

# Union Calendar No. 428

108<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4077

[Report No. 108-700]

To enhance criminal enforcement of the copyright laws, to educate the public about the application of copyright law to the Internet, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 31, 2004

Mr. SMITH of Texas (for himself, Mr. BERMAN, and Mr. CONYERS) introduced the following bill; which was referred to the Committee on the Judiciary

SEPTEMBER 24, 2004

Additional sponsors: Mr. OTTER, Mr. HOYER, Mr. COBLE, Mrs. BONO, and Mr. MEEHAN

SEPTEMBER 24, 2004

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of the introduced bill, see bill as introduced on March 31, 2004]

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## A BILL

To enhance criminal enforcement of the copyright laws, to educate the public about the application of copyright law to the Internet, and for other purposes.

1        *Be it enacted by the Senate and House of Representa-*  
2        *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Piracy Deterrence and*  
3 *Education Act of 2004”.*

4 **SEC. 2. FINDINGS.**

5 *The Congress finds as follows:*

6 *(1) The Internet, while changing the way our so-*  
7 *ciety communicates, has also changed the nature of*  
8 *many crimes, including the theft of intellectual prop-*  
9 *erty.*

10 *(2) Trafficking in infringing copyrighted works*  
11 *through increasingly sophisticated electronic means,*  
12 *including peer-to-peer file trading networks, Internet*  
13 *chat rooms, and news groups, threatens lost jobs, lost*  
14 *income 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 computer*  
18 *users over 600,000,000 times. At any one time there*  
19 *are over 3,000,000 users simultaneously using just*  
20 *one of these services. Each month, on average, over*  
21 *2,300,000,000 digital-media files are transferred*  
22 *among users of peer-to-peer systems.*

23 *(4) Many computer users simply believe that*  
24 *they will not be caught or prosecuted for their con-*  
25 *duct.*

1           (5) *The security and privacy threats posed by*  
2 *certain peer-to-peer networks extend beyond users in-*  
3 *advertently enabling a hacker to access files. Millions*  
4 *of copies of one of the most popular peer-to-peer net-*  
5 *works contain software that could allow an inde-*  
6 *pendent company to take over portions of users' com-*  
7 *puters and Internet connections and has the capacity*  
8 *to keep track of users' online habits.*

9           (6) *In light of these considerations, Federal law*  
10 *enforcement agencies should actively pursue criminals*  
11 *who steal the copyrighted works of others, and prevent*  
12 *such activity through enforcement and awareness. The*  
13 *public should be educated about the security and pri-*  
14 *vacv risks associated with being connected to certain*  
15 *peer-to-peer networks.*

16 **SEC. 3. VOLUNTARY PROGRAM OF DEPARTMENT OF JUS-**  
17 **TICE.**

18           (a) *VOLUNTARY PROGRAM.*—*The Attorney General is*  
19 *authorized to establish a program under which the Depart-*  
20 *ment of Justice, in cases where persons who are subscribers*  
21 *of Internet service providers appear to be engaging in copy-*  
22 *right infringing conduct in the course of using that Internet*  
23 *service, would send to the Internet Service providers notices*  
24 *that warn such persons of the penalties for such copyright*

1 *infringement. The Internet service providers may forward*  
2 *the notices to such persons.*

3 *(b) LIMITATIONS ON PROGRAM.—*

4 *(1) EXTENT AND LENGTH OF PROGRAM.—The*  
5 *program under subsection (a) shall terminate at the*  
6 *end of the 18-month period beginning on the date of*  
7 *the enactment of this Act and shall be limited to not*  
8 *more than 10,000 notices.*

9 *(2) PRIVACY PROTECTIONS.—No Internet service*  
10 *provider that receives a notice from the Department*  
11 *of Justice under subsection (a) may disclose to the*  
12 *Department any identifying information about the*  
13 *subscriber that is the subject of the notice except pur-*  
14 *suant to court order or other applicable legal process*  
15 *that requires such disclosure.*

16 *(c) REIMBURSEMENT OF INTERNET SERVICE PRO-*  
17 *VIDERS.—The Department of Justice shall reimburse Inter-*  
18 *net Service providers for all reasonable costs incurred by*  
19 *such service providers in forwarding notices under sub-*  
20 *section (a).*

21 *(d) REPORTS TO CONGRESS.—The Attorney General*  
22 *shall submit to the Congress a report on the program estab-*  
23 *lished under subsection (a) both at the time the program*  
24 *is initiated and at the conclusion of the program.*

