HEINONLINE

Citation: 1 William H. Manz Federal Copyright Law The Histories of the Major Enactments of the 105th 9883 1999

Content downloaded/printed from HeinOnline (http://heinonline.org) Wed Mar 27 23:10:01 2013

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at http://heinonline.org/HOL/License

-- The search text of this PDF is generated from uncorrected OCR text.

songwriters, many of whom I am proud to count as my constituents. What these composers and songwriters did was nothing more than to rely on an industry standard of many decades duration, which provides that the distribution of a phonorecord does not constitute publication of a musical work. This long-time understanding of copyright law has been ratified and reaffirmed by the Second Circuit over 20 years ago. American songwriters had every reason to consider this issue to be a matter of settled law.

But the LaCienaga decision took that settled law and cast it on its head, threatening to thrust into the public domain hundreds of thousands of musical works which presently enjoy copyright protection. This post-hoc penalty on copyright owners for failure to comply with copyright formalities, in reliance upon settled law, struck the members of the Subcommittee on Courts and Intellectual Property and, I am happy to say, the members of the other body as well, as grossly unfair. We concluded that the Ninth Circuit had reached an anomalous and insupportable result which in the interest of fundamental fairness begged to be corrected.

That is what the legislation before us would do. I commend this bill to my colleagues and urge its passage.

Mr. BONO. Mr. Speaker, I rise in support of H.R. 672 and urge my colleagues to join me. This is a very important measure needed in congressional response to a bizarre court decision. This decision also threatens to undermine the national economy. It is estimated that copyright industries contribute up to $4 billion to our economy and, in addition, are one of our most valuable exports.

The case of *La Cienaga Music Co.* v. *ZZ Top*, 53 F. 3d 950 (9th Cir. 1995), *cert. denied*, 116 S.Ct. 331 (1995) is unfortunate as it has jeopardized the private property rights for thousands of creative individuals who live within the jurisdiction of the Federal Court of Appeals of the Ninth Circuit. I am advised that this court decision makes it impossible for certain affected individual creators to bring an infringement action within the Ninth Circuit. Hence, you may have a copyright, but you have no available remedies against piracy.

Much of the credit for today belongs to House Judiciary Committee Chairman HYDE and Subcommittee Chairman COBLE for their diligence and attention to this issue. This is a bipartisan enterprise, and thanks for today also rests with Representative FRANK. This measure should be noncontroversial and speedily adopted by the House. As you know, this particular new language was contained in a much more comprehensive bill that I have sponsored along with Senate Judiciary Chairman HATCH, H.R. 1621. My House chairmen are also helping to bring along the rest of this badly needed legislation for copyright term extension to the floor. That cannot come too soon.

Mr. COBLE. Mr. Speaker, I have no further requests for time, and I, too, yield back the balance of my time.

The SPEAKER pro tempore [Mr. PACKARD]. The question is on the motion offered by the gentleman from North Carolina [Mr. COBLE] that the House suspend the rules and concur in the Senate amendments to H.R. 672.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendments were concurred in.

A motion to reconsider was laid on the table.

NO ELECTRONIC THEFT (NET) ACT

Mr. COBLE. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2265) 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, as amended.

The Clerk read as follows:

H.R. 2265

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 "No Electronic Theft (NET) Act".

SEC. 2. CRIMINAL INFRINGEMENT OF COPYRIGHTS.

(a) DEFINITION OF FINANCIAL GAIN.—Section 101 of title 17, United States Code, is amended by inserting after the undesignated paragraph relating to the term "display", the following new paragraph: "The term 'financial gain' includes receipt, or expectation of 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 1 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of more than $1,000,

shall be punished as provided under section 2319 of title 18. For purposes of this subsection, evidence of reproduction or distribution of a copyrighted work, by itself, shall not be sufficient to establish willful infringement.".

(c) LIMITATION ON CRIMINAL PROCEEDINGS.—Section 507(a) of title 17, United States Code, is amended by striking "three" and inserting "5".

