

## **Appendix V**

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### **Additional Provisions of the Digital Millennium Copyright Act<sup>1</sup>**

#### **Section 1 · Short Title.**

This Act may be cited as the “Digital Millennium Copyright Act”.

#### **Title I — WIPO Treaties Implementation**

##### ***Sec. 101 · Short Title.***

This title may be cited as the “WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998”.

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##### ***Sec. 104 · Evaluation of Impact of Copyright Law and Amendments on Electronic Commerce and Technological Development.***

(a) EVALUATION BY THE REGISTER OF COPYRIGHTS AND THE ASSISTANT SECRETARY FOR COMMUNICATIONS AND INFORMATION. — The Register of Copyrights and the Assistant Secretary for Communications and Information of the Department of Commerce shall jointly evaluate —

(1) the effects of the amendments made by this title and the development of electronic commerce and associated technology on the operation of sections 109 and 117 of title 17, United States Code; and

(2) the relationship between existing and emergent technology and the operation of sections 109 and 117 of title 17, United States Code.

(b) REPORT TO CONGRESS. — The Register of Copyrights and the Assistant Secretary for Communications and Information of the Department of Commerce shall, not later than 24 months after the date of the enactment of this Act, submit to the Congress a joint report on the evaluation conducted under subsection (a), including any legislative recommendations the Register and the Assistant Secretary may have.

##### ***Sec. 105 · Effective Date.***

(a) IN GENERAL. — Except as otherwise provided in this title, this title and the amendments made by this title shall take effect on the date of the enactment of this Act.

(b) AMENDMENTS RELATING TO CERTAIN INTERNATIONAL AGREEMENTS. — (1) The following shall take effect upon the entry into force of the WIPO Copyright Treaty with respect to the United States:

(A) Paragraph (5) of the definition of “international agreement” contained in section 101 of title 17, United States Code, as amended by section 102(a)(4) of this Act.

(B) The amendment made by section 102(a)(6) of this Act.

(C) Subparagraph (C) of section 104A(h)(1) of title 17, United States Code, as amended by section 102(c)(1) of this Act.

(D) Subparagraph (C) of section 104A(h)(3) of title 17, United States Code, as amended by section 102(c)(2) of this Act.

(2) The following shall take effect upon the entry into force of the WIPO Performances and Phonograms Treaty with respect to the United States:

(A) Paragraph (6) of the definition of “international agreement” contained in section 101 of title 17, United States Code, as amended by section 102(a)(4) of this Act.

(B) The amendment made by section 102(a)(7) of this Act.

(C) The amendment made by section 102(b)(2) of this Act.

(D) Subparagraph (D) of section 104A(h)(1) of title 17, United States Code, as amended by section 102(c)(1) of this Act.

(E) Subparagraph (D) of section 104A(h)(3) of title 17, United States Code, as amended by section 102(c)(2) of this Act.

(F) The amendments made by section 102(c)(3) of this Act.

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## **Title II — Online Copyright Infringement Liability Limitation**

### ***Sec. 201 · Short Title.***

This title may be cited as the “Online Copyright Infringement Liability Limitation Act”.

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### ***Sec. 203 · Effective Date.***

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

(3) Section 5314 of title 5, United States Code, is amended by adding at the end the following:

“Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

“Register of Copyrights.”

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**Sec. 403 • Limitations on Exclusive Rights; Distance Education.**

(a) RECOMMENDATIONS BY REGISTER OF COPYRIGHTS. — Not later than 6 months after the date of the enactment of this Act, the Register of Copyrights, after consultation with representatives of copyright owners, nonprofit educational institutions, and nonprofit libraries and archives, shall submit to the Congress recommendations on how to promote distance education through digital technologies, including interactive digital networks, while maintaining an appropriate balance between the rights of copyright owners and the needs of users of copyrighted works. Such recommendations shall include any legislation the Register of Copyrights considers appropriate to achieve the objective described in the preceding sentence.

(b) FACTORS. — In formulating recommendations under subsection (a), the Register of Copyrights shall consider —

(1) the need for an exemption from exclusive rights of copyright owners for distance education through digital networks;

(2) the categories of works to be included under any distance education exemption;

(3) the extent of appropriate quantitative limitations on the portions of works that may be used under any distance education exemption;

(4) the parties who should be entitled to the benefits of any distance education exemption;

(5) the parties who should be designated as eligible recipients of distance education materials under any distance education exemption;

(6) whether and what types of technological measures can or should be employed to safeguard against unauthorized access to, and use or retention of, copyrighted materials as a condition of eligibility for any distance education exemption, including, in light of developing technological capabilities, the exemption set out in section 110(2) of title 17, United States Code;

(7) the extent to which the availability of licenses for the use of copyrighted works in distance education through interactive digital networks should be considered in assessing eligibility for any distance education exemption; and

(8) such other issues relating to distance education through interactive digital networks that the Register considers appropriate.

