

108TH CONGRESS
2D SESSION

S. 2603

AN ACT

To amend section 227 of the Communications Act of 1934 (47 U.S.C. 227) relating to the prohibition on junk fax transmissions.

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—JUNK FAXES**

2 **SEC. 101. SHORT TITLE.**

3 This title may be cited as the “Junk Fax Prevention
4 Act of 2004”.

5 **SEC. 102. PROHIBITION ON FAX TRANSMISSIONS CON-**
6 **TAINING UNSOLICITED ADVERTISEMENTS.**

7 (a) PROHIBITION.—Section 227(b)(1)(C) of the Com-
8 munications Act of 1934 (47 U.S.C. 227(b)(1)(C)) is
9 amended to read as follows:

10 “(C) to use any telephone facsimile ma-
11 chine, computer, or other device to send, to a
12 telephone facsimile machine, an unsolicited ad-
13 vertisement, unless—

14 “(i) the unsolicited advertisement is
15 from a sender with an established business
16 relationship with the recipient;

17 “(ii) in the case of an unsolicited ad-
18 vertisement sent based on the established
19 business relationship to a residential tele-
20 phone facsimile machine, or, after the date
21 of enactment of the Junk Fax Prevention
22 Act of 2004, in the case of an unsolicited
23 advertisement sent based on the estab-
24 lished business relationship to a business

1 telephone facsimile machine, such number
2 was obtained by the sender through—

3 “(I) the voluntary communication
4 of such number, within the context of
5 such established business relationship,
6 from the recipient of the unsolicited
7 advertisement, or

8 “(II) a directory, advertisement,
9 or site on the World Wide Web to
10 which the recipient voluntarily agreed
11 to make available its facsimile number
12 for public distribution; and

13 “(iii) the unsolicited advertisement
14 contains a notice meeting the requirements
15 under paragraph (2)(D), except that the
16 exception under clauses (i) and (ii) shall
17 not apply with respect to an unsolicited ad-
18 vertisement sent to a telephone facsimile
19 machine by a sender to whom a request
20 has been made not to send future unsolic-
21 ited advertisements to such telephone fac-
22 simile machine that complies with the re-
23 quirements under paragraph (2)(E); or”.

1 (b) DEFINITION OF ESTABLISHED BUSINESS RELA-
 2 TIONSHIP.—Section 227(a) of the Communications Act of
 3 1934 (47 U.S.C. 227(a)) is amended—

4 (1) by redesignating paragraphs (2) through
 5 (4) as paragraphs (3) through (5), respectively; and

6 (2) by inserting after paragraph (1) the fol-
 7 lowing:

8 “(2) The term ‘established business relation-
 9 ship’, for purposes only of subsection (b)(1)(C)(i),
 10 shall have the meaning given the term in section
 11 64.1200 of title 47, Code of Federal Regulations, as
 12 in effect on January 1, 2003, except that—

13 “(A) such term shall include a relationship
 14 between a person or entity and a business sub-
 15 scriber subject to the same terms applicable
 16 under such section to a relationship between a
 17 person or entity and a residential subscriber;
 18 and

19 “(B) an established business relationship
 20 shall be subject to any time limitation estab-
 21 lished pursuant to paragraph (2)(G))”.

22 (c) REQUIRED NOTICE OF OPT-OUT OPPOR-
 23 TUNITY.—Section 227(b)(2) of the Communications Act
 24 of 1934 (47 U.S.C. 227(b)(2)) is amended—

1 (1) in subparagraph (B), by striking “and” at
2 the end;

3 (2) in subparagraph (C), by striking the period
4 at the end and inserting a semicolon; and

5 (3) by adding at the end the following:

6 “(D) shall provide that a notice contained
7 in an unsolicited advertisement complies with
8 the requirements under this subparagraph only
9 if—

10 “(i) the notice is clear and con-
11 spicuous and on the first page of the unso-
12 licited advertisement;

13 “(ii) the notice states that the recipi-
14 ent may make a request to the sender of
15 the unsolicited advertisement not to send
16 any future unsolicited advertisements to a
17 telephone facsimile machine or machines
18 and that failure to comply, within the
19 shortest reasonable time, as determined by
20 the Commission, with such a request meet-
21 ing the requirements under subparagraph
22 (E) is unlawful;

23 “(iii) the notice sets forth the require-
24 ments for a request under subparagraph
25 (E);

1 “(iv) the notice includes—

2 “(I) a domestic contact telephone
3 and facsimile machine number for the
4 recipient to transmit such a request to
5 the sender; and

6 “(II) a cost-free mechanism for a
7 recipient to transmit a request pursu-
8 ant to such notice to the sender of the
9 unsolicited advertisement; the Com-
10 mission shall by rule require the send-
11 er to provide such a mechanism and
12 may, in the discretion of the Commis-
13 sion and subject to such conditions as
14 the Commission may prescribe, ex-
15 empt certain classes of small business
16 senders, but only if the Commission
17 determines that the costs to such class
18 are unduly burdensome given the rev-
19 enues generated by such small busi-
20 nesses;

21 “(v) the telephone and facsimile ma-
22 chine numbers and the cost-free mecha-
23 nism set forth pursuant to clause (iv) per-
24 mit an individual or business to make such

1 a request during regular business hours;
2 and

3 “(vi) the notice complies with the re-
4 quirements of subsection (d);”.

5 (d) REQUEST TO OPT-OUT OF FUTURE UNSOLIC-
6 ITED ADVERTISEMENTS.—Section 227(b)(2) of the Com-
7 munications Act of 1934 (47 U.S.C. 227(b)(2)), as
8 amended by subsection (c), is further amended by adding
9 at the end the following:

10 “(E) shall provide, by rule, that a request
11 not to send future unsolicited advertisements to
12 a telephone facsimile machine complies with the
13 requirements under this subparagraph only if—

14 “(i) the request identifies the tele-
15 phone number or numbers of the telephone
16 facsimile machine or machines to which the
17 request relates;

18 “(ii) the request is made to the tele-
19 phone or facsimile number of the sender of
20 such an unsolicited advertisement provided
21 pursuant to subparagraph (D)(iv) or by
22 any other method of communication as de-
23 termined by the Commission; and

24 “(iii) the person making the request
25 has not, subsequent to such request, pro-

1 vided express invitation or permission to
2 the sender, in writing or otherwise, to send
3 such advertisements to such person at such
4 telephone facsimile machine;”.

