

**S.** \_\_\_\_\_

To modernize and enhance intellectual property laws, and for other purposes

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IN THE SENATE OF THE UNITED STATES

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M \_\_\_\_\_ introduced the following bill, which was read twice and referred to the Committee on the Judiciary

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**A BILL**

To modernize and enhance intellectual property laws, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SEC. 1.—SHORT TITLE**

This Act may be cited as the "Strengthening and Improving DMCA Safe Harbors Act."

**SEC. 2.—PENALIZING DMCA MISREPRESENTATIONS**

Section 512(f) of title 17, United States Code, shall be amended to read as follows:

(f) MISREPRESENTATIONS.— Any person who—

(1) knowingly or recklessly misrepresents under this section that material or activity is infringing, or knowingly makes misrepresentations under subsections (c)(3) or (h)(2), or

(2) knowingly misrepresents under subsection (g)(3) that material or activity was removed or disabled by mistake or misidentification,

shall be liable for:

(A) any damages 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.

(B) Statutory Damages. —

(i) Except as provided by clause (ii), a party injured by a misrepresentation under paragraph (1) may elect, at any time before final judgment is rendered, to recover, instead of actual damages, an award of statutory damages for each misrepresentation, in a sum of not less than \$200 and not more than \$2,500 as the court considers just.

(ii) In a case where the court finds that the misrepresentation was committed willfully, the court in its discretion may increase the award of statutory damages to a sum of not more than \$25,000.

(iii) In determining the appropriate statutory damages award under paragraph (B) of this section, courts shall consider, as relevant and appropriate:

(A) whether the notice sender or counter-notice sender has engaged in a pattern or practice of making misrepresentations under § 512(f),

(B) whether the notice sender under § 512(c)(3) or § 512(d)(3), or counter-notice sender under § 512(g)(3) intended to suppress speech and competition in making the misrepresentation,

(C) whether the effect of the misrepresentation is to suppress speech or competition,

(D) whether the notice sender under § 512(c)(3) or counter-notice sender under § 512(g)(3) made a good faith attempt to comply with the requirements of § 512(f), and

(E) whether the statutory damages award is reasonable and proportional to the actual harm incurred by the party injured by the § 512(f) misrepresentation.

(iv) To prevent injustice, the court in its discretion, may reduce the award of statutory damages below \$200 consistent with principles of equity.

(C) Fees and Costs. —Alleged infringers or service providers so injured shall also be allowed to recover their full costs and a reasonable attorney's fee.

### **SEC. 3 – ACCURACY IN TAKEDOWN NOTICES**

Section 512(c)(3)(A)(vi) is amended to read as follows:

(vi) under penalty of perjury, a statement:

(A) that the information in the notification is accurate, and

(B) that the complaining party is authorized to act on behalf of the owner of the exclusive right that is allegedly infringed.

#### **SEC. 4 – NOTICE RECORDATION**

(a) **REQUIRING FURTHER NOTICE**—Section 512(c)(3)(A) of title 17, United States Code is amended by adding after clause (vi) the following:

(vii) A statement that a copy of the notice of claimed infringement has been provided to the claimed infringer, or an explanation of why such notice could not be given; (viii) A statement that a copy of the notice of claimed infringement has been provided to the Copyright Office or a repository designated by the Copyright Office as provided in paragraph (4).

(b) **NOTICE REPOSITORY**—Section 512(c) of title 17, United States Code is amended by adding after the end of paragraph (3) the following:

(4) **ESTABLISHMENT OF A DATABASE OF NOTICES**—

(a) **IN GENERAL**—The Register of Copyrights shall establish, itself or through the designation of alternative repositories, an electronic database of notices of claimed infringement and counter-notices.

(b) **STANDARDS**—The entire database or collection of repositories under paragraph (a) shall be—

(i) kept current,

(ii) entirely searchable from a single website,

(iii) made available to the public, through the Internet, and

(iv) searchable free of charge.

#### **SEC. 5 – ALTERNATIVE MEANS OF DESIGNATING AN AGENT**

Section 512(c)(2) of title 17, United States Code is amended to read as:

**Designated agent**—The limitations on liability established in this subsection apply to a service provider only if the service provider has designated an agent to receive notifications of claimed infringement described in paragraph (3), by making conspicuously available through its service, including on its website in a location accessible to the public, or by providing to the Copyright Office, substantially the following 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 appropriate.

The Register of Copyrights shall maintain a current directory of agents available to the public for inspection, including through the Internet, in both electronic and hard copy formats, and may require payment of a fee by service providers to cover the costs of maintaining the directory.

## **SEC. 6 – PROMPT RETURN OF FILES**

Paragraph (2) of Section 512(g) of title 17, United States Code, shall be amended to read as follows:

(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 proper notice provided under subsection (c)(1)(C) according to the provisions of (c)(3), unless the service provider—

(A) takes reasonable steps promptly to notify the subscriber of its receipt of such notice and informs the subscriber of his or her right to issue a counter-notice described in paragraph (3) before it removes or disables access to the material;

(B) upon receipt of a counter-notice described in paragraph (3), promptly replaces the removed material and provides the person who provided the notification under subsection (c)(1)(C) with a copy of the counter-notice, and informs that person that it has replaced the removed material; and

(C) removes or disables access to the material if its designated agent 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 infringing activity relating to the material on the service provider's system or network.

## **SEC. 7 – ISSUES RELATING TO SAFE HARBORS**

(a) Section 512(a) of title 17, United States Code, is amended by inserting ', or violation of sections 1101, 1201, or 1202 of this title,' after "for infringement of copyright".

(b) Section 512(b)(1) of title 17, United States Code, is amended by inserting ', or violation of sections 1101, 1201, or 1202 of this title,' after "for infringement of copyright".

(c) Section 512(c)(1) of title 17, United States Code, is amended by inserting ', or violation of sections 1101, 1201, or 1202 of this title,' after "for infringement of copyright".

(d) Section 512(d) of title 17, United States Code, is amended by inserting ', or violation of sections 1101, 1201, or 1202 of this title,' after "for infringement of copyright".