1 **SEC. 4. DESIGNATION AND TRAINING OF AGENTS IN COM-**  
2 **PUTER HACKING AND INTELLECTUAL PROP-**  
3 **ERTY UNITS.**

4 (a) *DESIGNATION OF AGENTS IN CHIPS UNITS.*—The  
5 Attorney General shall ensure that any unit in the Depart-  
6 ment of Justice responsible for investigating computer hack-  
7 ing or responsible for investigating intellectual property  
8 crimes is assigned at least one agent to support such unit  
9 for the purpose of investigating crimes relating to the theft  
10 of intellectual property.

11 (b) *TRAINING.*—The Attorney General shall ensure  
12 that each agent assigned under subsection (a) has received  
13 training in the investigation and enforcement of intellectual  
14 property crimes.

15 **SEC. 5. EDUCATION PROGRAM.**

16 (a) *ESTABLISHMENT.*—There shall be established with-  
17 in the Office of the Associate Attorney General of the United  
18 States an Internet Use Education Program.

19 (b) *PURPOSE.*—The purpose of the Internet Use Edu-  
20 cation Program shall be to—

21 (1) educate the general public concerning the  
22 value of copyrighted works and the effects of the theft  
23 of such works on those who create them; and

24 (2) educate the general public concerning the pri-  
25 vacy, security, and other risks of using the Internet  
26 to obtain illegal copies of copyrighted works.

1           (c) *SECTOR SPECIFIC MATERIALS.—The Internet Use*  
2 *Educational Program shall, to the extent appropriate, de-*  
3 *velop materials appropriate to Internet users in different*  
4 *sectors of the general public where criminal copyright in-*  
5 *fringement is a concern. The Attorney General shall consult*  
6 *with appropriate interested parties in developing such sec-*  
7 *tor-specific materials.*

8           (d) *CONSULTATIONS.—The Attorney General shall con-*  
9 *sult with the Register of Copyrights and the Secretary of*  
10 *Commerce in developing the Internet Use Education Pro-*  
11 *gram under this section.*

12           (e) *PROHIBITION ON USE OF CERTAIN FUNDS.—The*  
13 *program created under this section shall not use funds or*  
14 *resources of the Department of Justice allocated for crimi-*  
15 *nal investigation or prosecution.*

16           (f) *ADDITIONAL PROHIBITION ON THE USE OF*  
17 *FUNDS.—The program created under this section shall not*  
18 *use any funds or resources of the Department of Justice al-*  
19 *located for the Civil Rights Division of the Department, in-*  
20 *cluding any funds allocated for the enforcement of civil*  
21 *rights or the Voting Rights Act of 1965.*

22 **SEC. 6. ACTIONS BY THE GOVERNMENT OF THE UNITED**  
23 **STATES.**

24           Section 411(a) of title 17, United States Code, is  
25 amended in the first sentence by striking “Except for” and

1 *inserting “Except for an action brought by the Government*  
2 *of the United States or by any agency or instrumentality*  
3 *thereof, or” .*

4 **SEC. 7. AUTHORIZED APPROPRIATIONS.**

5 *There are authorized to be appropriated to the Depart-*  
6 *ment of Justice for fiscal year 2005 not less than*  
7 *\$15,000,000 for the investigation and prosecution of viola-*  
8 *tions of title 17, United States Code.*

9 **SEC. 8. CRIMINAL PENALTIES FOR UNAUTHORIZED RE-**  
10 **CORDING OF MOTION PICTURES IN A MOTION**  
11 **PICTURE EXHIBITION FACILITY.**

12 *(a) IN GENERAL.—Chapter 113 of title 18, United*  
13 *States Code, is amended by adding after section 2319A the*  
14 *following new section:*

15 **“§2319B. Unauthorized recording of motion pictures**  
16 ***in a motion picture exhibition facility***

17 *“(a) OFFENSE.—Any person who, without the author-*  
18 *ization of the copyright owner, knowingly uses or attempts*  
19 *to use an audiovisual recording device to transmit or make*  
20 *a copy of a motion picture or other audiovisual work pro-*  
21 *tected under title 17, or any part thereof, from a perform-*  
22 *ance of such work in a motion picture exhibition facility,*  
23 *shall—*

24 *“(1) be imprisoned for not more than 3 years,*  
25 *fined under this title, or both; or*

1           “(2) if the offense is a second or subsequent of-  
2           fense, be imprisoned for no more than 6 years, fined  
3           under this title, or both.