5 (e) **AUTHORITY TO ESTABLISH NONPROFIT EXCEP-**
6 **TION.**—Section 227(b)(2) of the Communications Act of
7 1934 (47 U.S.C. 227(b)(2)), as amended by subsections
8 (c) and (d), is further amended by adding at the end the
9 following:

10 “(F) may, in the discretion of the Commis-
11 sion and subject to such conditions as the Com-
12 mission may prescribe, allow professional or
13 trade associations that are tax-exempt nonprofit
14 organizations to send unsolicited advertisements
15 to their members in furtherance of the associa-
16 tion’s tax-exempt purpose that do not contain
17 the notice required by paragraph (1)(C)(ii), ex-
18 cept that the Commission may take action
19 under this subparagraph only—

20 “(i) by regulation issued after public
21 notice and opportunity for public comment;
22 and

23 “(ii) if the Commission determines
24 that such notice required by paragraph
25 (1)(C)(ii) is not necessary to protect the

1 ability of the members of such associations
2 to stop such associations from sending any
3 future unsolicited advertisements; and”.

4 (f) AUTHORITY TO ESTABLISH TIME LIMIT ON ES-
5 TABLISHED BUSINESS RELATIONSHIP EXCEPTION.—Sec-
6 tion 227(b)(2) of the Communications Act of 1934 (47
7 U.S.C. 227(b)(2)), as amended by subsections (c), (d),
8 and (e) of this section, is further amended by adding at
9 the end the following:

10 “(G)(i) may, consistent with clause (ii),
11 limit the duration of the existence of an estab-
12 lished business relationship to a period after the
13 last occurrence of an action sufficient to estab-
14 lish such a relationship, but only if—

15 “(I) the Commission determines that
16 the existence of the exception under para-
17 graph (1)(C) relating to an established
18 business relationship has resulted in a sig-
19 nificant number of complaints to the Com-
20 mission regarding the sending of unsolic-
21 ited advertisements to telephone facsimile
22 machines;

23 “(II) upon review of such complaints
24 referred to in subclause (I), the Commis-
25 sion has reason to believe that a significant

1 number of such complaints involve unsolic-
2 ited advertisements that were sent on the
3 basis of an established business relation-
4 ship that was longer in duration than the
5 Commission believes is consistent with the
6 reasonable expectations of consumers;

7 “(III) the Commission determines
8 that the costs to senders of demonstrating
9 the existence of an established business re-
10 lationship within a specified period of time
11 do not outweigh the benefits to recipients
12 of establishing a limitation on such estab-
13 lished business relationship; and

14 “(IV) the Commission determines
15 that, with respect to small businesses, the
16 costs are not unduly burdensome, given the
17 revenues generated by small businesses,
18 and taking into account the number of spe-
19 cific complaints to the Commission regard-
20 ing the sending of unsolicited advertise-
21 ments to telephone facsimile machines by
22 small businesses; and

23 “(ii) may not commence a proceeding to
24 determine whether to limit the duration of the
25 existence of an established business relationship

1 before the expiration of the 3-year period that
2 begins on the date of the enactment of the
3 Junk Fax Prevention Act of 2004.”.

4 (g) UNSOLICITED ADVERTISEMENT.—Section
5 227(a)(5) of the Communications Act of 1934, as so re-
6 designated by subsection (b)(1), is amended by inserting
7 “, in writing or otherwise” before the period at the end.

8 (h) REGULATIONS.—Except as provided in section
9 227(b)(2)(G)(ii) of the Communications Act of 1934 (as
10 added by subsection (f)), not later than 270 days after
11 the date of enactment of this Act, the Federal Commu-
12 nications Commission shall issue regulations to implement
13 the amendments made by this section.

14 **SEC. 103. FCC ANNUAL REPORT REGARDING JUNK FAX EN-**
15 **FORCEMENT.**

16 Section 227 of the Communications Act of 1934 (47
17 U.S.C. 227) is amended by adding at the end the fol-
18 lowing:

19 “(g) JUNK FAX ENFORCEMENT REPORT.—The Com-
20 mission shall submit an annual report to Congress regard-
21 ing the enforcement during the past year of the provisions
22 of this section relating to sending of unsolicited advertise-
23 ments to telephone facsimile machines, which report shall
24 include—

1 “(1) the number of complaints received by the
2 Commission during such year alleging that a con-
3 sumer received an unsolicited advertisement via tele-
4 phone facsimile machine in violation of the Commis-
5 sion’s rules;

6 “(2) the number of citations issued by the Com-
7 mission pursuant to section 503 during the year to
8 enforce any law, regulation, or policy relating to
9 sending of unsolicited advertisements to telephone
10 facsimile machines;

11 “(3) the number of notices of apparent liability
12 issued by the Commission pursuant to section 503
13 during the year to enforce any law, regulation, or
14 policy relating to sending of unsolicited advertise-
15 ments to telephone facsimile machines;

16 “(4) for each notice referred to in paragraph
17 (3)—

18 “(A) the amount of the proposed forfeiture
19 penalty involved;

20 “(B) the person to whom the notice was
21 issued;

22 “(C) the length of time between the date
23 on which the complaint was filed and the date
24 on which the notice was issued; and

25 “(D) the status of the proceeding;

1 “(5) the number of final orders imposing for-
2 feiture penalties issued pursuant to section 503 dur-
3 ing the year to enforce any law, regulation, or policy
4 relating to sending of unsolicited advertisements to
5 telephone facsimile machines;

6 “(6) for each forfeiture order referred to in
7 paragraph (5)—

8 “(A) the amount of the penalty imposed by
9 the order;

10 “(B) the person to whom the order was
11 issued;

12 “(C) whether the forfeiture penalty has
13 been paid; and

14 “(D) the amount paid;

15 “(7) for each case in which a person has failed
16 to pay a forfeiture penalty imposed by such a final
17 order, whether the Commission referred such matter
18 for recovery of the penalty; and

19 “(8) for each case in which the Commission re-
20 ferred such an order for recovery—

21 “(A) the number of days from the date the
22 Commission issued such order to the date of
23 such referral;

24 “(B) whether an action has been com-
25 menced to recover the penalty, and if so, the

1 number of days from the date the Commission
2 referred such order for recovery to the date of
3 such commencement; and

4 “(C) whether the recovery action resulted
5 in collection of any amount, and if so, the
6 amount collected.”.

7 **SEC. 104. GAO STUDY OF JUNK FAX ENFORCEMENT.**

8 (a) IN GENERAL.—The Comptroller General of the
9 United States shall conduct a study regarding complaints
10 received by the Federal Communications Commission con-
11 cerning unsolicited advertisements sent to telephone fac-
12 simile machines, which study shall determine—

13 (1) the mechanisms established by the Commis-
14 sion to receive, investigate, and respond to such
15 complaints;

16 (2) the level of enforcement success achieved by
17 the Commission regarding such complaints;

18 (3) whether complainants to the Commission
19 are adequately informed by the Commission of the
20 responses to their complaints; and

21 (4) whether additional enforcement measures
22 are necessary to protect consumers, including rec-
23 ommendations regarding such additional enforce-
24 ment measures.

