Ohio Department of Rehabilitation and Correction

System Access Request

- ☐ DRC Employee
- ☐ Contractor
- ☐ Outside Agency/Individual
- ☐ Other: _____

Please complete and send to:

ODRC Information Service Center at 770 West Broad Street, Columbus, OH 43222 or fax to (614) 752-2943.

Date of Request:

Name of User (First, Middle, Last Name):	OAKS ID Number:
Job Title:	Institution/Office:
Location and Address:	Area (e.g., Cashier's Office):
Telephone Number of User (include the area code):	Fax Number of User (include the area code):

Justification/Purpose:

Check Application:

- ☐ **Reentry Portal**
- ☐ **E-MAIL -** Outlook
- ☐ **Syteline**
- ☐ **DRC Training Application**
- ☐ **ODRC Gateway**

DOTS Portal:

- ☐ **CIMS**
- ☐ **RAP**
- ☐ **SAP**
- ☐ **PSI**
- ☐ **STG**

Medical Infor. System

- ☐ **ODRC**
- ☐ **APA**
- ☐ **DYS**
- ☐ **ODMH**

Photo Retrieval:

- ☐ **Inmate**
- ☐ **Offender**
- ☐ **Employee**
- ☐ **STG**

ID/Photo:

- ☐ **Inmate**
- ☐ **Offender**
- ☐ **Employee**

Ohio Court Network:

- ☐ **OCN**

- ☐ **OPI Inmate Payroll**
- ☐ **Inventory Manager**
- ☐ **Supervision Fees**
- ☐ **DAS Central Warehouse** *(Food Service)*

- ☐ **INTERNET**
- ☐ **Dial-Up Account**
- ☐ **VPN**
- ☐ **Kronos**

- ☐ **OnBase**
- ☐ **E-Forms Catalog**
- ☐ **DRC Security Policies**
- ☐ **DPCS Security Policies**

- ☐ **CACTAS**
- ☐ **Domain User Account**
- ☐ **OAKS - Financials**
- ☐ **Server Access** (Justification Required):

_____
Server File Location

Additional Information

My signature below indicates that I have read, understand and agree to follow all pertinent laws, regulations, operational guidelines and procedures stated in DRC policy 05-OIT-10 and 01-COM-01. I acknowledge that all information obtained using Intranet, Internet, all online services/systems and/or dial-up services will be accepted and used only in accordance with my official duties. I understand that any and all computer systems remain the property of the State of Ohio, Department of Rehabilitation and Correction and may therefore be subject to inspection at any time. I agree not to compose, send, or forward any e-mail or document that may be construed as offensive or inflammatory to anyone.

All APA/Institution staff requesting Internet access and/or dial-up services must have approval by the Regional Administrator or Warden.

All Central Office Internet requests and/or dial-up services must be approved by the Bureau/Section Administrator.

Any Employee Violating Department Policies or AR's May Be Subject To Disciplinary Action.

User Signature:

Approved by:

Supervisor/Regional Administrator:
Deputy Director/Warden:
Director or Designee:

STATE OF OHIO

DEPARTMENT OF REHABILITATION AND CORRECTION

SUBJECT: **Internet, Electronic Mail, and Online Services Use**	PAGE 1 OF 5 .
	NUMBER: 05-OIT-10
RULE/CODE REFERENCE:	SUPERSEDES: 05-OIT-10 dated 02/21/11
RELATED ACA STANDARDS:	EFFECTIVE DATE: September 13, 2011
	APPROVED:

I. AUTHORITY

This policy is issued in compliance with Ohio Revised Code 5120.01 which delegates to the Director of the Department of Rehabilitation and Correction the authority to manage and direct the total operations of the Department and to establish such rules and regulations as the Director prescribes.

II. PURPOSE

The purpose of this policy is to establish security requirements for the appropriate use of Ohio Department of Rehabilitation and Correction information technology system assets.

III. APPLICABILITY

This policy applies to all employees of the Ohio Department of Rehabilitation and Correction (DRC) and other individuals such as DRC contractors and DRC volunteers who by virtue of their job duties, roles, responsibilities or assignments, request and/or receive access to Ohio Department of Rehabilitation and Correction information technology system assets.

IV. DEFINITIONS

DRC Information Technology Governance Group (ITGG) – The multi-disciplinary leadership group, chaired by the Deputy Director of the Office of Administration and comprised of DRC executive staff and administrators from the Office of Administration, Bureau of Information Technology Services (BITS), charged with the responsibility of guiding DRC's information technology biennial plan to ensure that information technology system assets are identified, obtained, and utilized in an efficient and effective manner to achieve and sustain DRC's mission and business continuity.

Highly Secure System Access - DRC information technology access given to users whose duties, roles, responsibilities, or assignments require access to highly secure and controlled DRC system assets such as mental health and medical data and systems.

Non-DRC System Access - Non-DRC information technology access given to users whose duties, roles, responsibilities, or assignments require access to non-DRC networks, data and/or services or resources such as LEADS and OHLEG.

Regular System Access - DRC information technology access given to users whose duties, roles, responsibilities, or assignments require access to basic, standardized DRC system assets such as DOTS Portal, OSP, ORAS or FOT.

Specialized System Access - DRC information technology access given to users above the regular system asset level whose duties, roles, responsibilities, or assignments require access to additional DRC system assets such as the internet, virtual privacy network (VPN) or air cards.

System Assets - Computer hardware, software, networks, data and/or services or resources that are necessary to support the information technology requirements of the Ohio Department of Rehabilitation and Correction and, therefore, must be protected by the appropriate security requirements to ensure business continuity.

V. POLICY

It is the policy of the Ohio Department of Rehabilitation and Correction to establish security requirements to protect DRC information technology system assets such as the internet, electronic mail, online services, and the virtual private network in order to ensure business continuity.

VI. PROCEDURES

A. DRC information technology system assets contain data that is the property of DRC. Said data is subject to inspection and, depending upon its content, may be subject to public records laws.

B. DRC has the capability to monitor the use of all DRC information technology system assets and shall do so when deemed appropriate. Any suspected misuse of DRC system assets shall be reported to the DRC Office of the Chief Inspector.

C. DRC reserves the right to limit and restrict access to all DRC information technology system assets. In order to protect the security of DRC information technology system assets, all access requests from DRC employees and others, such as DRC contractors and DRC volunteers, shall be documented via submission of a System Access Request Form (DRC3424) and shall be reviewed and approved by one or more management levels as follows:

1. For regular system access, the immediate supervisor, or appropriate supervisor if a DRC contractor, DRC volunteer or other external individual, shall review and approve the request.

2. For specialized system access, the immediate supervisor, or appropriate supervisor if a DRC contractor/volunteer or other external individual, and the Managing Officer/designee shall review and approve the request.

3. For highly secure system access, the immediate supervisor, or appropriate supervisor if a DRC contractor/volunteer or other external individual, and the Managing

Officer/designee shall review and approve the request. In addition, the appropriate Operation Support Center administrator representing the data owner shall review and approve the request.

D. Approved System Access Request Forms (DRC3424) shall be submitted by the final approving supervisor/manager/administrator to the DRC Information Service Center at the Operation Support Center where Help Desk staff shall create the appropriate user account.

E. In order to obtain access to non-DRC information technology systems, networks or data, DRC employees and other individuals, such as DRC contractors and DRC volunteers, shall follow all access request policies and procedures of the non-DRC agency that owns or hosts the information technology systems, networks or data.

The DRC employee or other individual shall complete the appropriate access form from the non-DRC agency and submit the form to the immediate supervisor, or appropriate supervisor if a DRC contractor, DRC volunteer or other external individual, for review and approval. Upon approving the request, the immediate/appropriate supervisor shall submit the form to the non-DRC agency for creation of the account.

F. The system access request/approval process outlined in this policy for regular, specialized, and highly secure DRC system asset user groups and non-DRC user groups can be modified only with the approval of the DRC Information Technology Governance Group.

