

AMENDMENT NO. _____ Calendar No. _____

Purpose: To enhance cooperative research and technology, deter intellectual property piracy, protect intellectual property rights, promote enforcement of copyrights, prohibit trafficking in counterfeit components, and for other purposes.

IN THE SENATE OF THE UNITED STATES—108th Cong., 2d Sess.

H.R. 2391

To amend title 35, United States Code, to promote cooperative research involving universities, the public sector, and private enterprises.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. HATCH (for himself, Mr. LEAHY, and Mr. BIDEN)

Viz:

- 1 Strike all after the enacting clause and insert the fol-
- 2 lowing:
- 3 **SECTION 1. SHORT TITLE.**
- 4 This Act may be cited as the “Intellectual Property
- 5 Protection Act of 2004”.

1 **TITLE I—COOPERATIVE RE-**
2 **SEARCH AND TECHNOLOGY**
3 **ENHANCEMENT**

4 **SEC. 101. SHORT TITLE.**

5 This title may be cited as the “Cooperative Research
6 and Technology Enhancement (CREATE) Act of 2004”.

7 **SEC. 102. COLLABORATIVE EFFORTS ON CLAIMED INVEN-**
8 **TIONS.**

9 Section 103(e) of title 35, United States Code, is
10 amended to read as follows:

11 “(c)(1) Subject matter developed by another person,
12 which qualifies as prior art only under one or more of sub-
13 sections (e), (f), and (g) of section 102 of this title, shall
14 not preclude patentability under this section where the
15 subject matter and the claimed invention were, at the time
16 the claimed invention was made, owned by the same per-
17 son or subject to an obligation of assignment to the same
18 person.

19 “(2) For purposes of this subsection, subject matter
20 developed by another person and a claimed invention shall
21 be deemed to have been owned by the same person or sub-
22 ject to an obligation of assignment to the same person if—

23 “(A) the claimed invention was made by or on
24 behalf of parties to a joint research agreement that

1 was in effect on or before the date the claimed in-
2 vention was made;

3 “(B) the claimed invention was made as a re-
4 sult of activities undertaken within the scope of the
5 joint research agreement; and

6 “(C) the application for patent for the claimed
7 invention discloses or is amended to disclose the
8 names of the parties to the joint research agree-
9 ment.

10 “(3) For purposes of paragraph (2), the term ‘joint
11 research agreement’ means a written contract, grant, or
12 cooperative agreement entered into by two or more per-
13 sons or entities for the performance of experimental, devel-
14 opmental, or research work in the field of the claimed in-
15 vention.”.

16 **SEC. 103. EFFECTIVE DATE.**

17 (a) IN GENERAL.—The amendments made by this
18 title shall apply to any patent granted on or after the date
19 of the enactment of this Act.

20 (b) SPECIAL RULE.—The amendments made by this
21 title shall not affect any final decision of a court or the
22 United States Patent and Trademark Office rendered be-
23 fore the date of the enactment of this Act, and shall not
24 affect the right of any party in any action pending before
25 the United States Patent and Trademark Office or a court

1 on the date of the enactment of this Act to have that par-
2 ty's rights determined on the basis of the provisions of
3 title 35, United States Code, in effect on the day before
4 the date of the enactment of this Act.

5 **TITLE II—PIRACY DETERRENCE** 6 **IN EDUCATION**

7 **SEC. 201. SHORT TITLE.**

8 This title may be cited as the “Piracy Deterrence and
9 Education Act of 2004”.

10 **SEC. 202. FINDINGS.**

11 Congress finds as follows:

12 (1) The Internet, while changing the way our
13 society communicates, has also changed the nature
14 of many crimes, including the theft of intellectual
15 property.

16 (2) Trafficking in infringing copyrighted works
17 through increasingly sophisticated electronic means,
18 including peer-to-peer file trading networks, Internet
19 chat rooms, and news groups, threatens lost jobs,
20 lost income for creators, lower tax revenue, and
21 higher prices for honest purchasers.

22 (3) The most popular peer-to-peer file trading
23 software programs have been downloaded by com-
24 puter users over 600,000,000 times. At any one time
25 there are over 3,000,000 users simultaneously using

1 just one of these services. Each month, on average,
2 over 2,300,000,000 digital-media files are trans-
3 ferred among users of peer-to-peer systems.

4 (4) Many computer users simply believe that
5 they will not be caught or prosecuted for their con-
6 duct.

7 (5) The security and privacy threats posed by
8 certain peer-to-peer networks extend beyond users
9 inadvertently enabling a hacker to access files. Mil-
10 lions of copies of one of the most popular peer-to-
11 peer networks contain software that could allow an
12 independent company to take over portions of users'
13 computers and Internet connections and has the ca-
14 pacity to keep track of users' online habits.

15 (6) In light of these considerations, Federal law
16 enforcement agencies should actively pursue crimi-
17 nals who steal the copyrighted works of others, and
18 prevent such activity through enforcement and
19 awareness. The public should be educated about the
20 security and privacy risks associated with being con-
21 nected to certain peer-to-peer networks.

22 **SEC.203. VOLUNTARY PROGRAM OF DEPARTMENT OF JUS-**
23 **TICE.**

24 (a) VOLUNTARY PROGRAM.—The Attorney General is
25 authorized to establish a program under which the De-

1 partment of Justice, in cases where persons who are sub-
2 scribers of Internet service providers appear to the De-
3 partment of Justice to be engaging in copyright infringing
4 conduct in the course of using such Internet service, would
5 send to the Internet service providers warning letters that
6 warn such persons of the penalties for such copyright in-
7 fringement. The Internet service providers may forward
8 the warning letters to such persons.

9 (b) LIMITATIONS ON PROGRAM.—

10 (1) EXTENT AND LENGTH OF PROGRAM.—The
11 program under subsection (a) shall terminate at the
12 end of the 18-month period beginning on the date of
13 the enactment of this Act and shall be limited to not
14 more than 10,000 warning letters.

15 (2) PRIVACY PROTECTIONS.—No Internet serv-
16 ice provider that receives a warning letter from the
17 Department of Justice under subsection (a) may dis-
18 close to the Department any identifying information
19 about the subscriber that is the subject of the warn-
20 ing letter except pursuant to court order or other
21 applicable legal process that requires such disclo-
22 sure.

23 (c) REIMBURSEMENT OF INTERNET SERVICE PRO-
24 VIDERS.—The Department of Justice shall reimburse
25 Internet service providers for all reasonable direct costs

1 incurred by such service providers in identifying the prop-
2 er recipients of the warning letters under subsection (a)
3 and forwarding the letters.

4 (d) REPORTS TO CONGRESS.—The Attorney General
5 shall submit to Congress a report on the program estab-
6 lished under subsection (a) both at the time the program
7 is initiated and at the conclusion of the program.

8 (e) INADMISSIBILITY OF EVIDENCE.—The fact that
9 an Internet service provider participated in the program
10 under subsection (a), received a warning letter from the
11 Department of Justice, was aware of the contents of the
12 warning letter, or forwarded the warning letter to a sub-
13 scriber, shall not be admissible in any legal proceeding
14 brought against the Internet service provider.

15 (f) CONSTRUCTION.—Nothing in this section shall be
16 construed to affect the ability of a court to consider, in
17 a legal proceeding brought against an Internet service pro-
18 vider, notifications of claimed infringement as described
19 in section 512(c)(3) of title 17, United States Code, or
20 any other relevant evidence, other than that described in
21 subsection (e).