4           *The possession by a person of an audiovisual recording de-*  
5           *vice in a motion picture exhibition facility may be consid-*  
6           *ered as evidence in any proceeding to determine whether*  
7           *that person committed an offense under this subsection, but*  
8           *shall not, by itself, be sufficient to support a conviction of*  
9           *that person for such offense.*

10           “(b) *FORFEITURE AND DESTRUCTION.*—When a per-  
11           son is convicted of an offense under subsection (a), the court  
12           in its judgment of conviction shall, in addition to any pen-  
13           alty provided, order the forfeiture and destruction or other  
14           disposition of all unauthorized copies of motion pictures or  
15           other audiovisual works protected under title 17, or parts  
16           thereof, and any audiovisual recording devices or other  
17           equipment used in connection with the offense.

18           “(c) *AUTHORIZED ACTIVITIES.*—This section does not  
19           prevent any lawfully authorized investigative, protective, or  
20           intelligence activity by an officer, agent, or employee of the  
21           United States, a State, or a political subdivision of a State,  
22           or by a person acting under a contract with the United  
23           States, a State, or a political subdivision of a State.

24           “(d) *IMMUNITY FOR THEATERS AND AUTHORIZED*  
25           *PERSONS.*—With reasonable cause, the owner or lessee of



1 *a motion picture facility where a motion picture is being*  
2 *exhibited, the authorized agent or employee of such owner*  
3 *or lessee, the licensor of the motion picture being exhibited,*  
4 *or the agent or employee of such licensor—*

5           “(1) *may detain, in a reasonable manner and*  
6 *for a reasonable time, any person suspected of com-*  
7 *mitting an offense under this section for the purpose*  
8 *of questioning that person or summoning a law en-*  
9 *forcement officer; and*

10           “(2) *shall not be held liable in any civil or*  
11 *criminal action by reason of a detention under para-*  
12 *graph (1).*

13           “(e) *VICTIM IMPACT STATEMENT.—*

14           “(1) *IN GENERAL.—During the preparation of*  
15 *the presentence report under rule 32(c) of the Federal*  
16 *Rules of Criminal Procedure, victims of an offense*  
17 *under this section shall be permitted to submit to the*  
18 *probation officer a victim impact statement that iden-*  
19 *tifies the victim of the offense and the extent and*  
20 *scope of the injury and loss suffered by the victim, in-*  
21 *cluding the estimated economic impact of the offense*  
22 *on that victim.*

23           “(2) *CONTENTS.—A victim impact statement*  
24 *submitted under this subsection shall include—*

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

3           “(B) holders of intellectual property rights  
4           in the works described in subparagraph (A); and

5           “(C) the legal representatives of such pro-  
6           ducers, sellers, and holders.

7           “(f) *DEFINITIONS.*—*In this section:*

8           “(1) *AUDIOVISUAL WORK, COPY, ETC.*—*The terms*  
9           *‘audiovisual work’, ‘copy’, ‘copyright owner’, ‘motion*  
10           *picture’, and ‘transmit’ have, respectively, the mean-*  
11           *ings given those terms in section 101 of title 17.*

12           “(2) *AUDIOVISUAL RECORDING DEVICE.*—*The*  
13           *term ‘audiovisual recording device’ means a digital or*  
14           *analog photographic or video camera, or any other*  
15           *technology or device capable of enabling the recording*  
16           *or transmission of a copyrighted motion picture or*  
17           *other audiovisual work, or any part thereof, regard-*  
18           *less of whether audiovisual recording is the sole or*  
19           *primary purpose of the device.*

20           “(3) *MOTION PICTURE EXHIBITION FACILITY.*—  
21           *The term ‘motion picture exhibition facility’ means a*  
22           *movie theater, screening room, or other venue that is*  
23           *being used primarily for the exhibition of a copy-*  
24           *righted motion picture, if such exhibition is open to*  
25           *the public or is made to an assembled group of view-*

1      *ers outside of a normal circle of a family and its so-*  
2      *cial acquaintances.*

3      “(g) *STATE LAW NOT PREEMPTED.—Nothing in this*  
4      *section may be construed to annul or limit any rights or*  
5      *remedies under the laws of any State.”.*