G. DRC employees and other individuals, such as DRC contractors and DRC volunteers, who receive access to DRC information technology system assets shall follow all DRC security requirements:

1. All DRC information technology system assets, including the internet, electronic mail, on-line services, and VPN access shall be used for business purposes only. Signature lines on electronic mail shall be restricted to business-related information such as name, title, and contact information.

2. Employees and other individuals with DRC system asset accounts, such as the internet, electronic mail, online services, and the VPN, shall not:

   a. Use any system asset for operating a business or for personal gain; supporting a non-DRC activity or organization; sending chain letters; soliciting money or services; purchasing non-business goods or services or for religious or political purposes.

   b. Send or distribute any unsolicited electronic mail, commonly referred to as “spam,” to individuals who have no direct interest in the subject matter of the electronic mail, including employees of DRC and other state agencies.

   c. Use an electronic mail “global distribution list” unless they are a member of the list or are using the distribution list for a legitimate business purpose.

   d. Use electronic mail for non-business communications.

e. Create or distribute communications, including images, that contain offensive or harassing statements, including disparaging or derogatory statements about others based on their race, national origin, sex, sexual orientation, age, disability, religious or political beliefs.

f. Create or distribute communications including images that contain incendiary statements which might incite violence or describe or promote the use of weapons or devices associated with illegal activities.

g. Use their DRC accounts for recreational purposes such as downloading or playing computer games, gambling, or to send, distribute or solicit sexually oriented messages, materials or images.

h. Use their DRC accounts to download, distribute, or print copyrighted materials including articles, books, software, or images in violation of copyright laws.

i. Use their DRC accounts to download or order non-DRC software, software service packs, or software updates to any State of Ohio owned or leased computer, peripheral device, communication line or network.

j. Use a DRC account or any non-DRC information system account for non-business purposes to access personal or confidential information about an individual.

k. Use another DRC system asset user's account or signature line.

l. Share their DRC system asset user account information with another individual or display their DRC system asset user account information in a location that can be viewed by others.

m. Share confidential data from DRC system assets with individuals that do not have a legitimate, business need for the data.

n. Misrepresent their duties, roles, responsibilities or assignments to obtain a DRC system asset user account.

H. Workstation Management Procedures for DRC Facilities

1. Security

a. Any internet workstation in a correctional facility must be located in a secure area (in a locked cabinet or behind a locked door).

b. Operation Support Center and Division of Parole and Community Services staff shall take the necessary precautions to secure their computer from offenders who may be in the area. This may include locking the computer, logging off the computer, or shutting the computer down when leaving the area.

2. Laptop Computers

a. DRC employees or other individuals who are authorized to use State of Ohio owned or leased computer equipment outside of DRC sites shall inform the Chief of the Bureau of Information and Technology services, in writing using an Incident Report (DRC1000) pursuant to Department Policy 01-COM-08, Incident Reporting and Notification, in the event of theft or loss of any state computer.

b. DRC employees or other individuals who are authorized to use State of Ohio owned computer or leased equipment outside of DRC sites shall inform the Chief of the Bureau of Information and Technology services in writing using an Incident Report (DRC1000) pursuant to Department Policy 01-COM-08, Incident Reporting and Notification, in the event that the security (passwords) of the computer or laptop is compromised.

Related Department Forms:

Incident Report	DRC1000
Systems Access Request Form	DRC3424

JOHN R. KASICH
GOVERNOR
STATE OF OHIO

TO: **Department/Agency Directors and Chief Legal Counsels**

FROM: D. Michael Grodhaus
Chief Counsel, Governor's Office

DATE: April 7, 2011

SUBJECT: Policy and Procedures for Notification of Suspected Illegal or Improper Activity within State Departments and Agencies

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The purpose of this Memorandum is to set forth the procedures to be followed when illegal or improper activity by any state employee or official is observed, suspected or reported. This Policy sets forth the procedures for processing such allegations and provides for the careful, expeditious handling of all allegations and claims made against state employees. The procedures described herein are not intended to waive or vary any rights or obligations set forth in any Collective Bargaining Agreement and/or any notification requirements imposed by law.

I. **Emergency Notification Procedure**:

If an illegal activity has been committed, or is in the process of being committed, and an *immediate law enforcement response is necessary* to protect life, physical safety, property and/or to preserve evidence, state employees may call 911. However, if time permits and it can be safely done, it is preferable that the State Highway Patrol's Office of Investigative Services be called first.[1]

In central Ohio, the State Highway Patrol Office of Investigative Services can be reached at (614) 752-0234 during normal business hours. After hours, call the Highway Patrol Communications Center at (614) 466-2660. In other areas of the state, reports should be directed to the local State Highway Patrol Post. A trooper will be dispatched to start an investigation.

After the immediate emergency has subsided, the Department Director and/or the Chief Legal Counsel for the Department shall provide information about the incident according to the procedure outlined below.

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[1] If there is a need to keep the peace on lands or waters owned, maintained, controlled or regulated by the Ohio Department of Natural Resources (ODNR), employees should call Gary Obermiller at ODNR at (614) 265-7067.

II. **Non-Emergency Suspected Illegal Activity Notification Procedure**:

A state employee who observes, becomes aware of, or suspects *non-emergency* illegal or improper activity should immediately notify his or her supervisor or the Chief Legal Counsel for the Department and/or the Department Director. If the notification is made to an employee's supervisor, that supervisor should then immediately report the information to the Chief Legal Counsel for the Department and/or the Department Director.[2] Employees who report conduct that they believe is illegal or improper should have a reasonable factual basis for believing or suspecting that illegal or improper activities have occurred or will occur, and should provide as much specific information as possible to allow for proper assessment of the nature, extent, and urgency of the illegal or improper conduct.

Once such a report is made by an employee, Department Directors, Chief Legal Counsels and department senior staffs must be aware of their obligations to comply with the so-called "whistleblower statutes" found in R.C. §124.341 and R.C. §4113.52. An employee who has properly reported an illegal or improper activity and has otherwise complied with a whistleblower statute cannot be subject to any disciplinary action for making such a report.

Upon receipt of the report of possible illegal or improper activity, the Chief Legal Counsel for the Department and/or the Department Director shall promptly provide the information to (a) the Chief Legal Counsel for the Governor (or his designee), (b) the State Highway Patrol Office of Investigative Services and (c) the Ohio Inspector General (or his designee). To the extent practicable, notification shall be simultaneously provided to the three of them in writing and include the following factual details: [3]

a. A description of the activity believed to be illegal or improper;
b. What action/investigation, if any, has been taken by the Department;
c. Where the activity occurred;
d. Name and position of the person(s) suspected of acting illegally or improperly;
e. Time frame in which the activity is believed to have occurred or will occur;
f. How and when the Department learned of the activity; and
g. Department contact person with contact information.

[2] If an employee observes, becomes aware of or suspects illegal or improper activity by the Department Director, then the employee or supervisor should report the activity to the Chief Legal Counsel and not the Director. The Chief Legal Counsel must then notify the Governor's Office, the State Highway Patrol and the Inspector General according to the procedures below. Likewise, if the purported illegal or improper activity is being conducted by the Chief Legal Counsel, then the employee or supervisor should notify the Director directly who will then notify the Governor's Office, the State Highway Patrol and the Inspector General according to the procedure set forth below.

[3] An example of the suggested format for this notification can be found on page 5.

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Once the information is received, the Chief Legal Counsel for the Governor, the State Highway Patrol Office of Investigative Services and the Ohio Inspector General, or their respective designees, will promptly and jointly determine whether to open an investigation, and if so, whether the State Highway Patrol will undertake the investigation, whether the Ohio Inspector General will undertake the investigation, or whether it is appropriate for those two agencies to jointly investigate the matter. The Chief Legal Counsel for the Governor, the State Highway Patrol and the Ohio Inspector General may also, when warranted, refer the matter to, consult with or determine to bring into the investigation other appropriate agencies including, but not limited to, the Ohio Ethics Commission, the Ohio Auditor of State, the Ohio Attorney General, a county or city prosecuting attorney, or a local law enforcement agency.

