

Calendar No. 482108TH CONGRESS
2D SESSION**S. 1932**

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.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 22, 2003

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

APRIL 29, 2004

Reported by Mr. HATCH, with an amendment

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

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Artists’ Rights and
3 Theft Prevention Act of 2003” or the “ART Act”.

4 **SEC. 2. CONGRESSIONAL FINDINGS.**

5 Congress finds the following:

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

12 (2) Music, film, software, and all forms of intel-
13 lectual property represent one of the strongest and
14 most significant sectors of the United States econ-
15 omy, as demonstrated by the fact that these indus-
16 tries—

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

20 (B) employ almost 6 percent of all United
21 States employment; and

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

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

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

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

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

1 (6) Given the difficulty of enforcement, online
2 theft of music, film, software, and all forms of intel-
3 lectual property continues to rise. The negative ef-
4 fects on this large segment of the United States
5 economy are significant, as exemplified by almost a
6 31 percent drop in sales for the music industry from
7 mid-year 2000 to mid-year 2003, which even critics
8 of the industry acknowledge to be heavily influenced
9 by the rampant distribution of pirated music.

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

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

23 (B) the importance of the music, film, soft-
24 ware and other intellectual property-based in-
25 dustries to the overall health of the United

1 States economy is well documented and signifi-
 2 cant; and

3 (C) theft and distribution of intellectual
 4 property across State and international lines oc-
 5 curs on a regular basis.

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

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

12 **“§ 2319B. Unauthorized recording of motion pictures**
 13 **in a motion picture exhibition facility**

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

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

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

1 “(b) FORFEITURE AND DESTRUCTION.—When a per-
2 son is convicted of a violation of subsection (a), the court
3 in its judgment of conviction shall, in addition to any pen-
4 alty provided, order the forfeiture and destruction or other
5 disposition of all unauthorized copies of motion pictures
6 or other audiovisual works protected under title 17,
7 United States Code, or parts thereof, and any audiovisual
8 recording devices or other equipment used in connection
9 with the offense.

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

17 “(d) VICTIM IMPACT STATEMENT.—

18 “(1) IN GENERAL.—During the preparation of
19 the presentence report pursuant to rule 32(e) of the
20 Federal Rules of Criminal Procedure, victims of an
21 offense under this section shall be permitted to sub-
22 mit to the probation officer a victim impact state-
23 ment that identifies the victim of the offense and the
24 extent and scope of the injury and loss suffered by

1 the victim, including the estimated economic impact
2 of the offense on that victim.

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

5 “(A) producers and sellers of legitimate
6 works affected by conduct involved in the of-
7 fense;

8 “(B) holders of intellectual property rights
9 in the works described in subparagraph (A);
10 and

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

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

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

20 “(2) AUDIOVISUAL RECORDING DEVICE.—The
21 term ‘audiovisual recording device’ means a digital
22 or analog photographic or video camera, or any
23 other technology capable of enabling the recording or
24 transmission of a copyrighted motion picture or
25 other audiovisual work, or any part thereof, regard-

1 less of whether audiovisual recording is the sole or
2 primary purpose of the device.

3 ~~“(3) MOTION PICTURE EXHIBITION FACILITY.—~~

4 The term ‘motion picture exhibition facility’ means
5 any theater, screening room, lobby, indoor or out-
6 door screening venue, ballroom, or other premises
7 where copyrighted motion pictures or other audio-
8 visual works are publicly exhibited, regardless of
9 whether an admission fee is charged.”.

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

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

14 **SEC. 4. CRIMINAL INFRINGEMENT OF A COMMERCIAL**
15 **PRERELEASE COPYRIGHTED WORK.**

16 Section 2319 of title 18, United States Code, is
17 amended—

18 (1) by redesignating subsection (e) as sub-
19 section (f); and

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

21 “(e)(1) For purposes of subsections (b) and (e) of
22 this section and of section 506(a) of title 17, United
23 States Code, in the case of a computer program, a non-
24 dramatic musical work, a motion picture or other audio-

1 visual work, or a sound recording protected under title 17,
2 United States Code, that is being prepared for commercial
3 distribution, it shall be conclusively presumed that a per-
4 son distributed at least 10 copies or phonorecords of the
5 work, and that such copies or phonorecords have a total
6 retail value of more than \$2,500, if that person—

7 “(A) distributes such work by making it avail-
8 able on a computer network accessible to members
9 of the public who are able to reproduce the work
10 through such access without the express consent of
11 the copyright owner; and

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

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

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

21 “(B) in the case of a motion picture, protected
22 under title 17, United States Code, when at the time
23 of unauthorized distribution, the work had been
24 made available for viewing in motion picture exhi-
25 bition facilities, but had not been made available to

1 the general public in the United States in a format
 2 intended to permit viewing outside motion picture
 3 exhibition facilities as defined in section 2319B.”.

