

1 “(17) A ‘writer’ is the composer or lyricist of
2 a particular musical work.

3 “(18) The terms ‘analog format’, ‘copyright
4 status’, ‘category code’, ‘generation status’, and
5 ‘source material’, mean those terms as they are used
6 in the technical reference document.

7 **“§ 1002. Prohibition on certain infringement actions**

8 “(a) CERTAIN ACTIONS PROHIBITED.—

9 “(1) GENERALLY.—No action may be brought
10 under this title, or under section 337 of the Tariff
11 Act of 1930, alleging infringement of copyright
12 based on the manufacture, importation, or dis-
13 tribution of a digital audio recording device or a dig-
14 ital audio recording medium, or an analog audio re-
15 cording device or analog audio recording medium, or
16 the use of such a device or medium for making
17 phonorecords. However, this subsection does not
18 apply with respect to any claim against a person for
19 infringement by virtue of the making of one or more
20 copies or phonorecords for direct or indirect com-
21 mercial advantage.

22 “(2) EXAMPLE.—For purposes of this section,
23 the copying of a phonorecord by a consumer for pri-
24 vate, noncommercial use is not for direct or indirect

1 commercial advantage, and is therefore not action-
2 able.

3 ~~“(b) EFFECT OF THIS SECTION.—~~Nothing in this
4 section shall be construed to create or expand a cause of
5 action for copyright infringement except to the extent such
6 a cause of action otherwise exists under other chapters
7 of this title or under section 337 of the Tariff Act of 1930,
8 or to limit any defenses that may be available to such
9 causes of action.

10 **“§ 1003. Effect on other rights and remedies with re-**
11 **spect to private home copying or other-**
12 **wise**

13 ~~“~~Except as expressly provided in this chapter with
14 respect to audio recording devices and media, neither the
15 enactment of this chapter nor anything contained in this
16 chapter shall be construed to expand, limit, or otherwise
17 affect the rights of any person with respect to private
18 home copying of copyrighted works; or to expand, limit,
19 create, or otherwise affect any other right or remedy that
20 may be held by or available to any person under chapters
21 1 through 9 of this title.

22 ~~“SUBCHAPTER B—ROYALTY PAYMENTS~~

23 **“§ 1011. Obligation to make royalty payments**

24 ~~“(a) PROHIBITION ON IMPORTATION AND MANUFAC-~~
25 ~~TURE.—~~No person shall import into and distribute in the

1 United States, or manufacture and distribute in the Unit-
2 ed States, any digital audio recording device or digital
3 audio recording medium unless such person—

4 “(1) records the notice specified by this section
5 and subsequently deposits the statements of account
6 and applicable royalty payments for such device or
7 medium specified by this section and section 1012 of
8 this title, or

9 “(2) complies with the applicable notice, state-
10 ment of account, and payment obligations under a
11 negotiated arrangement authorized pursuant to sec-
12 tion 1016 of this title.

13 “(b) FILING OF NOTICE.—

14 “(1) GENERALLY.—The importer or manufac-
15 turer of any digital audio recording device or digital
16 audio recording medium, within a product category
17 or utilizing a technology with respect to which such
18 manufacturer or importer has not previously filed a
19 notice under this subsection, shall file a notice with
20 the Register, no later than 45 days after the com-
21 mencement of the first distribution in the United
22 States of such device or medium, in such form as
23 the Register shall prescribe by regulation.

24 “(2) CONTENTS.—Such notice shall—

1 “(A) set forth the manufacturer’s or im-
2 porter’s identity and address;

3 “(B) identify such product category and
4 technology; and

5 “(C) identify any trade or business names;
6 trademarks; or like indicia of origin that the
7 importer or manufacturer uses or intends to use
8 in connection with the importation; manufac-
9 ture; or distribution of such device or medium
10 in the United States.

11 “(e) FILING OF QUARTERLY STATEMENTS OF AC-
12 COUNT.—

13 “(1) GENERALLY.—Any importer or manufac-
14 turer that distributed during a given quarter any
15 digital audio recording device or digital audio record-
16 ing medium that it manufactured or imported shall
17 file with the Register, in such form as the Register
18 shall prescribe by regulation, a quarterly statement
19 of account specifying, by product category, tech-
20 nology, and model, the number and transfer price of
21 all digital audio recording devices and digital audio
22 recording media that it distributed during such
23 quarter.

24 “(2) TIMING, CERTIFICATION, AND ROYALTY
25 PAYMENTS.—Such statement shall—

1 “(A) be filed no later than 45 days after
2 the close of the period covered by the state-
3 ment;

4 “(B) be certified as accurate by an author-
5 ized officer or principal of the importer or man-
6 ufacturer;

7 “(C) be accompanied by the total royalty
8 payment due for such period pursuant to sec-
9 tion 1012 of this title.

10 “(3) PERIOD COVERED.—The quarterly state-
11 ments of account may be filed on either a calendar
12 or fiscal year basis, at the election of the manufac-
13 turer or importer.

14 “(d) FILING OF ANNUAL STATEMENTS OF AC-
15 COUNT.—

16 “(1) GENERALLY.—Any importer or manufac-
17 turer that distributed during a given calendar or fis-
18 cal year (as applicable) any digital audio recording
19 device or digital audio recording medium that it
20 manufactured or imported shall also file with the
21 Register a cumulative annual statement of account,
22 in such form as the Register shall prescribe by regu-
23 lation.

24 “(2) TIMING AND CERTIFICATION.—Such state-
25 ment shall be filed no later than 60 days after the

1 close of such calendar or fiscal year, and shall be
2 certified as accurate by an authorized officer or
3 principal of the importer or manufacturer.

4 “(3) INDEPENDENT REVIEW AND CER-
5 TIFICATION.—The annual statement of account shall
6 be reviewed and, pursuant to generally accepted au-
7 diting standards, certified by an independent cer-
8 tified public accountant selected by the manufac-
9 turer or importer as fairly presenting the informa-
10 tion contained therein, on a consistent basis and in
11 accordance with the requirements of this chapter.

12 “(4) RECONCILIATION OF ROYALTY PAY-
13 MENT.—The cumulative annual statement of ac-
14 count shall be accompanied by any royalty payment
15 due under section 1012 of this title that was not
16 previously paid under subsection (e) of this section.

17 “(e) VERIFICATION.—

18 “(1) GENERALLY.—

19 “(A) The Register shall, after consulting
20 with interested copyright parties and interested
21 manufacturing parties, prescribe regulations
22 specifying procedures for the verification of
23 statements of account filed pursuant to this
24 section.

1 “(B) Such regulations shall permit inter-
2 ested copyright parties to select independent
3 certified public accountants to conduct audits in
4 order to verify the accuracy of the information
5 contained in the statements of account filed by
6 manufacturers and importers:

7 “(C) Such regulations shall also—

8 “(i) specify the scope of such inde-
9 pendent audits; and

10 “(ii) establish a procedure by which
11 interested copyright parties will coordinate
12 the engagement of such independent cer-
13 tified public accountants; in order to en-
14 sure that no manufacturer or importer is
15 audited more than once per year.

16 “(D) All such independent audits shall be
17 conducted at reasonable times, with reasonable
18 advance notice, and shall be no broader in scope
19 than is reasonably necessary to carry out the
20 purposes of this subsection in accordance with
21 generally accepted auditing standards.

22 “(2) INDEPENDENT CERTIFICATION.—The re-
23 sults of all such independent audits shall be certified
24 as fairly presenting the information contained there-
25 in, on a consistent basis and in accordance with the

1 requirements of this chapter and generally accepted
2 auditing standards, by the certified public account-
3 ant responsible for the audit. The certification and
4 results shall be filed with the Register.

5 “(3) ACCESS TO DOCUMENTS IN EVENT OF DIS-
6 PUTE.—In the event of a dispute concerning the
7 amount of the royalty payment due from a manufac-
8 turer or importer resulting from a verification audit
9 conducted under this section—

10 “(A) any interested manufacturing party
11 audited pursuant to this subsection, and its au-
12 thorized representatives, shall be entitled to
13 have access to all documents upon which the
14 audit results under this subsection were based;
15 and

16 “(B) any representative of an interested
17 copyright party that has been approved by the
18 Register under subsection (h)(2) of this section
19 shall be entitled to have access to all documents
20 upon which the audit results under subsection
21 (d) of this section were based, subject to the
22 limitations of subsection (h)(2) of this section.

23 “(f) COSTS OF VERIFICATION.—

24 “(1) The costs of all verification audits that are
25 conducted pursuant to subsection (e) of this section

1 shall be borne by interested copyright parties; except
2 that, in the case of a verification audit of a manu-
3 facturer or importer that leads ultimately to recov-
4 ery of an annual royalty underpayment of 5 percent
5 or more of the annual payment made, the importer
6 or manufacturer shall provide reimbursement for the
7 reasonable costs of such audit.

8 “(2) Except as may otherwise be agreed by in-
9 terested copyright parties, the costs of a verification
10 audit conducted pursuant to subsection (c) of this
11 section shall be borne by the party engaging the cer-
12 tified public accountant. Any recovery of royalty un-
13 derpayments as a result of the audit shall be used
14 first to provide reimbursement for the reasonable
15 costs of such audit to the extent such costs have not
16 otherwise been reimbursed by the manufacturer or
17 importer pursuant to this subsection. Any remaining
18 recovery shall be deposited with the Register pursu-
19 ant to section 1013 of this title, or as may otherwise
20 be provided by a negotiated arrangement authorized
21 under section 1016 of this title, for distribution to
22 interested copyright parties as though such funds
23 were royalty payments made pursuant to this sec-
24 tion.

1 “(g) INDEPENDENCE OF ACCOUNTANTS.—Each cer-
2 tified public accountant used by interested copyright par-
3 ties or interested manufacturing parties pursuant to this
4 section shall be in good standing and shall not be finan-
5 cially dependent upon interested copyright parties or inter-
6 ested manufacturing parties, respectively. The Register
7 may, upon petition by any interested copyright party or
8 interested manufacturing party, prevent the use of a par-
9 ticular certified public accountant on the ground that such
10 accountant does not meet the requirements of this sub-
11 section.

12 “(h) CONFIDENTIALITY.—

13 “(1) GENERALLY.—The quarterly and annual
14 statements of account filed pursuant to subsections
15 (e) and (d) of this section, and information disclosed
16 or generated during verification audits conducted
17 pursuant to subsection (e) of this section, shall be
18 presumed to contain confidential trade secret infor-
19 mation within the meaning of section 1905 of title
20 18 of the United States Code. Except as provided in
21 paragraphs (2), (3), and (4) of this subsection, nei-
22 ther the Register nor any member, officer, or em-
23 ployee of the Copyright Office or the Tribunal,
24 may—

1 “(A) publicly disclose audit information
2 furnished under this section or information con-
3 tained in quarterly or annual statements of ac-
4 count, except that aggregate information that
5 does not disclose, directly or indirectly, com-
6 pany-specific information may be made avail-
7 able to the public;

8 “(B) use such information for any purpose
9 other than to carry out responsibilities under
10 this chapter; or

11 “(C) permit anyone (other than members,
12 officers, and employees of the Copyright Office
13 and the Tribunal who require such information
14 in the performance of duties under this chap-
15 ter) to examine such information.

16 “(2) PROCEDURES FOR ACCESS TO BE PRE-
17 SCRIBED BY REGISTER.—(A) The Register, after
18 consulting with interested manufacturing parties and
19 interested copyright parties, shall prescribe proce-
20 dures for disclosing, in confidence, to representatives
21 of interested copyright parties and representatives of
22 interested manufacturing parties information con-
23 tained in quarterly and annual statements of ac-
24 count and information generated as a result of ver-
25 ification audits.

1 “(B) Such procedures shall provide that only
2 those representatives of interested copyright parties
3 and interested manufacturing parties who have been
4 approved by the Register shall have access to such
5 information, and that all such representatives shall
6 be required to sign a certification limiting the use of
7 the information to—

8 “(i) verification functions under this sec-
9 tion; and

10 “(ii) any enforcement actions that may re-
11 sult from such verification procedures.

12 “(3) ACCESS BY AUDITED MANUFACTURER.—

13 Any interested manufacturing party that is audited
14 pursuant to subsection (c) of this section; and its
15 authorized representatives; shall be entitled to have
16 access to all documents filed with the Register as a
17 result of such audit.

18 “(4) ACCESS BY CONGRESS.—Nothing in this
19 section shall authorize the withholding of informa-
20 tion from the Congress.

21 **“§ 1012. Royalty payments**

22 “(a) DIGITAL AUDIO RECORDING DEVICES.—

23 “(1) The royalty payment due under section
24 1011 of this title for each digital audio recording de-
25 vice imported into and distributed in the United

1 States, or manufactured and distributed in the Unit-
2 ed States, shall be 2 percent of the transfer price.
3 However, only the first person to manufacture and
4 distribute or import and distribute such device shall
5 be required to pay the royalty with respect to such
6 device.

7 “(2) With respect to a digital audio recording
8 device first distributed in combination with one or
9 more devices, either as a physically integrated unit
10 or as separate components, the royalty payment
11 shall be calculated as follows:

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

20 “(B) If the digital audio recording device
21 is not part of a physically integrated unit and
22 substantially similar devices have been distrib-
23 uted separately at any time during the preced-
24 ing 4 quarters, the royalty payment shall be

1 based on the average transfer price of such de-
2 vices during those 4 quarters.

3 “(C) If the digital audio recording device is
4 not part of a physically integrated unit and
5 substantially similar devices have not been dis-
6 tributed separately at any time during the pre-
7 ceeding 4 quarters, the royalty payment shall be
8 based on a constructed price reflecting the pro-
9 portional value of such device to the com-
10 bination as a whole.

11 “(3) Notwithstanding paragraph (1) or (2) of
12 this subsection, the amount of the royalty payment
13 for each digital audio recording device or physically
14 integrated unit containing a digital audio recording
15 device shall not be less than \$1 nor more than the
16 royalty maximum. The royalty maximum shall be \$8
17 per device, except that for a physically integrated
18 unit containing more than one digital audio record-
19 ing device, the royalty maximum for such unit shall
20 be \$12. During the 6th year after the effective date
21 of this chapter, and no more than once each year
22 thereafter, any interested copyright party may peti-
23 tion the Tribunal to increase the royalty maximum
24 and, if more than 20 percent of the royalty pay-
25 ments are at the relevant royalty maximum, the Tri-

1 bunal shall prospectively increase such royalty maxi-
2 mum with the goal of having no more than 10 per-
3 cent of such payments at the new royalty maximum.

4 “(b) ~~DIGITAL AUDIO RECORDING MEDIA.~~—The roy-
5 alty payment due under section 1011 of this title for each
6 digital audio recording medium imported into and distrib-
7 uted in the United States, or manufactured and distrib-
8 uted in the United States, shall be 3 percent of the trans-
9 fer price. However, only the first person to manufacture
10 and distribute or import and distribute such medium shall
11 be required to pay the royalty with respect to such me-
12 dium.

13 “(c) ~~RETURNED OR EXPORTED MERCHANDISE.~~—

14 “(1) In calculating the amount of royalty pay-
15 ments due under subsections (a) and (b) of this sec-
16 tion, manufacturers and importers may deduct the
17 amount of any royalty payments already made on
18 digital audio recording devices or media that are—

19 “(A) returned to the manufacturer or im-
20 porter as unsold or defective merchandise; or

21 “(B) exported by the manufacturer or im-
22 porter or a related person.

23 “(2) Any such credit shall be taken during the
24 period when such devices or media are returned or
25 exported, and the basis for any such credit shall be

1 set forth in the statement of account for such period
2 filed under section 1011(e) of this title.

3 “(3) Any such credit that is not fully used dur-
4 ing such period may be carried forward to sub-
5 sequent periods. If any returned or exported mer-
6 chandise for which a credit has been taken is sub-
7 sequently distributed, a royalty payment shall be
8 made as specified under subsection (a) or (b) of this
9 section, based on the transfer price applicable to
10 such distribution.

11 **“§ 1013. Deposit of royalty payments and deduction of**
12 **expenses**

13 “The Register shall receive all royalty payments de-
14 posited under this chapter and, after deducting the rea-
15 sonable costs incurred by the Copyright Office under this
16 chapter, shall deposit the balance in the Treasury of the
17 United States, in such manner as the Secretary of the
18 Treasury directs. All funds held by the Secretary of the
19 Treasury shall be invested in interest-bearing United
20 States securities for later distribution with interest under
21 section 1014, 1015, or 1016 of this title. The Register
22 shall submit to the Copyright Royalty Tribunal, on a quar-
23 terly basis, such information as the Tribunal shall require
24 to perform its functions under this chapter.

1 **“§ 1014. Entitlement to royalty payments**

2 “(a) INTERESTED COPYRIGHT PARTIES.—The roy-
3 alty payments deposited pursuant to section 1013 of this
4 title shall, in accordance with the procedures specified in
5 section 1015 or 1016 of this title, be distributed to any
6 interested copyright party—

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

9 “(A) embodied in phonorecords lawfully
10 made under this title that have been distributed
11 to the public; and

12 “(B) distributed to the public in the form
13 of phonorecords or disseminated to the public in
14 transmissions; during the period to which such
15 payments pertain; and

16 “(2) who has filed a claim under section 1015
17 or 1016 of this title.

18 “(b) ALLOCATION OF ROYALTY PAYMENTS TO
19 GROUPS.—The royalty payments shall be divided into two
20 funds as follows:

21 “(1) THE SOUND RECORDINGS FUND.—66⅔
22 percent of the royalty payments shall be allocated to
23 the Sound Recordings Fund. The American Fed-
24 eration of Musicians (or any successor entity) shall
25 receive 2⅕ percent of the royalty payments allocated
26 to the Sound Recordings Fund for the benefit of

1 nonfeatured musicians who have performed on sound
2 recordings distributed in the United States. The
3 American Federation of Television and Radio Artists
4 (or any successor entity) shall receive $1\frac{2}{3}$ percent of
5 the royalty payments allocated to the Sound Record-
6 ings Fund for the benefit of nonfeatured vocalists
7 who have performed on sound recordings distributed
8 in the United States. The remaining royalty pay-
9 ments in the Sound Recordings Fund shall be dis-
10 tributed to claimants under subsection (a) of this
11 section who are interested copyright parties under
12 section 1001(a)(6)(i) of this title. Such claimants
13 shall allocate such royalty payments, on a per sound
14 recording basis, in the following manner: 40 percent
15 to the recording artist or artists featured on such
16 sound recordings (or the persons conveying rights in
17 the artists' performances in the sound recordings),
18 and 60 percent to the interested copyright parties.

19 “(2) THE MUSICAL WORKS FUND.—

20 “(A) $33\frac{1}{3}$ percent of the royalty payments
21 shall be allocated to the Musical Works Fund
22 for distribution to interested copyright parties
23 whose entitlement is based on legal or beneficial
24 ownership or control of a copyright in a musical
25 work.

1 “(B) Notwithstanding any contractual obligation to the contrary—

2 “(i) music publishers shall be entitled
3 to 50 percent of the royalty payments allo-
4 cated to the Musical Works Fund; and

5 “(ii) writers shall be entitled to the
6 other 50 percent of the royalty payments
7 allocated to the Musical Works Fund.
8

9 “(c) ALLOCATION OF ROYALTY PAYMENTS WITHIN
10 GROUPS.—If all interested copyright parties within a
11 group specified in subsection (b) of this section do not
12 agree on a voluntary proposal for the distribution of the
13 royalty payments within such group, the Tribunal shall,
14 pursuant to the procedures specified in section 1015(e) of
15 this title, allocate such royalty payments based on the ex-
16 tent to which, during the relevant period—

17 “(1) for the Sound Recordings Fund, each
18 sound recording was distributed to the public in the
19 form of phonorecords; and

20 “(2) for the Musical Works Fund, each musical
21 work was distributed to the public in the form of
22 phonorecords or disseminated to the public in trans-
23 missions.

24 **“§ 1015. Procedures for distributing royalty payments**

25 “(a) FILING OF CLAIMS AND NEGOTIATIONS.—

1 “(1) During the first 2 months of each calendar
2 year after the calendar year in which this chapter
3 takes effect, every interested copyright party that is
4 entitled to royalty payments under section 1014 of
5 this title shall file with the Tribunal a claim for pay-
6 ments collected during the preceding year in such
7 form and manner as the Tribunal shall prescribe by
8 regulation.

9 “(2) All interested copyright parties within each
10 group specified in section 1014(b) of this title shall
11 negotiate in good faith among themselves in an ef-
12 fort to agree to a voluntary proposal for the dis-
13 tribution of royalty payments. Notwithstanding any
14 provision of the antitrust laws, for purposes of this
15 section such interested copyright parties may agree
16 among themselves to the proportionate division of
17 royalty payments, may lump their claims together
18 and file them jointly or as a single claim, or may
19 designate a common agent to receive payment on
20 their behalf, except that no agreement under this
21 subsection may vary the division of royalties speci-
22 fied in section 1014(b) of this title.

23 “(b) DISTRIBUTION OF PAYMENTS IN THE ABSENCE
24 OF A DISPUTE.—Within 30 days after the period estab-
25 lished for the filing of claims under subsection (a) of this

1 section, in each year after the year in which this section
 2 takes effect, the Tribunal shall determine whether there
 3 exists a controversy concerning the distribution of royalty
 4 payments under section 1014(e) of this title. If the Tribu-
 5 nal determines that no such controversy exists, it shall au-
 6 thorize the distribution of the royalty payments as set
 7 forth in the agreements regarding the distribution of roy-
 8 alty payments entered into pursuant to subsection (a) of
 9 this section, after deducting its reasonable administrative
 10 costs under this section.

