(b) Remedies.—In a suit described in subsection (a) for a violation described in that subsection, remedies (including remedies both at law and in equity) are available for the violation to the same extent as such remedies are available for such a violation in a suit against any public or private entity other than a State, instrumentality of a State, or officer or employee of a State acting in his or her official capacity. Such remedies include impounding and disposition of infringing articles under section 503, actual damages and profits and statutory damages under section 504, costs and attorney's fees under section 505, and the remedies provided in section 510.


AMENDMENTS


Effective Date

Section effective with respect to violations that occur on or after Nov. 15, 1990, see section 3 of Pub. L. 101–553, set out as an Effective Date of 1990 Amendment note under section 501 of this title.

§ 512. Limitations on liability relating to material online

(a) Transitory Digital Network Communications.—A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the intermediate and temporary storage of material on a system or network controlled or operated by or for the service provider in a case in which—

(A) the material is made available online by a person other than the service provider;

(B) the material is transmitted from the person described in subparagraph (A) through the system or network to a person other than the person described in subparagraph (A) at the direction of that other person; and

(C) the storage is carried out through an automatic technical process for the purpose of making the material available to users of the system or network who, after the material is transmitted as described in subparagraph (B), request access to the material from the person described in subparagraph (A),

if the conditions set forth in paragraph (2) are met.

(2) Conditions.—The conditions referred to in paragraph (1) are that—

(A) the material described in paragraph (1) is transmitted to the subsequent users described in paragraph (1)(C) without modification to its content from the manner in which the material was transmitted from the person described in paragraph (1)(A);

(B) the service provider described in paragraph (1) complies with rules concerning the refreshing, reloading, or other updating of the material when specified by the person making the material available online in accordance with a generally accepted industry standard data communications protocol for the system or network through which that person makes the material available, except that this subparagraph applies only if those rules are not used by the person described in paragraph (1)(A) to prevent or unreasonably impair the intermediate storage to which this subsection applies;

(C) the service provider does not interfere with the ability of technology associated with the material to return to the person described in paragraph (1)(A) the information that would have been available to that person if the material had been obtained by the subsequent users described in paragraph (1)(C) directly from that person, except that this subparagraph applies only if that technology—

(i) does not significantly interfere with the performance of the provider's system or network or with the intermediate storage of the material;

(ii) is consistent with generally accepted industry standard communications protocols; and

(iii) does not extract information from the provider's system or network other than the information that would have been available to the person described in paragraph (1)(A) if the subsequent users had
gained access to the material directly from that person;

(D) if the person described in paragraph 
(1)(A) has in effect a condition that a person 
must meet prior to having access to the ma-
terial, such as a condition based on payment 
of a fee or provision of a password or other 
information, the service provider permits ac-
to the stored material in significant 
part only to users of its system or network 
that have met those conditions and only in 
accordance with those conditions; and

(2) The party giving the notification in-
cludes in the notification a statement con-
fiming that the material has been removed 
from the originating site or that access to the 
material on the originating site is dis-
abled; and

(ii) the party giving the notification in-
cludes in the notification a statement con-
fiming that the material has been re-
moved from the originating site or access 
to it has been disabled or that a court has or-
dered that the material be removed from 
the originating site or that access to the 
material on the originating site is dis-
abled; and

(c) INFORMATION RESIDING ON SYSTEMS OR NET-
WORKS AT DIRECTION OF USERS.—

(1) In general.—A service provider shall not 
be liable for monetary relief, or, except as pro-
vided in subsection (j), for injunctive or other 
equitable relief, for infringement of copyright 
by reason of the storage at the direction of a 
user of material that resides on a system or 
control or operated by or for the 
service provider, if the service provider—

(i) does not have actual knowledge that 
the material or an activity using the mate-
rial on the system or network is infringing; 

(ii) in the absence of such actual knowl-
edge, is not aware of facts or circumstances 
from which infringing activity is apparent; 
or

(iii) upon obtaining such knowledge or 
awareness, acts expeditiously to remove, or 
disable access to, the material;

(B) does not receive a financial benefit di-
rectly attributable to the infringing activ-
ity, in a case in which the service provider 
has the right and ability to control such ac-
vity; and

(C) upon notification of claimed infringe-
ment as described in paragraph (3), responds 
expedi-
tously to remove, or disable access 
to, the material that is claimed to be 
fringing or to be the subject of infringing ac-
vity.

(2) DESIGNATED AGENT.—The limitations on 
liability established in this subsection apply 
to a service provider only if the service pro-
vider has designated an agent to receive noti-
fications of claimed infringement described in 
paragraph (3), by making available through its 
service, including on its website in a location 
accessible to the public, and by providing to 
the Copyright Office, substantially the follow-
ing information:

(A) the name, address, phone number, and 
electronic mail address of the agent;

(B) other contact information which the 
Register of Copyrights may deem appro-
riate.