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

6 Section 504(b) of title 17, United States Code, is
 7 amended—

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

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

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

12 “(2) DAMAGE FOR PRERELEASE INFRINGE-
 13 MENT.—

14 “(A) IN GENERAL.—In the case of a com-
 15 puter program, a non-dramatic musical work, a
 16 motion picture or other audiovisual work, or a
 17 sound recording protected under title 17,
 18 United States Code, that is being prepared for
 19 commercial distribution, actual damages shall
 20 be presumed conclusively to be no less than
 21 \$2,500 per infringement, if a person—

22 “(i) distributes such work by making
 23 it available on a computer network acces-
 24 sible to members of the public who are able
 25 to reproduce the work through such access

1 without the express consent of the copy-
2 right owner; and

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

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

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

15 “(ii) in the case of a motion picture,
16 protected under this title, when at the time
17 of unauthorized distribution, the work had
18 been made available for viewing in motion
19 picture exhibition facilities, but had not
20 been made available to the general public
21 in the United States in a format intended
22 to permit viewing outside motion picture
23 exhibition facilities as defined in section
24 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.

6 *Strike all after the enacting clause and insert the fol-
7 lowing:*

8 **SECTION 1. SHORT TITLE.**

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

11 **SEC. 2. CONGRESSIONAL FINDINGS.**

12 *Congress finds the following:*

13 *(1) Intellectual property—*

14 *(A) represents the ideas, imagination and
15 creativity needed to innovate long before a prod-
16 uct is brought to market;*

17 *(B) is fundamental to the continued eco-
18 nomic, social, and cultural development of soci-
19 ety; and*

20 *(C) deserves the protection of our laws.*

21 *(2) Music, film, software, and all other forms of
22 intellectual property represent one of the strongest
23 and most significant sectors of the United States
24 economy, as demonstrated by the fact that these in-
25 dustries—*

1 (A) accounted for more than 5 percent of
2 the United States Gross Domestic Product, or
3 \$535,100,000,000 in 2001;

4 (B) represent almost 6 percent of all United
5 States employment; and

6 (C) led all major industry sectors in foreign
7 sales and exports in 2001.

8 (3) In an attempt to combat the growing use of
9 the Internet and technology for the illegal reproduc-
10 tion and distribution of copyrighted materials, Con-
11 gress unanimously passed and President Clinton
12 signed the “No Electronic Theft (NET) Act” in 1997.
13 The NET Act is designed to strengthen copyright and
14 trademark laws and to permit the prosecution of in-
15 dividuals in cases involving large-scale illegal repro-
16 duction or distribution of copyrighted works where the
17 infringers act willfully.

18 (4) Under the No Electronic Theft (NET) Act’s
19 economic harm requirement, investigations by law en-
20 forcement of copyright infringements are particularly
21 resource intensive and pose significant challenges. In
22 the interest of broader deterrence and in order to fa-
23 cilitate the prosecution of particularly egregious copy-
24 right violations, it is important to recognize that a

1 *significant level of economic harm can be reached by*
2 *the distribution of prerelease commercial works.*

3 (5) *The use of camcorders and other audiovisual*
4 *recording devices in movie theaters to make illegal*
5 *copies of films is posing a serious threat to the motion*
6 *picture industry. According to a recent industry*
7 *study, 92.4 percent of the first copies of movies avail-*
8 *able for download on the Internet originate from*
9 *camcorders.*

10 (6) *Given the difficulty of enforcement, online*
11 *theft of music, film, software, and all forms of intel-*
12 *lectual property continues to rise. The negative effects*
13 *on this large segment of the United States economy*
14 *are significant, as exemplified by almost a 31 percent*
15 *drop in sales for the music industry from the middle*
16 *of 2000 to the middle of 2003.*