11 “(e) RESOLUTION OF DISPUTES.—If the Tribunal
 12 finds the existence of a controversy, it shall, pursuant to
 13 chapter 8 of this title, conduct a proceeding to determine
 14 the distribution of royalty payments. During the pendency
 15 of such a proceeding, the Tribunal shall withhold from dis-
 16 tribution an amount sufficient to satisfy all claims with
 17 respect to which a controversy exists, but shall, to the ex-
 18 tent feasible, authorize the distribution of any amounts
 19 that are not in controversy.

20 **“§ 1016. Negotiated collection and distribution ar-**
 21 **rangements**

22 “(a) SCOPE OF PERMISSIBLE NEGOTIATED AR-
 23 RANGEMENTS.—

24 “(1) Notwithstanding sections 1011 through
 25 1015 of this title, interested copyright parties and

1 interested manufacturing parties may at any time
2 negotiate among or between themselves an alter-
3 native system for the collection, distribution, or ver-
4 ification of royalty payments provided for in this
5 chapter.

6 “(2) Such a negotiated arrangement may vary
7 the collection, distribution, and verification proce-
8 dures and requirements that would otherwise apply,
9 including the time periods for payment and dis-
10 tribution of royalties, but shall not alter the royalty
11 rates specified in section 1012(a)(1) or (b) of this
12 title, the division of royalty payments specified in
13 section 1014(b) of this title, or the notice require-
14 ment of section 1011(b) of this title.

15 “(3) Such a negotiated arrangement may also
16 provide that specified types of disputes that cannot
17 be resolved among the parties shall be resolved by
18 binding arbitration or other agreed upon means of
19 dispute resolution. Notwithstanding any provision of
20 the antitrust laws, for purposes of this section inter-
21 ested manufacturing parties and interested copyright
22 parties may agree among themselves as to the collec-
23 tion, allocation, distribution, and verification of roy-
24 alty payments, and may designate common agents to

1 negotiate and carry out such activities on their be-
2 half.

3 “(b) IMPLEMENTATION OF A NEGOTIATED ARRANGE-
4 MENT.—(1)(A) No negotiated arrangement shall go into
5 effect under this section until the Tribunal has deter-
6 mined, after full opportunity for comment, that the par-
7 ticipants in the negotiated arrangement include—

8 “(i) at least two-thirds of all individual inter-
9 ested copyright parties that are entitled to receive
10 royalty payments from the Sound Recordings Fund;

11 “(ii) at least two-thirds of all individual inter-
12 ested copyright parties that are entitled to receive
13 royalty payments from the Musical Works Fund as
14 music publishers; and

15 “(iii) at least two-thirds of all individual inter-
16 ested copyright parties that are entitled to receive
17 royalty payments from the Musical Works Fund as
18 writers.

19 “(B) For purposes of subparagraph (A) of this para-
20 graph, the determination as to two-thirds participation
21 shall be based on annual retail sales of phonorecords in
22 which musical works or sound recordings of musical works
23 are embodied. One or more organizations representing any
24 of the types of individual interested copyright parties spee-
25 ified in the first sentence of this subsection shall be pre-

1 sumed to represent two-thirds of that type of interested
 2 copyright party if the membership of, or other participa-
 3 tion in, such organization or organizations includes two-
 4 thirds of that type of interested copyright party based on
 5 annual retail sales of phonorecords in which musical works
 6 or sound recordings of musical works are embodied.

7 “(2) Notwithstanding the existence of a negotiated
 8 arrangement that has gone into effect under this
 9 subsection—

10 “(A) any interested manufacturing party that is
 11 not a party to such negotiated arrangement may
 12 fully satisfy its obligations under this subchapter by
 13 complying with the procedures set forth in section
 14 1011 of this title; and

15 “(B) the Tribunal shall ensure that alternative
 16 distribution procedures are available for any inter-
 17 ested copyright party that is not a party to such ne-
 18 gotiated arrangement.

19 “(c) MAINTENANCE OF JURISDICTION BY TRIBU-
 20 NAL.—Where a negotiated arrangement has gone into ef-
 21 feet under this section, the Tribunal shall maintain juris-
 22 diction to hear and address any objections to the arrange-
 23 ment that may arise while it is in effect, and to ensure
 24 the availability of alternative procedures for any interested

1 manufacturing party or interested copyright party that is
2 not a participant in the negotiated arrangement.

3 ~~“SUBCHAPTER C—THE SERIAL COPY~~

4 ~~MANAGEMENT SYSTEM~~

5 ~~“§ 1021. Incorporation of the serial copy management~~
6 ~~system~~

7 ~~“(a) PROHIBITION ON IMPORTATION, MANUFAC-~~
8 ~~TURE, AND DISTRIBUTION.—~~

9 ~~“(1) No person shall import, manufacture, or~~
10 ~~distribute any digital audio recording device or any~~
11 ~~digital audio interface device that does not conform~~
12 ~~to the standards and specifications to implement the~~
13 ~~Serial Copy Management System that are—~~

14 ~~“(A) set forth in the technical reference~~
15 ~~document;~~

16 ~~“(B) set forth in an order by the Secretary~~
17 ~~of Commerce under section 1022(b) (1), (2), or~~
18 ~~(3) of this title; or~~

19 ~~“(C) in the case of a digital audio record-~~
20 ~~ing device other than a device defined in part~~
21 ~~II of the technical reference document or in an~~
22 ~~order issued by the Secretary pursuant to sec-~~
23 ~~tion 1022(b) of this title, established by the~~
24 ~~manufacturer (or, in the case of a proprietary~~
25 ~~technology, the proprietor of such technology)~~

1 so as to achieve the same functional character-
2 istics with respect to regulation of serial copy-
3 ing as, and to be compatible with the prevailing
4 method for implementation of, the Serial Copy
5 Management System set forth in the technical
6 reference document or in any order of the Sec-
7 retary issued under section 1022 of this title.

8 “(2) If the Secretary of Commerce approves
9 standards and specifications under section
10 1022(b)(4) of this title, then no person shall import,
11 manufacture, or distribute any digital audio record-
12 ing device or any digital audio interface device that
13 does not conform to such standards and specifica-
14 tions.

15 “(b) PROHIBITION ON CIRCUMVENTION OF THE SE-
16 RIAL COPY MANAGEMENT SYSTEM.—No person shall im-
17 port, manufacture, or distribute any device, or offer or
18 perform any service, the primary purpose or effect of
19 which is to avoid, bypass, remove, deactivate, or otherwise
20 circumvent any program or circuit which implements, in
21 whole or in part, the Serial Copy Management System in
22 a digital audio recording device or a digital audio interface
23 device.

24 “(c) ENCODING OF INFORMATION ON PHONOREC-
25 ORDS.—(1) No person shall encode a phonorecord of a

1 sound recording with inaccurate information relating to
2 the category code, copyright status, or generation status
3 of the source material so as improperly to affect the oper-
4 ation of the Serial Copy Management System.

5 “(2) Nothing in this subchapter requires any person
6 engaged in the importation, manufacture, or assembly of
7 phonorecords to encode any such phonorecord with respect
8 to its copyright status.

9 “(d) INFORMATION ACCOMPANYING TRANSMISSIONS
10 IN DIGITAL FORMAT.—Any person who transmits or oth-
11 erwise communicates to the public any sound recording
12 in digital format is not required under this subchapter to
13 transmit or otherwise communicate the information relat-
14 ing to the copyright status of the sound recording. How-
15 ever, any such person who does transmit or otherwise com-
16 municate such copyright status information shall transmit
17 or communicate such information accurately.

18 **“§ 1022. Implementing the serial copy management**
19 **system**

20 “(a) PUBLICATION OF TECHNICAL REFERENCE DOC-
21 UMENT.—Within 10 days after the date of the enactment
22 of this chapter, the Secretary of Commerce shall cause the
23 technical reference document to be published in the Fed-
24 eral Register.

1 “(b) ORDERS OF SECRETARY OF COMMERCE.—The
2 Secretary of Commerce, upon petition by an interested
3 manufacturing party or an interested copyright party, and
4 after consultation with the Register, may, if the Secretary
5 determines that to do so is in accordance with the pur-
6 poses of this chapter, issue an order to implement the Se-
7 rial Copy Management System set forth in the technical
8 reference document as follows:

9 “(1) FUNCTIONALLY EQUIVALENT ALTER-
10 NATIVES.—The Secretary may issue an order for the
11 purpose of permitting in commerce devices that do
12 not conform to all of the standards and specifica-
13 tions set forth in the technical reference document,
14 if the Secretary determines that such devices possess
15 the same functional characteristics with respect to
16 regulation of serial copying as, and are compatible
17 with the prevailing method for implementation of,
18 the Serial Copy Management System set forth in the
19 technical reference document.

20 “(2) REVISED GENERAL STANDARDS.—The
21 Secretary may issue an order for the purpose of per-
22 mitting in commerce devices that do not conform to
23 all of the standards and specifications set forth in
24 the technical reference document, if the Secretary
25 determines that—

1 “(A) the standards and specifications re-
2 relating generally to digital audio recording de-
3 vices and digital audio interface devices have
4 been or are being revised or otherwise amended
5 or modified such that the standards and speci-
6 fications set forth in the technical reference
7 document are not or would no longer be appli-
8 eable or appropriate; and

9 “(B) such devices conform to such new
10 standards and specifications and possess the
11 same functional characteristics with respect to
12 regulation of serial copying as the Serial Copy
13 Management System set forth in the technical
14 reference document.

15 “(3) STANDARDS FOR NEW DEVICES.—The Sec-
16 retary may issue an order for the purpose of—

17 “(A) establishing whether the standards
18 and specifications established by a manufac-
19 turer or proprietor for digital audio recording
20 devices other than devices defined in part II of
21 the technical reference document or a prior
22 order of the Secretary under paragraph (1) or
23 (2) of this subsection comply with the require-
24 ments of subparagraph (C) of section
25 1021(a)(1) of this title; or

1 “(B) establishing alternative standards or
2 specifications in order to ensure compliance
3 with such requirements.

4 “(4) MATERIAL INPUT TO DIGITAL DEVICE
5 THROUGH ANALOG CONVERTER.—

6 “(A) GENERALLY.—Except as provided in
7 subparagraphs (B) through (D), the Secretary,
8 after publication of notice in the Federal Reg-
9 ister and reasonable opportunity for public com-
10 ment, may issue an order for the purpose of ap-
11 proving standards and specifications for a tech-
12 nical method implementing in a digital audio
13 recording device the same functional character-
14 istics as the Serial Copy Management System
15 so as to regulate the serial copying of source
16 material input through an analog converter in
17 a manner equivalent to source material input in
18 the digital format.

19 “(B) COST LIMITATION.—The order may
20 not impose a total cost burden on manufactur-
21 ers of digital audio recording devices, for imple-
22 menting the Serial Copy Management System
23 and the technical method prescribed in such
24 order, in excess of 125 percent of the cost of

1 implementing the Serial Copy Management Sys-
2 tem before the issuance of such order.

3 ~~“(C) CONSIDERATION OF OTHER OBJEC-~~
4 ~~TIONS.—The Secretary shall consider other rea-~~
5 ~~soned objections from any interested manufac-~~
6 ~~turing party or interested copyright party.~~

7 ~~“(D) LIMITATION TO DIGITAL AUDIO DE-~~
8 ~~VICES.—The order shall not affect the record-~~
9 ~~ing of any source material on analog recording~~
10 ~~equipment and the order shall not impose any~~
11 ~~restrictions or requirements that must be imple-~~
12 ~~mented in any device other than a digital audio~~
13 ~~recording device or digital audio interface de-~~
14 ~~vice.~~

15 ~~“SUBCHAPTER D—REMEDIES~~

16 ~~“§ 1031. Civil remedies~~

17 ~~“(a) CIVIL ACTIONS.—Any interested copyright party~~
18 ~~or interested manufacturing party that is or would be in-~~
19 ~~jured by a violation of section 1011 or 1021 of this title,~~
20 ~~or the Attorney General of the United States, may bring~~
21 ~~a civil action in an appropriate United States district court~~
22 ~~against any person for such violation.~~

23 ~~“(b) POWERS OF THE COURT.—In an action brought~~
24 ~~under subsection (a) of this section, the court—~~

1 “(1) except as provided in subsection (h) of this
2 section, may grant temporary and permanent injunc-
3 tions on such terms as it deems reasonable to pre-
4 vent or restrain such violation;

5 “(2) in the case of a violation of section 1011
6 (a) through (d) or 1021 of this title, shall award
7 damages under subsection (d) of this section;

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

11 “(4) in its discretion may award a reasonable
12 attorney’s fee to the prevailing party as part of the
13 costs awarded under paragraph (3) if the court finds
14 that the nonprevailing party has not proceeded in
15 good faith; and

16 “(5) may grant such other equitable relief as it
17 deems reasonable.

18 “(e) RECOVERY OF OVERDUE ROYALTY PAY-
19 MENTS.—In any case in which the court finds that a vio-
20 lation of section 1011 of this title involving nonpayment
21 or underpayment of royalty payments has occurred, the
22 violator shall be directed to pay, in addition to damages
23 awarded under subsection (d) of this section, any such
24 royalties due, plus interest calculated as provided under
25 section 1961 of title 28, United States Code.

1 “(d) AWARD OF DAMAGES.—

2 “(1) SECTION 1011.—

3 “(A) DEVICE.—In the case of a violation
4 of section 1011(a) through (d) of this title in-
5 volving a digital audio recording device, the
6 court shall award statutory damages in an
7 amount between a nominal level and \$100 per
8 device, as the court considers just.

9 “(B) MEDIUM.—In the case of a violation
10 of section 1011(a) through (d) of this title in-
11 volving a digital audio recording medium, the
12 court shall award statutory damages in an
13 amount between a nominal level and \$4 per me-
14 dium, as the court considers just.

15 “(2) SECTION 1021.—In any case in which the
16 court finds that a violation of section 1021 of this
17 title has occurred, the court shall award damages
18 calculated, at the election of the complaining party
19 at any time before final judgment is rendered, pur-
20 suant to subparagraph (A) or (B) of this paragraph,
21 but in no event shall the judgment (excluding any
22 award of actual damages to an interested manufac-
23 turing party) exceed a total of \$1,000,000.

24 “(A) ACTUAL DAMAGES.—A complaining
25 party may recover its actual damages suffered

1 as a result of the violation and any profits of
 2 the violator that are attributable to the vio-
 3 lation that are not taken into account in com-
 4 puting the actual damages. In determining the
 5 violator's profits, the complaining party is re-
 6 quired to prove only the violator's gross reve-
 7 nue, and the violator is required to prove its de-
 8 ductible expenses and the elements of profit at-
 9 tributable to factors other than the violation.

10 ~~“(B) STATUTORY DAMAGES.—~~

11 ~~“(i) DEVICE.—~~A complaining party
 12 may recover an award of statutory dam-
 13 ages for each violation of section 1021(a)
 14 or (b) of this title in the sum of not less
 15 than \$1,000 nor more than \$10,000 per
 16 device involved in such violation or per de-
 17 vice on which a service prohibited by sec-
 18 tion 1021(b) of this title has been per-
 19 formed, as the court considers just.

20 ~~“(ii) PHONORECORD.—~~A complaining
 21 party may recover an award of statutory
 22 damages for each violation of section
 23 1021(e) of this title in the sum of not less
 24 than \$10 nor more than \$100 per phono-

1 record involved in such violation, as the
2 court considers just.

3 “(iii) TRANSMISSION.—A complaining
4 party may recover an award of damages
5 for each transmission or communication
6 that violates section 1021(d) of this title in
7 the sum of not less than \$10,000 nor more
8 than \$100,000, as the court considers just.

9 “(3) WILLFUL VIOLATIONS.—

10 “(A) In any case in which the court finds
11 that a violation of section 1011(a) through (d)
12 of this title was committed willfully and for pur-
13 poses of direct or indirect commercial advan-
14 tage, the court shall increase statutory
15 damages—

16 “(i) for a violation involving a digital
17 audio recording device, to a sum of not less
18 than \$100 nor more than \$500 per device;
19 and

20 “(ii) for a violation involving a digital
21 audio recording medium, to a sum of not
22 less than \$4 nor more than \$15 per me-
23 dium, as the court considers just.

24 “(B) In any case in which the court finds
25 that a violation of section 1021 of this title was

1 committed willfully and for purposes of direct
 2 or indirect commercial advantage, the court in
 3 its discretion may increase the award of dam-
 4 ages by an additional amount of not more than
 5 \$5,000,000, as the court considers just.

6 “(4) INNOCENT VIOLATIONS OF SECTION
 7 1021.—The court in its discretion may reduce the
 8 total award of damages against a person violating
 9 section 1021 of this title to a sum of not less than
 10 \$250 in any case in which the court finds that—

11 “(A) the violator was not aware and had
 12 no reason to believe that its acts constituted a
 13 violation of section 1021 of this title; or

14 “(B) in the case of a violation of section
 15 1021(a) of this title involving a digital audio re-
 16 cording device, the violator believed in good
 17 faith that the device complied with section
 18 1021(a)(1)(C) of this title, except that this sub-
 19 paragraph shall not apply to any damages
 20 awarded under subsection (d)(2)(A) of this sec-
 21 tion.

22 “(e) MULTIPLE ACTIONS.—

23 “(1) GENERALLY.—No more than one action
 24 shall be brought against any party and no more than

1 one award of statutory damages under subsection
2 (d) of this section shall be permitted—

3 “(A) for any violations of section 1011 of
4 this title involving the same digital audio re-
5 cording device or digital audio recording me-
6 dium; or

7 “(B) for any violations of section 1021 of
8 this title involving digital audio recording de-
9 vices or digital audio recording media of the
10 same model, except that this subparagraph
11 shall not bar an action or an award of damages
12 with respect to digital audio recording devices
13 or digital audio recording media that are im-
14 ported, manufactured, or distributed subsequent
15 to a final judgment in a prior action.

16 “(2) NOTICE AND INTERVENTION.—Any com-
17 plaining party who brings an action under this sec-
18 tion shall serve a copy of the complaint upon the
19 Register within 10 days after the complaining par-
20 ty’s service of a summons upon a defendant. The
21 Register shall cause a notice of such action to be
22 published in the Federal Register within 10 days
23 after receipt of such complaint. The court shall per-
24 mit any other interested copyright party or inter-
25 ested manufacturing party entitled to bring the ac-

1 tion under section 1031(a) of this title who moves
2 to intervene within 30 days after the publication of
3 such notice to intervene in the action.

4 “(3) AWARD.—

5 “(A) GENERALLY.—Except as provided in
6 subparagraph (B), the court may award recov-
7 ery of actual damages for a violation of section
8 1021 of this title pursuant to subsection
9 (d)(2)(A) of this section to each complaining
10 party in an action who elects to recover actual
11 damages.

12 “(B) LIMITATIONS.—

13 “(i) If more than one complaining
14 party elects to recover actual damages pur-
15 suant to subsection (d)(2)(A) of this sec-
16 tion, only a single award of the violator’s
17 profits shall be made, which shall be allo-
18 cated as the court considers just.

19 “(ii) If any complaining interested
20 copyright party or parties elect to recover
21 statutory damages pursuant to subsection
22 (d)(2) of this section in an action in which
23 one or more other complaining interested
24 copyright parties have elected to recover
25 actual damages, the single award of statu-

1 tory damages permitted pursuant to para-
2 graph (1) of this subsection shall be re-
3 duced by the total amount of actual dam-
4 ages awarded to interested copyright par-
5 ties pursuant to subsection (d)(2)(A) of
6 this section.

7 “(f) PAYMENT OF OVERDUE ROYALTIES AND DAM-
8 AGES.—The court may allocate any award of damages
9 under subsection (d) of this section between or among
10 complaining parties as it considers just. Any award of
11 damages that is allocated to an interested copyright party
12 and any award of overdue royalties and interest under
13 subsection (e) of this section shall be deposited with the
14 Register pursuant to section 1013 of this title, or as may
15 otherwise be provided pursuant to a negotiated arrange-
16 ment authorized under section 1016 of this title, for dis-
17 tribution to interested copyright parties as though such
18 funds were royalty payments made pursuant to section
19 1011 of this title.

20 “(g) IMPOUNDING OF ARTICLES.—At any time while
21 an action under this section is pending, the court may
22 order the impounding, on such terms as it deems reason-
23 able, of any digital audio recording device, digital audio
24 interface device, phonorecord, or device specified in section
25 1021(b) of this title that is in the custody or control of

1 the alleged violator and that the court has reasonable
 2 cause to believe does not comply with, or was involved in
 3 a violation of, section 1021 of this title.

4 “(h) LIMITATIONS REGARDING PROFESSIONAL MOD-
 5 ELS AND OTHER EXEMPT DEVICES.—Unless a court finds
 6 that the determination by a manufacturer or importer that
 7 a device fits within the exemption of subparagraph (A)
 8 or (B) of section 1001(3) of this title was without a rea-
 9 sonable basis or not in good faith, the court shall not grant
 10 a temporary or preliminary injunction against the dis-
 11 tribution of such device by the manufacturer or importer.

12 “(i) REMEDIAL MODIFICATION AND DESTRUCTION
 13 OF ARTICLES.—As part of a final judgment or decree
 14 finding a violation of section 1021 of this title, the court
 15 shall order the remedial modification, if possible, or the
 16 destruction of any digital audio recording device, digital
 17 audio interface device, phonorecord, or device specified in
 18 section 1021(b) of this title that—

19 “(1) does not comply with, or was involved in
 20 a violation of, section 1021 of this title, and

21 “(2) is in the custody or control of the violator
 22 or has been impounded under subsection (g) of this
 23 section.

