

102D CONGRESS
2D SESSION

H. R. 5982

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

SEPTEMBER 22, 1992

Mr. BROOKS (for himself, Mr. DINGELL, Mr. FISH, Mr. LENT, Mr. HUGHES, Mrs. COLLINS of Illinois, Mr. MOORHEAD, and Mr. MCMILLAN of North Carolina) 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

“Sec.

“1001. Definitions.

“SUBCHAPTER B—COPYING CONTROLS

“1002. Incorporation of copying controls.

“SUBCHAPTER C—ROYALTY PAYMENTS

“1003. Obligation to make royalty payments.

“1004. Royalty payments.

“1005. Deposit of royalty payments and deduction of expenses.

“1006. Entitlement to royalty payments.

“1007. Procedures for distributing royalty payments.

**“SUBCHAPTER D—PROHIBITION ON CERTAIN INFRINGEMENT
 ACTIONS, REMEDIES, AND ARBITRATION**

“1008. Prohibition on certain infringement actions.

“1009. Civil remedies.

“1010. Arbitration of certain disputes.

8 **“SUBCHAPTER A—DEFINITIONS**

9 **“§ 1001. Definitions**

10 “As used in this chapter, the following terms have
 11 the following meanings:

12 “(1) A ‘digital audio copied recording’ is a re-
 13 production in a digital recording format of a digital
 14 musical recording, whether that reproduction is

1 made directly from another digital musical recording
2 or indirectly from a transmission.

3 “(2) A ‘digital audio interface device’ is any
4 machine or device that is designed specifically to
5 communicate digital audio information and related
6 interface data to a digital audio recording device
7 through a nonprofessional interface.

8 “(3) A ‘digital audio recording device’ is any
9 machine or device of a type commonly distributed to
10 individuals for use by individuals, whether or not in-
11 cluded with or as part of some other machine or de-
12 vice, the digital recording function of which is de-
13 signed or marketed for the primary purpose of, and
14 that is capable of, making a digital audio copied re-
15 cording for private use, except for—

16 “(A) professional model products, and

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

22 “(4)(A) A ‘digital audio recording medium’ is
23 any material object in a form commonly distributed
24 for use by individuals, that is primarily marketed or
25 most commonly used by consumers for the purpose

1 of making digital audio copied recordings by use of
2 a digital audio recording 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; or

8 “(ii) that is primarily marketed and most
9 commonly used by consumers either for the
10 purpose of making copies of motion pictures or
11 other audiovisual works or for the purpose of
12 making copies of nonmusical literary works, in-
13 cluding computer programs or data bases.

14 “(5)(A) A ‘digital musical recording’ is a mate-
15 rial object—

16 “(i) in which are fixed, in a digital record-
17 ing format, only sounds, and material, state-
18 ments, or instructions incidental to those fixed
19 sounds, if any, and

20 “(ii) from which the sounds and material
21 can be perceived, reproduced, or otherwise com-
22 municated, either directly or with the aid of a
23 machine or device.

24 “(B) A ‘digital musical recording’ does not in-
25 clude a material object—

1 “(i) in which the fixed sounds consist en-
2 tirely of spoken word recordings, or

3 “(ii) in which one or more computer pro-
4 grams are fixed, except that a digital musical
5 recording may contain statements or instruc-
6 tions constituting the fixed sounds and inciden-
7 tal material, and statements or instructions to
8 be used directly or indirectly in order to bring
9 about the perception, reproduction, or commu-
10 nication of the fixed sounds and incidental ma-
11 terial.

12 “(C) For purposes of this paragraph—

13 “(i) a ‘spoken word recording’ is a sound
14 recording in which are fixed only a series of
15 spoken words, except that the spoken words
16 may be accompanied by incidental musical or
17 other sounds, and

18 “(ii) the term ‘incidental’ means related to
19 and relatively minor by comparison.

20 “(6) ‘Distribute’ means to sell, lease, or assign
21 a product to consumers in the United States, or to
22 sell, lease, or assign a product in the United States
23 for ultimate transfer to consumers in the United
24 States.

