

The digital millennium copyright act



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Copyright is identified as a branch of law that gives rights to authors to exclusively reproduce, perform, distribute, and display their works. The main goal of the said law is to promote the investment of creating new work of arts and literature. The copyright law is an integral part of a legal field which is known as intellectual property. Basically, the copyright law is a legal foundation that was created in order to protect the work of major industries such as book publishing, production of motion-pictures, musiclabels, and the development of computer software.

Since the said industries are in account for the upscale development in the economic activity of United States, the creation of the copyright law became as important as the emergence of these industries (Schechter). Most of the time when people hear the term copyright, the idea of protection is limited to certain works such as those of literature. However, due to the advancement in the technology of today majority of the industries are now at high risk of infringement.

Infringement is identified as the reproduction, performance, distribution and display of any copyrighted material without the permission of the owner of the copyright and without the presence of any required license (Schechter). By the time that personal computers have been widely utilized, the issue of infringement catapulted as well. End users are now capable of reproducing copyrighted materials digitally and the distribution has been made easier in every part of the globe through the use of internet.

In order to combat such unlawful activities, the initial actions of copyright owners were to apply protective measures in their works like the use of encryption and passwords. Yet, many of the end users are able to penetrate <https://assignbuster.com/the-digital-millennium-copyright-act/>

these measures; in the end, the copyrighted material is still reproduced, distributed, displayed and performed (Schechter). In response to the augmenting issue of infringement, a diplomatic conference was held in Geneva, Switzerland in December of 1996.

The said conference was spearheaded by the World Intellectual Property Organization (WIPO) and was centered on the issue of “ certain copyright and neighboring right questions” (Castro). As such, the meeting was held in order to address the challenges being faced by different industries regarding the protection of intellectual property that is at risk in the technological advancement of the digital age.

The session was a month-long negotiation which concluded in the adoption of two treaties: (1) the copyright treaty which is centered towards the certain question which concerns the protection of artistic and literary works; and (2) The performances and the phonographs treaty which is focused in the protection of the performer’s rights and the rights of the phonograph producers. The treaties include obligations about technological measures, management information rights as well as the provisions in the enforcement of rights (Castro).

On October 12, 1998, less than two years after the diplomatic conference, the US congress put forward the Digital Copyright Act (DMCA). By October 28, 1998, President Clinton signed into law the DMCA. The said legislation was intended to execute the functions of the two treaties signed during the Geneva conference. In addition, related provisions were also added in order to address the copyright issues that impact the entertainment industry.

The final form of the DMCA covered five titles: (1) “ WIPO copyright and performances and phonograph treaties implementation act of 1998;” (2) “ Online Copyright Infringement Liability Limitation Act;” (3) “ Computer Maintenance Competition Assurance Act;” (4) The fourth title is comprised of six miscellaneous amendments that adhere to the Copyright act of 1976 which also include provisions regarding the facilitation of broadcasting over the internet; and (5) the implementation of the “ Vessel Hull Design Protection Act” (Castro).

Title I: WIPO Treaty Implementation The main purpose of Title I redresses the US copyright law in complying with the treaties adopted by the WIPO in 1996 which are the “ copyright treaty and the performances and phonographs treaty. ” Two new prohibitions were also created under the Title 17 of the US code. First is in relation to the circumvention of the technological measures applied by owners of the copyright in order to protect their works, and second is the copyright management information tampering.

Civil remedies and criminal penalties were also added in account of violating the said prohibitions. Furthermore, title I also requires the copyright office of the USA to work with the Department of Commerce’s National Telecommunications and Information Administrations (NTIA) in a two joint studies (U. S. Copyright Office 2). The following are the highlights of the most important prohibitions, limitations, defenses, exemptions and rights stated in Title I of DMCA: A. Technologies to circumvent access controls

Basically the prohibition in circumvention states that no individual shall bypass any technological measure that has the capability to control the access in a copyrighted material and the prevention of copyright

management information from tampering (Castro). B. Use and distribution of technologies that bypass access controls Manufacturing, trafficking or importing technological devices as well as services in order to gain control over a copyrighted material is strictly prohibited (Castro).