24 “(j) DEFINITIONS.—For purposes of this section—

1 “(1) the term ‘complaining party’ means an in-
2 terested copyright party, interested manufacturing
3 party, or the Attorney General of the United States
4 when one of these parties has initiated or intervened
5 as a plaintiff in an action brought under this sec-
6 tion; and

7 “(2) the term ‘device’ does not include a phono-
8 record.

9 **“§ 1032. Binding arbitration**

10 “(a) **DISPUTES TO BE ARBITRATED.**—Any dispute
11 between an interested manufacturing party and an inter-
12 ested copyright party shall be resolved through binding ar-
13 bitration, in accordance with the provisions of this section,
14 if—

15 “(1) the parties mutually agree; or

16 “(2) before the date of first distribution in the
17 United States of the product which is the subject of
18 the dispute, an interested manufacturing party or an
19 interested copyright party requests arbitration con-
20 cerning whether such product is or is not a digital
21 audio recording device, a digital audio recording me-
22 dium, or a digital audio interface device, or concern-
23 ing the basis on which royalty payments are to be
24 made with respect to such product.

25 “(b) **ARBITRAL PROCEDURES.**—

1 “(1) REGULATIONS FOR COORDINATION OF AR-
2 BITRATION.—The Register shall, after consulting
3 with interested copyright parties, prescribe regula-
4 tions establishing a procedure by which interested
5 copyright parties will coordinate decisions and rep-
6 resentation concerning the arbitration of disputes.
7 No interested copyright party shall have the author-
8 ity to request, agree to, or (except as an intervenor
9 pursuant to subsection (e) of this section) enter into,
10 binding arbitration unless that party shall have been
11 authorized to do so pursuant to the regulations pre-
12 scribed by the Register.

13 “(2) PANEL.—Except as otherwise agreed by
14 the parties to a dispute that is to be submitted to
15 binding arbitration under subsection (a) of this sec-
16 tion, the dispute shall be heard by a panel of three
17 arbitrators, with one arbitrator selected by each of
18 the two sides to the dispute and the third arbitrator
19 selected by mutual agreement of the first two arbi-
20 trators chosen.

21 “(3) DECISION.—The arbitral panel shall
22 render its final decision concerning the dispute, in a
23 written opinion explaining its reasoning, within 120
24 days after the date on which the selection of arbitra-
25 tors has been concluded. The Register shall cause to

1 be published in the Federal Register the written
2 opinion of the arbitral panel within 10 days after re-
3 ceipt thereof.

4 “(4) TITLE 9 PROVISIONS TO GOVERN.—Except
5 to the extent inconsistent with this section, any arbi-
6 tration proceeding under this section shall be con-
7 ducted in the same manner, subject to the same lim-
8 itations, carried out with the same powers (including
9 the power to summon witnesses); and enforced in
10 the courts of the United States as an arbitration
11 proceeding under title 9, United States Code.

12 “(5) PRECEDENTS.—In rendering a final deci-
13 sion, the arbitral panel shall take into account any
14 final decisions rendered in prior proceedings under
15 this section that address identical or similar issues;
16 and failure of the arbitral panel to take account of
17 such prior decisions may be considered imperfect
18 execution of arbitral powers under section 10(a)(4)
19 of title 9, United States Code.

20 “(e) NOTICE AND RIGHT TO INTERVENE.—Any in-
21 terested copyright party or interested manufacturing
22 party that requests an arbitral proceeding under this sec-
23 tion shall provide the Register with notice concerning the
24 parties to the dispute and the nature of the dispute within
25 10 days after formally requesting arbitration under sub-

1 section (a) of this section. The Register shall cause a sum-
2 mary of such notice to be published in the Federal Reg-
3 ister within 10 days after receipt of such notice. The arbi-
4 tral panel shall permit any other interested copyright
5 party or interested manufacturing party who moves to in-
6 tervene within 20 days after such publication to intervene
7 in the action.

8 “(d) AUTHORITY OF ARBITRAL PANEL TO ORDER
9 RELIEF.—

10 “(1) TO PROTECT PROPRIETARY INFORMA-
11 TION.—The arbitral panel shall issue such orders as
12 are appropriate to protect the proprietary technology
13 and information of parties to the proceeding, includ-
14 ing provision for injunctive relief in the event of a
15 violation of such order.

16 “(2) TO TERMINATE PROCEEDING.—The arbi-
17 tral panel shall terminate any proceeding that it has
18 good cause to believe has been commenced in bad
19 faith by a competitor in order to gain access to pro-
20 prietary information. The panel shall also terminate
21 any proceeding that it believes has been commenced
22 before the technology or product at issue has been
23 sufficiently developed or defined to permit an in-
24 formed decision concerning the applicability of this
25 chapter to such technology or product.

1 “(3) TO ORDER RELIEF.—In any case in which
 2 the arbitral panel finds, with respect to devices or
 3 media that were the subject of the dispute, that roy-
 4 alty payments have been or will be due under section
 5 1011 of this title through the date of the arbitral de-
 6 cision, the panel shall order the deposit of such roy-
 7 alty payments pursuant to section 1013 of this title,
 8 plus interest calculated as provided under section
 9 1961 of title 28, United States Code. The arbitral
 10 panel shall not award monetary or injunctive relief,
 11 as provided in section 1031 of this title or otherwise,
 12 except as is expressly provided in this subsection.

13 “(c) EFFECT OF ARBITRATION PROCEEDING ON
 14 CIVIL ACTIONS AND REMEDIES.—Notwithstanding any
 15 provision of section 1031 of this title, no civil action may
 16 be brought or relief granted under section 1031 of this
 17 title against any party to an ongoing or completed arbitra-
 18 tion proceeding under this section, with respect to devices
 19 or media that are the subject of such an arbitration pro-
 20 ceeding. However, this subsection does not bar—

21 “(1) an action for injunctive relief at any time
 22 based on a violation of section 1021 of this title; or

23 “(2) an action or any relief with respect to
 24 those devices or media distributed by their importer
 25 or manufacturer following the conclusion of such ar-

1 arbitration proceeding, or, if so stipulated by the par-
2 ties, prior to the commencement of such proceeding.
3 “(f) ~~ARBITRAL COSTS.~~—Except as otherwise agreed
4 by the parties to a dispute, the costs of an arbitral pro-
5 ceeding under this section shall be divided among the par-
6 ties in such fashion as is considered just by the arbitral
7 panel at the conclusion of the proceeding. Each party to
8 the dispute shall bear its own attorney fees unless the ar-
9 bitral panel determines that a nonprevailing party has not
10 proceeded in good faith and that, as a matter of discretion,
11 it is appropriate to award reasonable attorney’s fees to
12 the prevailing party.”

13 **SEC. 3. TECHNICAL AMENDMENTS.**

14 (a) **FUNCTIONS OF REGISTER.**—Chapter 8 of title
15 17, United States Code is amended—

16 (1) in section 801(b)—

17 (A) by striking “and” at the end of para-
18 graph (2);

19 (B) by striking the period at the end of
20 paragraph (3) and inserting “; and”; and

21 (C) by adding the following new paragraph
22 at the end:

23 “(4) to distribute royalty payments deposited
24 with the Register of Copyrights under section 1014,
25 to determine, in cases where controversy exists, the

1 distribution of such payments, and to carry out its
2 other responsibilities under chapter 10”, and

3 (2) in section 804(d)—

4 (A) by inserting “or (4)” after
5 “801(b)(3)”, and

6 (B) by striking “or 119” and inserting
7 “119, 1015, or 1016”.

8 (b) DEFINITIONS.—Section 101 of title 17, United
9 States Code, is amended by striking “As used” and insert-
10 ing “Except as otherwise provided in this title, as used”.

11 (c) MASK WORKS.—Section 912 of title 17, United
12 States Code, is amended—

13 (1) in subsection (a) by inserting “or 10” after
14 “8”, and

15 (2) in subsection (b) by inserting “or 10” after
16 “8”.

17 **SEC. 4. EFFECTIVE DATE.**

18 This Act, and the amendments made by this Act,
19 shall take effect on the date of the enactment of this Act
20 or January 1, 1992, whichever date is later.

21 **SECTION 1. SHORT TITLE.**

22 *This Act may be cited as the “Audio Home Recording*
23 *Act of 1991”.*

1 **SEC. 2. IMPORTATION, MANUFACTURE, AND DISTRIBUTION**
 2 **OF DIGITAL AUDIO RECORDING DEVICES AND**
 3 **MEDIA.**

4 *Title 17, United States Code, is amended by adding*
 5 *at the end the following:*

6 **“CHAPTER 10—DIGITAL AUDIO RECORDING**
 7 **DEVICES AND MEDIA**

**“SUBCHAPTER A—DEFINITIONS, PROHIBITION OF CERTAIN
 INFRINGEMENT ACTIONS, AND RULES OF CONSTRUCTION**

“Sec.

“1001. Definitions.

“1002. Prohibition on certain infringement actions.

*“1003. Effect on other rights and remedies with respect to private home copying
 or otherwise.*

“SUBCHAPTER B—ROYALTY PAYMENTS

“1011. Obligation to make royalty payments.

“1012. Royalty payments.

“1013. Deposit of royalty payments and deduction of expenses.

“1014. Entitlement to royalty payments.

“1015. Procedures for distributing royalty payments.

“1016. Negotiated collection and distribution arrangements.

“SUBCHAPTER C—THE SERIAL COPY MANAGEMENT SYSTEM

“1021. Incorporation of the serial copy management system.

“1022. Implementing the serial copy management system.

“SUBCHAPTER D—REMEDIES

“1031. Civil remedies.

“1032. Binding arbitration.

8 **“SUBCHAPTER A—DEFINITIONS, PROHIBITION**
 9 **OF CERTAIN INFRINGEMENT ACTIONS, AND**
 10 **RULES OF CONSTRUCTION**

11 **“§ 1001. Definitions**

12 *“As used in this chapter, the following terms and their*
 13 *variant forms mean the following:*

1 “(1) An ‘audiogram’ is a material object (i) in
2 which are fixed, by any method now known or later
3 developed, only sounds (and not, for example, a mo-
4 tion picture or other audiovisual work even though it
5 may be accompanied by sounds), and material, state-
6 ments or instructions incidental to those fixed sounds,
7 if any, and (ii) from which the sounds and material
8 can be perceived, reproduced, or otherwise commu-
9 nicated, either directly or with the aid of a machine
10 or device.

11 “(2) A ‘digital audio copied recording’ is a re-
12 production in a digital recording format of an audio-
13 gram, whether that reproduction is made directly
14 from another audiogram or indirectly from a trans-
15 mission.

16 “(3) A ‘digital audio interface device’ is any ma-
17 chine or device, now known or later developed, wheth-
18 er or not included with or as part of some other ma-
19 chine or device, that supplies a digital audio signal
20 through a nonprofessional interface, as the term ‘non-
21 professional interface’ is used in the Digital Audio
22 Interface Standard in part I of the technical reference
23 document or as otherwise defined by the Secretary of
24 Commerce under section 1022(b).

1 “(4) A ‘digital audio recording device’ is any
2 machine or device, now known or later developed, of
3 a type commonly distributed to individuals for use by
4 individuals, whether or not included with or as part
5 of some other machine or device, the recording func-
6 tion of which is designed or marketed for the primary
7 purpose of, and that is capable of, making a digital
8 audio copied recording for private use, except for—

9 “(A) professional model products and

10 “(B) dictation machines, answering ma-
11 chines, and other audio recording equipment that
12 is designed and marketed primarily for the cre-
13 ation of sound recordings resulting from the fixa-
14 tion of nonmusical sounds.

15 “(5)(A) A ‘digital audio recording medium’ is
16 any material object in which sounds may be fixed,
17 now known or later developed, in a form commonly
18 distributed for ultimate sale to individuals for use by
19 individuals (such as magnetic digital audio tape cas-
20 settes, optical discs, and magneto-optical discs), that
21 is primarily marketed or most commonly used by
22 consumers for the purpose of making digital audio
23 copied recordings by use of a digital audio recording
24 device.

1 “(B) Such term does not include any material
2 object—

3 “(i) that embodies a sound recording at the
4 time it is first distributed by the importer or
5 manufacturer, unless the sound recording has
6 been so embodied in order to evade the obliga-
7 tions of section 1011 of this title; or

8 “(ii) that is primarily marketed and most
9 commonly used by consumers either for the pur-
10 pose of making copies of motion pictures or other
11 audiovisual works or for the purpose of making
12 copies of nonmusical library works, including,
13 without limitation, computer programs or data
14 bases.

15 “(6) ‘Distribute’ means to sell, resell, lease, or as-
16 sign a product to consumers in the United States, or
17 to sell, resell, lease, or assign a product in the United
18 States for ultimate transfer to consumers in the Unit-
19 ed States.

20 “(7) An ‘interested copyright party’ is—

21 “(A) the owner of the exclusive right under
22 section 106(1) of this title to reproduce a sound
23 recording of a musical work that has been em-
24 bodied in an audiogram lawfully made under
25 this title that has been distributed to the public;

1 “(B) *the legal or beneficial owner of, or the*
2 *person that controls, the right to reproduce in an*
3 *audiogram a musical work that has been em-*
4 *bodied in an audiogram lawfully made under*
5 *this title that has been distributed to the public;*
6 *or*

7 “(C) *any association or other*
8 *organization—*

9 “(i) *representing persons specified in*
10 *subparagraph (A) or (B), or*

11 “(ii) *engaged in licensing rights in*
12 *musical works to music users on behalf of*
13 *writers and publishers.*

14 “(8) *An ‘interested manufacturing party’ is any*
15 *person that imports or manufactures any digital*
16 *audio recording device or digital audio recording me-*
17 *dium in the United States, or any association of such*
18 *persons.*

19 “(9) *‘Manufacture’ includes the production or as-*
20 *sembly of a product in the United States.*

21 “(10) *A ‘music publisher’ is a person that is au-*
22 *thorized to license the reproduction of a particular*
23 *musical work in a sound recording.*

24 “(11)(A) *A ‘professional model product’ is an*
25 *audio recording device—*

1 “(i) that is capable of sending a digital
2 audio interface signal in which the channel sta-
3 tus block flag is set as a ‘professional’ interface,
4 in accordance with the standards and specifica-
5 tions set forth in the technical reference docu-
6 ment or established under an order issued by the
7 Secretary of Commerce under section 1022(b);

8 “(ii) that is clearly, prominently, and per-
9 manently marked with the letter ‘P’ or the word
10 ‘professional’ on the outside of its packaging,
11 and in all advertising, promotional, and descrip-
12 tive literature, with respect to the device, that is
13 available or provided to persons other than the
14 manufacturer or importer, its employees, or its
15 agents; and

16 “(iii) that is designed, manufactured, mar-
17 keted, and intended for use by recording profes-
18 sionals in the ordinary course of a lawful busi-
19 ness.

20 “(B) In determining whether an audio re-
21 cording device meets the requirements of sub-
22 paragraph (A)(iii), factors to be considered shall
23 include—

1. “(i) whether it has features used by record-
2 ing professionals in the course of a lawful busi-
3 ness, including features such as—

4 “(I) a data collection and reporting
5 system of error codes during recording and
6 playback;

7 “(II) a record and reproduce format
8 providing ‘read after write’ and ‘read after
9 read’;

10 “(III) a time code reader and genera-
11 tor conforming to the standards set by the
12 Society of Motion Picture and Television
13 Engineers for such readers and generators;
14 and

15 “(IV) a professional input/output
16 interface, both digital and analog, conform-
17 ing to standards set by audio engineering
18 organizations for connectors, signaling for-
19 mats, levels, and impedances;

20 “(vi) the nature of the promotional mate-
21 rials used to market the audio recording device;

22 “(iii) the media used for the dissemination
23 of the promotional materials, including the in-
24 tended audience;

1 “(iv) the distribution channels and retail
2 outlets through which the device is disseminated;

3 “(v) the manufacturer’s or importer’s price
4 for the device as compared to the manufacturer’s
5 or importer’s price for digital audio recording
6 devices implementing the Serial Copy Manage-
7 ment System;

8 “(vi) the relative quantity of the device
9 manufactured or imported as compared to the
10 size of the manufacturer’s or importer’s market
11 for professional model products;

12 “(vii) the occupations of the purchasers of
13 the device; and

14 “(viii) the uses to which the device is put.

15 “(12) The ‘Register’ is the Register of Copy-
16 rights.

17 “(13) The ‘Serial Copy Management System’
18 means the system for regulating serial copying by
19 digital audio recording devices that is set forth in the
20 technical reference document or in an order of the
21 Secretary of Commerce under section 1022(b), or that
22 conforms to the requirements of section 1021(a)(1)(C).

23 “(14) The ‘technical reference document’ is the
24 document entitled ‘Technical Reference Document for

1 *Audio Home Recording Act of 1991*’ in section 5 of
2 *this Act.*

3 “(15)(A) *The ‘transfer price’ of a digital audio*
4 *recording device or a digital audio recording medium*
5 *is—*

6 “(i) *in the case of an imported product, the*
7 *actual entered value at United States Customs*
8 *(exclusive of any freight, insurance, and applica-*
9 *ble duty), and*

10 “(ii) *in the case of a domestic product, the*
11 *manufacturer’s transfer price (FOB the manu-*
12 *facturer, and exclusive of any direct sales taxes*
13 *or excise taxes incurred in connection with the*
14 *sale).*

15 “(B) *Where the transferor and transferee are re-*
16 *lated entities or within a single entity, the transfer*
17 *price shall not be less than a reasonable arms-length*
18 *price under the principles of the regulations adopted*
19 *pursuant to section 482 of the Internal Revenue Code*
20 *of 1986, or any successor provision to such section*
21 *482.*

22 “(16) *A ‘transmission’ is any audio or audio-*
23 *visual transmission, now known or later developed,*
24 *whether by a broadcast station, cable system,*
25 *multipoint distribution service, subscription service,*

1 *direct broadcast satellite, or other form of analog or*
2 *digital communication.*

3 “(17) *The ‘Tribunal’ is the Copyright Royalty*
4 *Tribunal.*

5 “(18) *A ‘writer’ is the composer or lyricist of a*
6 *particular musical work.*

7 “(19) *The terms ‘analog format’, ‘copyright sta-*
8 *tus’, ‘category code’, ‘generation status’, and ‘source*
9 *material’, mean those terms as they are used in the*
10 *technical reference document.*

11 **“§ 1002. Prohibition on certain infringement actions**

12 “(a) *CERTAIN ACTIONS PROHIBITED.—*

13 “(1) *GENERALLY.—No action may be brought*
14 *under this title, or under section 337 of the Tariff Act*
15 *of 1930, alleging infringement of copyright based on*
16 *the manufacture, importation, or distribution of a*
17 *digital audio recording device or a digital audio re-*
18 *ording medium, or an analog audio recording device*
19 *or analog audio recording medium, or the use of such*
20 *a device or medium for making audiograms. How-*
21 *ever, this subsection does not apply with respect to*
22 *any claim against a person for infringement by vir-*
23 *tue of the making of one or more audiograms, or other*
24 *material objects in which works are fixed, for direct*
25 *or indirect commercial advantage.*

1 “(2) *EXAMPLE.*—*For purposes of this section, the*
 2 *copying of an audiogram by a consumer for private,*
 3 *noncommercial use is not for direct or indirect com-*
 4 *mercial advantage, and is therefore not actionable.*

5 “(b) *EFFECT OF THIS SECTION.*—*Nothing in this sec-*
 6 *tion shall be construed to create or expand a cause of action*
 7 *for copyright infringement except to the extent such a cause*
 8 *of action otherwise exists under other chapters of this title*
 9 *or under section 337 of the Tariff Act of 1930, or to limit*
 10 *any defenses that may be available to such causes of action.*

11 “**§1003. Effect on other rights and remedies with re-**
 12 **spect to private home copying or otherwise**

13 “*Except as expressly provided in this chapter with re-*
 14 *spect to audio recording devices and media, neither the en-*
 15 *actment of this chapter nor anything contained in this*
 16 *chapter shall be construed to expand, limit, or otherwise*
 17 *affect the rights of any person with respect to private home*
 18 *copying of copyrighted works, or to expand, limit, create,*
 19 *or otherwise affect any other right or remedy that may be*
 20 *held by or available to any person under chapters 1 through*
 21 *9 of this title.*

22 “**SUBCHAPTER B—ROYALTY PAYMENTS**

23 “**§1011. Obligation to make royalty payments**

24 “(a) *PROHIBITION ON IMPORTATION AND MANUFAC-*
 25 *TURE.*—*No person shall import into and distribute in the*

1 *United States, or manufacture and distribute in the United*
2 *States, any digital audio recording device or digital audio*
3 *recording medium unless such person—*

4 “(1) *records the notice specified by this section*
5 *and subsequently deposits the statements of account*
6 *and applicable royalty payments for such device or*
7 *medium specified by this section and section 1012 of*
8 *this title, or*

9 “(2) *complies with the applicable notice, state-*
10 *ment of account, and payment obligations under a*
11 *negotiated arrangement authorized pursuant to sec-*
12 *tion 1016 of this title.*

13 “(b) *FILING OF NOTICE.—*

14 “(1) *GENERALLY.—The importer or manufac-*
15 *turer of any digital audio recording device or digital*
16 *audio recording medium, within a product category*
17 *or utilizing a technology with respect to which such*
18 *manufacturer or importer has not previously filed a*
19 *notice under this subsection, shall file a notice with*
20 *the Register, no later than 45 days after the com-*
21 *mencement of the first distribution in the United*
22 *States of such device or medium, in such form as the*
23 *Register shall prescribe by regulation; provided, how-*
24 *ever, that no notice shall be required with respect to*

