

108TH CONGRESS  
2D SESSION

# S. 3021

To provide for the protection of intellectual property rights, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 20, 2004

Mr. HATCH (for himself and Mr. LEAHY) introduced the following bill; which was read twice

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## A BILL

To provide for the protection of intellectual property rights, 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 “Family Entertainment  
5 and Copyright Act of 2004”.

6 **TITLE I—ARTISTS’ RIGHTS AND**  
7 **THEFT PREVENTION**

8 **SEC. 101. SHORT TITLE.**

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

1 **SEC. 102. 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.—Any person who, without the au-  
10 thorization of the copyright owner, knowingly uses or at-  
11 tempts to use an audiovisual recording device to transmit  
12 or make a copy of a motion picture or other audiovisual  
13 work protected under title 17, or any part thereof, from  
14 a performance of such work in a motion picture exhibition  
15 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 The possession by a person of an audiovisual recording  
22 device in a motion picture exhibition facility may be con-  
23 sidered as evidence in any proceeding to determine wheth-  
24 er that person committed an offense under this subsection,  
25 but shall not, by itself, be sufficient to support a conviction  
26 of that person for such offense.

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, or  
7 parts thereof, and any audiovisual recording devices or  
8 other equipment used in connection with the offense.

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

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

22                   “(1) may detain, in a reasonable manner and  
23           for a reasonable time, any person suspected of a vio-  
24           lation of this section for the purpose of questioning  
25           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.

1       “(f) STATE LAW NOT PREEMPTED.—Nothing in this  
2 section may be construed to annul or limit any rights or  
3 remedies under the laws of any State.

4       “(g) DEFINITIONS.—In this section, the following  
5 definitions shall apply:

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

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

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

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

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

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

11 **SEC. 103. CRIMINAL INFRINGEMENT OF A WORK BEING**  
 12 **PREPARED FOR COMMERCIAL DISTRIBUTION.**  
 13 **TION.**

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

16 “(a) CRIMINAL INFRINGEMENT.—

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

21 “(A) for purposes of commercial advantage  
 22 or private financial gain;

23 “(B) by the reproduction or distribution,  
 24 including by electronic means, during any 180-  
 25 day period, of 1 or more copies or phonorecords

1 of 1 or more copyrighted works, which have a  
2 total retail value of more than \$1,000; or

3 “(C) by the distribution of a work being  
4 prepared for commercial distribution, by mak-  
5 ing it available on a computer network acces-  
6 sible to members of the public, if such person  
7 knew or should have known that the work was  
8 intended for commercial distribution.

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

13 “(3) DEFINITION.—In this subsection, the term  
14 ‘work being prepared for commercial distribution’  
15 means—

16 “(A) a computer program, a musical work,  
17 a motion picture or other audiovisual work, or  
18 a sound recording, if at the time of unauthor-  
19 ized distribution—

20 “(i) the copyright owner has a reason-  
21 able expectation of commercial distribu-  
22 tion; and

23 “(ii) the copies or phonorecords of the  
24 work have not been commercially distrib-  
25 uted; or

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

3           “(i) has been made available for view-  
4 ing in a motion picture exhibition facility;  
5 and

6           “(ii) has not been made available in  
7 copies for sale to the general public in the  
8 United States in a format intended to per-  
9 mit viewing outside a motion picture exhi-  
10 bition facility.”.

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

13       (1) in subsection (a)—

14           (A) by striking “Whoever” and inserting  
15 “Any person who”; and

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

18       (2) in subsection (b), by striking “section  
19 506(a)(1)” and inserting “section 506(a)(1)(A)”;

20       (3) in subsection (c), by striking “section  
21 506(a)(2) of title 17, United States Code” and in-  
22 serting “section 506(a)(1)(B) of title 17”;

23       (4) by redesignating subsections (d) and (e) as  
24 subsections (e) and (f), respectively;

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

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

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

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

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

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

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

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

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

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

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

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

4 **SEC. 104. CIVIL REMEDIES FOR INFRINGEMENT OF A WORK**  
5                           **BEING PREPARED FOR COMMERCIAL DIS-**  
6                           **TRIBUTION.**

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

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

12           “(1) RULEMAKING.—Not later than 180 days  
13 after the date of enactment of this subsection, the  
14 Register of Copyrights shall issue regulations to es-  
15 tablish procedures for preregistration of a work that  
16 is being prepared for commercial distribution and  
17 has not been published.

18           “(2) CLASS OF WORKS.—The regulations estab-  
19 lished under paragraph (1) shall permit  
20 preregistration for any work that is in a class of  
21 works that the Register determines has had a his-  
22 tory of infringement prior to authorized commercial  
23 distribution.

