

Union Calendar No. 362

105TH CONGRESS
2^D SESSION

H. R. 2281

[Report No. 105-551, Parts I and II]

A BILL

To amend title 17, United States Code, to implement the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty.

JULY 22, 1998

Reported from the Committee on Commerce with an amendment

JULY 22, 1998

The Committee on Ways and Means discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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IN THE HOUSE OF REPRESENTATIVES

JULY 29, 1997

Mr. COBLE (for himself, Mr. HYDE, Mr. CONYERS, and Mr. FRANK of Massachusetts) introduced the following bill; which was referred to the Committee on the Judiciary

MAY 22, 1998

Reported with an amendment, referred to the Committees on Commerce and Ways and Means for a period ending not later than June 19, 1998, for consideration of such provisions of the bill and amendment as fall within the jurisdictions of those committees pursuant to clause 1(e) and (s), rule X, respectively

[Strike out all after the enacting clause and insert the part printed in *italic*]

JUNE 19, 1998

Referral to the Committees on Commerce and Ways and Means extended for a period ending not later than June 26, 1998

JUNE 25, 1998

Referral to the Committees on Commerce and Ways and Means extended for a period ending not later than July 21, 1998

JULY 21, 1998

Referral to the Committees on Commerce and Ways and Means extended for a period ending not later than July 22, 1998

JULY 22, 1998

Reported from the Committee on Commerce with an amendment

[Strike out all after the enacting clause and insert the part printed in boldface roman]

JULY 22, 1998

Additional sponsors: Mr. BONO, Mr. MCCOLLUM, Mr. BERMAN, Mrs. BONO,
Mr. PAXON, and Mr. PICKERING

JULY 22, 1998

The Committee on Ways and Means discharged; committed to the Committee
of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on July 29, 1997]

A BILL

To amend title 17, United States Code, to implement the
World Intellectual Property Organization Copyright
Treaty and Performances and Phonograms Treaty.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **TITLE I—WIPO COPYRIGHT**
4 **TREATIES IMPLEMENTATION**

5 **SEC. 101. SHORT TITLE.**

6 *This title may be cited as the “WIPO Copyright Trea-*
7 *ties Implementation Act”.*

8 **SEC. 102. TECHNICAL AMENDMENTS.**

9 (a) *DEFINITIONS.*—*Section 101 of title 17, United*
10 *States Code, is amended—*

11 (1) *by striking the definition of “Berne Conven-*
12 *tion work”;*

13 (2) *in the definition of “The ‘country of origin’*
14 *of a Berne Convention work”—*

1 (A) by striking “The ‘country of origin’ of
2 a Berne Convention work, for purposes of section
3 411, is the United States if” and inserting “For
4 purposes of section 411, a work is a ‘United
5 States work’ only if”;

6 (B) in paragraph (1)—

7 (i) in subparagraph (B) by striking
8 “nation or nations adhering to the Berne
9 Convention” and inserting “treaty party or
10 parties”;

11 (ii) in subparagraph (C) by striking
12 “does not adhere to the Berne Convention”
13 and inserting “is not a treaty party”; and

14 (iii) in subparagraph (D) by striking
15 “does not adhere to the Berne Convention”
16 and inserting “is not a treaty party”; and

17 (C) in the matter following paragraph (3)
18 by striking “For the purposes of section 411, the
19 ‘country of origin’ of any other Berne Conven-
20 tion work is not the United States.”;

21 (3) by inserting after the definition of “fixed”
22 the following:

23 “The ‘Geneva Phonograms Convention’ is the
24 Convention for the Protection of Producers of
25 Phonograms Against Unauthorized Duplication of

1 *Their Phonograms, concluded at Geneva, Switzerland,*
2 *on October 29, 1971.”;*

3 (4) *by inserting after the definition of “includ-*
4 *ing” the following:*

5 *“An ‘international agreement’ is—*

6 *“(1) the Universal Copyright Convention;*

7 *“(2) the Geneva Phonograms Convention;*

8 *“(3) the Berne Convention;*

9 *“(4) the WTO Agreement;*

10 *“(5) the WIPO Copyright Treaty;*

11 *“(6) the WIPO Performances and*
12 *Phonograms Treaty; and*

13 *“(7) any other copyright treaty to which the*
14 *United States is a party.”;*

15 (5) *by inserting after the definition of “trans-*
16 *mit” the following:*

17 *“A ‘treaty party’ is a country or intergovern-*
18 *mental organization other than the United States that*
19 *is a party to an international agreement.”;*

20 (6) *by inserting after the definition of “widow”*
21 *the following:*

22 *“The ‘WIPO Copyright Treaty’ is the WIPO*
23 *Copyright Treaty concluded at Geneva, Switzerland,*
24 *on December 20, 1996.”;*

1 (7) by inserting after the definition of “The
2 ‘WIPO Copyright Treaty’” the following:

3 “*The ‘WIPO Performances and Phonograms*
4 *Treaty’ is the WIPO Performances and Phonograms*
5 *Treaty concluded at Geneva, Switzerland, on Decem-*
6 *ber 20, 1996.*”; and

7 (8) by inserting after the definition of “work
8 made for hire” the following:

9 “*The terms ‘WTO Agreement’ and ‘WTO member*
10 *country’ have the meanings given those terms in*
11 *paragraphs (9) and (10), respectively, of section 2 of*
12 *the Uruguay Round Agreements Act.*”.

13 (b) *SUBJECT MATTER OF COPYRIGHT; NATIONAL ORI-*
14 *GIN.—Section 104 of title 17, United States Code, is amend-*
15 *ed—*

16 (1) *in subsection (b)—*

17 (A) *in paragraph (1) by striking “foreign*
18 *nation that is a party to a copyright treaty to*
19 *which the United States is also a party” and in-*
20 *serting “treaty party”;*

21 (B) *in paragraph (2) by striking “party to*
22 *the Universal Copyright Convention” and insert-*
23 *ing “treaty party”;*

24 (C) *by redesignating paragraph (5) as*
25 *paragraph (6);*

1 (D) by redesignating paragraph (3) as
2 paragraph (5) and inserting it after paragraph
3 (4);

4 (E) by inserting after paragraph (2) the fol-
5 lowing:

6 “(3) the work is a sound recording that was first
7 fixed in a treaty party; or”;

8 (F) in paragraph (4) by striking “Berne
9 Convention work” and inserting “pictorial,
10 graphic, or sculptural work that is incorporated
11 in a building or other structure, or an architec-
12 tural work that is embodied in a building and
13 the building or structure is located in the United
14 States or a treaty party”; and

15 (G) by inserting after paragraph (6), as so
16 redesignated, the following:

17 *“For purposes of paragraph (2), a work that is published*
18 *in the United States or a treaty party within 30 days after*
19 *publication in a foreign nation that is not a treaty party*
20 *shall be considered to be first published in the United States*
21 *or such treaty party, as the case may be.”; and*

22 (2) by adding at the end the following new sub-
23 section:

24 “(d) *EFFECT OF PHONOGRAMS TREATIES.—Notwith-*
25 *standing the provisions of subsection (b), no works other*

1 *than sound recordings shall be eligible for protection under*
2 *this title solely by virtue of the adherence of the United*
3 *States to the Geneva Phonograms Convention or the WIPO*
4 *Performances and Phonograms Treaty.”.*

5 *(c) COPYRIGHT IN RESTORED WORKS.—Section*
6 *104A(h) of title 17, United States Code, is amended—*

7 *(1) in paragraph (1), by striking subparagraphs*
8 *(A) and (B) and inserting the following:*

9 *“(A) a nation adhering to the Berne Con-*
10 *vention;*

11 *“(B) a WTO member country;*

12 *“(C) a nation adhering to the WIPO Copy-*
13 *right Treaty;*

14 *“(D) a nation adhering to the WIPO Per-*
15 *formances and Phonograms Treaty; or*

16 *“(E) subject to a Presidential proclamation*
17 *under subsection (g).”;*

18 *(2) by amending paragraph (3) to read as fol-*
19 *lows:*

20 *“(3) The term ‘eligible country’ means a nation,*
21 *other than the United States, that—*

22 *“(A) becomes a WTO member country after*
23 *the date of the enactment of the Uruguay Round*
24 *Agreements Act;*

1 “(B) on such date of enactment is, or after
2 such date of enactment becomes, a nation adher-
3 ing to the Berne Convention;

4 “(C) adheres to the WIPO Copyright Trea-
5 ty;

6 “(D) adheres to the WIPO Performances
7 and Phonograms Treaty; or

8 “(E) after such date of enactment becomes
9 subject to a proclamation under subsection (g).”;
10 (3) in paragraph (6)—

11 (A) in subparagraph (C)(iii) by striking
12 “and” after the semicolon;

13 (B) at the end of subparagraph (D) by
14 striking the period and inserting “; and”; and

15 (C) by adding after subparagraph (D) the
16 following:

17 “(E) if the source country for the work is
18 an eligible country solely by virtue of its adher-
19 ence to the WIPO Performances and Phonograms
20 Treaty, is a sound recording.”;

21 (4) in paragraph (8)(B)(i)—

22 (A) by inserting “of which” before “the ma-
23 jority”; and

24 (B) by striking “of eligible countries”; and

25 (5) by striking paragraph (9).

1 (d) *REGISTRATION AND INFRINGEMENT ACTIONS.*—
 2 *Section 411(a) of title 17, United States Code, is amended*
 3 *in the first sentence—*

4 (1) *by striking “actions for infringement of*
 5 *copyright in Berne Convention works whose country*
 6 *of origin is not the United States and”;* and

7 (2) *by inserting “United States” after “no action*
 8 *for infringement of the copyright in any”.*

9 (e) *STATUTE OF LIMITATIONS.*—*Section 507(a) of title*
 10 *17, United State Code, is amended by striking “No” and*
 11 *inserting “Except as expressly provided otherwise in this*
 12 *title, no”.*

13 **SEC. 103. COPYRIGHT PROTECTIONS SYSTEMS AND COPY-**
 14 **RIGHT MANAGEMENT INFORMATION.**

15 *Title 17, United States Code, is amended by adding*
 16 *at the end the following new chapter:*

17 **“CHAPTER 12—COPYRIGHT PROTECTION**
 18 **AND MANAGEMENT SYSTEMS**

“Sec.

“1201. *Circumvention of copyright protection systems.*

“1202. *Integrity of copyright management information.*

“1203. *Civil remedies.*

“1204. *Criminal offenses and penalties.*

19 **“§ 1201. Circumvention of copyright protection sys-**
 20 **tems**

21 “(a) *VIOLATIONS REGARDING CIRCUMVENTION OF*
 22 *TECHNOLOGICAL PROTECTION MEASURES.*—(1) *No person*

1 *shall circumvent a technological protection measure that ef-*
2 *fectively controls access to a work protected under this title.*

3 “(2) *No person shall manufacture, import, offer to the*
4 *public, provide, or otherwise traffic in any technology,*
5 *product, service, device, component, or part thereof, that—*

6 “(A) *is primarily designed or produced for the*
7 *purpose of circumventing a technological protection*
8 *measure that effectively controls access to a work pro-*
9 *ected under this title;*

10 “(B) *has only limited commercially significant*
11 *purpose or use other than to circumvent a techno-*
12 *logical protection measure that effectively controls ac-*
13 *cess to a work protected under this title; or*

14 “(C) *is marketed by that person or another act-*
15 *ing in concert with that person with that person’s*
16 *knowledge for use in circumventing a technological*
17 *protection measure that effectively controls access to a*
18 *work protected under this title.*

19 “(3) *As used in this subsection—*

20 “(A) *to ‘circumvent a technological protection*
21 *measure’ means to descramble a scrambled work, to*
22 *decrypt an encrypted work, or otherwise to avoid, by-*
23 *pass, remove, deactivate, or impair a technological*
24 *protection measure, without the authority of the copy-*
25 *right owner; and*

1 “(B) a technological protection measure ‘effec-
2 tively controls access to a work’ if the measure, in the
3 ordinary course of its operation, requires the applica-
4 tion of information, or a process or a treatment, with
5 the authority of the copyright owner, to gain access
6 to the work.

7 “(b) *ADDITIONAL VIOLATIONS.*—(1) No person shall
8 manufacture, import, offer to the public, provide, or other-
9 wise traffic in any technology, product, service, device, com-
10 ponent, or part thereof, that—

11 “(A) is primarily designed or produced for the
12 purpose of circumventing protection afforded by a
13 technological protection measure that effectively pro-
14 tects a right of a copyright owner under this title in
15 a work or a portion thereof;

16 “(B) has only limited commercially significant
17 purpose or use other than to circumvent protection af-
18 forded by a technological protection measure that ef-
19 fectively protects a right of a copyright owner under
20 this title in a work or a portion thereof; or

21 “(C) is marketed by that person or another act-
22 ing in concert with that person with that person’s
23 knowledge for use in circumventing protection af-
24 forded by a technological protection measure that ef-

1 *fectively protects a right of a copyright owner under*
2 *this title in a work or a portion thereof.*

3 “(2) *As used in this subsection—*

4 “(A) *the term ‘circumvent protection afforded by*
5 *a technological protection measure’ means avoiding,*
6 *bypassing, removing, deactivating, or otherwise im-*
7 *pairing a technological protection measure; and*

8 “(B) *a technological protection measure ‘effec-*
9 *tively protects a right of a copyright owner’ under*
10 *this title if the measure, in the ordinary course of its*
11 *operation, prevents, restricts, or otherwise limits the*
12 *exercise of a right of a copyright owner under this*
13 *title.*

14 “(c) *IMPORTATION.—The importation into the United*
15 *States, the sale for importation, or the sale within the*
16 *United States after importation by the owner, importer, or*
17 *consignee of any technology, product, service, device, compo-*
18 *nent, or part thereof as described in subsection (a) or (b)*
19 *shall be actionable under section 337 of the Tariff Act of*
20 *1930 (19 U.S.C. 1337).*

21 “(d) *OTHER RIGHTS, ETC., NOT AFFECTED.—Nothing*
22 *in this section shall affect rights, remedies, limitations, or*
23 *defenses to copyright infringement, including fair use,*
24 *under this title.*

1 “(e) *EXEMPTION FOR NONPROFIT LIBRARIES, AR-*
2 *CHIVES, AND EDUCATIONAL INSTITUTIONS.*—(1) *A non-*
3 *profit library, archives, or educational institution which*
4 *gains access to a commercially exploited copyrighted work*
5 *solely in order to make a good faith determination of wheth-*
6 *er to acquire a copy of that work for the sole purpose of*
7 *engaging in conduct permitted under this title shall not be*
8 *in violation of subsection (a)(1). A copy of a work to which*
9 *access has been gained under this paragraph—*

10 “(A) *may not be retained longer than necessary*
11 *to make such good faith determination; and*

