



United States Copyright Office

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September 26, 2023

Hon. Diane P. Wood
Director, ALI
Professor Christopher Jon Sprigman
Professor Daniel J. Gervais
Professor Lydia Pallas Loren
Professor R. Anthony Reese
Professor Molly S. Van Houweling
Reporters, ALI Restatement of the Law, Copyright

Re: Preliminary Draft No. 9

Dear Judge Wood and Reporters:

The U.S. Copyright Office is responsible for administering the nation’s copyright law and providing expert advice to Congress, federal agencies, and the courts on copyright matters.¹ As advisers to this project, we have reviewed Preliminary Draft No. 9 of the ALI’s Restatement of the Law of Copyright, which is being discussed at the Project Meeting on September 28. To facilitate this discussion and improve the draft sections, we offer the following comments.²

Section 6.03: The Copyright Owner’s Exclusive Right to Prepare Derivative Works

In the current draft, the black letter of section 6.03(a) states that “[t]he owner of copyright in a work has the exclusive right ‘to prepare derivative works based upon the copyrighted work.’” To align the language with the statutory text, we recommend modifying this language to make clear that a copyright owner has the exclusive right both to prepare derivative works and to authorize the preparation of derivative works.³

Comment *a* identifies a list of purported examples of statutory limitations on the right to prepare derivative works. A few of these examples are not strictly exceptions to the right and may create confusion among readers. These include 17 U.S.C. § 110(11) (Family Movie Act of 2005 (“FMA”)) and §§ 203(b)(1) and 304(c)(6)(A) (derivative works exception to termination provisions). We propose deleting these from the list.

¹ 17 U.S.C. § 701(a), (b).

² In addition to our substantive comments provided below, we identified smaller errors and omissions in Preliminary Draft No. 9 during our review. We have included those in a separate appendix, which uses the pagination in the Preliminary Draft.

³ 17 U.S.C. § 106(2).

Comment *b* refers to the “congressional understanding that the reproduction right adopted by the 1976 Act was (like the prior right to ‘print, reprint, public, copy, and vend’) broad enough to include not only literal copies but also many adaptations.” We suggest including a citation to the legislative history in support of this proposition.

Comment *c* separates the statutory examples of derivative works into three categories: (1) those that change the subject-matter category or medium of the original work, (2) those that change the content of the original work, and (3) those that add to or subtract from the original work. We recommend including a citation to legal authority that supports this method of interpreting the statutory examples of derivative works or clarifying that this is the Restatement’s own method. We also note that certain statutory examples, such as translations and art reproductions, do not appear to easily fit into any of these three categories.

Comment *e* states that the “cases do not directly address, and this Restatement does not take a position on, the question of whether the originality necessary to trigger the derivative-work right must be contributed by a human being, as is required for purposes of copyrightability for all works.” The Office believes that the test for copyrightability and the test for infringement of the derivative-works right are distinct. With respect to the former, copyright only extends to “original works of authorship,”⁴ and thus only the products of human creativity are eligible for copyright protection.⁵ In contrast, the derivative-works right is framed in terms of “preparation,” indicating that non-human actions may be sufficient to infringe the right.⁶ Similarly, the Reporters’ Note to Comment *e* only cites to a law review article for additional discussion of “the status of derivative works generated by non-human authorship.” We suggest including citations to the statutory language as well.

Additionally, Comment *e* addresses modifications by owners of lawfully made copies and suggests that such modifications, provided that they do not contain sufficient new creative expression, may not infringe the exclusive right to prepare derivative works and may be displayed and distributed by the owner under the first-sale doctrine. We suggest making clearer that this is the Restatement’s view and this precise reasoning has not been adopted by a court and, in fact, may have been called into question by *Mirage Editions, Inc. v. Albuquerque A.R.T. Co.*, 856 F.2d 1341 (9th Cir. 1988), cited in Comment *e*.

We recommend deleting Comment *j* because, as noted above, it is not strictly an exception to the derivative-work right. At a minimum, two sections of the discussion of the FMA should be revised. First, the Comment suggests that the phrase “during a performance in . . . [a private] household for private home viewing” was intended to create an exception to the public performance right. The Comment, however, does not discuss the FMA language covering instances where a motion picture is “transmitted to [a private] household for private home viewing,” which has been the subject of litigation. Indeed, in the case cited in the Comment, it

⁴ *Id.* § 102.