6      “(b) *CLERICAL AMENDMENT.—The table of sections at*  
7      *the beginning of chapter 113 of title 18, United States Code,*  
8      *is amended by inserting after the item relating to section*  
9      *2319A the following:*

*“2319B. Unauthorized recording of motion pictures in a motion picture exhibition  
        facility.”.*

10     **SEC. 9. SENSE OF THE CONGRESS ON NEED TO TAKE STEPS**

11                 **TO PREVENT ILLEGAL ACTIVITY ON PEER-TO-**  
12                 **PEER SERVICES.**

13      “(a) *FINDINGS.—The Congress finds as follows:*

14              (1) *The most popular publicly accessible peer-to-*  
15      *peer file sharing software programs combined have*  
16      *been downloaded worldwide over 600,000,000 times.*

17              (2) *The vast majority of software products, in-*  
18      *cluding peer-to-peer technology, do not pose an inher-*  
19      *ent risk. Responsible persons making software prod-*  
20      *ucts should be encouraged and commended for the due*  
21      *diligence and reasonable care they take including by*  
22      *providing instructions, relevant information in the*  
23      *documentation, disseminating patches, updates, and*  
24      *other appropriate modifications to the software.*

1           (3) *Massive volumes of illegal activity, including*  
2           *the distribution of child pornography, viruses, and*  
3           *confidential personal information, and copyright in-*  
4           *fringement occur on publicly accessible peer-to-peer*  
5           *file sharing services every day. Some publicly acces-*  
6           *sible peer-to-peer file sharing services expose con-*  
7           *sumers, particularly children, to serious risks, includ-*  
8           *ing legal liability, loss of privacy, threats to computer*  
9           *security, and exposure to illegal and inappropriate*  
10          *material.*

11          (4) *Several studies and reports demonstrate that*  
12          *pornography, including child pornography, is preva-*  
13          *lent on publicly available peer-to-peer file sharing*  
14          *services, and children are regularly exposed to por-*  
15          *nography when using such peer-to-peer file sharing*  
16          *services.*

17          (5) *The full potential of peer-to-peer technology*  
18          *to benefit consumers has yet to be realized and will*  
19          *not be achieved until these problems are adequately*  
20          *addressed.*

21          (6) *To date, the businesses that run publicly ac-*  
22          *cessible file-sharing services have refused or failed to*  
23          *voluntarily and sufficiently address these problems.*

1           (7) *Many users of publicly available peer-to-peer*  
2 *file-sharing services are drawn to these systems by the*  
3 *lure of obtaining “free” music and movies.*

4           (8) *While some users use parental controls to*  
5 *protect children from pornography available on the*  
6 *Internet and search engines, not all such controls*  
7 *work on publicly accessible peer-to-peer networks.*

8           (9) *Businesses that run publicly accessible peer-*  
9 *to-peer file sharing services have openly acknowledged,*  
10 *and numerous studies and reports have established,*  
11 *that these services facilitate and profit from massive*  
12 *amounts of copyright infringement, causing enormous*  
13 *damage to the economic well-being of the copyright*  
14 *industries whose works are being illegally “shared”*  
15 *and downloaded.*

16           (10) *The legitimate digital music marketplace of-*  
17 *fers consumers a wide and growing array of choices*  
18 *for obtaining music legally, without exposure to the*  
19 *risks posed by publicly accessible peer-to-peer file*  
20 *sharing services.*

21           (11) *The Federal Trade Commission issued a*  
22 *Consumer Alert in July of 2003 warning consumers*  
23 *that some file-sharing services contain damaging vi-*  
24 *rus and worms and, without the computer user’s*  
25 *knowledge or consent, install spyware to monitor a*

1 *user's browsing habits and send data to third parties*  
2 *or automatically open network connections.*

3 *(12) Publicly available peer-to-peer file-sharing*  
4 *services can and should adopt reasonable business*  
5 *practices and use technology in the marketplace to ad-*  
6 *dress the existing risks posed to consumers by their*  
7 *services and facilitate the legitimate use of peer-to-*  
8 *peer file sharing technology and software.*

9 *(b) SENSE OF CONGRESS.—It is the sense of the Con-*  
10 *gress that—*

11 *(1) responsible software developers should be*  
12 *commended, recognized, and encouraged for their ef-*  
13 *forts to protect consumers;*

