

Intellectual Property Protection and Courts Amendments Act of 2004

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(Enrolled as Agreed to or Passed by Both House and Senate)

Approved December 23, 2004.

H.R.3632

One Hundred Eighth Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Tuesday,

the twentieth day of January, two thousand and four

An Act

To prevent and punish counterfeiting of copyrighted copies and phonorecords, 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 'Intellectual Property Protection and Courts Amendments Act of 2004'.

TITLE I--ANTI-COUNTERFEITING PROVISIONS ➡

SEC. 101. SHORT TITLE. ➡

This title may be cited as the 'Anti-counterfeiting Amendments Act of 2004'.

SEC. 102. PROHIBITION AGAINST TRAFFICKING IN COUNTERFEIT COMPONENTS. ➡

(a) In General- Section 2318 of title 18, United States Code, is amended--

(1) by striking the section heading and inserting the following:

'Sec. 2318. Trafficking in counterfeit labels, illicit labels, 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 or illicit label affixed to, enclosing, or accompanying, or designed to be affixed to, enclose, or accompany--

'(A) a phonorecord;

'(B) a copy of a computer program;

'(C) a copy of a motion picture or other audiovisual work;

'(D) a copy of a literary work;

'(E) a copy of a pictorial, graphic, or sculptural work;

'(F) a work of visual art; or

'(G) documentation or packaging; or

'(2) 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' after the semicolon;

(B) in paragraph (3)--

(i) by striking `and `audiovisual work' have' and inserting the following: `audiovisual work', `literary work', `pictorial, graphic, or sculptural work', `sound recording', `work of visual art', 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 `illicit label' means a genuine certificate, licensing document, registration card, or similar labeling component--

`(A) that is used by the copyright owner to verify that a phonorecord, a copy of a computer program, a copy of a motion picture or other audiovisual work, a copy of a literary work, a copy of a pictorial, graphic, or sculptural work, a work of visual art, or documentation or packaging is not counterfeit or infringing of any copyright; and

`(B) that is, without the authorization of the copyright owner--

`(i) distributed or intended for distribution not in connection with the copy, phonorecord, or work of visual art to which such labeling component was intended to be affixed by the respective copyright owner; or

`(ii) in connection with a genuine certificate or licensing document, knowingly falsified in order to designate a higher number of licensed users or copies than authorized by the copyright owner, unless that certificate or document is used by the copyright owner solely for the purpose of monitoring or tracking the copyright owner's distribution channel and not for the purpose of verifying that a copy or phonorecord is noninfringing;

`(5) the term `documentation or packaging' means documentation or packaging, in physical form, for a phonorecord, copy of a computer program, copy of a motion picture or other audiovisual work, copy of a literary work, copy of a pictorial, graphic, or sculptural work, or work of visual art; and

`(6) the term `counterfeit documentation or packaging' means documentation or packaging that appears to be genuine, but is not.';

(4) in subsection (c)--

(A) by striking paragraph (3) and inserting the following:

`(3) the counterfeit label or illicit label is affixed to, encloses, or accompanies, or is designed to be affixed to, enclose, or accompany--

`(A) a phonorecord of a copyrighted sound recording or copyrighted musical work;

`(B) a copy of a copyrighted computer program;

`(C) a copy of a copyrighted motion picture or other audiovisual work;

`(D) a copy of a literary work;

`(E) a copy of a pictorial, graphic, or sculptural work;

`(F) a work of visual art; or

`(G) copyrighted documentation or packaging; or'; and

(B) in paragraph (4), by striking `for a computer program'; and

(5) in subsection (d)--

(A) by inserting `or illicit labels' after `counterfeit labels' each place it appears; and

(B) by inserting before the period at the end the following: `, and of any equipment, device, or material used to manufacture, reproduce, or assemble the counterfeit labels or illicit labels'.

(b) Civil Remedies- Section 2318 of title 18, United States Code, is further amended by adding at the end the following:

`(f) Civil Remedies-

`(1) IN GENERAL- Any copyright owner who is injured, or is threatened with injury, by a violation of subsection (a) 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 a violation of subsection (a);

`(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 subsection (a); 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 in paragraph (3); or

`(II) statutory damages, as provided in 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 subsection

(a), as provided in subparagraph (B) of this paragraph; and

(ii) any profits of the violator that are attributable to a violation of subsection (a) 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, copies, or works of visual art which are, or are intended to be, affixed with, enclosed in, or accompanied by any counterfeit labels, illicit labels, or counterfeit documentation or packaging, by

(ii) the number of phonorecords, copies, or works of visual art which are, or are intended to be, affixed with, enclosed in, or accompanied by any counterfeit labels, illicit labels, or counterfeit documentation or packaging.

(C) DEFINITION- For purposes of this paragraph, the 'value' of a phonorecord, copy, or work of visual art is--

(i) in the case of a copyrighted sound recording or copyrighted musical work, the retail value of an authorized phonorecord of that sound recording or musical work;

(ii) in the case of a copyrighted computer program, the retail value of an authorized copy of that computer program;

(iii) in the case of a copyrighted motion picture or other audiovisual work, the retail value of an authorized copy of that motion picture or audiovisual work;

(iv) in the case of a copyrighted literary work, the retail value of an authorized copy of that literary work;

(v) in the case of a pictorial, graphic, or sculptural work, the retail value of an authorized copy of that work; and

(vi) in the case of a work of visual art, the retail value of that 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 subsection (a) 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 subsection (a) within 3 years after a final judgment was entered against that person for a violation of that subsection.

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

(c) Conforming Amendment- The item relating to section 2318 in the table of sections for chapter 113 of title 18, United States Code, is amended to read as follows:

'2318. Trafficking in counterfeit labels, illicit labels, or counterfeit documentation or packaging.'