Because a criminal investigation may be initiated as a result of such a report, the Department involved should not conduct an internal investigation unless and until specifically authorized to do so by the appropriate investigating agency. Administrative inquiries and interviews must give way to criminal investigations and no one suspected of illegal activity should be approached, disciplined or placed on administrative leave without such authorization. Upon completion of the law enforcement investigation, the Chief Legal Counsel of the Department in question shall be notified by the appropriate investigating agency.

III. Additional Procedures:

Any state employee who becomes aware of, or suspects, illegal or improper activity by the Governor or any member of his immediate staff may directly contact the State Highway Patrol <u>and</u> the Ohio Inspector General per their contact information below.

In such a case, the State Highway Patrol and the Inspector General shall confer without the Governor's Chief Counsel and decide whether an investigation is warranted, and if so, which agency will conduct the investigation or whether they will jointly investigate the allegation.

Employees observing or suspecting illegal or improper activity always have the option of directly reporting such activity directly to the Ohio Inspector General, the State Highway Patrol, the Ohio Ethics Commission, or any other pertinent law enforcement authority.

IV. Designations and Contact Information:

Governor's Office:

D. Michael Grodhaus, Chief Counsel
(614) 644-0825
michael.grodhaus@governor.ohio.gov

Designee: Kim Kutschbach, Assistant Chief Counsel
(614) 644-0809
kim.kutschbach@governor.ohio.gov

Ohio Inspector General:

Rodney Stewart, First Assistant Deputy Inspector General
(614) 644-9112
Rodney.Stewart@oig.state.oh.us

Designee: James Manken, Chief Legal Counsel
(614) 644-9589
James.Manken@oig.state.oh.us

State Highway Patrol, Office of Investigative Services:

Captain James D. Brink
(614) 466-3375
ospinvest@dps.state.oh.us

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CONFIDENTIAL MEMORANDUM

To: [insert designee & contact info]
Office of the Governor

[insert designee & contact info]
Ohio Inspector General

[insert designee & contact info]
Ohio State Highway Patrol

From: (Department Director or Chief Legal Counsel)

Date:

Subject: Notification of Employee Suspected Illegal Activity (Department Case Number)

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1. Activity believed to be illegal: [be specific]
2. What action/investigation, if any, has been taken by the Department:
3. Where the activity occurred:
4. Name of the person(s) to be investigated:
5. Time frame in which the activity is believed to have occurred or will occur:
6. How and when the Department learned of the activity:
7. Department contact person:

RECEIVED
MAR 05 2014
LORCI
WARDEN'S OFFICE

Acting Mayr Lowell, Please bring this Kite to Officer Campbell's attention in the presence of a union rep. Please be clear that we do not have evidence of those allegations but bringing in bootleg movies is unacceptable and will not be tolerated. Please document your conversation appropriately. VC

My name is [redacted]
Wanted to ask you a question. Are you aware that members of your staff are violating both Federal & State Law? C.O. Campbell who works in the [illegible] has been bringing in Copyrighted movies. For example Pirate Ship was shown mid February. This movie has not yet been released to DVD. He brought in several others as well. This is not a good practice to have within a correctional facility. I grew up in the Juvenile Detention Center in Illinois watching copyrighted movies there. This type of behavior influenced me so much that I became involved in [illegible] copyright infringement in my adult years thinking it was okay. It seems I learned [illegible] in Juvenile Prison [illegible]

[illegible] unacceptable behavior [illegible] enforced here. [illegible] case of [illegible] I think there should be a message to inmates & staff that the Sheriff's Department [illegible] individuals have [illegible]

Sir,
Thank You
for bringing
this matter
to my [illegible]
Your [illegible]
have [illegible]
[illegible]
[illegible]
[illegible]
Still taking
place.

Dear Warden,

It has been brought to my [illegible] that the C.O's on 4C intake continue to play pirated (copyrighted) movies to the inmates.

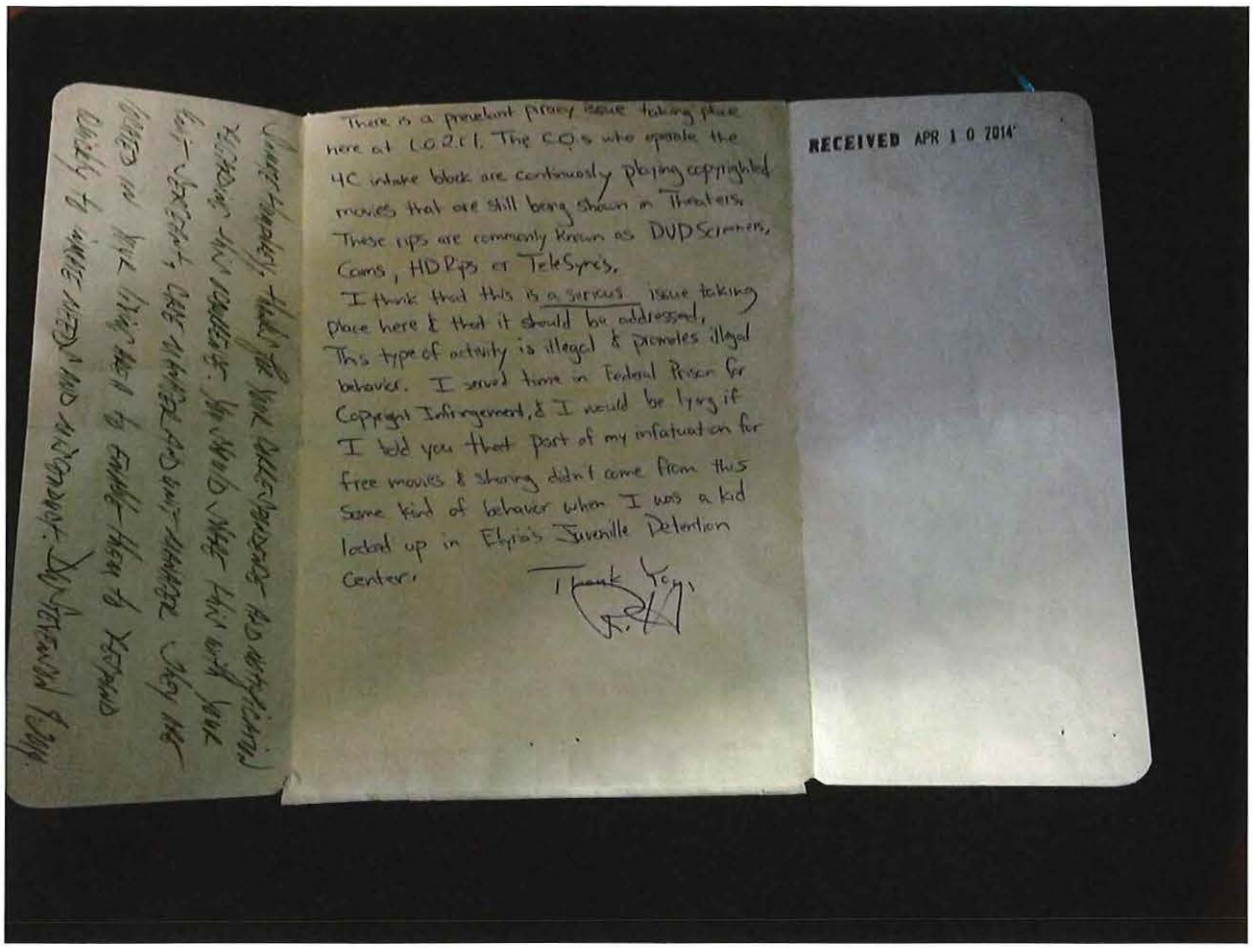
I sent you a kite upon my arrival here [illegible] over this type of [illegible] & the negative consequences that can transpire as a result.

I have spent 24 months in Federal [illegible] for Copyright Infringement. This type of [illegible] was presented to me in the Elyria Juvenile Detention Home where pirated movies were played constantly. As a result I became dulled to the possible legal consequences.

