### 108TH CONGRESS 1ST SESSION

# H. R. 2517

To enhance criminal enforcement of the copyright laws, educate the public about the application of copyright law to the Internet, and clarify the authority to seize unauthorized copyrighted works.

### IN THE HOUSE OF REPRESENTATIVES

June 19, 2003

Mr. Smith of Texas (for himself, Mr. Berman, and Mr. Conyers) introduced the following bill; which was referred to the Committee on the Judiciary

## A BILL

To enhance criminal enforcement of the copyright laws, educate the public about the application of copyright law to the Internet, and clarify the authority to seize unauthorized copyrighted works.

- 1 Be it enacted by the Senate and House of Representa-
- 2 tives of the United States of America in Congress assembled,
- 3 SECTION 1. SHORT TITLE.
- 4 This Act may be cited as the "Piracy Deterrence and
- 5 Education Act of 2003".
- 6 SEC. 2. FINDINGS.
- 7 The Congress finds as follows:

- 1 (1) The Internet, while changing the way our 2 society communicates, has also changed the nature 3 of many crimes, including the theft of intellectual 4 property.
  - (2) Trafficking in copyrighted works through increasingly sophisticated electronic means, including peer-to-peer file trading networks, Internet chat rooms, and newsgroups, 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 200,000,000 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 either do not know that copyright laws apply to Internet activity or simply believe that they will not be caught or prosecuted for their conduct.
  - (5) In addition, many of the computer users drawn to the convenience of peer-to-peer systems do not realize that these systems pose serious security and privacy threats to their personal computers or

- company networks. Recent studies reveal that the majority of the users of these systems are unable to tell what files they are sharing and sometimes incorrectly assume they were not sharing any files when in fact they were sharing all files on their hard drive.
  - (6) The security and privacy threats posed by peer-to-peer networks extend beyond users inadvert-ently 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.
  - (7) In light of these considerations, it is important that Federal law enforcement agencies actively pursue criminals who steal the copyrighted works of others, and prevent such activity through enforcement and awareness. It is also important that the public be educated about the security and privacy risks associated with being connected to an unauthorized peer-to-peer network.
  - (8) In addition, the Bureau of Customs and Border Protection of the Department of Homeland Security has the authority to act against infringe-

ments of copyrighted works, including those works protected under the Berne Convention and the Agreement on Trade Related Aspects of Intellectual Property of the World Trade Organization. Under United States law, merchandise can be seized by or forfeited to the Bureau of Customs and Border Pro-tection if "it is merchandise or packaging in which copyright, trademark, or trade name protection vio-lations are involved" (section 596(c)(2)(C) of the Tariff Act of 1930 (19 U.S.C. 1595a(c)(2)(C)).

(9) Though the regulations of the Bureau of Customs and Border Protection (section 133.31 of title 19, Code of Federal Regulations) provide that registered copyrighted works may be recorded with the Bureau for "import protection," recordation is not explicitly required before infringing merchandise can be seized or forfeited. Notwithstanding present legal authority, there have been concerns raised about the authority of the Bureau of Customs and Border Protection to seize infringing copyrighted materials that have neither been registered with the United States Copyright Office or recorded with the Bureau.

(10) Neither United States nor foreign works require registration with the Copyright Office for

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protection of the copyright in those works. United States works require registration only before an action for infringement is brought under title 17, United States Code. A foreign work need not be registered to bring such an action for infringement, and none of the rights contained in title 17, United States Code, including the right to control distribution in section 106 of that title or importation under section 602 of that title, are contingent upon registration. In accordance with the international obligations of the United States barring the use of formalities, United States law gives foreign copyright owners direct access to United States courts and procedures without resort to any registration requirement, and section 603 of title 17, United States Code, directs the Secretary of the Treasury and the United States Postal Service to separately or jointly make regulations for the enforcement of the provisions of title 17, United States Code, prohibiting importation.

