

102D 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, and Mr. BREAUX) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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".

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

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“SUBCHAPTER C—THE SERIAL COPY MANAGEMENT SYSTEM

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“SUBCHAPTER D—REMEDIES

“1031. Civil remedies.

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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
 13 their variant forms mean the following:

1 “(1) A ‘digital audio copied recording’ is a re-
2 production in a digital recording format of a phono-
3 record, whether that reproduction is made directly
4 from another phonorecord or indirectly from a trans-
5 mission.

6 “(2) A ‘digital audio interface device’ is any
7 machine or device, now known or later developed,
8 whether or not included with or as part of some
9 other machine or device, that supplies a digital audio
10 signal through a nonprofessional interface, as the
11 term ‘nonprofessional interface’ is used in the Digi-
12 tal Audio Interface Standard in part I of the techni-
13 cal reference document or as otherwise defined by
14 the Secretary of Commerce under section 1022(b).

15 “(3) A ‘digital audio recording device’ is any
16 machine or device, now known or later developed,
17 whether or not included with or as part of some
18 other machine or device, the recording function of
19 which is designed or marketed for the primary pur-
20 pose of, and that is capable of, making a digital
21 audio copied recording for private use, except for—

22 “(A) professional model products, and

23 “(B) dictation machines, answering ma-
24 chines, and other audio recording equipment
25 that is designed and marketed primarily for the

1 creation of sound recordings resulting from the
2 fixation of nonmusical sounds.

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

11 “(B) Such term does not include any material
12 object—

13 “(i) that embodies a sound recording at
14 the time it is first distributed by the importer
15 or manufacturer, unless the sound recording
16 has been so embodied in order to evade the obli-
17 gations of section 1011 of this title; or

18 “(ii) that is primarily marketed and most
19 commonly used by consumers either for the
20 purpose of making copies of motion pictures or
21 other audiovisual works or for the purpose of
22 making copies of nonmusical literary works, in-
23 cluding, without limitation, computer programs
24 or data bases.

1 “(5) ‘Distribute’ means to sell, resell, lease, or
2 assign a product to consumers in the United States,
3 or to sell, resell, lease, or assign a product in the
4 United States for ultimate transfer to consumers in
5 the United States.

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

7 “(A) the owner of the exclusive right under
8 section 106(1) of this title to reproduce a sound
9 recording of a musical work that has been em-
10 bodied in a phonorecord lawfully made under
11 this title that has been distributed to the public;

12 “(B) the legal or beneficial owner of, or
13 the person that controls, the right to reproduce
14 in a phonorecord a musical work that has been
15 embodied in a phonorecord lawfully made under
16 this title that has been distributed to the public;
17 or

18 “(C) any association or other
19 organization—

20 “(i) representing persons specified in
21 subparagraph (A) or (B), or

22 “(ii) engaged in licensing rights in
23 musical works to music users on behalf of
24 writers and publishers.

1 “(7) An ‘interested manufacturing party’ is any
2 person that imports or manufactures any digital
3 audio recording device or digital audio recording me-
4 dium in the United States, or any association of
5 such persons.

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

8 “(9) A ‘music publisher’ is a person that is au-
9 thORIZED to license the reproduction of a particular
10 musical work in a sound recording.

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

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

21 “(ii) that is clearly, prominently, and per-
22 manently marked with the letter ‘P’ or the word
23 ‘professional’ on the outside of its packaging,
24 and in all advertising, promotional, and descrip-
25 tive literature, with respect to the device, that

1 is available or provided to persons other than
2 the manufacturer or importer, its employees, or
3 its agents; and

4 “(iii) that is designed, manufactured, mar-
5 keted, and intended for use by recording profes-
6 sionals in the ordinary course of a lawful busi-
7 ness.

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

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

14 “(I) a data collection and reporting
15 system of error codes during recording and
16 playback;

17 “(II) a record and reproduce format
18 providing ‘read after write’ and ‘read after
19 read’;

20 “(III) a time code reader and genera-
21 tor conforming to the standards set by the
22 Society of Motion Picture and Television
23 Engineers for such readers and generators;
24 and

1 “(IV) a professional input/output
2 interface, both digital and analog, conform-
3 ing to standards set by audio engineering
4 organizations for connectors, signaling for-
5 mats, levels, and impedances;

6 “(ii) the nature of the promotional materi-
7 als used to market the audio recording device;

8 “(iii) the media used for the dissemination
9 of the promotional materials, including the in-
10 tended audience;

11 “(iv) the distribution channels and retail
12 outlets through which the device is disseminat-
13 ed;

14 “(v) the manufacturer’s or importer’s price
15 for the device as compared to the manufactur-
16 er’s or importer’s price for digital audio record-
17 ing devices implementing the Serial Copy Man-
18 agement System;

19 “(vi) the relative quantity of the device
20 manufactured or imported as compared to the
21 size of the manufacturer’s or importer’s market
22 for professional model products;

23 “(vii) the occupations of the purchasers of
24 the device; and

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

1 “(11) The ‘Register’ is the Register of Copy-
2 rights.