1 **SEC. 204. DESIGNATION AND TRAINING OF AGENTS IN COM-**
2 **PUTER HACKING AND INTELLECTUAL PROP-**
3 **ERTY UNITS.**

4 (a) DESIGNATION OF AGENTS IN CHIPS UNITS.—
5 The Attorney General shall ensure that any unit in the
6 Department of Justice responsible for investigating com-
7 puter hacking or responsible for investigating intellectual
8 property crimes is assigned at least one agent to support
9 such unit for the purpose of investigating crimes relating
10 to the theft of intellectual property.

11 (b) TRAINING.—The Attorney General shall ensure
12 that each agent assigned under subsection (a) has received
13 training in the investigation and enforcement of intellec-
14 tual property crimes.

15 **SEC. 205. EDUCATION PROGRAM.**

16 (a) ESTABLISHMENT.—There shall be established
17 within the Office of the Associate Attorney General of the
18 United States an Internet Use Education Program.

19 (b) PURPOSE.—The purpose of the Internet Use
20 Education Program shall be to—

21 (1) educate the general public concerning the
22 value of copyrighted works and the effects of the
23 theft of such works on those who create them; and

24 (2) educate the general public concerning the
25 privacy, security, and other risks of using the Inter-
26 net to obtain illegal copies of copyrighted works.

1 (c) SECTOR SPECIFIC MATERIALS.—The Internet
2 Use Educational Program shall, to the extent appropriate,
3 develop materials appropriate to Internet users in dif-
4 ferent sectors of the general public where criminal copy-
5 right infringement is a concern. The Attorney General
6 shall consult with appropriate interested parties in devel-
7 oping such sector-specific materials.

8 (d) CONSULTATIONS.—The Attorney General shall
9 consult with the Register of Copyrights and the Secretary
10 of Commerce in developing the Internet Use Education
11 Program under this section.

12 (e) PROHIBITION ON USE OF CERTAIN FUNDS.—The
13 program created under this section shall not use funds or
14 resources of the Department of Justice allocated for crimi-
15 nal investigation or prosecution.

16 (f) ADDITIONAL PROHIBITION ON THE USE OF
17 FUNDS.—The program created under this section shall
18 not use any funds or resources of the Department of Jus-
19 tice allocated for the Civil Rights Division of the Depart-
20 ment, including any funds allocated for the enforcement
21 of civil rights or the Voting Rights Act of 1965.

22 **SEC. 206. ACTIONS BY THE GOVERNMENT OF THE UNITED**
23 **STATES.**

24 Section 411(a) of title 17, United States Code, is
25 amended in the first sentence by striking “Except for”

1 and inserting “Except for an action brought by the Gov-
2 ernment of the United States or by any agency or instru-
3 mentality thereof, or” .

4 **SEC. 207. AUTHORIZED APPROPRIATIONS.**

5 There are authorized to be appropriated to the De-
6 partment of Justice for fiscal year 2005 not less than
7 \$15,000,000 for the investigation and prosecution of viola-
8 tions of title 17, United States Code.

9 **SEC. 208. CRIMINAL PENALTIES FOR UNAUTHORIZED RE-**
10 **CORDING OF MOTION PICTURES IN A MO-**
11 **TION PICTURE EXHIBITION FACILITY.**

12 (a) **SHORT TITLE.**—This section may be cited as the
13 “Artists’ Rights and Theft Prevention Act of 2004” or
14 the “ART Act”.

15 (b) **OFFENSE.**—Chapter 113 of title 18, United
16 States Code, is amended by adding after section 2319A
17 the following new section:

18 **“§ 2319B. Unauthorized recording of motion pictures**
19 **in a motion picture exhibition facility**

20 “(a) **OFFENSE.**—Any person who, without the au-
21 thorization of the copyright owner, knowingly uses or at-
22 tempts to use an audiovisual recording device to transmit
23 or make a copy of a motion picture or other audiovisual
24 work protected under title 17, or any part thereof, from

1 a performance of such work in a motion picture exhibition
2 facility, shall—

3 “(1) be imprisoned for not more than 3 years,
4 fined under this title, or both; or

5 “(2) if the offense is a second or subsequent of-
6 fense, be imprisoned for no more than 6 years, fined
7 under this title, or both.

8 The possession by a person of an audiovisual recording
9 device in a motion picture exhibition facility may be con-
10 sidered as evidence in any proceeding to determine wheth-
11 er that person committed an offense under this subsection,
12 but shall not, by itself, be sufficient to support a conviction
13 of that person for such offense.

14 “(b) FORFEITURE AND DESTRUCTION.—When a per-
15 son is convicted of an offense under subsection (a), the
16 court in its judgment of conviction shall, in addition to
17 any penalty provided, order the forfeiture and destruction
18 or other disposition of all unauthorized copies of motion
19 pictures or other audiovisual works protected under title
20 17, or parts thereof, and any audiovisual recording devices
21 or other equipment used in connection with the offense.

22 “(c) AUTHORIZED ACTIVITIES.—This section does
23 not prevent any lawfully authorized investigative, protec-
24 tive, or intelligence activity by an officer, agent, or em-
25 ployee of the United States, a State, or a political subdivi-

1 sion of a State, or by a person acting under a contract
2 with the United States, a State, or a political subdivision
3 of a State.

4 “(d) IMMUNITY FOR THEATERS AND AUTHORIZED
5 PERSONS.—With reasonable cause, the owner or lessee of
6 a motion picture facility where a motion picture is being
7 exhibited, the authorized agent or employee of such owner
8 or lessee, the licensor of the motion picture being exhib-
9 ited, or the agent or employee of such licensor—

10 “(1) may detain, in a reasonable manner and
11 for a reasonable time, any person suspected of com-
12 mitting an offense under this section for the purpose
13 of questioning that person or summoning a law en-
14 forcement officer; and

15 “(2) shall not be held liable in any civil or
16 criminal action by reason of a detention under para-
17 graph (1).

18 “(e) VICTIM IMPACT STATEMENT.—

19 “(1) IN GENERAL.—During the preparation of
20 the presentence report under rule 32(c) of the Fed-
21 eral Rules of Criminal Procedure, victims of an of-
22 fense under this section shall be permitted to submit
23 to the probation officer a victim impact statement
24 that identifies the victim of the offense and the ex-
25 tent and scope of the injury and loss suffered by the

1 victim, including the estimated economic impact of
2 the offense on that victim.

3 “(2) CONTENTS.—A victim impact statement
4 submitted under this subsection shall include—

5 “(A) producers and sellers of legitimate
6 works affected by conduct involved in the of-
7 fense;

8 “(B) holders of intellectual property rights
9 in the works described in subparagraph (A);
10 and

11 “(C) the legal representatives of such pro-
12 ducers, sellers, and holders.

13 “(f) DEFINITIONS.—In this section:

14 “(1) AUDIOVISUAL WORK, COPY, ETC.—The
15 terms ‘audiovisual work’, ‘copy’, ‘copyright owner’,
16 ‘motion picture’, and ‘transmit’ have, respectively,
17 the meanings given those terms in section 101 of
18 title 17.

19 “(2) AUDIOVISUAL RECORDING DEVICE.—The
20 term ‘audiovisual recording device’ means a digital
21 or analog photographic or video camera, or any
22 other technology or device capable of enabling the
23 recording or transmission of a copyrighted motion
24 picture or other audiovisual work, or any part there-

1 of, regardless of whether audiovisual recording is the
2 sole or primary purpose of the device.