24           “(3) APPLICATION FOR REGISTRATION.—Not  
25 later than 3 months after a the first publication of

1 a work preregistered under this subsection, the ap-  
2 plicant shall submit to the Copyright Office—

3 “(A) an application for registration of the  
4 work;

5 “(B) a deposit; and

6 “(C) the applicable fee.

7 “(4) EFFECT OF UNTIMELY APPLICATION.—An  
8 action under this chapter for infringement of a  
9 preregistered work, in a case in which the infringe-  
10 ment commenced no later than 2 months after the  
11 first publication of the work shall be dismissed if the  
12 items described in paragraph (3) are not submitted  
13 to the Copyright Office in proper form within the  
14 earlier of—

15 “(A) 3 months after the first publication of  
16 the work; or

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

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

22 (c) EXCLUSION.—Section 412 of title 17, United  
23 States Code, is amended by inserting “, an action for in-  
24 fringement of the copyright of a work that has been  
25 preregistered under section 408(f) before the commence-

1 ment of the infringement and that has an effective date  
2 of registration not later than the earlier of 3 months after  
3 the first publication of the work or 1 month after the copy-  
4 right owner has learned of the infringement,” after “sec-  
5 tion 106A(a)”.

6 **SEC. 105. FEDERAL SENTENCING GUIDELINES.**

7 (a) REVIEW AND AMENDMENT.—Not later than 180  
8 days after the date of enactment of this Act, the United  
9 States Sentencing Commission, pursuant to its authority  
10 under section 994 of title 28, United States Code, and  
11 in accordance with this section, shall review and, if appro-  
12 priate, amend the Federal sentencing guidelines and policy  
13 statements applicable to persons convicted of intellectual  
14 property rights crimes, including any offense under—

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

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

19 (b) AUTHORIZATION.—The United States Sentencing  
20 Commission may amend the Federal sentencing guidelines  
21 in accordance with the procedures set forth in section  
22 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994 note)  
23 as though the authority under that section had not ex-  
24 pired.

1 (c) RESPONSIBILITIES OF UNITED STATES SEN-  
2 TENCING COMMISSION.—In carrying out this section, the  
3 United States Sentencing Commission shall—

4 (1) take all appropriate measures to ensure that  
5 the Federal sentencing guidelines and policy state-  
6 ments described in subsection (a) are sufficiently  
7 stringent to deter, and adequately reflect the nature  
8 of, intellectual property rights crimes;

9 (2) determine whether to provide a sentencing  
10 enhancement for those convicted of the offenses de-  
11 scribed in subsection (a), if the conduct involves the  
12 display, performance, publication, reproduction, or  
13 distribution of a copyrighted work before it has been  
14 authorized by the copyright owner, whether in the  
15 media format used by the infringing party or in any  
16 other media format;

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

23 (4) determine whether the sentencing guidelines  
24 and policy statements applicable to the offenses de-  
25 scribed in subsection (a) adequately reflect any harm

1 to victims from copyright infringement if law en-  
2 forcement authorities cannot determine how many  
3 times copyright material has been reproduced or dis-  
4 tributed.

5 **TITLE II—EXEMPTION FROM IN-**  
6 **FRINGEMENT FOR SKIPPING**  
7 **AUDIO AND VIDEO CONTENT**  
8 **IN MOTION PICTURES**

9 **SEC. 201. SHORT TITLE.**

10 This title may be cited as the “Family Movie Act of  
11 2004”.

12 **SEC. 202. EXEMPTION FROM INFRINGEMENT FOR SKIPPING**  
13 **AUDIO AND VIDEO CONTENT IN MOTION PIC-**  
14 **TURES.**

15 (a) IN GENERAL.—Section 110 of title 17, United  
16 States Code, is amended—

17 (1) in paragraph (9), by striking “and” after  
18 the semicolon at the end;

19 (2) in paragraph (10), by striking the period at  
20 the end and inserting “; and”;

21 (3) by inserting after paragraph (10) the fol-  
22 lowing:

23 “(11) the making imperceptible, by or at the di-  
24 rection of a member of a private household, of lim-  
25 ited portions of audio or video content of a motion

1 picture, during a performance in or transmitted to  
2 that household for private home viewing, from an  
3 authorized copy of the motion picture, or the cre-  
4 ation or provision of a computer program or other  
5 technology that enables such making imperceptible  
6 and that is designed and marketed for such use at  
7 the direction of a member of a private household, if  
8 no fixed copy of the altered version of the motion  
9 picture is created by such computer program or  
10 other technology.”; and

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

12 “For purposes of paragraph (11), the term ‘making  
13 imperceptible’ does not include the addition of audio or  
14 video content that is performed or displayed over or in  
15 place of existing content in a motion picture.

16 “Nothing in paragraph (11) shall be construed to  
17 imply further rights under section 106 of this title, or to  
18 have any effect on defenses or limitations on rights grant-  
19 ed under any other section of this title or under any other  
20 paragraph of this section.”.

