

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
 TO H.R. 2517  
 OFFERED BY MR. SMITH OF TEXAS, MR. BERMAN,  
 AND MR. CONYERS**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Piracy Deterrence and  
 3 Education Act of 2003”.

**4 SEC. 2. FINDINGS.**

5 The Congress finds as follows:

6 (1) The Internet, while changing the way our  
 7 society communicates, has also changed the nature  
 8 of many crimes, including the theft of intellectual  
 9 property.

10 (2) Trafficking in copyrighted works through  
 11 increasingly sophisticated electronic means, including  
 12 peer-to-peer file trading networks, Internet chat  
 13 rooms, and newsgroups, threatens lost jobs, lost in-  
 14 come for creators, lower tax revenue, and higher  
 15 prices for honest purchasers.

16 (3) The most popular peer-to-peer file trading  
 17 software programs have been downloaded by com-  
 18 puter users over 200,000,000 times. At any one time  
 19 there are over 3,000,000 users simultaneously using

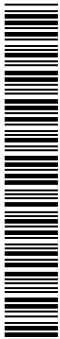


1 just one of these services. Each month, on average,  
2 over 2,300,000,000 digital-media files are trans-  
3 ferred among users of peer-to-peer systems.

4 (4) Many computer users simply believe that  
5 they will not be caught or prosecuted for their con-  
6 duct.

7 (5) In addition, many of the computer users  
8 drawn to the convenience of peer-to-peer systems do  
9 not realize that these systems pose serious security  
10 and privacy threats to their personal computers or  
11 company networks. Recent studies reveal that the  
12 majority of the users of these systems are unable to  
13 tell what files they are sharing and sometimes incor-  
14 rectly assume they were not sharing any files when  
15 in fact they were sharing all files on their hard  
16 drive.

17 (6) The security and privacy threats posed by  
18 peer-to-peer networks extend beyond users inadvert-  
19 ently enabling a hacker to access files. Millions of  
20 copies of one of the most popular peer-to-peer net-  
21 works contain software that could allow an inde-  
22 pendent company to take over portions of users'  
23 computers and Internet connections and has the ca-  
24 pacity to keep track of users' online habits.



1           (7) In light of these considerations, it is impor-  
2 tant that Federal law enforcement agencies actively  
3 pursue criminals who steal the copyrighted works of  
4 others, and prevent such activity through enforce-  
5 ment and awareness. It is also important that the  
6 public be educated about the security and privacy  
7 risks associated with being connected to an unau-  
8 thorized peer-to-peer network.

9           (8) In addition, the Bureau of Customs and  
10 Border Protection of the Department of Homeland  
11 Security has the authority to act against infringe-  
12 ments of copyrighted works, including those works  
13 protected under the Berne Convention and the  
14 Agreement on Trade Related Aspects of Intellectual  
15 Property of the World Trade Organization. Under  
16 United States law, merchandise can be seized by or  
17 forfeited to the Bureau of Customs and Border Pro-  
18 tection if “it is merchandise or packaging in which  
19 copyright, trademark, or trade name protection vio-  
20 lations are involved” (section 596(e)(2)(C) of the  
21 Tariff Act of 1930 (19 U.S.C. 1595a(e)(2)(C)).

22           (9) Though the regulations of the Bureau of  
23 Customs and Border Protection (section 133.31 of  
24 title 19, Code of Federal Regulations) provide that  
25 registered copyrighted works may be recorded with



1 the Bureau for “import protection,” recordation is  
2 not explicitly required before infringing merchandise  
3 can be seized or forfeited. Notwithstanding present  
4 legal authority, there have been concerns raised  
5 about the authority of the Bureau of Customs and  
6 Border Protection to seize infringing copyrighted  
7 materials that have neither been registered with the  
8 United States Copyright Office or recorded with the  
9 Bureau.

10 (10) Neither United States nor foreign works  
11 require registration with the Copyright Office for  
12 protection of the copyright in those works. United  
13 States works require registration only before an ac-  
14 tion for infringement is brought under title 17,  
15 United States Code. A foreign work need not be reg-  
16 istered to bring such an action for infringement, and  
17 none of the rights contained in title 17, United  
18 States Code, including the right to control distribu-  
19 tion in section 106 of that title or importation under  
20 section 602 of that title, are contingent upon reg-  
21 istration. In accordance with the international obli-  
22 gations of the United States barring the use of for-  
23 malities, United States law gives foreign copyright  
24 owners direct access to United States courts and  
25 procedures without resort to any registration re-



1        requirement, and section 603 of title 17, United  
2        States Code, directs the Secretary of the Treasury  
3        and the United States Postal Service to separately  
4        or jointly make regulations for the enforcement of  
5        the provisions of title 17, United States Code, pro-  
6        hibiting importation.

7            (11) Notwithstanding the preceding provisions  
8        of this section, the Bureau of Customs and Border  
9        Protection has been unclear about its legal authority  
10       to seize infringing copyrighted materials that have  
11       neither been registered with the Copyright Office nor  
12       recorded with the Bureau. To provide clarity, it is  
13       necessary to specify the authority of the Bureau of  
14       Customs and Border Protection to seize infringing  
15       materials protected by the copyright laws, with or  
16       without registration or recordation.