3 “(3) MOTION PICTURE EXHIBITION FACILITY.—
4 The term ‘motion picture exhibition facility’ means
5 a movie theater, screening room, or other venue that
6 is being used primarily for the exhibition of a copy-
7 righted motion picture, if such exhibition is open to
8 the public or is made to an assembled group of view-
9 ers outside of a normal circle of a family and its so-
10 cial acquaintances.

11 “(g) STATE LAW NOT PREEMPTED.—Nothing in this
12 section may be construed to annul or limit any rights or
13 remedies under the laws of any State.”.

14 (c) CLERICAL AMENDMENT.—The table of sections
15 at the beginning of chapter 113 of title 18, United States
16 Code, is amended by inserting after the item relating to
17 section 2319A the following:

“2319B. Unauthorized recording of motion pictures in a motion picture exhi-
bition facility.”.

18 **SEC. 209. SENSE OF CONGRESS ON NEED TO TAKE STEPS**
19 **TO PREVENT ILLEGAL ACTIVITY ON PEER-TO-**
20 **PEER SERVICES.**

21 (a) FINDINGS.—Congress finds as follows:

22 (1) The most popular publicly accessible peer-
23 to-peer file sharing software programs combined

1 have been downloaded worldwide over 600,000,000
2 times.

3 (2) The vast majority of software products, in-
4 cluding peer-to-peer technology, do not pose an in-
5herent risk. Responsible persons making software
6 products should be encouraged and commended for
7 the due diligence and reasonable care they take in-
8 cluding by providing instructions, relevant informa-
9 tion in the documentation, disseminating patches,
10 updates, and other appropriate modifications to the
11 software.

12 (3) Massive volumes of illegal activity, including
13 the distribution of child pornography, viruses, and
14 confidential personal information, and copyright in-
15fringement occur on publicly accessible peer-to-peer
16 file sharing services every day. Some publicly acces-
17 sible peer-to-peer file sharing services expose con-
18 sumers, particularly children, to serious risks, in-
19 cluding legal liability, loss of privacy, threats to com-
20 puter security, and exposure to illegal and inappro-
21 priate material.

22 (4) Several studies and reports demonstrate
23 that pornography, including child pornography, is
24 prevalent on publicly available peer-to-peer file shar-
25 ing services, and children are regularly exposed to

1 pornography when using such peer-to-peer file shar-
2 ing services.

3 (5) The full potential of peer-to-peer technology
4 to benefit consumers has yet to be realized and will
5 not be achieved until these problems are adequately
6 addressed.

7 (6) To date, the businesses that run publicly ac-
8 cessible file-sharing services have refused or failed to
9 voluntarily and sufficiently address these problems.

10 (7) Many users of publicly available peer-to-
11 peer file-sharing services are drawn to these systems
12 by the lure of obtaining “free” music and movies.

13 (8) While some users use parental controls to
14 protect children from pornography available on the
15 Internet and search engines, not all such controls
16 work on publicly accessible peer-to-peer networks.

17 (9) Businesses that run publicly accessible peer-
18 to-peer file sharing services have openly acknowl-
19 edged, and numerous studies and reports have estab-
20 lished, that these services facilitate and profit from
21 massive amounts of copyright infringement, causing
22 enormous damage to the economic well-being of the
23 copyright industries whose works are being illegally
24 “shared” and downloaded.

1 (10) The legitimate digital music marketplace
2 offers consumers a wide and growing array of
3 choices for obtaining music legally, without exposure
4 to the risks posed by publicly accessible peer-to-peer
5 file sharing services.

6 (11) The Federal Trade Commission issued a
7 Consumer Alert in July of 2003 warning consumers
8 that some file-sharing services contain damaging vi-
9 ruses and worms and, without the computer user's
10 knowledge or consent, install spyware to monitor a
11 user's browsing habits and send data to third parties
12 or automatically open network connections.

13 (12) Publicly available peer-to-peer file-sharing
14 services can and should adopt reasonable business
15 practices and use technology in the marketplace to
16 address the existing risks posed to consumers by
17 their services and facilitate the legitimate use of
18 peer-to-peer file sharing technology and software.

19 (b) SENSE OF CONGRESS.—It is the sense of Con-
20 gress that—

21 (1) responsible software developers should be
22 commended, recognized, and encouraged for their ef-
23 forts to protect consumers;

24 (2) currently the level of ongoing and persistent
25 illegal and dangerous activity on publicly accessible

1 peer-to-peer file sharing services is harmful to con-
2 sumers, minors, and the economy; and

3 (3) therefore, Congress and the executive
4 branch should consider all appropriate measures to
5 protect consumers and children, and prevent such il-
6 legal activity.

7 **SEC. 210. ENHANCEMENT OF CRIMINAL COPYRIGHT IN-**
8 **FRINGEMENT.**

9 (a) **CRIMINAL INFRINGEMENT.**—Section 506 of title
10 17, United States Code, is amended—

11 (1) by amending subsection (a) to read as fol-
12 lows:

13 “(a) **CRIMINAL INFRINGEMENT.**—Any person who—

14 “(1) infringes a copyright willfully and for pur-
15 poses of commercial advantage or private financial
16 gain,

17 “(2) infringes a copyright willfully by the repro-
18 duction or distribution, including by the offering for
19 distribution to the public by electronic means, during
20 any 180-day period, of 1 or more copies or
21 phonorecords of 1 or more copyrighted works, which
22 have a total retail value of more than \$1,000, or

23 “(3) infringes a copyright by the knowing dis-
24 tribution, including by the offering for distribution
25 to the public by electronic means, with reckless dis-

1 regard of the risk of further infringement, during
2 any 180-day period, of—

3 “(A) 1,000 or more copies or phonorecords
4 of 1 or more copyrighted works,

5 “(B) 1 or more copies or phonorecords of
6 1 or more copyrighted works with a total retail
7 value of more than \$10,000, or

8 “(C) 1 or more copies or phonorecords of
9 1 or more copyrighted pre-release works,

10 shall be punished as provided under section 2319 of title
11 18. For purposes of this subsection, evidence of reproduc-
12 tion or distribution of a copyrighted work, by itself, shall
13 not be sufficient to establish the necessary level of intent
14 under this subsection.”; and

15 (2) by adding at the end the following:

16 “(g) LIMITATION ON LIABILITY OF SERVICE PRO-
17 VIDERS.—No legal entity shall be liable for a violation of
18 subsection (a)(3) by reason of performing any function de-
19 scribed in subsection (a), (b), (c), or (d) of section 512
20 if such legal entity would not be liable for monetary relief
21 under section 512 by reason of performing such function.
22 Except for purposes of determining whether an entity
23 qualifies for the limitation on liability under subsection
24 (a)(3) of this section, the legal conclusion of whether an
25 entity qualifies for a limitation on liability under section

1 512 shall not be considered in a judicial determination of
2 whether the entity violates subsection (a) of this section.

3 “(h) DEFINITIONS.—In this section:

4 “(1) PRE-RELEASE WORK.—The term ‘pre-re-
5 lease work’ refers to a work protected under this
6 title which has a commercial and economic value and
7 which, at the time of the act of infringement that is
8 the basis for the offense under subsection (a)(3), the
9 defendant knew or should have known had not yet
10 been made available by the copyright owner to indi-
11 vidual members of the general public in copies or
12 phonorecords for sale, license, or rental.

