IN THE SENATE OF THE UNITED STATES

MARCH 11, 2004
Received; read twice and referred to the Committee on the Judiciary

OCTOBER 7, 2004
Reported by Mr. HATCH, with an amendment
[Strike out all after the enacting clause and insert the part printed in italic]

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

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3
4 This Act may be cited as the "Cooperative Research
5 and Technology Enhancement (CREATE) Act of 2004".
SEC. 2. COLLABORATIVE EFFORTS ON CLAIMED INVENTIONS.

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

"(c)(1) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made; owned by the same person or subject to an obligation of assignment to the same person.

"(2) For purposes of this subsection, subject matter developed by another person and a claimed invention shall be deemed to have been owned by the same person or subject to an obligation of assignment to the same person if—

"(A) the claimed invention was made by or on behalf of parties to a joint research agreement that was in effect on or before the date the claimed invention was made;

"(B) the claimed invention was made as a result of activities undertaken within the scope of the joint research agreement; and

"(C) the application for patent for the claimed invention discloses or is amended to disclose the
names of the parties to the joint research agreement.

"(3) For purposes of paragraph (2), the term 'joint research agreement' means a written contract, grant, or cooperative agreement entered into by two or more persons or entities for the performance of experimental, developmental, or research work in the field of the claimed invention.".

SEC. 3. EFFECTIVE DATE.

(a) In General.—The amendments made by this Act shall apply to any patent granted on or after the date of the enactment of this Act.

(b) Special Rule.—The amendments made by this Act shall not affect any final decision of a court or the United States Patent and Trademark Office rendered before the date of the enactment of this Act, and shall not affect the right of any party in any action pending before the United States Patent and Trademark Office or a court on the date of the enactment of this Act to have that party's rights determined on the basis of the provisions of title 35, United States Code, in effect on the day before the date of the enactment of this Act.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Intellectual Property Protection Act of 2004”.

•HR 2391 RS
TITLE I—COOPERATIVE RESEARCH AND TECHNOLOGY ENHANCEMENT

SEC. 101. SHORT TITLE.

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

SEC. 102. COLLABORATIVE EFFORTS ON CLAIMED INVENTIONS.

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

“(c)(1) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

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

“(A) the claimed invention was made by or on behalf of parties to a joint research agreement that was in effect on or before the date the claimed invention was made;
“(B) the claimed invention was made as a result of activities undertaken within the scope of the joint research agreement; and

“(C) the application for patent for the claimed invention discloses or is amended to disclose the names of the parties to the joint research agreement.

“(3) For purposes of paragraph (2), the term ‘joint research agreement’ means a written contract, grant, or co-operative agreement entered into by two or more persons or entities for the performance of experimental, developmental, or research work in the field of the claimed invention.”.

SEC. 103. EFFECTIVE DATE.

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

(b) SPECIAL RULE.—The amendments made by this title shall not affect any final decision of a court or the United States Patent and Trademark Office rendered before the date of the enactment of this Act, and shall not affect the right of any party in any action pending before the United States Patent and Trademark Office or a court on the date of the enactment of this Act to have that party’s rights determined on the basis of the provisions of title 35,
United States Code, in effect on the day before the date of
the enactment of this Act.

**TITLE II—PIRACY DETERRENCE
IN EDUCATION**

**SEC. 201. SHORT TITLE.**

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

**SEC. 202. FINDINGS.**

Congress finds as follows:

(1) The Internet, while changing the way our so-
 ciety communicates, has also changed the nature of
many crimes, including the theft of intellectual prop-
erty.

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

(3) The most popular peer-to-peer file trading
software programs have been downloaded by computer
users over 600,000,000 times. At any one time there
are over 3,000,000 users simultaneously using just
one of these services. Each month, on average, over
2,300,000,000 digital-media files are transferred among users of peer-to-peer systems.

(4) Many computer users simply believe that they will not be caught or prosecuted for their conduct.

(5) The security and privacy threats posed by certain peer-to-peer networks extend beyond users inadvertently enabling a hacker to access files. Millions of copies of one of the most popular peer-to-peer networks contain software that could allow an independent company to take over portions of users’ computers and Internet connections and has the capacity to keep track of users’ online habits.

(6) In light of these considerations, Federal law enforcement agencies should actively pursue criminals who steal the copyrighted works of others, and prevent such activity through enforcement and awareness. The public should be educated about the security and privacy risks associated with being connected to certain peer-to-peer networks.