21 (b) EXEMPTION FROM TRADEMARK INFRINGE-  
22 MENT.—Section 32 of the Trademark Act of 1946 (15  
23 U.S.C. 1114) is amended by adding at the end the fol-  
24 lowing:

1       “(3)(A) Any person who engages in the conduct de-  
2 scribed in paragraph (11) of section 110 of title 17,  
3 United States Code, and who complies with the require-  
4 ments set forth in that paragraph is not liable on account  
5 of such conduct for a violation of any right under this Act.  
6 This subparagraph does not preclude liability, nor shall  
7 it be construed to restrict the defenses or limitations on  
8 rights granted under this Act, of a person for conduct not  
9 described in paragraph (11) of section 110 of title 17,  
10 United States Code, even if that person also engages in  
11 conduct described in paragraph (11) of section 110 of  
12 such title.

13       “(B) A manufacturer, licensee, or licensor of tech-  
14 nology that enables the making of limited portions of  
15 audio or video content of a motion picture imperceptible  
16 as described in subparagraph (A) is not liable on account  
17 of such manufacture or license for a violation of any right  
18 under this Act, if such manufacturer, licensee, or licensor  
19 ensures that the technology provides a clear and con-  
20 spicuous notice at the beginning of each performance that  
21 the performance of the motion picture is altered from the  
22 performance intended by the director or copyright holder  
23 of the motion picture. The limitations on liability in sub-  
24 paragraph (A) and this subparagraph shall not apply to

1 a manufacturer, licensee, or licensor of technology that  
2 fails to comply with this paragraph.

3 “(C) The requirement under subparagraph (B) to  
4 provide notice shall apply only with respect to technology  
5 manufactured after the end of the 180-day period begin-  
6 ning on the date of the enactment of the Family Movie  
7 Act of 2004.

8 “(D) Any failure by a manufacturer, licensee, or li-  
9 censor of technology to qualify for the exemption under  
10 subparagraphs (A) and (B) shall not be construed to cre-  
11 ate an inference of liability for trademark infringement for  
12 any such party that engages in conduct described in para-  
13 graph (11) of section 110 of title 17, United States  
14 Code.”.

15 (c) DEFINITION.—In this section, the term “Trade-  
16 mark Act of 1946” means the Act entitled “An Act to  
17 provide for the registration and protection of trademarks  
18 used in commerce, to carry out the provisions of certain  
19 international conventions, and for other purposes”, ap-  
20 proved July 5, 1946 (15 U.S.C. 1051 et seq.).

1           **TITLE III—NATIONAL FILM**  
2                           **PRESERVATION**  
3       **Subtitle A—Reauthorization of the**  
4       **National Film Preservation Board**

5       **SEC. 301. SHORT TITLE.**

6           This subtitle may be cited as the “National Film  
7       Preservation Act of 2004”.

8       **SEC. 302. REAUTHORIZATION AND AMENDMENT.**

9           (a) DUTIES OF THE LIBRARIAN OF CONGRESS.—Sec-  
10       tion 103 of the National Film Preservation Act of 1996  
11       (2 U.S.C. 179m) is amended—

12                       (1) in subsection (b)—

13                               (A) by striking “film copy” each place that  
14                               term appears and inserting “film or other ap-  
15                               proved copy”;

16                               (B) by striking “film copies” each place  
17                               that term appears and inserting “film or other  
18                               approved copies”; and

19                               (C) in the third sentence, by striking  
20                               “copyrighted” and inserting “copyrighted, mass  
21                               distributed, broadcast, or published”; and

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

23           “(c) COORDINATION OF PROGRAM WITH OTHER  
24       COLLECTION, PRESERVATION, AND ACCESSIBILITY AC-  
25       TIVITIES.—In carrying out the comprehensive national

1 film preservation program for motion pictures established  
2 under the National Film Preservation Act of 1992, the  
3 Librarian, in consultation with the Board established pur-  
4 suant to section 104, shall—

5           “(1) carry out activities to make films included  
6           in the National Film registry more broadly acces-  
7           sible for research and educational purposes, and to  
8           generate public awareness and support of the Reg-  
9           istry and the comprehensive national film preserva-  
10          tion program;

11          “(2) review the comprehensive national film  
12          preservation plan, and amend it to the extent nec-  
13          essary to ensure that it addresses technological ad-  
14          vances in the preservation and storage of, and access  
15          to film collections in multiple formats; and

16          “(3) wherever possible, undertake expanded ini-  
17          tiatives to ensure the preservation of the moving  
18          image heritage of the United States, including film,  
19          videotape, television, and born digital moving image  
20          formats, by supporting the work of the National  
21          Audio-Visual Conservation Center of the Library of  
22          Congress, and other appropriate nonprofit archival  
23          and preservation organizations.”.