13 “(2) RETAIL VALUE.—The ‘retail value’ of a
14 copyrighted work is the retail price of that work in
15 the market in which it is sold. In the case of an in-
16 fringement of a copyright by distribution, if the re-
17 tail price does not adequately reflect the economic
18 value of the infringement, then the retail value may
19 be determined using other factors, including but not
20 limited to suggested retail price, wholesale price, re-
21 placement cost of the item, licensing, or distribution-
22 related fees.”.

23 (b) PENALTIES.—Section 2319 of title 18, United
24 States Code, is amended—

1 (1) by redesignating subsections (d) and (e) as
2 subsections (e) and (f), respectively;

3 (2) by inserting after subsection (c) the fol-
4 lowing:

5 “(d) Any person who commits an offense under sec-
6 tion 506(a)(3) of title 17—

7 “(1) shall be imprisoned not more than 3 years,
8 or fined in the amount set forth in this title, or both,
9 or, if the offense was committed for purposes of
10 commercial advantage or private financial gain, im-
11 prisoned for not more than 5 years, or fined in the
12 amount set forth in this title, or both; and

13 “(2) shall, if the offense is a second or subse-
14 quent offense under paragraph (1), be imprisoned
15 not more than 6 years, or fined in the amount set
16 forth in this title, or both, or, if the offense was
17 committed for purposes of commercial advantage or
18 private financial gain, imprisoned for not more than
19 10 years, or fined in the amount set forth in this
20 title, or both.”; and

21 (3) in subsection (f), as so redesignated—

22 (A) in paragraph (1), by striking “and”
23 after the semicolon;

24 (B) in paragraph (2), by striking the pe-
25 riod and inserting “; and”; and

1 (C) by adding at the end the following:

2 “(3) the term ‘financial gain’ has the meaning
3 given that term in section 101 (relating to defini-
4 tions) of title 17.”.

5 (c) CIVIL REMEDIES FOR INFRINGEMENT OF A
6 WORK BEING PREPARED FOR COMMERCIAL DISTRIBU-
7 TION.—

8 (1) PREREGISTRATION.—Section 408 of title
9 17, United States Code, is amended by adding at
10 the end the following:

11 “(f) PREREGISTRATION OF WORKS BEING PRE-
12 PARED FOR COMMERCIAL DISTRIBUTION.—

13 “(1) RULEMAKING.—Not later than 180 days
14 after the date of enactment of this subsection, the
15 Register of Copyrights shall issue regulations to es-
16 tablish procedures for preregistration of a work that
17 is being prepared for commercial distribution and
18 has not been published.

19 “(2) CLASS OF WORKS.—The regulations estab-
20 lished under paragraph (1) shall permit
21 preregistration for any work that is in a class of
22 works that the Register determines has had a his-
23 tory of infringement prior to authorized commercial
24 distribution.

1 “(3) APPLICATION FOR REGISTRATION.—Not
2 later than 3 months after the first publication of the
3 work, the applicant shall submit to the Copyright
4 Office—

5 “(A) an application for registration of the
6 work;

7 “(B) a deposit; and

8 “(C) the applicable fee.

9 “(4) EFFECT OF UNTIMELY APPLICATION.—An
10 action for infringement under this chapter shall be
11 dismissed, and no award of statutory damages or at-
12 torney fees shall be made for a preregistered work,
13 if the items described in paragraph (3) are not sub-
14 mitted to the Copyright Office in proper form within
15 the earlier of—

16 “(A) 3 months after the first publication of
17 the work; or

18 “(B) 1 month after the copyright owner
19 has learned of the infringement.”.

20 (2) INFRINGEMENT ACTIONS.—Section 411(a)
21 of title 17, United States Code, is amended by in-
22 sserting “preregistration or” after “shall be instituted
23 until”.

24 (3) EXCLUSION.—Section 412 of title 17,
25 United States Code, is amended by inserting “, an

1 action for infringement of the copyright of a work
2 that has been preregistered under section 408(f) be-
3 fore the commencement of the infringement,” after
4 “section 106A(a)”.

5 **SEC. 211. AMENDMENT OF FEDERAL SENTENCING GUIDE-**
6 **LINES REGARDING THE INFRINGEMENT OF**
7 **COPYRIGHTED WORKS AND RELATED**
8 **CRIMES.**

9 (a) AMENDMENT TO THE SENTENCING GUIDE-
10 LINES.—Pursuant to its authority under section 994 of
11 title 28, United States Code, and in accordance with this
12 section, the United States Sentencing Commission shall
13 review and, if appropriate, amend the sentencing guide-
14 lines and policy statements applicable to persons convicted
15 of intellectual property rights crimes, including sections
16 2318, 2319, 2319A, 2319B, 2320 of title 18, United
17 States Code, and sections 506, 1201, and 1202 of title
18 17, United States Code.

19 (b) FACTORS.—In carrying out this section, the Sen-
20 tencing Commission shall—

21 (1) take all appropriate measures to ensure that
22 the sentencing guidelines and policy statements ap-
23 plicable to the offenses described in subsection (a)
24 are sufficiently stringent to deter and adequately re-
25 flect the nature of such offenses;

1 (2) consider whether to provide a sentencing en-
2 hancement for those convicted of the offenses de-
3 scribed in subsection (a) when the conduct involves
4 the display, performance, publication, reproduction,
5 or distribution of a copyrighted work before the time
6 when the copyright owner has authorized the dis-
7 play, performance, publication, reproduction, or dis-
8 tribution of the original work, whether in the media
9 format used by the infringing good or in any other
10 media format;

11 (3) consider whether the definition of
12 “uploading” contained in Application Note 3 to
13 Guideline 2B5.3 is adequate to address the loss at-
14 tributable to people broadly distributing copyrighted
15 works over the Internet without authorization; and

16 (4) consider whether the sentencing guidelines
17 and policy statements applicable to the offenses de-
18 scribed in subsection (a) adequately reflect any harm
19 to victims from infringement in circumstances where
20 law enforcement cannot determine how many times
21 copyrighted material is reproduced or distributed.

22 (c) PROMULGATION.—The Commission may promul-
23 gate the guidelines or amendments under this section in
24 accordance with the procedures set forth in section 21(a)

1 of the Sentencing Act of 1987, as though the authority
2 under that Act had not expired.

3 **SEC. 212. EXEMPTION FROM INFRINGEMENT FOR SKIPPING**
4 **AUDIO AND VIDEO CONTENT IN MOTION PIC-**
5 **TURES.**

6 (a) **SHORT TITLE.**—This section may be cited as the
7 “Family Movie Act of 2004”.

8 (b) **EXEMPTION FROM COPYRIGHT AND TRADEMARK**
9 **INFRINGEMENT FOR SKIPPING OF AUDIO OR VIDEO CON-**
10 **TENT OF MOTION PICTURES.**—Section 110 of title 17,
11 United States Code, is amended—

12 (1) in paragraph (9), by striking “and” after
13 the semicolon at the end;

14 (2) in paragraph (10), by striking the period at
15 the end and inserting “; and”;

16 (3) by inserting after paragraph (10) the fol-
17 lowing:

18 “(11) the making imperceptible, by or at the di-
19 rection of a member of a private household, of lim-
20 ited portions of audio or video content of a motion
21 picture, during a performance in that household for
22 private home viewing, from an authorized pre-re-
23 corded copy of the motion picture, or the creation or
24 provision of a computer program or other technology
25 that enables such making imperceptible and that is

1 designed and marketed for such use at the direction
2 of a member of a private household, if no fixed copy
3 of the altered version of the motion picture is cre-
4 ated by such computer program or other tech-
5 nology.”; and

6 (4) by adding at the end the following:

7 “For purposes of paragraph (11)—

8 “(A) the term ‘making imperceptible’ does not
9 include the addition of audio or video content that
10 is performed or displayed over or in place of existing
11 content in a motion picture; and

12 “(B) the term ‘pre-recorded copy’ means a copy
13 of a motion picture that—

14 “(i) is manufactured under the authority
15 of the copyright owner; and

16 “(ii) has been made available for sale to
17 the public.”.

