

CONTENTS

- 1 PERFORMERS' PROTECTION ACT 11 of 1967 (SOUTH AFRICA)**
- 2 COPYRIGHT ACT 98 OF 1978 (SOUTH AFRICA)**
- 3 TRADE MARKS ACT 194 OF 1993 (SOUTH AFRICA)**
- 4 ELECTRONIC COMMUNICATIONS AND TRANSACTIONS ACT 25 OF
2002 (SOUTH AFRICA)**
- 5 15 USC (TRADE MARKS ACT: UNITED STATES OF AMERICA)**
- 6 17 USC (COPYRIGHT ACT: UNITED STATES OF AMERICA)**

1 Interpretation of terms

(1) In this Act, unless the context otherwise indicates —

...

“fixation” includes storage of —

- (a) sounds or images or both sounds and images; or
- (b) data or signals representing sounds or images or both sounds and images;

“literary and artistic works” include musical, dramatic and dramatico-musical works;

“performer” means an actor, singer, musician, dancer or other person who acts, sings, delivers, declaims, plays in or otherwise performs, literary or artistic works;

“phonogram” means any exclusively aural fixation of sounds of a performance or of other sounds;

...

“reproduction” means a copy made of a fixation of a performance.

(2) Except in so far as the context otherwise requires, any reference in this Act to the doing of an act in relation to a performance, a fixation of a performance or a reproduction of such a fixation, shall be taken to include a reference to the doing of that act in relation to a substantial part of the performance, the fixation or the reproduction, as the case may be.

2 Relation to copyright protection

The rights created by this Act shall in no way restrict or affect the rights provided for by any other law relating to copyright in literary and artistic works.

3 Protection of performers' rights in respect of performances in the Republic

Performers shall be granted the protection provided for in section 5 of this Act in respect of their performances —

- (a) taking place,
- (b) broadcast without a fixation, or
- (c) first fixed,

in the Republic.

4 Extension of protection of performers' rights to performances in certain countries

The protection granted to performers by this Act shall be extended automatically to performers in respect of their performances —

- (a) taking place;
- (b) broadcast without a fixation; or
- (c) first fixed,

in a country which is a member of the World Trade Organization.

5 Restrictions on use of performances

(1) Subject to the provisions of this Act, no person shall without the consent of the performer —

- (a) broadcast or communicate to the public a performance of such performer, unless the performance used in the broadcast or the public communication is

- itself already a broadcast performance or is made from a fixation of the performance or from a reproduction of such a fixation; or
- (b) make a fixation of the unfixed performance of such performer; or
 - (c) make a reproduction of a fixation of a performance of such performer —
 - (i) if the original fixation, other than a fixation excluded by section 8 from the necessity for obtaining the consent of the performer, was itself made without his consent; or
 - (ii) if the reproduction is made for purposes other than those in respect of which such performer gave his consent to the making of the original fixation or of a reproduction thereof; or
 - (iii) if the original fixation was made in accordance with the provisions of section 8, and the reproduction is made for purposes not covered by those provisions.

(2) In the absence of an agreement to the contrary, a performer's consent to the broadcasting of his performance shall be deemed to include his consent to the rebroadcasting of his performance, the fixation of his performance for broadcasting purposes, and the reproduction for broadcasting purposes of such fixation.

6 Collective performances

(1) Where several performers as a group take part in the same performance, it shall suffice if the consent required under section 5 is given by the manager or other authority in charge of the group or, failing such authority, by the leader of the group.

(2) In the case referred to in subsection (1) a single payment for the use of the performance shall, unless otherwise stipulated, be made to the manager or other authority in charge of the group or, failing such manager or authority, to the leader of the group, and the manager or authority or leader, as the case may be, shall distribute the proceeds as agreed by the performers or, in default of agreement, the right to remuneration of the respective performers shall be determined in accordance with the provisions of the Arbitration Act, 1965 (Act 42 of 1965), or alternatively, at the option of the majority of the performers, by the Copyright Tribunal established by the Copyright Act, 1965 (Act 63 of 1965).

7 Term of protection

The prohibition against the use of a performance as provided for in section 5, shall commence upon the day when the performance first took place or, if incorporated in a phonogram, when it was first fixed on such phonogram, and shall continue for a period of 50 years calculated from the end of the calendar year in which the performance took place or was incorporated in a phonogram, as the case may be.

8 Exceptions from prohibition against use of performance without the consent of the performer

...

(2) A performance, a fixation of a performance or a reproduction of such a fixation may be used without the consent required by section 5 —

- (a) if it is for the purposes of private study or personal and private use; or
- (b) if it is for the purposes of criticism or review or for the purpose of reporting on current events, provided that not more than short excerpts from the performance are used and, whenever possible, the performer's name or the names of the leading performers are acknowledged; or
- (c) if it is for the purposes of teaching or scientific research; or

- (d) if it is for the purpose of legal proceedings; or
- (e) if it is for the demonstration of recording, amplifying or similar apparatus, provided that the demonstration is made by a licensed dealer on his premises to a specific client.

(3) (a) A broadcaster may make by means of his or her own facilities a fixation of a performance and reproductions of such fixation without the consent required by section 5, provided that, unless otherwise stipulated —

- (i) the fixation and the reproductions thereof are used solely in the broadcasts made by the broadcaster;
- (ii) the fixation and any reproductions thereof, if they are not of an exceptional documentary character, are destroyed before the end of the period of six months commencing on the day on which the fixation was first made; and
- (iii) the broadcaster pays to the performer, whose performance is so used, in respect of each use of the fixation or of any reproduction thereof, an equitable remuneration, which, in the absence of agreement, shall be determined in accordance with the provisions of the Arbitration Act, 1965 (Act 42 of 1965), or alternatively, at the option of the performer, by the Copyright Tribunal established by the Copyright Act, 1978 (Act 98 of 1978).

- (b) The fixation and the reproductions thereof made under the provisions of this subsection may, on the grounds of their exceptional documentary character, be preserved in the archives of the Corporation but shall, subject to the provisions of this Act, not be further used without the consent of the performer.

...

9 Offences and penalties

- (1) Any person —
 - (a) who knowingly contravenes any of the provisions of section 5(1); or
 - (b) who knowingly sells or lets for hire or distributes for the purposes of trade, or by way of trade exposes or offers for sale or hire, any fixation of a performance or a reproduction of such a fixation made in contravention of section 5; or
 - (c) who makes, or has in his possession, a plate or similar contrivance for the purpose of making fixations of a performance or reproductions of such fixations in contravention of section 5,
 shall be guilty of an offence and liable on conviction —
 - (i) in the case of a contravention referred to in paragraph (a), to a fine or to imprisonment for a period not exceeding three months, and the court convicting him or her may in addition, on the application of the performer whose rights have been infringed, and without proof of any damages, order him or her to pay to the performer as damages such amount, not exceeding the amount determined by the Minister from time to time by notice in the Gazette, as may in the circumstances of the case appear to it to be reasonable;
 - (ii) in the case of a contravention of paragraph (b), to a fine not exceeding the amount determined by the Minister, in consultation

- with the Minister of Justice, from time to time by notice in the Gazette in respect of each fixation or reproduction; and
- (iii) in the case of a contravention of paragraph (c), to a fine or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(2) Any order made under subsection (1) for the payment of damages to a performer may be executed as if it were a civil judgment in favour of that performer.

10 Damages or interdict for infringement of performers' rights

Any person who infringes the rights of any performer may be sued in any court of law by such performer for —

- (a) an amount not exceeding the amount determined by the Minister from time to time by notice in the Gazette, and such court may, without proof of any damages and in addition to the costs of the action, award as damages such amount, not exceeding the said amount, as may in the circumstances of the case appear to it to be reasonable; or
- (b) damages or an interdict or for both damages and an interdict, and such court may, in addition to the costs of the action, award such damages as may appear to it to have been suffered by the performer, or award as damages such amount as it may determine in terms of paragraph (a), or grant an interdict or both award damages and grant an interdict.

11 Power of the court in respect of fixations, reproductions and plates made in contravention of this Act

The court before which any legal proceedings are taken under this Act may order that all fixations, reproductions of fixations or plates (including contrivances similar to plates) in the possession of the accused or the defendant, which appear to the court to have been made in contravention of this Act, be destroyed or otherwise dealt with as the court may in its discretion determine.

12 Consent on behalf of performers and criminal liability of unauthorized agent

- (1) Where in any legal proceedings under this Act it is proved —
 - (a) that the fixation, the reproduction of a fixation, the broadcast or the public communication to which the legal proceedings relate, was made with the consent of a person who, at the time of giving the consent, represented that he was authorized by the performers to give it on their behalf, and
 - (b) that the person who made the fixation, the reproduction of a fixation, the broadcast or the public communication had no reasonable grounds for believing that the person giving the consent was not so authorized,
 the provisions of this Act shall apply as if it had been proved that the performers had themselves consented to the making of the fixation, the reproduction of the fixation or the broadcast or the public communication, as the case may be.
- (2) Where —
 - (a) a fixation, a reproduction of a fixation, a broadcast or a public communication is made with the consent of a person who, at the time of giving the consent, represented that he was authorized by the performers to give it on their behalf when, to his knowledge, he was not so authorized, and

- (b) if legal proceedings were brought against the person to whom the consent was given, the consent would by virtue of subsection (1) afford a defence to those legal proceedings, the person who gave the consent shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand, or to imprisonment for a period not exceeding twelve months, or to both such fine and such imprisonment.

13 Contracts in respect of use of performances

Notwithstanding the provisions of this Act any performer may enter into any contract with any user or prospective user of his performance in respect of the use of his performance, but such contract shall be enforceable only in the Republic.

...

1 Definitions

(1) In this Act, unless the context otherwise indicates —

“adaptation”, in relation to —

- (a) a literary work, includes —
 - (i) in the case of a non-dramatic work, a version of the work in which it is converted into a dramatic work;
 - (ii) in the case of a dramatic work, a version of the work in which it is converted into a non-dramatic work;
 - (iii) a translation of the work; or
 - (iv) a version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book or in a newspaper, magazine or similar periodical;
- (b) a musical work, includes any arrangement or transcription of the work, if such arrangement or transcription has an original creative character;
- (c) an artistic work, includes a transformation of the work in such a manner that the original or substantial features thereof remain recognizable;
- (d) a computer program includes —
 - (i) a version of the program in a programming language, code or notation different from that of the program; or
 - (ii) a fixation of the program in or on a medium different from the medium of fixation of the program;

...

“artistic work” means, irrespective of the artistic quality thereof —

- (a) paintings, sculptures, drawings, engravings and photographs;
- (b) works of architecture, being either buildings or models of buildings; or
- (c) works of craftsmanship not falling within either paragraph (a) or (b);

“author”, in relation to —

- (a) a literary, musical or artistic work, means the person who first makes or creates the work;
- (b) a photograph, means the person who is responsible for the composition of the photograph;
- (c) a sound recording, means the person by whom the arrangements for making the sound recording were made;
- (d) a cinematograph film, means the person by whom the arrangements for the making of the film were made;

...

- (g) a published edition, means the publisher of the edition;
- (h) a literary, dramatic, musical or artistic work or computer program which is computer-generated, means the person by whom the arrangements necessary for the creation of the work were undertaken;
- (i) a computer program, the person who exercised control over the making of the computer program;

...

“cinematograph film” means any fixation or storage by any means whatsoever on film or any other material of data, signals or a sequence of images capable, when used in conjunction with any mechanical, electronic or other device, of being seen as a moving picture

and of reproduction, and includes the sounds embodied in a sound-track associated with the film, but shall not include a computer program;

“computer program” means a set of instructions fixed or stored in any manner and which, when used directly or indirectly in a computer, directs its operation to bring about a result;

“copy” means a reproduction of a work, and, in the case of a literary, musical or artistic work, a cinematograph film or a computer program, also an adaptation thereof: Provided that an object shall not be taken to be a copy of a work of architecture unless the object is a building or a model of a building;

...

“dramatic work” includes a choreographic work or entertainment in dumb show, if reduced to the material form in which the work or entertainment is to be presented, but does not include a cinematograph film as distinct from a scenario or script for a cinematograph film;

“drawing” includes any drawing of a technical nature or any diagram, map, chart or plan;

...

“exclusive licence” means a licence authorizing a licensee, to the exclusion of all other persons, including the grantor of the licence, to exercise a right which by virtue of this Act would, apart from the licence, be exercisable exclusively by the owner of the copyright; and “exclusive licensee” shall be construed accordingly;

“infringing copy”, in relation to —

- (a) a literary, musical or artistic work or a published edition, means a copy thereof;
- (b) a sound recording, means a record embodying that recording;
- (c) a cinematograph film, means a copy of the film or a still photograph made therefrom;

...

