

108TH CONGRESS
2D SESSION

H. R. 4077

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 29, 2004

Received

AN ACT

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **TITLE I—PIRACY DETERRENCE**
2 **IN EDUCATION**

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

4 This title may be cited as the “Piracy Deterrence and
5 Education Act of 2004”.

6 **SEC. 102. FINDINGS.**

7 The Congress finds as follows:

8 (1) The Internet, while changing the way our
9 society communicates, has also changed the nature
10 of many crimes, including the theft of intellectual
11 property.

12 (2) Trafficking in infringing copyrighted works
13 through increasingly sophisticated electronic means,
14 including peer-to-peer file trading networks, Internet
15 chat rooms, and news groups, threatens lost jobs,
16 lost income for creators, lower tax revenue, and
17 higher prices for honest purchasers.

18 (3) The most popular peer-to-peer file trading
19 software programs have been downloaded by com-
20 puter users over 600,000,000 times. At any one time
21 there are over 3,000,000 users simultaneously using
22 just one of these services. Each month, on average,
23 over 2,300,000,000 digital-media files are trans-
24 ferred among users of peer-to-peer systems.

1 (4) Many computer users simply believe that
2 they will not be caught or prosecuted for their con-
3 duct.

4 (5) The security and privacy threats posed by
5 certain peer-to-peer networks extend beyond users
6 inadvertently enabling a hacker to access files. Mil-
7 lions of copies of one of the most popular peer-to-
8 peer networks contain software that could allow an
9 independent company to take over portions of users'
10 computers and Internet connections and has the ca-
11 pacity to keep track of users' online habits.

12 (6) In light of these considerations, Federal law
13 enforcement agencies should actively pursue crimi-
14 nals who steal the copyrighted works of others, and
15 prevent such activity through enforcement and
16 awareness. The public should be educated about the
17 security and privacy risks associated with being con-
18 nected to certain peer-to-peer networks.

19 **SEC. 103. VOLUNTARY PROGRAM OF DEPARTMENT OF JUS-**
20 **TICE.**

21 (a) VOLUNTARY PROGRAM.—The Attorney General is
22 authorized to establish a program under which the De-
23 partment of Justice, in cases where persons who are sub-
24 scribers of Internet service providers appear to the De-
25 partment of Justice to be engaging in copyright infringing

1 conduct in the course of using such Internet service, would
2 send to the Internet service providers warning letters that
3 warn such persons of the penalties for such copyright in-
4 fringement. The Internet service providers may forward
5 the warning letters to such persons.

6 (b) LIMITATIONS ON PROGRAM.—

7 (1) EXTENT AND LENGTH OF PROGRAM.—The
8 program under subsection (a) shall terminate at the
9 end of the 18-month period beginning on the date of
10 the enactment of this Act and shall be limited to not
11 more than 10,000 warning letters.

12 (2) PRIVACY PROTECTIONS.—No Internet serv-
13 ice provider that receives a warning letter from the
14 Department of Justice under subsection (a) may dis-
15 close to the Department any identifying information
16 about the subscriber that is the subject of the warn-
17 ing letter except pursuant to court order or other
18 applicable legal process that requires such disclo-
19 sure.

20 (c) REIMBURSEMENT OF INTERNET SERVICE PRO-
21 VIDERS.—The Department of Justice shall reimburse
22 Internet service providers for all reasonable direct costs
23 incurred by such service providers in identifying the prop-
24 er recipients of the warning letters under subsection (a)
25 and forwarding the letters.

1 (d) REPORTS TO CONGRESS.—The Attorney General
2 shall submit to the Congress a report on the program es-
3 tablished under subsection (a) both at the time the pro-
4 gram is initiated and at the conclusion of the program.

5 (e) INADMISSIBILITY OF EVIDENCE.—The fact that
6 an Internet service provider participated in the program
7 under subsection (a), received a warning letter from the
8 Department of Justice, was aware of the contents of the
9 warning letter, or forwarded the warning letter to a sub-
10 scribe, shall not be admissible in any legal proceeding
11 brought against the Internet service provider.

12 (f) CONSTRUCTION.—Nothing in this section shall be
13 construed to affect the ability of a court to consider, in
14 a legal proceeding brought against an Internet service pro-
15 vider, notifications of claimed infringement as described
16 in section 512(c)(3) of title 17, United States Code, or
17 any other relevant evidence, other than that described in
18 subsection (e).