18 (c) EXEMPTION FROM TRADEMARK INFRINGE-
19 MENT.—Section 32 of the Trademark Act of 1946 (15
20 U.S.C. 1114) is amended by adding at the end the fol-
21 lowing:

22 “(3)(A) Any person who engages in the conduct de-
23 scribed in paragraph (11) of section 110 of title 17,
24 United States Code, and who complies with the require-
25 ments set forth in that paragraph is not liable on account

1 of such conduct for a violation of any right under this Act.
2 This subparagraph does not preclude liability of a person
3 for conduct not described in paragraph (11) of section 110
4 of title 17, United States Code, even if that person also
5 engages in conduct described in paragraph (11) of section
6 110 of such title.

7 “(B) A manufacturer, licensee, or licensor of tech-
8 nology that enables the making of limited portions of
9 audio or video content of a motion picture imperceptible
10 as described in subparagraph (A) is not liable on account
11 of such manufacture or license for a violation of any right
12 under this Act, if such manufacturer, licensee, or licensor
13 ensures that the technology provides a clear and con-
14 spicuous notice at the beginning of each performance that
15 the performance of the motion picture is altered from the
16 performance intended by the director or copyright holder
17 of the motion picture. The limitations on liability in sub-
18 paragraphs (A) and (B) shall not apply to a manufacturer,
19 licensee, or licensor of technology that fails to comply with
20 this paragraph.

21 “(C) The requirement under subparagraph (B) to
22 provide notice shall apply only with respect to technology
23 manufactured after the end of the 180-day period begin-
24 ning on the date of the enactment of the Family Movie
25 Act of 2004.”.

1 (d) DEFINITION.—In this section, the term “Trade-
2 mark Act of 1946” means the Act entitled “An Act to
3 provide for the registration and protection of trademarks
4 used in commerce, to carry out the provisions of certain
5 international conventions, and for other purposes”, ap-
6 proved July 5, 1946 (15 U.S.C. 1051 et seq.).

7 **TITLE III—PROTECTING INTEL-**
8 **LECTUAL RIGHTS AGAINST**
9 **THEFT AND EXPROPRIATION**

10 **SEC. 301. SHORT TITLE.**

11 This title may be cited as the “Protecting Intellectual
12 Rights Against Theft and Expropriation Act of 2004”.

13 **SEC. 302. AUTHORIZATION OF CIVIL COPYRIGHT ENFORCE-**
14 **MENT BY ATTORNEY GENERAL.**

15 (a) IN GENERAL.—Chapter 5 of title 17, United
16 States Code, is amended by inserting after section 506 the
17 following:

18 **“§ 506a. Civil penalties for violations of section 506**

19 “(a) IN GENERAL.—In lieu of a criminal action under
20 section 506, the Attorney General may commence a civil
21 action in the appropriate United States district court
22 against any person who engages in conduct constituting
23 an offense under section 506. Upon proof of such conduct
24 by a preponderance of the evidence, such person shall be
25 subject to a civil penalty under section 504 which shall

1 be in an amount equal to the amount which would be
2 awarded under section 3663(a)(1)(B) of title 18 and res-
3 titution to the copyright owner aggrieved by the conduct.

4 “(b) OTHER REMEDIES.—

5 “(1) IN GENERAL.—Imposition of a civil pen-
6 alty under this section does not preclude any other
7 criminal or civil statutory, injunctive, common law or
8 administrative remedy, which is available by law to
9 the United States or any other person;

10 “(2) OFFSET.—Any restitution received by a
11 copyright owner as a result of a civil action brought
12 under this section shall be offset against any award
13 of damages in a subsequent copyright infringement
14 civil action by that copyright owner for the conduct
15 that gave rise to the civil action brought under this
16 section.”.

17 (b) DAMAGES AND PROFITS.—Section 504 of title 17,
18 United States Code, is amended—

19 (1) in subsection (b)—

20 (A) in the first sentence—

21 (i) by inserting “, or the Attorney
22 General in a civil action,” after “The copy-
23 right owner”; and

24 (ii) by striking “him or her” and in-
25 serting “the copyright owner”; and

1 (B) in the second sentence by inserting “,
2 or the Attorney General in a civil action,” after
3 “the copyright owner”; and
4 (2) in subsection (c)—

5 (A) in paragraph (1), by inserting “, or the
6 Attorney General in a civil action,” after “the
7 copyright owner”; and

8 (B) in paragraph (2), by inserting “, or
9 the Attorney General in a civil action,” after
10 “the copyright owner”.

11 (c) TECHNICAL AND CONFORMING AMENDMENT.—
12 The table of sections for chapter 5 of title 17, United
13 States Code, is amended by inserting after the item relat-
14 ing to section 506 the following:

“506a. Civil penalties for violation of section 506.”.

15 **SEC. 303. AUTHORIZATION OF FUNDING FOR TRAINING**
16 **AND PILOT PROGRAM.**

17 (a) TRAINING AND PILOT PROGRAM.—Not later than
18 180 days after enactment of this Act, the Attorney Gen-
19 eral shall develop a program to ensure effective implemen-
20 tation and use of the authority for civil enforcement of
21 the copyright laws by—

22 (1) establishing training programs, including
23 practical training and written materials, for qualified
24 personnel from the Department of Justice and

1 United States Attorneys Offices to educate and in-
2 form such personnel about—

3 (A) resource information on intellectual
4 property and the legal framework established
5 both to protect and encourage creative works as
6 well as legitimate uses of information and
7 rights under the first amendment of the United
8 States Constitution;

9 (B) the technological challenges to pro-
10 tecting digital copyrighted works from online pi-
11 racy;

12 (C) guidance on and support for bringing
13 copyright enforcement actions against persons
14 engaging in infringing conduct, including model
15 charging documents and related litigation mate-
16 rials;

17 (D) strategic issues in copyright enforce-
18 ment actions, including whether to proceed in a
19 criminal or a civil action;

20 (E) how to employ and leverage the exper-
21 tise of technical experts in computer forensics;

22 (F) the collection and preservation of elec-
23 tronic data in a forensically sound manner for
24 use in court proceedings;

1 (G) the role of the victim copyright owner
2 in providing relevant information for enforce-
3 ment actions and in the computation of dam-
4 ages; and

5 (H) the appropriate use of injunctions, im-
6 poundment, forfeiture, and related authorities
7 in copyright law;

8 (2) designating personnel from at least 4
9 United States Attorneys Offices to participate in a
10 pilot program designed to implement the civil en-
11 forcement authority of the Attorney General under
12 section 506a of title 17, United States Code, as
13 added by this title; and

14 (3) reporting to Congress annually on—

15 (A) the use of the civil enforcement au-
16 thority of the Attorney General under section
17 506a of title 17, United States Code, as added
18 by this title; and

19 (B) the progress made in implementing the
20 training and pilot programs described under
21 paragraphs (1) and (2) of this subsection.

