

108TH CONGRESS
2D SESSION

S. 3021

AN ACT

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”.

1 **TITLE I—ARTISTS’ RIGHTS AND**
2 **THEFT PREVENTION**

3 **SEC. 101. SHORT TITLE.**

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

6 **SEC. 102. 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.—Any person who, without the au-
15 thorization of the copyright owner, knowingly uses or at-
16 tempts to use an audiovisual recording device to transmit
17 or make a copy of a motion picture or other audiovisual
18 work protected under title 17, or any part thereof, from
19 a performance of such work in a motion picture exhibition
20 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 The possession by a person of an audiovisual recording
2 device in a motion picture exhibition facility may be con-
3 sidered as evidence in any proceeding to determine wheth-
4 er that person committed an offense under this subsection,
5 but shall not, by itself, be sufficient to support a conviction
6 of that person for such offense.

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

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

22 “(d) IMMUNITY FOR THEATERS.—With reasonable
23 cause, the owner or lessee of a facility where a motion
24 picture is being exhibited, the authorized agent or em-
25 ployee of such owner or lessee, the licensor of the motion

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

3 “(1) may detain, in a reasonable manner and
4 for a reasonable time, any person suspected of a vio-
5 lation of this section for the purpose of questioning
6 or 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 Fed-
13 eral Rules of Criminal Procedure, victims of an of-
14 fense under this section shall be permitted to submit
15 to the probation officer a victim impact statement
16 that identifies the victim of the offense and the ex-
17 tent and scope of the injury and loss suffered by the
18 victim, including the estimated economic impact of
19 the offense 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 of-
24 fense;

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

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

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

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

11 “(1) TITLE 17 DEFINITIONS.—The terms
12 ‘audiovisual work’, ‘copy’, ‘copyright owner’, ‘motion
13 picture’, ‘motion picture exhibition facility’, and
14 ‘transmit’ have, respectively, the meanings given
15 those terms in section 101 of title 17.

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

24 (b) CLERICAL AMENDMENT.—The table of sections
25 at the beginning of chapter 113 of title 18, United States

1 Code, is amended by inserting after the item relating to
 2 section 2319A the following:

“2319B. Unauthorized recording of motion pictures in a motion picture exhibition facility.”.

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

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

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

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

18 “(a) CRIMINAL INFRINGEMENT.—

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

23 “(A) for purposes of commercial advantage
 24 or private financial gain;

1 “(B) by the reproduction or distribution,
2 including by electronic means, during any 180–
3 day period, of 1 or more copies or phonorecords
4 of 1 or more copyrighted works, which have a
5 total retail value of more than \$1,000; or

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

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

16 “(3) DEFINITION.—In this subsection, the term
17 ‘work being prepared for commercial distribution’
18 means—

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

23 “(i) the copyright owner has a reason-
24 able expectation of commercial distribu-
25 tion; and

1 “(ii) the copies or phonorecords of the
2 work have not been commercially distrib-
3 uted; or

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

6 “(i) has been made available for view-
7 ing in a motion picture exhibition facility;
8 and

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

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

16 (1) in subsection (a)—

17 (A) by striking “Whoever” and inserting
18 “Any person who”; and

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

21 (2) in subsection (b), by striking “section
22 506(a)(1)” and inserting “section 506(a)(1)(A)”;

23 (3) in subsection (c), by striking “section
24 506(a)(2) of title 17, United States Code” and in-
25 serting “section 506(a)(1)(B) of title 17”;

1 (4) by redesignating subsections (d) and (e) as
2 subsections (e) and (f), respectively;

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

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

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

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

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

15 “(4) shall be imprisoned not more than 10
16 years, fined under this title, or both, if the offense
17 is a second or subsequent offense under paragraph
18 (2).”;

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

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

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

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

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

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

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

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

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

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

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

1 “(3) APPLICATION FOR REGISTRATION.—Not
2 later than 3 months after a the first publication of
3 a work preregistered under this subsection, the ap-
4 plicant shall submit to the Copyright Office—

5 “(A) an application for registration of the
6 work;

7 “(B) a deposit; and

8 “(C) the applicable fee.

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

17 “(A) 3 months after the first publication of
18 the work; or

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

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

24 (c) EXCLUSION.—Section 412 of title 17, United
25 States Code, is amended by inserting “, an action for in-

1 fringement of the copyright of a work that has been
2 preregistered under section 408(f) before the commence-
3 ment of the infringement and that has an effective date
4 of registration not later than the earlier of 3 months after
5 the first publication of the work or 1 month after the copy-
6 right owner has learned of the infringement,” after “sec-
7 tion 106A(a)”.

8 **SEC. 105. FEDERAL SENTENCING GUIDELINES.**

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

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

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

21 (b) AUTHORIZATION.—The United States Sentencing
22 Commission may amend the Federal sentencing guidelines
23 in accordance with the procedures set forth in section
24 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994 note)

1 as though the authority under that section had not ex-
2 pired.

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

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

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

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

1 (4) determine whether the sentencing guidelines
 2 and policy statements applicable to the offenses de-
 3 scribed in subsection (a) adequately reflect any harm
 4 to victims from copyright infringement if law en-
 5 forcement authorities cannot determine how many
 6 times copyright material has been reproduced or dis-
 7 tributed.

8 **TITLE II—EXEMPTION FROM IN-**
 9 **FRINGEMENT FOR SKIPPING**
 10 **AUDIO AND VIDEO CONTENT**
 11 **IN MOTION PICTURES**

12 **SEC. 201. SHORT TITLE.**

13 This title may be cited as the “Family Movie Act of
 14 2004”.

15 **SEC. 202. EXEMPTION FROM INFRINGEMENT FOR SKIPPING**
 16 **AUDIO AND VIDEO CONTENT IN MOTION PIC-**
 17 **TURES.**

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

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

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

24 (3) by inserting after paragraph (10) the fol-
 25 lowing:

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

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

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

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

24 (c) EXEMPTION FROM TRADEMARK INFRINGE-
25 MENT.—Section 32 of the Trademark Act of 1946 (15

1 U.S.C. 1114) is amended by adding at the end the fol-
2 lowing:

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

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

1 paragraph (A) and this subparagraph shall not apply to
2 a manufacturer, licensee, or licensor of technology that
3 fails to comply with this paragraph.

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

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

16 (d) DEFINITION.—In this section, the term “Trade-
17 mark Act of 1946” means the Act entitled “An Act to
18 provide for the registration and protection of trademarks
19 used in commerce, to carry out the provisions of certain
20 international conventions, and for other purposes”, ap-
21 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”
7 and 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
13 multiplying—

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
4 subtitle—

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
8 a 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 offense of which an element is the false
9 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.

5 **TITLE VII—PROFESSIONAL**
 6 **BOXING SAFETY**

7 **SEC. 701. SHORT TITLE; TABLE OF CONTENTS.**

8 (a) **SHORT TITLE.**—This title may be cited as the
 9 “Professional Boxing Amendments Act of 2004”.

10 (b) **TABLE OF CONTENTS.**—The table of contents for
 11 this title is as follows:

- Sec. 701. Short title; table of contents.
- Sec. 702. Amendment of Professional Boxing Safety Act of 1996.
- Sec. 703. Definitions.
- Sec. 704. Purposes.
- Sec. 705. United States Boxing Commission approval, or ABC or commission sanction, required for matches.
- Sec. 706. Safety standards.
- Sec. 707. Registration.
- Sec. 708. Review.
- Sec. 709. Reporting.
- Sec. 710. Contract requirements.
- Sec. 711. Coercive contracts.
- Sec. 712. Sanctioning organizations.
- Sec. 713. Required disclosures by sanctioning organizations.
- Sec. 714. Required disclosures by promoters and broadcasters.
- Sec. 715. Judges and referees.
- Sec. 716. Medical registry.
- Sec. 717. Conflicts of interest.
- Sec. 718. Enforcement.
- Sec. 719. Repeal of deadwood.
- Sec. 720. Recognition of tribal law.
- Sec. 721. Establishment of United States Boxing Commission.
- Sec. 722. Study and report on definition of promoter.
- Sec. 723. Effective date.

