

## OTHER RIGHTS NOT AFFECTED BY ANTI-COUNTERFEITING PROVISIONS

Pub. L. 108-482, title I, §103, Dec. 23, 2004, 118 Stat. 3915, provided that:

“(a) CHAPTERS 5 AND 12 OF TITLE 17; ELECTRONIC TRANSMISSIONS.—The amendments made by this title [amending this section]—

“(1) shall not enlarge, diminish, or otherwise affect any liability or limitations on liability under sections 512, 1201 or 1202 of title 17, United States Code; and

“(2) shall not be construed to apply—

“(A) in any case, to the electronic transmission of a genuine certificate, licensing document, registration card, similar labeling component, or documentation or packaging described in paragraph (4) or (5) of section 2318(b) of title 18, United States Code, as amended by this title; and

“(B) in the case of a civil action under section 2318(f) [now 2318(e)] of title 18, United States Code, to the electronic transmission of a counterfeit label or counterfeit documentation or packaging defined in paragraph (1) or (6) of section 2318(b) of title 18, United States Code.

“(b) FAIR USE.—The amendments made by this title shall not affect the fair use, under section 107 of title 17, United States Code, of a genuine certificate, licensing document, registration card, similar labeling component, or documentation or packaging described in paragraph (4) or (5) of section 2318(b) of title 18, United States Code, as amended by this title.”

### § 2319. Criminal infringement of a copyright

(a) Any person who violates section 506(a) (relating to criminal offenses) of title 17 shall be punished as provided in subsections (b), (c), and (d) and such penalties shall be in addition to any other provisions of title 17 or any other law.

(b) Any person who commits an offense under section 506(a)(1)(A) of title 17—

(1) shall be imprisoned not more than 5 years, or fined in the amount set forth in this title, or both, if the offense consists of the reproduction or distribution, including by electronic means, during any 180-day period, of at least 10 copies or phonorecords, of 1 or more copyrighted works, which have a total retail value of more than \$2,500;

(2) shall be imprisoned not more than 10 years, or fined in the amount set forth in this title, or both, if the offense is a felony and is a second or subsequent offense under subsection (a); and

(3) shall be imprisoned not more than 1 year, or fined in the amount set forth in this title, or both, in any other case.

(c) Any person who commits an offense under section 506(a)(1)(B) of title 17—

(1) shall be imprisoned not more than 3 years, or fined in the amount set forth in this title, or both, if the offense consists of the reproduction or distribution of 10 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of \$2,500 or more;

(2) shall be imprisoned not more than 6 years, or fined in the amount set forth in this title, or both, if the offense is a felony and is a second or subsequent offense under subsection (a); and

(3) shall be imprisoned not more than 1 year, or fined in the amount set forth in this title, or both, if the offense consists of the reproduc-

tion or distribution of 1 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of more than \$1,000.

(d) Any person who commits an offense under section 506(a)(1)(C) of title 17—

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

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

(3) shall be imprisoned not more than 6 years, fined under this title, or both, if the offense is a felony and is a second or subsequent offense under subsection (a); and

(4) shall be imprisoned not more than 10 years, fined under this title, or both, if the offense is a felony and is a second or subsequent offense under paragraph (2).

(e)(1) During preparation of the presentence report pursuant to Rule 32(c) of the Federal Rules of Criminal Procedure, victims of the offense shall be permitted to submit, and the probation officer shall receive, a victim impact statement that identifies the victim of the offense and the extent and scope of the injury and loss suffered by the victim, including the estimated economic impact of the offense on that victim.

(2) Persons permitted to submit victim impact statements shall include—

(A) producers and sellers of legitimate works affected by conduct involved in the offense;

(B) holders of intellectual property rights in such works; and

(C) the legal representatives of such producers, sellers, and holders.

(f) As used in this section—

(1) the terms “phonorecord” and “copies” have, respectively, the meanings set forth in section 101 (relating to definitions) of title 17;

(2) the terms “reproduction” and “distribution” refer to the exclusive rights of a copyright owner under clauses (1) and (3) respectively of section 106 (relating to exclusive rights in copyrighted works), as limited by sections 107 through 122, of title 17;

(3) the term “financial gain” has the meaning given the term in section 101 of title 17; and

(4) the term “work being prepared for commercial distribution” has the meaning given the term in section 506(a) of title 17.

(Added Pub. L. 97-180, §3, May 24, 1982, 96 Stat. 92; amended Pub. L. 102-561, Oct. 28, 1992, 106 Stat. 4233; Pub. L. 105-80, §12(b)(2), Nov. 13, 1997, 111 Stat. 1536; Pub. L. 105-147, §2(d), Dec. 16, 1997, 111 Stat. 2678; Pub. L. 107-273, div. C, title III, §13211(a), Nov. 2, 2002, 116 Stat. 1910; Pub. L. 109-9, title I, §103(b), Apr. 27, 2005, 119 Stat. 220; Pub. L. 110-403, title II, §208, Oct. 13, 2008, 122 Stat. 4263.)

### Editorial Notes

#### REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (e)(1), are set out in the Appendix to this title.

## AMENDMENTS

2008—Subsecs. (b)(2), (c)(2). Pub. L. 110-403, § 208(1), (2), inserted “is a felony and” after “the offense” and substituted “subsection (a)” for “paragraph (1)”.

Subsec. (d)(3). Pub. L. 110-403, § 208(3), inserted “is a felony and” after “the offense” and “under subsection (a)” before the semicolon.

Subsec. (d)(4). Pub. L. 110-403, § 208(4), inserted “is a felony and” after “the offense”.