1 (b) NATIONAL FILM PRESERVATION BOARD.—Sec-  
2 tion 104 of the National Film Preservation Act of 1996  
3 (2 U.S.C. 179n) is amended—

4 (1) in subsection (a)(1) by striking “20” and  
5 inserting “22”;

6 (2) in subsection (a)(2) by striking “three” and  
7 inserting “5”;

8 (3) in subsection (d) by striking “11” and in-  
9 serting “12”; and

10 (4) by striking subsection (e) and inserting the  
11 following:

12 “(e) REIMBURSEMENT OF EXPENSES.—Members of  
13 the Board shall serve without pay, but may receive travel  
14 expenses, including per diem in lieu of subsistence, in ac-  
15 cordance with sections 5702 and 5703 of title 5, United  
16 States Code.”.

17 (c) NATIONAL FILM REGISTRY.—Section 106 of the  
18 National Film Preservation Act of 1996 (2 U.S.C. 179p)  
19 is amended by adding at the end the following:

20 “(e) NATIONAL AUDIO-VISUAL CONSERVATION CEN-  
21 TER.—The Librarian shall utilize the National Audio-Vis-  
22 ual Conservation Center of the Library of Congress at  
23 Culpeper, Virginia, to ensure that preserved films included  
24 in the National Film Registry are stored in a proper man-

1 ner, and disseminated to researchers, scholars, and the  
2 public as may be appropriate in accordance with—

3 “(1) title 17, United States Code; and

4 “(2) the terms of any agreements between the  
5 Librarian and persons who hold copyrights to such  
6 audiovisual works.”.

7 (d) USE OF SEAL.—Section 107 (a) of the National  
8 Film Preservation Act of 1996 (2 U.S.C. 179q(a)) is  
9 amended—

10 (1) in paragraph (1), by inserting “in any for-  
11 mat” after “or any copy”; and

12 (2) in paragraph (2), by striking “or film copy”  
13 and inserting “in any format”.

14 (e) EFFECTIVE DATE.—Section 113 of the National  
15 Film Preservation Act of 1996 (2 U.S.C. 179w) is amend-  
16 ed by striking “7” and inserting “12”.

17 **Subtitle B—Reauthorization of the**  
18 **National Film Preservation**  
19 **Foundation**

20 **SEC. 311. SHORT TITLE.**

21 This subtitle may be cited as the “National Film  
22 Preservation Foundation Reauthorization Act of 2004”.

23 **SEC. 312. REAUTHORIZATION AND AMENDMENT.**

24 (a) BOARD OF DIRECTORS.—Section 151703 of title  
25 36, United States Code, is amended—

1           (1) in subsection (b)(2)(A), by striking “nine”  
2           and inserting “12”; and

3           (2) in subsection (b)(4), by striking the second  
4           sentence and inserting “There shall be no limit to  
5           the number of terms to which any individual may be  
6           appointed.”.

7           (b) POWERS.—Section 151705 of title 36, United  
8           States Code, is amended in subsection (b) by striking  
9           “District of Columbia” and inserting “the jurisdiction in  
10          which the principal office of the corporation is located”.

11          (c) PRINCIPAL OFFICE.—Section 151706 of title 36,  
12          United States Code, is amended by inserting “, or another  
13          place as determined by the board of directors” after “Dis-  
14          trict of Columbia”.

15          (d) AUTHORIZATION OF APPROPRIATIONS.—Section  
16          151711 of title 36, United States Code, is amended by  
17          striking subsections (a) and (b) and inserting the fol-  
18          lowing:

19          “(a) AUTHORIZATION OF APPROPRIATIONS.—There  
20          are authorized to be appropriated to the Library of Con-  
21          gress amounts necessary to carry out this chapter, not to  
22          exceed \$530,000 for each of the fiscal years 2004 through  
23          2008. These amounts are to be made available to the cor-  
24          poration to match any private contributions (whether in

1 currency, services, or property) made to the corporation  
2 by private persons and State and local governments.

3 “(b) LIMITATION RELATED TO ADMINISTRATIVE EX-  
4 PENSES.—Amounts authorized under this section may not  
5 be used by the corporation for management and general  
6 or fundraising expenses as reported to the Internal Rev-  
7 enue Service as part of an annual information return re-  
8 quired under the Internal Revenue Code of 1986.”.

9 **TITLE IV—PRESERVATION OF**  
10 **ORPHAN WORKS**

11 **SEC. 401. SHORT TITLE.**

12 This title may be cited as the “Preservation of Or-  
13 phan Works Act”.

14 **SEC. 402. REPRODUCTION OF COPYRIGHTED WORKS BY LI-**  
15 **BRARIES AND ARCHIVES.**

16 Section 108(i) of title 17, United States Code, is  
17 amended by striking “(b) and (c)” and inserting “(b), (c),  
18 and (h)”.

