

# HEINONLINE

Citation: 4 William H. Manz Federal Copyright Law The  
Histories of the Major Enactments of the 105th  
1 1999

Content downloaded/printed from  
HeinOnline (<http://heinonline.org>)  
Fri Apr 12 21:11:48 2013

- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <http://heinonline.org/HOL/License>
- The search text of this PDF is generated from uncorrected OCR text.

105TH CONGRESS  
1ST SESSION

# S. 1146

To amend title 17, United States Code, to provide limitations on copyright liability relating to material on-line, and for other purposes.

---

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 3, 1997

Mr. ASHCROFT introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

## A BILL

To amend title 17, United States Code, to provide limitations on copyright liability relating to material on-line, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Digital Copyright Clar-  
5 ification and Technology Education Act of 1997”.

6 **TITLE 1—DIGITAL COPYRIGHT CLARIFICATION**

7 **SEC. 101. PURPOSES.**

8       The purposes of this Act are—

- 1           (1) to clarify the application of copyright law in  
2           the unique environment of Internet and on-line com-  
3           munication;
- 4           (2) to foster the continued growth and develop-  
5           ment of the Internet as a means of communication  
6           and commerce, including the lawful distribution of  
7           intellectual property;
- 8           (3) to protect the rights of copyright owners in  
9           the digital environment;
- 10          (4) to clarify that providing network services  
11          and facilities with respect to the transmission of  
12          electronic communications of another person does  
13          not result in liability under the Copyright Act;
- 14          (5) to clarify that Internet and on-line service  
15          providers are not liable for third-party copyright in-  
16          fringements unless they have received notice in com-  
17          pliance with this Act of the infringing material and  
18          have a reasonable opportunity to limit the third-  
19          party infringement; and
- 20          (6) to create incentives for the rapid elimination  
21          of infringing material residing on an electronic com-  
22          munications system or network without litigation.

1 **SEC. 102. CLARIFICATION OF LIABILITY.**

2 (a) IN GENERAL.—Chapter 5 of title 17, United  
3 States Code, is amended by adding after section 511 the  
4 following new section:

5 **“§ 512. Liability relating to material on the Internet**  
6 **and on-line**

7 “(a) MATERIAL BEING TRANSMITTED THROUGH AN  
8 ELECTRONIC COMMUNICATIONS SYSTEM OR NETWORK.—

9 “(1) NETWORK SERVICES WITH RESPECT TO  
10 THE TRANSMISSION OF ELECTRONIC COMMUNICA-  
11 TIONS.—A person shall not be liable for direct, vi-  
12 carious or contributory infringement of copyright  
13 arising out of providing electronic communications  
14 network services or facilities with respect to a copy-  
15 right infringement by a user. A person shall be con-  
16 sidered to provide “network services and facilities”  
17 when such person transmits, routes or provides con-  
18 nections for material on behalf of a user over an  
19 electronic communications system or network con-  
20 trolled or operated by or for the person, including  
21 intermediate and transient storage, the processing of  
22 information, and the provision of facilities therefor,  
23 if—

24 “(A) the provision of services is for the  
25 purpose of managing, controlling or operating a  
26 communications system or network, supplying

1 local access, local exchange, telephone toll,  
2 trunk line, private line, or backbone services, in-  
3 cluding network components or functions nec-  
4 essary to the transmission of material contained  
5 in electronic communications carried over those  
6 services; or .

7 “(B) the transmission of material over the  
8 system or network on behalf of a user does not  
9 involve the generation or material alteration of  
10 content by the person.

11 “(2) PRIVATE AND REAL-TIME COMMUNICATION  
12 SERVICES.—A person shall not be liable for direct,  
13 vicarious or contributory infringement of copyright  
14 arising from supplying to another—

15 “(A) a private electronic communication,  
16 including voice messaging or electronic mail  
17 services, or any other communication for which  
18 such person lacks either the technical ability or  
19 authority under law to access or disclose such  
20 communication to any third party in the normal  
21 course of business; or

22 “(B) real-time communication formats, in-  
23 cluding chat rooms, streamed data, or other vir-  
24 tually simultaneous transmissions.

