

Anticounterfeiting Act.

• SECTION 1. SHORT TITLE.	1
• SEC. 2. FINDINGS.	1
• SEC. 3. PROHIBITION AGAINST TRAFFICKING IN ILLICIT AUTHENTICATION FEATURES.	2

108th CONGRESS

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S. 2227

To prevent and punish counterfeiting and copyright piracy, and for other purposes.

IN THE SENATE OF THE UNITED STATES

March 23, 2004

Mr. BIDEN (for himself, Mr. HOLLINGS, Mrs. MURRAY, Mr. SMITH, and Mr. ALLEN)
introduced the following bill; which was read twice and referred to the Committee on the
Judiciary

A BILL

To prevent and punish counterfeiting and copyright piracy, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America
in Congress assembled,

SECTION 1. SHORT TITLE. ➡

This Act may be cited as the `Anticounterfeiting Act of 2004'.

SEC. 2. FINDINGS. ➡

Congress finds that--

1. American innovation, and the protection of that innovation by the government, has
been a critical component of the economic growth of this Nation throughout the history
of the Nation;
2. copyright-based industries represent one of the most valuable economic assets of this

country, contributing over 5 percent of the gross domestic product of the United States and creating significant job growth and tax revenues;

3. the American intellectual property sector employs approximately 4,300,000 people, representing over 3 percent of total United States employment;
4. the proliferation of organized criminal counterfeiting enterprises threatens the economic growth of United States copyright industries;
5. the American intellectual property sector has invested millions of dollars to develop highly sophisticated authentication features that assist consumers and law enforcement in distinguishing genuine intellectual property products and packaging from counterfeits;
6. in order to thwart these industry efforts, counterfeiters traffic in, and tamper with, genuine authentication features, for example, by obtaining genuine authentication features through illicit means and then commingling these features with counterfeit software or packaging;
7. Federal law does not provide adequate civil and criminal remedies to combat tampering activities that directly facilitate counterfeiting crimes; and
8. in order to strengthen Federal enforcement against counterfeiting of copyrighted works, Congress must enact legislation that--
 - A. prohibits trafficking in, and tampering with, authentication features of copyrighted works; and
 - B. permits aggrieved parties an appropriate civil cause of action.

SEC. 3. PROHIBITION AGAINST TRAFFICKING IN ILLICIT AUTHENTICATION FEATURES. ➡

- a. IN GENERAL- Section 2318 of title 18, United States Code, is amended--
 1. by striking the heading and inserting `Trafficking in counterfeit labels, illicit authentication features, or counterfeit documentation or packaging';
 2. by striking subsection (a) and inserting the following:
 - a. Whoever, in any of the circumstances described in subsection (c), knowingly traffics in--
 1. a counterfeit label affixed to, or designed to be affixed to--
 - A. a phonorecord;

- B. a copy of a computer program;
 - C. a copy of a motion picture or other audiovisual work; or
 - D. documentation or packaging;
2. an illicit authentication feature affixed to or embedded in, or designed to be affixed to or embedded in--
- A. a phonorecord;
 - B. a copy of a computer program;
 - C. a copy of a motion picture or other audiovisual work; or
 - D. documentation or packaging; or
3. counterfeit documentation or packaging, shall be fined under this title or imprisoned for not more than 5 years, or both.;
3. in subsection (b)--
- A. in paragraph (2), by striking `and' at the end;
 - B. in paragraph (3)--
 - i. by striking `and `audiovisual work' have' and inserting the following: `, `audiovisual work', and `copyright owner' have'; and
 - ii. by striking the period at the end and inserting a semicolon; and
 - C. by adding at the end the following:
 - 4. the term `authentication feature' means any hologram, watermark, certification, symbol, code, image, sequence of numbers or letters, or other physical feature that either individually or in combination with another feature is used by the respective copyright owner to verify that a phonorecord, a copy of a computer program, a copy of a motion picture or other audiovisual work, or documentation or packaging is not counterfeit or otherwise infringing of any copyright;
 - 5. the term `documentation or packaging' means documentation or packaging for a phonorecord, copy of a computer program, or copy of a motion picture or other audiovisual work; and
 - 6. the term `illicit authentication feature' means an authentication feature, that--

