

of 2004, Pub. L. 108-419, see section 6 of Pub. L. 109-303, set out as a note under section 111 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-419 effective 6 months after Nov. 30, 2004, subject to transition provisions, see section 6 of Pub. L. 108-419, set out as an Effective Date; Transition Provisions note under section 801 of this title.

SUBCHAPTER D—PROHIBITION ON CERTAIN INFRINGEMENT ACTIONS, REMEDIES, AND ARBITRATION

**§ 1008. Prohibition on certain infringement actions**

No action may be brought under this title alleging infringement of copyright based on the manufacture, importation, or distribution of a digital audio recording device, a digital audio recording medium, an analog recording device, or an analog recording medium, or based on the noncommercial use by a consumer of such a device or medium for making digital musical recordings or analog musical recordings.

(Added Pub. L. 102-563, § 2, Oct. 28, 1992, 106 Stat. 4244.)

**§ 1009. Civil remedies**

(a) CIVIL ACTIONS.—Any interested copyright party injured by a violation of section 1002 or 1003 may bring a civil action in an appropriate United States district court against any person for such violation.

(b) OTHER CIVIL ACTIONS.—Any person injured by a violation of this chapter may bring a civil action in an appropriate United States district court for actual damages incurred as a result of such violation.

(c) POWERS OF THE COURT.—In an action brought under subsection (a), the court—

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

(2) in the case of a violation of section 1002, or in the case of an injury resulting from a failure to make royalty payments required by section 1003, shall award damages under subsection (d);

(3) in its discretion may allow the recovery of costs by or against any party other than the United States or an officer thereof; and

(4) in its discretion may award a reasonable attorney's fee to the prevailing party.

(d) AWARD OF DAMAGES.—

(1) DAMAGES FOR SECTION 1002 OR 1003 VIOLATIONS.—

(A) ACTUAL DAMAGES.—(i) In an action brought under subsection (a), if the court finds that a violation of section 1002 or 1003 has occurred, the court shall award to the complaining party its actual damages if the complaining party elects such damages at any time before final judgment is entered.

(ii) In the case of section 1003, actual damages shall constitute the royalty payments that should have been paid under section 1004 and deposited under section 1005. In such a case, the court, in its discretion, may award an additional amount of not to exceed 50 percent of the actual damages.

(B) STATUTORY DAMAGES FOR SECTION 1002 VIOLATIONS.—

(i) DEVICE.—A complaining party may recover an award of statutory damages for each violation of section 1002(a) or (c) in the sum of not more than \$2,500 per device involved in such violation or per device on which a service prohibited by section 1002(c) has been performed, as the court considers just.

(ii) DIGITAL MUSICAL RECORDING.—A complaining party may recover an award of statutory damages for each violation of section 1002(d) in the sum of not more than \$25 per digital musical recording involved in such violation, as the court considers just.

(iii) TRANSMISSION.—A complaining party may recover an award of damages for each transmission or communication that violates section 1002(e) in the sum of not more than \$10,000, as the court considers just.

(2) REPEATED VIOLATIONS.—In any case in which the court finds that a person has violated section 1002 or 1003 within 3 years after a final judgment against that person for another such violation was entered, the court may increase the award of damages to not more than double the amounts that would otherwise be awarded under paragraph (1), as the court considers just.

(3) INNOCENT VIOLATIONS OF SECTION 1002.—The court in its discretion may reduce the total award of damages against a person violating section 1002 to a sum of not less than \$250 in any case in which the court finds that the violator was not aware and had no reason to believe that its acts constituted a violation of section 1002.

(e) PAYMENT OF DAMAGES.—Any award of damages under subsection (d) shall be deposited with the Register pursuant to section 1005 for distribution to interested copyright parties as though such funds were royalty payments made pursuant to section 1003.

(f) IMPOUNDING OF ARTICLES.—At any time while an action under subsection (a) is pending, the court may order the impounding, on such terms as it deems reasonable, of any digital audio recording device, digital musical recording, or device specified in section 1002(c) that is in the custody or control of the alleged violator and that the court has reasonable cause to believe does not comply with, or was involved in a violation of, section 1002.

(g) REMEDIAL MODIFICATION AND DESTRUCTION OF ARTICLES.—In an action brought under subsection (a), the court may, as part of a final judgment or decree finding a violation of section 1002, order the remedial modification or the destruction of any digital audio recording device, digital musical recording, or device specified in section 1002(c) that—

(1) does not comply with, or was involved in a violation of, section 1002, and

(2) is in the custody or control of the violator or has been impounded under subsection (f).

(Added Pub. L. 102-563, § 2, Oct. 28, 1992, 106 Stat. 4245.)

### § 1010. Determination of certain disputes

(a) SCOPE OF DETERMINATION.—Before the date of first distribution in the United States of a digital audio recording device or a digital audio interface device, any party manufacturing, importing, or distributing such device, and any interested copyright party may mutually agree to petition the Copyright Royalty Judges to determine whether such device is subject to section 1002, or the basis on which royalty payments for such device are to be made under section 1003.

(b) INITIATION OF PROCEEDINGS.—The parties under subsection (a) shall file the petition with the Copyright Royalty Judges requesting the commencement of a proceeding. Within 2 weeks after receiving such a petition, the Chief Copyright Royalty Judge shall cause notice to be published in the Federal Register of the initiation of the proceeding.