1 *any distribution occurring prior to the effective date*
2 *of this chapter.*

3 “(2) *CONTENTS.—Such notice shall—*

4 “(A) *set forth the manufacturer’s or import-*
5 *er’s identity and address,*

6 “(B) *identify such product category and*
7 *technology, and*

8 “(C) *identify any trade or business names,*
9 *trademarks, or like indicia of origin that the im-*
10 *porter or manufacturer uses or intends to use in*
11 *connection with the importation, manufacture,*
12 *or distribution of such device or medium in the*
13 *United States.*

14 “(c) *FILING OF QUARTERLY STATEMENTS OF AC-*
15 *COUNT.—*

16 “(1) *GENERALLY.—Any importer or manufac-*
17 *turer that distributed during a given quarter any dig-*
18 *ital audio recording device or digital audio recording*
19 *medium that it manufactured or imported shall file*
20 *with the Register, in such form as the Register shall*
21 *prescribe by regulation, a quarterly statement of ac-*
22 *count specifying, by product category, technology, and*
23 *model, the number and transfer price of all digital*
24 *audio recording devices and digital audio recording*
25 *media that it distributed during such quarter.*

1 “(2) *PERIOD COVERED.*—*The quarterly state-*
2 *ments of account may be filed on either a calendar*
3 *or fiscal year basis, at the election of the manufac-*
4 *turer or importer.*

5 “(3) *STATEMENTS OF ACCOUNT FOR THE FIRST*
6 *THREE QUARTERS.*—*For the first three quarters of*
7 *any calendar or fiscal year, such statement shall—*

8 “(A) *be filed no later than 45 days after the*
9 *close of the period covered by the statement; pro-*
10 *vided, however, that any quarterly statement*
11 *that would be due within three months and 45*
12 *days of the effective date of this chapter shall not*
13 *be filed until the next quarterly statement is due,*
14 *at which time a statement shall be filed covering*
15 *the entire period since the effective date of this*
16 *chapter;*

17 “(B) *be certified as accurate by an author-*
18 *ized officer or principal of the importer or man-*
19 *ufacturer;*

20 “(C) *be accompanied by the total royalty*
21 *payment due for such period pursuant to section*
22 *1012 of this title.*

23 “(4) *STATEMENT OF ACCOUNT FOR THE FOURTH*
24 *QUARTER.*—*The quarterly statement for the final*
25 *quarter of any calendar or fiscal year shall be incor-*

1 *porated into the annual statement required under*
2 *subsection (d) of this section, which shall be accom-*
3 *panied by the royalty payment due for such quarter.*

4 *“(d) FILING OF ANNUAL STATEMENTS OF ACCOUNT.—*

5 *“(1) GENERALLY.—Any importer or manufac-*
6 *turer that distributed during a given calendar or fis-*
7 *cal year (as applicable) any digital audio recording*
8 *device or digital audio recording medium that it*
9 *manufactured or imported shall also file with the*
10 *Register a cumulative annual statement of account,*
11 *in such form as the Register shall prescribe by regula-*
12 *tion.*

13 *“(2) TIMING AND CERTIFICATION.—Such state-*
14 *ment shall be filed no later than 60 days after the*
15 *close of such calendar or fiscal year, and shall be cer-*
16 *tified as accurate by an authorized officer or prin-*
17 *cipal of the importer or manufacturer.*

18 *“(3) INDEPENDENT REVIEW AND CER-*
19 *TIFICATION.—The annual statement of account shall*
20 *be reviewed and, pursuant to generally accepted au-*
21 *diting standards, certified by an independent certified*
22 *public accountant selected by the manufacturer or im-*
23 *porter as fairly presenting the information contained*
24 *therein, on a consistent basis and in accordance with*
25 *the requirements of this chapter.*

1 “(4) *RECONCILIATION OF ROYALTY PAYMENT.*—

2 *The cumulative annual statement of account shall be*
3 *accompanied by any royalty payment due under sec-*
4 *tion 1012 of this title that was not previously paid*
5 *under subsection (c) of this section.*

6 “(e) *VERIFICATION.*—

7 “(1) *GENERALLY.*—

8 “(A) *The Register shall, after consulting*
9 *with interested copyright parties and interested*
10 *manufacturing parties, prescribe regulations*
11 *specifying procedures for the verification of state-*
12 *ments of account filed pursuant to this section.*

13 “(B) *Such regulations shall permit inter-*
14 *ested copyright parties to select independent cer-*
15 *tified public accountants to conduct audits in*
16 *order to verify the accuracy of the information*
17 *contained in the statements of account filed by*
18 *manufacturers and importers.*

19 “(C) *Such regulations shall also—*

20 “(i) *specify the scope of such independ-*
21 *ent audits; and*

22 “(ii) *establish a procedure by which*
23 *interested copyright parties will coordinate*
24 *the engagement of such independent cer-*
25 *tified public accountants, in order to ensure*

1 *that no manufacturer or importer is au-*
2 *dated more than once per year.*

3 “(D) *All such independent audits shall be*
4 *conducted at reasonable times, with reasonable*
5 *advance notice, and shall be no broader in scope*
6 *than is reasonably necessary to carry out the*
7 *purposes of this subsection in accordance with*
8 *generally accepted auditing standards.*

9 “(2) *INDEPENDENT CERTIFICATION.*—*The results*
10 *of all such independent audits shall be certified as*
11 *fairly presenting the information contained therein,*
12 *on a consistent basis and in accordance with the re-*
13 *quirements of this chapter and generally accepted au-*
14 *ditting standards, by the certified public accountant*
15 *responsible for the audit. The certification and results*
16 *shall be filed with the Register.*

17 “(3) *ACCESS TO DOCUMENTS IN EVENT OF DIS-*
18 *PUTE.*—*In the event of a dispute concerning the*
19 *amount of the royalty payment due from a manufac-*
20 *turer or importer resulting from a verification audit*
21 *conducted under this section—*

22 “(A) *any interested manufacturing party*
23 *audited pursuant to this subsection, and its au-*
24 *thorized representatives, shall be entitled to have*

1 *access to all documents upon which the audit re-*
2 *sults under this subsection were based; and*

3 *“(B) any representative of an interested*
4 *copyright party that has been approved by the*
5 *Register under subsection (h)(2) of this section*
6 *shall be entitled to have access to all documents*
7 *upon which the audit results under subsection*
8 *(d) of this section were based, subject to the lim-*
9 *itations of subsection (h)(2) of this section.*

10 *“(f) COSTS OF VERIFICATION.—*

11 *“(1) The costs of all verification audits that are*
12 *conducted pursuant to subsection (e) of this section*
13 *shall be borne by interested copyright parties, except*
14 *that, in the case of a verification audit of a manufac-*
15 *turer or importer that leads ultimately to recovery of*
16 *an annual royalty underpayment of 5 percent or*
17 *more of the annual payment made, the importer or*
18 *manufacturer shall provide reimbursement for the*
19 *reasonable costs of such audit.*

20 *“(2) Except as may otherwise be agreed by inter-*
21 *ested copyright parties, the costs of a verification*
22 *audit conducted pursuant to subsection (e) of this sec-*
23 *tion shall be borne by the party engaging the certified*
24 *public accountant. Any recovery of royalty underpay-*
25 *ments as a result of the audit shall be used first to*

1 *provide reimbursement for the reasonable costs of such*
2 *audit to the extent such costs have not otherwise been*
3 *reimbursed by the manufacturer or importer pursu-*
4 *ant to this subsection. Any remaining recovery shall*
5 *be deposited with the Register pursuant to section*
6 *1013 of this title, or as may otherwise be provided by*
7 *a negotiated arrangement authorized under section*
8 *1016 of this title, for distribution to interested copy-*
9 *right parties as though such funds were royalty pay-*
10 *ments made pursuant to this section.*

11 “(g) *INDEPENDENCE OF ACCOUNTANTS.—Each cer-*
12 *tified public accountant used by interested copyright parties*
13 *or interested manufacturing parties pursuant to this section*
14 *shall be in good standing and shall not be financially de-*
15 *pendent upon interested copyright parties or interested*
16 *manufacturing parties, respectively. The Register may,*
17 *upon petition by any interested copyright party or inter-*
18 *ested manufacturing party, prevent the use of a particular*
19 *certified public accountant on the ground that such account-*
20 *ant does not meet the requirements of this subsection.*

21 “(h) *CONFIDENTIALITY.—*

22 “(1) *GENERALLY.—The quarterly and annual*
23 *statements of account filed pursuant to subsections (c)*
24 *and (d) of this section, and information disclosed or*
25 *generated during verification audits conducted pursu-*

1 *ant to subsection (e) of this section, shall be presumed*
 2 *to contain confidential trade secret information with-*
 3 *in the meaning of section 1905 of title 18 of the Unit-*
 4 *ed States Code. Except as provided in paragraphs (2),*
 5 *(3), and (4) of this subsection, neither the Register*
 6 *nor any member, officer, or employee of the Copyright*
 7 *Office or the Tribunal, may—*

8 *“(A) publicly disclose audit information*
 9 *furnished under this section or information con-*
 10 *tained in quarterly or annual statements of ac-*
 11 *count, except that aggregate information that*
 12 *does not disclose, directly or indirectly, com-*
 13 *pany-specific information may be made avail-*
 14 *able to the public;*

15 *“(B) use such information for any purpose*
 16 *other than to carry out responsibilities under*
 17 *this chapter; or*

18 *“(C) permit anyone (other than members,*
 19 *officers, and employees of the Copyright Office*
 20 *and the Tribunal who require such information*
 21 *in the performance of duties under this chapter)*
 22 *to examine such information.*

23 *“(2) PROCEDURES FOR ACCESS TO BE PRE-*
 24 *SCRIBED BY REGISTER.—(A) The Register, after con-*
 25 *sulting with interested manufacturing parties and in-*

1 *interested copyright parties, shall prescribe procedures*
2 *for disclosing, in confidence, to representatives of in-*
3 *terested copyright parties and representatives of inter-*
4 *ested manufacturing parties information contained in*
5 *quarterly and annual statements of account and in-*
6 *formation generated as a result of verification audits.*

7 *“(B) Such procedures shall provide that only*
8 *those representatives of interested copyright parties*
9 *and interested manufacturing parties who have been*
10 *approved by the Register shall have access to such in-*
11 *formation, and that all such representatives shall be*
12 *required to sign a certification limiting the use of the*
13 *information to—*

14 *“(i) verification functions under this sec-*
15 *tion, and*

16 *“(ii) any enforcement actions that may re-*
17 *sult from such verification procedures.*

18 *“(3) ACCESS BY AUDITED MANUFACTURER.—Any*
19 *interested manufacturing party that is audited pur-*
20 *suant to subsections (e) of this section, and its author-*
21 *ized representatives, shall be entitled to have access to*
22 *all documents filed with the Register as a result of*
23 *such audit.*

1 “(4) ACCESS BY CONGRESS.—*Nothing in this*
2 *section shall authorize the withholding of information*
3 *from the Congress.*

4 **“§ 1012. Royalty payments**

5 “(a) DIGITAL AUDIO RECORDING DEVICES.—

6 “(1) *The royalty payment due under section*
7 *1011 of this title for each digital audio recording de-*
8 *vice imported into and distributed in the United*
9 *States, or manufactured and distributed in the Unit-*
10 *ed States, shall be 2 percent of the transfer price.*
11 *However, only the first person to manufacture and*
12 *distribute or import and distribute such device shall*
13 *be required to pay the royalty with respect to such de-*
14 *vice.*

15 “(2) *With respect to a digital audio recording*
16 *device first distributed in combination with one or*
17 *more devices, either as a physically integrated unit or*
18 *as separate components, the royalty payment shall be*
19 *calculated as follows:*

20 “(A) *If the digital audio recording device*
21 *and such other devices are part of a physically*
22 *integrated unit, the royalty payment shall be*
23 *based on the transfer price of the unit, but shall*
24 *be reduced by any royalty payment made on any*
25 *digital audio recording device included within*

1 *the unit that was not first distributed in com-*
2 *ination with the unit.*

3 “(B) *If the digital audio recording device is*
4 *not part of a physically integrated unit and sub-*
5 *stantially similar devices have been distributed*
6 *separately at any time during the preceding 4*
7 *quarters, the royalty payment shall be based on*
8 *the average transfer price of such devices during*
9 *those 4 quarters.*

10 “(C) *If the digital audio recording device is*
11 *not part of a physically integrated unit and sub-*
12 *stantially similar devices have not been distrib-*
13 *uted separately at any time during the preceding*
14 *4 quarters, the royalty payment shall be based*
15 *on a constructed price reflecting the proportional*
16 *value of such device to the combination as a*
17 *whole.*

18 “(3) *Notwithstanding paragraph (1) or (2) of*
19 *this subsection, the amount of the royalty payment for*
20 *each digital audio recording device or physically inte-*
21 *grated unit containing a digital audio recording de-*
22 *vice shall not be less than \$1 nor more than the roy-*
23 *alty maximum. The royalty maximum shall be \$8 per*
24 *device, except that for a physically integrated unit*
25 *containing more than one digital audio recording de-*

1 *vice, the royalty maximum for such unit shall be \$12.*
2 *During the 6th year after the effective date of this*
3 *chapter, and no more than once each year thereafter,*
4 *any interested copyright party may petition the Tri-*
5 *bunal to increase the royalty maximum and, if more*
6 *than 20 percent of the royalty payments are at the*
7 *relevant royalty maximum, the Tribunal shall pro-*
8 *spectively increase such royalty maximum with the*
9 *goal of having no more than 10 percent of such pay-*
10 *ments at the new royalty maximum; provided, how-*
11 *ever, that the amount of any such increase as a per-*
12 *centage of the royalty maximum shall in no event ex-*
13 *ceed the percentage increase in the Consumer Price*
14 *Index during the period under review.*

15 “(b) *DIGITAL AUDIO RECORDING MEDIA.*—*The roy-*
16 *alty payment due under section 1011 of this title for each*
17 *digital audio recording medium imported into and distrib-*
18 *uted in the United States, or manufactured and distributed*
19 *in the United States, shall be 3 percent of the transfer price.*
20 *However, only the first person to manufacture and distrib-*
21 *ute or import and distribute such medium shall be required*
22 *to pay the royalty with respect to such medium.*

23 “(c) *RETURNED OR EXPORTED MERCHANDISE.*—

24 “(1) *In calculating the amount of royalty pay-*
25 *ments due under subsections (a) and (b) of this sec-*

1 *tion, manufacturers and importers may deduct the*
2 *amount of any royalty payments already made on*
3 *digital audio recording devices or media that are—*

4 *“(A) returned to the manufacturer or im-*
5 *porter as unsold or defective merchandise; or*

6 *“(B) exported by the manufacturer or im-*
7 *porter or a related person—*

8 *within two years following the date royalties are paid*
9 *on such devices or media.*

10 *“(2) Any such credit shall be taken during the*
11 *period when such devices or media are returned or ex-*
12 *ported, and the basis for any such credit shall be set*
13 *forth in the statement of account for such period filed*
14 *under section 1011(c) of this title.*

15 *“(3) Any such credit that is not fully used dur-*
16 *ing such period may be carried forward to subsequent*
17 *periods. If any returned or exported merchandise for*
18 *which a credit has been taken is subsequently distrib-*
19 *uted, a royalty payment shall be made as specified*
20 *under subsection (a) or (b) of this section, based on*
21 *the transfer price applicable to such distribution.*

22 **“§1013. Deposit of royalty payments and deduction of**
23 **expenses**

24 *“The Register shall receive all royalty payments depos-*
25 *ited under this chapter and, after deducting the reasonable*

1 costs incurred by the Copyright Office under this chapter,
2 shall deposit the balance in the Treasury of the United
3 States, in such manner as the Secretary of the Treasury
4 directs. All funds held by the Secretary of the Treasury shall
5 be invested in interest-bearing United States securities for
6 later distribution with interest under section 1014, 1015,
7 or 1016 of this title. The Register may, in the Register's
8 discretion, four years after the close of any calendar year,
9 close out the royalty payments account for that calendar
10 year, and may treat any funds remaining in such account
11 and any subsequent deposits that would otherwise be attrib-
12 utable to that calendar year as attributable to the next suc-
13 ceeding calendar year. The Register shall submit to the
14 Copyright Royalty Tribunal, on a monthly basis, a finan-
15 cial statement reporting the amount of royalties available
16 for distribution.

17 **“§ 1014. Entitlement to royalty payments**

18 “(a) *INTERESTED COPYRIGHT PARTIES.*—The royalty
19 payments deposited pursuant to section 1013 of this title
20 shall, in accordance with the procedures specified in section
21 1015 or 1016 of this title, be distributed to any interested
22 copyright party—

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

1 “(A) embodied in audiograms lawfully
2 made under this title that have been distributed
3 to the public, and

4 “(B) distributed to the public in the form of
5 audiograms or disseminated to the public in
6 transmissions, during the period to which such
7 payments pertain; and

8 “(2) who has filed a claim under section 1015 or
9 1016 of this title.

10 “(b) ALLOCATION OF ROYALTY PAYMENTS TO
11 GROUPS.—The royalty payments shall be divided into two
12 funds as follows:

13 “(1) THE SOUND RECORDINGS FUND.— $66\frac{2}{3}$ per-
14 cent of the royalty payments shall be allocated to the
15 Sound Recordings Fund. The American Federation of
16 Musicians (or any successor entity) shall receive $2\frac{5}{8}$
17 percent of the royalty payments allocated to the
18 Sound Recordings Fund for the benefit of nonfeatured
19 musicians who have performed on sound recordings
20 distributed in the United States. The American Fed-
21 eration of Television and Radio Artists (or any suc-
22 cessor entity) shall receive $1\frac{3}{8}$ percent of the royalty
23 payments allocated to the Sound Recordings Fund for
24 the benefit of nonfeatured vocalists who have per-
25 formed on sound recordings distributed in the United

1 *States. The remaining royalty payments in the*
2 *Sound Recordings Fund shall be distributed to claim-*
3 *ants under subsection (a) of this section who are in-*
4 *terested copyright parties under section 1001(7)(A) of*
5 *this title. Such claimants shall allocate such royalty*
6 *payments, on a per sound recording basis, in the fol-*
7 *lowing manner: 40 percent to the recording artist or*
8 *artists featured on such sound recordings (or the per-*
9 *sons conveying rights in the artists' performances in*
10 *the sound recordings), and 60 percent to the interested*
11 *copyright parties.*

12 “(2) *THE MUSICAL WORKS FUND.—*

13 “(A) *33¹/₃ percent of the royalty payments*
14 *shall be allocated to the Musical Works Fund for*
15 *distribution to interested copyright parties whose*
16 *entitlement is based on legal or beneficial owner-*
17 *ship or control of a copyright in a musical work.*

18 “(B) *Notwithstanding any contractual obli-*
19 *gation to the contrary—*

20 “(i) *music publishers shall be entitled*
21 *to 50 percent of the royalty payments allo-*
22 *cated to the Musical Works Fund, and*

23 “(ii) *writers shall be entitled to the*
24 *other 50 percent of the royalty payments al-*
25 *located to the Musical Works Fund.*

1 “(c) *DISTRIBUTION OF ROYALTY PAYMENTS WITHIN*
2 *GROUPS.*—*If all interested copyright parties within a*
3 *group specified in subsection (b) of this section do not agree*
4 *on a voluntary proposal for the distribution of the royalty*
5 *payments within such group, the Tribunal shall, pursuant*
6 *to the procedures specified in section 1015(c) of this title,*
7 *allocate such royalty payments based on the extent to which,*
8 *during the relevant period—*

9 “(1) *for the Sound Recording Fund, each sound*
10 *recording was distributed to the public in the form of*
11 *audiograms; and*

12 “(2) *for the Musical Works Fund, each musical*
13 *work was distributed to the public in the form of*
14 *audiograms or disseminated to the public in trans-*
15 *missions.*

16 **“§ 1015. Procedures for distributing royalty payments**

17 “(a) *FILING OF CLAIMS AND NEGOTIATIONS.*—

18 “(1) *During the first 2 months of each calendar*
19 *year after the calendar year in which this chapter*
20 *takes effect, every interested copyright party that is*
21 *entitled to royalty payments under section 1014 of*
22 *this title shall file with the Tribunal a claim for pay-*
23 *ments collected during the preceding year in such*
24 *form and manner as the Tribunal shall prescribe by*
25 *regulation.*

1 “(2) All interested copyright parties within each
2 group specified in section 1014(b) of this title shall
3 negotiate in good faith among themselves in an effort
4 to agree to a voluntary proposal for the distribution
5 of royalty payments. Notwithstanding any provision
6 of the antitrust laws, for purposes of this section such
7 interested copyright parties may agree among them-
8 selves to the proportionate division of royalty pay-
9 ments, may lump their claims together and file them
10 jointly or as a single claim, or may designate a com-
11 mon agent to receive payment on their behalf; except
12 that no agreement under this subsection may vary the
13 allocation of royalties specified in section 1014(b) of
14 this title.

15 “(b) *DISTRIBUTION OF PAYMENTS IN THE ABSENCE OF*
16 *A DISPUTE.*—Within 30 days after the period established
17 for the filing of claims under subsection (a) of this section,
18 in each year after the year in which this section takes effect,
19 the Tribunal shall determine whether there exists a con-
20 troversy concerning the distribution of royalty payments
21 under section 1014(c) of this title. If the Tribunal deter-
22 mines that no such controversy exists, it shall, within 30
23 days after such determination, authorize the distribution of
24 the royalty payments as set forth in the agreements regard-
25 ing the distribution of royalty payments entered into pursu-

1 ant to subsection (a) of this section, after deducting its rea-
2 sonable administrative costs under this section.