17 (7) *Federal legislation is necessary and war-*
18 *ranted to combat the most egregious forms of online*
19 *theft of intellectual property and its significant, nega-*
20 *tive economic impact on the United States economy*
21 *because—*

22 (A) *Article 1, section 8 of the United States*
23 *Constitution gives Congress the power “[t]o pro-*
24 *mote the Progress of Science and useful Arts, by*
25 *securing for limited Times to Authors and In-*

1 *ventors the exclusive Right to their respective*
 2 *Writings and Discoveries,” as well as the power*
 3 *“[t]o regulate Commerce with foreign nations,*
 4 *and among the several States.”;*

5 *(B) the importance of the music, film, soft-*
 6 *ware and other intellectual property-based indus-*
 7 *tries to the overall health of the United States*
 8 *economy is well documented and significant; and*

9 *(C) theft and unauthorized distribution of*
 10 *intellectual property across State and inter-*
 11 *national lines occurs on a regular basis.*

12 **SEC. 3. CRIMINAL PENALTIES FOR UNAUTHORIZED RE-**
 13 **CORDING OF MOTION PICTURES IN A MOTION**
 14 **PICTURE EXHIBITION FACILITY.**

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

18 **“§2319B. Unauthorized recording of motion pictures**
 19 **in a motion picture exhibition facility**

20 *“(a) OFFENSE.—Any person who, without the author-*
 21 *ization of the copyright owner, knowingly uses or attempts*
 22 *to use an audiovisual recording device to transmit or make*
 23 *a copy of a motion picture or other audiovisual work pro-*
 24 *tected under title 17, or any part thereof, from a perform-*

1 *ance of such work in a motion picture exhibition facility,*
2 *shall—*

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

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

8 “(b) *FORFEITURE AND DESTRUCTION.—When a per-*
9 *son is convicted of a violation of subsection (a), the court*
10 *in its judgment of conviction shall, in addition to any pen-*
11 *alty provided, order the forfeiture and destruction or other*
12 *disposition of all unauthorized copies of motion pictures or*
13 *other audiovisual works protected under title 17, or parts*
14 *thereof, and any audiovisual recording devices or other*
15 *equipment used in connection with the offense.*

16 “(c) *AUTHORIZED ACTIVITIES.—This section does not*
17 *prevent any lawfully authorized investigative, protective, or*
18 *intelligence activity by an officer, agent, or employee of the*
19 *United States, a State, or a political subdivision of a State,*
20 *or a person acting under a contract with the United States,*
21 *a State, or a political subdivision of a State.*

22 “(d) *IMMUNITY FOR THEATERS.—With reasonable*
23 *cause, the owner or lessee of a facility where a motion pic-*
24 *ture is being exhibited, the authorized agent or employee*

1 of such owner or lessee, the licensor of the motion picture
2 being exhibited, or the agent or employee of such licensor—

3 “(1) may detain, in a reasonable manner and
4 for a reasonable time, any person suspected of a viola-
5 tion of this section for the purpose of questioning or
6 summoning a law enforcement officer; and

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

10 “(e) *VICTIM IMPACT STATEMENT.*—

11 “(1) *IN GENERAL.*—During the preparation of
12 the presentence report under rule 32(c) of the Federal
13 Rules of Criminal Procedure, victims of an offense
14 under this section shall be permitted to submit to the
15 probation officer a victim impact statement that iden-
16 tifies the victim of the offense and the extent and
17 scope of the injury and loss suffered by the victim, in-
18 cluding the estimated economic impact of the offense
19 on that victim.

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

22 “(A) producers and sellers of legitimate
23 works affected by conduct involved in the offense;

24 “(B) holders of intellectual property rights
25 in the works described in subparagraph (A); and

1 “(C) *the legal representatives of such pro-*
2 *ducers, sellers, and holders.*

3 “(f) *DEFINITIONS.—In this section, the following defi-*
4 *initions shall apply:*

5 “(1) *TITLE 17 DEFINITIONS.—The terms ‘audio-*
6 *visual work’, ‘copy’, ‘copyright owner’, ‘motion pic-*
7 *ture’, ‘motion picture exhibition facility’, and ‘trans-*
8 *mit’ have, respectively, the meanings given those*
9 *terms in section 101 of title 17.*

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

18 “(b) *CLERICAL AMENDMENT.—The table of sections at*
19 *the beginning of chapter 113 of title 18, United States Code,*
20 *is amended by inserting after the item relating to section*
21 *2319A the following:*

“2319B. Unauthorized recording of motion pictures in a motion picture ex-
hibition facility.”.

