

109TH CONGRESS
1ST SESSION

H. R. 1036

IN THE SENATE OF THE UNITED STATES

NOVEMBER 17, 2005

Received; read twice and referred to the Committee on the Judiciary

AN ACT

To amend title 17, United States Code, to make technical corrections relating to Copyright Royalty Judges, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Copyright Royalty
3 Judges Program Technical Corrections Act”.

4 **SEC. 2. REFERENCE.**

5 Any reference in this Act to a provision of title 17,
6 United States Code, refers to such provision as amended
7 by the Copyright Royalty and Distribution Reform Act of
8 2004 (Public Law 108–419) and the Satellite Home View-
9 er Extension and Reauthorization Act of 2004 (title IX
10 of division J of Public Law 108–447).

11 **SEC. 3. AMENDMENTS TO CHAPTER 8 OF TITLE 17, UNITED**
12 **STATES CODE.**

13 Chapter 8 of title 17, United States Code, is amended
14 as follows:

15 (1) Section 801(b)(1) is amended, in the matter
16 preceding subparagraph (A), by striking “119 and
17 1004” and inserting “119, and 1004”.

18 (2) Section 801 is amended by adding at the
19 end the following:

20 “(f) EFFECTIVE DATE OF ACTIONS.—On and after
21 the date of the enactment of the Copyright Royalty and
22 Distribution Reform Act of 2004, in any case in which
23 time limits are prescribed under this title for performance
24 of an action with or by the Copyright Royalty Judges, and
25 in which the last day of the prescribed period falls on a
26 Saturday, Sunday, holiday, or other nonbusiness day with-

1 in the District of Columbia or the Federal Government,
2 the action may be taken on the next succeeding business
3 day, and is effective as of the date when the period ex-
4 pired.”.

5 (3) Section 802(f)(1)(A) is amended—

6 (A) in clause (i), by striking “clause (ii) of
7 this subparagraph and subparagraph (B)” and
8 inserting “subparagraph (B) and clause (ii) of
9 this subparagraph”; and

10 (B) by striking clause (ii) and inserting the
11 following:

12 “(ii) One or more Copyright Royalty
13 Judges may, or by motion to the Copyright
14 Royalty Judges, any participant in a proceeding
15 may, request from the Register of Copyrights
16 an interpretation of any material questions of
17 substantive law that relate to the construction
18 of provisions of this title and arise in the course
19 of the proceeding. Any request for a written in-
20 terpretation shall be in writing and on the
21 record, and reasonable provision shall be made
22 to permit participants in the proceeding to com-
23 ment on the material questions of substantive
24 law in a manner that minimizes duplication and
25 delay. Except as provided in subparagraph (B),

1 the Register of Copyrights shall deliver to the
2 Copyright Royalty Judges a written response
3 within 14 days after the receipt of all briefs and
4 comments from the participants. The Copyright
5 Royalty Judges shall apply the legal interpreta-
6 tion embodied in the response of the Register of
7 Copyrights if it is timely delivered, and the re-
8 sponse shall be included in the record that ac-
9 companies the final determination. The author-
10 ity under this clause shall not be construed to
11 authorize the Register of Copyrights to provide
12 an interpretation of questions of procedure be-
13 fore the Copyright Royalty Judges, the ultimate
14 adjustments and determinations of copyright
15 royalty rates and terms, the ultimate distribu-
16 tion of copyright royalties, or the acceptance or
17 rejection of royalty claims, rate adjustment pe-
18 titions, or petitions to participate in a pro-
19 ceeding.”.

20 (4) Section 802(f)(1)(D) is amended by insert-
21 ing a comma after “undertakes to consult with”.

22 (5) Section 803(a)(1) is amended—

23 (A) by striking “The Copyright” and in-
24 serting “The Copyright Royalty Judges shall
25 act in accordance with this title, and to the ex-

1 tent not inconsistent with this title, in accord-
2 ance with subchapter II of chapter 5 of title 5,
3 in carrying out the purposes set forth in section
4 801. The Copyright”; and

5 (B) by inserting after “Congress, the Reg-
6 ister of Copyrights,” the following: “copyright
7 arbitration royalty panels (to the extent those
8 determinations are not inconsistent with a deci-
9 sion of the Librarian of Congress or the Reg-
10 ister of Copyrights),”.

11 (6) Section 803(b) is amended—

12 (A) in paragraph (1)(A)(i)(V)—

13 (i) by striking “in the case of” and in-
14 sserting “the publication of notice require-
15 ment shall not apply in the case of”; and

16 (ii) by striking “, such notice may not
17 be published.”;

18 (B) in paragraph (2)—

19 (i) in subparagraph (A), by striking“,
20 together with a filing fee of \$150”;

21 (ii) in subparagraph (B), by striking
22 “and” after the semicolon;

23 (iii) in subparagraph (C), by striking
24 the period and inserting “; and”; and

1 (iv) by adding at the end the fol-
2 lowing:

3 “(D) the petition to participate is accom-
4 panied by either—

5 “(i) in a proceeding to determine roy-
6 alty rates, a filing fee of \$150; or

7 “(ii) in a proceeding to determine dis-
8 tribution of royalty fees—

9 “(I) a filing fee of \$150; or

10 “(II) a statement that the peti-
11 tioner (individually or as a group) will
12 not seek a distribution of more than
13 \$1000, in which case the amount dis-
14 tributed to the petitioner shall not ex-
15 ceed \$1000.”;

16 (C) in paragraph (3)(A)—

17 (i) by striking “(A) IN GENERAL.—
18 Promptly” and inserting “(A) COMMENCE-
19 MENT OF PROCEEDINGS.—

20 “(i) RATE ADJUSTMENT PRO-
21 CEEDING.—Promptly”; and

22 (ii) by adding at the end the fol-
23 lowing:

24 “(ii) DISTRIBUTION PROCEEDING.—
25 Promptly after the date for filing of peti-

1 tions to participate in a proceeding to de-
2 termine the distribution of royalties, the
3 Copyright Royalty Judges shall make
4 available to all participants in the pro-
5 ceeding a list of such participants. The ini-
6 tiation of a voluntary negotiation period
7 among the participants shall be set at a
8 time determined by the Copyright Royalty
9 Judges.”.

10 (D) in paragraph (4)(A), by striking the
11 last sentence; and

12 (E) in paragraph (6)(C)—

13 (i) in clause (i)—

14 (I) in the first sentence, by in-
15 serting “and written rebuttal state-
16 ments” after “written direct state-
17 ments”;

18 (II) in the first sentence, by
19 striking “which may” and inserting
20 “which, in the case of written direct
21 statements, may”; and

22 (III) by striking “clause (iii)”
23 and inserting “clause (iv)”;

24 (ii) by amending clause (ii)(I) to read
25 as follows:

1 “(ii)(I) Following the submission to
2 the Copyright Royalty Judges of written
3 direct statements and written rebuttal
4 statements by the participants in a pro-
5 ceeding under paragraph (2), the Copy-
6 right Royalty Judges, after taking into
7 consideration the views of the participants
8 in the proceeding, shall determine a sched-
9 ule for conducting and completing dis-
10 covery.”;

11 (iii) by amending clause (iv) to read
12 as follows:

13 “(iv) Discovery in connection with
14 written direct statements shall be per-
15 mitted for a period of 60 days, except for
16 discovery ordered by the Copyright Royalty
17 Judges in connection with the resolution of
18 motions, orders, and disputes pending at
19 the end of such period. The Copyright
20 Royalty Judges may order a discovery
21 schedule in connection with written rebut-
22 tal statements.”; and

23 (iv) by amending clause (x) to read as
24 follows:

1 “(x) The Copyright Royalty Judges
2 shall order a settlement conference among
3 the participants in the proceeding to facili-
4 tate the presentation of offers of settle-
5 ment among the participants. The settle-
6 ment conference shall be held during a 21-
7 day period following the 60-day discovery
8 period specified in clause (iv) and shall
9 take place outside the presence of the
10 Copyright Royalty Judges.”.

11 (7) Section 803(c)(2)(B) is amended by striking
12 “concerning rates and terms”.

13 (8) Section 803(c)(4) is amended by striking “,
14 with the approval of the Register of Copyrights,”.

15 (9) Section 803(c)(7) is amended by striking
16 “of Copyright” and inserting “of the Copyright”.

17 (10) Section 803(d)(2)(C)(i)(I) is amended by
18 striking “statements of account and any report of
19 use” and inserting “applicable statements of account
20 and reports of use”.

21 (11) Section 803(d)(3) is amended by striking
22 “If the court, pursuant to section 706 of title 5,
23 modifies” and inserting “Section 706 of title 5 shall
24 apply with respect to review by the court of appeals
25 under this subsection. If the court modifies”.

1 (12) Section 804(b)(1)(B) is amended—

2 (A) by striking “801(b)(3)(B) or (C)” and
3 inserting “801(b)(2)(B) or (C)”; and

4 (B) in the last sentence, by striking
5 “change is” and inserting “change in”.

6 (13) Section 804(b)(3) is amended—

7 (A) in subparagraph (A), by striking “ef-
8 fective date” and inserting “date of enact-
9 ment”; and

10 (B) in subparagraph (C)—

11 (i) in clause (ii), by striking “that is
12 filed” and inserting “is filed”; and

13 (ii) in clause (iii), by striking “such
14 subsections (b)” and inserting “subsections
15 (b)”.

16 **SEC. 4. ADDITIONAL TECHNICAL AMENDMENTS.**

17 (a) **DISTRIBUTION OF ROYALTY FEES.**—Section
18 111(d) of title 17, United States Code, is amended—

19 (1) in the second sentence of paragraph (2), by
20 striking all that follows “Librarian of Congress” and
21 inserting “upon authorization by the Copyright Roy-
22 alty Judges.”;

23 (2) in paragraph (4)—

24 (A) in subparagraph (B)—

1 (i) by striking the second sentence
2 and inserting the following: “If the Copy-
3 right Royalty Judges determine that no
4 such controversy exists, the Copyright Roy-
5 alty Judges shall authorize the Librarian
6 of Congress to proceed to distribute such
7 fees to the copyright owners entitled to re-
8 ceive them, or to their designated agents,
9 subject to the deduction of reasonable ad-
10 ministrative costs under this section.”; and

11 (ii) in the last sentence, by striking
12 “finds” and inserting “find”; and

13 (B) by striking subparagraph (C) and in-
14 serting the following:

15 “(C) During the pendency of any pro-
16 ceeding under this subsection, the Copyright
17 Royalty Judges shall have the discretion to au-
18 thorize the Librarian of Congress to proceed to
19 distribute any amounts that are not in con-
20 troversy.”.

21 (b) SOUND RECORDINGS.—Section 114(f) of title 17,
22 United States Code, is amended—

23 (1) in paragraph (1)(A), in the first sentence,
24 by striking “except where” and all that follows
25 through the end period and inserting “except in the

1 case of a different transitional period provided under
2 section 6(b)(3) of the Copyright Royalty and Dis-
3 tribution Reform Act of 2004, or such other period
4 as the parties may agree.”;

5 (2) by amending paragraph (2)(A) to read as
6 follows:

7 “(2)(A) Proceedings under chapter 8 shall de-
8 termine reasonable rates and terms of royalty pay-
9 ments for public performances of sound recordings
10 by means of eligible nonsubscription transmission
11 services and new subscription services specified by
12 subsection (d)(2) during the 5-year period beginning
13 on January 1 of the second year following the year
14 in which the proceedings are to be commenced, ex-
15 cept in the case of a different transitional period
16 provided under section 6(b)(3) of the Copyright Roy-
17 alty and Distribution Reform Act of 2004, or such
18 other period as the parties may agree. Such rates
19 and terms shall distinguish among the different
20 types of eligible nonsubscription transmission serv-
21 ices and new subscription services then in operation
22 and shall include a minimum fee for each such type
23 of service. Any copyright owners of sound recordings
24 or any entities performing sound recordings affected
25 by this paragraph may submit to the Copyright Roy-

1 alty Judges licenses covering such eligible non-
2 subscription transmissions and new subscription
3 services with respect to such sound recordings. The
4 parties to each proceeding shall bear their own
5 costs.”; and

6 (3) in paragraph (2)(B), in the last sentence,
7 by striking “negotiated under” and inserting “de-
8 scribed in”.