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

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

17 “(14)(A) The ‘transfer price’ of a digital audio
18 recording device or a digital audio recording medium
19 is—

20 “(i) in the case of an imported product,
21 the actual entered value at United States Cus-
22 toms (exclusive of any freight, insurance, and
23 applicable duty), and

24 “(ii) in the case of a domestic product, the
25 manufacturer’s transfer price (FOB the manu-

1 factorer, and exclusive of any direct sales taxes
2 or excise taxes incurred in connection with the
3 sale).

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

11 “(15) A ‘transmission’ is any audio or audiovis-
12 ual transmission, now known or later developed,
13 whether by a broadcast station, cable system,
14 multipoint distribution service, subscription service,
15 direct broadcast satellite, or other form of analog or
16 digital communication.

17 “(16) The ‘Tribunal’ is the Copyright Royalty
18 Tribunal.

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

21 “(18) The terms ‘analog format’, ‘copyright
22 status’, ‘category code’, ‘generation status’, and
23 ‘source material’, mean those terms as they are used
24 in the technical reference document.

1 **“§ 1002. Prohibition on certain infringement actions**

2 “(a) CERTAIN ACTIONS PROHIBITED.—

3 “(1) GENERALLY.—No action may be brought
4 under this title, or under section 337 of the Tariff
5 Act of 1930, alleging infringement of copyright
6 based on the manufacture, importation, or distribu-
7 tion of a digital audio recording device or a digital
8 audio recording medium, or an analog audio record-
9 ing device or analog audio recording medium, or the
10 use of such a device or medium for making
11 phonorecords. However, this subsection does not
12 apply with respect to any claim against a person for
13 infringement by virtue of the making of one or more
14 copies or phonorecords for direct or indirect com-
15 mercial advantage.

16 “(2) EXAMPLE.—For purposes of this section,
17 the copying of a phonorecord by a consumer for pri-
18 vate, noncommercial use is not for direct or indirect
19 commercial advantage, and is therefore not action-
20 able.

21 “(b) EFFECT OF THIS SECTION.—Nothing in this
22 section shall be construed to create or expand a cause of
23 action for copyright infringement except to the extent such
24 a cause of action otherwise exists under other chapters
25 of this title or under section 337 of the Tariff Act of 1930,

1 or to limit any defenses that may be available to such
2 causes of action.

3 **“§ 1003. Effect on other rights and remedies with re-**
4 **spect to private home copying or other-**
5 **wise**

6 “Except as expressly provided in this chapter with
7 respect to audio recording devices and media, neither the
8 enactment of this chapter nor anything contained in this
9 chapter shall be construed to expand, limit, or otherwise
10 affect the rights of any person with respect to private
11 home copying of copyrighted works, or to expand, limit,
12 create, or otherwise affect any other right or remedy that
13 may be held by or available to any person under chapters
14 1 through 9 of this title.

15 **“SUBCHAPTER B—ROYALTY PAYMENTS**

16 **“§ 1011. Obligation to make royalty payments**

17 **“(a) PROHIBITION ON IMPORTATION AND MANUFAC-**
18 **TURE.—**No person shall import into and distribute in the
19 United States, or manufacture and distribute in the Unit-
20 ed States, any digital audio recording device or digital
21 audio recording medium unless such person—

22 **“(1)** records the notice specified by this section
23 and subsequently deposits the statements of account
24 and applicable royalty payments for such device or

1 medium specified by this section and section 1012 of
2 this title, or

3 “(2) complies with the applicable notice, state-
4 ment of account, and payment obligations under a
5 negotiated arrangement authorized pursuant to sec-
6 tion 1016 of this title.

7 “(b) FILING OF NOTICE.—

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

18 “(2) CONTENTS.—Such notice shall—

19 “(A) set forth the manufacturer’s or im-
20 porter’s identity and address,

21 “(B) identify such product category and
22 technology, and

23 “(C) identify any trade or business names,
24 trademarks, or like indicia of origin that the
25 importer or manufacturer uses or intends to use

1 in connection with the importation, manufac-
2 ture, or distribution of such device or medium
3 in the United States.

4 “(c) FILING OF QUARTERLY STATEMENTS OF AC-
5 COUNT.—

6 “(1) GENERALLY.—Any importer or manufac-
7 turer that distributed during a given quarter any
8 digital audio recording device or digital audio record-
9 ing medium that it manufactured or imported shall
10 file with the Register, in such form as the Register
11 shall prescribe by regulation, a quarterly statement
12 of account specifying, by product category, technolo-
13 gy, and model, the number and transfer price of all
14 digital audio recording devices and digital audio re-
15 cording media that it distributed during such quar-
16 ter.

