

108TH CONGRESS
2D SESSION

H. R. 4077

To enhance criminal enforcement of the copyright laws, to educate the public about the application of copyright law to the Internet, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 31, 2004

Mr. SMITH of Texas (for himself, Mr. BERMAN, and Mr. CONYERS) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To enhance criminal enforcement of the copyright laws, to educate the public about the application of copyright law to the Internet, 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 “Piracy Deterrence and
5 Education Act of 2004”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds as follows:

8 (1) The Internet, while changing the way our
9 society communicates, has also changed the nature

1 of many crimes, including the theft of intellectual
2 property.

3 (2) Trafficking in infringing copyrighted works
4 through increasingly sophisticated electronic means,
5 including peer-to-peer file trading networks, Internet
6 chat rooms, and news groups, threatens lost jobs,
7 lost income for creators, lower tax revenue, and
8 higher prices for honest purchasers.

9 (3) The most popular peer-to-peer file trading
10 software programs have been downloaded by com-
11 puter users over 200,000,000 times. At any one time
12 there are over 3,000,000 users simultaneously using
13 just one of these services. Each month, on average,
14 over 2,300,000,000 digital-media files are trans-
15 ferred among users of peer-to-peer systems.

16 (4) Many computer users simply believe that
17 they will not be caught or prosecuted for their con-
18 duct.

19 (5) The security and privacy threats posed by
20 certain peer-to-peer networks extend beyond users
21 inadvertently enabling a hacker to access files. Mil-
22 lions of copies of one of the most popular peer-to-
23 peer networks contain software that could allow an
24 independent company to take over portions of users'

1 computers and Internet connections and has the ca-
2 pacity to keep track of users' online habits.

3 (6) In light of these considerations, Federal law
4 enforcement agencies should actively pursue crimi-
5 nals who steal the copyrighted works of others, and
6 prevent such activity through enforcement and
7 awareness. The public should be educated about the
8 security and privacy risks associated with being con-
9 nected to certain peer-to-peer networks.

10 **SEC. 3. DETERRENCE AND COORDINATION.**

11 (a) PROGRAM; SHARING OF INFORMATION.—The Di-
12 rector of the Federal Bureau of Investigation, in consulta-
13 tion with the Register of Copyrights, shall—

14 (1) develop a program based on providing of in-
15 formation and notice to deter members of the public
16 from committing acts of copyright infringement
17 through the Internet; and

18 (2) facilitate the sharing among law enforce-
19 ment agencies, Internet service providers, and copy-
20 right owners of information concerning acts of copy-
21 right infringement described in paragraph (1).

22 The program under paragraph (1) shall include issuing
23 appropriate warnings to individuals engaged in acts of
24 copyright infringement described in paragraph (1) that
25 they may be subject to criminal prosecution.

1 (b) CONSTRUCTION.—Nothing in this section shall be
2 construed to expand the investigative or enforcement pow-
3 ers of the Federal Bureau of Investigation nor to affect
4 the duty, if any, of Internet service providers to monitor
5 their service, affirmatively seek facts indicating infringing
6 activity, or share private information about the users of
7 their systems.

8 (c) PROHIBITION ON USE OF CERTAIN FUNDS.—The
9 program created under subsection (a)(1) shall not use
10 funds or resources of the Department of Justice allocated
11 for criminal investigation or prosecution.

12 **SEC. 4. DESIGNATION AND TRAINING OF AGENTS IN COM-**
13 **PUTER HACKING AND INTELLECTUAL PROP-**
14 **ERTY UNITS.**

15 (a) DESIGNATION OF AGENTS IN CHIPS UNITS.—
16 The Attorney General shall ensure that any unit in the
17 Department of Justice responsible for investigating com-
18 puter hacking or responsible for investigating intellectual
19 property crimes is assigned at least one agent to support
20 such unit for the purpose of investigating crimes relating
21 to the theft of intellectual property.

22 (b) TRAINING.—The Attorney General shall ensure
23 that each agent assigned under subsection (a) has received
24 training in the investigation and enforcement of intellec-
25 tual property crimes.