(e) a computer program, means a copy of such computer program, being in any such case an article the making of which constituted an infringement of the copyright in the work, recording, cinematograph film, ... or computer program or, in the case of an imported article, would have constituted an infringement of that copyright if the article had been made in the Republic;

...

“literary work” includes, irrespective of literary quality and in whatever mode or form expressed —

- (a) novels, stories and poetical works;
- (b) dramatic works, stage directions, cinematograph film scenarios and broadcasting scripts;
- (c) textbooks, treatises, histories, biographies, essays and articles;
- (d) encyclopaedias and dictionaries;
- (e) letters, reports and memoranda;
- (f) lectures, speeches and sermons; and
- (g) tables and compilations, including tables and compilations of data stored or embodied in a computer or a medium used in conjunction with a computer

but shall not include a computer program;

...

“musical work” means a work consisting of music, exclusive of any words or action

intended to be sung, spoken or performed with the music;

...

“performance” includes any mode of visual or acoustic presentation of a work, including any such presentation by the operation of a loudspeaker, a radio, television or diffusion receiver or by the exhibition of a cinematograph film or by the use of a record or by any other means, and in relation to lectures, speeches and sermons, includes delivery thereof; and references to “perform” in relation to a work shall be construed accordingly: Provided that “performance” shall not include broadcasting or rebroadcasting or transmitting a work in a diffusion service;

“photograph” means any product of photography or of any process analogous to photography, but does not include any part of a cinematograph film;

...

“published edition” means the first print by whatever process of a particular typographical arrangement of a literary or musical work;

...

“record” means any disc, tape, perforated role or other device in or on which sounds, or data or signals representing sounds, are embodied or represented so as to be capable of being automatically reproduced or performed therefrom;

...

“reproduction”, in relation to —

- (a) a literary or musical work or a broadcast, includes a reproduction in the form of a record or a cinematograph film;
- (b) an artistic work, includes a version produced by converting the work into a three-dimensional form or, if it is in three dimensions, by converting it into a two-dimensional form;
- (c) any work, includes a reproduction made from a reproduction of that work;

and references to “reproduce” and “reproducing” shall be construed accordingly;

...

“sound recording” means any fixation or storage of sounds, or data or signals representing sounds, capable of being reproduced, but does not include a sound-track associated with a cinematograph film;

...

“writing” includes any form of notation, whether by hand or by printing, typewriting or any similar process.

(2) Any reference in this Act to a sound-track associated with a cinematograph film shall be construed as a reference to any record of sounds which is incorporated in any print, negative, tape or other article on which the film or part of it, in so far as it consists of visual images, is recorded or which is issued by the author of the film for use in conjunction with such an article.

(2A) Any reference in this Act to the doing of any act in relation to any work shall, unless the context otherwise indicates, be construed as a reference also to the doing of any such act in relation to any substantial part of such work.

...

(5) For the purposes of this Act the following provisions shall apply in connection with the publication of a work:

- (a) Subject to paragraph (e), a work shall be deemed to have been published if copies of such work have been issued to the public with the consent of the

- owner of the copyright in the work in sufficient quantities to reasonably meet the demands of the public, having regard to the nature of the work.
- (b) Publication of a cinematograph film or sound recording is the sale, letting, hire or offer for sale or hire, of copies thereof.
 - (c) A publication shall not be treated as being other than the first publication by reason only of an earlier publication elsewhere within a period of 30 days.
 - (d) Publication shall not include —
 - (i) a performance of a musical or dramatic work, cinematograph film or sound recording;
 - (ii) a public delivery of a literary work;
 - (iii) a transmission in a diffusion service;
 - (iv) a broadcasting of a work;
 - (v) an exhibition of a work of art;
 - (vi) a construction of a work of architecture.
 - (e) For the purposes of sections 6, 7 and 11(b), a work shall be deemed to be published if copies thereof have been issued to the public.

CHAPTER 1: COPYRIGHT IN ORIGINAL WORKS

2 Works eligible for copyright

(1) Subject to the provisions of this Act, the following works, if they are original, shall be eligible for copyright —

- (a) literary works;
- (b) musical works;
- (c) artistic works;
- (d) cinematograph films,
- (e) sound recordings;
- (f) broadcasts;
- (g) programme-carrying signals;
- (h) published editions;
- (i) computer programs.

(2) A work ... shall not be eligible for copyright unless the work has been written down, recorded, represented in digital data or signals or otherwise reduced to material form.

...

(3) A work shall not be ineligible for copyright by reason only that the making of the work, or the doing of any act in relation to the work, involved an infringement of copyright in some other work.

3 Copyright by virtue of nationality, domicile or residence, and duration of copyright

(1) Copyright shall be conferred by this section on every work, eligible for copyright, of which the author or, in the case of a work of joint authorship, any one of the authors is at the time the work or a substantial part thereof is made, a qualified person, that is —

- (a) in the case of an individual, a person who is a South African citizen or is domiciled or resident in the Republic; or
- (b) in the case of a juristic person, a body incorporated under the laws of the Republic:

Provided that a work of architecture erected in the Republic or any other artistic work incorporated in a building or any other permanent structure in the Republic, shall be eligible

for copyright, whether or not the author was a qualified person.

(2) The term of copyright conferred by this section shall be, in the case of —

- (a) literary or musical works or artistic works, other than photographs, the life of the author and fifty years from the end of the year in which the author dies: Provided that if before the death of the author none of the following acts had been done in respect of such works or an adaptation thereof, namely —
 - (i) the publication thereof;
 - (ii) the performance thereof in public;
 - (iii) the offer for sale to the public of records thereof;
 - (iv) the broadcasting thereof;

the term of copyright shall continue to subsist for a period of fifty years from the end of the year in which the first of the said acts is done;

- (b) cinematograph films, photographs and computer programs, fifty years from the end of the year in which the work —
 - (i) is lawfully made available to the public with the consent of the owner of the copyright; or
 - (ii) is first published,
 whichever term is the longer, or failing such an event within fifty years of the making of the work, fifty years from the end of the year in which the work is made;
- (c) sound recordings, fifty years from the end of the year in which the recording is first published;
- ...
- (f) published editions, fifty years from the end of the year in which the edition is first published.

(3)(a) In the case of anonymous or pseudonymous works, the copyright therein shall subsist for fifty years from the end of the year in which the work is lawfully made available to the public with the consent of the owner of the copyright or from the end of the year in which it is reasonable to presume that the author died, whichever term is the shorter.

(b) In the event of the identity of the author becoming known before the expiration of the period referred to in paragraph (a), the term of protection of the copyright shall be calculated in accordance with the provisions of subsection (2).

(4) In the case of a work of joint authorship the reference in the preceding subsections to the death of the author shall be taken to refer to the author who dies last, whether or not he is a qualified person.

4 Copyright by reference to country of origin

(1) Copyright shall be conferred by this section on every work which is eligible for copyright and which —

- (a) being a literary, musical or artistic work or a sound recording, is first published in the Republic;
- (b) being a broadcast, is made in the Republic;
- ...
- (e) being a published edition, is first published in the Republic;
- (f) being a computer program, is first published or made in the Republic,

and in respect of which copyright is not conferred by section 3.

(2) Copyright conferred on a work by this section shall be subject to the same term of copyright provided for in section 3 for a similar work.

...

6 Nature of copyright in literary or musical works

Copyright in a literary or musical work vests the exclusive right to do or to authorize the doing of any of the following acts in the Republic:

- (a) Reproducing the work in any manner or form;
- (b) publishing the work if hitherto unpublished;
- (c) performing the work in public;
- (d) broadcasting the work;
- (e) causing the work to be transmitted in a diffusion service, unless such service transmits a lawful broadcast, including the work, and is operated by the original broadcaster;
- (f) making an adaptation of the work;
- (g) doing, in relation to an adaptation of the work, any of the acts specified in relation to the work in paragraphs (a) to (e) inclusive.

7 Nature of copyright in artistic works

Copyright in an artistic work vests the exclusive right to do or to authorize the doing of any of the following acts in the Republic:

- (a) Reproducing the work in any manner or form;
- (b) publishing the work if hitherto unpublished;
- (c) including the work in a cinematograph film or a television broadcast;
- (d) causing a television or other programme, which includes the work, to be transmitted in a diffusion service, unless such service transmits a lawful television broadcast, including the work, and is operated by the original broadcaster;
- (e) making an adaptation of the work;
- (f) doing, in relation to an adaptation of the work, any of the acts specified in relation to the work in paragraphs (a) to (d) inclusive.

8 Nature of copyright in cinematograph films

(1) Copyright in a cinematograph film vests the exclusive right to do or to authorize the doing of any of the following acts in the Republic:

- (a) reproducing the film in any manner or form, including making a still photograph therefrom;
- (b) causing the film, in so far as it consists of images, to be seen in public, or, in so far as it consists of sounds, to be heard in public;
- (c) broadcasting the film;
- (d) causing the film to be transmitted in a diffusion service, unless such service transmits a lawful television broadcast, including the film, and is operated by the original broadcaster;
- (e) making an adaptation of the film;
- (f) doing, in relation to an adaptation of the film, any of the acts specified in relation to the film in paragraphs (a) to (d) inclusive;
- (g) letting, or offering or exposing for hire by way of trade, directly or indirectly, a copy of the film.

9 Nature of copyright in sound recordings

Copyright in a sound recording vests the exclusive right to do or to authorize the doing

of any of the following acts in the Republic:

- (a) Making, directly or indirectly, a record embodying the sound recording;
- (b) letting, or offering or exposing for hire by way of trade, directly or indirectly, a reproduction of the sound recording.

...

11A Nature of copyright in published editions

Copyright in a published edition vests the exclusive right to make or to authorize the making of a reproduction of the edition in any manner.

11B Nature of copyright in computer programs

Copyright in a computer program vests the exclusive right to do or authorize the doing of any of the following acts in the Republic:

- (a) Reproducing the computer program in any manner or form;
- (b) publishing the computer program if it was hitherto unpublished;
- (c) performing the computer program in public;
- (d) broadcasting the computer program;
- (e) causing the computer program to be transmitted in a diffusion service, unless such service transmits a lawful broadcast, including the computer program, and is operated by the original broadcaster;
- (f) making an adaption of the computer program;
- (g) doing, in relation to an adaptation of a computer program, any of the acts specified in relation to the computer program in paragraphs (a) to (e) inclusive;
- (h) letting, or offering or exposing for hire by way of trade, directly or indirectly, a copy of the computer program.

12 General exceptions from protection of literary and musical works

(1) Copyright shall not be infringed by any fair dealing with a literary or musical work

—

- (a) for the purposes of research or private study by, or the personal or private use of, the person using the work;
- (b) for the purposes of criticism or review of that work or of another work; or
- (c) for the purpose of reporting current events —
 - (i) in a newspaper, magazine or similar periodical; or
 - (ii) by means of broadcasting or in a cinematograph film;

Provided that, in the case of paragraphs (b) and (c)(i), the source shall be mentioned, as well as the name of the author if it appears on the work.

(2) The copyright in a literary or musical work shall not be infringed by using the work for the purposes of judicial proceedings or by reproducing it for the purposes of a report of judicial proceedings.

(3) The copyright in a literary or musical work which is lawfully available to the public shall not be infringed by any quotation therefrom, including any quotation from articles in newspapers or periodicals that are in the form of summaries of any such work: Provided that the quotation shall be compatible with fair practice, that the extent thereof shall not exceed the extent justified by the purpose and that the source shall be mentioned, as well as the name of the author if it appears on the work.

(4) The copyright in a literary or musical work shall not be infringed by using such work, to the extent justified by the purpose, by way of illustration in any publication, broadcast or

sound or visual record for teaching: Provided that such use shall be compatible with fair practice and that the source shall be mentioned, as well as the name of the author if it appears on the work.

