

Channels.com Terms of Use

Welcome!

Welcome to the Channels.com website (the “Site”). These Terms of Use (“TOU”) govern your access to and use of the Site and any services provided through the Site (the “Service”), either as a Subscriber (defined below) or a visitor to the Site. By accessing or using this Site or Service, you agree to be bound by these TOU and our Privacy Policy [<http://www.channels.com/legal>], which is incorporated herein by reference. If you do not agree to be bound by the terms and conditions of these TOU, do not use or access the Site or Service. If you are using this Site or Service on behalf of another party (such as your employer), you represent and warrant that you have the authority to do so and to accept these TOU on their behalf.

Modification of TOU

Channels.com reserves the right to (i) modify, discontinue or terminate the Site and Service, or (ii) modify these TOU or any related terms and conditions governing your use of the Site and Service at any time without advance notice. If we modify these TOU, we will give notice to all registered Channels.com users of the new terms and all modified terms and conditions will be effective after they are initially posted on the Site (unless a longer notice period is required by applicable law). If any modified terms and conditions are not acceptable to you, your only recourse is to cease using the Site and Service, and if applicable, cancel your account with us. Your use of the Site or the Service after we have provided such notice will represent your acceptance of the revised TOU.

Becoming a Subscriber

You may register with Channels.com to become a “Subscriber”. This involves selection of a user name and account password, in addition to providing us with your email address. You agree to provide Channels.com with complete, accurate and current information and will promptly update such information as necessary to ensure that it remains complete, accurate and current. Channels.com reserves the right to suspend or terminate your account if it determines (or has a reasonable basis to believe) that your registration information is, at the time of registration or thereafter, incomplete, inaccurate or no longer current. You are responsible for safeguarding the password and you agree not to disclose your password to any third party. You agree to take sole responsibility for any activities or actions under your password, whether or not you have authorized such activities or actions. You will immediately notify Channels.com of any unauthorized use of your password. You must be at least 18 years old to access and/or use the Site or Service including to register with Channels.com as a Subscriber. By doing any of these things, you represent and warrant that you are at least 18 years old. Channels.com reserves the right to terminate your membership subscription, access, and/or use of the Site or Service in the event that Channels.com becomes aware you are under 18. You acknowledge that Channels.com reserves the right to delete accounts that are inactive for more than one year or such other time as Channels.com may determine.

Account Cancellation

You may terminate or cancel your account at any time. If you violate these TOU, your permission to access and/or use the Site and Service will automatically terminate.

Channels.com Service

Channels.com, as part of its Service, makes available a searchable index of thousands of public video RSS feeds, which users may search and to which they may subscribe. Subscribers may also add to the Channels.com inventory of video RSS feeds. If you choose not to become a Subscriber, you can still search the video RSS feeds and watch video content enclosed in such RSS feeds, however you will not be able to subscribe to such RSS feeds or add your own RSS feeds to the Site. You agree that Channels.com has no responsibility or liability for any message or other communication or content maintained or transmitted via the Site or the Service.

The Site makes video RSS feeds available and consequently contains links to third-party websites and resources, which provide access to content and services from third parties. You agree that Channels.com is not responsible or liable for the: (i) availability or accuracy of, such websites or resources; or (ii) content, and in particular video content, or services, on or available from such websites or resources, and you assume sole responsibility for, and all risk arising from, access to such content and services. Channels.com does not endorse or recommend any such third party content or services, nor is it affiliated with the provider of such third party content and services, including, without limitation, the video RSS feeds made available via the Site and Service. Your access to and use of the Site and Service is at your own risk. Channels.com is not responsible or liable for any harm to your computer system, loss of data or any other harm that results from your access to, or use of, the Site or Service.