17 “(2) TIMING, CERTIFICATION, AND ROYALTY
18 PAYMENTS.—Such statement shall—

19 “(A) be filed no later than 45 days after
20 the close of the period covered by the state-
21 ment;

22 “(B) be certified as accurate by an author-
23 ized officer or principal of the importer or man-
24 ufacturer;

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

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

8 “(d) FILING OF ANNUAL STATEMENTS OF AC-
9 COUNT.—

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

18 “(2) TIMING AND CERTIFICATION.—Such state-
19 ment shall be filed no later than 60 days after the
20 close of such calendar or fiscal year, and shall be
21 certified as accurate by an authorized officer or
22 principal of the importer or manufacturer.

23 “(3) INDEPENDENT REVIEW AND CERTIFICA-
24 TION.—The annual statement of account shall be re-
25 viewed and, pursuant to generally accepted auditing

1 standards, certified by an independent certified public
2 accountant selected by the manufacturer or importer as fairly presenting the information contained
3 therein, on a consistent basis and in accordance with
4 the requirements of this chapter.
5

6 “(4) RECONCILIATION OF ROYALTY PAY-
7 MENT.—The cumulative annual statement of account shall be accompanied by any royalty payment
8 due under section 1012 of this title that was not
9 previously paid under subsection (c) of this section.
10

11 “(e) VERIFICATION.—

12 “(1) GENERALLY.—

13 “(A) The Register shall, after consulting
14 with interested copyright parties and interested
15 manufacturing parties, prescribe regulations
16 specifying procedures for the verification of
17 statements of account filed pursuant to this
18 section.

19 “(B) Such regulations shall permit interested
20 copyright parties to select independent
21 certified public accountants to conduct audits in
22 order to verify the accuracy of the information
23 contained in the statements of account filed by
24 manufacturers and importers.

25 “(C) Such regulations shall also—

1 “(i) specify the scope of such inde-
2 pendent audits; and

3 “(ii) establish a procedure by which
4 interested copyright parties will coordinate
5 the engagement of such independent certi-
6 fied public accountants, in order to ensure
7 that no manufacturer or importer is audit-
8 ed more than once per year.

9 “(D) All such independent audits shall be
10 conducted at reasonable times, with reasonable
11 advance notice, and shall be no broader in scope
12 than is reasonably necessary to carry out the
13 purposes of this subsection in accordance with
14 generally accepted auditing standards.

15 “(2) INDEPENDENT CERTIFICATION.—The re-
16 sults of all such independent audits shall be certified
17 as fairly presenting the information contained there-
18 in, on a consistent basis and in accordance with the
19 requirements of this chapter and generally accepted
20 auditing standards, by the certified public account-
21 ant responsible for the audit. The certification and
22 results shall be filed with the Register.

23 “(3) ACCESS TO DOCUMENTS IN EVENT OF DIS-
24 PUTE.—In the event of a dispute concerning the
25 amount of the royalty payment due from a manufac-

1 turer or importer resulting from a verification audit
2 conducted under this section—

3 “(A) any interested manufacturing party
4 audited pursuant to this subsection, and its au-
5 thorized representatives, shall be entitled to
6 have access to all documents upon which the
7 audit results under this subsection were based;
8 and

9 “(B) any representative of an interested
10 copyright party that has been approved by the
11 Register under subsection (h)(2) of this section
12 shall be entitled to have access to all documents
13 upon which the audit results under subsection
14 (d) of this section were based, subject to the
15 limitations of subsection (h)(2) of this section.

16 “(f) COSTS OF VERIFICATION.—

17 “(1) The costs of all verification audits that are
18 conducted pursuant to subsection (e) of this section
19 shall be borne by interested copyright parties, except
20 that, in the case of a verification audit of a manu-
21 facturer or importer that leads ultimately to recov-
22 ery of an annual royalty underpayment of 5 percent
23 or more of the annual payment made, the importer
24 or manufacturer shall provide reimbursement for the
25 reasonable costs of such audit.

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

18 “(g) INDEPENDENCE OF ACCOUNTANTS.—Each cer-
19 tified public accountant used by interested copyright par-
20 ties or interested manufacturing parties pursuant to this
21 section shall be in good standing and shall not be finan-
22 cially dependent upon interested copyright parties or inter-
23 ested manufacturing parties, respectively. The Register
24 may, upon petition by any interested copyright party or
25 interested manufacturing party, prevent the use of a par-

1 ticular certified public accountant on the ground that such
2 accountant does not meet the requirements of this subsec-
3 tion.

4 “(h) CONFIDENTIALITY.—

5 “(1) GENERALLY.—The quarterly and annual
6 statements of account filed pursuant to subsections
7 (c) and (d) of this section, and information disclosed
8 or generated during verification audits conducted
9 pursuant to subsection (e) of this section, shall be
10 presumed to contain confidential trade secret infor-
11 mation within the meaning of section 1905 of title
12 18 of the United States Code. Except as provided in
13 paragraphs (2), (3), and (4) of this subsection, nei-
14 ther the Register nor any member, officer, or em-
15 ployee of the Copyright Office or the Tribunal,
16 may—

17 “(A) publicly disclose audit information
18 furnished under this section or information con-
19 tained in quarterly or annual statements of ac-
20 count, except that aggregate information that
21 does not disclose, directly or indirectly, compa-
22 ny-specific information may be made available
23 to the public;

1 “(B) use such information for any purpose
2 other than to carry out responsibilities under
3 this chapter; or

4 “(C) permit anyone (other than members,
5 officers, and employees of the Copyright Office
6 and the Tribunal who require such information
7 in the performance of duties under this chap-
8 ter) to examine such information.

