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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.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 22, 2003

Mr. CORNYN (for himself, Mrs. FEINSTEIN, Mr. HATCH, Mr. SMITH, Mr. ALEXANDER, and Mr. GRAHAM of South Carolina) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

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 2003” or the “ART Act”.

6 **SEC. 2. CONGRESSIONAL FINDINGS.**

7 Congress finds the following:

1           (1) Intellectual property, among other things,  
2 represents the ideas, imagination and creativity  
3 needed to innovate long before a product is brought  
4 to market. As such, it is fundamental to the contin-  
5 ued economic, social, and cultural development of so-  
6 ciety and deserves the protection of our laws.

7           (2) Music, film, software, and all forms of intel-  
8 lectual property represent one of the strongest and  
9 most significant sectors of the United States econ-  
10 omy, as demonstrated by the fact that these indus-  
11 tries—

12                   (A) accounted for more than 5 percent of  
13 the United States Gross Domestic Product  
14 (GDP), or \$535,100,000,000 in 2001;

15                   (B) employ almost 6 percent of all United  
16 States employment; and

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

19           (3) In an attempt to combat the growing use of  
20 the Internet and technology for the illegal reproduc-  
21 tion and distribution of copyrighted materials, Con-  
22 gress unanimously passed and President Clinton  
23 signed the “No Electronic Theft” or “NET” Act in  
24 1997. The NET Act is designed to strengthen copy-  
25 right and trademark laws and to permit the prosecu-

1       tion of individuals in cases involving large-scale ille-  
2       gal reproduction or distribution of copyrighted works  
3       where the infringers act willfully.

4           (4) Under the NET Act's requirement of eco-  
5       nomic harm, investigations by law enforcement of  
6       copyright infringements are particularly resource in-  
7       tensive and pose significant challenges. In the inter-  
8       est of broader deterrence and in order to facilitate  
9       the prosecution of particularly egregious copyright  
10      violations, it is important to recognize that a signifi-  
11      cant level of economic harm can be reached by the  
12      distribution of so-called "prerelease" commercial  
13      works.

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

21          (6) Given the difficulty of enforcement, online  
22      theft of music, film, software, and all forms of intel-  
23      lectual property continues to rise. The negative ef-  
24      fects on this large segment of the United States  
25      economy are significant, as exemplified by almost a

1 31 percent drop in sales for the music industry from  
2 mid-year 2000 to mid-year 2003, which even critics  
3 of the industry acknowledge to be heavily influenced  
4 by the rampant distribution of pirated music.

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

10 (A) Article 1, section 8 of the Constitution  
11 confers upon Congress the power “[t]o promote  
12 the Progress of Science and useful Arts, by se-  
13 curing for limited Times to Authors and Inven-  
14 tors the exclusive Right to their respective  
15 Writings and Discoveries,” as well as the power  
16 “[t]o regulate Commerce with foreign nations,  
17 and among the several States.”;

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

23 (C) theft and distribution of intellectual  
24 property across State and international lines oc-  
25 curs on a regular basis.

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

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

7 **“§ 2319B. Unauthorized recording of motion pictures**  
 8 **in a motion picture exhibition facility**

9 “(a) OFFENSE.—Whoever, without the consent of the  
 10 copyright owner, knowingly uses or attempts to use an  
 11 audiovisual recording device in a motion picture exhibition  
 12 facility to transmit or make a copy of a motion picture  
 13 or other audiovisual work protected under title 17, United  
 14 States Code, or any part thereof, in a motion picture exhi-  
 15 bition facility shall—

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

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

21 “(b) FORFEITURE AND DESTRUCTION.—When a per-  
 22 son is convicted of a violation of subsection (a), the court  
 23 in its judgment of conviction shall, in addition to any pen-  
 24 alty provided, order the forfeiture and destruction or other  
 25 disposition of all unauthorized copies of motion pictures  
 26 or other audiovisual works protected under title 17,

1 United States Code, or parts thereof, and any audiovisual  
2 recording devices or other equipment used in connection  
3 with the offense.

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

11 “(d) VICTIM IMPACT STATEMENT.—

12 “(1) IN GENERAL.—During the preparation of  
13 the presentence report pursuant to rule 32(c) of the  
14 Federal Rules of Criminal Procedure, victims of an  
15 offense under this section shall be permitted to sub-  
16 mit to the probation officer a victim impact state-  
17 ment that identifies the victim of the offense and the  
18 extent and scope of the injury and loss suffered by  
19 the victim, including the estimated economic impact  
20 of the offense on that victim.

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

23 “(A) producers and sellers of legitimate  
24 works affected by conduct involved in the of-  
25 fense;

1           “(B) holders of intellectual property rights  
2           in the works described in subparagraph (A);  
3           and

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

6           “(e) DEFINITIONS.—As used in this section, the fol-  
7           lowing definitions shall apply:

8           “(1) AUDIOVISUAL WORK, COPY, AND MOTION  
9           PICTURE.—The terms ‘audiovisual work’, ‘copy’, and  
10          ‘motion picture’ have, respectively, the meanings  
11          given those terms in section 101 of title 17, United  
12          States Code.

13          “(2) AUDIOVISUAL RECORDING DEVICE.—The  
14          term ‘audiovisual recording device’ means a digital  
15          or analog photographic or video camera, or any  
16          other technology capable of enabling the recording or  
17          transmission of a copyrighted motion picture or  
18          other audiovisual work, or any part thereof, regard-  
19          less of whether audiovisual recording is the sole or  
20          primary purpose of the device.