In order to view the video content made available from the video RSS feeds, third party video players may be necessary. If you do not already have the appropriate video player on your computer, Channels.com may locate such player for you to enable you to view the video content. Notwithstanding the foregoing, you are solely responsible for (i) securing any and all licenses and rights to use such third party video players, and (ii) compliance with any third party terms and conditions applicable to such video players including, without limitation, payment terms (if applicable), and Channels.com disclaims any and all liability relating to your access to and use of such third party video players.

Copyright Policy

Channels.com respects the intellectual property rights of others and expects its users to do the same. Unauthorized copying, modification, distribution, public display or public performance of a copyrighted work is an infringement of the copyright holder's rights. You acknowledge that Channels.com will terminate the account of any user who uses the Site or the Service repeatedly to infringe the intellectual property rights of others.

Your Conduct

As a condition to your access and/or use of the Site or Service, you agree not to:

- (i) Upload, post, email, transmit, link to, or otherwise make available any information, materials or other content that is infringing, illegal, harmful, threatening, abusive, harassing, defamatory, obscene, pornographic, invades another's privacy, or promotes bigotry, racism, hatred for or harm against any individual or group;
- (ii) Impersonate any person or entity or falsely state or otherwise misrepresent your affiliation with a person or entity;
- (iii) Forge headers or otherwise manipulate identifiers to disguise the origin of any content transmitted through the Service;
- (iv) Upload, post, email, transmit, link to, or otherwise make available any information, materials or other content that infringes another's rights, including any copyrights or other intellectual property rights;
- (v) Upload, post, email, transmit, link to, or otherwise make available any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
- (vi) Use any manual or automated software, devices, or other processes to "crawl," "spider" or "screen scrape" any web pages contained on this Site other than solely for purposes of use in an information-location tool or search service such as Google, Yahoo or MSN Search;
- (vii) Reverse engineer, decompile or disassemble any of the software used to provide this Site or Service, or attempt to access anything proprietary to Channels.com, including, without limitation any Channels.com taxonomy of RSS feeds;
- (viii) Interfere with or disrupt this Site or Service, or any servers or networks connected thereto, or disobey any requirements, procedures, policies or regulations of networks connected thereto; or
- (ix) Obtain, collect, store or modify the personal information about other users.

Enforcement

Channels.com reserves the right to investigate and prosecute violations of any of the above to the fullest extent of the law. Channels.com may involve and cooperate with law enforcement authorities in prosecuting users who violate these TOU. You acknowledge that Channels.com has no obligation to pre-screen or monitor your access and/or use of its Site or Service, but has the right to do so for the purpose of operating this Site or Service to ensure your compliance with these TOU, or to comply with applicable law or the order or requirement of a court, administrative agency or other government body. You hereby agree that Channels.com may, in the exercise of Channels.com's sole discretion, remove or delete any content or portions thereof that violate these TOU or that is otherwise objectionable.

Ownership

Channels.com and its licensors own all right, title and interest in and to this Site and Service. This Site and Service are protected by copyright, trademark, and other laws of both the United States and foreign countries. Except as expressly permitted in the TOU, you may not reproduce, modify or prepare derivative works based on, distribute, sell, transfer, publicly display, publicly perform, transmit, or otherwise use this Site or the Service, or any portion thereof. You may not use this Site or the Service on or in connection with any other web site for any purpose.

Trademarks

Channels.com, the Channels.com logo and all other Channels.com trademarks, service marks, product names, and trade names of Channels.com appearing on or in conjunction with the Site or Service are owned by Channels.com. All other trademarks, service marks, product names, and logos appearing on this Site are the property of their respective owners. You may not use or display any trademark, service mark, product name, trade name or logo appearing on this Site without the owner's prior written consent.