9 “(2) PROCEDURES FOR ACCESS TO BE PRE-
10 SCRIBED BY REGISTER.—(A) The Register, after
11 consulting with interested manufacturing parties and
12 interested copyright parties, shall prescribe proce-
13 dures for disclosing, in confidence, to representatives
14 of interested copyright parties and representatives of
15 interested manufacturing parties information con-
16 tained in quarterly and annual statements of ac-
17 count and information generated as a result of veri-
18 fication audits.

19 “(B) Such procedures shall provide that only
20 those representatives of interested copyright parties
21 and interested manufacturing parties who have been
22 approved by the Register shall have access to such
23 information, and that all such representatives shall
24 be required to sign a certification limiting the use of
25 the information to—

1 “(i) verification functions under this sec-
2 tion, and

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

5 “(3) ACCESS BY AUDITED MANUFACTURER.—

6 Any interested manufacturing party that is audited
7 pursuant to subsection (e) of this section, and its
8 authorized representatives, shall be entitled to have
9 access to all documents filed with the Register as a
10 result of such audit.

11 “(4) ACCESS BY CONGRESS.—Nothing in this
12 section shall authorize the withholding of informa-
13 tion from the Congress.

14 **“§ 1012. Royalty payments**

15 “(a) DIGITAL AUDIO RECORDING DEVICES.—

16 “(1) The royalty payment due under section
17 1011 of this title for each digital audio recording de-
18 vice imported into and distributed in the United
19 States, or manufactured and distributed in the Unit-
20 ed States, shall be 2 percent of the transfer price.
21 However, only the first person to manufacture and
22 distribute or import and distribute such device shall
23 be required to pay the royalty with respect to such
24 device.

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

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

14 “(B) If the digital audio recording device
15 is not part of a physically integrated unit and
16 substantially similar devices have been distrib-
17 uted separately at any time during the preced-
18 ing 4 quarters, the royalty payment shall be
19 based on the average transfer price of such de-
20 vices during those 4 quarters.

21 “(C) If the digital audio recording device is
22 not part of a physically integrated unit and
23 substantially similar devices have not been dis-
24 tributed separately at any time during the pre-
25 ceding 4 quarters, the royalty payment shall be

1 based on a constructed price reflecting the pro-
2 portional value of such device to the combina-
3 tion as a whole.

4 “(3) Notwithstanding paragraph (1) or (2) of
5 this subsection, the amount of the royalty payment
6 for each digital audio recording device or physically
7 integrated unit containing a digital audio recording
8 device shall not be less than \$1 nor more than the
9 royalty maximum. The royalty maximum shall be \$8
10 per device, except that for a physically integrated
11 unit containing more than one digital audio record-
12 ing device, the royalty maximum for such unit shall
13 be \$12. During the 6th year after the effective date
14 of this chapter, and no more than once each year
15 thereafter, any interested copyright party may peti-
16 tion the Tribunal to increase the royalty maximum
17 and, if more than 20 percent of the royalty pay-
18 ments are at the relevant royalty maximum, the Tri-
19 bunal shall prospectively increase such royalty maxi-
20 mum with the goal of having no more than 10 per-
21 cent of such payments at the new royalty maximum.

22 “(b) DIGITAL AUDIO RECORDING MEDIA.—The roy-
23 alty payment due under section 1011 of this title for each
24 digital audio recording medium imported into and distrib-
25 uted in the United States, or manufactured and distribut-

1 ed in the United States, shall be 3 percent of the transfer
2 price. However, only the first person to manufacture and
3 distribute or import and distribute such medium shall be
4 required to pay the royalty with respect to such medium.

5 “(c) RETURNED OR EXPORTED MERCHANDISE.—

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

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

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

15 “(2) Any such credit shall be taken during the
16 period when such devices or media are returned or
17 exported, and the basis for any such credit shall be
18 set forth in the statement of account for such period
19 filed under section 1011(c) of this title.

20 “(3) Any such credit that is not fully used dur-
21 ing such period may be carried forward to subse-
22 quent periods. If any returned or exported merchan-
23 dise for which a credit has been taken is subsequent-
24 ly distributed, a royalty payment shall be made as
25 specified under subsection (a) or (b) of this section,

1 based on the transfer price applicable to such distri-
2 bution.