Being that this is a controlled facility I feel that any type of illegal activity regardless of how minor it may be should be addressed. Thank You! [illegible]

RECEIVED
APR 09 2014
LO

This matter will
continue to
be addressed
until rectified.
Warden.
Clipper



There is a prevelant piracy issue taking place here at L.O.2.C.I. The C.O.s who operate the 4C intake block are continuosly playing copyrighted movies that are still being shown in Theaters. These rips are commonly known as DVD Screeners, Cams, HD Rips or TeleSync's.

I think that this is a serious issue taking place here & that it should be addressed. This type of activity is illegal & promotes illegal behavior. I served time in Federal Prison for Copyright Infringement, & I would be lying if I told you that part of my infatuation for free movies & sharing didn't come from this same kind of behavior when I was a kid locked up in Elyria's Juvenile Detention Center.

Thank You,

RECEIVED APR 1 0 2014

Sincere Humbly, thank you for your correspondence and notification regarding this occurrence. You should share this with your Lieut Sergeant, care manager and unit manager. They are located in your living area to enable them to respond quickly to inmate needs and misconduct. Dr Stevenson & Guy.

DRC4018

Conduct Report

		Institution: LORCI	LORCI-14-001456
Name: REDDICK, OCIE		Number: A186383	Lock: 10/B/109B
Date/Offense: 05/14/2014	Time/Offense: 10:30 AM	Location: 10B 109B	

Rule(s) Violated: 51,61

Possession of contraband, including any article knowingly possessed which has been altered or for which permission has not been given; Any violation of any published institutional rules, regulations or procedures

Supporting Facts (Describe what occurred and how the inmate violated the rule[s]):

On May 14, 2014 @ 10:30am a cell search was performed on inmate Reddick #186383 and a burned copy of HOBBIT 2 movie was found.This item was turned into shift. EOR

(Use Conduct Report Supplement sheet, if needed)

As the Charging Official, do you wish to have input into the disciplinary proceedings? ☐ Yes ☑ No

Printed Name: Sams, T	Signature:	
Shift: 1st	Days Off: M/T	Date: 05/14/2014

A copy of this conduct report was served upon the above-named inmate on: May, 16 20 14, at 09:00 AM.

Staff Signature: Michael L. Doty

I acknowledge receipt of the conduct report on the above stated date and time:

Inmate Signature:	Number: A186383

DRC 4018 (rev 12/05) DISTRIBUTION: WHITE - RIB CANARY - Unit File PINK - RIB Board GOLD - Inmate ACA 4214 through 4236, 4269

Chapter 5

Copyright Infringement and Remedies

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§ 501 · Infringement of copyright[3]

(a) Anyone who violates any of the exclusive rights of the copyright owner as provided by sections 106 through 122 or of the author as provided in section 106A(a), or who imports copies or phonorecords into the United States in violation of section 602, is an infringer of the 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). As used in this subsection, the term "anyone" includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this title in the same manner and to the same extent as any nongovernmental entity.

(b) The legal or beneficial owner of an exclusive right under a copyright is entitled, subject to the requirements of section 411, to institute an action for any infringement of that particular right committed while he or she is the owner of it. The court may require such owner to serve written notice of the action with a copy of the complaint upon any person shown, by the records of the Copyright Office or otherwise, to have or claim an interest in the copyright, and shall require that such notice be served upon any person whose interest is likely to be affected by a decision in the case. The court may require the joinder, and shall permit the intervention, of any person having or claiming an interest in the copyright.

(c) For any secondary transmission by a cable system that embodies a performance or a display of a work which is actionable as an act of infringement under subsection (c) of section 111, a television broadcast station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that television station.

(d) For any secondary transmission by a cable system that is actionable as an act of infringement pursuant to section 111(c)(3), the following shall also have standing to sue: (i) the primary transmitter whose transmission has been altered by the cable system; and (ii) any broadcast station within whose local service area the secondary transmission occurs.

(e) With respect to any secondary transmission that is made by a satellite carrier of a performance or display of a work embodied in a primary transmission and is actionable as an act of infringement under section 119(a)(5), a network station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that station.

(f)(1) With respect to any secondary transmission that is made by a satellite carrier of a performance or display of a work embodied in a primary transmission and is actionable as an act of infringement under section 122, a television broadcast station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local market of that station.

(2) A television broadcast station may file a civil action against any satellite carrier that has refused to carry television broadcast signals, as required under section 122(a)(2), to enforce that television broadcast station's rights under section 338(a) of the Communications Act of 1934.

§ 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.

§ 503 · Remedies for infringement: Impounding and disposition of infringing articles[4]

(a)(1) 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—

(A) of all copies or phonorecords claimed to have been made or used in violation of the exclusive right of the copyright owner;

(B) of all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies or phonorecords may be reproduced; and

(C) of records documenting the manufacture, sale, or receipt of things involved in any such violation, provided that any records seized under this subparagraph shall be taken into the custody of the court.

(2) For impoundments of records ordered under paragraph (1)(C), the court shall enter an appropriate protective order with respect to discovery and use of any records or information that has been impounded. The protective order shall provide for appropriate procedures to ensure that confidential, private, proprietary, or privileged information contained in such records is not improperly disclosed or used.

(3) The relevant provisions of paragraphs (2) through (11) of section 34(d) of the Trademark Act (15 U.S.C. 1116(d)(2) through (11)) shall extend to any impoundment of records ordered under paragraph (1)(C) that is based upon an ex parte application, notwithstanding the provisions of rule 65 of the Federal Rules of Civil Procedure. Any references in paragraphs (2) through (11) of section 34(d) of the Trademark Act to section 32 of such Act shall be read as references to section 501 of this title, and references to use of a counterfeit mark in connection with the sale, offering for sale, or distribution of goods or services shall be read as references to infringement of a copyright.

(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 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.

§ 504 · Remedies for infringement: Damages and profits[5]

(a) In General.—Except as otherwise provided by this title, an infringer of copyright is liable for either—

(1) the copyright owner's actual damages and any additional profits of the infringer, as provided by subsection (b); or

(2) statutory damages, as provided by subsection (c).

(b) Actual Damages and Profits.—The copyright owner is entitled to recover the actual damages suffered by him or her as a result of the infringement, and any profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages. In establishing the infringer's profits, the copyright owner is required to present proof only of the infringer's gross revenue, and the infringer is required to prove his or her deductible expenses and the elements of profit attributable to factors other than the copyrighted work.

(c) Statutory Damages.—

(1) Except as provided by clause (2) of this subsection, the copyright owner may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to any one work, for which any one infringer is liable individually, or for which any two or more infringers are li-

able jointly and severally, in a sum of not less than $750 or more than $30,000 as the court considers just. For the purposes of this subsection, all the parts of a compilation or derivative work constitute one work.

(2) In a case where the copyright owner sustains the burden of proving, and the court finds, that infringement was committed willfully, the court in its discretion may increase the award of statutory damages to a sum of not more than $150,000. In a case where the infringer sustains the burden of proving, and the court finds, that such infringer was not aware and had no reason to believe that his or her acts constituted an infringement of copyright, the court in its discretion may reduce the award of statutory damages to a sum of not less than $200. The court shall remit statutory damages in any case where an infringer believed and had reasonable grounds for believing that his or her use of the copyrighted work was a fair use under section 107, if the infringer was: (i) an employee or agent of a nonprofit educational institution, library, or archives acting within the scope of his or her employment who, or such institution, library, or archives itself, which infringed by reproducing the work in copies or phonorecords; or (ii) a public broadcasting entity which or a person who, as a regular part of the nonprofit activities of a public broadcasting entity (as defined in section 118(f)) infringed by performing a published nondramatic literary work or by reproducing a transmission program embodying a performance of such a work.

