S T A T E O F N E W Y O R K

3915--A

2011-2012 Regular Sessions

I N A S S E M B L Y

January 28, 2011

Introduced by M. of A. JEFFRIES, BROOK-KRASNY, BURLING, COLTON, GABRYSZAK, HOOPER, SCHIMMINGER -- Multi-Sponsored by -- M. of A. P. RIVERA -- read once and referred to the Committee on Economic Development -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to stolen or misappropriated information technology

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The general business law is amended by adding a new section 390-d to read as follows:

S 390-D. ILLEGAL USE OF STOLEN OR MISAPPROPRIATED INFORMATION TECHNOLOGY. 1. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "ARTICLE OR PRODUCT" MEANS ANY TANGIBLE ARTICLE OR PRODUCT, BUT DOES NOT INCLUDE: ANY SERVICES SOLD, OFFERED FOR SALE OR MADE AVAILABLE IN THIS STATE, INCLUDING FREE SERVICES AND ONLINE SERVICES; ANY PRODUCT SUBJECT TO REGULATION BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION AND THAT IS PRIMARILY USED FOR MEDICAL OR MEDICINAL PURPOSES; FOOD AND BEVERAGES; OR RESTAURANT SERVICES.

(B) "COPYRIGHTABLE END PRODUCT" MEANS A WORK WITHIN THE SUBJECT MATTER OF COPYRIGHT AS SPECIFIED IN SECTION 102 OF TITLE 17, UNITED STATES CODE, AND WHICH FOR THE PURPOSES OF THIS SECTION INCLUDES MASK WORKS PROTECTION AS SPECIFIED IN SECTION 902 OF TITLE 17, UNITED STATES CODE.

(C) "ESSENTIAL COMPONENT" MEANS A COMPONENT OF AN ARTICLE OR PRODUCT PROVIDED OR TO BE PROVIDED TO A THIRD PARTY PURSUANT TO A CONTRACT, INCLUDING A PURCHASE ORDER, WITHOUT WHICH SUCH ARTICLE OR PRODUCT WILL NOT PERFORM AS INTENDED AND FOR WHICH THERE IS NO SUBSTITUTE COMPONENT AVAILABLE THAT OFFERS A COMPARABLE RANGE AND QUALITY OF FUNCTIONALITIES AND IS AVAILABLE IN COMPARABLE QUANTITIES AND AT A COMPARABLE PRICE.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(D) "MANUFACTURE" MEANS DIRECTLY TO MANUFACTURE, PRODUCE OR ASSEMBLE AN ARTICLE OR PRODUCT SUBJECT TO THE PROVISIONS OF SUBDIVISION TWO OF THIS SECTION, IN WHOLE OR SUBSTANTIAL PART, BUT DOES NOT INCLUDE CONTRACTING WITH OR OTHERWISE ENGAGING ANOTHER PERSON, OR THAT PERSON ENGAGING ANOTHER PERSON, TO DEVELOP, MANUFACTURE, PRODUCE OR ASSEMBLE AN ARTICLE OR PRODUCT SUBJECT TO THE PROVISIONS OF SUBDIVISION TWO OF THIS SECTION.

(E) "MATERIAL COMPETITIVE INJURY" MEANS AT LEAST A THREE PERCENT RETAIL PRICE DIFFERENCE BETWEEN THE ARTICLE OR PRODUCT MADE IN VIOLATION OF SUBDIVISION TWO OF THIS SECTION DESIGNED TO HARM COMPETITION AND A DIRECTLY COMPETING ARTICLE OR PRODUCT THAT WAS MANUFACTURED WITHOUT THE USE OF STOLEN OR MISAPPROPRIATED INFORMATION TECHNOLOGY, SUCH PRICE DIFFERENCE OCCURRING OVER A FOUR-MONTH PERIOD OF TIME.

(F) "RETAIL PRICE" OF STOLEN OR MISAPPROPRIATED INFORMATION TECHNOLOGY IS THE RETAIL PRICE OF THE INFORMATION TECHNOLOGY CHARGED AT THE TIME OF, AND IN THE JURISDICTION WHERE, THE ALLEGED THEFT OR MISAPPROPRIATION OCCURRED, MULTIPLIED BY THE NUMBER OF STOLEN OR MISAPPROPRIATED ITEMS USED IN THE BUSINESS OPERATIONS OF THE PERSON ALLEGED TO HAVE VIOLATED SUBDIVISION TWO OF THIS SECTION.

(G) "STOLEN OR MISAPPROPRIATED INFORMATION TECHNOLOGY" MEANS HARDWARE OR SOFTWARE THAT THE PERSON REFERRED TO IN SUBDIVISION TWO OF THIS SECTION ACQUIRED, APPROPRIATED OR USED WITHOUT THE AUTHORIZATION OF THE OWNER OF THE INFORMATION TECHNOLOGY OR THE OWNER'S AUTHORIZED LICENSEE IN VIOLATION OF APPLICABLE LAW, BUT DOES NOT INCLUDE SITUATIONS IN WHICH THE HARDWARE OR SOFTWARE ALLEGED TO HAVE BEEN STOLEN OR MISAPPROPRIATED WAS NOT AVAILABLE FOR RETAIL PURCHASE ON A STANDALONE BASIS AT OR BEFORE THE TIME IT WAS ACQUIRED, APPROPRIATED OR USED BY SUCH PERSON.

2. UNLAWFUL ACT. ANY PERSON WHO MANUFACTURES ANY ARTICLE OR PRODUCT WHILE USING STOLEN OR MISAPPROPRIATED INFORMATION TECHNOLOGY IN ITS BUSINESS OPERATIONS AFTER NOTICE AND OPPORTUNITY TO CURE AS PROVIDED IN SUBDIVISION FIVE OF THIS SECTION AND, WITH RESPECT TO REMEDIES SOUGHT UNDER PARAGRAPH (E) OF SUBDIVISION SIX OF THIS SECTION OR SUBDIVISION SEVEN OF THIS SECTION, CAUSES A MATERIAL COMPETITIVE INJURY AS A RESULT OF SUCH USE OF STOLEN OR MISAPPROPRIATED INFORMATION TECHNOLOGY, SHALL BE DEEMED TO ENGAGE IN AN UNFAIR ACT WHERE SUCH ARTICLE OR PRODUCT IS SOLD OR OFFERED FOR SALE IN THIS STATE, EITHER SEPARATELY OR AS A COMPONENT OF ANOTHER ARTICLE OR PRODUCT, AND IN COMPETITION WITH AN ARTICLE OR PRODUCT SOLD OR OFFERED FOR SALE IN THIS STATE THAT WAS MANUFACTURED WITHOUT VIOLATING THIS PROVISION. ANY PERSON WHO ENGAGES IN SUCH UNFAIR ACT, AND ANY ARTICLES OR PRODUCTS MANUFACTURED BY SUCH PERSON IN VIOLATION OF THIS PROVISION, SHALL BE SUBJECT TO THE LIABILITIES AND REMEDIAL PROVISIONS OF THIS SECTION IN AN ACTION BY THE ATTORNEY GENERAL OR ANY PERSON DESCRIBED IN PARAGRAPH (D) OF SUBDIVISION SIX OF THIS SECTION. FOR THE PURPOSES OF THIS SECTION, INFORMATION TECHNOLOGY SHALL BE CONSIDERED TO BE USED IN A PERSON'S BUSINESS OPERATIONS IF THE PERSON USES SUCH TECHNOLOGY IN THE MANUFACTURE, DISTRIBUTION, MARKETING OR SALES OF THE ARTICLES OR PRODUCTS SUBJECT TO THIS SECTION.