3 **“§ 1013. Deposit of royalty payments and deduction of**
4 **expenses**

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

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

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

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

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

4 “(B) distributed to the public in the form
5 of phonorecords 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
9 or 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.— $66\frac{2}{3}$
14 percent of the royalty payments shall be allocated to
15 the Sound Recordings Fund. The American Federa-
16 tion of Musicians (or any successor entity) shall re-
17 ceive $2\frac{5}{8}$ percent of the royalty payments allocated
18 to the Sound Recordings Fund for the benefit of
19 nonfeatured musicians who have performed on sound
20 recordings distributed in the United States. The
21 American Federation of Television and Radio Artists
22 (or any successor entity) shall receive $1\frac{3}{8}$ percent of
23 the royalty payments allocated to the Sound Record-
24 ings Fund for the benefit of nonfeatured vocalists
25 who have performed on sound recordings distributed

1 in the United States. The remaining royalty pay-
2 ments in the Sound Recordings Fund shall be dis-
3 tributed to claimants under subsection (a) of this
4 section who are interested copyright parties under
5 section 1001(a)(6)(i) of this title. Such claimants
6 shall allocate such royalty payments, on a per sound
7 recording basis, in the following manner: 40 percent
8 to the recording artist or artists featured on such
9 sound recordings (or the persons conveying rights in
10 the artists' performances in the sound recordings),
11 and 60 percent to the interested copyright parties.

12 “(2) THE MUSICAL WORKS FUND.—

13 “(A) 33 $\frac{1}{3}$ percent of the royalty payments
14 shall be allocated to the Musical Works Fund
15 for distribution to interested copyright parties
16 whose entitlement is based on legal or beneficial
17 ownership or control of a copyright in a musical
18 work.

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

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

1 “(ii) writers shall be entitled to the
2 other 50 percent of the royalty payments
3 allocated to the Musical Works Fund.

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

12 “(1) for the Sound Recordings Fund, each
13 sound recording was distributed to the public in the
14 form of phonorecords; and

15 “(2) for the Musical Works Fund, each musical
16 work was distributed to the public in the form of
17 phonorecords or disseminated to the public in trans-
18 missions.

19 **“§ 1015. Procedures for distributing royalty payments**

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

21 “(1) During the first 2 months of each calendar
22 year after the calendar year in which this chapter
23 takes effect, every interested copyright party that is
24 entitled to royalty payments under section 1014 of
25 this title shall file with the Tribunal a claim for pay-

1 ments collected during the preceding year in such
2 form and manner as the Tribunal shall prescribe by
3 regulation.

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

18 “(b) DISTRIBUTION OF PAYMENTS IN THE ABSENCE
19 OF A DISPUTE.—Within 30 days after the period estab-
20 lished for the filing of claims under subsection (a) of this
21 section, in each year after the year in which this section
22 takes effect, the Tribunal shall determine whether there
23 exists a controversy concerning the distribution of royalty
24 payments under section 1014(c) of this title. If the Tribu-
25 nal determines that no such controversy exists, it shall au-

1 thorize the distribution of the royalty payments as set
2 forth in the agreements regarding the distribution of roy-
3 alty payments entered into pursuant to subsection (a) of
4 this section, after deducting its reasonable administrative
5 costs under this section.

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

15 **“§ 1016. Negotiated collection and distribution ar-**
16 **rangements**

17 “(a) SCOPE OF PERMISSIBLE NEGOTIATED AR-
18 RANGEMENTS.—

19 “(1) Notwithstanding sections 1011 through
20 1015 of this title, interested copyright parties and
21 interested manufacturing parties may at any time
22 negotiate among or between themselves an alterna-
23 tive system for the collection, distribution, or verifi-
24 cation of royalty payments provided for in this chap-
25 ter.

1 “(2) Such a negotiated arrangement may vary
2 the collection, distribution, and verification proce-
3 dures and requirements that would otherwise apply,
4 including the time periods for payment and distribu-
5 tion of royalties, but shall not alter the royalty rates
6 specified in section 1012(a)(1) or (b) of this title,
7 the division of royalty payments specified in section
8 1014(b) of this title, or the notice requirement of
9 section 1011(b) of this title.

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

22 “(b) IMPLEMENTATION OF A NEGOTIATED ARRANGE-
23 MENT.—(1)(A) No negotiated arrangement shall go into
24 effect under this section until the Tribunal has deter-

1 mined, after full opportunity for comment, that the par-
2 ticipants in the negotiated arrangement include—

3 “(i) at least two-thirds of all individual interest-
4 ed copyright parties that are entitled to receive roy-
5 alty payments from the Sound Recordings Fund,

6 “(ii) at least two-thirds of all individual inter-
7 ested copyright parties that are entitled to receive
8 royalty payments from the Musical Works Fund as
9 music publishers, and

10 “(iii) at least two-thirds of all individual inter-
11 ested copyright parties that are entitled to receive
12 royalty payments from the Musical Works Fund as
13 writers.