- (5) (a) The copyright in a literary or musical work shall not be infringed by the reproduction of such work by a broadcaster by means of its own facilities where such reproduction or any copy thereof is intended exclusively for lawful broadcasts of the broadcaster and is destroyed before the expiration of a period of six months immediately following the making of the reproduction, or such longer period as may be agreed to by the owner of the relevant part of the copyright in the work.
- (b) Any reproduction of a work made under paragraph (a) may, if it is of an exceptional documentary nature, be preserved in the archive of the broadcaster but shall, subject to the provisions of this Act, not be used for broadcasting or for any other purpose without the consent of the owner of the relevant part of the copyright in the work.
- (6) (a) The copyright in a lecture, address or other work of a similar nature which is delivered in public shall not be infringed by reproducing it in the press or by broadcasting it, if such reproduction or broadcast is for an informatory purpose.
- (b) The author of a lecture, address or other work referred to in paragraph (a) shall have the exclusive right of making a collection thereof.

(7) The copyright in an article published in a newspaper or periodical, or in a broadcast, on any current economic, political or religious topic shall not be infringed by reproducing it in the press or broadcasting it, if such reproduction or broadcast has not been expressly reserved and the source is clearly mentioned.

- (8) (a) No copyright shall subsist in official texts of a legislative, administrative or legal nature, or in official translations of such texts, or in speeches of a political nature or in speeches delivered in the course of legal proceedings, or in news of the day that are mere items of press information.
- (b) The author of the speeches referred to in paragraph (a) shall have the exclusive right of making a collection thereof.

(9) The provisions of subsections (1) to (7) inclusive shall apply also with reference to the making or use of an adaptation of a work.

(10) The provisions of subsections (6) and (7) shall apply also with reference to a work or an adaptation thereof which is transmitted in a diffusion service.

(11) The provisions of subsections (1) to (4) inclusive and (6), (7) and (10) shall be construed as embracing the right to use the work in question either in its original language or in a different language, and the right of translation of the author shall, in the latter event, be deemed not to have been infringed.

(12) The copyright in a literary or musical work shall not be infringed by the use thereof in a bona fide demonstration of radio or television receivers or any type of recording equipment or playback equipment to a client by a dealer in such equipment.

(13) An authorization to use a literary work as a basis for the making of a cinematograph film or as a contribution of a literary work to such making, shall, in the absence of an agreement to the contrary, include the right to broadcast the film.

13 General exceptions in respect of reproduction of works

In addition to reproductions permitted in terms of this Act reproduction of a work shall also be permitted as prescribed by regulation, but in such a manner that the reproduction is not in conflict with a normal exploitation of the work and is not unreasonably prejudicial to the legitimate interests of the owner of the copyright.

14 Special exception in respect of records of musical works

(1) The copyright in a musical work shall not be infringed by a person (in this section referred to as the 'manufacturer') who makes a record of the work or of an adaptation thereof in the Republic, whether from an imported disc, tape, matrix or otherwise, if —

- (a) records embodying the work or a similar adaptation of the work were previously made in or imported into the Republic for the purposes of retail sale and were so made or imported by, or with the licence of, the owner of the copyright in the work;
- (b) before making the record the manufacturer gave the prescribed notice to the owner of the copyright of his intention to make it;
- (c) the manufacturer intends to sell the record by retail or to supply it for the purpose of resale by retail by another person or to use it for making other records to be so sold or so supplied; and
- (d) in the case of a record which is sold by retail or supplied for the purpose of resale by retail, the manufacturer pays to the owner of the copyright, in the prescribed manner and at the prescribed time, the prescribed royalties.

(2) Where a record comprises, with or without other material, a performance of a musical work or of an adaptation of a musical work in which words are sung or are spoken that are incidental to, or in association with, the music and no copyright subsists in that work or, if copyright does subsist therein, the conditions specified in subsection (1) are fulfilled in relation to such copyright and —

- (a) the words consist or form part of a literary work in which copyright subsists; and
- (b) the records referred to in subsection (1)(a) were made or imported by or with the licence of the owner of the copyright in that literary work; and
- (c) the conditions specified in subsection (1)(b) and (d) are fulfilled in relation to the owner of that copyright,

the making of the record shall not constitute an infringement of the copyright in the literary work.

(3) For the purposes of this section an adaptation of a work shall be deemed to be similar to an adaptation thereof embodied in a previous record if the two adaptations do not substantially differ in their treatment of the work, either in respect of style or, apart from any difference in number, in respect of the performers required to perform them.

(4) A manufacturer may for the purposes of paragraph (a) of subsection (1) make the prescribed enquiries in order to ascertain whether the previous records referred to in that paragraph were previously made in or imported into the Republic, and if the owner of the copyright fails to reply to such enquiries within the prescribed period, the said previous records shall be taken to have been made or imported, as the case may be, with the licence of the owner of the copyright.

(5) The preceding provisions of this section shall apply also with reference to records of a part of a work or an adaptation thereof: Provided that the provisions of subsection (1) shall not apply with reference to —

- (a) a record of the whole of a work or an adaptation thereof unless the previous records referred to in paragraph (a) of that subsection were records of the whole of the work or of a similar adaptation; or
- (b) a record of a part of a work or an adaptation thereof unless the records previously made in or imported into the Republic as contemplated in paragraph (a) of that subsection were of, or included, that part of the work or of a similar adaptation.

15 General exceptions from protection of artistic works

(1) The copyright in an artistic work shall not be infringed by its inclusion in a cinematograph film or a television broadcast or transmission in a diffusion service, if such inclusion is merely by way of background, or incidental, to the principal matters represented in the film, broadcast or transmission.

(2) The copyright in a work of architecture or in the relevant drawings shall not be infringed by the reconstruction of that work on the same site in the same style as the original.

(3) The copyright in an artistic work shall not be infringed by its reproduction or inclusion in a cinematograph film or a television broadcast or transmission in a diffusion service, if such work is permanently situated in a street, square or a similar public place.

- (3A) (a) The copyright in an artistic work of which three-dimensional reproductions were made available, whether inside or outside the Republic, to the public by or with the consent of the copyright owner (hereinafter referred to as authorized reproductions), shall not be infringed if any person without the consent of the owner makes or makes available to the public three-dimensional reproductions or adaptations of the authorized reproductions, provided —

...

- (ii) the authorized reproductions primarily have a utilitarian purpose and are made by an industrial process.

...

(4) The provisions of section 12(1), (2), (4), (5), (12) and (13) shall mutatis mutandis, in so far as they can be applied, apply with reference to artistic works.

16 General exceptions from protection of cinematograph films

(1) The provisions of section 12(1)(b) and (c), (2), (3), (4), (12) and (13) shall mutatis mutandis apply with reference to cinematograph films.

(2) Where sounds embodied in a sound-track associated with a cinematograph film are also embodied in a record other than such a sound-track or in a record derived directly or indirectly from such a sound-track, the copyright in the film shall not be infringed by the use of the record.

17 General exceptions from protection of sound recordings

The provisions of section 12(1)(b) and (c), (2), (3), (4), (5), (12) and (13) shall mutatis mutandis apply with reference to sound recordings.

...

19A General exceptions from protection of published editions

The provisions of sections 12(1), (2), (4), (5), (8), (12) and (13) shall mutatis mutandis apply with reference to published editions.

19B General exceptions regarding protection of computer programs

(1) Subject to the provisions of section 23(2)(d), the provisions of section 12(1)(b) and (c), (2), (3), (4), (5), (12) and (13) shall mutatis mutandis apply, in so far as they can be applied, with reference to computer programs.

(2) The copyright in a computer program shall not be infringed by a person who is in lawful possession of that computer program, or an authorized copy thereof, if —

- (a) he makes copies thereof to the extent reasonably necessary for back-up purposes;
- (b) a copy so made is intended exclusively for personal or private purposes; and
- (c) such copy is destroyed when the possession of the computer program in question, or authorized copy thereof, ceases to be lawful.

20 Moral rights

(1) Notwithstanding the transfer of the copyright in a literary, musical or artistic work, in a cinematograph film or in a computer program, the author shall have the right to claim authorship in the work, subject to the provisions of this Act, and to object to any distortion, mutilation or other modification of the work where such action is or would be prejudicial to the honour or reputation of the author: Provided that an author who authorizes the use of his work in a cinematograph film or a television broadcast or an author of a computer program or a work associated with a computer program may not prevent or object to modifications that are absolutely necessary on technical grounds or for the purpose of commercial exploitation of the work.

(2) Any infringement of the provisions of this section shall be treated as an infringement of copyright under Chapter 2, and for the purposes of the provisions of the said Chapter the author shall be deemed to be the owner of the copyright in question.

21 Ownership of copyright

- (1) (a) Subject to the provisions of this section, the ownership of any copyright conferred by section 3 or 4 on any work shall vest in the author or, in the case of a work of joint authorship, in the co-authors of the work.
- (b) Where a literary or artistic work is made by an author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, and is so made for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall be the owner of the copyright in the work in so far as the copyright relates to publication of the work in any newspaper, magazine or similar periodical or to reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the owner of any copyright subsisting in the work by virtue of section 3 or 4.
- (c) Where a person commissions the taking of a photograph, the painting or drawing of a portrait, the making of a gravure, the making of a cinematograph film or the making of a sound recording and pays or

agrees to pay for it in money or money's worth, and the work is made in pursuance of that commission, such person shall, subject to the provisions of paragraph (b), be the owner of any copyright subsisting therein by virtue of section 3 or 4.

- (d) Where in a case not falling within either paragraph (b) or (c) a work is made in the course of the author's employment by another person under a contract of service or apprenticeship, that other person shall be the owner of any copyright subsisting in the work by virtue of section 3 or 4.
- (e) Paragraphs (b), (c) and (d) shall in any particular case have effect subject to any agreement excluding the operation thereof and subject to the provisions of section 20.

...

22 Assignment and licences in respect of copyright

(1) Subject to the provisions of this section, copyright shall be transmissible as movable property by assignment, testamentary disposition or operation of law.

(2) An assignment or testamentary disposition of copyright may be limited so as to apply to some only of the acts which the owner of the copyright has the exclusive right to control, or to a part only of the term of the copyright, or to a specified country or other geographical area.

(3) No assignment of copyright and no exclusive licence to do an act which is subject to copyright shall have effect unless it is in writing signed by or on behalf of the assignor, the licensor or, in the case of an exclusive sublicense, the exclusive sublicenser, as the case may be.

(4) A non-exclusive licence to do an act which is subject to copyright may be written or oral, or may be inferred from conduct, and may be revoked at any time: Provided that such a licence granted by contract shall not be revoked, either by the person who granted the licence or his successor in title, except as the contract may provide, or by a further contract.

(5) An assignment, licence or testamentary disposition may be granted or made in respect of the copyright in a future work, or the copyright in an existing work in which copyright does not subsist but will come into being in the future, and the future copyright in any such work shall be transmissible as movable property.

(6) A testamentary disposition of the material on which a work is first written or otherwise recorded shall, in the absence of a stipulation to the contrary, be taken to include the disposition of any copyright or future copyright in the work which is vested in the deceased at the time of his death.

(7) A licence granted in respect of any copyright by the person who, in relation to the matters to which the licence relates, is the owner of the copyright, shall be binding upon every successor in title to his interest in the copyright, except a purchaser in good faith and without notice, actual or constructive, of the licence or a person deriving title from such a purchaser, and any reference in this Act to the doing in relation to any copyright of anything with or without the licence of the owner of the copyright shall be construed accordingly.

(8) Where the doing of anything is authorized by the grantee of a licence or a person deriving title from the grantee, and it is within the terms, including any implied terms, of the

licence for him to authorize it, it shall for the purpose of this Act be deemed to be done with the licence of the grantor and of every person, if any, upon whom the licence is binding.

CHAPTER 2 : INFRINGEMENTS OF COPYRIGHT AND REMEDIES

23 Infringement

(1) Copyright shall be infringed by any person, not being the owner of the copyright, who, without the licence of such owner, does or causes any other person to do, in the Republic, any act which the owner of the copyright has the exclusive right to do or to authorize.

(2) Without derogating from the generality of subsection (1), copyright shall be infringed by any person who, without the licence of the owner of the copyright and at a time when copyright subsists in a work —

- (a) imports an article into the Republic for a purpose other than for his private and domestic use;
- (b) sells, lets, or by way of trade offers or exposes for sale or hire in the Republic any article;
- (c) distributes in the Republic any article for the purposes of trade, or for any other purpose, to such an extent that the owner of the copyright in question is prejudicially affected; or
- (d) acquires an article relating to a computer program in the Republic,

if to his knowledge the making of that article constituted an infringement of that copyright or would have constituted such an infringement if the article had been made in the Republic.

(3) The copyright in a literary or musical work shall be infringed by any person who permits a place of public entertainment to be used for a performance in public of the work, where the performance constitutes an infringement of the copyright in the work: Provided that this subsection shall not apply in a case where the person permitting the place of public entertainment to be so used was not aware and had no reasonable grounds for suspecting that the performance would be an infringement of the copyright.