14 *(2) currently the level of ongoing and persistent*  
15 *illegal and dangerous activity on publicly accessible*  
16 *peer-to-peer file sharing services is harmful to con-*  
17 *sumers, minors, and the economy; and*

18 *(3) therefore, the Congress and the executive*  
19 *branch should consider all appropriate measures to*  
20 *protect consumers and children, and prevent such ille-*  
21 *gal activity.*

22 **SEC. 10. ENHANCEMENT OF CRIMINAL COPYRIGHT IN-**  
23 **FRINGEMENT.**

24 *(a) CRIMINAL INFRINGEMENT.—Section 506 of title*  
25 *17, United States Code, is amended—*

1           (1) *by amending subsection (a) to read as fol-*  
2           *lows:*

3           “(a) *CRIMINAL INFRINGEMENT.—Any person who—*

4           *“(1) infringes a copyright willfully and for pur-*  
5           *poses of commercial advantage or private financial*  
6           *gain,*

7           *“(2) infringes a copyright willfully by the repro-*  
8           *duction or distribution, including by the offering for*  
9           *distribution to the public by electronic means, during*  
10          *any 180-day period, of 1 or more copies or*  
11          *phonorecords of 1 or more copyrighted works, which*  
12          *have a total retail value of more than \$1,000, or*

13          *“(3) infringes a copyright by the knowing dis-*  
14          *tribution, including by the offering for distribution to*  
15          *the public by electronic means, with reckless disregard*  
16          *of the risk of further infringement, during any 180-*  
17          *day period, of—*

18                  *“(A) 1,000 or more copies or phonorecords*  
19                  *of 1 or more copyrighted works,*

20                  *“(B) 1 or more copies or phonorecords of 1*  
21                  *or more copyrighted works with a total retail*  
22                  *value of more than \$10,000, or*

23                  *“(C) 1 or more copies or phonorecords of 1*  
24                  *or more copyrighted pre-release works,*

1 *shall be punished as provided under section 2319 of title*  
2 *18. For purposes of this subsection, evidence of reproduction*  
3 *or distribution of a copyrighted work, by itself, shall not*  
4 *be sufficient to establish the necessary level of intent under*  
5 *this subsection.”; and*

6 (2) *by adding at the end the following:*

7 “(g) *LIMITATION ON LIABILITY OF SERVICE PRO-*  
8 *VIDERS.—No legal entity shall be liable for a violation of*  
9 *subsection (a)(3) by reason of performing any function de-*  
10 *scribed in subsection (a), (b), (c), or (d) of section 512 if*  
11 *such legal entity would not be liable for monetary relief*  
12 *under section 512 by reason of performing such function.*  
13 *Except for purposes of determining whether an entity quali-*  
14 *fies for the limitation on liability under subsection (a)(3)*  
15 *of this section, the legal conclusion of whether an entity*  
16 *qualifies for a limitation on liability under section 512*  
17 *shall not be considered in a judicial determination of wheth-*  
18 *er the entity violates subsection (a) of this section.*

19 “(h) *DEFINITIONS.—In this section:*

20 (1) *PRE-RELEASE WORK.—The term ‘pre-release*  
21 *work’ refers to a work protected under this title which*  
22 *has a commercial and economic value and which, at*  
23 *the time of the act of infringement that is the basis*  
24 *for the offense under subsection (a)(3), the defendant*  
25 *knew or should have known had not yet been made*



1       *available by the copyright owner to individual mem-*  
2       *bers of the general public in copies or phonorecords*  
3       *for sale, license, or rental.*

4               “(2) *RETAIL VALUE.*—*The ‘retail value’ of a*  
5       *copyrighted work is the retail price of that work in*  
6       *the market in which it is sold. In the case of an in-*  
7       *fringement of a copyright by distribution, if the retail*  
8       *price does not adequately reflect the economic value of*  
9       *the infringement, then the retail value may be deter-*  
10       *mined using other factors, including but not limited*  
11       *to suggested retail price, wholesale price, replacement*  
12       *cost of the item, licensing, or distribution-related*  
13       *fees.”.*

14       (b) *PENALTIES.*—*Section 2319 of title 18, United*  
15       *States Code, is amended—*

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

18               (2) *by inserting after subsection (c) the fol-*  
19       *lowing:*

20               “(d) *Any person who commits an offense under section*  
21       *506(a)(3) of title 17—*

