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105TH CONGRESS
1ST SESSION

H. R. 2265

IN THE SENATE OF THE UNITED STATES

NOVEMBER 5, 1997

Received; read twice and referred to the Committee on the Judiciary

AN ACT

To amend the provisions of titles 17 and 18, United States Code, to provide greater copyright protection by amending criminal copyright infringement provisions, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “No Electronic Theft
3 (NET) Act”.

4 **SEC. 2. CRIMINAL INFRINGEMENT OF COPYRIGHTS.**

5 (a) **DEFINITION OF FINANCIAL GAIN.**—Section 101
6 of title 17, United States Code, is amended by inserting
7 after the undesignated paragraph relating to the term
8 “display”, the following new paragraph:

9 “The term ‘financial gain’ includes receipt, or
10 expectation of receipt, of anything of value, includ-
11 ing the receipt of other copyrighted works.”.

12 (b) **CRIMINAL OFFENSES.**—Section 506(a) of title
13 17, United States Code, is amended to read as follows:

14 “(a) **CRIMINAL INFRINGEMENT.**—Any person who in-
15 fringes a copyright willfully either—

16 “(1) for purposes of commercial advantage or
17 private financial gain, or

18 “(2) by the reproduction or distribution, includ-
19 ing by electronic means, during any 180-day period,
20 of 1 or more copies or phonorecords of 1 or more
21 copyrighted works, which have a total retail value of
22 more than \$1,000,

23 shall be punished as provided under section 2319 of title
24 18. For purposes of this subsection, evidence of reproduc-
25 tion or distribution of a copyrighted work, by itself, shall
26 not be sufficient to establish willful infringement.”.

1 (c) LIMITATION ON CRIMINAL PROCEEDINGS.—Sec-
2 tion 507(a) of title 17, United States Code, is amended
3 by striking “three” and inserting “5”.

4 (d) CRIMINAL INFRINGEMENT OF A COPYRIGHT.—
5 Section 2319 of title 18, United States Code, is amend-
6 ed—

7 (1) in subsection (a), by striking “subsection
8 (b)” and inserting “subsections (b) and (c)”;

9 (2) in subsection (b)—

10 (A) in the matter preceding paragraph (1),
11 by striking “subsection (a) of this section” and
12 inserting “section 506(a)(1) of title 17”; and

13 (B) in paragraph (1)—

14 (i) by inserting “including by elec-
15 tronic means,” after “if the offense con-
16 sists of the reproduction or distribution,”;
17 and

18 (ii) by striking “with a retail value of
19 more than \$2,500” and inserting “which
20 have a total retail value of more than
21 \$2,500”; and

22 (3) by redesignating subsection (c) as sub-
23 section (e) and inserting after subsection (b) the fol-
24 lowing:

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

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

9 “(2) shall be imprisoned not more than 6 years,
10 or fined in the amount set forth in this title, or both,
11 if the offense is a second or subsequent offense
12 under paragraph (1); and

13 “(3) shall be imprisoned not more than 1 year,
14 or fined in the amount set forth in this title, or both,
15 if the offense consists of the reproduction or dis-
16 tribution of 1 or more copies or phonorecords of 1
17 or more copyrighted works, which have a total retail
18 value of more than \$1,000.

19 “(d)(1) During preparation of the presentence report
20 pursuant to Rule 32(c) of the Federal Rules of Criminal
21 Procedure, victims of the offense shall be permitted to
22 submit, and the probation officer shall receive, a victim
23 impact statement that identifies the victim of the offense
24 and the extent and scope of the injury and loss suffered

1 by the victim, including the estimated economic impact of
2 the offense on that victim.

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

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

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

9 “(C) the legal representatives of such produc-
10 ers, sellers, and holders.”.

11 (e) UNAUTHORIZED FIXATION AND TRAFFICKING OF
12 LIVE MUSICAL PERFORMANCES.—Section 2319A of title
13 18, United States Code, is amended—

14 (1) by redesignating subsections (d) and (e) as
15 subsections (e) and (f), respectively; and

16 (2) by inserting after subsection (c) the follow-
17 ing:

18 “(d) VICTIM IMPACT STATEMENT.—(1) During prep-
19 aration of the presentence report pursuant to Rule 32(c)
20 of the Federal Rules of Criminal Procedure, victims of the
21 offense shall be permitted to submit, and the probation
22 officer shall receive, a victim impact statement that identi-
23 fies the victim of the offense and the extent and scope
24 of the injury and loss suffered by the victim, including

1 the estimated economic impact of the offense on that vic-
2 tim.

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

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

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

9 “(C) the legal representatives of such produc-
10 ers, sellers, and holders.”.

11 (f) **TRAFFICKING IN COUNTERFEIT GOODS OR SERV-**
12 **ICES.**—Section 2320 of title 18, United States Code, is
13 amended—

14 (1) by redesignating subsections (d) and (e) as
15 subsections (e) and (f), respectively; and

16 (2) by inserting after subsection (e) the follow-
17 ing:

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

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

3 “(A) producers and sellers of legitimate goods
4 or services affected by conduct involved in the of-
5 fense;

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

8 “(C) the legal representatives of such produc-
9 ers, sellers, and holders.”.

10 (g) DIRECTIVE TO SENTENCING COMMISSION.—(1)
11 Under the authority of the Sentencing Reform Act of 1984
12 (Public Law 98-473; 98 Stat. 1987) and section 21 of
13 the Sentencing Act of 1987 (Public Law 100-182; 101
14 Stat. 1271; 18 U.S.C. 994 note) (including the authority
15 to amend the sentencing guidelines and policy state-
16 ments), the United States Sentencing Commission shall
17 ensure that the applicable guideline range for a defendant
18 convicted of a crime against intellectual property (includ-
19 ing offenses set forth at section 506(a) of title 17, United
20 States Code, and sections 2319, 2319A, and 2320 of title
21 18, United States Code) is sufficiently stringent to deter
22 such a crime and to adequately reflect the additional con-
23 siderations set forth in paragraph (2) of this subsection.

24 (2) In implementing paragraph (1), the Sentencing
25 Commission shall ensure that the guidelines provide for

1 consideration of the retail value and quantity of the items
2 with respect to which the crime against intellectual prop-
3 erty was committed.

4 **SEC. 3. INFRINGEMENT BY UNITED STATES.**

5 Section 1498(b) of title 28, United States Code, is
6 amended by striking "remedy of the owner of such copy-
7 right shall be by action" and inserting "action which may
8 be brought for such infringement shall be an action by
9 the copyright owner".

Passed the House of Representatives November 4,
1997.

Attest:

ROBIN H. CARLE,

Clerk.

Document No. 9

