

/\* R FRINGE COMMENTARY: This section of the copyright code deals with how jukebox and Tv cable royalties are apportioned among those who own songs and Tv shows. Unless this is of interest to you, it may be safely ignored. \*/

## CHAPTER 8. COPYRIGHT ROYALTY TRIBUNAL

### Section

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### S 801. Copyright Royalty Tribunal: Establishment and purpose

(a) There is hereby created an independent Copyright Royalty Tribunal in the legislative branch.

(b) Subject to the provisions of this chapter [17 USC SS 801 et seq.], the purposes of the Tribunal shall be --

(1) to make determinations concerning the adjustment of reasonable copyright royalty rates as provided in sections 115 and 116 [17 USC SS 115 and 116], and to make determinations as to reasonable terms and rates of royalty payments as provided in section 118 [17 USC S 118]. The rates applicable under sections 115 and 116 [17 USC SS 115 and 116] shall be calculated to achieve the following objectives:

(A) To maximize the availability of creative works to the public;

(B) To afford the copyright owner a fair return for his creative work and the copyright user a fair income under existing economic conditions;

(C) To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution to the opening of new markets for creative expression and media for their communication;

(D) To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.

(2) to make determinations concerning the adjustment of the copyright royalty rates in section 111 [17 USC S 111] solely in accordance with the following provisions:

(A) The rates established by section 111(d)(2)(B) [17 USC S 111(d)(2)(B)] may be adjusted to reflect (i) national monetary inflation or deflation or (ii) changes in the average rates charged cable subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar level of the royalty fee per subscriber which existed as of the date of enactment of this Act [enacted Oct. 19, 1976]: Provided, That if the average rates charged cable system subscribers for the basic service of providing secondary transmissions are changed so that

the average rates exceed national monetary inflation, no change in the rates established by section 111(d)(2)(B) [17 USC S 111(d)(2)(B)] shall be permitted: And provided further, That no increase in the royalty fee shall be permitted based on any reduction in the average number of distant signal equivalents per subscriber. The Commission may consider all factors relating to the maintenance of such level of payments including, as an extenuating factor, whether the cable industry has been restrained by subscriber rate regulating authorities from increasing the rates for the basic service of providing secondary transmissions.

(B) In the event that the rules and regulations of the Federal Communications Commission are amended at any time after April 15, 1976, to permit the carriage by cable systems of additional television broadcast signals beyond the local service area of the primary transmitters of such signals, the royalty rates established by section 111(d)(2)(B) [17 USC S 111(d)(2)(B)] may be adjusted to insure that the rates for the additional distant signal equivalents resulting from such carriage are reasonable in the light of the changes effected by the amendment to such rules and regulations. In determining the reasonableness of rates proposed following an amendment of Federal Communications Commission rules and regulations, the Copyright Royalty Tribunal shall consider, among other factors, the economic impact on copyright owners and users: Provided, That no adjustment in royalty rates shall be made under this subclause with respect to any distant signal equivalent or fraction thereof represented by (i) carriage of any signal permitted under the rules and regulations of the Federal Communications Commission in effect on April 15, 1976, or the carriage of a signal of the same type (that is, independent, network, or noncommercial educational) substituted for such permitted signal, or noncommercial educational) substituted for such permitted signal, or (ii) a television broadcast signal first carried after April 15, 1976, pursuant to an individual waiver of the rules and regulations of the Federal Communications Commission, as such rules and regulations were in effect on April 15, 1976.

(C) In the event of any change in the rules and regulations of the Federal Communications Commission with respect to syndicated and sports program exclusivity after April 15, 1976, the rates established by section 111(d)(2)(B) [17 USC S 111(d)(2)(B)] may be adjusted to assure that such rates are reasonable in light of the changes to such rules and regulations, but any such adjustment shall apply only to the affected television broadcast signals carried on those systems affected by the change.

(D) The gross receipts limitations established by section 111(d)(2)(C) and (D) [17 USC S 111(d)(2)(C) and (D)] shall be adjusted to reflect national monetary inflation or deflation or changes in the average rates charged cable system subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar value of the exemption provided by such section; and the royalty rate specified therein shall not be subject to adjustment; and

(3) to distribute royalty fees deposited with the Register of Copyrights under section 111 and 116 [17 USC S 111 and 116], and to determine, in cases where controversy exists, the distribution of such fees.