1 **SEC. 702. AMENDMENT OF PROFESSIONAL BOXING SAFETY**
2 **ACT OF 1996.**

3 Except as otherwise expressly provided, whenever in
4 this title an amendment or repeal is expressed in terms
5 of an amendment to, or repeal of, a section or other provi-
6 sion, the reference shall be considered to be made to a
7 section or other provision of the Professional Boxing Safe-
8 ty Act of 1996 (15 U.S.C. 6301 et seq.).

9 **SEC. 703. DEFINITIONS.**

10 (a) IN GENERAL.—Section 2 (15 U.S.C. 6301) is
11 amended to read as follows:

12 **“SEC. 2. DEFINITIONS.**

13 “In this Act:

14 “(1) COMMISSION.—The term ‘Commission’
15 means the United States Boxing Commission.

16 “(2) BOUT AGREEMENT.—The term ‘bout
17 agreement’ means a contract between a promoter
18 and a boxer that requires the boxer to participate in
19 a professional boxing match for a particular date.

20 “(3) BOXER.—The term ‘boxer’ means an indi-
21 vidual who fights in a professional boxing match.

22 “(4) BOXING COMMISSION.—The term ‘boxing
23 commission’ means an entity authorized under State
24 or tribal law to regulate professional boxing
25 matches.

1 “(5) BOXER REGISTRY.—The term ‘boxer reg-
2 istry’ means any entity certified by the Commission
3 for the purposes of maintaining records and identi-
4 fication of boxers.

5 “(6) BOXING SERVICE PROVIDER.—The term
6 ‘boxing service provider’ means a promoter, man-
7 ager, sanctioning body, licensee, or matchmaker.

8 “(7) CONTRACT PROVISION.—The term ‘con-
9 tract provision’ means any legal obligation between
10 a boxer and a boxing service provider.

11 “(8) INDIAN LANDS; INDIAN TRIBE.—The
12 terms ‘Indian lands’ and ‘Indian tribe’ have the
13 meanings given those terms by paragraphs (4) and
14 (5), respectively, of section 4 of the Indian Gaming
15 Regulatory Act (25 U.S.C. 2703).

16 “(9) LICENSEE.—The term ‘licensee’ means an
17 individual who serves as a trainer, corner man, sec-
18 ond, or cut man for a boxer.

19 “(10) MANAGER.—The term ‘manager’ means a
20 person other than a promoter who, under contract,
21 agreement, or other arrangement with a boxer, un-
22 dertakes to control or administer, directly or indi-
23 rectly, a boxing-related matter on behalf of that
24 boxer, including a person who is a booking agent for
25 a boxer.

1 “(11) MATCHMAKER.—The term ‘matchmaker’
2 means a person that proposes, selects, and arranges
3 for boxers to participate in a professional boxing
4 match.

5 “(12) PHYSICIAN.—The term ‘physician’ means
6 a doctor of medicine legally authorized to practice
7 medicine by the State in which the physician per-
8 forms such function or action and who has training
9 and experience in dealing with sports injuries, par-
10 ticularly head trauma.

11 “(13) PROFESSIONAL BOXING MATCH.—The
12 term ‘professional boxing match’ means a boxing
13 contest held in the United States between individ-
14 uals for financial compensation. The term ‘profes-
15 sional boxing match’ does not include a boxing con-
16 test that is regulated by a duly recognized amateur
17 sports organization, as approved by the Commission.

18 “(14) PROMOTER.—The term ‘promoter’—

19 “(A) means the person primarily respon-
20 sible for organizing, promoting, and producing
21 a professional boxing match; but

22 “(B) does not include a hotel, casino, re-
23 sort, or other commercial establishment hosting
24 or sponsoring a professional boxing match
25 unless—

1 “(i) the hotel, casino, resort, or other
2 commercial establishment is primarily re-
3 sponsible for organizing, promoting, and
4 producing the match; and

5 “(ii) there is no other person primarily
6 responsible for organizing, promoting, and
7 producing the match.

8 “(15) PROMOTIONAL AGREEMENT.—The term
9 ‘promotional agreement’ means a contract, for the
10 acquisition of rights relating to a boxer’s participa-
11 tion in a professional boxing match or series of box-
12 ing matches (including the right to sell, distribute,
13 exhibit, or license the match or matches), with—

14 “(A) the boxer who is to participate in the
15 match or matches; or

16 “(B) the nominee of a boxer who is to par-
17 ticipate in the match or matches, or the nomi-
18 nee is an entity that is owned, controlled or
19 held in trust for the boxer unless that nominee
20 or entity is a licensed promoter who is con-
21 veying a portion of the rights previously ac-
22 quired.

23 “(16) STATE.—The term ‘State’ means each of
24 the 50 States, Puerto Rico, the District of Columbia,

1 and any territory or possession of the United States,
2 including the Virgin Islands.

3 “(17) SANCTIONING ORGANIZATION.—The term
4 ‘sanctioning organization’ means an organization,
5 other than a boxing commission, that sanctions pro-
6 fessional boxing matches, ranks professional boxers,
7 or charges a sanctioning fee for professional boxing
8 matches in the United States—

9 “(A) between boxers who are residents of
10 different States; or

11 “(B) that are advertised, otherwise pro-
12 moted, or broadcast (including closed circuit
13 television) in interstate commerce.

14 “(18) SUSPENSION.—The term ‘suspension’ in-
15 cludes within its meaning the temporary revocation
16 of a boxing license.

17 “(19) TRIBAL ORGANIZATION.—The term ‘trib-
18 al organization’ has the same meaning as in section
19 4(l) of the Indian Self-Determination and Education
20 Assistance Act (25 U.S.C. 450b(l)).”.

21 (b) CONFORMING AMENDMENT.—Section 21 (15
22 U.S.C. 6312) is amended to read as follows:

1 **“SEC. 21. PROFESSIONAL BOXING MATCHES CONDUCTED**
2 **ON INDIAN LANDS.**

3 “(a) IN GENERAL.—Notwithstanding any other pro-
4 vision of law, a tribal organization may establish a boxing
5 commission to regulate professional boxing matches held
6 on Indian land under the jurisdiction of that tribal organi-
7 zation.

8 “(b) STANDARDS AND LICENSING.—A tribal organi-
9 zation that establishes a boxing commission shall, by tribal
10 ordinance or resolution, establish and provide for the im-
11 plementation of health and safety standards, licensing re-
12 quirements, and other requirements relating to the con-
13 duct of professional boxing matches that are at least as
14 restrictive as—

15 “(1) the otherwise applicable requirements of
16 the State in which the Indian land on which the pro-
17 fessional boxing match is held is located; or

18 “(2) the guidelines established by the United
19 States Boxing Commission.

20 “(c) APPLICATION OF ACT TO BOXING MATCHES ON
21 TRIBAL LANDS.—The provisions of this Act apply to pro-
22 fessional boxing matches held on tribal lands to the same
23 extent and in the same way as they apply to professional
24 boxing matches held in any State.”.

1 **SEC. 704. PURPOSES.**

2 Section 3(2) (15 U.S.C. 6302(2)) is amended by
3 striking “State”.

4 **SEC. 705. UNITED STATES BOXING COMMISSION APPROVAL,**
5 **OR ABC OR COMMISSION SANCTION, RE-**
6 **QUIRED FOR MATCHES.**

7 (a) IN GENERAL.—Section 4 (15 U.S.C. 6303) is
8 amended to read as follows:

9 **“SEC. 4. APPROVAL OR SANCTION REQUIREMENT.**

10 “(a) IN GENERAL.—No person may arrange, pro-
11 mote, organize, produce, or fight in a professional boxing
12 match within the United States unless the match—

13 “(1) is approved by the Commission; and

14 “(2) is held in a State, or on tribal land of a
15 tribal organization, that regulates professional box-
16 ing matches in accordance with standards and cri-
17 teria established by the Commission.