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

(1) in subsection (a), by striking "subsection (b)" and inserting "subsections (b) and (c)";

(2) 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"; and

(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 $2,500"; and

(3) 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 of 10 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of $2,500 or more;

"(2) 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 offense under paragraph (1); and

"(3) 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 of 1 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of more than $1,000.

"(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—

"(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—

"(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 subsections (d) and (e) as subsections (e) and (f), respectively; and

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

"(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—

"(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) Under the authority of the Sentencing

HeinOnline -- 1 William H. Manz, Federal Copyright Law: The Legislative Histories of the Major Enactments of the 105th Congress 9883 1999

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) is sufficiently stringent to deter such a crime and to adequately reflect the additional considerations set forth in paragraph (2) of this subsection.

(2) In implementing paragraph (1), the Sentencing Commission shall ensure that the guidelines provide for consideration of the retail value and quantity of the items with respect to which the crime against intellectual property was committed.

SEC. 3. INFRINGEMENT BY UNITED STATES.

Section 1498(b) of title 28, United States Code, is amended by striking "remedy of the owner of such copyright shall be by action" and inserting "action which may be brought for such infringement shall be an action by the copyright owner".

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from North Carolina [Mr. COBLE] and the gentleman from Massachusetts [Mr. FRANK] each will control 20 minutes.

The Chair recognizes the gentleman from North Carolina [Mr. COBLE].

GENERAL LEAVE

Mr. COBLE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

Mr. COBLE. Mr. Speaker, I yield myself such time as I may consume.

H.R. 2265, Mr. Speaker, is a much needed legislative response to a 1994 court case that created a loophole which currently prevents the Department of Justice from prosecuting Internet copyright theft. The bill represents the hard work of industry representatives, officials from the Department of Justice and the Copyright Office, and the members of the Subcommittee on Courts and Intellectual Property and the full Committee on the Judiciary.

Again, this is a good bill that has been brought to the floor in a bipartisan manner, and I urge its adoption.

Mr. Speaker, I rise in support of H.R. 2265, the No Electronic Theft [NET] Act. Introduced by Mr. GOODLATTE of Virginia, this bill represents an important legislative response to those persons who cavalierly appropriate copyrighted works and share them with other Internet thieves.

Industry groups estimate that counterfeiting and piracy of intellectual property—especially computer software, compact discs, and movies—cost the affected copyrights holders more than $11 billion last year; some claim the actual figure is closer to $20 billion. Regrettably, the problem has great potential to worsen. The advent of digital video discs and the development of new audi-compression techniques, to cite two prominent examples, will only create additional incentive for copyright thieves to steal protected works.

The NET Act constitutes a legislative response to the so-called LaMacchi case, a 1994 decision authored by a Massachusetts Federal court. In LaMacchia, the defendant encouraged lawful purchasers of copyright software and computer games to upload these works via a special password to an electronic bulletin board on the Internet. The defendant then transferred the works to another electronic address and encouraged others with access to a second password to download the materials for personal use without authorization by or compensation to the copyright owners. While critical of the defendant's behavior, the court precluded his prosecution under a Federal wire fraud statute, stating that this area of the law was never intended to cover copyright infringement. The court also noted that the relevant criminal provisions of the Copyright Act and title 18 of the United States Code historically required prosecutors to prove that a defendant acted "willfully" and for "commercial advantage" or "private financial gain"—a threshold standard which did not apply to LaMacchia, who never benefited financially from his transgressions.

Accordingly, the NER Act proscribes the willful act of copyright infringement, either for "commercial advantage or private financial gain"; or by reproducing or distributing one or more copies of one or more copyrighted works with a total retail value of more than $1,000. The legislation specifically encompasses acts of reproduction or distribution the occur via "electronic means" which is to say, by computer theft. In addition, "financial gain" is defined as the acquisition of "anything of value, including the receipt of other copyrighted works." This change would enable the Department of Justice to pursue a LaMacchia-like defendant who steals copyrighted works but gives them away—instead of selling them—to others. This legislation includes stiff penalties and prison terms for infringers.