1 **TITLE V—ANTICOUNTERFEIT-**  
 2 **ING PROVISIONS AND FRAUD-**  
 3 **ULENT ONLINE IDENTITY**  
 4 **SANCTIONS**

5 **Subtitle A—Anticounterfeiting**  
 6 **Provisions**

7 **SEC. 501. SHORT TITLE.**

8 This subtitle may be cited as the “Anticounterfeiting  
 9 Act of 2004”.

10 **SEC. 502. PROHIBITION AGAINST TRAFFICKING IN COUN-**  
 11 **TERFEIT COMPONENTS.**

12 (a) IN GENERAL.—Section 2318 of title 18, United  
 13 States Code, is amended—

14 (1) by striking the section heading and insert-  
 15 ing the following:

16 **“§ 2318. Trafficking in counterfeit labels, illicit labels,**  
 17 **or counterfeit documentation or pack-**  
 18 **aging”;**

19 (2) by striking subsection (a) and inserting the  
 20 following:

21 “(a) Whoever, in any of the circumstances described  
 22 in subsection (c), knowingly traffics in—

23 “(1) a counterfeit label or illicit label affixed to,  
 24 enclosing, or accompanying, or designed to be af-  
 25 fixed to, enclose, or accompany—

1 “(A) a phonorecord;

2 “(B) a copy of a computer program;

3 “(C) a copy of a motion picture or other  
4 audiovisual work;

5 “(D) a copy of a literary work;

6 “(E) a copy of a pictorial, graphic, or  
7 sculptural work;

8 “(F) a work of visual art; or

9 “(G) documentation or packaging; or

10 “(2) counterfeit documentation or packaging,

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

13 (3) in subsection (b)—

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

16 (B) in paragraph (3)—

17 (i) by striking “and ‘audiovisual work’  
18 have” and inserting the following: “‘audio-  
19 visual work’, ‘literary work’, ‘pictorial,  
20 graphic, or sculptural work’, ‘sound record-  
21 ing’, ‘work of visual art’, and ‘copyright  
22 owner’ have”; and

23 (ii) by striking the period at the end  
24 and inserting a semicolon; and

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

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

4                   “(A) that is used by the copyright owner  
5           to verify that a phonorecord, a copy of a com-  
6           puter program, a copy of a motion picture or  
7           other audiovisual work, a copy of a literary  
8           work, a copy of a pictorial, graphic, or sculp-  
9           tural work, a work of visual art, or documenta-  
10          tion or packaging is not counterfeit or infring-  
11          ing of any copyright; and

12                   “(B) that is, without the authorization of  
13          the copyright owner—

14                   “(i) distributed or intended for dis-  
15          tribution not in connection with the copy,  
16          phonorecord, or work of visual art to which  
17          such labeling component was intended to  
18          be affixed by the respective copyright  
19          owner; or

20                   “(ii) in connection with a genuine cer-  
21          tificate or licensing document, knowingly  
22          falsified in order to designate a higher  
23          number of licensed users or copies than  
24          authorized by the copyright owner, unless  
25          that certificate or document is used by the

1 copyright owner solely for the purpose of  
2 monitoring or tracking the copyright own-  
3 er's distribution channel and not for the  
4 purpose of verifying that a copy or phono-  
5 record is noninfringing;

6 “(5) the term ‘documentation or packaging’  
7 means documentation or packaging, in physical  
8 form, for a phonorecord, copy of a computer pro-  
9 gram, copy of a motion picture or other audiovisual  
10 work, copy of a literary work, copy of a pictorial,  
11 graphic, or sculptural work, or work of visual art;  
12 and

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

16 (4) in subsection (c)—

17 (A) by striking paragraph (3) and insert-  
18 ing the following:

19 “(3) the counterfeit label or illicit label is af-  
20 fixed to, encloses, or accompanies, or is designed to  
21 be affixed to, enclose, or accompany—

22 “(A) a phonorecord of a copyrighted sound  
23 recording or copyrighted musical work;

24 “(B) a copy of a copyrighted computer  
25 program;

1           “(C) a copy of a copyrighted motion pic-  
2           ture or other audiovisual work;

3           “(D) a copy of a literary work;

4           “(E) a copy of a pictorial, graphic, or  
5           sculptural work;

6           “(F) a work of visual art; or

7           “(G) copyrighted documentation or pack-  
8           aging; or”; and

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

11         (5) in subsection (d)—

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

14           (B) by inserting before the period at the  
15          end the following: “, and of any equipment, de-  
16          vice, or material used to manufacture, repro-  
17          duce, or assemble the counterfeit labels or illicit  
18          labels”.

