

DMCA

The Digital Millennium Copyright
Act of 1998

Digital Millennium Copyright Act

- **Title I: WIPO Treaties**

Relates to international copyright treaties and protections.

- **Title II: Online Copyright Infringement Liability Limitation Act**

Liability limitations for ISPs

- **Title III: Computer Maintenance Competition Assurance Act**

Exempts copies made for certain maintenance situations.

- **Title IV: Misc Provisions**

Copyright office information, educational exceptions, webcasting, etc.

- **Title V: Vessel Hull Design Protection Act**

Unrelated act strengthening current protections for ship designs.

Title I – WIPO Compliance

Long name: “WIPO (World Intellectual Property Organization) Copyright and Performances and Phonograms Treaties Implementation Act of 1998”

Essentially strengthens existing international copyright protections defined in the WIPO treaties. Also adds new sections to US copyright law.

WIPO Implementation

- Requires member countries to protect copyrighted material from other members.
- Defines conditions for foreign works to be protected under US copyright law.
- Obligates members to prevent circumvention of protection technologies
- Protects “Fair Use”, but prohibits unauthorized copying, or the selling of devices which allow unauthorized access or copying.

- Does not require manufacturers to conform to specific copy protection technology, except for analog devices such as VCRs.
- Defines exceptions to technological circumvention and copying for nonprofit libraries, authorised researchers and testers, or situations involving personal privacy or protection of minors (in certain cases).
- Requires the copyright office to study the effects of the DMCA and WIPO and report to Congress on the impacts on media piracy, research, and other areas.

Title II-Online Copyright Infringement Liability Limitation

- Sec.201 Short Title
 - States this title may be cited as “Online Copyright Infringement Liability Limitation Act”
- Sec.202 Limitations on Liability for Copyright Infringement
- Sec.203 Effective Date
 - States this title and all amendments for this title shall take effect on the enactment of this Act

Sec. 202

- Limitations on Liability for Copyright Infringement
 - Amends Chapter 5 of Title 17 of United States Code
 - Adds section 512 to cover four issues
 - a. Transitory communications
 - b. System caching
 - c. Storage of information on systems or networks at direction of users
 - d. Information location tools.

Limitation for Transitory Communication

- Section 512(a) acts to limit the liability of a service provider acting as a data conduit.
- This limitation covers
 - Acts of transmission
 - Routing, or
 - Providing connections for the information, or copies made in the operation of a network

What is a Service Provider (SP)

- Definition:
 - The term “service provider” means an entity offering the connections for means of online communication.

Qualification for limited liability

- In order to qualify for the limitation a service provider's acts must
 - Be initiated by a person other than the SP
 - The transmission or routing must be done by an automatic device without selection by the SP
 - The SP must not determine the recipients of the material
 - Any intermediate copies must not be kept longer than necessary and must not be given out to anyone other than the intended recipients
 - The material must be transmitted without modification to its contents

Limitation for System Caching

- Section 512(b) limits the liability of SP's for the practice of retaining copies of material made available online by a person other than the provider.

Why would a SP do this?

- A SP would retain copies of material so subsequent requests for the same material could be transmitted without going to the original source on the network.
 - Reduces the SP bandwidth requirement
 - Reduces wait time for requests of the same information

Qualifications for Limitation

- The content retained must not be modified.
- The provider must comply with rules about “refreshing” the info so users don’t get out of data material.
- The provider must not interfere with technology providing “hit” information.
- The provider must limit access with accordance of original access rights such as a password.
- Any material posted without authorization by the copyrights owner must be removed once the SP is informed of it’s misuse.

Limitation for Information Residing on Systems or Networks at the Direction of Users

- This Limits the liability of a SP for infringing material on websites hosted on their systems

Qualifications for Limitation

- The provider must not have actual knowledge of the infringement. Or upon receiving knowledge of a violation reports the violation and takes down or blocks the material.
- If the SP can control the “bad” activity it must not have financially benefited directly from the infringing activity.
- Lastly the provider must act promptly.

Limitation for Information Location Tools

- Section 512(d) limits the liability of SP for hyperlinks, online directories, and search engines or the like.
- It limits the liability for referring users to sites with infringing material by using such “information tools.”

Qualifications for Limitation

- Same as before
- The provider must not have actual knowledge of the infringement. Or upon receiving knowledge of a violation reports the violation and takes down or blocks the material.
- If the SP can control the “bad” activity it must not have financially benefited directly from the infringing activity.
- Lastly the provider must act promptly.

Rules for Nonprofit Educational Institution

- Section 512(e) acts to determine if the actions of a graduate student or employee will affect the eligibility for limitations on liability for a nonprofit education institute.

Qualifications

- In order for the person to be considered someone other than the provider the following conditions must be met
 - The material must not be course material from the last three years
 - The institution must not have received more than two notifications in the last three years that the person was infringing.
 - The institution provides all users with copyright information.

Summary

- Title II limits liability in four areas for SP's
 - a. Transitory communications
 - b. System caching
 - c. Storage of information on systems or networks at direction of users
 - d. Information location tools.

Title III - Exemption for computer maintenance or repair

- Exempts the copying of software from protection under DMCA in specific instances.
- Allows the owner of a software program to make or authorize a copy of that program when necessary to repair or maintain a computer.
- Only authorizes program copies made “automatically when computer is activated”, if the computer already contains a legal copy.
- Requires that new copy not be used for other purposes, and be deleted once repair is complete.

Title IV – Miscellaneous Exemptions

- Clarification of the Authority of the Copyright Office
- Ephemeral Recordings for Broadcasters
- Distance Education Study
- Exemption for Nonprofit Libraries and Archives
- Webcasting Amendments to the Digital Performance Right in Sound Recordings
- Assumption of Contractual Obligations upon Transfers of Rights in Motion Pictures

Clarification of the Authority of the Copyright Office

- Section 401
- Upgrades United States Code
- Clarifies existing responsibilities
- Adds new responsibilities for the digital age

Ephemeral Recordings for Broadcasters

- Section 402 upgrades Section 112
- Exemption for ephemeral recordings
- Update to allow digital formats
- Allows circumvention of access control technologies

Distance Education Study

- Section 403
- Copyright office to consider this later
- Which parties should be eligible?
- Security measures
- Other issues

Exemption for Nonprofit Libraries and Archives

- Section 404 upgrades Section 108
- Now permits digital copy
- Previously only allowed facsimile
- Now permits three copies
- Cannot leave library
- Allows changes to update from obsolete format

Webcasting Amendments to the Digital Performance Right in Sound Recordings

- Section 405
- New category of transmission
- Non-subscription transmission

Assumption of Contractual Obligations upon Transfers of Rights in Motion Pictures

- Section 406
- Takes care of writers, directors, and screen actors
- If producer is no longer able to make residual payments, distributors must pay

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Some facts:

Length of the Official Text of the DMCA:

59 pages

Total number of words:

26,876