SEC. 203. VOLUNTARY PROGRAM OF DEPARTMENT OF JUSTICE.

(a) VOLUNTARY PROGRAM.—The Attorney General is authorized to establish a program under which the Department of Justice, in cases where persons who are subscribers
of Internet service providers appear to the Department of Justice to be engaging in copyright infringing conduct in the course of using such Internet service, would send to the Internet service providers warning letters that warn such persons of the penalties for such copyright infringement. The Internet service providers may forward the warning letters to such persons.

(b) LIMITATIONS ON PROGRAM.—

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

(2) PRIVACY PROTECTIONS.—No Internet service provider that receives a warning letter from the Department of Justice under subsection (a) may disclose to the Department any identifying information about the subscriber that is the subject of the warning letter except pursuant to court order or other applicable legal process that requires such disclosure.

(c) REIMBURSEMENT OF INTERNET SERVICE PROVIDERS.—The Department of Justice shall reimburse Internet service providers for all reasonable direct costs incurred by such service providers in identifying the proper recipi-
ents of the warning letters under subsection (a) and forwarding the letters.

(d) REPORTS TO CONGRESS.—The Attorney General shall submit to Congress a report on the program established under subsection (a) both at the time the program is initiated and at the conclusion of the program.

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

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

SEC. 204. DESIGNATION AND TRAINING OF AGENTS IN COMPUTER HACKING AND INTELLECTUAL PROPERTY UNITS.

(a) DESIGNATION OF AGENTS IN CHIPS UNITS.—The Attorney General shall ensure that any unit in the Depart-
ment of Justice responsible for investigating computer hacking or responsible for investigating intellectual property crimes is assigned at least one agent to support such unit for the purpose of investigating crimes relating to the theft of intellectual property.

(b) **Training.**—The Attorney General shall ensure that each agent assigned under subsection (a) has received training in the investigation and enforcement of intellectual property crimes.

SEC. 205. **EDUCATION PROGRAM.**

(a) **Establishment.**—There shall be established within the Office of the Associate Attorney General of the United States an Internet Use Education Program.

(b) **Purpose.**—The purpose of the Internet Use Education Program shall be to—

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

(2) educate the general public concerning the privacy, security, and other risks of using the Internet to obtain illegal copies of copyrighted works.

(c) **Sector Specific Materials.**—The Internet Use Educational Program shall, to the extent appropriate, develop materials appropriate to Internet users in different sectors of the general public where criminal copyright in-
fringement is a concern. The Attorney General shall consult
with appropriate interested parties in developing such sec-
tor-specific materials.

(d) CONSULTATIONS.—The Attorney General shall con-
sult with the Register of Copyrights and the Secretary of
Commerce in developing the Internet Use Education Pro-
gram under this section.

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

(f) ADDITIONAL PROHIBITION ON THE USE OF
FUNDS.—The program created under this section shall not
use any funds or resources of the Department of Justice al-
located for the Civil Rights Division of the Department, in-
cluding any funds allocated for the enforcement of civil
rights or the Voting Rights Act of 1965.

SEC. 206. ACTIONS BY THE GOVERNMENT OF THE UNITED
STATES.

Section 411(a) of title 17, United States Code, is
amended in the first sentence by striking “Except for” and
inserting “Except for an action brought by the Government
of the United States or by any agency or instrumentality
thereof, or”.”.
SEC. 207. AUTHORIZED APPROPRIATIONS.

There are authorized to be appropriated to the Department of Justice for fiscal year 2005 not less than $15,000,000 for the investigation and prosecution of violations of title 17, United States Code.

SEC. 208. CRIMINAL PENALTIES FOR UNAUTHORIZED RECORDING OF MOTION PICTURES IN A MOTION PICTURE EXHIBITION FACILITY.

(a) In General.—Chapter 113 of title 18, United States Code, is amended by adding after section 2319A the following new section:

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

“(a) Offense.—Any person who, without the authorization of the copyright owner, knowingly uses or attempts to use an audiovisual recording device to transmit or make a copy of a motion picture or other audiovisual work protected under title 17, or any part thereof, from a performance of such work in a motion picture exhibition facility, shall—

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

“(2) if the offense is a second or subsequent offense, be imprisoned for no more than 6 years, fined under this title, or both.
The possession by a person of an audiovisual recording device in a motion picture exhibition facility may be considered as evidence in any proceeding to determine whether that person committed an offense under this subsection, but shall not, by itself, be sufficient to support a conviction of that person for such offense.