19         (b) CIVIL REMEDIES.—Section 2318 of title 18,  
20         United States Code, is further amended by adding at the  
21         end the following:

22           “(f) CIVIL REMEDIES.—

23           “(1) IN GENERAL.—Any copyright owner who  
24          is injured, or is threatened with injury, by a viola-

1       tion of subsection (a) may bring a civil action in an  
2       appropriate United States district court.

3               “(2) DISCRETION OF COURT.—In any action  
4       brought under paragraph (1), the court—

5               “(A) may grant 1 or more temporary or  
6       permanent injunctions on such terms as the  
7       court determines to be reasonable to prevent or  
8       restrain a violation of subsection (a);

9               “(B) at any time while the action is pend-  
10       ing, may order the impounding, on such terms  
11       as the court determines to be reasonable, of any  
12       article that is in the custody or control of the  
13       alleged violator and that the court has reason-  
14       able cause to believe was involved in a violation  
15       of subsection (a); and

16              “(C) may award to the injured party—

17              “(i) reasonable attorney fees and  
18       costs; and

19              “(ii)(I) actual damages and any addi-  
20       tional profits of the violator, as provided in  
21       paragraph (3); or

22              “(II) statutory damages, as provided  
23       in paragraph (4).

24              “(3) ACTUAL DAMAGES AND PROFITS.—

1           “(A) IN GENERAL.—The injured party is  
2 entitled to recover—

3           “(i) the actual damages suffered by  
4 the injured party as a result of a violation  
5 of subsection (a), as provided in subpara-  
6 graph (B) of this paragraph; and

7           “(ii) any profits of the violator that  
8 are attributable to a violation of subsection  
9 (a) and are not taken into account in com-  
10 puting the actual damages.

11           “(B) CALCULATION OF DAMAGES.—The  
12 court shall calculate actual damages by multi-  
13 plying—

14           “(i) the value of the phonorecords,  
15 copies, or works of visual art which are, or  
16 are intended to be, affixed with, enclosed  
17 in, or accompanied by any counterfeit la-  
18 bels, illicit labels, or counterfeit docu-  
19 mentation or packaging, by

20           “(ii) the number of phonorecords, cop-  
21 ies, or works of visual art which are, or are  
22 intended to be, affixed with, enclosed in, or  
23 accompanied by any counterfeit labels, il-  
24 licit labels, or counterfeit documentation or  
25 packaging.

1           “(C) DEFINITION.—For purposes of this  
2 paragraph, the ‘value’ of a phonorecord, copy,  
3 or work of visual art is—

4           “(i) in the case of a copyrighted  
5 sound recording or copyrighted musical  
6 work, the retail value of an authorized pho-  
7 norecord of that sound recording or musi-  
8 cal work;

9           “(ii) in the case of a copyrighted com-  
10 puter program, the retail value of an au-  
11 thorized copy of that computer program;

12           “(iii) in the case of a copyrighted mo-  
13 tion picture or other audiovisual work, the  
14 retail value of an authorized copy of that  
15 motion picture or audiovisual work;

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

19           “(v) in the case of a pictorial, graphic,  
20 or sculptural work, the retail value of an  
21 authorized copy of that work; and

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

24           “(4) STATUTORY DAMAGES.—The injured party  
25 may elect, at any time before final judgment is ren-

1       dered, to recover, instead of actual damages and  
2       profits, an award of statutory damages for each vio-  
3       lation of subsection (a) in a sum of not less than  
4       \$2,500 or more than \$25,000, as the court considers  
5       appropriate.

6               “(5) SUBSEQUENT VIOLATION.—The court may  
7       increase an award of damages under this subsection  
8       by 3 times the amount that would otherwise be  
9       awarded, as the court considers appropriate, if the  
10      court finds that a person has subsequently violated  
11      subsection (a) within 3 years after a final judgment  
12      was entered against that person for a violation of  
13      that subsection.

14              “(6) LIMITATION ON ACTIONS.—A civil action  
15      may not be commenced under this subsection unless  
16      it is commenced within 3 years after the date on  
17      which the claimant discovers the violation of sub-  
18      section (a).”.

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

“2318. Trafficking in counterfeit labels, illicit labels, or counterfeit documenta-  
tion or packaging.”.