17       **SEC. 3. DETERRENCE AND COORDINATION.**

18       The Director of the Federal Bureau of Investigation,  
19       in consultation with the Register of Copyrights, shall—

20            (1) develop a program to deter members of the  
21       public from committing acts of copyright infringe-  
22       ment through the Internet; and

23            (2) facilitate the sharing among law enforce-  
24       ment agencies, Internet service providers, and copy-



1 right owners of information concerning acts of copy-  
2 right infringement described in paragraph (1).

3 The program under paragraph (1) shall include issuing  
4 appropriate warnings to individuals engaged in acts of  
5 copyright infringement described in paragraph (1) that  
6 they may be subject to criminal prosecution.

7 **SEC. 4. DESIGNATION AND TRAINING OF AGENTS IN COM-**  
8 **PUTER HACKING AND INTELLECTUAL PROP-**  
9 **ERTY UNITS.**

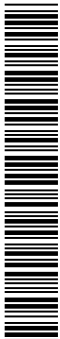
10 (a) DESIGNATION OF AGENTS IN CHIPS UNITS.—

11 The Attorney General shall ensure that any unit in the  
12 Department of Justice responsible for investigating com-  
13 puter hacking or responsible for investigating intellectual  
14 property crimes is assigned at least one agent to support  
15 such unit for the purpose of investigating crimes relating  
16 to the theft of intellectual property.

17 (b) TRAINING.—The Attorney General shall ensure  
18 that each agent assigned under subsection (a) has received  
19 training in the investigation and enforcement of intellec-  
20 tual property crimes.

21 **SEC. 5. EDUCATION PROGRAM.**

22 (a) ESTABLISHMENT.—There shall be established  
23 within the Office of the Associate Attorney General of the  
24 United States an Internet Use Education Program.



1 (b) PURPOSE.—The purpose of the Internet Use  
2 Education Program shall be to—

3 (1) educate the general public concerning the  
4 value of copyrighted works and the effects of the  
5 theft of such works on those who create them;

6 (2) educate the general public concerning the  
7 privacy, security, and other risks of using the Inter-  
8 net to obtain illegal copies of copyrighted works;

9 (3) coordinate and consult with the Department  
10 of Education on compliance by educational institu-  
11 tions with applicable copyright laws involving Inter-  
12 net use; and

13 (4) coordinate and consult with the Department  
14 of Commerce on compliance by corporations with ap-  
15 plicable copyright laws involving Internet use.

16 (c) CONSULTATION WITH REGISTER OF COPY-  
17 RIGHTS.—The Attorney General shall consult with the  
18 Register of Copyrights in developing the Internet Use  
19 Education Program under this section.

20 **SEC. 6. CUSTOMS RECORDATION.**

21 Section 411(a) of title 17, United States Code, is  
22 amended by inserting after the first sentence the fol-  
23 lowing: “An action for infringement of the copyright in  
24 any United States work shall not include any action



1 brought by the Government of the United States or by  
2 any agency or instrumentality thereof.”.

3 **SEC. 7. AUTHORIZED APPROPRIATIONS.**

4 There are authorized to be appropriated for fiscal  
5 year 2004, to the Department of Justice for investigation  
6 and prosecution of violations of title 17, United States  
7 Code, not less than \$15,000,000.

8 **SEC. 8. PREVENTION OF SURREPTITIOUS RECORDING IN**  
9 **THEATERS.**

10 Section 506(a) of title 17, United States Code, is  
11 amended—

12 (1) in paragraph (1), by striking “or” after the  
13 comma;

14 (2) in paragraph (2), by inserting “or” after  
15 “\$1,000,”; and

16 (3) by inserting after paragraph (2) the fol-  
17 lowing:

18 “(3) by the unauthorized reproduction or re-  
19 cording of a motion picture as it is being performed  
20 or displayed in a motion picture theater,”.

21 **SEC. 9. NOTICE AND CONSENT.**

22 (a) IN GENERAL.—Chapter 89 of title 18, United  
23 States Code, is amended by adding at the end the fol-  
24 lowing:



1 **“§ 1822. Notice and consent relating to certain soft-**  
2 **ware**

3 “(a) Whoever knowingly offers enabling software for  
4 download over the Internet and does not—

5 “(1) clearly and conspicuously warn any person  
6 downloading that software, before it is downloaded,  
7 that it is enabling software and could create a secu-  
8 rity and privacy risk for the user’s computer; and

9 “(2) obtain that person’s prior consent to the  
10 download after that warning;

11 shall be fined under this title or imprisoned not more than  
12 6 months, or both.

13 “(b) As used in this section, the term ‘enabling soft-  
14 ware’ means software that, when installed on the user’s  
15 computer, enables third parties to store data on that com-  
16 puter, or use that computer to search other computers’  
17 contents over the Internet.”.

18 (b) AMENDMENT TO TABLE OF SECTIONS.—The  
19 table of sections at the beginning of chapter 89 of title  
20 18, United States Code, is amended by adding at the end  
21 the following new item:

“1822. Notice and consent relating to certain software.”.

Amend the title so as to read: “A bill to enhance  
criminal enforcement of the copyright laws, educate the  
public about the application of copyright law to the Inter-



net, and clarify the authority to seize unauthorized copyrighted works, and for other purposes.”.