1 **SEC. 5. EDUCATION PROGRAM.**

2 (a) ESTABLISHMENT.—There shall be established
3 within the Office of the Associate Attorney General of the
4 United States an Internet Use Education Program.

5 (b) PURPOSE.—The purpose of the Internet Use
6 Education Program shall be to—

7 (1) educate the general public concerning the
8 value of copyrighted works and the effects of the
9 theft of such works on those who create them; and

10 (2) educate the general public concerning the
11 privacy, security, and other risks of using the Inter-
12 net to obtain illegal copies of copyrighted works.

13 (c) SECTOR SPECIFIC MATERIALS.—The Internet
14 Use Educational Program shall, to the extent appropriate,
15 develop materials appropriate to Internet users in dif-
16 ferent sectors of the general public where criminal copy-
17 right infringement is a concern. The Attorney General
18 shall consult with appropriate interested parties in devel-
19 oping such sector-specific materials.

20 (d) CONSULTATIONS.—The Attorney General shall
21 consult with the Register of Copyrights and the Secretary
22 of Commerce in developing the Internet Use Education
23 Program under this section.

24 (e) PROHIBITION ON USE OF CERTAIN FUNDS.—The
25 program created under this section shall not use funds or

1 resources of the Department of Justice allocated for crimi-
2 nal investigation or prosecution.

3 **SEC. 6. ACTIONS BY THE GOVERNMENT OF THE UNITED**
4 **STATES.**

5 Section 411(a) of title 17, United States Code, is
6 amended in the first sentence by striking “Except for”
7 and inserting “Except for an action brought by the Gov-
8 ernment of the United States or by any agency or instru-
9 mentality thereof, or”.

10 **SEC. 7. AUTHORIZED APPROPRIATIONS.**

11 There are authorized to be appropriated to the De-
12 partment of Justice for fiscal year 2005 not less than
13 \$15,000,000 for the investigation and prosecution of viola-
14 tions of title 17, United States Code.

15 **SEC. 8. PREVENTION OF SURREPTITIOUS RECORDING IN**
16 **MOTION PICTURE THEATERS.**

17 (a) SHORT TITLE.—This section may be cited as the
18 “Artists’ Rights and Theft Prevention Act of 2004” or
19 the “ART Act”.

20 (b) CRIMINAL PENALTIES FOR UNAUTHORIZED RE-
21 CORDING OF MOTION PICTURES IN A MOTION PICTURE
22 THEATER.—

23 (1) IN GENERAL.—Chapter 113 of title 18,
24 United States Code, is amended by adding after sec-
25 tion 2319A the following new section:

1 **“§ 2319B. Unauthorized recording of motion pictures**
2 **in a motion picture theater**

3 “(a) OFFENSE.—Whoever, without the authorization
4 of the copyright owner, knowingly uses or attempts to use
5 an audiovisual recording device in a motion picture theater
6 to transmit or make a copy of a motion picture or other
7 audiovisual work protected under title 17, or any part
8 thereof, in a motion picture theater shall—

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

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

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

22 “(c) AUTHORIZED ACTIVITIES.—This section does
23 not prevent any lawfully authorized investigative, protec-
24 tive, or intelligence activity by an officer, agent, or em-
25 ployee of the United States, a State, or a political subdivi-
26 sion of a State, or by a person acting pursuant to a con-

1 tract with the United States, a State, or a political sub-
2 division of a State.

3 “(d) VICTIM IMPACT STATEMENT.—

4 “(1) IN GENERAL.—During the preparation of
5 the presentence report pursuant to rule 32(c) of the
6 Federal Rules of Criminal Procedure, victims of an
7 offense under this section shall be permitted to sub-
8 mit to the probation officer a victim impact state-
9 ment that identifies the victim of the offense and the
10 extent and scope of the injury and loss suffered by
11 the victim, including the estimated economic impact
12 of the offense on that victim.

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

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

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

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

23 “(e) DEFINITIONS.—In this section:

24 “(1) AUDIOVISUAL WORK, COPY, ETC.—The
25 terms ‘audiovisual work’, ‘copy’, ‘copyright owner’,

1 ‘motion picture’, and ‘transmit’ have, respectively,
2 the meanings given those terms in section 101 of
3 title 17.