⁵ See *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53, 60 (1884); *Urantia Found. v. Kristen Maaherra*, 114 F.3d 955, 957–59 (9th Cir. 1997); *Naruto v. Slater*, 888 F.3d 418, 426 (9th Cir. 2018), *decided on other grounds*; see also *Copyright Registration Guidance: Works Containing Materials Generated by Artificial Intelligence*, 88 FR 16190 (Mar. 16, 2023), https://copyright.gov/ai/ai_policy_guidance.pdf.

⁶ 17 U.S.C. § 106(2) (stating that copyright owner has exclusive right to “prepare derivative works based upon the copyrighted work” or authorize others to do so).

was the *transmission* of unauthorized copies of plaintiff’s works to defendant’s streaming customers that was the public performance at issue, not the “performance in” customers’ homes.⁷

Second, Comment *j* states that “it is clear that in enacting 17 U.S.C. § 110(11) Congress was motivated by concern that courts might interpret the *derivative-work* right to prohibit the creation, provision, or use of technology for skipping objectionable content.” We disagree with this characterization, which implies that the FMA may have been intended to create an exemption from the derivative-work right when, in fact, the FMA exemption concerns only public performances and creating a derivative work is expressly prohibited by the FMA. To be exempt from violating the public performance right, the FMA requires that “no fixed copy of the altered version of the motion picture is created.”⁸ The Comment later correctly explains this, noting that the statute does not apply “when the technology produces a new fixed copy of [an] altered work.” Indeed, fixing an altered version of the work would likely violate the derivative-work right.⁹ So, because technology that fixes an altered version of a motion picture likely creates a derivative work and is not exempt under the FMA, concern over potential infringement of the derivative work right could not be the reason Congress enacted the FMA. Rather, as the heading for section 110 indicates, Congress intended to and did create an “exemption of certain performances” from the public performance right, namely, for “a performance in or transmitted to [a private] household for private home viewing.” The Comment’s discussion about congressional concern about the derivative-work right cannot be reconciled with the actual language and scope of the statutory exemption, which only relates to public performances.

Section 6.10: Digital Audio Transmissions

Comment *b* states that live performances are not within the scope of the digital audio transmission right because these performances are “transmissions.” We suggest that the Comment elaborate on this by explaining: (1) why live performances are not transmissions under the statutory definition in section 101, and (2) how a live performance could consist of or include the performance of a sound recording.

Section 6.12: Fair Use

We note that, overall, the discussion of fair use primarily emphasizes competition, or market substitution, as the focal point of fair use. We would caution that, as the courts have emphasized, fair use is a case-by-case analysis that looks at the interplay of all of the factors.

⁷ See *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 857–60 (9th Cir. 2017); *Disney Enters., Inc. v. VidAngel, Inc.*, 224 F. Supp. 957, 969–72 (C.D. Cal. 2016). Although the FMA provides that transmissions can be exempt from violating the public performance right, the district court determined, and the Ninth Circuit affirmed, that VidAngel’s activities were not exempt under the FMA because (1) defendant “fixed” copies of plaintiffs’ works, and (2) the motion picture copies were not “authorized.”

⁸ 17 U.S.C. § 110(11).

⁹ See *Disney Enters., Inc.*, 869 F.3d at 859 n.10 (disagreeing with defendant’s contention that the FMA “contemplates that fixed copies of the authorized copy can be made” and explaining that “[t]he FMA states only that, when streaming from an authorized copy, ‘the altered version of the motion picture’ created by the filtering technology cannot be fixed in a copy”); cf. *Disney Enters., Inc.*, 224 F. Supp. at 969–70 (finding that defendant’s copying violates the reproduction right, which is not covered by the FMA exemption).

While market substitution is clearly an important aspect of the analysis, we would not want it to be seen as a substitute for a careful analysis of the facts of each case.