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

“(c) AUTHORIZED ACTIVITIES.—This section does not prevent any lawfully authorized investigative, protective, or intelligence activity by an officer, agent, or employee of the United States, a State, or a political subdivision of a State, or by a person acting under a contract with the United States, a State, or a political subdivision of a State.

“(d) IMMUNITY FOR THEATERS AND AUTHORIZED PERSONS.—With reasonable cause, the owner or lessee of a motion picture facility where a motion picture is being exhibited, the authorized agent or employee of such owner
or lessee, the licensor of the motion picture being exhibited, or the agent or employee of such licensor—

“(1) may detain, in a reasonable manner and for a reasonable time, any person suspected of committing an offense under this section for the purpose of questioning that person or summoning a law enforcement officer; and

“(2) shall not be held liable in any civil or criminal action by reason of a detention under paragraph (1).

“(e) VICTIM IMPACT STATEMENT.—

“(1) IN GENERAL.—During the preparation of the presentence report under rule 32(c) of the Federal Rules of Criminal Procedure, victims of an offense under this section shall be permitted to submit to the probation officer a victim impact statement that identifies the victim of the offense and the extent and scope of the injury and loss suffered by the victim, including the estimated economic impact of the offense on that victim.

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

“(A) producers and sellers of legitimate works affected by conduct involved in the offense;
“(B) holders of intellectual property rights in the works described in subparagraph (A); and
“(C) the legal representatives of such producers, sellers, and holders.
“(f) DEFINITIONS.—In this section:
“(1) AUDIOVISUAL WORK, COPY, ETC.—The terms ‘audiovisual work’, ‘copy’, ‘copyright owner’, ‘motion picture’, and ‘transmit’ have, respectively, the meanings given those terms in section 101 of title 17.
“(2) AUDIOVISUAL RECORDING DEVICE.—The term ‘audiovisual recording device’ means a digital or analog photographic or video camera, or any other technology or device capable of enabling the recording or transmission of a copyrighted motion picture or other audiovisual work, or any part thereof, regardless of whether audiovisual recording is the sole or primary purpose of the device.
“(3) MOTION PICTURE EXHIBITION FACILITY.—The term ‘motion picture exhibition facility’ means a movie theater, screening room, or other venue that is being used primarily for the exhibition of a copyrighted motion picture, if such exhibition is open to the public or is made to an assembled group of viewers outside of a normal circle of a family and its social acquaintances.
“(g) STATE LAW NOT PREEMPTED.—Nothing in this section may be construed to annul or limit any rights or remedies under the laws of any State.”.

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

“2319B. Unauthorized recording of motion pictures in a motion picture exhibition facility.”.

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

(a) FINDINGS.—Congress finds as follows:

(1) The most popular publicly accessible peer-to-peer file sharing software programs combined have been downloaded worldwide over 600,000,000 times.

(2) The vast majority of software products, including peer-to-peer technology, do not pose an inherent risk. Responsible persons making software products should be encouraged and commended for the due diligence and reasonable care they take including by providing instructions, relevant information in the documentation, disseminating patches, updates, and other appropriate modifications to the software.

(3) Massive volumes of illegal activity, including the distribution of child pornography, viruses, and
confidential personal information, and copyright infringement occur on publicly accessible peer-to-peer file sharing services every day. Some publicly accessible peer-to-peer file sharing services expose consumers, particularly children, to serious risks, including legal liability, loss of privacy, threats to computer security, and exposure to illegal and inappropriate material.

(4) Several studies and reports demonstrate that pornography, including child pornography, is prevalent on publicly available peer-to-peer file sharing services, and children are regularly exposed to pornography when using such peer-to-peer file sharing services.

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

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

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

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

(9) Businesses that run publicly accessible peer-to-peer file sharing services have openly acknowledged, and numerous studies and reports have established, that these services facilitate and profit from massive amounts of copyright infringement, causing enormous damage to the economic well-being of the copyright industries whose works are being illegally “shared” and downloaded.

