HEINONLINE

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

Content downloaded/printed from HeinOnline (http://heinonline.org) Thu Apr 11 14:44:47 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.

# One Hundred Fifth Congress of the United States of America

## AT THE FIRST SESSION

*Begun and held at the City of Washington on Tuesday, the seventh day of January, one thousand nine hundred and ninety-seven*

# An Act

To amend the provisions of titles 17 and 18, United States Code, to provide greater copyright protection by amending criminal copyright infringement provisions, and for other purposes.

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "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, United States Code. 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)—

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

(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, United States Code—

"(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

HeinOnline -- 1 William H. Manz, Federal Copyright Law: The Legislative Histories of the Major Enactments of the 105th Congress 2 1999

"(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

HeinOnline -- 1 William H. Manz, Federal Copyright Law: The Legislative Histories of the Major Enactments of the 105th Congress 3 1999

action" and inserting "action which may be brought for such infringement shall be an action by the copyright owner".

*Speaker of the House of Representatives.*

*Vice President of the United States and*
*President of the Senate.*

HeinOnline -- 1 William H. Manz, Federal Copyright Law: The Legislative Histories of the Major Enactments of the 105th Congress 4 1999

# Document No. 10

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