

Union Calendar No. 360

108TH CONGRESS
2D SESSION

H. R. 3632

[Report No. 108-600]

To prevent and punish counterfeiting of copyrighted copies and phonorecords,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 21, 2003

Mr. SMITH of Texas (for himself, Mr. KELLER, Mr. WEXLER, Mr. GOOD-
LATTE, Mr. GALLEGLY, and Mr. CARTER) introduced the following bill;
which was referred to the Committee on the Judiciary

JULY 13, 2004

Additional sponsor: Mrs. BLACKBURN

JULY 13, 2004

Reported with an amendment, committed to the Committee of the Whole
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on November 21, 2003]

A BILL

To prevent and punish counterfeiting of copyrighted copies
and phonorecords, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Anti-counterfeiting*
3 *Amendments Act of 2004”.*

4 **SEC. 2. PROHIBITION AGAINST TRAFFICKING IN COUNTER-**
5 **FEIT COMPONENTS.**

6 (a) *IN GENERAL.*—Section 2318 of title 18, United
7 States Code, is amended—

8 (1) *by striking the section heading and inserting*
9 *the following:*

10 **“§2318. Trafficking in counterfeit labels, illicit labels,**
11 **or counterfeit documentation or pack-**
12 **aging”;**

13 (2) *by striking subsection (a) and inserting the*
14 *following:*

15 “(a) *Whoever, in any of the circumstances described*
16 *in subsection (c), knowingly traffics in—*

17 “(1) *a counterfeit label or illicit label affixed to,*
18 *enclosing, or accompanying, or designed to be affixed*
19 *to, enclose, or accompany—*

20 “(A) *a phonorecord;*

21 “(B) *a copy of a computer program;*

22 “(C) *a copy of a motion picture or other*
23 *audiovisual work;*

24 “(D) *a copy of a literary work;*

25 “(E) *a copy of a pictorial, graphic, or*
26 *sculptural work;*

1 “(F) a work of visual art; or

2 “(G) documentation or packaging; or

3 “(2) counterfeit documentation or packaging,

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

6 (3) in subsection (b)—

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

9 (B) in paragraph (3)—

10 (i) by striking “and ‘audiovisual work’
11 have” and inserting the following: “‘audio-
12 visual work’, ‘literary work’, ‘pictorial,
13 graphic, or sculptural work’, ‘sound record-
14 ing’, ‘work of visual art’, and ‘copyright
15 owner’ have”; and

16 (ii) by striking the period at the end
17 and inserting a semicolon; and

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

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

22 “(A) that is used by the copyright owner to
23 verify that a phonorecord, a copy of a computer
24 program, a copy of a motion picture or other
25 audiovisual work, a copy of a literary work, a

1 *copy of a pictorial, graphic, or sculptural work,*
2 *a work of visual art, or documentation or pack-*
3 *aging is not counterfeit or infringing of any*
4 *copyright; and*

5 “(B) *that is, without the authorization of*
6 *the copyright owner—*

7 “(i) *distributed or intended for dis-*
8 *tribution not in connection with the copy,*
9 *phonorecord, or work of visual art to which*
10 *such labeling component was intended to be*
11 *affixed by the respective copyright owner; or*

12 “(ii) *in connection with a genuine cer-*
13 *tificate or licensing document, knowingly*
14 *falsified in order to designate a higher num-*
15 *ber of licensed users or copies than author-*
16 *ized by the copyright owner, unless that cer-*
17 *tificate or document is used by the copy-*
18 *right owner solely for the purpose of moni-*
19 *toring or tracking the copyright owner’s dis-*
20 *tribution channel and not for the purpose of*
21 *verifying that a copy or phonorecord is*
22 *noninfringing;*

23 “(5) *the term ‘documentation or packaging’*
24 *means documentation or packaging, in physical form,*
25 *for a phonorecord, copy of a computer program, copy*

1 of a motion picture or other audiovisual work, copy
2 of a literary work, copy of a pictorial, graphic, or
3 sculptural work, or work of visual art; and

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

7 (4) in subsection (c)—

8 (A) by striking paragraph (3) and inserting
9 the following:

10 “(3) the counterfeit label or illicit label is affixed
11 to, encloses, or accompanies, or is designed to be af-
12 fixed to, enclose, or accompany—

13 “(A) a phonorecord of a copyrighted sound
14 recording or copyrighted musical work;

15 “(B) a copy of a copyrighted computer pro-
16 gram;

17 “(C) a copy of a copyrighted motion picture
18 or other audiovisual work;

19 “(D) a copy of a literary work;

20 “(E) a copy of a pictorial, graphic, or
21 sculptural work;

22 “(F) a work of visual art; or

23 “(G) copyrighted documentation or pack-
24 aging; or”;

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

3 (5) in subsection (d)—

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

6 (B) by inserting before the period at the end
7 the following: “, and of any equipment, device,
8 or material used to manufacture, reproduce, or
9 assemble the counterfeit labels or illicit labels”.

10 (b) *CIVIL REMEDIES.*—Section 2318 of title 18, United
11 States Code, is further amended by adding at the end the
12 following:

13 “(f) *CIVIL REMEDIES.*—

14 “(1) *IN GENERAL.*—Any copyright owner who is
15 injured, or is threatened with injury, by a violation
16 of subsection (a) may bring a civil action in an ap-
17 propriate United States district court.

