

Digital Era Copyright Enhancement Act

• SECTION 1. SHORT TITLE.	1
• SEC. 2. FAIR USE.	2
• SEC. 3. LIBRARY/ARCHIVE EXEMPTIONS.	2
• SEC. 4. FIRST SALE.	3
• SEC. 5. DISTANCE LEARNING.	3
• SEC. 6. LIMITATIONS ON EXCLUSIVE RIGHTS.	3
• SEC. 7. PREEMPTION.	4
• SEC. 8. COPYRIGHT PROTECTION AND MANAGEMENT SYSTEMS.	4
• SEC. 9. CONFORMING AMENDMENTS.	7
• SEC. 10. EFFECTIVE DATES.	7

105th CONGRESS

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H. R. 3048

To update and preserve balance in the Copyright Act for the 21st Century; to advance educational opportunities through distance learning; to implement the World Intellectual Property Organization Copyright Treaty, and Performances and Phonograms Treaty, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

November 13, 1997

Mr. BOUCHER (for himself and Mr. CAMPBELL) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To update and preserve balance in the Copyright Act for the 21st Century; to advance educational opportunities through distance learning; to implement the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE. ➡

This Act may be cited as the 'Digital Era Copyright Enhancement Act'.

SEC. 2. FAIR USE. ➡

(a) TRANSMISSIONS- The first sentence of section 107 of title 17, United States Code, is amended by inserting after 'or by any other means specified in that section,' the following: 'and by analog or digital transmission,'; and

(b) DETERMINATION- Section 107 of title 17, United States Code, is amended by adding at the end thereof the following:

'In making a determination concerning fair use, no independent weight shall be afforded to--

'(1) the means by which the work has been performed, displayed or distributed under the authority of the copyright owner; or

'(2) the application of an effective technological measure (as defined under section 1201(c)) to the work.'

SEC. 3. LIBRARY/ARCHIVE EXEMPTIONS. ➡

Section 108 of title 17, United States Code, is amended--

(1) by striking 'Notwithstanding' at the beginning of subsection (a) and inserting: 'Except as otherwise provided and notwithstanding';

(2) by inserting after 'copyright' in subsection (a)(3): 'if such notice appears on the copy or phonorecord that is reproduced under the provisions of this section';

(3) in subsection (b) by--

(A) deleting 'a copy or phonorecord' and inserting in lieu thereof: 'three copies or phonorecords'; and

(B) deleting 'in facsimile form'; and

(4) in subsection (c) by--

(A) deleting 'a copy or phonorecord' and inserting in lieu thereof: 'three copies or phonorecords';

(B) deleting 'in facsimile form'; and

(C) inserting 'or if the existing format in which the work is stored has become obsolete,' after 'stolen,'.

SEC. 4. FIRST SALE. ➡

Section 109 of title 17, United States Code, is amended by adding the following new subsection at the end thereof:

`(f) The authorization for use set forth in subsection (a) applies where the owner of a particular copy or phonorecord in a digital format lawfully made under this title, or any person authorized by such owner, performs, displays or distributes the work by means of transmission to a single recipient, if that person erases or destroys his or her copy or phonorecord at substantially the same time. The reproduction of the work, to the extent necessary for such performance, display, distribution, is not an infringement.'

SEC. 5. DISTANCE LEARNING. ➡

(a) TITLE CHANGE- The title of section 110 of title 17, United States Code, is amended to read as follows:

`Sec. 110. Limitations on exclusive rights: Exemption of certain activities';

(b) PERFORMANCE, DISPLAY AND DISTRIBUTION OF A WORK- Section 110(2) of title 17, United States Code, is amended to read as follows:

`(2) performance, display or distribution of a work, by or in the course of an analog or digital transmission, if--

`(A) the performance, display or distribution is a regular part of the systematic instructional activities of a governmental body or a nonprofit educational institution;

`(B) the performance, display or distribution is directly related and of material assistance to the teaching content of the transmission; and

`(C) the work is provided for reception by--

`(i) students officially enrolled in the course in connection with which it is provided; or

`(ii) officers or employees of governmental bodies as part of their official duties or employment;'

(c) EPHEMERAL RECORDINGS OF WORKS- Section 112(b) of title 17, United States Code, is amended by deleting `transmit a performance or display of' and inserting in lieu thereof: `perform, display or distribute'.

