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105TH CONGRESS
1ST SESSION

S. 1044

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 SENATE OF THE UNITED STATES

JULY 21, 1997

Mr. LEAHY (for himself and Mr. KYL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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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.

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 "Criminal Copyright Improvement Act of 1997".

SEC. 2. CRIMINAL INFRINGEMENT OF COPYRIGHTS.

(a) DEFINITION OF FINANCIAL GAIN.—Section 101 of title 17, United States Code, is amended by inserting

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after the undesignated paragraph relating to the term "display", the following new paragraph:

"The term 'financial gain' includes receipt of anything of value, including the receipt of other copyrighted works.".

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

"(a) CRIMINAL INFRINGEMENT.—Any person who infringes a copyright willfully either—

"(1) for purposes of commercial advantage or private financial gain; or

"(2) by the reproduction or distribution, including by electronic means, during any 180-day period, of 10 or more copies, of 1 or more copyrighted works, and the total retail value of the copyrighted work or the total retail value of the copies of such work is $5,000 or more,

shall be punished as provided under section 2319 of title 18.".

(c) LIMITATION ON CRIMINAL PROCEEDINGS.—Section 507(a) of title 17, United States Code, is amended by striking "three" and inserting "five".

(d) CRIMINAL INFRINGEMENT OF A COPYRIGHT.—Section 2319 of title 18, United States Code, is amended—

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(1) in subsection (b)—

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

(B) in paragraph (1)—

(i) by inserting "including by electronic means," after "if the offense consists of the reproduction or distribution,"; and

(ii) by striking "with a retail value of more than $2,500" and inserting "which have a total retail value of more than $5,000"; and

(C) in paragraph (3) by inserting before the semicolon "under this subsection"; and

(2) by redesignating subsection (c) as subsection (e) and inserting after subsection (b) the following:

"(c) Any person who commits an offense under section 506(a)(2) of title 17—

"(1) shall be imprisoned not more than 3 years, or fined in the amount set forth in this title, or both, if the offense consists of the reproduction or distribution, including by electronic means, during any 180-day period, of 10 or more copies of 1 or more

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copyrighted works, and the total retail value of the copyrighted work or the total retail value of the copies of such work is $10,000 or more;

"(2) shall be imprisoned not more than 1 year or fined in the amount set forth in this title, or both, if the offense consists of the reproduction or distribution, including by electronic means during any 180-day period, of 10 or more copies of 1 or more copyrighted works, and the total retail value of the copyrighted works or the total retail value of the copies of such works is $5,000 or more; and

"(3) shall be imprisoned not more than 6 years, or fined in the amount set forth in this title, or both, if the offense is a second or subsequent felony offense under paragraph (1).

"(d)(1) During preparation of the presentence report pursuant to rule 32(c) of the Federal Rules of Criminal Procedure, victims of the offense shall be permitted to submit, and the probation officer shall receive, 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) Persons permitted to submit victim impact statements shall include—

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

"(B) holders of intellectual property rights in such works; and

"(C) the legal representatives of such producers, sellers, and holders.".

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

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

(2) by inserting after subsection (c) the following:

"(d) VICTIM IMPACT STATEMENT.—(1) During preparation of the presentence report pursuant to rule 32(c) of the Federal Rules of Criminal Procedure, victims of the offense shall be permitted to submit, and the probation officer shall receive, 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) Persons permitted to submit victim impact statements shall include—

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

"(B) holders of intellectual property rights in such works; and

"(C) the legal representatives of such producers, sellers, and holders.".

(f) TRAFFICKING IN COUNTERFEIT GOODS OR SERVICES.—Section 2320 of title 18, United States Code, is amended—

(1) by redesignating subsection (d) as subsection (f) and transferring such subsection to the end of the section;

(2) by redesignating subsection (e) as subsection (d); and

(3) by inserting after subsection (d) (as redesignated by paragraph (2) of this subsection) the following:

"(e)(1) During preparation of the presentence report pursuant to rule 32(c) of the Federal Rules of Criminal Procedure, victims of the offense shall be permitted to submit, and the probation officer shall receive, 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.

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"(2) Persons permitted to submit victim impact statements shall include—

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

"(B) holders of intellectual property rights in such goods or services; and

"(C) the legal representatives of such producers, sellers, and holders.".

(g) DIRECTIVE TO SENTENCING COMMISSION.—

(1) IN GENERAL.—Under the authority of the Sentencing Reform Act of 1984 (Public Law 98–473; 98 Stat. 1987) and section 21 of the Sentencing Act of 1987 (Public Law 100–182; 101 Stat. 1271; 18 U.S.C. 994 note) (including the authority to amend the sentencing guidelines and policy statements), the United States Sentencing Commission shall ensure that the applicable guideline range for a defendant convicted of a crime against intellectual property (including offenses set forth at section 506(a) of title 17, United States Code, and sections 2319, 2319A and 2320 of title 18, United States Code)—

(A) is sufficiently stringent to deter such a crime;

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(B) adequately reflects the additional considerations set forth in paragraph (2) of this subsection; and

(C) takes into account more than minimal planning and other aggravating factors.

(2) IMPLEMENTATION.—In implementing paragraph (1), the Sentencing Commission shall ensure that the guidelines provide for consideration of the retail value of the legitimate items that are infringed upon and the quantity of items so infringed.

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