Section 1042. Remedies as to physical codes

When an infringement of computer software copyright registration is the distribution of a specimen of physical code that is identical, except for trivial and immaterial differences, to a specimen of physical code first distributed by the computer software copyright registration owner or a licensee thereof, the owner shall be entitled to punitive damages and a reasonable attorney’s fee, unless the infringer establishes that the infringement was, in the circumstances, excusable.

Section 1043. Limitation on remedies for certain infringements

(a) When an innocent infringer, or other infringer to which this section applies, does not profit or benefit substantially from the infringement, the infringer shall not be liable to the computer software copyright registration owner and no remedies under this chapter shall be available against the infringer.

(b) When an innocent infringer, or other infringer to which this section applies, profits or benefits substantially from the infringement, the infringer shall be liable to the computer software copyright registration owner for a reasonable royalty for the use of the computer software copyright or other infringement. Subject to subsection (c) of this section, no other remedies under this chapter shall be available against the infringer for the conduct.

(c) A computer software copyright registration owner shall be entitled to a reasonable attorney’s fee and the other reasonable expenses of litigation, in addition to a reasonable royalty, if:

(1) the owner demands a reasonable royalty from an innocent infringer or other infringer to which this section applies and gives such infringer reasonable notice of the facts and of the computer software copyright registration;

(2) the infringer refuses to pay the royalty demanded;

(3) the computer software copyright registration owner sues; and

(4) the court finds that the owner is entitled to a reasonable royalty from the infringer, not substantially lower than that which the owner demanded and which the infringer refused to pay.

Section 1044. Remedies as to certain downward translations

An infringer shall be liable only as provided in section 1043 if the infringement is the use or distribution of a specimen of code that is not substantially similar in expression to any specimen of code that was earlier distributed by the owner of the computer software copyright registration, a licensee thereof, or a predecessor thereof.

Section 1045. Enhancements

An infringer shall be liable only as provided in section 1043 if the infringement is the use or distribution of a specimen of code that is a substantial enhancement over the protected specimen of code.

Subchapter F—Miscellaneous Provisions

Section 1051. Rights of customers

(a) For the purposes of this section:

(1) A customer is any end user of a specimen of code.

(2) A customer-owner is any person who purchases or similarly lawfully acquires a product embodying, constituting, or including a protected specimen of physical code, directly or indirectly from the computer software copyright owner, including from a licensee. A person lawfully acquiring the product from such a customer-owner is a customer-owner.

(3) Substance shall govern over form. Licenses, bailments, or other transactions that are in substance equivalent to sales to a purchaser shall be treated as such sales.

(b) A customer or customer-owner may adapt, enhance, or otherwise modify the specimen of code of which such person is customer or customer-owner without being liable for infringement of the computer software copyright on the specimen of code of which the person is customer or customer-owner. The person may do so by preparing a new specimen of physical code, and may exercise this right through a third person. Such third person shall not be liable under this title for furnishing such services.

(c) A customer-owner may resell the product acquired, in its original form or in any modified form, without being liable for infringement. But such right of resale extends only to as many specimens of code as the customer-owner acquired from the computer software copyright owner; is not a right to sell additional specimens of code or products embodying or including them; and is not a right both to sell and to retain the specimen of code and its modified version.

(d) A customer-owner may make archival copies of codes, but may not sell them or use them for other than archival purposes.

Section 1052. Inapplicability of certain provisions

The provisions of this chapter shall govern over other sections of this title, in respect of computer software copyrights; and the application of the following sections is expressly excluded: 117, 303, 503-506, and 509-601.

Section 1053. Relation to other laws

(a) Nothing contained in this chapter shall add to or detract from rights under other chapters of this title, in respect of subject matter not within the scope of this chapter.

(b) For the purpose of determining rights in or in relation to computer program works, their expressions, and their embodiments, they shall be regarded as goods. In all transactions or matters concerning computer program works, their expressions, or their embodiments, in or affecting commerce, and whenever nonuniform regulation would burden interstate business, the courts shall apply federal law, to be derived from, among other things, the Uniform Commercial Code and applicable restatements of the law.

Section 1054. Administrative authority

The administrative authority shall be the person, agency, or authority appointed by the President, or his delegate or subdelegate, to administer the provisions of this chapter. [Alternatively: be the Copyright Office.] [Alternatively: be the person designated by the Secretary of Commerce, or his delegate, to administer the provisions of this chapter.]