12 “(B) *may not be used for any other purpose.*

13 “(2) *The exemption available under paragraph (1)*
14 *shall only apply with respect to a work when an identical*
15 *copy of that work is not reasonably available in another*
16 *form.*

17 “(3) *A nonprofit library, archives, or educational in-*
18 *stitution that willfully for the purpose of commercial ad-*
19 *vantage or financial gain violates paragraph (1)—*

20 “(A) *shall, for the first offense, be subject to the*
21 *civil remedies under section 1203; and*

22 “(B) *shall, for repeated or subsequent offenses, in*
23 *addition to the civil remedies under section 1203, for-*
24 *feit the exemption provided under paragraph (1).*

1 “(4) *This subsection may not be used as a defense to*
2 *a claim under subsection (a)(2) or (b), nor may this sub-*
3 *section permit a nonprofit library, archives, or educational*
4 *institution to manufacture, import, offer to the public, pro-*
5 *vide, or otherwise traffic in any technology which cir-*
6 *cumvents a technological protection measure.*

7 “(5) *In order for a library or archives to qualify for*
8 *the exemption under this subsection, the collections of that*
9 *library or archives shall be—*

10 “(A) *open to the public; or*

11 “(B) *available not only to researchers affiliated*
12 *with the library or archives or with the institution of*
13 *which it is a part, but also to other persons doing re-*
14 *search in a specialized field.*

15 “(f) *LAW ENFORCEMENT AND INTELLIGENCE ACTIVI-*
16 *TIES.—This section does not prohibit any lawfully author-*
17 *ized investigative, protective, or intelligence activity of a*
18 *law enforcement agency of the United States, a State, or*
19 *a political subdivision of a State, or of an intelligence agen-*
20 *cy of the United States.*

21 “**§ 1202. Integrity of copyright management informa-**
22 **tion**

23 “(a) *FALSE COPYRIGHT MANAGEMENT INFORMA-*
24 *TION.—No person shall knowingly—*

1 “(1) *provide copyright management information*
2 *that is false, or*

3 “(2) *distribute or import for public distribution*
4 *copyright management information that is false,*
5 *with the intent to induce, enable, facilitate, or conceal in-*
6 *fringement.*

7 “(b) *REMOVAL OR ALTERATION OF COPYRIGHT MAN-*
8 *AGEMENT INFORMATION.—No person shall, without the au-*
9 *thority of the copyright owner or the law—*

10 “(1) *intentionally remove or alter any copyright*
11 *management information,*

12 “(2) *distribute or import for distribution copy-*
13 *right management information, knowing that the*
14 *copyright management information has been removed*
15 *or altered without authority of the copyright owner or*
16 *the law, or*

17 “(3) *distribute, import for distribution, or pub-*
18 *licly perform works, copies of works, or phonorecords,*
19 *knowing that the copyright management information*
20 *has been removed or altered without authority of the*
21 *copyright owner or the law,*

22 *knowing or, with respect to civil remedies under section*
23 *1203, having reasonable grounds to know, that it will in-*
24 *duce, enable, facilitate, or conceal an infringement of any*
25 *right under this title.*

1 “(c) *DEFINITION.*—As used in this chapter, the term
2 ‘copyright management information’ means the following
3 information conveyed in connection with copies or
4 phonorecords of a work or performances or displays of a
5 work, including in digital form:

6 “(1) The title and other information identifying
7 the work, including the information set forth on a no-
8 tice of copyright.

9 “(2) The name of, and other identifying infor-
10 mation about, the author of a work.

11 “(3) The name of, and other identifying infor-
12 mation about, the copyright owner of the work, in-
13 cluding the information set forth in a notice of copy-
14 right.

15 “(4) With the exception of public performances of
16 works by radio and television broadcast stations, the
17 name of, and other identifying information about, a
18 performer whose performance is fixed in a work other
19 than an audiovisual work.

20 “(5) With the exception of public performances of
21 works by radio and television broadcast stations, in
22 the case of an audiovisual work, the name of, and
23 other identifying information about, a writer, per-
24 former, or director who is credited in the audiovisual
25 work.

1 “(6) *Identifying numbers or symbols referring to*
2 *such information or links to such information.*

3 “(7) *Such other information as the Register of*
4 *Copyrights may prescribe by regulation, but not in-*
5 *cluding any information concerning the user of a*
6 *copyrighted work.*

7 “(d) *LAW ENFORCEMENT AND INTELLIGENCE ACTIVI-*
8 *TIES.—This section does not prohibit any lawfully author-*
9 *ized investigative, protective, or intelligence activity of a*
10 *law enforcement agency of the United States, a State, or*
11 *a political subdivision of a State, or of an intelligence agen-*
12 *cy of the United States.*

13 “**§ 1203. Civil remedies**

14 “(a) *CIVIL ACTIONS.—Any person injured by a viola-*
15 *tion of section 1201 or 1202 may bring a civil action in*
16 *an appropriate United States district court for such viola-*
17 *tion.*

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

20 “(1) *may grant temporary and permanent in-*
21 *junctions on such terms as it deems reasonable to pre-*
22 *vent or restrain a violation;*

23 “(2) *at any time while an action is pending,*
24 *may order the impounding, on such terms as it deems*
25 *reasonable, of any device or product that is in the*

1 *custody or control of the alleged violator and that the*
2 *court has reasonable cause to believe was involved in*
3 *a violation;*

4 *“(3) may award damages under subsection (c);*

5 *“(4) in its discretion may allow the recovery of*
6 *costs by or against any party other than the United*
7 *States or an officer thereof;*

8 *“(5) in its discretion may award reasonable at-*
9 *torney’s fees to the prevailing party; and*

10 *“(6) may, as part of a final judgment or decree*
11 *finding a violation, order the remedial modification*
12 *or the destruction of any device or product involved*
13 *in the violation that is in the custody or control of*
14 *the violator or has been impounded under paragraph*
15 *(2).*

16 *“(c) AWARD OF DAMAGES.—*

17 *“(1) IN GENERAL.—Except as otherwise provided*
18 *in this chapter, a person committing a violation of*
19 *section 1201 or 1202 is liable for either—*

20 *“(A) the actual damages and any addi-*
21 *tional profits of the violator, as provided in*
22 *paragraph (2); or*

23 *“(B) statutory damages, as provided in*
24 *paragraph (3).*

1 “(2) *ACTUAL DAMAGES.*—*The court shall award*
2 *to the complaining party the actual damages suffered*
3 *by the party as a result of the violation, and any*
4 *profits of the violator that are attributable to the vio-*
5 *lation and are not taken into account in computing*
6 *the actual damages, if the complaining party elects*
7 *such damages at any time before final judgment is*
8 *entered.*

9 “(3) *STATUTORY DAMAGES.*—(A) *At any time*
10 *before final judgment is entered, a complaining party*
11 *may elect to recover an award of statutory damages*
12 *for each violation of section 1201 in the sum of not*
13 *less than \$200 or more than \$2,500 per act of cir-*
14 *cumvention, device, product, component, offer, or per-*
15 *formance of service, as the court considers just.*

16 “(B) *At any time before final judgment is en-*
17 *tered, a complaining party may elect to recover an*
18 *award of statutory damages for each violation of sec-*
19 *tion 1202 in the sum of not less than \$2,500 or more*
20 *than \$25,000.*

21 “(4) *REPEATED VIOLATIONS.*—*In any case in*
22 *which the injured party sustains the burden of prov-*
23 *ing, and the court finds, that a person has violated*
24 *section 1201 or 1202 within 3 years after a final*
25 *judgment was entered against that person for another*

1 *such violation, the court may increase the award of*
2 *damages up to triple the amount that would otherwise*
3 *be awarded, as the court considers just.*

4 “(5) *INNOCENT VIOLATIONS.*—

5 “(A) *IN GENERAL.*—*The court in its discre-*
6 *tion may reduce or remit the total award of*
7 *damages in any case in which the violator sus-*
8 *tains the burden of proving, and the court finds,*
9 *that the violator was not aware and had no rea-*
10 *son to believe that its acts constituted a viola-*
11 *tion.*

12 “(B) *NONPROFIT LIBRARY, ARCHIVES, OR*
13 *EDUCATIONAL INSTITUTION.*—*In the case of a*
14 *nonprofit library, archives, or educational insti-*
15 *tution, the court shall remit damages in any case*
16 *in which the library, archives, or educational in-*
17 *stitution sustains the burden of proving, and the*
18 *court finds, that the library, archives, or edu-*
19 *cational institution was not aware and had no*
20 *reason to believe that its acts constituted a viola-*
21 *tion.*

22 **“§ 1204. Criminal offenses and penalties**

23 “(a) *IN GENERAL.*—*Any person who violates section*
24 *1201 or 1202 willfully and for purposes of commercial ad-*
25 *vantage or private financial gain—*

1 “(1) shall be fined not more than \$500,000 or
2 imprisoned for not more than 5 years, or both, for the
3 first offense; and

4 “(2) shall be fined not more than \$1,000,000 or
5 imprisoned for not more than 10 years, or both, for
6 any subsequent offense.

7 “(b) *LIMITATION FOR NONPROFIT LIBRARY, AR-*
8 *CHIVES, OR EDUCATIONAL INSTITUTION.*—Subsection (a)
9 *shall not apply to a nonprofit library, archives, or edu-*
10 *cational institution.*

11 “(c) *STATUTE OF LIMITATIONS.*—Notwithstanding sec-
12 *tion 507(a) of this title, no criminal proceeding shall be*
13 *maintained under subsection (a) unless such proceeding is*
14 *commenced within 5 years after the cause of action arose.”.*

15 **SEC. 104. CONFORMING AMENDMENT.**

16 *The table of chapters for title 17, United States Code,*
17 *is amended by adding at the end the following:*

“12. Copyright Protection and Management Systems 1201”.

18 **SEC. 105. EFFECTIVE DATE.**

19 (a) *IN GENERAL.*—Subject to subsection (b), the
20 *amendments made by this title shall take effect on the date*
21 *of the enactment of this Act.*

22 (b) *AMENDMENTS RELATING TO CERTAIN INTER-*
23 *NATIONAL AGREEMENTS.*—(1) *The following shall take ef-*
24 *fect upon the entry into force of the WIPO Copyright Treaty*
25 *with respect to the United States:*

1 (A) Paragraph (5) of the definition of “inter-
2 national agreement” contained in section 101 of title
3 17, United States Code, as amended by section
4 102(a)(4) of this Act.

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

7 (C) Subparagraph (C) of section 104(h)(1) of
8 title 17, United States Code, as amended by section
9 102(c)(1) of this Act.

10 (D) Subparagraph (C) of section 104(h)(3) of
11 title 17, United States Code, as amended by section
12 102(c)(2) of this Act.

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

16 (A) Paragraph (6) of the definition of “inter-
17 national agreement” contained in section 101 of title
18 17, United States Code, as amended by section
19 102(a)(4) of this Act.

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

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

1 (D) Subparagraph (D) of section 104(h)(1) of
 2 title 17, United States Code, as amended by section
 3 102(c)(1) of this Act.

4 (E) Subparagraph (D) of section 104(h)(3) of
 5 title 17, United States Code, as amended by section
 6 102(c)(2) of this Act.

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

9 **TITLE II—ON-LINE COPYRIGHT**
 10 **INFRINGEMENT LIABILITY**
 11 **LIMITATION**

12 **SEC. 201. SHORT TITLE.**

13 This title may be cited as the “On-Line Copyright In-
 14 fringement Liability Limitation Act”.

15 **SEC. 202. LIMITATIONS ON LIABILITY FOR COPYRIGHT IN-**
 16 **FRINGEMENT.**

17 (a) *IN GENERAL.*—Chapter 5 of title 17, United States
 18 Code, is amended by adding after section 511 the following
 19 new section:

20 **“§512. Limitations on liability relating to material**
 21 **on-line**

22 “(a) *LIMITATION.*—Notwithstanding the provisions of
 23 section 106, a provider shall not be liable for—

24 “(1) direct infringement, based solely on the in-
 25 termediate storage and transmission of material

1 *through a system or network controlled or operated*
2 *by or for that provider, if—*

3 *“(A) the transmission was initiated by an-*
4 *other person;*

5 *“(B) the storage and transmission is car-*
6 *ried out through an automatic technological*
7 *process, without any selection of that material by*
8 *the provider; and*

9 *“(C) no copy of the material thereby made*
10 *by the provider is maintained on the provider’s*
11 *system or network in a manner ordinarily acces-*
12 *sible to anyone other than the recipients antici-*
13 *pated by the person who initiated the trans-*
14 *mission, and no such copy is maintained on the*
15 *system or network in a manner ordinarily acces-*
16 *sible to such recipients for a longer period than*
17 *is reasonably necessary for the transmission;*

18 *“(2) monetary relief under section 504 or 505 for*
19 *contributory infringement or vicarious liability, based*
20 *solely on conduct described in paragraph (1); or*

21 *“(3) monetary relief under section 504 or 505 for*
22 *contributory infringement or vicarious liability, based*
23 *solely on transmitting or providing access to material*
24 *over that provider’s system or network, other than*
25 *conduct described in paragraph (1), if the provider—*

1 “(A) does not have actual knowledge that
2 the material is infringing or, in the absence of
3 such actual knowledge, is not aware of facts or
4 circumstances from which infringing activity is
5 apparent; and

6 “(B) does not receive a financial benefit di-
7 rectly attributable to the infringing activity, if
8 the provider has the right and ability to control
9 such activity.

10 “(b) *PROTECTION OF PRIVACY.*—Nothing in subsection
11 (a) shall be construed to condition the applicability of sub-
12 section (a) on a provider—

13 “(1) monitoring its service or affirmatively seek-
14 ing facts indicating infringing activity, or

15 “(2) accessing, removing, or disabling access to
16 material, if such conduct is prohibited by law.

17 “(c) *LIMITATION BASED UPON REMOVING OR DIS-*
18 *ABLING ACCESS TO INFRINGING MATERIAL.*—A provider
19 shall not be liable to any person for any claim based on
20 that provider’s good faith disabling of access to or removal
21 of material claimed to be infringing or based on facts or
22 circumstances from which infringing activity is apparent,
23 regardless of whether the material or activity is ultimately
24 determined to be infringing.