18 “(b) APPROVAL PRESUMED.—

19 “(1) IN GENERAL.—For purposes of subsection
20 (a), the Commission shall be presumed to have ap-
21 proved any match other than—

22 “(A) a match with respect to which the
23 Commission has been informed of an alleged
24 violation of this Act and with respect to which
25 it has notified the supervising boxing commis-
26 sion that it does not approve;

1 “(B) a match advertised to the public as a
2 championship match;

3 “(C) a match scheduled for 10 rounds or
4 more; or

5 “(D) a match in which 1 of the boxers
6 has—

7 “(i) suffered 10 consecutive defeats in
8 professional boxing matches; or

9 “(ii) has been knocked out 5 consecu-
10 tive times in professional boxing matches.

11 “(2) DELEGATION OF APPROVAL AUTHORITY.—
12 Notwithstanding paragraph (1), the Commission
13 shall be presumed to have approved a match de-
14 scribed in subparagraph (B), (C), or (D) of para-
15 graph (1) if—

16 “(A) the Commission has delegated in
17 writing its approval authority with respect to
18 that match to a boxing commission; and

19 “(B) the boxing commission has approved
20 the match.

21 “(3) KNOCKED-OUT DEFINED.—Except as may
22 be otherwise provided by the Commission by rule, in
23 paragraph (1)(D)(ii), the term ‘knocked out’ means
24 knocked down and unable to continue after a count

1 of 10 by the referee or stopped from continuing be-
2 cause of a technical knockout.”.

3 (b) CONFORMING AMENDMENT.—Section 19 (15
4 U.S.C. 6310) is repealed.

5 **SEC. 706. SAFETY STANDARDS.**

6 Section 5 (15 U.S.C. 6304) is amended—

7 (1) by striking “requirements or an alternative
8 requirement in effect under regulations of a boxing
9 commission that provides equivalent protection of
10 the health and safety of boxers:” and inserting “re-
11 quirements:”;

12 (2) by adding at the end of paragraph (1) “The
13 examination shall include testing for infectious dis-
14 eases in accordance with standards established by
15 the Commission.”;

16 (3) by striking paragraph (2) and inserting the
17 following:

18 “(2) An ambulance continuously present on
19 site.”;

20 (4) by redesignating paragraphs (3) and (4) as
21 paragraphs (4) and (5), respectively, and inserting
22 after paragraph (2) the following:

23 “(3) Emergency medical personnel with appro-
24 priate resuscitation equipment continuously present
25 on site.”; and

1 (5) by striking “match.” in paragraph (5), as
2 redesignated, and inserting “match in an amount
3 prescribed by the Commission.”.

4 **SEC. 707. REGISTRATION.**

5 Section 6 (15 U.S.C. 6305) is amended—

6 (1) by inserting “or Indian tribe” after “State”
7 the second place it appears in subsection (a)(2);

8 (2) by striking the first sentence of subsection
9 (c) and inserting “A boxing commission shall, in ac-
10 cordance with requirements established by the Com-
11 mission, make a health and safety disclosure to a
12 boxer when issuing an identification card to that
13 boxer.”;

14 (3) by striking “should” in the second sentence
15 of subsection (c) and inserting “shall, at a min-
16 imum,”; and

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

18 “(d) COPY OF REGISTRATION AND IDENTIFICATION
19 CARDS TO BE SENT TO COMMISSION.—A boxing commis-
20 sion shall furnish a copy of each registration received
21 under subsection (a), and each identification card issued
22 under subsection (b), to the Commission.”.

23 **SEC. 708. REVIEW.**

24 Section 7 (15 U.S.C. 6306) is amended—

1 (1) by striking “that, except as provided in sub-
2 section (b), no” in subsection (a)(2) and inserting
3 “that no”;

4 (2) by striking paragraphs (3) and (4) of sub-
5 section (a) and inserting the following:

6 “(3) Procedures to review a summary suspen-
7 sion when a hearing before the boxing commission is
8 requested by a boxer, licensee, manager, match-
9 maker, promoter, or other boxing service provider
10 which provides an opportunity for that person to
11 present evidence.”;

12 (3) by striking subsection (b); and

13 (4) by striking “(a) PROCEDURES.—”.

14 **SEC. 709. REPORTING.**

15 Section 8 (15 U.S.C. 6307) is amended—

16 (1) by striking “48 business hours” and insert-
17 ing “2 business days”;

18 (2) by striking “bxoing” and inserting “box-
19 ing”; and

20 (3) by striking “each boxer registry.” and in-
21 sserting “the Commission.”.

22 **SEC. 710. CONTRACT REQUIREMENTS.**

23 Section 9 (15 U.S.C. 6307a) is amended to read as
24 follows:

1 **“SEC. 9. CONTRACT REQUIREMENTS.**

2 “(a) IN GENERAL.—The Commission, in consultation
3 with the Association of Boxing Commissions, shall develop
4 guidelines for minimum contractual provisions that shall
5 be included in each bout agreement, boxer-manager con-
6 tract, and promotional agreement. Each boxing commis-
7 sion shall ensure that these minimal contractual provisions
8 are present in any such agreement or contract submitted
9 to it.

10 “(b) FILING AND APPROVAL REQUIREMENTS.—

11 “(1) COMMISSION.—A manager or promoter
12 shall submit a copy of each boxer-manager contract
13 and each promotional agreement between that man-
14 ager or promoter and a boxer to the Commission,
15 and, if requested, to the boxing commission with ju-
16 risdiction over the bout.

17 “(2) BOXING COMMISSION.—A boxing commis-
18 sion may not approve a professional boxing match
19 unless a copy of the bout agreement related to that
20 match has been filed with it and approved by it.

21 “(c) BOND OR OTHER SURETY.—A boxing commis-
22 sion may not approve a professional boxing match unless
23 the promoter of that match has posted a surety bond,
24 cashier’s check, letter of credit, cash, or other security
25 with the boxing commission in an amount acceptable to
26 the boxing commission.”.

1 **SEC. 711. COERCIVE CONTRACTS.**

2 Section 10 (15 U.S.C. 6307b) is amended—

3 (1) by striking paragraph (3) of subsection (a);

4 (2) by inserting “OR ELIMINATION” after “MAN-
5 DATORY” in the heading of subsection (b); and

6 (3) by inserting “or elimination” after “manda-
7 tory” in subsection (b).

8 **SEC. 712. SANCTIONING ORGANIZATIONS.**

9 (a) IN GENERAL.—Section 11 (15 U.S.C. 6307c) is
10 amended to read as follows:

11 **“SEC. 11. SANCTIONING ORGANIZATIONS.**

12 “(a) OBJECTIVE CRITERIA.—Within 1 year after the
13 date of enactment of the Professional Boxing Amendments
14 Act of 2004, the Commission shall develop guidelines for
15 objective and consistent written criteria for the rating of
16 professional boxers based on the athletic merits and pro-
17 fessional record of the boxers. Within 90 days after the
18 Commission’s promulgation of the guidelines, each sanc-
19 tioning organization shall adopt the guidelines and follow
20 them.

21 “(b) NOTIFICATION OF CHANGE IN RATING.—A
22 sanctioning organization shall, with respect to a change
23 in the rating of a boxer previously rated by such organiza-
24 tion in the top 10 boxers—

25 “(1) post a copy, within 7 days after the
26 change, on its Internet website or home page, if any,

1 including an explanation of the change, for a period
2 of not less than 30 days;

3 “(2) provide a copy of the rating change and a
4 thorough explanation in writing under penalty of
5 perjury to the boxer and the Commission;

6 “(3) provide the boxer an opportunity to appeal
7 the ratings change to the sanctioning organization;
8 and

9 “(4) apply the objective criteria for ratings re-
10 quired under subsection (a) in considering any such
11 appeal.

