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Referred to the Committee on the Judiciary

AN ACT

To provide criminal penalties for unauthorized recording of motion pictures in a motion picture exhibition facility, to provide criminal and civil penalties for unauthorized distribution of commercial prerelease copyrighted works, 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 `Artists' Rights and Theft Prevention Act of 2004' or the `ART Act'.

SEC. 2. CONGRESSIONAL FINDINGS. ➡

Congress finds the following:

1. Intellectual property--
 - A. represents the ideas, imagination and creativity needed to innovate long before a product is brought to market;
 - B. is fundamental to the continued economic, social, and cultural development of society; and
 - C. deserves the protection of our laws.
2. Music, film, software, and all other forms of intellectual property represent one of the strongest and most significant sectors of the United States economy, as demonstrated by the fact that these industries--
 - A. accounted for more than 5 percent of the United States Gross Domestic Product, or \$535,100,000,000 in 2001;
 - B. represent almost 6 percent of all United States employment; and
 - C. led all major industry sectors in foreign sales and exports in 2001.
3. In an attempt to combat the growing use of the Internet and technology for the illegal reproduction and distribution of copyrighted materials, Congress unanimously passed and President Clinton signed the 'No Electronic Theft (NET) Act' in 1997. The NET Act is designed to strengthen copyright and trademark laws and to permit the prosecution of individuals in cases involving large-scale illegal reproduction or distribution of copyrighted works where the infringers act willfully.
4. Under the No Electronic Theft (NET) Act's economic harm requirement, investigations by law enforcement of copyright infringements are particularly resource intensive and pose significant challenges. In the interest of broader deterrence and in order to facilitate the prosecution of particularly egregious copyright violations, it is important to recognize that a significant level of economic harm can be reached by the distribution of prerelease commercial works.
5. The use of camcorders and other audiovisual recording devices in movie theaters to make illegal copies of films is posing a serious threat to the motion picture industry. According to a recent industry study, 92.4 percent of the first copies of movies available for download on the Internet originate from camcorders.
6. Given the difficulty of enforcement, online theft of music, film, software, and all forms of intellectual property continues to rise. The negative effects on this large segment of the United States economy are significant, as exemplified by almost a 31 percent drop in sales for the music industry from the middle of 2000 to the middle of 2003.
7. Federal legislation is necessary and warranted to combat the most egregious forms of online theft of intellectual property and its significant, negative economic impact on the United States economy because--
 - A. Article 1, section 8 of the United States Constitution gives Congress the power

'[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries,' as well as the power '[t]o regulate Commerce with foreign nations, and among the several States.');

- B. the importance of the music, film, software and other intellectual property-based industries to the overall health of the United States economy is well documented and significant; and
- C. theft and unauthorized distribution of intellectual property across State and international lines occurs on a regular basis.

SEC. 3. CRIMINAL PENALTIES FOR UNAUTHORIZED RE-CORDING OF MOTION PICTURES IN A MOTION PICTURE EXHIBITION FACILITY. ➡

- a. IN GENERAL- Chapter 113 of title 18, United States Code, is amended by adding after section 2319A the following new section:

'Sec. 2319B. Unauthorized recording of motion pictures in a motion picture exhibition facility

- a. OFFENSE- Any person who, without the authorization of the copyright owner, knowingly uses or attempts to use an audiovisual recording device to transmit or make a copy of a motion picture or other audiovisual work protected under title 17, or any part thereof, from a performance of such work in a motion picture exhibition facility, shall--
 - 1. be imprisoned for not more than 3 years, fined under this title, or both; or
 - 2. if the offense is a second or subsequent offense, be imprisoned for no more than 6 years, fined under this title, or both.
- b. FORFEITURE AND DESTRUCTION- 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.
- c. AUTHORIZED ACTIVITIES- This section does not prevent any lawfully authorized investigative, protective, or intelligence activity by an officer, agent, or employee of the United States, a State, or a political subdivision of a State, or a person acting under a contract with the United States, a State, or a political subdivision of a State.
- d. IMMUNITY FOR THEATERS- With reasonable cause, the owner or lessee of a facility where a motion picture is being exhibited, the authorized agent or employee of such owner or lessee, the licensor of the motion picture being exhibited, or the agent or employee of such licensor--