In explaining the first fair use factor, we suggest that it may be useful to include additional discussion about parody and satire, and how the distinction between the two has informed analysis of a particular use’s purpose and character. Since the Supreme Court’s decision in *Campbell v. Acuff-Rose*, in which it explained that “[p]arody needs to mimic an original to make its point . . . whereas satire can stand on its own two feet and so requires justification for the very act of borrowing,”¹⁰ courts have looked to this distinction when parsing the first factor.¹¹ This is true even in cases that do not involve a purported parodic or satirical use.¹²

We propose that Comment *o* would benefit from citing *Castle Rock Entertainment, Inc. v. Carol Publishing Group, Inc.*¹³ as an example of a case where fair use was not found and the infringing work was determined to cut off a potential market. Although a footnote in *Castle Rock* is cited elsewhere in the Comment for the proposition that a copyright owner cannot cut off all derivative markets to fair use, a fair discussion of the case would indicate that a derivative market *was* found in that case.¹⁴ Similarly, while the Comment provides examples of cases where the allegedly infringing work was found *not* to cut off a derivative market, it would be useful to also include examples of cases where the secondary work *was found* to have interfered with a potential derivative market.

The Reporters’ Note to Comment *k* seems to suggest that factual/functional works and fanciful/highly expressive works are to be treated identically in the second factor analysis. While it may be true that a use of a more expressive work should not be presumptively unfair, courts have generally found that the second factor disfavors fair use where the nature of the work is creative, at least where the use relies on the work’s creative expression as opposed to the factual or functional nature of the work.¹⁵

In addition, Reporters’ Note *k* states that “[m]ore probative than a general inquiry into the nature of [the] work is careful analysis of the nature of what the defendant took from [a] work, and why.” Even assuming this assertion finds support in the caselaw, the analysis of the portion taken and why it was taken are primarily third and first factor considerations, not inquiries made when considering the nature of the work under the second factor. There is, of course, interplay among the four fair use factors that can affect how each factor is analyzed and its relative weight within an overall equitable determination. But we caution against implying that analysis of the

¹⁰ 510 U.S. 569, 580–81 (1994).

¹¹ See, e.g., *Dr. Seuss Enters., L.P. v. Penguin Books USA, Inc.*, 109 F.3d 1394 (9th Cir. 1997).

¹² See, e.g., *Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith*, 143 S. Ct. 1258, 1285 (2023) (explaining that “[l]ike satire that does not target an original work, AWF’s asserted commentary ‘can stand on its own two feet and so requires justification for the very act of borrowing.’”) (quoting *Campbell*, 510 U.S. at 581).

¹³ 150 F.3d 132, 145–46 (2d Cir. 1998).

¹⁴ *Id.* at 145–46 (concluding that defendant’s work “is likely to fill a market niche that [plaintiff] would in general develop” and “[a]lthough [plaintiff] has evidenced little if any interest in exploiting this market for derivative works . . . copyright law must respect that creative and economic choice”).

¹⁵ See generally 4 NIMMER ON COPYRIGHT § 13F.06[A] (2023 ed.); 4 PATRY ON COPYRIGHT § 10:138 (2023 ed.).

second—or any other statutory—factor receive diminished consideration in favor of other factors.¹⁶

Section 6.13: Other Limitations on Copyright Rights

In discussing the types of uses allowed under section 108, we recommend that Comment *b*, or an accompanying Reporters’ Note, summarize the conditions that must be satisfied for libraries and archives to reproduce copies or phonorecords of copyrighted works. For example, subsection 108(c) requires that a library seeking to replace a damaged copy of a work first determine that “an unused replacement cannot be obtained at a fair price” and not make available digital copies outside the library’s premises. Providing a summary and explanation of the various applicable conditions on reproduction by libraries and archives would be useful to fully elucidate the scope of these statutory limitations on exclusive rights.

In support of the statement in Comment *b* that a library or archive is not required to be a nonprofit organization, we suggest a citation to the Copyright Office’s 2017 *Discussion Document on Section 108 of Title 17*.¹⁷

Illustration 4 in Comment *f* states that the exemption providing by subsection 110(1) would not apply where a DVD that was not lawfully made was purchased from a street vendor and played for a class by a student. This conclusion assumes that the student, as the person responsible for the performance, “knew or had reason to believe it was not lawfully made” based on the source of the DVD. To clarify that the statute’s knowledge requirement has been satisfied in the Illustration, we recommend including additional facts or expressly stating that the student had reason(s) to believe that the DVD was not lawfully made.