12 “(c) CHALLENGE OF RATING.—If, after disposing
13 with an appeal under subsection (b)(3), a sanctioning or-
14 ganization receives a petition from a boxer challenging
15 that organization’s rating of the boxer, it shall (except to
16 the extent otherwise required by the Commission), within
17 7 days after receiving the petition—

18 “(1) provide to the boxer a written explanation
19 under penalty of perjury of the organization’s rating
20 criteria, its rating of the boxer, and the rationale or
21 basis for its rating (including a response to any spe-
22 cific questions submitted by the boxer); and

23 “(2) submit a copy of its explanation to the As-
24 sociation of Boxing Commissions and the Commis-
25 sion for their review.”.

1 (b) CONFORMING AMENDMENTS.—Section 18(e) (15
2 U.S.C. 6309(e)) is amended—

3 (1) by striking “FEDERAL TRADE COMMIS-
4 SION,” in the subsection heading and inserting
5 “UNITED STATES BOXING COMMISSION”; and

6 (2) by striking “Federal Trade Commission,” in
7 paragraph (1) and inserting “United States Boxing
8 Commission,”.

9 **SEC. 713. REQUIRED DISCLOSURES BY SANCTIONING OR-**
10 **GANIZATIONS.**

11 Section 12 (15 U.S.C. 6307d) is amended—

12 (1) by striking the matter preceding paragraph
13 (1) and inserting “Within 7 days after a professional
14 boxing match of 10 rounds or more, the sanctioning
15 organization, if any, for that match shall provide to
16 the Commission, and, if requested, to the boxing
17 commission in the State or on Indian land respon-
18 sible for regulating the match, a written statement
19 of—”;

20 (2) by striking “will assess” in paragraph (1)
21 and inserting “has assessed, or will assess,”; and

22 (3) by striking “will receive” in paragraph (2)
23 and inserting “has received, or will receive,”.

1 **SEC. 714. REQUIRED DISCLOSURES BY PROMOTERS AND**
2 **BROADCASTERS.**

3 Section 13 (15 U.S.C. 6307e) is amended—

4 (1) by striking “**PROMOTERS.**” in the section
5 caption and inserting “**PROMOTERS AND BROAD-**
6 **CASTERS.**”;

7 (2) by striking so much of subsection (a) as
8 precedes paragraph (1) and inserting the following:

9 “(a) DISCLOSURES TO BOXING COMMISSIONS AND
10 THE COMMISSION.—Within 7 days after a professional
11 boxing match of 10 rounds or more, the promoter of any
12 boxer participating in that match shall provide to the
13 Commission, and, if requested, to the boxing commission
14 in the State or on Indian land responsible for regulating
15 the match—”;

16 (3) by striking “writing,” in subsection (a)(1)
17 and inserting “writing, other than a bout agreement
18 previously provided to the commission,”;

19 (4) by striking “all fees, charges, and expenses
20 that will be” in subsection (a)(3)(A) and inserting
21 “a written statement of all fees, charges, and ex-
22 penses that have been, or will be,”;

23 (5) by inserting “a written statement of” before
24 “all” in subsection (a)(3)(B);

25 (6) by inserting “a statement of” before “any”
26 in subsection (a)(3)(C);

1 (7) by striking the matter in subsection (b) fol-
 2 lowing “BOXER.—” and preceding paragraph (1)
 3 and inserting “Within 7 days after a professional
 4 boxing match of 10 rounds or more, the promoter of
 5 the match shall provide to each boxer participating
 6 in the bout or match with whom the promoter has
 7 a bout or promotional agreement a statement
 8 of—”;

9 (8) by striking “match;” in subsection (b)(1)
 10 and inserting “match, and that the promoter has
 11 paid, or agreed to pay, to any other person in con-
 12 nection with the match;” and

13 (9) by adding at the end the following:

14 “(d) REQUIRED DISCLOSURES BY BROADCASTERS.—

15 “(1) IN GENERAL.—A broadcaster that owns
 16 the television broadcast rights for a professional box-
 17 ing match of 10 rounds or more shall, within 7 days
 18 after that match, provide to the Commission—

19 “(A) a statement of any advance, guar-
 20 antee, or license fee paid or owed by the broad-
 21 caster to a promoter in connection with that
 22 match;

23 “(B) a copy of any contract executed by or
 24 on behalf of the broadcaster with—

1 “(i) a boxer who participated in that
2 match; or

3 “(ii) the boxer’s manager, promoter,
4 promotional company, or other representa-
5 tive or the owner or representative of the
6 site of the match; and

7 “(C) a list identifying sources of income
8 received from the broadcast of the match.

9 “(2) COPY TO BOXING COMMISSION.—Upon re-
10 quest from the boxing commission in the State or
11 Indian land responsible for regulating a match to
12 which paragraph (1) applies, a broadcaster shall
13 provide the information described in paragraph (1)
14 to that boxing commission.

15 “(3) CONFIDENTIALITY.—The information pro-
16 vided to the Commission or to a boxing commission
17 pursuant to this subsection shall be confidential and
18 not revealed by the Commission or a boxing commis-
19 sion, except that the Commission may publish an
20 analysis of the data in aggregate form or in a man-
21 ner which does not disclose confidential information
22 about identifiable broadcasters.

23 “(4) TELEVISION BROADCAST RIGHTS.—In
24 paragraph (1), the term ‘television broadcast rights’
25 means the right to broadcast the match, or any part

1 thereof, via a broadcast station, cable service, or
2 multichannel video programming distributor as such
3 terms are defined in section 3(5), 602(6), and
4 602(13) of the Communications Act of 1934 (47
5 U.S.C. 153(5), 602(6), and 602(13), respectively).”.

6 **SEC. 715. JUDGES AND REFEREES.**

7 (a) IN GENERAL.—Section 16 (15 U.S.C. 6307h) is
8 amended—

9 (1) by inserting “(a) LICENSING AND ASSIGN-
10 MENT REQUIREMENT.—” before “No person”;

11 (2) by striking “certified and approved” and in-
12 serting “selected”;

13 (3) by inserting “or Indian lands” after
14 “State”; and

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

16 “(b) CHAMPIONSHIP AND 10-ROUND BOUTS.—In ad-
17 dition to the requirements of subsection (a), no person
18 may arrange, promote, organize, produce, or fight in a
19 professional boxing match advertised to the public as a
20 championship match or in a professional boxing match
21 scheduled for 10 rounds or more unless all referees and
22 judges participating in the match have been licensed by
23 the Commission.

24 “(c) ROLE OF SANCTIONING ORGANIZATION.—A
25 sanctioning organization may provide a list of judges and

1 referees deemed qualified by that organization to a boxing
2 commission, but the boxing commission shall select, li-
3 cense, and appoint the judges and referees participating
4 in the match.

5 “(d) ASSIGNMENT OF NONRESIDENT JUDGES AND
6 REFEREES.—A boxing commission may assign judges and
7 referees who reside outside that commission’s State or In-
8 dian land.

9 “(e) REQUIRED DISCLOSURE.—A judge or referee
10 shall provide to the boxing commission responsible for reg-
11 ulating a professional boxing match in a State or on In-
12 dian land a statement of all consideration, including reim-
13 bursement for expenses, that the judge or referee has re-
14 ceived, or will receive, from any source for participation
15 in the match. If the match is scheduled for 10 rounds or
16 more, the judge or referee shall also provide such a state-
17 ment to the Commission.”.

18 (b) CONFORMING AMENDMENT.—Section 14 (15
19 U.S.C. 6307f) is repealed.

20 **SEC. 716. MEDICAL REGISTRY.**

21 The Act is amended by inserting after section 13 (15
22 U.S.C. 6307e) the following:

23 **“SEC. 14. MEDICAL REGISTRY.**

24 “(a) IN GENERAL.—The Commission shall establish
25 and maintain, or certify a third party entity to establish

1 and maintain, a medical registry that contains comprehen-
2 sive medical records and medical denials or suspensions
3 for every licensed boxer.