14 “(B) For purposes of subparagraph (A) of this para-
15 graph, the determination as to two-thirds participation
16 shall be based on annual retail sales of phonorecords in
17 which musical works or sound recordings of musical works
18 are embodied. One or more organizations representing any
19 of the types of individual interested copyright parties spec-
20 ified in the first sentence of this subsection shall be pre-
21 sumed to represent two-thirds of that type of interested
22 copyright party if the membership of, or other participa-
23 tion in, such organization or organizations includes two-
24 thirds of that type of interested copyright party based on

1 annual retail sales of phonorecords in which musical works
2 or sound recordings of musical works are embodied.

3 “(2) Notwithstanding the existence of a negotiated
4 arrangement that has gone into effect under this
5 subsection—

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

11 “(B) the Tribunal shall ensure that alternative
12 distribution procedures are available for any inter-
13 ested copyright party that is not a party to such ne-
14 gotiated arrangement.

15 “(c) MAINTENANCE OF JURISDICTION BY TRIBU-
16 NAL.—Where a negotiated arrangement has gone into ef-
17 fect under this section, the Tribunal shall maintain juris-
18 diction to hear and address any objections to the arrange-
19 ment that may arise while it is in effect, and to ensure
20 the availability of alternative procedures for any interested
21 manufacturing party or interested copyright party that is
22 not a participant in the negotiated arrangement.

1 “SUBCHAPTER C—THE SERIAL COPY
2 MANAGEMENT SYSTEM

3 **“§ 1021. Incorporation of the serial copy management**
4 **system**

5 “(a) PROHIBITION ON IMPORTATION, MANUFAC-
6 TURE, 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
10 to the standards and specifications to implement the
11 Serial Copy Management System that are—

12 “(A) set forth in the technical reference
13 document;

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 record-
18 ing device other than a device defined in part
19 II of the technical reference document or in an
20 order issued by the Secretary pursuant to sec-
21 tion 1022(b) of this title, established by the
22 manufacturer (or, in the case of a proprietary
23 technology, the proprietor of such technology)
24 so as to achieve the same functional character-
25 istics with respect to regulation of serial copy-

1 ing as, and to be compatible with the prevailing
2 method for implementation of, the Serial Copy
3 Management System set forth in the technical
4 reference document or in any order of the Sec-
5 retary issued under section 1022 of this title.

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

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

22 “(c) ENCODING OF INFORMATION ON PHONOREC-
23 ORDS.—(1) No person shall encode a phonorecord of a
24 sound recording with inaccurate information relating to
25 the category code, copyright status, or generation status

1 of the source material so as improperly to affect the oper-
2 ation of the Serial Copy Management System.

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

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

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

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

23 “(b) ORDERS OF SECRETARY OF COMMERCE.—The
24 Secretary of Commerce, upon petition by an interested
25 manufacturing party or an interested copyright party, and

1 after consultation with the Register, may, if the Secretary
2 determines that to do so is in accordance with the pur-
3 poses of this chapter, issue an order to implement the Se-
4 rial Copy Management System set forth in the technical
5 reference document as follows:

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

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

23 “(A) the standards and specifications re-
24 lating generally to digital audio recording de-
25 vices and digital audio interface devices have

1 been or are being revised or otherwise amended
2 or modified such that the standards and specifi-
3 cations set forth in the technical reference doc-
4 ument are not or would no longer be applicable
5 or appropriate; and

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

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

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

23 “(B) establishing alternative standards or
24 specifications in order to ensure compliance
25 with such requirements.

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

3 “(A) GENERALLY.—Except as provided in
4 subparagraphs (B) through (D), the Secretary,
5 after publication of notice in the Federal Register
6 and reasonable opportunity for public comment,
7 may issue an order for the purpose of approving
8 standards and specifications for a technical
9 method implementing in a digital audio
10 recording device the same functional characteristics
11 as the Serial Copy Management System
12 so as to regulate the serial copying of source
13 material input through an analog converter in
14 a manner equivalent to source material input in
15 the digital format.

16 “(B) COST LIMITATION.—The order may
17 not impose a total cost burden on manufacturers
18 of digital audio recording devices, for implementing
19 the Serial Copy Management System
20 and the technical method prescribed in such
21 order, in excess of 125 percent of the cost of
22 implementing the Serial Copy Management System
23 before the issuance of such order.

24 “(C) CONSIDERATION OF OTHER OBJEC-
25 TIONS.—The Secretary shall consider other rea-

1 soned objections from any interested manufac-
2 turing party or interested copyright party.

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

11 “SUBCHAPTER D—REMEDIES

12 “§ 1031. Civil remedies

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

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

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

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

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

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

12 “(5) may grant such other equitable relief as it
13 deems reasonable.

14 “(c) RECOVERY OF OVERDUE ROYALTY PAY-
15 MENTS.—In any case in which the court finds that a viola-
16 tion of section 1011 of this title involving nonpayment or
17 underpayment of royalty payments has occurred, the viola-
18 tor shall be directed to pay, in addition to damages award-
19 ed under subsection (d) of this section, any such royalties
20 due, plus interest calculated as provided under section
21 1961 of title 28, United States Code.