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

1 “(A) the owner of the exclusive right under
2 section 106(1) of this title to reproduce a sound
3 recording of a musical work that has been em-
4 bodied in a digital musical recording or analog
5 musical recording lawfully made under this title
6 that has been distributed;

7 “(B) the legal or beneficial owner of, or
8 the person that controls, the right to reproduce
9 in a digital musical recording or analog musical
10 recording a musical work that has been em-
11 bodied in a digital musical recording or analog
12 musical recording lawfully made under this title
13 that has been distributed;

14 “(C) a featured recording artist who per-
15 forms on a sound recording that has been dis-
16 tributed; or

17 “(D) any association or other
18 organization—

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

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

1 “(8) To ‘manufacture’ means to produce or as-
2 semble a product in the United States. A ‘manufac-
3 turer’ is a person who manufactures.

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

7 “(10) A ‘professional model product’ is an
8 audio recording device that is designed, manufac-
9 tured, marketed, and intended for use by recording
10 professionals in the ordinary course of a lawful busi-
11 ness, in accordance with such requirements as the
12 Secretary of Commerce shall establish by regulation.

13 “(11) The term ‘serial copying’ means the du-
14 plication in a digital format of a copyrighted musical
15 work or sound recording from a digital reproduction
16 of a digital musical recording. The term ‘digital re-
17 production of a digital musical recording’ does not
18 include a digital musical recording as distributed, by
19 authority of the copyright owner, for ultimate sale to
20 consumers.

21 “(12) The ‘transfer price’ of a digital audio re-
22 cording device or a digital audio recording
23 medium—

24 “(A) is, subject to subparagraph (B)—

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

5 “(ii) in the case of a domestic prod-
6 uct, the manufacturer’s transfer price
7 (FOB the manufacturer, and exclusive of
8 any direct sales taxes or excise taxes in-
9 curred in connection with the sale); and

10 “(B) shall, in a case in which the trans-
11 feror and transferee are related entities or with-
12 in a single entity, not be less than a reasonable
13 arms-length price under the principles of the
14 regulations adopted pursuant to section 482 of
15 the Internal Revenue Code of 1986, or any suc-
16 cessor provision to such section.

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

19 “SUBCHAPTER B—COPYING CONTROLS

20 “§ 1002. Incorporation of copying controls

21 “(a) PROHIBITION ON IMPORTATION, MANUFAC-
22 TURE, AND DISTRIBUTION.—No person shall import,
23 manufacture, or distribute any digital audio recording de-
24 vice or digital audio interface device that does not conform
25 to—

1 “(1) the Serial Copy Management System;

2 “(2) a system that has the same functional
3 characteristics as the Serial Copy Management Sys-
4 tem and requires that copyright and generation sta-
5 tus information be accurately sent, received, and
6 acted upon between devices using the system’s meth-
7 od of serial copying regulation and devices using the
8 Serial Copy Management System; or

9 “(3) any other system certified by the Secretary
10 of Commerce as prohibiting unauthorized serial
11 copying.

12 “(b) DEVELOPMENT OF VERIFICATION PROCE-
13 DURE.—The Secretary of Commerce shall establish a pro-
14 cedure to verify, upon the petition of an interested party,
15 that a system meets the standards set forth in subsection
16 (a)(2).

17 “(c) PROHIBITION ON CIRCUMVENTION OF THE SYS-
18 TEM.—No person shall import, manufacture, or distribute
19 any device, or offer or perform any service, the primary
20 purpose or effect of which is to avoid, bypass, remove, de-
21 activate, or otherwise circumvent any program or circuit
22 which implements, in whole or in part, a system described
23 in subsection (a).

24 “(d) ENCODING OF INFORMATION ON DIGITAL MUSI-
25 CAL RECORDINGS.—

1 “(1) PROHIBITION ON ENCODING INACCURATE
2 INFORMATION.—No person shall encode a digital
3 musical recording of a sound recording with inac-
4 curate information relating to the category code,
5 copyright status, or generation status of the source
6 material for the recording.