(c) As soon as possible after the date of enactment of this Act [enacted Oct. 19, 1976], and no later than six months following such date, the President shall publish a notice announcing the initial appointments provided in section 802 [17 USC S 802], and shall designate an order of seniority among the initially-appointed commissioners for purposes of section 802(b) [17 USC S 802(b)].

#### S 802. Membership of the Tribunal

(a) The Tribunal shall be composed of five commissioners appointed by the President with the advice and consent of the Senate for a term of seven years each; of the first five members appointed, three shall be designated to serve for seven years from the date of the notice specified in section 801 (c) [17 USC S 801(c)], and two shall be designated to serve for five years from such date, respectively. Commissioners shall be compensated at the highest rate now or hereafter [enacted Oct. 19, 1976] prescribe [prescribed] for grade 18 of the General Schedule pay rates (5 USC 5332) [5 USC S 5332].

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(b) Upon convening the commissioners shall elect a chairman from among the commissioners appointed for a full seven-year term. Such chairman shall serve for a term of one year. Thereafter, the most senior commissioner who has not previously served as chairman shall serve as chairman for a period of one year, except that, if all commissioners have served a full term as chairman, the most senior commissioner who has served the least number of terms as chairman shall be designated as chairman.

(c) Any vacancy in the Tribunal shall not affect its powers and shall be filled, for the unexpired term of the appointment, in the same manner as the original appointment was made.

#### S 803. Procedures of the Tribunal

(a) The Tribunal shall adopt regulations, not inconsistent with law, governing its procedure and methods of operation. Except as otherwise provided in this chapter, the Tribunal shall be subject to the provisions of the Administrative Procedure Act of June 11, 1946, as amended (c. 324, 60 Stat. 237, Title 5, United States Code, Chapter 5, Subchapter II and Chapter 7).

(b) Every final determination of the Tribunal shall be published in the Federal Register. It shall state in detail the criteria that the Tribunal determined to be applicable to the particular proceeding, the various facts that it found relevant to its determination in that proceeding, and the specific reasons for its determination.

#### S 804. Institution and conclusion of proceedings

(a) With respect to proceedings under section 801(b)(1) [17 USC S 801(b)(1)] concerning the adjustment of royalty rates as provided in sections 115 and 116 [17 USC SS 115 and 116], and with respect to proceedings under section 801(b)(2)(A) and (D) [17 USC S 801(b)(2)(A) and (D)] --

(1) on January 1, 1980, the Chairman of the Tribunal shall

cause to be published in the Federal Register notice of commencement of proceedings under this chapter [17 USC SS 801 et seq.]; and

(2) during the calendar years specified in the following schedule, any owner or user of a copyrighted work whose royalty rates are specified by this title [17 USC SS 101 et seq.], or by a rate established by the Tribunal, may file a petition with the Tribunal declaring that the petitioner requests an adjustment of the rate. The Tribunal shall make a determination as to whether the applicant has a significant interest in the royalty rate in which an adjustment is requested. If the Tribunal determines that the petitioner has a significant interest, the Chairman shall cause notice of this determination, with the reasons therefore, to be published in the Federal Register, together with notice of commencement of proceedings under this chapter [17 USC SS 801 et seq.].

(A) In proceedings under section 801(b)(2)(A) and (D) [17 USC S 801(b)(2)(A) and (D)], such petition may be filed during 1985 and in each subsequent fifth calendar year.

(B) In proceedings under section 801(b)(1) [17 USC S 801(b)(1)] concerning the adjustment of royalty rates as provided in section 115 [17 USC S 115], such petition may be filed in 1987 and in each subsequent tenth calendar year.

(C) In proceedings under section 801(b)(1) [17 USC S 801 (b)(1)] concerning the adjustment of royalty rates under section 116 [17 USC S 116], such petition may be filed in 1990 and in each subsequent tenth calendar year.