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

12 “(3) MOTION PICTURE THEATER.—The term
13 ‘motion picture theater’ means a movie theater,
14 screening room, or other venue that is being used
15 primarily for public performance of a motion pic-
16 ture.”.

17 (2) CONFORMING AMENDMENT.—The table of
18 sections for chapter 113 of title 18, United States
19 Code, is amended by inserting after the item relating
20 to section 2319A the following:

“2319B. Unauthorized recording of motion pictures in a motion picture the-
ater.”.

21 **SEC. 9. SENSE OF THE CONGRESS ON NEED TO TAKE STEPS**
22 **TO PREVENT ILLEGAL ACTIVITY ON PEER-TO-**
23 **PEER SERVICES.**

24 (a) FINDINGS.—The Congress finds as follows:

1 (1) The most popular publicly accessible peer-
2 to-peer file sharing software programs combined
3 have been downloaded worldwide over 600,000,000
4 times.

5 (2) The vast majority of software products, in-
6 cluding peer-to-peer technology, do not pose an in-
7 herent risk. Responsible persons making software
8 products should be encouraged and commended for
9 the due diligence and reasonable care they take in-
10 cluding by providing instructions, relevant informa-
11 tion in the documentation, disseminating patches,
12 updates, and other appropriate modifications to the
13 software.

14 (3) Massive volumes of illegal activity, including
15 the distribution of child pornography, viruses, and
16 confidential personal information, and copyright in-
17 fringement occur on publicly accessible peer-to-peer
18 file sharing services every day. Some publicly acces-
19 sible peer-to-peer file sharing services expose con-
20 sumers, particularly children, to serious risks, in-
21 cluding legal liability, loss of privacy, threats to com-
22 puter security, and exposure to illegal and inappro-
23 priate material.

24 (4) The following studies and reports dem-
25 onstrate that pornography, including child pornog-

1 raphy, is prevalent on publicly available peer-to-peer
2 file sharing services, and children are regularly ex-
3 posed to pornography when using publicly available
4 peer-to-peer file-sharing services:

5 (A) A February 2004 report by the Gen-
6 eral Accounting Office (GAO) states that chil-
7 dren using peer-to-peer file-sharing technology
8 can be exposed inadvertently to pornographic
9 content. When searching for popular terms like
10 “Britney”, “Pokemon”, and “Olsen twins”,
11 more than half the files retrieved were porno-
12 graphic, including 8 percent containing child
13 pornography or child erotica.

14 (B) The GAO also found that when
15 searching the most popular peer-to-peer service
16 for keywords known to be associated with child
17 pornography, 42 percent of the returns (543
18 out of 1,286 files) were associated with images
19 of child pornography.

20 (C) From 2001, when the National Center
21 for Missing and Exploited Children began to
22 track peer-to-peer child pornography, until
23 2002, the number of reported incidents in-
24 creased over 400 percent—compared to an in-
25 crease of less than 100 percent for chat rooms,

1 less than 32 percent for websites, and no in-
2 crease for news groups and bulletin boards.

3 (5) The full potential of peer-to-peer technology
4 to benefit consumers has yet to be realized and will
5 not be achieved until these problems are adequately
6 addressed.

7 (6) To date, the businesses that run publicly ac-
8 cessible file-sharing services have refused or failed to
9 voluntarily and sufficiently address these problems.

10 (7) Many users of publicly available peer-to-
11 peer file-sharing services are drawn to these systems
12 by the lure of obtaining “free” music and movies.

13 (8) While some users use parental controls to
14 protect children from pornography available on the
15 Internet and search engines, not all such controls
16 work on publicly accessible peer-to-peer networks.

17 (9) Businesses that run publicly accessible peer-
18 to-peer file sharing services have openly acknowl-
19 edged, and numerous studies and reports have estab-
20 lished, that these services facilitate and profit from
21 massive amounts of copyright infringement, causing
22 enormous damage to the economic well-being of the
23 copyright industries whose works are being illegally
24 “shared” and downloaded.