22               “(1) *shall be imprisoned not more than 3 years,*  
23       *or fined in the amount set forth in this title, or both,*  
24       *or, if the offense was committed for purposes of com-*  
25       *mercial advantage or private financial gain, impris-*

1        *oned for not more than 5 years, or fined in the*  
 2        *amount set forth in this title, or both; and*

3            *“(2) shall, if the offense is a second or subsequent*  
 4        *offense under paragraph (1), be imprisoned not more*  
 5        *than 6 years, or fined in the amount set forth in this*  
 6        *title, or both, or, if the offense was committed for pur-*  
 7        *poses of commercial advantage or private financial*  
 8        *gain, imprisoned for not more than 10 years, or fined*  
 9        *in the amount set forth in this title, or both.”; and*

10            *(3) in subsection (f), as so redesignated—*

11                    *(A) in paragraph (1), by striking “and”*  
 12                    *after the semicolon;*

13                    *(B) in paragraph (2), by striking the period*  
 14                    *and inserting “; and”; and*

15                    *(C) by adding at the end the following:*

16                    *“(3) the term ‘financial gain’ has the meaning*  
 17        *given that term in section 101 (relating to defini-*  
 18        *tions) of title 17.”.*

19        *(c) CIVIL REMEDIES FOR INFRINGEMENT OF A COM-*  
 20        *MERCIAL PRE-RELEASE COPYRIGHTED WORK.—Section*  
 21        *504(b) of title 17, United States Code, is amended—*

22                    *(1) by striking “The copyright owner” and in-*  
 23                    *serting the following:*

24                    *“(1) IN GENERAL.—The copyright owner”; and*

25                    *(2) by adding at the end the following:*

1           “(2) *DAMAGES FOR PRE-RELEASE INFRINGE-*  
2           *MENT.*—

3           “(A) *IN GENERAL.*—*In the case of any pre-*  
4           *release work, actual damages shall be presumed*  
5           *conclusively to be no less than \$10,000 per in-*  
6           *fringement, if a person—*

7                     “(i) *distributes such work by making it*  
8                     *available on a computer network accessible*  
9                     *to members of the public; and*

10                    “(ii) *knew or should have known that*  
11                    *the work was intended for commercial dis-*  
12                    *tribution.*

13           “(B) *DEFINITION.*—*For purposes of this*  
14           *subsection, the term ‘pre-release work’ has the*  
15           *meaning given that term in section 506(h).”.*

16 **SEC. 11. AMENDMENT OF FEDERAL SENTENCING GUIDE-**  
17 **LINES REGARDING THE INFRINGEMENT OF**  
18 **COPYRIGHTED WORKS AND RELATED CRIMES.**

19           (a) *AMENDMENT TO THE SENTENCING GUIDELINES.*—  
20 *Pursuant to its authority under section 994 of title 28,*  
21 *United States Code, and in accordance with this section,*  
22 *the United States Sentencing Commission shall review and,*  
23 *if appropriate, amend the sentencing guidelines and policy*  
24 *statements applicable to persons convicted of intellectual*  
25 *property rights crimes, including sections 2318, 2319,*

1 2319A, 2319B, 2320 of title 18, United States Code, and  
2 sections 506, 1201, and 1202 of title 17, United States Code.

3 (b) *FACTORS.*—*In carrying out this section, the Sen-*  
4 *tencing Commission shall—*

5 (1) *take all appropriate measures to ensure that*  
6 *the sentencing guidelines and policy statements appli-*  
7 *cable to the offenses described in subsection (a) are*  
8 *sufficiently stringent to deter and adequately reflect*  
9 *the nature of such offenses;*

10 (2) *consider whether to provide a sentencing en-*  
11 *hancement for those convicted of the offenses described*  
12 *in subsection (a) when the conduct involves the dis-*  
13 *play, performance, publication, reproduction, or dis-*  
14 *tribution of a copyrighted work before the time when*  
15 *the copyright owner has authorized the display, per-*  
16 *formance, publication, reproduction, or distribution of*  
17 *the original work, whether in the media format used*  
18 *by the infringing good or in any other media format;*

19 (3) *consider whether the definition of*  
20 *“uploading” contained in Application Note 3 to*  
21 *Guideline 2B5.3 is adequate to address the loss attrib-*  
22 *utable to people broadly distributing copyrighted*  
23 *works over the Internet without authorization; and*

24 (4) *consider whether the sentencing guidelines*  
25 *and policy statements applicable to the offenses de-*