1 (b) ADDITIONAL ENFORCEMENT REMEDIES.—In
2 conducting the analysis and making the recommendations
3 required under subsection (a)(4), the Comptroller General
4 shall specifically examine—

5 (1) the adequacy of existing statutory enforce-
6 ment actions available to the Commission;

7 (2) the adequacy of existing statutory enforce-
8 ment actions and remedies available to consumers;

9 (3) the impact of existing statutory enforcement
10 remedies on senders of facsimiles;

11 (4) whether increasing the amount of financial
12 penalties is warranted to achieve greater deterrent
13 effect; and

14 (5) whether establishing penalties and enforce-
15 ment actions for repeat violators or abusive viola-
16 tions similar to those established under section 1037
17 of title 18, United States Code, would have a greater
18 deterrent effect.

19 (c) REPORT.—Not later than 270 days after the date
20 of the enactment of this Act, the Comptroller General shall
21 submit a report on the results of the study under this sec-
22 tion to Committee on Energy and Commerce of the House
23 of Representatives and the Committee on Commerce,
24 Science, and Transportation of the Senate.

1 **TITLE II—PROFESSIONAL**
 2 **BOXING SAFETY**

3 **SEC. 201. SHORT TITLE; TABLE OF CONTENTS.**

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

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

- Sec. 201. Short title; table of contents.
- Sec. 202. Amendment of Professional Boxing Safety Act of 1996.
- Sec. 203. Definitions.
- Sec. 204. Purposes.
- Sec. 205. United States Boxing Commission approval, or ABC or commission sanction, required for matches.
- Sec. 206. Safety standards.
- Sec. 207. Registration.
- Sec. 208. Review.
- Sec. 209. Reporting.
- Sec. 210. Contract requirements.
- Sec. 211. Coercive contracts.
- Sec. 212. Sanctioning organizations.
- Sec. 213. Required disclosures by sanctioning organizations.
- Sec. 214. Required disclosures by promoters and broadcasters.
- Sec. 215. Judges and referees.
- Sec. 216. Medical registry.
- Sec. 217. Conflicts of interest.
- Sec. 218. Enforcement.
- Sec. 219. Repeal of deadwood.
- Sec. 220. Recognition of tribal law.
- Sec. 221. Establishment of United States Boxing Commission.
- Sec. 222. Study and report on definition of promoter.
- Sec. 223. Effective date.

8 **SEC. 202. AMENDMENT OF PROFESSIONAL BOXING SAFETY**
 9 **ACT OF 1996.**

10 Except as otherwise expressly provided, whenever in
 11 this title an amendment or repeal is expressed in terms
 12 of an amendment to, or repeal of, a section or other provi-
 13 sion, the reference shall be considered to be made to a

1 section or other provision of the Professional Boxing Safe-
2 ty Act of 1996 (15 U.S.C. 6301 et seq.).

3 **SEC. 203. DEFINITIONS.**

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

6 **“SEC. 2. DEFINITIONS.**

7 “In this Act:

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

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

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

16 “(4) BOXING COMMISSION.—The term ‘boxing
17 commission’ means an entity authorized under State
18 or tribal law to regulate professional boxing
19 matches.

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

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

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

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

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

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

22 “(11) MATCHMAKER.—The term ‘matchmaker’
23 means a person that proposes, selects, and arranges
24 for boxers to participate in a professional boxing
25 match.

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

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

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

15 “(A) means the person primarily respon-
16 sible for organizing, promoting, and producing
17 a professional boxing match; but

18 “(B) does not include a hotel, casino, re-
19 sort, or other commercial establishment hosting
20 or sponsoring a professional boxing match
21 unless—

22 “(i) the hotel, casino, resort, or other
23 commercial establishment is primarily re-
24 sponsible for organizing, promoting, and
25 producing the match; and

1 “(ii) there is no other person primarily
2 responsible for organizing, promoting, and
3 producing the match.

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

10 “(A) the boxer who is to participate in the
11 match or matches; or

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

19 “(16) STATE.—The term ‘State’ means each of
20 the 50 States, Puerto Rico, the District of Columbia,
21 and any territory or possession of the United States,
22 including the Virgin Islands.

23 “(17) SANCTIONING ORGANIZATION.—The term
24 ‘sanctioning organization’ means an organization,
25 other than a boxing commission, that sanctions pro-

1 professional boxing matches, ranks professional boxers,
 2 or charges a sanctioning fee for professional boxing
 3 matches in the United States—

4 “(A) between boxers who are residents of
 5 different States; or

6 “(B) that are advertised, otherwise pro-
 7 moted, or broadcast (including closed circuit
 8 television) in interstate commerce.

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

12 “(19) TRIBAL ORGANIZATION.—The term ‘trib-
 13 al organization’ has the same meaning as in section
 14 4(l) of the Indian Self-Determination and Education
 15 Assistance Act (25 U.S.C. 450b(l)).”.

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

18 **“SEC. 21. PROFESSIONAL BOXING MATCHES CONDUCTED**
 19 **ON INDIAN LANDS.**

20 “(a) IN GENERAL.—Notwithstanding any other pro-
 21 vision of law, a tribal organization may establish a boxing
 22 commission to regulate professional boxing matches held
 23 on Indian land under the jurisdiction of that tribal organi-
 24 zation.

1 “(b) STANDARDS AND LICENSING.—A tribal organi-
 2 zation that establishes a boxing commission shall, by tribal
 3 ordinance or resolution, establish and provide for the im-
 4 plementation of health and safety standards, licensing re-
 5 quirements, and other requirements relating to the con-
 6 duct of professional boxing matches that are at least as
 7 restrictive as—

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

11 “(2) the guidelines established by the United
 12 States Boxing Commission.

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

18 **SEC. 204. PURPOSES.**

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

21 **SEC. 205. UNITED STATES BOXING COMMISSION APPROVAL,**
 22 **OR ABC OR COMMISSION SANCTION, RE-**
 23 **QUIRED FOR MATCHES.**

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

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

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

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

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

10 “(b) APPROVAL PRESUMED.—

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

14 “(A) a match with respect to which the
15 Commission has been informed of an alleged
16 violation of this Act and with respect to which
17 it has notified the supervising boxing commis-
18 sion that it does not approve;

19 “(B) a match advertised to the public as a
20 championship match;

21 “(C) a match scheduled for 10 rounds or
22 more; or

23 “(D) a match in which 1 of the boxers
24 has—

25 “(i) suffered 10 consecutive defeats in
26 professional boxing matches; or

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

3 “(2) DELEGATION OF APPROVAL AUTHORITY.—
4 Notwithstanding paragraph (1), the Commission
5 shall be presumed to have approved a match de-
6 scribed in subparagraph (B), (C), or (D) of para-
7 graph (1) if—

8 “(A) the Commission has delegated in
9 writing its approval authority with respect to
10 that match to a boxing commission; and

11 “(B) the boxing commission has approved
12 the match.

13 “(3) KNOCKED-OUT DEFINED.—Except as may
14 be otherwise provided by the Commission by rule, in
15 paragraph (1)(D)(ii), the term ‘knocked out’ means
16 knocked down and unable to continue after a count
17 of 10 by the referee or stopped from continuing be-
18 cause of a technical knockout.”.

