



Digital Copyright Act of 2021

The world governed by copyright law has changed dramatically since the Digital Millennium Copyright Act (DMCA) was enacted in 1998, and the law today shows the strain of a statute that has not adapted well to the technological advancements and changing business practices that have occurred since then. In particular, copyright law today is ill-suited for the needs of most copyright owners and individual users. Rather, than tinker around the edges of existing law, copyright modernization ought to reform the framework to better encourage the creation of copyrightable works and to protect users and consumers who are making lawful uses of copyrighted goods and software-enabled products, respectively.

The Digital Copyright Act of 2021 will modernize U.S. copyright law by amending the key provision for addressing online infringement, by improving the exemptions available to users for circumventing technological protections measures (TPMs), by increasing attribution information attached to copyrighted works so that authors can be properly credited, by placing the Copyright Office under the Department of Commerce, and by creating a copyright small claims tribunal.

Significant revisions include:

1. Increasing roles for various federal agencies in establishing regulations to better protect copyright owners and individual users and to increase certainty for online service providers (OSPs) regarding obligations under section 512, such as establishing standard technical measures that OSPs must accommodate or adopt and best practices that account for differences in size, service, and scale of infringement;
2. Clarifying knowledge requirements for OSPs, lowering the specificity with which copyright owners must identify infringing material in certain circumstances, and replacing the notice-and-takedown system in existing law with a notice-and-staydown system for complete and near complete works;
3. Establishing a copyright small claims tribunal, as envisioned by the CASE Act, and using it to resolve disputes between copyright owners and counter-notice senders, as well as for pursuing enhanced penalties under section 512(f);
4. Creating a limitation on liability for good faith users who, following a diligent search, are unable to locate the copyright owner and decide to still use the orphan work;
5. Establishing the Copyright Office as an executive branch agency within the Department of Commerce, led by a presidentially appointed Register of Copyrights;
6. Modernizing the existing permanent exemptions that allow for TPM circumvention for security testing and encryption research, and adding new permanent exemptions;
7. Streamlining the triennial rulemaking process for temporary exemptions;

8. Expanding the possible scope of temporary exemptions by authorizing the Copyright Office to permit third-party assistance “at the direction of” an intended user and to adopt temporary exemptions for trafficking of circumvention tools when the tool would be used to facilitate an exempted circumvention;
9. Providing the author of the copyrighted work with a right of action when someone removes or alters copyright management information on digital or analog copies with the intent to conceal an author’s attribution information.

The Digital Copyright Act of 2021 is the product of an extensive legislative record developed through six hearings of the Subcommittee on Intellectual Property focused on reforming copyright law in the digital environment, as well as two staff briefings, and it incorporates numerous recommendations from four extensive Copyright Office studies. The Digital Copyright Act of 2021 will ensure that our copyright system provides both sufficient incentives for creators, important certainty and guidance for OSPs, and necessary protections for individual users and consumers.