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105TH CONGRESS
1ST SESSION

H. R. 2265

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.

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

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
8 of title 17, United States Code, is amended by inserting

1 after the undesignated paragraph relating to the term
2 “display”, the following new paragraph:

3 “The term ‘financial gain’ includes receipt of
4 anything of value, including the receipt of other
5 copyrighted works.”.

6 (b) CRIMINAL OFFENSES.—Section 506(a) of title
7 17, United States Code, is amended to read as follows:

8 “(a) CRIMINAL INFRINGEMENT.—Any person who in-
9 fringes a copyright willfully either—

10 “(1) for purposes of commercial advantage or
11 private financial gain; or

12 “(2) by the reproduction or distribution, includ-
13 ing by electronic means, of 1 or more copies, of 1
14 or more copyrighted works,

15 shall be punished as provided under section 2319 of title
16 18.”

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

20 (d) CRIMINAL INFRINGEMENT OF A COPYRIGHT.—
21 Section 2319 of title 18, United States Code, is amend-
22 ed—

23 (1) in subsection (b)—

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

4 (B) in paragraph (1)—

5 (i) by inserting “including by elec-
6 tronic means,” after “if the offense con-
7 sists of the reproduction or distribution,”;

8 (ii) by striking “with a retail value of
9 more than \$2,500” and inserting “which
10 have a total retail value of more than
11 \$5,000”; and

12 (iii) by adding “and” at the end; and

13 (2) by redesignating subsection (c) as sub-
14 section (e) and inserting after subsection (b) the fol-
15 lowing:

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

18 “(1) shall be imprisoned not more than 3 years,
19 or fined in the amount set forth in this title, or both,
20 if the offense consists of the reproduction or dis-
21 tribution, including by electronic means, during any
22 180-day period, of 10 or more copies of 1 or more
23 copyrighted works, which have a total retail value of
24 more than \$5,000;

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

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

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

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

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

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

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

1 (e) UNAUTHORIZED FIXATION AND TRAFFICKING OF
2 LIVE MUSICAL PERFORMANCES.—Section 2319A of title
3 18, United States Code, is amended—

4 (1) by redesignating subsections (d) and (e) as
5 subsections (e) and (f), respectively; and

6 (2) by inserting after subsection (e) the follow-
7 ing:

8 “(d) VICTIM IMPACT STATEMENT.—(1) During prep-
9 aration of the presentence report pursuant to Rule 32(c)
10 of the Federal Rules of Criminal Procedure, victims of the
11 offense shall be permitted to submit, and the probation
12 officer shall receive, a victim impact statement that identi-
13 fies the victim of the offense and the extent and scope
14 of the injury and loss suffered by the victim, including
15 the estimated economic impact of the offense on that vic-
16 tim.

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

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

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

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

1 (f) TRAFFICKING IN COUNTERFEIT GOODS OR SERV-
2 ICES.—Section 2320 of title 18, United States Code, is
3 amended—

4 (1) by redesignating subsections (d) and (e) as
5 subsections (e) and (f), respectively; and

6 (2) by inserting after subsection (c) the follow-
7 ing:

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

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

18 “(A) producers and sellers of legitimate goods
19 or services affected by conduct involved in the of-
20 fense;

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

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

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

15 (2) In implementing paragraph (1), the Sentencing
16 Commission shall ensure that the guidelines provide for
17 consideration of the retail value and quantity of the items
18 with respect to which the crime against intellectual prop-
19 erty was committed.

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