(3) (A) In a case of infringement, it shall be a rebuttable presumption that the infringement was committed willfully for purposes of determining relief if the violator, or a person acting in concert with the violator, knowingly provided or knowingly caused to be provided materially false contact information to a domain name registrar, domain name registry, or other domain name registration authority in registering, maintaining, or renewing a domain name used in connection with the infringement.

(B) Nothing in this paragraph limits what may be considered willful infringement under this subsection.

(C) For purposes of this paragraph, the term "domain name" has the meaning given that term in section 45 of the Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes" approved July 5, 1946 (commonly referred to as the "Trademark Act of 1946"; 15 U.S.C. 1127).

(d) Additional Damages in Certain Cases.—In any case in which the court finds that a defendant proprietor of an establishment who claims as a defense that its activities were exempt under section 110(5) did not have reasonable grounds to believe that its use of a copyrighted work was exempt under such section, the plaintiff shall be entitled to, in addition to any award of damages under this section, an additional award of two times the amount of the license fee that

the proprietor of the establishment concerned should have paid the plaintiff for such use during the preceding period of up to 3 years.

§ 505 · Remedies for infringement: Costs and attorney's fees

In any civil action under this title, the court in its discretion may allow the recovery of full costs by or against any party other than the United States or an officer thereof. Except as otherwise provided by this title, the court may also award a reasonable attorney's fee to the prevailing party as part of the costs.

§ 506 · Criminal offenses[6]

(a) Criminal Infringement.—

(1) In general.—Any person who willfully infringes a copyright shall be punished as provided under section 2319 of title 18, if the infringement was committed—

(A) for purposes of commercial advantage or private financial gain;

(B) by the reproduction or distribution, including by electronic means, during any 180-day period, of 1 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of more than $1,000; or

(C) by the distribution of a work being prepared for commercial distribution, by making it available on a computer network accessible to members of the public, if such person knew or should have known that the work was intended for commercial distribution.

(2) Evidence.—For purposes of this subsection, evidence of reproduction or distribution of a copyrighted work, by itself, shall not be sufficient to establish willful infringement of a copyright.

(3) Definition.—In this subsection, the term "work being prepared for commercial distribution" means—

(A) a computer program, a musical work, a motion picture or other audiovisual work, or a sound recording, if, at the time of unauthorized distribution—

(i) the copyright owner has a reasonable expectation of commercial distribution; and

(ii) the copies or phonorecords of the work have not been commercially distributed; or

(B) a motion picture, if, at the time of unauthorized distribution, the motion picture—

(i) has been made available for viewing in a motion picture exhibition facility; and

(ii) has not been made available in copies for sale to the general public in the United States in a format intended to permit viewing outside a motion picture exhibition facility.

(b) Forfeiture, Destruction, and Restitution.—Forfeiture, destruction, and restitution relating to this section shall be subject to section 2323 of title 18, to the extent provided in that section, in addition to any other similar remedies provided by law.

(c) Fraudulent Copyright Notice.—Any person who, with fraudulent intent, places on any article a notice of copyright or words of the same purport that such person knows to be false, or who, with fraudulent intent, publicly distributes or imports for public distribution any article bearing such notice or words that such person knows to be false, shall be fined not more than $2,500.

(d) Fraudulent Removal of Copyright Notice.—Any person who, with fraudulent intent, removes or alters any notice of copyright appearing on a copy of a copyrighted work shall be fined not more than $2,500.

(e) False Representation.—Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than $2,500.

(f) Rights of Attribution and Integrity.—Nothing in this section applies to infringement of the rights conferred by section 106A(a).

§507 · Limitations on actions[7]

(a) Criminal Proceedings.—Except as expressly provided otherwise in this title, no criminal proceeding shall be maintained under the provisions of this title unless it is commenced within 5 years after the cause of action arose.

(b) Civil Actions.—No civil action shall be maintained under the provisions of this title unless it is commenced within three years after the claim accrued.

§508 · Notification of filing and determination of actions

(a) Within one month after the filing of any action under this title, the clerks of the courts of the United States shall send written notification to the Register of Copyrights setting forth, as far as is shown by the papers filed in the court, the names and addresses of the parties and the title, author, and registration number of each work involved in the action. If any other copyrighted work is later included in the action by amendment, answer, or other pleading, the clerk shall

also send a notification concerning it to the Register within one month after the pleading is filed.

(b) Within one month after any final order or judgment is issued in the case, the clerk of the court shall notify the Register of it, sending with the notification a copy of the order or judgment together with the written opinion, if any, of the court.

(c) Upon receiving the notifications specified in this section, the Register shall make them a part of the public records of the Copyright Office.

§ 509 · [Repealed][8]

§ 510 · Remedies for alteration of programming by cable systems[9]

(a) In any action filed pursuant to section 111(c)(3), the following remedies shall be available:

(1) Where an action is brought by a party identified in subsections (b) or (c) of section 501, the remedies provided by sections 502 through 505, and the remedy provided by subsection (b) of this section; and

(2) When an action is brought by a party identified in subsection (d) of section 501, the remedies provided by sections 502 and 505, together with any actual damages suffered by such party as a result of the infringement, and the remedy provided by subsection (b) of this section.

(b) In any action filed pursuant to section 111(c)(3), the court may decree that, for a period not to exceed thirty days, the cable system shall be deprived of the benefit of a statutory license for one or more distant signals carried by such cable system.

§ 511 · Liability of States, instrumentalities of States, and State officials for infringement of copyright[10]

(a) In General.—Any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity, shall not be immune, under the Eleventh Amendment of the Constitution of the United States or under any other doctrine of sovereign immunity, from suit in Federal Court by any person, including any governmental or nongovernmental entity, for a violation of any of the exclusive rights of a copyright owner provided by sections 106 through 122, for importing copies

of phonorecords in violation of section 602, or for any other violation under this title.

(b) Remedies. — In a suit described in subsection (a) for a violation described in that subsection, remedies (including remedies both at law and in equity) are available for the violation to the same extent as such remedies are available for such a violation in a suit against any public or private entity other than a State, instrumentality of a State, or officer or employee of a State acting in his or her official capacity. Such remedies include impounding and disposition of infringing articles under section 503, actual damages and profits and statutory damages under section 504, costs and attorney's fees under section 505, and the remedies provided in section 510.

§ 512 · Limitations on liability relating to material online[11]

(a) Transitory Digital Network Communications. — A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the provider's transmitting, routing, or providing connections for, material through a system or network controlled or operated by or for the service provider, or by reason of the intermediate and transient storage of that material in the course of such transmitting, routing, or providing connections, if —

(1) the transmission of the material was initiated by or at the direction of a person other than the service provider;

(2) the transmission, routing, provision of connections, or storage is carried out through an automatic technical process without selection of the material by the service provider;

(3) the service provider does not select the recipients of the material except as an automatic response to the request of another person;

(4) no copy of the material made by the service provider in the course of such intermediate or transient storage is maintained on the system or network in a manner ordinarily accessible to anyone other than anticipated recipients, and no such copy is maintained on the system or network in a manner ordinarily accessible to such anticipated recipients for a longer period than is reasonably necessary for the transmission, routing, or provision of connections; and

(5) the material is transmitted through the system or network without modification of its content.

(b) System Caching. —

(1) Limitation on liability. — A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the intermediate

and temporary storage of material on a system or network controlled or operated by or for the service provider in a case in which—

(A) the material is made available online by a person other than the service provider;

(B) the material is transmitted from the person described in subparagraph (A) through the system or network to a person other than the person described in subparagraph (A) at the direction of that other person; and

(C) the storage is carried out through an automatic technical process for the purpose of making the material available to users of the system or network who, after the material is transmitted as described in subparagraph (B), request access to the material from the person described in subparagraph (A), if the conditions set forth in paragraph (2) are met.

