

102D CONGRESS
2D SESSION

H. R. 4567

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 HOUSE OF REPRESENTATIVES

MARCH 25, 1992

Ms. COLLINS of Illinois introduced the following bill; which was referred jointly to the Committees on the Judiciary, Energy and Commerce and Ways and Means

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 1992".

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.

“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

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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) An ‘audiogram’ is a material object—

2 “(A) in which is fixed, by any method now
3 known or later developed, only sounds (and not,
4 for example, a motion picture or other audio-
5 visual work even though it may be accompanied
6 by sounds), and material, statements, or in-
7 structions incidental to those fixed sounds, if
8 any, and

9 “(B) from which the sounds and material
10 can be perceived, reproduced, or otherwise com-
11 municated, either directly or with the aid of a
12 machine or device.

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

18 “(3) A ‘digital audio interface device’ is any
19 machine or device, now known or later developed,
20 whether or not included with or as part of some
21 other machine or device, that supplies a digital audio
22 signal through a nonprofessional interface, as the
23 term ‘nonprofessional interface’ is used in the Digi-
24 tal Audio Interface Standard in part I of the tech-

1 nical reference document or as otherwise defined by
2 the Secretary of Commerce under section 1022(b).

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

12 “(A) professional model products, and

13 “(B) dictation machines, answering ma-
14 chines, and other audio recording equipment
15 that is designed and marketed primarily for the
16 creation of sound recordings resulting from the
17 fixation of nonmusical sounds.

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

1 copied recordings by use of a digital audio recording
2 device.

3 “(B) Such term does not include any material
4 object—

5 “(i) that embodies a sound recording at
6 the time it is first distributed by the importer
7 or manufacturer, unless the sound recording
8 has been so embodied in order to evade the re-
9 quirements of section 1011; or

10 “(ii) that is primarily marketed and most
11 commonly used by consumers either for the
12 purpose of making copies of motion pictures or
13 other audiovisual works or for the purpose of
14 making copies of nonmusical literary works, in-
15 cluding, without limitation, computer programs
16 or data bases.

17 “(6) To ‘distribute’ means to sell, resell, lease,
18 or assign a product to consumers in the United
19 States, or to sell, resell, lease, or assign a product
20 in the United States for ultimate transfer to con-
21 sumers in the United States.

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

23 “(A) the owner of the exclusive right under
24 section 106(1) of this title to reproduce a sound
25 recording of a musical work that has been em-

1 bodied in an audiogram lawfully made under
2 this title that has been distributed to the public;

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

9 “(C) any association or other
10 organization—

11 “(i) representing persons specified in
12 subparagraph (A) or (B), or

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

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

21 “(9) To ‘manufacture’ means to produce or as-
22 semble a product in the United States or abroad.

23 “(10) A ‘music publisher’ is a person that is
24 authorized to license the reproduction of a particular
25 musical work in a sound recording.

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

3 “(i) that is capable of sending a digital
4 audio interface signal in which the channel sta-
5 tus block flag is set as a ‘professional’ interface,
6 in accordance with the standards and specifica-
7 tions set forth in the technical reference docu-
8 ment or established under an order issued by
9 the Secretary of Commerce under section
10 1022(b);

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

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

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

1 “(i) whether it has features used by re-
2 cording professionals in the course of a lawful
3 business, 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 “(ii) 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 dissemi-
3 nated;

4 “(v) the manufacturer’s or importer’s price
5 for the device as compared to the manufactur-
6 er’s or importer’s price for digital audio record-
7 ing devices implementing the Serial Copy Man-
8 agement System;

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

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

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

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

18 “(13) The ‘Serial Copy Management System’
19 means the system for regulating serial copying by
20 digital audio recording devices that is set forth in
21 the technical reference document or in an order of
22 the Secretary of Commerce under section 1022(b),
23 or that conforms to the requirements of section
24 1021(a)(1)(C).

1 “(14) The ‘technical reference document’ is the
2 document entitled ‘Technical Reference Document
3 for Audio Home Recording Act of 1992 that is set
4 forth in the report of the Committee on Energy and
5 Commerce to the House of Representatives to ac-
6 company the Audio Home Recording Act of 1992.

7 “(15) The ‘transfer price’ of a digital audio re-
8 cording device or a digital audio recording medium
9 is—

10 “(i) subject to clause (ii)—

11 “(I) in the case of an imported prod-
12 uct, the actual entered value at United
13 States Customs (exclusive of any freight,
14 insurance, and applicable duty), and

15 “(II) in the case of a domestic prod-
16 uct, the manufacturer’s transfer price
17 (FOB the manufacturer, and exclusive of
18 any direct sales taxes or excise taxes in-
19 curred in connection with the sale); and

20 “(ii) in a case in which the transferor and
21 transferee are entities subject to section 482 of
22 the Internal Revenue Code of 1986, the trans-
23 fer price shall not be less than a reasonable
24 arms-length price under the principles of the

1 regulations adopted pursuant to such section,
2 or any successor provision to such section.

3 “(16) A ‘transmission’ is any audio or audio-
4 visual transmission, now known or later developed,
5 whether by a broadcast station, cable system,
6 multipoint distribution service, subscription service,
7 direct broadcast satellite, or other form of analog or
8 digital communication.

9 “(17) The ‘Tribunal’ is the Copyright Royalty
10 Tribunal.

11 “(18) A ‘writer’ is the composer or lyricist of
12 a particular musical work.

13 “(19) The terms ‘analog format’, ‘copyright
14 status’, ‘category code’, ‘generation status’, and
15 ‘source material’, mean those terms as they are used
16 in the technical reference document.

17 **“§ 1002. Prohibition on certain infringement actions**

18 “(a) CERTAIN ACTIONS PROHIBITED.—

19 “(1) GENERALLY.—Subject to paragraph (2),
20 no action may be brought under this title, or under
21 section 337 of the Tariff Act of 1930, alleging in-
22 fringement of copyright based on the manufacture,
23 importation, or distribution of a digital audio record-
24 ing device or a digital audio recording medium, or
25 an analog audio recording device or analog audio re-

1 cording medium, or the use of such a device or me-
2 dium for making audiograms.

3 “(2) EXCEPTION.—(A) Paragraph (1) does not
4 apply with respect to any claim against a person for
5 infringement by virtue of the making of one or more
6 audiograms, or other material objects in which
7 works are fixed, for direct or indirect commercial ad-
8 vantage.