1           “(3) INFORMATION LOCATION TOOLS.—No person  
2 shall be liable for direct, vicarious or contribu-  
3 tory infringement of copyright arising out of supply-  
4 ing a user of network services or facilities with—

5                   “(A) a site-linking aid or directory, includ-  
6 ing a hyperlink or index;

7                   “(B) a navigational aid, including a search  
8 engine or browser; or

9                   “(C) the tools for the creation of a site-  
10 linking aid.

11           “(b) MATERIAL RESIDING ON A SYSTEM OR NET-  
12 WORK.—

13                   “(1) COOPERATIVE PROCEDURE FOR EXPEDI-  
14 TIOUS RESPONSE TO CLAIMS OF INFRINGEMENT.—A  
15 person shall not be liable for direct, vicarious or con-  
16 tributory infringement of copyright arising out of  
17 the violation of any of the exclusive rights of the  
18 copyright owner by another with respect to material  
19 residing on a system or network used in conjunction  
20 with electronic communications that is controlled or  
21 operated by or for the person, unless upon receiving  
22 notice complying with paragraph (b)(3), the person  
23 fails expeditiously to remove, disable, or block access  
24 to the material to the extent technologically feasible  
25 and economically reasonable for a period of ten days,

1 or until receiving a court order concerning the mate-  
2 rial, whichever is less.

3 “(2) Paragraph (b)(1) shall apply where such  
4 person—

5 “(A) did not initiate the placement of the  
6 material on the system or network;

7 “(B) did not determine the content of the  
8 material placed on the system of network; and

9 “(C) did not contract for placement of the  
10 specific material on the system or network by  
11 another person in order to provide that content  
12 as part of the person’s service offering.

13 “(3) A person shall not be deemed to have no-  
14 tice that material residing on a system or network  
15 used in conjunction with electronic communications  
16 is infringing unless the person—

17 “(A) is in receipt of a notification that the  
18 particular material is infringing. Such notifica-  
19 tion shall:

20 “(i) pertain only to allegedly infring-  
21 ing material that resides on a system or  
22 network controlled or operated by or for  
23 the person;

24 “(ii) be submitted in accordance with  
25 directions displayed on the person’s system

1 or network indicating a single place or per-  
2 son to which such notifications shall be  
3 submitted;

4 “(iii) be signed, physically or elec-  
5 tronically, by an owner of an exclusive  
6 right that is allegedly infringed, or by a  
7 person authorized to act on such owner’s  
8 behalf;

9 “(iv) provide an address, telephone  
10 number, and electronic mail address, if  
11 available, at which the complaining party  
12 may be contacted in a timely manner;

13 “(v) describe the material claimed to  
14 be infringing, including information rea-  
15 sonably sufficient to permit the person ex-  
16 peditiously to identify and locate the mate-  
17 rial;

18 “(vi) provide reasonable proof of a  
19 certificate of copyright registration for the  
20 material in question, a filed application for  
21 such registration, or a court order estab-  
22 lishing that use of the material in the man-  
23 ner complained of is not authorized by the  
24 copyright owner or the law;



1                   “(vii) contain a sworn statement that  
2                   the information in the notice is accurate,  
3                   that the complaining party is an owner of  
4                   the exclusive right that is claimed to be in-  
5                   fringed or otherwise has the authority to  
6                   enforce the owner’s rights under this title,  
7                   and that the complaining party has a good  
8                   faith belief that the use complained of is  
9                   an infringement;

10                   “(viii) be accompanied by any pay-  
11                   ment that the Register of Copyrights de-  
12                   termines is necessary to deter frivolous and  
13                   de minimis notices; and

14                   “(B) A person who is an employee or  
15                   agent of a nonprofit educational institution, li-  
16                   brary or archives, acting within the scope of his  
17                   employment, or such an educational institution,  
18                   library or archives itself, shall not be deemed to  
19                   have notice under subparagraph (A) if that per-  
20                   son reasonably believed (i) that the allegedly in-  
21                   fringing use was a fair use under Sec. 10 or (ii)  
22                   was otherwise lawful; and

23                   “(C) The Register of Copyrights may, by  
24                   regulation, establish guidelines identifying addi-  
25                   tional information to be included in the notice

1           and shall issue a standard notice form in both  
2           electronic and hard copy formats, which com-  
3           plies with this paragraph, but failure of a party  
4           to provide any such additional information, or  
5           failure to use any issued form, shall not invali-  
6           date the notice.