Mr. Speaker, the Subcommittee on Courts and Intellectual Property, during its markup of the NET Act, passed an amendment to ensure that the bill would not modify liability for copyright infringement, including the standard of willfulness for criminal infringement. After full committee consideration of H.R. 2265, negotiating sessions that included representatives of the Copyright Office, the Department of Justice, and relevant industry organizations produced compromise language, now inserted in the bill, that provides additional protection for entities which transmit copyrighted works over the Internet.

More specifically, this language is intended to clarify that a finding of willfulness cannot be established solely from evidence of reproduction or distribution of copyrighted works, and thus that prosecutions based solely on such evidence will not be pursued. While it is not the majority rule, some cases have held in the past that evidence of reproduction or distribution of such works, by itself, is sufficient to establish willfulness under 17 U.S.C. 506. This language rejects the holding of those cases, and clarifies that in order for criminal liability to attach to a defendant's conduct, the Government must prove something more than the mere reproduction or distribution of copyrighted works in establishing willfulness.

It should be emphasized that proof of the defendant's state of mind is not required. The Government should not be required to prove that the defendant was familiar with the criminal copyright statute or violated it intentionally. Particularly in cases of clear infringement, the willfulness standard should be satisfied if there is adequate proof that the defendant acted with reckless disregard of the rights of the copyright holder. In such circumstances, a proclaimed ignorance of the law should not allow the infringer to escape conviction. Willfulness is often established by circumstantial evidence, and may be inferred from the facts and circumstances of each case.

Further, a violation act of infringement performed by the defendant is required by this section. Evidence of reproductions or distributions, including those made electronically on behalf of third parties, would not, by itself, be sufficient to establish willfulness under the NET Act.

Finally, the requirements of a showing of financial gain or commercial advantage under 17 U.S.C.506(a) is not intended to imply that all types of financial gain or commercial advantage can, by themselves, trigger a finding of willful infringement. I should emphasize strongly that this bill addresses criminal, not civil, copyright liability. To repeat: nothing in H.R. 2265 affects civil liability for copyright infringement.

Mr. Speaker, the public must come to understand that intellectual property rights, while abstract and arcane, are no less deserving of protection than personal or real property rights. The intellectual property community will continue its works in educating the public about these concerns, but we in the Congress must do our job as well by ensuring that piracy of copyrighted works will be treated with an appropriate level of fair but serious disapproval. We will fulfill this obligation today by passing H.R. 2265.

Allow me to conclude by acknowledging the conspicuous hard work of the gentleman from Virginia, Mr. GOODLATTE, who is also the bill's sponsor; and the ranking subcommittee member from Massachusetts, Mr. FRANK. They and the other members of our subcommittee have truly worked in a bipartisan manner to expedite passage of the NET Act.

I reserve, Mr. Speaker, the balance of my time.

Mr. FRANK of Massachusetts. Mr. Speaker, I yield myself such time as I may consume.

As with the previous bill, this is a bipartisan bill brought forward by the subcommittee to try to deal with some technical problems. Once again, it is a response to a court decision, and I would just note by the way there are people who, here and in other places, from time to time object to court decisions. Often the court decisions that people object to are statutory interpretations. And we should be very clear. When a court has done something that many of us disagree with because of how they interpret a statute, we retain full power to overturn that, as we just did in the previous bill, as we are doing in this bill, and I have to say, in fairness to the courts, sometimes the statutory interpretation and question is a little strained; sometimes it is accurate because we were a little sloppy, and we had the ability to correct the inadvertent policy problem.

HeinOnline -- 1 William H. Manz, Federal Copyright Law: The Legislative Histories of the Major Enactments of the 105th Congress 9884 1999

This is a very important policy. What we are essentially saying is if you trash somebody else's property, even if you are not doing it for money but you are just doing it because you wanted to show how smart you are and because you are seriously maladjusted and cannot make an impression on anybody in any other way, it is as criminal as if you stole. You have no right to use technical skills to interfere with other people's property.

And those who somehow admire that, those who try to make that skill into something that they boast of, are dead wrong morally. And that is what this bill says, "You have no right to interfere with the work and intellectual property of other people."

And it is precisely those who most understand the importance of the new technology to humanity who ought to be joining us in supporting this bill, because this is a threat to the ability of individuals to get the full use and enjoyment of it.

