

**§ 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.

read as follows: “As used in this section, the term ‘traffic in’ means transport, transfer, or otherwise dispose of, to another, as consideration for anything of value, or make or obtain control of with intent to transport, transfer, or dispose of.”

## CHAPTER 12—COPYRIGHT PROTECTION AND MANAGEMENT SYSTEMS

Sec.	
1201.	Circumvention of copyright protection systems.
1202.	Integrity of copyright management information.
1203.	Civil remedies.
1204.	Criminal offenses and penalties.
1205.	Savings clause.

### § 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 rulemaking, the Librarian shall examine—

- (i) the availability for use of copyrighted works;
- (ii) the availability for use of works for non-profit 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.