1        *scribed in subsection (a) adequately reflect any harm*  
2        *to victims from infringement in circumstances where*  
3        *law enforcement cannot determine how many times*  
4        *copyrighted material is reproduced or distributed.*

5        *(c) PROMULGATION.—The Commission may promul-*  
6        *gate the guidelines or amendments under this section in ac-*  
7        *cordance with the procedures set forth in section 21(a) of*  
8        *the Sentencing Act of 1987, as though the authority under*  
9        *that Act had not expired.*

10    **SEC. 12. EXEMPTION FROM INFRINGEMENT FOR SKIPPING**  
11                            **AUDIO CONTENT IN MOTION PICTURES.**

12        *(a) SHORT TITLE.—This section may be cited as the*  
13        *“Family Movie Act of 2004”.*

14        *(b) EXEMPTION FROM COPYRIGHT AND TRADEMARK*  
15        *INFRINGEMENT FOR SKIPPING OF AUDIO OR VIDEO CON-*  
16        *TENT OF MOTION PICTURES.—Section 110 of title 17,*  
17        *United States Code, is amended—*

18                *(1) in paragraph (9), by striking “and” after the*  
19                *semicolon at the end;*

20                *(2) in paragraph (10), by striking the period at*  
21                *the end and inserting “; and”; and*

22                *(3) by inserting after paragraph (10) the fol-*  
23                *lowing:*

24                        *“(11)(A) the making of limited portions of audio*  
25                        *or video content of a motion picture imperceptible by*

1       or for the owner or other lawful possessor of an au-  
2       thorized copy of that motion picture in the course of  
3       viewing of that work for private use in a household,  
4       by means of consumer equipment or services that—

5               “(i) are operated by an individual in that  
6               household;

7               “(ii) serve only such household; and

8               “(iii) do not create a fixed copy of the al-  
9               tered version; and

10              “(B) the use of technology to make such audio or  
11       video content imperceptible, that does not create a  
12       fixed copy of the altered version.”.

13       (c) *EXEMPTION FROM TRADEMARK INFRINGEMENT.*—  
14       Section 32 of the Trademark Act of 1946 (15 U.S.C. 1114)  
15       is amended by adding at the end the following:

16              “(3)(A) Any person who engages in the conduct de-  
17       scribed in paragraph (11) of section 110 of title 17, United  
18       States Code, and who complies with the requirements set  
19       forth in that paragraph is not liable on account of such  
20       conduct for a violation of any right under this Act.

21              “(B) A manufacturer, licensee, or licensor of tech-  
22       nology that enables the making of limited portions of audio  
23       or video content of a motion picture imperceptible that is  
24       authorized under subparagraph (A) is not liable on account  
25       of such manufacture or license for a violation of any right

1 *under this Act, if such manufacturer, licensee, or licensor*  
2 *ensures that the technology provides a clear and con-*  
3 *spicuous notice that the performance of the motion picture*  
4 *is altered from the performance intended by the director or*  
5 *copyright holder of the motion picture.*

6       “(C) *Any manufacturer, licensee, or licensor of tech-*  
7 *nology described in subparagraph (B) who fails to comply*  
8 *with the requirement under subparagraph (B) to provide*  
9 *notice with respect to a motion picture shall be liable in*  
10 *a civil action brought by the copyright owner of the motion*  
11 *picture that is modified by the technology in an amount*  
12 *not to exceed \$1,000 for each such motion picture.*

13       “(D) *The requirement under subparagraph (B) to pro-*  
14 *vide notice, and the provisions of subparagraph (C), shall*  
15 *apply only with respect to technology manufactured after*  
16 *the end of the 180-day period beginning on the date of the*  
17 *enactment of the Family Movie Act of 2004.”.*

18       (d) *DEFINITION.—In this section, the term “Trade-*  
19 *mark Act of 1946” means the Act entitled “An Act to pro-*  
20 *vide for the registration and protection of trademarks used*  
21 *in commerce, to carry out the provisions of certain inter-*  
22 *national conventions, and for other purposes”, approved*  
23 *July 5, 1946 (15 U.S.C. 1051 et seq.).*

Union Calendar No. 428

108<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R. 4077**

[Report No. 108-700]

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## **A BILL**

To enhance criminal enforcement of the copyright laws, to educate the public about the application of copyright law to the Internet, and for other purposes.

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SEPTEMBER 24, 2004

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed