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H.R. 2391

[Report No. 108-____]

IN THE SENATE OF THE UNITED STATES

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Received; read twice and referred to the Committee on the Judiciary

SEPTEMBER ____ (legislative day, _____), 2004

Reported by Mr. HATCH, with an amendment

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

AN ACT

To amend title 35, United States Code, to promote cooperative research involving universities, the public sector, and private enterprises.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Cooperative Research
5 and Technology Enhancement (CREATE) Act of 2004”.

1 **SEC. 2. COLLABORATIVE EFFORTS ON CLAIMED INVEN-**
2 **TIONS.**

3 Section 103(e) of title 35, United States Code, is
4 amended to read as follows:

5 “(e)(1) Subject matter developed by another person,
6 which qualifies as prior art only under one or more of sub-
7 sections (e), (f), and (g) of section 102 of this title, shall
8 not preclude patentability under this section where the
9 subject matter and the claimed invention were, at the time
10 the claimed invention was made, owned by the same per-
11 son or subject to an obligation of assignment to the same
12 person.

13 “(2) For purposes of this subsection, subject matter
14 developed by another person and a claimed invention shall
15 be deemed to have been owned by the same person or sub-
16 ject to an obligation of assignment to the same person if—

17 “(A) the claimed invention was made by or on
18 behalf of parties to a joint research agreement that
19 was in effect on or before the date the claimed in-
20 vention was made;

21 “(B) the claimed invention was made as a re-
22 sult of activities undertaken within the scope of the
23 joint research agreement; and

24 “(C) the application for patent for the claimed
25 invention discloses or is amended to disclose the

1 names of the parties to the joint research agree-
2 ment.

3 “(3) For purposes of paragraph (2), the term ‘joint
4 research agreement’ means a written contract, grant, or
5 cooperative agreement entered into by two or more per-
6 sons or entities for the performance of experimental, devel-
7 opmental, or research work in the field of the claimed in-
8 vention.”.

9 **SEC. 3. EFFECTIVE DATE.**

10 (a) **IN GENERAL.**—The amendments made by this
11 Act shall apply to any patent granted on or after the date
12 of the enactment of this Act.

13 (b) **SPECIAL RULE.**—The amendments made by this
14 Act shall not affect any final decision of a court or the
15 United States Patent and Trademark Office rendered be-
16 fore the date of the enactment of this Act, and shall not
17 affect the right of any party in any action pending before
18 the United States Patent and Trademark Office or a court
19 on the date of the enactment of this Act to have that par-
20 ty’s rights determined on the basis of the provisions of
21 title 35, United States Code, in effect on the day before
22 the date of the enactment of this Act.

23 **SECTION 1. SHORT TITLE.**

24 *This Act may be cited as the “Intellectual Property*
25 *Protection Act of 2004”.*

1 **TITLE I—COOPERATIVE RE-**
2 **SEARCH AND TECHNOLOGY**
3 **ENHANCEMENT**

4 **SEC. 101. SHORT TITLE.**

5 *This title may be cited as the “Cooperative Research*
6 *and Technology Enhancement (CREATE) Act of 2004”.*

7 **SEC. 102. COLLABORATIVE EFFORTS ON CLAIMED INVEN-**
8 **TIONS.**

9 *Section 103(c) of title 35, United States Code, is*
10 *amended to read as follows:*

11 *“(c)(1) Subject matter developed by another person,*
12 *which qualifies as prior art only under one or more of sub-*
13 *sections (e), (f), and (g) of section 102 of this title, shall*
14 *not preclude patentability under this section where the sub-*
15 *ject matter and the claimed invention were, at the time the*
16 *claimed invention was made, owned by the same person or*
17 *subject to an obligation of assignment to the same person.*

18 *“(2) For purposes of this subsection, subject matter de-*
19 *veloped by another person and a claimed invention shall*
20 *be deemed to have been owned by the same person or subject*
21 *to an obligation of assignment to the same person if—*

22 *“(A) the claimed invention was made by or on*
23 *behalf of parties to a joint research agreement that*
24 *was in effect on or before the date the claimed inven-*
25 *tion was made;*

1 “(B) *the claimed invention was made as a result*
2 *of activities undertaken within the scope of the joint*
3 *research agreement; and*

4 “(C) *the application for patent for the claimed*
5 *invention discloses or is amended to disclose the*
6 *names of the parties to the joint research agreement.*