4 “(b) CONTENT; SUBMISSION.—The Commission shall
5 determine—

6 “(1) the nature of medical records and medical
7 suspensions of a boxer that are to be forwarded to
8 the medical registry; and

9 “(2) the time within which the medical records
10 and medical suspensions are to be submitted to the
11 medical registry.

12 “(c) CONFIDENTIALITY.—The Commission shall es-
13 tablish confidentiality standards for the disclosure of per-
14 sonally identifiable information to boxing commissions
15 that will—

16 “(1) protect the health and safety of boxers by
17 making relevant information available to the boxing
18 commissions for use but not public disclosure; and

19 “(2) ensure that the privacy of the boxers is
20 protected.”.

21 **SEC. 717. CONFLICTS OF INTEREST.**

22 Section 17 (15 U.S.C. 6308) is amended—

23 (1) by striking “enforces State boxing laws,” in
24 subsection (a) and inserting “implements State or

1 tribal boxing laws, no officer or employee of the
2 Commission,”;

3 (2) by striking “belong to,” and inserting “hold
4 office in,” in subsection (a);

5 (3) by striking the last sentence of subsection
6 (a);

7 (4) by striking subsection (b) and inserting the
8 following:

9 “(b) BOXERS.—A boxer may not own or control, di-
10 rectly or indirectly, an entity that promotes the boxer’s
11 bouts if that entity is responsible for—

12 “(1) executing a bout agreement or promotional
13 agreement with the boxer’s opponent; or

14 “(2) providing any payment or other compensa-
15 tion to—

16 “(A) the boxer’s opponent for participation
17 in a bout with the boxer;

18 “(B) the boxing commission that will regu-
19 late the bout; or

20 “(C) ring officials who officiate at the
21 bout.”.

22 **SEC. 718. ENFORCEMENT.**

23 Section 18 (15 U.S.C. 6309) is amended—

1 (1) by striking “(a) INJUNCTIONS.—” in sub-
2 section (a) and inserting “(a) ACTIONS BY ATTOR-
3 NEY GENERAL.—”;

4 (2) by striking “enforces State boxing laws,” in
5 subsection (b)(3) and inserting “implements State or
6 tribal boxing laws, any officer or employee of the
7 Commission,”;

8 (3) by inserting “has engaged in or” after “or-
9 ganization” in subsection (c);

10 (4) by striking “subsection (b)” in subsection
11 (c)(3) and inserting “subsection (b), a civil penalty,
12 or”; and

13 (5) by striking “boxer” in subsection (d) and
14 inserting “person”.

15 **SEC. 719. REPEAL OF DEADWOOD.**

16 Section 20 (15 U.S.C. 6311) is repealed.

17 **SEC. 720. RECOGNITION OF TRIBAL LAW.**

18 Section 22 (15 U.S.C. 6313) is amended—

19 (1) by insert “**OR TRIBAL**” in the section
20 heading after “**STATE**”; and

21 (2) by inserting “or Indian tribe” after
22 “State”.

1 **SEC. 721. ESTABLISHMENT OF UNITED STATES BOXING**
 2 **COMMISSION.**

3 (a) IN GENERAL.—The Act is amended by adding at
 4 the end the following:

5 **“TITLE II—UNITED STATES**
 6 **BOXING COMMISSION**

7 **“SEC. 201. PURPOSE.**

8 “The purpose of this title is to protect the health,
 9 safety, and welfare of boxers and to ensure fairness in the
 10 sport of professional boxing.

11 **“SEC. 202. UNITED STATES BOXING COMMISSION.**

12 “(a) IN GENERAL.—The United States Boxing Com-
 13 mission is established as a commission within the Depart-
 14 ment of Commerce.

15 “(b) MEMBERS.—

16 “(1) IN GENERAL.—The Commission shall con-
 17 sist of 3 members appointed by the President, by
 18 and with the advice and consent of the Senate.

19 “(2) QUALIFICATIONS.—

20 “(A) IN GENERAL.—Each member of the
 21 Commission shall be a citizen of the United
 22 States who—

23 “(i) has extensive experience in pro-
 24 fessional boxing activities or in a field di-
 25 rectly related to professional sports;

1 “(ii) is of outstanding character and
2 recognized integrity; and

3 “(iii) is selected on the basis of train-
4 ing, experience, and qualifications and
5 without regard to political party affiliation.

6 “(B) SPECIFIC QUALIFICATIONS FOR CER-
7 TAIN MEMBERS.—At least 1 member of the
8 Commission shall be a former member of a local
9 boxing authority. If practicable, at least 1 mem-
10 ber of the Commission shall be a physician or
11 other health care professional duly licensed as
12 such.

13 “(C) DISINTERESTED PERSONS.—No
14 member of the Commission may, while serving
15 as a member of the Commission—

16 “(i) be engaged as a professional
17 boxer, boxing promoter, agent, fight man-
18 ager, matchmaker, referee, judge, or in any
19 other capacity in the conduct of the busi-
20 ness of professional boxing;

21 “(ii) have any pecuniary interest in
22 the earnings of any boxer or the proceeds
23 or outcome of any boxing match; or

24 “(iii) serve as a member of a boxing
25 commission.

1 “(3) BIPARTISAN MEMBERSHIP.—Not more
2 than 2 members of the Commission may be members
3 of the same political party.

4 “(4) GEOGRAPHIC BALANCE.—Not more than 2
5 members of the Commission may be residents of the
6 same geographic region of the United States when
7 appointed to the Commission. For purposes of the
8 preceding sentence, the area of the United States
9 east of the Mississippi River is a geographic region,
10 and the area of the United States west of the Mis-
11 sissippi River is a geographic region.

12 “(5) TERMS.—

13 “(A) IN GENERAL.—The term of a mem-
14 ber of the Commission shall be 3 years.

15 “(B) REAPPOINTMENT.—Members of the
16 Commission may be reappointed to the Com-
17 mission.

18 “(C) MIDTERM VACANCIES.—A member of
19 the Commission appointed to fill a vacancy in
20 the Commission occurring before the expiration
21 of the term for which the member’s predecessor
22 was appointed shall be appointed for the re-
23 mainder of that unexpired term.

24 “(D) CONTINUATION PENDING REPLACE-
25 MENT.—A member of the Commission may

1 serve after the expiration of that member’s
2 term until a successor has taken office.

3 “(6) REMOVAL.—A member of the Commission
4 may be removed by the President only for cause.

5 “(c) EXECUTIVE DIRECTOR.—

6 “(1) IN GENERAL.—The Commission shall em-
7 ploy an Executive Director to perform the adminis-
8 trative functions of the Commission under this Act,
9 and such other functions and duties of the Commis-
10 sion as the Commission shall specify.

11 “(2) DISCHARGE OF FUNCTIONS.—Subject to
12 the authority, direction, and control of the Commis-
13 sion the Executive Director shall carry out the func-
14 tions and duties of the Commission under this Act.

15 “(d) GENERAL COUNSEL.—The Commission shall
16 employ a General Counsel to provide legal counsel and ad-
17 vice to the Executive Director and the Commission in the
18 performance of its functions under this Act, and to carry
19 out such other functions and duties as the Commission
20 shall specify.

21 “(e) STAFF.—The Commission shall employ such ad-
22 ditional staff as the Commission considers appropriate to
23 assist the Executive Director and the General Counsel in
24 carrying out the functions and duties of the Commission
25 under this Act.

1 “(f) COMPENSATION.—

2 “(1) MEMBERS OF COMMISSION.—

3 “(A) IN GENERAL.—Each member of the
4 Commission shall be compensated at a rate
5 equal to the daily equivalent of the annual rate
6 of basic pay prescribed for level IV of the Exec-
7utive Schedule under section 5315 of title 5,
8 United States Code, for each day (including
9 travel time) during which such member is en-
10gaged in the performance of the duties of the
11 Commission.

