TEXTILE SECRETS INTERNATIONAL v. YA-YA BRAND INC.

524 F. Supp. 2d 1184 (C.D. Cal. 2007)

I. BACKGROUND

Now pending before the Court and ready for decision is a Motion for Summary Judgment filed by defendants Ya-Ya Brand Incorporated, Bluefly, Inc., Bop, LLC, Saks Incorporated, and Ron Herman, Inc., on August 23, 2007.

In the operative Second Amended Complaint, plaintiff Textile Secrets International, Inc., ("TSI" or "plaintiff") asserts three causes of action against defendants: the first, for copyright infringement under 17 U.S.C. §101, et seq.; the second, for contributory copyright infringement; and the third, for removing "copyright management information" in violation of 17 U.S.C. §1202(b), a provision of the Digital Millennium Copyright Act ("DMCA"). Defendants contend that they are entitled to summary judgment on all claims because no triable issues of fact exist regarding (1) plaintiff's ownership of the copyright at issue, and (2) defendants' removal of copyright management information. * * *

III. FACTUAL SUMMARY

Textile Secrets International, Inc., is in the business of wholesale textile designs and sales, and is jointly owned by Dariush Pourrahmani and Shazar Pazooky. Pourrahmani operates as TSI's design director and Pazooky is in charge of the company's operations.

In 2004, TSI created a fabric design based on peacock feathers that was given the internal designation "JPG08" or "FEATHERS." TSI has a copyright registration certificate for the FEATHERS design, which was signed by Pazooky on April 3, 2006. The copyright registration indicates that the FEATHERS design is a "work made for hire."

Ya-Ya Brand Incorporated is a high-end clothing designer owned by Yael Aflalo. Ya-Ya designs, manufactures, and sells garments to various clothing stores. Ya-Ya created five different garment styles bearing designs similar to FEATHERS and offered them for sale for one month primarily through Ya-Ya's showrooms in Los Angeles and New York. Ya-Ya sold the allegedly infringing garments to several customers who, in turn, sold the garments to the public. * * *

C. THE "DIGITAL MILLENNIUM COPYRIGHT ACT" CLAIM

Plaintiff in the third cause of action asserts that defendants violated 17 U.S.C. §1202(b), a provision of the Digital Millennium Copyright Act.[1] In support, plaintiff alleges that it produced "sample

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[1] The provision of the DMCA at issue, 17 U.S.C. ß 1202(b), provides the following:

> No person shall, without the authority of the copyright owner or the law --
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> (1) intentionally remove or alter any copyright management information,
>
> (2) distribute or import for distribution copyright management information knowing that the copyright management information 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 copyright management information has been removed or altered without authority of the copyright

yardage" of fabric bearing the FEATHERS design. The sample yardage had markings on the selvage[2] that listed plaintiff's name and the copyright symbol. When [*1193] the fabric was sold to a customer, a tag was attached that stated the design is a registered work of TSI. Plaintiff urges that these two identifying markers (i.e., the information on the selvage and the tag) constitute "copyright management information" within the meaning of the DMCA, and that by removing this information and making copies of the FEATHERS design, defendants violated 17 U.S.C. §1202(b), the statute that protects the integrity of copyright management information.

The term "copyright management information" is defined in 17 U.S.C. §1202(c) as information, such as the title, author, or copyright owner of a work, or the terms and conditions for the use of a work, that is "conveyed in connection with copies or phonorecords of a work or performances or displays of a work, including in digital form[.]" See 17 U.S.C. §1202(c).[3]

Defendants contend, inter alia, that the information regarding TSI on the fabric should not be considered "copyright management information" within the meaning of the DMCA. In support, defendants argue that the term "copyright management information" is ambiguous because, although its definition is broad, it is nevertheless contained within the DMCA, a statutory scheme which primarily applies to goods and transactions that take place on the Internet or in the "electronic marketplace." [*1194] Thus, defendants urge, the Court should consider the legislative history of §1202,

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owner or the law, knowing, or ... having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any right under this title.

[2] "Selvage" is the edge or border of the fabric that is intended to be cut off and discarded.