(2) Conditions.—The conditions referred to in paragraph (1) are that—

(A) the material described in paragraph (1) is transmitted to the subsequent users described in paragraph (1)(C) without modification to its content from the manner in which the material was transmitted from the person described in paragraph (1)(A);

(B) the service provider described in paragraph (1) complies with rules concerning the refreshing, reloading, or other updating of the material when specified by the person making the material available online in accordance with a generally accepted industry standard data communications protocol for the system or network through which that person makes the material available, except that this subparagraph applies only if those rules are not used by the person described in paragraph (1)(A) to prevent or unreasonably impair the intermediate storage to which this subsection applies;

(C) the service provider does not interfere with the ability of technology associated with the material to return to the person described in paragraph (1)(A) the information that would have been available to that person if the material had been obtained by the subsequent users described in paragraph (1)(C) directly from that person, except that this subparagraph applies only if that technology—

(i) does not significantly interfere with the performance of the provider's system or network or with the intermediate storage of the material;

(ii) is consistent with generally accepted industry standard communications protocols; and

(iii) does not extract information from the provider's system or network other than the information that would have been available to the person described in paragraph (1)(A) if the subsequent users had gained access to the material directly from that person;

(D) if the person described in paragraph (1)(A) has in effect a condition that a person must meet prior to having access to the material, such as a

condition based on payment of a fee or provision of a password or other information, the service provider permits access to the stored material in significant part only to users of its system or network that have met those conditions and only in accordance with those conditions; and

(E) if the person described in paragraph (1)(A) makes that material available online without the authorization of the copyright owner of the material, the service provider responds expeditiously to remove, or disable access to, the material that is claimed to be infringing upon notification of claimed infringement as described in subsection (c)(3), except that this subparagraph applies only if—

(i) the material has previously been removed from the originating site or access to it has been disabled, or a court has ordered that the material be removed from the originating site or that access to the material on the originating site be disabled; and

(ii) the party giving the notification includes in the notification a statement confirming that the material has been removed from the originating site or access to it has been disabled or that a court has ordered that the material be removed from the originating site or that access to the material on the originating site be disabled.

(c) Information Residing on Systems or Networks at Direction of Users.—

(1) In general.—A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the storage at the direction of a user of material that resides on a system or network controlled or operated by or for the service provider, if the service provider—

(A)(i) does not have actual knowledge that the material or an activity using the material on the system or network is infringing;

(ii) in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent; or

(iii) upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material;

(B) does not receive a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control such activity; and

(C) upon notification of claimed infringement as described in paragraph (3), responds expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity.

(2) 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 available through its service, including on its website in a location accessible to the public, and 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, and may require payment of a fee by service providers to cover the costs of maintaining the directory.

(3) Elements of notification.—

(A) To be effective under this subsection, a notification of claimed infringement must be a written communication provided to the designated agent of a service provider that includes substantially the following:

(i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

(ii) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.

(iii) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material.

(iv) Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted.

(v) A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.

(vi) A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

(B)(i) Subject to clause (ii), a notification from a copyright owner or from a person authorized to act on behalf of the copyright owner that fails to comply substantially with the provisions of subparagraph (A) shall not be considered under paragraph (1)(A) in determining whether a service provider has actual knowledge or is aware of facts or circumstances from which infringing activity is apparent.

(ii) In a case in which the notification that is provided to the service provider's designated agent fails to comply substantially with all the provisions of subparagraph (A) but substantially complies with clauses (ii), (iii), and (iv) of subparagraph (A), clause (i) of this subparagraph applies only if the service provider promptly attempts to contact the person making the notification or takes other reasonable steps to assist in the receipt of notification that substantially complies with all the provisions of subparagraph (A).

(d) Information Location Tools.—A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the provider referring or linking users to an online location containing infringing material or infringing activity, by using information location tools, including a directory, index, reference, pointer, or hypertext link, if the service provider—

(1) (A) does not have actual knowledge that the material or activity is infringing;

(B) in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent; or

(C) upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material;

(2) does not receive a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control such activity; and

(3) upon notification of claimed infringement as described in subsection (c)(3), responds expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity, except that, for purposes of this paragraph, the information described in subsection (c)(3)(A)(iii) shall be identification of the reference or link, to material or activity claimed to be infringing, that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate that reference or link.

(e) Limitation on Liability of Nonprofit Educational Institutions.—(1) When a public or other nonprofit institution of higher education is a service provider, and when a faculty member or graduate student who is an employee of such institution is performing a teaching or research function, for the purposes of subsections (a) and (b) such faculty member or graduate student shall be considered to be a person other than the institution, and for the purposes of subsections (c) and (d) such faculty member's or graduate student's knowledge or awareness of his or her infringing activities shall not be attributed to the institution, if—

(A) such faculty member's or graduate student's infringing activities do not involve the provision of online access to instructional materials that are or were required or recommended, within the preceding 3-year period,

for a course taught at the institution by such faculty member or graduate student;

(B) the institution has not, within the preceding 3-year period, received more than 2 notifications described in subsection (c)(3) of claimed infringement by such faculty member or graduate student, and such notifications of claimed infringement were not actionable under subsection (f); and

(C) the institution provides to all users of its system or network informational materials that accurately describe, and promote compliance with, the laws of the United States relating to copyright.

(2) For the purposes of this subsection, the limitations on injunctive relief contained in subsections (j)(2) and (j)(3), but not those in (j)(1), shall apply.

(f) Misrepresentations.—Any person who knowingly materially misrepresents under this section—

(1) that material or activity is infringing, or

(2) that material or activity was removed or disabled by mistake or misidentification,

shall be liable for any damages, including costs and attorneys' fees, 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.

(g) Replacement of Removed or Disabled Material and Limitation on Other Liability.—

(1) No liability for taking down generally.—Subject to paragraph (2), a service provider shall not be liable to any person for any claim based on the service provider's good faith disabling of access to, or removal of, material or activity claimed to be infringing or based on facts or circumstances from which infringing activity is apparent, regardless of whether the material or activity is ultimately determined to be infringing.

(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 notice provided under subsection (c)(1)(C), unless the service provider—

(A) takes reasonable steps promptly to notify the subscriber that it has removed or disabled access to the material;

(B) upon receipt of a counter notification described in paragraph (3), promptly provides the person who provided the notification under subsection (c)(1)(C) with a copy of the counter notification, and informs that person that it will replace the removed material or cease disabling access to it in 10 business days; and

(C) replaces the removed material and ceases disabling access to it not less than 10, nor more than 14, business days following receipt of the counter notice, unless its designated agent first 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.

(3) Contents of counter notification. — To be effective under this subsection, a counter notification must be a written communication provided to the service provider's designated agent that includes substantially the following:

(A) A physical or electronic signature of the subscriber.

(B) Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled.

(C) A statement under penalty of perjury that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled.

(D) The subscriber's name, address, and telephone number, and a statement that the subscriber consents to the jurisdiction of Federal District Court for the judicial district in which the address is located, or if the subscriber's address is outside of the United States, for any judicial district in which the service provider may be found, and that the subscriber will accept service of process from the person who provided notification under subsection (c)(1)(C) or an agent of such person.

(4) Limitation on other liability. — A service provider's compliance with paragraph (2) shall not subject the service provider to liability for copyright infringement with respect to the material identified in the notice provided under subsection (c)(1)(C).

(h) Subpoena to Identify Infringer. —

(1) Request. — A copyright owner or a person authorized to act on the owner's behalf may request the clerk of any United States district court to issue a subpoena to a service provider for identification of an alleged infringer in accordance with this subsection.

(2) Contents of request. — The request may be made by filing with the clerk —

(A) a copy of a notification described in subsection (c)(3)(A);

(B) a proposed subpoena; and

(C) a sworn declaration to the effect that the purpose for which the subpoena is sought is to obtain the identity of an alleged infringer and that such information will only be used for the purpose of protecting rights under this title.

(3) Contents of subpoena.—The subpoena shall authorize and order the service provider receiving the notification and the subpoena to expeditiously disclose to the copyright owner or person authorized by the copyright owner information sufficient to identify the alleged infringer of the material described in the notification to the extent such information is available to the service provider.