1 “(d) *OTHER DEFENSES NOT AFFECTED.*—*Removing*
2 *or disabling access to material which a provider transmits*
3 *on-line or to which a provider provides on-line access, or*
4 *the failure to do so, shall not adversely bear upon the con-*
5 *sideration by a court of a defense to infringement asserted*
6 *by that provider on the basis of section 107 or any other*
7 *provision of law.*

8 “(e) *MISREPRESENTATIONS.*—*Any person who know-*
9 *ingly materially misrepresents to a provider that material*
10 *on-line is infringing shall be liable for any damages, in-*
11 *cluding costs and attorneys’ fees, incurred by the provider,*
12 *by the alleged infringer, or by any copyright owner or copy-*
13 *right owner’s authorized licensee, who is injured by such*
14 *misrepresentation, as a result of the provider relying upon*
15 *such misrepresentation in removing or disabling access to*
16 *the material claimed to be infringing.*

17 “(f) *DEFINITION.*—*As used in this section, the term*
18 *‘provider’ means a provider of on-line services or network*
19 *access.”.*

20 “(b) *CONFORMING AMENDMENT.*—*The table of sections*
21 *for chapter 5 of title 17, United States Code, is amended*
22 *by adding at the end the following:*

“512. *Limitations on liability relating to material on-line.*”.

1 **SEC. 203. LIMITATIONS ON EXCLUSIVE RIGHTS; COMPUTER**
2 **PROGRAMS.**

3 *Section 117 of title 17, United States Code, is amend-*
4 *ed—*

5 *(1) by striking “Notwithstanding” and inserting the*
6 *following:*

7 *“(a) MAKING OF ADDITIONAL COPY OR ADAPTATION*
8 *BY OWNER OF COPY.—Notwithstanding”;*

9 *(2) by striking “Any exact” and inserting the follow-*
10 *ing:*

11 *“(b) LEASE, SALE, OR OTHER TRANSFER OF ADDI-*
12 *TIONAL COPY OR ADAPTATION.—Any exact”;* and

13 *(3) by adding at the end the following:*

14 *“(c) MACHINE MAINTENANCE OR REPAIR.—Notwith-*
15 *standing the provisions of section 106, it is not an infringe-*
16 *ment for the owner or lessee of a machine to make or author-*
17 *ize the making of a copy of a computer program if such*
18 *copy is made solely by virtue of the activation of a machine*
19 *that lawfully contains an authorized copy of the computer*
20 *program, for purposes only of maintenance or repair of that*
21 *machine, if—*

22 *“(1) such new copy is used in no other manner*
23 *and is destroyed immediately after the maintenance*
24 *or repair is completed; and*

25 *“(2) with respect to any computer program or*
26 *part thereof that is not necessary for that machine to*

1 *be activated, such program or part thereof is not*
 2 *accessed or used other than to make such new copy by*
 3 *virtue of the activation of the machine.*

4 “(d) *DEFINITIONS.—For purposes of this section—*

5 “(1) *the ‘maintenance’ of a machine is the serv-*
 6 *icing of the machine in order to make it work in ac-*
 7 *cordance with its original specifications and any*
 8 *changes to those specifications authorized for that ma-*
 9 *chine; and*

10 “(2) *the ‘repair’ of a machine is the restoring of*
 11 *the machine to the state of working in accordance*
 12 *with its original specifications and any changes to*
 13 *those specifications authorized for that machine.”.*

14 **SECTION 1. SHORT TITLE.**

15 **This Act may be cited as the “Digital Mil-**
 16 **lennium Copyright Act of 1998”.**

17 **SEC. 2. TABLE OF CONTENTS.**

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—WIPO TREATIES IMPLEMENTATION

Sec. 101. Short title.

Sec. 102. Circumvention of copyright protection systems.

Sec. 103. Integrity of copyright management information.

Sec. 104. Civil remedies.

Sec. 105. Criminal offenses and penalties.

Sec. 106. Savings clause.

**Sec. 107. Development and implementation of technological
 protection measures.**

Sec. 108. Technical amendments.

Sec. 109. Effective date.

**TITLE II—INTERNET COPYRIGHT INFRINGEMENT
 LIABILITY**

- Sec. 201. Short title.
 Sec. 202. Limitations on liability for Internet copyright infringement.
 Sec. 203. Limitations on exclusive rights; computer programs.
 Sec. 204. Liability of educational institutions for online infringement of copyright.
 Sec. 205. Evaluation of impact of copyright law and amendments on electronic commerce and technological development.
 Sec. 206. Effective date.

TITLE III—EPHEMERAL RECORDINGS; DISTANCE EDUCATION; EXEMPTION FOR LIBRARIES AND ARCHIVES

- Sec. 301. Ephemeral recordings.
 Sec. 302. Limitations on exclusive rights; distance education.
 Sec. 303. Exemption for libraries and archives.

TITLE IV—RELATED PROVISIONS

- Sec. 401. Report by National Telecommunications and Information Administration.

1 **TITLE I—WIPO TREATIES**
 2 **IMPLEMENTATION**

3 SEC. 101. SHORT TITLE.

4 **This title may be cited as the “WIPO Copy-**
 5 **right Treaties Implementation Act”.**

6 SEC. 102. CIRCUMVENTION OF COPYRIGHT PROTECTION
 7 SYSTEMS.

8 **(a) VIOLATIONS REGARDING CIRCUMVENTION**
 9 **OF TECHNOLOGICAL PROTECTION MEASURES.—**
 10 **(1)(A) The Secretary of Commerce shall issue**
 11 **regulations prohibiting any person from cir-**
 12 **cumventing a technological protection meas-**
 13 **ure that effectively controls access to a work**
 14 **protected under title 17, United States Code,**
 15 **to the extent provided in this subsection, ef-**

1 **fective at the end of the 2-year period begin-**
2 **ning on the date of the enactment of this Act.**

3 **(B) During the 2-year period described in**
4 **subparagraph (A), and in each succeeding 2-**
5 **year period, the Secretary of Commerce, in**
6 **consultation with the Assistant Secretary of**
7 **Commerce for Communications and Informa-**
8 **tion, the Commissioner of Patents and Trade-**
9 **marks, and the Register of Copyrights, shall**
10 **conduct a rulemaking on the record to deter-**
11 **mine whether users of copyrighted works**
12 **have been, or are likely to be in the succeed-**
13 **ing 2-year period, adversely affected by the**
14 **implementation of technological protection**
15 **measures that effectively control access to**
16 **works protected under title 17, United States**
17 **Code, in their ability to make lawful uses**
18 **under title 17, United States Code, of copy-**
19 **righted works. In conducting such rule-**
20 **making, the Secretary shall examine—**

21 **(i) the availability for use of copy-**
22 **righted works;**

23 **(ii) the availability for use of works**
24 **for archival, preservation, and edu-**
25 **cational purposes;**

1 (iii) the impact of the application of
2 technological protection measures to
3 copyrighted works on criticism, com-
4 ment, news reporting, teaching, scholar-
5 ship, or research;

6 (iv) the effect of circumvention of
7 technological protection measures on the
8 market for or value of copyrighted works;
9 and

10 (v) such other factors as the Sec-
11 retary, in consultation with the Assistant
12 Secretary of Commerce for Communica-
13 tions and Information, the Commissioner
14 of Patents and Trademarks, and the Reg-
15 ister of Copyrights, considers appro-
16 priate.

17 (C) The Secretary, with respect to each
18 particular class of copyrighted works for
19 which the Secretary has determined, pursu-
20 ant to the rulemaking conducted under sub-
21 paragraph (B), that lawful uses have been, or
22 are likely to be, adversely affected, shall
23 waive the applicability of the regulations
24 issued under subparagraph (A) for the ensu-
25 ing 2-year period. The determinations made

1 **in the rulemaking shall not be admissible in**
2 **any action to enforce any provision of this Act**
3 **other than this paragraph.**

4 **(2) No person shall manufacture, import,**
5 **offer to the public, provide, or otherwise traf-**
6 **fic in any technology, product, service, device,**
7 **component, or part thereof, that—**

8 **(A) is primarily designed or produced**
9 **for the purpose of circumventing a tech-**
10 **nological protection measure that effec-**
11 **tively controls access to a work protected**
12 **under title 17, United States Code;**

13 **(B) has only limited commercially sig-**
14 **nificant purpose or use other than to cir-**
15 **cumvent a technological protection meas-**
16 **ure that effectively controls access to a**
17 **work protected under title 17, United**
18 **States Code; or**

19 **(C) is marketed by that person or an-**
20 **other acting in concert with that person**
21 **with that person’s knowledge for use in**
22 **circumventing a technological protection**
23 **measure that effectively controls access**
24 **to a work protected under title 17, United**
25 **States Code.**

1 **(3) As used in this subsection—**

2 **(A) to “circumvent a technological**
3 **protection measure” means to**
4 **descramble a scrambled work, to decrypt**
5 **an encrypted work, or otherwise to avoid,**
6 **bypass, remove, deactivate, or impair a**
7 **technological protection measure, with-**
8 **out the authority of the copyright owner;**
9 **and**

10 **(B) a technological protection meas-**
11 **ure “effectively controls access to a**
12 **work” if the measure, in the ordinary**
13 **course of its operation, requires the ap-**
14 **plication of information, or a process or a**
15 **treatment, with the authority of the copy-**
16 **right owner, to gain access to the work.**

17 **(b) ADDITIONAL VIOLATIONS.—(1) No person**
18 **shall manufacture, import, offer to the public,**
19 **provide, or otherwise traffic in any tech-**
20 **nology, product, service, device, component,**
21 **or part thereof, that—**

22 **(A) is primarily designed or produced**
23 **for the purpose of circumventing protec-**
24 **tion afforded by a technological protec-**
25 **tion measure that effectively protects a**

1 **right of a copyright owner under title 17,**
2 **United States Code, in a work or a por-**
3 **tion thereof;**

4 **(B) has only limited commercially sig-**
5 **nificant purpose or use other than to cir-**
6 **cumvent protection afforded by a techno-**
7 **logical protection measure that effec-**
8 **tively protects a right of a copyright**
9 **owner under title 17, United States Code,**
10 **in a work or a portion thereof; or**

11 **(C) is marketed by that person or an-**
12 **other acting in concert with that person**
13 **with that person’s knowledge for use in**
14 **circumventing protection afforded by a**
15 **technological protection measure that ef-**
16 **fectively protects a right of a copyright**
17 **owner under title 17, United States Code,**
18 **in a work or a portion thereof.**

19 **(2) As used in this subsection—**

20 **(A) to “circumvent protection af-**
21 **forded by a technological protection**
22 **measure” means avoiding, bypassing, re-**
23 **moving, deactivating, or otherwise im-**
24 **pairing a technological protection meas-**
25 **ure; and**

1 **(B) a technological protection meas-**
2 **ure “effectively protects a right of a copy-**
3 **right owner under title 17, United States**
4 **Code” if the measure, in the ordinary**
5 **course of its operation, prevents, re-**
6 **stricts, or otherwise limits the exercise of**
7 **a right of a copyright owner under title**
8 **17, United States Code.**

9 **(c) OTHER RIGHTS, ETC., NOT AFFECTED.—**

10 **(1) Nothing in this section shall affect rights,**
11 **remedies, limitations, or defenses to copy-**
12 **right infringement, including fair use, under**
13 **title 17, United States Code.**

14 **(2) Nothing in this section shall enlarge or**
15 **diminish vicarious or contributory liability**
16 **for copyright infringement in connection with**
17 **any technology, product, service, device, com-**
18 **ponent, or part thereof.**

19 **(3) Nothing in this section shall require**
20 **that the design of, or design and selection of**
21 **parts and components for, a consumer elec-**
22 **tronics, telecommunications, or computing**
23 **product provide for a response to any particu-**
24 **lar technological protection measure.**

1 **(4) Nothing in this section shall enlarge or**
2 **diminish any rights of free speech or the**
3 **press for activities using consumer elec-**
4 **tronics, telecommunications, or computing**
5 **products.**

6 **(d) EXEMPTION FOR NONPROFIT LIBRARIES,**
7 **ARCHIVES, AND EDUCATIONAL INSTITUTIONS.—(1)**
8 **A nonprofit library, archives, or educational**
9 **institution which gains access to a commer-**
10 **cially exploited copyrighted work solely in**
11 **order to make a good faith determination of**
12 **whether to acquire a copy of that work for the**
13 **sole purpose of engaging in conduct per-**
14 **mitted under title 17, United States Code,**
15 **shall not be in violation of the regulations**
16 **issued under subsection (a)(1)(A). A copy of a**
17 **work to which access has been gained under**
18 **this paragraph—**

19 **(A) may not be retained longer than**
20 **necessary to make such good faith deter-**
21 **mination; and**

22 **(B) may not be used for any other**
23 **purpose.**

24 **(2) The exemption made available under**
25 **paragraph (1) shall only apply with respect to**

1 a work when an identical copy of that work
2 is not reasonably available in another form.

3 (3) A nonprofit library, archives, or edu-
4 cational institution that willfully for the pur-
5 pose of commercial advantage or financial
6 gain violates paragraph (1)—

7 (A) shall, for the first offense, be sub-
8 ject to the civil remedies under section
9 104; and

10 (B) shall, for repeated or subsequent
11 offenses, in addition to the civil remedies
12 under section 104, forfeit the exemption
13 provided under paragraph (1).

14 (4) This subsection may not be used as a
15 defense to a claim under subsection (a)(2) or
16 (b), nor may this subsection permit a non-
17 profit library, archives, or educational insti-
18 tution to manufacture, import, offer to the
19 public, provide, or otherwise traffic in any
20 technology, product, service, component, or
21 part thereof, which circumvents a techno-
22 logical protection measure.

23 (5) In order for a library or archives to
24 qualify for the exemption under this sub-

1 section, the collections of that library or ar-
2 chives shall be—

3 (A) open to the public; or

4 (B) available not only to researchers
5 affiliated with the library or archives or
6 with the institution of which it is a part,
7 but also to other persons doing research
8 in a specialized field.

9 (e) **LAW ENFORCEMENT AND INTELLIGENCE**
10 **ACTIVITIES.**—This section does not prohibit
11 any lawfully authorized investigative, protec-
12 tive, or intelligence activity of an officer,
13 agent, or employee of the United States, a
14 State, or a political subdivision of a State, or
15 a person acting pursuant to a contract with
16 the United States, a State, or a political sub-
17 division of a State.

18 (f) **REVERSE ENGINEERING.**—(1) Notwith-
19 standing the regulations issued under sub-
20 section (a)(1)(A), a person who has lawfully
21 obtained the right to use a copy of a computer
22 program may circumvent a technological pro-
23 tection measure that effectively controls ac-
24 cess to a particular portion of that program
25 for the sole purpose of identifying and analyz-

1 ing those elements of the program that are
2 necessary to achieve interoperability of an
3 independently created computer program
4 with other programs, and that have not pre-
5 viously been readily available to the person
6 engaging in the circumvention, to the extent
7 any such acts of identification and analysis do
8 not constitute infringement under title 17,
9 United States Code.