3. LIMITATIONS. NO ACTION MAY BE BROUGHT PURSUANT TO THE PROVISIONS OF THIS SECTION, AND NO LIABILITY SHALL RESULT, WHERE: (A) THE END ARTICLE OR END PRODUCT SOLD OR OFFERED FOR SALE IN THIS STATE AND ALLEGED TO VIOLATE SUBDIVISION TWO OF THIS SECTION IS: (1) A COPYRIGHTABLE END PRODUCT; (2) MERCHANDISE MANUFACTURED BY OR ON BEHALF OF, OR PURSUANT TO A LICENSE FROM, A COPYRIGHT OWNER AND WHICH DISPLAYS OR EMBODIES A NAME, CHARACTER, ARTWORK OR OTHER INDICIA OF OR FROM A WORK THAT FALLS WITHIN SUBPARAGRAPH ONE OF THIS PARAGRAPH, OR MERCHANDISE MANUFACTURED BY OR ON BEHALF OF, OR PURSUANT TO A LICENSE FROM, A COPYRIGHT OR TRADEMARK OWNER

AND WHICH DISPLAYS OR EMBODIES A NAME, CHARACTER, ARTWORK OR OTHER INDICIA OF OR FROM A THEME PARK, THEME PARK ATTRACTION OR OTHER FACILITY ASSOCIATED WITH A THEME PARK; OR (3) PACKAGING, CARRIER MEDIA OR PROMOTIONAL OR ADVERTISING MATERIALS FOR ANY END ARTICLE, END PRODUCT OR MERCHANDISE THAT FALLS WITHIN SUBPARAGRAPH ONE OR TWO OF THIS PARAGRAPH;

(B) THE ALLEGATION THAT THE INFORMATION TECHNOLOGY IS STOLEN OR MISAPPROPRIATED IS BASED ON A CLAIM THAT (1) THE INFORMATION TECHNOLOGY OR ITS USE INFRINGES A PATENT OR MISAPPROPRIATES A TRADE SECRET UNDER APPLICABLE LAW, OR (2) COULD BE BROUGHT UNDER ANY PROVISION OF TITLE 35 OF THE UNITED STATES CODE;

(C) THE ALLEGATION THAT THE INFORMATION TECHNOLOGY IS STOLEN OR MISAPPROPRIATED IS BASED ON A CLAIM THAT THE DEFENDANT'S USE OF THE INFORMATION TECHNOLOGY VIOLATES THE TERMS OF A LICENSE THAT ALLOWS USERS TO MODIFY AND REDISTRIBUTE ANY SOURCE CODE ASSOCIATED WITH THE TECHNOLOGY FREE OF CHARGE; OR

(D) THE ALLEGATION IS BASED ON A CLAIM THAT THE PERSON VIOLATED THE PROVISIONS OF SUBDIVISION TWO OF THIS SECTION BY AIDING, ABETTING, FACILITATING OR ASSISTING SOMEONE ELSE TO ACQUIRE, APPROPRIATE, USE, SELL OR OFFER TO SELL, OR BY PROVIDING SOMEONE ELSE WITH ACCESS TO, INFORMATION TECHNOLOGY WITHOUT AUTHORIZATION OF THE OWNER OF SUCH INFORMATION TECHNOLOGY OR THE OWNER'S AUTHORIZED LICENSEE IN VIOLATION OF APPLICABLE LAW.

4. INJUNCTION. NO INJUNCTION MAY ISSUE AGAINST A PERSON OTHER THAN THE PERSON ADJUDICATED TO HAVE VIOLATED SUBDIVISION TWO OF THIS SECTION, AND NO ATTACHMENT ORDER MAY ISSUE AGAINST ARTICLES OR PRODUCTS OTHER THAN ARTICLES OR PRODUCTS IN WHICH THE PERSON ALLEGED TO VIOLATE SUBDIVISION TWO OF THIS SECTION HOLDS TITLE. A PERSON OTHER THAN THE PERSON ALLEGED TO VIOLATE SUBDIVISION TWO OF THIS SECTION INCLUDES ANY PERSON OTHER THAN THE ACTUAL MANUFACTURER WHO CONTRACTS WITH OR OTHERWISE ENGAGES ANOTHER PERSON TO DEVELOP, MANUFACTURE, PRODUCE, MARKET, DISTRIBUTE, ADVERTISE OR ASSEMBLE AN ARTICLE OR PRODUCT ALLEGED TO VIOLATE SUBDIVISION TWO OF THIS SECTION.

5. NOTICE. (A) NO ACTION MAY BE BROUGHT UNDER SUBDIVISION TWO OF THIS SECTION UNLESS THE PERSON SUBJECT TO SUCH SUBDIVISION RECEIVED WRITTEN NOTICE OF THE ALLEGED USE OF THE STOLEN OR MISAPPROPRIATED INFORMATION TECHNOLOGY FROM THE OWNER OR EXCLUSIVE LICENSEE OF THE INFORMATION TECHNOLOGY OR THE OWNER'S AGENT AND THE PERSON: (1) FAILED TO ESTABLISH THAT ITS USE OF THE INFORMATION TECHNOLOGY IN QUESTION DID NOT VIOLATE SUBDIVISION TWO OF THIS SECTION; OR (2) FAILED, WITHIN NINETY DAYS AFTER RECEIVING SUCH NOTICE, TO CEASE USE OF THE OWNER'S STOLEN OR MISAPPROPRIATED INFORMATION TECHNOLOGY, PROVIDED, IF THE PERSON COMMENCES AND THEREAFTER PROCEEDS DILIGENTLY TO REPLACE SUCH INFORMATION TECHNOLOGY WITH INFORMATION TECHNOLOGY WHOSE USE WOULD NOT VIOLATE SUBDIVISION TWO OF THIS SECTION, SUCH PERIOD SHALL BE EXTENDED FOR AN ADDITIONAL PERIOD OF NINETY DAYS, BUT WHICH MAY NOT EXCEED ONE HUNDRED EIGHTY DAYS IN TOTAL.