In Comment *h*, the discussion of the application of the “homestyle exemption” to businesses may benefit from citing to the House Report about factors to be considered when determining whether a receiving apparatus qualifies for the exemption.¹⁸

We recommend two changes in Comment *n*. First, as Comment *o* cites to the National Commission on New Technological Uses of Copyrighted Works (“CONTU”) Report to explain the purpose for the archival use exception in subsection 117(a)(2), we recommend adding a similar citation to the CONTU Report in Comment *n* to explain the purpose behind the essential step defense.¹⁹ Second, Comment *n* on page 84 cites to *Aymes v. Bonelli* in support of the proposition that subsidiaries of an owner can avail themselves of subsection 117(a)(1). Because

¹⁶ Indeed, as Comment *k* acknowledges, the second factor was given significant weight in the Supreme Court’s fair use analysis in *Google v. Oracle*. 141 S. Ct. 1183 (2021).

¹⁷ See U.S. COPYRIGHT OFFICE, SECTION 108 OF TITLE 17 22 (2017), <https://www.copyright.gov/policy/section108/discussion-document.pdf>.

¹⁸ See H.R. REP. NO. 94-1976, at 87 (1976), reprinted in 1976 U.S.C.A.N. 5659, 5701 (“Factors to consider in particular cases would include the size, physical arrangement, and noise level of the areas within the establishment where the transmissions are made audible or visible, and the extent to which the receiving apparatus is altered or augmented for the purpose of improving the aural or visual quality of the performance for individual members of the public using those areas.”).

¹⁹ CONTU, FINAL REPORT OF CONTU 13 (July 13, 1978) (“CONTU Report”) (One who rightfully possesses a copy of a program . . . should be provided with a legal right to copy it to that extent which will permit its use by that possessor. This would include the right to load it into a computer . . .”).

Aymes did not involve distribution to or use by subsidiaries,²⁰ we recommend the citation to this case for this proposition be removed.

For further analysis of the section 117 exceptions pertaining to computer programs, the Office suggests that the Reporters consider citing relevant portions of the Office’s 2016 *Software-Enabled Consumer Products* study.²¹ In addition, in previous 1201 triennial rulemakings, the Office has evaluated whether diagnosis, maintenance, and repair of vehicles and various software-enabled devices are likely noninfringing under section 117. The Registers’ Recommendations in these triennial rulemakings may help illustrate the section 117 analysis albeit in a different context than copyright infringement litigation.²²

Comment *q* explains the different outcomes in *Leicester v. Warner Bros.*, where the 17 U.S.C. § 120(a) limitation applied, and *Falkner v. General Motors LLC*, where the limitation did not apply. To further illustrate the differences between these two cases, we suggest that it may be useful to note additional relevant facts in *Falkner*, namely, that the architectural work (*i.e.*, the parking garage) was completed before the mural was affixed, the mural artist was different than the architect, and the mural artist had complete creative independence.

Comment *r* indicates that “detailed requirements” for section 114 and 115 licenses are “beyond the scope of this Restatement.” We agree with this decision; however, it may be useful to direct readers to other materials addressing these subjects. For example, the Office created a webpage that compiles resources that explain the Music Modernization Act and its regulatory implementation by the Office.²³

Section 7.05: Affirmative Defenses to Copyright Infringement

As a preliminary matter, we believe that the source note to the black letter of section 7.05 may create the impression that all of the affirmative defenses that are listed have a statutory basis. We suggest revising the black letter to make clear which affirmative defenses are based in the statute.

With respect to Comment *e* and the accompanying Reporters’ Note, we are concerned that the Restatement is presenting the law surrounding copyright misuse as settled, when there is disagreement as to the scope of the defense among the courts that have addressed the issue. We

²⁰ 47 F.3d 23, 27 (2d Cir. 1995) (“The district court found that [the owner of a software copy] used [the software] for internal business purposes only and did not distribute the program to its subsidiaries Nor is there evidence that the modified program was marketed, manufactured, distributed, transferred, or used for any purpose other than [the owner of the copy’s] own internal business needs.”).

²¹ See U.S. COPYRIGHT OFFICE, SOFTWARE ENABLED CONSUMER PRODUCTS 17–25, 35–38 (2016).