19 **SEC. 104. DESIGNATION AND TRAINING OF AGENTS IN COM-**
20 **PUTER HACKING AND INTELLECTUAL PROP-**
21 **ERTY UNITS.**

22 (a) DESIGNATION OF AGENTS IN CHIPS UNITS.—
23 The Attorney General shall ensure that any unit in the
24 Department of Justice responsible for investigating com-
25 puter hacking or responsible for investigating intellectual

1 property crimes is assigned at least one agent to support
2 such unit for the purpose of investigating crimes relating
3 to the theft of intellectual property.

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

8 **SEC. 105. EDUCATION PROGRAM.**

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

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

14 (1) educate the general public concerning the
15 value of copyrighted works and the effects of the
16 theft of such works on those who create them; and

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

20 (c) SECTOR SPECIFIC MATERIALS.—The Internet
21 Use Educational Program shall, to the extent appropriate,
22 develop materials appropriate to Internet users in dif-
23 ferent sectors of the general public where criminal copy-
24 right infringement is a concern. The Attorney General

1 shall consult with appropriate interested parties in devel-
2 oping such sector-specific materials.

3 (d) CONSULTATIONS.—The Attorney General shall
4 consult with the Register of Copyrights and the Secretary
5 of Commerce in developing the Internet Use Education
6 Program under this section.

7 (e) PROHIBITION ON USE OF CERTAIN FUNDS.—The
8 program created under this section shall not use funds or
9 resources of the Department of Justice allocated for crimi-
10 nal investigation or prosecution.

11 (f) ADDITIONAL PROHIBITION ON THE USE OF
12 FUNDS.—The program created under this section shall
13 not use any funds or resources of the Department of Jus-
14 tice allocated for the Civil Rights Division of the Depart-
15 ment, including any funds allocated for the enforcement
16 of civil rights or the Voting Rights Act of 1965.

17 **SEC. 106. ACTIONS BY THE GOVERNMENT OF THE UNITED**
18 **STATES.**

19 Section 411(a) of title 17, United States Code, is
20 amended in the first sentence by striking “Except for”
21 and inserting “Except for an action brought by the Gov-
22 ernment of the United States or by any agency or instru-
23 mentality thereof, or” .

1 **SEC. 107. AUTHORIZED APPROPRIATIONS.**

2 There are authorized to be appropriated to the De-
3 partment of Justice for fiscal year 2005 not less than
4 \$15,000,000 for the investigation and prosecution of viola-
5 tions of title 17, United States Code.

6 **SEC. 108. 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 an offense under subsection (a), the
9 court in its judgment of conviction shall, in addition to
10 any penalty provided, order the forfeiture and destruction
11 or other disposition of all unauthorized copies of motion
12 pictures or other audiovisual works protected under title
13 17, or parts thereof, and any audiovisual recording devices
14 or 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 by a person acting under a contract
20 with the United States, a State, or a political subdivision
21 of a State.

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

1 or lessee, the licensor of the motion picture being exhib-
2 ited, or the agent or employee of such licensor—

3 “(1) may detain, in a reasonable manner and
4 for a reasonable time, any person suspected of com-
5 mitting an offense under this section for the purpose
6 of questioning that person or summoning a law en-
7 forcement officer; and

8 “(2) shall not be held liable in any civil or
9 criminal action by reason of a detention under para-
10 graph (1).

11 “(e) VICTIM IMPACT STATEMENT.—

12 “(1) IN GENERAL.—During the preparation of
13 the presentence report under rule 32(c) of the Fed-
14 eral Rules of Criminal Procedure, victims of an of-
15 fense under this section shall be permitted to submit
16 to the probation officer a victim impact statement
17 that identifies the victim of the offense and the ex-
18 tent and scope of the injury and loss suffered by the
19 victim, including the estimated economic impact of
20 the offense on that victim.

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

23 “(A) producers and sellers of legitimate
24 works affected by conduct involved in the of-
25 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) DEFINITIONS.—In this section:

7 “(1) AUDIOVISUAL WORK, COPY, ETC.—The
8 terms ‘audiovisual work’, ‘copy’, ‘copyright owner’,
9 ‘motion picture’, and ‘transmit’ have, respectively,
10 the meanings given those terms in section 101 of
11 title 17.

