

108TH CONGRESS  
2D SESSION

# S. 1932

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## AN ACT

To provide criminal penalties for unauthorized recording of motion pictures in a motion picture exhibition facility, to provide criminal and civil penalties for unauthorized distribution of commercial prerelease copyrighted works, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Artists’ Rights and  
5 Theft Prevention Act of 2004” or the “ART Act”.

1 **SEC. 2. CONGRESSIONAL FINDINGS.**

2 Congress finds the following:

3 (1) Intellectual property—

4 (A) represents the ideas, imagination and  
5 creativity needed to innovate long before a  
6 product is brought to market;

7 (B) is fundamental to the continued eco-  
8 nomic, social, and cultural development of soci-  
9 ety; and

10 (C) deserves the protection of our laws.

11 (2) Music, film, software, and all other forms of  
12 intellectual property represent one of the strongest  
13 and most significant sectors of the United States  
14 economy, as demonstrated by the fact that these  
15 industries—

16 (A) accounted for more than 5 percent of  
17 the United States Gross Domestic Product, or  
18 \$535,100,000,000 in 2001;

19 (B) represent almost 6 percent of all  
20 United States employment; and

21 (C) led all major industry sectors in for-  
22 eign sales and exports in 2001.

23 (3) In an attempt to combat the growing use of  
24 the Internet and technology for the illegal reproduc-  
25 tion and distribution of copyrighted materials, Con-  
26 gress unanimously passed and President Clinton

1 signed the “No Electronic Theft (NET) Act” in  
2 1997. The NET Act is designed to strengthen copy-  
3 right and trademark laws and to permit the prosecu-  
4 tion of individuals in cases involving large-scale ille-  
5 gal reproduction or distribution of copyrighted works  
6 where the infringers act willfully.

7 (4) Under the No Electronic Theft (NET) Act’s  
8 economic harm requirement, investigations by law  
9 enforcement of copyright infringements are particu-  
10 larly resource intensive and pose significant chal-  
11 lenges. In the interest of broader deterrence and in  
12 order to facilitate the prosecution of particularly  
13 egregious copyright violations, it is important to rec-  
14 ognize that a significant level of economic harm can  
15 be reached by the distribution of prerelease commer-  
16 cial works.

17 (5) The use of camcorders and other audio-  
18 visual recording devices in movie theaters to make il-  
19 legal copies of films is posing a serious threat to the  
20 motion picture industry. According to a recent in-  
21 dustry study, 92.4 percent of the first copies of mov-  
22 ies available for download on the Internet originate  
23 from camcorders.

24 (6) Given the difficulty of enforcement, online  
25 theft of music, film, software, and all forms of intel-

1       lectual property continues to rise. The negative ef-  
2       fects on this large segment of the United States  
3       economy are significant, as exemplified by almost a  
4       31 percent drop in sales for the music industry from  
5       the middle of 2000 to the middle of 2003.

6               (7) Federal legislation is necessary and war-  
7       ranted to combat the most egregious forms of online  
8       theft of intellectual property and its significant, neg-  
9       ative economic impact on the United States economy  
10      because—

11               (A) Article 1, section 8 of the United  
12      States Constitution gives Congress the power  
13      “[t]o promote the Progress of Science and use-  
14      ful Arts, by securing for limited Times to Au-  
15      thors and Inventors the exclusive Right to their  
16      respective Writings and Discoveries,” as well as  
17      the power “[t]o regulate Commerce with foreign  
18      nations, and among the several States.”;

19               (B) the importance of the music, film, soft-  
20      ware and other intellectual property-based in-  
21      dustries to the overall health of the United  
22      States economy is well documented and signifi-  
23      cant; and

1 (C) theft and unauthorized distribution of  
 2 intellectual property across State and inter-  
 3 national lines occurs on a regular basis.