Disclaimer of Warranties

THE SITE, SERVICE AND ANY CONTENT THEREON OR MADE AVAILABLE THEREFROM ARE PROVIDED "AS IS." CHANNELS.COM MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE OPERATION OF THIS SITE OR SERVICE OR THE QUALITY, ACCURACY, TIMELINESS, TRUTHFULNESS, COMPLETENESS OR RELIABILITY OF ANY INFORMATION, MATERIALS OR CONTENT DOWNLOADED, LINKED TO, OR OTHERWISE OBTAINED THROUGH THIS SITE OR SERVICE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CHANNELS.COM DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. CHANNELS.COM MAKES NO WARRANTY THAT THE SITE OR SERVICE WILL MEET YOUR REQUIREMENTS OR WILL BE AVAILABLE ON AN UNINTERRUPTED, SECURE OR ERROR-FREE BASIS. YOU AGREE THAT YOUR ACCESS OR USE OF THE SITE AND SERVICE IS AT YOUR OWN RISK.

Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER CHANNELS.COM NOR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SITE OR SERVICE WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES RESULTING FROM YOUR ACCESS TO AND/OR USE OF, OR INABILITY TO ACCESS OR USE, THE SITE OR SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY, WHETHER OR NOT CHANNELS.COM HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. YOU SPECIFICALLY ACKNOWLEDGE THAT CHANNELS.COM IS NOT LIABLE FOR THE DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF OTHER USERS OR THIRD

PARTIES AND THAT THE RISK OF INJURY OF THE FOREGOING RESTS ENTIRELY WITH YOU. FURTHER, CHANNELS.COM WILL HAVE NO LIABILITY TO YOU OR TO ANY THIRD PARTY FOR ANY CONTENT LINKED OR ACCESSED TO THROUGH THE SITE OR THROUGH THE SERVICE. YOU AGREE THAT THE AGGREGATE LIABILITY OF CHANNELS.COM TO YOU FOR ANY AND ALL CLAIMS ARISING FROM THE USE OF THE SITE OR SERVICE IS LIMITED TO \$1000.00. THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN CHANNELS.COM AND YOU.

Indemnity

You agree to defend, indemnify, and hold Channels.com, its officers, directors, employees and agents harmless from and against any claims, liabilities, damages, losses, and expenses, including, but not limited to, reasonable legal and accounting fees, arising out of or in any way connected with your access to or use of the Site or Services, or your violation of these TOU or Channels.com's Copyright Policy.

Relationship of the Parties

You and Channels.com are independent contractors, and nothing in these TOU will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between us. You will have no authority to make or accept any offers or representations on our behalf.

General

In the event that any provision in these TOU is held to be invalid or unenforceable, the unenforceable part will be given effect to the greatest extent permitted by law and the remaining provisions will remain in full force and effect to the maximum extent permitted by law. The failure of a party to enforce any right or provision of these TOU will not be deemed a waiver of such right or provision. You may not assign or transfer these TOU (by operation of law or otherwise) without the prior written consent of Channels.com and any prohibited assignment will be null and void. Channels.com may assign these TOU or any rights hereunder without your consent. These TOU will be governed by and interpreted in accordance with the laws of the State of California excluding that body of law pertaining to conflict of laws. Any legal action or proceeding arising under these TOU will be brought exclusively in courts located in Santa Clara County, California and the parties hereby irrevocably consent to the personal jurisdiction and venue therein. You agree that these TOU and the rules, restrictions and policies contained herein, and Channels.com's enforcement thereof, are not intended to confer and do not confer any rights or remedies upon any person other than you and Channels.com. These TOU together with the rules and policies of Channels.com incorporated herein by reference constitute the entire agreement between Channels.com and you with respect to the subject matter of these TOU and supersede and replace any prior agreements between Channels.com and you regarding the Site and Service.

APPENDIX 4

Channels.com Privacy Policy

[General note for Channels.com - While you are reviewing this policy please consider whether it accurately reflects our discussions and Channels.com's practices and also whether Channels.com will realistically be able to meet these obligations and keep to these limits in its information collection practices.]