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

20 “(3) MOTION PICTURE EXHIBITION FACILITY.—
21 The term ‘motion picture exhibition facility’ means
22 a movie theater, screening room, or other venue that
23 is being used primarily for the exhibition of a copy-
24 righted motion picture, if such exhibition is open to
25 the public or is made to an assembled group of view-

1 ers outside of a normal circle of a family and its so-
2 cial acquaintances.

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

6 (b) CLERICAL AMENDMENT.—The table of sections
7 at the beginning of chapter 113 of title 18, United States
8 Code, is amended by inserting after the item relating to
9 section 2319A the following:

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

10 **SEC. 109. SENSE OF THE CONGRESS ON NEED TO TAKE**
11 **STEPS TO PREVENT ILLEGAL ACTIVITY ON**
12 **PEER-TO-PEER SERVICES.**

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

14 (1) The most popular publicly accessible peer-
15 to-peer file sharing software programs combined
16 have been downloaded worldwide over 600,000,000
17 times.

18 (2) The vast majority of software products, in-
19 cluding peer-to-peer technology, do not pose an in-
20 herent risk. Responsible persons making software
21 products should be encouraged and commended for
22 the due diligence and reasonable care they take in-
23 cluding by providing instructions, relevant informa-
24 tion in the documentation, disseminating patches,

1 updates, and other appropriate modifications to the
2 software.

3 (3) Massive volumes of illegal activity, including
4 the distribution of child pornography, viruses, and
5 confidential personal information, and copyright in-
6 fringement occur on publicly accessible peer-to-peer
7 file sharing services every day. Some publicly acces-
8 sible peer-to-peer file sharing services expose con-
9 sumers, particularly children, to serious risks, in-
10 cluding legal liability, loss of privacy, threats to com-
11 puter security, and exposure to illegal and inappro-
12 priate material.

13 (4) Several studies and reports demonstrate
14 that pornography, including child pornography, is
15 prevalent on publicly available peer-to-peer file shar-
16 ing services, and children are regularly exposed to
17 pornography when using such peer-to-peer file shar-
18 ing services.

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

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

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

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

8 (9) Businesses that run publicly accessible peer-
9 to-peer file sharing services have openly acknowl-
10 edged, and numerous studies and reports have estab-
11 lished, that these services facilitate and profit from
12 massive amounts of copyright infringement, causing
13 enormous damage to the economic well-being of the
14 copyright industries whose works are being illegally
15 “shared” and downloaded.

16 (10) The legitimate digital music marketplace
17 offers consumers a wide and growing array of
18 choices for obtaining music legally, without exposure
19 to the risks posed by publicly accessible peer-to-peer
20 file sharing services.

21 (11) The Federal Trade Commission issued a
22 Consumer Alert in July of 2003 warning consumers
23 that some file-sharing services contain damaging vi-
24 ruses and worms and, without the computer user’s
25 knowledge or consent, install spyware to monitor a

1 user's browsing habits and send data to third parties
2 or automatically open network connections.

3 (12) Publicly available peer-to-peer file-sharing
4 services can and should adopt reasonable business
5 practices and use technology in the marketplace to
6 address the existing risks posed to consumers by
7 their services and facilitate the legitimate use of
8 peer-to-peer file sharing technology and software.

9 (b) SENSE OF CONGRESS.—It is the sense of the
10 Congress that—

11 (1) responsible software developers should be
12 commended, recognized, and encouraged for their ef-
13 forts to protect consumers;

14 (2) currently the level of ongoing and persistent
15 illegal and dangerous activity on publicly accessible
16 peer-to-peer file sharing services is harmful to con-
17 sumers, minors, and the economy; and

18 (3) therefore, the Congress and the executive
19 branch should consider all appropriate measures to
20 protect consumers and children, and prevent such il-
21 legal activity.