9 “(B) For purposes of this paragraph, the copy-
10 ing of an audiogram by a consumer for private, non-
11 commercial use is not for direct or indirect commer-
12 cial advantage.

13 “(b) EFFECT OF THIS SECTION.—Nothing in this
14 section shall be construed—

15 “(1) to create or expand a cause of action for
16 copyright infringement except to the extent such a
17 cause of action otherwise exists under provisions of
18 this title other than this chapter or under section
19 337 of the Tariff Act of 1930, or

20 “(2) to limit any defenses that may be available
21 to such cause of action.

1 **“§ 1003. Effect on other rights and remedies with re-**
2 **spect to private home copying or other-**
3 **wise**

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

13 **“SUBCHAPTER B—ROYALTY PAYMENTS**

14 **“§ 1011. Obligation to make royalty payments**

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

20 **“(1)** records the notice specified by this section
21 and subsequently deposits the statements of account
22 and applicable royalty payments for such device or
23 medium specified by this section and section 1012,
24 or

25 **“(2)** complies with the applicable notice, state-
26 ment of account, and payment obligations under a

1 negotiated arrangement authorized pursuant to sec-
2 tion 1016.

3 “(b) FILING OF NOTICE.—

4 “(1) GENERALLY.—Subject to paragraph (2),
5 the importer or manufacturer of any digital audio
6 recording device or digital audio recording medium,
7 within a product category or utilizing a technology
8 with respect to which such manufacturer or importer
9 has not previously filed a notice under this sub-
10 section, shall file a notice with the Register, not
11 later than 45 days after the commencement of the
12 first distribution in the United States of such device
13 or medium, in such form as the Register shall pre-
14 scribe by regulation.

15 “(2) EXCEPTION.—No notice shall be required
16 under paragraph (1) with respect to any distribution
17 occurring before the effective date of this chapter.

18 “(3) CONTENTS.—A notice under paragraph
19 (1) shall—

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

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

24 “(C) identify any trademark or other trade
25 or business name that the importer or manufac-

1 turer uses or intends to use in connection with
2 the importation, manufacture, or distribution of
3 such device or medium 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 of a
8 calendar or fiscal year (in accordance with an elec-
9 tion under paragraph (2)) any digital audio record-
10 ing device or digital audio recording medium that it
11 manufactured or imported shall file with the Reg-
12 ister, in such form as the Register shall prescribe by
13 regulation, a quarterly statement of account specify-
14 ing, by product category, technology, and model, the
15 number and transfer price of all digital audio re-
16 cording devices and digital audio recording media
17 that it distributed during such quarter.

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

22 “(3) STATEMENTS OF ACCOUNT FOR THE FIRST
23 3 QUARTERS.—For the first 3 quarters of any cal-
24 endar or fiscal year, 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, except that any quarterly statement that
4 would be due within 3 months and 45 days
5 after the effective date of this chapter shall not
6 be filed until the next quarterly statement is
7 due, at which time a statement shall be filed
8 covering the entire period since the effective
9 date of this chapter;

10 “(B) be certified as accurate by an author-
11 ized officer or principal of the importer or man-
12 ufacturer; and

13 “(C) be accompanied by the total royalty
14 payment due for such period pursuant to sec-
15 tion 1012.

16 “(4) STATEMENT OF ACCOUNT FOR THE
17 FOURTH QUARTER.—The quarterly statement for
18 the final quarter of any calendar or fiscal year shall
19 be incorporated into the annual statement required
20 under subsection (d), which shall be accompanied by
21 the royalty payment due for such quarter.

22 “(d) FILING OF ANNUAL STATEMENTS OF AC-
23 COUNT.—

24 “(1) GENERALLY.—Any importer or manufac-
25 turer that distributed during a given calendar or fis-

1 cal year (as applicable) any digital audio recording
2 device or digital audio recording medium that such
3 importer or manufacturer imported or manufactured
4 shall also file with the Register a cumulative annual
5 statement of account, in such form as the Register
6 shall prescribe by regulation.

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

12 “(3) INDEPENDENT REVIEW AND CER-
13 TIFICATION.—The annual statement of account shall
14 be reviewed and, pursuant to generally accepted au-
15 diting standards, certified by an independent cer-
16 tified public accountant selected by the manufac-
17 turer or importer as fairly presenting the informa-
18 tion contained therein, on a consistent basis and in
19 accordance with the requirements of this chapter.

20 “(4) RECONCILIATION OF ROYALTY PAY-
21 MENT.—The cumulative annual statement of ac-
22 count shall be accompanied by any royalty payment
23 due under section 1012 that was not previously paid
24 under subsection (c).

25 “(e) VERIFICATION.—

1 “(1) GENERALLY.—

2 “(A) The Register shall, after consulting
3 with interested copyright parties and interested
4 manufacturing parties, prescribe regulations
5 specifying procedures for the verification of
6 statements of account filed pursuant to this
7 section.

8 “(B) Such regulations shall permit inter-
9 ested copyright parties to select independent
10 certified public accountants to conduct audits in
11 order to verify the accuracy of the information
12 contained in the statements of account filed by
13 manufacturers and importers.

14 “(C) Such regulations shall also—

15 “(i) specify the scope of such inde-
16 pendent audits; and

17 “(ii) establish a procedure by which
18 interested copyright parties will coordinate
19 the engagement of such independent cer-
20 tified public accountants, in order to en-
21 sure that no manufacturer or importer is
22 audited more than once per year.

23 “(D) All such independent audits shall be
24 conducted at reasonable times, with reasonable
25 advance notice, and shall be no broader in scope

1 than is reasonably necessary to carry out the
2 purposes of this subsection in accordance with
3 generally accepted auditing standards.

4 “(2) INDEPENDENT CERTIFICATION.—The re-
5 sults of all such independent audits shall be certified
6 as fairly presenting the information contained there-
7 in, on a consistent basis and in accordance with the
8 requirements of this chapter and generally accepted
9 auditing standards, by the certified public account-
10 ant responsible for the audit. The certification and
11 results shall be filed with the Register.

12 “(3) ACCESS TO DOCUMENTS IN EVENT OF DIS-
13 PUTE.—In the event of a dispute concerning the
14 amount of the royalty payment due from a manufac-
15 turer or importer resulting from a verification audit
16 conducted under this section—

17 “(A) any interested manufacturing party
18 audited pursuant to this subsection, and its au-
19 thorized representatives, shall be entitled to
20 have access to all documents upon which the
21 audit results under this subsection were based;
22 and

23 “(B) any representative of an interested
24 copyright party that has been approved by the
25 Register under subsection (h)(2) shall be enti-

1 tled to have access to all documents upon which
2 the audit results under subsection (d) were
3 based, subject to the limitations of subsection
4 (h)(2).

