

109TH CONGRESS
1ST SESSION

H. R. 357

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

IN THE HOUSE OF REPRESENTATIVES

JANUARY 25, 2005

Mr. SMITH of Texas (for himself, Mr. GOODLATTE, and Mr. JENKINS) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on House Administration, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*

2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Family Entertainment

5 and Copyright Act of 2005”.

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

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

4 This title may be cited as the “Artists’ Rights and
5 Theft Prevention Act of 2005” or the “ART Act”.

6 **SEC. 102. CRIMINAL PENALTIES FOR UNAUTHORIZED RE-**
7 **CORDING OF MOTION PICTURES IN A MO-**
8 **TION PICTURE EXHIBITION FACILITY.**

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

12 **“§ 2319B. Unauthorized recording of motion pictures**
13 **in a motion picture exhibition facility**

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

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

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

1 The possession by a person of an audiovisual recording
2 device in a motion picture exhibition facility may be con-
3 sidered as evidence in any proceeding to determine wheth-
4 er that person committed an offense under this subsection,
5 but shall not, by itself, be sufficient to support a conviction
6 of that person for such offense.

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

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

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

1 such owner or lessee, the licensor of the motion picture
2 or other audiovisual work being exhibited, or the agent
3 or employee of such licensor—

4 “(1) may detain, in a reasonable manner and
5 for a reasonable time, any person suspected of a vio-
6 lation of this section with respect to that motion pic-
7 ture or audiovisual work for the purpose of ques-
8 tioning or summoning a law enforcement officer; and

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

12 “(e) VICTIM IMPACT STATEMENT.—

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

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

1 “(A) producers and sellers of legitimate
2 works affected by conduct involved in the of-
3 fense;

4 “(B) holders of intellectual property rights
5 in the works described in subparagraph (A);
6 and

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

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

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

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

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

1 of, regardless of whether audiovisual recording is the
2 sole or primary purpose of the device.”.

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

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

7 (c) DEFINITION.—Section 101 of title 17, United
8 States Code, is amended by inserting after the definition
9 of “Motion pictures” the following: “The term ‘motion picture exhibition facility’ means a movie theater, screening
10 room, or other venue that is being used primarily for the
11 exhibition of a copyrighted motion picture, if such exhibition is open to the public or is made to an assembled
12 group of viewers outside of a normal circle of a family
13 and its social acquaintances.”.

16 **SEC. 103. CRIMINAL INFRINGEMENT OF A WORK BEING
17 PREPARED FOR COMMERCIAL DISTRIBUTION.**

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

21 “(a) CRIMINAL INFRINGEMENT.—

22 “(1) IN GENERAL.—Any person who willfully
23 infringes a copyright shall be punished as provided

1 under section 2319 of title 18, if the infringement
2 was committed—

3 “(A) for purposes of commercial advantage
4 or private financial gain;

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

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

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

20 “(3) DEFINITION.—In this subsection, the term
21 ‘work being prepared for commercial distribution’
22 means—

23 “(A) a computer program, a musical work,
24 a motion picture or other audiovisual work, or

1 a sound recording, if, at the time of unauthorized
2 distribution—

3 “(i) the copyright owner has a reasonable
4 expectation of commercial distribution;
5 and

6 “(ii) the copies or phonorecords of the
7 work have not been commercially distributed;
8 or

9 “(B) a motion picture, if, at the time of
10 unauthorized distribution, the motion picture—

11 “(i) has been made available for viewing
12 in a motion picture exhibition facility;
13 and

14 “(ii) has not been made available in
15 copies for sale to the general public in the
16 United States in a format intended to permit
17 viewing outside a motion picture exhibition
18 facility.”.

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

21 (1) in subsection (a)—

22 (A) by striking “Whoever” and inserting
23 “Any person who”; and

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

3 (3) in subsection (c), by striking “section
4 506(a)(2) of title 17, United States Code” and in-
5 serting “section 506(a)(1)(B) of title 17”;

6 (4) by redesignating subsections (d) and (e) as
7 subsections (e) and (f), respectively;

10 tion 506(a)(1)(C) of title 17—

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

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

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

20 “(4) shall be imprisoned not more than 10
21 years, fined under this title, or both, if the offense
22 is a second or subsequent offense under paragraph
23 (2).”;