10 (2) Notwithstanding the provisions of sub-
11 sections (a)(2) and (b), a person may develop
12 and employ technological means to cir-
13 cumvent a technological protection measure,
14 or to circumvent protection afforded by a
15 technological protection measure, in order to
16 make the identification and analysis per-
17 mitted under paragraph (1), or for the limited
18 purpose of achieving interoperability of an
19 independently created computer program
20 with other programs, if such means are nec-
21 essary to achieve such interoperability, to the
22 extent that doing so does not constitute in-
23 fringement under title 17, United States Code.

24 (3) The information acquired through the
25 acts permitted under paragraph (1), and the

1 means permitted under paragraph (2), may be
2 made available to others if the person re-
3 ferred to in paragraph (1) or (2), as the case
4 may be, provides such information or means
5 solely for the purpose of achieving interoper-
6 ability of an independently created computer
7 program with other programs, and to the ex-
8 tent that doing so does not constitute in-
9 fringement under title 17, United States Code,
10 or violate other applicable law.

11 (4) For purposes of this subsection, the
12 term “interoperability” means the ability of
13 computer programs to exchange information,
14 and of such programs mutually to use the in-
15 formation which has been exchanged.

16 (g) ENCRYPTION RESEARCH.—

17 (1) DEFINITIONS.—For purposes of this
18 subsection—

19 (A) the term “encryption re-
20 search” means activities necessary to
21 identify and analyze flaws and
22 vulnerabilities of encryption tech-
23 nologies applied to copyrighted
24 works, if these activities are con-
25 ducted to advance the state of knowl-

1 **edge in the field of encryption tech-**
2 **nology or to assist in the development**
3 **of encryption products; and**

4 **(B) the term “encryption tech-**
5 **nology” means the scrambling and**
6 **descrambling of information using**
7 **mathematical formulas or algorithms.**

8 **(2) PERMISSIBLE ACTS OF ENCRYPTION**
9 **RESEARCH.—Notwithstanding the provi-**
10 **sions of subsection (a)(1)(A), it is not a**
11 **violation of the regulations issued under**
12 **that subsection for a person to cir-**
13 **cumvent a technological protection meas-**
14 **ure as applied to a copy, phonorecord,**
15 **performance, or display of a published**
16 **work in the course of an act of good faith**
17 **encryption research if—**

18 **(A) the person lawfully obtained**
19 **the encrypted copy, phonorecord,**
20 **performance, or display of the pub-**
21 **lished work;**

22 **(B) such act is necessary to con-**
23 **duct such encryption research;**

1 (C) the person made a good faith
2 effort to obtain authorization before
3 the circumvention; and

4 (D) such act does not constitute
5 infringement under title 17, United
6 States Code, or a violation of applica-
7 ble law other than this section, in-
8 cluding section 1030 of title 18,
9 United States Code, and those provi-
10 sions of title 18, United States Code,
11 amended by the Computer Fraud and
12 Abuse Act of 1986.

13 (3) **FACTORS IN DETERMINING EXEMP-**
14 **TION.**—In determining whether a person
15 qualifies for the exemption under para-
16 graph (2), the factors to be considered
17 shall include—

18 (A) whether the information de-
19 rived from the encryption research
20 was disseminated, and if so, whether
21 it was disseminated in a manner rea-
22 sonably calculated to advance the
23 state of knowledge or development of
24 encryption technology, versus wheth-
25 er it was disseminated in a manner

1 **that facilitates infringement under**
2 **title 17, United States Code, or a vio-**
3 **lation of applicable law other than**
4 **this section, including a violation of**
5 **privacy or breach of security;**

6 **(B) whether the person is engaged**
7 **in a legitimate course of study, is em-**
8 **ployed, or is appropriately trained or**
9 **experienced, in the field of**
10 **encryption technology; and**

11 **(C) whether the person provides**
12 **the copyright owner of the work to**
13 **which the technological protection**
14 **measure is applied with notice of the**
15 **findings and documentation of the re-**
16 **search, and the time when such no-**
17 **tice is provided.**

18 **(4) USE OF TECHNOLOGICAL MEANS FOR**
19 **RESEARCH ACTIVITIES.—Notwithstanding**
20 **the provisions of subsection (a)(2), it is**
21 **not a violation of that subsection for a**
22 **person to—**

23 **(A) develop and employ techno-**
24 **logical means to circumvent a techno-**
25 **logical protection measure for the**

1 **sole purpose of performing the acts of**
2 **good faith encryption research de-**
3 **scribed in paragraph (2); and**

4 **(B) provide the technological**
5 **means to another person with whom**
6 **he or she is working collaboratively**
7 **for the purpose of conducting the**
8 **acts of good faith encryption research**
9 **described in paragraph (2) or for the**
10 **purpose of having that other person**
11 **verify his or her acts of good faith**
12 **encryption research described in**
13 **paragraph (2).**

14 **(5) REPORT TO CONGRESS.—Not later**
15 **than 1 year after the date of the enact-**
16 **ment of this Act, the Assistant Secretary**
17 **of Commerce for Communications and In-**
18 **formation shall report to the Congress on**
19 **the effect this subsection has had on—**

20 **(A) encryption research and the**
21 **development of encryption tech-**
22 **nology;**

23 **(B) the adequacy and effective-**
24 **ness of technological protection for**
25 **copyrighted works; and**

1 **(C) protection of copyright own-**
2 **ers against the unauthorized access**
3 **to their encrypted copyrighted works.**

4 **The Assistant Secretary shall include in**
5 **such report recommendations, if any, on**
6 **proposed amendments to this Act.**

7 **(h) COMPONENTS OR PARTS TO PREVENT AC-**
8 **CESS OF MINORS TO THE INTERNET.—In applying**
9 **subsection (a) and the regulations issued**
10 **under subsection (a)(1)(A) to a component or**
11 **part, the court may consider the necessity for**
12 **its intended and actual incorporation in a**
13 **technology, product, service, or device,**
14 **which—**

15 **(1) does not itself violate the provi-**
16 **sions of title 17, United States Code; and**

17 **(2) has the sole purpose to prevent**
18 **the access of minors to material on the**
19 **Internet.**

20 **(i) PROTECTION OF PERSONALLY IDENTIFY-**
21 **ING INFORMATION.—**

22 **(1) CIRCUMVENTION PERMITTED.—Not-**
23 **withstanding the provisions of subsection**
24 **(a)(1)(A), it is not a violation of the regu-**
25 **lations issued under that subsection for a**

1 **person to circumvent a technological pro-**
2 **tection measure that effectively controls**
3 **access to a work protected under title 17,**
4 **United States Code, if—**

5 **(A) the technological protection**
6 **measure, or the work it protects, con-**
7 **tains the capability of collecting or**
8 **disseminating personally identifying**
9 **information reflecting the online ac-**
10 **tivities of a natural person who seeks**
11 **to gain access to the work protected;**

12 **(B) in the normal course of its op-**
13 **eration, the technological protection**
14 **measure, or the work it protects, col-**
15 **lects or disseminates personally iden-**
16 **tifying information about the person**
17 **who seeks to gain access to the work**
18 **protected, without providing con-**
19 **spicuous notice of such collection or**
20 **dissemination to such person, and**
21 **without providing such person with**
22 **the capability to prevent or restrict**
23 **such collection or dissemination;**

24 **(C) the act of circumvention has**
25 **the sole effect of identifying and dis-**

1 **abling the capability described in**
2 **subparagraph (A), and has no other**
3 **effect on the ability of any person to**
4 **gain access to any work; and**

5 **(D) the act of circumvention is**
6 **carried out solely for the purpose of**
7 **preventing the collection or dissemi-**
8 **nation of personally identifying infor-**
9 **mation about a natural person who**
10 **seeks to gain access to the work pro-**
11 **tected, and is not in violation of any**
12 **other law.**

13 **(2) INAPPLICABILITY TO CERTAIN TECH-**
14 **NOLOGICAL PROTECTION MEASURES.—This**
15 **subsection does not apply to a techno-**
16 **logical protection measure, or a work it**
17 **protects, that does not collect or dissemi-**
18 **nate personally identifying information**
19 **and that is disclosed to a user as not hav-**
20 **ing or using such capability.**

21 **SEC. 103. INTEGRITY OF COPYRIGHT MANAGEMENT INFOR-**
22 **MATION.**

23 **(a) FALSE COPYRIGHT MANAGEMENT INFOR-**
24 **MATION.—No person shall knowingly and with**

1 **the intent to induce, enable, facilitate, or con-**
2 **ceal infringement—**

3 **(1) provide copyright management in-**
4 **formation that is false, or**

5 **(2) distribute or import for distribu-**
6 **tion copyright management information**
7 **that is false.**

8 **(b) REMOVAL OR ALTERATION OF COPYRIGHT**
9 **MANAGEMENT INFORMATION.—No person shall,**
10 **without the authority of the copyright owner**
11 **or the law—**

12 **(1) intentionally remove or alter any**
13 **copyright management information,**

14 **(2) distribute or import for distribu-**
15 **tion copyright management information**
16 **knowing that the copyright management**
17 **information has been removed or altered**
18 **without authority of the copyright owner**
19 **or the law, or**

20 **(3) distribute, import for distribution,**
21 **or publicly perform works, copies of**
22 **works, or phonorecords, knowing that**
23 **copyright management information has**
24 **been removed or altered without author-**
25 **ity of the copyright owner or the law,**

1 **knowing, or, with respect to civil remedies**
2 **under section 104, having reasonable grounds**
3 **to know, that it will induce, enable, facilitate,**
4 **or conceal an infringement of any right under**
5 **title 17, United States Code.**

6 **(c) DEFINITIONS.—As used in this section—**

7 **(1) the terms “distribute”, “publicly**
8 **perform”, “copies”, and “phonorecords”**
9 **have the meanings given those terms in**
10 **title 17, United States Code; and**

11 **(2) the term “copyright management**
12 **information” means any of the following**
13 **information conveyed in connection with**
14 **copies or phonorecords of a work or per-**
15 **formances or displays of a work, includ-**
16 **ing in digital form, except that such term**
17 **does not include any personally identify-**
18 **ing information about a user of a work or**
19 **of a copy, phonorecord, performance, or**
20 **display of a work:**

21 **(A) The title and other informa-**
22 **tion identifying the work, including**
23 **the information set forth on a notice**
24 **of copyright.**

1 **(B) The name of, and other identi-**
2 **fyng information about, the author**
3 **of a work.**

4 **(C) The name of, and other identi-**
5 **fyng information about, the copy-**
6 **right owner of the work, including**
7 **the information set forth in a notice**
8 **of copyright.**

9 **(D) With the exception of public**
10 **performances of works by radio and**
11 **television broadcast stations, the**
12 **name of, and other identifying infor-**
13 **mation about, a performer whose per-**
14 **formance is fixed in a work other**
15 **than an audiovisual work.**

16 **(E) With the exception of public**
17 **performances of works by radio and**
18 **television broadcast stations, in the**
19 **case of an audiovisual work, the**
20 **name of, and other identifying infor-**
21 **mation about, a writer, performer, or**
22 **director who is credited in the audio-**
23 **visual work.**

24 **(F) Terms and conditions for use**
25 **of the work.**

1 **(G) Identifying numbers or sym-**
2 **bols referring to such information or**
3 **links to such information.**

4 **(H) Such other information as the**
5 **Register of Copyrights may prescribe**
6 **by regulation, except that the Reg-**
7 **ister of Copyrights may not require**
8 **the provision of any information con-**
9 **cerning the user of a copyrighted**
10 **work.**

11 **(d) LAW ENFORCEMENT AND INTELLIGENCE**
12 **ACTIVITIES.—This section does not prohibit**
13 **any lawfully authorized investigative, protec-**
14 **tive, or intelligence activity of an officer,**
15 **agent, or employee of the United States, a**
16 **State, or a political subdivision of a State, or**
17 **a person acting pursuant to a contract with**
18 **the United States, a State, or a political sub-**
19 **division of a State.**

20 **(e) LIMITATIONS ON LIABILITY.—**

21 **(1) ANALOG TRANSMISSIONS.—In the**
22 **case of an analog transmission, a person**
23 **who is making transmissions in its capac-**
24 **ity as a broadcast station, or as a cable**
25 **system (as defined in section 602 of the**

1 **Communications Act of 1934), or someone**
2 **who provides programming to such sta-**
3 **tion or system, shall not be liable for a**
4 **violation of subsection (b) if—**

5 **(A) avoiding the activity that con-**
6 **stitutes such violation is not tech-**
7 **nically feasible or would create an**
8 **undue financial hardship on such**
9 **person; and**

10 **(B) such person did not intend, by**
11 **engaging in such activity, to induce,**
12 **enable, facilitate, or conceal infringe-**
13 **ment of a right under title 17, United**
14 **States Code.**

15 **(2) DIGITAL TRANSMISSIONS.—**

16 **(A) If a digital transmission stand-**
17 **ard for the placement of copyright**
18 **management information for a cat-**
19 **egory of works is set in a voluntary,**
20 **consensus standard-setting process**
21 **involving a representative cross-sec-**
22 **tion of broadcast stations or cable**
23 **systems and copyright owners of a**
24 **category of works that are intended**
25 **for public performance by such sta-**

1 **tions or systems, a person identified**
2 **in paragraph (1) shall not be liable**
3 **for a violation of subsection (b) with**
4 **respect to the particular copyright**
5 **management information addressed**
6 **by such standard if—**

7 **(i) the placement of such in-**
8 **formation by someone other than**
9 **such person is not in accordance**
10 **with such standard; and**

11 **(ii) the activity that con-**
12 **stitutes such violation is not in-**
13 **tended to induce, enable, facili-**
14 **tate, or conceal infringement of a**
15 **right under title 17, United States**
16 **Code.**

17 **(B) Until a digital transmission**
18 **standard has been set pursuant to**
19 **subparagraph (A) with respect to the**
20 **placement of copyright management**
21 **information for a category or works,**
22 **a person identified in paragraph (1)**
23 **shall not be liable for a violation of**
24 **subsection (b) with respect to such**
25 **copyright management information,**

1 **if the activity that constitutes such**
2 **violation is not intended to induce,**
3 **enable, facilitate, or conceal infringe-**
4 **ment of a right under title 17, United**
5 **States Code, and if—**

6 **(i) the transmission of such**
7 **information by such person**
8 **would result in a perceptible vis-**
9 **ual or aural degradation of the**
10 **digital signal; or**

11 **(ii) the transmission of such**
12 **information by such person**
13 **would conflict with—**

14 **(I) an applicable govern-**
15 **ment regulation relating to**
16 **transmission of information**
17 **in a digital signal;**

18 **(II) an applicable indus-**
19 **try-wide standard relating to**
20 **the transmission of informa-**
21 **tion in a digital signal that**
22 **was adopted by a voluntary**
23 **consensus standards body**
24 **prior to the effective date of**
25 **this title; or**