24 Action by owner of copyright for infringement

(1) Subject to the provisions of this Act, infringements of copyright shall be actionable at the suit of the owner of the copyright, and in any action for such an infringement all such relief by way of damages, interdict, delivery of infringing copies or plates used or intended to be used for infringing copies or otherwise shall be available to the plaintiff as is available in any corresponding proceedings in respect of infringements of other proprietary rights.

(1A) In lieu of damages the plaintiff may, at his or her option, be awarded an amount calculated on the basis of a reasonable royalty which would have been payable under the circumstances by a licensee in respect of the work or type of work concerned.

(1B) For the purposes of determining the amount of damages or a reasonable royalty to be awarded under this section or section 25(2), the court may direct an enquiry to be held and may prescribe such procedures for conducting such enquiry as the court considers necessary.

(1C) Before the owner of copyright institutes proceedings under this section, he or she shall give notice in writing to the exclusive licensee or sub-licensee of the copyright concerned of the intention to do so, and the exclusive licensee or sub-licensee may intervene in such

proceedings and recover any damages he or she may have suffered as a result of the infringement concerned or a reasonable royalty to which he or she may be entitled.

(2) Where in an action for infringement of copyright it is proved or admitted that an infringement was committed but that at the time of the infringement the defendant was not aware and had no reasonable grounds for suspecting that copyright subsisted in the work to which the action relates, the plaintiff shall not be entitled under this section to any damages against the defendant in respect of the infringement.

(3) Where in an action under this section an infringement of copyright is proved or admitted, and the court having regard, in addition to all other material considerations, to —

- (a) the flagrancy of the infringement; and
- (b) any benefit shown to have accrued to the defendant by reason of the infringement,

is satisfied that effective relief would not otherwise be available to the plaintiff, the court shall in assessing damages for the infringement have power to award such additional damages as the court may deem fit.

(4) In an action for infringement of copyright in respect of the construction of a building, no interdict or other order shall be made —

- (a) after the construction of the building has been begun so as to prevent it from being completed; or
- (b) so as to require the building, in so far as it has been constructed, to be demolished.

25 Rights of action and remedies of exclusive licensee and exclusive sub-licensee

(1) An exclusive licensee and an exclusive sub-licensee shall have the same rights of action and be entitled to the same remedies as if the licence were an assignment, and those rights and remedies shall be concurrent with the rights and remedies of the owner of the copyright under which the licence and sub-licence were granted.

(2) Before an exclusive licensee or sub-licensee institutes proceedings under subsection (1), he or she shall give notice in writing to the owner of the copyright concerned of the intention to do so, and the owner may intervene in such proceedings and recover any damages he or she may have suffered as a result of the infringement concerned or a reasonable royalty to which he or she may be entitled.

...

CHAPTER 4 : EXTENSION OR RESTRICTION OF OPERATION OF ACT

37 Application of Act to countries to which it does not extend

(1) The Minister may by notice in the Gazette provide that any provision of this Act specified in the notice shall in the case of any country so specified apply —

- (a) in relation to literary, musical or artistic works, computer programs, cinematograph films, sound recordings and published editions first published in that country as it applies in relation to literary, musical or artistic works, computer programs, cinematograph films, sound recordings and published editions first published in the Republic;
- (b) in relation to persons who at a material time are citizens or subjects of that country as it applies in relation to persons who at such a time are South African citizens;

- (c) in relation to persons who at a material time are domiciled or resident in that country as it applies in relation to persons who at such a time are domiciled or resident in the Republic;
- (d) in relation to bodies incorporated under the laws of that country as it applies in relation to bodies incorporated under the laws of the Republic;

...

- (2) A notice under this section may provide —
 - (a) that any provisions referred to therein shall apply subject to such exceptions or modifications as may be specified in the notice;
 - (b) that such provisions shall so apply either generally or in relation to such classes of works or classes of cases as may be so specified.

(3) No notice shall be issued under this section in respect of any country which is not a party to a convention relating to copyright to which the Republic is also a party, unless the Minister is satisfied that, in respect of the class of works to which the notice relates, provision has been or will be made under the laws of that country whereby adequate protection will be given to owners of copyright under this Act.

CHAPTER 5 : MISCELLANEOUS PROVISIONS

...

44 Time when a work is made

(1) For the purposes of this Act a work ... shall be deemed to have been made at the time when it was first reduced to writing, recorded or otherwise reduced to material form.

...

...

Section 10: Unregistrable trade marks

The following marks shall not be registered as trade marks or, if registered, shall, subject to the provisions of sections 3 and 70, be liable to be removed from the register:

...

- (17) a mark which is identical or similar to a trade mark which is already registered and which is well-known in the Republic, if the use of the mark sought to be registered would be likely to take unfair advantage of, or be detrimental to, the distinctive character or the repute of the registered trade mark, notwithstanding the absence of deception or confusion, unless the proprietor of such trade mark consents to the registration of such mark...

Section 34: Infringement of registered trade mark

- (1) The rights acquired by registration of a trade mark shall be infringed by —
- (a) the unauthorized use in the course of trade in relation to goods or services in respect of which the trade mark is registered, of an identical mark or of a mark so nearly resembling it as to be likely to deceive or cause confusion;
 - (b) the unauthorized use of a mark which is identical or similar to the trade mark registered, in the course of trade in relation to goods or services which are so similar to the goods or services in respect of which the trade mark is registered, that in such use there exists the likelihood of deception or confusion;
 - (c) the unauthorized use in the course of trade in relation to any goods or services of a mark which is identical or similar to a trade mark registered, if such trade mark is well known in the Republic and the use of the said mark would be likely to take unfair advantage of, or be detrimental to the distinctive character or the repute of the registered trade mark, notwithstanding the absence of confusion or deception: Provided that the provisions of this paragraph shall not apply to a trade mark referred to in section 70(2).

...

Section 35: Protection of well-known marks under Paris Convention

- (1) References in this Act to a trade mark which is entitled to protection under the Paris Convention as a well-known trade mark, are to a mark which is well known in the Republic as being the mark of —
- (a) a person who is a national of a convention country; or
 - (b) a person who is domiciled in, or has a real and effective industrial or commercial establishment in, a convention country, whether or not such person carries on business, or has any goodwill, in the Republic.
- (1A) In determining for the purposes of subsection (1) whether a trade mark is well-known in the Republic, due regard shall be given to the knowledge of the trade mark in the relevant sector of the public, including knowledge which has been obtained as a result of the promotion of the trade mark.
- (2) A reference in this Act to the proprietor of such a mark shall be construed

accordingly.

- (3) The proprietor of a trade mark which is entitled to protection under the Paris Convention as a well-known trade mark is entitled to restrain the use in the Republic of a trade mark which constitutes, or the essential part of which constitutes, a reproduction, imitation or translation of the well-known trade mark in relation to goods or services which are identical or similar to the goods or services in respect of which the trade mark is well known and where the use is likely to cause deception or confusion.
- (4) Where, by virtue of section 10(8), the authorization of the competent authority of a convention country or an international organization is required for the registration of a mark as a trade mark, such authority or organization is entitled to restrain the use in the Republic of such a mark without such authorization.

...

4 ELECTRONIC COMMUNICATIONS AND TRANSACTIONS ACT 25 OF 2002 (SOUTH AFRICA)

...

Chapter XI: Limitation of Liability of Service Providers

70 Definition

In this Chapter, “service provider” means any person providing information system services.

71 Recognition of representative body

- (1) The Minister may, on application by an industry representative body for service providers by notice in the *Gazette*, recognise such body for purposes of section 72.
- (2) The Minister may only recognise a representative body referred to in subsection (1) if the Minister is satisfied that —
 - (a) its members are subject to a code of conduct;
 - (b) membership is subject to adequate criteria;
 - (c) the code of conduct requires continued adherence to adequate standards of conduct; and
 - (d) the representative body is capable of monitoring and enforcing its code of conduct adequately.

72 Conditions for eligibility

The limitations on liability established by this Chapter apply to a service provider only if —

- (a) the service provider is a member of the representative body referred to in section 71; and
- (b) the service provider has adopted and implemented the official code of conduct of that representative body.

73 Mere conduit

- (1) A service provider is not liable for providing access to or for operating facilities for information systems or transmitting, routing or storage of data messages via an information system under its control, as long as the service provider —
 - (a) does not initiate the transmission;
 - (b) does not select the addressee;
 - (c) performs the functions in an automatic, technical manner without selection of the data; and
 - (d) does not modify the data contained in the transmission.
- (2) The acts of transmission, routing and of provision of access referred to in subsection (1) include the automatic, intermediate and transient storage of the information transmitted in so far as this takes place —
 - (a) for the sole purpose of carrying out the transmission in the information system;
 - (b) in a manner that makes it ordinarily inaccessible to anyone other than anticipated recipients; and

(c) for a period no longer than is reasonably necessary for the transmission.

- (3) Notwithstanding this section, a competent court may order a service provider to terminate or prevent unlawful activity in terms of any other law.

74 Caching

- (1) A service provider that transmits data provided by a recipient of the service via an information system under its control is not liable for the automatic, intermediate and temporary storage of that data, where the purpose of storing such data is to make the onward transmission of the data more efficient to other recipients of the service upon their request, as long as the service provider —
- (a) does not modify the data;
 - (b) complies with conditions on access to the data;
 - (c) complies with rules regarding the updating of the data, specified in a manner widely recognised and used by industry;
 - (d) does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain information on the use of the data; and
 - (e) removes or disables access to the data it has stored upon receiving a take-down notice referred to in section 77.
- (2) Notwithstanding this section, a competent court may order a service provider to terminate or prevent unlawful activity in terms of any other law.

75 Hosting

- (1) A service provider that provides a service that consists of the storage of data provided by a recipient of the service, is not liable for damages arising from data stored at the request of the recipient of the service, as long as the service provider —
- (a) does not have actual knowledge that the data message or an activity relating to the data message is infringing the rights of a third party; or
 - (b) is not aware of facts or circumstances from which the infringing activity or the infringing nature of the data message is apparent; and
 - (c) upon receipt of a take-down notification referred to in section 77, acts expeditiously to remove or to disable access to the data.
- (2) The limitations on liability established by this section do not apply to a service provider unless it has designated an agent to receive notifications of infringement and has provided through its services, including on its web sites in locations accessible to the public, the name, address, phone number and e-mail address of the agent.
- (3) Notwithstanding this section, a competent court may order a service provider to terminate or prevent unlawful activity in terms of any other law.
- (4) Subsection (1) does not apply when the recipient of the service is acting under the authority or the control of the service provider.

76 Information location tools

A service provider is not liable for damages incurred by a person if the service provider refers or links users to a web page containing an infringing data message or infringing activity, by using information location tools, including a directory, index,

reference, pointer, or hyperlink, where the service provider —

- (a) does not have actual knowledge that the data message or an activity relating to the data message is infringing the rights of that person;
- (b) is not aware of facts or circumstances from which the infringing activity or the infringing nature of the data message is apparent;
- (c) does not receive a financial benefit directly attributable to the infringing activity; and
- (d) removes, or disables access to, the reference or link to the data message or activity within a reasonable time after being informed that the data message or the activity relating to such data message, infringes the rights of a person.

77 Take-down notification

- (1) For the purposes of this Chapter, a notification of unlawful activity must be in writing, must be addressed by the complainant to the service provider or its designated agent and must include —
 - (a) the full names and address of the complainant;
 - (b) the written or electronic signature of the complainant;
 - (c) identification of the right that has allegedly been infringed;
 - (d) identification of the material or activity that is claimed to be the subject of unlawful activity;
 - (e) the remedial action required to be taken by the service provider in respect of the complaint;
 - (f) telephonic and electronic contact details, if any, of the complainant;
 - (g) a statement that the complainant is acting in good faith;
 - (h) a statement by the complainant that the information in the take-down notification is to his or her knowledge true and correct.
- (2) Any person who lodges a notification of unlawful activity with a service provider knowing that it materially misrepresents the facts is liable for damages for wrongful take-down.
- (3) A service provider is not liable for wrongful take-down in response to a notification.

78 No general obligation to monitor

- (1) When providing the services contemplated in this Chapter there is no general obligation on a service provider to —
 - (a) monitor the data which it transmits or stores; or
 - (b) actively seek facts or circumstances indicating an unlawful activity.
- (2) The Minister may, subject to section 14 of the Constitution, prescribe procedures for service providers to —
 - (a) inform the competent public authorities of alleged illegal activities undertaken or information provided by recipients of their service; and
 - (b) to communicate to the competent authorities, at their request, information enabling the identification of recipients of their service.