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

21 **SEC. 206. SAFETY STANDARDS.**

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

23 (1) by striking “requirements or an alternative
24 requirement in effect under regulations of a boxing
25 commission that provides equivalent protection of

1 the health and safety of boxers.” and inserting “re-
2 quirements.”;

3 (2) by adding at the end of paragraph (1) “The
4 examination shall include testing for infectious dis-
5 eases in accordance with standards established by
6 the Commission.”;

7 (3) by striking paragraph (2) and inserting the
8 following:

9 “(2) An ambulance continuously present on
10 site.”;

11 (4) by redesignating paragraphs (3) and (4) as
12 paragraphs (4) and (5), respectively, and inserting
13 after paragraph (2) the following:

14 “(3) Emergency medical personnel with appro-
15 priate resuscitation equipment continuously present
16 on site.”; and

17 (5) by striking “match.” in paragraph (5), as
18 redesignated, and inserting “match in an amount
19 prescribed by the Commission.”.

20 **SEC. 207. REGISTRATION.**

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

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

24 (2) by striking the first sentence of subsection
25 (c) and inserting “A boxing commission shall, in ac-

1 cordance with requirements established by the Com-
 2 mission, make a health and safety disclosure to a
 3 boxer when issuing an identification card to that
 4 boxer.”;

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

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

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

14 **SEC. 208. REVIEW.**

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

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

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

21 “(3) Procedures to review a summary suspen-
 22 sion when a hearing before the boxing commission is
 23 requested by a boxer, licensee, manager, match-
 24 maker, promoter, or other boxing service provider

1 which provides an opportunity for that person to
2 present evidence.”;

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

4 (4) by striking “(a) PROCEDURES.—”.

5 **SEC. 209. REPORTING.**

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

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

9 (2) by striking “bxoing” and inserting “box-
10 ing”; and

11 (3) by striking “each boxer registry.” and in-
12 serting “the Commission.”.

13 **SEC. 210. CONTRACT REQUIREMENTS.**

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

16 **“SEC. 9. CONTRACT REQUIREMENTS.**

17 “(a) IN GENERAL.—The Commission, in consultation
18 with the Association of Boxing Commissions, shall develop
19 guidelines for minimum contractual provisions that shall
20 be included in each bout agreement, boxer-manager con-
21 tract, and promotional agreement. Each boxing commis-
22 sion shall ensure that these minimal contractual provisions
23 are present in any such agreement or contract submitted
24 to it.

25 “(b) FILING AND APPROVAL REQUIREMENTS.—

1 “(1) COMMISSION.—A manager or promoter
2 shall submit a copy of each boxer-manager contract
3 and each promotional agreement between that man-
4 ager or promoter and a boxer to the Commission,
5 and, if requested, to the boxing commission with ju-
6 risdiction over the bout.

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

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

17 **SEC. 211. COERCIVE CONTRACTS.**

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

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

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

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

1 **SEC. 212. SANCTIONING ORGANIZATIONS.**

2 (a) IN GENERAL.—Section 11 (15 U.S.C. 6307e) is
3 amended to read as follows:

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

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

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

18 “(1) post a copy, within 7 days after the
19 change, on its Internet website or home page, if any,
20 including an explanation of the change, for a period
21 of not less than 30 days;

22 “(2) provide a copy of the rating change and a
23 thorough explanation in writing under penalty of
24 perjury to the boxer and the Commission;

1 “(3) provide the boxer an opportunity to appeal
2 the ratings change to the sanctioning organization;
3 and

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

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

13 “(1) provide to the boxer a written explanation
14 under penalty of perjury of the organization’s rating
15 criteria, its rating of the boxer, and the rationale or
16 basis for its rating (including a response to any spe-
17 cific questions submitted by the boxer); and

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

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

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

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

4 **SEC. 213. REQUIRED DISCLOSURES BY SANCTIONING OR-**
5 **GANIZATIONS.**

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

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

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

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

19 **SEC. 214. REQUIRED DISCLOSURES BY PROMOTERS AND**
20 **BROADCASTERS.**

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

22 (1) by striking “**PROMOTERS.**” in the section
23 caption and inserting “**PROMOTERS AND BROAD-**
24 **CASTERS.**”;

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

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

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

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

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

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

21 (7) by striking the matter in subsection (b) fol-
22 lowing “BOXER.—” and preceding paragraph (1)
23 and inserting “Within 7 days after a professional
24 boxing match of 10 rounds or more, the promoter of
25 the match shall provide to each boxer participating

1 in the bout or match with whom the promoter has
 2 a bout or promotional agreement a statement
 3 of—”;

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

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

9 “(d) REQUIRED DISCLOSURES BY BROADCASTERS.—

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

14 “(A) a statement of any advance, guar-
 15 antee, or license fee paid or owed by the broad-
 16 caster to a promoter in connection with that
 17 match;

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

20 “(i) a boxer who participated in that
 21 match; or

22 “(ii) the boxer’s manager, promoter,
 23 promotional company, or other representa-
 24 tive or the owner or representative of the
 25 site of the match; and

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

3 “(2) COPY TO BOXING COMMISSION.—Upon re-
4 quest from the boxing commission in the State or
5 Indian land responsible for regulating a match to
6 which paragraph (1) applies, a broadcaster shall
7 provide the information described in paragraph (1)
8 to that boxing commission.

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

17 “(4) TELEVISION BROADCAST RIGHTS.—In
18 paragraph (1), the term ‘television broadcast rights’
19 means the right to broadcast the match, or any part
20 thereof, via a broadcast station, cable service, or
21 multichannel video programming distributor as such
22 terms are defined in section 3(5), 602(6), and
23 602(13) of the Communications Act of 1934 (47
24 U.S.C. 153(5), 602(6), and 602(13), respectively).”.

1 **SEC. 215. JUDGES AND REFEREES.**

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

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

6 (2) by striking “certified and approved” and in-
7 serting “selected”;

8 (3) by inserting “or Indian lands” after
9 “State”; and

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

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

19 “(c) ROLE OF SANCTIONING ORGANIZATION.—A
20 sanctioning organization may provide a list of judges and
21 referees deemed qualified by that organization to a boxing
22 commission, but the boxing commission shall select, li-
23 cense, and appoint the judges and referees participating
24 in the match.

25 “(d) ASSIGNMENT OF NONRESIDENT JUDGES AND
26 REFEREES.—A boxing commission may assign judges and

1 referees who reside outside that commission’s State or In-
 2 dian land.

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

12 (b) **CONFORMING AMENDMENT.**—Section 14 (15
 13 U.S.C. 6307f) is repealed.

14 **SEC. 216. MEDICAL REGISTRY.**

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

17 **“SEC. 14. MEDICAL REGISTRY.**

18 “(a) **IN GENERAL.**—The Commission shall establish
 19 and maintain, or certify a third party entity to establish
 20 and maintain, a medical registry that contains comprehen-
 21 sive medical records and medical denials or suspensions
 22 for every licensed boxer.

