

108th CONGRESS

2d Session

H. R. 4077

AN ACT

To enhance criminal enforcement of the copyright laws, to educate the public about the application of copyright law to the Internet, and for other purposes.

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To enhance criminal enforcement of the copyright laws, to educate the public about the application of copyright law to the Internet, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I--PIRACY DETERRENCE IN EDUCATION

SEC. 101. SHORT TITLE.

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

SEC. 102. FINDINGS.

The Congress finds as follows:

- (1) The Internet, while changing the way our society communicates, has also changed the nature of many crimes, including the theft of intellectual property.
- (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. 103. 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 recipients of the warning letters under subsection (a) and forwarding the letters.

(d) Reports to Congress- The Attorney General shall submit to the 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. 104. 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 Department 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. 105. 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 infringement is a concern. The Attorney General shall consult with appropriate interested parties in developing such sector-specific materials.

(d) Consultations- The Attorney General shall consult with the Register of Copyrights and the Secretary of Commerce in developing the Internet Use Education Program 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 criminal 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 allocated for the Civil Rights Division of the Department, including any funds allocated for the enforcement of civil rights or the Voting Rights Act of 1965.

SEC. 106. 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. 107. 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. 108. 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:

Sec. 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. 109. SENSE OF THE CONGRESS ON NEED TO TAKE STEPS TO PREVENT ILLEGAL ACTIVITY ON PEER-TO-PEER SERVICES.

(a) Findings- The 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 address 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 the 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, the Congress and the executive branch should consider all appropriate measures to protect consumers and children, and prevent such illegal activity.

SEC. 110. 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 Commercial Pre-Release Copyrighted Work- Section 504(b) of title 17, United States Code, is amended--

(1) by striking `The copyright owner' and inserting the following:

`(1) IN GENERAL- The copyright owner'; and

(2) by adding at the end the following:

`(2) DAMAGES FOR PRE-RELEASE INFRINGEMENT-

`(A) IN GENERAL- In the case of any pre-release work, actual damages shall be presumed conclusively to be no less than \$10,000 per infringement, if a person--

`(i) distributes such work by making it available on a computer network accessible to members of the public; and

(ii) knew or should have known that the work was intended for commercial distribution.

(B) DEFINITION- For purposes of this subsection, the term 'pre-release work' has the meaning given that term in section 506(h).'

SEC. 111. 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. 112. 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 picture 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:

(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:

`(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 that is authorized under 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. Subparagraph (A) shall not apply to a manufacturer, licensee, or licensor of technology that fails to comply with this subparagraph.

`(C) The requirement under subparagraph (B) to provide notice shall apply only with respect to technology 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 provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes', approved July 5, 1946 (15 U.S.C. 1051 et seq.).

TITLE II--MISCELLANEOUS

SEC. 201. DESIGNATION OF NATIONAL TREE.

(a) DESIGNATION- Chapter 3 of title 36, United States Code, is amended by adding at the end the following:

'Sec. 305. National tree

'The tree genus Quercus, commonly known as the oak tree, is the national tree.'

(b) CONFORMING AMENDMENTS- Such title is amended--

(1) in the table of contents for part A of subtitle I, by striking ', and March' and inserting '**March, and Tree**';

(2) in the chapter heading for chapter 3, by striking ', AND MARCH' and inserting 'MARCH, AND TREE'; and

(3) in the table of sections for chapter 3, by adding at the end the following:

'305. National tree.'

Passed the House of Representatives September 28, 2004.

Attest:

Clerk.

END