79 Savings

This Chapter does not affect —

- (a) any obligation founded on an agreement;
- (b) the obligation of a service provider acting as such under a licensing or other regulatory regime established by or under any law;
- (c) any obligation imposed by law or by a court to remove, block or deny access to any

- data message; or
- (d) any right to limitation of liability based on the common law or the Constitution.
- ...

CHAPTER XIII: CYBER CRIME

85 Definition

In this Chapter, unless the context indicates otherwise —
 “access” includes the actions of a person who, after taking note of any data, becomes aware of the fact that he or she is not authorised to access that data and still continues to access that data.

86 Unauthorized access to, interception of or interference with data

- (1) Subject to the Interception and Monitoring Prohibition Act, 1992 (Act 127 of 1992), a person who intentionally accesses or intercepts any data without authority or permission to do so, is guilty of an offence.
- ...
- (3) A person who unlawfully produces, sells, offers to sell, procures for use, designs, adapts for use, distributes or possesses any device, including a computer program or a component, which is designed primarily to overcome security measures for the protection of data, or performs any of those acts with regard to a password, access code or any other similar kind of data with the intent to unlawfully utilise such item to contravene this section, is guilty of an offence.
- (4) A person who utilizes any device or computer program mentioned in subsection (3) in order to unlawfully overcome security measures designed to protect such data or access thereto, is guilty of an offence.
- (5) A person who commits any act described in this section with the intent to interfere with access to an information system so as to constitute a denial, including a partial denial, of service to legitimate users is guilty of an aggravated offence.
- ...

...

§ 1125: False designations of origin and false descriptions forbidden**(a) Civil action**

- (1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which —
 - (A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or
 - (B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities, shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.
- (2) As used in this subsection, the term "any person" includes any State, instrumentality of a State or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this Act in the same manner and to the same extent as any nongovernmental entity.
- (3) In a civil action for trade dress infringement under this Act for trade dress not registered on the principal register, the person who asserts trade dress protection has the burden of proving that the matter sought to be protected is not functional.

- (b) Importation:** Any goods marked or labeled in contravention of the provisions of this section shall not be imported into the United States or admitted to entry at any customhouse of the United States. The owner, importer, or consignee of goods refused entry at any customhouse under this section may have any recourse by protest or appeal that is given under the customs revenue laws or may have the remedy given by this Act in cases involving goods refused entry or seized.

(c) Remedies for dilution of famous marks

- (1) The owner of a famous mark shall be entitled, subject to the principles of equity and upon such terms as the court deems reasonable, to an injunction against another person's commercial use in commerce of a mark or trade name, if such use begins after the mark has become famous and causes dilution of the distinctive quality of the mark, and to obtain such other relief as is provided in this subsection. In determining whether a mark is distinctive and famous, a court may consider factors such as, but not limited to —
 - (A) the degree of inherent or acquired distinctiveness of the mark;
 - (B) the duration and extent of use of the mark in connection with the

- goods or services with which the mark is used;
- (C) the duration and extent of advertising and publicity of the mark;
- (D) the geographical extent of the trading area in which the mark is used;
- (E) the channels of trade for the goods or services with which the mark is used;
- (F) the degree of recognition of the mark in the trading areas and channels of trade used by the marks' owner and the person against whom the injunction is sought;
- (G) the nature and extent of use of the same or similar marks by third parties; and
- (H) whether the mark was registered under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register.

- (2) In an action brought under this subsection, the owner of the famous mark shall be entitled only to injunctive relief as set forth in section 34 [15 USC §1116] unless the person against whom the injunction is sought willfully intended to trade on the owner's reputation or to cause dilution of the famous mark. If such willful intent is proven, the owner of the famous mark shall also be entitled to the remedies set forth in sections 35(a) and 36 [15 USC §§1117(a), 1118], subject to the discretion of the court and the principles of equity.
- (3) The ownership by a person of a valid registration under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register shall be a complete bar to an action against that person, with respect to that mark, that is brought by another person under the common law or a statute of a State and that seeks to prevent dilution of the distinctiveness of a mark, label, or form of advertisement.
- (4) The following shall not be actionable under this section:
 - (A) Fair use of a famous mark by another person in comparative commercial advertising or promotion to identify the competing goods or services of the owner of the famous mark.
 - (B) Noncommercial use of a mark.
 - (C) All forms of news reporting and news commentary.

(d) Cyberpiracy prevention

- (1) (A) A person shall be liable in a civil action by the owner of a mark, including a personal name which is protected as a mark under this section, if, without regard to the goods or services of the parties, that person —
 - (i) has a bad faith intent to profit from that mark, including a personal name which is protected as a mark under this section; and
 - (ii) registers, traffics in, or uses a domain name that —
 - (I) in the case of a mark that is distinctive at the time of registration of the domain name, is identical or confusingly similar to that mark;
 - (II) in the case of a famous mark that is famous at the time of registration of the domain name, is identical or confusingly similar to or dilutive of that mark; or
 - (III) is a trademark, word, or name protected by reason of

section 706 of title 18, United States Code, or section 220506 of title 36, United States Code.

- (B) (i) In determining whether a person has a bad faith intent described under subparagraph (A), a court may consider factors such as, but not limited to —
 - (I) the trademark or other intellectual property rights of the person, if any, in the domain name;
 - (II) the extent to which the domain name consists of the legal name of the person or a name that is otherwise commonly used to identify that person;
 - (III) the person's prior use, if any, of the domain name in connection with the bona fide offering of any goods or services;
 - (IV) the person's bona fide noncommercial or fair use of the mark in a site accessible under the domain name;
 - (V) the person's intent to divert consumers from the mark owner's online location to a site accessible under the domain name that could harm the goodwill represented by the mark, either for commercial gain or with the intent to tarnish or disparage the mark, by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site;
 - (VI) the person's offer to transfer, sell, or otherwise assign the domain name to the mark owner or any third party for financial gain without having used, or having an intent to use, the domain name in the bona fide offering of any goods or services, or the person's prior conduct indicating a pattern of such conduct;
 - (VII) the person's provision of material and misleading false contact information when applying for the registration of the domain name, the person's intentional failure to maintain accurate contact information, or the person's prior conduct indicating a pattern of such conduct;
 - (VIII) the person's registration or acquisition of multiple domain names which the person knows are identical or confusingly similar to marks of others that are distinctive at the time of registration of such domain names, or dilutive of famous marks of others that are famous at the time of registration of such domain names, without regard to the goods or services of the parties; and
 - (IX) the extent to which the mark incorporated in the person's domain name registration is or is not distinctive and famous within the meaning of subsection (c)(1) of section 43 [subsec (c)(1) of this section].
- (ii) Bad faith intent described under subparagraph (A) shall not be found in any case in which the court determines that the person believed and had reasonable grounds to believe that the use of the domain name was a fair use or otherwise lawful.

- (C) In any civil action involving the registration, trafficking, or use of a domain name under this paragraph, a court may order the forfeiture or cancellation of the domain name or the transfer of the domain name to the owner of the mark.
 - (D) A person shall be liable for using a domain name under subparagraph (A) only if that person is the domain name registrant or that registrant's authorized licensee.
 - (E) As used in this paragraph, the term "traffics in" refers to transactions that include, but are not limited to, sales, purchases, loans, pledges, licenses, exchanges of currency, and any other transfer for consideration or receipt in exchange for consideration.
- (2) (A) The owner of a mark may file an in rem civil action against a domain name in the judicial district in which the domain name registrar, domain name registry, or other domain name authority that registered or assigned the domain name is located if —
- (i) the domain name violates any right of the owner of a mark registered in the Patent and Trademark Office, or protected under subsection (a) or (c); and
 - (ii) the court finds that the owner —
 - (I) is not able to obtain in personam jurisdiction over a person who would have been a defendant in a civil action under paragraph (1); or
 - (II) through due diligence was not able to find a person who would have been a defendant in a civil action under paragraph (1) by —
 - (aa) sending a notice of the alleged violation and intent to proceed under this paragraph to the registrant of the domain name at the postal and e-mail address provided by the registrant to the registrar; and
 - (bb) publishing notice of the action as the court may direct promptly after filing the action.
- (B) The actions under subparagraph (A)(ii) shall constitute service of process.
- (C) In an in rem action under this paragraph, a domain name shall be deemed to have its situs in the judicial district in which —
- (i) the domain name registrar, registry, or other domain name authority that registered or assigned the domain name is located; or
 - (ii) documents sufficient to establish control and authority regarding the disposition of the registration and use of the domain name are deposited with the court.
- (D) (i) The remedies in an in rem action under this paragraph shall be limited to a court order for the forfeiture or cancellation of the domain name or the transfer of the domain name to the owner

of the mark. Upon receipt of written notification of a filed, stamped copy of a complaint filed by the owner of a mark in a United States district court under this paragraph, the domain name registrar, domain name registry, or other domain name authority shall —

- (I) expeditiously deposit with the court documents sufficient to establish the court's control and authority regarding the disposition of the registration and use of the domain name to the court; and
 - (II) not transfer, suspend, or otherwise modify the domain name during the pendency of the action, except upon order of the court.
- (ii) The domain name registrar or registry or other domain name authority shall not be liable for injunctive or monetary relief under this paragraph except in the case of bad faith or reckless disregard, which includes a willful failure to comply with any such court order.
- (3) The civil action established under paragraph (1) and the in rem action established under paragraph (2), and any remedy available under either such action, shall be in addition to any other civil action or remedy otherwise applicable.
- (4) The in rem jurisdiction established under paragraph (2) shall be in addition to any other jurisdiction that otherwise exists, whether in rem or in personam.

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Chapter 5: Copyright Infringement and Remedies

§ 512: Limitations on liability relating to material online

- (a) **Transitory Digital Network Communications:** A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the provider's transmitting, routing, or providing connections for, material through a system or network controlled or operated by or for the service provider, or by reason of the intermediate and transient storage of that material in the course of such transmitting, routing, or providing connections, if —
- (1) the transmission of the material was initiated by or at the direction of a person other than the service provider;
 - (2) the transmission, routing, provision of connections, or storage is carried out through an automatic technical process without selection of the material by the service provider;
 - (3) the service provider does not select the recipients of the material except as an automatic response to the request of another person;
 - (4) no copy of the material made by the service provider in the course of such intermediate or transient storage is maintained on the system or network in a manner ordinarily accessible to anyone other than anticipated recipients, and no such copy is maintained on the system or network in a manner ordinarily accessible to such anticipated recipients for a longer period than is reasonably necessary for the transmission, routing, or provision of connections; and
 - (5) the material is transmitted through the system or network without modification of its content.
- (b) **System Caching**
- (1) **Limitation on Liability:** A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the intermediate and temporary storage of material on a system or network controlled or operated by or for the service provider in a case in which —
 - (A) the material is made available online by a person other than the service provider;
 - (B) the material is transmitted from the person described in subparagraph (A) through the system or network to a person other than the person described in subparagraph (A) at the direction of that other person; and
 - (C) the storage is carried out through an automatic technical process for the purpose of making the material available to users of the system or network who, after the material is transmitted as described in subparagraph (B), request access to the material from the person described in subparagraph (A), if the conditions set forth in paragraph (2) are met.

- (2) **Conditions:** The conditions referred to in paragraph (1) are that —
- (A) the material described in paragraph (1) is transmitted to the subsequent users described in paragraph (1)(C) without modification to its content from the manner in which the material was transmitted from the person described in paragraph (1)(A);
 - (B) the service provider described in paragraph (1) complies with rules concerning the refreshing, reloading, or other updating of the material when specified by the person making the material available online in accordance with a generally accepted industry standard data communications protocol for the system or network through which that person makes the material available, except that this subparagraph applies only if those rules are not used by the person described in paragraph (1)(A) to prevent or unreasonably impair the intermediate storage to which this subsection applies;
 - (C) the service provider does not interfere with the ability of technology associated with the material to return to the person described in paragraph (1)(A) the information that would have been available to that person if the material had been obtained by the subsequent users described in paragraph (1)(C) directly from that person, except that this subparagraph applies only if that technology —
 - (i) does not significantly interfere with the performance of the provider's system or network or with the intermediate storage of the material;
 - (ii) is consistent with generally accepted industry standard communications protocols; and
 - (iii) does not extract information from the provider's system or network other than the information that would have been available to the person described in paragraph (1)(A) if the subsequent users had gained access to the material directly from that person;
 - (D) if the person described in paragraph (1)(A) has in effect a condition that a person must meet prior to having access to the material, such as a condition based on payment of a fee or provision of a password or other information, the service provider permits access to the stored material in significant part only to users of its system or network that have met those conditions and only in accordance with those conditions; and
 - (E) if the person described in paragraph (1)(A) makes that material available online without the authorization of the copyright owner of the material, the service provider responds expeditiously to remove, or disable access to, the material that is claimed to be infringing upon notification of claimed infringement as described in subsection (c)(3), except that this subparagraph applies only if —
 - (i) the material has previously been removed from the originating site or access to it has been disabled, or a court has ordered that the material be removed from the originating site or that access to the material on the originating site be disabled; and
 - (ii) the party giving the notification includes in the notification a statement confirming that the material has been removed from the originating site or access to it has been disabled or that a court has ordered that the material be removed from the

originating site or that access to the material on the originating site be disabled.