22 (b) ANNUAL REPORT.—The report under subsection
23 (a)(3) may be included in the annual performance report
24 of the Department of Justice and shall include—

1 (1) with respect to civil actions filed under sec-
2 tion 506a of title 17, United States Code, as added
3 by this title—

4 (A) the number of investigative matters re-
5 ceived by the Department of Justice and United
6 States Attorneys Offices;

7 (B) the number of defendants involved in
8 those matters;

9 (C) the number of civil actions filed and
10 the number of defendants involved;

11 (D) the number of civil actions resolved or
12 terminated;

13 (E) the number of defendants involved in
14 those civil actions;

15 (F) the disposition of those civil actions,
16 including whether the civil actions were settled,
17 dismissed, or resolved after a trial;

18 (G) the dollar value of any civil penalty im-
19 posed and the amount remitted to any copy-
20 right owner; and

21 (H) other information that the Attorney
22 General may consider relevant to inform Con-
23 gress on the effective use of the civil enforce-
24 ment authority;

1 (2) a description of the training program and
2 the number of personnel who participated in the pro-
3 gram; and

4 (3) the locations of the United States Attorneys
5 Offices designated to participate in the pilot pro-
6 gram.

7 (c) AUTHORIZATION OF APPROPRIATIONS.—There
8 are authorized to be appropriated \$2,000,000 for fiscal
9 year 2005 to carry out this section.

10 **TITLE IV—NATIONAL FILM**
11 **PRESERVATION ACT OF 2004**
12 **Subtitle A—Reauthorization of the**
13 **National Film Preservation Board**

14 **SEC. 401. SHORT TITLE.**

15 This subtitle may be cited as the “National Film
16 Preservation Act of 2004”.

17 **SEC. 402. REAUTHORIZATION AND AMENDMENT.**

18 (a) DUTIES OF THE LIBRARIAN OF CONGRESS.—Sec-
19 tion 103 of the National Film Preservation Act of 1996
20 (2 U.S.C. 179m) is amended—

21 (1) in subsection (b)—

22 (A) by striking “film copy” each place that
23 term appears and inserting “film or other ap-
24 proved copy”;

1 (B) by striking “film copies” each place
2 that term appears and inserting “film or other
3 approved copies”; and

4 (C) in the third sentence, by striking
5 “copyrighted” and inserting “copyrighted, mass
6 distributed, broadcast, or published”; and

7 (2) by adding at the end the following:

8 “(c) COORDINATION OF PROGRAM WITH OTHER
9 COLLECTION, PRESERVATION, AND ACCESSIBILITY AC-
10 TIVITIES.—In carrying out the comprehensive national
11 film preservation program for motion pictures established
12 under the National Film Preservation Act of 1992, the
13 Librarian, in consultation with the Board established pur-
14 suant to section 104, and in accordance with title 17,
15 United States Code, shall—

16 “(1) carry out activities to make films included
17 in the National Film registry more broadly acces-
18 sible for research and educational purposes, and to
19 generate public awareness and support of the Reg-
20 istry and the comprehensive national film preserva-
21 tion program;

22 “(2) review the comprehensive national film
23 preservation plan, and amend it to the extent nec-
24 essary to ensure that it addresses technological ad-

1 vances in the preservation and storage of, and access
2 to film collections in multiple formats; and

3 “(3) wherever possible, undertake expanded ini-
4 tiatives to ensure the preservation of the moving
5 image heritage of the United States, including film,
6 videotape, television, and born digital moving image
7 formats, by supporting the work of the National
8 Audio-Visual Conservation Center of the Library of
9 Congress, and other appropriate nonprofit archival
10 and preservation organizations.”.

11 (b) NATIONAL FILM PRESERVATION BOARD.—Sec-
12 tion 104 of the National Film Preservation Act of 1996
13 (2 U.S.C. 179n) is amended—

14 (1) in subsection (a)(1), by striking “20” and
15 inserting “22”;

16 (2) in subsection (a)(2), by striking “three”
17 and inserting “5”;

18 (3) in subsection (d), by striking “11” and in-
19 serting “12”; and

20 (4) by striking subsection (e) and inserting the
21 following:

22 “(e) REIMBURSEMENT OF EXPENSES.—Members of
23 the Board shall serve without pay, but may receive travel
24 expenses, including per diem in lieu of subsistence, in ac-

1 cordance with sections 5702 and 5703 of title 5, United
2 States Code.”.

3 (c) NATIONAL FILM REGISTRY.—Section 106 of the
4 National Film Preservation Act of 1996 (2 U.S.C. 179q)
5 is amended by adding at the end the following:

6 “(e) NATIONAL AUDIO-VISUAL CONSERVATION CEN-
7 TER.—The Librarian shall utilize the National Audio-Vis-
8 ual Conservation Center of the Library of Congress at
9 Culpeper, Virginia, to ensure that preserved films included
10 in the National Film Registry are stored in a proper man-
11 ner, and disseminated to researchers, scholars, and the
12 public as may be appropriate in accordance with—

13 “(1) title 17 of the United States Code; and

14 “(2) the terms of any agreements between the
15 Librarian and persons who hold copyrights to such
16 audiovisual works.”.

17 (d) USE OF SEAL.—Section 107 (a) of the National
18 Film Preservation Act of 1996 (2 U.S.C. 179q) is
19 amended—

20 (1) in paragraph (1), by inserting “in any for-
21 mat” after “or any copy”; and

22 (2) in paragraph (2), by striking “or film copy”
23 and inserting “in any format”.

24 (e) AUTHORIZATION OF APPROPRIATIONS.—Section
25 112 of the National Film Preservation Act of 1996 (2

1 U.S.C. 179v) is amended by striking “\$250,000” and in-
2 serting “\$200,000”.

3 (f) EFFECTIVE DATE.—Section 113 of the National
4 Film Preservation Act of 1996 (2 U.S.C. 179w) is amend-
5 ed by striking “7” and inserting “11”.

6 **Subtitle B—Reauthorization of the**
7 **National Film Preservation**
8 **Foundation**

9 **SEC. 411. SHORT TITLE.**

10 This subtitle may be cited as the “National Film
11 Preservation Foundation Reauthorization Act of 2004”.

12 **SEC. 412. REAUTHORIZATION AND AMENDMENT.**

13 (a) BOARD OF DIRECTORS.—Section 151703 of title
14 36, United States Code, is amended—

15 (1) in subsection (b)(2)(A), by striking “nine”
16 and inserting “12”; and

17 (2) in subsection (b)(4), by striking the second
18 sentence and inserting “There shall be no limit to
19 the number of terms to which any individual may be
20 appointed.”.

21 (b) POWERS.—Section 151705 of title 36, United
22 States Code, is amended in subsection (b) by striking
23 “District of Columbia” and inserting “the jurisdiction in
24 which the principal office of the corporation is located”.

1 (c) PRINCIPAL OFFICE.—Section 151706 of title 36,
2 United States Code, is amended by inserting “, or another
3 place as determined by the board of directors” after “Dis-
4 trict of Columbia”.