12 “(B) TRAVEL EXPENSES.—The members
13 of the Commission shall be allowed travel ex-
14penses, including per diem in lieu of subsist-
15ence, at rates authorized for employees of agen-
16cies under subchapter I of chapter 57 of title 5,
17 United States Code, while away from their
18 homes or regular places of business in the per-
19formance of services for the Commission.

20 “(2) EXECUTIVE DIRECTOR AND STAFF.—The
21 Commission shall fix the compensation of the Execu-
22tive Director, the General Counsel, and other per-
23sonnel of the Commission. The rate of pay for the
24 Executive Director, the General Counsel, and other
25 personnel may not exceed the rate payable for level

1 V of the Executive Schedule under section 5316 of
2 title 5, United States Code.

3 **“SEC. 203. FUNCTIONS.**

4 “(a) PRIMARY FUNCTIONS.—The primary functions
5 of the Commission are—

6 “(1) to protect the health, safety, and general
7 interests of boxers consistent with the provisions of
8 this Act; and

9 “(2) to ensure uniformity, fairness, and integ-
10 rity in professional boxing.

11 “(b) SPECIFIC FUNCTIONS.—The Commission
12 shall—

13 “(1) administer title I of this Act;

14 “(2) promulgate uniform standards for profes-
15 sional boxing in consultation with the Association of
16 Boxing Commissions;

17 “(3) except as otherwise determined by the
18 Commission, oversee all professional boxing matches
19 in the United States;

20 “(4) work with the boxing commissions of the
21 several States and tribal organizations—

22 “(A) to improve the safety, integrity, and
23 professionalism of professional boxing in the
24 United States;

1 “(B) to enhance physical, medical, finan-
2 cial, and other safeguards established for the
3 protection of professional boxers; and

4 “(C) to improve the status and standards
5 of professional boxing in the United States;

6 “(5) ensure, in cooperation with the Attorney
7 General (who shall represent the Commission in any
8 judicial proceeding under this Act), the chief law en-
9 forcement officer of the several States, and other ap-
10 propriate officers and agencies of Federal, State,
11 and local government, that Federal and State laws
12 applicable to professional boxing matches in the
13 United States are vigorously, effectively, and fairly
14 enforced;

15 “(6) review boxing commission regulations for
16 professional boxing and provide assistance to such
17 authorities in meeting minimum standards pre-
18 scribed by the Commission under this title;

19 “(7) serve as the coordinating body for all ef-
20 forts in the United States to establish and maintain
21 uniform minimum health and safety standards for
22 professional boxing;

23 “(8) if the Commission determines it to be ap-
24 propriate, publish a newspaper, magazine, or other

1 publication and establish and maintain a website
2 consistent with the purposes of the Commission;

3 “(9) procure the temporary and intermittent
4 services of experts and consultants to the extent au-
5 thORIZED by section 3109(b) of title 5, United States
6 Code, at rates the Commission determines to be rea-
7 sonable; and

8 “(10) promulgate rules, regulations, and guid-
9 ance, and take any other action necessary and prop-
10 er to accomplish the purposes of, and consistent
11 with, the provisions of this title.

12 “(c) PROHIBITIONS.—The Commission may not—

13 “(1) promote boxing events or rank professional
14 boxers; or

15 “(2) provide technical assistance to, or author-
16 ize the use of the name of the Commission by, box-
17 ing commissions that do not comply with require-
18 ments of the Commission.

19 “(d) USE OF NAME.—The Commission shall have the
20 exclusive right to use the name ‘United States Boxing
21 Commission’. Any person who, without the permission of
22 the Commission, uses that name or any other exclusive
23 name, trademark, emblem, symbol, or insignia of the Com-
24 mission for the purpose of inducing the sale or exchange
25 of any goods or services, or to promote any exhibition, per-

1 formance, or sporting event, shall be subject to suit in a
2 civil action by the Commission for the remedies provided
3 in the Act of July 5, 1946 (commonly known as the
4 ‘Trademark Act of 1946’; 15 U.S.C. 1051 et seq.).

5 **“SEC. 204. LICENSING AND REGISTRATION OF BOXING PER-**
6 **SONNEL.**

7 “(a) LICENSING.—

8 “(1) REQUIREMENT FOR LICENSE.—No person
9 may compete in a professional boxing match or serve
10 as a boxing manager, boxing promoter, or sanc-
11 tioning organization for a professional boxing match
12 except as provided in a license granted to that per-
13 son under this subsection.

14 “(2) APPLICATION AND TERM.—

15 “(A) IN GENERAL.—The Commission
16 shall—

17 “(i) establish application procedures,
18 forms, and fees;

19 “(ii) establish and publish appropriate
20 standards for licenses granted under this
21 section; and

22 “(iii) issue a license to any person
23 who, as determined by the Commission,
24 meets the standards established by the
25 Commission under this title.

1 “(B) DURATION.—A license issued under
2 this section shall be for a renewable—

3 “(i) 4-year term for a boxer; and

4 “(ii) 2-year term for any other person.

5 “(C) PROCEDURE.—The Commission may
6 issue a license under this paragraph through
7 boxing commissions or in a manner determined
8 by the Commission.

9 “(b) LICENSING FEES.—

10 “(1) AUTHORITY.—The Commission may pre-
11 scribe and charge reasonable fees for the licensing of
12 persons under this title. The Commission may set,
13 charge, and adjust varying fees on the basis of clas-
14 sifications of persons, functions, and events deter-
15 mined appropriate by the Commission.

16 “(2) LIMITATIONS.—In setting and charging
17 fees under paragraph (1), the Commission shall en-
18 sure that, to the maximum extent practicable—

19 “(A) club boxing is not adversely effected;

20 “(B) sanctioning organizations and pro-
21 moters pay comparatively the largest portion of
22 the fees; and

23 “(C) boxers pay as small a portion of the
24 fees as is possible.

1 “(3) COLLECTION.—Fees established under this
2 subsection may be collected through boxing commis-
3 sions or by any other means determined appropriate
4 by the Commission.

5 **“SEC. 205. NATIONAL REGISTRY OF BOXING PERSONNEL.**

6 “(a) REQUIREMENT FOR REGISTRY.—The Commis-
7 sion shall establish and maintain (or authorize a third
8 party to establish and maintain) a unified national com-
9 puterized registry for the collection, storage, and retrieval
10 of information related to the performance of its duties.

11 “(b) CONTENTS.—The information in the registry
12 shall include the following:

13 “(1) BOXERS.—A list of professional boxers
14 and data in the medical registry established under
15 section 114 of this Act, which the Commission shall
16 secure from disclosure in accordance with the con-
17 fidentiality requirements of section 114(c).

18 “(2) OTHER PERSONNEL.—Information (perti-
19 nent to the sport of professional boxing) on boxing
20 promoters, boxing matchmakers, boxing managers,
21 trainers, cut men, referees, boxing judges, physi-
22 cians, and any other personnel determined by the
23 Commission as performing a professional activity for
24 professional boxing matches.

1 **“SEC. 206. CONSULTATION REQUIREMENTS.**

2 “The Commission shall consult with the Association
3 of Boxing Commissions—

4 “(1) before prescribing any regulation or estab-
5 lishing any standard under the provisions of this
6 title; and

7 “(2) not less than once each year regarding
8 matters relating to professional boxing.

9 **“SEC. 207. MISCONDUCT.**

10 “(a) **SUSPENSION AND REVOCATION OF LICENSE OR**
11 **REGISTRATION.—**

12 “(1) **AUTHORITY.—**The Commission may, after
13 notice and opportunity for a hearing, suspend or re-
14 voke any license issued under this title if the Com-
15 mission finds that—

16 “(A) the license holder has violated any
17 provision of this Act;

18 “(B) there are reasonable grounds for be-
19 lief that a standard prescribed by the Commis-
20 sion under this title is not being met, or that
21 bribery, collusion, intentional losing, racket-
22 eering, extortion, or the use of unlawful threats,
23 coercion, or intimidation have occurred in con-
24 nection with a license; or

1 “(C) the suspension or revocation is nec-
2 essary for the protection of health and safety or
3 is otherwise in the public interest.