[3] 17 U.S.C. ß 1202(c) provides:

> "[C]opyright management information" means any of the following information conveyed in connection with copies or phonorecords of a work or performances or displays of a work, including in digital form, except that such term does not include any personally identifying information about a user of a work or of a copy, phonorecord, performance, or display of a work:
>
> (1) The title and other information identifying the 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 the work, [**22] including the information set forth in a notice of copyright.
>
> (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.
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> (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.
>
> (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 of Copyrights may not require the provision of any information concerning the user of a copyrighted work.

which reveals that the statute does not apply to the facts of this case involving copyright information on fabric. Plaintiff, on the other hand, contends that §1202(c) is not ambiguous, and that a plain reading of the language leads to the conclusion that "copyright management information" can be found on all works, that is, on works in both digital and nondigital form. According to plaintiff, this means that the information regarding TSI set forth on the tag and selvage portion of the FEATHERS fabric constitutes "copyright management information" within the meaning of §1202(c), and that defendants are liable under the DMCA for removing such information.

1. Statutory Construction of 17 U.S.C. §1202

The basic principles of statutory construction are well established:

> The purpose of statutory construction is to discern the intent of Congress in enacting a particular statute. The first step in ascertaining congressional intent is to look to the plain language of the statute. To determine the plain meaning of a particular statutory provision, and thus congressional intent, the court looks to the entire statutory scheme. If the statute uses a term which it does not define, the court gives that term its ordinary meaning. The plain meaning of the statute controls, and courts will look no further, unless its application leads to unreasonable or impracticable results. If the statute is ambiguous -- and only then -- courts may look to its legislative history for evidence of congressional intent.

United States v. Daas, 198 F.3d 1167, 1174 (9th Cir.1999).

"[S]tatutory language must always be read in its proper context. 'In ascertaining the plain meaning of a statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole.'" In this regard, the Court must "'mak[e] every effort not to interpret [the] provision [at issue] in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous.'"

Applying the foregoing principles, the Court looks to §1202 not in isolation, but within the coverall statutory scheme of the DMCA to ensure that the language at issue is considered in its proper context. [*1195] Section 1202 is found within Chapter 12 of the Copyright Act. The first statutory provision in Chapter 12, 17 U.S.C. §1201, provides that "[n]o person shall circumvent a technological measure that effectively controls access to a [protected] work" (17 U.S.C. §1201(a)(1)(A)), and goes on to prohibit the manufacturing, importing, offering to the public, providing, or otherwise trafficking in any technology, product, service, device, component, or part thereof, that "(A) is primarily designed or produced for the purpose of circumventing a technological measure that effectively controls access to a [copyrighted work]; (B) has only limited commercially significant purpose or use other than to circumvent a technological measure that effectively controls access to a [copyrighted work]; or (C) is marketed by that person or another acting in concert with that person with that person's knowledge for use in circumventing a technological measure that effectively controls access to a [copyrighted work]." 17 U.S.C. §1201(a)(2).[10] The next provision is §1202, which serves to protect the integrity of copyright management information, and also sets limitations on liability in the case of certain analog and digital transmissions. (See 17 U.S.C. §1202(e)). Sections 1203 and 1204 provide, respectively, for civil remedies and criminal penalties as a result of violations of §1201 and §1202. Lastly, §1205 sets forth the following "savings clause": "Nothing in this chapter abrogates, diminishes, or weakens the provisions of, nor provides any defense or element of

mitigation in a criminal prosecution or civil action under, any Federal or State law that prevents the violation of the privacy of an individual in connection with the individual's use of the Internet." 17 U.S.C. §1205.

Adopting plaintiff's approach to the statute, a literal interpretation of "copyright management information" as defined in §1202(c) would in effect give §1202 limitless scope in that it would be applicable to all works bearing copyright information as listed in §1202(c)(1)-(8). In other words, §1202 would apply, as one court put it, "wherever any author has affixed anything that might refer to his or her name." IQ Group, Ltd. v. Wiesner Publishing LLC, 409 F. Supp. 2d 587, 593 (D.N.J. 2006). However, considering §1202's placement in the structure of the DMCA -- a statutory scheme which, along with protecting the integrity of copyright management information, also prohibits the circumvention of technological measures that protect copyrighted works -- the Court finds that such a wide-reaching interpretation would not be proper. Thus, to avoid applying the statute in such a way that would lead to "impracticable results," the Court finds it necessary to discern the congressional intent in enacting §1202, and therefore considers the relevant legislative history.