1 **(III) an applicable indus-**
2 **try-wide standard relating to**
3 **the transmission of informa-**
4 **tion in a digital signal that**
5 **was adopted in a voluntary,**
6 **consensus standards-setting**
7 **process open to participation**
8 **by a representative cross-sec-**
9 **tion of broadcast stations or**
10 **cable systems and copyright**
11 **owners of a category of works**
12 **that are intended for public**
13 **performance by such stations**
14 **or systems.**

15 **(3) DEFINITIONS.—As used in this sub-**
16 **section—**

17 **(A) the term “broadcast station”**
18 **has the meaning given that term in**
19 **section 3 of the Communications Act**
20 **of 1934 (47 U.S.C. 153); and**

21 **(B) the term “cable system” has**
22 **the meaning given that term in sec-**
23 **tion 602 of the Communications Act**
24 **of 1934 (47 U.S.C. 522)).**

1 **SEC. 104. CIVIL REMEDIES.**

2 **(a) CIVIL ACTIONS.—Any person injured by**
3 **a violation of section 102 or 103, or of any reg-**
4 **ulation issued under section 102(a)(1), may**
5 **bring a civil action in an appropriate United**
6 **States district court for such violation.**

7 **(b) POWERS OF THE COURT.—In an action**
8 **brought under subsection (a), the court—**

9 **(1) may grant temporary and perma-**
10 **nent injunctions on such terms as it**
11 **deems reasonable to prevent or restrain a**
12 **violation, but in no event shall impose a**
13 **prior restraint on free speech or the**
14 **press protected under the 1st amendment**
15 **to the Constitution;**

16 **(2) at any time while an action is**
17 **pending, may order the impounding, on**
18 **such terms as it deems reasonable, of any**
19 **device or product that is in the custody**
20 **or control of the alleged violator and that**
21 **the court has reasonable cause to believe**
22 **was involved in a violation;**

23 **(3) may award damages under sub-**
24 **section (c);**

25 **(4) in its discretion may allow the re-**
26 **covery of costs by or against any party**

1 other than the United States or an officer
2 thereof;

3 (5) in its discretion may award rea-
4 sonable attorney's fees to the prevailing
5 party; and

6 (6) may, as part of a final judgment or
7 decree finding a violation, order the re-
8 medial modification or the destruction of
9 any device or product involved in the vio-
10 lation that is in the custody or control of
11 the violator or has been impounded
12 under paragraph (2).

13 (c) AWARD OF DAMAGES.—

14 (1) IN GENERAL.—Except as otherwise
15 provided in this title, a person commit-
16 ting a violation of section 102 or 103, or
17 of any regulation issued under section
18 102(a)(1), is liable for either—

19 (A) the actual damages and any
20 additional profits of the violator, as
21 provided in paragraph (2), or

22 (B) statutory damages, as pro-
23 vided in paragraph (3).

24 (2) ACTUAL DAMAGES.—The court shall
25 award to the complaining party the ac-

1 **tual damages suffered by the party as a**
2 **result of the violation, and any profits of**
3 **the violator that are attributable to the**
4 **violation and are not taken into account**
5 **in computing the actual damages, if the**
6 **complaining party elects such damages at**
7 **any time before final judgment is en-**
8 **tered.**

9 **(3) STATUTORY DAMAGES.—**

10 **(A) At any time before final judg-**
11 **ment is entered, a complaining party**
12 **may elect to recover an award of stat-**
13 **utory damages for each violation of**
14 **section 102, or of a regulation issued**
15 **under section 102(a)(1), in the sum of**
16 **not less than \$200 or more than**
17 **\$2,500 per act of circumvention, de-**
18 **vice, product, component, offer, or**
19 **performance of service, as the court**
20 **considers just.**

21 **(B) At any time before final judg-**
22 **ment is entered, a complaining party**
23 **may elect to recover an award of stat-**
24 **utory damages for each violation of**

1 section 103 in the sum of not less
2 than \$2,500 or more than \$25,000.

3 **(4) REPEATED VIOLATIONS.—**In any case
4 in which the injured party sustains the
5 burden of proving, and the court finds,
6 that a person has violated section 102 or
7 103, or any regulation issued under sec-
8 tion 102(a)(1), within three years after a
9 final judgment was entered against the
10 person for another such violation, the
11 court may increase the award of damages
12 up to triple the amount that would other-
13 wise be awarded, as the court considers
14 just.

15 **(5) INNOCENT VIOLATIONS.—**

16 **(A) IN GENERAL.—**The court in its
17 discretion may reduce or remit the
18 total award of damages in any case in
19 which the violator sustains the bur-
20 den of proving, and the court finds,
21 that the violator was not aware and
22 had no reason to believe that its acts
23 constituted a violation.

24 **(B) NONPROFIT LIBRARY, ARCHIVES,**
25 **OR EDUCATIONAL INSTITUTIONS.—**In the

1 **case of a nonprofit library, archives,**
2 **or educational institution, the court**
3 **shall remit damages in any case in**
4 **which the library, archives, or edu-**
5 **catinal institution sustains the bur-**
6 **den of proving, and the court finds,**
7 **that the library, archives, or edu-**
8 **catinal institution was not aware**
9 **and had no reason to believe that its**
10 **acts constituted a violation.**

11 **SEC. 105. CRIMINAL OFFENSES AND PENALTIES.**

12 **(a) IN GENERAL.—Any person who violates**
13 **section 102 or 103, or any regulation issued**
14 **under section 102(a)(1), willfully and for pur-**
15 **poses of commercial advantage or private fi-**
16 **nancial gain—**

17 **(1) shall be fined not more than**
18 **\$500,000 or imprisoned for not more than**
19 **5 years, or both, for the first offense; and**

20 **(2) shall be fined not more than**
21 **\$1,000,000 or imprisoned for not more**
22 **than 10 years, or both, for any subse-**
23 **quent offense.**

24 **(b) LIMITATION FOR NONPROFIT LIBRARY,**
25 **ARCHIVES, OR EDUCATIONAL INSTITUTION.—Sub-**

1 **section (a) shall not apply to a nonprofit li-**
2 **brary, archives, or educational institution.**

3 **(c) STATUTE OF LIMITATIONS.—No criminal**
4 **proceeding shall be brought under this sec-**
5 **tion unless such proceeding is commenced**
6 **within five years after the cause of action**
7 **arose.**

8 **SEC. 106. SAVINGS CLAUSE.**

9 **Nothing in this title abrogates, dimin-**
10 **ishes, or weakens the provisions of, nor pro-**
11 **vides any defense or element of mitigation in**
12 **a criminal prosecution or civil action under,**
13 **any Federal or State law that prevents the**
14 **violation of the privacy of an individual in**
15 **connection with the individual's use of the**
16 **Internet.**

17 **SEC. 107. DEVELOPMENT AND IMPLEMENTATION OF TECH-**
18 **NOLOGICAL PROTECTION MEASURES.**

19 **(a) STATEMENT OF CONGRESSIONAL POLICY**
20 **AND OBJECTIVE.—It is the sense of the Con-**
21 **gress that technological protection measures**
22 **play a crucial role in safeguarding the inter-**
23 **ests of both copyright owners and lawful**
24 **users of copyrighted works in digital formats,**
25 **by facilitating lawful uses of such works while**

1 protecting the private property interests of
2 holders of rights under title 17, United States
3 Code. Accordingly, the expeditious implemen-
4 tation of such measures, developed by the pri-
5 vate sector through voluntary industry-led
6 processes, is a key factor in realizing the full
7 benefits of making available copyrighted
8 works through digital networks, including the
9 benefits set forth in this section.

10 (b) TECHNOLOGICAL PROTECTION MEAS-
11 URES.—The technological protection measures
12 referred to in subsection (a) shall include, but
13 not be limited to, those which—

14 (1) enable nonprofit libraries, for non-
15 profit purposes, to continue to lend to li-
16 brary users copies or phonorecords that
17 such libraries have lawfully acquired, in-
18 cluding the lending of such copies or
19 phonorecords in digital formats in a man-
20 ner that prevents infringement;

21 (2) effectively protect against the in-
22 fringement of exclusive rights under title
23 17, United States Code, and facilitate the
24 exercise of those exclusive rights; and

1 **(3) promote the development and im-**
2 **plementation of diverse methods, mecha-**
3 **nisms, and arrangements in the market-**
4 **place for making available copyrighted**
5 **works in digital formats which provide**
6 **opportunities for individual members of**
7 **the public to make lawful uses of copy-**
8 **righted works in digital formats.**

9 **(c) PROCEDURES FOR DEVELOPING AND IM-**
10 **PLEMENTING TECHNOLOGICAL PROTECTION**
11 **MEASURES.—The technological protection**
12 **measures whose development and implemen-**
13 **tation the Congress anticipates are those**
14 **which—**

15 **(1) are developed pursuant to a broad**
16 **consensus in an open, fair, voluntary, and**
17 **multi-industry process;**

18 **(2) are made available on reasonable**
19 **and nondiscriminatory terms; and**

20 **(3) do not impose substantial costs or**
21 **burdens on copyright owners or on man-**
22 **ufacturers of hardware or software used**
23 **in conjunction with copyrighted works in**
24 **digital formats.**

1 **(d) OVERSIGHT AND REPORTING.—(1) The**
2 **Secretary of Commerce, in consultation with**
3 **the Assistant Secretary of Commerce for Com-**
4 **munications and Information and the Reg-**
5 **ister of Copyrights, shall review the impact of**
6 **the enactment of section 102 of this Act on the**
7 **access of individual users to copyrighted**
8 **works in digital formats and shall report an-**
9 **nually thereon to the Committees on Com-**
10 **merce and on the Judiciary of the House of**
11 **Representatives and the Committees on Com-**
12 **merce, Science, and Transportation and on**
13 **the Judiciary of the Senate.**

14 **(2) Each report under paragraph (1) shall**
15 **address the following issues:**

16 **(A) The status of the development and**
17 **implementation of technological protec-**
18 **tion measures, including measures that**
19 **advance the objectives of this section,**
20 **and the effectiveness of technological**
21 **protection measures in protecting the**
22 **private property interests of copyright**
23 **owners under title 17, United States**
24 **Code.**

1 **(B) The degree to which individual**
2 **lawful users of copyrighted works—**

3 **(i) have access to the Internet and**
4 **digital networks generally;**

5 **(ii) are dependent upon such ac-**
6 **cess for their use of copyrighted**
7 **works;**

8 **(iii) have available to them other**
9 **channels for obtaining and using**
10 **copyrighted works, other than the**
11 **Internet and digital networks gen-**
12 **erally;**

13 **(iv) are required to pay copyright**
14 **owners or intermediaries for each**
15 **lawful use of copyrighted works in**
16 **digital formats to which they have ac-**
17 **cess; and**

18 **(v) are able to utilize nonprofit li-**
19 **braries to obtain access, through bor-
20 **rowing without payment by the user,
21 **to copyrighted works in digital for-
22 **mats.********

23 **(C) The degree to which infringement**
24 **of copyrighted works in digital formats is**
25 **occurring.**

1 **(D) Whether and the extent to which**
2 **section 102, and the regulations issued**
3 **under section 102(a)(1), are asserted as a**
4 **basis for liability in claims brought**
5 **against persons conducting research and**
6 **development, including reverse engineer-**
7 **ing of copyrighted works, and the extent**
8 **to which such claims constitute a serious**
9 **impediment to the development and pro-**
10 **duction of competitive goods and serv-**
11 **ices.**

12 **(E) The degree to which individual**
13 **users of copyrighted materials in digital**
14 **formats are able effectively to protect**
15 **themselves against the use of techno-**
16 **logical protection measures to carry out**
17 **or facilitate the undisclosed collection**
18 **and dissemination of personally identify-**
19 **ing information concerning the access to**
20 **and use of such materials by such users.**

21 **(F) Such other issues as the Secretary**
22 **of Commerce, in consultation with the**
23 **Assistant Secretary of Commerce for**
24 **Communications and Information and**
25 **the Register of Copyrights, identifies as**

1 relevant to the impact of the enactment
2 of section 102 on the access of individual
3 users to copyrighted works in digital for-
4 mats.

5 (3) The first report under this subsection
6 shall be submitted not later than one year
7 after the date of the enactment of this Act,
8 and the last such report shall be submitted
9 not later than three years after the date of the
10 enactment of this Act.

11 (4) The reports under this subsection may
12 include such recommendations for additional
13 legislative action as the Secretary of Com-
14 merce and the Register of Copyrights con-
15 sider advisable in order to further the objec-
16 tives of this section.

17 SEC. 108. TECHNICAL AMENDMENTS.

18 (a) DEFINITIONS.—Section 101 of title 17,
19 United States Code, is amended—

20 (1) by striking the definition of
21 “Berne Convention work”;

22 (2) in the definition of “The ‘country
23 of origin’ of a Berne Convention work”—

24 (A) by striking “The ‘country of
25 origin’ of a Berne Convention work,

1 for purposes of section 411, is the
2 United States if” and inserting “For
3 purposes of section 411, a work is a
4 ‘United States work’ only if”;

5 (B) in paragraph (1)—

6 (i) in subparagraph (B) by
7 striking “nation or nations adher-
8 ing to the Berne Convention” and
9 inserting “treaty party or par-
10 ties”;

11 (ii) in subparagraph (C) by
12 striking “does not adhere to the
13 Berne Convention” and inserting
14 “is not a treaty party”; and

15 (iii) in subparagraph (D) by
16 striking “does not adhere to the
17 Berne Convention” and inserting
18 “is not a treaty party”; and

19 (C) in the matter following para-
20 graph (3) by striking “For the pur-
21 poses of section 411, the ‘country of
22 origin’ of any other Berne Convention
23 work is not the United States.”;

24 (3) by inserting after the definition of
25 “fixed” the following:

1 **“The ‘Geneva Phonograms Conven-**
2 **tion’ is the Convention for the Protection**
3 **of Producers of Phonograms Against Un-**
4 **authorized Duplication of Their**
5 **Phonograms, concluded at Geneva, Swit-**
6 **zerland, on October 29, 1971.”;**

7 **(4) by inserting after the definition of**
8 **“including” the following:**

9 **“An ‘international agreement’ is—**

10 **“(1) the Universal Copyright Con-**
11 **vention;**

12 **“(2) the Geneva Phonograms Con-**
13 **vention;**

14 **“(3) the Berne Convention;**

15 **“(4) the WTO Agreement;**

16 **“(5) the WIPO Copyright Treaty;**

17 **“(6) the WIPO Performances and**
18 **Phonograms Treaty; and**

19 **“(7) any other copyright treaty to**
20 **which the United States is a party.”;**

21 **(5) by inserting after the definition of**
22 **“transmit” the following:**

23 **“A ‘treaty party’ is a country or inter-**
24 **governmental organization other than**

1 the United States that is a party to an
2 international agreement.”;

3 (6) by inserting after the definition of
4 “widow” the following:

5 “The ‘WIPO Copyright Treaty’ is the
6 WIPO Copyright Treaty concluded at Ge-
7 neva, Switzerland, on December 20,
8 1996.”;

9 (7) by inserting after the definition of
10 “The ‘WIPO Copyright Treaty’” the fol-
11 lowing:

12 “The ‘WIPO Performances and
13 Phonograms Treaty’ is the WIPO Per-
14 formances and Phonograms Treaty con-
15 cluded at Geneva, Switzerland, on De-
16 cember 20, 1996.”; and

17 (8) by inserting after the definition of
18 “work made for hire” the following:

19 “The terms ‘WTO Agreement’ and
20 ‘WTO member country’ have the mean-
21 ings given those terms in paragraphs (9)
22 and (10), respectively, of section 2 of the
23 Uruguay Round Agreements Act.”.