²² See REGISTER OF COPYRIGHTS, SECTION 1201 RULEMAKING: EIGHTH TRIENNIAL PROCEEDING TO DETERMINE EXEMPTIONS TO THE PROHIBITION ON CIRCUMVENTION, RECOMMENDATION OF THE REGISTER OF COPYRIGHTS 206–07 (2021); REGISTER OF COPYRIGHTS, SECTION 1201 RULEMAKING: SEVENTH TRIENNIAL PROCEEDING TO DETERMINE EXEMPTIONS TO THE PROHIBITION ON CIRCUMVENTION, RECOMMENDATION OF THE REGISTER OF COPYRIGHTS 200–01, 209–11 (2018); REGISTER OF COPYRIGHTS, SECTION 1201 RULEMAKING: SIXTH TRIENNIAL PROCEEDING TO DETERMINE EXEMPTIONS TO THE PROHIBITION ON CIRCUMVENTION, RECOMMENDATION OF THE REGISTER OF COPYRIGHTS 237–39 (2015). These Recommendations are available at <https://www.copyright.gov/1201/>.

²³ *The Music Modernization Act*, U.S. COPYRIGHT OFFICE, <https://www.copyright.gov/music-modernization/> (last visited Sept. 26, 2023).

suggest limiting this section to addressing the scenarios that courts have determined to constitute copyright misuse after an analysis of that issue. For example, Comment *e* cites *Assessment Techs. of WI, LLC v. WIREdata, Inc.* for the proposition that “asserting copyright over plainly unprotectable content, such as data, can constitute misuse.” It is questionable, however, whether a court would find *copyright* misuse where no copyrighted work exists or instead rely on other equitable doctrines to address the conduct.²⁴ In any event, the discussion of copyright misuse in this case appeared in dicta and the court did not ultimately rule on the issue.²⁵ Similarly, Comment *e* cites *F.E.L. Publications, Ltd. v. Cath. Bishop of Chicago* for the proposition that “[e]xacting a fee for the use of a work that is in the public domain can constitute misuse.” Though the Seventh Circuit asserted this proposition in a footnote, its only support was a Supreme Court patent case from 1944 and it ultimately concluded that the defense did not apply to the facts at hand.²⁶

Section 7.06: Criminal Infringement of Copyright

Section 7.06(a)(3) of the black letter is presented as spliced up quotations, but the text is a direct quotation of the entirety of 17 U.S.C. § 506(a)(1)(C). We suggest revising to make clear that it is one quotation.

Section 8.02: Contributory Copyright Infringement

We reiterate our previous observation that Comment *d* makes a broad statement that court decisions interpreting “material contribution” to a direct infringement are “aligned with” cases analyzing proximate cause in the context of tort law. We are not aware of any court recognizing this “alignment.” In some cases, such as where a defendant provided the site and facilities to the direct infringer, courts have determined that the defendant’s contribution was “material” without concluding that it was “essential” or the “but-for cause” of the direct infringement.²⁷ Had a heightened “but-for” standard for materiality been applied in those cases, it is questionable whether the courts would have found contributory liability where the direct infringer arguably could have found an alternative way to distribute infringing works. Accordingly, we suggest making it clearer that this is a position taken by the Restatement and the Reporters, and not a connection that courts have explicitly drawn themselves.

²⁴ *Assessment Techs. of WI, LLC*, 350 F.3d 640, 646–47 (7th Cir. 2003) (summarizing defendant’s tactic of filing an infringement suit as “an abuse of process”).

²⁵ *Id.* at 646–47.

²⁶ *F.E.L. Publ’ns, Ltd.*, No. 81-cv-1333, 1982 WL 19198, at *5 n.9 (7th Cir. Mar. 25, 1982) (citing *Mercoird Corp. v. Mid-Continent Investment Co.*, 320 U.S. 661 (1944)).

²⁷ See, e.g., *Fonovisa v. Cherry Auctions*, 76 F.3d 259, 264 (9th Cir. 1996) (holding that providing “site and facilities” and the “environment and the market” for sales of infringing records constituted a material contribution); *Arista Records, Inc. v. Flea World, Inc.*, No. 03-cv-2670, 2006 WL 842883, at *14–16 (D.N.J. Mar. 31, 2006) (concluding that providing flea market vendors with “basic requirements such as wooden tables, and booth spaces, security, free parking, maintenance of the market grounds (including cleaning and repair), and restrooms” as well as “extensive advertising” and refund services was sufficiently material); *UMG Recordings, Inc. v. Sinnott*, 300 F. Supp. 2d 993, 1001 (E.D. Cal. 2004) (determining that “[o]perating a flea market or swap meet involves providing vendors with support services” and “[t]his is all that is required to satisfy the requirement of material contribution necessary to establish contributory liability”).