As an overview of the history of the DMCA, the Court notes the summary provided by the Second Circuit:

> The DMCA was enacted in 1998 to implement the World Intellectual Property Organization Copyright Treaty ("WIPO Treaty"), which requires contracting parties to "provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights under this Treaty or the Berne Convention and that restrict acts, in respect of their works, which are not authorized by the authors concerned or permitted by law." Even before the treaty, Congress had been devoting attention to the problems faced by copyright enforcement in the digital age. Hearings on the topic have spanned several years. This legislative effort resulted in the DMCA.

Universal City Studios, Inc. v. Corley, 273 F.3d 429, 440 (2nd Cir. 2001).

a. The "White Paper"

Although it is widely noted that the DMCA was enacted to implement the WIPO treaties, the origin of the Act can be traced further back to a report known as the "White Paper." As discussed below, the White Paper came about as a result of the Clinton Administration's efforts to address the issue of modernizing copyright enforcement.

In 1993, the Clinton Administration established the Information Infrastructure Task Force ("IITF") which was given the mandate to develop "comprehensive telecommunications and information policies that will promote the development of the [National Information Infrastructure ("NII")]." The IITF included, inter alia, the Information Policy Committee which, in turn, encompassed the Working Group on Intellectual Property Rights (the "Working Group"). "The Working Group ... was established ... to examine the intellectual property implications of the NII and make recommendations on any appropriate changes to U.S. intellectual property law and policy." In 1995, after holding extensive hearings and soliciting public comments, the Working Group released the Report of the Working Group on Intellectual Property Rights, known as the "White Paper."

The purpose of the White Paper was "to discuss the application of [then] existing copyright law and to recommend ... changes that [were] essential to adapt the law to the needs of the global information society." The White Paper defined "copyright management information" as the name and other identifying information of the author of a work, the name and identifying information of the copyright owner, and the terms and conditions for uses of the work. The White Paper set forth that "copyright management information" would "serve as a kind of license plate for a work on the information superhighway, from which a user may obtain important information about the work." The White Paper included a draft of §1201 and §1202, and discussed the underlying rationale [*1197] for these provisions:

> Systems for managing rights in works are being contemplated in the development of the NII. These systems will serve the functions of tracking and monitoring uses of copyrighted works as well as licensing of rights and indicating attribution, creation and ownership interests. A combination of file- and system-based access controls using encryption technologies, digital signatures and steganography are, and will continue to be, employed by owners of works to address copyright management concerns. Such security measures must be carefully designed and implemented to ensure that they not only effectively protect the owner's interests in the works but also do not unduly burden use of the work by consumers or compromise their privacy. And measures should be studied to ensure that systems established to serve these functions are not readily defeated.
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> To implement these rights management functions, information will likely be included in digital versions of a work (i.e., copyright management information) to inform the user about the authorship and ownership of a work (e.g., attribution information) as well as to indicate authorized uses of the work (e.g., permitted use information). For instance, information may be included in an "electronic envelope" containing a work that provides information regarding authorship, copyright ownership, date of creation or last modification, and terms and conditions of authorized uses. As measures for this purpose become incorporated at lower levels (e.g., at the operating system level), such information may become a fundamental component of a file or information object.
>
> Once information such as this is affiliated with a particular information object (e.g., data constituting the work) and readily accessible, users will be able to easily address questions over licensing and use of the work. For example, systems for electronic licensing may be developed based on the attribution or permitted use information associated with an information object.

b. The National Information Infrastructure Copyright Protection Act

After the White Paper was published, the National Information Infrastructure Copyright Protection Act ("NIICPA") was introduced in the House and Senate. The provisions of the NIICPA, which included drafts of §1201 and §1202, were taken verbatim from the White Paper. Multiple hearings on the proposed legislation were held, but ultimately the NIICPA stalled due to unsettled issues concerning the scope of liability of service providers for the infringing acts of their users.