1 **(b) SUBJECT MATTER OF COPYRIGHT; NA-**
2 **TIONAL ORIGIN.—Section 104 of title 17, United**
3 **States Code, is amended—**

4 **(1) in subsection (b)—**

5 **(A) in paragraph (1) by striking**
6 **“foreign nation that is a party to a**
7 **copyright treaty to which the United**
8 **States is also a party” and inserting**
9 **“treaty party”;**

10 **(B) in paragraph (2) by striking**
11 **“party to the Universal Copyright**
12 **Convention” and inserting “treaty**
13 **party”;**

14 **(C) by redesignating paragraph**
15 **(5) as paragraph (6);**

16 **(D) by redesignating paragraph**
17 **(3) as paragraph (5) and inserting it**
18 **after paragraph (4);**

19 **(E) by inserting after paragraph**
20 **(2) the following:**

21 **“(3) the work is a sound recording**
22 **that was first fixed in a treaty party; or”;**

23 **(F) in paragraph (4) by striking**
24 **“Berne Convention work” and insert-**
25 **ing “pictorial, graphic, or sculptural**

1 **work that is incorporated in a build-**
2 **ing or other structure, or an architec-**
3 **tural work that is embodied in a**
4 **building and the building or struc-**
5 **ture is located in the United States or**
6 **a treaty party”;** and

7 **(G) by inserting after paragraph**
8 **(6), as so redesignated, the following:**
9 **“For purposes of paragraph (2), a work that**
10 **is published in the United States or a treaty**
11 **party within 30 days after publication in a**
12 **foreign nation that is not a treaty party shall**
13 **be considered to be first published in the**
14 **United States or such treaty party, as the case**
15 **may be.”;** and

16 **(2) by adding at the end the following**
17 **new subsection:**

18 **“(d) EFFECT OF PHONOGRAMS TREATIES.—**
19 **Notwithstanding the provisions of subsection**
20 **(b), no works other than sound recordings**
21 **shall be eligible for protection under this title**
22 **solely by virtue of the adherence of the**
23 **United States to the Geneva Phonograms Con-**
24 **vention or the WIPO Performances and**
25 **Phonograms Treaty.”.**

1 **(c) COPYRIGHT IN RESTORED WORKS.—Sec-**
2 **tion 104A(h) of title 17, United States Code, is**
3 **amended—**

4 **(1) in paragraph (1), by striking sub-**
5 **paragraphs (A) and (B) and inserting the**
6 **following:**

7 **“(A) a nation adhering to the**
8 **Berne Convention;**

9 **“(B) a WTO member country;**

10 **“(C) a nation adhering to the**
11 **WIPO Copyright Treaty;**

12 **“(D) a nation adhering to the**
13 **WIPO Performances and Phonograms**
14 **Treaty; or**

15 **“(E) subject to a Presidential**
16 **proclamation under subsection (g).”;**

17 **(2) by amending paragraph (3) to**
18 **read as follows:**

19 **“(3) The term ‘eligible country’ means**
20 **a nation, other than the United States,**
21 **that—**

22 **“(A) becomes a WTO member**
23 **country after the date of the enact-**
24 **ment of the Uruguay Round Agree-**
25 **ments Act;**

1 **“(B) on such date of enactment is,**
2 **or after such date of enactment be-**
3 **comes, a nation adhering to the**
4 **Berne Convention;**

5 **“(C) adheres to the WIPO Copy-**
6 **right Treaty;**

7 **“(D) adheres to the WIPO Per-**
8 **formances and Phonograms Treaty;**
9 **or**

10 **“(E) after such date of enactment**
11 **becomes subject to a proclamation**
12 **under subsection (g).”;**

13 **(3) in paragraph (6)—**

14 **(A) in subparagraph (C)(iii) by**
15 **striking “and” after the semicolon;**

16 **(B) at the end of subparagraph**
17 **(D) by striking the period and insert-**
18 **ing “; and”; and**

19 **(C) by adding after subparagraph**
20 **(D) the following:**

21 **“(E) if the source country for the**
22 **work is an eligible country solely by**
23 **virtue of its adherence to the WIPO**
24 **Performances and Phonograms Trea-**
25 **ty, is a sound recording.”;**

1 **(4) in paragraph (8)(B)(i)—**

2 **(A) by inserting “of which” before**
3 **“the majority”; and**

4 **(B) by striking “of eligible coun-**
5 **tries”; and**

6 **(5) by striking paragraph (9).**

7 **(d) REGISTRATION AND INFRINGEMENT AC-**
8 **TIONS.—Section 411(a) of title 17, United**
9 **States Code, is amended in the first sen-**
10 **tence—**

11 **(1) by striking “actions for infringe-**
12 **ment of copyright in Berne Convention**
13 **works whose country of origin is not the**
14 **United States and”; and**

15 **(2) by inserting “United States” after**
16 **“no action for infringement of the copy-**
17 **right in any”.**

18 **(e) STATUTE OF LIMITATIONS.—Section**
19 **507(a) of title 17, United State Code, is amend-**
20 **ed by striking “No” and inserting “Except as**
21 **expressly provided otherwise in this title, no”.**

22 **SEC. 109. EFFECTIVE DATE.**

23 **(a) IN GENERAL.—Subject to subsection (b),**
24 **the amendments made by this title shall take**
25 **effect on the date of the enactment of this Act.**

1 **(b) AMENDMENTS RELATING TO CERTAIN**
2 **INTERNATIONAL AGREEMENTS.—(1) The follow-**
3 **ing shall take effect upon the entry into force**
4 **of the WIPO Copyright Treaty with respect to**
5 **the United States:**

6 **(A) Paragraph (5) of the definition of**
7 **“international agreement” contained in**
8 **section 101 of title 17, United States Code,**
9 **as amended by section 108(a)(4) of this**
10 **Act.**

11 **(B) The amendment made by section**
12 **108(a)(6) of this Act.**

13 **(C) Subparagraph (C) of section**
14 **104A(h)(1) of title 17, United States Code,**
15 **as amended by section 108(c)(1) of this**
16 **Act.**

17 **(D) Subparagraph (C) of section**
18 **104A(h)(3) of title 17, United States Code,**
19 **as amended by section 108(c)(2) of this**
20 **Act.**

21 **(2) The following shall take effect upon**
22 **the entry into force of the WIPO Perform-**
23 **ances and Phonograms Treaty with respect to**
24 **the United States:**

1 **(A) Paragraph (6) of the definition of**
2 **“international agreement” contained in**
3 **section 101 of title 17, United States Code,**
4 **as amended by section 108(a)(4) of this**
5 **Act.**

6 **(B) The amendment made by section**
7 **108(a)(7) of this Act.**

8 **(C) The amendment made by section**
9 **108(b)(2) of this Act.**

10 **(D) Subparagraph (D) of section**
11 **104A(h)(1) of title 17, United States Code,**
12 **as amended by section 108(c)(1) of this**
13 **Act.**

14 **(E) Subparagraph (D) of section**
15 **104A(h)(3) of title 17, United States Code,**
16 **as amended by section 108(c)(2) of this**
17 **Act.**

18 **(F) The amendments made by section**
19 **108(c)(3) of this Act.**

20 **TITLE II—INTERNET COPYRIGHT**
21 **INFRINGEMENT LIABILITY**

22 **SEC. 201. SHORT TITLE.**

23 **This title may be cited as the “Internet**
24 **Copyright Infringement Liability Clarifica-**
25 **tion Act of 1998”.**

1 **SEC. 202. LIMITATIONS ON LIABILITY FOR INTERNET COPY-**
2 **RIGHT INFRINGEMENT.**

3 **(a) IN GENERAL.—Chapter 5 of title 17,**
4 **United States Code, is amended by adding**
5 **after section 511 the following new section:**

6 **“§ 512. Liability of service providers for online in-**
7 **fringement of copyright**

8 **“(a) DIGITAL NETWORK COMMUNICATIONS.—**
9 **A service provider shall not be liable for mon-**
10 **etary relief, or except as provided in sub-**
11 **section (i) for injunctive or other equitable re-**
12 **lief, for infringement for the provider’s trans-**
13 **mitting, routing, or providing connections for,**
14 **material through a system or network con-**
15 **trolled or operated by or for the service pro-**
16 **vider, or the intermediate and transient stor-**
17 **age of such material in the course of such**
18 **transmitting, routing or providing connec-**
19 **tions, if—**

20 **“(1) it was initiated by or at the direc-**
21 **tion of a person other than the service**
22 **provider;**

23 **“(2) it is carried out through an auto-**
24 **matic technical process without selection**
25 **of such material by the service provider;**

1 **“(3) the service provider does not se-**
2 **lect the recipients of such material ex-**
3 **cept as an automatic response to the re-**
4 **quest of another;**

5 **“(4) no such copy of such material**
6 **made by the service provider is main-**
7 **tained on the system or network in a**
8 **manner ordinarily accessible to anyone**
9 **other than anticipated recipients, and no**
10 **such copy is maintained on the system or**
11 **network in a manner ordinarily acces-**
12 **sible to the anticipated recipients for a**
13 **longer period than is reasonably nec-**
14 **essary for the communication; and**

15 **“(5) the material is transmitted with-**
16 **out modification to its content.**

17 **“(b) SYSTEM CACHING.—A service provider**
18 **shall not be liable for monetary relief, or ex-**
19 **cept as provided in subsection (i) for injunc-**
20 **tive or other equitable relief, for infringement**
21 **for the intermediate and temporary storage of**
22 **material on the system or network controlled**
23 **or operated by or for the service provider:**
24 *Provided, That—*

1 “(1) such material is made available
2 online by a person other than such serv-
3 ice provider,

4 “(2) such material is transmitted from
5 the person described in paragraph (1)
6 through such system or network to some-
7 one other than that person at the direc-
8 tion of such other person,

9 “(3) the storage is carried out through
10 an automatic technical process for the
11 purpose of making such material avail-
12 able to users of such system or network
13 who subsequently request access to that
14 material from the person described in
15 paragraph (1):

16 *Provided further, That—*

17 “(4) such material is transmitted to
18 such subsequent users without modifica-
19 tion to its content from the manner in
20 which the material otherwise was trans-
21 mitted from the person described in para-
22 graph (1);

23 “(5) such service provider complies
24 with rules concerning the refreshing, re-
25 loading or other updating of such mate-

1 rial when specified by the person making
2 that material available online in accord-
3 ance with an accepted industry standard
4 data communications protocol for the
5 system or network through which that
6 person makes the material available: *Pro-*
7 *vided further*, That the rules are not used
8 by the person described in paragraph (1)
9 to prevent or unreasonably impair such
10 intermediate storage;

11 “(6) such service provider does not
12 interfere with the ability of technology
13 associated with such material that re-
14 turns to the person described in para-
15 graph (1) the information that would
16 have been available to such person if
17 such material had been obtained by such
18 subsequent users directly from such per-
19 son: *Provided further*, That such tech-
20 nology—

21 “(A) does not significantly inter-
22 fere with the performance of the pro-
23 vider’s system or network or with the
24 intermediate storage of the material;

1 **“(B) is consistent with accepted**
2 **industry standard communications**
3 **protocols; and**

4 **“(C) does not extract information**
5 **from the provider’s system or net-**
6 **work other than the information that**
7 **would have been available to such**
8 **person if such material had been**
9 **accessed by such users directly from**
10 **such person;**

11 **“(7) either—**

12 **“(A) the person described in para-**
13 **graph (1) does not currently condi-**
14 **tion access to such material; or**

15 **“(B) if access to such material is**
16 **so conditioned by such person, by a**
17 **current individual pre-condition,**
18 **such as a pre-condition based on pay-**
19 **ment of a fee, or provision of a pass-**
20 **word or other information, the serv-**
21 **ice provider permits access to the**
22 **stored material in significant part**
23 **only to users of its system or network**
24 **that have been so authorized and**

1 **only in accordance with those condi-**
2 **tions; and**

3 **“(8) if the person described in para-**
4 **graph (1) makes that material available**
5 **online without the authorization of the**
6 **copyright owner, then the service pro-**
7 **vider responds expeditiously to remove,**
8 **or disable access to, the material that is**
9 **claimed to be infringing upon notifica-**
10 **tion of claimed infringements described**
11 **in subsection (c)(3): *Provided further,***
12 **That the material has previously been re-**
13 **moved from the originating site, and the**
14 **party giving the notification includes in**
15 **the notification a statement confirming**
16 **that such material has been removed or**
17 **access to it has been disabled or ordered**
18 **to be removed or have access disabled.**

19 **“(c) INFORMATION STORED ON SERVICE PRO-**
20 **VIDERS.—**

21 **“(1) IN GENERAL.—A service provider**
22 **shall not be liable for monetary relief, or**
23 **except as provided in subsection (i) for**
24 **injunctive or other equitable relief, for**
25 **infringement for the storage at the direc-**

1 **tion of a user of material that resides on**
2 **a system or network controlled or oper-**
3 **ated by or for the service provider, if the**
4 **service provider—**

5 **“(A)(i) does not have actual**
6 **knowledge that the material or activ-**
7 **ity is infringing,**

8 **“(ii) in the absence of such actual**
9 **knowledge, is not aware of facts or**
10 **circumstances from which infringing**
11 **activity is apparent, or**

12 **“(iii) if upon obtaining such**
13 **knowledge or awareness, the service**
14 **provider acts expeditiously to remove**
15 **or disable access to, the material;**

16 **“(B) does not receive a financial**
17 **benefit directly attributable to the in-**
18 **fringing activity, where the service**
19 **provider has the right and ability to**
20 **control such activity; and**

21 **“(C) in the instance of a notifica-**
22 **tion of claimed infringement as de-**
23 **scribed in paragraph (3), responds ex-**
24 **pediently to remove, or disable ac-**
25 **cess to, the material that is claimed**

1 to be infringing or to be the subject
2 of infringing activity.