5 “(f) COSTS OF VERIFICATION.—

6 “(1) The costs of all verification audits that are
7 conducted pursuant to subsection (e) shall be borne
8 by interested copyright parties, except that, in the
9 case of a verification audit of a manufacturer or im-
10 porter that leads ultimately to recovery of an annual
11 royalty underpayment of 5 percent or more of the
12 annual payment made, the importer or manufacturer
13 shall provide reimbursement for the reasonable costs
14 of such audit.

15 “(2) Except as may otherwise be agreed by in-
16 terested copyright parties, the costs of a verification
17 audit conducted pursuant to subsection (e) shall be
18 borne by the party engaging the certified public ac-
19 countant. Any recovery of royalty underpayments as
20 a result of the audit shall be used first to provide
21 reimbursement for the reasonable costs of such audit
22 to the extent such costs have not otherwise been re-
23 imbursed by the manufacturer or importer pursuant
24 to this subsection. Any remaining recovery shall be
25 deposited with the Register pursuant to section

1 1013, or as may otherwise be provided by a nego-
2 tiated arrangement authorized under section 1016,
3 for distribution to interested copyright parties as
4 though such funds were royalty payments made pur-
5 suant to this section.

6 “(g) INDEPENDENCE OF ACCOUNTANTS.—Each cer-
7 tified public accountant used by interested copyright par-
8 ties or interested manufacturing parties pursuant to this
9 section shall, as determined by the Register, be in good
10 standing and not be financially dependent upon interested
11 copyright parties or interested manufacturing parties, re-
12 spectively. The Register may, upon petition by any inter-
13 ested copyright party or interested manufacturing party,
14 prevent the use of a particular certified public accountant
15 on the ground that such accountant does not meet the re-
16 quirements of this subsection.

17 “(h) CONFIDENTIALITY.—

18 “(1) GENERALLY.—The quarterly and annual
19 statements of account filed pursuant to subsections
20 (c) and (d), and information disclosed or generated
21 during verification audits conducted pursuant to
22 subsection (e), shall be presumed to contain infor-
23 mation the disclosure of which is subject to the pen-
24 alties set forth in section 1905 of title 18. Except
25 as provided in paragraphs (2), (3), and (4), neither

1 the Register nor any member, officer, or employee of
2 the Copyright Office or the Tribunal may—

3 “(A) make available to the public audit in-
4 formation furnished under this section or infor-
5 mation contained in quarterly or annual state-
6 ments of account, except that aggregate infor-
7 mation that does not disclose, directly or indi-
8 rectly, company-specific information may be
9 made available to the public;

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

13 “(C) except as provided in subparagraph
14 (A), permit anyone (other than members, offi-
15 cers, and employees of the Copyright Office and
16 the Tribunal who require such information in
17 the performance of duties under this chapter)
18 to examine such information.

19 “(2) PROCEDURES FOR ACCESS TO BE PRE-
20 SCRIBED BY REGISTER.—(A) The Register, after
21 consulting with interested manufacturing parties and
22 interested copyright parties, shall prescribe proce-
23 dures for disclosing, in confidence, to representatives
24 of interested copyright parties and representatives of
25 interested manufacturing parties information con-

1 tained in quarterly and annual statements of ac-
2 count and information generated as a result of ver-
3 fication audits.

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

11 “(i) verification functions under this sec-
12 tion, and

13 “(ii) any enforcement actions that may re-
14 sult from such verification functions.

15 “(3) ACCESS BY AUDITED MANUFACTURER.—
16 Any interested manufacturing party that is audited
17 pursuant to subsection (e), and its authorized rep-
18 resentatives, shall be entitled to have access to all
19 documents filed with the Register as a result of such
20 audit.

21 “(4) ACCESS BY CONGRESS.—Nothing in this
22 section shall authorize the withholding of informa-
23 tion from the Congress.

24 **“§ 1012. Royalty payments**

25 “(a) DIGITAL AUDIO RECORDING DEVICES.—

1 “(1) AMOUNT OF PAYMENT.—The royalty pay-
2 ment due under section 1011 of this title for each
3 digital audio recording device imported into and dis-
4 tributed in the United States, or manufactured and
5 distributed in the United States, shall be 2 percent
6 of the transfer price. Only the first person to manu-
7 facture and distribute or import and distribute such
8 device shall be required to pay the royalty with re-
9 spect to such device.

10 “(2) CALCULATION FOR DEVICES DISTRIBUTED
11 WITH OTHER DEVICES.—With respect to a digital
12 audio recording device first distributed in com-
13 bination with one or more devices, either as a phys-
14 ically integrated unit or as separate components, the
15 royalty payment shall be calculated as follows:

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

24 “(B) If the digital audio recording device
25 is not part of a physically integrated unit and

1 substantially similar devices have been distrib-
2 uted separately at any time during the preced-
3 ing 4 quarters, the royalty payment shall be
4 based on the average transfer price of such de-
5 vices during those 4 quarters.

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

14 “(3) LIMITS ON ROYALTIES.—Notwithstanding
15 paragraph (1) or (2) of this subsection, the amount
16 of the royalty payment for each digital audio record-
17 ing device or physically integrated unit containing a
18 digital audio recording device shall not be less than
19 \$1 nor more than the royalty maximum. The royalty
20 maximum shall be \$8 per device, except that for a
21 physically integrated unit containing more than one
22 digital audio recording device, the royalty maximum
23 for such unit shall be \$12. During the 6th year after
24 the effective date of this chapter, and not more than
25 once each year thereafter, any interested copyright

1 party may petition the Tribunal to increase the roy-
2 alty maximum and, if more than 20 percent of the
3 royalty payments are at the relevant royalty maxi-
4 mum, the Tribunal shall prospectively increase such
5 royalty maximum with the goal of having not more
6 than 10 percent of such payments at the new royalty
7 maximum; except that the amount of any such in-
8 crease as a percentage of the royalty maximum shall
9 in no event exceed the percentage increase in the
10 Consumer Price Index of the Department of Labor
11 during the period under review.