18 “(2) *DISCRETION OF COURT.*—In any action
19 brought under paragraph (1), the court—

20 “(A) may grant 1 or more temporary or
21 permanent injunctions on such terms as the
22 court determines to be reasonable to prevent or
23 restrain a violation of subsection (a);

24 “(B) at any time while the action is pend-
25 ing, may order the impounding, on such terms

1 *as the court determines to be reasonable, of any*
2 *article that is in the custody or control of the al-*
3 *leged violator and that the court has reasonable*
4 *cause to believe was involved in a violation of*
5 *subsection (a); and*

6 “(C) *may award to the injured party—*

7 “(i) *reasonable attorney fees and costs;*

8 *and*

9 “(ii) (I) *actual damages and any addi-*
10 *tional profits of the violator, as provided in*
11 *paragraph (3); or*

12 “(II) *statutory damages, as provided*
13 *in paragraph (4).*

14 “(3) *ACTUAL DAMAGES AND PROFITS.—*

15 “(A) *IN GENERAL.—The injured party is*
16 *entitled to recover—*

17 “(i) *the actual damages suffered by the*
18 *injured party as a result of a violation of*
19 *subsection (a), as provided in subparagraph*
20 *(B) of this paragraph; and*

21 “(ii) *any profits of the violator that*
22 *are attributable to a violation of subsection*
23 *(a) and are not taken into account in com-*
24 *puting the actual damages.*

1 “(B) *CALCULATION OF DAMAGES.*—*The*
2 *court shall calculate actual damages by multi-*
3 *plying—*

4 “(i) *the value of the phonorecords, cop-*
5 *ies, or works of visual art which are, or are*
6 *intended to be, affixed with, enclosed in, or*
7 *accompanied by any counterfeit labels, il-*
8 *licit labels, or counterfeit documentation or*
9 *packaging, by*

10 “(ii) *the number of phonorecords, cop-*
11 *ies, or works of visual art which are, or are*
12 *intended to be, affixed with, enclosed in, or*
13 *accompanied by any counterfeit labels, il-*
14 *licit labels, or counterfeit documentation or*
15 *packaging.*

16 “(C) *DEFINITION.*—*For purposes of this*
17 *paragraph, the ‘value’ of a phonorecord, copy, or*
18 *work of visual art is—*

19 “(i) *in the case of a copyrighted sound*
20 *recording or copyrighted musical work, the*
21 *retail value of an authorized phonorecord of*
22 *that sound recording or musical work;*

23 “(ii) *in the case of a copyrighted com-*
24 *puter program, the retail value of an au-*
25 *thorized copy of that computer program;*

1 “(iii) in the case of a copyrighted mo-
2 tion picture or other audiovisual work, the
3 retail value of an authorized copy of that
4 motion picture or audiovisual work;

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

8 “(v) in the case of a pictorial, graphic,
9 or sculptural work, the retail value of an
10 authorized copy of that work; and

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

13 “(4) *STATUTORY DAMAGES.*—The injured party
14 may elect, at any time before final judgment is ren-
15 dered, to recover, instead of actual damages and prof-
16 its, an award of statutory damages for each violation
17 of subsection (a) in a sum of not less than \$2,500 or
18 more than \$25,000, as the court considers appro-
19 priate.

20 “(5) *SUBSEQUENT VIOLATION.*—The court may
21 increase an award of damages under this subsection
22 by 3 times the amount that would otherwise be
23 awarded, as the court considers appropriate, if the
24 court finds that a person has subsequently violated
25 subsection (a) within 3 years after a final judgment

1 *was entered against that person for a violation of that*
 2 *subsection.*

3 “(6) *LIMITATION ON ACTIONS.*—*A civil action*
 4 *may not be commenced under section unless it is com-*
 5 *menced within 3 years after the date on which the*
 6 *claimant discovers the violation of subsection (a).”.*

7 *(c) CONFORMING AMENDMENT.*—*The item relating to*
 8 *section 2318 in the table of sections for chapter 113 of title*
 9 *18, United States Code, is amended to read as follows:*

*“2318. Trafficking in counterfeit labels, illicit labels, or counterfeit documentation
 or packaging.”.*

10 **SEC. 3. OTHER RIGHTS NOT AFFECTED.**

11 *(a) CHAPTERS 5 AND 12 OF TITLE 17; ELECTRONIC*
 12 *TRANSMISSIONS.*—*The amendments made by this Act—*

13 *(1) shall not enlarge, diminish, or otherwise af-*
 14 *fect any liability or limitations on liability under*
 15 *sections 512, 1201 or 1202 of title 17, United States*
 16 *Code; and*

17 *(2) shall not be construed to apply—*

18 *(A) in any case, to the electronic trans-*
 19 *mission of a genuine certificate, licensing docu-*
 20 *ment, registration card, similar labeling compo-*
 21 *nent, or documentation or packaging described*
 22 *in paragraph (4) or (5) of section 2318(b) of*
 23 *title 18, United States Code, as amended by this*
 24 *Act; and*

1 (B) *in the case of a civil action under sec-*
2 *tion 2318(f) of title 18, United States Code, to*
3 *the electronic transmission of a counterfeit label*
4 *or counterfeit documentation or packaging de-*
5 *finied in paragraph (1) or (6) of section 2318(b)*
6 *of title 18, United States Code.*

7 (b) *FAIR USE.—The amendments made by this Act*
8 *shall not affect the fair use, under section 107 of title 17,*
9 *United States Code, of a genuine certificate, licensing docu-*
10 *ment, registration card, similar labeling component, or docu-*
11 *mentation or packaging described in paragraph (4) or (5)*
12 *of section 2318(b) of title 18, United States Code, as amend-*
13 *ed by this Act.*

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