Information collected under any privacy policy should be handled in accordance with the terms of that policy. Later changing the practices (and the corresponding written policy) could require both 1) segregating the information you collect according to which policy was in place when you collected it and 2) having Subscribers explicitly accept the new policy (depending on the materiality of the change). Consequently, please let us know if Channels.com anticipates implementing any information sharing practices that we haven't considered here (e.g. sharing user personally identifiable information with third party for that third parties direct marketing purposes, entering into a joint venture with other website operators, any co-branding initiatives).]

Effective August [__], 2008 [Insert the date the Privacy Policy is posted to the Channels.com website.]

Channels.com Privacy Policy

Channels.com provides this Privacy Policy to inform you of our policies and procedures regarding the collection, use and disclosure of information received from users of <<[www.Channels.com \(insert link\)](#)>> (this "Site"). This Privacy Policy applies only to this Site and is incorporated into our <<[Channels.com Terms of Use \(insert link\)](#)>>. *[Note for Channels.com – Lets discuss whether the Privacy Policy should be part of the Terms of Use and consequently a binding document.]* This Privacy Policy may be updated from time to time. We will notify you of any material changes by posting the new Privacy Policy on the Site. You are advised to consult this policy regularly for any changes. *[Note for Channels.com – Channels.com should notify users of changes to the Privacy Policy by posting the notice of the changes and possibly the changes themselves prominently on the Site.]*

By using our Site you are consenting to our processing of your information as set forth in this Privacy Policy. As used in this policy, the terms "using" and "processing" information include using cookies on a computer, subjecting the information to statistical or other analysis and using or handling information in any way, including, but not limited to collecting, storing, evaluating, modifying, deleting, using, combining, disclosing and transferring information within our organization or among our affiliates within the United States or internationally.

Information Collection and Use

Our Primary goals in collecting information are: to provide and improve services, features and content (together, the “Service”), to allow users to personalize their use of the Service and to enable users to easily navigate and enjoy the Site.

Personally Identifiable Information.

- When you register with us through the Site as a Subscriber, <<[\(insert link to description of a Subscriber\)>>](#), we ask you for personally identifiable information such as your email address, screen/user name and an account password (“Personal Information”). Personal Information is information about you that when on its own or in combination with other identifiers can be used to contact or identify you. We use your Personal Information to provide the Service and administer your inquiries.
- We may also use your Personal Information to contact you with Channels.com newsletters, promotional materials and other information that may be of interest to you. Where you agree to the terms and conditions of the <<[Channels.com Terms of Use \(insert link\)>>](#) you are given the opportunity to opt-in to the receipt of such information from us in the future. If you decide at any time that you no longer wish to receive such information from us, you may follow the unsubscribe instructions provided in the communication or you may also update your “user preferences” information. (See “Changing or Deleting Information,” below.) *[Note for Channels.com – Will Channels.com provide such an opt-in for Subscribers e.g. for newsletters and the like from Channels.com?]*

Log Data. When you visit the Site, whether as a Subscriber or a non-registered user just browsing (any of these, a “Channels.com User”), our servers automatically record information that your browser sends whenever you visit a website (“Log Data”). This log data may include information such as your IP address, browser type or the domain from which you are visiting. For most users accessing the Internet from an Internet service provider, the IP address will be different every time you log on. We do not use this information to identify you personally. We use it to monitor use of the Site and the Service and for the Site’s technical administration.

Cookies

Like many websites, we use “cookies” to collect information. A cookie is a small data file that we transfer to your computer’s hard disk for record-keeping purposes. We use cookies for two purposes. First, we utilize persistent cookies to save your registration ID and login password for future logins to the Site. Second, we utilize session ID cookies to enable certain features of the Site, to better understand how you interact with the Site, and to monitor aggregate usage by Channels.com Users and web traffic routing on the Site. Unlike persistent cookies, session cookies are deleted from your computer when you disconnect from the Site and Service. Third party advertisers on the Site may also place or read cookies on your browser. You can instruct your browser, by editing its options, to stop accepting cookies or to prompt you before accepting a cookie from the websites you visit. If you do not accept cookies, however, you may not be able to use all portions of the Site or all functionality of the Service.