C. Utilization and distribution of technologies that bypass the protection of any copyrighted material. This is an additional prohibition in the use and distributions of technological products, services and devices that tend to bypass the measures used for the protection of the rights of the owners of the copyrighted material. This prohibition is focused on the copyrighted materials rather than the access controls that protect them (Castro). D. Rights, limitations, defenses

The rights, limitations, remedies and defenses for copyright infringement is not covered under these provisions. Both copyright violations and circumvention violations are different from each other thus the defenses for copyright violations are not the same as the provisions in section 1201 which is intended for the circumvention violation (Castro). E. Exemptions The Congress fully recognize that there are legitimate reasons why technological are circumvented in order to gain access over a copyrighted material. As such, the congress provided exemptions in provision 1201.

The exemptions include: Non-profit libraries, archives and educational institutions, reverse engineering, encryption research, use for the protection of minors, personal privacy and security testing. Each of the said exemptions has its own set of conditions upon its application (Castro). Title II: Online Copyright Infringement Liability Limitation Title II of the DMCA added a new section 512 in the " Fairness in Musical Licensing Act" stating that four new

liability limitations are applied for the Online Service Providers (OPS) in terms of copyright infringement.

The said limitations are derived from the four categories: Transitory communications, system caching, information storage in systems or networks directed for users, and information location tools. Section 512 also includes special rules that apply to non-profit educational institutions in account to the said limitations (U. S. Copyright Office 8). Generally, Title II puts a limitation in the financial liability of the providers in account to copyright infringement.

The limitation is applicable in events such as when another party placed infringing materials on the website owned by the online service provider or if the OSP provided links or made connections to a particular website that contains infringing works. The new provisions provide a legal protection for the providers as long as they follow the guidelines set by the law. The guidelines identified exemptions or “ safe harbors” in accordance to the activities carried out by the provider.

Exemptions given out by the DMCA would only be functional if the defense presented by the OSP is under a copyright law or any law that is said to be applicable (Castro). Moreover, Title II created a procedure wherein an owner of a copyright could secure a subpoena from the federal court which orders an OSP to reveal the identity of a particular subscriber who is engaging with infringing activities (U. S. Copyright Office 9). Title III: Computer Maintenance or Repair

Title III is an extension of the exemptions written in Copyright Act section 117 which is related with computer programs allowing the owner of a <https://assignbuster.com/the-digital-millennium-copyright-act/>

program copy to reproduce or adapt the programs while working on the computer. Owners or lessees of the computer are authorized by the amendment to reproduce the copy of a certain program during the time of the computer repair or maintenance. However, the reproduced copy should not be used in any manner and should be destroyed right after the computer maintenance or repair is done (US copyright office 13-14). Title IV: Miscellaneous Provisions

DMCA Title IV applied the following provisions: (1) Refine and added the duties and authority of the copyright office; (2) Added ephemeral recordings for broadcasters. Ephemeral recordings are the copies of a particular recording in order to manage the process of transmission. For instance a radio station could record songs and instead of broadcasting songs from the original CD, they would use the recorded songs during the broadcast. (3) A provision that gives consideration on the promotion of distance education; (4) Provision that gives exemption for non-profit libraries and archives.

As such, the provision assists libraries in working on a new format of a copyrighted material once the original format of the material is already outdated; and (5) A provision that considers webcasting of sound recordings as well as the transfer of motion pictures (US copyright office 14-17). Title V: Protection of Certain Original Designs The Title V of DMCA encompasses the “ Vessel Hull design protection act (VHDPA)” by adding a new chapter 13 in the US Code Title 17.

The amendment created a system that protects the original design of a boat hull’s “ useful articles” which makes the object appear distinct and attractive. According to the VHDPA, the “ useful articles” of the boat are only

limited to the hulls of the boat and should not be longer than 200 feet. The said design would only be protected by the VHDPa if the “useful article” which embodies the design is made public or the design registration is published. If the application for the registration is not done within two years after the design was created, the VHDPa protection is lost.

A design could not be registered if it has been already known by the public for more than a year prior to the date of the application for registration. By the time that the design is registered, the protection is continued for ten years (US Copyright Office 17). The enactment of Digital Millennium Copyright Act received criticisms from various sectors. However, it is important to note that not all countries have the capability to enforce laws which govern the protection of copyrighted materials.

Putting such law in effect is a step towards combating infringement of copyrighted materials and without the presence of strict laws that protect the rights of copyright owners, copyright piracy and copyright violations would continuously augment. Although limited countries have laws that actually heighten the security of copyrighted materials, in one way or another these countries would be able to persuade other nations to partake in the fight against infringement that would eventually end copyright violations.