3 “(c) *RESOLUTION OF DISPUTES.*—If the Tribunal
4 finds the existence of a controversy, it shall, pursuant to
5 chapter 8 of this title, conduct a proceeding to determine
6 the distribution of royalty payments. During the pendency
7 of such a proceeding, the Tribunal shall withhold from dis-
8 tribution an amount sufficient to satisfy all claims with
9 respect to which a controversy exists, but shall, to the extent
10 feasible, authorize the distribution of any amounts that are
11 not in controversy.

12 **§1016. Negotiated collection and distribution ar-**
13 **rangements**

14 “(a) *SCOPE OF PERMISSIBLE NEGOTIATED ARRANGE-*
15 *MENTS.*—

16 “(1) *Interested copyright parties and interested*
17 *manufacturing parties may at any time negotiate*
18 *among or between themselves a single alternative sys-*
19 *tem for the collection, distribution, or verification of*
20 *royalty payments provided for in this chapter.*

21 “(2) *Such a negotiated arrangement may vary*
22 *the collection, distribution, and verification proce-*
23 *dures and requirements that would otherwise apply*
24 *under sections 1011 through 1015 of this title, includ-*
25 *ing the time periods for payment and distribution of*

1 royalties, but shall not alter the requirements of sec-
 2 tion 1011(a), (b), or (h)(4), section 1012 (a) or (b),
 3 or section 1014 (a) or (b) of this title.

4 “(3) Such a negotiated arrangement may also
 5 provide that specified types of disputes that cannot be
 6 resolved among the parties to the arrangement shall
 7 be resolved by binding arbitration or other agreed
 8 upon means of dispute resolution.

9 “(4) Notwithstanding any provision of the anti-
 10 trust laws, for purposes of this section interested man-
 11 ufacturing parties and interested copyright parties
 12 may negotiate in good faith and voluntarily agree
 13 among themselves as to the collection, distribution,
 14 and verification of royalty payments, and may des-
 15 ignate common agents to negotiate and carry out such
 16 activities on their behalf.

17 “(b) IMPLEMENTATION OF A NEGOTIATED ARRANGE-
 18 MENT.—

19 “(1) No negotiated arrangement shall go into ef-
 20 fect under this section until the Tribunal has ap-
 21 proved the arrangement, after full opportunity for
 22 comment, as meeting the following requirements.

23 “(A) The participants in the negotiated ar-
 24 rangement shall include—

1 “(i) at least two-thirds of all individ-
2 ual interested copyright parties that are en-
3 titled to receive royalty payments from the
4 Sound Recording Fund,

5 “(ii) at least two-thirds of all individ-
6 ual interested copyright parties that are en-
7 titled to receive royalty payments from the
8 Musical Works Fund as music publishers,
9 and

10 “(iii) at least two-thirds of all individ-
11 ual interested copyright parties that are en-
12 titled to receive royalty payments from the
13 Musical Works Fund as writers.

14 “(B) For purposes of subparagraph (A) of
15 this paragraph, the determination as to two-
16 thirds participation shall be based on annual re-
17 tail sales of audiograms in which musical works
18 or sound recordings of musical works are em-
19 bodied. One or more organizations representing
20 any of the types of individual interested copy-
21 right parties specified in the first sentence of this
22 subsection shall be presumed to represent two-
23 thirds of that type of interested copyright party
24 if the membership of, or other participation in,
25 such organization or organizations includes two-

1 *thirds of that type of interested copyright party*
2 *based on annual retail sales of audiograms in*
3 *which musical works or sound recordings of mu-*
4 *sical works are embodied.*

5 “(C) *The implementation of the arrange-*
6 *ment shall include all necessary safeguards, as*
7 *determined by the Tribunal, which ensure that*
8 *all interested copyright parties who are not par-*
9 *ticipants in the arrangement receive the royalty*
10 *payments to which they would be entitled in the*
11 *absence of such an arrangement under sections*
12 *1013 and either 1014(c) or 1015(b), whichever is*
13 *applicable. Such safeguards may include ac-*
14 *counting procedures, reports and any other in-*
15 *formation determined to be necessary to ensure*
16 *the proper collection and distribution of royalty*
17 *payments.*

18 “(2) *Notwithstanding the existence of a nego-*
19 *tiated arrangement that has gone into effect under*
20 *this section, any interested manufacturing party that*
21 *is not a party to such negotiated arrangement shall*
22 *remain subject to the requirements of sections 1011*
23 *and 1012 and may fully satisfy its obligations under*
24 *this subchapter by complying with the procedures set*
25 *forth therein.*

1 “(c) *MAINTENANCE OF JURISDICTION BY TRIBUNAL.*—
2 *Where a negotiated arrangement has gone into effect under*
3 *this section, the Tribunal shall maintain jurisdiction and*
4 *shall (1) hear and address any objections to the arrange-*
5 *ment that may arise while it is in effect, (2) ensure the*
6 *availability of alternative procedures for any interested*
7 *manufacturing party or interested copyright party that is*
8 *not a participant in the negotiated arrangement, (3) ensure*
9 *that all interested copyright parties who are not partici-*
10 *pants in the arrangement receive the royalty payments to*
11 *which they would be entitled in the absence of such an ar-*
12 *rangement under sections 1013 and either 1014(c) or*
13 *1015(b), whichever is applicable, (4) ensure that it has ade-*
14 *quate funds at its disposal, received either through the*
15 *Copyright Office or through the entity administering the*
16 *negotiated arrangement, to distribute to interested copy-*
17 *right parties not participating in the arrangement the roy-*
18 *alty payments to which they are entitled under section*
19 *1014(c) or 1015(b), including applicable interest, and (5)*
20 *ensure that the requirements of section 1016(b)(1)(C) are*
21 *met.*

22 “(d) *JUDICIAL ENFORCEMENT.*—*The Tribunal may*
23 *seek injunctive relief in an appropriate United States dis-*
24 *trict court to secure compliance with the requirements of*
25 *subsection (c).*

1 “SUBCHAPTER C—THE SERIAL COPY

2 MANAGEMENT SYSTEM

3 “§ 1021. *Incorporation of the serial copy management*
4 *system*5 “(a) *PROHIBITION ON IMPORTATION, MANUFACTURE,*
6 *AND DISTRIBUTION.—*7 “(1) *No person shall import, manufacture, or*
8 *distribute any digital audio recording device or any*
9 *digital audio interface device that does not conform to*
10 *the standards and specifications to implement the Se-*
11 *rial Copy Management System that are—*12 “(A) *set forth in the technical reference doc-*
13 *ument;*14 “(B) *set forth in an order by the Secretary*
15 *of Commerce under section 1022(b) (1), (2), or*
16 *(3) of this title; or*17 “(C) *in the case of a digital audio recording*
18 *device other than a device defined in part II of*
19 *the technical reference document or in an order*
20 *issued by the Secretary pursuant to section*
21 *1022(b) of this title, established by the manufac-*
22 *turer (or, in the case of a proprietary technology,*
23 *the proprietor of such technology) so as to*
24 *achieve the same functional characteristics with*
25 *respect to regulation of serial copying as, and to*

1 *be compatible with the prevailing method for im-*
2 *plementation of, the Serial Copy Management*
3 *System set forth in the technical reference docu-*
4 *ment or in any order of the Secretary issued*
5 *under section 1022 of this title.*

6 “(2) *If the Secretary of Commerce approves*
7 *standards and specifications under section 1022(b)(4)*
8 *of this title, then no person shall import, manufac-*
9 *ture, or distribute any digital audio recording device*
10 *or any digital audio interface device that does not*
11 *conform to such standards and specifications.*

12 “(b) *PROHIBITION ON CIRCUMVENTION OF THE SERIAL*
13 *COPY MANAGEMENT SYSTEM.—No person shall import,*
14 *manufacture, or distribute any device, or offer or perform*
15 *any service, the primary purpose or effect of which is to*
16 *avoid, bypass, remove, deactivate, or otherwise circumvent*
17 *any program or circuit which implements, in whole or in*
18 *part, the Serial Copy Management System in a digital*
19 *audio recording device or a digital audio interface device.*

20 “(c) *ENCODING OF INFORMATION ON AUDIOGRAMS.—*

21 “(1) *No person shall encode an audiogram of a*
22 *sound recording with inaccurate information relating*
23 *to the category code, copyright status, or generation*
24 *status of the source material so as improperly to af-*

1 *fect the operation of the Serial Copy Management*
2 *System.*

3 “(2) *Nothing in this subchapter requires any*
4 *person engaged in the importation, manufacture, or*
5 *assembly of audiograms to encode any such audio-*
6 *gram with respect to its copyright status.*

7 “(d) *INFORMATION ACCOMPANYING TRANSMISSIONS IN*
8 *DIGITAL FORMAT.—Any person who transmits or otherwise*
9 *communicates to the public any sound recording in digital*
10 *format is not required under this subchapter to transmit*
11 *or otherwise communicate the information relating to the*
12 *copyright status of the sound recording. However, any such*
13 *person who does transmit or otherwise communicate such*
14 *copyright status information shall transmit or commu-*
15 *nicate such information accurately.*

16 **“§1022. Implementing the serial copy management**
17 **system**

18 “(a) *PUBLICATION OF TECHNICAL REFERENCE DOCU-*
19 *MENT AND CERTIFICATION.—Within 10 days after the date*
20 *of enactment of this chapter, the Secretary of Commerce*
21 *shall cause to be published in the Federal Register the tech-*
22 *nical reference document along with the certification from*
23 *the National Institute of Standards and Technology, as*
24 *such certification appears in the report of the Committee*
25 *on the Judiciary to the Senate on the Audio Home Record-*

1 *ing Act of 1991, that the technical reference document sets*
2 *forth standards and specifications that adequately incor-*
3 *porate the intended functional characteristics to regulate se-*
4 *rial copying and are not incompatible with existing inter-*
5 *national digital audio interface standards and existing dig-*
6 *ital audio technology.*

7 “(b) *ORDERS OF SECRETARY OF COMMERCE.—The*
8 *Secretary of Commerce, upon petition by an interested*
9 *manufacturing party or an interested copyright party, and*
10 *after consultation with the Register, may, if the Secretary*
11 *determines that to do so is in accordance with the purposes*
12 *of this chapter, issue an order to implement the Serial Copy*
13 *Management System set forth in the technical reference doc-*
14 *ument as follows:*

15 “(1) *FUNCTIONALLY EQUIVALENT ALTER-*
16 *NATIVES.—The Secretary may issue an order for the*
17 *purpose of permitting in commerce devices that do*
18 *not conform to all of the standards and specifications*
19 *set forth in the technical reference document, if the*
20 *Secretary determines that such devices possess the*
21 *same functional characteristics with respect to regula-*
22 *tion of serial copying as, and are compatible with the*
23 *prevailing method for implementation of, the Serial*
24 *Copy Management System set forth in the technical*
25 *reference document.*

1 “(2) *REVISED GENERAL STANDARDS.*—*The Sec-*
2 *retary may issue an order for the purpose of permit-*
3 *ting in commerce devices that do not conform to all*
4 *of the standards and specifications set forth in the*
5 *technical reference document, if the Secretary deter-*
6 *mines that—*

7 “(A) *the standards and specifications relat-*
8 *ing generally to digital audio recording devices*
9 *and digital audio interface devices have been or*
10 *are being revised or otherwise amended or modi-*
11 *fied such that the standards and specifications*
12 *set forth in the technical reference document are*
13 *not or would no longer be applicable or appro-*
14 *priate; and*

15 “(B) *such devices conform to such new*
16 *standards and specifications and possess the*
17 *same functional characteristics with respect to*
18 *regulation of serial copying as the Serial Copy*
19 *Management System set forth in the technical*
20 *reference document.*

21 “(3) *STANDARDS FOR NEW DEVICES.*—*The Sec-*
22 *retary may issue an order for the purpose of—*

23 “(A) *establishing whether the standards and*
24 *specifications established by a manufacturer or*
25 *proprietor for digital audio recording devices*

1 *other than devices defined in part II of the tech-*
2 *nical reference document or a prior order of the*
3 *Secretary under paragraph (1) or (2) of this sub-*
4 *section comply with the requirements of subpara-*
5 *graph (C) of section 1021(a)(1) of this title; or*

6 “(B) *establishing alternative standards or*
7 *specifications in order to ensure compliance with*
8 *such requirements.*

9 “(4) *MATERIAL INPUT TO DIGITAL DEVICE*
10 *THROUGH ANALOG CONVERTER.—*

11 “(A) *GENERALLY.—Except as provided in*
12 *subparagraphs (B) through (D), the Secretary,*
13 *after publication of notice in the Federal Reg-*
14 *ister and reasonable opportunity for public com-*
15 *ment, may issue an order for the purpose of ap-*
16 *proving standards and specifications for a tech-*
17 *nical method implementing in a digital audio*
18 *recording device the same functional characteris-*
19 *tics as the Serial Copy Management System so*
20 *as to regulate the serial copying of source mate-*
21 *rial input through an analog converter in a*
22 *manner equivalent to source material input in*
23 *the digital format.*

24 “(B) *COST LIMITATION.—The order may*
25 *not impose a total cost burden on manufacturers*

1 *of digital audio recording devices, for implement-*
2 *ing the Serial Copy Management System and the*
3 *technical method prescribed in such order, in ex-*
4 *cess of 125 percent of the cost of implementing*
5 *the Serial Copy Management System before the*
6 *issuance of such order.*

7 “(C) *CONSIDERATION OF OTHER OBJEC-*
8 *TIONS.—The Secretary shall consider other rea-*
9 *soned objections from any interested manufactur-*
10 *ing party or interested copyright party.*

11 “(D) *LIMITATIONS TO DIGITAL AUDIO DE-*
12 *VICES.—The order shall not affect the recording*
13 *of any source material on analog recording*
14 *equipment and the order shall not impose any*
15 *restrictions or requirements that must be imple-*
16 *mented in any device other than a digital audio*
17 *recording device or digital audio interface device.*

18 “SUBCHAPTER D—REMEDIES

19 “§ 1031. *Civil remedies*

20 “(a) *CIVIL ACTIONS.—Any interested copyright party*
21 *or interested manufacturing party that is or would be in-*
22 *jured by a violation of section 1011 or 1021 of this title,*
23 *or the Attorney General of the United States, may bring*
24 *a civil action in an appropriate United States district*
25 *court against any person for such violation.*

1 “(b) *POWERS OF THE COURT.*—*In an action brought*
2 *under subsection (a) of this section, the court—*

3 “(1) *except as provided in subsection (h) of this*
4 *section, may grant temporary and permanent injunc-*
5 *tions on such terms as it deems reasonable to prevent*
6 *or restrain such violation;*

7 “(2) *in the case of a violation of section 1011 (a)*
8 *through (d) or 1021 of this title, shall award damages*
9 *under subsection (d) of this section;*

10 “(3) *in its discretion may allow the recovery of*
11 *full costs by or against any party other than the*
12 *United States or an officer thereof;*

13 “(4) *in its discretion may award a reasonable*
14 *attorney’s fee to the prevailing party as part of the*
15 *costs awarded under paragraph (3) if the court finds*
16 *that the nonprevailing party has not proceeded in*
17 *good faith; and*

18 “(5) *may grant such other equitable relief as it*
19 *deems reasonable.*

20 “(c) *RECOVERY OF OVERDUE ROYALTY PAYMENTS.*—
21 *In any case in which the court finds that a violation of*
22 *section 1011 of this title involving nonpayment or*
23 *underpayment of royalty payments has occurred, the viola-*
24 *tor shall be directed to pay, in addition to damages award-*
25 *ed under subsection (d) of this section, any such royalties*

1 *due, plus interest calculated as provided under section 1961*
2 *of title 28, United States Code.*

3 “(d) *AWARD OF DAMAGES.*—

4 “(1) *SECTION 1011.*—

5 “(A) *DEVICE.*—*In the case of a violation of*
6 *section 1011 (a) through (d) of this title involv-*
7 *ing a digital audio recording device, the court*
8 *shall award statutory damages in an amount be-*
9 *tween a nominal level and \$100 per device, as*
10 *the court considers just.*

11 “(B) *MEDIUM.*—*In the case of a violation of*
12 *section 1011 (a) through (d) of this title involv-*
13 *ing a digital audio recording medium, the court*
14 *shall award statutory damages in an amount be-*
15 *tween a nominal level and \$4 per medium, as*
16 *the court considers just.*

17 “(2) *SECTION 1021.*—*In any case in which the*
18 *court finds that a violation of section 1021 of this*
19 *title has occurred, the court shall award damages cal-*
20 *culated, at the election of the complaining party at*
21 *any time before final judgment is rendered, pursuant*
22 *to subparagraph (A) or (B) of this paragraph, but in*
23 *no event shall the judgment (excluding any award of*
24 *actual damages to an interested manufacturing*
25 *party) exceed a total of \$1,000,000:*

1 “(A) *ACTUAL DAMAGES.*—A complaining
2 party may recover its actual damages suffered as
3 a result of the violation and any profits of the
4 violator that are attributable to the violation
5 that are not taken into account in computing the
6 actual damages. In determining the violator’s
7 profits, the complaining party is required to
8 prove only the violator’s gross revenue, and the
9 violator is required to prove its deductible ex-
10 penses and the elements of profit attributable to
11 factors other than the violation.

12 “(B) *STATUTORY DAMAGES.*—

13 “(i) *DEVICE.*—A complaining party
14 may recover an award of statutory damages
15 for each violation of section 1021 (a) or (b)
16 of this title in the sum of not less than
17 \$1,000 nor more than \$10,000 per device
18 involved in such violation or per device on
19 which a service prohibited by section
20 1021(b) of this title has been performed, as
21 the court considers just.

22 “(ii) *AUDIOGRAM.*—A complaining
23 party may recover an award of statutory
24 damages for each violation of section
25 1021(c) of this title in the sum of not less

1 *than \$10 nor more than \$100 per audio-*
2 *gram involved in such violation, as the*
3 *court considers just.*

4 “(iii) TRANSMISSION.—*A complaining*
5 *party may recover an award of damages for*
6 *each transmission or communication that*
7 *violates section 1021(d) of this title in the*
8 *sum of not less than \$10,000 nor more than*
9 *\$100,000, as the court considers just.*

10 “(3) WILLFUL VIOLATIONS.—

11 “(A) *In any case in which the court finds*
12 *that a violation of section 1011 (a) through (d)*
13 *of this title was committed willfully and for pur-*
14 *poses of direct or indirect commercial advantage,*
15 *the court shall increase statutory damages—*

16 “(i) *for a violation involving a digital*
17 *audio recording device, to a sum of not less*
18 *than \$100 nor more than \$500 per device;*
19 *and*

20 “(ii) *for a violation involving a digital*
21 *audio recording medium, to a sum of not*
22 *less than \$4 nor more than \$15 per me-*
23 *diuM, as the court considers just.*

24 “(B) *In any case in which the court finds*
25 *that a violation of section 1021 of this title was*

1 *committed willfully and for purposes of direct or*
2 *indirect commercial advantage, the court in its*
3 *discretion may increase the award of damages by*
4 *an additional amount of not more than*
5 *\$5,000,000, as the court considers just.*

6 “(4) *INNOCENT VIOLATIONS OF SECTION 1021.—*
7 *The court in its discretion may reduce the total*
8 *award of damages against a person violating section*
9 *1021 of this title to a sum of not less than \$250 in*
10 *any case in which the court finds that—*

11 “(A) *the violator was not aware and had no*
12 *reason to believe that its acts constituted a vio-*
13 *lation of section 1021 of this title, or*

14 “(B) *in the case of a violation of section*
15 *1021(a) of this title involving a digital audio re-*
16 *recording device, the violator believed in good faith*
17 *that the device complied with section*
18 *1021(a)(1)(C) of this title, except that this sub-*
19 *paragraph shall not apply to any damages*
20 *awarded under subsection (d)(2)(A) of this sec-*
21 *tion.*

22 “(e) *MULTIPLE ACTIONS.—*

23 “(1) *GENERALLY.—No more than one action*
24 *shall be brought against any party and no more than*

1 *one award of statutory damages under subsection (d)*
2 *of this section shall be permitted—*

3 “(A) *for any violations of section 1011 of*
4 *this title involving the same digital audio record-*
5 *ing device or digital audio recording medium; or*

6 “(B) *for any violations of section 1021 of*
7 *this title involving digital audio recording de-*
8 *vices or digital audio interface devices of the*
9 *same model, except that this subparagraph shall*
10 *not bar an action or an award of damages with*
11 *respect to digital audio recording devices or digi-*
12 *tal audio interface devices that are imported,*
13 *manufactured, or distributed subsequent to a*
14 *final judgment in a prior action.*

15 “(2) *NOTICE AND INTERVENTION.—Any com-*
16 *plaining party who brings an action under this sec-*
17 *tion shall serve a copy of the complaint upon the Reg-*
18 *ister within 10 days after the complaining party’s*
19 *service of a summons upon a defendant. The Register*
20 *shall cause a notice of such action to be published in*
21 *the Federal Register within 10 days after receipt of*
22 *such complaint. The court shall permit any other in-*
23 *terested copyright party or interested manufacturing*
24 *party entitled to bring the action under section*
25 *1031(a) of this title who moves to intervene within 30*

1 *days after the publication of such notice to intervene*
2 *in the action.*

3 “(3) *AWARD.—*

4 “(A) *GENERALLY.—Except as provided in*
5 *subparagraph (B), the court may award recovery*
6 *of actual damages for a violation of section 1021*
7 *of this title pursuant to subsection (d)(2)(A) of*
8 *this section to each complaining party in an ac-*
9 *tion who elects to recover actual damages.*

10 “(B) *LIMITATIONS.—*

11 “(i) *If more than one complaining*
12 *party elects to recover actual damages pur-*
13 *suant to subsection (d)(2)(A) of this section,*
14 *only a single award of the violator’s profits*
15 *shall be made, which shall be allocated as*
16 *the court considers just.*

17 “(ii) *If any complaining interested*
18 *copyright party or parties elect to recover*
19 *statutory damages pursuant to subsection*
20 *(d)(2) of this section in an action in which*
21 *one or more other complaining interested*
22 *copyright parties have elected to recover ac-*
23 *tual damages, the single award of statutory*
24 *damages permitted pursuant to paragraph*
25 *(1) of this subsection shall be reduced by the*

1 total amount of actual damages awarded to
2 interested copyright parties pursuant to
3 subsection (d)(2)(A) of this section.