21          “(3) MOTION PICTURE EXHIBITION FACILITY.—  
22          The term ‘motion picture exhibition facility’ means  
23          any theater, screening room, lobby, indoor or out-  
24          door screening venue, ballroom, or other premises  
25          where copyrighted motion pictures or other audio-

1 visual works are publicly exhibited, regardless of  
2 whether an admission fee is charged.”.

3 (b) CHAPTER ANALYSIS.—The chapter analysis for  
4 chapter 113 of title 18, United States Code, is amended  
5 by inserting after the item relating to section 2319A the  
6 following:

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

7 **SEC. 4. CRIMINAL INFRINGEMENT OF A COMMERCIAL**  
8 **PRERELEASE COPYRIGHTED WORK.**

9 Section 2319 of title 18, United States Code, is  
10 amended—

11 (1) by redesignating subsection (e) as sub-  
12 section (f); and

13 (2) by adding after subsection (d) the following:

14 “(e)(1) For purposes of subsections (b) and (c) of  
15 this section and of section 506(a) of title 17, United  
16 States Code, in the case of a computer program, a non-  
17 dramatic musical work, a motion picture or other audio-  
18 visual work, or a sound recording protected under title 17,  
19 United States Code, that is being prepared for commercial  
20 distribution, it shall be conclusively presumed that a per-  
21 son distributed at least 10 copies or phonorecords of the  
22 work, and that such copies or phonorecords have a total  
23 retail value of more than \$2,500, if that person—



1           “(A) distributes such work by making it avail-  
2           able on a computer network accessible to members  
3           of the public who are able to reproduce the work  
4           through such access without the express consent of  
5           the copyright owner; and

6           “(B) knew or should have known that the work  
7           was intended for commercial distribution.

8           “(2) For purposes of paragraph (1), a work protected  
9           under title 17, United States Code, is being prepared for  
10          commercial distribution—

11           “(A) when at the time of unauthorized distribu-  
12           tion, the copyright owner had a reasonable expecta-  
13           tion of substantial commercial distribution and the  
14           work had not yet been so distributed; or

15           “(B) in the case of a motion picture, protected  
16           under title 17, United States Code, when at the time  
17           of unauthorized distribution, the work had been  
18           made available for viewing in motion picture exhi-  
19           bition facilities, but had not been made available to  
20           the general public in the United States in a format  
21           intended to permit viewing outside motion picture  
22           exhibition facilities as defined in section 2319B.”.

1 **SEC. 5. CIVIL REMEDIES FOR INFRINGEMENT OF A COM-**  
2 **MERCIAL PRERELEASE COPYRIGHTED WORK.**

3 Section 504(b) of title 17, United States Code, is  
4 amended—

5 (1) by striking the first instance of “The copy-  
6 right” and inserting the following:

7 “(1) IN GENERAL.—The copyright”; and

8 (2) by adding at the end the following:

9 “(2) DAMAGE FOR PRERELEASE INFRINGE-  
10 MENT.—

11 “(A) IN GENERAL.—In the case of a com-  
12 puter program, a non-dramatic musical work, a  
13 motion picture or other audiovisual work, or a  
14 sound recording protected under title 17,  
15 United States Code, that is being prepared for  
16 commercial distribution, actual damages shall  
17 be presumed conclusively to be no less than  
18 \$2,500 per infringement, if a person—

19 “(i) distributes such work by making  
20 it available on a computer network acces-  
21 sible to members of the public who are able  
22 to reproduce the work through such access  
23 without the express consent of the copy-  
24 right owner; and

1           “(ii) knew or should have known that  
2           the work was intended for commercial dis-  
3           tribution.

4           “(B) WORK PREPARED FOR DISTRIBUTION.—For purposes of subparagraph (A), a  
5           work protected under this title is being pre-  
6           pared for commercial distribution—

8           “(i) when at the time of unauthorized  
9           distribution, the copyright owner had a  
10          reasonable expectation of substantial com-  
11          mercial distribution and the work had not  
12          yet been so distributed; or

13          “(ii) in the case of a motion picture,  
14          protected under this title, when at the time  
15          of unauthorized distribution, the work had  
16          been made available for viewing in motion  
17          picture exhibition facilities, but had not  
18          been made available to the general public  
19          in the United States in a format intended  
20          to permit viewing outside motion picture  
21          exhibition facilities as defined in section  
22          2319B of title 18.”.

1 **SEC. 6. SENTENCING GUIDELINES.**

2 (a) IN GENERAL.—Not later than 180 days after the  
3 date of enactment of this Act, the United States Sen-  
4 tencing Commission shall—

5 (1) review the Federal sentencing guidelines  
6 with respect to offenses involving the illegal repro-  
7 duction and distribution of copyrighted works in vio-  
8 lation of Federal law, including violations of section  
9 2319 and section 2319B of title 18, United States  
10 Code;

11 (2) amend the Federal sentencing guidelines, as  
12 necessary, to provide for increased penalties for of-  
13 fenses involving the illegal reproduction and distribu-  
14 tion of works protected under title 17, United States  
15 Code, in a manner that reflects the serious nature  
16 of, and need to deter, such offenses;

17 (3) submit a report to Congress that details its  
18 findings and amendments; and

19 (4) take such other action that the Commission  
20 considers necessary to carry out this Act.

21 (b) CONSULTATION.—In carrying out this section,  
22 the United States Sentencing Commission shall seek input  
23 from the Department of Justice, copyright owners, and  
24 other interested parties.

1 **SEC. 7. AUTHORIZATION.**

2       There is authorized to be appropriated to the Depart-  
3 ment of Justice an additional \$5,000,000 for each of fiscal  
4 years 2005, 2006, 2007, 2008, and 2009 to prosecute vio-  
5 lations of section 2319 of title 18, United States Code.

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