The Register of Copyrights shall maintain a 
current directory of agents available to the 
public for inspection, including through the 
Internet, and may require payment of a fee by 
service providers to cover the costs of main-
taining the directory.

(3) ELEMENTS OF NOTIFICATION.—

(A) To be effective under this subsection, a 
notification of claimed infringement must 
be a written communication provided to the 
designated agent of a service provider that 
includes substantially the following:

(i) A physical or electronic signature of 
a person authorized to act on behalf of the 
owner of an exclusive right that is alleg-
edly infringed.

(ii) Identification of the copyrighted 
work claimed to have been infringed, or, if 
multiple copyrighted works at a single on-
line site are covered by a single notifica-
tion, a representative list of such works at 
that site.

(iii) Identification of the material that is 
claimed to be infringing or to be the sub-
ject of infringing activity and that is to be 
removed or access to which is to be dis-
abled, and information reasonably suffi-
cient to permit the service provider to lo-
cate the material.

(iv) Information reasonably sufficient to 
permit the service provider to contact the 
complaining party, such as an address, 
telephone number, and, if available, an 
electronic mail address at which the com-
plaining party may be contacted.

(v) A statement that the complaining 
party has a good faith belief that use of 
the material in the manner complained of 
is not authorized by the copyright owner, 
its agent, or the law.

(vi) A statement that the information in 
the notification is accurate, and under 
penalty of perjury, that the complaining 
party is authorized to act on behalf of the 
owner of an exclusive right that is alleg-
edly infringed.

(B) Subject to clause (ii), a notification 
from a copyright owner or from a person au-
thorized to act on behalf of the copyright 
owner that fails to comply substantially 
with the provisions of subparagraph (A) shall 
not be considered under paragraph (1)(A) in 
determining whether a service provider has 
actual knowledge or is aware of facts or cir-
cumstances from which infringing activity 
is apparent.

(ii) In a case in which the notification that 
is provided to the service provider's des-
ignated agent fails to comply substantially with all the provisions of subparagraph (A) but substantially complies with clauses (ii), (iii), and (iv) of subparagraph (A), clause (i) of this subparagraph applies only if the service provider promptly attempts to contact the person making the notification or takes other reasonable steps to assist in the receipt of notification that substantially complies with all the provisions of subparagraph (A).

(d) INFORMATION LOCATION TOOLS.—A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the provider referring or linking users to an online location containing infringing material or infringing activity, by using information location tools, including a directory, index, reference, pointer, or hypertext link, if the service provider—

(1)(A) does not have actual knowledge that the material or activity is infringing;
(B) in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent; or
(C) upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material;
(2) does not receive a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control such activity; and
(3) upon notification of claimed infringement as described in subsection (c)(3), responds expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity, except that, for purposes of this paragraph, the information described in subsection (c)(3)(A)(ii) shall be identification of the reference or link, to material or activity claimed to be infringing, that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate that reference or link.

(e) LIMITATION ON LIABILITY OF NONPROFIT EDUCATIONAL INSTITUTIONS.—(1) When a public or other nonprofit institution of higher education is a service provider, and when a faculty member or graduate student who is an employee of such institution is performing a teaching or research function, for the purposes of subsections (a) and (b) such faculty member or graduate student shall be considered to be a person other than the institution, and for the purposes of subsections (c) and (d) such faculty member’s or graduate student’s knowledge or awareness of his or her infringing activities shall not be attributed to the institution if—
(A) such faculty member’s or graduate student’s infringing activities do not involve the provision of online access to instructional materials that are or were required or recommended, within the preceding 3-year period, for a course taught at the institution by such faculty member or graduate student;
(B) the institution has not, within the preceding 3-year period, received more than two notifications described in subsection (c)(3) of claimed infringement by such faculty member or graduate student, and such notifications of claimed infringement were not actionable under subsection (f); and
(C) the institution provides to all users of its system or network informational materials that accurately describe, and promote compliance with, the laws of the United States relating to copyright.

(2) For the purposes of this subsection, the limitations on injunctive relief contained in subsections (j)(2) and (j)(3), but not those in (j)(1), shall apply.

(f) MISREPRESENTATIONS.—Any person who knowingly materially misrepresents under this section—

(1) that material or activity is infringing, or
(2) that material or activity was removed or disabled by mistake or misidentification, shall be liable for any damages, including costs and attorneys’ fees, incurred by the alleged infringer, by any copyright owner or copyright owner’s authorized licensee, or by a service provider, who is injured by such misrepresentation, as the result of the service provider relying upon such misrepresentation in removing or disabling access to the material or activity claimed to be infringing, or in replacing the removed material or ceasing to disable access to it.

