

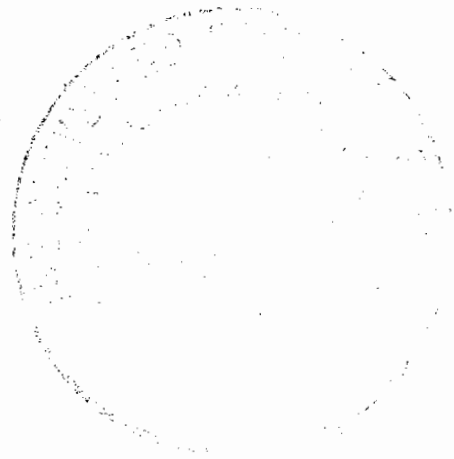
UNITED STATES CODE
CONGRESSIONAL AND
ADMINISTRATIVE NEWS

105th Congress—Second Session
1998

Convened January 27, 1998
Adjourned December 19, 1998

Volume 3

PUBLIC LAWS 105-277 to 105-333
[112 Stat. pages 2681 to 3136]



DIGITAL MILLENNIUM COPYRIGHT ACT

*For Legislative History of Act, see Report for P.L. 105-304 in U.S.C.C. & A.N
Legislative History Section
For Signing Statement of Act, see Statement for P.L. 105-304 in U.S.C.C. & A.N
Legislative History Section*

An Act to amend title 17, United States Code, to implement the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty, and for other purposes.

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

Digital
Millennium
Copyright Act,
17 USC 101 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Digital Millennium Copyright Act".

SEC. 2. TABLE OF CONTENTS.

- Sec. 1. Short title.
- Sec. 2. Table of contents.

TITLE I--WIPO TREATIES IMPLEMENTATION

- Sec. 101. Short title.
- Sec. 102. Technical amendments.
- Sec. 103. Copyright protection systems and copyright management information.
- Sec. 104. Evaluation of impact of copyright law and amendments on electronic commerce and technological development.
- Sec. 105. Effective date.

TITLE II--ONLINE COPYRIGHT INFRINGEMENT LIABILITY LIMITATION

- Sec. 201. Short title.
- Sec. 202. Limitations on liability for copyright infringement.
- Sec. 203. Effective date.

TITLE III--COMPUTER MAINTENANCE OR REPAIR COPYRIGHT EXEMPTION

- Sec. 301. Short title.
- Sec. 302. Limitations on exclusive rights; computer programs.

TITLE IV--MISCELLANEOUS PROVISIONS

- Sec. 401. Provisions Relating to the Commissioner of Patents and Trademarks and the Register of Copyrights.
- Sec. 402. Ephemeral recordings.
- Sec. 403. Limitations on exclusive rights; distance education.
- Sec. 404. Exemption for libraries and archives.
- Sec. 405. Scope of exclusive rights in sound recordings; ephemeral recordings.
- Sec. 406. Assumption of contractual obligations related to transfers of rights in motion pictures.
- Sec. 407. Effective date.

TITLE V--PROTECTION OF CERTAIN ORIGINAL DESIGNS

- Sec. 501. Short title.
- Sec. 502. Protection of certain original designs.
- Sec. 503. Conforming amendments.
- Sec. 504. Joint study of the effect of this title.
- Sec. 505. Effective date.

SEC. 1
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Treaties

SEC. 10

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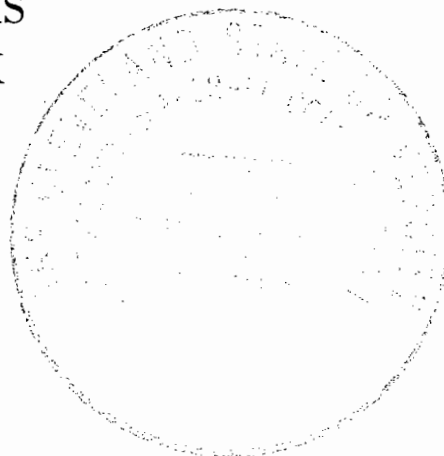
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Volume 5

LEGISLATIVE HISTORY:
PUBLIC LAWS 105-261 to 105-393
PROCLAMATIONS
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TABLES and INDEX



DIGITAL MILLENNIUM COPYRIGHT ACT

PUBLIC LAW 105-304, see page 112 Stat. 2360

DATES OF CONSIDERATION AND PASSAGE

House: August 4, September 23, 1998

Senate: May 14, August .31, September 17, 1998

Cong. Record Vol. 144 (1998)

House Report (Judiciary Committee)

No. 105-551(I) May 22, 1998

[To accompany H.R. 2281]

House Report (Commerce Committee)

No. 105-551(II) July 22, 1998

[To accompany H.R. 2281]

Senate Report (Judiciary Committee)

No. 105-190, May 6, 1998

[To accompany S. 2037]

House Conference Report

No. 105-796, October 8, 1998

[To accompany H.R. 2281]

The House Conference Report is set out below .

HOUSE CONFERENCE REPORT NO. 105-796

[page 1]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2281), to amend title 17, United States Code, to implement the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

under the doctrines of respondeat superior, or of contributory liability, where liability does not now exist. Further, subsection (e) does not alter any of the existing limitations on the rights of copyright owners that are already contained in the Copyright Act. So, for example, subsection (e) has no impact on the fair use (section 107) doctrine or the availability of fair use in a university setting; similarly, section 110 of the Copyright Act dealing with classroom performance and distance

[page 76]

learning is not changed by subsection (e). In this regard, subsection (e) is fully consistent with the rest of section 512, which neither creates any new liabilities for service providers, nor affects any defense to infringement available to a service provider. Finally, subsection (e) has no applicability to any case asserting that a university is liable for copyright infringement in any capacity other than as a service provider.

SECTION 203. EFFECTIVE DATE

The Senate recedes to House section 203. This section sets forth the effective date of the amendments made by this title. The corresponding sections of the House bill and the Senate amendment are substantively identical.

TITLE III—COMPUTER MAINTENANCE OR REPAIR COPYRIGHT EXEMPTION

SECTIONS 301-302

The Senate recedes to the House sections 301-302. These sections effect a minor, yet important clarification in section 117 of the Copyright Act to ensure that the lawful owner or lessee of a computer machine may authorize an independent service provider—a person unaffiliated with either the owner or lessee of the machine—to activate the machine for the sole purpose of servicing its hardware components. When a computer is activated, certain software or parts thereof is automatically copied into the machine's random access memory, or "RAM". A clarification in the Copyright Act is necessary in light of judicial decisions holding that such copying is a "reproduction" under section 106 of the Copyright Act (17 U.S.C. 106),² thereby calling into question the right of an independent service provider who is not the licensee of the computer program resident on the client's machine to even activate that machine for the purpose of servicing the hardware components. This section does not in any way alter the law with respect to the scope of the term "reproduction" as it is used the Copyright Act. Rather, this section it is narrowly crafted to achieve the objectives just described—namely, ensuring that an independent service provider may turn on a client's computer machine in order to service its hardware components, provided that such service provider complies with the provisions of this section designed to protect the rights of copyright owners of computer software. The corresponding sections of the House bill and the Senate amendment are substantively identical.

² See *MAI Sys. Corp. v. Peak Computer*, 991 F.2d 511 (9th Cir. 1993), cert. denied, 114 S.Ct. 671 (1994).