(4) Basis for granting subpoena.—If the notification filed satisfies the provisions of subsection (c)(3)(A), the proposed subpoena is in proper form, and the accompanying declaration is properly executed, the clerk shall expeditiously issue and sign the proposed subpoena and return it to the requester for delivery to the service provider.

(5) Actions of service provider receiving subpoena.—Upon receipt of the issued subpoena, either accompanying or subsequent to the receipt of a notification described in subsection (c)(3)(A), the service provider shall expeditiously disclose to the copyright owner or person authorized by the copyright owner the information required by the subpoena, notwithstanding any other provision of law and regardless of whether the service provider responds to the notification.

(6) Rules applicable to subpoena.—Unless otherwise provided by this section or by applicable rules of the court, the procedure for issuance and delivery of the subpoena, and the remedies for noncompliance with the subpoena, shall be governed to the greatest extent practicable by those provisions of the Federal Rules of Civil Procedure governing the issuance, service, and enforcement of a subpoena *duces tecum*.

(i) Conditions for Eligibility.—

(1) Accommodation of technology.—The limitations on liability established by this section shall apply to a service provider only if the service provider—

(A) has adopted and reasonably implemented, and informs subscribers and account holders of the service provider's system or network of, a policy that provides for the termination in appropriate circumstances of subscribers and account holders of the service provider's system or network who are repeat infringers; and

(B) accommodates and does not interfere with standard technical measures.

(2) Definition.—As used in this subsection, the term "standard technical measures" means technical measures that are used by copyright owners to identify or protect copyrighted works and—

(A) have been developed pursuant to a broad consensus of copyright owners and service providers in an open, fair, voluntary, multi-industry standards process;

(B) are available to any person on reasonable and nondiscriminatory terms; and

(C) do not impose substantial costs on service providers or substantial burdens on their systems or networks.

(j) Injunctions. — The following rules shall apply in the case of any application for an injunction under section 502 against a service provider that is not subject to monetary remedies under this section:

(1) Scope of relief. — (A) With respect to conduct other than that which qualifies for the limitation on remedies set forth in subsection (a), the court may grant injunctive relief with respect to a service provider only in one or more of the following forms:

(i) An order restraining the service provider from providing access to infringing material or activity residing at a particular online site on the provider's system or network.

(ii) An order restraining the service provider from providing access to a subscriber or account holder of the service provider's system or network who is engaging in infringing activity and is identified in the order, by terminating the accounts of the subscriber or account holder that are specified in the order.

(iii) Such other injunctive relief as the court may consider necessary to prevent or restrain infringement of copyrighted material specified in the order of the court at a particular online location, if such relief is the least burdensome to the service provider among the forms of relief comparably effective for that purpose.

(B) If the service provider qualifies for the limitation on remedies described in subsection (a), the court may only grant injunctive relief in one or both of the following forms:

(i) An order restraining the service provider from providing access to a subscriber or account holder of the service provider's system or network who is using the provider's service to engage in infringing activity and is identified in the order, by terminating the accounts of the subscriber or account holder that are specified in the order.

(ii) An order restraining the service provider from providing access, by taking reasonable steps specified in the order to block access, to a specific, identified, online location outside the United States.

(2) Considerations. — The court, in considering the relevant criteria for injunctive relief under applicable law, shall consider —

(A) whether such an injunction, either alone or in combination with other such injunctions issued against the same service provider under this subsection, would significantly burden either the provider or the operation of the provider's system or network;

(B) the magnitude of the harm likely to be suffered by the copyright owner in the digital network environment if steps are not taken to prevent or restrain the infringement;

(C) whether implementation of such an injunction would be technically feasible and effective, and would not interfere with access to noninfringing material at other online locations; and

(D) whether other less burdensome and comparably effective means of preventing or restraining access to the infringing material are available.

(3) Notice and ex parte orders.—Injunctive relief under this subsection shall be available only after notice to the service provider and an opportunity for the service provider to appear are provided, except for orders ensuring the preservation of evidence or other orders having no material adverse effect on the operation of the service provider's communications network.

(k) Definitions.—

(1) Service provider.—(A) As used in subsection (a), the term "service provider" means an entity offering the transmission, routing, or providing of connections for digital online communications, between or among points specified by a user, of material of the user's choosing, without modification to the content of the material as sent or received.

(B) As used in this section, other than subsection (a), the term "service provider" means a provider of online services or network access, or the operator of facilities therefor, and includes an entity described in subparagraph (A).

(2) Monetary relief.—As used in this section, the term "monetary relief" means damages, costs, attorneys' fees, and any other form of monetary payment.

(l) Other Defenses Not Affected.—The failure of a service provider's conduct to qualify for limitation of liability under this section shall not bear adversely upon the consideration of a defense by the service provider that the service provider's conduct is not infringing under this title or any other defense.

(m) Protection of Privacy.—Nothing in this section shall be construed to condition the applicability of subsections (a) through (d) on—

(1) a service provider monitoring its service or affirmatively seeking facts indicating infringing activity, except to the extent consistent with a standard technical measure complying with the provisions of subsection (i); or

(2) a service provider gaining access to, removing, or disabling access to material in cases in which such conduct is prohibited by law.

(n) Construction.—Subsections (a), (b), (c), and (d) describe separate and distinct functions for purposes of applying this section. Whether a service provider qualifies for the limitation on liability in any one of those subsections shall be based solely on the criteria in that subsection, and shall not affect a determination of whether that service provider qualifies for the limitations on liability under any other such subsection.

§ 513 · Determination of reasonable license fees for individual proprietors[12]

In the case of any performing rights society subject to a consent decree which provides for the determination of reasonable license rates or fees to be charged by the performing rights society, notwithstanding the provisions of that consent decree, an individual proprietor who owns or operates fewer than 7 nonpublicly traded establishments in which nondramatic musical works are performed publicly and who claims that any license agreement offered by that performing rights society is unreasonable in its license rate or fee as to that individual proprietor, shall be entitled to determination of a reasonable license rate or fee as follows:

(1) The individual proprietor may commence such proceeding for determination of a reasonable license rate or fee by filing an application in the applicable district court under paragraph (2) that a rate disagreement exists and by serving a copy of the application on the performing rights society. Such proceeding shall commence in the applicable district court within 90 days after the service of such copy, except that such 90-day requirement shall be subject to the administrative requirements of the court.

(2) The proceeding under paragraph (1) shall be held, at the individual proprietor's election, in the judicial district of the district court with jurisdiction over the applicable consent decree or in that place of holding court of a district court that is the seat of the Federal circuit (other than the Court of Appeals for the Federal Circuit) in which the proprietor's establishment is located.

(3) Such proceeding shall be held before the judge of the court with jurisdiction over the consent decree governing the performing rights society. At the discretion of the court, the proceeding shall be held before a special master or magistrate judge appointed by such judge. Should that consent decree provide for the appointment of an advisor or advisors to the court for any purpose, any such advisor shall be the special master so named by the court.

(4) In any such proceeding, the industry rate shall be presumed to have been reasonable at the time it was agreed to or determined by the court. Such presumption shall in no way affect a determination of whether the rate is being correctly applied to the individual proprietor.

(5) Pending the completion of such proceeding, the individual proprietor shall have the right to perform publicly the copyrighted musical compositions in the repertoire of the performing rights society by paying an interim license rate or fee into an interest bearing escrow account with the clerk of the court, subject to retroactive adjustment when a final rate or fee has been determined, in an amount equal to the industry rate, or, in the absence of an industry rate, the amount of the most recent license rate or fee agreed to by the parties.

(6) Any decision rendered in such proceeding by a special master or magistrate judge named under paragraph (3) shall be reviewed by the judge of

the court with jurisdiction over the consent decree governing the performing rights society. Such proceeding, including such review, shall be concluded within 6 months after its commencement.

(7) Any such final determination shall be binding only as to the individual proprietor commencing the proceeding, and shall not be applicable to any other proprietor or any other performing rights society, and the performing rights society shall be relieved of any obligation of nondiscrimination among similarly situated music users that may be imposed by the consent decree governing its operations.