3 “(2) DESIGNATED AGENT.—The limita-
4 tions on liability established in this sub-
5 section apply only if the service provider
6 has designated an agent to receive notifi-
7 cations of claimed infringement de-
8 scribed in paragraph (3), by substantially
9 making the name, address, phone num-
10 ber, electronic mail address of such
11 agent, and other contact information
12 deemed appropriate by the Register of
13 Copyrights, available through its service,
14 including on its website, and by provid-
15 ing such information to the Copyright Of-
16 fice. The Register of Copyrights shall
17 maintain a current directory of agents
18 available to the public for inspection, in-
19 cluding through the Internet, in both
20 electronic and hard copy formats.

21 “(3) ELEMENTS OF NOTIFICATION.—

22 “(A) To be effective under this
23 subsection, a notification of claimed
24 infringement means any written com-
25 munication provided to the service

1 provider's designated agent that in-
2 cludes substantially the following—

3 “(i) a physical or electronic
4 signature of a person authorized
5 to act on behalf of the owner of
6 an exclusive right that is alleg-
7 edly infringed;

8 “(ii) identification of the copy-
9 righted work claimed to have
10 been infringed, or, if multiple
11 such works at a single online site
12 are covered by a single notifica-
13 tion, a representative list of such
14 works at that site;

15 “(iii) identification of the ma-
16 terial that is claimed to be in-
17 fringing or to be the subject of in-
18 fringing activity that is to be re-
19 moved or access to which is to be
20 disabled, and information reason-
21 ably sufficient to permit the serv-
22 ice provider to locate the mate-
23 rial;

24 “(iv) information reasonably
25 sufficient to permit the service

1 provider to contact the complain-
2 ing party, such as an address,
3 telephone number, and, if avail-
4 able an electronic mail address at
5 which the complaining party may
6 be contacted;

7 “(v) a statement that the com-
8 plaining party has a good faith
9 belief that use of the material in
10 the manner complained of is not
11 authorized by the copyright
12 owner, or its agent, or the law;
13 and

14 “(vi) a statement that the in-
15 formation in the notification is
16 accurate, and under penalty of
17 perjury, that the complaining
18 party has the authority to enforce
19 the owner’s rights that are
20 claimed to be infringed.

21 “(B) A notification from the copy-
22 right owner or from a person author-
23 ized to act on behalf of the copyright
24 owner that fails substantially to con-
25 form to the provisions of paragraph

1 **(3)(A) shall not be considered under**
2 **paragraph (1)(A) in determining**
3 **whether a service provider has actual**
4 **knowledge or is aware of facts or cir-**
5 **cumstances from which infringing ac-**
6 **tivity is apparent: *Provided*, That the**
7 **provider promptly attempts to con-**
8 **tact the complaining party or takes**
9 **other reasonable steps to assist in the**
10 **receipt of notice under paragraph**
11 **(3)(A) when the notice is provided to**
12 **the service provider’s designated**
13 **agent and substantially satisfies the**
14 **provisions of paragraphs (3)(A) (ii),**
15 **(iii), and (iv).**

16 **“(d) INFORMATION LOCATION TOOLS.—A**
17 **service provider shall not be liable for mone-**
18 **tary relief, or except as provided in sub-**
19 **section (i) for injunctive or other equitable re-**
20 **lief, for infringement for the provider refer-**
21 **ring or linking users to an online location**
22 **containing infringing material or activity by**
23 **using information location tools, including a**
24 **directory, index, reference, pointer or hyper-**
25 **text link, if the provider—**

1 “(1) does not have actual knowledge
2 that the material or activity is infringing
3 or, in the absence of such actual knowl-
4 edge, is not aware of facts or cir-
5 cumstances from which infringing activ-
6 ity is apparent;

7 “(2) does not receive a financial bene-
8 fit directly attributable to the infringing
9 activity, where the service provider has
10 the right and ability to control such ac-
11 tivity; and

12 “(3) responds expeditiously to remove
13 or disable the reference or link upon no-
14 tification of claimed infringement as de-
15 scribed in subsection (c)(3): *Provided,*
16 That for the purposes of this paragraph,
17 the element in subsection (c)(3)(A)(iii)
18 shall be identification of the reference or
19 link, to material or activity claimed to be
20 infringing, that is to be removed or ac-
21 cess to which is to be disabled, and infor-
22 mation reasonably sufficient to permit
23 the service provider to locate such ref-
24 erence or link.

1 “(e) **MISREPRESENTATIONS.—Any person**
2 **who knowingly materially misrepresents**
3 **under this section—**

4 “(1) **that material or activity is in-**
5 **fringing, or**

6 “(2) **that material or activity was re-**
7 **moved or disabled by mistake or**
8 **misidentification,**

9 **shall be liable for any damages, including**
10 **costs and attorneys’ fees, incurred by the al-**
11 **leged infringer, by any copyright owner or**
12 **copyright owner’s authorized licensee, or by**
13 **the service provider, who is injured by such**
14 **misrepresentation, as the result of the service**
15 **provider relying upon such misrepresenta-**
16 **tion in removing or disabling access to the**
17 **material or activity claimed to be infringing,**
18 **or in replacing the removed material or ceas-**
19 **ing to disable access to it.**

20 “(f) **REPLACEMENT OF REMOVED OR DIS-**
21 **ABLED MATERIAL AND LIMITATION ON OTHER LI-**
22 **ABILITY.—**

23 “(1) **Subject to paragraph (2) of this**
24 **subsection, a service provider shall not**
25 **be liable to any person for any claim**

1 based on the service provider’s good faith
2 disabling of access to, or removal of, ma-
3 terial or activity claimed to be infringing
4 or based on facts or circumstances from
5 which infringing activity is apparent, re-
6 gardless of whether the material or activ-
7 ity is ultimately determined to be infring-
8 ing.

9 “(2) Paragraph (1) of this subsection
10 shall not apply with respect to material
11 residing at the direction of a subscriber
12 of the service provider on a system or
13 network controlled or operated by or for
14 the service provider that is removed, or
15 to which access is disabled by the service
16 provider pursuant to a notice provided
17 under subsection (c)(1)(C), unless the
18 service provider—

19 “(A) takes reasonable steps
20 promptly to notify the subscriber that
21 it has removed or disabled access to
22 the material;

23 “(B) upon receipt of a counter no-
24 tice as described in paragraph (3),
25 promptly provides the person who

1 provided the notice under subsection
2 (c)(1)(C) with a copy of the counter
3 notice, and informs such person that
4 it will replace the removed material
5 or cease disabling access to it in ten
6 business days; and

7 “(C) replaces the removed mate-
8 rial and ceases disabling access to it
9 not less than 10, nor more than 14,
10 business days following receipt of the
11 counter notice, unless its designated
12 agent first receives notice from the
13 person who submitted the notifica-
14 tion under subsection (c)(1)(C) that
15 such person has filed an action seek-
16 ing a court order to restrain the sub-
17 scriber from engaging in infringing
18 activity relating to the material on
19 the service provider’s system or net-
20 work.

21 “(3) To be effective under this sub-
22 section, a counter notification means any
23 written communication provided to the
24 service provider’s designated agent that
25 includes substantially the following:

1 **“(A) A physical or electronic sig-**
2 **nature of the subscriber.**

3 **“(B) Identification of the material**
4 **that has been removed or to which**
5 **access has been disabled and the lo-**
6 **cation at which such material ap-**
7 **peared before it was removed or ac-**
8 **cess was disabled.**

9 **“(C) A statement under penalty of**
10 **perjury that the subscriber has a**
11 **good faith belief that the material**
12 **was removed or disabled as a result**
13 **of mistake or misidentification of the**
14 **material to be removed or disabled.**

15 **“(D) The subscriber’s name, ad-**
16 **dress and telephone number, and a**
17 **statement that the subscriber con-**
18 **sents to the jurisdiction of Federal**
19 **Court for the judicial district in**
20 **which the address is located, or if the**
21 **subscriber’s address is outside of the**
22 **United States, for any judicial district**
23 **in which the service provider may be**
24 **found, and that the subscriber will**
25 **accept service of process from the**

1 person who provided notice under
2 subsection (c)(1)(C) or agent of such
3 person.

4 “(4) A service provider’s compliance
5 with paragraph (2) shall not subject the
6 service provider to liability for copyright
7 infringement with respect to the material
8 identified in the notice provided under
9 subsection (c)(1)(C).

10 “(g) IDENTIFICATION OF DIRECT IN-
11 FRINGER.—The copyright owner or a person
12 authorized to act on the owner’s behalf may
13 request an order for release of identification
14 of an alleged infringer by filing—

15 “(1) a copy of a notification described
16 in subsection (c)(3)(A), including a pro-
17 posed order, and

18 “(2) a sworn declaration that the pur-
19 pose of the order is to obtain the identity
20 of an alleged infringer and that such in-
21 formation will only be used for the pur-
22 pose of this title, with the clerk of any
23 United States district court.

24 The order shall authorize and order the serv-
25 ice provider receiving the notification to dis-

1 close expeditiously to the copyright owner or
2 person authorized by the copyright owner in-
3 formation sufficient to identify the alleged di-
4 rect infringer of the material described in the
5 notification to the extent such information is
6 available to the service provider. The order
7 shall be expeditiously issued if the accom-
8 panying notification satisfies the provisions
9 of subsection (c)(3)(A) and the accompanying
10 declaration is properly executed. Upon re-
11 ceipt of the order, either accompanying or
12 subsequent to the receipt of a notification de-
13 scribed in subsection (c)(3)(A), a service pro-
14 vider shall expeditiously give to the copyright
15 owner or person authorized by the copyright
16 owner the information required by the order,
17 notwithstanding any other provision of law
18 and regardless of whether the service pro-
19 vider responds to the notification.

20 “(h) CONDITIONS FOR ELIGIBILITY.—

21 “(1) ACCOMMODATION OF TECH-
22 NOLOGY.—The limitations on liability es-
23 tablished by this section shall apply only
24 if the service provider—

1 “(A) has adopted and reasonably
2 implemented, and informs subscrib-
3 ers of the service of, a policy for the
4 termination of subscribers of the
5 service who are repeat infringers;
6 and

7 “(B) accommodates and does not
8 interfere with standard technical
9 measures as defined in this sub-
10 section.

11 “(2) DEFINITION.—As used in this sec-
12 tion, ‘standard technical measures’ are
13 technical measures, used by copyright
14 owners to identify or protect copyrighted
15 works, that—

16 “(A) have been developed pursu-
17 ant to a broad consensus of copyright
18 owners and service providers in an
19 open, fair, voluntary, multi-industry
20 standards process;

21 “(B) are available to any person
22 on reasonable and nondiscriminatory
23 terms; and

24 “(C) do not impose substantial
25 costs on service providers or substan-

1 **tial burdens on their systems or net-**
2 **works.**

3 **“(i) INJUNCTIONS.—The following rules**
4 **shall apply in the case of any application for**
5 **an injunction under section 502 against a**
6 **service provider that is not subject to mone-**
7 **tary remedies by operation of this section.**

8 **“(1) SCOPE OF RELIEF.—**

9 **“(A) With respect to conduct other**
10 **than that which qualifies for the limi-**
11 **tation on remedies as set forth in sub-**
12 **section (a), the court may only grant**
13 **injunctive relief with respect to a**
14 **service provider in one or more of the**
15 **following forms—**

16 **“(i) an order restraining it**
17 **from providing access to infring-**
18 **ing material or activity residing**
19 **at a particular online site on the**
20 **provider’s system or network;**

21 **“(ii) an order restraining it**
22 **from providing access to an iden-**
23 **tified subscriber of the service**
24 **provider’s system or network who**
25 **is engaging in infringing activity**

1 by terminating the specified ac-
2 counts of such subscriber; or

3 “(iii) such other injunctive
4 remedies as the court may con-
5 sider necessary to prevent or re-
6 strain infringement of specified
7 copyrighted material at a particu-
8 lar online location: *Provided*, That
9 such remedies are the least bur-
10 densome to the service provider
11 that are comparably effective for
12 that purpose.

13 “(B) If the service provider quali-
14 fies for the limitation on remedies de-
15 scribed in subsection (a), the court
16 may only grant injunctive relief in
17 one or both of the following forms—

18 “(i) an order restraining it
19 from providing access to an iden-
20 tified subscriber of the service
21 provider’s system or network who
22 is using the provider’s service to
23 engage in infringing activity by
24 terminating the specified ac-
25 counts of such subscriber; or

1 “(ii) an order restraining it
2 from providing access, by taking
3 specified reasonable steps to
4 block access, to a specific, identi-
5 fied, foreign online location.

6 “(2) CONSIDERATIONS.—The court, in
7 considering the relevant criteria for in-
8 junctive relief under applicable law, shall
9 consider—

10 “(A) whether such an injunction,
11 either alone or in combination with
12 other such injunctions issued against
13 the same service provider under this
14 subsection, would significantly bur-
15 den either the provider or the oper-
16 ation of the provider’s system or net-
17 work;

18 “(B) the magnitude of the harm
19 likely to be suffered by the copyright
20 owner in the digital network environ-
21 ment if steps are not taken to prevent
22 or restrain the infringement;

23 “(C) whether implementation of
24 such an injunction would be tech-
25 nically feasible and effective, and

1 would not interfere with access to
2 noninfringing material at other on-
3 line locations; and

4 “(D) whether other less burden-
5 some and comparably effective means
6 of preventing or restraining access to
7 the infringing material are available.

8 “(3) NOTICE AND EX PARTE ORDERS.—In-
9 junctive relief under this subsection shall
10 not be available without notice to the
11 service provider and an opportunity for
12 such provider to appear, except for or-
13 ders ensuring the preservation of evi-
14 dence or other orders having no material
15 adverse effect on the operation of the
16 service provider’s communications net-
17 work.

18 “(j) DEFINITIONS.—

19 “(1)(A) As used in subsection (a), the
20 term ‘service provider’ means an entity
21 offering the transmission, routing or pro-
22 viding of connections for digital online
23 communications, between or among
24 points specified by a user, of material of
25 the user’s choosing, without modification

1 to the content of the material as sent or
2 received.

3 “(B) As used in any other subsection
4 of this section, the term ‘service provider’
5 means a provider of online services or
6 network access, or the operator of facili-
7 ties therefor, and includes an entity de-
8 scribed in the preceding paragraph of
9 this subsection.

10 “(2) As used in this section, the term
11 ‘monetary relief’ means damages, costs,
12 attorneys’ fees, and any other form of
13 monetary payment.

14 “(k) OTHER DEFENSES NOT AFFECTED.—The
15 failure of a service provider’s conduct to qual-
16 ify for limitation of liability under this section
17 shall not bear adversely upon the consider-
18 ation of a defense by the service provider that
19 the service provider’s conduct is not infring-
20 ing under this title or any other defense.