4 “(2) PERIOD OF SUSPENSION.—

5 “(A) IN GENERAL.—A suspension of a li-
6 cense under this section shall be effective for a
7 period determined appropriate by the Commis-
8 sion except as provided in subparagraph (B).

9 “(B) SUSPENSION FOR MEDICAL REA-
10 SONS.—In the case of a suspension or denial of
11 the license of a boxer for medical reasons by the
12 Commission, the Commission may terminate
13 the suspension or denial at any time that a phy-
14 sician certifies that the boxer is fit to partici-
15 pate in a professional boxing match. The Com-
16 mission shall prescribe the standards and proce-
17 dures for accepting certifications under this
18 subparagraph.

19 “(3) PERIOD OF REVOCATION.—In the case of
20 a revocation of the license of a boxer, the revocation
21 shall be for a period of not less than 1 year.

22 “(b) INVESTIGATIONS AND INJUNCTIONS.—

23 “(1) AUTHORITY.—The Commission may—

24 “(A) conduct any investigation that it con-
25 siders necessary to determine whether any per-

1 son has violated, or is about to violate, any pro-
2 vision of this Act or any regulation prescribed
3 under this Act;

4 “(B) require or permit any person to file
5 with it a statement in writing, under oath or
6 otherwise as the Commission shall determine,
7 as to all the facts and circumstances concerning
8 the matter to be investigated;

9 “(C) in its discretion, publish information
10 concerning any violations; and

11 “(D) investigate any facts, conditions,
12 practices, or matters to aid in the enforcement
13 of the provisions of this Act, in the prescribing
14 of regulations under this Act, or in securing in-
15 formation to serve as a basis for recommending
16 legislation concerning the matters to which this
17 Act relates.

18 “(2) POWERS.—

19 “(A) IN GENERAL.—For the purpose of
20 any investigation under paragraph (1) or any
21 other proceeding under this title—

22 “(i) any officer designated by the
23 Commission may administer oaths and af-
24 firmations, subpoena or otherwise compel
25 the attendance of witnesses, take evidence,

1 and require the production of any books,
2 papers, correspondence, memoranda, or
3 other records the Commission considers
4 relevant or material to the inquiry; and

5 “(ii) the provisions of sections 6002
6 and 6004 of title 18, United States Code,
7 shall apply.

8 “(B) WITNESSES AND EVIDENCE.—The
9 attendance of witnesses and the production of
10 any documents under subparagraph (A) may be
11 required from any place in the United States,
12 including Indian land, at any designated place
13 of hearing.

14 “(3) ENFORCEMENT OF SUBPOENAS.—

15 “(A) CIVIL ACTION.—In case of contumacy
16 by, or refusal to obey a subpoena issued to, any
17 person, the Commission may file an action in
18 any district court of the United States within
19 the jurisdiction of which an investigation or
20 proceeding is carried out, or where that person
21 resides or carries on business, to enforce the at-
22 tendance and testimony of witnesses and the
23 production of books, papers, correspondence,
24 memorandums, and other records. The court
25 may issue an order requiring the person to ap-

1 pear before the Commission to produce records,
2 if so ordered, or to give testimony concerning
3 the matter under investigation or in question.

4 “(B) FAILURE TO OBEY.—Any failure to
5 obey an order issued by a court under subpara-
6 graph (A) may be punished as contempt of that
7 court.

8 “(C) PROCESS.—All process in any con-
9 tempt case under subparagraph (A) may be
10 served in the judicial district in which the per-
11 son is an inhabitant or in which the person may
12 be found.

13 “(4) EVIDENCE OF CRIMINAL MISCONDUCT.—

14 “(A) IN GENERAL.—No person may be ex-
15 cused from attending and testifying or from
16 producing books, papers, contracts, agreements,
17 and other records and documents before the
18 Commission, in obedience to the subpoena of
19 the Commission, or in any cause or proceeding
20 instituted by the Commission, on the ground
21 that the testimony or evidence, documentary or
22 otherwise, required of that person may tend to
23 incriminate the person or subject the person to
24 a penalty or forfeiture.

1 “(B) LIMITED IMMUNITY.—No individual
2 may be prosecuted or subject to any penalty or
3 forfeiture for, or on account of, any transaction,
4 matter, or thing concerning the matter about
5 which that individual is compelled, after having
6 claimed a privilege against self-incrimination, to
7 testify or produce evidence, documentary or
8 otherwise, except that the individual so testi-
9 fying shall not be exempt from prosecution and
10 punishment for perjury committed in so testi-
11 fying.

12 “(5) INJUNCTIVE RELIEF.—If the Commission
13 determines that any person is engaged or about to
14 engage in any act or practice that constitutes a vio-
15 lation of any provision of this Act, or of any regula-
16 tion prescribed under this Act, the Commission may
17 bring an action in the appropriate district court of
18 the United States, the United States District Court
19 for the District of Columbia, or the United States
20 courts of any territory or other place subject to the
21 jurisdiction of the United States, to enjoin the act
22 or practice, and upon a proper showing, the court
23 shall grant without bond a permanent or temporary
24 injunction or restraining order.

1 “(6) MANDAMUS.—Upon application of the
2 Commission, the district courts of the United States,
3 the United States District Court for the District of
4 Columbia, and the United States courts of any terri-
5 tory or other place subject to the jurisdiction of the
6 United States, shall have jurisdiction to issue writs
7 of mandamus commanding any person to comply
8 with the provisions of this Act or any order of the
9 Commission.

10 “(c) INTERVENTION IN CIVIL ACTIONS.—

11 “(1) IN GENERAL.—The Commission, on behalf
12 of the public interest, may intervene of right as pro-
13 vided under rule 24(a) of the Federal Rules of Civil
14 Procedure in any civil action relating to professional
15 boxing filed in a district court of the United States.

16 “(2) AMICUS FILING.—The Commission may
17 file a brief in any action filed in a court of the
18 United States on behalf of the public interest in any
19 case relating to professional boxing.

20 “(d) HEARINGS BY COMMISSION.—Hearings con-
21 ducted by the Commission under this Act shall be public
22 and may be held before any officer of the Commission.
23 The Commission shall keep appropriate records of the
24 hearings.

1 **“SEC. 208. NONINTERFERENCE WITH BOXING COMMIS-**
2 **SIONS.**

3 “(a) NONINTERFERENCE.—Nothing in this Act pro-
4 hibits any boxing commission from exercising any of its
5 powers, duties, or functions with respect to the regulation
6 or supervision of professional boxing or professional box-
7 ing matches to the extent not inconsistent with the provi-
8 sions of this Act.

9 “(b) MINIMUM STANDARDS.—Nothing in this Act
10 prohibits any boxing commission from enforcing local
11 standards or requirements that exceed the minimum
12 standards or requirements promulgated by the Commis-
13 sion under this Act.

14 **“SEC. 209. ASSISTANCE FROM OTHER AGENCIES.**

15 “Any employee of any executive department, agency,
16 bureau, board, commission, office, independent establish-
17 ment, or instrumentality may be detailed to the Commis-
18 sion, upon the request of the Commission, on a reimburs-
19 able or nonreimbursable basis, with the consent of the ap-
20 propriate authority having jurisdiction over the employee.
21 While so detailed, an employee shall continue to receive
22 the compensation provided pursuant to law for the employ-
23 ee’s regular position of employment and shall retain, with-
24 out interruption, the rights and privileges of that employ-
25 ment.

1 **“SEC. 210. REPORTS.**

2 “(a) ANNUAL REPORT.—The Commission shall sub-
3 mit a report on its activities to the Senate Committee on
4 Commerce, Science, and Transportation and the House of
5 Representatives Committee on Commerce each year. The
6 annual report shall include—

7 “(1) a detailed discussion of the activities of the
8 Commission for the year covered by the report; and

9 “(2) an overview of the licensing and enforce-
10 ment activities of the State and tribal organization
11 boxing commissions.