12 “(b) DIGITAL AUDIO RECORDING MEDIA.—The roy-
13 alty payment due under section 1011 for each digital
14 audio recording medium imported into and distributed in
15 the United States, or manufactured and distributed in the
16 United States, shall be 3 percent of the transfer price,
17 except that only the first person to manufacture and dis-
18 tribute or import and distribute such medium shall be re-
19 quired to pay the royalty with respect to such medium.

20 “(c) RETURNED OR EXPORTED MERCHANDISE.—

21 “(1) DEDUCTION.—In calculating the amount
22 of royalty payments due under subsections (a) and
23 (b) of this section, manufacturers and importers
24 may deduct the amount of any royalty payments al-
25 ready made on digital audio recording devices or

1 media that are returned to the manufacturer or im-
2 porter as unsold or defective merchandise within 2
3 years after the date on which royalty payments
4 under subsections (a) and (b) are paid on such de-
5 vices or media.

6 “(2) TIMING OF CREDIT.—Any such credit shall
7 be taken during the period when such devices or
8 media are returned or exported, and the basis for
9 any such credit shall be set forth in the statement
10 of account for such period filed under section
11 1011(e).

12 “(3) CARRYOVERS AND ADDITIONAL PAY-
13 MENTS.—Any such credit that is not fully used dur-
14 ing such period may be carried forward to sub-
15 sequent periods. If any returned or exported mer-
16 chandise for which a credit has been taken is sub-
17 sequently distributed, a royalty payment shall be
18 made as specified under subsection (a) or (b) of this
19 section, based on the transfer price applicable to
20 such distribution.

21 **“§ 1013. Deposit of royalty payments and deduction of**
22 **expenses**

23 “The Register shall receive all royalty payments de-
24 posited under this chapter and, after deducting the rea-
25 sonable costs incurred by the Copyright Office under this

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

16 **“§ 1014. Entitlement to royalty payments**

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

22 “(1) whose musical work or sound recording
23 has 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
5 of 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
9 or 1016.

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 Fed-
16 eration of Musicians (or any successor entity) shall
17 receive $2\frac{5}{8}$ 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) who are
4 interested copyright parties under section
5 1001(a)(6)(i). Such claimants shall allocate such
6 royalty payments, on a per sound recording basis, in
7 the following manner: 40 percent to the recording
8 artist or artists featured on such sound recordings
9 (or the persons conveying rights in the artists' per-
10 formances in the sound recordings), and 60 percent
11 to the interested copyright parties.

12 “(2) THE MUSICAL WORKS FUND.—(A) $33\frac{1}{3}$
13 percent of the royalty payments shall be allocated to
14 the Musical Works Fund for distribution to inter-
15 ested copyright parties whose entitlement is based
16 on legal or beneficial ownership or control of a copy-
17 right in a musical work.

18 “(B) Notwithstanding any contractual obliga-
19 tion to the contrary—

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

23 “(ii) writers shall be entitled to the other
24 50 percent of the royalty payments allocated to
25 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) do not agree on a vol-
4 untary proposal for the distribution of the royalty pay-
5 ments within such group, the Tribunal shall, pursuant to
6 the procedures specified in section 1015(c), allocate such
7 royalty payments based on the extent to which, during the
8 relevant period—

9 “(1) for the Sound Recordings Fund, each
10 sound recording was distributed to the public in the
11 form of 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 wishing
21 to receive royalty payments to which such party is
22 entitled under section 1014 shall file with the Tribu-
23 nal a claim for payments collected during the pre-
24 ceding year in such form and manner as the Tribu-
25 nal shall prescribe by regulation.

1 “(2) All interested copyright parties within each
2 group specified in section 1014(b) shall negotiate in
3 good faith among themselves in an effort to agree to
4 a voluntary proposal for the distribution of royalty
5 payments. Notwithstanding any provision of the
6 antitrust laws, for purposes of this section such in-
7 terested 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 modify
13 the allocation of royalties specified in section
14 1014(b).

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

1 to subsection (a), after deducting its reasonable adminis-
2 trative 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 ex-
10 tent feasible, authorize the distribution of any amounts
11 that are not in controversy.

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

14 “(a) SCOPE OF PERMISSIBLE NEGOTIATED AR-
15 RANGEMENTS.—

16 “(1) AUTHORITY TO NEGOTIATE.—Interested
17 copyright parties and interested manufacturing par-
18 ties may at any time negotiate among or between
19 themselves a single alternative system for the collec-
20 tion, distribution, or verification of royalty payments
21 provided for in this chapter.

22 “(2) SCOPE OF ALTERNATIVE ARRANGE-
23 MENT.—Such a negotiated arrangement may modify
24 the collection, distribution, and verification proce-
25 dures and requirements that would otherwise apply

1 under sections 1011 through 1015, including the
2 time periods for payment and distribution of royal-
3 ties, but shall not alter the requirements of section
4 1011 (a), (b), or (h)(4), section 1012(a), or section
5 1014(a).

6 “(3) RESOLUTION OF DISPUTES.—Such a nego-
7 tiated arrangement may also provide that specified
8 types of disputes that cannot be resolved among the
9 parties to the arrangement shall be resolved by bind-
10 ing arbitration or other agreed upon means of dis-
11 pute resolution.

12 “(4) INAPPLICABILITY OF ANTITRUST LAWS.—
13 Notwithstanding any provision of the antitrust laws,
14 for purposes of this section interested manufacturing
15 parties and interested copyright parties may nego-
16 tiate in good faith and voluntarily agree among
17 themselves as to the collection, allocation, dis-
18 tribution, and verification of royalty payments, and
19 may designate common agents to negotiate and
20 carry out such activities on their behalf.

21 “(b) IMPLEMENTATION OF A NEGOTIATED ARRANGE-
22 MENT.—

23 “(1) DETERMINATION BY THE TRIBUNAL.—(A)
24 No negotiated arrangement shall go into effect
25 under this section until the Tribunal has deter-

1 mined, after full opportunity for comment by inter-
2 ested persons, that participants in the negotiated ar-
3 rangement include—

4 “(i) at least $\frac{2}{3}$ of all individual interested
5 copyright parties that are entitled to receive
6 royalty payments from the Sound Recordings
7 Fund,

8 “(ii) at least $\frac{2}{3}$ of all individual interested
9 copyright parties that are entitled to receive
10 royalty payments from the Musical Works Fund
11 as music publishers, and

12 “(iii) at least $\frac{2}{3}$ of all individual interested
13 copyright parties that are entitled to receive
14 royalty payments from the Musical Works Fund
15 as writers.

