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105TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { 105–339

NO ELECTRONIC THEFT (NET) ACT

OCTOBER 23, 1997.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. COBLE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 2265]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred 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, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

59–006

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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.".

(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.

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"(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 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".

SEC. 4. CLARIFICATION OF LIABILITY FOR COPYRIGHT INFRINGEMENT.

Except as expressly provided in this Act, nothing in this Act or the amendments made by this Act modifies liability for copyright infringement, including the standard of willfulness for criminal infringement.

PURPOSE AND SUMMARY

The purpose of H.R. 2265, as amended, is to reverse the practical consequences of *United States* v. *LaMacchia,* 871 F. Supp. 535 (D. Mass. 1994) [hereinafter *LaMacchia*], which held, *inter alia,* that electronic piracy of copyrighted works may not be prosecuted under the federal wire fraud statute; and that criminal sanctions available under Titles 17 and 18 of the U.S. Code for copyright infringement do not apply in instances in which a defendant does not realize a commercial advantage or private financial gain.

BACKGROUND AND NEED FOR LEGISLATION

THE EXTENT OF ELECTRONIC PIRACY

Section 106 of the Copyright Act (Title 17 of the U.S. Code) gives the owner of a copyright the . . . exclusive rights . . . to reproduce ". . . [and] distribute copies of . . . the copyrighted work. . . ." An individual who otherwise violates any of these exclusive rights is an infringer, and may be subject to criminal penalties set forth in

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Section 506 of the Act and section 2319 of Title 18. Current penalties include fines of $250,000 per individual ($500,000 per organization) and imprisonment of up to five years (10 years for second or subsequent offenses).

Notwithstanding these penalties, copyright piracy flourishes in the software world. Industry groups estimate that counterfeiting and piracy of intellectual property—especially computer software, compact discs, and movies—cost the affected copyright holders more than $11 billion last year (others believe the figure is closer to $20 billion). In some countries, software piracy rates are as high as 90% of all sales. The U.S. rate is far lower (27%), but the dollar losses ($2.3 billion) are the highest worldwide. The effect of this volume of theft is substantial: 130,000 lost U.S. jobs, $5.6 billion in corresponding lost wages, $1 billion in lower tax revenue, and higher prices for honest purchasers of copyrighted software.

Unfortunately, the potential for this problem to worsen is great. By the turn of the century the Internet is projected to have more than 200 million users, and the development of new technology will create additional incentive for copyright thieves to steal protected works. The advent of digital video discs, for example, will enable individuals to store far more material on conventional discs and, at the same time, produce perfect secondhand copies. The extension of an audio-compression technique, commonly referred to as MP–3, now permits infringers to transmit large volumes of CD-quality music over the Internet. As long as the relevant technology evolves in this way, more piracy will ensue. Many computer users are either ignorant that copyright laws apply to Internet activity, or they simply believe that they will not be caught or prosecuted for their conduct.

In light of this disturbing trend, it is manifest that Congress must respond appropriately with additional penalties to dissuade such conduct.

THE *LA MACCHIA* CASE

Representative Goodlatte introduced H.R. 2265 on July 25, 1997. Chairman Coble, Ranking Member Frank, and Representative Cannon of the Subcommittee on Courts and Intellectual Property are cosponsors of the bill.

H.R. 2265 constitutes a legislative response to the *LaMacchia* case, in which the defendant, a graduate student attending MIT, encouraged lawful purchasers of copyrighted computer games and other software 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 urged other persons with access to a second password to download the materials for personal use without authorization by or compensation to the copyright owners. The defendant never benefitted financially from any of these transactions.

A federal grand jury returned a one-count indictment against the defendant, charging him with violating a federal wire fraud statute (18 U.S.C. 1343). The Massachusetts district court dismissed the case, however, ruling that Congress never envisioned protecting copyrights under the wire fraud statute. The court further noted that criminal copyright infringement law, from its origin in the

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Copyright Act of 1897 through passage of the Copyright Felony Act of 1992, always required prosecutors to prove that a defendant acted willfully and for commercial advantage or private financial gain. LaMacchia, as noted, did not personally benefit from his conduct. In concluding dicta, the court observed that Congress has always tread cautiously and deliberately in amending the Copyright Act, especially when devising criminal penalties for infringement; and that it is Congress's prerogative to change the law if it wishes to criminalize *LaMacchia*-like behavior.