(c) **Information Residing on Systems or Networks at Direction of Users**

- (1) **In General:** A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the storage at the direction of a user of material that resides on a system or network controlled or operated by or for the service provider, if the service provider —
 - (A)
 - (i) does not have actual knowledge that the material or an activity using the material on the system or network is infringing;
 - (ii) in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent; or
 - (iii) upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material;
 - (B) does not receive a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control such activity; and
 - (C) upon notification of claimed infringement as described in paragraph (3), responds expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity.
- (2) **Designated Agent:** The limitations on liability established in this subsection apply to a service provider only if the service provider has designated an agent to receive notifications of claimed infringement described in paragraph (3), by making available through its service, including on its website in a location accessible to the public, and by providing to the Copyright Office, substantially the following information:
 - (A) the name, address, phone number, and electronic mail address of the agent.
 - (B) other contact information which the Register of Copyrights may deem appropriate.

The Register of Copyrights shall maintain a current directory of agents available to the public for inspection, including through the Internet, in both electronic and hard copy formats, and may require payment of a fee by service providers to cover the costs of maintaining the directory.

(3) **Elements of Notification**

- (A) To be effective under this subsection, a notification of claimed infringement must be a written communication provided to the designated agent of a service provider that includes substantially the following:
 - (i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
 - (ii) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of

such works at that site.

- (iii) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material.
- (iv) Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted.
- (v) A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.
- (vi) A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

- (B) (i) Subject to clause (ii), a notification from a copyright owner or from a person authorized to act on behalf of the copyright owner that fails to comply substantially with the provisions of subparagraph (A) shall not be considered under paragraph (1)(A) in determining whether a service provider has actual knowledge or is aware of facts or circumstances from which infringing activity is apparent.
- (ii) In a case in which the notification that is provided to the service provider's designated agent fails to comply substantially with all the provisions of subparagraph (A) but substantially complies with clauses (ii), (iii), and (iv) of subparagraph (A), clause (i) of this subparagraph applies only if the service provider promptly attempts to contact the person making the notification or takes other reasonable steps to assist in the receipt of notification that substantially complies with all the provisions of subparagraph (A).

(d) **Information Location Tools:** A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the provider referring or linking users to an online location containing infringing material or infringing activity, by using information location tools, including a directory, index, reference, pointer, or hypertext link, if the service provider —

- (1) (A) does not have actual knowledge that the material or activity is infringing;
- (B) in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent; or
- (C) upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material;
- (2) does not receive a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control such activity; and
- (3) upon notification of claimed infringement as described in subsection (c)(3),

responds expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity, except that, for purposes of this paragraph, the information described in subsection (c)(3)(A)(iii) shall be identification of the reference or link, to material or activity claimed to be infringing, that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate that reference or link.

(e) **Limitation on Liability of Nonprofit Educational Institutions**

- (1) When a public or other nonprofit institution of higher education is a service provider, and when a faculty member or graduate student who is an employee of such institution is performing a teaching or research function, for the purposes of subsections (a) and (b) such faculty member or graduate student shall be considered to be a person other than the institution, and for the purposes of subsections (c) and (d) such faculty member's or graduate student's knowledge or awareness of his or her infringing activities shall not be attributed to the institution, if —
 - (A) such faculty member's or graduate student's infringing activities do not involve the provision of online access to instructional materials that are or were required or recommended, within the preceding 3-year period, for a course taught at the institution by such faculty member or graduate student;
 - (B) the institution has not, within the preceding 3-year period, received more than 2 notifications described in subsection (c)(3) of claimed infringement by such faculty member or graduate student, and such notifications of claimed infringement were not actionable under subsection (f); and
 - (C) the institution provides to all users of its system or network informational materials that accurately describe, and promote compliance with, the laws of the United States relating to copyright.
- (2) For the purposes of this subsection, the limitations on injunctive relief contained in subsections (j)(2) and (j)(3), but not those in (j)(1), shall apply.

(f) **Misrepresentations:** Any person who knowingly materially misrepresents under this section —

- (1) that material or activity is infringing, or
- (2) that material or activity was removed or disabled by mistake or misidentification,

shall be liable for any damages, including costs and attorneys' fees, incurred by the alleged infringer, by any copyright owner or copyright owner's authorized licensee, or by a service provider, who is injured by such misrepresentation, as the result of the service provider relying upon such misrepresentation in removing or disabling access to the material or activity claimed to be infringing, or in replacing the removed material or ceasing to disable access to it.

(g) **Replacement of Removed or Disabled Material and Limitation on Other Liability**

- (1) **No Liability for Taking Down Generally:** Subject to paragraph (2), a

service provider shall not be liable to any person for any claim based on the service provider's good faith disabling of access to, or removal of, material or activity claimed to be infringing or based on facts or circumstances from which infringing activity is apparent, regardless of whether the material or activity is ultimately determined to be infringing.

- (2) **Exception:** Paragraph (1) shall not apply with respect to material residing at the direction of a subscriber of the service provider on a system or network controlled or operated by or for the service provider that is removed, or to which access is disabled by the service provider, pursuant to a notice provided under subsection (c)(1)(C), unless the service provider —
 - (A) takes reasonable steps promptly to notify the subscriber that it has removed or disabled access to the material;
 - (B) upon receipt of a counter notification described in paragraph (3), promptly provides the person who provided the notification under subsection (c)(1)(C) with a copy of the counter notification, and informs that person that it will re-place the removed material or cease disabling access to it in 10 business days; and
 - (C) replaces the removed material and ceases disabling access to it not less than 10, nor more than 14, business days following receipt of the counter notice, unless its designated agent first receives notice from the person who submitted the notification under subsection (c)(1)(C) that such person has filed an action seeking a court order to restrain the subscriber from engaging in infringing activity relating to the material on the service provider's system or network.
- (3) **Contents of Counter Notification:** To be effective under this subsection, a counter notification must be a written communication provided to the service provider's designated agent that includes substantially the following:
 - (A) A physical or electronic signature of the subscriber.
 - (B) Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled.
 - (C) A statement under penalty of perjury that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled.
 - (D) The subscriber's name, address, and telephone number, and a statement that the subscriber consents to the jurisdiction of Federal District Court for the judicial district in which the address is located, or if the subscriber's address is outside of the United States, for any judicial district in which the service provider may be found, and that the subscriber will accept service of process from the person who provided notification under subsection (c)(1)(C) or an agent of such person.
- (4) **Limitation on Other Liability:** A service provider's compliance with paragraph (2) shall not subject the service provider to liability for copyright infringement with respect to the material identified in the notice provided under subsection (c)(1)(C).

(h) **Subpoena to Identify Infringer**

- (1) **Request:** A copyright owner or a person authorized to act on the owner's behalf may request the clerk of any United States district court to issue a subpoena to a service provider for identification of an alleged infringer in accordance with this subsection.
 - (2) **Contents of Request:** The request may be made by filing with the clerk —
 - (A) a copy of a notification described in subsection (c)(3)(A);
 - (B) a proposed subpoena; and
 - (C) a sworn declaration to the effect that the purpose for which the subpoena is sought is to obtain the identity of an alleged infringer and that such information will only be used for the purpose of protecting rights under this title.
 - (3) **Contents of Subpoena:** The subpoena shall authorize and order the service provider receiving the notification and the subpoena to expeditiously disclose to the copyright owner or person authorized by the copyright owner information sufficient to identify the alleged infringer of the material described in the notification to the extent such information is available to the service provider.
 - (4) **Basis for Granting Subpoena:** If the notification filed satisfies the provisions of subsection (c)(3)(A), the proposed subpoena is in proper form, and the accompanying declaration is properly executed, the clerk shall expeditiously issue and sign the proposed subpoena and return it to the requester for delivery to the service provider.
 - (5) **Actions of Service Provider Receiving Subpoena:** Upon receipt of the issued subpoena, either accompanying or subsequent to the receipt of a notification described in subsection (c)(3)(A), the service provider shall expeditiously disclose to the copyright owner or person authorized by the copyright owner the information required by the subpoena, notwithstanding any other provision of law and regardless of whether the service provider responds to the notification.
 - (6) **Rules Applicable to Subpoena:** Unless otherwise provided by this section or by applicable rules of the court, the procedure for issuance and delivery of the subpoena, and the remedies for noncompliance with the subpoena, shall be governed to the greatest extent practicable by those provisions of the Federal Rules of Civil Procedure governing the issuance, service, and enforcement of a subpoena duces tecum.
- (i) **Conditions for Eligibility**
- (1) **Accommodation of Technology:** The limitations on liability established by this section shall apply to a service provider only if the service provider —
 - (A) has adopted and reasonably implemented, and informs subscribers and account holders of the service provider's system or network of, a policy that provides for the termination in appropriate circumstances of subscribers and account holders of the service provider's system or network who are repeat infringers; and
 - (B) accommodates and does not interfere with standard technical

measures.

- (2) **Definition:** As used in this subsection, the term "standard technical measures" means technical measures that are used by copyright owners to identify or protect copyrighted works and —
- (A) have been developed pursuant to a broad consensus of copyright owners and service providers in an open, fair, voluntary, multi-industry standards process;
 - (B) are available to any person on reasonable and nondiscriminatory terms; and
 - (C) do not impose substantial costs on service providers or substantial burdens on their systems or networks.

- (j) **Injunctions:** The following rules shall apply in the case of any application for an injunction under section 502 against a service provider that is not subject to monetary remedies under this section:

(1) **Scope of Relief**

- (A) With respect to conduct other than that which qualifies for the limitation on remedies set forth in subsection (a), the court may grant injunctive relief with respect to a service provider only in one or more of the following forms:
 - (i) An order restraining the service provider from providing access to infringing material or activity residing at a particular online site on the provider's system or network.
 - (ii) An order restraining the service provider from providing access to a subscriber or account holder of the service provider's system or network who is engaging in infringing activity and is identified in the order, by terminating the accounts of the subscriber or account holder that are specified in the order.
 - (iii) Such other injunctive relief as the court may consider necessary to prevent or restrain infringement of copyrighted material specified in the order of the court at a particular online location, if such relief is the least burdensome to the service provider among the forms of relief comparably effective for that purpose.
- (B) If the service provider qualifies for the limitation on remedies described in subsection (a), the court may only grant injunctive relief in one or both of the following forms:
 - (i) An order restraining the service provider from providing access to a subscriber or account holder of the service provider's system or network who is using the provider's service to engage in infringing activity and is identified in the order, by terminating the accounts of the subscriber or account holder that are specified in the order.
 - (ii) An order restraining the service provider from providing access, by taking reasonable steps specified in the order to block access, to a specific, identified, online location outside the United States.

- (2) **Considerations:** The court, in considering the relevant criteria for injunctive relief under applicable law, shall consider —
- (A) whether such an injunction, either alone or in combination with other such injunctions issued against the same service provider under this subsection, would significantly burden either the provider or the operation of the provider's system or network;
 - (B) the magnitude of the harm likely to be suffered by the copyright owner in the digital network environment if steps are not taken to prevent or restrain the infringement;
 - (C) whether implementation of such an injunction would be technically feasible and effective, and would not interfere with access to noninfringing material at other online locations; and
 - (D) whether other less burdensome and comparably effective means of preventing or restraining access to the infringing material are available.
- (3) **Notice and Ex Parte Orders:** Injunctive relief under this subsection shall be available only after notice to the service provider and an opportunity for the service provider to appear are provided, except for orders ensuring the preservation of evidence or other orders having no material adverse effect on the operation of the service provider's communications network.