16 “(B) For purposes of subparagraph (A), the de-
17 termination with respect to $\frac{2}{3}$ participation shall be
18 based on annual retail sales of audiograms in which
19 musical works or sound recordings of musical works
20 are embodied. One or more organizations rep-
21 resenting any of the types of individual interested
22 copyright parties specified in the first sentence of
23 this subparagraph shall be presumed to represent $\frac{2}{3}$
24 of that type of interested copyright party if the
25 membership of, or other participation in, such orga-

1 nization or organizations includes $\frac{2}{3}$ of that type of
2 interested copyright party based on annual retail
3 sales of phonorecords in which musical works or
4 sound recordings of musical works are embodied.

5 “(C) The implementation of the negotiated ar-
6 rangement shall include all necessary safeguards, as
7 determined by the Tribunal, which ensure that all
8 interested parties who are not participants in the ne-
9 gotiated arrangement receive the royalty payments
10 to which they would be entitled in the absence of
11 such an arrangement. Such safeguards may include
12 accounting procedures, reports, and any other infor-
13 mation determined to be necessary to ensure the
14 proper collection and distribution of royalty pay-
15 ments.

16 “(2) PARTIES NOT SUBJECT TO NEGOTIATED
17 ARRANGEMENT.—Notwithstanding the existence of a
18 negotiated arrangement that has gone into effect
19 under this section, any interested manufacturing
20 party that is not a party to such negotiated arrange-
21 ment shall remain subject to the requirements of
22 sections 1011 and 1012 and may fully satisfy its ob-
23 ligations under this subchapter by complying with
24 the procedures set forth in such sections.

1 “(c) MAINTENANCE OF JURISDICTION BY TRIBU-
2 NAL.—If a negotiated arrangement has gone into effect
3 under this section, the Tribunal shall maintain jurisdiction
4 over the arrangement and shall—

5 “(1) hear and address any objections to the ar-
6 rangement that may arise while it is in effect;

7 “(2) ensure the availability of alternative proce-
8 dures for any interested manufacturing party or in-
9 terested copyright party that is not a participant in
10 the negotiated arrangement;

11 “(3) ensure that all interested copyright parties
12 who are not participants in the arrangement receive
13 the royalty payments to which they would be entitled
14 in the absence of such an arrangement;

15 “(4) ensure that it has adequate funds at its
16 disposal, received either through the Copyright Of-
17 fice or through the entity administering the nego-
18 tiated arrangement, to distribute to interested copy-
19 right parties not participating in the arrangement
20 the royalty payments to which they are entitled
21 under section 1014(c) or 1015(b), including applica-
22 ble interest; and

23 “(5) ensure that the requirements of section
24 1016(b)(1)(C) are met.

1 “(d) JUDICIAL REVIEW.—The Tribunal may seek in-
2 junctive relief in an appropriate United States district
3 court to secure compliance with the requirements of sub-
4 section (c).

5 “SUBCHAPTER C—THE SERIAL COPY
6 MANAGEMENT SYSTEM

7 “§ 1021. Incorporation of the serial copy management
8 system

9 “(a) PROHIBITION ON IMPORTATION, MANUFAC-
10 TURE, AND DISTRIBUTION.—

11 “(1) GENERALLY.—No person shall import,
12 manufacture, or distribute any digital audio record-
13 ing device or any digital audio interface device that
14 does not conform to the standards and specifications
15 to implement the Serial Copy Management System
16 that are—

17 “(A) set forth in the technical reference
18 document;

19 “(B) set forth in an order by the Secretary
20 of Commerce under section 1022(b) (1), (2), or
21 (3); or

22 “(C) in the case of a digital audio record-
23 ing device other than a device subject to part
24 II of the technical reference document or an
25 order issued by the Secretary pursuant to sec-

1 tion 1022(b), established by the manufacturer
2 (or, in the case of a proprietary technology, the
3 proprietor of such technology) so as to achieve
4 the same functional characteristics with respect
5 to regulation of serial copying as, and to be
6 compatible with the prevailing method for im-
7 plementation of, the Serial Copy Management
8 System set forth in the technical reference doc-
9 ument or in any order of the Secretary issued
10 under section 1022.

11 “(2) ORDER RELATING TO COPYING THROUGH
12 ANALOG CONVERTER.—If the Secretary of Com-
13 merce approves standards and specifications under
14 section 1022(b)(4), then no person shall import,
15 manufacture, or distribute any digital audio record-
16 ing device or any digital audio interface device that
17 does not conform to such standards and specifica-
18 tions.

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

1 a digital audio recording device or a digital audio interface
2 device.

3 “(c) ENCODING OF INFORMATION ON
4 AUDIOGRAMS.—

5 “(1) PROHIBITION ON ENCODING INACCURATE
6 INFORMATION.—No person shall encode an audio-
7 gram of a sound recording with inaccurate informa-
8 tion relating to the category code, copyright status,
9 or generation status of the source material so as to
10 adversely affect the operation of the Serial Copy
11 Management System.

12 “(2) ENCODING OF COPYRIGHT STATUS NOT
13 REQUIRED.—Nothing in this subchapter requires
14 any person engaged in the importation, manufac-
15 ture, or assembly of audiograms to encode any such
16 audiogram with respect to its copyright status.

17 “(d) INFORMATION ACCOMPANYING TRANSMISSIONS
18 IN DIGITAL FORMAT.—Any person who transmits or oth-
19 erwise communicates to the public any sound recording
20 in digital format is not required under this subchapter to
21 transmit or otherwise communicate the information relat-
22 ing to the copyright status of the sound recording. Any
23 such person who does transmit or otherwise communicate
24 such copyright status information shall transmit or com-
25 municate such information accurately.

1 **“§ 1022. Implementing the serial copy management**
2 **system**

3 “(a) PUBLICATION OF TECHNICAL REFERENCE DOC-
4 UMENT AND CERTIFICATION.—Within 10 days after the
5 date of the enactment of this chapter, the Secretary of
6 Commerce shall cause to be published in the Federal Reg-
7 ister the technical reference document, together with the
8 certification from the National Institute of Standards and
9 Technology, as such certification appears in the report of
10 the Committee on Energy and Commerce to the House
11 of Representatives to accompany the Audio Home Record-
12 ing Act of 1992, that the technical reference document
13 sets forth standards and specifications that adequately in-
14 corporate the intended functional characteristics to regu-
15 late serial copying and are not incompatible with existing
16 international digital audio interface standards and exist-
17 ing digital audio technology.