In effect, H.R. 2265 does just that: it criminalizes computer theft of copyrighted works, whether or not the defendant derives a direct financial benefit from the act(s) of misappropriation, thereby preventing such willful conduct from destroying businesses, especially small businesses, that depend on licensing agreements and royalties for survival.

HEARINGS

The Committee's Subcommittee on Courts and Intellectual Property held an oversight hearing on electronic piracy of copyrighted works and a legislative hearing on H.R. 2265, the "No Electronic Theft (NET) Act," on September 11, 1997. Testimony was received from eight witnesses who, collectively, represented two government entities, two corporations, and four industry trade associations.

COMMITTEE CONSIDERATION

On September 30, 1997, the Subcommittee on Courts and Intellectual Property met in open session and ordered reported the bill, H.R. 2265, as amended, by voice vote, a quorum being present. On October 7, 1997, the Committee met in open session and ordered reported favorably the bill, H.R. 2265, with amendment by voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budget authority or increased tax expenditures.

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CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth,with respect to the bill, H.R. 2265, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 16, 1997.

Hon. HENRY J. HYDE, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2265, the No Electronic Theft (NET) Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Rachel Forward (for federal costs), who can be reached at 226–2860, and Alyssa Trzeszkowski (for revenues), who can be reached at 226–2720.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

H.R. 2265—No Electronic Theft (NET) Act

CBO estimates that enacting H.R. 2265 would not result in any significant net costs to the federal government. The bill would affect direct spending and receipts through the imposition of criminal fines and the resulting spending from the Crime Victims Fund. Therefore, pay-as-you-go procedures would apply. CBO estimates, however, that the amounts of additional direct spending and receipts would not be significant. H.R. 2265 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 and would not affect the budgets of state, local, or tribal governments.

H.R. 2265 would establish criminal fines and penalties for reproducing and distributing copyrighted works by electronic means even if the perpetrator does not benefit financially from the theft. Based on information from the Department of Justice (DOJ), CBO expects that enacting this bill would enable DOJ to prosecute several additional copyright infringement cases each year. Because DOJ may prosecute certain criminal cases that would not be tried under current law, enacting H.R. 2265 could result in additional costs for federal prosecutors and the federal court system, subject to the availability of appropriated funds. CBO, however, expects that any additional discretionary costs would not be significant.

Depending on whether DOJ wins a case, the fine assessed for each case could range from about $25,000 to $50,000 of more. Any collections from such fines are recorded on the budget as governmental receipts (revenues). They are deposited in the Crime Victims Fund and spent the following year. Because any increase in direct spending under H.R. 2265 would be the same as the amount

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collected with a one-year lag, the additional direct spending would be negligible.

H.R. 2265 also would extend from three years to five years the statute of limitations on criminal proceedings brought under the Copyright Act and would permit victims of copyright infringement to submit information on the damages caused by the infringement during the sentencing phase of the infringer's trial. CBO estimates that these provisions would not have any budgetary impact.

The CBO staff contacts for this estimate are Rachel Forward (for federal costs), who can be reached at 226–2860, and Alyssa Trzeszkowski (for revenues), who can be reached at 226–2720. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to Rule XI, clause 2(l)(4) of the Rule of the House of Representatives, the Committee finds the authority for this legislation in Article I, clause 8, section 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

SECTION 1—SHORT TITLE

The short title of the legislation is the "No Electronic Theft (NET) Act."

SECTION 2—CHANGES TO TITLES 17 AND 18 OF THE U.S. CODE

"Financial Gain" Defined

The bill amends the term "financial gain" as used in the Copyright Act to include "receipt, or expectation of receipt, of anything of value, including the receipt of other copyrighted works. " This revision, set forth in Section 2(a) of H.R. 2265, will enable authorities to prosecute someone like LaMacchia who steals or helps others to steal copyrighted works but who otherwise does not profit financially from the theft. In addition, the *en bloc* amendment adopted by the Subcommittee added the phrase "expectation of receipt" to the bill as drafted in deference to a suggestion by a subcommittee witness who testified that it is difficult, if not impossible, to prove that money has changed hands when the Department of Justice raids a duplicating laboratory or warehouse to seize pirated works.

Phonorecords, Other Copyrighted Works, and Related Infringement

Under the amended bill's rewording of Section 506(a) of the Copyright Act,

> [a]ny 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 with a total retail value of more than $1,000, shall be punished as provided under Section 2319 of Title 18.