4 “(f) PAYMENT OF OVERDUE ROYALTIES AND DAM-
5 AGES.—The court may allocate any award of damages
6 under subsection (d) of this section between or among com-
7 plaining parties as it considers just. Any award of damages
8 that is allocated to an interested copyright party and any
9 award of overdue royalties and interest under subsection
10 (c) of this section shall be deposited with the Register pursu-
11 ant to section 1013 of this title, or as may otherwise be
12 provided pursuant to a negotiated arrangement authorized
13 under section 1016 of this title, for distribution to interested
14 copyright parties as though such funds were royalty pay-
15 ments made pursuant to section 1011 of this title.

16 “(g) IMPOUNDING OF ARTICLES.—At any time while
17 an action under this section is pending, the court may order
18 the impounding, on such terms as it deems reasonable, of
19 any digital audio recording device, digital audio interface
20 device, audiogram, or device specified in section 1021(b) of
21 this title that is in the custody or control of the alleged vio-
22 lator and that the court has reasonable cause to believe does
23 not comply with, or was involved in a violation of, section
24 1021 of this title.

1 “(h) *LIMITATIONS REGARDING PROFESSIONAL MOD-*
2 *ELS AND OTHER EXEMPT DEVICES.*—Unless a court finds
3 *that the determination by a manufacturer or importer that*
4 *a device fits within the exemption of subparagraph (A) or*
5 *(B) of section 1001(4) of this title was without a reasonable*
6 *basis or not in good faith, the court shall not grant a tem-*
7 *porary or preliminary injunction against the distribution*
8 *of such device by the manufacturer or importer.*

9 “(i) *REMEDIAL MODIFICATION AND DESTRUCTION OF*
10 *ARTICLES.*—As part of a final judgment or decree finding
11 *a violation of section 1021 of this title, the court shall order*
12 *the remedial modification, if possible, or the destruction of*
13 *any digital audio recording device, digital audio interface*
14 *device, audiogram, or device specified in section 1021(b) of*
15 *this title that—*

16 “(1) *does not comply with, or was involved in a*
17 *violation of, section 1021 of this title, and*

18 “(2) *is in the custody or control of the violator*
19 *or has been impounded under subsection (g) of this*
20 *section.*

21 “(j) *DEFINITIONS.*—For purposes of this section—

22 “(1) *the term ‘complaining party’ means an in-*
23 *terested copyright party, interested manufacturing*
24 *party, or the Attorney General of the United States*
25 *when one of these parties has initiated or intervened*

1 as a plaintiff in an action brought under this section;

2 and

3 “(2) the term ‘device’ does not include an audio-

4 gram.

5 **“§ 1032. Binding arbitration**

6 “(a) *DISPUTES TO BE ARBITRATED.*—Any dispute be-

7 tween an interested manufacturing party and an interested

8 copyright party shall be resolved through binding arbitra-

9 tion, in accordance with the provisions of this section, if—

10 “(1) the parties mutually agree; or

11 “(2) before the date of first distribution in the

12 United States of the product which is the subject of

13 the dispute, an interested manufacturing party or an

14 interested copyright party requests arbitration con-

15 cerning whether such product is or is not a digital

16 audio recording device, a digital audio recording me-

17 dium, or a digital audio interface device, or concern-

18 ing the basis on which royalty payments are to be

19 made with respect to such product.

20 “(b) *ARBITRAL PROCEDURES.*—

21 “(1) *REGULATIONS FOR COORDINATION OF ARBI-*

22 *TRATION.*—The Register shall, after consulting with

23 interested copyright parties, prescribe regulations es-

24 tablishing a procedure by which interested copyright

25 parties will coordinate decisions and representation

1 *concerning the arbitration of disputes. No interested*
2 *copyright party shall have the authority to request,*
3 *agree to, or (except as an intervenor pursuant to sub-*
4 *section (c) of this section) enter into, binding arbitra-*
5 *tion unless that party shall have been authorized to*
6 *do so pursuant to the regulations prescribed by the*
7 *Register.*

8 *“(2) PANEL.—Except as otherwise agreed by the*
9 *parties to a dispute that is to be submitted to binding*
10 *arbitration under subsection (a) of this section, the*
11 *dispute shall be heard by a panel of three arbitrators,*
12 *with one arbitrator selected by each of the two sides*
13 *to the dispute and the third arbitrator selected by mu-*
14 *tual agreement of the first two arbitrators chosen.*

15 *“(3) DECISION.—The arbitral panel shall render*
16 *its final decision concerning the dispute, in a written*
17 *opinion explaining its reasoning, within 120 days*
18 *after the date on which the selection of arbitrators has*
19 *been concluded. The Register shall cause to be pub-*
20 *lished in the Federal Register the written opinion of*
21 *the arbitral panel within 10 days after receipt thereof.*

22 *“(4) TITLE 9 PROVISIONS TO GOVERN.—Except*
23 *to the extent inconsistent with this section, any arbi-*
24 *tration proceedings under this section shall be con-*
25 *ducted in the same manner, subject to the same lim-*

1 *itations, carried out with the same powers (including*
2 *the power to summon witnesses), and enforced in the*
3 *courts of the United States as an arbitration proceed-*
4 *ing under title 9, United States Code.*

5 *“(5) PRECEDENTS.—In rendering a final deci-*
6 *sion, the arbitral panel shall take into account any*
7 *final decisions rendered in prior proceedings under*
8 *this section that address identical or similar issues;*
9 *and failure of the arbitral panel to take account of*
10 *such prior decisions may be considered imperfect exe-*
11 *cution of arbitral powers under section 10(a)(4) of*
12 *title 9, United States Code.*

13 *“(c) NOTICE AND RIGHT TO INTERVENE.—Any inter-*
14 *ested copyright party or interested manufacturing party*
15 *that requests an arbitral proceeding under this section shall*
16 *provide the Register with notice concerning the parties to*
17 *the dispute and the nature of the dispute within 10 days*
18 *after formally requesting arbitration under subsection (a)*
19 *of this section. The Register shall cause a summary of such*
20 *notice to be published in the Federal Register within 30*
21 *days after receipt of such notice. The arbitral panel shall*
22 *permit any other interested copyright party or interested*
23 *manufacturing party who moves to intervene within 20*
24 *days after such publication to intervene in the action.*

1 “(d) *AUTHORITY OF ARBITRAL PANEL TO ORDER RE-*
2 *LIEF.—*

3 “(1) *TO PROTECT PROPRIETARY INFORMATION.—*
4 *The arbitral panel shall issue such orders as are ap-*
5 *propriate to protect the proprietary technology and*
6 *information of parties to the proceeding, including*
7 *provision for injunctive relief in the event of a vio-*
8 *lation of such order.*

9 “(2) *TO TERMINATE PROCEEDING.—The arbitral*
10 *panel shall terminate any proceeding that it has good*
11 *cause to believe has been commenced in bad faith by*
12 *a competitor in order to gain access to proprietary*
13 *information. The panel shall also terminate any pro-*
14 *ceeding that it believes has been commenced before the*
15 *technology or product at issue has been sufficiently*
16 *developed or defined to permit an informed decision*
17 *concerning the applicability of this chapter to such*
18 *technology or product.*

19 “(3) *TO ORDER RELIEF.—In any case in which*
20 *the arbitral panel finds with respect to devices or*
21 *media that were the subject of the dispute, that roy-*
22 *alty payments have been or will be due under section*
23 *1011 of this title through the date of the arbitral deci-*
24 *sion, the panel shall order the deposit of such royalty*
25 *payments pursuant to section 1013 of this title, plus*

1 *interest calculated as provided under section 1961 of*
2 *title 28, United States Code. The arbitral panel shall*
3 *not award monetary or injunctive relief, as provided*
4 *in section 1031 of this title or otherwise, except as is*
5 *expressly provided in this subsection.*

6 “(e) *EFFECT OF ARBITRATION PROCEEDING ON CIVIL*
7 *ACTIONS AND REMEDIES.—Notwithstanding any provision*
8 *of section 1031 of this title, no civil action may be brought*
9 *or relief granted under section 1031 of this title against*
10 *any party to an ongoing or completed arbitration proceed-*
11 *ing under this section, with respect to devices or media that*
12 *are the subject of such an arbitration proceeding. However,*
13 *this subsection does not bar—*

14 “(1) *an action for injunctive relief at any time*
15 *based on a violation of section 1021 of this title; or*

16 “(2) *an action or any relief with respect to those*
17 *devices or media distributed by their importer or*
18 *manufacturer following the conclusion of such arbi-*
19 *tration proceeding, or, if so stipulated by the parties,*
20 *prior to the commencement of such proceedings.*

21 “(f) *ARBITRAL COSTS.—Except as otherwise agreed by*
22 *the parties to a dispute, the costs of an arbitral proceeding*
23 *under this section shall be divided among the parties in*
24 *such fashion as is considered just by the arbitral panel at*
25 *the conclusion of the proceeding. Each party to the dispute*

1 shall bear its own attorney fees unless the arbitral panel de-
2 termines that a nonprevailing party has not proceeded in
3 good faith and that, as a matter of discretion, it is appro-
4 priate to award reasonable attorney's fees to the prevailing
5 party.”.

6 **SEC. 3. TECHNICAL AMENDMENTS.**

7 (a) **FUNCTIONS OF REGISTER.**—Chapter 8 of title 17,
8 United States Code is amended—

9 (1) in section 801(b)—

10 (A) by striking “and” at the end of para-
11 graph (2);

12 (B) by striking the period at the end of
13 paragraph (3) and inserting “; and”; and

14 (C) by adding the following new paragraph
15 at the end:

16 “(4) to distribute royalty payments deposited
17 with the Register of Copyrights under section 1014, to
18 determine, in cases where controversy exists, the dis-
19 tribution of such payments, and to carry out its other
20 responsibilities under chapter 10”; and

21 (2) in section 804(d)—

22 (A) by inserting “or (4)” after “801(b)(3)”;

23 and

24 (B) by striking “or 119” and inserting

25 “119, 1015, or 1016”.

1 (b) *DEFINITIONS.*—Section 101 of title 17, United
2 States Code, is amended by striking “As used” and insert-
3 ing “Except as otherwise provided in this title, as used”.

4 (c) *MASK WORKS.*—Section 912 of title 17, United
5 States Code, is amended—

6 (1) in subsection (a) by inserting “or 10” after
7 “8”; and

8 (2) in subsection (b) by inserting “or 10” after
9 “8”.

10 **SEC. 4. EFFECTIVE DATE.**

11 *This Act, and the amendments made by this Act, shall*
12 *take effect on the date of the enactment of this Act or Janu-*
13 *ary 1, 1992, whichever date is later.*

14 **SEC. 5. TECHNICAL REFERENCE DOCUMENT FOR AUDIO**
15 **HOME RECORDING ACT OF 1991.**

16 **SEC. 6. REPEAL OF SECTION 5.**

17 *Effective upon publication of the Technical Reference*
18 *Document in the Federal Register pursuant to section*
19 *1022(a) of this title—*

20 (a) *section 5 of this Act shall be repealed, and*

21 (b) *section 1001(14) of this title shall be amend-*
22 *ed by striking “in section 5 of this Act” and inserting*
23 *“as such document was published in the Federal Reg-*
24 *ister pursuant to section 1022(a) of this title”.*

1 *TECHNICAL REFERENCE DOCUMENT FOR THE*
2 *AUDIO HOME RECORDING ACT OF 1991*

3 *INTRODUCTION*

4 *This Technical Reference Document is provided to fa-*
5 *cilitate the implementation of legislation relating to digital*
6 *audio recording ("DAR") devices, known as the "Audio*
7 *Home Recording Act of 1991" ("the Act").*

8 *This Technical Reference Document establishes the*
9 *standards and specifications that are necessary to imple-*
10 *ment the Serial Copy Management System ("SCMS")*
11 *under the Act. It draws in part from specifications proposed*
12 *to the International Electrotechnical Commission ("IEC")*
13 *in "IEC 958: Digital Audio Interface" (First edition 1989-*
14 *03) and "Amendment Number 1 to IEC 958 (1989): Digital*
15 *Audio Interface, Serial Copy Management System" (Ref-*
16 *erence 84(CO)126 submitted on June 21, 1991) (collectively,*
17 *"IEC 958"), and "IEC 60A(CO)136 Part 6: Serial copy*
18 *management system for consumer audio use DAT record-*
19 *ers". The standards and specifications set forth herein relate*
20 *only to the implementation of SCMS via digital audio*
21 *interface signals, DAR devices and digital audio interface*
22 *devices. The standards and specifications set forth herein,*
23 *as they may be amended pursuant to an order of the Sec-*
24 *retary of Commerce under section 1022(b) of subchapter C*
25 *of the Act, shall be considered determinative under the Act,*

1 *regardless of any future action by the IEC or by a manufac-*
2 *turer or by an owner of a proprietary technology.*

3 *SCMS is intended to prohibit DAR devices from re-*
4 *ording "second-generation" digital copies from "first-gen-*
5 *eration" digital copies containing audio material over*
6 *which copyright has been asserted via SCMS. It does not*
7 *generally restrict the ability of such devices to make "first-*
8 *generation" digital copies from "original" digital sources*
9 *such as prerecorded commercially available compact discs,*
10 *digital transmissions or digital tapes.*

11 *Currently, the predominant type of DAR device offered*
12 *for sale in the United States is the DAT recorder, which*
13 *records and sends digital signals in accordance with the*
14 *IEC 958 nonprofessional digital audio interface format.*
15 *Additional types of DAR devices and interface formats are*
16 *being or may be developed. The standards and specifications*
17 *in this Technical Reference Document are not intended to*
18 *hinder the development of such new technologies but require,*
19 *in accordance with section 1021(a)(1)(A)–(C) of subchapter*
20 *C of the Act, that they incorporate the functional character-*
21 *istics of SCMS protection. In order for a DAR device to*
22 *be "compatible with the prevailing method of implementing*
23 *SCMS," to the extent DAR devices are capable of recording*
24 *signals sent in a particular digital audio interface signal*
25 *format, the SCMS information must be accurately received*

1 *and acted upon by the DAR devices so as to correctly imple-*
2 *ment the same level of SCMS protection provided by that*
3 *format. "Compatibility" does not require direct bit-for-bit*
4 *correspondence across every interface signal format; indeed,*
5 *particular interface signal formats may be recordable by*
6 *some, but not all, DAR devices. To the extent that any digi-*
7 *tal audio interface device translates and sends signals in*
8 *a form that can be recorded by a particular DAR device,*
9 *however, "compatibility" requires that the SCMS informa-*
10 *tion also be accurately translated and sent by the interface*
11 *device, and accurately read and acted upon by the DAR*
12 *device.*

13 *This document is in three parts. Part I section A sets*
14 *forth standards and specifications constituting the func-*
15 *tional characteristics for implementing SCMS in digital*
16 *audio interface signals. Sections B and C then apply these*
17 *standards and specifications in a specific reference for im-*
18 *plementing SCMS in the IEC 958 nonprofessional digital*
19 *audio interface format. Part II section A similarly first sets*
20 *forth standards and specifications constituting the func-*
21 *tional characteristics for implementing SCMS in DAR de-*
22 *vices. Sections B and C then apply these standards and*
23 *specifications in a specific reference for implementing*
24 *SCMS with respect to the recording and play-back func-*
25 *tions of nonprofessional model DAT recorders. Part III con-*

1 tains a series of charts that apply and correlate those codes
2 that are mandated for implementation in DAT recorders
3 by parts I-C and II-C of this document.

4 The terms "digital audio interface device," "digital
5 audio recording device," "digital audio recording medium,"
6 "distribute," "professional model," and "transmission" as
7 used in this document have the same meanings as in the
8 Act. "Generation status" means whether the signal ema-
9 nates from a source that has been produced or published
10 by or with the authority of the owner of the material, such
11 as commercially released pre-recorded compact discs or dig-
12 ital tapes or a digital transmission (referred to herein as
13 "original"); or whether the signal emanates from a record-
14 ing made from such "original" material.

15 PART I. IMPLEMENTATION OF SCMS IN DIGITAL AUDIO
16 INTERFACE FORMATS

17 Various consumer devices are capable of producing
18 digital audio signals. Currently, for example, compact disc
19 players, DAT recorders and analog-to-digital converters can
20 send digital audio signals; future devices may include digi-
21 tal microphones or recordable compact disk devices. To en-
22 able communication between these different types of devices
23 and a DAR device, it is necessary and desirable to establish
24 common protocols or "interfaces" that mandate specific in-
25 formation in the digital audio output signal of each device.

1 *Digital signal interfaces may enable communication of dif-*
2 *ferent types of data. A "digital audio interface signal" com-*
3 *municates audio and related interface data as distinguished*
4 *from, for example, computer or video data. Digital audio*
5 *interface signal formats may be established for particular*
6 *types of devices or uses. For example, interface protocols*
7 *may exist for broadcast use, or for users of professional*
8 *model products ("professional interface") or for non-*
9 *professional model products ("nonprofessional interface")*
10 *or for nonprofessional model products ("nonprofessional*
11 *interface"). One such set of protocols already has been estab-*
12 *lished in the document IEC 958. Sections B and C of part*
13 *I summarize and mandate the implementation of SCMS*
14 *in the IEC 958 nonprofessional interface.*

15 *Section A sets forth the standards and specifications*
16 *for implementing SCMS in digital audio interface signals*
17 *and devices.*

18 (A) *DIGITAL AUDIO INTERFACE STANDARD.—To im-*
19 *plement the functional characteristics of SCMS in non-*
20 *professional digital audio interface signal formats, whether*
21 *presently known or developed in the future, the following*
22 *conditions must be observed:*

23 (1) *The digital audio interface format shall pro-*
24 *vide a means to indicate—*

1 (a) whether or not copyright protection is
2 being asserted via SCMS over the material being
3 sent via the interface; and

4 (b) whether or not the generation status of
5 the material being sent via the interface is origi-
6 nal.

7 (2) If the digital audio interface format has dis-
8 crete professional and nonprofessional modes, the
9 interface format and digital audio interface devices
10 shall indicate accurately the professional or non-
11 professional status of the interface signal. Such indi-
12 cation is referred to generically as a "channel status
13 block flag".

14 (3) If the interface format has a discrete mode
15 for sending data other than audio material, the inter-
16 face format shall indicate accurately whether or not
17 the interface signal contains audio material.

18 (4) If a digital audio interface device is capable
19 of combining more than one digital audio input sig-
20 nal into a single digital audio output signal, and if
21 copy right is asserted via SCMS over the material
22 being sent in at least one of the input signals, then
23 the device shall indicate in the output signal that
24 copyright is asserted over the entire output signal. If
25 copyright protection is asserted via SCMS over any

1 of the input signals, and the generation status of that
2 copyright-asserted signal is not original, then the en-
3 tire output signal shall indicate that copyright is as-
4 serted and that the generation status is not original.

5 (5) Devices that are capable of reading original
6 recordings and/or DAR media, and that are capable
7 of sending digital audio signals that can be recorded
8 by a DAR device, shall accurately read the copyright
9 and generation status information from the media
10 and accurately send that information.

11 (6) Devices having a nonprofessional digital
12 audio interface shall receive and accurately send the
13 copyright and generation status information.

14 (7) Professional devices that are capable of send-
15 ing audio information in a nonprofessional digital
16 audio interface format shall send SCMS information
17 as implemented for that format. However, nothing
18 shall prevent professional devices and/or recording
19 professionals engaged in a lawful business from set-
20 ting SCMS information according to the needs of re-
21 cording professionals.