18 “(b) ORDERS OF SECRETARY OF COMMERCE.—The
19 Secretary of Commerce, upon petition by an interested
20 manufacturing party or an interested copyright party, and
21 after consultation with the Register, may, if the Secretary
22 determines that to do so is in accordance with the pur-
23 poses of this chapter, issue an order to implement the Se-
24 rial Copy Management System set forth in the technical
25 reference document as follows:

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

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

18 “(A) the standards and specifications re-
19 lating generally to digital audio recording de-
20 vices and digital audio interface devices have
21 been or are being revised or otherwise amended
22 or modified such that the standards and speci-
23 fications set forth in the technical reference
24 document are not or would no longer be appli-
25 cable or appropriate; and

1 “(B) such devices conform to such new
2 standards and specifications and possess the
3 same functional characteristics with respect to
4 regulation of serial copying as the Serial Copy
5 Management System set forth in the technical
6 reference document.

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

9 “(A) establishing whether the standards
10 and specifications established by a manufac-
11 turer or proprietor for digital audio recording
12 devices other than devices subject to part II of
13 the technical reference document or a prior
14 order of the Secretary under paragraph (1) or
15 (2) comply with the requirements of subpara-
16 graph (C) of section 1021(a)(1); or

17 “(B) establishing alternative standards or
18 specifications in order to ensure compliance
19 with such requirements.

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

22 “(A) GENERALLY.—Except as provided in
23 subparagraphs (B) through (D), the Secretary,
24 after publication of notice in the Federal Reg-
25 ister and reasonable opportunity for public com-

1 ment, may issue an order for the purpose of ap-
2 proving standards and specifications for a tech-
3 nical method implementing in a digital audio
4 recording device the same functional character-
5 istics as the Serial Copy Management System
6 so as to regulate the serial copying of source
7 material input through an analog converter in
8 a manner equivalent to source material input in
9 the digital format.

10 “(B) COST LIMITATION.—The order may
11 not impose a total cost burden on manufactur-
12 ers of digital audio recording devices, for imple-
13 menting the Serial Copy Management System
14 and the technical method prescribed in such
15 order, in excess of 125 percent of the cost of
16 implementing the Serial Copy Management Sys-
17 tem before the issuance of such order.

18 “(C) CONSIDERATION OF OTHER OBJEC-
19 TIONS.—Before issuing the order, the Secretary
20 shall take into account comments submitted by
21 interested parties with respect to the order.

22 “(D) LIMITATION TO DIGITAL AUDIO DE-
23 VICES.—The order shall not affect the record-
24 ing of any source material on analog recording
25 equipment and the order shall not impose any

1 restrictions or requirements that must be imple-
2 mented in any device other than a digital audio
3 recording device or digital audio interface de-
4 vice.

5 “SUBCHAPTER D—REMEDIES

6 “§ 1031. **Civil remedies**

7 “(a) CIVIL ACTIONS.—Any interested copyright party
8 or interested manufacturing party that is or would be in-
9 jured by a violation of section 1011 or 1021, or the Attor-
10 ney General of the United States, may bring a civil action
11 in an appropriate United States district court against any
12 person for such violation.

13 “(b) POWERS OF THE COURT.—In an action brought
14 under subsection (a), the court—

15 “(1) except as provided in subsection (h), may
16 grant temporary and permanent injunctions on such
17 terms as it deems reasonable to prevent or restrain
18 such violation;

19 “(2) in the case of a violation of section 1011
20 (a) through (d) or 1021, shall award damages under
21 subsection (d);

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

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

6 “(5) may grant such other equitable relief as it
7 deems reasonable.

8 “(e) RECOVERY OF OVERDUE ROYALTY PAY-
9 MENTS.—In any case in which the court finds that a vio-
10 lation of section 1011, involving nonpayment or
11 underpayment of royalty payments has occurred, the viola-
12 tor shall be directed to pay, in addition to damages award-
13 ed under subsection (d), any such royalties due, plus inter-
14 est calculated as provided under section 1961 of title 28.

15 “(d) AWARD OF DAMAGES.—

16 “(1) SECTION 1011.—

17 “(A) DEVICE.—In the case of a violation
18 of subsection (a), (b), (c), or (d) of section
19 1011 involving a digital audio recording device,
20 the court shall award statutory damages in an
21 amount between a nominal level and \$100 per
22 device, as the court considers just.

23 “(B) MEDIUM.—In the case of a violation
24 of subsection (a), (b), (c), or (d) of section
25 1011 involving a digital audio recording me-

1 dium, the court shall award statutory damages
2 in an amount between a nominal level and \$4
3 per medium, as the court considers just.

4 “(2) SECTION 1021.—

5 “(A) IN GENERAL.—In any case in which
6 the court finds that a violation of section 1021
7 has occurred, the court shall award damages
8 calculated, at the election of the complaining
9 party at any time before final judgment is ren-
10 dered, pursuant to subparagraph (B) or (C),
11 but in no event shall the judgment (excluding
12 any award of actual damages to an interested
13 manufacturing party) exceed a total of
14 \$1,000,000.

15 “(B) ACTUAL DAMAGES.—A complaining
16 party may recover its actual damages suffered
17 as a result of the violation and any profits of
18 the violator that are attributable to the vio-
19 lation that are not taken into account in com-
20 puting the actual damages. In determining the
21 violator’s profits, the complaining party is re-
22 quired to prove only the violator’s gross reve-
23 nue, and the violator is required to prove its de-
24 ductible expenses and the elements of profit at-
25 tributable to factors other than the violation.

1 “(C) STATUTORY DAMAGES.—

2 “(i) DEVICE.—A complaining party
3 may recover an award of statutory dam-
4 ages for each violation of section 1021(a)
5 or (b) in the sum of not less than \$1,000
6 nor more than \$10,000 per device involved
7 in such violation or per device on which a
8 service prohibited by section 1021(b) has
9 been performed, as the court considers
10 just.

11 “(ii) AUDIOGRAM.—A complaining
12 party may recover an award of statutory
13 damages for each violation of section
14 1021(c) in the sum of not less than \$10
15 nor more than \$100 per audiogram in-
16 volved in such violation, as the court con-
17 siders just.