Information Sharing and Disclosure

Log Data. We may share Log Data with third parties for industry analysis and demographic profiling. This information will not contain your Personal Information.

Service Providers. We may employ third party companies and individuals to facilitate our Service, to provide the Service on our behalf or to perform Site-related services (e.g., without limitation, maintenance services, database management and improvement of the Site's features). These third parties have access to your Personal Information only to perform these tasks on our behalf and are obligated not to use it for any other purpose.

Compliance with Laws and Law Enforcement. Channels.com cooperates with government and law enforcement officials or private parties to enforce and comply with the law. We may disclose any information about you to government or law enforcement officials or private parties as we, in our sole discretion, believe necessary or appropriate to respond to claims and legal process (including subpoenas), to protect the property and rights of Channels.com or a third party, to protect the safety of the public or any person, or to prevent or stop any illegal, unethical or legally actionable activity.

Business Transfers.

Language Option One: Channels.com may sell, transfer or otherwise share some or all of its assets, including information provided by you, in connection with a merger, reorganization, or sale of assets, or in the event of bankruptcy. [If the new entity wishes to make additional uses of your information different from those described in this Privacy Policy you will have the opportunity to decline such use at that time.] *[Note for Channels.com - This last sentence could be onerous for an acquiring entity, however, including it is an industry practice.]*

Language Option Two: If Channels.com becomes involved in a merger, acquisition, or any form of sale of some or all of its assets, we will provide notice before personal information is transferred and becomes subject to a different privacy policy. *[Note for Channels.com - This option, which would take the place of the preceding paragraph, may not be legally valid in some international jurisdictions, but experience dictates that acquiring entities often want to purchase personal information and handle it under their own privacy policy. If Channels.com sees itself later selling personal information to such an entity, this version of the provision could decrease exposure in the US.]*

Changing or Deleting Your Information

All Subscribers may review, update, correct or delete the Personal Information in their registration profile. If you completely delete any such information, then your account may become deactivated. If you would like us to delete your record in our system, please contact us and we will attempt to accommodate your request. See below for privacy contact information.

Security & International Transfer

Channels.com is very concerned with safeguarding your information. We employ administrative, physical and electronic measures designed to protect your information from unauthorized access. Your information may be transferred to—and maintained on—computers located outside of your state, province, country or other governmental jurisdiction where the privacy laws may not be as protective as those in your jurisdiction. Channels.com transfers Personal Information to the United States and maintains it there.

Links to Other Sites

Our Site contains links to other websites. For example, if you choose to visit an advertiser by “clicking on” a banner ad or other type of advertisement, you will be directed to that third party’s website. The fact that we link to a third party website or present a third party banner add or other type of advertisement is not an endorsement, authorization or representation of our affiliation with that third party. We do not exercise control over third party websites. These other websites may place their own cookies or other files on your computer, collect data or solicit personal information from you. This Privacy Policy addresses the use and disclosure of information that we collect from you through this Site. Other sites follow different rules regarding the use or disclosure of the personal information you submit to them. We encourage you to read the privacy policies or statements of the other websites you visit.

Our Policy Toward Children

This Site is not directed to persons under 18. If a parent or guardian becomes aware that his or her child has provided us with Personal Information without their consent, he or she should contact us at Privacy@channels.com. If we become aware that a child under 13 has provided us with Personal Information, we will delete such information from our files.

Contacting Us

If you have any questions about this Privacy Policy, please contact us at Privacy@channels.com or at: **[Please insert contact information.]**

[Please provide a general contact or indicate a specific Privacy Officer e.g. [Privacy Matters c/o Channels.com] OR [contact name, Privacy Officer, postal address]]

APPENDIX 5
Provisions of Section 512 of the DMCA

Section 512. Limitations on liability relating to material online

(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 web site 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, in both electronic and hard copy formats, and may require payment of a fee by service providers to cover the costs of maintaining the directory.

(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 two 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.