7 “(2) ENCODING OF COPYRIGHT STATUS NOT
8 REQUIRED.—Nothing in this chapter requires any
9 person engaged in the importation or manufacture
10 of digital musical recordings to encode any such dig-
11 ital musical recording with respect to its copyright
12 status.

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

22 “SUBCHAPTER C—ROYALTY PAYMENTS

23 “§ 1003. **Obligation to make royalty payments**

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

1 manufacture and distribute, any digital audio recording
2 device or digital audio recording medium unless such per-
3 son records the notice specified by this section and subse-
4 quently deposits the statements of account and applicable
5 royalty payments for such device or medium specified in
6 section 1004.

7 “(b) FILING OF NOTICE.—The importer or manufac-
8 turer of any digital audio recording device or digital audio
9 recording medium, within a product category or utilizing
10 a technology with respect to which such manufacturer or
11 importer has not previously filed a notice under this sub-
12 section, shall file with the Register of Copyrights a notice
13 with respect to such device or medium, in such form and
14 content as the Register shall prescribe by regulation.

15 “(c) FILING OF QUARTERLY AND ANNUAL STATE-
16 MENTS OF ACCOUNT.—

17 “(1) GENERALLY.—Any importer or manufac-
18 turer that distributes any digital audio recording de-
19 vice or digital audio recording medium that it manu-
20 factured or imported shall file with the Register of
21 Copyrights, in such form and content as the Reg-
22 ister shall prescribe by regulation, such quarterly
23 and annual statements of account with respect to
24 such distribution as the Register shall prescribe by
25 regulation.

1 “(2) CERTIFICATION, VERIFICATION, AND CON-
2 FIDENTIALITY.—Each such statement shall be cer-
3 tified as accurate by an authorized officer or prin-
4 cipal of the importer or manufacturer. The Register
5 shall issue regulations to provide for the verification
6 and audit of such statements and to protect the con-
7 fidentiality of the information contained in such
8 statements. Such regulations shall provide for the
9 disclosure, in confidence, of such statements to in-
10 terested copyright parties.

11 “(3) ROYALTY PAYMENTS.—Each such state-
12 ment shall be accompanied by the royalty payments
13 specified in section 1004.

14 **“§ 1004. Royalty payments**

15 “(a) DIGITAL AUDIO RECORDING DEVICES.—

16 “(1) AMOUNT OF PAYMENT.—The royalty pay-
17 ment due under section 1003 for each digital audio
18 recording device imported into and distributed in the
19 United States, or manufactured and distributed in
20 the United States, shall be 2 percent of the transfer
21 price. Only the first person to manufacture and dis-
22 tribute or import and distribute such device shall be
23 required to pay the royalty with respect to such de-
24 vice.

1 “(2) CALCULATION FOR DEVICES DISTRIBUTED
2 WITH OTHER DEVICES.—With respect to a digital
3 audio recording device first distributed in combina-
4 tion with one or more devices, either as a physically
5 integrated unit or as separate components, the roy-
6 alty payment shall be calculated as follows:

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

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

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

1 ceding 4 calendar quarters, the royalty payment
2 shall be based on a constructed price reflecting
3 the proportional value of such device to the
4 combination as a whole.

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

23 “(b) DIGITAL AUDIO RECORDING MEDIA.—The roy-
24 alty payment due under section 1003 for each digital
25 audio recording medium imported into and distributed in

1 the United States, or manufactured and distributed in the
2 United States, shall be 3 percent of the transfer price.
3 Only the first person to manufacture and distribute or im-
4 port and distribute such medium shall be required to pay
5 the royalty with respect to such medium.