SEC. 6. LIMITATIONS ON EXCLUSIVE RIGHTS. ➡

(a) TITLE- The title of section 117 of title 17, United States Code, is amended to read as follows:

`Sec. Limitations on exclusive rights: Computer programs and digital copies';

(b) DIGITAL COPIES- Section 117 of title 17, United States Code, is amended by inserting '(a)' before 'Notwithstanding' and inserting the following as a new subsection (b):

(b) Notwithstanding the provisions of section 106, it is not an infringement to make a copy of a work in a digital format if such copying--

(1) is incidental to the operation of a device in the course of the use of a work otherwise lawful under this title; and

(2) does not conflict with the normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.'.

SEC. 7. PREEMPTION. ➡

Section 301(a) of title 17, United States Code, is amended by inserting the following at the end thereof:

'When a work is distributed to the public subject to non-negotiable license terms, such terms shall not be enforceable under the common law or statutes of any state to the extent that they--

(1) limit the reproduction, adaptation, distribution, performance, or display, by means of transmission or otherwise, of material that is uncopyrightable under section 102(b) or otherwise; or

(2) abrogate or restrict the limitations on exclusive rights specified in sections 107 through 114 and sections 117 and 118 of this title.'.

SEC. 8. COPYRIGHT PROTECTION AND MANAGEMENT SYSTEMS. ➡

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

'CHAPTER 12--COPYRIGHT PROTECTION AND MANAGEMENT SYSTEMS

'Sec.

'1201. Circumvention of certain technological measures.

'1202. Integrity of copyright management information.

'1203. Civil remedies.

'Sec. 1201. Circumvention of certain technological measures

(a) CIRCUMVENTION CONDUCT- No person, for the purpose of facilitating or engaging in an act of infringement, shall engage in conduct so as knowingly to remove, deactivate or otherwise circumvent the application or operation of any effective technological measure used by a copyright owner to preclude or limit reproduction of a work or a portion thereof. As used in this subsection, the term 'conduct' does not include manufacturing, importing or

distributing a device or a computer program.

`(b) CONDUCT GOVERNED BY SEPARATE CHAPTER- Notwithstanding subsection (a), this section shall not apply with respect to conduct or the offer or performance of a service governed by a separate chapter of this title.

`(c) DEFINITION OF EFFECTIVE TECHNOLOGICAL MEASURE- As used in this section, the term `effective technological measure' means a change in the data comprising a work or a copy of a work transmitted in digital format so as to protect the rights of a copyright owner of such work or portion thereof under this title and which--

`(1) encrypts or scrambles the work or a portion thereof in the absence of information supplied by the copyright owner; or

`(2) includes attributes with respect to access or recording status that cannot be removed without degrading the work or a portion thereof.

`Sec. 1202. Integrity of copyright management information

`(a) FALSE COPYRIGHT MANAGEMENT INFORMATION- No person shall knowingly provide copyright management information that is false, or knowingly publicly distribute or import for distribution copyright management information that is false, with intent to induce, facilitate, or conceal infringement.

`(b) REMOVAL OR ALTERATION OF COPYRIGHT MANAGEMENT INFORMATION- No person shall, without authority of the copyright owner or other lawful authority, knowingly and with intent to mislead or to induce or facilitate infringement--

`(1) remove or alter any copyright management information;

`(2) publicly distribute or import for distribution a copy or phonorecord containing copyright management information that has been altered without authority of the copyright owner or other lawful authority; or

`(3) publicly distribute or import for distribution a copy or phonorecord from which copyright management information has been removed without authority of the copyright owner or other lawful authority: Provided, That the conduct governed by this subsection does not include the manufacturing, importing or distributing of a device.