(k) **Definitions**

(1) **Service Provider**

- (A) As used in subsection (a), the term "service provider" means an entity offering the transmission, routing, or providing of connections for digital online communications, between or among points specified by a user, of material of the user's choosing, without modification to the content of the material as sent or received.
- (B) As used in this section, other than subsection (a), the term "service provider" means a provider of online services or network access, or the operator of facilities therefor, and includes an entity described in subparagraph (A).

- (2) **Monetary Relief:** As used in this section, the term "monetary relief" means damages, costs, attorneys' fees, and any other form of monetary payment.

- (l) **Other Defenses Not Affected:** The failure of a service provider's conduct to qualify for limitation of liability under this section shall not bear adversely upon the consideration of a defense by the service provider that the service provider's conduct is not infringing under this title or any other defense.

- (m) **Protection of Privacy:** Nothing in this section shall be construed to condition the applicability of subsections (a) through (d) on —

- (1) a service provider monitoring its service or affirmatively seeking facts indicating infringing activity, except to the extent consistent with a standard technical measure complying with the provisions of subsection (i); or
- (2) a service provider gaining access to, removing, or disabling access to material in cases in which such conduct is prohibited by law.

- (n) **Construction:** Subsections (a), (b), (c), and (d) describe separate and distinct functions for purposes of applying this section. Whether a service provider qualifies for the limitation on liability in any one of those subsections shall be based solely on the criteria in that subsection, and shall not affect a determination of whether that service provider qualifies for the limitations on liability under any other such subsection.

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Chapter 12: Copyright Protection and Management Systems

§ 1201: Circumvention of copyright protection systems

(a) **Violations Regarding Circumvention of Technological Measures**

- (1) (A) No person shall circumvent a technological measure that effectively controls access to a work protected under this title. The prohibition contained in the preceding sentence shall take effect at the end of the 2-year period beginning on the date of the enactment of this chapter.
- (B) The prohibition contained in subparagraph (A) shall not apply to persons who are users of a copyrighted work which is in a particular class of works, if such persons are, or are likely to be in the succeeding 3-year period, adversely affected by virtue of such prohibition in their ability to make noninfringing uses of that particular class of works under this title, as determined under subparagraph (C).
- (C) During the 2-year period described in subparagraph (A), and during each succeeding 3-year period, the Librarian of Congress, upon the recommendation of the Register of Copyrights, who shall consult with the Assistant Secretary for Communications and Information of the Department of Commerce and report and comment on his or her views in making such recommendation, shall make the determination in a rulemaking proceeding for purposes of subparagraph (B) of whether persons who are users of a copyrighted work are, or are likely to be in the succeeding 3-year period, adversely affected by the prohibition under subparagraph (A) in their ability to make noninfringing uses under this title of a particular class of copyrighted works. In conducting such rule-making, the Librarian shall examine —
 - (i) the availability for use of copyrighted works;
 - (ii) the availability for use of works for nonprofit archival, preservation, and educational purposes;
 - (iii) the impact that the prohibition on the circumvention of technological measures applied to copyrighted works has on criticism, comment, news reporting, teaching, scholarship, or research;
 - (iv) the effect of circumvention of technological measures on the market for or value of copyrighted works; and
 - (v) such other factors as the Librarian considers appropriate.
- (D) The Librarian shall publish any class of copyrighted works for which the Librarian has determined, pursuant to the rulemaking conducted under subparagraph (C), that noninfringing uses by persons who are

users of a copyrighted work are, or are likely to be, adversely affected, and the prohibition contained in subparagraph (A) shall not apply to such users with respect to such class of works for the ensuing 3-year period.

- (E) Neither the exception under subparagraph (B) from the applicability of the prohibition contained in subparagraph (A), nor any determination made in a rulemaking conducted under subparagraph (C), may be used as a defense in any action to enforce any provision of this title other than this paragraph.
- (2) No person shall manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, device, component, or part thereof, that —
 - (A) is primarily designed or produced for the purpose of circumventing a technological measure that effectively controls access to a work protected under this title;
 - (B) has only limited commercially significant purpose or use other than to circumvent a technological measure that effectively controls access to a work protected under this title; or
 - (C) is marketed by that person or another acting in concert with that person with that person's knowledge for use in circumventing a technological measure that effectively controls access to a work protected under this title.
- (3) As used in this subsection —
 - (A) to "circumvent a technological measure" means to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological measure, without the authority of the copyright owner; and
 - (B) a technological measure "effectively controls access to a work" if the measure, in the ordinary course of its operation, requires the application of information, or a process or a treatment, with the authority of the copyright owner, to gain access to the work.

(b) **Additional Violations**

- (1) No person shall manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, device, component, or part thereof, that —
 - (A) is primarily designed or produced for the purpose of circumventing protection afforded by a technological measure that effectively protects a right of a copyright owner under this title in a work or a portion thereof;
 - (B) has only limited commercially significant purpose or use other than to circumvent protection afforded by a technological measure that effectively protects a right of a copyright owner under this title in a work or a portion thereof; or
 - (C) is marketed by that person or another acting in concert with that person with that person's knowledge for use in circumventing protection afforded by a technological measure that effectively protects a right of a copyright owner under this title in a work or a

portion thereof.

- (2) As used in this subsection —
 - (A) to "circumvent protection afforded by a technological measure" means avoiding, bypassing, removing, deactivating, or otherwise impairing a technological measure; and
 - (B) a technological measure "effectively protects a right of a copyright owner under this title" if the measure, in the ordinary course of its operation, prevents, restricts, or otherwise limits the exercise of a right of a copyright owner under this title.

(c) **Other Rights, Etc, Not Affected**

- (1) Nothing in this section shall affect rights, remedies, limitations, or defenses to copyright infringement, including fair use, under this title.
- (2) Nothing in this section shall enlarge or diminish vicarious or contributory liability for copyright infringement in connection with any technology, product, service, device, component, or part thereof.
- (3) Nothing in this section shall require that the design of, or design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as such part or component, or the product in which such part or component is integrated, does not otherwise fall within the prohibitions of subsection (a)(2) or (b)(1).
- (4) Nothing in this section shall enlarge or diminish any rights of free speech or the press for activities using consumer electronics, telecommunications, or computing products.

(d) **Exemption for Nonprofit Libraries, Archives, and Educational Institutions**

- (1) A nonprofit library, archives, or educational institution which gains access to a commercially exploited copyrighted work solely in order to make a good faith determination of whether to acquire a copy of that work for the sole purpose of engaging in conduct permitted under this title shall not be in violation of subsection (a)(1)(A). A copy of a work to which access has been gained under this paragraph —
 - (A) may not be retained longer than necessary to make such good faith determination; and
 - (B) may not be used for any other purpose.
- (2) The exemption made available under paragraph (1) shall only apply with respect to a work when an identical copy of that work is not reasonably available in another form.
- (3) A nonprofit library, archives, or educational institution that willfully for the purpose of commercial advantage or financial gain violates paragraph (1) —
 - (A) shall, for the first offense, be subject to the civil remedies under section 1203; and
 - (B) shall, for repeated or subsequent offenses, in addition to the civil remedies under section 1203, forfeit the exemption provided under

paragraph (1).

- (4) This subsection may not be used as a defense to a claim under subsection (a)(2) or (b), nor may this subsection permit a nonprofit library, archives, or educational institution to manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, component, or part thereof, which circumvents a technological measure.
- (5) In order for a library or archives to qualify for the exemption under this subsection, the collections of that library or archives shall be —
 - (A) open to the public; or
 - (B) available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field.
- (e) **Law Enforcement, Intelligence, and Other Government Activities:** This section does not prohibit any lawfully authorized investigative, protective, information security, or intelligence activity of an officer, agent, or employee of the United States, a State, or a political subdivision of a State, or a person acting pursuant to a contract with the United States, a State, or a political subdivision of a State. For purposes of this subsection, the term "information security" means activities carried out in order to identify and address the vulnerabilities of a government computer, computer system, or computer network.
- (f) **Reverse Engineering**
 - (1) Notwithstanding the provisions of subsection (a)(1)(A), a person who has lawfully obtained the right to use a copy of a computer program may circumvent a technological measure that effectively controls access to a particular portion of that program for the sole purpose of identifying and analyzing those elements of the program that are necessary to achieve interoperability of an independently created computer program with other programs, and that have not previously been readily available to the person engaging in the circumvention, to the extent any such acts of identification and analysis do not constitute infringement under this title.
 - (2) Notwithstanding the provisions of subsections (a)(2) and (b), a person may develop and employ technological means to circumvent a technological measure, or to circumvent protection afforded by a technological measure, in order to enable the identification and analysis under paragraph (1), or for the purpose of enabling interoperability of an independently created computer program with other programs, if such means are necessary to achieve such interoperability, to the extent that doing so does not constitute infringement under this title.
 - (3) The information acquired through the acts permitted under paragraph (1), and the means permitted under paragraph (2), may be made available to others if the person referred to in paragraph (1) or (2), as the case may be, provides such information or means solely for the purpose of enabling interoperability of an independently created computer program with other programs, and to the extent that doing so does not constitute infringement under this title or violate applicable law other than this section.

- (4) For purposes of this subsection, the term "interoperability" means the ability of computer programs to exchange information, and of such programs mutually to use the information which has been exchanged.

(g) **Encryption Research**

- (1) **Definitions:** For purposes of this subsection —
- (A) the term "encryption research" means activities necessary to identify and analyze flaws and vulnerabilities of encryption technologies applied to copyrighted works, if these activities are conducted to advance the state of knowledge in the field of encryption technology or to assist in the development of encryption products; and
 - (B) the term "encryption technology" means the scrambling and descrambling of information using mathematical formulas or algorithms.
- (2) **Permissible Acts of Encryption Research:** Notwithstanding the provisions of subsection (a)(1)(A), it is not a violation of that subsection for a person to circumvent a technological measure as applied to a copy, phonorecord, performance, or display of a published work in the course of an act of good faith encryption research if —
- (A) the person lawfully obtained the encrypted copy, phonorecord, performance, or display of the published work;
 - (B) such act is necessary to conduct such encryption research;
 - (C) the person made a good faith effort to obtain authorization before the circumvention; and
 - (D) such act does not constitute infringement under this title or a violation of applicable law other than this section, including section 1030 of title 18 and those provisions of title 18 amended by the Computer Fraud and Abuse Act of 1986.
- (3) **Factors in Determining Exemption:** In determining whether a person qualifies for the exemption under paragraph (2), the factors to be considered shall include —
- (A) whether the information derived from the encryption research was disseminated, and if so, whether it was disseminated in a manner reasonably calculated to advance the state of knowledge or development of encryption technology, versus whether it was disseminated in a manner that facilitates infringement under this title or a violation of applicable law other than this section, including a violation of privacy or breach of security;
 - (B) whether the person is engaged in a legitimate course of study, is employed, or is appropriately trained or experienced, in the field of encryption technology; and
 - (C) whether the person provides the copyright owner of the work to which the technological measure is applied with notice of the findings and documentation of the research, and the time when such notice is provided.
- (4) **Use of Technological Means for Research Activities:** Notwithstanding the provisions of subsection (a)(2), it is not a violation of that subsection for a person to —

- (A) develop and employ technological means to circumvent a technological measure for the sole purpose of that person performing the acts of good faith encryption research described in paragraph (2); and
- (B) provide the technological means to another person with whom he or she is working collaboratively for the purpose of conducting the acts of good faith encryption research described in paragraph (2) or for the purpose of having that other person verify his or her acts of good faith encryption research described in paragraph (2).

- (5) **Report to Congress:** Not later than 1 year after the date of the enactment of this chapter, the Register of Copyrights and the Assistant Secretary for Communications and Information of the Department of Commerce shall jointly report to the Congress on the effect this subsection has had on —
- (A) encryption research and the development of encryption technology;
 - (B) the adequacy and effectiveness of technological measures designed to protect copyrighted works; and
 - (C) protection of copyright owners against the unauthorized access to their encrypted copyrighted works.

The report shall include legislative recommendations, if any.

- (h) **Exceptions Regarding Minors:** In applying subsection (a) to a component or part, the court may consider the necessity for its intended and actual incorporation in a technology, product, service, or device, which —
- (1) does not itself violate the provisions of this title; and
 - (2) has the sole purpose to prevent the access of minors to material on the Internet.