4 **SEC. 3. CRIMINAL PENALTIES FOR UNAUTHORIZED RE-**  
 5 **CORDING OF MOTION PICTURES IN A MO-**  
 6 **TION PICTURE EXHIBITION FACILITY.**

7 (a) IN GENERAL.—Chapter 113 of title 18, United  
 8 States Code, is amended by adding after section 2319A  
 9 the following new section:

10 **“§ 2319B. Unauthorized recording of motion pictures**  
 11 **in a motion picture exhibition facility**

12 “(a) OFFENSE.—Any person who, without the au-  
 13 thorization of the copyright owner, knowingly uses or at-  
 14 tempts to use an audiovisual recording device to transmit  
 15 or make a copy of a motion picture or other audiovisual  
 16 work protected under title 17, or any part thereof, from  
 17 a performance of such work in a motion picture exhibition  
 18 facility, shall—

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

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

24 “(b) FORFEITURE AND DESTRUCTION.—When a per-  
 25 son is convicted of a violation of subsection (a), the court

1 in its judgment of conviction shall, in addition to any pen-  
2 alty provided, order the forfeiture and destruction or other  
3 disposition of all unauthorized copies of motion pictures  
4 or other audiovisual works protected under title 17, or  
5 parts thereof, and any audiovisual recording devices or  
6 other equipment used in connection with the offense.

7       “(c) AUTHORIZED ACTIVITIES.—This section does  
8 not prevent any lawfully authorized investigative, protec-  
9 tive, or intelligence activity by an officer, agent, or em-  
10 ployee of the United States, a State, or a political subdivi-  
11 sion of a State, or a person acting under a contract with  
12 the United States, a State, or a political subdivision of  
13 a State.

14       “(d) IMMUNITY FOR THEATERS.—With reasonable  
15 cause, the owner or lessee of a facility where a motion  
16 picture is being exhibited, the authorized agent or em-  
17 ployee of such owner or lessee, the licensor of the motion  
18 picture being exhibited, or the agent or employee of such  
19 licensor—

20               “(1) may detain, in a reasonable manner and  
21 for a reasonable time, any person suspected of a vio-  
22 lation of this section for the purpose of questioning  
23 or summoning a law enforcement officer; and

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

4           “(e) VICTIM IMPACT STATEMENT.—

5           “(1) IN GENERAL.—During the preparation of  
6 the presentence report under rule 32(c) of the Fed-  
7 eral Rules of Criminal Procedure, victims of an of-  
8 fense under this section shall be permitted to submit  
9 to the probation officer a victim impact statement  
10 that identifies the victim of the offense and the ex-  
11 tent and scope of the injury and loss suffered by the  
12 victim, including the estimated economic impact of  
13 the offense on that victim.

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

16           “(A) producers and sellers of legitimate  
17 works affected by conduct involved in the of-  
18 fense;

19           “(B) holders of intellectual property rights  
20 in the works described in subparagraph (A);  
21 and

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

24           “(f) DEFINITIONS.—In this section, the following  
25 definitions shall apply:

1           “(1) TITLE 17 DEFINITIONS.—The terms  
2           ‘audiovisual work’, ‘copy’, ‘copyright owner’, ‘motion  
3           picture’, ‘motion picture exhibition facility’, and  
4           ‘transmit’ have, respectively, the meanings given  
5           those terms in section 101 of title 17.

6           “(2) AUDIOVISUAL RECORDING DEVICE.—The  
7           term ‘audiovisual recording device’ means a digital  
8           or analog photographic or video camera, or any  
9           other technology or device capable of enabling the  
10          recording or transmission of a copyrighted motion  
11          picture or other audiovisual work, or any part there-  
12          of, regardless of whether audiovisual recording is the  
13          sole or primary purpose of the device.”.

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

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

18          (c) DEFINITION.—Section 101 of title 17, United  
19          States Code, is amended by inserting after the definition  
20          of “Motion pictures” the following:

21          “The term ‘motion picture exhibition facility’ means  
22          a movie theater, screening room, or other venue that is  
23          being used primarily for the exhibition of a copyrighted  
24          motion picture, if such exhibition is open to the public or



1 is made to an assembled group of viewers outside of a nor-  
 2 mal circle of a family and its social acquaintances.”.