6 **“§ 1005. Deposit of royalty payments and deduction of**
7 **expenses**

8 “The Register of Copyrights shall receive all royalty
9 payments deposited under this chapter and, after deduct-
10 ing the reasonable costs incurred by the Copyright Office
11 under this chapter, shall deposit the balance in the Treas-
12 ury of the United States as offsetting receipts, in such
13 manner as the Secretary of the Treasury directs. All funds
14 held by the Secretary of the Treasury shall be invested
15 in interest-bearing United States securities for later dis-
16 tribution with interest under section 1007. The Register
17 may, in the Register’s discretion, 4 years after the close
18 of any calendar year, close out the royalty payments ac-
19 count for that calendar year, and may treat any funds re-
20 maining in such account and any subsequent deposits that
21 would otherwise be attributable to that calendar year as
22 attributable to the succeeding calendar year. The Register
23 shall submit to the Copyright Royalty Tribunal, on a
24 monthly basis, a financial statement reporting the amount

1 of royalties under this chapter that are available for dis-
2 tribution.

3 **“§ 1006. Entitlement to royalty payments**

4 “(a) INTERESTED COPYRIGHT PARTIES.—The roy-
5 alty payments deposited pursuant to section 1005 shall,
6 in accordance with the procedures specified in section
7 1007, be distributed to any interested copyright party—

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

10 “(A) embodied in a digital musical record-
11 ing or an analog musical recording lawfully
12 made under this title that has been distributed,
13 and

14 “(B) distributed in the form of digital mu-
15 sical recordings or analog musical recordings or
16 disseminated to the public in transmissions,
17 during the period to which such payments per-
18 tain; and

19 “(2) who has filed a claim under section 1007.

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

23 “(1) THE SOUND RECORDINGS FUND.—66²/₃
24 percent of the royalty payments shall be allocated to
25 the Sound Recordings Fund. 2⁵/₈ percent of the roy-

1 alty payments allocated to the Sound Recordings
2 Fund shall be placed in an escrow account managed
3 by an independent administrator jointly appointed
4 by the interested copyright parties described in sec-
5 tion 1001(7)(A) and the American Federation of
6 Musicians (or any successor entity) to be distributed
7 to nonfeatured musicians (whether or not members
8 of the American Federation of Musicians or any suc-
9 cessor entity) who have performed on sound record-
10 ings distributed in the United States. 1³/₈ percent of
11 the royalty payments allocated to the Sound Record-
12 ings Fund shall be placed in an escrow account man-
13 aged by an independent administrator jointly ap-
14 pointed by the interested copyright parties described
15 in section 1001(7)(A) and the American Federation
16 of Television and Radio Artists (or any successor en-
17 tity) to be distributed to nonfeatured vocalists
18 (whether or not members of the American Federa-
19 tion Television and Radio Artists or any successor
20 entity) who have performed on sound recordings dis-
21 tributed in the United States. 40 percent of the re-
22 maining royalty payments in the Sound Recordings
23 Fund shall be distributed to the interested copyright
24 parties described in section 1001(7)C), and 60 per-
25 cent of such remaining royalty payments shall be

1 distributed to the interested copyright parties de-
2 scribed in section 1001(7)(A).

3 “(2) THE MUSICAL WORKS FUND.—

4 “(A) 33 $\frac{1}{3}$ percent of the royalty payments
5 shall be allocated to the Musical Works Fund
6 for distribution to interested copyright parties
7 described in section 1001(7)(B).

8 “(B)(i) Music publishers shall be entitled
9 to 50 percent of the royalty payments allocated
10 to the Musical Works Fund.

11 “(ii) Writers shall be entitled to the other
12 50 percent of the royalty payments allocated to
13 the Musical Works Fund.

14 “(c) ALLOCATION OF ROYALTY PAYMENTS WITHIN
15 GROUPS.—If all interested copyright parties within a
16 group specified in subsection (b) do not agree on a vol-
17 untary proposal for the distribution of the royalty pay-
18 ments within each group, the Copyright Royalty Tribunal
19 shall, pursuant to the procedures specified under section
20 1007(c), allocate royalty payments under this section
21 based on the extent to which, during the relevant period—

22 “(1) for the Sound Recordings Fund, each
23 sound recording was distributed in the form of digi-
24 tal musical recordings or analog musical recordings;
25 and

1 “(2) for the Musical Works Fund, each musical
2 work was distributed in the form of digital musical
3 recordings or analog musical recordings or dissemi-
4 nated to the public in transmissions.