c. The WIPO Treaties

On the international front, parallel efforts to ensure protection of copyrighted works in the digital age proceeded as well. In December, 1996, the WIPO held a conference [*1198] in Switzerland which culminated in the adoption of two treaties, the "WIPO Copyright Treaty" and the "WIPO Performances and Phonograms Treaty," which were agreed to by a consensus of 160 countries. The WIPO treaties addressed concerns regarding the modification or removal of copyright management information, and instituted a "double protection for technical measures":

> On one hand, the treaties provide protection for "effective technological measures that are used by authors in connection with the exercise of their rights under this Treaty or the Berne Convention and that restricts acts, in respect with their works, which are not authorized by the authors concerned or permitted by law." On the other hand, they provide protection for the "Rights Management Information." In the latter case, Article 12(1) of the Copyright Treaty provides that:
>
> Contracting parties shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right covered by this Treaty or the Berne Convention:
>
> (i) to remove or alter any electronic rights management information without authority;
>
> (ii) to distribute, import for distribution, broadcast or communicate to the public, without authority, works or copies of works knowing that electronic rights management information has been removed or altered without authority.

CMI is defined in Article 12 of the WIPO Treaties as:

> [I]nformation which identifies the work, the author of the work, the owner of any right in the work, or information about the terms and conditions of use of the work, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work or appears in connection with the communication of a work to the public.

d. Congressional Reports on the DMCA

Prior to the enactment of the DMCA in 1998, committees from the House and Senate published reports regarding the Act.

With respect to the WIPO treaties, the House Committee remarked:

> The treaties will ensure adequate protection for American works in countries around the world at a time when borderless digital means of dissemination are becoming increasingly popular. While such rapid dissemination of perfect copies will benefit both U.S. owners and consumers, it will unfortunately also facilitate pirates who aim to destroy the value of American intellectual property.

> The successful negotiation of the treaties brings with it the need for domestic implementing legislation. Title I of this bill [the DMCA] contains two substantive additions to U.S. domestic law ... to bring the law into compliance with the treaties so that they may be ratified appropriately.

The House Committee explained that implementation of the WIPO treaties required [*1199] "two technological adjuncts to copyright law, intended to ensure a thriving electronic marketplace for copyrighted works on the internet." The first "technological adjunct" concerned anti-circumvention measures and is embodied in 17 U.S.C. §1201. The second "technological adjunct," embodied in 17 U.S.C. §1202, was needed to ensure "the integrity of the electronic marketplace by preventing fraud and misinformation."

The Senate Report similarly explained:

> Due to the ease with which digital works can be copied and distributed worldwide virtually instantaneously, copyright owners will hesitate to make their works readily available on the Internet without reasonable assurance that they will be protected against massive piracy. Legislation implementing the [WIPO] treaties provides this protection and creates the legal platform for launching the global digital on-line marketplace for copyrighted works.

Comments in the Senate Committee Report in reference to §1202 in particular provide insight into the meaning of "copyright management information":

> The purpose of [copyright management information ("CMI")] is to facilitate licensing of copyright for use on the Internet and to discourage piracy.
>
> Copyright Management Information (CMI) is an important element in establishing an efficient Internet marketplace in copyrighted works free from governmental regulation. Such information will assist in tracking and monitoring uses of copyrighted works, as well as licensing of rights and indicating attribution, creation and ownership.
>
> Under the bill, CMI includes such items as the title of the work, the author, the copyright owner, and in some instances, the writer, performer, and director. CMI need not be in digital form, but CMI in digital form is expressly included. It is important to note that the DMCA does not require CMI, but if CMI is provided, the bill protects it from falsification, removal or alteration. Information that is not defined as CMI under the bill would not be protected by these provisions, although its removal or falsification might be protected under other laws, such as unfair trade.

