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IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 2004

Referred to the Committee on the Judiciary

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 in-
15 dustries—

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
21 2318, 2319, 2319A, 2319B, and 2320 of title 18, United
22 States Code.

Passed the Senate June 25, 2004.

Attest: EMILY J. REYNOLDS,
Secretary.