Appendix B

The Digital Millennium Copyright Act of 1998[1]

Section 1 · Short Title.

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

Title I — WIPO Treaties Implementation

Sec. 101 · Short Title.

This title may be cited as the "WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998".

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Sec. 105 · Effective Date.

(a) In General. — Except as otherwise provided in this title, this title and the amendments made by this title shall take effect on the date of the enactment of this Act.

(b) Amendments Relating to Certain International Agreements. —

(1) The following shall take effect upon the entry into force of the WIPO Copyright Treaty with respect to the United States:

(A) Paragraph (5) of the definition of "international agreement" contained in section 101 of title 17, United States Code, as amended by section 102(a)(4) of this Act.

(B) The amendment made by section 102(a)(6) of this Act.

(C) Subparagraph (C) of section 104A(h)(1) of title 17, United States Code, as amended by section 102(c)(1) of this Act.

(D) Subparagraph (C) of section 104A(h)(3) of title 17, United States Code, as amended by section 102(c)(2) of this Act.

(2) The following shall take effect upon the entry into force of the WIPO Performances and Phonograms Treaty with respect to the United States:

(A) Paragraph (6) of the definition of "international agreement" contained in section 101 of title 17, United States Code, as amended by section 102(a)(4) of this Act.

(B) The amendment made by section 102(a)(7) of this Act.

(C) The amendment made by section 102(b)(2) of this Act.

(D) Subparagraph (D) of section 104A(h)(1) of title 17, United States Code, as amended by section 102(c)(1) of this Act.

(E) Subparagraph (D) of section 104A(h)(3) of title 17, United States Code, as amended by section 102(c)(2) of this Act.

(F) The amendments made by section 102(c)(3) of this Act.

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Title II — Online Copyright Infringement Liability Limitation

Sec. 201 · Short Title.

This title may be cited as the "Online Copyright Infringement Liability Limitation Act".

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Sec. 203 · Effective Date.

This title and the amendments made by this title shall take effect on the date of the enactment of this Act.

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Title IV — Miscellaneous Provisions

Sec. 401 · Provisions Relating to the Commissioner of Patents and Trademarks and the Register of Copyrights

(a) Compensation.—(1) Section 3(d) of title 35, United States Code, is amended by striking "prescribed by law for Assistant Secretaries of Commerce" and inserting "in effect for level III of the Executive Schedule under section 5314 of title 5, United States Code".

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(3) Section 5314 of title 5, United States Code, is amended by adding at the end the following:

"Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

"Register of Copyrights.".

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Sec. 405 · Scope of Exclusive Rights in Sound Recordings; Ephemeral Recordings.

(a) Scope of Exclusive Rights in Sound Recordings.

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(5) The amendment made by paragraph (2)(B)(i)(III) of this subsection shall be deemed to have been enacted as part of the Digital Performance Right in Sound Recordings Act of 1995, and the publication of notice of proceedings under section 114(f)(1) of title 17, United States Code, as in effect upon the effective date of that Act, for the determination of royalty payments shall be deemed to have been made for the period beginning on the effective date of that Act and ending on December 1, 2001.

(6) The amendments made by this subsection do not annul, limit, or otherwise impair the rights that are preserved by section 114 of title 17, United States Code, including the rights preserved by subsections (c), (d)(4), and (i) of such section.

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(c) Scope of Section 112(a) of Title 17 Not Affected.—

Nothing in this section or the amendments made by this section shall affect the scope of section 112(a) of title 17, United States Code, or the entitlement of any person to an exemption thereunder.

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Sec. 406 · Assumption of Contractual Obligations Related to Transfers of Rights in Motion Pictures.

(a) In General.—Part VI of title 28, United States Code, is amended by adding at the end the following new chapter:

"Chapter 180—Assumption of Certain Contractual Obligations

"Sec. 4001. Assumption of contractual obligations related to transfers of rights in motion pictures.

"§4001. Assumption of contractual obligations related to transfers of rights in motion pictures

"(a) Assumption of Obligations.—(1) In the case of a transfer of copyright ownership under United States law in a motion picture (as the terms 'transfer of copyright ownership' and 'motion picture' are defined in section 101 of title 17) that is produced subject to 1 or more collective bargaining agreements negotiated under the laws of the United States, if the transfer is executed on or after the effective date of this chapter and is not limited to public performance rights, the transfer instrument shall be deemed to incorporate the assumption agreements applicable to the copyright ownership being transferred that are required by the applicable collective bargaining agreement, and the transferee shall be subject to the obligations under each such assumption agreement to

make residual payments and provide related notices, accruing after the effective date of the transfer and applicable to the exploitation of the rights transferred, and any remedies under each such assumption agreement for breach of those obligations, as those obligations and remedies are set forth in the applicable collective bargaining agreement, if—

"(A) the transferee knows or has reason to know at the time of the transfer that such collective bargaining agreement was or will be applicable to the motion picture; or

"(B) in the event of a court order confirming an arbitration award against the transferor under the collective bargaining agreement, the transferor does not have the financial ability to satisfy the award within 90 days after the order is issued.