There is just one point I wanted to comment on as a result of, I think, a very useful process. When this bill left committee, we had one somewhat unresolved issue. It was not our intention in trying to make clear that you are criminally liable if you interfere with other people's property regardless of your motive; it was not our intention to lower the barrier by which people could find themselves criminally liable for acts that were not intentional. We were talking here, we were aiming at people who deliberately went and screwed up other people's work even if they were not doing it for money. There was a legitimate concern brought forward by, among others, the gentleman from Virginia and people who testified that we not go beyond that.

Now I do have to say there was one sort of misapplication or misdescription in the committee report. I did offer an amendment in subcommittee that tried to make clear that the bill was not intended to broaden the definition or reduce the burden that had to be met in order to show that somebody had done something intentionally.

We have two issues here: Was it intentional? and, why was it intentional? This bill only deals with why it is intentional. This bill says, "If you did it and you meant to do it, we don't care why. We care that you did it and you shouldn't have, and the fact that you didn't have a monetary incentive isn't relevant."

Some people fear that that might also mean that people who had done something without any intent to interfere with other people's work would somehow be implicated. The amendment I offered in subcommittee was aimed not at changing the definition of "willful" or making it harder to meet but making clear that this bill itself did not do that. And that amendment was adopted.

Indeed, Mr. Speaker, I have a proposal that we should put on the legislative keyboard a phrase that says this act does not do what this act does not do because we often have the problem of people reading into legislation things that are not there.

In any case, that turned out to be insufficient, and at the full committee the gentleman from Virginia proposed a further clarification. We had some disagreement about the specifics, but we agreed that he had brought up a very valid point, and as a result of the legislative process working, the bill that comes before us today which we can do under suspension has new language which makes it clear that there is no effort here and no intention on our part to make it easier to go after people when they were not acting intentionally. I believe the gentleman from Virginia is probably going to be expounding on that, and it will be very clear to people.

So I want to thank my colleagues on all sides of the committee. This is a bill which was noncontroversial in its purpose.

□ 1330

On two occasions we amended it to make clear that we would be dealing very specifically, it obviously would have been somewhat ironic in a bill that was aimed at curing legislative sloppiness to get sloppy again, and I think the bill that we have now brought forward does that appropriately.

Mr. Speaker, I reserve the balance of my time.

Mr. COBLE. Mr. Speaker, I yield 8 minutes to the gentleman from Virginia [Mr. GOODLATTE], the author of the bill.

Mr. GOODLATTE. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in support of H.R. 2265, the No Electronic Theft, or NET Act of 1997. I would like to thank the gentleman from North Carolina [Mr. COBLE]; the gentleman from Massachusetts [Mr. FRANK], the ranking Member; and also the gentleman from Utah [Mr. CANNON] for their leadership and support on this important legislation which I introduced.

The NET Act closes a loophole in our Nation's criminal copyright law and gives law enforcement the tools they need to bring to justice individuals who steal the products of America's authors, musicians and software producers. Additionally, the bill promotes the dissemination of creative works online and helps consumers realize the promise and potential of the Internet.

The Internet is a tremendous opportunity. Its development has contributed to the economic growth we have enjoyed in the last few years. Its true potential, however, lies in the future when students and teachers can access a wealth of information through the click of a mouse, and consumers can fully benefit from electronic commerce. For this to happen, creators must feel secure that they are protected by laws as effective in cyberspace as they are on Main Street.

The NET Act clarifies that when Internet users or any other individuals sell pirated copies of software, recordings, movies or other creative works, use pirated copies to barter for other works, or simply take pirated works and distribute them broadly even if they do not intend to profit personally, such individuals are stealing. Intellectual property is no less valuable than other property.

Pirating works online is the same as shoplifting a videotape, book, or record from a store. Through a loophole in the law, however, copyright infringers who pirate works knowingly and willfully, but not for profit, are outside the law. This situation has developed because the authors of our copyright laws could not have anticipated the nature of the Internet, which has made the theft of copyrighted works virtually cost-free and anonymous.