7           “(4) MISREPRESENTATIONS AND REDRESS FOR  
8           WRONGFUL NOTIFICATIONS.—Any person who mate-  
9           rially misrepresents that material on-line is infring-  
10          ing in a notice described in paragraph (b)(3)(A),  
11          shall be liable in a civil action that may be brought  
12          in an appropriate United States district court or  
13          State court for statutory damages of not less than  
14          \$1,000, and any actual damages, including costs and  
15          attorneys’ fees, incurred by—

16                 “(A) the actual copyright owner or the al-  
17                 leged infringer arising out of the disabling or  
18                 blocking of access to or removal of such mate-  
19                 rial; or

20                 “(B) any person who relies upon such mis-  
21                 representation in removing, disabling, or block-  
22                 ing access to the material claimed to be infring-  
23                 ing in such notice.

24           “(5) LIMITATION ON LIABILITY BASED UPON  
25          REMOVING, DISABLING, OR BLOCKING ACCESS TO IN-

1 FRINGING MATERIAL.—A person shall not be liable  
2 for any claim based on that person's removing, dis-  
3 abling, or blocking access for a period of ten days,  
4 or until the person receives a court order concerning  
5 the material, whichever is less, to material residing  
6 on a system or network used in conjunction with  
7 electronic communications that is controlled or oper-  
8 ated by or for that person in response to notice pur-  
9 suant to paragraph (b)(3)(A) that the material is in-  
10 fringing, whether or not the material is infringing.

11 “(6) OTHER DEFENSES NOT AFFECTED.—A  
12 person's removing, disabling, or blocking access to  
13 material residing on a system or network used in  
14 conjunction with electronic communications that is  
15 controlled or operated by or for that person, pursu-  
16 ant to paragraph (1), or the failure to do so, shall  
17 not adversely bear upon the consideration by a court  
18 of any other issue pertaining to liability or remedy,  
19 including any other limitation on liability established  
20 in paragraph (a), any other applicable defense, any  
21 claim that the service provider's alleged conduct is  
22 not infringing, or whether or not such conduct is  
23 willful or innocent.”.

1 (b) CONFORMING AMENDMENT.—The table of sec-  
 2 tions for chapter 5 of title 17, United States Code, is  
 3 amended at the end the following:

“512. Liability relating to material on the Internet and on-line.”.

4 TITLE II—TECHNOLOGY FOR TEACHERS AND  
 5 LIBRARIANS

6 **SEC. 201. SHORT TITLE.**

7 This title may be cited as the “Technology for Edu-  
 8 cators and Children (TECh) Act”.

9 **SEC. 202. FAIR USE.**

10 (a) TRANSMISSIONS.—The first sentence of section  
 11 107 of title 17, United States Code, is amended by insert-  
 12 ing after “or by any other means specified in that sec-  
 13 tion,” the following: “and by analog or digital trans-  
 14 mission,”.

15 (b) DETERMINATION.—Section 107 of title 17,  
 16 United States Code, is amended by adding at the end  
 17 thereof the following: “In making a determination con-  
 18 cerning fair use, no independent weight shall be afforded  
 19 to—

20 “(1) the means by which the work has been  
 21 performed, displayed or distributed under the au-  
 22 thority of the copyright owner; or

23 “(2) the application of an effective technological  
 24 measure (as defined under section 1201(c)) to the  
 25 work.”.