"(2) For purposes of paragraph (1)(A), 'knows or has reason to know' means any of the following:

"(A) Actual knowledge that the collective bargaining agreement was or will be applicable to the motion picture.

"(B)(i) Constructive knowledge that the collective bargaining agreement was or will be applicable to the motion picture, arising from recordation of a document pertaining to copyright in the motion picture under section 205 of title 17 or from publication, at a site available to the public online that is operated by the relevant union, of information that identifies the motion picture as subject to a collective bargaining agreement with that union, if the site permits commercially reasonable verification of the date on which the information was available for access.

"(ii) Clause (i) applies only if the transfer referred to in subsection (a)(1) occurs—

"(I) after the motion picture is completed, or

"(II) before the motion picture is completed and—

"(aa) within 18 months before the filing of an application for copyright registration for the motion picture under section 408 of title 17, or

"(bb) if no such application is filed, within 18 months before the first publication of the motion picture in the United States.

"(C) Awareness of other facts and circumstances pertaining to a particular transfer from which it is apparent that the collective bargaining agreement was or will be applicable to the motion picture.

"(b) Scope of Exclusion of Transfers of Public Performance Rights.—For purposes of this section, the exclusion under subsection (a) of transfers of copyright ownership in a motion picture that are limited to public performance rights includes transfers to a terrestrial broadcast station, cable system, or programmer to the extent that the station, system, or programmer is functioning as an exhibitor of the motion picture, either by exhibiting the motion picture on its

own network, system, service, or station, or by initiating the transmission of an exhibition that is carried on another network, system, service, or station. When a terrestrial broadcast station, cable system, or programmer, or other transferee, is also functioning otherwise as a distributor or as a producer of the motion picture, the public performance exclusion does not affect any obligations imposed on the transferee to the extent that it is engaging in such functions.

"(c) Exclusion for Grants of Security Interests.—Subsection (a) shall not apply to—

"(1) a transfer of copyright ownership consisting solely of a mortgage, hypothecation, or other security interest; or

"(2) a subsequent transfer of the copyright ownership secured by the security interest described in paragraph (1) by or under the authority of the secured party, including a transfer through the exercise of the secured party's rights or remedies as a secured party, or by a subsequent transferee.

The exclusion under this subsection shall not affect any rights or remedies under law or contract.

"(d) Deferral Pending Resolution of Bona Fide Dispute.—A transferee on which obligations are imposed under subsection (a) by virtue of paragraph (1) of that subsection may elect to defer performance of such obligations that are subject to a bona fide dispute between a union and a prior transferor until that dispute is resolved, except that such deferral shall not stay accrual of any union claims due under an applicable collective bargaining agreement.

"(e) Scope of Obligations Determined by Private Agreement.—Nothing in this section shall expand or diminish the rights, obligations, or remedies of any person under the collective bargaining agreements or assumption agreements referred to in this section.

"(f) Failure to Notify.—If the transferor under subsection (a) fails to notify the transferee under subsection (a) of applicable collective bargaining obligations before the execution of the transfer instrument, and subsection (a) is made applicable to the transferee solely by virtue of subsection (a)(1)(B), the transferor shall be liable to the transferee for any damages suffered by the transferee as a result of the failure to notify.

"(g) Determination of Disputes and Claims.—Any dispute concerning the application of subsections (a) through (f) shall be determined by an action in United States district court, and the court in its discretion may allow the recovery of full costs by or against any party and may also award a reasonable attorney's fee to the prevailing party as part of the costs.

"(h) Study.—The Comptroller General, in consultation with the Register of Copyrights, shall conduct a study of the conditions in the motion picture industry that gave rise to this section, and the impact of this section on the motion picture industry. The Comptroller General shall report the findings of the study to the Congress within 2 years after the effective date of this chapter.".

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Sec. 407 · Effective Date.

Except as otherwise provided in this title, this title and the amendments made by this title shall take effect on the date of the enactment of this Act.

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Title V — Protection of Certain Original Designs

Sec. 501 · Short Title.

This Act may be referred to as the "Vessel Hull Design Protection Act".

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Sec. 505 · Effective Date.[2]

The amendments made by sections 502 and 503 shall take effect on the date of the enactment of this Act.[3]

Appendix B · Notes

1. This appendix contains provisions from the Digital Millennium Copyright Act (DMCA), Pub. L. No. 105-304, 112 Stat. 2860, that do not amend Title 17 of the *United States Code*.

2. The Intellectual Property and Communications Omnibus Reform Act of 1999 amended section 505 by deleting everything at the end of the sentence, after "Act." Pub. L. No. 106-113, 113 Stat. 1501, app. I at 1501A-521, 593.

3. Section 502 of the DMCA added chapter 13 to Title 17 of the *United States Code*. Section 503 made conforming amendments. The date of enactment of this Act is October 28, 1998.