SEC. 103. OTHER RIGHTS NOT AFFECTED. ➔

(a) Chapters 5 and 12 of Title 17; Electronic Transmissions- The amendments made by this title--

(1) shall not enlarge, diminish, or otherwise affect any liability or limitations on liability under sections 512, 1201 or 1202 of title 17, United States Code; and

(2) shall not be construed to apply--

(A) in any case, to the electronic transmission of a genuine certificate, licensing document, registration card, similar labeling component, or documentation or packaging described in paragraph (4) or (5) of section 2318(b) of title 18, United States Code, as amended by this title; and

(B) in the case of a civil action under section 2318(f) of title 18, United States Code, to the electronic transmission of a counterfeit label or counterfeit documentation or packaging defined in paragraph (1) or (6) of section 2318(b) of title 18, United States Code.

(b) Fair Use- The amendments made by this title shall not affect the fair use, under section 107 of title 17, United States Code, of a genuine certificate, licensing document, registration card, similar labeling component, or documentation or packaging described in paragraph (4) or (5) of section 2318(b) of title 18, United States Code, as amended by this title.

TITLE II--FRAUDULENT ONLINE IDENTITY SANCTIONS ➔

SEC. 201. SHORT TITLE. ➔

This title may be cited as the 'Fraudulent Online Identity Sanctions Act'.

SEC. 202. AMENDMENT TO TRADEMARK ACT OF 1946. ➔

Section 35 of the Act entitled 'An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes', approved July 5, 1946 (commonly referred to as the 'Trademark Act of 1946'; 15 U.S.C. 1117), is amended by adding at the end the following new subsection:

'(e) In the case of a violation referred to in this section, it shall be a rebuttable presumption that the violation is willful for purposes of determining relief if the violator, or a person acting in concert with the violator, knowingly provided or knowingly caused to be provided materially false contact information to a domain name registrar, domain name registry, or other domain name registration authority in registering, maintaining, or renewing a domain name used in connection with the violation. Nothing in this subsection limits what may be considered a willful violation under this section.'

SEC. 203. AMENDMENT TO TITLE 17, UNITED STATES CODE. ➔

Section 504(c) of title 17, United States Code, is amended by adding at the end the following new paragraph:

`(3) (A) In a case of infringement, it shall be a rebuttable presumption that the infringement was committed willfully for purposes of determining relief if the violator, or a person acting in concert with the violator, knowingly provided or knowingly caused to be provided materially false contact information to a domain name registrar, domain name registry, or other domain name registration authority in registering, maintaining, or renewing a domain name used in connection with the infringement.

`(B) Nothing in this paragraph limits what may be considered willful infringement under this subsection.

`(C) For purposes of this paragraph, the term `domain name' has the meaning given that term in section 45 of the Act entitled `An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes' approved July 5, 1946 (commonly referred to as the `Trademark Act of 1946'; 15 U.S.C. 1127).'

SEC. 204. AMENDMENT TO TITLE 18, UNITED STATES CODE. ➔

(a) Sentencing Enhancement- Section 3559 of title 18, United States Code, is amended by adding at the end the following:

`(f)(1) If a defendant who is convicted of a felony offense (other than offense of which an element is the false registration of a domain name) knowingly falsely registered a domain name and knowingly used that domain name in the course of that offense, the maximum imprisonment otherwise provided by law for that offense shall be doubled or increased by 7 years, whichever is less.

`(2) As used in this section--

`(A) the term `falsely registers' means registers in a manner that prevents the effective identification of or contact with the person who registers; and

`(B) the term `domain name' has the meaning given that term in section 45 of the Act entitled `An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes' approved July 5, 1946 (commonly referred to as the `Trademark Act of 1946') (15 U.S.C. 1127).'

(b) United States Sentencing Commission-

(1) DIRECTIVE- Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and amend the sentencing guidelines and policy statements to ensure that the applicable guideline range for a defendant convicted of any felony offense carried out online that may be facilitated through the use of a domain name registered with materially false contact information is sufficiently stringent to deter commission of such acts.

(2) REQUIREMENTS- In carrying out this subsection, the Sentencing Commission shall provide sentencing enhancements for anyone convicted of any felony offense furthered through knowingly providing or knowingly causing to be provided materially false contact

information to a domain name registrar, domain name registry, or other domain name registration authority in registering, maintaining, or renewing a domain name used in connection with the violation.

(3) DEFINITION- For purposes of this subsection, the term `domain name' has the meaning given that term in section 45 of the Act entitled `An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes', approved July 5, 1946 (commonly referred to as the `Trademark Act of 1946'; 15 U.S.C. 1127).

SEC. 205. CONSTRUCTION. ➔

(a) Free Speech and Press- Nothing in this title shall enlarge or diminish any rights of free speech or of the press for activities related to the registration or use of domain names.

(b) Discretion of Courts in Determining Relief- Nothing in this title shall restrict the discretion of a court in determining damages or other relief to be assessed against a person found liable for the infringement of intellectual property rights.

(c) Discretion of Courts in Determining Terms of Imprisonment- Nothing in this title shall be construed to limit the discretion of a court to determine the appropriate term of imprisonment for an offense under applicable law.

TITLE III--COURTS ➔

SEC. 301. ADDITIONAL PLACE OF HOLDING COURT IN THE DISTRICT OF COLORADO. ➔

Section 85 of title 28, United States Code, is amended by inserting `Colorado Springs,' after `Boulder,'.

SEC. 302. PLACE OF HOLDING COURT IN THE NORTHERN DISTRICT OF NEW YORK. ➔

Section 112(a) of title 28, United States Code, is amended by inserting `Plattsburgh,' after `Malone,'.

Speaker of the House of Representatives.

Vice President of the United States and

President of the Senate.