7 “(3) *For purposes of paragraph (2), the term ‘joint*
8 *research agreement’ means a written contract, grant, or co-*
9 *operative agreement entered into by two or more persons*
10 *or entities for the performance of experimental, develop-*
11 *mental, or research work in the field of the claimed inven-*
12 *tion.”.*

13 **SEC. 103. EFFECTIVE DATE.**

14 (a) *IN GENERAL.—The amendments made by this title*
15 *shall apply to any patent granted on or after the date of*
16 *the enactment of this Act.*

17 (b) *SPECIAL RULE.—The amendments made by this*
18 *title shall not affect any final decision of a court or the*
19 *United States Patent and Trademark Office rendered before*
20 *the date of the enactment of this Act, and shall not affect*
21 *the right of any party in any action pending before the*
22 *United States Patent and Trademark Office or a court on*
23 *the date of the enactment of this Act to have that party’s*
24 *rights determined on the basis of the provisions of title 35,*

1 *United States Code, in effect on the day before the date of*
2 *the enactment of this Act.*

3 ***TITLE II—PIRACY DETERRENCE***
4 ***IN EDUCATION***

5 ***SEC. 201. SHORT TITLE.***

6 *This title may be cited as the “Piracy Deterrence and*
7 *Education Act of 2004”.*

8 ***SEC. 202. FINDINGS.***

9 *Congress finds as follows:*

10 *(1) The Internet, while changing the way our so-*
11 *ciety communicates, has also changed the nature of*
12 *many crimes, including the theft of intellectual prop-*
13 *erty.*

14 *(2) Trafficking in infringing copyrighted works*
15 *through increasingly sophisticated electronic means,*
16 *including peer-to-peer file trading networks, Internet*
17 *chat rooms, and news groups, threatens lost jobs, lost*
18 *income for creators, lower tax revenue, and higher*
19 *prices for honest purchasers.*

20 *(3) The most popular peer-to-peer file trading*
21 *software programs have been downloaded by computer*
22 *users over 600,000,000 times. At any one time there*
23 *are over 3,000,000 users simultaneously using just*
24 *one of these services. Each month, on average, over*

1 2,300,000,000 digital-media files are transferred
2 among users of peer-to-peer systems.

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

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

14 (6) In light of these considerations, Federal law
15 enforcement agencies should actively pursue criminals
16 who steal the copyrighted works of others, and prevent
17 such activity through enforcement and awareness. The
18 public should be educated about the security and pri-
19 vacy risks associated with being connected to certain
20 peer-to-peer networks.

21 **SEC.203. VOLUNTARY PROGRAM OF DEPARTMENT OF JUS-**
22 **TICE.**

23 (a) *VOLUNTARY PROGRAM.*—The Attorney General is
24 authorized to establish a program under which the Depart-
25 ment of Justice, in cases where persons who are subscribers

1 *of Internet service providers appear to the Department of*
2 *Justice to be engaging in copyright infringing conduct in*
3 *the course of using such Internet service, would send to the*
4 *Internet service providers warning letters that warn such*
5 *persons of the penalties for such copyright infringement.*
6 *The Internet service providers may forward the warning let-*
7 *ters to such persons.*

8 (b) *LIMITATIONS ON PROGRAM.—*

9 (1) *EXTENT AND LENGTH OF PROGRAM.—The*
10 *program under subsection (a) shall terminate at the*
11 *end of the 18-month period beginning on the date of*
12 *the enactment of this Act and shall be limited to not*
13 *more than 10,000 warning letters.*

14 (2) *PRIVACY PROTECTIONS.—No Internet service*
15 *provider that receives a warning letter from the De-*
16 *partment of Justice under subsection (a) may disclose*
17 *to the Department any identifying information about*
18 *the subscriber that is the subject of the warning letter*
19 *except pursuant to court order or other applicable*
20 *legal process that requires such disclosure.*

21 (c) *REIMBURSEMENT OF INTERNET SERVICE PRO-*
22 *VIDERS.—The Department of Justice shall reimburse Inter-*
23 *net service providers for all reasonable direct costs incurred*
24 *by such service providers in identifying the proper recipi-*

1 *ents of the warning letters under subsection (a) and for-*
2 *warding the letters.*