(11) Notwithstanding the preceding provisions of this section, the Bureau of Customs and Border Protection has been unclear about its legal authority to seize infringing copyrighted materials that have neither been registered with the Copyright Office nor

recorded with the Bureau. To provide clarity, it is 1 2 necessary to specify the authority of the Bureau of Customs and Border Protection to seize infringing 3 materials protected by the copyright laws, with or 5 without registration or recordation. 6 SEC. 3. DETERRENCE AND COORDINATION. 7 The Director of the Federal Bureau of Investigation 8 shall— 9 (1) develop a program to deter members of the 10 public from committing acts of copyright infringe-11 ment by— 12 (A) offering on the Internet copies of copy-13 righted works, or (B) making copies of copyrighted works 14 15 from the Internet, 16 without the authorization of the copyright owners; 17 and 18 (2) facilitate the sharing among law enforce-19 ment agencies, Internet service providers, and copy-20 right owners of information concerning activities de-21 scribed in subparagraphs (A) and (B) of paragraph 22 (1).23 The program under paragraph (1) shall include issuing appropriate warnings to individuals engaged in an activity

- 1 described in subparagraph (A) or (B) of paragraph (1)
- 2 that they may be subject to criminal prosecution.
- 3 SEC. 4. DESIGNATION AND TRAINING OF AGENTS IN COM-
- 4 PUTER HACKING AND INTELLECTUAL PROP-
- 5 ERTY UNITS.
- 6 (a) Designation of Agents in CHIPs Units.—
- 7 The Attorney General shall ensure that any unit in the
- 8 Department of Justice responsible for investigating com-
- 9 puter hacking or responsible for investigating intellectual
- 10 property crimes is assigned at least one agent to support
- 11 such unit for the purpose of investigating crimes relating
- 12 to the theft of intellectual property.
- 13 (b) Training.—The Attorney General shall ensure
- 14 that each agent assigned under subsection (a) has received
- 15 training in the investigation and enforcement of intellec-
- 16 tual property crimes.
- 17 SEC. 5. EDUCATION PROGRAM.
- 18 (a) Establishment.—There shall be established
- 19 within the Office of the Associate Attorney General of the
- 20 United States an Internet Use Education Program.
- 21 (b) Purpose.—The purpose of the Internet Use
- 22 Education Program shall be to—
- 23 (1) educate the general public concerning the
- value of copyrighted works and the effects of the
- 25 theft of such works on those who create them;

- 1 (2) educate the general public concerning the 2 privacy, security, and other risks of using the Inter-3 net to obtain unauthorized copies of copyrighted
- 5 (3) coordinate and consult with the Department 6 of Education on compliance by educational institu-7 tions with applicable copyright laws involving Inter-8 net use; and
- 9 (4) coordinate and consult with the Department 10 of Commerce on compliance by corporations with ap-11 plicable copyright laws involving Internet use.

### 12 SEC. 6. CUSTOMS RECORDATION.

works;

- 13 (a) Registration and Infringement Actions.—
- 14 Section 411(a) of title 17, United States Code, is amended
- 15 by inserting after the first sentence the following: "An ac-
- 16 tion for infringement of the copyright in any United States
- 17 work shall not include any action brought by the Govern-
- 18 ment of the United States or by any agency or instrumen-
- 19 tality thereof.".
- 20 (b) Infringing Importation.—Section 602(a) of
- 21 title 17, United States Code, is amended by inserting be-
- 22 fore the period at the end of the first sentence the fol-
- 23 lowing: ", regardless of whether that work has been reg-
- 24 istered with the Copyright Office or recorded with the Bu-

- 1 reau of Customs and Border Protection of the Department
- 2 of Homeland Security".
- 3 (c) Importation Prohibitions.—Section 603(a) of
- 4 title 17, United States Code, is amended by inserting be-
- 5 fore the period the following: "of copies or phonorecords
- 6 of a work protected under this title, regardless of whether
- 7 that work has been registered with the Copyright Office
- 8 or recorded with the Bureau of Customs and Border Pro-
- 9 tection of the Department of Homeland Security".

#### 10 SEC. 7. INFRINGEMENT WARNING NOTICE.

- The Attorney General shall, within 3 months after
- 12 the date of the enactment of this Act, set forth criteria
- 13 under which copyright owners designated by the Attorney
- 14 General will be able to use the seal of the Federal Bureau
- 15 of Investigation for deterrent purposes in connection with
- 16 physical and digital copies and phonorecords and digital
- 17 transmission of their works of authorship.

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