1 (10) The legitimate digital music marketplace
2 offers consumers a wide and growing array of
3 choices for obtaining music legally, without exposure
4 to the risks posed by publicly accessible peer-to-peer
5 file sharing services.

6 (11) The Federal Trade Commission issued a
7 Consumer Alert in July of 2003 warning consumers
8 that some file-sharing services contain damaging vi-
9 ruses and worms and, without the computer user's
10 knowledge or consent, install spyware to monitor a
11 user's browsing habits and send data to third parties
12 or automatically open network connections.

13 (12) Publicly available peer-to-peer file-sharing
14 services can and should adopt reasonable business
15 practices and use technology in the marketplace to
16 address the existing risks posed to consumers by
17 their services and facilitate the legitimate use of
18 peer-to-peer file sharing technology and software.

19 (b) SENSE OF CONGRESS.—It is the sense of the
20 Congress that—

21 (1) responsible software developers should be
22 commended, recognized, and encouraged for their ef-
23 forts to protect consumers;

24 (2) currently the level of ongoing and persistent
25 illegal and dangerous activity on publicly accessible

1 peer-to-peer file sharing services is harmful to con-
2 sumers, minors, and the economy; and

3 (3) therefore, the Congress and the executive
4 branch should consider all appropriate measures to
5 protect consumers and children, and prevent such il-
6 legal activity.

7 **SEC. 10. ENHANCEMENT OF CRIMINAL COPYRIGHT IN-**
8 **FRINGEMENT.**

9 (a) CRIMINAL INFRINGEMENT.—Section 506 of title
10 17, United States Code, is amended—

11 (1) by amending subsection (a) to read as fol-
12 lows:

13 “(a) CRIMINAL INFRINGEMENT.—Any person who—

14 “(1) infringes a copyright willfully and for pur-
15 poses of commercial advantage or private financial
16 gain,

17 “(2) infringes a copyright willfully by the repro-
18 duction or distribution, including by the offering for
19 distribution to the public by electronic means, during
20 any 180-day period, of 1 or more copies or
21 phonorecords of 1 or more copyrighted works, which
22 have a total retail value of more than \$1,000, or

23 “(3) infringes a copyright by the knowing dis-
24 tribution, including by the offering for distribution
25 to the public by electronic means, with reckless dis-

1 regard of the risk of further infringement, during
2 any 180-day period, of—

3 “(A) 1,000 or more copies or phonorecords
4 of 1 or more copyrighted works,

5 “(B) 1 or more copies or phonorecords of
6 1 or more copyrighted works with a total retail
7 value of more than \$10,000, or

8 “(C) 1 or more copies or phonorecords of
9 1 or more copyrighted pre-release works,

10 shall be punished as provided under section 2319 of title
11 18. For purposes of this subsection, evidence of reproduc-
12 tion or distribution of a copyrighted work, by itself, shall
13 not be sufficient to establish the necessary level of intent
14 under this subsection.”; and

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

16 “(g) DEFINITIONS.—In this section:

17 “(1) PRE-RELEASE WORK.—The term ‘pre-re-
18 lease work’ refers to a work protected under this
19 title which has a commercial and economic value and
20 which, at the time of the infringement, the defend-
21 ant knew or should have known that the work had
22 not yet been made available by the copyright owner
23 to individual members of the general public in copies
24 or phonorecords for sale, license, or rental.

1 “(2) RETAIL VALUE.—The ‘retail value’ of a
2 copyrighted work is the retail price of that work in
3 the market in which it is sold. In the case of an in-
4 fringement of a copyright by distribution, if the re-
5 tail price does not adequately reflect the economic
6 value of the infringement, then the retail value may
7 be determined using other factors, including but not
8 limited to suggested retail price, wholesale price, re-
9 placement cost of the item, licensing, or distribution-
10 related fees.”.