22 (8) If the audio signal is capable of being re-
23 corded by a DAR device and the interface format re-
24 quires an indication of the type of device sending the
25 signal via the interface, then the device shall send the

1 *most accurate and specific designation applicable to*
2 *that device; for example, "Category Codes" as set*
3 *forth in part I with reference to the IEC 958 non-*
4 *professional interface.*

5 *(9) Devices that receive digital audio trans-*
6 *missions sent without copyright and generation status*
7 *information shall indicate that copyright is asserted*
8 *over the transmitted audio material and that the gen-*
9 *eration status is original. If the transmitting entity*
10 *wishes to transmit copyright status information it*
11 *shall do so accurately, and the information shall ac-*
12 *curately be received and sent unaltered by the receiv-*
13 *ing device. In the case of Electronic Audio Software*
14 *Delivery signal transmissions, the receiver shall accu-*
15 *rately receive generation status information as sent*
16 *by the transmitting entity so as to permit or restrict*
17 *recording of the transmitted signals. "Electronic*
18 *Audio Software Delivery" refers to a type of trans-*
19 *mission whereby the consumer interactively deter-*
20 *mines what specific work(s) and/or events(s) are re-*
21 *ceived. This includes, for example, "audio on de-*
22 *mand" (electronic selection and delivery of sound re-*
23 *cordings for copying) or "pay-per-listen" reception,*
24 *as distinguished from regular broadcast or com-*
25 *parable cable radio programming services.*

1 (10)(a) *If the digital audio portion of an inter-*
2 *face signal format is recordable by a “preexisting”*
3 *type of DAR device, that is, one that was distributed*
4 *prior to the distribution of the interface signal for-*
5 *mat, then the signal format shall implement the rules*
6 *of SCMS so that the preexisting DAR device will act*
7 *upon the rules of SCMS applicable to that DAR de-*
8 *vice.*

9 (b) *If a type of DAR device is capable of record-*
10 *ing the digital audio portion of signals sent by a pre-*
11 *existing digital audio interface device, then the DAR*
12 *device shall implement the rules of SCMS so that the*
13 *DAR device will act upon the rules of SCMS applica-*
14 *ble to that preexisting digital audio interface device’s*
15 *format.*

16 (c) *If a digital audio interface device is capable*
17 *of translating a signal from one interface format to*
18 *another, then the device also shall accurately translate*
19 *and send the SCMS information.*

20 (B) *SUMMARY OF SCMS IMPLEMENTATION IN THE*
21 *IEC 958 DIGITAL AUDIO INTERFACE.—Under IEC 958,*
22 *SCMS is implemented via inaudible information, known*
23 *as “channel status data”, that accompanies a digital audio*
24 *signal being sent to or by a DAR device via a non-*
25 *professional digital audio interface. Like all digital data,*

1 channel status data consist of numerical information en-
2 coded as a series of zeros and ones. Each zero or one con-
3 stitutes a "bit" of data in which both zero and one may
4 impart information concerning the composition of the audio
5 signal being sent to or by a DAR device. Bits represented
6 in this Technical Reference Document as "X", rather than
7 as zero or one, indicate that those bits may be either zero
8 or one without affecting the specifications set forth herein.

9 Channel status data bits are organized into units of
10 information, known as "blocks," relating to both the left and
11 right stereo audio channels. Each block contains 192 bits
12 of information, numbered consecutively from 0 to 191.
13 Those channel status bits that are significant to the imple-
14 mentation of SCMS via the IEC 958 interface are included
15 within channel status bits 0 through 15. Certain of these
16 16 bits identify professional or nonprofessional interfaces;
17 some specify copyright assertion; and some identify the gen-
18 eration number of a recording. The remaining bits are
19 "Category Codes" that describe the type of device sending
20 the digital audio signal. More complete descriptions of these
21 channel status bits are set forth in the remaining sections
22 of this part I.

23 IEC 958 defines professional and nonprofessional
24 interface formats for digital audio signals. An IEC 958 pro-
25 fessional interface contains particular types of channel sta-

1 *tus data for such digital audio recording devices as would*
2 *be used in professional model products. An IEC 958 non-*
3 *professional interface contains different types of channel*
4 *status data. The channel status data sent in a non-*
5 *professional interface are incompatible with the channel*
6 *status data in a professional interface; a DAR device can-*
7 *not correctly read the channel status data sent in a profes-*
8 *sional interface.*

9 *The specifications summarized herein and mandated*
10 *in section C apply only to devices that send or read an*
11 *IEC 958 nonprofessional interface signal. To the extent that*
12 *a professional device also may have a IEC 958 non-*
13 *professional interface, such a professional device must be*
14 *capable to sending channel status data via its non-*
15 *professional interface in accordance with the standards set*
16 *forth herein. However, nothing in this Technical Reference*
17 *Document shall be interpreted to prevent a professional de-*
18 *vice having an IEC 958 nonprofessional interface and/or*
19 *recording professionals engaged in a lawful business from*
20 *permitting such channel status data bits to be set in accord-*
21 *ance with the needs of recording professionals.*

22 *All devices having a digital audio output capable of*
23 *supplying a digital audio signal to a DAR device through*
24 *an IEC 958 nonprofessional interface must implement five*
25 *types of codes located between Channel Status Bits 0 and*

1 15. For the IEC 958 interface format, Channel Status Bits
2 0 through 15 are supplied in a digital audio output signal
3 to a DAR device as follows:

4 (1) BIT 0.—Bit 0 (the “Channel Status Block
5 Flag”), one of the “Control” bits, shall identify wheth-
6 er the channel status bits are for a professional or
7 nonprofessional interface. Where Bit 0 is set as “1”,
8 the signal contains the channel status data required
9 for a professional interface. Where Bit 0 is set as “0”,
10 the channel status data is suitable for a non-
11 professional interface. The remaining bit assignments
12 are mandated only with respect to a nonprofessional
13 interface, that is, where Bit 0 is set as “0”.

14 (2) BIT 1.—Bit 1, another of the “Control” bits,
15 shall identify whether the signal being sent to or by
16 the DAR device is a digital audio or a digital data
17 signal. Where Bit 1 is set as “0”, the signal is a digi-
18 tal audio signal. Where Bit 1 is set as “1”, the signal
19 is a digital data signal.

20 (3) BIT 2.—Bit 2 (the “C” Bit), another of the
21 “Control” bits, shall identify whether copyright pro-
22 tection is asserted for the audio material being sent
23 via the digital audio signal. Where the C Bit is set
24 as “0”, copyright protection has been asserted over the
25 material being sent to the digital audio input of the

1 *DAR device. Where the C Bit is set as "1", either that*
2 *material is not protected by copyright or no copyright*
3 *protection has been asserted by the owner of that ma-*
4 *terial. There are specific applications of the C Bit for*
5 *three types of devices, as follows:*

6 *Compact disc players compatible with the*
7 *standards set forth in IEC 908 (compact disc*
8 *standard, Category Code 10000000) in effect as*
9 *of the date of enactment of the Act indicate in*
10 *the C Bit both the copyright and generation sta-*
11 *tus of the signal. (See description of "Bit 15",*
12 *infra.) Where the signal is original and copy-*
13 *right protection has been asserted, the C Bit*
14 *= "0". Where no copyright protection has been*
15 *asserted, the C Bit = "1". Where the signal is*
16 *first-generation and copyright protection has*
17 *been asserted, the C Bit will fluctuate between*
18 *"0" and "1" at a rate of between 4-10 Hz.*

19 *Digital Receivers (Category Codes*
20 *001XXXXL and 0111XXXXL) shall set the C Bit*
21 *as "0", except that these devices shall send the C*
22 *Bit as "1" only where the cable operator, broad-*
23 *caster or other entity specifically transmits in-*
24 *formation indicating that no copyright protec-*
25 *tion has been asserted over the material.*

1 *Devices that combine digital audio input*
2 *signals into one digital audio output signal for*
3 *example, digital signal mixing devices) shall re-*
4 *fect whether copyright protection has been as-*
5 *serted in the C Bit for at least one of the input*
6 *signals by setting the C bit as "0" in the result-*
7 *ing digital audio output signal.*

8 *Devices in the Category Codes for General*
9 *("00000000") and Present A/D Converters*
10 *("01100XXX") are not capable of sending copy-*
11 *right status information in the C Bit. The C Bit*
12 *in the channel status data sent by these devices*
13 *has no meaning.*

14 *There is no existing legal requirement that*
15 *a copyright owner must assert protection over its*
16 *material (and, therefore, set the C Bit as "0").*
17 *However, except as provided herein with respect*
18 *to implementation in Digital Receivers (category*
19 *codes 001XXXXL and 0111XXXXL), a copyright*
20 *owner may not set the C Bit as "0" for material*
21 *that is not copyrighted or is in the public do-*
22 *main.*

23 (4) *BITS 3-7.—These bits are sent to and read*
24 *by a DAR device, but specific bit settings for Bits 3-*
25 *7 are not necessary for the implementation of SCMS.*

1 *(Bits 6–7 are Music Production Program Block*
2 *(“MPPB”) flag bits.)*

3 (5) *BITS 8–14.—Bits 8–14 shall specify a “Cat-*
4 *egory Code” that identifies the type of device that*
5 *produces the digital audio signal sent to or by a DAR*
6 *device. Using various combinations of zeros and ones,*
7 *Bits 8–14 can define Category Codes for as many as*
8 *128 different devices that can provide digital audio*
9 *signals to a DAR device. According to IEC 958, the*
10 *first three to five Category Code bits (numbered Bits*
11 *8–10 through 8–12) describe general product groups,*
12 *and the remaining Category Code bits specify par-*
13 *ticular devices within each product group. IEC 958*
14 *has assigned particular Category Codes to existing*
15 *and anticipated product groups and devices, and has*
16 *reserved additional Category Codes for future devices.*

17 *The Category Code issued by each particular de-*
18 *vice must reflect the most specific code applicable to*
19 *that device, with the following exceptions:*

20 *Digital signal processing and mixing prod-*
21 *ucts receive digital audio signals from one or*
22 *more sources and either process or combine them*
23 *with other incoming digital audio signals. If all*
24 *input signals come from analog-to-digital con-*
25 *verters having a Category Code “01100XXX”,*

1 *these devices should issue the Category Code of*
2 *an analog-to-digital converter rather than of the*
3 *digital signal processing or mixing device.*

4 *Sampling rate converters and digital sound*
5 *samplers come under the Category Codes for dig-*
6 *ital-to-digital converters. If an input signal to a*
7 *sampling rate converter or digital sound sampler*
8 *comes from an analog-to-digital converter having*
9 *a Category Code "01100XXX", the sampling rate*
10 *converter or digital sound sampler should issue*
11 *the Category Code of the analog-to-digital con-*
12 *verter.*

13 *These exception cases will permit two generations of*
14 *digital copies from analog recordings, which currently is*
15 *permitted under SCMS.*

16 *The relevance of these Category Codes to SCMS as im-*
17 *plemented for devices having the IEC 958 nonprofessional*
18 *interface is described in Section C and, specifically as to*
19 *DAT recorders, in Part II Sections B and C.*

20 (6) *BIT 15.—Bit 15 (the "L" Bit) shall indicate*
21 *the "generation status" of the digital audio signals*
22 *being sent to or by a DAR device. "Generation sta-*
23 *tus" means whether the signal emanates from a*
24 *source that has been produced or published by or with*
25 *the authority of the owner of the material, such as*

1 *commercially released pre-recorded compact discs or*
2 *digital tapes or a digital transmission (referred to*
3 *herein as “original”); or where the signal emanates*
4 *from a recording made from such “original” mate-*
5 *rial. In the latter case, a recording made directly*
6 *from an “original” source is known as a “first-gen-*
7 *eration” copy; a recording made from a first-genera-*
8 *tion copy is a “second-generation” copy; and so forth.*
9 *Because there is no restriction on the number of cop-*
10 *ies that can be made from material over which no*
11 *copyright protection has been asserted, generation sta-*
12 *tus is relevant only where copyright protection has*
13 *been asserted over the signal. For most products, if*
14 *the L Bit is set as “0”, the source is a recording that*
15 *is first-generation or higher. If the L Bit is set as*
16 *“1”, the source is “original.” There are four specific*
17 *categories of products which indicate generation sta-*
18 *tus differently, as follows:*

19 *Compact disc players compatible with the*
20 *specifications in IEC 908 (Category Code*
21 *10000000) are incapable of controlling the L Bit.*
22 *These products signal generation status solely by*
23 *means of the C Bit (Bit 2).*

24 *Digital audio output signals from all other*
25 *laser-optical products (Category Code*

1 100XXXXL) shall send the L Bit as "0" for
2 "original" material and the L Bit as "1" for
3 first-generation or higher recordings.

4 Digital Receivers (Category Codes
5 001XXXXL and 0111XXXXL) shall set the L Bit
6 as "0"; except in the case of receivers for Elec-
7 tronic Audio Software Delivery, which receivers
8 shall send the L Bit as "1" only where the entity
9 specifically transmits information indicating
10 that the material should be treated as if it were
11 first generation or higher.

12 Devices that combine more than one digital
13 audio input signal into one digital audio output
14 signal, such as digital signal processors or mix-
15 ers, shall reflect in the L Bit of the output signal
16 the highest generation status of any input con-
17 taining material over which copyright protection
18 has been asserted. Thus, where one or more of the
19 constituent input signals contains material that
20 is not original (that is, a first-generation copy)
21 and over which copyright protection is asserted,
22 then the device must reflect in the L Bit of the
23 digital audio output signal a nonoriginal gen-
24 eration status. In all other cases, the device shall

1 reflect in the L Bit that the output signal is
2 original.

3 (C) MANDATORY SPECIFICATIONS FOR IMPLEMENTING
4 SCMS IN THE IEC 958 DIGITAL AUDIO INTERFACE.—The
5 following bit assignments for channel status data, as ref-
6 erenced in the provisions of IEC 958 paragraph 4.2.2
7 “Channel status data format for digital equipment for
8 consumer use”, shall be mandatory for devices implement-
9 ing the IEC 958 interface:

10 (1) BITS 0–2 OF THE “CONTROL” BITS.—

11 (a) BIT 0 (THE “CHANNEL STATUS BLOCK
12 FLAG”):

Bit 0 = “0”	Nonprofessional interface.
Bit 0 = “1”	Professional interface.

13 (b) BIT 1:

Bit 1 = “0”	Digital audio signals.
Bit 1 = “1”	Nonaudio (data) signals.

14 (c) BIT 2 (THE “C” BIT)—

15 (i) CASE 1:

Bit 2 = “0”	Copyright protection asserted.
Bit 2 = “1”	No copyright protection asserted or not under copyright.

16 (ii) CASE 2—COMPACT DISC PLAY-
17 ERS.—For compact disc players compatible
18 with IEC 908 (Category Code 10000000),
19 the C Bit shall indicate:

Bit 2 = “0”	Copyright protection asserted and gen- eration status is “original”.
Bit 2 = “1”	No copyright protection asserted.

1 Where the Bit 2 fluctuates between '0'
2 and "1" at a rate between 4–10 Hz, copy-
3 right protection has been asserted and the
4 signal is first generation or higher.

5 (iii) CASE 3—DIGITAL RECEIVERS.—
6 For Digital Receivers (Category Codes
7 001XXXXL and 0111XXXXL), the C Bit
8 shall indicate, where copyright information
9 is transmitted to the digital receiver:

Bit 2="0"	Copyright protection asserted.
Bit 2="1"	No copyright protection asserted

10 Where no copyright information is
11 transmitted to the receiver, the digital re-
12 ceiver shall set the C Bit as "0".

13 (iv) CASE 4—DIGITAL SIGNAL MIX-
14 ERS.—Where a single digital audio output
15 signal results from the combination of more
16 than one digital audio input signal:

Bit 2="0"	Copyright protection asserted over at least one of the constituent digital audio input signals.
Bit 2="1"	For all of the constituent digital audio input signals, no copyright protec- tion asserted or not under copy- right.

17 (v) EXCEPTION CASE.—The C Bit has
18 no meaning for A/D converters for analog
19 signals that do not include status informa-
20 tion concerning the C Bit and the L Bit

1 *(that is, A/D converters in Category Code*
 2 *01100XXX).*

3 *(2) BITS 3-7.—Specific bit settings for Bits 3-*
 4 *7 are not necessary for the implementation of SCMS.*

5 *(3) CATEGORY CODE BITS 8-15:*

6 *(a) BITS 8-15.—The Category Codes that*
 7 *follow are established for particular product*
 8 *groups. Where Bit 15 is represented by “L” rath-*
 9 *er than a zero or one, Bit 15 (the “L” Bit) can*
 10 *be either a zero or one without affecting the Cat-*
 11 *egory Code. Where Bit 15 is represented by “X”*
 12 *rather than a zero or one, the device is not capa-*
 13 *ble of issuing status information concerning the*
 14 *L Bit:*

00000000

General. This category applies to products that are capable of sending channel status data but are not programmed to send such data in accordance with the specifications set forth in this Technical Reference Document because the products were manufactured before the effective date of the Act. This General Category Code shall not be used for products manufactured after the effective date of the Act.

0000001L
 100XXXXL

Experimental products not for commercial sale. Laser-optical products, such as compact disc players (including recordable and erasable compact disc players) and videodisc players with digital audio outputs.

010XXXXL

Digital-to-digital (“D/D”) converters and signal processing products.

110XXXXL

Magnetic tape or disk based products, such as DAT players and recorders.

001XXXXL and
 0111XXXXL

Receivers of digitally encoded audio transmissions with or without video signals.

101XXXXL

Musical instruments, microphones and other sources that create original digital audio signals.

01100XXX	Analog-to-digital ("A/D") converters for analog signals without status information concerning the C Bit and the L Bit ("Present A/D converters").
01101XXL	A/D converters for analog signals which include status information concerning the C Bit and the L Bit ("Future A/D converters").
0001XXXL	Solid state memory based media products.

1 Particular devices within each product group de-
2 fined above shall be assigned specific Category
3 Codes in accordance with IEC 958. Manufactur-
4 ers of any device that is capable of supplying a
5 digital audio input to a DAR device must use
6 the most specific Category Code applicable to
7 that particular device. However, digital signal
8 processing or digital signal mixing products in
9 Category Code product group "010XXXXL" shall
10 issue the Category Code for Present A/D convert-
11 ers where all the input signals have the Category
12 Code for a Present A/D converter. Similarly,
13 sampling rate converters in Category Code
14 "0101100L" and digital sound samplers in Cat-
15 egory Code "0100010L" shall issue the Category
16 Code for Present A/D converters where the input
17 signal comes from a Present A/D converter.

18 (b) BIT 15 (THE "L" BIT).—The L Bit shall
19 be used to identify the generation status of the
20 digital audio input signal as emanating from an

1 *“original” source or from a nonoriginal (that is,*
 2 *first-generation or higher) recording.*

3 (1) *CASE 1—GENERAL CASE.—For all*
 4 *Category Codes (except as explicitly set*
 5 *forth below), the L Bit shall indicate:*

<i>Bit 15 = “0”</i>	<i>First-generation or higher recording.</i>
<i>Bit 15 = “1”</i>	<i>“Original” source, such as a commercially released prerecorded digital audiogram.</i>

6 (2) *CASE 2.—LASER OPTICAL PROD-*
 7 *UCTS.—The reverse situation is valid for*
 8 *laser optical products (Category Code*
 9 *100XXXXL), other than compact disc play-*
 10 *ers compatible with IEC 908 (Category*
 11 *Code 10000000). For laser optical products*
 12 *in Category Code 100XXXXL, the L Bit*
 13 *shall indicate:*

<i>Bit 15 = “1”</i>	<i>First-generation or higher recording.</i>
<i>Bit 15 = “0”</i>	<i>“Original” recording, such as a commercially released prerecorded compact disc.</i>

14 (3) *CASE 3.—DIGITAL RECEIVERS.—*
 15 *For Digital Receivers (Category Codes*
 16 *001XXXXL and 0111XXXXL), Bit 15 always*
 17 *shall be set as “0”; except for receivers for*
 18 *Electronic Audio Software Delivery, for*
 19 *which the L Bit shall indicate:*

<i>Bit 15 = “0”</i>	<i>Generation status information transmitted as “original” material.</i>
---------------------	--

Bit 15 = "1" *Generation status information transmitted as for nonoriginal material, or no generation status information transmitted.*

1 (4) *CASE 4.—DIGITAL SIGNAL MIX-*
 2 *ERS.—Where a single digital audio output*
 3 *signal results from the combination of more*
 4 *than one digital audio input signal:*

Bit 15 = "0" *One or more of those constituent digital audio input signals over which copyright protection has been asserted is first-generation or higher.*

Bit 15 = "1" *All other cases.*

5 (5) *EXCEPTION CASE.—The L Bit has*
 6 *no meaning for A/D converters for analog*
 7 *signals that do not include status informa-*
 8 *tion concerning the C Bit and the L Bit*
 9 *(that is, A/D converters in Category Code*
 10 *01100XXX) and compact disc players in*
 11 *Category Code 10000000.*

12 *PART II. SERIAL COPY MANAGEMENT SYSTEM FOR DAR*
 13 *DEVICES AND NONPROFESSIONAL MODEL DAT RE-*
 14 *CORDERS*

15 *The intention of SCMS is generally to prevent DAR*
 16 *devices from making second-generation or higher "serial"*
 17 *digital recordings of "original" digital audio material over*
 18 *which copyright protection has been asserted through*
 19 *SCMS. SCMS does not prevent the making of a first-gen-*
 20 *eration recording of such "original" digital audio material.*
 21 *As future technologies permit, SCMS may limit the digital*

1 *recording by a DAR device of analog audio material over*
2 *which copyright protection has been asserted to the making*
3 *of only first-generation digital copies. However, because*
4 *present technology does not identify whether analog audio*
5 *material is protected by copyright, SCMS will not prevent*
6 *the making of first- and second-generation digital copies of*
7 *such material. SCMS will not restrict digital recording of*
8 *material carrying an indication through SCMS that copy-*
9 *right protection has not been asserted. SCMS does not apply*
10 *to professional model products as defined under the Act.*

11 (A) *GENERAL PRINCIPLES FOR SCMS IMPLEMENTA-*
12 *TION IN DAR DEVICES.—To implement the functional*
13 *characteristics of SCMS in DAR devices, whether presently*
14 *known or developed in the future, the following conditions*
15 *must be observed:*

16 (1) *A digital audio recording medium shall be*
17 *capable of storing an indication of—*

18 (a) *whether or not copyright protection is*
19 *being asserted over the audio material being sent*
20 *via the interface and stored on the DAR me-*
21 *diuM; and*

22 (b) *whether or not the generation status of*
23 *the audio material being sent via the interface*
24 *and stored on the DAR medium is original.*

1 (2) *If the digital audio interface format being*
2 *sent to and read by a DAR device has discrete modes*
3 *for professional as well as nonprofessional purposes,*
4 *the DAR device shall distinguish accurately the pro-*
5 *fessional or nonprofessional status of the interface sig-*
6 *nal.*