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

7 *(e) INADMISSIBILITY OF EVIDENCE.—The fact that an*
8 *Internet service provider participated in the program under*
9 *subsection (a), received a warning letter from the Depart-*
10 *ment of Justice, was aware of the contents of the warning*
11 *letter, or forwarded the warning letter to a subscriber, shall*
12 *not be admissible in any legal proceeding brought against*
13 *the Internet service provider.*

14 *(f) CONSTRUCTION.—Nothing in this section shall be*
15 *construed to affect the ability of a court to consider, in a*
16 *legal proceeding brought against an Internet service pro-*
17 *vider, notifications of claimed infringement as described in*
18 *section 512(c)(3) of title 17, United States Code, or any*
19 *other relevant evidence, other than that described in sub-*
20 *section (e).*

21 **SEC. 204. DESIGNATION AND TRAINING OF AGENTS IN COM-**
22 **PUTER HACKING AND INTELLECTUAL PROP-**
23 **ERTY UNITS.**

24 *(a) DESIGNATION OF AGENTS IN CHIPS UNITS.—The*
25 *Attorney General shall ensure that any unit in the Depart-*

1 *ment of Justice responsible for investigating computer hack-*
2 *ing or responsible for investigating intellectual property*
3 *crimes is assigned at least one agent to support such unit*
4 *for the purpose of investigating crimes relating to the theft*
5 *of intellectual property.*

6 (b) *TRAINING.*—*The Attorney General shall ensure*
7 *that each agent assigned under subsection (a) has received*
8 *training in the investigation and enforcement of intellectual*
9 *property crimes.*

10 **SEC. 205. EDUCATION PROGRAM.**

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

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

16 (1) *educate the general public concerning the*
17 *value of copyrighted works and the effects of the theft*
18 *of such works on those who create them; and*

19 (2) *educate the general public concerning the pri-*
20 *vacancy, security, and other risks of using the Internet*
21 *to obtain illegal copies of copyrighted works.*

22 (c) *SECTOR SPECIFIC MATERIALS.*—*The Internet Use*
23 *Educational Program shall, to the extent appropriate, de-*
24 *velop materials appropriate to Internet users in different*
25 *sectors of the general public where criminal copyright in-*

1 *fringement is a concern. The Attorney General shall consult*
2 *with appropriate interested parties in developing such sec-*
3 *tor-specific materials.*

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

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

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

18 **SEC. 206. ACTIONS BY THE GOVERNMENT OF THE UNITED**
19 **STATES.**

20 *Section 411(a) of title 17, United States Code, is*
21 *amended in the first sentence by striking “Except for” and*
22 *inserting “Except for an action brought by the Government*
23 *of the United States or by any agency or instrumentality*
24 *thereof, or” .*

1 **SEC. 207. AUTHORIZED APPROPRIATIONS.**

2 *There are authorized to be appropriated to the Depart-*
3 *ment of Justice for fiscal year 2005 not less than*
4 *\$15,000,000 for the investigation and prosecution of viola-*
5 *tions of title 17, United States Code.*

6 **SEC. 208. CRIMINAL PENALTIES FOR UNAUTHORIZED RE-**
7 **CORDING OF MOTION PICTURES IN A MOTION**
8 **PICTURE EXHIBITION FACILITY.**

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

12 **“§2319B. Unauthorized recording of motion pictures**
13 **in a motion picture exhibition facility**

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

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

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

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

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

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

21 “(d) *IMMUNITY FOR THEATERS AND AUTHORIZED*
22 *PERSONS.*—With reasonable cause, the owner or lessee of
23 *a motion picture facility where a motion picture is being*
24 *exhibited, the authorized agent or employee of such owner*

1 *or lessee, the licensor of the motion picture being exhibited,*
2 *or the agent or employee of such licensor—*

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

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

11 “(e) *VICTIM IMPACT STATEMENT.—*

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

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

23 “(A) *producers and sellers of legitimate*
24 *works affected by conduct involved in the offense;*

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

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

5 “(f) DEFINITIONS.—In this section:

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

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

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

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

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

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

8 **SEC. 209. SENSE OF CONGRESS ON NEED TO TAKE STEPS**
9 **TO PREVENT ILLEGAL ACTIVITY ON PEER-TO-**
10 **PEER SERVICES.**

11 (a) *FINDINGS.*—*Congress finds as follows:*

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

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

23 (3) *Massive volumes of illegal activity, including*
24 *the distribution of child pornography, viruses, and*