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

13 (1) by redesignating subsections (d) and (e) as
14 subsections (e) and (f), respectively;

15 (2) by inserting after subsection (c) the fol-
16 lowing:

17 “(d) Any person who commits an offense under sec-
18 tion 506(a)(3) of title 17—

19 “(1) shall be imprisoned not more than 3 years,
20 or fined in the amount set forth in this title, or both,
21 or, if the offense was committed for purposes of
22 commercial advantage or private financial gain, im-
23 prisoned for not more than 5 years, or fined in the
24 amount set forth in this title, or both; and

1 “(2) shall, if the offense is a second or subse-
2 quent offense under paragraph (1), be imprisoned
3 not more than 6 years, or fined in the amount set
4 forth in this title, or both, or, if the offense was
5 committed for purposes of commercial advantage or
6 private financial gain, imprisoned for not more than
7 10 years, or fined in the amount set forth in this
8 title, or both.”; and

9 (3) in subsection (f), as so redesignated—

10 (A) in paragraph (1), by striking “and”
11 after the semicolon;

12 (B) in paragraph (2), by striking the pe-
13 riod and inserting “; and”; and

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

15 “(3) the term ‘financial gain’ has the meaning
16 given that term in section 101 (relating to defini-
17 tions) of title 17.”.

18 (c) CIVIL REMEDIES FOR INFRINGEMENT OF A COM-
19 MERCIAL PRE-RELEASE COPYRIGHTED WORK.—Section
20 504(b) of title 17, United States Code, is amended—

21 (1) by striking “The copyright owner” and in-
22 serting the following:

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

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

1 “(2) DAMAGES FOR PRE-RELEASE INFRINGE-
2 MENT.—

3 “(A) IN GENERAL.—In the case of any
4 pre-release work, actual damages shall be pre-
5 sumed conclusively to be no less than \$10,000
6 per infringement, if a person—

7 “(i) distributes such work by making
8 it available on a computer network acces-
9 sible to members of the public; and

10 “(ii) knew or should have known that
11 the work was intended for commercial dis-
12 tribution.

13 “(B) DEFINITION.—For purposes of this
14 subsection, the term ‘pre-release work’ has the
15 meaning given that term in section 506(g).”.

16 **SEC. 11. AMENDMENT OF FEDERAL SENTENCING GUIDE-**
17 **LINES REGARDING THE INFRINGEMENT OF**
18 **COPYRIGHTED WORKS AND RELATED**
19 **CRIMES.**

20 (a) AMENDMENT TO THE SENTENCING GUIDE-
21 LINES.—Pursuant to its authority under section 994 of
22 title 28, United States Code, and in accordance with this
23 section, the United States Sentencing Commission shall
24 review and, if appropriate, amend the sentencing guide-
25 lines and policy statements applicable to persons convicted

1 of intellectual property rights crimes, including sections
2 2318, 2319, 2319A, 2319B, 2320 of title 18, United
3 States Code, and sections 506, 1201, and 1202 of title
4 17, United States Code.

5 (b) FACTORS.—In carrying out this section, the Sen-
6 tencing Commission shall—

7 (1) take all appropriate measures to ensure that
8 the sentencing guidelines and policy statements ap-
9 plicable to the offenses described in subsection (a)
10 are sufficiently stringent to deter and adequately re-
11 flect the nature of such offenses;

12 (2) consider whether to provide a sentencing en-
13 hancement for those convicted of the offenses de-
14 scribed in subsection (a) when the conduct involves
15 the display, performance, publication, reproduction,
16 or distribution of a copyrighted work before the time
17 when the copyright owner has authorized the dis-
18 play, performance, publication, reproduction, or dis-
19 tribution of the original work, whether in the media
20 format used by the infringing good or in any other
21 media format;

22 (3) consider whether the definition of
23 “uploading” contained in Application Note 3 to
24 Guideline 2B5.3 is adequate to address the loss at-

1 tributable to people broadly distributing copyrighted
2 works over the Internet without authorization; and

3 (4) consider whether the sentencing guidelines
4 and policy statements applicable to the offenses de-
5 scribed in subsection (a) adequately reflect any harm
6 to victims from infringement in circumstances where
7 law enforcement cannot determine how many times
8 copyrighted material is reproduced or distributed.

9 (c) PROMULGATION.—The Commission may promul-
10 gate the guidelines or amendments under this section in
11 accordance with the procedures set forth in section 21(a)
12 of the Sentencing Act of 1987, as though the authority
13 under that Act had not expired.

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