- A. without the authorization of the respective copyright owner has been tampered with or altered so as to facilitate the reproduction or distribution of--
 - i. a phonorecord;
 - ii. a copy of a computer program;
 - iii. a copy of a motion picture or other audiovisual work; or
 - iv. documentation or packaging;

in violation of the rights of the copyright owner under title 17;
 - B. is genuine, but has been distributed, or is intended for distribution, without the authorization of the respective copyright owner; or
 - C. appears to be genuine, but is not.';
4. in subsection (c)--
- A. by striking paragraph (3) and inserting the following:
 - 1. the counterfeit label or illicit authentication feature is affixed to, is embedded in, or encloses, or is designed to be affixed to, to be embedded in, or to enclose--
 - A. a phonorecord of a copyrighted sound recording;
 - B. a copy of a copyrighted computer program;
 - C. a copy of a copyrighted motion picture or other audiovisual work;
or
 - D. documentation or packaging; or'; and
 - B. in paragraph (4), by striking 'for a computer program';
5. in subsection (d)--
- A. by inserting 'or illicit authentication features' after 'counterfeit labels' each place it appears;
 - B. by inserting 'or illicit authentication features' after 'such labels'; and

- C. by inserting before the period at the end the following: `, and of any equipment, device, or materials used to manufacture, reproduce, or assemble the counterfeit labels or illicit authentication features'; and
- 6. by adding at the end the following:
 - f. CIVIL REMEDIES FOR VIOLATION-
 - 1. IN GENERAL- Any copyright owner who is injured by a violation of this section or is threatened with injury, may bring a civil action in an appropriate United States district court.
 - 2. DISCRETION OF COURT- In any action brought under paragraph (1), the court--
 - A. may grant 1 or more temporary or permanent injunctions on such terms as the court determines to be reasonable to prevent or restrain violations of this section;
 - B. at any time while the action is pending, may order the impounding, on such terms as the court determines to be reasonable, of any article that is in the custody or control of the alleged violator and that the court has reasonable cause to believe was involved in a violation of this section; and
 - C. may award to the injured party--
 - i. reasonable attorney fees and costs; and
 - ii.
 - I. actual damages and any additional profits of the violator, as provided by paragraph (3); or
 - II. statutory damages, as provided by paragraph (4).
 - 3. ACTUAL DAMAGES AND PROFITS-
 - A. IN GENERAL- The injured party is entitled to recover--
 - i. the actual damages suffered by the injured party as a result of a violation of this section, as provided by subparagraph (B); and
 - ii. any profits of the violator that are attributable to a violation of this section and are not taken into account in computing the actual damages.
 - B. CALCULATION OF DAMAGES- The court shall calculate actual

damages by multiplying--

- i. the value of the phonorecords or copies to which counterfeit labels, illicit authentication features, or counterfeit documentation or packaging were affixed or embedded, or designed to be affixed or embedded; by
- ii. the number of phonorecords or copies to which counterfeit labels, illicit authentication features, or counterfeit documentation or packaging were affixed or embedded, or designed to be affixed or embedded, unless such calculation would underestimate the actual harm suffered by the copyright owner.

C. DEFINITION- For purposes of this paragraph, the term 'value of the phonorecord or copy' means--

- i. the retail value of an authorized phonorecord of a copyrighted sound recording;
- ii. the retail value of an authorized copy of a copyrighted computer program; or
- iii. the retail value of a copy of a copyrighted motion picture or other audiovisual work.

4. STATUTORY DAMAGES- The injured party may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for each violation of this section in a sum of not less than \$2,500 or more than \$25,000, as the court considers appropriate.

5. SUBSEQUENT VIOLATION- The court may increase an award of damages under this subsection by 3 times the amount that would otherwise be awarded, as the court considers appropriate, if the court finds that a person has subsequently violated this section within 3 years after a final judgment was entered against that person for a violation of this section.

6. LIMITATION ON ACTIONS- A civil action may not be commenced under this section unless it is commenced within 3 years after the date on which the claimant discovers the violation.

9. OTHER RIGHTS NOT AFFECTED- Nothing in this section shall enlarge, diminish, or otherwise affect liability under section 1201 or 1202 of title 17.'.

b. TECHNICAL AND CONFORMING AMENDMENT- The item relating to section 2318 in the table of sections at the beginning of chapter 113 of title 18, United States Code, is amended by inserting 'or illicit authentication features' after 'counterfeit labels'.