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

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

(12) Publicly available peer-to-peer file-sharing services can and should adopt reasonable business practices and use technology in the marketplace to ad-
dress the existing risks posed to consumers by their services and facilitate the legitimate use of peer-to-peer file sharing technology and software.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) responsible software developers should be commended, recognized, and encouraged for their efforts to protect consumers;

(2) currently the level of ongoing and persistent illegal and dangerous activity on publicly accessible peer-to-peer file sharing services is harmful to consumers, minors, and the economy; and

(3) therefore, Congress and the executive branch should consider all appropriate measures to protect consumers and children, and prevent such illegal activity.

SEC. 210. ENHANCEMENT OF CRIMINAL COPYRIGHT INFRINGEMENT.

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

(1) by amending subsection (a) to read as follows:

“(a) CRIMINAL INFRINGEMENT.—Any person who—
“(1) infringes a copyright willfully and for purposes of commercial advantage or private financial gain,

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

“(3) infringes a copyright by the knowing distribution, including by the offering for distribution to the public by electronic means, with reckless disregard of the risk of further infringement, during any 180-day period, of—

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

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

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

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

(2) by adding at the end the following:

“(g) LIMITATION ON LIABILITY OF SERVICE PROVIDERS.—No legal entity shall be liable for a violation of subsection (a)(3) by reason of performing any function described in subsection (a), (b), (c), or (d) of section 512 if such legal entity would not be liable for monetary relief under section 512 by reason of performing such function. Except for purposes of determining whether an entity qualifies for the limitation on liability under subsection (a)(3) of this section, the legal conclusion of whether an entity qualifies for a limitation on liability under section 512 shall not be considered in a judicial determination of whether the entity violates subsection (a) of this section.

“(h) DEFINITIONS.—In this section:

“(1) PRE-RELEASE WORK.—The term ‘pre-release work’ refers to a work protected under this title which has a commercial and economic value and which, at the time of the act of infringement that is the basis for the offense under subsection (a)(3), the defendant knew or should have known had not yet been made available by the copyright owner to individual members of the general public in copies or phonorecords for sale, license, or rental.
“(2) RETAIL VALUE.—The ‘retail value’ of a copyrighted work is the retail price of that work in the market in which it is sold. In the case of an infringement of a copyright by distribution, if the retail price does not adequately reflect the economic value of the infringement, then the retail value may be determined using other factors, including but not limited to suggested retail price, wholesale price, replacement cost of the item, licensing, or distribution-related fees.”.

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

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

(2) by inserting after subsection (c) the following:

“(d) Any person who commits an offense under section 506(a)(3) of title 17—

“(1) shall be imprisoned not more than 3 years, or fined in the amount set forth in this title, or both, or, if the offense was committed for purposes of commercial advantage or private financial gain, imprisoned for not more than 5 years, or fined in the amount set forth in this title, or both; and
“(2) shall, if the offense is a second or subsequent offense under paragraph (1), be imprisoned not more than 6 years, or fined in the amount set forth in this title, or both, or, if the offense was committed for purposes of commercial advantage or private financial gain, imprisoned for not more than 10 years, or fined in the amount set forth in this title, or both.”; and

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

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

(B) in paragraph (2), by striking the period and inserting “; and”; and

(C) by adding at the end the following:

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

(c) Civil Remedies for Infringement of a Work Being Prepared for Commercial Distribution.—

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

“(f) Preregistration of Works Being Prepared for Commercial Distribution.—

“(1) Rulemaking.—Not later than 180 days after the date of enactment of this subsection, the Reg-
ister of Copyrights shall issue regulations to establish procedures for preregistration of a work that is being prepared for commercial distribution and has not been published.

“(2) Class of Works.—The regulations established under paragraph (1) shall permit preregistration for any work that is in a class of works that the Register determines has had a history of infringement prior to authorized commercial distribution.

“(3) Application for Registration.—Not later than 3 months after the first publication of the work, the applicant shall submit to the Copyright Office—

“(A) an application for registration of the work;
“(B) a deposit; and
“(C) the applicable fee.

“(4) Effect of Untimely Application.—An action for infringement under this chapter shall be dismissed, and no award of statutory damages or attorney fees shall be made for a preregistered work, if the items described in paragraph (3) are not submitted to the Copyright Office in proper form within the earlier of—
“(A) 3 months after the first publication of the work; or

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

(2) INFRINGEMENT ACTIONS.—Section 411(a) of title 17, United States Code, is amended by inserting “preregistration or” after “shall be instituted until”.

(3) EXCLUSION.—Section 412 of title 17, United States Code, is amended by inserting “, an action for infringement of the copyright of a work that has been preregistered under section 408(f) before the commencement of the infringement,” after “section 106A(a)”.