In addition, the Court observes other statements by the congressional committees that shed light on the impetus for the new legislation. For example, the House Report included the following explanation regarding the background and need for the DMCA:

> The digital environment now allows users of electronic media to send and retrieve perfect reproductions of copyrighted material easily and nearly instantaneously, to or from locations around the world. With this evolution in technology, the law must adapt in order to make digital networks safe places to disseminate and exploit copyrighted

> works.... [P] When copyrighted material is adequately protected in the digital environment, a plethora of works will be distributed and performed over the Internet. In order to protect the owner, copyrighted works will most likely be encrypted and made available to consumers once payment is made for access to a copy of the work....

The Senate Committee similarly observed that the DMCA was designed "to facilitate the robust development and world-wide expansion of electronic commerce, communications, research, development and education in the digital age." [*1200]

2. Cases Discussing the Scope of 17 U.S.C. §1202

As the Court previously discussed in its Order denying defendants' Motion to Dismiss the First Amended Complaint, it appears that only two reported cases have thus far dealt with the scope and applicability of 17 U.S.C. §1202. The first case, IQ Group, Ltd. v. Wiesner Publishing, LLC, 409 F. Supp. 2d 587 (D.N.J 2006), involved the following facts: the plaintiff alleged that it had created certain e-mail advertisements for its clients, two insurances companies. The ads included the plaintiff's logo and a hyperlink that directed the user to the plaintiff's Web site which contained copyright notices. According to the plaintiff, it provided the e-mail ads to the two insurance companies, who in turn both hired the defendant to distribute the ads. The defendant copied and distributed the ads via e-mail, but only after removing the plaintiff's logo and hyperlink and adding new information so that responses to the ads would go to the insurance company clients. The plaintiff subsequently applied for copyright registration of the ads and filed suit in the District Court of New Jersey, alleging, among other claims, that the defendant had violated 17 U.S.C. §1202. The defendant sought summary judgment on the claim. In its consideration of the motion, the district court discussed the statutory interpretation of §1202. Finding no reported cases on the issue, the court turned to scholarly writings, as well as the legislative history of the DMCA, before concluding that §1202 should be construed to protect only copyright management performed by the technological measures of automated systems. In reaching this conclusion, the IQ Group court explained:

> [T]raditionally, the rights of authors have been managed by people, who have controlled access and reproduction. Through scientific advances, we now have technological measures that can control access and reproduction of works, and thereby manage the rights of copyright owners and users. Section 1202 operates to protect copyright by protecting a key component of some of these technological measures. It should not be construed to cover copyright management performed by people, which is covered by the Copyright Act, as it preceded the DMCA; it should be construed to protect copyright management performed by the technological measures of automated systems.

The court went on to hold that the plaintiff s logo and hyperlink to copyright information did not constitute copyright management information under the DMCA, and that the defendant thus did not violate §1202.

The second case, out of the District Court in the Western District of Pennsylvania, interpreted §1202 more expansively. See McClatchey v. The Associated Press, 2007 U.S. Dist. LEXIS 17768 (W.D.Pa. March 9, 2007). In McClatchey, the plaintiff had obtained copyright protection for a photograph she took of the United 93 plane crash that occurred on September [*1201] 11, 2001. The plaintiff kept in a binder a copy of the photograph bearing her title and copyright information. An

Associated Press ("AP") photographer went to the plaintiff's home and, according to the plaintiff, took a snapshot of the copyrighted photograph. The photographer then "cropped" his picture of the photograph to remove the plaintiff's title and copyright notice. The cropped photograph was later distributed to the AP's member news organizations without the plaintiff's permission. The plaintiff brought suit under, inter alia, 17 U.S.C. §1202. On defendant's motion for summary judgment, the McClatchey court rejected the defendant's argument that §1202 did not apply. Specifically, because the plaintiff used a computer software program to print her title, name, and copyright notice on the copies of her photograph, the district court found that this "technological process" came within the term "digital 'copyright management information'" as defined in §1202(c). The court further observed that under §1202(c), the term "copyright management information" was broadly defined, and included protection for non-digital information as well.

3. Plaintiff's Claim Under 17 U.S.C. §1202 Lacks Merit

As the Court observed previously in the denial of defendants' Motion to Dismiss, the above district court decisions reflect a broad range of interpretations concerning the application of 17 U.S.C. §1202. At the time of defendants' Motion to Dismiss, the Court found it premature to make any determination as to the applicability of §1202 to the instant case as the facts had not yet been developed through discovery. [15] Now, however, after considering the evidence in support of the instant Motion and viewing §1202 within the context of its legislative history, the Court is persuaded by the IQ Group court's conclusion that §1202 is subject to a narrowing interpretation.

