

Copyright Laws and Regulations

remedial modification or the destruction of any digital audio recording device, digital musical recording, or device specified in section 1002(c) that -

- (1) does not comply with, or was involved in a violation of, section 1002, and
- (2) is in the custody or control of the violator or has been impounded under subsection (f).

(Added Pub. L. 102-563, Sec. 2, Oct. 28, 1992, 106 Stat. 4245.)

17 U.S.C. 1010 Arbitration of certain disputes

(a) **Scope of Arbitration.** - Before the date of first distribution in the United States of a digital audio recording device or a digital audio interface device, any party manufacturing, importing, or distributing such device, and any interested copyright party may mutually agree to binding arbitration for the purpose of determining whether such device is subject to section 1002, or the basis on which royalty payments for such device are to be made under section 1003.

(b) **Initiation of Arbitration Proceedings.** - Parties agreeing to such arbitration shall file a petition with the Librarian of Congress requesting the commencement of an arbitration proceeding. The petition may include the names and qualifications of potential arbitrators. Within 2 weeks after receiving such a petition, the Librarian of Congress shall cause notice to be published in the Federal Register of the initiation of an arbitration proceeding. Such notice shall include the names and qualifications of 3 arbitrators chosen by the Librarian of Congress from a list of available arbitrators obtained from the American Arbitration Association or such similar organization as the Librarian of Congress shall select, and from potential arbitrators listed in the parties' petition. The arbitrators selected under this subsection shall constitute an Arbitration Panel.

(c) **Stay of Judicial Proceedings.** - Any civil action brought under section 1009 against a party to arbitration under this section shall, on application of one of the parties to the arbitration, be stayed until completion of the arbitration proceeding.

(d) **Arbitration Proceeding.** - The Arbitration Panel shall conduct an arbitration proceeding with respect to the matter concerned, in accordance with such procedures as it may adopt. The Panel shall act on the basis of a fully documented written record. Any party to the arbitration may submit relevant information and proposals to the Panel. The parties to the proceeding shall bear the entire cost thereof in such manner and proportion as the Panel shall direct.

(e) **Report to Librarian of Congress.** - Not later than 60 days after publication of the notice under subsection (b) of the initiation of an arbitration proceeding, the Arbitration Panel shall report to the Librarian of Congress its determination concerning whether the device concerned is subject to section 1002, or the basis on which royalty payments for the device are to be made under section 1003. Such report shall be accompanied by the written record, and shall set forth the facts that the Panel found relevant to its determination.

(f) **Action by the Librarian of Congress.** - Within 60 days after receiving the report of the Arbitration Panel under subsection (e), the Librarian of Congress shall adopt or reject the determination of the Panel. The Librarian of Congress shall adopt the determination of the Panel unless the Librarian of Congress finds that the determination is clearly erroneous. If the Librarian of Congress rejects the determination of the Panel, the Librarian of Congress shall, before the end of that 60-day period, and after full examination of the record created in the arbitration proceeding, issue an order setting forth the Librarian's decision and the reasons therefor. The Librarian of Congress shall cause to be published in the Federal Register the determination of the Panel and the decision of the Librarian of Congress under this subsection with respect to the determination (including any order issued under the preceding sentence).

(g) **Judicial Review.** - Any decision of the Librarian of Congress under subsection (f) with respect to a determination of the Arbitration Panel may be appealed, by a party to the arbitration, to the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the publication of the decision in the Federal Register. The pendency of an appeal under this subsection shall not stay the decision of the Librarian of Congress. The court shall have jurisdiction to modify or vacate a decision of the Librarian of Congress only if it finds, on the basis of the record before the Librarian of Congress, that the Arbitration Panel or the Librarian of Congress acted in an arbitrary

Copyright Laws and Regulations

manner. If the court modifies the decision of the Librarian of Congress, the court shall have jurisdiction to enter its own decision in accordance with its final judgment. The court may further vacate the decision of the Librarian of Congress and remand the case for arbitration proceedings as provided in this section.

(Added Pub. L. 102-563, Sec. 2, Oct. 28, 1992, 106 Stat. 4246; amended Pub. L. 103-198, Sec. 6(b)(5), Dec. 17, 1993, 107 Stat. 2312.)

Copyright Laws and Regulations

CHAPTER 11—SOUND RECORDINGS AND MUSIC VIDEOS

Sec.

1101 Unauthorized fixation and trafficking in sound recordings and music videos.

17 U.S.C. 1101 **Unauthorized fixation and trafficking in sound recordings and music videos**

(a) **Unauthorized Acts.** - Anyone who, without the consent of the performer or performers involved -

- (1) fixes the sounds or sounds and images of a live musical performance in a copy or phonorecord, or reproduces copies or phonorecords of such a performance from an unauthorized fixation,
- (2) transmits or otherwise communicates to the public the sounds or sounds and images of a live musical performance, or
- (3) distributes or offers to distribute, sells or offers to sell, rents or offers to rent, or traffics in any copy or phonorecord fixed as described in paragraph (1), regardless of whether the fixations occurred in the United States, shall be subject to the remedies provided in sections 502 through 505, to the same extent as an infringer of copyright.

(b) **Definition.** - As used in this section, the term "traffic in" means transport, transfer, or otherwise dispose of, to another, as consideration for anything of value, or make or obtain control of with intent to transport, transfer, or dispose of.

(c) **Applicability.** - This section shall apply to any act or acts that occur on or after the date of the enactment of the Uruguay Round Agreements Act.

(d) **State Law Not Preempted.** - Nothing in this section may be construed to annul or limit any rights or remedies under the common law or statutes of any State.

(Added Pub. L. 103-465, title V, Sec. 512(a), Dec. 8, 1994, 108 Stat. 4974.)