23 “(b) **CONTENT; SUBMISSION.**—The Commission shall
 24 determine—

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

4 “(2) the time within which the medical records
5 and medical suspensions are to be submitted to the
6 medical registry.

7 “(c) CONFIDENTIALITY.—The Commission shall es-
8 tablish confidentiality standards for the disclosure of per-
9 sonally identifiable information to boxing commissions
10 that will—

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

14 “(2) ensure that the privacy of the boxers is
15 protected.”.

16 **SEC. 217. CONFLICTS OF INTEREST.**

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

18 (1) by striking “enforces State boxing laws,” in
19 subsection (a) and inserting “implements State or
20 tribal boxing laws, no officer or employee of the
21 Commission,”;

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

24 (3) by striking the last sentence of subsection
25 (a);

1 (4) by striking subsection (b) and inserting the
2 following:

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

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

8 “(2) providing any payment or other compensa-
9 tion to—

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

12 “(B) the boxing commission that will regu-
13 late the bout; or

14 “(C) ring officials who officiate at the
15 bout.”.

16 **SEC. 218. ENFORCEMENT.**

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

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

21 (2) by striking “enforces State boxing laws,” in
22 subsection (b)(3) and inserting “implements State or
23 tribal boxing laws, any officer or employee of the
24 Commission,”;

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

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

6 (5) by striking “boxer” in subsection (d) and
7 inserting “person”.

8 **SEC. 219. REPEAL OF DEADWOOD.**

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

10 **SEC. 220. RECOGNITION OF TRIBAL LAW.**

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

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

14 (2) by inserting “or Indian tribe” after
15 “State”.

16 **SEC. 221. ESTABLISHMENT OF UNITED STATES BOXING**
17 **COMMISSION.**

18 (a) **IN GENERAL.**—The Act is amended by adding at
19 the end the following:

20 **“TITLE II—UNITED STATES**
21 **BOXING COMMISSION**

22 **“SEC. 201. PURPOSE.**

23 “The purpose of this title is to protect the health,
24 safety, and welfare of boxers and to ensure fairness in the
25 sport of professional boxing.

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

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

5 “(b) MEMBERS.—

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

9 “(2) QUALIFICATIONS.—

10 “(A) IN GENERAL.—Each member of the
11 Commission shall be a citizen of the United
12 States who—

13 “(i) has extensive experience in pro-
14 fessional boxing activities or in a field di-
15 rectly related to professional sports;

16 “(ii) is of outstanding character and
17 recognized integrity; and

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

21 “(B) SPECIFIC QUALIFICATIONS FOR CER-
22 TAIN MEMBERS.—At least 1 member of the
23 Commission shall be a former member of a local
24 boxing authority. If practicable, at least 1 mem-
25 ber of the Commission shall be a physician or

1 other health care professional duly licensed as
2 such.

3 “(C) DISINTERESTED PERSONS.—No
4 member of the Commission may, while serving
5 as a member of the Commission—

6 “(i) be engaged as a professional
7 boxer, boxing promoter, agent, fight man-
8 ager, matchmaker, referee, judge, or in any
9 other capacity in the conduct of the busi-
10 ness of professional boxing;

11 “(ii) have any pecuniary interest in
12 the earnings of any boxer or the proceeds
13 or outcome of any boxing match; or

14 “(iii) serve as a member of a boxing
15 commission.

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

19 “(4) GEOGRAPHIC BALANCE.—Not more than 2
20 members of the Commission may be residents of the
21 same geographic region of the United States when
22 appointed to the Commission. For purposes of the
23 preceding sentence, the area of the United States
24 east of the Mississippi River is a geographic region,

1 and the area of the United States west of the Mis-
2 sissippi River is a geographic region.

3 “(5) TERMS.—

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

6 “(B) REAPPOINTMENT.—Members of the
7 Commission may be reappointed to the Com-
8 mission.

9 “(C) MIDTERM VACANCIES.—A member of
10 the Commission appointed to fill a vacancy in
11 the Commission occurring before the expiration
12 of the term for which the member’s predecessor
13 was appointed shall be appointed for the re-
14 mainder of that unexpired term.

15 “(D) CONTINUATION PENDING REPLACE-
16 MENT.—A member of the Commission may
17 serve after the expiration of that member’s
18 term until a successor has taken office.

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

21 “(c) EXECUTIVE DIRECTOR.—

22 “(1) IN GENERAL.—The Commission shall em-
23 ploy an Executive Director to perform the adminis-
24 trative functions of the Commission under this Act,

1 and such other functions and duties of the Commis-
2 sion as the Commission shall specify.

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

7 “(d) GENERAL COUNSEL.—The Commission shall
8 employ a General Counsel to provide legal counsel and ad-
9 vice to the Executive Director and the Commission in the
10 performance of its functions under this Act, and to carry
11 out such other functions and duties as the Commission
12 shall specify.

13 “(e) STAFF.—The Commission shall employ such ad-
14 ditional staff as the Commission considers appropriate to
15 assist the Executive Director and the General Counsel in
16 carrying out the functions and duties of the Commission
17 under this Act.

18 “(f) COMPENSATION.—

19 “(1) MEMBERS OF COMMISSION.—

20 “(A) IN GENERAL.—Each member of the
21 Commission shall be compensated at a rate
22 equal to the daily equivalent of the annual rate
23 of basic pay prescribed for level IV of the Exec-
24 utive Schedule under section 5315 of title 5,
25 United States Code, for each day (including

1 travel time) during which such member is en-
2 gaged in the performance of the duties of the
3 Commission.

4 “(B) TRAVEL EXPENSES.—The members
5 of the Commission shall be allowed travel ex-
6 penses, including per diem in lieu of subsist-
7 ence, at rates authorized for employees of agen-
8 cies under subchapter I of chapter 57 of title 5,
9 United States Code, while away from their
10 homes or regular places of business in the per-
11 formance of services for the Commission.

12 “(2) EXECUTIVE DIRECTOR AND STAFF.—The
13 Commission shall fix the compensation of the Execu-
14 tive Director, the General Counsel, and other per-
15 sonnel of the Commission. The rate of pay for the
16 Executive Director, the General Counsel, and other
17 personnel may not exceed the rate payable for level
18 V of the Executive Schedule under section 5316 of
19 title 5, United States Code.

20 **“SEC. 203. FUNCTIONS.**

21 “(a) PRIMARY FUNCTIONS.—The primary functions
22 of the Commission are—

23 “(1) to protect the health, safety, and general
24 interests of boxers consistent with the provisions of
25 this Act; and

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

3 “(b) SPECIFIC FUNCTIONS.—The Commission
4 shall—

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

6 “(2) promulgate uniform standards for profes-
7 sional boxing in consultation with the Association of
8 Boxing Commissions;

9 “(3) except as otherwise determined by the
10 Commission, oversee all professional boxing matches
11 in the United States;

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

14 “(A) to improve the safety, integrity, and
15 professionalism of professional boxing in the
16 United States;

17 “(B) to enhance physical, medical, finan-
18 cial, and other safeguards established for the
19 protection of professional boxers; and

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

22 “(5) ensure, in cooperation with the Attorney
23 General (who shall represent the Commission in any
24 judicial proceeding under this Act), the chief law en-
25 forcement officer of the several States, and other ap-

1 appropriate officers and agencies of Federal, State,
2 and local government, that Federal and State laws
3 applicable to professional boxing matches in the
4 United States are vigorously, effectively, and fairly
5 enforced;

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

10 “(7) serve as the coordinating body for all ef-
11 forts in the United States to establish and maintain
12 uniform minimum health and safety standards for
13 professional boxing;

14 “(8) if the Commission determines it to be ap-
15 propriate, publish a newspaper, magazine, or other
16 publication and establish and maintain a website
17 consistent with the purposes of the Commission;

18 “(9) procure the temporary and intermittent
19 services of experts and consultants to the extent au-
20 thorized by section 3109(b) of title 5, United States
21 Code, at rates the Commission determines to be rea-
22 sonable; and

23 “(10) promulgate rules, regulations, and guid-
24 ance, and take any other action necessary and prop-

1 er to accomplish the purposes of, and consistent
2 with, the provisions of this title.

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

4 “(1) promote boxing events or rank professional
5 boxers; or

6 “(2) provide technical assistance to, or author-
7 ize the use of the name of the Commission by, box-
8 ing commissions that do not comply with require-
9 ments of the Commission.

10 “(d) USE OF NAME.—The Commission shall have the
11 exclusive right to use the name ‘United States Boxing
12 Commission’. Any person who, without the permission of
13 the Commission, uses that name or any other exclusive
14 name, trademark, emblem, symbol, or insignia of the Com-
15 mission for the purpose of inducing the sale or exchange
16 of any goods or services, or to promote any exhibition, per-
17 formance, or sporting event, shall be subject to suit in a
18 civil action by the Commission for the remedies provided
19 in the Act of July 5, 1946 (commonly known as the
20 ‘Trademark Act of 1946’; 15 U.S.C. 1051 et seq.).

21 **“SEC. 204. LICENSING AND REGISTRATION OF BOXING PER-**
22 **SONNEL.**

23 “(a) LICENSING.—

24 “(1) REQUIREMENT FOR LICENSE.—No person
25 may compete in a professional boxing match or serve

1 as a boxing manager, boxing promoter, or sanc-
2 tioning organization for a professional boxing match
3 except as provided in a license granted to that per-
4 son under this subsection.

5 “(2) APPLICATION AND TERM.—

6 “(A) IN GENERAL.—The Commission
7 shall—

8 “(i) establish application procedures,
9 forms, and fees;

10 “(ii) establish and publish appropriate
11 standards for licenses granted under this
12 section; and

13 “(iii) issue a license to any person
14 who, as determined by the Commission,
15 meets the standards established by the
16 Commission under this title.

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

19 “(i) 4-year term for a boxer; and

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

21 “(C) PROCEDURE.—The Commission may
22 issue a license under this paragraph through
23 boxing commissions or in a manner determined
24 by the Commission.

25 “(b) LICENSING FEES.—

1 “(1) **AUTHORITY.**—The Commission may pre-
 2 scribe and charge reasonable fees for the licensing of
 3 persons under this title. The Commission may set,
 4 charge, and adjust varying fees on the basis of clas-
 5 sifications of persons, functions, and events deter-
 6 mined appropriate by the Commission.

7 “(2) **LIMITATIONS.**—In setting and charging
 8 fees under paragraph (1), the Commission shall en-
 9 sure that, to the maximum extent practicable—

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

11 “(B) sanctioning organizations and pro-
 12 motors pay comparatively the largest portion of
 13 the fees; and

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

16 “(3) **COLLECTION.**—Fees established under this
 17 subsection may be collected through boxing commis-
 18 sions or by any other means determined appropriate
 19 by the Commission.

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

21 “(a) **REQUIREMENT FOR REGISTRY.**—The Commis-
 22 sion shall establish and maintain (or authorize a third
 23 party to establish and maintain) a unified national com-
 24 puterized registry for the collection, storage, and retrieval
 25 of information related to the performance of its duties.

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

3 “(1) BOXERS.—A list of professional boxers
4 and data in the medical registry established under
5 section 114 of this Act, which the Commission shall
6 secure from disclosure in accordance with the con-
7 fidentiality requirements of section 114(c).

8 “(2) OTHER PERSONNEL.—Information (perti-
9 nent to the sport of professional boxing) on boxing
10 promoters, boxing matchmakers, boxing managers,
11 trainers, cut men, referees, boxing judges, physi-
12 cians, and any other personnel determined by the
13 Commission as performing a professional activity for
14 professional boxing matches.

15 **“SEC. 206. CONSULTATION REQUIREMENTS.**

16 “The Commission shall consult with the Association
17 of Boxing Commissions—

18 “(1) before prescribing any regulation or estab-
19 lishing any standard under the provisions of this
20 title; and

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

23 **“SEC. 207. MISCONDUCT.**

24 “(a) SUSPENSION AND REVOCATION OF LICENSE OR
25 REGISTRATION.—

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

5 “(A) the license holder has violated any
6 provision of this Act;

7 “(B) there are reasonable grounds for be-
8 lief that a standard prescribed by the Commis-
9 sion under this title is not being met, or that
10 bribery, collusion, intentional losing, racket-
11 eering, extortion, or the use of unlawful threats,
12 coercion, or intimidation have occurred in con-
13 nection with a license; or

14 “(C) the suspension or revocation is nec-
15 essary for the protection of health and safety or
16 is otherwise in the public interest.

17 “(2) PERIOD OF SUSPENSION.—

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

22 “(B) SUSPENSION FOR MEDICAL REA-
23 SONS.—In the case of a suspension or denial of
24 the license of a boxer for medical reasons by the
25 Commission, the Commission may terminate

1 the suspension or denial at any time that a phy-
2 sician certifies that the boxer is fit to partici-
3 pate in a professional boxing match. The Com-
4 mission shall prescribe the standards and proce-
5 dures for accepting certifications under this
6 subparagraph.

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

10 “(b) INVESTIGATIONS AND INJUNCTIONS.—

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

12 “(A) conduct any investigation that it con-
13 siders necessary to determine whether any per-
14 son has violated, or is about to violate, any pro-
15 vision of this Act or any regulation prescribed
16 under this Act;

17 “(B) require or permit any person to file
18 with it a statement in writing, under oath or
19 otherwise as the Commission shall determine,
20 as to all the facts and circumstances concerning
21 the matter to be investigated;

22 “(C) in its discretion, publish information
23 concerning any violations; and

24 “(D) investigate any facts, conditions,
25 practices, or matters to aid in the enforcement

1 of the provisions of this Act, in the prescribing
2 of regulations under this Act, or in securing in-
3 formation to serve as a basis for recommending
4 legislation concerning the matters to which this
5 Act relates.

6 “(2) POWERS.—

7 “(A) IN GENERAL.—For the purpose of
8 any investigation under paragraph (1) or any
9 other proceeding under this title—

10 “(i) any officer designated by the
11 Commission may administer oaths and af-
12 firmations, subpoena or otherwise compel
13 the attendance of witnesses, take evidence,
14 and require the production of any books,
15 papers, correspondence, memoranda, or
16 other records the Commission considers
17 relevant or material to the inquiry; and

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

21 “(B) WITNESSES AND EVIDENCE.—The
22 attendance of witnesses and the production of
23 any documents under subparagraph (A) may be
24 required from any place in the United States,

1 including Indian land, at any designated place
2 of hearing.

3 “(3) ENFORCEMENT OF SUBPOENAS.—

4 “(A) CIVIL ACTION.—In case of contumacy
5 by, or refusal to obey a subpoena issued to, any
6 person, the Commission may file an action in
7 any district court of the United States within
8 the jurisdiction of which an investigation or
9 proceeding is carried out, or where that person
10 resides or carries on business, to enforce the at-
11 tendance and testimony of witnesses and the
12 production of books, papers, correspondence,
13 memorandums, and other records. The court
14 may issue an order requiring the person to ap-
15 pear before the Commission to produce records,
16 if so ordered, or to give testimony concerning
17 the matter under investigation or in question.

18 “(B) FAILURE TO OBEY.—Any failure to
19 obey an order issued by a court under subpara-
20 graph (A) may be punished as contempt of that
21 court.

22 “(C) PROCESS.—All process in any con-
23 tempt case under subparagraph (A) may be
24 served in the judicial district in which the per-

1 son is an inhabitant or in which the person may
2 be found.

3 “(4) EVIDENCE OF CRIMINAL MISCONDUCT.—

4 “(A) IN GENERAL.—No person may be ex-
5 cused from attending and testifying or from
6 producing books, papers, contracts, agreements,
7 and other records and documents before the
8 Commission, in obedience to the subpoena of
9 the Commission, or in any cause or proceeding
10 instituted by the Commission, on the ground
11 that the testimony or evidence, documentary or
12 otherwise, required of that person may tend to
13 incriminate the person or subject the person to
14 a penalty or forfeiture.

15 “(B) LIMITED IMMUNITY.—No individual
16 may be prosecuted or subject to any penalty or
17 forfeiture for, or on account of, any transaction,
18 matter, or thing concerning the matter about
19 which that individual is compelled, after having
20 claimed a privilege against self-incrimination, to
21 testify or produce evidence, documentary or
22 otherwise, except that the individual so testi-
23 fying shall not be exempt from prosecution and
24 punishment for perjury committed in so testi-
25 fying.

1 “(5) INJUNCTIVE RELIEF.—If the Commission
2 determines that any person is engaged or about to
3 engage in any act or practice that constitutes a vio-
4 lation of any provision of this Act, or of any regula-
5 tion prescribed under this Act, the Commission may
6 bring an action in the appropriate district court of
7 the United States, the United States District Court
8 for the District of Columbia, or the United States
9 courts of any territory or other place subject to the
10 jurisdiction of the United States, to enjoin the act
11 or practice, and upon a proper showing, the court
12 shall grant without bond a permanent or temporary
13 injunction or restraining order.

14 “(6) MANDAMUS.—Upon application of the
15 Commission, the district courts of the United States,
16 the United States District Court for the District of
17 Columbia, and the United States courts of any terri-
18 tory or other place subject to the jurisdiction of the
19 United States, shall have jurisdiction to issue writs
20 of mandamus commanding any person to comply
21 with the provisions of this Act or any order of the
22 Commission.

23 “(c) INTERVENTION IN CIVIL ACTIONS.—

24 “(1) IN GENERAL.—The Commission, on behalf
25 of the public interest, may intervene of right as pro-

1 vided under rule 24(a) of the Federal Rules of Civil
2 Procedure in any civil action relating to professional
3 boxing filed in a district court of the United States.

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

8 “(d) HEARINGS BY COMMISSION.—Hearings con-
9 ducted by the Commission under this Act shall be public
10 and may be held before any officer of the Commission.
11 The Commission shall keep appropriate records of the
12 hearings.

13 **“SEC. 208. NONINTERFERENCE WITH BOXING COMMIS-**
14 **SIONS.**

15 “(a) NONINTERFERENCE.—Nothing in this Act pro-
16 hibits any boxing commission from exercising any of its
17 powers, duties, or functions with respect to the regulation
18 or supervision of professional boxing or professional box-
19 ing matches to the extent not inconsistent with the provi-
20 sions of this Act.

21 “(b) MINIMUM STANDARDS.—Nothing in this Act
22 prohibits any boxing commission from enforcing local
23 standards or requirements that exceed the minimum
24 standards or requirements promulgated by the Commis-
25 sion under this Act.

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

2 “Any employee of any executive department, agency,
3 bureau, board, commission, office, independent establish-
4 ment, or instrumentality may be detailed to the Commis-
5 sion, upon the request of the Commission, on a reimburs-
6 able or nonreimbursable basis, with the consent of the ap-
7 propriate authority having jurisdiction over the employee.
8 While so detailed, an employee shall continue to receive
9 the compensation provided pursuant to law for the employ-
10 ee’s regular position of employment and shall retain, with-
11 out interruption, the rights and privileges of that employ-
12 ment.

13 **“SEC. 210. REPORTS.**

14 “(a) ANNUAL REPORT.—The Commission shall sub-
15 mit a report on its activities to the Senate Committee on
16 Commerce, Science, and Transportation and the House of
17 Representatives Committee on Commerce each year. The
18 annual report shall include—

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

21 “(2) an overview of the licensing and enforce-
22 ment activities of the State and tribal organization
23 boxing commissions.

24 “(b) PUBLIC REPORT.—The Commission shall annu-
25 ally issue and publicize a report of the Commission on the
26 progress made at Federal and State levels and on Indian

1 lands in the reform of professional boxing, which shall in-
2 clude comments on issues of continuing concern to the
3 Commission.

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

8 **“SEC. 211. INITIAL IMPLEMENTATION.**

9 “(a) TEMPORARY EXEMPTION.—The requirements
10 for licensing under this title do not apply to a person for
11 the performance of an activity as a boxer, boxing judge,
12 or referee, or the performance of any other professional
13 activity in relation to a professional boxing match, if the
14 person is licensed by a boxing commission to perform that
15 activity as of the effective date of this title.