(i) **Protection of Personally Identifying Information**

- (1) **Circumvention Permitted:** Notwithstanding the provisions of subsection (a)(1)(A), it is not a violation of that subsection for a person to circumvent a technological measure that effectively controls access to a work protected under this title, if —
- (A) the technological measure, or the work it protects, contains the capability of collecting or disseminating personally identifying information reflecting the online activities of a natural person who seeks to gain access to the work protected;
 - (B) in the normal course of its operation, the technological measure, or the work it protects, collects or disseminates personally identifying information about the person who seeks to gain access to the work protected, without providing conspicuous notice of such collection or dissemination to such person, and without providing such person with the capability to prevent or restrict such collection or dissemination;
 - (C) the act of circumvention has the sole effect of identifying and disabling the capability described in subparagraph (A), and has no other effect on the ability of any person to gain access to any work; and
 - (D) the act of circumvention is carried out solely for the purpose of preventing the collection or dissemination of personally identifying information about a natural person who seeks to gain access to the work protected, and is not in violation of any other law.

- (2) **Inapplicability to Certain Technological Measures:** This subsection does not apply to a technological measure, or a work it protects, that does not collect or disseminate personally identifying information and that is disclosed to a user as not having or using such capability.

(j) **Security Testing**

- (1) **Definition:** For purposes of this subsection, the term "security testing" means accessing a computer, computer system, or computer network, solely for the purpose of good faith testing, investigating, or correcting, a security flaw or vulnerability, with the authorization of the owner or operator of such computer, computer system, or computer network.
- (2) **Permissible Acts of Security Testing:** Notwithstanding the provisions of subsection (a)(1)(A), it is not a violation of that subsection for a person to engage in an act of security testing, if such act does not constitute infringement under this title or a violation of applicable law other than this section, including section 1030 of title 18 and those provisions of title 18 amended by the Computer Fraud and Abuse Act of 1986.
- (3) **Factors in Determining Exemption:** In determining whether a person qualifies for the exemption under paragraph (2), the factors to be considered shall include —
- (A) whether the information derived from the security testing was used solely to promote the security of the owner or operator of such computer, computer system or computer network, or shared directly with the developer of such computer, computer system, or computer network; and
 - (B) whether the information derived from the security testing was used or maintained in a manner that does not facilitate infringement under this title or a violation of applicable law other than this section, including a violation of privacy or breach of security.
- (4) **Use of Technological Means for Security Testing:** Notwithstanding the provisions of subsection (a)(2), it is not a violation of that subsection for a person to develop, produce, distribute or employ technological means for the sole purpose of performing the acts of security testing described in subsection (2), provided such technological means does not otherwise violate section (a)(2).

(k) **Certain Analog Devices and Certain Technological Measures**

(1) **Certain Analog Devices**

- (A) Effective 18 months after the date of the enactment of this chapter, no person shall manufacture, import, offer to the public, provide or otherwise traffic in any —
- (i) VHS format analog video cassette recorder unless such recorder conforms to the automatic gain control copy control technology;
 - (ii) 8mm format analog video cassette camcorder unless such camcorder conforms to the automatic gain control technology;

- (iii) Beta format analog video cassette recorder, unless such recorder conforms to the automatic gain control copy control technology, except that this requirement shall not apply until there are 1,000 Beta format analog video cassette recorders sold in the United States in any one calendar year after the date of the enactment of this chapter;
 - (iv) 8mm format analog video cassette recorder that is not an analog video cassette camcorder, unless such recorder conforms to the automatic gain control copy control technology, except that this requirement shall not apply until there are 20,000 such recorders sold in the United States in any one calendar year after the date of the enactment of this chapter; or
 - (v) analog video cassette recorder that records using an NTSC format video input and that is not otherwise covered under clauses (i) through (iv), unless such device conforms to the automatic gain control copy control technology.
- (B) Effective on the date of the enactment of this chapter, no person shall manufacture, import, offer to the public, provide or otherwise traffic in —
- (i) any VHS format analog video cassette recorder or any 8mm format analog video cassette recorder if the design of the model of such recorder has been modified after such date of enactment so that a model of recorder that previously conformed to the automatic gain control copy control technology no longer conforms to such technology; or
 - (ii) any VHS format analog video cassette recorder, or any 8mm format analog video cassette recorder that is not an 8mm analog video cassette camcorder, if the design of the model of such recorder has been modified after such date of enactment so that a model of recorder that previously conformed to the four-line colorstripe copy control technology no longer conforms to such technology.

Manufacturers that have not previously manufactured or sold a VHS format analog video cassette recorder, or an 8mm format analog cassette recorder, shall be required to conform to the four-line colorstripe copy control technology in the initial model of any such recorder manufactured after the date of the enactment of this chapter, and thereafter to continue conforming to the four-line colorstripe copy control technology. For purposes of this subparagraph, an analog video cassette recorder "conforms to" the four-line colorstripe copy control technology if it records a signal that, when played back by the playback function of that recorder in the normal viewing mode, exhibits, on a reference display device, a display containing distracting visible lines through portions of the viewable picture.

- (2) **Certain Encoding Restrictions:** No person shall apply the automatic gain control copy control technology or colorstripe copy control technology to prevent or limit consumer copying except such copying —
- (A) of a single transmission, or specified group of transmissions, of live events or of audiovisual works for which a member of the public has

exercised choice in selecting the transmissions, including the content of the transmissions or the time of receipt of such transmissions, or both, and as to which such member is charged a separate fee for each such transmission or specified group of transmissions;

- (B) from a copy of a transmission of a live event or an audiovisual work if such transmission is provided by a channel or service where payment is made by a member of the public for such channel or service in the form of a subscription fee that entitles the member of the public to receive all of the programming contained in such channel or service;
- (C) from a physical medium containing one or more prerecorded audiovisual works; or
- (D) from a copy of a transmission described in subparagraph (A) or from a copy made from a physical medium described in subparagraph (C).

In the event that a transmission meets both the conditions set forth in subparagraph (A) and those set forth in subparagraph (B), the transmission shall be treated as a transmission described in subparagraph (A).

(3) **Inapplicability:** This subsection shall not —

- (A) require any analog video cassette camcorder to conform to the automatic gain control copy control technology with respect to any video signal received through a camera lens;
- (B) apply to the manufacture, importation, offer for sale, provision of, or other trafficking in, any professional analog video cassette recorder; or
- (C) apply to the offer for sale or provision of, or other trafficking in, any previously owned analog video cassette recorder, if such recorder was legally manufactured and sold when new and not subsequently modified in violation of paragraph (1)(B).

(4) **Definitions:** For purposes of this subsection:

- (A) An "analog video cassette recorder" means a device that records, or a device that includes a function that records, on electromagnetic tape in an analog format the electronic impulses produced by the video and audio portions of a television program, motion picture, or other form of audiovisual work.
- (B) An "analog video cassette camcorder" means an analog video cassette recorder that contains a recording function that operates through a camera lens and through a video input that may be connected with a television or other video playback device.
- (C) An analog video cassette recorder "conforms" to the automatic gain control copy control technology if it —
 - (i) detects one or more of the elements of such technology and does not record the motion picture or transmission protected by such technology; or
 - (ii) records a signal that, when played back, exhibits a meaningfully distorted or degraded display.
- (D) The term "professional analog video cassette recorder" means an

analog video cassette recorder that is designed, manufactured, marketed, and intended for use by a person who regularly employs such a device for a lawful business or industrial use, including making, performing, displaying, distributing, or transmitting copies of motion pictures on a commercial scale.

- (E) The terms "VHS format," "8mm format," "Beta format," "automatic gain control copy control technology," "colorstripe copy control technology," "four-line version of the colorstripe copy control technology," and "NTSC" have the meanings that are commonly understood in the consumer electronics and motion picture industries as of the date of the enactment of this chapter.
- (5) **Violations:** Any violation of paragraph (1) of this subsection shall be treated as a violation of subsection (b)(1) of this section. Any violation of paragraph (2) of this subsection shall be deemed an "act of circumvention" for the purposes of section 1203(c)(3)(A) of this chapter.

§ 1202: Integrity of copyright management information

- (a) **False Copyright Management Information:** No person shall knowingly and with the intent to induce, enable, facilitate, or conceal infringement —
 - (1) provide copyright management information that is false, or
 - (2) distribute or import for distribution copyright management information that is false.
- (b) **Removal or Alteration of Copyright Management Information:** No person shall, without the authority of the copyright owner or the law —
 - (1) intentionally remove or alter any copyright management information,
 - (2) distribute or import for distribution copyright management information knowing that the copyright management information has been removed or altered without authority of the copyright owner or the law, or
 - (3) distribute, import for distribution, or publicly perform works, copies of works, or phonorecords, knowing that copyright management information has been removed or altered without authority of the copyright owner or the law,
 knowing, or, with respect to civil remedies under section 1203, having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any right under this title.
- (c) **Definition:** As used in this section, the term "copyright management information" means any of the following information conveyed in connection with copies or phonorecords of a work or performances or displays of a work, including in digital form, except that such term does not include any personally identifying information about a user of a work or of a copy, phonorecord, performance, or display of a work:
 - (1) The title and other information identifying the work, including the information set forth on a notice of copyright.
 - (2) The name of, and other identifying information about, the author of a work.
 - (3) The name of, and other identifying information about, the copyright owner of the work, including the information set forth in a notice of copyright.
 - (4) With the exception of public performances of works by radio and television

broadcast stations, the name of, and other identifying information about, a performer whose performance is fixed in a work other than an audiovisual work.

- (5) With the exception of public performances of works by radio and television broadcast stations, in the case of an audiovisual work, the name of, and other identifying information about, a writer, performer, or director who is credited in the audiovisual work.
- (6) Terms and conditions for use of the work.
- (7) Identifying numbers or symbols referring to such information or links to such information.
- (8) Such other information as the Register of Copyrights may prescribe by regulation, except that the Register of Copyrights may not require the provision of any information concerning the user of a copyrighted work.

(d) **Law Enforcement, Intelligence, and Other Government Activities:** This section does not prohibit any lawfully authorized investigative, protective, information security, or intelligence activity of an officer, agent, or employee of the United States, a State, or a political subdivision of a State, or a person acting pursuant to a contract with the United States, a State, or a political subdivision of a State. For purposes of this subsection, the term "information security" means activities carried out in order to identify and address the vulnerabilities of a government computer, computer system, or computer network.

(e) **Limitations on Liability**

- (1) **Analog Transmissions:** In the case of an analog transmission, a person who is making transmissions in its capacity as a broadcast station, or as a cable system, or someone who provides programming to such station or system, shall not be liable for a violation of subsection (b) if —
 - (A) avoiding the activity that constitutes such violation is not technically feasible or would create an undue financial hardship on such person; and
 - (B) such person did not intend, by engaging in such activity, to induce, enable, facilitate, or conceal infringement of a right under this title.

(2) **Digital Transmissions**

- (A) If a digital transmission standard for the placement of copyright management information for a category of works is set in a voluntary, consensus standard-setting process involving a representative cross-section of broadcast stations or cable systems and copyright owners of a category of works that are intended for public performance by such stations or systems, a person identified in paragraph (1) shall not be liable for a violation of subsection (b) with respect to the particular copyright management information addressed by such standard if —
 - (i) the placement of such information by someone other than such person is not in accordance with such standard; and
 - (ii) the activity that constitutes such violation is not intended to induce, enable, facilitate, or conceal infringement of a right under this title.

- (B) Until a digital transmission standard has been set pursuant to subparagraph (A) with respect to the placement of copyright management information for a category of works, a person identified in paragraph (1) shall not be liable for a violation of subsection (b) with respect to such copyright management information, if the activity that constitutes such violation is not intended to induce, enable, facilitate, or conceal infringement of a right under this title, and if —
 - (i) the transmission of such information by such person would result in a perceptible visual or aural degradation of the digital signal; or
 - (ii) the transmission of such information by such person would conflict with —
 - (I) an applicable government regulation relating to transmission of information in a digital signal;
 - (II) an applicable industry-wide standard relating to the transmission of information in a digital signal that was adopted by a voluntary consensus standards body prior to the effective date of this chapter; or
 - (III) an applicable industry-wide standard relating to the transmission of information in a digital signal that was adopted in a voluntary, consensus standards-setting process open to participation by a representative cross-section of broadcast stations or cable systems and copyright owners of a category of works that are intended for public performance by such stations or systems.
- (3) **Definitions:** As used in this subsection —
 - (A) the term "broadcast station" has the meaning given that term in section 3 of the Communications Act of 1934 (47 U.S.C. 153); and
 - (B) the term "cable system" has the meaning given that term in section 602 of the Communications Act of 1934 (47 U.S.C. 522).

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