1. may detain, in a reasonable manner and for a reasonable time, any person suspected of a violation of this section for the purpose of questioning or summoning a law enforcement officer; and
 2. shall not be held liable in any civil or criminal action arising out of a detention under paragraph (1).
- 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. DEFINITIONS- In this section, the following definitions shall apply:
- A. 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.
 - B. 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.'
- b. CLERICAL AMENDMENT- The table of sections at the beginning of chapter 113 of title 18, United States Code, is amended by inserting after the item relating to section 2319A the following:
- `2319B. Unauthorized recording of motion pictures in a motion picture exhibition facility.'
- c. DEFINITION- Section 101 of title 17, United States Code, is amended by inserting

after the definition of 'Motion pictures' the following:

'The term 'motion picture exhibition facility' means a movie theater, screening room, or other venue that is being used primarily for the exhibition of a copyrighted motion picture, if such exhibition is open to the public or is made to an assembled group of viewers outside of a normal circle of a family and its social acquaintances.'

SEC. 4. CRIMINAL INFRINGEMENT OF A WORK BEING PREPARED FOR COMMERCIAL DISTRIBUTION. ➔

a. PROHIBITED ACTS- Section 506(a) of title 17, United States Code, is amended to read as follows:

a. CRIMINAL INFRINGEMENT-

1. IN GENERAL- Any person who willfully infringes a copyright shall be punished as provided under section 2319 of title 18, if the infringement was committed--

A. for purposes of commercial advantage or private financial gain;

B. by the reproduction or distribution, including by electronic means, during any 180-day period, of 1 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of more than \$1,000; or

C. by the distribution of a work being prepared for commercial distribution, by making it available on a computer network accessible to members of the public, if such person knew or should have known that the work was intended for commercial distribution.

2. EVIDENCE- For purposes of this subsection, evidence of reproduction or distribution of a copyrighted work, by itself, shall not be sufficient to establish willful infringement of a copyright.

3. DEFINITION- In this subsection, the term 'work being prepared for commercial distribution' 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 distribution--

i. the copyright owner has a reasonable expectation of commercial distribution; and

ii. the copies or phonorecords of the work have not been commercially distributed; or

- B. a motion picture, if at the time of unauthorized distribution, the motion picture--
- 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 in a format intended to permit viewing outside a motion picture exhibition facility.'
- b. CRIMINAL PENALTIES- Section 2319 of title 18, United States Code, is amended--
1. in subsection (a)--
 - A. by striking 'Whoever' and inserting 'Any person who'; and
 - B. by striking 'and (c) of this section' and inserting ', (c), and (d)';
 2. in subsection (b), by striking 'section 506(a)(1)' and inserting 'section 506(a)(1)(A)';
 3. in subsection (c), by striking 'section 506(a)(2) of title 17, United States Code' and inserting 'section 506(a)(1)(B) of title 17';
 4. by redesignating subsections (d) and (e) as subsections (e) and (f), respectively;
 5. by adding after subsection (c) the following:
 - d. Any person who commits an offense under section 506(a)(1)(C) of title 17--
 1. shall be imprisoned not more than 3 years, fined under this title, or both;
 2. shall be imprisoned not more than 5 years, fined under this title, or both, if the offense was committed for purposes of commercial advantage or private financial gain;
 3. shall be imprisoned not more than 6 years, fined under this title, or both, if the offense is a second or subsequent offense; and
 4. shall be imprisoned not more than 10 years, fined under this title, or both, if the offense is a second or subsequent offense under paragraph (2).'; and
 6. in subsection (f), as redesignated--

- A. in paragraph (1), by striking `and' at the end;
- B. in paragraph (2), by striking the period at the end and inserting a semicolon; and
- C. by adding at the end the following:
 - 3. the term `financial gain' has the meaning given the term in section 101 of title 17; and
 - 4. the term `work being prepared for commercial distribution' has the meaning given the term in section 506(a) of title 17.'