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

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

20 or

21 “(B) the date that is 2 years after the date
22 of the enactment of the Professional Boxing
23 Amendments Act of 2004.

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

2 “(a) IN GENERAL.—There are authorized to be ap-
3 propriated for the Commission for each fiscal year such
4 sums as may be necessary for the Commission to perform
5 its functions for that fiscal year.

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

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

12 “(2) shall be available for expenditure only to
13 pay the costs of activities and services for which the
14 fee is imposed; and

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

16 (b) CONFORMING AMENDMENTS.—

17 (1) PBSA.—The Professional Boxing Safety
18 Act of 1996, as amended by this Act, is further
19 amended—

20 (A) by striking section 1 and inserting the
21 following:

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

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

25 “(b) TABLE OF CONTENTS.—The table of contents
26 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 organizations.

“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;

1 (D) by striking subsection (a) of section
2 113, as redesignated, and inserting the fol-
3 lowing:

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

9 (E) by striking “section 13” in subsection
10 (b) of section 113, as redesignated, and insert-
11 ing “section 111”;

12 (F) by striking “9(b), 10, 11, 12, 13, 14,
13 or 16,” in paragraph (1) of section 116(b), as
14 redesignated, and inserting “107, 108, 109,
15 110, 111, or 114”;

16 (G) by striking “9(b), 10, 11, 12, 13, 14,
17 or 16” in paragraph (2) of section 116(b), as
18 redesignated, and inserting “107, 108, 109,
19 110, 111, or 114”;

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

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

1 (J) by striking “of this Act” each place it
2 appears in sections 101 through 120, as reded-
3 ignated, and inserting “of this title”.

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

7 “Members of the United States Boxing Com-
8 mission.”.

9 **SEC. 222. STUDY AND REPORT ON DEFINITION OF PRO-**
10 **MOTER.**

11 (a) STUDY.—The United States Boxing Commission
12 shall conduct a study on how the term “promoter” should
13 be defined for purposes of the Professional Boxing Safety
14 Act.

15 (b) HEARINGS.—As part of that study, the Commis-
16 sion shall hold hearings and solicit testimony at those
17 hearings from boxers, managers, promoters, premium,
18 cable, and satellite program service providers, hotels, casi-
19 nos, resorts, and other commercial establishments that
20 host or sponsor professional boxing matches, and other in-
21 terested parties with respect to the definition of that term
22 as it is used in the Professional Boxing Safety Act.

23 (c) REPORT.—Not later than 12 months after the
24 date of the enactment of this Act, the Commission shall
25 submit to the Committee on Commerce, Science, and

1 Transportation of the Senate and the Committee on En-
 2 ergy and Commerce of the House of Representatives a re-
 3 port on the study conducted under subsection (a). The re-
 4 port shall—

5 (1) set forth a proposed definition of the term
 6 “promoter” for purposes of the Professional Boxing
 7 Safety Act; and

8 (2) describe the findings, conclusions, and ra-
 9 tionale of the Commission for the proposed defini-
 10 tion, together with any recommendations of the
 11 Commission, based on the study.

12 **SEC. 223. EFFECTIVE DATE.**

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

16 (b) 1-YEAR DELAY FOR CERTAIN TITLE II PROVI-
 17 SIONS.—Sections 205 through 212 of the Professional
 18 Boxing Safety Act of 1996, as added by section 221(a)
 19 of this title, shall take effect 1 year after the date of enact-
 20 ment of this Act.

21 **TITLE III—ARTISTS’ RIGHTS AND**
 22 **THEFT PREVENTION**

23 **SEC. 301. SHORT TITLE.**

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

1 **SEC. 302. CRIMINAL PENALTIES FOR UNAUTHORIZED RE-**
2 **CORDING OF MOTION PICTURES IN A MO-**
3 **TION PICTURE EXHIBITION FACILITY.**

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

7 **“§ 2319B. Unauthorized recording of motion pictures**
8 **in a motion picture exhibition facility**

9 “(a) OFFENSE.—Any person who, without the au-
10 thorization of the copyright owner, knowingly uses or at-
11 tempts to use an audiovisual recording device to transmit
12 or make a copy of a motion picture or other audiovisual
13 work protected under title 17, or any part thereof, from
14 a performance of such work in a motion picture exhibition
15 facility, shall—

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

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

21 The possession by a person of an audiovisual recording
22 device in a motion picture exhibition facility may be con-
23 sidered as evidence in any proceeding to determine wheth-
24 er that person committed an offense under this subsection,
25 but shall not, by itself, be sufficient to support a conviction
26 of that person for such offense.

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

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

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

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

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

4 “(e) VICTIM IMPACT STATEMENT.—

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

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

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

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

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

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

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

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

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

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

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

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

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

11 **SEC. 303. CRIMINAL INFRINGEMENT OF A WORK BEING**
 12 **PREPARED FOR COMMERCIAL DISTRIBUTION.**
 13 **TION.**

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

16 “(a) CRIMINAL INFRINGEMENT.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (1) in subsection (a)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 **SEC. 304. CIVIL REMEDIES FOR INFRINGEMENT OF A WORK**
5 **BEING PREPARED FOR COMMERCIAL DIS-**
6 **TRIBUTION.**

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

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

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

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

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

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

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

5 “(B) a deposit; and

6 “(C) the applicable fee.

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

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

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

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

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

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

6 **SEC. 305. FEDERAL SENTENCING GUIDELINES.**

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

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

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

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

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

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

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

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

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

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

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

9 **SEC. 401. SHORT TITLE.**

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

12 **SEC. 402. EXEMPTION FROM INFRINGEMENT FOR SKIPPING**
 13 **AUDIO AND VIDEO CONTENT IN MOTION PIC-**
 14 **TURES.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 **SEC. 501. SHORT TITLE.**

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

8 **SEC. 502. 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. 611. SHORT TITLE.**

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

23 **SEC. 612. 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 VII—PRESERVATION OF** 10 **ORPHAN WORKS**

11 **SEC. 701. SHORT TITLE.**

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

14 **SEC. 702. 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 VIII—ANTICOUNTERFEIT-**
2 **ING PROVISIONS AND FRAUD-**
3 **ULENT ONLINE IDENTITY**
4 **SANCTIONS**

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

7 **SEC. 801. SHORT TITLE.**

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

10 **SEC. 802. 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. 803. 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. 811. SHORT TITLE.**

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

9 **SEC. 812. 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. 813. 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. 814. 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. 815. 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 IX—COOPERATIVE RE-**
2 **SEARCH AND TECHNOLOGY**
3 **ENHANCEMENT**

4 **SEC. 901. SHORT TITLE.**

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

7 **SEC. 902. 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. 903. 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.

Passed the Senate December 8, 2004.

Attest:

Secretary.

108TH CONGRESS
2^D SESSION

S. 2603

AN ACT

To amend section 227 of the Communications Act of 1934 (47 U.S.C. 227) relating to the prohibition on junk fax transmissions.