(B) IN ORDER TO SATISFY THE REQUIREMENTS OF THIS SUBDIVISION, A WRITTEN NOTICE MUST, UNDER PENALTY OF PERJURY: (1) IDENTIFY THE STOLEN OR MISAPPROPRIATED INFORMATION TECHNOLOGY; (2) IDENTIFY THE LAWFUL OWNER OR EXCLUSIVE LICENSEE OF THE INFORMATION TECHNOLOGY; (3) IDENTIFY THE APPLICABLE LAW THE PERSON IS ALLEGED TO BE VIOLATING AND STATE THAT THE NOTIFIER HAS A REASONABLE BELIEF THAT THE PERSON HAS ACQUIRED, APPROPRIATED OR USED THE INFORMATION TECHNOLOGY IN QUESTION WITHOUT AUTHORIZATION OF THE OWNER OF THE INFORMATION TECHNOLOGY OR THE OWNER'S AUTHORIZED LICENSEE IN VIOLATION OF SUCH APPLICABLE LAW; (4) TO THE EXTENT KNOWN BY THE NOTIFIER, STATE THE MANNER IN WHICH SUCH INFORMATION TECH-

NOLOGY IS BEING USED BY THE DEFENDANT; (5) STATE THE ARTICLES OR PRODUCTS TO WHICH SUCH INFORMATION TECHNOLOGY RELATES; AND (6) SPECIFY THE BASIS AND THE PARTICULAR EVIDENCE UPON WHICH THE NOTIFIER BASES SUCH ALLEGATION.

(C) THE WRITTEN NOTIFICATION SHALL STATE, UNDER PENALTY OF PERJURY, THAT, AFTER A REASONABLE AND GOOD-FAITH INVESTIGATION, THE INFORMATION IN THE NOTICE IS ACCURATE BASED ON THE NOTIFIER'S REASONABLE KNOWLEDGE, INFORMATION AND BELIEF.

6. ACTIONS. (A) NO EARLIER THAN NINETY DAYS AFTER THE PROVISION OF NOTICE IN ACCORDANCE WITH SUBDIVISION FIVE OF THIS SECTION, THE ATTORNEY GENERAL, OR A PERSON DESCRIBED IN PARAGRAPH (D) OF THIS SUBDIVISION, MAY BRING AN ACTION AGAINST ANY PERSON THAT IS SUBJECT TO THE PROVISIONS OF SUBDIVISION TWO OF THIS SECTION:

(1) TO ENJOIN VIOLATION OF SUBDIVISION TWO OF THIS SECTION, INCLUDING ENJOINING SUCH PERSON FROM SELLING OR OFFERING TO SELL IN THIS STATE ARTICLES OR PRODUCTS THAT ARE SUBJECT TO THE PROVISIONS OF SUBDIVISION TWO OF THIS SECTION, EXCEPT AS PROVIDED IN PARAGRAPH (E) OF THIS SUBDIVISION; PROVIDED THAT NO SUCH INJUNCTION SHALL ENCOMPASS ARTICLES OR PRODUCTS TO BE PROVIDED TO A THIRD PARTY THAT ESTABLISHES THAT SUCH THIRD PARTY HAS SATISFIED ONE OR MORE OF THE AFFIRMATIVE DEFENSES SET FORTH IN PARAGRAPH (A) OF SUBDIVISION EIGHT OF THIS SECTION WITH RESPECT TO THE MANUFACTURER ALLEGED TO HAVE VIOLATED SUBDIVISION TWO OF THIS SECTION; OR

(2) ONLY AFTER A DETERMINATION BY THE COURT THAT THE PERSON HAS VIOLATED SUBDIVISION TWO OF THIS SECTION, TO RECOVER THE GREATER OF:

(A) ACTUAL DIRECT DAMAGES, WHICH MAY BE IMPOSED ONLY AGAINST THE PERSON WHO VIOLATED SUBDIVISION TWO OF THIS SECTION; OR

(B) STATUTORY DAMAGES OF NO MORE THAN THE RETAIL PRICE OF THE STOLEN OR MISAPPROPRIATED INFORMATION TECHNOLOGY, WHICH MAY BE IMPOSED ONLY AGAINST THE PERSON WHO VIOLATED SUBDIVISION TWO OF THIS SECTION.

(3) IN THE EVENT THE PERSON ALLEGED TO HAVE VIOLATED SUBDIVISION TWO OF THIS SECTION HAS BEEN SUBJECT TO A FINAL JUDGMENT OR HAS ENTERED INTO A FINAL SETTLEMENT, OR ANY PRODUCTS MANUFACTURED BY SUCH PERSON AND ALLEGED TO VIOLATE SUBDIVISION TWO OF THIS SECTION HAVE BEEN THE SUBJECT OF AN INJUNCTION OR ATTACHMENT ORDER, IN ANY FEDERAL OR STATE COURT IN THIS STATE OR ANY OTHER STATE, ARISING OUT OF THE SAME THEFT OR MISAPPROPRIATION OF INFORMATION TECHNOLOGY, THE COURT SHALL DISMISS THE ACTION WITH PREJUDICE. IF SUCH PERSON IS A DEFENDANT IN AN ONGOING ACTION, OR ANY PRODUCTS MANUFACTURED BY SUCH PERSON AND ALLEGED TO VIOLATE SUBDIVISION TWO OF THIS SECTION ARE THE SUBJECT OF AN ONGOING INJUNCTION OR ATTACHMENT ORDER, IN ANY FEDERAL OR STATE COURT IN THIS STATE OR ANY OTHER STATE, ARISING OUT OF THE SAME THEFT OR MISAPPROPRIATION OF INFORMATION TECHNOLOGY, THE COURT SHALL STAY THE ACTION AGAINST SUCH PERSON PENDING RESOLUTION OF THE OTHER ACTION. IN THE EVENT THE OTHER ACTION RESULTS IN A FINAL JUDGMENT OR FINAL SETTLEMENT, THE COURT SHALL DISMISS THE ACTION WITH PREJUDICE AGAINST THE PERSON. DISMISSALS UNDER THIS SECTION SHALL BE RES JUDICATA TO ACTIONS FILED AGAINST THE PERSON ALLEGED TO HAVE VIOLATED SUBDIVISION TWO OF THIS SECTION ARISING OUT OF THE SAME THEFT OR MISAPPROPRIATION OF INFORMATION TECHNOLOGY.