(g) REPLACEMENT OF REMOVED OR DISABLED MATERIAL AND LIMITATION ON OTHER LIABILITY.—

(1) NO LIABILITY FOR TAKING DOWN GENERALLY.—Subject to paragraph (2), a service provider shall not be liable to any person for any claim based on the service provider’s good faith disabling of access to, or removal of, material or activity claimed to be infringing or based on facts or circumstances from which infringing activity is apparent, regardless of whether the material or activity is ultimately determined to be infringing.

(2) EXCEPTION.—Paragraph (1) shall not apply with respect to material residing at the direction of a subscriber of the service provider on a system or network controlled or operated by or for the service provider that is removed, or to which access is disabled by the service provider, pursuant to a notice provided under subsection (c)(1)(C), unless the service provider—

(A) takes reasonable steps promptly to notify the subscriber that it has removed or disabled access to the material;
(B) upon receipt of a counter notification described in paragraph (3), promptly provides the person who provided the notification under subsection (c)(1)(C) with a copy of the counter notification, and informs that person that it will replace the removed material or cease disabling access to it in 10 business days; and
(C) replaces the removed material and ceases disabling access to it not less than 10, nor more than 14, business days following receipt of the counter notice, unless its designated agent first receives notice from the person who submitted the notification under subsection (c)(1)(C) that such person has filed an action seeking a court order to restrain the subscriber from engaging in in-
fringing activity relating to the material on the service provider's system or network.

(3) CONTENTS OF COUNTER NOTIFICATION.—To be effective under this subsection, a counter notification must be a written communication provided to the service provider's designated agent that includes substantially the following:
(A) A physical or electronic signature of the subscriber.
(B) Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled.
(C) A statement under penalty of perjury that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled.

(4) LIMITATION ON OTHER LIABILITY.—A service provider's compliance with paragraph (2) shall not subject the service provider to liability for copyright infringement with respect to the material identified in the notice provided to the service provider's designated agent that includes substantially the following:
(A) A physical or electronic signature of the subscriber.
(B) Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled.
(C) A statement under penalty of perjury that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled.

(h) SUBPOENA TO IDENTIFY INFRINGER.—

(1) REQUEST.—A copyright owner or a person authorized to act on the owner's behalf may request the clerk of any United States district court to issue a subpoena to a service provider for identification of an alleged infringer in accordance with this subsection.

(2) CONTENTS OF REQUEST.—The request may be made by filing with the clerk—
(A) a copy of a notification described in subsection (c)(3)(A);
(B) a proposed subpoena; and
(C) a sworn declaration to the effect that the purpose for which the subpoena is sought is to obtain the identity of an alleged infringer and that such information will only be used for the purpose of protecting rights under this title.

(3) CONTENTS OF SUBPOENA.—The subpoena shall authorize and order the service provider receiving the notification and the subpoena to expeditiously disclose to the copyright owner or person authorized by the copyright owner information sufficient to identify the alleged infringer of the material described in the notification to the extent such information is available to the service provider.

(j) INJUNCTIONS.—The following rules shall apply in the case of any application for an injunction under section 502 against a service provider that is not subject to monetary remedies under this section:

(1) SCOPE OF RELIEF.—(A) With respect to conduct other than that which qualifies for the limitation on remedies set forth in subsection (a), the court may grant injunctive relief with respect to a service provider only in one or more of the following forms:
(1) An order restraining the service provider from providing access to infringing material or activity residing at a particular online site on the provider's system or network.
(ii) An order restraining the service provider from providing access to a subscriber or account holder of the service provider’s system or network who is engaging in infringing activity and is identified in the order by terminating the accounts of the subscriber or account holder that are specified in the order.

(iii) Such other injunctive relief as the court may consider necessary to prevent or restrain infringement of copyrighted material specified in the order of the court at a particular online location, if such relief is the least burdensome to the service provider among the forms of relief comparably effective for that purpose.

(B) If the service provider qualifies for the limitation on remedies described in subsection (a), the court may only grant injunctive relief in one or both of the following forms:

(1) An order restraining the service provider from providing access to a subscriber or account holder of the service provider’s system or network who is using the provider’s service to engage in infringing activity and is identified in the order, by terminating the accounts of the subscriber or account holder that are specified in the order.

(2) An order restraining the service provider from providing access, by taking reasonable steps specified in the order to block access, to a specific, identified, online location outside the United States.

(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 (l); 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.

§ 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 paragraph (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 special master or magistrate judge named by such judge.


AMENDMENTS

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

EFFECTIVE DATE


CHAPTER 6—IMPORTATION AND EXPORTATION

Sec. 601. Repealed.

602. Infringing importation of copies or phonorecords.

603. Importation prohibitions: Enforcement and disposition of excluded articles.

AMENDMENTS


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