Pursuant to a narrower construction, the Court concludes that §1202 is not applicable here, i.e., where plaintiff alleges that defendants removed TSI's copyright information from the FEATHERS fabric before infringing on the design. While the Court does not attempt in this decision to define the precise contours of the applicability of §1202, the Court nevertheless cannot find that the provision was intended to apply to circumstances that have no relation to the Internet, electronic commerce, automated copyright protections or management systems, public registers, or other technological measures or processes as contemplated in the DMCA as a whole. In other words, although the parties do not dispute that the FEATHERS fabric contained TSI's copyright information, there are no facts showing that any technological process as contemplated in the DMCA was utilized by plaintiff in placing the copyright information onto the FEATHERS fabric, or that defendants employed any technological [*1202] process in either their removal of the copyright information from the design or in their alleged distribution of the design.[4] In short, the Court finds that, in light of the legislative intent behind the DMCA to facilitate electronic and Internet commerce, the facts of this case do not trigger §1202.

In making this determination, the Court takes into account defendants' argument that the McClatchey opinion is distinguishable because the District Court did not consider the legislative history of the DMCA before concluding that §1202 was applicable in that case. The Court further observes that in other court opinions, discussions regarding the DMCA reflect the view that the Act's scope was intended to encompass the Internet and other forms of electronic transactions.

[4] For example, there are no facts establishing that the copyright information on FEATHERS included a bar code or other marker that could be electronically scanned; nor are there any facts showing that defendants scanned or otherwise transferred the FEATHERS design into digital form so that the design could be disseminated electronically.

As noted by the IQ Group court, "Congress intended the DMCA to modernize copyright protection as a response to the development of new technologies which both enabled new forms of copyright protection as well as new forms of copyright infringement." IQ Group, 409 F. Supp. 2d at 597. The Court also agrees in general with the IQ Group court's reasoning that:

> [A narrower] interpretation of §1202 makes sense ... because it fits §1201 with §1202, and with chapter 12 [of the DMCA] as a whole. The language of §1201 expressly states that it concerns the circumvention of a "technological measure" which either "effectively controls access to a work" or "effectively protects a right of a copyright [*1203] owner." These two provisions are sections within a common chapter (chapter 12, "Copyright Protection and Management Systems") and are the two provisions covered by the remedies and penalty provisions of §§1203 and 1204. Chapter 12, as a whole, appears to protect automated systems which protect and manage copyrights. The systems themselves are protected by §1201 and the copyright information used in the functioning of the systems is protected in §1202.

IQ Group, 409 F. Supp. 2d at 597.[5]

If the scope of §1202 were as broad as plaintiff urges, it appears that such an expansive construction would be contrary to the intent of Congress and inconsistent with the statute's legislative history. Accordingly, the Court concludes that, when considering §1202 within the structure of the DMCA as a whole and in light of its historical context, the statute does not apply here. With respect to the third cause of action, the Court therefore finds no genuine issue as to any material fact and that summary adjudication of this claim is appropriate.

[5] Although the Court is persuaded to some extent by the reasoning set forth in the IQ Group decision, the Court does not find it necessary to define the scope of §1202 as definitively as the IQ Group court did (i.e., that the provision applies only to copyright management information that functions "as a component of an automated copyright protection or management system"). The Court also notes the declaration of attorney Lorin Brennan submitted by plaintiff in support of its opposition wherein Mr. Brennan describes his participation in the legislative efforts that led to the enactment of the DMCA and explains the basis for his opinion that "copyright management information" is not limited to information in only "digital" or "electronic" form. The conclusion reached today regarding the limits of §1202 is not necessarily at odds with Mr. Brennan's opinion. Although Mr. Brennan opines that "copyright management information" may exist in non-digital or non-electronic form, he does not go so far as to state that §1202 extends to a copyright notice that is set forth on fabric selvage or a tag, and that can be physically removed.