2005—Subsec. (a). Pub. L. 109-9, § 103(b)(1), substituted “Any person who” for “Whoever” and “, (c), and (d)” for “and (c) of this section”.

Subsec. (b). Pub. L. 109-9, § 103(b)(2), substituted “section 506(a)(1)(A)” for “section 506(a)(1)” in introductory provisions.

Subsec. (c). Pub. L. 109-9, § 103(b)(3), substituted “section 506(a)(1)(B) of title 17” for “section 506(a)(2) of title 17, United States Code” in introductory provisions.

Subsecs. (d), (e). Pub. L. 109-9, § 103(b)(4), (5), added subsec. (d) and redesignated former subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 109-9, § 103(b)(4), (6), redesignated subsec. (e) as (f) and added pars. (3) and (4).

2002—Subsec. (e)(2). Pub. L. 107-273 substituted “107 through 122” for “107 through 120”.

1997—Subsec. (a). Pub. L. 105-147, § 2(d)(1), substituted “subsections (b) and (c)” for “subsection (b)”.

Subsec. (b). Pub. L. 105-147, § 2(d)(2)(A), substituted “section 506(a)(1) of title 17” for “subsection (a) of this section” in introductory provisions.

Subsec. (b)(1). Pub. L. 105-147, § 2(d)(2)(B), inserted “including by electronic means,” after “if the offense consists of the reproduction or distribution,” and substituted “which have a total retail value of more than \$2,500” for “with a retail value of more than \$2,500”.

Pub. L. 105-80, substituted “at least 10 copies” for “at least 10 copies”.

Subsecs. (c) to (e). Pub. L. 105-147, § 2(d)(3), added subsecs. (c) and (d) and redesignated former subsec. (c) as (e).

1992—Subsec. (b). Pub. L. 102-561, § 1, amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “Any person who commits an offense under subsection (a) of this section—

“(1) shall be fined not more than \$250,000 or imprisoned for not more than five years, or both, if the offense—

“(A) involves the reproduction or distribution, during any one-hundred-and-eighty-day period, of at least one thousand phonorecords or copies infringing the copyright in one or more sound recordings;

“(B) involves the reproduction or distribution, during any one-hundred-and-eighty-day period, of at least sixty-five copies infringing the copyright in one or more motion pictures or other audiovisual works; or

“(C) is a second or subsequent offense under either of subsection (b)(1) or (b)(2) of this section, where a prior offense involved a sound recording, or a motion picture or other audiovisual work;

“(2) shall be fined not more than \$250,000 or imprisoned for not more than two years, or both, if the offense—

“(A) involves the reproduction or distribution, during any one-hundred-and-eighty-day period, of more than one hundred but less than one thousand phonorecords or copies infringing the copyright in one or more sound recordings; or

“(B) involves the reproduction or distribution, during any one-hundred-and-eighty-day period, of more than seven but less than sixty-five copies infringing the copyright in one or more motion pictures or other audiovisual works; and

“(3) shall be fined not more than \$25,000 or imprisoned for not more than one year, or both, in any other case.”

Subsec. (c). Pub. L. 102-561, § 2, substituted “‘phonorecord’” for “‘sound recording’, ‘motion picture’,

‘audiovisual work’, ‘phonorecord’,” in par. (1) and “‘120’” for “‘118’” in par. (2).

### § 2319A. Unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances

(a) OFFENSE.—Whoever, without the consent of the performer or performers involved, knowingly and for purposes of commercial advantage or private financial gain—

(1) fixes the sounds or sounds and images of a live musical performance in a copy or phonorecord, or reproduces copies or phonorecords of such a performance from an unauthorized fixation;

(2) transmits or otherwise communicates to the public the sounds or sounds and images of a live musical performance; or

(3) distributes or offers to distribute, sells or offers to sell, rents or offers to rent, or traffics in any copy or phonorecord fixed as described in paragraph (1), regardless of whether the fixations occurred in the United States;

shall be imprisoned for not more than 5 years or fined in the amount set forth in this title, or both, or if the offense is a second or subsequent offense, shall be imprisoned for not more than 10 years or fined in the amount set forth in this title, or both.

(b) FORFEITURE AND DESTRUCTION OF PROPERTY; RESTITUTION.—Forfeiture, destruction, and restitution relating to this section shall be subject to section 2323, to the extent provided in that section, in addition to any other similar remedies provided by law.

(c) SEIZURE AND FORFEITURE.—If copies or phonorecords of sounds or sounds and images of a live musical performance are fixed outside of the United States without the consent of the performer or performers involved, such copies or phonorecords are subject to seizure and forfeiture in the United States in the same manner as property imported in violation of the customs laws. The Secretary of Homeland Security shall issue regulations by which any performer may, upon payment of a specified fee, be entitled to notification by United States Customs and Border Protection of the importation of copies or phonorecords that appear to consist of unauthorized fixations of the sounds or sounds and images of a live musical performance.

(d) VICTIM IMPACT STATEMENT.—(1) During preparation of the presentence report pursuant to Rule 32(c) of the Federal Rules of Criminal Procedure, victims of the offense shall be permitted to submit, and the probation officer shall receive, a victim impact statement that identifies the victim of the offense and the extent and scope of the injury and loss suffered by the victim, including the estimated economic impact of the offense on that victim.

(2) Persons permitted to submit victim impact statements shall include—

(A) producers and sellers of legitimate works affected by conduct involved in the offense;

(B) holders of intellectual property rights in such works; and

(C) the legal representatives of such producers, sellers, and holders.

(e) DEFINITIONS.—As used in this section—