1 **SEC. 203. LIBRARY EXEMPTIONS.**

2 Section 108 of title 17, United States Code, is  
3 amended—

4 (1) by striking “Notwithstanding” at the begin-  
5 ning of subsection (a) and inserting: “Except as oth-  
6 erwise provided and notwithstanding”;

7 (2) by inserting after “copyright” in subsection  
8 (a)(3): “if such notice appears on the copy or phono-  
9 record that is reproduced under the provisions of  
10 this section”;

11 (3) in subsection (b) by—

12 (A) deleting “a copy or phonorecord” and  
13 inserting in lieu thereof: “three copies or  
14 phonorecords”; and

15 (B) deleting “in facsimile form”; and

16 (4) in subsection (c) by—

17 (A) deleting “a copy or phonorecord” and  
18 inserting in lieu thereof: “three copies or  
19 phonorecords”;

20 (B) deleting “in facsimile form”; and

21 (C) inserting “or if the existing format in  
22 which the work is stored has become obsolete,”  
23 after “stolen,”.

1 **SEC. 204. DISTANCE EDUCATION.**

2 (a) **TITLE CHANGE.**—The title of section 117 of title  
3 17,

4 United States Code, is amended to read as follows:

5 **“§ 110. Limitations on exclusive rights: Exemption of  
6 certain activities”;**

7 (b) **PERFORMANCE, DISPLAY AND DISTRIBUTION OF  
8 A WORK.**—Section 110(2) of title 17, United States Code,  
9 is amended to read as follows:

10 “(2) performance, display or distribution of a  
11 work, by or in the course of an analog or digital  
12 transmission, if—

13 “(A) the performance, display or distribu-  
14 tion is a regular part of the systematic instruc-  
15 tional activities of a governmental body or a  
16 nonprofit educational institution;

17 “(B) the performance, display or distribu-  
18 tion is directly related and of material assist-  
19 ance to the teaching content of the trans-  
20 mission; and

21 “(C) the work is provided for reception  
22 by—

23 “(i) students officially enrolled in the  
24 course in connection with which it is pro-  
25 vided; or

1                   “(ii) officers or employees of govern-  
2                   mental bodies as part of their official du-  
3                   ties or employment;”

4           (c) **EPHEMERAL RECORDINGS OF WORKS.**—Section  
5 112(b) of title 17, United States Code, is amended by de-  
6 leting “transmit a performance or display of” and insert-  
7 ing in lieu thereof: “perform, display or distribute”.

8 **SEC. 205. LIMITATIONS ON EXCLUSIVE RIGHTS.**

9           (a) **TITLE.**—The title of section 117 of title 17,  
10 United States Code, is amended to read as follows:

11 **“§ 117. Limitations on exclusive rights: Computer**  
12 **programs and digital copies”;**

13           (b) **DIGITAL COPIES.**—Section 117 of title 17, United  
14 States Code, is amended by inserting “(a)” before “Not-  
15 withstanding” and inserting the following as a new sub-  
16 section (b):

17           “(b) Notwithstanding the provisions of section 106,  
18 it is not an infringement to make a copy of a work in  
19 a digital format if such copying—

20                   “(1) is incidental to the operation of a device in  
21                   the course of the use of a work otherwise lawful  
22                   under this title; and

23                   “(2) does not conflict with the normal exploi-  
24                   tation of the work and does not unreasonably preju-  
25                   dice the legitimate interests of the author.”.

## 1 TITLE III—WIPO TREATY IMPLEMENTATION

## 2 SEC. 301. WIPO IMPLEMENTATION

3 Title 17 of the United States Code is amended by  
4 adding the following sections:

5 **“§ 1201. Circumvention of certain technological meas-**  
6 **ures**

7 “(a) CIRCUMVENTION CONDUCT.—No person, for the  
8 purpose of facilitating or engaging in an act of infringe-  
9 ment, shall engage in conduct so as knowingly to remove,  
10 deactivate or otherwise circumvent the application or oper-  
11 ation of any effective technological measure used by a  
12 copyright owner to preclude or limit reproduction of a  
13 work or a portion thereof. As used in this subsection, the  
14 term ‘conduct’ does not include manufacturing, importing  
15 or distributing a device or a computer program.

16 “(b) CONDUCT GOVERNED BY SEPARATE CHAP-  
17 TER.—Notwithstanding subsection (a), this section shall  
18 not apply with respect to conduct or the offer or perform-  
19 ance of a service governed by a separate chapter of this  
20 title.

21 “(c) DEFINITION OF EFFECTIVE TECHNOLOGICAL  
22 MEASURE.—As used in this section, the term ‘effective  
23 technological measure’ means information included with or  
24 an attribute applied to a transmission or a copy of a work  
25 in a digital format, or a portion thereof, so as to protect



1 the rights of a copyright owner of such work or portion  
 2 thereof under chapter one of this title and which—

3 “(1) encrypts or scrambles the work or a por-  
 4 tion thereof in the absence of access information  
 5 supplied by the copyright owner; or

6 “(2) includes attributes regarding access to or  
 7 recording of the work that cannot be removed with-  
 8 out degrading the work or a portion thereof.

9 **“§ 1202. Integrity of copyright management informa-**  
 10 **tion**

11 “(a) FALSE COPYRIGHT MANAGEMENT INFORMA-  
 12 TION.—No person shall knowingly provide copyright man-  
 13 agement information that is false, or knowingly publicly  
 14 distribute or import for distribution copyright manage-  
 15 ment information that is false, with intent to induce, facili-  
 16 tate, or conceal infringement.

17 “(b) REMOVAL OR ALTERATION OF COPYRIGHT  
 18 MANAGEMENT INFORMATION.—No person shall, without  
 19 authority of the copyright owner or other lawful authority,  
 20 knowingly and with intent to mislead or to induce or facili-  
 21 tate infringement—

22 “(1) remove or alter any copyright management  
 23 information;

24 “(2) publicly distribute or import for distribu-  
 25 tion a copy of phonorecord containing copyright

1 management information that has been altered with-  
 2 out authority of the copyright owner or other lawful  
 3 authority; or

4 “(3) publicly distribute or import for distribu-  
 5 tion a copy or phonorecord from which copyright  
 6 management information has been removed without  
 7 authority of the copyright owner or other lawful au-  
 8 thority:

9 *Provided*, That the conduct governed by this subsection  
 10 does not include the manufacturing, importing or distrib-  
 11 uting of a device.

12 (c) DEFINITION OF COPYRIGHT MANAGEMENT IN-  
 13 FORMATION.—As used in this chapter, the term ‘copyright  
 14 management information’ means the following information  
 15 in electronic form as carried in or as data accompanying  
 16 a copy of phonorecord of a work, including in digital form:

17 “(1) The title and other information identifying  
 18 the work, including the information set forth in a  
 19 notice of copyright;

20 “(2) The name and other identifying informa-  
 21 tion of the author of the work;

22 “(3) The name and other identifying informa-  
 23 tion of the copyright owner of the work, including  
 24 the information set forth in a notice of copyright;

25 “(4) Terms and conditions for uses of the work;

1           “(5) Identifying numbers or symbols referring  
2           to such information or links to such information;  
3           and

4           “(6) Such other identifying information con-  
5           cerning the work as the Register of Copyrights may  
6           prescribe by regulation:

7 *Provided*, That the term ‘copyright management informa-  
8 tion’ does not include the information described in section  
9 1002, section 1201(c), or a chapter of this title other than  
10 chapters one through nine of this title: *Provided further*,  
11 That, in order to assure privacy protection, the term  
12 ‘copyright management information’ does not include any  
13 personally identifiable information relating to the user of  
14 a work, including but not limited to the name, account,  
15 address or other contact information of or pertaining to  
16 the user.

17 **“§ 1203. Civil remedies**

18           “(a) CIVIL ACTIONS.—Any person aggrieved by a vio-  
19 lation of section 1201(a) or 1202 may bring a civil action  
20 in an appropriate United States district court against any  
21 person for such violation.