`(c) DEFINITION OF COPYRIGHT MANAGEMENT INFORMATION- As used in this chapter, the term `copyright management information' means the following information in electronic form as carried in or as data accompanying a copy or phonorecord of a work, including in digital form:

`(1) The title and other information identifying the work, including the information set forth in a notice of copyright;

`(2) The name and other identifying information of the author of the work;

`(3) The name and other identifying information of the copyright owner of the work, including the information set forth in a notice of copyright;

`(4) Terms and conditions for uses of the work;

`(5) Identifying numbers or symbols referring to such information or links to such information; and

`(6) Such other identifying information concerning the work as the Register of Copyrights may prescribe by regulation:

Provided, That the term 'copyright management information' does not include the information described in section 1002, section 1201(c), or a chapter of this title other than chapters one through nine of this title: Provided further, That, in order to assure privacy protection, the term 'copyright management information' does not include any personally identifiable information relating to the user of a work, including but not limited to the name, account, address or other contact information of or pertaining to the user.

`Sec. 1203. Civil remedies

`(a) CIVIL ACTIONS- Any person aggrieved by a violation of section 1201(a) or 1202 may bring a civil action in an appropriate United States district court against any person for such violation.

`(b) POWERS OF THE COURT- In an action brought under subsection (a), the court--

`(1) may grant a temporary and a permanent injunction on such terms as it deems reasonable to prevent or restrain a violation;

`(2) may grant such other equitable relief as it deems appropriate;

`(3) may award damages pursuant to subsection (c);

`(4) may allow the recovery of costs by or against any party other than the United States or an officer thereof; and

`(5) may award a reasonable attorney's fee to the prevailing party.

`(c) AWARD OF DAMAGES-

`(1) IN GENERAL- If the court finds that a violation of section 1201(a) or 1202 has occurred, the complaining party may elect either actual damages as computed under paragraph (2) or statutory damages as computed under paragraph (3).

`(2) ACTUAL DAMAGES- The court may award to the complaining party the actual damages suffered by him or her as a result of the violation, and any profits of the violator that are attributable to the violation and are not taken into account in computing the actual damages, if the complaining party elects such damages instead of statutory damages at any time before final judgment is entered.

`(3) STATUTORY DAMAGES- (A) The court may award to the complaining party statutory damages for each violation of section 1201(a) of not less than \$250 or more than \$2,500, as the court considers just, if the complaining party elects such damages instead of actual damages at any time before final judgment is entered.

`(B) The court may award to the complaining party statutory damages for each violation of section 1202 of not less than \$500 or more than \$20,000, as the court considers just, if the complaining party elects such damages instead of actual damages at any time before final

judgment is entered.

`(4) REPEATED VIOLATIONS- In any case in which the court finds that a person has violated section 1201(a) or 1202 within three years after a final judgment against that person for another such violation was entered, the court may increase the award of damages to not more than double the amount that would otherwise be awarded under paragraph (2) or (3), as the court considers just.

`(5) INNOCENT VIOLATION- The court may reduce or remit altogether the total award of damages that otherwise would be awarded under paragraph (2) or (3) in any case in which the violator sustains the burden of proving, and the court finds, that the violator was not aware and had no reason to believe that its acts constituted a violation of section 1201(a) or 1202.'.

SEC. 9. CONFORMING AMENDMENTS. ➡

`(a) TABLE OF SECTIONS- The table of sections for chapter 1 of title 17, United States Code, is amended by--

(1) Revising the item relating to section 110 to read as follows:

`110. Limitations on exclusive rights: Exemption of certain activities';

and

(2) Revising the item relating to section 117 to read as follows:

`117. Limitations on exclusive rights: computer programs and digital copies'.

`(b) TABLE OF CHAPTERS- The table of chapters for title 17, United States Code, is amended by adding at the end the following:

`12. Copyright Protection and Management Systems

--1201'.

SEC. 10. EFFECTIVE DATES. ➡

`(a) IN GENERAL- Sections one through seven and section 9(a) of this Act, and the amendments made by sections one through seven and section 9(a) of this Act, shall take effect on the date of enactment of this Act.

`(b) WIPO TREATIES- Section 8 and section 9(b) of this Act, and the amendments made by section 8 and section 9(b) of this Act, shall take effect on the date on which both the World Intellectual Property Organization Copyright Treaty and the World Intellectual Property Organization Performances and Phonograms Treaty have entered into force with respect to the United States.