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

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

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

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

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

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

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

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

18 (11) *The Federal Trade Commission issued a*
19 *Consumer Alert in July of 2003 warning consumers*
20 *that some file-sharing services contain damaging vi-*
21 *ruses and worms and, without the computer user’s*
22 *knowledge or consent, install spyware to monitor a*
23 *user’s browsing habits and send data to third parties*
24 *or automatically open network connections.*

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

7 **(b) SENSE OF CONGRESS.**—*It is the sense of Congress*
8 *that—*

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

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

16 (3) *therefore, Congress and the executive branch*
17 *should consider all appropriate measures to protect*
18 *consumers and children, and prevent such illegal ac-*
19 *tivity.*

20 **SEC. 210. ENHANCEMENT OF CRIMINAL COPYRIGHT IN-**
21 **FRINGEMENT.**

22 **(a) CRIMINAL INFRINGEMENT.**—*Section 506 of title*
23 *17, United States Code, is amended—*

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

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

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

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

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

16 “(A) *1,000 or more copies or phonorecords*
17 *of 1 or more copyrighted works,*

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

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

23 *shall be punished as provided under section 2319 of title*
24 *18. For purposes of this subsection, evidence of reproduction*
25 *or distribution of a copyrighted work, by itself, shall not*

1 *be sufficient to establish the necessary level of intent under*
2 *this subsection.”; and*

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

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

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

17 *“(1) PRE-RELEASE WORK.—The term ‘pre-release*
18 *work’ refers to a work protected under this title which*
19 *has a commercial and economic value and which, at*
20 *the time of the act of infringement that is the basis*
21 *for the offense under subsection (a)(3), the defendant*
22 *knew or should have known had not yet been made*
23 *available by the copyright owner to individual mem-*
24 *bers of the general public in copies or phonorecords*
25 *for sale, license, or rental.*

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

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

13 *(1) by redesignating subsections (d) and (e) as*
14 *subsections (e) and (f), respectively;*

15 *(2) by inserting after subsection (c) the fol-*
16 *lowing:*

17 *“(d) Any person who commits an offense under section*
18 *506(a)(3) of title 17—*

19 *“(1) shall be imprisoned not more than 3 years,*
20 *or fined in the amount set forth in this title, or both,*
21 *or, if the offense was committed for purposes of com-*
22 *mmercial advantage or private financial gain, impris-*
23 *oned for not more than 5 years, or fined in the*
24 *amount set forth in this title, or both; and*

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

8 (3) in subsection (f), as so redesignated—

9 (A) in paragraph (1), by striking “and”
10 after the semicolon;

11 (B) in paragraph (2), by striking the period
12 and inserting “; and”; and

13 (C) by adding at the end the following:

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

17 (c) *CIVIL REMEDIES FOR INFRINGEMENT OF A WORK*
18 *BEING PREPARED FOR COMMERCIAL DISTRIBUTION.*—

19 (1) *PREREGISTRATION.*—Section 408 of title 17,
20 *United States Code*, is amended by adding at the end
21 *the following:*

22 “(f) *PREREGISTRATION OF WORKS BEING PREPARED*
23 *FOR COMMERCIAL DISTRIBUTION.*—

24 “(1) *RULEMAKING.*—Not later than 180 days
25 after the date of enactment of this subsection, the Reg-

1 *ister of Copyrights shall issue regulations to establish*
2 *procedures for preregistration of a work that is being*
3 *prepared for commercial distribution and has not*
4 *been published.*

5 *“(2) CLASS OF WORKS.—The regulations estab-*
6 *lished under paragraph (1) shall permit*
7 *preregistration for any work that is in a class of*
8 *works that the Register determines has had a history*
9 *of infringement prior to authorized commercial dis-*
10 *tribution.*

11 *“(3) APPLICATION FOR REGISTRATION.—Not*
12 *later than 3 months after the first publication of the*
13 *work, the applicant shall submit to the Copyright*
14 *Office—*

15 *“(A) an application for registration of the*
16 *work;*

17 *“(B) a deposit; and*

18 *“(C) the applicable fee.*

19 *“(4) EFFECT OF UNTIMELY APPLICATION.—An*
20 *action for infringement under this chapter shall be*
21 *dismissed, and no award of statutory damages or at-*
22 *torney fees shall be made for a preregistered work, if*
23 *the items described in paragraph (3) are not sub-*
24 *mitted to the Copyright Office in proper form within*
25 *the earlier of—*

1 “(A) 3 months after the first publication of
2 the work; or

3 “(B) 1 month after the copyright owner has
4 learned of the infringement.”.