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

1 *“The term ‘motion picture exhibition facility’ means*
 2 *a movie theater, screening room, or other venue that is being*
 3 *used primarily for the exhibition of a copyrighted motion*
 4 *picture, if such exhibition is open to the public or is made*
 5 *to an assembled group of viewers outside of a normal circle*
 6 *of a family and its social acquaintances.”.*

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

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

11 *“(a) CRIMINAL INFRINGEMENT.—*

12 *“(1) IN GENERAL.—Any person who willfully in-*
 13 *fringes a copyright shall be punished as provided*
 14 *under section 2319 of title 18, if the infringement was*
 15 *committed—*

16 *“(A) for purposes of commercial advantage*
 17 *or private financial gain;*

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

23 *“(C) by the distribution of a work being*
 24 *prepared for commercial distribution, by making*
 25 *it available on a computer network accessible to*

1 *members of the public, if such person knew or*
2 *should have known that the work was intended*
3 *for commercial distribution.*

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

8 “(3) *DEFINITION.*—*In this subsection, the term*
9 *‘work being prepared for commercial distribution’*
10 *means—*

11 “(A) *a computer program, a musical work,*
12 *a motion picture or other audiovisual work, or*
13 *a sound recording, if at the time of unauthorized*
14 *distribution—*

15 “(i) *the copyright owner has a reason-*
16 *able expectation of commercial distribution;*
17 *and*

18 “(ii) *the copies or phonorecords of the*
19 *work have not been commercially distrib-*
20 *uted; or*

21 “(B) *a motion picture, if at the time of un-*
22 *authorized distribution, the motion picture—*

23 “(i) *has been made available for view-*
24 *ing in a motion picture exhibition facility;*
25 *and*

1 “(ii) has not been made available in
2 copies for sale to the general public in the
3 United States in a format intended to per-
4 mit viewing outside a motion picture exhi-
5 bition facility.”.

6 (b) *CRIMINAL PENALTIES*.—Section 2319 of title 18,
7 *United States Code*, is amended—

8 (1) in subsection (a)—

9 (A) by striking “Whoever” and inserting
10 “Any person who”; and

11 (B) by striking “and (c) of this section”
12 and inserting “, (c), and (d)”;

13 (2) in subsection (b), by striking “section
14 506(a)(1)” and inserting “section 506(a)(1)(A)”;

15 (3) in subsection (c), by striking “section
16 506(a)(2) of title 17, *United States Code*” and insert-
17 ing “section 506(a)(1)(B) of title 17”;

18 (4) by redesignating subsections (d) and (e) as
19 subsections (e) and (f), respectively;

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

21 “(d) Any person who commits an offense under section
22 506(a)(1)(C) of title 17—

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

1 “(2) shall be imprisoned not more than 5 years,
2 fined under this title, or both, if the offense was com-
3 mitted for purposes of commercial advantage or pri-
4 vate financial gain;

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

8 “(4) shall be imprisoned not more than 10 years,
9 fined under this title, or both, if the offense is a sec-
10 ond or subsequent offense under paragraph (2).”;

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

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

14 (B) in paragraph (2), by striking the period
15 at the end and inserting a semicolon; and

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

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

19 “(4) the term ‘work being prepared for commer-
20 cial distribution’ has the meaning given the term in
21 section 506(a) of title 17.”.

1 **SEC. 5. CIVIL REMEDIES FOR INFRINGEMENT OF A WORK**
2 **BEING PREPARED FOR COMMERCIAL DIS-**
3 **TRIBUTION.**

4 (a) *PREREGISTRATION.*—Section 408 of title 17,
5 United States Code, is amended by adding at the end the
6 following:

7 “(f) *PREREGISTRATION OF WORKS BEING PREPARED*
8 *FOR COMMERCIAL DISTRIBUTION.*—

9 “(1) *RULEMAKING.*—Not later than 180 days
10 after the date of enactment of this Act, the Register
11 of Copyrights shall issue regulations to establish pro-
12 cedures for preregistration of a work that is being
13 prepared for commercial distribution and has not
14 been published.