22 **SEC. 110. ENHANCEMENT OF CRIMINAL COPYRIGHT IN-**
23 **FRINGEMENT.**

24 (a) CRIMINAL INFRINGEMENT.—Section 506 of title
25 17, United States Code, is amended—

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

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

4 “(1) infringes a copyright willfully and for pur-
5 poses of commercial advantage or private financial
6 gain,

7 “(2) infringes a copyright willfully by the repro-
8 duction or distribution, including by the offering for
9 distribution to the public by electronic means, during
10 any 180-day period, of 1 or more copies or
11 phonorecords of 1 or more copyrighted works, which
12 have a total retail value of more than \$1,000, or

13 “(3) infringes a copyright by the knowing dis-
14 tribution, including by the offering for distribution
15 to the public by electronic means, with reckless dis-
16 regard of the risk of further infringement, during
17 any 180-day period, of—

18 “(A) 1,000 or more copies or phonorecords
19 of 1 or more copyrighted works,

20 “(B) 1 or more copies or phonorecords of
21 1 or more copyrighted works with a total retail
22 value of more than \$10,000, or

23 “(C) 1 or more copies or phonorecords of
24 1 or more copyrighted pre-release works,

1 shall be punished as provided under section 2319 of title
 2 18. For purposes of this subsection, evidence of reproduc-
 3 tion or distribution of a copyrighted work, by itself, shall
 4 not be sufficient to establish the necessary level of intent
 5 under this subsection.”; and

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

7 “(g) LIMITATION ON LIABILITY OF SERVICE PRO-
 8 VIDERS.—No legal entity shall be liable for a violation of
 9 subsection (a)(3) by reason of performing any function de-
 10 scribed in subsection (a), (b), (c), or (d) of section 512
 11 if such legal entity would not be liable for monetary relief
 12 under section 512 by reason of performing such function.
 13 Except for purposes of determining whether an entity
 14 qualifies for the limitation on liability under subsection
 15 (a)(3) of this section, the legal conclusion of whether an
 16 entity qualifies for a limitation on liability under section
 17 512 shall not be considered in a judicial determination of
 18 whether the entity violates subsection (a) of this section.

19 “(h) DEFINITIONS.—In this section:

20 “(1) PRE-RELEASE WORK.—The term ‘pre-re-
 21 lease work’ refers to a work protected under this
 22 title which has a commercial and economic value and
 23 which, at the time of the act of infringement that is
 24 the basis for the offense under subsection (a)(3), the
 25 defendant knew or should have known had not yet

1 been made available by the copyright owner to indi-
2 vidual members of the general public in copies or
3 phonorecords for sale, license, or rental.

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

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

16 (1) by redesignating subsections (d) and (e) as
17 subsections (e) and (f), respectively;

18 (2) by inserting after subsection (c) the fol-
19 lowing:

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

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

1 prisoned for not more than 5 years, or fined in the
2 amount set forth in this title, or both; and

3 “(2) shall, if the offense is a second or subse-
4 quent offense under paragraph (1), be imprisoned
5 not more than 6 years, or fined in the amount set
6 forth in this title, or both, or, if the offense was
7 committed for purposes of commercial advantage or
8 private financial gain, imprisoned for not more than
9 10 years, or fined in the amount set forth in this
10 title, or both.”; and

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

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

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

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

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

20 (c) CIVIL REMEDIES FOR INFRINGEMENT OF A COM-
21 MERCIAL PRE-RELEASE COPYRIGHTED WORK.—Section
22 504(b) of title 17, United States Code, is amended—

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

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

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

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

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

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

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

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

17 **SEC. 111. AMENDMENT OF FEDERAL SENTENCING GUIDE-**
18 **LINES REGARDING THE INFRINGEMENT OF**
19 **COPYRIGHTED WORKS AND RELATED**
20 **CRIMES.**

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

1 lines and policy statements applicable to persons convicted
2 of intellectual property rights crimes, including sections
3 2318, 2319, 2319A, 2319B, 2320 of title 18, United
4 States Code, and sections 506, 1201, and 1202 of title
5 17, United States Code.

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

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

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

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

1 tributable to people broadly distributing copyrighted
2 works over the Internet without authorization; and
3 (4) consider whether the sentencing guidelines
4 and policy statements applicable to the offenses de-
5 scribed in subsection (a) adequately reflect any harm
6 to victims from infringement in circumstances where
7 law enforcement cannot determine how many times
8 copyrighted material is reproduced or distributed.