22           “(b) POWERS OF THE COURT.—In an action brought  
23 under subsection (a), the court—

1           “(1) may grant a temporary and a permanent  
2 injunction on such terms as it deems reasonable to  
3 prevent or restrain a violation;

4           “(2) may grant such other equitable relief as it  
5 deems appropriate;

6           “(3) may award damages pursuant to sub-  
7 section (c);

8           “(4) may allow the recovery of costs by or  
9 against any party other than the United States or  
10 an officer thereof; and

11           “(5) may award a reasonable attorney’s fee to  
12 the prevailing party.

13           “(c) AWARD OF DAMAGES.—

14           “(1) IN GENERAL.—If the court finds that a  
15 violation of section 1201(a) or 1202 has occurred,  
16 the complaining party may elect to either actual  
17 damages as computed under paragraph (2) or statu-  
18 tory damages as computed under paragraph (3).

19           “(2) ACTUAL DAMAGES.—The court may award  
20 to the complaining party the actual damages suf-  
21 fered by him or her as a result of the violation, and  
22 any profits of the violator that are attributable to  
23 the violation and are not taken into account in com-  
24 puting the actual damages, if the complaining party

1 elects such damages instead of statutory damages at  
2 any time before final judgment is entered.

3 “(3) STATUTORY DAMAGES.—(A) The court  
4 may award to the complaining party statutory dam-  
5 ages for each violation of section 1201(a) of not less  
6 than \$250 or more than \$2,500, as the court consid-  
7 ers just, if the complaining party elects such dam-  
8 ages instead of actual damages at any time before  
9 final judgment is entered.

10 “(B) The court may award to the complaining  
11 party statutory damages for each violation of section  
12 1202 of not less than \$500 or more than \$20,000,  
13 as the court considers just, if the complaining party  
14 elects such damages instead of actual damages at  
15 any time before final judgment is entered.

16 “(4) REPEATED VIOLATIONS.—In an case in  
17 which the court finds that a person has violated sec-  
18 tion 1201(a) or 1202 within three years after a final  
19 judgment against that person for another such viola-  
20 tion was entered, the court may increase the award  
21 of damages to not more than double the amount  
22 that would otherwise be awarded under paragraph  
23 (2) or (3), as the court considers just.

24 “(5) INNOCENT VIOLATION.—The court may re-  
25 duce or remit altogether the total award of damages

1 that otherwise would be awarded under paragraph  
 2 (2) or (3) in any case in which the violator sustains  
 3 the burden of proving, and the court finds, that the  
 4 violator was not aware and had no reason to believe  
 5 that its acts constituted a violation of section  
 6 1201(a) or 1202.”.

7 **SEC. 302. CONFORMING AMENDMENTS.**

8 (a) **TABLE OF SECTIONS.**—The table of sections for  
 9 chapter 1 of title 17, United States Code, is amended by—  
 10 (1) revising the item relating to section 110 to  
 11 read as follows:

“110. Limitations on exclusive rights: Exemption of certain activities.”;

12 and

13 (2) revising the item relating to section 117 to  
 14 read as follows:

“117. Limitations on exclusive rights: Computer programs and digital copies.”.

15 (b) **TABLE OF CHAPTERS.**—The table of chapters for  
 16 title 17, United States Code, is amended by adding at the  
 17 end the following:

“12. Copyright Protection and Management Systems ..... 1201”.

18 **SEC. 303. EFFECTIVE DATES.**

19 (a) **IN GENERAL.**—Sections one through seven and  
 20 section 9(a) of this Act, and the amendments made by  
 21 sections one through seven and section 9(a) of this Act,  
 22 shall take effect on the date of enactment of this Act.

1           (b) WIPO TREATIES.—Section 8 and section 9(b) of  
2 this Act, and the amendments made by section 8 and sec-  
3 tion 9(b) of this Act, shall take effect on the date on which  
4 both the World Intellectual Property Organization Copy-  
5 right Treaty and the World Intellectual Property Organi-  
6 zation Performances and Phonograms Treaty have en-  
7 tered into force with respect to the United States.

○

# **Document No. 83**