(B) (1) AFTER DETERMINATION BY THE COURT THAT A PERSON HAS VIOLATED THE PROVISIONS OF SUBDIVISION TWO OF THIS SECTION AND ENTRY OF A JUDGMENT AGAINST THE PERSON FOR VIOLATING THE PROVISIONS OF SUCH SUBDIVISION, THE ATTORNEY GENERAL, OR A PERSON DESCRIBED IN PARAGRAPH (D) OF THIS SUBDIVISION, MAY ADD TO THE ACTION A CLAIM FOR ACTUAL DIRECT DAMAGES AGAINST A THIRD PARTY WHO SELLS OR OFFERS TO SELL IN THIS STATE ARTICLES OR PRODUCTS MADE BY THAT PERSON IN VIOLATION OF SUBDIVISION TWO

OF THIS SECTION, SUBJECT TO THE PROVISIONS OF SUBDIVISION EIGHT OF THIS SECTION; PROVIDED, DAMAGES MAY BE IMPOSED AGAINST A THIRD PARTY ONLY IF:

(A) THE THIRD PARTY'S AGENT FOR SERVICE OF PROCESS PROPERLY WAS SERVED WITH A COPY OF A WRITTEN NOTICE SENT TO THE PERSON ALLEGED TO HAVE VIOLATED SUBDIVISION TWO OF THIS SECTION THAT SATISFIES THE REQUIREMENTS OF SUBDIVISION FIVE OF THIS SECTION AT LEAST NINETY DAYS PRIOR TO THE ENTRY OF THE JUDGMENT;

(B) THE PERSON WHO VIOLATED SUBDIVISION TWO OF THIS SECTION DID NOT MAKE AN APPEARANCE OR DOES NOT HAVE SUFFICIENT ATTACHABLE ASSETS TO SATISFY A JUDGMENT AGAINST THE PERSON;

(C) SUCH PERSON EITHER MANUFACTURED THE FINAL ARTICLE OR PRODUCT OR PRODUCED A COMPONENT EQUAL TO THIRTY PERCENT OR MORE OF THE VALUE OF THE FINAL ARTICLE OR PRODUCT;

(D) SUCH PERSON HAS A DIRECT CONTRACTUAL RELATIONSHIP WITH THE THIRD PARTY RESPECTING THE MANUFACTURE OF SUCH FINAL ARTICLE OR PRODUCT OR COMPONENT; AND

(E) THE THIRD PARTY HAS NOT BEEN SUBJECT TO A FINAL JUDGMENT OR ENTERED INTO A FINAL SETTLEMENT IN ANY FEDERAL OR STATE COURT IN THIS STATE OR ANY OTHER STATE ARISING OUT OF THE SAME THEFT OR MISAPPROPRIATION OF INFORMATION TECHNOLOGY; PROVIDED, HOWEVER, THAT IN THE EVENT THE THIRD PARTY IS A PARTY TO AN ONGOING SUIT FOR DAMAGES, OR HAS ENTERED AN APPEARANCE AS AN INTERESTED THIRD PARTY IN PROCEEDINGS IN REM, IN ANY FEDERAL OR STATE COURT IN THIS STATE OR ANY OTHER STATE ARISING OUT OF THE SAME THEFT OR MISAPPROPRIATION OF INFORMATION TECHNOLOGY, THE COURT SHALL STAY THE ACTION AGAINST THE THIRD PARTY PENDING RESOLUTION OF THE OTHER ACTION. IN THE EVENT THE OTHER ACTION RESULTS IN A FINAL JUDGMENT, THE COURT SHALL DISMISS THE ACTION WITH PREJUDICE AGAINST THE THIRD PARTY AND DISMISS ANY IN REM ACTION AS TO ANY ARTICLES OR PRODUCTS MANUFACTURED FOR SUCH THIRD PARTY OR THAT HAVE BEEN OR ARE TO BE SUPPLIED TO SUCH THIRD PARTY. DISMISSALS UNDER THIS SECTION SHALL BE RES JUDICATA TO ACTIONS FILED AGAINST THE PERSON ALLEGED TO HAVE VIOLATED SUBDIVISION TWO OF THIS SECTION ARISING OUT OF THE SAME THEFT OR MISAPPROPRIATION OF INFORMATION TECHNOLOGY.

(2) AN AWARD OF DAMAGES AGAINST SUCH THIRD PARTY PURSUANT TO SUBPARAGRAPH ONE OF THIS PARAGRAPH SHALL BE THE LESSER OF THE RETAIL PRICE OF THE STOLEN OR MISAPPROPRIATED INFORMATION TECHNOLOGY AT ISSUE OR TWO HUNDRED FIFTY THOUSAND DOLLARS, LESS ANY AMOUNTS RECOVERED FROM THE PERSON ADJUDICATED TO HAVE VIOLATED SUBDIVISION TWO OF THIS SECTION, AND THE PROVISIONS OF SUBPARAGRAPH ONE OF PARAGRAPH (C) OF THIS SUBDIVISION SHALL NOT APPLY TO SUCH AWARD OR RECOVERY AGAINST SUCH THIRD PARTY.

(C) IN AN ACTION UNDER THIS SECTION, A COURT MAY:

(1) IMPOSE TREBLE DAMAGES WHERE THE COURT FINDS THAT THE PERSON'S USE OF THE STOLEN OR MISAPPROPRIATED INFORMATION TECHNOLOGY WAS WILLFUL;

(2) WITH RESPECT TO AN AWARD UNDER PARAGRAPH (A) OF THIS SUBDIVISION ONLY, AWARD COSTS AND REASONABLE ATTORNEY'S FEES TO A PREVAILING PLAINTIFF IN ACTIONS BROUGHT BY AN INJURED PERSON PURSUANT TO SUBDIVISION TWO OF THIS SECTION; OR A PREVAILING DEFENDANT IN ACTIONS BROUGHT BY AN ALLEGEDLY INJURED PERSON; AND

(3) WITH RESPECT TO AN ACTION UNDER PARAGRAPH (B) OF THIS SUBDIVISION BROUGHT BY A PRIVATE PLAINTIFF ONLY, AWARD COSTS AND REASONABLE ATTORNEY'S FEES TO A THIRD PARTY FOR ALL LITIGATION EXPENSES (INCLUDING, WITHOUT LIMITATION, DISCOVERY EXPENSES) INCURRED BY THAT PARTY IF IT PREVAILS ON THE REQUIREMENT SET FORTH IN CLAUSE (C) OF SUBPARAGRAPH ONE OF PARAGRAPH (B) OF THIS SUBDIVISION OR WHO QUALIFIES FOR AN AFFIRMATIVE DEFENSE UNDER SUBDIVISION EIGHT OF THIS SECTION; PROVIDED, IN A CASE IN WHICH THE THIRD PARTY RECEIVED A COPY OF THE NOTIFICATION DESCRIBED IN