18 “(iii) TRANSMISSION.—A complaining
19 party may recover an award of damages
20 for each transmission or communication
21 that violates section 1021(d) in the sum of
22 not less than \$10,000 nor more than
23 \$100,000, as the court considers just.

24 “(3) WILLFUL VIOLATIONS.—

1 “(A) In any case in which the court finds
2 that a violation of subsection (a), (b), (c), or (d)
3 of section 1011 was committed willfully and for
4 purposes of direct or indirect commercial ad-
5 vantage, the court shall increase statutory
6 damages—

7 “(i) for a violation involving a digital
8 audio recording device, to a sum of not less
9 than \$100 nor more than \$500 per device;
10 and

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

15 “(B) In any case in which the court finds
16 that a violation of section 1021 was committed
17 willfully and for purposes of direct or indirect
18 commercial advantage, the court in its discre-
19 tion may increase the award of damages by an
20 additional amount of not more than
21 \$5,000,000, as the court considers just.

22 “(4) INNOCENT VIOLATIONS OF SECTION
23 1021.—The court in its discretion may reduce the
24 total award of damages against a person violating

1 section 1021 to a sum of not less than \$250 in any
2 case in which the court finds that—

3 “(A) the violator was not aware and had
4 no reason to believe that its acts constituted a
5 violation of section 1021, or

6 “(B) in the case of a violation of section
7 1021(a) involving a digital audio recording de-
8 vice, the violator believed in good faith that the
9 device complied with section 1021(a)(1)(C), ex-
10 cept that this subparagraph shall not apply to
11 any damages awarded under subsection
12 (d)(2)(A).

13 “(e) MULTIPLE ACTIONS.—

14 “(1) GENERALLY.—No more than one action
15 shall be brought against any party and no more than
16 one award of statutory damages under subsection
17 (d) shall be permitted—

18 “(A) for any violations of section 1011 in-
19 volving the same digital audio recording device
20 or digital audio recording medium; or

21 “(B) for any violations of section 1021 in-
22 volving digital audio recording devices or digital
23 audio interface devices of the same model, ex-
24 cept that this subparagraph shall not bar an ac-
25 tion or an award of damages with respect to

1 digital audio recording devices or digital audio
2 interface devices that are imported, manufac-
3 tured, or distributed subsequent to a final judg-
4 ment in a prior action.

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

18 “(3) AWARD.—

19 “(A) GENERALLY.—Except as provided in
20 subparagraph (B), the court may award recov-
21 ery of actual damages for a violation of section
22 1021 pursuant to subsection (d)(2)(B) to each
23 complaining party in an action who elects to re-
24 cover actual damages.

25 “(B) LIMITATIONS.—

1 “(i) If more than one complaining
2 party elects to recover actual damages pur-
3 suant to subsection (d)(2)(B), only a single
4 award of the violator’s profits shall be
5 made, which shall be allocated as the court
6 considers just.

7 “(ii) If any complaining interested
8 copyright party or parties elect to recover
9 statutory damages pursuant to subsection
10 (d)(2) in an action in which one or more
11 other complaining interested copyright par-
12 ties have elected to recover actual dam-
13 ages, the single award of statutory dam-
14 ages permitted pursuant to paragraph (1)
15 shall be reduced by the total amount of ac-
16 tual damages awarded to interested copy-
17 right parties pursuant to subsection
18 (d)(2)(B).

19 “(f) PAYMENT OF OVERDUE ROYALTIES AND DAM-
20 AGES.—The court may allocate any award of damages
21 under subsection (d) between or among complaining par-
22 ties as it considers just. Any award of damages that is
23 allocated to an interested copyright party and any award
24 of overdue royalties and interest under subsection (c) shall
25 be deposited with the Register pursuant to section 1013,

1 or as may otherwise be provided pursuant to a negotiated
2 arrangement authorized under section 1016, for dis-
3 tribution to interested copyright parties as though such
4 funds were royalty payments made pursuant to section
5 1011.

6 “(g) IMPOUNDING OF ARTICLES.—At any time while
7 an action under this section is pending, the court may
8 order the impounding, on such terms as it deems reason-
9 able, of any digital audio recording device, digital audio
10 interface device, audiogram, or device specified in section
11 1021(b) that is in the custody or control of the alleged
12 violator and that the court has reasonable cause to believe
13 does not comply with, or was involved in a violation of,
14 section 1021.

15 “(h) LIMITATIONS REGARDING PROFESSIONAL MOD-
16 ELS AND OTHER EXEMPT DEVICES.—Unless a court finds
17 that the determination by a manufacturer or importer that
18 a device is a device described in subparagraph (A) or (B)
19 of section 1001(4) was without a reasonable basis or not
20 in good faith, the court shall not grant a temporary or
21 preliminary injunction against the distribution of such de-
22 vice by the manufacturer or importer.

23 “(i) REMEDIAL MODIFICATION AND DESTRUCTION
24 OF ARTICLES.—As part of a final judgment or decree
25 finding a violation of section 1021, the court shall order

1 the remedial modification, if possible, or the destruction
2 of any digital audio recording device, digital audio inter-
3 face device, audiogram, or device specified in section
4 1021(b) that—

5 “(1) does not comply with, or was involved in
6 a violation of, section 1021, and

7 “(2) is in the custody or control of the violator
8 or has been impounded under subsection (g).

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

10 “(1) the term ‘complaining party’ means an in-
11 terested copyright party, interested manufacturing
12 party, or the Attorney General of the United States
13 when one of these parties has initiated or intervened
14 as a plaintiff in an action brought under this sec-
15 tion; and

16 “(2) the term ‘device’ does not include an
17 audiogram.

18 **“§ 1032. Binding arbitration**

19 “(a) DISPUTES TO BE ARBITRATED.—Any dispute
20 between an interested manufacturing party and an inter-
21 ested copyright party shall be resolved through binding ar-
22 bitration, in accordance with the provisions of this section,
23 if—

24 “(1) the parties mutually agree; or

1 “(2) before the date of first distribution in the
2 United States of the product which is the subject of
3 the dispute, an interested manufacturing party or an
4 interested copyright party requests arbitration con-
5 cerning whether such product is or is not a digital
6 audio recording device, a digital audio recording me-
7 dium, or a digital audio interface device, or concern-
8 ing the basis on which royalty payments are to be
9 made with respect to such product.