5 **“§ 1007. Procedures for distributing royalty payments**

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

7 “(1) FILING OF CLAIMS.—During the first 2
8 months of each calendar year after the calendar year
9 in which this chapter takes effect, every interested
10 copyright party seeking to receive royalty payments
11 to which such party is entitled under section 1006
12 shall file with the Copyright Royalty Tribunal a
13 claim for payments collected during the preceding
14 year in such form and manner as the Tribunal shall
15 prescribe by regulation.

16 “(2) NEGOTIATIONS.—Notwithstanding any
17 provision of the antitrust laws, for purposes of this
18 section interested copyright parties within each
19 group specified in section 1006(b) may agree among
20 themselves to the proportionate division of royalty
21 payments, may lump their claims together and file
22 them jointly or as a single claim, or may designate
23 a common agent, including any organization de-
24 scribed in section 1001(7)(D), to negotiate or receive
25 payment on their behalf; except that no agreement

1 under this subsection may modify the allocation of
2 royalties specified in section 1006(b).

3 “(b) DISTRIBUTION OF PAYMENTS IN THE ABSENCE
4 OF A DISPUTE.—Within 30 days after the period estab-
5 lished for the filing of claims under subsection (a), in each
6 year after the year in which this section takes effect, the
7 Copyright Royalty Tribunal shall determine whether there
8 exists a controversy concerning the distribution of royalty
9 payments under section 1006(c). If the Tribunal deter-
10 mines that no such controversy exists, the Tribunal shall,
11 within 30 days after such determination, authorize the dis-
12 tribution of the royalty payments as set forth in the agree-
13 ments regarding the distribution of royalty payments en-
14 tered into pursuant to subsection (a), after deducting its
15 reasonable administrative costs under this section.

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

1 authorizing the distribution of such royalty payments, deduct
2 its reasonable administrative costs under this section.

3 “SUBCHAPTER D—PROHIBITION ON CERTAIN
4 INFRINGEMENT ACTIONS, REMEDIES, AND
5 ARBITRATION

6 “§ 1008. **Prohibition on certain infringement actions**

7 “No action may be brought under this title alleging
8 infringement of copyright based on the manufacture, im-
9 portation, or distribution of a digital audio recording de-
10 vice, a digital audio recording medium, an analog record-
11 ing device, or an analog recording medium, or based on
12 the noncommercial use by a consumer of such a device
13 or medium for making digital musical recordings or analog
14 musical recordings.

15 “§ 1009. **Civil remedies**

16 “(a) CIVIL ACTIONS.—Any interested copyright party
17 injured by a violation of section 1002 or 1003 may bring
18 a civil action in an appropriate United States district court
19 against any person for such violation.

20 “(b) OTHER CIVIL ACTIONS.—Any person injured by
21 a violation of this chapter may bring a civil action in an
22 appropriate United States district court for actual dam-
23 ages incurred as a result of such violation.

24 “(c) POWERS OF THE COURT.—In an action brought
25 under subsection (a), the court—

1 “(1) may grant temporary and permanent in-
2 junctions on such terms as it deems reasonable to
3 prevent or restrain such violation;

4 “(2) in the case of a violation of section 1002,
5 or in the case of an injury resulting from a failure
6 to make royalty payments required by section 1003,
7 shall award damages under subsection (d);

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

11 “(4) in its discretion may award a reasonable
12 attorney’s fee to the prevailing party.

13 “(d) AWARD OF DAMAGES.—

14 “(1) DAMAGES FOR SECTION 1002 OR 1003 VIO-
15 LATIONS.—

16 “(A) ACTUAL DAMAGES.—(i) In an action
17 brought under subsection (a), if the court finds
18 that a violation of section 1002 or 1003 has oc-
19 curred, the court shall award to the complain-
20 ing party its actual damages if the complaining
21 party elects such damages at any time before
22 final judgment is entered.

23 “(ii) In the case of section 1003, actual
24 damages shall constitute the royalty payments
25 that should have been paid under section 1004

1 and deposited under section 1005. In such a
2 case, the court, in its discretion, may award an
3 additional amount of not to exceed 50 percent
4 of the actual damages.