12 “(b) PUBLIC REPORT.—The Commission shall annu-
13 ally issue and publicize a report of the Commission on the
14 progress made at Federal and State levels and on Indian
15 lands in the reform of professional boxing, which shall in-
16 clude comments on issues of continuing concern to the
17 Commission.

18 “(c) FIRST ANNUAL REPORT ON THE COMMIS-
19 SION.—The first annual report under this title shall be
20 submitted not later than 2 years after the effective date
21 of this title.

22 **“SEC. 211. INITIAL IMPLEMENTATION.**

23 “(a) TEMPORARY EXEMPTION.—The requirements
24 for licensing under this title do not apply to a person for
25 the performance of an activity as a boxer, boxing judge,
26 or referee, or the performance of any other professional

1 activity in relation to a professional boxing match, if the
 2 person is licensed by a boxing commission to perform that
 3 activity as of the effective date of this title.

4 “(b) EXPIRATION.—The exemption under subsection
 5 (a) with respect to a license issued by a boxing commission
 6 expires on the earlier of—

7 “(A) the date on which the license expires;

8 or

9 “(B) the date that is 2 years after the date
 10 of the enactment of the Professional Boxing
 11 Amendments Act of 2004.

12 **“SEC. 212. AUTHORIZATION OF APPROPRIATIONS.**

13 “(a) IN GENERAL.—There are authorized to be ap-
 14 propriated for the Commission for each fiscal year such
 15 sums as may be necessary for the Commission to perform
 16 its functions for that fiscal year.

17 “(b) RECEIPTS CREDITED AS OFFSETTING COLLEC-
 18 TIONS.—Notwithstanding section 3302 of title 31, United
 19 States Code, any fee collected under this title—

20 “(1) shall be credited as offsetting collections to
 21 the account that finances the activities and services
 22 for which the fee is imposed;

23 “(2) shall be available for expenditure only to
 24 pay the costs of activities and services for which the
 25 fee is imposed; and

1 “(3) shall remain available until expended.”.

2 (b) CONFORMING AMENDMENTS.—

3 (1) PBSA.—The Professional Boxing Safety
4 Act of 1996, as amended by this Act, is further
5 amended—

6 (A) by striking section 1 and inserting the
7 following:

8 **“SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

9 “(a) SHORT TITLE.—This Act may be cited as the
10 ‘Professional Boxing Safety Act’.

11 “(b) TABLE OF CONTENTS.—The table of contents
12 for this Act is as follows:

“Section 1. Short title; table of contents.

“Sec. 2. Definitions.

“TITLE I—PROFESSIONAL BOXING SAFETY

“Sec. 101. Purposes.

“Sec. 102. Approval or sanction requirement.

“Sec. 103. Safety standards.

“Sec. 104. Registration.

“Sec. 105. Review.

“Sec. 106. Reporting.

“Sec. 107. Contract requirements.

“Sec. 108. Protection from coercive contracts.

“Sec. 109. Sanctioning organizations.

“Sec. 110. Required disclosures to State boxing commissions by sanctioning or-
ganizations.

“Sec. 111. Required disclosures by promoters and broadcasters.

“Sec. 112. Medical registry.

“Sec. 113. Confidentiality.

“Sec. 114. Judges and referees.

“Sec. 115. Conflicts of interest.

“Sec. 116. Enforcement.

“Sec. 117. Professional boxing matches conducted on Indian lands.

“Sec. 118. Relationship with State or Tribal law.

“TITLE II—UNITED STATES BOXING COMMISSION

“Sec. 201. Purpose.

“Sec. 202. United States Boxing Commission.

“Sec. 203. Functions.

“Sec. 204. Licensing and registration of boxing personnel.

“Sec. 205. National registry of boxing personnel.

“Sec. 206. Consultation requirements.

“Sec. 207. Misconduct.

“Sec. 208. Noninterference with boxing commissions

“Sec. 209. Assistance from other agencies.

“Sec. 210. Reports.

“Sec. 211. Initial implementation.

“Sec. 212. Authorization of appropriations.”;

1 (B) by inserting before section 3 the fol-
2 lowing:

3 **“TITLE I—PROFESSIONAL**
4 **BOXING SAFETY”;**

5 (C) by redesignating sections 3, 4, 5, 6, 7,
6 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21, and
7 22 as sections 101 through 118, respectively;

8 (D) by striking subsection (a) of section
9 113, as redesignated, and inserting the fol-
10 lowing:

11 “(a) IN GENERAL.—Except to the extent required in
12 a legal, administrative, or judicial proceeding, a boxing
13 commission, an Attorney General, or the Commission may
14 not disclose to the public any matter furnished by a pro-
15 moter under section 111.”;

16 (E) by striking “section 13” in subsection
17 (b) of section 113, as redesignated, and insert-
18 ing “section 111”;

19 (F) by striking “9(b), 10, 11, 12, 13, 14,
20 or 16,” in paragraph (1) of section 116(b), as

1 redesignated, and inserting “107, 108, 109,
2 110, 111, or 114,”;

3 (G) by striking “9(b), 10, 11, 12, 13, 14,
4 or 16” in paragraph (2) of section 116(b), as
5 redesignated, and inserting “107, 108, 109,
6 110, 111, or 114”;

7 (H) by striking “section 17(a)” in sub-
8 section (b)(3) of section 116, as redesignated,
9 and inserting “section 115(a)”;

10 (I) by striking “section 10” in subsection
11 (e)(3) of section 116, as redesignated, and in-
12 serting “section 108”; and

13 (J) by striking “of this Act” each place it
14 appears in sections 101 through 120, as redesi-
15 gnated, and inserting “of this title”.

16 (2) COMPENSATION OF MEMBERS.—Section
17 5315 of title 5, United States Code, is amended by
18 adding at the end the following:

19 “Members of the United States Boxing Com-
20 mission.”.

21 **SEC. 722. STUDY AND REPORT ON DEFINITION OF PRO-**
22 **MOTER.**

23 (a) STUDY.—The United States Boxing Commission
24 shall conduct a study on how the term “promoter” should

1 be defined for purposes of the Professional Boxing Safety
2 Act.

3 (b) HEARINGS.—As part of that study, the Commis-
4 sion shall hold hearings and solicit testimony at those
5 hearings from boxers, managers, promoters, premium,
6 cable, and satellite program service providers, hotels, casi-
7 nos, resorts, and other commercial establishments that
8 host or sponsor professional boxing matches, and other in-
9 terested parties with respect to the definition of that term
10 as it is used in the Professional Boxing Safety Act.

11 (c) REPORT.—Not later than 12 months after the
12 date of the enactment of this Act, the Commission shall
13 submit to the Committee on Commerce, Science, and
14 Transportation of the Senate and the Committee on En-
15 ergy and Commerce of the House of Representatives a re-
16 port on the study conducted under subsection (a). The re-
17 port shall—

18 (1) set forth a proposed definition of the term
19 “promoter” for purposes of the Professional Boxing
20 Safety Act; and

21 (2) describe the findings, conclusions, and ra-
22 tionale of the Commission for the proposed defini-
23 tion, together with any recommendations of the
24 Commission, based on the study.

1 **SEC. 723. EFFECTIVE DATE.**

2 (a) IN GENERAL.—Except as provided in subsection
3 (b), the amendments made by this title shall take effect
4 on the date of enactment of this Act.

5 (b) 1-YEAR DELAY FOR CERTAIN TITLE II PROVI-
6 SIONS.—Sections 205 through 212 of the Professional
7 Boxing Safety Act of 1996, as added by section 721(a)
8 of this title, shall take effect 1 year after the date of enact-
9 ment of this Act.

Passed the Senate November 20, 2004.

Attest:

Secretary.

108TH CONGRESS
2D SESSION

S. 3021

AN ACT

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