The Internet allows a single computer program or other copyrighted work to be illegally distributed to millions of users, virtually without cost, if an individual merely makes it available on a single server and points others to the location. Other users can contact that server at any time of day and download the copyrighted work to their own computers. It is unacceptable that today this activity can be carried out by individuals without fear of criminal prosecution.

Imagine the same situation occurring with tangible goods that could not be transmitted over the Internet, such as copying popular movies onto hundreds of blank tapes and passing them out on every street corner or copying personal software onto blank disks and freely distributing them throughout the world. Few would disagree that such activities are illegal and should be prosecuted. We should be no less vigilant when such activities occur on the Internet. We cannot allow the Internet to become the Home Shoplifting Network.

H.R. 2265 makes it a felony to willfully infringe a copyright by reproducing or distributing 10 or more copyrighted works with a value of at least $2,500, within a 180-day period, regardless of whether the infringing individual realized any commercial advantage or private financial gain. It also clarifies an existing portion of the law that makes it a crime to willfully infringe a copyright for profit or personal financial gain. It does so by specifying that receiving other copyrighted works in exchange for pirated copies, bartering essentially, is considered a form of profit and is as unlawful as simply selling pirated works for cash. Additionally, the NET Act calls for victim impact statements during sentencing and directs the sentencing commission to determine a sentence strong enough to deter these crimes.

During the Committee on the Judiciary's consideration of H.R. 2265, I offered an amendment to clarify that

HeinOnline -- 1 William H. Manz, Federal Copyright Law: The Legislative Histories of the Major Enactments of the 105th Congress 9885 1999

criminal copyright liability should not apply to those who merely intended to reproduce or distribute a copyrighted work without any accompanying criminal intent. With assurances from the chairman that this issue would be addressed, I withdrew that amendment. I am happy to report that language addressing this issue is included in the bill we are considering today, and would like to make a few comments regarding the intent of that provision.

This language is intended to clarify that a finding of willfulness cannot be established solely from evidence of the reproduction or distribution of copyright-protected works and thus, that prosecutions based solely on such evidence will not be pursued. While it is not the majority rule, some cases have held in the past that evidence of the reproduction or distribution of such works by itself is sufficient to establish willfulness under 17 U.S.C. 506. This section rejects the holding of those cases and clarifies that in order for criminal liability to attach to a defendant's conduct, the Government must prove something more than the mere reproduction or distribution of copyrighted works in establishing willfulness.

It should be also emphasized that proof of the defendant's state of mind is not required. The Government should not be required to prove that the defendant was familiar with the criminal copyright statute or violated it intentionally. Particularly in cases of clear infringement, the willfulness standard should be satisfied if there is adequate proof that the defendant acted with reckless disregard of the rights of the copyright holder. In such circumstances, a proclaimed ignorance of the law should not allow the infringer to escape conviction. Willfulness is often established by circumstantial evidence and may be inferred from the facts and circumstances of each case.

Further, a volitional act of infringement performed by the defendant is required by this section. Evidence of reproductions or distributions, including those made electronically on behalf of third parties, would not, by itself, be sufficient to establish willfulness under this act.

Finally, the requirement of a showing of financial gain or commercial advantage under 17 U.S.C. 506(a) is not intended to imply that all types of financial gain or commercial advantage can, by themselves, trigger a finding of willful infringement. It should also be made clear that this act deals only with criminal copyright liability. Nothing in this act affects civil liability for copyright infringement.

Mr. Speaker, the United States is the world leader in intellectual property. We export billions of dollars worth of creative works every year in the form of software, books, videotapes and records. Our ability to create so many quality products has become a bulwark of our national economy. By closing this loophole in our copyright law, the NET Act sends the strong message that we value the creations of our citizens and will not tolerate the theft of our intellectual property.

I urge my colleagues to support H.R. 2265.

Mr. FRANK of Massachusetts. Mr. Speaker, I yield myself 1 minute simply to say that I appreciate the very careful discussion of that point that the gentleman from Virginia [Mr. GOODLATTE] just engaged in, and I want to express my agreement with the exposition that the gentleman from Virginia gave. I think we have as a result of his comments a very clear expression of the consensus that exists on the committee as to the relevant standards that need to be met to find criminal liability.