5 “(B) STATUTORY DAMAGES FOR SECTION
6 1002 VIOLATIONS.—

7 “(i) DEVICE.—A complaining party
8 may recover an award of statutory dam-
9 ages for each violation of section 1002 (a)
10 or (c) in the sum of not more than \$2,500
11 per device involved in such violation or per
12 device on which a service prohibited by sec-
13 tion 1002(c) has been performed, as the
14 court considers just.

15 “(ii) DIGITAL MUSICAL RECORDING.—
16 A complaining party may recover an award
17 of statutory damages for each violation of
18 section 1002(d) in the sum of not more
19 than \$25 per digital musical recording in-
20 volved in such violation, as the court con-
21 siders just.

22 “(iii) TRANSMISSION.—A complaining
23 party may recover an award of damages
24 for each transmission or communication
25 that violates section 1002(e) in the sum of

1 not more than \$10,000, as the court con-
2 siders just.

3 “(2) REPEATED VIOLATIONS.—In any case in
4 which the court finds that a person has violated sec-
5 tion 1002 or 1003 within 3 years after a final judg-
6 ment against that person for another such violation
7 was entered, the court may increase the award of
8 damages to not more than double the amounts that
9 would otherwise be awarded under paragraph (1), as
10 the court considers just.

11 “(3) INNOCENT VIOLATIONS OF SECTION
12 1002.—The court in its discretion may reduce the
13 total award of damages against a person violating
14 section 1002 to a sum of not less than \$250 in any
15 case in which the court finds that the violator was
16 not aware and had no reason to believe that its acts
17 constituted a violation of section 1002.

18 “(e) PAYMENT OF DAMAGES.—Any award of dam-
19 ages under subsection (d) shall be deposited with the Reg-
20 ister pursuant to section 1005 for distribution to inter-
21 ested copyright parties as though such funds were royalty
22 payments made pursuant to section 1003.

23 “(f) IMPOUNDING OF ARTICLES.—At any time while
24 an action under subsection (a) is pending, the court may
25 order the impounding, on such terms as it deems reason-

1 able, of any digital audio recording device, digital musical
2 recording, or device specified in section 1002(c) that is
3 in the custody or control of the alleged violator and that
4 the court has reasonable cause to believe does not comply
5 with, or was involved in a violation of, section 1002.

6 “(g) REMEDIAL MODIFICATION AND DESTRUCTION
7 OF ARTICLES.—In an action brought under subsection
8 (a), the court may, as part of a final judgment or decree
9 finding a violation of section 1002, order the remedial
10 modification or the destruction of any digital audio record-
11 ing device, digital musical recording, or device specified
12 in section 1002(c) that—

13 “(1) does not comply with, or was involved in
14 a violation of, section 1002, and

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

17 **“§ 1010. Arbitration of certain disputes**

18 “(a) SCOPE OF ARBITRATION.—Before the date of
19 first distribution in the United States of a digital audio
20 recording device or a digital audio interface device, any
21 party manufacturing, importing, or distributing such de-
22 vice, and any interested copyright party may mutually
23 agree to binding arbitration for the purpose of determin-
24 ing whether such device is subject to section 1002, or the

1 basis on which royalty payments for such device are to
2 be made under section 1003.

3 “(b) INITIATION OF ARBITRATION PROCEEDINGS.—
4 Parties agreeing to such arbitration shall file a petition
5 with the Copyright Royalty Tribunal requesting the com-
6 mencement of an arbitration proceeding. The petition may
7 include the names and qualifications of potential arbitra-
8 tors. Within 2 weeks after receiving such a petition, the
9 Tribunal shall cause notice to be published in the Federal
10 Register of the initiation of an arbitration proceeding.
11 Such notice shall include the names and qualifications of
12 3 arbitrators chosen by the Tribunal from a list of avail-
13 able arbitrators obtained from the American Arbitration
14 Association or such similar organization as the Tribunal
15 shall select, and from potential arbitrators listed in the
16 parties’ petition. The arbitrators selected under this sub-
17 section shall constitute an Arbitration Panel.