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***Sec. 405 · Scope of Exclusive Rights in Sound Recordings;  
Ephemeral Recordings.***

(a) SCOPE OF EXCLUSIVE RIGHTS IN SOUND RECORDINGS.

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(5) The amendment made by paragraph (2)(B)(i)(III) of this subsection shall be deemed to have been enacted as part of the Digital Performance Right in Sound Recordings Act of 1995, and the publication of notice of proceedings under section 114(f)(1) of title 17, United States Code, as in effect upon the effective date of that Act, for the determination of royalty payments shall be deemed to have been made for the period beginning on the effective date of that Act and ending on December 1, 2001.

(6) The amendments made by this subsection do not annul, limit, or otherwise impair the rights that are preserved by section 114 of title 17, United States Code, including the rights preserved by subsections (c), (d)(4), and (i) of such section.

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(c) SCOPE OF SECTION 112(A) OF TITLE 17 NOT AFFECTED. —

Nothing in this section or the amendments made by this section shall affect the scope of section 112(a) of title 17, United States Code, or the entitlement of any person to an exemption thereunder.

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***Sec. 406 · Assumption of Contractual Obligations Related to  
Transfers of Rights in Motion Pictures.***

(a) IN GENERAL. — Part VI of title 28, United States Code, is amended by adding at the end the following new chapter:

**“Chapter 180 — Assumption of Certain Contractual Obligations**

“Sec. 4001. Assumption of contractual obligations related to transfers of rights in motion pictures.

**“§4001. Assumption of contractual obligations related to transfers of rights in motion pictures**

“(a) ASSUMPTION OF OBLIGATIONS. — (1) In the case of a transfer of copyright ownership under United States law in a motion picture (as the terms ‘transfer of

copyright ownership’ and ‘motion picture’ are defined in section 101 of title 17) that is produced subject to 1 or more collective bargaining agreements negotiated under the laws of the United States, if the transfer is executed on or after the effective date of this chapter and is not limited to public performance rights, the transfer instrument shall be deemed to incorporate the assumption agreements applicable to the copyright ownership being transferred that are required by the applicable collective bargaining agreement, and the transferee shall be subject to the obligations under each such assumption agreement to make residual payments and provide related notices, accruing after the effective date of the transfer and applicable to the exploitation of the rights transferred, and any remedies under each such assumption agreement for breach of those obligations, as those obligations and remedies are set forth in the applicable collective bargaining agreement, if—

“(A) the transferee knows or has reason to know at the time of the transfer that such collective bargaining agreement was or will be applicable to the motion picture; or

“(B) in the event of a court order confirming an arbitration award against the transferor under the collective bargaining agreement, the transferor does not have the financial ability to satisfy the award within 90 days after the order is issued.

“(2) For purposes of paragraph (1)(A), ‘knows or has reason to know’ means any of the following:

“(A) Actual knowledge that the collective bargaining agreement was or will be applicable to the motion picture.

“(B)(i) Constructive knowledge that the collective bargaining agreement was or will be applicable to the motion picture, arising from recordation of a document pertaining to copyright in the motion picture under section 205 of title 17 or from publication, at a site available to the public online that is operated by the relevant union, of information that identifies the motion picture as subject to a collective bargaining agreement with that union, if the site permits commercially reasonable verification of the date on which the information was available for access.

“(ii) Clause (i) applies only if the transfer referred to in subsection (a)(1) occurs—

“(I) after the motion picture is completed, or

“(II) before the motion picture is completed and—

“(aa) within 18 months before the filing of an application for copyright registration for the motion picture under section 408 of title 17, or

“(bb) if no such application is filed, within 18 months before the first publication of the motion picture in the United States.

“(C) Awareness of other facts and circumstances pertaining to a particular transfer from which it is apparent that the collective bargaining agreement was or will be applicable to the motion picture.

“(b) SCOPE OF EXCLUSION OF TRANSFERS OF PUBLIC PERFORMANCE RIGHTS. — For purposes of this section, the exclusion under subsection (a) of transfers of copyright ownership in a motion picture that are limited to public performance rights includes transfers to a terrestrial broadcast station, cable system, or programmer to the extent that the station, system, or programmer is functioning as an exhibitor of the motion picture, either by exhibiting the motion picture on its own network, system, service, or station, or by initiating the transmission of an exhibition that is carried on another network, system, service, or station. When a terrestrial broadcast station, cable system, or programmer, or other transferee, is also functioning otherwise as a distributor or as a producer of the motion picture, the public performance exclusion does not affect any obligations imposed on the transferee to the extent that it is engaging in such functions.

