

to this section intended to exempt the proprietors of an establishment, such as a ballroom or night club, from liability for copyright infringement committed by an independent contractor, such as an orchestra leader. A well-established principle of copyright law is that a person who violates any of the exclusive rights of the copyright owner is an infringer, including persons who can be considered related or vicarious infringers. To be held a related or vicarious infringer in the case of performing rights, a defendant must either actively operate or supervise the operation of the place wherein the performances occur, or control the content of the infringing program, and expect commercial gain from the operation and either direct or indirect benefit from the infringing performance. The committee has decided that no justification exists for changing existing law, and causing a significant erosion of the public performance right.

REFERENCES IN TEXT

Section 338(a) of the Communications Act of 1934, referred to in subsec. (f)(2), is classified to section 338(a) of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

AMENDMENTS

1999—Subsec. (a). Pub. L. 106-44 substituted “121” for “118”.

Subsec. (e). Pub. L. 106-113, §1000(a)(9) [title I, §1011(b)(3)], substituted “performance or display of a work embodied in a primary transmission” for “primary transmission embodying the performance or display of a work”.

Subsec. (f). Pub. L. 106-113, §1000(a)(9) [title I, §1002(b)], added subsec. (f).

1990—Subsec. (a). Pub. L. 101-650 inserted “or of the author as provided in section 106A(a)” after “118” and substituted “copyright or right of the author, as the case may be. For purposes of this chapter (other than section 506), any reference to copyright shall be deemed to include the rights conferred by section 106A(a).” for “copyright.”

Pub. L. 101-553 inserted sentences at end defining “anyone” and providing that any State and any instrumentality, officer, or employee be subject to the provisions of this title in the same manner and to the same extent as any nongovernmental entity.

1988—Subsec. (b). Pub. L. 100-568 substituted “section 411” for “sections 205(d) and 411”.

Subsec. (e). Pub. L. 100-667 added subsec. (e).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(9) [title I, §1002(b)] of Pub. L. 106-113 effective July 1, 1999, and amendment by section 1000(a)(9) [title I, §1011(b)(3)] of Pub. L. 106-113 effective Nov. 29, 1999, see section 1000(a)(9) [title I, §1012] of Pub. L. 106-113, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1990 AMENDMENTS

Amendment by Pub. L. 101-650 effective 6 months after Dec. 1, 1990, see section 610 of Pub. L. 101-650, set out as an Effective Date note under section 106A of this title.

Section 3 of Pub. L. 101-553 provided that: “The amendments made by this Act [enacting section 511 of this title and amending this section and sections 910 and 911 of this title] shall take effect with respect to violations that occur on or after the date of the enactment of this Act [Nov. 15, 1990].”

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100-667 effective Jan. 1, 1989, see section 206 of Pub. L. 100-667, set out as an Effective Date note under section 119 of this title.

Amendment by Pub. L. 100-568 effective Mar. 1, 1989, with any cause of action arising under this title before such date being governed by provisions in effect when cause of action arose, see section 13 of Pub. L. 100-568, set out as a note under section 101 of this title.

CAUSES OF ACTION ARISING UNDER PREDECESSOR PROVISIONS

Section 112 of Pub. L. 94-553 provided that: “All causes of action that arose under title 17 before January 1, 1978, shall be governed by title 17 as it existed when the cause of action arose.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 109, 111, 115, 119, 122, 411, 510, 602 of this title; title 47 section 338.

§ 502. Remedies for infringement: Injunctions

(a) Any court having jurisdiction of a civil action arising under this title may, subject to the provisions of section 1498 of title 28, grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain infringement of a copyright.

(b) Any such injunction may be served anywhere in the United States on the person enjoined; it shall be operative throughout the United States and shall be enforceable, by proceedings in contempt or otherwise, by any United States court having jurisdiction of that person. The clerk of the court granting the injunction shall, when requested by any other court in which enforcement of the injunction is sought, transmit promptly to the other court a certified copy of all the papers in the case on file in such clerk’s office.

(Pub. L. 94-553, title I, §101, Oct. 19, 1976, 90 Stat. 2584.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94-1476

Section 502(a) [subsec. (a) of this section] reasserts the discretionary power of courts to grant injunctions and restraining orders, whether “preliminary,” “temporary,” “interlocutory,” “permanent,” or “final,” to prevent or stop infringements of copyright. This power is made subject to the provisions of section 1498 of title 28 dealing with infringement actions against the United States. The latter reference in section 502(a) makes it clear that the bill would not permit the granting of an injunction against an infringement for which the Federal Government is liable under section 1498.

Under subsection (b), which is the counterpart of provisions in sections 112 and 113 of the present statute [sections 112 and 113 of former title 17], a copyright owner who has obtained an injunction in one State will be able to enforce it against a defendant located anywhere else in the United States.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 109, 111, 115, 119, 122, 411, 510, 512, 1101 of this title.

§ 503. Remedies for infringement: Impounding and disposition of infringing articles

(a) At any time while an action under this title is pending, the court may order the impounding, on such terms as it may deem reasonable, of all copies or phonorecords claimed to have been made or used in violation of the copyright owner’s exclusive rights, and of all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies or phonorecords may be reproduced.

(b) As part of a final judgment or decree, the court may order the destruction or other reasonable disposition of all copies or phonorecords found to have been made or used in violation of