The Copyright Office recommended that the Subcommittee codify the threshold limits of Paragraph (2), *id.,* governing time periods,

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number of copies misappropriated, and their retail value under Title 17 rather than Title 18. This change was incorporated in the Subcommittee *en bloc* amendment and remains a part of the bill.

In addition, the full Committee, as part of its *en bloc* amendment, revised the misdemeanor threshold under the bill. Pursuant to this change, a misdemeanor is defined as an offense in which an individual reproduces or distributes one or more copies or phonorecords of one or more copyrighted works with a total retail value of more than $1,000. The Committee adopted this change in response to a suggestion by the Department of Justice, which envisions prosecuting some infringment cases that would fall below the misdemeanor standard incorporated in the bill as reported by the Subcommittee (10 or more copies with a total retail value of between $1,000 and $2,500). The Department believes it will want to pursue some actions involving thefts of fewer than 10 copies or phonorecords of especially popular or valuable copyrighted works.

The practical significance of these changes is that they criminalize *LaMacchia*-like behavior; that is, "computerized" misappropriation in which the infringer does not realize a direct financial benefit but whose actions nonetheless substantially damage the market for copyrighted works. *De minimis* infringement (e.g., a teen-ager copying a software program for a younger sibling) will not be punished. At the same time, however, the Department of Justice, in its discretion, will be allowed to use the newly-defined misdemeanor standard to extract plea bargains from infringers who would otherwise be prosecuted under the felony threshold (10 copies with a total retail value of $2,500 or more).

Clarification of Penalties

The bill as drafted established a higher threshold ($5,000) for felony prosecution under its terms. The Subcommittee, however, elected to retain the current threshold ($2,500) in the *en bloc* amendment pursuant to recommendations made at the hearing by certain members of the copyright community. In light of their willingness to accept the substitution of a *de minimis* threshold for the Subcommittee misdemeanor standard (more than $1,000 but less than $2,500), the retention of the $2,500-felony offense was even more appropriate. As noted, the full Committee changed the misdemeanor standard further while retaining the Subcommittee version of the felony offense.

Taken together, the changes set forth in the bill as amended result in the following criminal penalties governing *willful infringement* under Section 2319 of Title 18:

> (1) For purposes of commercial advantage or private financial gain:
>
> (a) imprisonment of not more than five years, or fines of not more than $250,000 per individual ($500,000 per organization), or both,if the offense consists of the reproduction or distribution, including by electronic means, in any 180-day period, of at least 10 copies or phonorecords of one or more copyrighted works with a total retail value of $2,500;
>
> (b) imprisonment of not more than 10 years, or fines of not more than $250,000 per individual ($500,000 per or-

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ganization), or both, if the offense is a second or subsequent offense under (a), *id.*;

(c) imprisonment of not more than one year, or fines of not more than $100,000, or both, in every other case.

(2) For reproduction or distribution, including by electronic means, during any 180-day period, of one or more copies or phonorecords of one or more copyrighted works, which have a total retail value of more than $1,000:

(a) imprisonment of not more than three years, or fines of not more than $250,000 per individual ($500,000 per organization), or both, in a case involving a total retail value of $2,500 or more;

(b) imprisonment of not more than six years, or fines of not more than $250,000 per individual ($500,000 per organization), or both, if the offense is a second or subsequent offense under (a), *id.;* and

(c) imprisonment of not more than one year, or fines of not more than $100,000, or both, in a case involving a total retail value of $1,000.

Victim's Impact Statement and Sentencing

Section 2319 of Title 18 addresses criminal infringement of copyrights, while Section 2319A of that same Title prohibits "bootlegging" (audio taping and videotaping) of live musical performances, as well as trafficking in bootlegged products. Section 2320 proscribes the act of trafficking in counterfeit (pirated) goods or services.

Sections 2(d) and (e) of the bill permit three classes of "victims" to submit impact statements during the sentencing phase of an infringer's trial. *See* Fed. R. Crim. P. 32(c). The three classes are comprised of producers and sellers of legitimate works affected by criminal conduct that is the subject of Sections 2319, 2319A, and 2320; the relevant copyright holders; and the legal representatives of the producers, sellers, and copyright holders.

Any such statement will be made part of the presentence report which a sentencing judge reviews before rendering a decision, and elaborates on the scope of the defendant's behavior, especially as it contributed to a victim's economic loss as a result of infringement. Egregious conduct as documented by a victim's impact statement would compel a judge to deliver a tougher sentence in a given case.