CLAUSE (A) OF SUBPARAGRAPH ONE OF PARAGRAPH (B) OF THIS SUBDIVISION AT LEAST NINETY DAYS BEFORE THE FILING OF THE ACTION UNDER PARAGRAPH (B) OF THIS SUBDIVISION, THAT WITH RESPECT TO A THIRD PARTY'S RELIANCE ON THE AFFIRMATIVE DEFENSES SET FORTH IN SUBPARAGRAPHS THREE AND FOUR OF PARAGRAPH (A) OF SUBDIVISION EIGHT OF THIS SECTION, THE COURT MAY AWARD COSTS AND REASONABLE ATTORNEY'S FEES ONLY IF ALL OF THE CONDUCT ON WHICH THE AFFIRMATIVE DEFENSE IS BASED WAS UNDERTAKEN BY THE THIRD PARTY, AND THE THIRD PARTY NOTIFIED THE PLAINTIFF OF SUCH CONDUCT, PRIOR TO THE END OF SUCH NINETY DAY PERIOD.

(D) A PERSON SHALL BE DEEMED TO HAVE BEEN INJURED BY THE SALE OR OFFER FOR SALE OF A DIRECTLY COMPETING ARTICLE OR PRODUCT SUBJECT TO THE PROVISIONS OF SUBDIVISION TWO OF THIS SECTION IF THE PERSON ESTABLISHES BY A PREPONDERANCE OF THE EVIDENCE THAT:

(1) THE PERSON MANUFACTURES ARTICLES OR PRODUCTS THAT ARE SOLD OR OFFERED FOR SALE IN THIS STATE IN DIRECT COMPETITION WITH ARTICLES OR PRODUCTS THAT ARE SUBJECT TO SUBDIVISION TWO OF THIS SECTION;

(2) THE PERSON'S ARTICLES OR PRODUCTS WERE NOT MANUFACTURED USING STOLEN OR MISAPPROPRIATED INFORMATION TECHNOLOGY OF THE OWNER OF THE INFORMATION TECHNOLOGY;

(3) THE PERSON SUFFERED ECONOMIC HARM, WHICH MAY BE SHOWN BY EVIDENCE THAT THE RETAIL PRICE OF THE STOLEN OR MISAPPROPRIATED INFORMATION TECHNOLOGY WAS TWENTY THOUSAND DOLLARS OR MORE; AND

(4) IF THE PERSON IS PROCEEDING IN REM OR SEEKS INJUNCTIVE RELIEF, THAT THE PERSON SUFFERED MATERIAL COMPETITIVE INJURY AS A RESULT OF THE VIOLATION OF SUBDIVISION TWO OF THIS SECTION.

(E) (1) IF THE COURT DETERMINES THAT A PERSON FOUND TO HAVE VIOLATED THE PROVISIONS OF SUBDIVISION TWO OF THIS SECTION LACKS SUFFICIENT ATTACHABLE ASSETS IN THIS STATE TO SATISFY A JUDGMENT RENDERED AGAINST IT, THE COURT MAY ENJOIN THE SALE OR OFFERING FOR SALE IN THIS STATE OF ANY ARTICLES OR PRODUCTS SUBJECT TO SUBDIVISION TWO OF THIS SECTION, EXCEPT AS PROVIDED IN SUBDIVISION FOUR OF THIS SECTION.

(2) TO THE EXTENT THAT AN ARTICLE OR PRODUCT SUBJECT TO THE PROVISIONS OF SUBDIVISION TWO OF THIS SECTION IS AN ESSENTIAL COMPONENT OF A THIRD PARTY'S ARTICLE OR PRODUCT, THE COURT SHALL DENY INJUNCTIVE RELIEF AS TO SUCH ESSENTIAL COMPONENT, PROVIDED THAT THE THIRD PARTY HAS UNDERTAKEN GOOD-FAITH EFFORTS WITHIN THE THIRD PARTY'S RIGHTS UNDER ITS APPLICABLE CONTRACT WITH SUCH MANUFACTURER TO DIRECT THE MANUFACTURER OF THE ESSENTIAL COMPONENT TO CEASE THE THEFT OR MISAPPROPRIATION OF INFORMATION TECHNOLOGY IN VIOLATION OF SUBDIVISION TWO OF THIS SECTION, WHICH MAY BE SATISFIED, WITHOUT LIMITATION, BY THE THIRD PARTY ISSUING A WRITTEN DIRECTIVE TO THE MANUFACTURER DEMANDING THAT IT CEASE SUCH THEFT OR MISAPPROPRIATION AND DEMANDING THAT THE MANUFACTURER PROVIDE THE THIRD PARTY WITH COPIES OF INVOICES, PURCHASE ORDERS, LICENSES, OR OTHER VERIFICATION OF LAWFUL USE OF THE INFORMATION TECHNOLOGY AT ISSUE.

(F) THE COURT SHALL DETERMINE WHETHER A CURE PERIOD LONGER THAN THE PERIOD REFLECTED IN SUBDIVISION FIVE OF THIS SECTION WOULD BE REASONABLE GIVEN THE NATURE OF THE USE OF THE INFORMATION TECHNOLOGY THAT IS THE SUBJECT OF THE ACTION AND THE TIME REASONABLY NECESSARY EITHER TO BRING SUCH USE INTO COMPLIANCE WITH APPLICABLE LAW OR TO REPLACE THE INFORMATION TECHNOLOGY WITH INFORMATION TECHNOLOGY THAT WOULD NOT VIOLATE SUBDIVISION TWO OF THIS SECTION. IF THE COURT DEEMS THAT A LONGER CURE PERIOD WOULD BE REASONABLE, THEN THE ACTION SHALL BE STAYED UNTIL THE END OF THAT LONGER CURE PERIOD. IF BY THE END OF THAT LONGER CURE PERIOD, THE DEFENDANT HAS ESTABLISHED THAT ITS USE OF THE INFORMATION TECHNOLOGY IN QUESTION DID NOT VIOLATE SUBDIVISION TWO OF THIS SECTION, OR

THE DEFENDANT CEASED USE OF THE STOLEN OR MISAPPROPRIATED INFORMATION TECHNOLOGY, THEN THE ACTION SHALL BE DISMISSED.