SEC. 211. AMENDMENT OF FEDERAL SENTENCING GUIDELINES REGARDING THE INFRINGEMENT OF COPYRIGHTED WORKS AND RELATED CRIMES.

(a) AMENDMENT TO THE SENTENCING GUIDELINES.—Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, if appropriate, amend the sentencing guidelines and policy statements applicable to persons convicted of intellectual property rights crimes, including sections 2318, 2319, 2319A, 2319B, 2320 of title 18, United States Code, and sections 506, 1201, and 1202 of title 17, United States Code.
(b) FACTORS.—In carrying out this section, the Sentencing Commission shall—

(1) take all appropriate measures to ensure that the sentencing guidelines and policy statements applicable to the offenses described in subsection (a) are sufficiently stringent to deter and adequately reflect the nature of such offenses;

(2) consider whether to provide a sentencing enhancement for those convicted of the offenses described in subsection (a) when the conduct involves the display, performance, publication, reproduction, or distribution of a copyrighted work before the time when the copyright owner has authorized the display, performance, publication, reproduction, or distribution of the original work, whether in the media format used by the infringing good or in any other media format;

(3) consider whether the definition of “uploading” contained in Application Note 3 to Guideline 2B5.3 is adequate to address the loss attributable to people broadly distributing copyrighted works over the Internet without authorization; and

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

(c) **PROMULGATION.**—The Commission may promulgate the guidelines or amendments under this section in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987, as though the authority under that Act had not expired.

**SEC. 212. EXEMPTION FROM INFRINGEMENT FOR SKIPPING AUDIO AND VIDEO CONTENT IN MOTION PICTURES.**

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

(b) **EXEMPTION FROM COPYRIGHT AND TRADEMARK INFRINGEMENT FOR SKIPPING OF AUDIO OR VIDEO CONTENT OF MOTION PICTURES.**—Section 110 of title 17, United States Code, is amended—

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

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

(3) by inserting after paragraph (10) the following:

“(11) the making imperceptible, by or at the direction of a member of a private household, of limited portions of audio or video content of a motion pic-
ture, during a performance in or transmitted to that household for private home viewing, from an authorized copy of the motion picture, or the creation or provision of a computer program or other technology that enables such making imperceptible and that is designed and marketed for such use at the direction of a member of a private household, if—

“(A) no fixed copy of the altered version of the motion picture is created by such computer program or other technology; and

“(B) no changes, deletions or additions are made by such computer program or other technology to commercial advertisements, or to network or station promotional announcements, that would otherwise be performed or displayed before, during or after the performance of the motion picture.”; and

(4) by adding at the end the following:

“For purposes of paragraph (11), the term ‘making imperceptible’ does not include the addition of audio or video content that is performed or displayed over or in place of existing content in a motion picture.”.

(c) EXEMPTION FROM TRADEMARK INFRINGEMENT.—

Section 32 of the Trademark Act of 1946 (15 U.S.C. 1114) is amended by adding at the end the following:

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“(3)(A) Any person who engages in the conduct described in paragraph (11) of section 110 of title 17, United States Code, and who complies with the requirements set forth in that paragraph is not liable on account of such conduct for a violation of any right under this Act. This subparagraph does not preclude liability of a person for conduct not described in paragraph (11) of section 110 of title 17, United States Code, even if that person also engages in conduct described in paragraph (11) of section 110 of such title.

“(B) A manufacturer, licensee, or licensor of technology that enables the making of limited portions of audio or video content of a motion picture imperceptible as described in subparagraph (A) is not liable on account of such manufacture or license for a violation of any right under this Act, if such manufacturer, licensee, or licensor ensures that the technology provides a clear and conspicuous notice at the beginning of each performance that the performance of the motion picture is altered from the performance intended by the director or copyright holder of the motion picture. The limitations on liability in subparagraphs (A) and (B) shall not apply to a manufacturer, licensee, or licensor of technology that fails to comply with this paragraph.

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

(d) DEFINITION.—In this section, the term “Trademark Act of 1946” means the Act entitled “An Act to pro-
vide for the registration and protection of trademarks used
in commerce, to carry out the provisions of certain inter-
national conventions, and for other purposes”, approved
July 5, 1946 (15 U.S.C. 1051 et seq.).