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

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

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

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

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

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

11 SEC. 104. CIVIL REMEDIES FOR INFRINGEMENT OF A WORK
12 BEING PREPARED FOR COMMERCIAL DIS-
13 TRIBUTION.

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

17 "(f) PREREGISTRATION OF WORKS BEING PRE-
18 PARED FOR COMMERCIAL DISTRIBUTION.—

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

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

7 “(3) APPLICATION FOR REGISTRATION.—Not
8 later than 3 months after the first publication of a
9 work preregistered under this subsection, the appli-
10 cant shall submit to the Copyright Office—

11 “(A) an application for registration of the
12 work;
13 “(B) a deposit; and
14 “(C) the applicable fee.

15 “(4) EFFECT OF UNTIMELY APPLICATION.—An
16 action under this chapter for infringement of a work
17 preregistered under this subsection, in a case in
18 which the infringement commenced no later than 2
19 months after the first publication of the work, shall
20 be dismissed if the items described in paragraph (3)
21 are not submitted to the Copyright Office in proper
22 form within the earlier of—

23 “(A) 3 months after the first publication of
24 the work; or

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

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

6 (c) EXCLUSION.—Section 412 of title 17, United
7 States Code, is amended by inserting after “section
8 106A(a)” the following: “, an action for infringement of
9 the copyright of a work that has been preregistered under
10 section 408(f) before the commencement of the infringe-
11 ment and that has an effective date of registration not
12 later than the earlier of 3 months after the first publica-
13 tion of the work or 1 month after the copyright owner
14 has learned of the infringement.”.

15 **SEC. 105. FEDERAL SENTENCING GUIDELINES.**

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

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

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

3 (b) AUTHORIZATION.—The United States Sentencing
4 Commission may amend the Federal sentencing guidelines
5 in accordance with the procedures set forth in section
6 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994 note)
7 as though the authority under that section had not ex-
8 pired.

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

14 **TITLE II—EXEMPTION FROM IN-**
15 **FRINGEMENT FOR SKIPPING**
16 **AUDIO AND VIDEO CONTENT**
17 **IN MOTION PICTURES**

18 SEC. 201. SHORT TITLE.

19 This title may be cited as the “Family Movie Act of
20 2005”.

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

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

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

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

21 “For purposes of paragraph (11), the term “making
22 imperceptible” does not include the addition of audio or
23 video content that is performed or displayed over or in
24 place of existing content in a motion picture.

1 “Nothing in paragraph (11) shall be construed to
2 imply further rights under section 106 of this title, or to
3 have any effect on defenses or limitations on rights grant-
4 ed under any other section of this title or under any other
5 paragraph of this section.”.

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

10 “(3)(A) Any person who engages in the conduct de-
11 scribed in paragraph (11) of section 110 of title 17,
12 United States Code, and who complies with the require-
13 ments set forth in that paragraph is not liable on account
14 of such conduct for a violation of any right under this Act.

15 This subparagraph does not preclude liability, nor shall
16 it be construed to restrict the defenses or limitations on
17 rights granted under this Act, of a person for conduct not
18 described in paragraph (11) of section 110 of title 17,
19 United States Code, even if that person also engages in
20 conduct described in paragraph (11) of section 110 of
21 such title.

22 “(B) A manufacturer, licensee, or licensor of tech-
23 nology that enables the making of limited portions of
24 audio or video content of a motion picture imperceptible
25 as described in subparagraph (A) is not liable on account

1 of such manufacture or license for a violation of any right
2 under this Act, if such manufacturer, licensee, or licensor
3 ensures that the technology provides a clear and con-
4 spicuous notice at the beginning of each performance that
5 the performance of the motion picture is altered from the
6 performance intended by the director or copyright holder
7 of the motion picture. The limitations on liability in sub-
8 paragraph (A) and this subparagraph shall not apply to
9 a manufacturer, licensee, or licensor of technology that
10 fails to comply with this paragraph.

11 “(C) The requirement under subparagraph (B) to
12 provide notice shall apply only with respect to technology
13 manufactured after the end of the 180-day period begin-
14 ning on the date of the enactment of the Family Movie
15 Act of 2005.

16 “(D) Any failure by a manufacturer, licensee, or li-
17 censor of technology to qualify for the exemption under
18 subparagraphs (A) and (B) shall not be construed to cre-
19 ate an inference that any such party that engages in con-
20 duct described in paragraph (11) of section 110 of title
21 17, United States Code, is liable for trademark infringe-
22 ment by reason of such conduct.”.