18 “(c) STAY OF JUDICIAL PROCEEDINGS.—Any civil
19 action brought under section 1009 against a party to arbi-
20 tration under this section shall, on application of one of
21 the parties to the arbitration, be stayed until completion
22 of the arbitration proceeding.

23 “(d) ARBITRATION PROCEEDING.—The Arbitration
24 Panel shall conduct an arbitration proceeding with respect
25 to the matter concerned, in accordance with such proce-

1 dures as it may adopt. The Panel shall act on the basis
2 of a fully documented written record. Any party to the
3 arbitration may submit relevant information and proposals
4 to the Panel. The parties to the proceeding shall bear the
5 entire cost thereof in such manner and proportion as the
6 Panel shall direct.

7 “(e) REPORT TO COPYRIGHT ROYALTY TRIBUNAL.—
8 Not later than 60 days after publication of the notice
9 under subsection (b) of the initiation of an arbitration pro-
10 ceeding, the Arbitration Panel shall report to the Copy-
11 right Royalty Tribunal its determination concerning
12 whether the device concerned is subject to section 1002,
13 or the basis on which royalty payments for the device are
14 to be made under section 1003. Such report shall be ac-
15 companied by the written record, and shall set forth the
16 facts that the Panel found relevant to its determination.

17 “(f) ACTION BY THE COPYRIGHT ROYALTY TRIBU-
18 NAL.—Within 60 days after receiving the report of the Ar-
19 bitration Panel under subsection (e), the Copyright Roy-
20 alty Tribunal shall adopt or reject the determination of
21 the Panel. The Tribunal shall adopt the determination of
22 the Panel unless the Tribunal finds that the determination
23 is clearly erroneous. If the Tribunal rejects the determina-
24 tion of the Panel, the Tribunal shall, before the end of
25 that 60-day period, and after full examination of the

1 record created in the arbitration proceeding, issue an
2 order setting forth its decision and the reasons therefor.
3 The Tribunal shall cause to be published in the Federal
4 Register the determination of the Panel and the decision
5 of the Tribunal under this subsection with respect to the
6 determination (including any order issued under the pre-
7 ceding sentence).

8 “(g) JUDICIAL REVIEW.—Any decision of the Copy-
9 right Royalty Tribunal under subsection (f) with respect
10 to a determination of the Arbitration Panel may be ap-
11 pealed, by a party to the arbitration, to the United States
12 Court of Appeals for the District of Columbia Circuit,
13 within 30 days after the publication of the decision in the
14 Federal Register. The pendency of an appeal under this
15 subsection shall not stay the Tribunal’s decision. The
16 court shall have jurisdiction to modify or vacate a decision
17 of the Tribunal only if it finds, on the basis of the record
18 before the Tribunal, that the Arbitration Panel or the Tri-
19 bunal acted in an arbitrary manner. If the court modifies
20 the decision of the Tribunal, the court shall have jurisdic-
21 tion to enter its own decision in accordance with its final
22 judgment. The court may further vacate the decision of
23 the Tribunal and remand the case for arbitration proceed-
24 ings as provided in this section.”.

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 1003,
13 to determine the distribution of such payments, and
14 to carry out its other responsibilities under chapter
15 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, or 1007”.

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 (d) **CONFORMING AMENDMENT TO SECTION 337 OF**
6 **THE TARIFF ACT OF 1930.**—The second sentence of sec-
7 tion 337(b)(3) of the Tariff Act of 1930 (19 U.S.C.
8 1337(b)(3)) is amended to read as follows: “If the Com-
9 mission has reason to believe that the matter before it (A)
10 is based solely on alleged acts and effects which are within
11 the purview of section 303, 671, or 673, or (B) relates
12 to an alleged copyright infringement with respect to which
13 action is prohibited by section 1008 of title 17, United
14 States Code, the Commission shall terminate, or not insti-
15 tute, any investigation into the matter.”.

16 **SEC. 4. EFFECTIVE DATE.**

17 This Act and the amendments made by this Act shall
18 take effect on the date of the enactment of this Act.

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