(b) With respect to proceedings under subclause (B) or (C) of section 801(b)(2) [17 USC S 801(b)(2)(B) or (C)], following an event described in either of those subsections, any owner or user of a copyrighted work whose royalty rates are specified by section 111 [17 USC S 111], or by a rate established by the Tribunal, may, within twelve months, file a petition with the Tribunal declaring that the petitioner requests an adjustment of the rate. In this event the Tribunal shall proceed as in subsection (a)(2), above. Any change in royalty rates made by the Tribunal pursuant to this subsection may be reconsidered in 1980, 1985, and each fifth calendar year thereafter, in accordance with the provisions in section 801(b)(2)(B) or (C) [17 USC S 801(b)(2)(B) or (C)], as the case may be.

(c) With respect to proceedings under section 801(b)(1) [17 USC S 801(b)(1)], concerning the determination of reasonable terms and rates of royalty payments as provided in section 118 [17 USC S 118], the Tribunal shall proceed when and as provided by that section.

(d) With respect to proceedings under section 801(b)(3) [17 USC S 801(b)(3)], concerning the distribution of royalty fees in certain circumstances under sections 111 or 116 [17 USC SS 111 or 116], the Chairman of the Tribunal shall, upon determination by the Tribunal that a controversy exists concerning such distribution, cause to be published in the Federal Register notice of commencement of proceedings under this chapter [17 USC SS 801 et seq.].

(e) All proceedings under this chapter [17 USC SS 801 et seq.] shall be initiated without delay following publication of the

notice specified in this section, and the Tribunal shall render its final decision in any such proceeding within one year from the date of such publication.

#### S 805. Staff of the Tribunal

(a) The Tribunal is authorized to appoint and fix the compensation of such employees as may be necessary to carry out the provisions of this chapter [17 USC SS 801 et seq.], and to prescribe their functions and duties.

(b) The Tribunal may procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5 [5 USC S 3109].

#### S 806. Administrative support of the Tribunal

(a) The Library of Congress shall provide the Tribunal with necessary administrative services, including those related to the budgeting, accounting, financial reporting, travel, personnel, and procurement. The Tribunal shall pay the Library for such services, either in advance or by reimbursement from the funds of the Tribunal, at amounts to be agreed upon between the Librarian and the Tribunal.

(b) The Library of Congress is authorized to disburse funds for the Tribunal, under regulations prescribed jointly by the Librarian of Congress and the Tribunal and approved by the Comptroller General. Such regulations shall establish requirements and procedures under which every voucher certified for payment by the Library of Congress under this chapter [17 USC SS 801 et seq.] shall be supported with a certification by a duly authorized officer or employee of the Tribunal, and shall prescribe the responsibilities and accountability of said officers and employees of the Tribunal with respect to such certifications.

#### S 807. Deduction of costs of proceedings

Before any funds are distributed pursuant to a final decision in a proceeding involving distribution of royalty fees, the Tribunal shall assess the reasonable costs of such proceeding.

#### S 808. Reports

In addition to its publication of the reports of all final determinations as provided in section 803(b) [17 USC S 803(b)], the Tribunal shall make an annual report to the President and the Congress concerning the Tribunal's work during the preceding fiscal year, including a detailed fiscal statement of account.

#### S 809. Effective date of final determinations

Any final determination by the Tribunal under this chapter [17 USC SS 801 et seq.] shall become effective thirty days following its publication in the Federal Register as provided in section 803(b) [17 USC S 803(b)], unless prior to that time an appeal has been filed pursuant to section 810 [17 USC S 810], to vacate, modify, or correct such determination, and notice of such appeal has been served on all parties who appeared before the Tribunal in the proceeding in question. Where the proceeding involves the distribution of royalty fees under sections 111 or 116 [17 USC SS 111 or 116], the Tribunal shall, upon the expiration of such thirty-day period, distribute any royalty fees not

subject to an appeal filed pursuant to section 810 [17 USC S 810].

#### S 810. Judicial review

Any final decision of the Tribunal in a proceeding under section 801(b) [17 USC S 801(b)] may be appealed to the United States Court of Appeals, within thirty days after its publication in the Federal Register by an aggrieved party. The judicial review of the decision shall be had, in accordance with Chapter 7 of title 5 [USC SS 701 et seq.], on the basis of the record before the Tribunal. No court shall have jurisdiction to review a final decision of the Tribunal except as provided in this section.