TITLE III—PROTECTING INTEL-
LECTUAL RIGHTS AGAINST
THEFT AND EXPROPRIATION

SEC. 301. SHORT TITLE.

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

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

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

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

“(a) IN GENERAL.—In lieu of a criminal action under
section 506, the Attorney General may commence a civil
action in the appropriate United States district court
against any person who engages in conduct constituting an
offense under section 506. Upon proof of such conduct by
a preponderance of the evidence, such person shall be subject to a civil penalty under section 504 which shall be in an amount equal to the amount which would be awarded under section 3663(a)(1)(B) of title 18 and restitution to the copyright owner aggrieved by the conduct.

“(b) Other Remedies.—

“(1) In general.—Imposition of a civil penalty under this section does not preclude any other criminal or civil statutory, injunctive, common law or administrative remedy, which is available by law to the United States or any other person.

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

(b) Damages and Profits.—Section 504 of title 17, United States Code, is amended—

(1) in subsection (b)—

(A) in the first sentence—

(i) by inserting “, or the Attorney General in a civil action,” after “The copyright owner”; and
(ii) by striking “him or her” and inserting “the copyright owner”; and

(B) in the second sentence by inserting “, or the Attorney General in a civil action,” after “the copyright owner”; and

(2) in subsection (c)—

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

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

(c) Technical and Conforming Amendment.—The table of sections for chapter 5 of title 17, United States Code, is amended by inserting after the item relating to section 506 the following:

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

SEC. 303. AUTHORIZATION OF FUNDING FOR TRAINING AND PILOT PROGRAM.

(a) Training and Pilot Program.—Not later than 180 days after enactment of this Act, the Attorney General shall develop a program to ensure effective implementation and use of the authority for civil enforcement of the copyright laws by—

(1) establishing training programs, including practical training and written materials, for quali-
fied personnel from the Department of Justice and United States Attorneys Offices to educate and inform such personnel about—

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

(B) the technological challenges to protecting digital copyrighted works from online piracy;

(C) guidance on and support for bringing copyright enforcement actions against persons engaging in infringing conduct, including model charging documents and related litigation materials;

(D) strategic issues in copyright enforcement actions, including whether to proceed in a criminal or a civil action;

(E) how to employ and leverage the expertise of technical experts in computer forensics;

(F) the collection and preservation of electronic data in a forensically sound manner for use in court proceedings;
(G) the role of the victim copyright owner in providing relevant information for enforcement actions and in the computation of damages; and

(H) the appropriate use of injunctions, impoundment, forfeiture, and related authorities in copyright law;

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

(3) reporting to Congress annually on—

(A) the use of the civil enforcement authority of the Attorney General under section 506a of title 17, United States Code, as added by this title; and

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

(b) ANNUAL REPORT.—The report under subsection (a)(3) may be included in the annual performance report of the Department of Justice and shall include—
(1) with respect to civil actions filed under section 506a of title 17, United States Code, as added by this title—

(A) the number of investigative matters received by the Department of Justice and United States Attorneys Offices;

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

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

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

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

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

(G) the dollar value of any civil penalty imposed and the amount remitted to any copyright owner; and

(H) other information that the Attorney General may consider relevant to inform Congress on the effective use of the civil enforcement authority;
(2) a description of the training program and
the number of personnel who participated in the pro-
gram; and

(3) the locations of the United States Attorneys
Offices designated to participate in the pilot program.

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

TITLE IV—NATIONAL FILM
PRESERVATION ACT OF 2004

Subtitle A—Reauthorization of the
National Film Preservation Board

SEC. 401. SHORT TITLE.

This subtitle may be cited as the “National Film Pres-
servation Act of 2004”.

SEC. 402. REAUTHORIZATION AND AMENDMENT.

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

(1) in subsection (b)—

(A) by striking “film copy” each place that
term appears and inserting “film or other ap-
proved copy”;
(B) by striking “film copies” each place that term appears and inserting “film or other approved copies”; and

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

(2) by adding at the end the following:

“(c) COORDINATION OF PROGRAM WITH OTHER COLLECTION, PRESERVATION, AND ACCESSIBILITY ACTIVITIES.—In carrying out the comprehensive national film preservation program for motion pictures established under the National Film Preservation Act of 1992, the Librarian, in consultation with the Board established pursuant to section 104, and in accordance with title 17, United States Code, shall—