Sentencing Commission

Section 2(g) of H.R. 2265 directs the U.S. Sentencing Commission to ensure that its guideline range is "sufficiently stringent" to deter crime against intellectual property, including those offenses set forth in Section 506(a) of the Copyright Act and Sections 2319, 2319A, and 2320 of Title 18.

"Willful" Misconduct Defined

The Ranking Member from Massachusetts made clear when questioning witnesses during the September 11 hearing that the Subcommittee could improve the bill by amending it to define "willful" misconduct. In the absence of such clarification, those with questions concerning the meaning of the word and its application

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in the electronic environment were reluctant to rely on report language or existing case law for guidance.

Accordingly, the *en bloc* amendment adopted by the Subcommittee contains a provision, now set forth in Section Four, which states that nothing in the bill ". . . modifies liability for copyright infringement, including the standard of willfulness for criminal infringement." By accepting this provision, the Subcommittee (and full Committee) intend that H.R. 2265 will *not* change the current interpretation of the word as developed by case law and as applied by the Department of Justice.

The issue was resurrected during full Committee consideration of the bill when Representative Goodlatte offered, but eventually withdrew, an amendment to clarify the point further. The Goodlatte amendment stated that, for purposes of Section 506(a) of the Copyright Act only, ". . . a person does not infringe a copyright willfully unless that person has an *intent* to violate another person's copyright" (*italic added*). Some members noted that federal case law on the subject was not entirely uniform, and that the Goodlatte amendment might make it more difficult for the Department of Justice, in some instances, to prosecute cases. Chairman Coble observed that the use of the word "intent" in the Goodlatte amendment might inadvertently cause some to ascribe a different meaning to "willfully" as it is currently understood, since the majority view on the matter is that "willful" conduct necessitates "intent."

Chairman Coble also emphasized that other parties interested in shaping H.R. 2265 might use the bill to influence the progress of separate legislation, H.R. 2180, which speaks to the liability of online service providers in the electronic environment. The bills are unrelated on the point of willfulness, since H.R. 2180 addresses *civil* infringment of copyrights, while H.R. 2265 deals with *criminal* misconduct. In fact, the Department of Justice contrasts criminal copyright actions with civil copyright infringement by noting that the latter ". . . remains a strict liability tort." *Federal Prosecution of Violations of Intellectual Property Rights,* U.S. Dept. Of Justice (May 1997) at p. 24.

Non-Application to Intelligence Gathering Activities

The National Security Agency (NSA) informed the Subcommittee that the bill as written might technically apply to, and therefore inhibit, the legitimate intelligence gathering activities of various federal entities and workers on behalf of the U.S. government. The NSA sought assurance from the Subcommittee that H.R. 2265 would not interfere with current federal law on the matter, codified at 28 U.S.C. 1498. In brief, that statute confines copyright infringement cases against the government to the Court of Federal Claims for the recovery of damages. Language set forth in the *en bloc* amendment adopted by the full Committee makes clear that the ". . . exclusive *action* which may be brought for . . . infringement shall be an action by the copyright owner . . ." under 28 U.S.C. 1498 (*italic added*). Since an *action* is either civil or criminal, and the existing statute addressing the matter speaks only to a civil remedy, the language added to the bill in Section Three ensures

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that H.R. 2265 will not apply to intelligence gathering activities that are protected and dealt with in 28 U.S.C. 1498.

Statute of Limitations

Finally, the bill requires that any criminal proceeding brought under the Copyright Act must commence within five years from the time the cause of action arose. The current limit, as contained in Section 507(a) of the Act, is three years.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 17, UNITED STATES CODE

* * * * * * *

CHAPTER 1—SUBJECT MATTER AND SCOPE OF COPYRIGHT

* * * * * * *

§ 101. Definitions

Except as otherwise provided in this title, as used in this title, the following terms and their variant forms mean the following:

* * * * * * *

To "display" a work means to show a copy of it, either directly or by means of a film, slide, television image, or any other device or process or, in the case of a motion picture or other audiovisual work, to show individual images nonsequentially.

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

* * * * * * *

CHAPTER 5—COPYRIGHT INFRINGEMENT AND REMEDIES

* * * * * * *

§ 506. Criminal offenses

[(a) CRIMINAL INFRINGEMENT.—Any person who infringes a copyright willfully and for purposes of commercial advantage or private financial gain shall be punished as provided in section 2319 of title 18.]

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

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(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.