5 (d) AUTHORIZATION OF APPROPRIATIONS.—Section
6 151711 of title 36, United States Code, is amended by
7 striking subsections (a) and (b) and inserting the fol-
8 lowing:

9 “(a) AUTHORIZATION OF APPROPRIATIONS.—There
10 are authorized to be appropriated to the Library of Con-
11 gress amounts necessary to carry out this chapter, not to
12 exceed \$250,000 for each of the fiscal years 2005 and
13 2006, and not to exceed \$400,000 for fiscal year 2007.
14 These amounts are to be made available to the corporation
15 to match any private contributions (whether in currency,
16 services, or property) made to the corporation by private
17 persons and State and local governments.

18 “(b) LIMITATION RELATED TO ADMINISTRATIVE EX-
19 PENSES.—Amounts authorized under this section may not
20 be used by the corporation for management and general
21 or fundraising expenses as reported to the Internal Rev-
22 enue Service as part of an annual information return re-
23 quired under the Internal Revenue Code of 1986.”.

1 **TITLE V—PRESERVATION OF**
2 **ORPHAN WORKS**

3 **SEC. 501. SHORT TITLE.**

4 This title may be cited as the “ Preservation of Or-
5 phan Works Act”.

6 **SEC. 502. REPRODUCTION OF COPYRIGHTED WORKS BY LI-**
7 **BRARIES AND ARCHIVES.**

8 Section 108(i) of title 17, United States Code, is
9 amended by striking “(b) and (c)” and inserting “(b), (c),
10 and (h)”.

11 **TITLE VI—ENHANCING FEDERAL**
12 **OBSCENITY REPORTING AND**
13 **COPYRIGHT ENFORCEMENT**

14 **SEC. 601. SHORT TITLE.**

15 This title may be cited as the “Enhancing Federal
16 Obscenity Reporting and Copyright Enforcement Act of
17 2004”.

18 **SEC. 602. HARMLESS ERRORS IN REGISTRATION CERTIFI-**
19 **CATES.**

20 (a) IN GENERAL.—Section 411 of title 17, United
21 States Code, is amended—

22 (1) by redesignating subsection (b) as sub-
23 section (c); and

24 (2) inserting after subsection (a) the following:

1 “(b)(1) A certificate of registration shall satisfy the
2 requirements of this section and section 412 irrespective
3 of any inaccurate information therein, unless—

4 “(A) the inaccurate information was included
5 on the application for copyright registration with
6 knowledge that it was inaccurate; and

7 “(B) the inaccuracy of the information, if
8 known, would have caused the Register of Copy-
9 rights to refuse registration.

10 “(2) In any case in which inaccuracies described
11 under paragraph (1) are alleged, the court shall request
12 the Register of Copyrights to advise the court whether the
13 inaccuracy of the information, if known, would have
14 caused the Register of Copyrights to refuse registration.”.

15 (b) TECHNICAL AND CONFORMING AMENDMENT.—
16 Section 412 of title 17, United States Code, is amended
17 by striking “section 411(b)” and inserting “section
18 411(c)”.

19 **SEC. 603. COMPUTATION OF STATUTORY DAMAGES.**

20 (a) IN GENERAL.—Section 504(c)(1) of title 17,
21 United States Code, is amended in the second sentence
22 by inserting before the period “, except that the court in
23 its discretion may determine that such parts are separate
24 works if the court concludes that they are distinct works
25 having independent economic value”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall apply only to infringements that occur
3 on or after the date of enactment of this Act. Nothing
4 in the amendment made by subsection (a) shall be con-
5 strued to affect the interpretation of the second sentence
6 of section 504(c)(1) of title 17, United States Code, with
7 respect to infringements that occur before the date of en-
8 actment of this Act.

9 **SEC. 604. REPORT TO CONGRESS.**

10 The Attorney General shall include in the report of
11 the Attorney General to Congress on the business of the
12 Department of Justice, prepared under section 522 of title
13 28, United States Code, the number of misdemeanor pros-
14 ecutions and the number of felony prosecutions under sec-
15 tions 1462, 1464, 1465, 1466, 1466A, 1470, 2252,
16 2252A, 2252B, 2260, 2318, 2319, 2319A, and 2320 of
17 title 18, United States Code, commenced and concluded
18 during the last preceding fiscal year, including, in the case
19 of those offenses where applicable, detailed information
20 concerning—

21 (1) the types of works involved;

22 (2) the tangible media of expression and means
23 of reproduction and distribution involved; and

24 (3) in the case of prosecutions concluded, the
25 disposition of such prosecutions, such as the number

1 of convictions and acquittals, and the sentences im-
2 posed.

3 **TITLE VII—ANTI-**
4 **COUNTERFEITING PROVISIONS**

5 **SEC. 701. SHORT TITLE.**

6 This title may be cited as the “Anticounterfeiting Act
7 of 2004”.

8 **SEC. 702. PROHIBITION AGAINST TRAFFICKING IN COUN-**
9 **TERFEIT COMPONENTS.**

10 (a) IN GENERAL.—Section 2318 of title 18, United
11 States Code, is amended—

12 (1) by striking the section heading and insert-
13 ing the following:

14 **“§ 2318. Trafficking in counterfeit labels, illicit labels,**
15 **or counterfeit documentation or pack-**
16 **aging”;**

17 (2) by striking subsection (a) and inserting the
18 following:

19 “(a) Whoever, in any of the circumstances described
20 in subsection (c), knowingly traffics in—

21 “(1) a counterfeit label or illicit label affixed to,
22 enclosing, or accompanying, or designed to be af-
23 fixed to, enclose, or accompany—

24 “(A) a phonorecord;

25 “(B) a copy of a computer program;

1 “(C) a copy of a motion picture or other
2 audiovisual work;

3 “(D) a copy of a literary work;

4 “(E) a copy of a pictorial, graphic, or
5 sculptural work;

6 “(F) a work of visual art; or

7 “(G) documentation or packaging; or

8 “(2) counterfeit documentation or packaging,

9 shall be fined under this title or imprisoned for not more
10 than 5 years, or both.”;

11 (3) in subsection (b)—

12 (A) in paragraph (2), by striking “and”
13 after the semicolon;

14 (B) in paragraph (3)—

15 (i) by striking “and ‘audiovisual work’
16 have” and inserting the following: “‘audio-
17 visual work’, ‘literary work’, ‘pictorial,
18 graphic, or sculptural work’, ‘sound record-
19 ing’, ‘work of visual art’, and ‘copyright
20 owner’ have”; and

21 (ii) by striking the period at the end
22 and inserting a semicolon; and

23 (C) by adding at the end the following:

1 “(4) the term ‘illicit label’ means a genuine cer-
2 tificate, licensing document, registration card, or
3 similar labeling component—

4 “(A) that is used by the copyright owner
5 to verify that a phonorecord, a copy of a com-
6 puter program, a copy of a motion picture or
7 other audiovisual work, a copy of a literary
8 work, a copy of a pictorial, graphic, or sculp-
9 tural work, a work of visual art, or documenta-
10 tion or packaging is not counterfeit or infring-
11 ing of any copyright; and

12 “(B) that is, without the authorization of
13 the copyright owner—

14 “(i) distributed or intended for dis-
15 tribution not in connection with the copy,
16 phonorecord, or work of visual art to which
17 such labeling component was intended to
18 be affixed by the respective copyright
19 owner; or

20 “(ii) in connection with a genuine cer-
21 tificate or licensing document, knowingly
22 falsified in order to designate a higher
23 number of licensed users or copies than
24 authorized by the copyright owner, unless
25 that certificate or document is used by the

1 copyright owner solely for the purpose of
2 monitoring or tracking the copyright own-
3 er's distribution channel and not for the
4 purpose of verifying that a copy or phono-
5 record is noninfringing;