Mr. Speaker, I yield back the balance of my time.

Mr. COBLE. Mr. Speaker, I yield 3 minutes to the gentleman from Utah [Mr. CANNON], who has worked dutifully on this bill.

Mr. CANNON. Mr. Speaker, I would like to thank the gentleman from North Carolina [Mr. COBLE]; the gentleman from Massachusetts [Mr. FRANK]; and the gentleman from Virginia [Mr. GOODLATTE], the author of the bill, for their hard work on this matter.

Mr. Speaker, information technologies are the wellspring of our Nation's future, and my home State of Utah is one of the primary sources. The idea of networking computers came from Novell. WordPerfect created the standard for word processing.

Utah is one of the top five U.S. centers for software development. Utah high-tech companies have generated sales in excess of $6.5 billion last year.

The heart of the Utah software industry is Utah County, the largest county in my district. Given the composition of my district, I am honored to be an original cosponsor of the NET, No Electronic Theft Act. I also need to compliment again those who worked so hard to bring this issue to a head today.

This is an important issue. In today's booming economy, U.S. computer software is one of the primary driving engines, with exports topping $26 billion per year. But software piracy is a significant and unjustified burden that American software companies are bearing. Last year piracy cost U.S. software companies an estimated $11.2 billion globally.

The NET Act is a concrete step toward curbing both domestic and international software theft. Current copyright law has a loophole for thieves who give software away, but do not sell it. Three years ago a Massachusetts Federal district court in U.S. versus LaMacchia held that a pirate who had given away 1 million dollars worth of commercial software through a bulletin board could not be prosecuted because the pirate had not been compensated by his fellow thieves.

Playing Robin Hood may have made sense when the Sheriff of Nottingham was extracting tribute from the peasantry, but playing Robin Hood on the Internet is a recipe for disaster for our domestic software industry. That is why we need the NET Act now.

The act is simple. It focuses on the damage done to the software owner, not just the money put into the pocket of the pirate. By doing so, the act gives the Department of Justice the tools to pursue U.S. software pirates who use the Internet as their primary conduit. By shutting down U.S. pirates, we can simultaneously curb domestic and overseas piracy. By doing so, we will boost one of our leading industries, enhance our exports and strengthen our competitiveness in a critical technological area.

For these reasons, I urge an affirmative vote.

Mr. COBLE. Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. ROHRABACHER].

Mr. ROHRABACHER. Mr. Speaker, I would like to take this opportunity to thank the gentleman from North Carolina [Mr. COBLE]; the gentleman from Virginia [Mr. GOODLATTE]; and the gentleman from Massachusetts [Mr. FRANK] for the excellent work that they are doing on this intellectual property rights issue.

Intellectual property rights, especially when it concerns the entertainment industry and the software industry, is a vital part of the economy of California. We are talking about billions of dollars directly affecting the well-being of the people of my State and, yes, the people of our country.

We have a balance of payment problem as well. Software and entertainment play such an important role in keeping America's balance of payments manageable. So these bills today, both the one we are discussing now and the one we discussed just prior to this, represent hard work and responsibility on the part of this committee, and I would like to congratulate these gentlemen for a job well done.

Mr. COBLE. Mr. Speaker, I yield myself such time as I may consume.

I just want to say that this bill is about preventing theft. It will close a gap that currently exists in the Copyright Act to arrest electronic piracy.

I thank the gentleman from Virginia [Mr. GOODLATTE]; the gentleman from Massachusetts [Mr. FRANK]; and the gentleman from Utah [Mr. CANNON] and others on the subcommittee for the hard work that they did, and I specifically thank the gentleman from Massachusetts [Mr. FRANK] and the gentleman from Virginia [Mr. GOODLATTE] for having alluded to the manager's amendment included in today's bill.

I have submitted for the RECORD an extensive statement describing the intent of that amendment, and I again thank all of the members of the subcommittee for their good work, Mr. Speaker.