21 “(l) PROTECTION OF PRIVACY.—Nothing in
22 this section shall be construed to condition
23 the applicability of subsections (a) through
24 (d) on—

1 “(1) a service provider monitoring its
2 service or affirmatively seeking facts in-
3 dicating infringing activity except to the
4 extent consistent with a standard tech-
5 nical measure complying with the provi-
6 sions of subsection (h); or

7 “(2) a service provider accessing, re-
8 moving, or disabling access to material
9 where such conduct is prohibited by law.

10 “(m) **RULE OF CONSTRUCTION.**—Subsections
11 (a), (b), (c), and (d) are intended to describe
12 separate and distinct functions for purposes
13 of analysis under this section. Whether a serv-
14 ice provider qualifies for the limitation on li-
15 ability in any one such subsection shall be
16 based solely on the criteria in each such sub-
17 section and shall not affect a determination of
18 whether such service provider qualifies for
19 the limitations on liability under any other
20 such subsection.”.

21 **(b) CONFORMING AMENDMENT.**—The table of
22 sections for chapter 5 of title 17, United States
23 Code, is amended by adding at the end the fol-
24 lowing:

“512. Liability of service providers for online infringement of
copyright.”.

1 SEC. 203. LIMITATIONS ON EXCLUSIVE RIGHTS; COMPUTER
2 PROGRAMS.

3 Section 117 of title 17, United States Code,
4 is amended—

5 (1) by striking “Notwithstanding” and in-
6 serting the following:

7 “(a) MAKING OF ADDITIONAL COPY OR ADAP-
8 TATION BY OWNER OF COPY.—Notwithstanding”;

9 (2) by striking “Any exact” and inserting
10 the following:

11 “(b) LEASE, SALE, OR OTHER TRANSFER OF
12 ADDITIONAL COPY OR ADAPTATION.—Any exact”;

13 and

14 (3) by adding at the end the following:

15 “(c) MACHINE MAINTENANCE OR REPAIR.—
16 Notwithstanding the provisions of section
17 106, it is not an infringement for the owner or
18 lessee of a machine to make or authorize the
19 making of a copy of a computer program if
20 such copy is made solely by virtue of the acti-
21 vation of a machine that lawfully contains an
22 authorized copy of the computer program, for
23 purposes only of maintenance or repair of
24 that machine, if—

25 “(1) such new copy is used in no other
26 manner and is destroyed immediately

1 after the maintenance or repair is com-
2 pleted; and

3 “(2) with respect to any computer
4 program or part thereof that is not nec-
5 essary for that machine to be activated,
6 such program or part thereof is not
7 accessed or used other than to make such
8 new copy by virtue of the activation of
9 the machine.

10 “(d) DEFINITIONS.—For purposes of this
11 section—

12 “(1) the ‘maintenance’ of a machine is
13 the servicing of the machine in order to
14 make it work in accordance with its
15 original specifications and any changes
16 to those specifications authorized for
17 that machine; and

18 “(2) the ‘repair’ of a machine is the re-
19 storing of the machine to the state of
20 working in accordance with its original
21 specifications and any changes to those
22 specifications authorized for that ma-
23 chine.”.

1 SEC. 204. LIABILITY OF EDUCATIONAL INSTITUTIONS FOR
2 ONLINE INFRINGEMENT OF COPYRIGHT.

3 (a) RECOMMENDATIONS BY REGISTER OF
4 COPYRIGHTS.—Not later than six months after
5 the date of the enactment of this Act, the Reg-
6 ister of Copyrights, after consultation with
7 representatives of copyright owners and non-
8 profit educational institutions, shall submit to
9 the Congress recommendations regarding the
10 liability of nonprofit educational institutions
11 for copyright infringement committed with
12 the use of computer systems for which such
13 an institution is a service provider, as that
14 term is defined in section 512 of title 17,
15 United States Code (as added by section 202
16 of this Act), including recommendations for
17 legislation that the Register of Copyrights
18 considers appropriate regarding such liabil-
19 ity, if any.

20 (b) FACTORS.—In formulating rec-
21 ommendations under subsection (a), the Reg-
22 ister of Copyrights shall consider, where rel-
23 evant—

24 (1) current law regarding the direct,
25 vicarious, and contributory liability of
26 nonprofit educational institutions for in-

1 **fringement by faculty, administrative em-**
2 **ployees, students, graduate students, and**
3 **students who are employees of such non-**
4 **profit educational institutions;**

5 (2) **other users of their computer sys-**
6 **tems for whom nonprofit educational in-**
7 **stitutions may be responsible;**

8 (3) **the unique nature of the relation-**
9 **ship between nonprofit educational insti-**
10 **tutions and faculty;**

11 (4) **what policies nonprofit edu-**
12 **cational institutions should adopt regard-**
13 **ing copyright infringement by users of**
14 **their computer systems;**

15 (5) **what technological measures are**
16 **available to monitor infringing uses;**

17 (6) **what monitoring of their com-**
18 **puter systems by nonprofit educational**
19 **institutions is appropriate;**

20 (7) **what due process nonprofit edu-**
21 **cational institutions should afford in dis-**
22 **abling access by users of their computer**
23 **systems who are alleged to have commit-**
24 **ted copyright infringement;**

1 **(8) what distinctions, if any, should**
2 **be drawn between computer systems**
3 **which may be accessed from outside the**
4 **nonprofit educational systems, those**
5 **which may not, and combinations there-**
6 **of;**

7 **(9) the tradition of academic freedom;**
8 **and**

9 **(10) such other issues relating to the**
10 **liability of nonprofit educational institu-**
11 **tions for copyright infringement commit-**
12 **ted with the use of computer systems for**
13 **which such an institution is a service**
14 **provider that the Register considers ap-**
15 **propriate.**

16 **SEC. 205. EVALUATION OF IMPACT OF COPYRIGHT LAW**
17 **AND AMENDMENTS ON ELECTRONIC COM-**
18 **MERCE AND TECHNOLOGICAL DEVELOP-**
19 **MENT.**

20 **(a) FINDINGS.—In order to maintain strong**
21 **protection for intellectual property and pro-**
22 **mote the development of electronic commerce**
23 **and the technologies to support that com-**
24 **merce, the Congress must have accurate and**
25 **current information on the effects of intellec-**

1 tual property protection on electronic com-
2 merce and technology. The emergence of digi-
3 tal technology and the proliferation of copy-
4 righted works in digital media, along with the
5 amendments to copyright law contained in
6 this Act, make it appropriate for the Congress
7 to review these issues to ensure that neither
8 copyright law nor electronic commerce inhib-
9 its the development of the other.

10 (b) **EVALUATION BY SECRETARY OF COM-**
11 **MERCE.**—The Secretary of Commerce, in con-
12 sultation with the Assistant Secretary of Com-
13 merce for Communications and Information
14 and the Register of Copyrights, shall evalu-
15 ate—

16 (1) the effects of this Act and the
17 amendments made by this Act on the de-
18 velopment of electronic commerce and
19 associated technology; and

20 (2) the relationship between existing
21 and emergent technology and existing
22 copyright law.

23 (c) **REPORT TO CONGRESS.**—The Secretary
24 of Commerce shall, not later than 1 year after
25 the date of the enactment of this Act, submit

1 to the Congress a report on the evaluation
2 conducted under subsection (b), including
3 any legislative recommendations the Sec-
4 retary may have.

5 SEC. 206. EFFECTIVE DATE.

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

9 **TITLE III—EPHEMERAL RE-**
10 **CORDINGS; DISTANCE EDU-**
11 **CATION; EXEMPTION FOR LI-**
12 **BRARIES AND ARCHIVES**

13 SEC. 301. EPHEMERAL RECORDINGS.

14 Section 112(a) of title 17, United States
15 Code, is amended—

16 (1) by redesignating paragraphs (1),
17 (2), and (3) as subparagraphs (A), (B), and
18 (C), respectively;

19 (2) by inserting “(1)” after “(a)”; and

20 (3) by inserting after “114(a),” the fol-
21 lowing: “or for a transmitting organiza-
22 tion that is a broadcast radio or tele-
23 vision station licensed as such by the
24 Federal Communications Commission
25 that broadcasts a performance of a sound

1 recording in a digital format on a non-
2 subscription basis,”; and

3 (4) by adding at the end the follow-
4 ing:

5 “(2) In a case in which a transmitting or-
6 ganization entitled to make a copy or phono-
7 record under paragraph (1) in connection
8 with the transmission to the public of a per-
9 formance or display of a work described in
10 that paragraph is prevented from making
11 such copy or phonorecord by reason of the ap-
12 plication by the copyright owner of technical
13 measures that prevent the reproduction of
14 the work, the copyright owner shall make
15 available to the transmitting organization the
16 necessary means for permitting the making of
17 such copy or phonorecord within the meaning
18 of that paragraph, if it is technologically fea-
19 sible and economically reasonable for the
20 copyright owner to do so. If the copyright
21 owner fails to do so in a timely manner in
22 light of the transmitting organization’s rea-
23 sonable business requirements, the transmit-
24 ting organization shall not be liable for a vio-
25 lation of the regulations issued under section

1 **102(a)(1)(A) of the WIPO Copyright Treaties**
2 **Implementation Act for engaging in such ac-**
3 **tivities as are necessary to make such copies**
4 **or phonorecords as permitted under para-**
5 **graph (1) of this subsection.”.**

6 **SEC. 302. LIMITATIONS ON EXCLUSIVE RIGHTS; DISTANCE**
7 **EDUCATION.**

8 **(a) RECOMMENDATIONS BY NATIONAL TELE-**
9 **COMMUNICATIONS AND INFORMATION ADMINIS-**
10 **TRATION.—Not later than 6 months after the**
11 **date of the enactment of this Act, the Assist-**
12 **ant Secretary of Commerce for Communica-**
13 **tions and Information, after consultation with**
14 **representatives of copyright owners, non-**
15 **profit educational institutions, and nonprofit**
16 **libraries and archives, shall submit to the**
17 **Congress recommendations on how to pro-**
18 **mote distance education through digital tech-**
19 **nologies, including interactive digital net-**
20 **works, while maintaining an appropriate bal-**
21 **ance between the rights of copyright owners**
22 **and the needs of users of copyrighted works.**
23 **Such recommendations shall include any leg-**
24 **islation the Assistant Secretary considers ap-**
25 **propriate to achieve the foregoing objective.**

1 **(b) FACTORS.—In formulating rec-**
2 **ommendations under subsection (a), the As-**
3 **sistant Secretary of Commerce for Commu-**
4 **nications and Information shall consider—**

5 **(1) the need for an exemption from**
6 **exclusive rights of copyright owners for**
7 **distance education through digital net-**
8 **works;**

9 **(2) the categories of works to be in-**
10 **cluded under any distance education ex-**
11 **emption;**

12 **(3) the extent of appropriate quan-**
13 **titative limitations on the portions of**
14 **works that may be used under any dis-**
15 **tance education exemption;**

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

19 **(5) the parties who should be des-**
20 **ignated as eligible recipients of distance**
21 **education materials under any distance**
22 **education exemption;**

23 **(6) whether and what types of techno-**
24 **logical measures can or should be em-**
25 **ployed to safeguard against unauthorized**

1 access to, and use or retention of, copy-
2 righted materials as a condition to eligi-
3 bility for any distance education exemp-
4 tion, including, in light of developing
5 technological capabilities, the exemption
6 set out in section 110(2) of title 17, United
7 States Code;

8 (7) the extent to which the availabil-
9 ity of licenses for the use of copyrighted
10 works in distance education through
11 interactive digital networks should be
12 considered in assessing eligibility for any
13 distance education exemption; and

14 (8) such other issues relating to dis-
15 tance education through interactive digi-
16 tal networks that the Assistant Secretary
17 considers appropriate.

18 **SEC. 303. EXEMPTION FOR LIBRARIES AND ARCHIVES.**

19 Section 108 of title 17, United States Code,
20 is amended—

21 (1) in subsection (a)—

22 (A) by striking “Notwithstanding”
23 and inserting “Except as otherwise
24 provided in this title and notwith-
25 standing”;

1 **(B) by inserting after “no more**
2 **than one copy or phonorecord of a**
3 **work” the following: “, except as pro-**
4 **vided in subsections (b) and (c)”;** and

5 **(C) in paragraph (3) by inserting**
6 **after “copyright” the following: “that**
7 **appears on the copy or phonorecord**
8 **that is reproduced under the provi-**
9 **sions of this section, or includes a leg-**
10 **end stating that the work may be pro-**
11 **TECTED BY COPYRIGHT IF NO SUCH NOTICE**
12 **CAN BE FOUND ON THE COPY OR PHONO-**
13 **RECORD THAT IS REPRODUCED UNDER THE**
14 **PROVISIONS OF THIS SECTION”;**

15 **(2) in subsection (b)—**

16 **(A) by striking “a copy or phono-**
17 **record” and inserting “three copies or**
18 **phonorecords”;**

19 **(B) by striking “in facsimile**
20 **form”;** and

21 **(C) by striking “if the copy or**
22 **phonorecord reproduced is currently**
23 **in the collections of the library or ar-**
24 **chives.” and inserting “if—**

1 “(1) the copy or phonorecord repro-
2 duced is currently in the collections of
3 the library or archives; and

4 “(2) any such copy or phonorecord
5 that is reproduced in digital format is not
6 otherwise distributed in that format and
7 is not made available to the public in that
8 format outside the premises of the library
9 or archives.”; and

10 (3) in subsection (c)—

11 (A) by striking “a copy or phono-
12 record” and inserting “three copies or
13 phonorecords”;

14 (B) by striking “in facsimile
15 form”;

16 (C) by inserting “or if the existing
17 format in which the work is stored
18 has become obsolete,” after “stolen,”;
19 and

20 (D) by striking “if the library or
21 archives has, after a reasonable ef-
22 fort, determined that an unused re-
23 placement cannot be obtained at a
24 fair price.” and inserting “if—

1 appropriate mechanisms to encourage the de-
2 velopment of access protocols, encryption
3 testing methods, and security testing methods
4 which would allow lawful access to, with ap-
5 propriate safeguards to prevent the unlawful
6 copying of, encrypted works. The Assistant
7 Secretary shall include in such report rec-
8 ommendations on proposed amendments to
9 this Act, if any, for achieving such result and
10 for mechanisms to ensure that such safe-
11 guards—

12 (1) would be developed pursuant to a
13 broad consensus of copyright owners and
14 cryptographic researchers and security
15 administrators in an open, fair, voluntary
16 standards-setting process;

17 (2) to the extent feasible, would pro-
18 tect copyright owners against the unau-
19 thorized distribution or reproduction of
20 their encrypted works; and

21 (3) would not limit encryption re-
22 search, to the extent such research is per-
23 mitted by law as of the enactment of this
24 Act.