Section 10.04: Integrity of Copyright Management Information

To clarify the distinctions between violations relating to false copyright management information (“CMI”), provided for in subsection 1202(a), and violations relating to removal or alteration of CMI, provided for in subsection 1202(b), we recommend the Restatement include headings in the black letter law similar to those found in the statutory subsections.

There are two instances, one in the black letter law and one in Comment *a*, where the Restatement indicates that criminal violations of section 1202(a) require the offender have actual knowledge that their actions “will induce, enable, facilitate, or conceal an infringement of any right under [title 17].” Although this standard does apply to criminal violations of 1202(b) for alteration or removal of CMI, false CMI violations instead require that the actions be done “with the intent to induce, enable, facilitate, or conceal infringement.” In other words, a criminal 1202(b) violation requires that one “know” that their actions “will” lead to infringement whereas a criminal 1202(a) violation only requires that one have the “intent” that their actions lead to infringement. The black letter section and Comment *a* should be revised to reflect this nuance in the scienter requirements for criminal violations of subsection 1202(a).

Reporters’ Note to Comment *d* includes cases illustrating the list of examples of CMI. As the cases are already organized by the type of CMI at issue (*e.g.*, metadata, gutter credits, watermarks, source code), it may be helpful to specify these types before presenting the cases in the Note or otherwise separate the cases by type of CMI.

Section 11.03: Statute of Limitations

As the draft section acknowledges, there is a split of authority among the Courts of Appeal as to whether the Copyright Act’s statute of limitations for civil actions, 17 U.S.C. 507(b), precludes retrospective relief for acts of infringement that occurred more than three years before the filing of a lawsuit. Because a petition for certiorari is currently pending before the U.S. Supreme Court on this issue,²⁸ and a ruling by the Court may require substantial revisions to this draft section of the Restatement, the Office recommends that the section be held and redistributed to the Advisers after the Court either denies the petition or grants certiorari and issues an opinion. Accordingly, the Office declines to offer substantive comments on the draft section at this time.

* * * *

²⁸ See Petition for Writ of Certiorari, Warner Chappell Music, Inc. v. Nealy, No. 22-1078 (S. Ct. May 5, 2023).

The Office welcomes public evaluation and discussion of U.S. copyright law and thanks the ALI and the Reporters for their work and their past attention to our comments.

Sincerely,

A handwritten signature in black ink that reads "Suzanne V. Wilson". The signature is written in a cursive style with a large, stylized initial 'S'.

Suzanne V. Wilson
General Counsel and Associate Register of Copyrights

A handwritten signature in black ink that reads "Robert J. Kasunic". The signature is written in a cursive style with a large, stylized initial 'R'.

Robert J. Kasunic
Associate Register of Copyrights and Director of Registration Policy & Practice

Appendix: Errors and Omissions

Section 6.12: Fair Use

- In Comment *f* on page 40, line 17, the sentence should say that the first factor is “less,” not “more,” likely to weigh in favor of fair use.
- In Comment *g* on page 43, line 29, the word “In” after “Go!” should be lowercase.
- In Comment *j* on page 48, line 18, the words “lack of” should be removed from the parenthetical following the citation to *Folsom v. Marsh*, 9 F. Cas. 342, 349 (No. 4,901) (CCD Mass. 181). In line 20, the pin cite should be changed to page 585 n.18.
- In Comment *k* on page 50, beginning at line 6, the sentence as written appears incomplete; however, removing the word “whether” in line 7 would resolve the issue.
- In Comment *n* on page 57, lines 10 and 11, the citation to *MCA, Inc. v. Wilson* and accompanying parenthetical should be removed as they appear in the block quotation from *Google v. Oracle*.