Mr. DELAHUNT. Mr. Speaker, I am proud to be a cosponsor of this legislation, and I rise to express my strong support for it.

HeinOnline -- 1 William H. Manz, Federal Copyright Law: The Legislative Histories of the Major Enactments of the 105th Congress 9886 1999

The age of the Internet promises enormous benefits—instantaneous communication from one end of the planet to the other, paperless financial transactions, access to vast libraries of information at the touch of a button.

But these benefits are not without a price: the same technology that facilitates unprecedented access has also fostered a new breed of sophisticated criminals. Today's Internet pirates can download perfect digital copies of copyrighted works—from movies to musical recordings to video games—and distribute them to other Internet users without the knowledge or permission of the copyright holders.

Software piracy carries enormous costs for our society. Last year, it cost copyright holders between $11 and 20 billion worldwide, with $2.3 billion lost in the United States alone. That, in turn, meant the loss of many thousands of American jobs, higher prices to honest software purchasers, and a billion dollars in lost tax revenues.

Most people who commit these crimes do so for financial gain. But increasingly these crimes are being committed by computer hackers who obtain copyrighted software from lawful users and post it on electronic bulletin boards, free for the taking.

The present copyright law can do little to either deter or punish these crimes, because under current law there can be no culpability unless the defendant was seeking commercial gain. H.R. 2265 corrects that problem by criminalizing computer theft of copyrighted works whether or not the defendant derives a direct financial benefit from his actions.

I believe this measure will help preserve the creative incentive on which so much of our prosperity—and the future of the Internet itself—depend.

I urge support for the bill.

Mr. BERMAN. Mr. Speaker, I rise in strong support of H.R. 2265, the NET Act.

The enactment of H.R. 2265 is essential to the continuing growth of the Internet. Daily business developments attest to the pressing need for content to fill the pages of our newest medium for entertainment and mass communications. But that content will simply not be available unless its creators can be assured that their intellectual property will be protected.

The decision of the Federal District Court in Massachusetts in 1994 in *U.S. v. LaMacchia*, however, created a loophole which leaves copyright owners virtually defenseless against those who infringe copyright not for profit, but for the pure fun of it, as a top executive of the Recording Industry Association of America put it at the legislative hearing on H.R. 2265.

We simply must make clear that there is no hacker defense to criminal copyright liability. Copyright owners' exclusive rights of public performance, distribution, and reproduction must be protected no less from the grad student who thinks content on the Internet should be free than from the pirate who reaps a fortune from his counterfeiting operation. The end result is the same: the substantial loss of revenue to intellectual property owners, increasingly as technology makes it possible for more and more content to be moved over digital networks.

In enacting H.R. 2265, we make clear that the computer theft of copyrighted works is subject to criminal penalties, and in so doing exercise our constitutional responsibility to protect copyright. I urge my colleagues to vote for this important legislation.

Mr. COBLE. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore [Mr. PACKARD]. The question is on the motion offered by the gentleman from North Carolina [Mr. COBLE] that the House suspend the rules and pass the bill, H.R. 2265, as amended.

The question was taken.

Mr. FRANK of Massachusetts. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 5 of rule I and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum is considered withdrawn.

REQUIRING ATTORNEY GENERAL TO ESTABLISH PROGRAM IN PRISONS TO IDENTIFY CRIMINAL ALIENS AND ALIENS UNLAWFULLY PRESENT IN THE UNITED STATES

Mr. GALLEGLY. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1493) to require the Attorney General to establish a program in local prisons to identify, prior to arraignment, criminal aliens and aliens who are unlawfully present in the United States, and for other purposes, as amended.

The Clerk read as follows:

H.R. 1493

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PROGRAM OF IDENTIFICATION OF CERTAIN DEPORTABLE ALIENS AWAITING ARRAIGNMENT.

(a) ESTABLISHMENT OF PROGRAM.—Not later than 6 months after the date of the enactment of this Act, and subject to such amounts as are provided in appropriations Acts, the Attorney General shall establish and implement a program to identify, from among the individuals who are incarcerated in local governmental incarceration facilities prior to arraignment on criminal charges, those individuals who are within 1 or more of the following classes of deportable aliens:

(1) Aliens unlawfully present in the United States.