1 **SEC. 503. OTHER RIGHTS NOT AFFECTED.**

2 (a) CHAPTERS 5 AND 12 OF TITLE 17; ELECTRONIC  
3 TRANSMISSIONS.—The amendments made by this sub-  
4 title—

5 (1) shall not enlarge, diminish, or otherwise af-  
6 fect any liability or limitations on liability under sec-  
7 tions 512, 1201, or 1202 of title 17, United States  
8 Code; and

9 (2) shall not be construed to apply—

10 (A) in any case, to the electronic trans-  
11 mission of a genuine certificate, licensing docu-  
12 ment, registration card, similar labeling compo-  
13 nent, or documentation or packaging described  
14 in paragraph (4) or (5) of section 2318(b) of  
15 title 18, United States Code, as amended by  
16 this subtitle; and

17 (B) in the case of a civil action under sec-  
18 tion 2318(f) of title 18, United States Code, to  
19 the electronic transmission of a counterfeit label  
20 or counterfeit documentation or packaging de-  
21 fined in paragraph (1) or (6) of section 2318(b)  
22 of title 18, United States Code.

23 (b) FAIR USE.—The amendments made by this sub-  
24 title shall not affect the fair use, under section 107 of title  
25 17, United States Code, of a genuine certificate, licensing  
26 document, registration card, similar labeling component,

1 or documentation or packaging described in paragraph (4)  
2 or (5) of section 2318(b) of title 18, United States Code,  
3 as amended by this subtitle.

## 4 **Subtitle B—Fraudulent Online** 5 **Identity Sanctions**

### 6 **SEC. 511. SHORT TITLE.**

7 This subtitle may be cited as the “Fraudulent Online  
8 Identity Sanctions Act”.

### 9 **SEC. 512. AMENDMENT TO TRADEMARK ACT OF 1946.**

10 Section 35 of the Act entitled “An Act to provide for  
11 the registration and protection of trademarks used in com-  
12 merce, to carry out the provisions of certain international  
13 conventions, and for other purposes”, approved July 5,  
14 1946 (commonly referred to as the “Trademark Act of  
15 1946”; 15 U.S.C. 1117), is amended by adding at the end  
16 the following new subsection:

17 “(e) In the case of a violation referred to in this sec-  
18 tion, it shall be a rebuttable presumption that the violation  
19 is willful for purposes of determining relief if the violator,  
20 or a person acting in concert with the violator, knowingly  
21 provided or knowingly caused to be provided materially  
22 false contact information to a domain name registrar, do-  
23 main name registry, or other domain name registration  
24 authority in registering, maintaining, or renewing a do-  
25 main name used in connection with the violation. Nothing

1 in this subsection limits what may be considered a willful  
2 violation under this section.”.

3 **SEC. 513. AMENDMENT TO TITLE 17, UNITED STATES CODE.**

4 Section 504(e) of title 17, United States Code, is  
5 amended by adding at the end the following new para-  
6 graph:

7 “(3)(A) In a case of infringement, it shall be a  
8 rebuttable presumption that the infringement was  
9 committed willfully for purposes of determining re-  
10 lief if the violator, or a person acting in concert with  
11 the violator, knowingly provided or knowingly caused  
12 to be provided materially false contact information  
13 to a domain name registrar, domain name registry,  
14 or other domain name registration authority in reg-  
15 istering, maintaining, or renewing a domain name  
16 used in connection with the infringement.

17 “(B) Nothing in this paragraph limits what  
18 may be considered willful infringement under this  
19 subsection.

20 “(C) For purposes of this paragraph, the term  
21 ‘domain name’ has the meaning given that term in  
22 section 45 of the Act entitled ‘An Act to provide for  
23 the registration and protection of trademarks used  
24 in commerce, to carry out the provisions of certain  
25 international conventions, and for other purposes’

1 approved July 5, 1946 (commonly referred to as the  
2 ‘Trademark Act of 1946’; 15 U.S.C. 1127).”.

3 **SEC. 514. AMENDMENT TO TITLE 18, UNITED STATES CODE.**

4 (a) SENTENCING ENHANCEMENT.—Section 3559 of  
5 title 18, United States Code, is amended by adding at the  
6 end the following:

7 “(f)(1) If a defendant who is convicted of a felony  
8 offense (other than an offense of which an element is the  
9 false registration of a domain name) knowingly falsely reg-  
10 istered a domain name and knowingly used that domain  
11 name in the course of that offense, the maximum impris-  
12 onment otherwise provided by law for that offense shall  
13 be doubled or increased by 7 years, whichever is less.

14 “(2) As used in this subsection—

15 “(A) the term ‘falsely registers’ means registers  
16 in a manner that prevents the effective identification  
17 of or contact with the person who registers; and

18 “(B) the term ‘domain name’ has the meaning  
19 given that term in section 45 of the Act entitled ‘An  
20 Act to provide for the registration and protection of  
21 trademarks used in commerce, to carry out the pro-  
22 visions of certain international conventions, and for  
23 other purposes’ approved July 5, 1946 (commonly  
24 referred to as the ‘Trademark Act of 1946’; (15  
25 U.S.C. 1127).”.