Section 6.13: Other Limitations on Copyright Rights

- In Comment *e* on page 71, lines 25–26, the quoted language from subsection 108(i) should be replaced with language from or a summary of the material described in subsection 108(d) because that the subsection cross-referenced in subsection 108(g)(2).
- In Comment *f* on page 72, line 11, the word “under” should be deleted.
- In Comment *g* on page 75, line 25, the citation should be amended to 17 U.S.C. § 110(4)(B), adding the (B).
- In Comment *h* on page 76, line 18, a citation to 17 U.S.C. § 110(5)(A) should be added after the sentence quoting the statute.
- In Comment *l* on page 79, line 12, a pin cite to pages 433 through 444 should be added. We also recommend changing the signal and/or adding an explanatory parenthetical to indicate that the relevant discussion of section 110(7) in the cited case came in the context of a fair use analysis where the court rejected defendant’s argument that because 110(7) exempts music previews in physical establishments as “fair,” streaming previews of musical ringtones on the internet should be considered “fair uses.”
- In Comment *l* on page 81, lines 6 and 8, the internal cross-references should be changed to “Comment *n*” and “Comment *o*.”
- In Comment *n* on page 84, line 10, the relevant subsection is 117(a)(1), not 117(a), which covers both the essential step and archival use exceptions.
- The Reporters’ Note to Comment *n* on page 95, line 31, appears to be missing the phrase “of adaptation in” after the word “inclusion.” Adding this phrase would properly frame the CONTU Report excerpt that explains the rationale for allowing adaptation of a program where it is an essential step to use the program.
- In the Reporters’ Note to Comment *q* on page 96, line 14, the C.F.R. volume number, 37, should be added to the citation.

Section 10.04: Integrity of Copyright Management Information

- In Comment *b* on page 163, line 16, consider adding a pin cite to pages 928–29.

- There are several instances where the part of H.R. Rep. No. 105-551 is not specified. Because this House report was published in two parts, the relevant part should be specified every time this report is cited.
- In Comment *e* on page 167, line 4, consider changing the pin cite from “303” to “302–05.”
- In Comment *f* on page 169, line 2, “3d” is missing from the reporter citation.
- In Comment *g* on page 170, line 31, consider adding “–10” to the pin cite.
- In Comment *h* on page 173, line 12, the parenthetical should be deleted or changed to “emphasis in original.” On page 174, line 22, consider changing the pin cite to 926–27. On page 176, line 10, the words “constructive knowledge of” should be inserted after the word “requires.”
- In Comment *j* on page 178, line 16, we suggest adding the phrase “by someone other than the entity” so that it aligns with the statutory language in 1202(e)(2)(A)(i).
- In Comment *k* on page 179, line 2, consider adding “–06” to the pin cite.
- In the Reporters’ Note to Comment *b* on page 183, line 7, the quotation marks around the phrase “copyright management information” should be changed to internal quotation marks.
- In the Reporters’ Note to Comment *d* on page 184, lines 10–11, the quotation marks around the phrase “title information and other information identifying the work” should be changed to internal quotation marks while keeping a close quotation mark at the end. On page 185, line 1, the quotation marks around the phrase “conveyed in connection with” should be changed to internal quotation marks.
- In Reporters’ Note to Comment *h*, on page 187, line 18, consider adding an explanatory parenthetical similar to those for the other cases cited in this section, such as: (concluding that because “defendants alleged copying did not constitute copyright infringement, plaintiff is foreclosed from maintaining its claim under the DMCA.”). On page 188, lines 17–18, the two instances of “s.” should be changed to section marks.
- In Reporters’ Note to Comment *i*, on page 188, line 28, brackets should be added around the “O” in the word “One.”
- In the Reporters’ Note to Comment *k* on page 189, line 30, consider adding a pin cite to at *4–7.
- In the Reporters’ Note to Comment *l* on page 191, line 17, the additional defendants, IGT and DoubleDown Interactive LLC, should be deleted from the case citation. On page 191, line 30, the case citation should be corrected from “Com.” to “Plot Commerce.” On page 192, line 15, the parenthetical should indicate that, in addition to the citations, internal quotations were also omitted from the quoted language.

Section 11.01: Standing to Sue for Copyright Infringement

- In Reporters’ Note *a* on page 203, lines 17–18, the Compendium citation should be to the “(3d ed. 2021),” not “(3d ed. 2014).”

Section 11.03: Statute of Limitations

- In Reporters’ Note *a* on page 227, line 20, the pin cite for the Senate report should begin on page 1, not page 2. On page 227, lines 23–24, the word “state” should be capitalized

in both instances as it appears in the Senate report. On page 227, line 28, there should be a period after the word “claimants.” On page 227, line 30, the report number 94-1476 should be included in the citation. On page 228, line 1, we suggest using the term “vessel” instead of “boat” to match the statutory term. On page 228, line 2, Copyright Claims Board should be capitalized. On page 228, line 4, the statutory subsection should be 2318(e)(6), not 2318(c). On page 228, line 14, the word “at” should be added before the number 27.