

(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.

(Added Pub. L. 105-304, title II, §202(a), Oct. 28, 1998, 112 Stat. 2877; amended Pub. L. 106-44, §1(d), Aug. 5, 1999, 113 Stat. 222; Pub. L. 111-295, §3(a), Dec. 9, 2010, 124 Stat. 3180.)

Editorial Notes

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (h)(6), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

CODIFICATION

Another section 512 was renumbered section 513 of this title.

AMENDMENTS

2010—Subsec. (c)(2). Pub. L. 111-295 struck out “, in both electronic and hard copy formats” after “Internet” in concluding provisions.

1999—Subsec. (e). Pub. L. 106-44, §1(d)(1)(A), substituted “Limitation on Liability of Nonprofit Educational Institutions” for “Limitation on liability of nonprofit educational institutions” in heading.

Subsec. (e)(2). Pub. L. 106-44, §1(d)(1)(B), struck out par. heading “Injunctions”.

Subsec. (j)(3). Pub. L. 106-44, §1(d)(2), substituted “Notice and ex parte orders” for “Notice and Ex Parte Orders” in heading.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 105-304, title II, §203, Oct. 28, 1998, 112 Stat. 2886, provided that: “This title [enacting this section and provisions set out as a note under section 101 of this title] and the amendments made by this title shall take effect on the date of the enactment of this Act [Oct. 28, 1998].”

§ 513. Determination of reasonable license fees for individual proprietors

In the case of any performing rights society subject to a consent decree which provides for the determination of reasonable license rates or fees to be charged by the performing rights society, notwithstanding the provisions of that consent decree, an individual proprietor who owns or operates fewer than 7 non-publicly traded establishments in which nondramatic musical works are performed publicly and who claims that any license agreement offered by that performing rights society is unreasonable in its license rate or fee as to that individual proprietor, shall be entitled to determination of a reasonable license rate or fee as follows:

(1) The individual proprietor may commence such proceeding for determination of a reasonable license rate or fee by filing an application in the applicable district court under para-

graph (2) that a rate disagreement exists and by serving a copy of the application on the performing rights society. Such proceeding shall commence in the applicable district court within 90 days after the service of such copy, except that such 90-day requirement shall be subject to the administrative requirements of the court.

(2) The proceeding under paragraph (1) shall be held, at the individual proprietor's election, in the judicial district of the district court with jurisdiction over the applicable consent decree or in that place of holding court of a district court that is the seat of the Federal circuit (other than the Court of Appeals for the Federal Circuit) in which the proprietor's establishment is located.

(3) Such proceeding shall be held before the judge of the court with jurisdiction over the consent decree governing the performing rights society. At the discretion of the court, the proceeding shall be held before a special master or magistrate judge appointed by such judge. Should that consent decree provide for the appointment of an advisor or advisors to the court for any purpose, any such advisor shall be the special master so named by the court.

(4) In any such proceeding, the industry rate shall be presumed to have been reasonable at the time it was agreed to or determined by the court. Such presumption shall in no way affect a determination of whether the rate is being correctly applied to the individual proprietor.

(5) Pending the completion of such proceeding, the individual proprietor shall have the right to perform publicly the copyrighted musical compositions in the repertoire of the performing rights society by paying an interim license rate or fee into an interest bearing escrow account with the clerk of the court, subject to retroactive adjustment when a final rate or fee has been determined, in an amount equal to the industry rate, or, in the absence of an industry rate, the amount of the most recent license rate or fee agreed to by the parties.

(6) Any decision rendered in such proceeding by a special master or magistrate judge named under paragraph (3) shall be reviewed by the judge of the court with jurisdiction over the consent decree governing the performing rights society. Such proceeding, including such review, shall be concluded within 6 months after its commencement.

(7) Any such final determination shall be binding only as to the individual proprietor commencing the proceeding, and shall not be applicable to any other proprietor or any other performing rights society, and the performing rights society shall be relieved of any obligation of nondiscrimination among similarly situated music users that may be imposed by the consent decree governing its operations.

(8) An individual proprietor may not bring more than one proceeding provided for in this section for the determination of a reasonable license rate or fee under any license agreement with respect to any one performing rights society.

(9) For purposes of this section, the term "industry rate" means the license fee a performing rights society has agreed to with, or which has been determined by the court for, a significant segment of the music user industry to which the individual proprietor belongs.

(Added Pub. L. 105-298, title II, §203(a), Oct. 27, 1998, 112 Stat. 2831, §512; renumbered §513, Pub. L. 106-44, §1(c)(1), Aug. 5, 1999, 113 Stat. 221.)

Editorial Notes

AMENDMENTS

1999—Pub. L. 106-44 renumbered section 512 of this title as this section.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective 90 days after Oct. 27, 1998, see section 207 of Pub. L. 105-298, set out as an Effective Date of 1998 Amendment note under section 101 of this title.

CHAPTER 6—IMPORTATION AND EXPORTATION

Sec. [601.	Repealed.]
602. ¹	Infringing importation of copies or phonorecords.
603.	Importation prohibitions: Enforcement and disposition of excluded articles.

Editorial Notes

AMENDMENTS

2010—Pub. L. 111-295, §4(a), (b)(1)(A), Dec. 9, 2010, 124 Stat. 3180, substituted "IMPORTATION AND EXPORTATION" for "MANUFACTURING REQUIREMENTS, IMPORTATION, AND EXPORTATION" in chapter heading and struck out item 601 "Manufacture, importation, and public distribution of certain copies".

2008—Pub. L. 110-403, title I, §105(a), Oct. 13, 2008, 122 Stat. 4259, substituted "MANUFACTURING REQUIREMENTS, IMPORTATION, AND EXPORTATION" for "MANUFACTURING REQUIREMENTS AND IMPORTATION" in chapter heading.

[§ 601. Repealed. Pub. L. 111-295, §4(a), Dec. 9, 2010, 124 Stat. 3180]

Section, Pub. L. 94-553, title I, §101, Oct. 19, 1976, 90 Stat. 2588; Pub. L. 97-215, July 13, 1982, 96 Stat. 178; Pub. L. 105-80, §12(a)(15), (16), Nov. 13, 1997, 111 Stat. 1535; Pub. L. 110-403, title I, §105(c)(2), Oct. 13, 2008, 122 Stat. 4260, related to manufacture, importation, and public distribution of certain copies of nondramatic English-language literary material protected under this title.

§ 602. Infringing importation or exportation of copies or phonorecords

(a) INFRINGING IMPORTATION OR EXPORTATION.—

(1) IMPORTATION.—Importation into the United States, without the authority of the owner of copyright under this title, of copies or phonorecords of a work that have been acquired outside the United States is an infringement of the exclusive right to distribute copies or phonorecords under section 106, actionable under section 501.

(2) IMPORTATION OR EXPORTATION OF INFRINGING ITEMS.—Importation into the United

¹ So in original. Does not conform to section catchline.