

17 U.S.C. § 1202: Protection of Copyright Management Information

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17 U.S.C. § 1202

- **§ 1202(a): No person shall knowingly and with the intent to induce, enable, facilitate, or conceal infringement**
 - (1) provide copyright management information that is false, or
 - (2) distribute or import for distribution copyright management information that is false.

17 U.S.C. § 1202

- **§ 1202(b): No person shall, without the authority of the copyright owner or the law**
 - (1) intentionally remove or alter any [CMI],
 - (2) distribute or import for distribution [CMI] knowing that the [CMI] has been removed or altered without authority of the copyright owner or the law, or
 - (3) distribute, import for distribution, or publicly perform works, copies of works, or phonorecords, knowing that [CMI] has been removed or altered without authority of the copyright owner or the law
- **knowing or . . . having reasonable grounds to know that it will induce, enable, facilitate, or conceal an infringement . . .**

17 U.S.C. § 1202

- **§ 1202(c): the term “copyright management information” means any of the following information conveyed in connection with copies or phonorecords ... or performances or displays of a work, including in digital form ...**
 - (1) The title and other information identifying a work, including the information set forth on a notice of copyright.
 - (2) The name of, and other identifying information about, the author of a work.
 - (3) The name of, and other identifying information about, the copyright owner of a work, including the information set forth in a notice of copyright.

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- **§ 1202(c): the term “copyright management information” means any of the following ...**
 - (4) With the exception of public performances of works by radio and television broadcast stations, the name of, and other identifying information about, a performer whose performance is fixed in a work other than an audiovisual work.
 - (5) With the exception of public performances of works by radio and television broadcast stations, in the case of an audiovisual work, the name of, and other identifying information about, a writer, performer, or director who is credited in the audiovisual work.

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- **§ 1202(c): the term “copyright management information” means any of the following ...**
 - (6) Terms and conditions for use of the work.
 - (7) Identifying numbers or symbols referring to such information or links to such information.
 - (8) Such other information as the Register of Copyrights may prescribe by regulation, except that the Register ... may not require the provision of any information concerning the user of a copyrighted work.
- **except [CMI] does not include any personally identifying information about a user of a work or of a copy, phonorecord, performance or display of a work**

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- **Issue No. 1: Does CMI include only rights management information in digital form?**
 - **IQ Group, Ltd. v. Wiesner Publishing, LLC**, 409 F. Supp. 2d 587, 597 (D.N.J. 2006): “To come within §1202, the information removed must function as a component of an automated copyright protection or management system.”
 - **Accord, Textile Secrets Int’l, Inc. v. Ya-Ya Brand Inc.**, 524 F. Supp. 2d 1184, 1200-01 (C.D. Cal. 2007)
- **§ 1202(c): the term “copyright management information” means ... information conveyed in connection with copies or phonorecords ... or performances or displays of a work, *including in digital form* ...**

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- **Issue No. 1: Does CMI include only rights management information in digital form?**
 - Murphy v. Millennium Radio Group, LLC, 650 F.3d 295 (3d Cir. 2011): Text of statute is unambiguous. Nothing in text of §1202 refers to §1201 or vice versa.
 - S. Rep. 105-190 (1998): “CMI need not be in digital form, but CMI in digital form is expressly included.”
 - “[W]hile it is possible to read the legislative history to support the [narrow] interpretation of CMI, that history does not ... compel us to disregard the plain language of the statute.”
 - “[W]e find that CMI, as defined in § 1202(c), is *not* restricted to the context of ‘automated copy-right protection or management systems.’”

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- **Issue No. 2: What is the nature of the intent required to prove a violation of § 1202?**
 - **Gordon v. Nextel Communications**, 345 F.3d 922 (6th Cir. 2003): Crossroads obtained copy of poster, believing it had been cleared for use in TV ads.
 - McCarthy, Crossroads' art director, scanned and enlarged illustrations from the poster for use in the background of a TV commercial.
 - McCarthy testified that he would have tried to contact the artist to clear the rights if he knew it was an issue
 - HELD: No evidence that Crossroads had any reason to know that the removal would facilitate or conceal an infringement. [In *dicta*, stated ad agency and client could be vicariously liable.]

● Issue No. 3: Intentional and inadvertent stripping of metadata

- “Many of the basic tools that automatically process images on web servers strip metadata by default.... [Y]ou can lose [metadata] by simply resizing a photo.” [Mark Meyer Photo Journal, Dec. 3, 2012]
- Result: When photos are posted to many social media sites, the metadata is stripped automatically. E.g., Facebook, Twitter, Pinterest, Flickr, GoogleDocs
- Example: Getty recently licensed a large number of commercial “stock photo” images to Google Docs, but all of the metadata was stripped from the images.
- Does stripping metadata knowingly “induce, enable, or facilitate” infringement?

● Issue No. 4: What is “removal” of CMI?

- Physical copies: Removing a copyright notice from physical copies would be a violation.
- What about removing pages from a book that has such a notice?
- What about verbatim copying of material from a copy that has a copyright notice?
 - *Schiffer Publishing v. Chronicle Books*, 73 USPQ 2d 1090 (E.D. Pa. 2004) (scanning photos from books; no violation)
- What about non-literal copying of material from a copy that has a copyright notice?
 - *Faulkner Press v. Class Notes*, 756 F.Supp.2d 1352 (N.D. Fla. 2010) (indirect copying of textbook by taking notes of professor’s lectures is not removal of CMI)

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● Issue No. 4: What is “removal” of CMI?

- Electronic copies: Removing metadata from an image or other electronic copy would be a violation.
- What about verbatim copying of an image that has a copyright notice next to it in the HTML? What if the copyright notice is on the home page? on each page?
 - Kelly v. Arriba Soft Corp., 77 F.Supp. 2d 1116 (C.D. Cal. 1999) (1202(b)(1) refers only to removal of CMI from plaintiff’s product or original work; but 1202(b)(3) applies to copies of photos removed from context of plaintiff’s website)
 - Jedson Eng’g v. Spirit Constr., 720 F.Supp.2d 904 (S.D. Ohio 2010) (“cutting and pasting” constitutes removal)
- What about non-literal copying of material from a website that has a copyright notice?