22 “(d) AWARD OF DAMAGES.—

23 “(1) SECTION 1011.—

24 “(A) DEVICE.—In the case of a violation
25 of section 1011(a) through (d) of this title in-

1 volving a digital audio recording device, the
2 court shall award statutory damages in an
3 amount between a nominal level and \$100 per
4 device, as the court considers just.

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

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

20 “(A) ACTUAL DAMAGES.—A complaining
21 party may recover its actual damages suffered
22 as a result of the violation and any profits of
23 the violator that are attributable to the viola-
24 tion that are not taken into account in comput-
25 ing the actual damages. In determining the vio-

1 lator's profits, the complaining party is required
2 to prove only the violator's gross revenue, and
3 the violator is required to prove its deductible
4 expenses and the elements of profit attributable
5 to factors other than the violation.

6 “(B) STATUTORY DAMAGES.—

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

16 “(ii) PHONORECORD.—A complaining
17 party may recover an award of statutory
18 damages for each violation of section
19 1021(c) of this title in the sum of not less
20 than \$10 nor more than \$100 per phono-
21 record involved in such violation, as the
22 court considers just.

23 “(iii) TRANSMISSION.—A complaining
24 party may recover an award of damages
25 for each transmission or communication

1 that violates section 1021(d) of this title in
2 the sum of not less than \$10,000 nor more
3 than \$100,000, as the court considers just.

4 “(3) WILLFUL VIOLATIONS.—

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

11 “(i) for a violation involving a digital
12 audio recording device, to a sum of not less
13 than \$100 nor more than \$500 per device;
14 and

15 “(ii) for a violation involving a digital
16 audio recording medium, to a sum of not
17 less than \$4 nor more than \$15 per medi-
18 um, as the court considers just.

19 “(B) In any case in which the court finds
20 that a violation of section 1021 of this title was
21 committed willfully and for purposes of direct
22 or indirect commercial advantage, the court in
23 its discretion may increase the award of dam-
24 ages by an additional amount of not more than
25 \$5,000,000, as the court considers just.

1 “(4) INNOCENT VIOLATIONS OF SECTION
2 1021.—The court in its discretion may reduce the
3 total award of damages against a person violating
4 section 1021 of this title to a sum of not less than
5 \$250 in any case in which the court finds that—

6 “(A) the violator was not aware and had
7 no reason to believe that its acts constituted a
8 violation of section 1021 of this title, or

9 “(B) in the case of a violation of section
10 1021(a) of this title involving a digital audio re-
11 cording device, the violator believed in good
12 faith that the device complied with section
13 1021(a)(1)(C) of this title, except that this sub-
14 paragraph shall not apply to any damages
15 awarded under subsection (d)(2)(A) of this sec-
16 tion.

17 “(e) MULTIPLE ACTIONS.—

18 “(1) GENERALLY.—No more than one action
19 shall be brought against any party and no more than
20 one award of statutory damages under subsection
21 (d) of this section shall be permitted—

22 “(A) for any violations of section 1011 of
23 this title involving the same digital audio re-
24 cording device or digital audio recording medi-
25 um; or

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

10 “(2) NOTICE AND INTERVENTION.—Any com-
11 plaining party who brings an action under this sec-
12 tion shall serve a copy of the complaint upon the
13 Register within 10 days after the complaining par-
14 ty’s service of a summons upon a defendant. The
15 Register shall cause a notice of such action to be
16 published in the Federal Register within 10 days
17 after receipt of such complaint. The court shall per-
18 mit any other interested copyright party or interest-
19 ed manufacturing party entitled to bring the action
20 under section 1031(a) of this title who moves to in-
21 tervene within 30 days after the publication of such
22 notice to intervene in the action.

23 “(3) AWARD.—

24 “(A) GENERALLY.—Except as provided in
25 subparagraph (B), the court may award recov-

1 ery of actual damages for a violation of section
2 1021 of this title pursuant to subsection
3 (d)(2)(A) of this section to each complaining
4 party in an action who elects to recover actual
5 damages.

6 “(B) LIMITATIONS.—

7 “(i) If more than one complaining
8 party elects to recover actual damages pur-
9 suant to subsection (d)(2)(A) of this sec-
10 tion, only a single award of the violator’s
11 profits shall be made, which shall be allo-
12 cated as the court considers just.

13 “(ii) If any complaining interested
14 copyright party or parties elect to recover
15 statutory damages pursuant to subsection
16 (d)(2) of this section in an action in which
17 one or more other complaining interested
18 copyright parties have elected to recover
19 actual damages, the single award of statu-
20 tory damages permitted pursuant to para-
21 graph (1) of this subsection shall be re-
22 duced by the total amount of actual dam-
23 ages awarded to interested copyright par-
24 ties pursuant to subsection (d)(2)(A) of
25 this section.

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

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

23 “(h) LIMITATIONS REGARDING PROFESSIONAL MOD-
24 ELS AND OTHER EXEMPT DEVICES.—Unless a court finds
25 that the determination by a manufacturer or importer that

1 a device fits within the exemption of subparagraph (A)
2 or (B) of section 1001(3) of this title was without a rea-
3 sonable basis or not in good faith, the court shall not grant
4 a temporary or preliminary injunction against the distri-
5 bution of such device by the manufacturer or importer.

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

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

15 “(2) is in the custody or control of the violator
16 or has been impounded under subsection (g) of this
17 section.

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

19 “(1) the term ‘complaining party’ means an in-
20 terested copyright party, interested manufacturing
21 party, or the Attorney General of the United States
22 when one of these parties has initiated or intervened
23 as a plaintiff in an action brought under this sec-
24 tion; and

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

3 **“§ 1032. Binding arbitration**

4 “(a) DISPUTES TO BE ARBITRATED.—Any dispute
5 between an interested manufacturing party and an inter-
6 ested copyright party shall be resolved through binding ar-
7 bitration, in accordance with the provisions of this section,
8 if—

9 “(1) the parties mutually agree; or

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

19 “(b) ARBITRAL PROCEDURES.—

20 “(1) REGULATIONS FOR COORDINATION OF AR-
21 BITRATION.—The Register shall, after consulting
22 with interested copyright parties, prescribe regula-
23 tions establishing a procedure by which interested
24 copyright parties will coordinate decisions and repre-
25 sentation concerning the arbitration of disputes. No

1 interested copyright party shall have the authority to
2 request, agree to, or (except as an intervenor pursu-
3 ant to subsection (c) of this section) enter into, bind-
4 ing arbitration unless that party shall have been au-
5 thorized to do so pursuant to the regulations pre-
6 scribed by the Register.

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

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

23 “(4) TITLE 9 PROVISIONS TO GOVERN.—Except
24 to the extent inconsistent with this section, any arbi-
25 tration proceeding under this section shall be con-

1 ducted in the same manner, subject to the same lim-
2 itations, carried out with the same powers (including
3 the power to summon witnesses), and enforced in
4 the courts of the United States as an arbitration
5 proceeding under title 9, United States Code.

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

14 “(c) NOTICE AND RIGHT TO INTERVENE.—Any in-
15 terested copyright party or interested manufacturing
16 party that requests an arbitral proceeding under this sec-
17 tion shall provide the Register with notice concerning the
18 parties to the dispute and the nature of the dispute within
19 10 days after formally requesting arbitration under sub-
20 section (a) of this section. The Register shall cause a sum-
21 mary of such notice to be published in the Federal Regis-
22 ter within 10 days after receipt of such notice. The arbi-
23 tral panel shall permit any other interested copyright
24 party or interested manufacturing party who moves to in-

1 tervene within 20 days after such publication to intervene
2 in the action.

3 “(d) AUTHORITY OF ARBITRAL PANEL TO ORDER
4 RELIEF.—

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

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

21 “(3) TO ORDER RELIEF.—In any case in which
22 the arbitral panel finds, with respect to devices or
23 media that were the subject of the dispute, that roy-
24 alty payments have been or will be due under section
25 1011 of this title through the date of the arbitral de-

1 cision, the panel shall order the deposit of such roy-
2 alty payments pursuant to section 1013 of this title,
3 plus interest calculated as provided under section
4 1961 of title 28, United States Code. The arbitral
5 panel shall not award monetary or injunctive relief,
6 as provided in section 1031 of this title or otherwise,
7 except as is expressly provided in this subsection.

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

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

18 “(2) an action or any relief with respect to
19 those devices or media distributed by their importer
20 or manufacturer following the conclusion of such ar-
21 bitration proceeding, or, if so stipulated by the par-
22 ties, prior to the commencement of such proceeding.

23 “(f) ARBITRAL COSTS.—Except as otherwise agreed
24 by the parties to a dispute, the costs of an arbitral pro-
25 ceeding under this section shall be divided among the par-

1 ties in such fashion as is considered just by the arbitral
2 panel at the conclusion of the proceeding. Each party to
3 the dispute shall bear its own attorney fees unless the ar-
4 bitral panel determines that a nonprevailing party has not
5 proceeded in good faith and that, as a matter of discretion,
6 it is appropriate to award reasonable attorney's fees to
7 the prevailing party.”.

8 **SEC. 3. TECHNICAL AMENDMENTS.**

9 (a) **FUNCTIONS OF REGISTER.**—Chapter 8 of title
10 17, United States Code is amended—

11 (1) in section 801(b)—

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

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

16 (C) by adding the following new paragraph
17 at the end:

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

23 (2) in section 804(d)—

24 (A) by inserting “or (4)” after
25 “801(b)(3)”; and

1 (B) by striking “or 119” and inserting
2 “119, 1015, or 1016”.

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

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

8 (1) in subsection (a) by inserting “or 10” after
9 “8”; and

10 (2) in subsection (b) by inserting “or 10” after
11 “8”.

12 **SEC. 4. EFFECTIVE DATE.**

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

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