3 **SEC. 4. CRIMINAL INFRINGEMENT OF A WORK BEING PRE-**  
 4 **PARED FOR COMMERCIAL DISTRIBUTION.**

5 (a) PROHIBITED ACTS.—Section 506(a) of title 17,  
 6 United States Code, is amended to read as follows:

7 “(a) CRIMINAL INFRINGEMENT.—

8 “(1) IN GENERAL.—Any person who willfully  
 9 infringes a copyright shall be punished as provided  
 10 under section 2319 of title 18, if the infringement  
 11 was committed—

12 “(A) for purposes of commercial advantage  
 13 or private financial gain;

14 “(B) by the reproduction or distribution,  
 15 including by electronic means, during any 180-  
 16 day period, of 1 or more copies or phonorecords  
 17 of 1 or more copyrighted works, which have a  
 18 total retail value of more than \$1,000; or

19 “(C) by the distribution of a work being  
 20 prepared for commercial distribution, by mak-  
 21 ing it available on a computer network acces-  
 22 sible to members of the public, if such person  
 23 knew or should have known that the work was  
 24 intended for commercial distribution.

1           “(2) EVIDENCE.—For purposes of this sub-  
2           section, evidence of reproduction or distribution of a  
3           copyrighted work, by itself, shall not be sufficient to  
4           establish willful infringement of a copyright.

5           “(3) DEFINITION.—In this subsection, the term  
6           ‘work being prepared for commercial distribution’  
7           means—

8                   “(A) a computer program, a musical work,  
9                   a motion picture or other audiovisual work, or  
10                  a sound recording, if at the time of unauthor-  
11                  ized distribution—

12                           “(i) the copyright owner has a reason-  
13                           able expectation of commercial distribu-  
14                           tion; and

15                           “(ii) the copies or phonorecords of the  
16                           work have not been commercially distrib-  
17                           uted; or

18                   “(B) a motion picture, if at the time of un-  
19                  authorized distribution, the motion picture—

20                           “(i) has been made available for view-  
21                           ing in a motion picture exhibition facility;  
22                           and

23                           “(ii) has not been made available in  
24                           copies for sale to the general public in the  
25                           United States in a format intended to per-

1 mit viewing outside a motion picture exhi-  
2 bition facility.”.

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

5 (1) in subsection (a)—

6 (A) by striking “Whoever” and inserting  
7 “Any person who”; and

8 (B) by striking “and (e) of this section”  
9 and inserting “, (e), and (d)”;

10 (2) in subsection (b), by striking “section  
11 506(a)(1)” and inserting “section 506(a)(1)(A)”;

12 (3) in subsection (c), by striking “section  
13 506(a)(2) of title 17, United States Code” and in-  
14 serting “section 506(a)(1)(B) of title 17”;

15 (4) by redesignating subsections (d) and (e) as  
16 subsections (e) and (f), respectively;

17 (5) by adding after subsection (c) the following:

18 “(d) Any person who commits an offense under sec-  
19 tion 506(a)(1)(C) of title 17—

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

22 “(2) shall be imprisoned not more than 5 years,  
23 fined under this title, or both, if the offense was  
24 committed for purposes of commercial advantage or  
25 private financial gain;

1           “(3) shall be imprisoned not more than 6 years,  
2           fined under this title, or both, if the offense is a sec-  
3           ond or subsequent offense; and

4           “(4) shall be imprisoned not more than 10  
5           years, fined under this title, or both, if the offense  
6           is a second or subsequent offense under paragraph  
7           (2).”; and

8           (6) in subsection (f), as redesignated—

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

11                   (B) in paragraph (2), by striking the pe-  
12           riod at the end and inserting a semicolon; and

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

14           “(3) the term ‘financial gain’ has the meaning  
15           given the term in section 101 of title 17; and

16           “(4) the term ‘work being prepared for com-  
17           mercial distribution’ has the meaning given the term  
18           in section 506(a) of title 17.”.

19 **SEC. 5. CIVIL REMEDIES FOR INFRINGEMENT OF A WORK**  
20 **BEING PREPARED FOR COMMERCIAL DIS-**  
21 **TRIBUTION.**

22           (a) PREREGISTRATION.—Section 408 of title 17,  
23 United States Code, is amended by adding at the end the  
24 following:

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

3           “(1) RULEMAKING.—Not later than 180 days  
4 after the date of enactment of this Act, the Register  
5 of Copyrights shall issue regulations to establish  
6 procedures for preregistration of a work that is  
7 being prepared for commercial distribution and has  
8 not been published.