7 (3) *If the interface format has a discrete mode*
8 *for sending data other than audio material, the DAR*
9 *device shall distinguish accurately whether or not the*
10 *interface signal contains audio material.*

11 (4) *A DAR device capable of receiving and re-*
12 *coding digital audio signals shall observe the fol-*
13 *lowing rules:*

14 (a) *Audio material over which copyright is*
15 *asserted via SCMS and whose generation status*
16 *is original is permitted to be recorded. An indi-*
17 *cation that copyright is asserted over the audio*
18 *material contained in the signal and that the*
19 *generation status of the recording is first genera-*
20 *tion shall be recorded on the media.*

21 (b) *Audio material over which copyright is*
22 *not asserted via SCMS may be recorded, without*
23 *regard to generation status. An indication that*
24 *copyright is not asserted shall be recorded on the*
25 *media.*

1 (c) *Audio material over which copyright is*
2 *asserted via SCMS and whose generation status*
3 *is not original shall not be recorded.*

4 (5) *DAR media shall store the copyright and*
5 *generation status information as described herein*
6 *during recording in a manner that the information*
7 *can be accurately read.*

8 (6) *Devices that are capable of reading original*
9 *recordings and/or DAR media, and that are capable*
10 *of sending digital audio signals that can be recorded*
11 *by a DAR device, shall accurately read the copyright*
12 *and generation status information from the media*
13 *and accurately send the information.*

14 (7) *DAR devices shall not be capable of recording*
15 *digital audio signals transmitted in a professional*
16 *digital audio interface format.*

17 (8) *DAR devices having a nonprofessional digi-*
18 *tal audio interface shall receive and accurately send*
19 *the copyright and generation status information.*

20 (9) *Professional devices that are capable of send-*
21 *ing audio information in a nonprofessional digital*
22 *audio interface format shall send SCMS information*
23 *as implemented for that format. However, nothing*
24 *shall prevent professional devices and/or recording*
25 *professionals engaged in a lawful business from set-*

1 *ting SCMS information according to the needs of re-*
2 *coding professionals.*

3 *(10) Digital audio signals that are capable of*
4 *being recorded by a DAR device but that have no in-*
5 *formation concerning copyright and/or generation*
6 *status shall be recorded by the DAR device so that the*
7 *digital copy is copyright asserted and original gen-*
8 *eration status.*

9 *(11) If the signal is capable of being recorded by*
10 *a DAR device and the interface format requires an*
11 *indication of the type of device sending the signal via*
12 *the interface, then the device shall send the most accu-*
13 *rate and specific designation applicable to that de-*
14 *vice; for example, "Category Codes" as set forth in*
15 *part I with reference to the IEC 958 nonprofessional*
16 *interface.*

17 *(12) Except as may be provided pursuant to sec-*
18 *tion 1022(b)(4) of subchapter C of the Act, a DAR de-*
19 *vice that is capable of converting analog input signals*
20 *to be recorded in digital format shall indicate that the*
21 *digital copy is copyright asserted and original gen-*
22 *eration status.*

23 *(13)(a) If the digital audio portion of an inter-*
24 *face signal format is recordable by a "preexisting"*
25 *type of DAR device, that is, one that was distributed*

1 prior to the distribution of the interface signal for-
2 mat, then the signal format shall implement the rules
3 of SCMS so that the preexisting DAR device will act
4 upon the rules of SCMS applicable to that DAR de-
5 vice.

6 (b) If a type of DAR device is capable of record-
7 ing the digital audio portion of signals sent by a pre-
8 existing digital audio interface device, then the DAR
9 device shall implement the rules of SCMS so that the
10 DAR device will act upon the rules of SCMS applica-
11 ble to the format of that preexisting digital audio
12 interface device.

13 (c) If a digital audio interface device is capable
14 of translating a signal from one interface format to
15 another, then the device also shall accurately translate
16 and send the SCMS information.

17 (B) SUMMARY OF MANDATORY SCMS SPECIFICATIONS
18 FOR DAT RECORDERS.—SCMS, to be implemented for
19 DAT machines, requires that a DAT machine must play-
20 back and/or record specific inaudible data in a particular
21 location on a DAT tape. According to IEC documents “IEC
22 60A(CO)130 part 1: Digital Audio Tape Cassette System
23 (DAT) . Dimensions and Characteristics” and “IEC
24 60A(CO)136 part 6: Serial copy management system for
25 consumer audio use DAT recorders”, that particular loca-

1 *tion on the digital audio tape consists of two bits known*
2 *as “subcode ID6 in the main ID in the main data area”*
3 *(“ID6”).*

4 (1) *SCMS OPERATION WHEN PLAYING A DAT*
5 *TAPE.—With respect to the play-back function, a*
6 *DAT machine that is connected to a DAT recorder*
7 *can provide digital audio output signals via a non-*
8 *professional interface. In that circumstance, the DAT*
9 *play-back machine functions as a digital audio inter-*
10 *face device that must provide channel status data con-*
11 *forming to the general principles and specifications*
12 *set forth in part I. SCMS as implemented for the IEC*
13 *958 nonprofessional interface format requires that*
14 *when a DAT tape is played back, the DAT play-back*
15 *machine reads the information from ID6 on the tape*
16 *and then sends the corresponding channel status data*
17 *(concerning Bit 2 “the C Bit” and Bit 15 “the L*
18 *Bit”), along with the Category Code for a DAT ma-*
19 *chine, in its digital audio output signal. The channel*
20 *status data to be sent in response to the various set-*
21 *tings of ID6 are as follows:*

22 (a) *Where ID6 is set as “00”, copyright*
23 *protection has not been asserted over the mate-*
24 *rial under SCMS. In response to ID6, the digital*

1 *audio signal output of the DAT will provide the*
2 *C Bit set as "1" and the L Bit set as "0".*

3 *(b) Where ID6 is set as "10", copyright pro-*
4 *tection has been asserted over the material under*
5 *SCMS and the recording is not "original". In*
6 *response to ID6, the digital audio output signal*
7 *of the DAT will provide the C Bit set as "0" and*
8 *the L Bit set as "0".*

9 *(c) Where ID6 is set as "11", copyright pro-*
10 *tection has been asserted over the material under*
11 *SCMS and the recording is "original". In re-*
12 *sponse to ID6, the digital audio output signal of*
13 *the DAT will provide the C Bit set as "0" and*
14 *the L Bit set as "1".*

15 (2) *SCMS OPERATION WHEN RECORDING ON DAT*
16 *TAPE.—With respect to the recording function, SCMS*
17 *governs the circumstances and manner in which a*
18 *DAT recorder may record a digital audio input sig-*
19 *nal. A DAT recorder implementing SCMS informa-*
20 *tion being sent in the IEC 958 nonprofessional inter-*
21 *face format must be capable of acknowledging the*
22 *presence or absence of specific channel status informa-*
23 *tion being sent to the DAT recorder via its digital*
24 *audio input. The DAT recorder then responds to that*
25 *channel status information by either preventing or*

1 *permitting the recording of that digital audio input*
2 *signal. If recording is permitted, the DAT machine*
3 *records specific codes in ID6 on the tape, so that*
4 *when the tape is played back, the DAT machine will*
5 *issue the correct channel status data in its digital*
6 *audio output signal. The settings of ID6 to be re-*
7 *corded in response to particular IEC 958 channel sta-*
8 *tus bit information are as follows:*

9 *(a) Where the C bit of the digital audio*
10 *input signal is set as "0" (copyright protection*
11 *asserted), the DAT recorder shall not record the*
12 *input, except in three circumstances: (a) where*
13 *the input is original material and the digital*
14 *audio input signal comes from one of the prod-*
15 *ucts on the "Category Code White List" (section*
16 *D below); (b) where the digital audio input sig-*
17 *nal contains an undefined Category Code (in*
18 *which case only one generation of recording is*
19 *permitted); or, (c) where the digital audio input*
20 *signal comes from a product with a defined Cat-*
21 *egory Code but the product currently is not ca-*
22 *pable of transmitting information regarding*
23 *copyright protection (in which case, two genera-*
24 *tions of copying are possible). In circumstances*
25 *(a) and (b) above, the DAT recorder will record*

1 “10” in ID6 to prevent further copying. In cir-
2 cumstance (c) above, the DAT recorder will
3 record “11” in ID6 for the first-generation copy.

4 (b) Where the C Bit of the digital audio
5 input signal is set as “1” (no copyright protec-
6 tion asserted or not copyrighted), the DAT re-
7 corder will record “00” in ID6, and unlimited
8 generations of copying will be permitted.

9 (c) Where the C Bit of the digital audio
10 input signal fluctuates between “0” and “1” at
11 a rate of between 4–10 Hz, the signal is coming
12 from a compact disc player compatible with IEC
13 908 (Category Code 10000000) which plays back
14 a compact disc that is not an “original” and
15 that contains material over which copyright pro-
16 tection has been asserted. The DAT recorder shall
17 not record in this circumstance.

18 (d) The condition “01” in ID6 has been as-
19 signed no meaning within SCMS. Therefore, to
20 prevent circumvention of SCMS, the DAT re-
21 corder shall not record “01” in ID6 on the tape.

22 (C) MANDATORY SPECIFICATIONS FOR IMPLEMENTING
23 SCMS IN DAT RECORDERS IN THE IEC 958 FORMAT.—

24 (1) MANDATORY STANDARDS FOR DIGITAL AUDIO
25 OUTPUT SIGNALS.—

1 (a) *CATEGORY CODE BIT 15 (THE "L"*
2 *BIT).*—*All nonprofessional model DAT recorders*
3 *having a IEC 958 interface shall provide the*
4 *Category Code "1100000L" in the channel status*
5 *bits of the IEC 958 digital audio output signal.*
6 *The status of the L Bit of the Category Code*
7 *shall be provided in the digital audio output sig-*
8 *nal of the DAT recorder as follows, in accordance*
9 *with the status of ID6:*

10 When ID6 is "00", the digital audio
11 output signal shall indicate in the L Bit of
12 the Category Code that the output source is
13 either a first-generation or higher DAT tape
14 recorded from an "original" source, or an
15 "original" commercially released
16 prerecorded DAT tape of material over
17 which copyright protection is not being as-
18 serted under SCMS. In either of these cases,
19 the L Bit shall be set as "0", and the com-
20 plete Category Code would be "11000000".

21 When ID6 is "10", the digital audio
22 output signal shall indicate in the L Bit of
23 the Category Code that the output source is
24 a first-generation or higher DAT tape re-
25 corded from an "original" source (that is, L

1 Bit="0"). The complete Category Code in
2 this case would be "11000000".

3 When ID6 is "11", the digital audio
4 output signal shall indicate in the L Bit of
5 the Category Code that the output source is
6 an "original" source, such as a commer-
7 cially released prerecorded DAT tape (that
8 is, L Bit="1"). The complete Category
9 Code in this case would be "11000001".

10 (b) BIT 2 (THE "C" BIT).—All non-
11 professional model DAT recorders having an
12 IEC 958 nonprofessional interface shall provide
13 an output code in the C Bit in the channel sta-
14 tus bits of the IEC 958 digital audio output sig-
15 nal. The C Bit shall be applied in the digital
16 audio output signal as follows, in accordance
17 with the status of ID6:

18 When ID6 is "00", the C Bit shall be
19 set as "1".

20 When ID6 is "10" or "11", the C Bit
21 shall be set as "0".

22 (2) MANDATORY SPECIFICATIONS FOR RECORD-
23 ING FUNCTIONS.—SCMS with respect to recording
24 functions performed by a nonprofessional model DAT
25 recorder receiving digital audio input signals in the

1 *IEC 958 nonprofessional interface format shall be im-*
2 *plemented as follows:*

3 *(a) Digital audio input signals in which*
4 *the C Bit is set as "0" shall not be recorded, ex-*
5 *cept for the cases specified below in paragraphs*
6 *b, d, and e.*

7 *(b) A DAT recorder may record a digital*
8 *audio input signal in which the C Bit is set as*
9 *"0", where the Category Code of the signal is*
10 *listed in the "Category Code White List." The*
11 *DAT recorder shall record "10" in ID6 on the*
12 *tape in this case.*

13 *(c) For digital audio input signals in which*
14 *the C Bit is set as "1", the DAT recorder shall*
15 *record "00" in ID6 on the tape except for those*
16 *cases specified below in paragraphs d and e.*

17 *(d) For digital audio input signals that*
18 *contain Category Code information that is not*
19 *defined in this document, the DAT recorder shall*
20 *record "10" in ID6, regardless of the status of*
21 *the C Bit or the L Bit.*

22 *(e) For digital audio input signals originat-*
23 *ing from a source identified as an A/D converter*
24 *with the Category Code "01100XXL", or from*
25 *other sources such as from A/D converters with*

1 the Category Code for "General" ("00000000"),
2 the DAT recorder shall record "11" in ID6, re-
3 gardless of the status of the C Bit or the L Bit.
4 This requirement shall be applied to digital
5 input signals that do not contain source infor-
6 mation of the original signal before digitization,
7 for example, and A/D converter that does not de-
8 liver source information.

9 (f) For digital input signals originating
10 from an A/D converter with the Category Code
11 "01101XXL", which can deliver original source
12 information concerning the C Bit and L Bit
13 even if the source is in analog format, the re-
14 quirement stated above in paragraph e shall not
15 be applied. The "Category Code White List" in-
16 cludes this Category Code.

17 (g) A DAT tape of "original" generation
18 status over which copyright protection has been
19 asserted shall contain "11" in ID6. A DAT tape
20 of "original" generation status over which no
21 copyright protection has been asserted shall con-
22 tain "00" in ID6.

23 (h) A DAT recorder shall not record digital
24 audio input signals where the C Bit alternates
25 between "0" and "1" at a frequency of between

1 4 and 10 Hz and the Category Code is for a
 2 Compact disc digital audio signal (“10000000”),
 3 as in the case of digital audio input signals from
 4 recordable or erasable compact discs that are not
 5 “original” and that contain material over which
 6 copyright protection has been asserted.

7 (i) A nonprofessional model DAT recorder
 8 shall not record digital audio input signals sent
 9 from a professional interface, that is, where
 10 channel status Bit 0 is set as “1”.

11 (j) The condition “01” in ID6 is not to be
 12 used.

13 (k) Category codes and the C Bit included
 14 in the channel status information of digital
 15 audio input signals being sent to or by a DAT
 16 recorder shall not be deleted or modified and
 17 shall be monitored continuously and acted upon
 18 accordingly.

19 (D) “CATEGORY CODE WHITE LIST”.—

100XXXX0	Laser optical product.
010XXXX1	Digital-to-digital converter and signal processing devices.
110XXXX1	Magnetic tape and disk based product.
001XXXX0 and 0111XXXX0	Receivers of digitally encoded audio transmissions with or without video signals.
101XXXX1	Musical instruments.
0110LXX1	Future A/D converter (with status information concerning the C Bit and L Bit).
0001XXX1	Solid state memory based media products.
00000011	Experimental products not for commercial sale.

1 *PART III. APPLICATION OF SCMS IN DAT RECORDERS*2 *IMPLEMENTING THE IEC 958 INTERFACE*

3 *The following charts apply and correlate those codes*
4 *that are mandated under the Act to implement SCMS in*
5 *nonprofessional model DAT recorders having an IEC 958*
6 *nonprofessional interface, in those situations contemplated*
7 *by these standards. The columns in each of these charts*
8 *identify the following information:*

9 *The "Signal Source" column describes the type of*
10 *product sending the digital audio signal to a DAT recorder.*

11 *The three columns under the heading "Digital Audio*
12 *Input Signal," that is, the signal sent to the DAT recorder,*
13 *identify the correct channel status information in the C Bit,*
14 *Category Code Bits 8–14 and the L Bit, respectively, which*
15 *correspond to each product. (In each case, Bit 0 will be "0"*
16 *to indicate that the signal is being sent in the IEC 958*
17 *nonprofessional interface format, and Bit 1 will be "0" to*
18 *indicate that the signal consists of audio data.)*

19 *The next three columns under the heading "DAT Re-*
20 *recorder Response" identify the response of the DAT recorder*
21 *to the corresponding digital audio input signal. The column*
22 *"ID6" specifies the code that the DAT recorder will record*
23 *on the tape in ID6 in response to the digital audio input*
24 *signal. The last two columns set forth the correct channel*
25 *status information in the C Bit and L Bit that are sent*

- 1 in the digital audio output signal of a DAT recorder in
- 2 response to the setting of ID6.
- 3 Each of the appropriate codes is set forth in the cases
- 4 described below:

Case 1: Where copyright protection has been asserted over the digital audio input, and the source of the input is "original" material (Only first-generation recording permitted):

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8-14)	L bit (Bit 15)	ID6	C Bit (Bit 2)	L bit (Bit 15)
Laser Optical	0	100XXXX	0	10	0	0
D/D converter	0	010XXXX	1	10	0	0
Magnetic prod.	0	110XXXX	1	10	0	0
Musical Instrum.	0	101XXXX	1	10	0	0
Future A/D conv.	0	0110LXX	1	10	0	0
Digital Receiver	0	001XXXX	0	10	0	0
Digital Receiver	0	0111XXX	0	10	0	0
Experimental	0	0000001	1	10	0	0
Solid state dev.	0	0001XXX	1	10	0	0

Case 2: Where copyright protection has not been asserted over the digital audio input, and the source of the input is "original" material (First-generation and above recording permitted):

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8-14)	L bit (Bit 15)	ID6	C Bit (Bit 2)	L bit (Bit 15)
Laser Optical	1	100XXXX	0	00	1	0
D/D converter	1	010XXXX	1	00	1	0
Magnetic prod.	1	110XXXX	1	00	1	0
Musical Instrum.	1	101XXXX	1	00	1	0
Future A/D conv.	1	0110LXX	1	00	1	0
Digital Receiver	1	001XXXX	0	00	1	0
Digital Receiver	1	0111XXX	0	00	1	0
Experimental	1	0000001	1	00	1	0
Solid state dev.	1	0001XXX	1	00	1	0

Case 3: Where copyright protection has been asserted over the digital audio input, and the source of the input to the DAT recorder is not "original" material (No recording permitted):

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8-14)	L bit (Bit 15)	ID6	C Bit (Bit 2)	L bit (Bit 15)
Laser Optical	0	100XXXX	1	.....	.....	.....
D/D converter	0	010XXXX	0	.....	.....	.....
Magnetic prod.	0	110XXXX	0	.....	.....	.....
Musical Instrum.	0	101XXXX	0	.....	.....	.....
Future A/D conv.	0	0110LXX	0	.....	.....	.....
Experimental	0	0000001	0	.....	.....	.....
Solid state dev.	0	0001XXX	0	.....	.....	.....

Case 4: Where copyright protection has not been asserted over the digital audio input, and the source of the input to the DAT recorder is not "original" material (Second-generation and above recording permitted):

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8-14)	L bit (Bit 15)	ID6	C Bit (Bit 2)	L bit (Bit 15)
Laser Optical	1	100XXXX	1	00	1	0

Case 4: Where copyright protection has not been asserted over the digital audio input, and the source of the input to the DAT recorder is not "original" material (Second-generation and above recording permitted):—Continued

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8–14)	L bit (Bit 15)	ID6	C Bit (Bit 2)	L bit (Bit 15)
D/D converter	1	010XXXX	0	00	1	0
Magnetic prod.	1	110XXXX	0	00	1	0
Musical Instrum.	1	101XXXX	0	00	1	0
Future A/D conv.	1	0110LXX	0	00	1	0
Experimental	1	0000001	0	00	1	0
Solid state dev.	1	0001XXX	0	00	1	0

Case 5: Where the digital audio input signal includes Category Code information, but cannot provide information concerning copyright protection of the source (First- and second-generation recording permitted):

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8–14)	L bit (Bit 15)	ID6	C Bit (Bit 2)	L bit (Bit 15)
General	X	0000000	0	11	0	1
Present A/D Con	X	01100XX	X	11	0	1

Case 6: Where the digital input signal does not include a defined Category Code (First-generation recording permitted):

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8–14)	L bit (Bit 15)	ID6	C Bit (Bit 2)	L bit (Bit 15)
Undefined	X	.....	X	10	0	0

Case 7: Where copyright protection has been asserted over the digital audio input from a compact disc that is not an "original" by fluctuating the C Bit at a rate between 4–10 Hz (No recording permitted):

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8–14)	L bit (Bit 15)	ID6	C Bit (Bit 2)	L bit (Bit 15)
CD Player	0/1	1000000	X	.....	.....	.....

Case 8: Where the digital signal transmitted to a Digital Receiver does not include information concerning copyright protection (Only first-generation recording permitted):

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8–14)	L bit (Bit 15)	ID6	C Bit (Bit 2)	L bit (Bit 15)
Digital Receiver	0	001XXXX	0	10	0	0
Digital Receiver	0	0111XXX	0	10	0	0

Case 9: Where the digital signal transmitted to a receiver for Electronic Audio Software Delivery provides generation status information as if the status were first-generation or higher (No recording permitted):

Signal Source	Digital Audio Input Signal			DAT Recorder Response		
	C Bit (Bit 2)	Category code (Bits 8–14)	L bit (Bit 15)	ID6	C Bit (Bit 2)	L bit (Bit 15)
Digital Receiver	0	001XXXX	1
Digital Receiver	0	0111XXX	1

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102D CONGRESS
1ST SESSION

S. 1623

A BILL

To amend title 17, United States Code, to implement a royalty payment system and a serial copy management system for digital audio recording, to prohibit certain copyright infringement actions, and for other purposes.

NOVEMBER 27 (legislative day, NOVEMBER 23), 1991

Reported with an amendment