“(1) carry out activities to make films included in the National Film registry more broadly accessible for research and educational purposes, and to generate public awareness and support of the Registry and the comprehensive national film preservation program;

“(2) review the comprehensive national film preservation plan, and amend it to the extent necessary to ensure that it addresses technological ad-
ances in the preservation and storage of, and access
to film collections in multiple formats; and

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

(b) NATIONAL FILM PRESERVATION BOARD.—Section
104 of the National Film Preservation Act of 1996 (2
U.S.C. 179n) is amended—

(1) in subsection (a)(1), by striking “20” and in-
serting “22”;

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

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

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

“(e) REIMBURSEMENT OF EXPENSES.—Members of the
Board shall serve without pay, but may receive travel ex-
penses, including per diem in lieu of subsistence, in accord-
ance with sections 5702 and 5703 of title 5, United States Code.”.

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

“(e) NATIONAL AUDIO-VISUAL CONSERVATION CENTER.—The Librarian shall utilize the National Audio-Visual Conservation Center of the Library of Congress at Culpeper, Virginia, to ensure that preserved films included in the National Film Registry are stored in a proper manner, and disseminated to researchers, scholars, and the public as may be appropriate in accordance with—

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

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

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

(1) in paragraph (1), by inserting “in any format” after “or any copy”; and

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

(e) AUTHORIZATION OF APPROPRIATIONS.—Section 112 of the National Film Preservation Act of 1996 (2
U.S.C. 179v) is amended by striking “$250,000” and inserting “$200,000”.

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

Subtitle B—Reauthorization of the National Film Preservation Foundation

SEC. 411. SHORT TITLE.

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

SEC. 412. REAUTHORIZATION AND AMENDMENT.

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

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

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

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

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(c) Principal Office.—Section 151706 of title 36, United States Code, is amended by inserting “, or another place as determined by the board of directors” after “District of Columbia”.

(d) Authorization of Appropriations.—Section 151711 of title 36, United States Code, is amended by striking subsections (a) and (b) and inserting the following:

“(a) Authorization of Appropriations.—There are authorized to be appropriated to the Library of Congress amounts necessary to carry out this chapter, not to exceed $250,000 for each of the fiscal years 2005 and 2006, and not to exceed $400,000 for fiscal year 2007. These amounts are to be made available to the corporation to match any private contributions (whether in currency, services, or property) made to the corporation by private persons and State and local governments.

“(b) Limitation Related to Administrative Expenses.—Amounts authorized under this section may not be used by the corporation for management and general or fundraising expenses as reported to the Internal Revenue Service as part of an annual information return required under the Internal Revenue Code of 1986.”.
TITLE V—PRESERVATION OF ORPHAN WORKS

SEC. 501. SHORT TITLE.

This title may be cited as the “Preservation of Orphan Works Act”.

SEC. 502. REPRODUCTION OF COPYRIGHTED WORKS BY LIBRARIES AND ARCHIVES.

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

TITLE VI—ENHANCING FEDERAL OBSCENITY REPORTING AND COPYRIGHT ENFORCEMENT

SEC. 601. SHORT TITLE.

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

SEC. 602. HARMLESS ERRORS IN REGISTRATION CERTIFICATES.

(a) In General.—Section 411 of title 17, United States Code, is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) inserting after subsection (a) the following:
“(b)(1) A certificate of registration shall satisfy the requirements of this section and section 412 irrespective of any inaccurate information therein, unless—

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

“(B) the inaccuracy of the information, if known, would have caused the Register of Copyrights to refuse registration.

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

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

SEC. 603. COMPUTATION OF STATUTORY DAMAGES.

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

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SEC. 604. REPORT TO CONGRESS.

The Attorney General shall include in the report of the Attorney General to Congress on the business of the Department of Justice, prepared under section 522 of title 28, United States Code, the number of misdemeanor prosecutions and the number of felony prosecutions under sections 1462, 1464, 1465, 1466, 1466A, 1470, 2252, 2252A, 2252B, 2260, 2318, 2319, 2319A, and 2320 of title 18, United States Code, commenced and concluded during the last preceding fiscal year, including, in the case of those offenses where applicable, detailed information concerning—

(1) the types of works involved;

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

(3) in the case of prosecutions concluded, the disposition of such prosecutions, such as the number of convictions and acquittals, and the sentences imposed.
AN ACT

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

OCTOBER 7, 2004

Reported with an amendment

H. R. 2391

Calendar No. 781