(8) An individual proprietor may not bring more than one proceeding provided for in this section for the determination of a reasonable license rate or fee under any license agreement with respect to any one performing rights society.

(9) For purposes of this section, the term "industry rate" means the license fee a performing rights society has agreed to with, or which has been determined by the court for, a significant segment of the music user industry to which the individual proprietor belongs.

Chapter 5 · Notes

1. See note 8, *infra*.

2. In 1998, two sections 512 were enacted into law. First, on October 17, 1998, the Fairness in Music Licensing Act of 1998 was enacted. This Act amended chapter 5 to add section 512 entitled "Determination of reasonable license fees for individual proprietors." Pub. L. No. 105-298, 112 Stat. 2827, 2831. Second, on October 28, 1998, the Online Copyright Infringement Liability Limitation Act was enacted. This Act amended chapter 5 to add section 512 entitled "Limitations on liability relating to material online." Pub. L. No. 105-304, 112 Stat. 2860, 2877. Consequently, in 1999, a technical correction was enacted to redesignate the section 512 that was entitled "Determination of reasonable license fees for individual proprietors" as section 513. Also, the table of sections was amended to reflect that change. Pub. L. No. 106-44, 113 Stat. 221. See also note 12, *infra*.

3. The Berne Convention Implementation Act of 1988 amended section 501(b) by striking out "sections 205(d) and 411" and inserting in lieu thereof "section 411." Pub. L. No. 100-568, 102 Stat. 2853, 2860. The Satellite Home Viewer Act of 1988 amended section 501 by adding subsection (e). Pub. L. No. 100-667, 102 Stat. 3935, 3957.

In 1990, the Copyright Remedy Clarification Act amended section 501(a) by adding the last two sentences. Pub. L. No. 101-553, 104 Stat. 2749. The Visual Artists Rights Act of 1990 also amended section 501(a) as follows: 1) by inserting "or of the author as provided in section 106A(a)" after "118" and 2) by striking out "copyright." and inserting in lieu thereof "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)." Pub. L. No. 101-650, 104 Stat. 5089, 5131.

In 1999, a technical correction amended the first sentence in subsection 501(a) by inserting "121" in lieu of "118." Pub. L. No. 106-44, 113 Stat. 221, 222. The Satellite Home Viewer Improvement Act of 1999 amended section 501 by adding a subsection (f) and, in subsection (e), by inserting "performance or display of a work embodied in a primary transmission" in lieu of "primary transmission embodying the performance or display of a work." Pub. L. No. 106-113, 113 Stat. 1501, app. I at 1501A-527 and 544. The Satellite Home Viewer Improvement Act of 1999 states that section 501(f) shall be effective as of July 1, 1999. Pub. L. No. 106-113, 113 Stat. 1501, app. I at 1501A-544.

The Intellectual Property and High Technology Technical Amendments Act of 2002 amended section 501(a) by substituting sections "106 through 122" for "106 through 121." Pub. L. No. 107-273, 116 Stat. 1758, 1909.

4. The Prioritizing Resources and Organization for Intellectual Property Act of 2008 amended section 503 by revising subsection (a) in its entirety. Pub. L. No. 110-403, 122 Stat. 4256, 4258. A technical correction in the Copyright Cleanup, Clarification, and Corrections Act of 2010 amended section 503(a)(1)(B) to substitute "copies or phonorecords" for "copies of phonorecords." Pub. L. No. 111-295, 124 Stat. 3180, 3181.

5. The Berne Convention Implementation Act of 1988 amended section 504(c) as follows: 1) in paragraph (1), by inserting "$500" in lieu of "$250" and by inserting "$20,000" in lieu of "$10,000" and 2) in paragraph (2), by inserting "$100,000" in lieu of "$50,000" and by inserting "$200" in lieu of "$100." Pub. L. No. 100-568, 102 Stat. 2853, 2860. The Digital Theft Deterrence and Copyright Damages Improvement Act of 1999 amended section 504(c), in paragraph (1), by substituting "$750" for "$500" and "$30,000" for "$20,000" and, in paragraph (2), by substituting "$150,000" for "$100,000." Pub. L. No. 106-160, 113 Stat. 1774.

The Fraudulent Online Identity Sanctions Act of 2004 amended section 504(c) by adding a new subparagraph (3). Pub. L. No. 108-482, 118 Stat. 3912, 3916. The Copyright Cleanup, Clarification, and Corrections Act of 2010 amended paragraph 504(c)(2) to change the reference from "subsection (g) of section 118" to "section 118(f)." Pub. L. No. 111-295, 124 Stat. 3180, 3181.

6. The Piracy and Counterfeiting Amendments Act of 1982 amended section 506 by substituting a new subsection (a). Pub. L. No. 97-180, 96 Stat. 91, 93. The Visual Artists Rights Act of 1990 amended section 506 by adding subsection (f). Pub. L. No.101-650, 104 Stat. 5089, 5131. In 1997, the No Electronic Theft (NET) Act again amended section 506 by amending subsection (a) in its entirety. Pub. L. No. 105-147, 111 Stat. 2678. That Act also directed the United States Sentencing Commission to "ensure that the applicable guideline range for a defendant convicted of a crime against intellectual property … is sufficiently stringent to deter such a crime" and to "ensure that the guidelines provide for consideration of the retail value and quantity of the items with respect to which the crime against intellectual property was committed." Pub. L. No. 105-147, 111 Stat. 2678, 2680. See also note 2 in Appendix H.

The Artists' Rights and Theft Prevention Act of 2005 amended subsection 506(a) in its entirety. Pub. L. No. 109-9, 119 Stat. 218, 220.

The Prioritizing Resources and Organization for Intellectual Property Act of 2008 amended section 506 by revising subsection (b) in its entirety. Pub. L. No. 110-403, 122 Stat. 4256, 4260.

7. In 1997, the No Electronic Theft (NET) Act amended section 507(a) by inserting "5" in lieu of "three." Pub. L. No. 105-147, 111 Stat. 2678.

8. The Prioritizing Resources and Organization for Intellectual Property Act of 2008 repealed section 509. Pub. L. No. 110-403, 122 Stat. 4256, 4260. In lieu of this provision, refer to section 2323, chapter 113 of title 18, *United States Code*, entitled, "Forfeiture, Destruction and Restitution." Section 2323 is included in Appendix H to this volume.

9. The Satellite Home Viewer Improvement Act of 1999 amended the heading for section 510 by substituting "programming" for "programing" and, in subsection (b), by substituting "statutory" for "compulsory." Pub. L. No. 106-113, 113 Stat. 1501, app. I at 1501A-543.

10. In 1990, the Copyright Remedy Clarification Act added section 511. Pub. L. No. 101-553, 104 Stat. 2749. In 1999, a technical correction amended subsection 511(a) by inserting "121" in lieu of "119." Pub. L. No. 106-44, 113 Stat. 221, 222. The Intellectual Property and High Technology Technical Amendments Act of 2002 amended section 511(a) by substituting sections "106 through 122" for "106 through 121." Pub. L. No. 107-273, 116 Stat. 1758, 1909.

11. In 1998, the Online Copyright Infringement Liability Limitation Act added section 512. Pub. L. No. 105-304, 112 Stat. 2860, 2877. In 1999, a technical correction deleted the heading for paragraph (2) of section 512(e), which was "Injunctions." Pub. L. No. 106-44, 113 Stat. 221, 222. The Copyright Cleanup, Clarification, and Corrections Act of 2010 amended the last sentence in paragraph 512(c)(2)(B) by deleting "in both electronic and hard copy formats" after "through the Internet." Pub. L. No. 111-295, 124 Stat. 3180, 3180.

12. The Fairness in Music Licensing Act of 1998 added section 513. Pub. L. No. 105-298, 112 Stat. 2827, 2831. This section was originally designated as section 512. However, because two sections 512 had been enacted into law in 1998, a technical amendment redesignated this as section 513. Pub. L. No. 106-44, 113 Stat. 221. See also note 2, *supra.*