1 (b) UNITED STATES SENTENCING COMMISSION.—

2 (1) DIRECTIVE.—Pursuant to its authority  
3 under section 994(p) of title 28, United States Code,  
4 and in accordance with this section, the United  
5 States Sentencing Commission shall review and  
6 amend the sentencing guidelines and policy state-  
7 ments to ensure that the applicable guideline range  
8 for a defendant convicted of any felony offense car-  
9 ried out online that may be facilitated through the  
10 use of a domain name registered with materially  
11 false contact information is sufficiently stringent to  
12 deter commission of such acts.

13 (2) REQUIREMENTS.—In carrying out this sub-  
14 section, the Sentencing Commission shall provide  
15 sentencing enhancements for anyone convicted of  
16 any felony offense furthered through knowingly pro-  
17 viding or knowingly causing to be provided materi-  
18 ally false contact information to a domain name reg-  
19 istrar, domain name registry, or other domain name  
20 registration authority in registering, maintaining, or  
21 renewing a domain name used in connection with the  
22 violation.

23 (3) DEFINITION.—For purposes of this sub-  
24 section, the term “domain name” has the meaning  
25 given that term in section 45 of the Act entitled “An

1 Act to provide for the registration and protection of  
2 trademarks used in commerce, to carry out the pro-  
3 visions of certain international conventions, and for  
4 other purposes”, approved July 5, 1946 (commonly  
5 referred to as the “Trademark Act of 1946”; 15  
6 U.S.C. 1127).

7 **SEC. 515. CONSTRUCTION.**

8 (a) **FREE SPEECH AND PRESS.**—Nothing in this sub-  
9 title shall enlarge or diminish any rights of free speech  
10 or of the press for activities related to the registration or  
11 use of domain names.

12 (b) **DISCRETION OF COURTS IN DETERMINING RE-**  
13 **LIEF.**—Nothing in this subtitle shall restrict the discretion  
14 of a court in determining damages or other relief to be  
15 assessed against a person found liable for the infringement  
16 of intellectual property rights.

17 (c) **DISCRETION OF COURTS IN DETERMINING**  
18 **TERMS OF IMPRISONMENT.**—Nothing in this subtitle shall  
19 be construed to limit the discretion of a court to determine  
20 the appropriate term of imprisonment for an offense under  
21 applicable law.

1 **TITLE VI—COOPERATIVE RE-**  
2 **SEARCH AND TECHNOLOGY**  
3 **ENHANCEMENT**

4 **SEC. 601. SHORT TITLE.**

5 This title may be cited as the “Cooperative Research  
6 and Technology Enhancement (CREATE) Act of 2004”.

7 **SEC. 602. COLLABORATIVE EFFORTS ON CLAIMED INVEN-**  
8 **TIONS.**

9 Section 103(e) of title 35, United States Code, is  
10 amended to read as follows:

11 “(c)(1) Subject matter developed by another person,  
12 which qualifies as prior art only under one or more of sub-  
13 sections (e), (f), and (g) of section 102 of this title, shall  
14 not preclude patentability under this section where the  
15 subject matter and the claimed invention were, at the time  
16 the claimed invention was made, owned by the same per-  
17 son or subject to an obligation of assignment to the same  
18 person.

19 “(2) For purposes of this subsection, subject matter  
20 developed by another person and a claimed invention shall  
21 be deemed to have been owned by the same person or sub-  
22 ject to an obligation of assignment to the same person if—

23 “(A) the claimed invention was made by or on  
24 behalf of parties to a joint research agreement that

1 was in effect on or before the date the claimed in-  
2 vention was made;

3 “(B) the claimed invention was made as a re-  
4 sult of activities undertaken within the scope of the  
5 joint research agreement; and

6 “(C) the application for patent for the claimed  
7 invention discloses or is amended to disclose the  
8 names of the parties to the joint research agree-  
9 ment.

10 “(3) For purposes of paragraph (2), the term ‘joint  
11 research agreement’ means a written contract, grant, or  
12 cooperative agreement entered into by two or more per-  
13 sons or entities for the performance of experimental, devel-  
14 opmental, or research work in the field of the claimed in-  
15 vention.”.

16 **SEC. 603. EFFECTIVE DATE.**

17 (a) IN GENERAL.—The amendments made by this  
18 title shall apply to any patent granted on or after the date  
19 of the enactment of this Act.

20 (b) SPECIAL RULE.—The amendments made by this  
21 title shall not affect any final decision of a court or the  
22 United States Patent and Trademark Office rendered be-  
23 fore the date of the enactment of this Act, and shall not  
24 affect the right of any party in any action pending before  
25 the United States Patent and Trademark Office or a court

1 on the date of the enactment of this Act to have that par-  
2 ty's rights determined on the basis of the provisions of  
3 title 35, United States Code, in effect on the day before  
4 the date of the enactment of this Act.

○