7. IN REM ACTIONS. (A) IN A CASE IN WHICH THE COURT IS UNABLE TO OBTAIN PERSONAL JURISDICTION OVER A PERSON SUBJECT TO SUBDIVISION TWO OF THIS SECTION, THE COURT MAY PROCEED IN REM AGAINST ANY ARTICLES OR PRODUCTS SUBJECT TO SUBDIVISION TWO OF THIS SECTION SOLD OR OFFERED FOR SALE IN THIS STATE IN WHICH THE PERSON ALLEGED TO HAVE VIOLATED SUBDIVISION TWO OF THIS SECTION HOLDS TITLE. EXCEPT AS PROVIDED IN SUBDIVISION FOUR OF THIS SECTION AND PARAGRAPHS (B), (C) AND (D) OF THIS SUBDIVISION, ALL SUCH ARTICLES OR PRODUCTS SHALL BE SUBJECT TO ATTACHMENT AT OR AFTER THE TIME OF FILING A COMPLAINT, REGARDLESS OF THE AVAILABILITY OR AMOUNT OF ANY MONETARY JUDGMENT.

(B) AT LEAST NINETY DAYS PRIOR TO THE ENFORCEMENT OF AN ATTACHMENT ORDER AGAINST ARTICLES OR PRODUCTS PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION, THE COURT SHALL NOTIFY ANY PERSON IN POSSESSION OF SUCH ARTICLES OR PRODUCTS OF THE PENDING ATTACHMENT ORDER. PRIOR TO THE EXPIRATION OF SUCH NINETY DAY PERIOD, ANY PERSON FOR WHOM THE ARTICLES OR PRODUCTS WERE MANUFACTURED, OR TO WHOM SUCH ARTICLES OR PRODUCTS HAVE BEEN OR ARE TO BE SUPPLIED, PURSUANT TO AN EXISTING CONTRACT OR PURCHASE ORDER, MAY:

(1) ESTABLISH THAT THE PERSON HAS SATISFIED ONE OR MORE OF THE AFFIRMATIVE DEFENSES SET FORTH IN PARAGRAPH (A) OF SUBDIVISION EIGHT OF THIS SECTION WITH RESPECT TO THE MANUFACTURER ALLEGED TO HAVE VIOLATED THE PROVISIONS OF SUBDIVISION TWO OF THIS SECTION, IN WHICH CASE THE ATTACHMENT ORDER SHALL BE DISSOLVED ONLY WITH RESPECT TO THOSE ARTICLES OR PRODUCTS THAT WERE MANUFACTURED FOR SUCH PERSON, OR HAVE BEEN OR ARE TO BE SUPPLIED TO SUCH PERSON, PURSUANT TO AN EXISTING CONTRACT OR PURCHASE ORDER; OR

(2) POST A BOND WITH THE COURT EQUAL TO THE RETAIL PRICE OF THE ALLEGEDLY STOLEN OR MISAPPROPRIATED INFORMATION TECHNOLOGY OR TWENTY-FIVE THOUSAND DOLLARS, WHICHEVER IS LESS, IN WHICH CASE THE COURT SHALL STAY ENFORCEMENT OF THE ATTACHMENT ORDER AGAINST SUCH ARTICLES OR PRODUCTS AND SHALL PROCEED ON THE BASIS OF ITS JURISDICTION OVER THE BOND. THE PERSON POSTING THE BOND SHALL RECOVER THE FULL AMOUNT OF SUCH BOND, PLUS INTEREST, AFTER THE ISSUANCE OF A FINAL JUDGMENT.

(C) IN THE EVENT THE PERSON POSTING THE BOND PURSUANT TO SUBPARAGRAPH TWO OF PARAGRAPH (B) OF THIS SUBDIVISION IS ENTITLED TO CLAIM AN AFFIRMATIVE DEFENSE IN SUBDIVISION EIGHT OF THIS SECTION, AND THAT PERSON ESTABLISHES WITH THE COURT THAT IT IS ENTITLED TO ANY SUCH AFFIRMATIVE DEFENSE, THE COURT SHALL AWARD COSTS AND REASONABLE ATTORNEY'S FEES TO THE PERSON POSTING THE BOND AND AGAINST THE PLAINTIFF IN THE EVENT THE PLAINTIFF PROCEEDS WITH AN ACTION PURSUANT TO PARAGRAPH (B) OF SUBDIVISION SIX OF THIS SECTION AGAINST THE PERSON POSTING THE BOND.

(D) IN THE EVENT THAT THE COURT DOES NOT PROVIDE NOTIFICATION AS DESCRIBED IN PARAGRAPH (B) OF THIS SUBDIVISION, THE COURT, UPON MOTION OF ANY THIRD PARTY, SHALL STAY THE ENFORCEMENT OF THE ATTACHMENT ORDER FOR NINETY DAYS AS TO ARTICLES OR PRODUCTS MANUFACTURED FOR SUCH THIRD PARTY, OR THAT HAVE BEEN OR ARE TO BE SUPPLIED TO SUCH THIRD PARTY, PURSUANT TO AN EXISTING CONTRACT OR PURCHASE ORDER, DURING WHICH NINETY DAY PERIOD THE THIRD PARTY MAY AVAIL ITSELF OF THE OPTIONS SET FORTH IN SUBPARAGRAPHS ONE AND TWO OF PARAGRAPH (B) OF THIS SUBDIVISION.

8. LIMITATION ON AWARDS OF DAMAGES. (A) A COURT MAY NOT AWARD DAMAGES AGAINST ANY THIRD PARTY PURSUANT TO PARAGRAPH (B) OF SUBDIVISION SIX OF THIS SECTION WHERE THAT PARTY, AFTER HAVING BEEN AFFORDED REASONABLE NOTICE OF AT LEAST NINETY DAYS BY PROPER SERVICE UPON SUCH PARTY'S AGENT FOR SERVICE OF PROCESS AND OPPORTUNITY TO PLEAD ANY OF THE AFFIRMATIVE

DEFENSES SET FORTH BELOW, ESTABLISHES BY A PREPONDERANCE OF THE EVIDENCE ANY OF THE FOLLOWING:

(1) SUCH PERSON IS THE END CONSUMER OR END USER OF AN ARTICLE OR PRODUCT SUBJECT TO SUBDIVISION TWO OF THIS SECTION, OR ACQUIRED THE ARTICLE OR PRODUCT AFTER ITS SALE TO AN END CONSUMER OR END USER;

(2) SUCH PERSON IS A BUSINESS WITH ANNUAL REVENUES NOT IN EXCESS OF FIFTY MILLION DOLLARS;

(3) THE PERSON ACQUIRED THE ARTICLES OR PRODUCTS:

(A) AND HAD EITHER: A CODE OF CONDUCT OR OTHER WRITTEN DOCUMENT GOVERNING THE PERSON'S COMMERCIAL RELATIONSHIPS WITH THE MANUFACTURER ADJUDICATED TO HAVE VIOLATED SUBDIVISION TWO OF THIS SECTION AND WHICH INCLUDES COMMITMENTS, SUCH AS GENERAL COMMITMENTS TO COMPLY WITH APPLICABLE LAWS, THAT PROHIBIT USE OF THE STOLEN OR MISAPPROPRIATED INFORMATION TECHNOLOGY BY SUCH MANUFACTURER; OR WRITTEN ASSURANCES FROM THE MANUFACTURER OF SUCH ARTICLES OR PRODUCTS THAT SUCH ARTICLES OR PRODUCTS, TO THE MANUFACTURER'S REASONABLE KNOWLEDGE, WERE MANUFACTURED WITHOUT THE USE OF STOLEN OR MISAPPROPRIATED INFORMATION TECHNOLOGY IN THE MANUFACTURER'S BUSINESS OPERATIONS; PROVIDED, WITH RESPECT TO BOTH THE CODE OF CONDUCT AND THE WRITTEN ASSURANCES FROM THE MANUFACTURER SET FORTH IN THIS CLAUSE, THAT WITHIN ONE HUNDRED EIGHTY DAYS OF RECEIVING WRITTEN NOTICE OF THE JUDGMENT AGAINST THE MANUFACTURER FOR VIOLATION OF SUBDIVISION TWO OF THIS SECTION AND A COPY OF A WRITTEN NOTICE THAT SATISFIES THE REQUIREMENTS OF SUBDIVISION FIVE OF THIS SECTION, THE PERSON UNDERTAKES COMMERCIALLY REASONABLE EFFORTS TO DO ANY OF THE FOLLOWING:

(I) EXCHANGE WRITTEN CORRESPONDENCE CONFIRMING THAT SUCH MANUFACTURER IS NOT USING SUCH STOLEN OR MISAPPROPRIATED INFORMATION TECHNOLOGY IN VIOLATION OF SUBDIVISION TWO OF THIS SECTION, WHICH MAY BE SATISFIED, WITHOUT LIMITATION, BY OBTAINING WRITTEN ASSURANCES FROM THE MANUFACTURER ACCOMPANIED BY COPIES OF INVOICES, PURCHASE ORDERS, LICENSES OR OTHER VERIFICATION OF LAWFUL USE OF THE INFORMATION TECHNOLOGY AT ISSUE;

(II) DIRECT THE MANUFACTURER TO CEASE THE THEFT OR MISAPPROPRIATION, WHICH MAY BE SATISFIED, WITHOUT LIMITATION, BY THE THIRD PARTY ISSUING A WRITTEN DIRECTIVE TO THE MANUFACTURER DEMANDING THAT IT CEASE SUCH THEFT OR MISAPPROPRIATION AND DEMANDING THAT THE MANUFACTURER PROVIDE THE THIRD PARTY WITH COPIES OF INVOICES, PURCHASE ORDERS, LICENSES OR OTHER VERIFICATION OF LAWFUL USE OF THE INFORMATION TECHNOLOGY AT ISSUE; AND FOR PURPOSES OF CLARIFICATION, THE THIRD PARTY NEED TAKE NO ADDITIONAL ACTION TO FULLY AVAIL ITSELF OF THIS AFFIRMATIVE DEFENSE; OR

(III) IN A CASE IN WHICH THE MANUFACTURER HAS FAILED TO CEASE THE THEFT OR MISAPPROPRIATION WITHIN SUCH ONE HUNDRED EIGHTY DAY PERIOD, AND THE THIRD PARTY HAS NOT SATISFIED EITHER SUBCLAUSE (I) OR (II) OF THIS CLAUSE, CEASE THE FUTURE ACQUISITION OF SUCH ARTICLES OR PRODUCTS FROM SUCH MANUFACTURER DURING THE PERIOD THAT SUCH MANUFACTURER CONTINUES TO ENGAGE IN SUCH THEFT OR MISAPPROPRIATION SUBJECT TO THE PROVISIONS OF SUBDIVISION TWO OF THIS SECTION WHERE DOING SO WOULD NOT CONSTITUTE A BREACH OF AN AGREEMENT BETWEEN THE PERSON AND SUCH MANUFACTURER FOR THE MANUFACTURE OF THE ARTICLES OR PRODUCTS IN QUESTION THAT WAS ENTERED INTO ON OR BEFORE ONE HUNDRED EIGHTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION; OR

(B) PURSUANT TO AN AGREEMENT BETWEEN THE PERSON AND A MANUFACTURER FOR THE MANUFACTURE OF THE ARTICLES OR PRODUCTS IN QUESTION THAT WAS ENTERED INTO BEFORE ONE HUNDRED EIGHTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION; PROVIDED, WITHIN ONE HUNDRED EIGHTY DAYS OF RECEIVING WRITTEN NOTICE OF THE JUDGMENT AGAINST THE MANUFACTURER FOR VIOLATION OF SUBDIVISION TWO OF THIS SECTION AND A COPY OF A WRITTEN NOTICE THAT SATISFIES

THE REQUIREMENTS OF SUBDIVISION FIVE OF THIS SECTION, THE PERSON UNDERTAKES COMMERCIALLY REASONABLE EFFORTS TO DO ANY OF THE FOLLOWING:

(I) OBTAIN FROM SUCH MANUFACTURER WRITTEN ASSURANCES THAT SUCH MANUFACTURER IS NOT USING SUCH STOLEN OR MISAPPROPRIATED INFORMATION TECHNOLOGY IN VIOLATION OF SUBDIVISION TWO OF THIS SECTION, WHICH MAY BE SATISFIED, WITHOUT LIMITATION, BY OBTAINING WRITTEN ASSURANCES FROM THE MANUFACTURER ACCOMPANIED BY COPIES OF INVOICES, PURCHASE ORDERS, LICENSES OR OTHER VERIFICATION OF LAWFUL USE OF THE INFORMATION TECHNOLOGY AT ISSUE;

(II) DIRECT THE MANUFACTURER TO CEASE SUCH THEFT OR MISAPPROPRIATION, WHICH MAY BE SATISFIED, WITHOUT LIMITATION, BY THE THIRD PARTY ISSUING A WRITTEN DIRECTIVE TO THE MANUFACTURER DEMANDING THAT IT CEASE SUCH THEFT OR MISAPPROPRIATION AND DEMANDING THAT THE MANUFACTURER PROVIDE THE THIRD PARTY WITH COPIES OF INVOICES, PURCHASE ORDERS, LICENSES OR OTHER VERIFICATION OF LAWFUL USE OF THE INFORMATION TECHNOLOGY AT ISSUE; AND FOR PURPOSES OF CLARIFICATION, THE THIRD PARTY NEED TAKE NO ADDITIONAL ACTION TO FULLY AVAIL ITSELF OF THIS AFFIRMATIVE DEFENSE; OR