9           “(2) CLASS OF WORKS.—The regulations estab-  
10 lished under paragraph (1) shall permit  
11 preregistration for any work that is in a class of  
12 works that the Register determines has had a his-  
13 tory of infringement prior to authorized commercial  
14 distribution.

15           “(3) APPLICATION FOR REGISTRATION.—Not  
16 later than 3 months after the first publication of the  
17 work, the applicant shall submit to the Copyright  
18 Office—

19           “(A) an application for registration of the  
20 work;

21           “(B) a deposit; and

22           “(C) the applicable fee.

23           “(4) EFFECT OF UNTIMELY APPLICATION.—An  
24 action for infringement under this chapter shall be  
25 dismissed, and no award of statutory damages or at-

1       torney fees shall be made for a preregistered work,  
2       if the items described in paragraph 3 are not sub-  
3       mitted to the Copyright Office in proper form within  
4       the earlier of—

5               “(A) 3 months after the first publication of  
6               the work; or

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

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

12      (c) EXCLUSION.—Section 412 of title 17, United  
13      States Code, is amended by inserting “, an action for in-  
14      fringement of the copyright of a work that has been  
15      preregistered under section 408(f) before the commence-  
16      ment of the infringement,” after “section 106A(a)”.

17      **SEC. 6. FEDERAL SENTENCING GUIDELINES.**

18      (a) REVIEW AND AMENDMENT.—Not later than 180  
19      days after the date of enactment of this Act, the United  
20      States Sentencing Commission, pursuant to its authority  
21      under section 994 of title 28, United States Code, and  
22      in accordance with this section, shall review and, if appro-  
23      priate, amend the Federal sentencing guidelines and policy  
24      statements applicable to persons convicted of intellectual  
25      property rights crimes, including any offense under—

1           (1) section 506, 1201, or 1202 of title 17,  
2           United States Code; or

3           (2) section 2318, 2319, 2319A, 2319B, or 2320  
4           of title 18, United States Code.

5           (b) AUTHORIZATION.—The United States Sentencing  
6           Commission may amend the Federal sentencing guidelines  
7           in accordance with the procedures set forth in section  
8           21(a) of the Sentencing Act of 1987 (28 U.S.C. 994 note)  
9           as though the authority under that section had not ex-  
10          pired.

11          (c) RESPONSIBILITIES OF UNITED STATES SEN-  
12          TENCING COMMISSION.—In carrying out this subsection,  
13          the United States Sentencing Commission shall—

14               (1) take all appropriate measures to ensure that  
15               the Federal sentencing guidelines and policy state-  
16               ments described in subsection (a) are sufficiently  
17               stringent to deter, and adequately reflect the nature  
18               of, intellectual property rights crimes;

19               (2) determine whether to provide a sentencing  
20               enhancement for those convicted of the offenses de-  
21               scribed in subsection (a), if the conduct involves the  
22               display, performance, publication, reproduction, or  
23               distribution of a copyrighted work before it has been  
24               authorized by the copyright owner, whether in the

1 media format used by the infringing party or in any  
2 other media format;

3 (3) determine whether the scope of “uploading”  
4 set forth in application note 3 of section 2B5.3 of  
5 the Federal sentencing guidelines is adequate to ad-  
6 dress the loss attributable to people who broadly dis-  
7 tribute copyrighted works without authorization over  
8 the Internet; and

9 (4) determine whether the sentencing guidelines  
10 and policy statements applicable to the offenses de-  
11 scribed in subsection (a) adequately reflect any harm  
12 to victims from copyright infringement if law en-  
13 forcement authorities cannot determine how many  
14 times copyright material has been reproduced or dis-  
15 tributed.

16 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

17 There are authorized to be appropriated to the De-  
18 partment of Justice \$5,000,000 for each of the fiscal years  
19 2005, 2006, 2007, 2008, and 2009 to prosecute violations  
20 of intellectual property rights as set forth under sections



- 1 2318, 2319, 2319A, 2319B, and 2320 of title 18, United
- 2 States Code.

Passed the Senate June 25, 2004.

Attest:

*Secretary.*

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2<sup>D</sup> SESSION

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