(c) STAY OF JUDICIAL PROCEEDINGS.—Any civil action brought under section 1009 against a party to a proceeding under this section shall, on application of one of the parties to the proceeding, be stayed until completion of the proceeding.

(d) PROCEEDING.—The Copyright Royalty Judges shall conduct a proceeding with respect to the matter concerned, in accordance with such procedures as the Copyright Royalty Judges may adopt. The Copyright Royalty Judges shall act on the basis of a fully documented written record. Any party to the proceeding may submit relevant information and proposals to the Copyright Royalty Judges. The parties to the proceeding shall each bear their respective costs of participation.

(e) JUDICIAL REVIEW.—Any determination of the Copyright Royalty Judges under subsection (d) may be appealed, by a party to the proceeding, in accordance with section 803(d) of this title. The pendency of an appeal under this subsection shall not stay the determination of the Copyright Royalty Judges. If the court modifies the determination of the Copyright Royalty Judges, the court shall have jurisdiction to enter its own decision in accordance with its final judgment. The court may further vacate the determination of the Copyright Royalty Judges and remand the case for proceedings as provided in this section.

(Added Pub. L. 102-563, §2, Oct. 28, 1992, 106 Stat. 4246; amended Pub. L. 103-198, §6(b)(5), Dec. 17, 1993, 107 Stat. 2312; Pub. L. 108-419, §5(i)(4)(A), Nov. 30, 2004, 118 Stat. 2368.)

#### AMENDMENTS

2004—Pub. L. 108-419 amended section catchline and text generally, substituting provisions relating to determination of certain disputes for provisions relating to arbitration of certain disputes.

1993—Subsec. (b). Pub. L. 103-198, §6(b)(5)(A), substituted “Librarian of Congress” for “Copyright Royalty Tribunal” before “requesting the commencement” and for “Tribunal” wherever appearing.

Subsec. (e). Pub. L. 103-198, §6(b)(5)(B), substituted “Librarian of Congress” for “Copyright Royalty Tribunal” in heading and text.

Subsec. (f). Pub. L. 103-198, §6(b)(5)(C), substituted “Librarian of Congress” for “Copyright Royalty Tribunal” in heading and before “shall adopt or reject” in text, substituted “Librarian of Congress” for “Tribunal” wherever appearing, and substituted “the Librarian’s” for “its”.

Subsec. (g). Pub. L. 103-198, §6(b)(5)(D), substituted “Librarian of Congress” for “Copyright Royalty Tribunal” after “Any decision of the”, “decision of the Librarian of Congress” for “Tribunal’s decision” in second sentence, and “Librarian of Congress” for “Tribunal” wherever appearing in third through fifth sentences.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-419 effective 6 months after Nov. 30, 2004, subject to transition provisions, see section 6 of Pub. L. 108-419, set out as an Effective Date; Transition Provisions note under section 801 of this title.

### CHAPTER 11—SOUND RECORDINGS AND MUSIC VIDEOS

Sec.

1101. Unauthorized fixation and trafficking in sound recordings and music videos.

#### § 1101. Unauthorized fixation and trafficking in sound recordings and music videos

(a) UNAUTHORIZED ACTS.—Anyone who, without the consent of the performer or performers involved—

(1) fixes the sounds or sounds and images of a live musical performance in a copy or phonorecord, or reproduces copies or phonorecords of such a performance from an unauthorized fixation,

(2) transmits or otherwise communicates to the public the sounds or sounds and images of a live musical performance, or

(3) distributes or offers to distribute, sells or offers to sell, rents or offers to rent, or traffics in any copy or phonorecord fixed as described in paragraph (1), regardless of whether the fixations occurred in the United States,

shall be subject to the remedies provided in sections 502 through 505, to the same extent as an infringer of copyright.

(b) DEFINITION.—In this section, the term “traffic” has the same meaning as in section 2320(e)<sup>1</sup> of title 18.

(c) APPLICABILITY.—This section shall apply to any act or acts that occur on or after the date of the enactment of the Uruguay Round Agreements Act.

(d) STATE LAW NOT PREEMPTED.—Nothing in this section may be construed to annul or limit any rights or remedies under the common law or statutes of any State.

(Added Pub. L. 103-465, title V, §512(a), Dec. 8, 1994, 108 Stat. 4974; amended Pub. L. 109-181, §2(c)(3), Mar. 16, 2006, 120 Stat. 288.)

#### REFERENCES IN TEXT

Section 2320 of title 18, referred to in subsec. (b), was amended generally by Pub. L. 112-81, div. A, title VIII, §818(h), Dec. 31, 2011, 125 Stat. 1497, and, as so amended, provisions similar to those formerly appearing in subsec. (e) are now contained in subsec. (f).

The date of the enactment of the Uruguay Round Agreements Act, referred to in subsec. (c), is the date of enactment of Pub. L. 103-465, which was approved Dec. 8, 1994.

#### AMENDMENTS

2006—Subsec. (b). Pub. L. 109-181 added subsec. (b) and struck out heading and text of former subsec. (b). Text

<sup>1</sup> See References in Text note below.