* * * * * * *

§ 507. Limitations on actions

(a) CRIMINAL PROCEEDINGS.—No criminal proceeding shall be maintained under the provisions of this title unless it is commenced within [three] *5* years after the cause of action arose.

* * * * * * *

CHAPTER 113 OF TITLE 18, UNITED STATES CODE

CHAPTER 113—STOLEN PROPERTY

* * * * * * *

§ 2319. Criminal infringement of a copyright

(a) Whoever violates section 506(a) (relating to criminal offenses) of title 17 shall be punished as provided in [subsection (b)] *subsections (b) and (c)* of this section and such penalties shall be in addition to any other provisions of title 17 or any other law.

(b) Any person who commits an offense under [subsection (a) of this section] *section 506(a)(1) of title 17*—

(1) shall be imprisoned not more than 5 years, or fined in the amount set forth in this title, or both, if the offense consists of the reproduction or distribution, *including by electronic means,* during any 180-day period, of at last 10 copies or phonorecords, of 1 or more copyrighted works, [with a retail value of more than $2,500] *which have a total retail value of more than $2,500;*

* * * * * * *

(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.

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(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.

[(c)] *(e)* As used in this section—

(1) the terms "phonorecord" and "copies" have, respectively, the meanings set forth in section 101 (relating to definitions) of title 17; and

(2) the terms "reproduction" and "distribution" refer to the exclusive rights of a copyright owner under clauses (1) and (3) respectively of section 106 (relating to exclusive rights in copyrighted works), as limited by sections 107 through 120, of title 17.

§ 2319A. Unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances

(a) * * *

(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.

* * * * * * *

[(d)] *(e)* DEFINITIONS.—As used in this section—

(1) the terms "copy", "fixed", "musical work", "phonorecord", "reproduce", "sound recordings", and "transmit" mean those terms within the meaning of title 17; and

(2) the term "traffic in" means transport, transfer, or otherwise dispose of, to another, as consideration for anything of value, or make or obtain control of with intent to transport, transfer, or dispose of.

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[(e)] *(f)* APPLICABILITY.—This section shall apply to any Act or Acts that occur on or after the date of the enactment of the Uruguay Round Agreements Act.

§ 2320. Trafficking in counterfeit goods or services

(a) * * *

* * * * * * *

(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.

[(d)] *(e)* For the purposes of this section—

(1) * * *

* * * * * * *

[(e)] *(f)* Beginning with the first year after the date of enactment of this subsection, the Attorney General shall include in the report of the Attorney General to Congress on the business of the Department of Justice prepared pursuant to section 522 of title 28, an accounting, on a district by district basis, of the following with respect to all actions taken by the Department of Justice that involve trafficking in counterfeit labels for phonorecords, copies of computer programs or computer program documentation or packaging, copies of motion pictures or other audiovisual works (as defined in section 2318 of title 18), criminal infringement of copyrights (as defined in section 2319 of title 18), unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances (as defined in section 2319A of title 18), or trafficking in goods or services bearing counterfeit marks (as defined in section 2320 of title 18):

(1) * * *

* * * * * * *

SECTION 1498 OF TITLE 28, UNITED STATES CODE

§ 1498. Patent and copyright cases

(a) * * *

(b) Hereafter, whenever the copyright in any work protected under the copyright laws of the United States shall be infringed by the United States, by a corporation owned or controlled by the United States, or by a contractor, subcontractor, or any person, firm, or corporation acting for the Government and with the au-

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thorization or consent of the Government, the exclusive [remedy of the owner of such copyright shall be by action] *action which may be brought for such infringement shall be an action by the copyright owner* against the United States in the Court of Federal Claims for the recovery of his reasonable and entire compensation as damages for such infringement, including the minimum statutory damages as set forth in section 504(c) of title 17, United States Code: *Provided,* That a Government employee shall have a right of action against the Government under this subsection except where he was in a position to order, influence, or induce use of the copyrighted work by the Government: *Provided, however,* That this subsection shall not confer a right of action on any copyright owner or any assignee of such owner with respect to any copyrighted work prepared by a person while in the employment or service of the United States, where the copyrighted work was prepared as a part of the official functions of the employee, or in the preparation of which Government time, material, or facilities were used: *And provided further,* That before such action against the United States has been instituted the appropriate corporation owned or controlled by the United States or the head of the appropriate department or agency of the Government, as the case may be, is authorized to enter into an agreement with the copyright owner in full settlement and compromise for the damages accruing to him by reason of such infringement and to settle the claim administratively out of available appropriations.

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