(III) IN A CASE IN WHICH THE MANUFACTURER HAS FAILED TO CEASE SUCH THEFT OR MISAPPROPRIATION WITHIN SUCH ONE HUNDRED EIGHTY DAY PERIOD, AND THE THIRD PARTY HAS NOT FULFILLED EITHER SUBCLAUSE (I) OR (II) OF THIS CLAUSE, CEASE THE FUTURE ACQUISITION OF SUCH ARTICLES OR PRODUCTS FROM SUCH MANUFACTURER DURING THE PERIOD THAT SUCH MANUFACTURER CONTINUES TO ENGAGE IN SUCH THEFT OR MISAPPROPRIATION SUBJECT TO THE PROVISIONS OF SUBDIVISION TWO OF THIS SECTION WHERE DOING SO WOULD NOT CONSTITUTE A BREACH OF SUCH AGREEMENT;

(4) THE PERSON HAS MADE COMMERCIALLY REASONABLE EFFORTS TO IMPLEMENT PRACTICES AND PROCEDURES TO REQUIRE ITS DIRECT MANUFACTURERS, IN MANUFACTURING ARTICLES OR PRODUCTS FOR SUCH PERSON, NOT TO USE STOLEN OR MISAPPROPRIATED INFORMATION TECHNOLOGY IN VIOLATION OF SUBDIVISION TWO OF THIS SECTION. A PERSON MAY SATISFY THIS SUBDIVISION BY:

(A) ADOPTING AND UNDERTAKING COMMERCIALLY REASONABLE EFFORTS TO IMPLEMENT A CODE OF CONDUCT OR SIMILAR WRITTEN REQUIREMENTS, WHICH ARE APPLICABLE TO THE PERSON'S DIRECT MANUFACTURERS, THAT PROHIBIT USE OF STOLEN OR MISAPPROPRIATED INFORMATION TECHNOLOGY BY SUCH MANUFACTURER, SUBJECT TO A RIGHT OF AUDIT, AND SUCH PERSON EITHER (I) HAS A PRACTICE OF AUDITING ITS DIRECT MANUFACTURERS ON A PERIODIC BASIS IN ACCORDANCE WITH GENERALLY ACCEPTED INDUSTRY STANDARDS, OR (II) REQUIRES IN ITS AGREEMENTS WITH ITS DIRECT MANUFACTURERS THAT THEY SUBMIT TO AUDITS BY A THIRD PARTY, WHICH MAY INCLUDE A THIRD PARTY ASSOCIATION OF BUSINESSES REPRESENTING THE OWNER OF THE STOLEN OR MISAPPROPRIATED INTELLECTUAL PROPERTY, AND FURTHER PROVIDES THAT A FAILURE TO REMEDY ANY DEFICIENCIES FOUND IN SUCH AUDIT THAT CONSTITUTE A VIOLATION OF THE APPLICABLE LAW OF THE JURISDICTION WHERE THE DEFICIENCY OCCURRED SHALL CONSTITUTE A BREACH OF THE CONTRACT, SUBJECT TO CURE WITHIN A REASONABLE PERIOD OF TIME; OR

(B) ADOPTING AND UNDERTAKING COMMERCIALLY REASONABLE EFFORTS TO IMPLEMENT A CODE OF CONDUCT OR SIMILAR WRITTEN REQUIREMENTS, WHICH ARE APPLICABLE TO THE PERSON'S DIRECT MANUFACTURERS, THAT PROHIBIT USE OF STOLEN OR MISAPPROPRIATED INFORMATION TECHNOLOGY BY SUCH MANUFACTURER, AND THE PERSON UNDERTAKES PRACTICES AND PROCEDURES TO ADDRESS COMPLIANCE WITH THE PROHIBITION AGAINST THE USE OF THE STOLEN OR MISAPPROPRIATED INFORMATION TECHNOLOGY IN ACCORDANCE WITH THE APPLICABLE CODE OF CONDUCT OR WRITTEN REQUIREMENTS; OR

(5) THE PERSON DOES NOT HAVE A CONTRACTUAL RELATIONSHIP WITH THE PERSON ALLEGED TO HAVE VIOLATED SUBDIVISION TWO OF THIS SECTION RESPECTING THE MANUFACTURE OF THE ARTICLES OR PRODUCTS ALLEGED TO HAVE BEEN MANUFACTURED IN VIOLATION OF SUBDIVISION TWO OF THIS SECTION.

(B) A THIRD PARTY SHALL HAVE THE OPPORTUNITY TO BE HEARD REGARDING WHETHER AN ARTICLE OR PRODUCT IS AN ESSENTIAL COMPONENT PROVIDED OR TO BE PROVIDED TO SUCH THIRD PARTY, AND SHALL HAVE THE RIGHT TO FILE A MOTION TO DISMISS ANY ACTION BROUGHT AGAINST IT UNDER PARAGRAPH (B) OF SUBDIVISION SIX OF THIS SECTION.

(C) THE COURT SHALL NOT ENFORCE ANY AWARD FOR DAMAGES AGAINST SUCH THIRD PARTY UNTIL AFTER THE COURT HAS RULED ON THAT PARTY'S CLAIM OF ELIGIBILITY FOR ANY OF THE AFFIRMATIVE DEFENSES SET OUT IN PARAGRAPH (A) OF THIS SUBDIVISION, AND PRIOR TO SUCH RULING MAY ALLOW DISCOVERY, IN AN ACTION UNDER PARAGRAPH (B) OF SUBDIVISION SIX OF THIS SECTION, ONLY ON THE PARTICULAR DEFENSES RAISED BY THE THIRD PARTY.

(D) THE COURT SHALL ALLOW DISCOVERY AGAINST A THIRD PARTY ON AN ISSUE ONLY AFTER ALL DISCOVERY ON THAT ISSUE BETWEEN THE PARTIES HAS BEEN COMPLETED AND ONLY IF THE EVIDENCE PRODUCED AS A RESULT OF SUCH DISCOVERY DOES NOT RESOLVE AN ISSUE OF MATERIAL DISPUTE BETWEEN THE PARTIES.

(E) ANY CONFIDENTIAL OR OTHERWISE SENSITIVE INFORMATION SUBMITTED BY A PARTY PURSUANT TO THIS SECTION SHALL BE SUBJECT TO A PROTECTIVE ORDER.

9. TIME LIMITATION ON AWARD. A COURT MAY NOT ENFORCE AN AWARD OF DAMAGES AGAINST A THIRD PARTY PURSUANT TO PARAGRAPH (B) OF SUBDIVISION SIX OF THIS SECTION FOR A PERIOD OF EIGHTEEN MONTHS FROM THE EFFECTIVE DATE OF THIS SECTION.

S 2. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which the judgment shall have been rendered.

S 3. This act shall take effect on the ninetieth day after it shall have become a law.