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

14 **SEC. 112. EXEMPTION FROM INFRINGEMENT FOR SKIPPING**
15 **AUDIO AND VIDEO CONTENT IN MOTION PIC-**
16 **TURES.**

17 (a) SHORT TITLE.—This section may be cited as the
18 “Family Movie Act of 2004”.

19 (b) EXEMPTION FROM COPYRIGHT AND TRADEMARK
20 INFRINGEMENT FOR SKIPPING OF AUDIO OR VIDEO CON-
21 TENT OF MOTION PICTURES.—Section 110 of title 17,
22 United States Code, is amended—

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

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

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

5 “(11) the making imperceptible, by or at the di-
6 rection of a member of a private household, of lim-
7 ited portions of audio or video content of a motion
8 picture during a performance in or transmitted to
9 that household for private home viewing, from an
10 authorized copy of the motion picture, or the cre-
11 ation or provision of a computer program or other
12 technology that enables such making imperceptible
13 and that is designed and marketed for such use at
14 the direction of a member of a private household,
15 if—

16 “(A) no fixed copy of the altered version of
17 the motion picture is created by such computer
18 program or other technology; and

19 “(B) no changes, deletions or additions are
20 made by such computer program or other tech-
21 nology to commercial advertisements, or to net-
22 work or station promotional announcements,
23 that would otherwise be performed or displayed
24 before, during or after the performance of the
25 motion picture.”; and

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

2 “For purposes of paragraph (11), the term ‘making
3 imperceptible’ does not include the addition of audio or
4 video content that is performed or displayed over or in
5 place of existing content in a motion picture.”.

6 (c) EXEMPTION FROM TRADEMARK INFRINGE-
7 MENT.—Section 32 of the Trademark Act of 1946 (15
8 U.S.C. 1114) is amended by adding at the end the fol-
9 lowing:

10 (c) EXEMPTION FROM TRADEMARK INFRINGE-
11 MENT.—Section 32 of the Trademark Act of 1946 (15
12 U.S.C. 1114) is amended by adding at the end the fol-
13 lowing:

14 “(3)(A) Any person who engages in the conduct de-
15 scribed in paragraph (11) of section 110 of title 17,
16 United States Code, and who complies with the require-
17 ments set forth in that paragraph is not liable on account
18 of such conduct for a violation of any right under this Act.
19 This subparagraph does not preclude liability of a person
20 for conduct not described in paragraph (11) of section 110
21 of title 17, United States Code, even if that person also
22 engages in conduct described in paragraph (11) of section
23 110 of such title.

24 “(B) A manufacturer, licensee, or licensor of tech-
25 nology that enables the making of limited portions of

1 audio or video content of a motion picture imperceptible
2 that is authorized under subparagraph (A) is not liable
3 on account of such manufacture or license for a violation
4 of any right under this Act, if such manufacturer, licensee,
5 or licensor ensures that the technology provides a clear
6 and conspicuous notice at the beginning of each perform-
7 ance that the performance of the motion picture is altered
8 from the performance intended by the director or copy-
9 right holder of the motion picture. Subparagraph (A) shall
10 not apply to a manufacturer, licensee, or licensor of tech-
11 nology that fails to comply with this subparagraph.

12 “(C) The requirement under subparagraph (B) to
13 provide notice shall apply only with respect to technology
14 manufactured after the end of the 180-day period begin-
15 ning on the date of the enactment of the Family Movie
16 Act of 2004.”.

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

1 **TITLE II—MISCELLANEOUS**

2 **SEC. 201. DESIGNATION OF NATIONAL TREE.**

3 (a) DESIGNATION.—Chapter 3 of title 36, United
4 States Code, is amended by adding at the end the fol-
5 lowing:

6 **“§ 305. National tree**

7 “The tree genus *Quercus*, commonly known as the
8 oak tree, is the national tree.”.

9 (b) CONFORMING AMENDMENTS.—Such title is
10 amended—

11 (1) in the table of contents for part A of sub-
12 title I, by striking “, **and March**” and inserting
13 “**March, and Tree**”;

14 (2) in the chapter heading for chapter 3, by
15 striking “, AND MARCH” and inserting “MARCH,
16 AND TREE”; and

17 (3) in the table of sections for chapter 3, by
18 adding at the end the following:

“305. National tree.”.

Passed the House of Representatives September 28,
2004.

Attest:

JEFF TRANDAHL,

Clerk.