SEC. 5. CIVIL REMEDIES FOR INFRINGEMENT OF A WORK BEING PREPARED FOR COMMERCIAL DISTRIBUTION. ➔

- a. PREREGISTRATION- Section 408 of title 17, United States Code, is amended by adding at the end the following:
 - f. PREREGISTRATION OF WORKS BEING PREPARED FOR COMMERCIAL DISTRIBUTION-
 - 1. RULEMAKING- Not later than 180 days after the date of enactment of this Act, the Register of Copyrights shall issue regulations to establish procedures for preregistration of a work that is being prepared for commercial distribution and has not been published.
 - 2. CLASS OF WORKS- The regulations established under paragraph (1) shall permit preregistration for any work that is in a class of works that the Register determines has had a history of infringement prior to authorized commercial distribution.
 - 3. APPLICATION FOR REGISTRATION- Not later than 3 months after the first publication of the work, the applicant shall submit to the Copyright Office--
 - A. an application for registration of the work;
 - B. a deposit; and
 - C. the applicable fee.
 - 4. EFFECT OF UNTIMELY APPLICATION- An action for infringement under this chapter shall be dismissed, and no award of statutory damages or attorney fees shall be made for a preregistered work, if the items described in paragraph 3 are not submitted to the Copyright Office in proper form

within the earlier of--

- A. 3 months after the first publication of the work; or
 - B. 1 month after the copyright owner has learned of the infringement.'
- b. INFRINGEMENT ACTIONS- Section 411(a) of title 17, United States Code, is amended by inserting 'preregistration or' after 'shall be instituted until'.
- c. EXCLUSION- Section 412 of title 17, United States Code, is amended by inserting ', an action for infringement of the copyright of a work that has been preregistered under section 408(f) before the commencement of the infringement,' after 'section 106A(a)'.

SEC. 6. FEDERAL SENTENCING GUIDELINES. ➔

- a. REVIEW AND AMENDMENT- Not later than 180 days after the date of enactment of this Act, the United States Sentencing Commission, pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this section, shall review and, if appropriate, amend the Federal sentencing guidelines and policy statements applicable to persons convicted of intellectual property rights crimes, including any offense under--
1. section 506, 1201, or 1202 of title 17, United States Code; or
 2. section 2318, 2319, 2319A, 2319B, or 2320 of title 18, United States Code.
- b. AUTHORIZATION- The United States Sentencing Commission may amend the Federal sentencing guidelines in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994 note) as though the authority under that section had not expired.
- c. RESPONSIBILITIES OF UNITED STATES SENTENCING COMMISSION- In carrying out this subsection, the United States Sentencing Commission shall--
1. take all appropriate measures to ensure that the Federal sentencing guidelines and policy statements described in subsection (a) are sufficiently stringent to deter, and adequately reflect the nature of, intellectual property rights crimes;
 2. determine whether to provide a sentencing enhancement for those convicted of the offenses described in subsection (a), if the conduct involves the display, performance, publication, reproduction, or distribution of a copyrighted work before it has been authorized by the copyright owner, whether in the media format used by the infringing party or in any other media format;
 3. determine whether the scope of 'uploading' set forth in application note 3 of section 2B5.3 of the Federal sentencing guidelines is adequate to address the loss attributable to people who broadly distribute copyrighted works without

authorization over the Internet; and

4. determine whether the sentencing guidelines and policy statements applicable to the offenses described in subsection (a) adequately reflect any harm to victims from copyright infringement if law enforcement authorities cannot determine how many times copyright material has been reproduced or distributed.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS. ➡

There are authorized to be appropriated to the Department of Justice \$5,000,000 for each of the fiscal years 2005, 2006, 2007, 2008, and 2009 to prosecute violations of intellectual property rights as set forth under sections 2318, 2319, 2319A, 2319B, and 2320 of title 18, United States Code.

Passed the Senate June 25, 2004.

Attest:

EMILY J. REYNOLDS,

Secretary.