9 (c) PHONORECORDS OF NONDRAMATIC MUSICAL
10 WORKS.—Section 115(c)(3) of title 17, United States
11 Code, is amended—

12 (1) in subparagraph (B), by striking “subpara-
13 graphs (B) through (F)” and inserting “this sub-
14 paragraph and subparagraphs (C) through (E)”;

15 (2) in subparagraph (D), in the third sentence,
16 by inserting “in subparagraphs (B) and (C)” after
17 “described”; and

18 (3) in subparagraph (E), in clauses (i) and
19 (ii)(I), by striking “(C) or (D)” each place it ap-
20 pears and inserting “(C) and (D)”.

21 (d) NONCOMMERCIAL BROADCASTING.—Section 118
22 of title 17, United States Code, is amended—

23 (1) in subsection (b)(3), by striking “copyright
24 owners in works” and inserting “owners of copyright
25 in works”; and

1 (2) in subsection (c)—

2 (A) in the matter preceding paragraph (1),
3 by striking “established by” and all that follows
4 through “engage” and inserting “established by
5 the Copyright Royalty Judges under subsection
6 (b)(4), engage”; and

7 (B) in paragraph (1), by striking “(g)”
8 and inserting “(f)”.

9 (e) SATELLITE CARRIERS.—Section 119 of title 17,
10 United States Code, is amended—

11 (1) in subsection (b)(4)—

12 (A) in subparagraph (B), by striking the
13 second sentence and inserting the following: “If
14 the Copyright Royalty Judges determine that
15 no such controversy exists, the Copyright Roy-
16 alty Judges shall authorize the Librarian of
17 Congress to proceed to distribute such fees to
18 the copyright owners entitled to receive them,
19 or to their designated agents, subject to the de-
20 duction of reasonable administrative costs
21 under this section.”; and

22 (B) by amending subparagraph (C) to read
23 as follows:

24 “(C) WITHHOLDING OF FEES DURING
25 CONTROVERSY.—During the pendency of any

1 proceeding under this subsection, the Copyright
2 Royalty Judges shall have the discretion to au-
3 thorize the Librarian of Congress to proceed to
4 distribute any amounts that are not in con-
5 troversy.”; and

6 (2) in subsection (c)(1)(F)(i), in the last sen-
7 tence, by striking “arbitrary” and inserting “arbitra-
8 tion”.

9 (f) DIGITAL AUDIO RECORDING DEVICES.—Section
10 1007 of title 17, United States Code, is amended—

11 (1) in subsection (b)—

12 (A) in the second sentence, by striking
13 “Librarian of Congress” and inserting “Copy-
14 right Royalty Judges”; and

15 (B) in the last sentence, by striking “by
16 the Librarian”; and

17 (2) in subsection (c), in the last sentence, by
18 striking “by the Librarian”.

19 (g) REMOVAL OF INCONSISTENT PROVISIONS.—The
20 amendments contained in subsection (h) of section 5 of
21 the Copyright Royalty and Distribution Reform Act of
22 2004 shall be deemed never to have been enacted.

23 (h) EFFECTIVE DATE.—Section 6(b)(1) of the Copy-
24 right Royalty and Distribution Reform Act of 2004 (Pub-
25 lic Law 108–419) is amended by striking “commenced be-

1 fore the date of enactment of this Act” and inserting
2 “commenced before the effective date provided in sub-
3 section (a)”.

4 **SEC. 5. EFFECTIVE DATE.**

5 This Act and the amendments made by this Act shall
6 be effective as if included in the Copyright Royalty and
7 Distribution Reform Act of 2004.

 Passed the House of Representatives November 16,
2005.

Attest:

JEFF TRANDAHL,

Clerk.