“(c) EXCLUSION FOR GRANTS OF SECURITY INTERESTS. — Subsection (a) shall not apply to —

“(1) a transfer of copyright ownership consisting solely of a mortgage, hypothecation, or other security interest; or

“(2) a subsequent transfer of the copyright ownership secured by the security interest described in paragraph (1) by or under the authority of the secured party, including a transfer through the exercise of the secured party’s rights or remedies as a secured party, or by a subsequent transferee.

The exclusion under this subsection shall not affect any rights or remedies under law or contract.

“(d) DEFERRAL PENDING RESOLUTION OF BONA FIDE DISPUTE. —

A transferee on which obligations are imposed under subsection (a) by virtue of paragraph (1) of that subsection may elect to defer performance of such obligations that are subject to a bona fide dispute between a union and a prior transferor until that dispute is resolved, except that such deferral shall not stay accrual of any union claims due under an applicable collective bargaining agreement.

“(e) SCOPE OF OBLIGATIONS DETERMINED BY PRIVATE AGREEMENT. — Nothing in this section shall expand or diminish the rights, obligations, or remedies of any person under the collective bargaining agreements or assumption agreements referred to in this section.

“(f) FAILURE TO NOTIFY. — If the transferor under subsection (a) fails to notify the transferee under subsection (a) of applicable collective bargaining obligations before the execution of the transfer instrument, and subsection (a) is made applicable to the transferee solely by virtue of subsection (a)(1)(B), the transferor shall be liable to the transferee for any damages suffered by the transferee as a result of the failure to notify.

“(g) DETERMINATION OF DISPUTES AND CLAIMS. — Any dispute concerning the application of subsections (a) through (f) shall be determined by an action in United States district court, and the court in its discretion may allow the

recovery of full costs by or against any party and may also award a reasonable attorney's fee to the prevailing party as part of the costs.

“(h) STUDY. — The Comptroller General, in consultation with the Register of Copyrights, shall conduct a study of the conditions in the motion picture industry that gave rise to this section, and the impact of this section on the motion picture industry. The Comptroller General shall report the findings of the study to the Congress within 2 years after the effective date of this chapter.”

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**Sec. 407 · Effective Date.**

Except as otherwise provided in this title, this title and the amendments made by this title shall take effect on the date of the enactment of this Act.

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**Title V—Protection of Certain Original Designs**

**Sec. 501 · Short Title.**

This Act may be referred to as the “Vessel Hull Design Protection Act”.

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**Sec. 504 · Joint Study of the Effect of This Title<sup>2</sup>**

(a) IN GENERAL. — Not later than November 1, 2003, the Register of Copyrights and the Commissioner of Patents and Trademarks shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a joint report evaluating the effect of the amendments made by this title.

(b) ELEMENTS FOR CONSIDERATION. — In carrying out subsection (a), the Register of Copyrights and the Commissioner of Patents and Trademarks shall consider —

- (1) the extent to which the amendments made by this title has been effective in suppressing infringement of the design of vessel hulls;
- (2) the extent to which the registration provided for in chapter 13 of title 17, United States Code, as added by this title, has been utilized;
- (3) the extent to which the creation of new designs of vessel hulls have been encouraged by the amendments made by this title;
- (4) the effect, if any, of the amendments made by this title on the price of vessels with hulls protected under such amendments; and
- (5) such other considerations as the Register and the Commissioner may deem relevant to accomplish the purposes of the evaluation conducted under subsection (a).

**Sec. 505 · Effective Date.**<sup>3</sup>

The amendments made by sections 502 and 503 shall take effect on the date of the enactment of this Act.<sup>4</sup>

**Appendix V · Endnotes**

1. Appendix V contains provisions from the Digital Millennium Copyright Act, Pub. L. No. 105-304, 112 Stat. 2860, that do not amend title 17 of the *United States Code*.
2. The Satellite Home Viewer Improvement Act of 1999 amended section 504(a) in its entirety. Pub. L. No. 106-113, 113 Stat. 1501, app. I at 1501A-593.
3. The Intellectual Property and Communications Omnibus Reform Act of 1999 amended section 505 by deleting everything at the end of the sentence, after “Act.” Pub. L. No. 106-113, 113 Stat. 1501, app. I at 1501A-593.
4. Section 502 added chapter 13 to title 17 of the *United States Code*. Section 503 made conforming amendments. The date of enactment of this Act is October 28, 1998.