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# Union Calendar No. 198

105<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 2265

[Report No. 105-339]

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.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 25, 1997

Mr. GOODLATTE (for himself, Mr. COBLE, Mr. FRANK of Massachusetts, and Mr. CANNON) introduced the following bill; which was referred to the Committee on the Judiciary

OCTOBER 23, 1997

Additional sponsors: Mr. DELAHUNT, Mr. GALLEGLY, and Mr. CLEMENT

OCTOBER 23, 1997

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on July 25, 1997]

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## A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “No Electronic Theft*  
 5 *(NET) Act”.*

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

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

11 *“The term ‘financial gain’ includes receipt, or*  
 12 *expectation of receipt, of anything of value, including*  
 13 *the receipt of other copyrighted works.”.*

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

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

18 *“(1) for purposes of commercial advantage or*  
 19 *private financial gain, or*

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

1 *shall be punished as provided under section 2319 of title*  
 2 *18.”.*

3 (c) *LIMITATION ON CRIMINAL PROCEEDINGS.*—Section  
 4 *507(a) of title 17, United States Code, is amended by strik-*  
 5 *ing “three” and inserting “5”.*

6 (d) *CRIMINAL INFRINGEMENT OF A COPYRIGHT.*—Sec-  
 7 *tion 2319 of title 18, United States Code, is amended—*

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

10 (2) *in subsection (b)—*

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

14 (B) *in paragraph (1)—*

15 (i) *by inserting “including by elec-*  
 16 *tronic means,” after “if the offense consists*  
 17 *of the reproduction or distribution,”; 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 subsection*  
 23 *(e) and inserting after subsection (b) the following:*

24 “(c) *Any person who commits an offense under section*  
 25 *506(a)(2) of title 17—*

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

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

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

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

1       “(2) *Persons permitted to submit victim impact state-*  
2 *ments shall include—*

3               “(A) *producers and sellers of legitimate works af-*  
4 *ected by conduct involved in the offense;*

5               “(B) *holders of intellectual property rights in*  
6 *such works; and*

7               “(C) *the legal representatives of such producers,*  
8 *sellers, and holders.”.*

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

12               (1) *by redesignating subsections (d) and (e) as*  
13 *subsections (e) and (f), respectively; and*

14               (2) *by inserting after subsection (c) the follow-*  
15 *ing:*

16               “(d) *VICTIM IMPACT STATEMENT.—(1) During prepa-*  
17 *ration of the presentence report pursuant to Rule 32(c) of*  
18 *the Federal Rules of Criminal Procedure, victims of the of-*  
19 *fense shall be permitted to submit, and the probation officer*  
20 *shall receive, a victim impact statement that identifies the*  
21 *victim of the offense and the extent and scope of the injury*  
22 *and loss suffered by the victim, including the estimated eco-*  
23 *nomiic impact of the offense on that victim.*

24       “(2) *Persons permitted to submit victim impact state-*  
25 *ments shall include—*

1           “(A) producers and sellers of legitimate works af-  
2           fected by conduct involved in the offense;

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

5           “(C) the legal representatives of such producers,  
6           sellers, and holders.”.

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

10           (1) by redesignating subsections (d) and (e) as  
11           subsections (e) and (f), respectively; and

12           (2) by inserting after subsection (c) the follow-  
13           ing:

14           “(d)(1) During preparation of the presentence report  
15 pursuant to Rule 32(c) of the Federal Rules of Criminal  
16 Procedure, victims of the offense shall be permitted to sub-  
17 mit, and the probation officer shall receive, a victim impact  
18 statement that identifies the victim of the offense and the  
19 extent and scope of the injury and loss suffered by the vic-  
20 tim, including the estimated economic impact of the offense  
21 on that victim.

22           “(2) Persons permitted to submit victim impact state-  
23 ments shall include—

24           “(A) producers and sellers of legitimate goods or  
25           services affected by conduct involved in the offense;

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

3           “(C) the legal representatives of such producers,  
4           sellers, and holders.”.

5           (g) *DIRECTIVE TO SENTENCING COMMISSION.—(1)*  
6 *Under the authority of the Sentencing Reform Act of 1984*  
7 *(Public Law 98-473; 98 Stat. 1987) and section 21 of the*  
8 *Sentencing Act of 1987 (Public Law 100-182; 101 Stat.*  
9 *1271; 18 U.S.C. 994 note) (including the authority to*  
10 *amend the sentencing guidelines and policy statements), the*  
11 *United States Sentencing Commission shall ensure that the*  
12 *applicable guideline range for a defendant convicted of a*  
13 *crime against intellectual property (including offenses set*  
14 *forth at section 506(a) of title 17, United States Code, and*  
15 *sections 2319, 2319A, and 2320 of title 18, United States*  
16 *Code) is sufficiently stringent to deter such a crime and*  
17 *to adequately reflect the additional considerations set forth*  
18 *in paragraph (2) of this subsection.*

19           (2) *In implementing paragraph (1), the Sentencing*  
20 *Commission shall ensure that the guidelines provide for con-*  
21 *sideration of the retail value and quantity of the items with*  
22 *respect to which the crime against intellectual property was*  
23 *committed.*



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

2       Section 1498(b) of title 28, United States Code, is  
3 amended by striking “remedy of the owner of such copyright  
4 shall be by action” and inserting “action which may be  
5 brought for such infringement shall be an action by the  
6 copyright owner”.

7 **SEC. 4. CLARIFICATION OF LIABILITY FOR COPYRIGHT IN-**  
8                                   **FRINGEMENT.**

9       Except as expressly provided in this Act, nothing in  
10 this Act or the amendments made by this Act modifies li-  
11 ability for copyright infringement, including the standard  
12 of willfulness for criminal infringement.

## **Document No. 7**