(2) Aliens described in paragraph (2) or (4) of section 237(a) of the Immigration and Nationality Act (as redesignated by section 305(a)(2) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996).

(b) DESCRIPTION OF PROGRAM.—The program authorized by subsection (a) shall include—

(1) the detail, to each incarceration facility selected under subsection (c), of at least one employee of the Immigration and Naturalization Service who has expertise in the identification of aliens described in subsection (a); and

(2) provision of funds sufficient to provide for—

(A) the detail of such employees to each selected facility on a full-time basis, including the portions of the day or night when the greatest number of individuals are incarcerated prior to arraignment;

(B) access for such employees to records of the Service and other Federal law enforcement agencies that are necessary to identify such aliens; and

(C) in the case of an individual identified as such an alien, pre-arraignment reporting to the court regarding the Service's intention to remove the alien from the United States.

(c) SELECTION OF FACILITIES.—

(1) IN GENERAL.—The Attorney General shall select for participation in the program each incarceration facility that satisfies the following requirements:

(A) The facility is owned by the government of a local political subdivision described in clause (i) or (ii) of subparagraph (C).

(B) Such government has submitted a request for such selection to the Attorney General.

(C) The facility is located—

(i) in a county that is determined by the Attorney General to have a high concentration of aliens described in subsection (a); or

(ii) in a city, town, or other analogous local political subdivision, that is determined by the Attorney General to have a high concentration of such aliens (but only in the case of a facility that is not located in a country).

(D) The facility incarcerates or processes individuals prior to their arraignment on criminal charges.

(2) NUMBER OF QUALIFYING SUBDIVISIONS.—For any fiscal year, the total number of local political subdivisions determined under clauses (i) and (ii) of paragraph (1)(C) to meet the standard in such clauses shall be the following:

(A) For fiscal year 1999, not less than 10 and not more than 25.

(B) For fiscal year 2000, not less than 25 and not more than 50.

(C) For fiscal year 2001, not more than 75.

(D) For fiscal year 2002, not more than 100.

(E) For fiscal year 2003 and subsequent fiscal years, 100, or such other number of political subdivisions as may be specified in appropriations Acts.

(3) FACILITIES IN INTERIOR STATES.—For any fiscal year, of the local political subdivisions determined under clauses (i) and (ii) of paragraph (1)(C) to meet the standard in such clauses, not less than 20 percent shall be in States that are not contiguous to a land border.

(4) TREATMENT OF CERTAIN FACILITIES.—All of the incarceration facilities within the county of Orange, California, and the county of Ventura, California, that are owned by the government of a local political subdivision, and satisfy the requirements of paragraph (1)(D), shall be selected for participation in the program.

SEC. 2. STUDY AND REPORT.

Not later than 1 year after the date of the enactment of this Act, the Attorney General shall complete a study, and submit a report to the Congress, concerning the logistical and technological feasibility of implementing the program under section 1 in a greater number of locations than those selected under such section through—

(1) the assignment of a single Immigration and Naturalization Service employee to more than 1 incarceration facility; and

(2) the development of a system to permit the Attorney General to conduct off-site verification, by computer or other electronic means, of the immigration status of individuals who are incarcerated in local governmental incarceration facilities prior to arraignment on criminal charges.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California [Mr. GALLEGLY] and the gentleman from New York [Mr. NADLER] each will control 20 minutes.

HeinOnline -- 1 William H. Manz, Federal Copyright Law: The Legislative Histories of the Major Enactments of the 105th Congress 9887 1999

HeinOnline -- 1 William H. Manz, Federal Copyright Law: The Legislative Histories of the Major Enactments of the 105th Congress 9888 1999

Document No. 23

HeinOnline -- 1 William H. Manz, Federal Copyright Law: The Legislative Histories of the Major Enactments of the 105th Congress [i] 1999

HeinOnline -- 1 William H. Manz, Federal Copyright Law: The Legislative Histories of the Major Enactments of the 105th Congress [ii] 1999