

(e) VICTIM IMPACT STATEMENT.—

(1) IN GENERAL.—During the preparation of the presentence report under rule 32(c) of the Federal Rules of Criminal Procedure, victims of an offense under this section shall be permitted to submit to the probation officer 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) CONTENTS.—A victim impact statement submitted under this subsection shall include—

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

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

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

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

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

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

(2) AUDIOVISUAL RECORDING DEVICE.—The term “audiovisual recording device” means a digital or analog photographic or video camera, or any other technology or device capable of enabling the recording or transmission of a copyrighted motion picture or other audiovisual work, or any part thereof, regardless of whether audiovisual recording is the sole or primary purpose of the device.

(Added Pub. L. 109–9, title I, §102(a), Apr. 27, 2005, 119 Stat. 218; amended Pub. L. 110–403, title II, § 204, Oct. 13, 2008, 122 Stat. 4261.)

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—Subsec. (b). Pub. L. 110–403 amended subsec. (b) generally. Prior to amendment, text read as follows: “When a person is convicted of a violation of subsection (a), the court in its judgment of conviction shall, in addition to any penalty provided, order the forfeiture and destruction or other disposition of all unauthorized copies of motion pictures or other audiovisual works protected under title 17, or parts thereof, and any audiovisual recording devices or other equipment used in connection with the offense.”

§ 2319C. Illicit digital transmission services

(a) DEFINITIONS.—In this section—

(1) the terms “audiovisual work”, “computer program”, “copies”, “copyright owner”, “digital transmission”, “financial gain”, “mo-

tion picture”, “motion picture exhibition facility”, “perform”, “phonorecords”, “publicly” (with respect to performing a work), “sound recording”, and “transmit” have the meanings given those terms in section 101 of title 17;

(2) the term “digital transmission service” means a service that has the primary purpose of publicly performing works by digital transmission;

(3) the terms “publicly perform” and “public performance” refer to the exclusive rights of a copyright owner under paragraphs (4) and (6) of section 106 (relating to exclusive rights in copyrighted works) of title 17, as limited by sections 107 through 122 of title 17; and

(4) the term “work being prepared for commercial public performance” means—

(A) a computer program, a musical work, a motion picture or other audiovisual work, or a sound recording, if, at the time of unauthorized public performance—

(i) the copyright owner has a reasonable expectation of commercial public performance; and

(ii) the copies or phonorecords of the work have not been commercially publicly performed in the United States by or with the authorization of the copyright owner; or

(B) a motion picture, if, at the time of unauthorized public performance, the motion picture—

(i) (I) has been made available for viewing in a motion picture exhibition facility; and

(II) has not been made available in copies for sale to the general public in the United States by or with the authorization of the copyright owner in a format intended to permit viewing outside a motion picture exhibition facility; or

(ii) had not been commercially publicly performed in the United States by or with the authorization of the copyright owner more than 24 hours before the unauthorized public performance.

(b) PROHIBITED ACT.—It shall be unlawful for a person to willfully, and for purposes of commercial advantage or private financial gain, offer or provide to the public a digital transmission service that—

(1) is primarily designed or provided for the purpose of publicly performing works protected under title 17 by means of a digital transmission without the authority of the copyright owner or the law;

(2) has no commercially significant purpose or use other than to publicly perform works protected under title 17 by means of a digital transmission without the authority of the copyright owner or the law; or

(3) is intentionally marketed by or at the direction of that person to promote its use in publicly performing works protected under title 17 by means of a digital transmission without the authority of the copyright owner or the law.

(c) PENALTIES.—Any person who violates subsection (b) shall be, in addition to any penalties provided for under title 17 or any other law—

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

(2) fined under this title, imprisoned not more than 5 years, or both, if—

(A) the offense was committed in connection with 1 or more works being prepared for commercial public performance; and

(B) the person knew or should have known that the work was being prepared for commercial public performance; and

(3) fined under this title, imprisoned not more than 10 years, or both, if the offense is a second or subsequent offense under this section or section 2319(a).

(d) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed to—

(1) affect the interpretation of any other provision of civil copyright law, including the limitations of liability set forth in section 512 of title 17, or principles of secondary liability; or

(2) prevent any Federal or State authority from enforcing cable theft or theft of service laws that are not subject to preemption under section 301 of title 17.

(Added Pub. L. 116-260, div. Q, title II, §211(a), Dec. 27, 2020, 134 Stat. 2175.)

§ 2320. Trafficking in counterfeit goods or services

(a) **OFFENSES.**—Whoever intentionally—

(1) traffics in goods or services and knowingly uses a counterfeit mark on or in connection with such goods or services,

(2) traffics in labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging of any type or nature, knowing that a counterfeit mark has been applied thereto, the use of which is likely to cause confusion, to cause mistake, or to deceive,

(3) traffics in goods or services knowing that such good or service is a counterfeit military good or service the use, malfunction, or failure of which is likely to cause serious bodily injury or death, the disclosure of classified information, impairment of combat operations, or other significant harm to a combat operation, a member of the Armed Forces, or to national security, or

(4) traffics in a drug and knowingly uses a counterfeit mark on or in connection with such drug,

or attempts or conspires to violate any of paragraphs (1) through (4) shall be punished as provided in subsection (b).

(b) **PENALTIES.**—

(1) **IN GENERAL.**—Whoever commits an offense under subsection (a)—

(A) if an individual, shall be fined not more than \$2,000,000 or imprisoned not more than 10 years, or both, and, if a person other than an individual, shall be fined not more than \$5,000,000; and

(B) for a second or subsequent offense under subsection (a), if an individual, shall be fined not more than \$5,000,000 or imprisoned not more than 20 years, or both, and if

other than an individual, shall be fined not more than \$15,000,000.

(2) **SERIOUS BODILY INJURY OR DEATH.**—

(A) **SERIOUS BODILY INJURY.**—Whoever knowingly or recklessly causes or attempts to cause serious bodily injury from conduct in violation of subsection (a), if an individual, shall be fined not more than \$5,000,000 or imprisoned for not more than 20 years, or both, and if other than an individual, shall be fined not more than \$15,000,000.

(B) **DEATH.**—Whoever knowingly or recklessly causes or attempts to cause death from conduct in violation of subsection (a), if an individual, shall be fined not more than \$5,000,000 or imprisoned for any term of years or for life, or both, and if other than an individual, shall be fined not more than \$15,000,000.

(3) **COUNTERFEIT MILITARY GOODS OR SERVICES AND COUNTERFEIT DRUGS.**—Whoever commits an offense under subsection (a) involving a counterfeit military good or service or drug that uses a counterfeit mark on or in connection with the drug—

(A) if an individual, shall be fined not more than \$5,000,000, imprisoned not more than 20 years, or both, and if other than an individual, be fined not more than \$15,000,000; and

(B) for a second or subsequent offense, if an individual, shall be fined not more than \$15,000,000, imprisoned not more than 30 years, or both, and if other than an individual, shall be fined not more than \$30,000,000.

(c) **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.

(d) **DEFENSES.**—All defenses, affirmative defenses, and limitations on remedies that would be applicable in an action under the Lanham Act shall be applicable in a prosecution under this section. In a prosecution under this section, the defendant shall have the burden of proof, by a preponderance of the evidence, of any such affirmative defense.

(e) **PRESENTENCE REPORT.**—(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 goods or services affected by conduct involved in the offense;

(B) holders of intellectual property rights in such goods or services; and

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