15 “(2) *CLASS OF WORKS.*—The regulations estab-
16 lished under paragraph (1) shall permit
17 preregistration for any work that is in a class of
18 works that the Register determines has had a history
19 of infringement prior to authorized commercial dis-
20 tribution.

21 “(3) *APPLICATION FOR REGISTRATION.*—Not
22 later than 3 months after the first publication of the
23 work, the applicant shall submit to the Copyright Of-
24 fice—

25 “(A) an application for registration of the
26 work;

1 “(B) a deposit; and

2 “(C) the applicable fee.

3 “(4) *EFFECT OF UNTIMELY APPLICATION.*—An
4 *action for infringement under this chapter shall be*
5 *dismissed, and no award of statutory damages or at-*
6 *torney fees shall be made for a preregistered work, if*
7 *the items described in paragraph 3 are not submitted*
8 *to the Copyright Office in proper form within the ear-*
9 *lier of—*

10 “(A) 3 months after the first publication of
11 *the work; or*

12 “(B) 1 month after the copyright owner has
13 *learned of the infringement.”.*

14 (b) *INFRINGEMENT ACTIONS.*—Section 411(a) of title
15 17, United States Code, is amended by inserting
16 “preregistration or” after “shall be instituted until”.

17 (c) *EXCLUSION.*—Section 412 of title 17, United States
18 Code, is amended by inserting “, an action for infringement
19 of the copyright of a work that has been preregistered under
20 section 408(f) before the commencement of the infringe-
21 ment,” after “section 106A(a)”.

22 **SEC. 6. FEDERAL SENTENCING GUIDELINES.**

23 (a) *REVIEW AND AMENDMENT.*—Not later than 180
24 days after the date of enactment of this Act, the United
25 States Sentencing Commission, pursuant to its authority

1 *under section 994 of title 28, United States Code, and in*
2 *accordance with this section, shall review and, if appro-*
3 *priate, amend the Federal sentencing guidelines and policy*
4 *statements applicable to persons convicted of intellectual*
5 *property rights crimes, including any offense under—*

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

8 (2) *section 2318, 2319, 2319A, 2319B, or 2320*
9 *of title 18, United States Code.*

10 (b) *AUTHORIZATION.—The United States Sentencing*
11 *Commission may amend the Federal sentencing guidelines*
12 *in accordance with the procedures set forth in section 21(a)*
13 *of the Sentencing Act of 1987 (28 U.S.C. 994 note) as*
14 *though the authority under that section had not expired.*

15 (c) *RESPONSIBILITIES OF UNITED STATES SEN-*
16 *TENCING COMMISSION.—In carrying out this subsection, the*
17 *United States Sentencing Commission shall—*

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

23 (2) *determine whether to provide a sentencing*
24 *enhancement for those convicted of the offenses de-*
25 *scribed in subsection (a), if the conduct involves the*

1 *display, performance, publication, reproduction, or*
2 *distribution of a copyrighted work before it has been*
3 *authorized by the copyright owner, whether in the*
4 *media format used by the infringing party or in any*
5 *other media format;*

6 (3) *determine whether the scope of “uploading”*
7 *set forth in application note 3 of section 2B5.3 of the*
8 *Federal sentencing guidelines is adequate to address*
9 *the loss attributable to people who broadly distribute*
10 *copyrighted works without authorization over the*
11 *Internet; and*

12 (4) *determine whether the sentencing guidelines*
13 *and policy statements applicable to the offenses de-*
14 *scribed in subsection (a) adequately reflect any harm*
15 *to victims from copyright infringement if law enforce-*
16 *ment authorities cannot determine how many times*
17 *copyright material has been reproduced or distrib-*
18 *uted.*

19 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

20 *There are authorized to be appropriated to the Depart-*
21 *ment of Justice \$5,000,000 for each of the fiscal years 2005,*
22 *2006, 2007, 2008, and 2009 to prosecute violations of intel-*
23 *lectual property rights as set forth under sections 2318,*
24 *2319, 2319A, 2319B, and 2320 of title 18, United States*
25 *Code.*

Calendar No. 482

108TH CONGRESS
2D SESSION

S. 1932

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.

APRIL 29, 2004

Reported with an amendment