6 “(5) the term ‘documentation or packaging’
7 means documentation or packaging, in physical
8 form, for a phonorecord, copy of a computer pro-
9 gram, copy of a motion picture or other audiovisual
10 work, copy of a literary work, copy of a pictorial,
11 graphic, or sculptural work, or work of visual art;
12 and

13 “(6) the term ‘counterfeit documentation or
14 packaging’ means documentation or packaging that
15 appears to be genuine, but is not.”;

16 (4) in subsection (c)—

17 (A) by striking paragraph (3) and insert-
18 ing the following:

19 “(3) the counterfeit label or illicit label is af-
20 fixed to, encloses, or accompanies, or is designed to
21 be affixed to, enclose, or accompany—

22 “(A) a phonorecord of a copyrighted sound
23 recording or copyrighted musical work;

24 “(B) a copy of a copyrighted computer
25 program;

1 “(C) a copy of a copyrighted motion pic-
2 ture or other audiovisual work;

3 “(D) a copy of a literary work;

4 “(E) a copy of a pictorial, graphic, or
5 sculptural work;

6 “(F) a work of visual art; or

7 “(G) copyrighted documentation or pack-
8 aging; or”; and

9 (B) in paragraph (4), by striking “for a
10 computer program”; and

11 (5) in subsection (d)—

12 (A) by inserting “or illicit labels” after
13 “counterfeit labels” each place it appears; and

14 (B) by inserting before the period at the
15 end the following: “, and of any equipment, de-
16 vice, or material used to manufacture, repro-
17 duce, or assemble the counterfeit labels or illicit
18 labels”.

19 (b) CIVIL REMEDIES.—Section 2318 of title 18,
20 United States Code, is further amended by adding at the
21 end the following:

22 “(f) CIVIL REMEDIES.—

23 “(1) IN GENERAL.—Any copyright owner who
24 is injured, or is threatened with injury, by a viola-

1 tion of subsection (a) may bring a civil action in an
2 appropriate United States district court.

3 “(2) DISCRETION OF COURT.—In any action
4 brought under paragraph (1), the court—

5 “(A) may grant 1 or more temporary or
6 permanent injunctions on such terms as the
7 court determines to be reasonable to prevent or
8 restrain a violation of subsection (a);

9 “(B) at any time while the action is pend-
10 ing, may order the impounding, on such terms
11 as the court determines to be reasonable, of any
12 article that is in the custody or control of the
13 alleged violator and that the court has reason-
14 able cause to believe was involved in a violation
15 of subsection (a); and

16 “(C) may award to the injured party—

17 “(i) reasonable attorney fees and
18 costs; and

19 “(ii)(I) actual damages and any addi-
20 tional profits of the violator, as provided in
21 paragraph (3); or

22 “(II) statutory damages, as provided
23 in paragraph (4).

24 “(3) ACTUAL DAMAGES AND PROFITS.—

1 “(A) IN GENERAL.—The injured party is
2 entitled to recover—

3 “(i) the actual damages suffered by
4 the injured party as a result of a violation
5 of subsection (a), as provided in subpara-
6 graph (B) of this paragraph; and

7 “(ii) any profits of the violator that
8 are attributable to a violation of subsection
9 (a) and are not taken into account in com-
10 puting the actual damages.

11 “(B) CALCULATION OF DAMAGES.—The
12 court shall calculate actual damages by
13 multiplying—

14 “(i) the value of the phonorecords,
15 copies, or works of visual art which are, or
16 are intended to be, affixed with, enclosed
17 in, or accompanied by any counterfeit la-
18 bels, illicit labels, or counterfeit docu-
19 mentation or packaging, by

20 “(ii) the number of phonorecords, cop-
21 ies, or works of visual art which are, or are
22 intended to be, affixed with, enclosed in, or
23 accompanied by any counterfeit labels, il-
24 licit labels, or counterfeit documentation or
25 packaging.

1 “(C) DEFINITION.—For purposes of this
2 paragraph, the ‘value’ of a phonorecord, copy,
3 or work of visual art is—

4 “(i) in the case of a copyrighted
5 sound recording or copyrighted musical
6 work, the retail value of an authorized pho-
7 norecord of that sound recording or musi-
8 cal work;

9 “(ii) in the case of a copyrighted com-
10 puter program, the retail value of an au-
11 thorized copy of that computer program;

12 “(iii) in the case of a copyrighted mo-
13 tion picture or other audiovisual work, the
14 retail value of an authorized copy of that
15 motion picture or audiovisual work;

16 “(iv) in the case of a copyrighted lit-
17 erary work, the retail value of an author-
18 ized copy of that literary work;

19 “(v) in the case of a pictorial, graphic,
20 or sculptural work, the retail value of an
21 authorized copy of that work; and

22 “(vi) in the case of a work of visual
23 art, the retail value of that work.

24 “(4) STATUTORY DAMAGES.—The injured party
25 may elect, at any time before final judgment is ren-

1 dered, to recover, instead of actual damages and
2 profits, an award of statutory damages for each vio-
3 lation of subsection (a) in a sum of not less than
4 \$2,500 or more than \$25,000, as the court considers
5 appropriate.

6 “(5) SUBSEQUENT VIOLATION.—The court may
7 increase an award of damages under this subsection
8 by 3 times the amount that would otherwise be
9 awarded, as the court considers appropriate, if the
10 court finds that a person has subsequently violated
11 subsection (a) within 3 years after a final judgment
12 was entered against that person for a violation of
13 that subsection.

14 “(6) LIMITATION ON ACTIONS.—A civil action
15 may not be commenced under this subsection unless
16 it is commenced within 3 years after the date on
17 which the claimant discovers the violation of sub-
18 section (a).”.

19 (c) CONFORMING AMENDMENT.—The item relating
20 to section 2318 in the table of sections for chapter 113
21 of title 18, United States Code, is amended to read as
22 follows:

 “2318. Trafficking in counterfeit labels, illicit labels, or counterfeit documenta-
 tion or packaging.”.

1 **SEC. 703. OTHER RIGHTS NOT AFFECTED.**

2 (a) CHAPTERS 5 AND 12 OF TITLE 17; ELECTRONIC
3 TRANSMISSIONS.—The amendments made by this title—

4 (1) shall not enlarge, diminish, or otherwise af-
5 fect any liability or limitations on liability under sec-
6 tions 512, 1201 or 1202 of title 17, United States
7 Code; and

8 (2) shall not be construed to apply—

9 (A) in any case, to the electronic trans-
10 mission of a genuine certificate, licensing docu-
11 ment, registration card, similar labeling compo-
12 nent, or documentation or packaging described
13 in paragraph (4) or (5) of section 2318(b) of
14 title 18, United States Code, as amended by
15 this title; and

16 (B) in the case of a civil action under sec-
17 tion 2318(f) of title 18, United States Code, to
18 the electronic transmission of a counterfeit label
19 or counterfeit documentation or packaging de-
20 fined in paragraph (1) or (6) of section 2318(b)
21 of title 18, United States Code.

22 (b) FAIR USE.—The amendments made by this title
23 shall not affect the fair use, under section 107 of title 17,
24 United States Code, of a genuine certificate, licensing doc-
25 ument, registration card, similar labeling component, or
26 documentation or packaging described in paragraph (4)

1 or (5) of section 2318(b) of title 18, United States Code,
2 as amended by this title.