23 (c) DEFINITION.—In this section, the term “Trade-
24 mark Act of 1946” means the Act entitled “An Act to
25 provide for the registration and protection of trademarks

1 used in commerce, to carry out the provisions of certain
2 international conventions, and for other purposes”, ap-
3 proved July 5, 1946 (15 U.S.C. 1051 et seq.).

4 **TITLE III—NATIONAL FILM
5 PRESERVATION**

6 **Subtitle A—Reauthorization of the
7 National Film Preservation Board**

8 **SEC. 301. SHORT TITLE.**

9 This subtitle may be cited as the “National Film
10 Preservation Act of 2005”.

11 **SEC. 302. REAUTHORIZATION AND AMENDMENT.**

12 (a) DUTIES OF THE LIBRARIAN OF CONGRESS.—Sec-
13 tion 103 of the National Film Preservation Act of 1996
14 (2 U.S.C. 179m) is amended—

15 (1) in subsection (b)—

16 (A) by striking “film copy” each place that
17 term appears and inserting “film or other ap-
18 proved copy”;

19 (B) by striking “film copies” each place
20 that term appears and inserting “film or other
21 approved copies”; and

22 (C) in the third sentence, by striking
23 “copyrighted” and inserting “copyrighted, mass
24 distributed, broadcast, or published”; and

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

1 “(c) COORDINATION OF PROGRAM WITH OTHER
2 COLLECTION, PRESERVATION, AND ACCESSIBILITY AC-
3 TIVITIES.—In carrying out the comprehensive national
4 film preservation program for motion pictures established
5 under the National Film Preservation Act of 1992, the
6 Librarian, in consultation with the Board established pur-
7 suant to section 104, shall—

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

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

19 “(3) wherever possible, undertake expanded ini-
20 tiatives to ensure the preservation of the moving
21 image heritage of the United States, including film,
22 videotape, television, and born digital moving image
23 formats, by supporting the work of the National
24 Audio-Visual Conservation Center of the Library of

1 Congress, and other appropriate nonprofit archival
2 and preservation organizations.”.

3 (b) NATIONAL FILM PRESERVATION BOARD.—Sec-
4 tion 104 of the National Film Preservation Act of 1996
5 (2 U.S.C. 179n) is amended—

6 (1) in subsection (a)(1) by striking “20” and
7 inserting “22”;

8 (2) in subsection (a)(2) by striking “three” and
9 inserting “5”;

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

12 (4) by striking subsection (e) and inserting the
13 following:

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

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

22 “(e) NATIONAL AUDIO-VISUAL CONSERVATION CEN-
23 TER.—The Librarian shall utilize the National Audio-Vis-
24 ual Conservation Center of the Library of Congress at
25 Culpeper, Virginia, to ensure that preserved films included

1 in the National Film Registry are stored in a proper man-
2 ner, and disseminated to researchers, scholars, and the
3 public as may be appropriate in accordance with—

4 “(1) title 17, United States Code; and
5 “(2) the terms of any agreements between the
6 Librarian and persons who hold copyrights to such
7 audiovisual works.”.

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

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

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

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

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

21 **SEC. 311. SHORT TITLE.**

22 This subtitle may be cited as the “National Film
23 Preservation Foundation Reauthorization Act of 2005”.

1 **SEC. 312. REAUTHORIZATION AND AMENDMENT.**

2 (a) BOARD OF DIRECTORS.—Section 151703 of title
3 36, United States Code, is amended—

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

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

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

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

18 (d) AUTHORIZATION OF APPROPRIATIONS.—Section
19 151711 of title 36, United States Code, is amended by
20 striking subsections (a) and (b) and inserting the fol-
21 lowing:

22 (a) AUTHORIZATION OF APPROPRIATIONS.—There
23 are authorized to be appropriated to the Library of Con-
24 gress amounts necessary to carry out this chapter, not to
25 exceed \$530,000 for each of the fiscal years 2005 through
26 2009. These amounts are to be made available to the cor-

1 poration to match any private contributions (whether in
2 currency, services, or property) made to the corporation
3 by private persons and State and local governments.

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

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

12 **SEC. 401. SHORT TITLE.**

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

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

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