10 “(b) ARBITRAL PROCEDURES.—

11 “(1) REGULATIONS FOR COORDINATION OF AR-
12 BITRATION.—The Register shall, after consulting
13 with interested copyright parties, prescribe regula-
14 tions establishing a procedure by which interested
15 copyright parties will coordinate the arbitration of
16 disputes. No interested copyright party shall have
17 the authority to request, agree to, or (except as an
18 intervenor pursuant to subsection (c)) enter into,
19 binding arbitration unless that party has been au-
20 thorized to do so pursuant to the regulations pre-
21 scribed by the Register.

22 “(2) PANEL.—Except as otherwise agreed by
23 the parties to a dispute that is to be submitted to
24 binding arbitration under subsection (a), the dispute
25 shall be heard by a panel of 3 arbitrators, with one

1 arbitrator selected by each of the 2 opposing parties
2 to the dispute and the third arbitrator selected by
3 mutual agreement of the first 2 arbitrators chosen.

4 “(3) DECISION.—The arbitral panel shall
5 render its final decision concerning the dispute, in a
6 written opinion explaining its reasoning, within 120
7 days after the date on which the selection of arbitra-
8 tors has been concluded. The Register shall cause to
9 be published in the Federal Register the written
10 opinion of the arbitral panel within 10 days after re-
11 ceipt thereof.

12 “(4) TITLE 9 PROVISIONS TO GOVERN.—Except
13 to the extent inconsistent with this section, any arbi-
14 tration proceeding under this section shall be con-
15 ducted in the same manner, subject to the same lim-
16 itations, carried out with the same powers (including
17 the power to summon witnesses), and enforced in
18 the courts of the United States as an arbitration
19 proceeding under title 9.

20 “(5) PRECEDENTS.—In rendering a final deci-
21 sion, the arbitral panel shall take into account any
22 final decisions rendered in prior proceedings under
23 this section that address identical or similar issues.
24 The failure of the arbitral panel to take into account
25 such prior decisions may be considered imperfect

1 execution of arbitral powers under section 10(a)(4)
2 of title 9.

3 “(c) NOTICE AND RIGHT TO INTERVENE.—Any in-
4 terested copyright party or interested manufacturing
5 party that requests an arbitral proceeding under this sec-
6 tion shall provide the Register with notice concerning the
7 parties to the dispute and the nature of the dispute within
8 10 days after formally requesting arbitration under sub-
9 section (a). The Register shall cause a summary of such
10 notice to be published in the Federal Register within 10
11 days after receipt of such notice. The arbitral panel shall
12 permit any other interested copyright party or interested
13 manufacturing party who moves to intervene within 20
14 days after such publication to intervene in the action.

15 “(d) AUTHORITY OF ARBITRAL PANEL TO ORDER
16 RELIEF.—

17 “(1) TO PROTECT PROPRIETARY INFORMA-
18 TION.—The arbitral panel shall issue such orders as
19 are appropriate to protect the proprietary technology
20 and information of parties to the proceeding, includ-
21 ing provision for injunctive relief in the event of a
22 violation of such order.

23 “(2) TO TERMINATE PROCEEDING.—The arbi-
24 tral panel shall terminate any proceeding that it has
25 good cause to believe has been commenced in bad

1 faith by a competitor in order to gain access to pro-
2 prietary information. The panel shall also terminate
3 any proceeding that it believes has been commenced
4 before the technology or product at issue has been
5 sufficiently developed or defined to permit an in-
6 formed decision concerning the applicability of this
7 chapter to such technology or product.

8 “(3) TO ORDER RELIEF.—In any case in which
9 the arbitral panel finds, with respect to devices or
10 media that were the subject of the dispute, that roy-
11 alty payments have been or will be due under section
12 1011 through the date of the arbitral decision, the
13 panel shall order the deposit of such royalty pay-
14 ments pursuant to section 1013, plus interest cal-
15 culated as provided under section 1961 of title 28.
16 The arbitral panel shall not award monetary or in-
17 junctive relief, as provided in section 1031 or other-
18 wise, except as is expressly provided in this sub-
19 section.

20 “(e) EFFECT OF ARBITRATION PROCEEDING ON
21 CIVIL ACTIONS AND REMEDIES.—

22 “(1) GENERALLY.—Subject to paragraph (2),
23 and notwithstanding any provision of section 1031,
24 no civil action may be brought or relief granted
25 under section 1031 against any party to an ongoing

1 or completed arbitration proceeding under this sec-
2 tion, with respect to devices or media that are the
3 subject of an arbitration proceeding under this sec-
4 tion.

5 “(2) EXCEPTION.—Paragraph (1) does not
6 bar—

7 “(A) an action for injunctive relief at any
8 time based on a violation of section 1021; or

9 “(B) an action or any relief with respect to
10 those devices or media distributed by their im-
11 porter or manufacturer following the conclusion
12 of such arbitration proceeding, or, if so stipu-
13 lated by the parties, prior to the commencement
14 of such proceeding.

15 “(f) ARBITRAL COSTS.—Except as otherwise agreed
16 by the parties to a dispute, the costs of an arbitral pro-
17 ceeding under this section shall be divided among the par-
18 ties in such fashion as is considered just by the arbitral
19 panel at the conclusion of the proceeding. Each party to
20 the dispute shall bear its own attorney fees unless the ar-
21 bitral panel determines that a nonprevailing party has not
22 proceeded in good faith and that, as a matter of discretion,
23 it is appropriate to award reasonable attorney’s fees to
24 the prevailing party.”.

1 **SEC. 3. TECHNICAL AMENDMENTS.**

2 (a) **FUNCTIONS OF REGISTER.**—Chapter 8 of title
3 17, United States Code is amended—

4 (1) in section 801(b)—

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

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

9 (C) by adding the following new paragraph
10 at the end:

11 “(4) to distribute royalty payments deposited
12 with the Register of Copyrights under section 1014,
13 to determine, in cases where controversy exists, the
14 distribution of such payments, and to carry out its
15 other responsibilities under chapter 10”; and

16 (2) in section 804(d)—

17 (A) by inserting “or (4)” after
18 “801(b)(3)”; and

19 (B) by striking “or 119” and inserting
20 “119, 1015, or 1016”.

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

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

1 (1) in subsection (a) by inserting “or 10” after
2 “8”; and

3 (2) in subsection (b) by inserting “or 10” after
4 “8”.

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

6 This Act and the amendments made by this Act shall
7 take effect on January 1, 1993.

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