5 (2) *INFRINGEMENT ACTIONS*.—Section 411(a) of
6 title 17, United States Code, is amended by inserting
7 “preregistration or” after “shall be instituted until”.

8 (3) *EXCLUSION*.—Section 412 of title 17, United
9 States Code, is amended by inserting “, an action for
10 infringement of the copyright of a work that has been
11 preregistered under section 408(f) before the com-
12 mencement of the infringement,” after “section
13 106A(a)”.

14 **SEC. 211. AMENDMENT OF FEDERAL SENTENCING GUIDE-**
15 **LINES REGARDING THE INFRINGEMENT OF**
16 **COPYRIGHTED WORKS AND RELATED CRIMES.**

17 (a) *AMENDMENT TO THE SENTENCING GUIDELINES*.—
18 Pursuant to its authority under section 994 of title 28,
19 United States Code, and in accordance with this section,
20 the United States Sentencing Commission shall review and,
21 if appropriate, amend the sentencing guidelines and policy
22 statements applicable to persons convicted of intellectual
23 property rights crimes, including sections 2318, 2319,
24 2319A, 2319B, 2320 of title 18, United States Code, and
25 sections 506, 1201, and 1202 of title 17, United States Code.

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

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

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

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

22 (4) *consider whether the sentencing guidelines*
23 *and policy statements applicable to the offenses de-*
24 *scribed in subsection (a) adequately reflect any harm*
25 *to victims from infringement in circumstances where*

1 *law enforcement cannot determine how many times*
2 *copyrighted material is reproduced or distributed.*

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

8 **SEC. 212. EXEMPTION FROM INFRINGEMENT FOR SKIPPING**
9 **AUDIO AND VIDEO CONTENT IN MOTION PIC-**
10 **TURES.**

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

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

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

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

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

23 “(11) *the making imperceptible, by or at the di-*
24 *rection of a member of a private household, of limited*
25 *portions of audio or video content of a motion pic-*

1 *ture, during a performance in or transmitted to that*
2 *household for private home viewing, from an author-*
3 *ized copy of the motion picture, or the creation or*
4 *provision of a computer program or other technology*
5 *that enables such making imperceptible and that is*
6 *designed and marketed for such use at the direction*
7 *of a member of a private household, if—*

8 *“(A) no fixed copy of the altered version of*
9 *the motion picture is created by such computer*
10 *program or other technology; and*

11 *“(B) no changes, deletions or additions are*
12 *made by such computer program or other tech-*
13 *nology to commercial advertisements, or to net-*
14 *work or station promotional announcements,*
15 *that would otherwise be performed or displayed*
16 *before, during or after the performance of the*
17 *motion picture.”; and*

18 *(4) by adding at the end the following:*

19 *“For purposes of paragraph (11), the term ‘making*
20 *imperceptible’ does not include the addition of audio or*
21 *video content that is performed or displayed over or in place*
22 *of existing content in a motion picture.”.*

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

1 “(3)(A) *Any person who engages in the conduct de-*
2 *scribed in paragraph (11) of section 110 of title 17, United*
3 *States Code, and who complies with the requirements set*
4 *forth in that paragraph is not liable on account of such*
5 *conduct for a violation of any right under this Act. This*
6 *subparagraph does not preclude liability of a person for*
7 *conduct not described in paragraph (11) of section 110 of*
8 *title 17, United States Code, even if that person also engages*
9 *in conduct described in paragraph (11) of section 110 of*
10 *such title.*

11 “(B) *A manufacturer, licensee, or licensor of tech-*
12 *nology that enables the making of limited portions of audio*
13 *or video content of a motion picture imperceptible as de-*
14 *scribed in subparagraph (A) is not liable on account of such*
15 *manufacture or license for a violation of any right under*
16 *this Act, if such manufacturer, licensee, or licensor ensures*
17 *that the technology provides a clear and conspicuous notice*
18 *at the beginning of each performance that the performance*
19 *of the motion picture is altered from the performance in-*
20 *tended by the director or copyright holder of the motion pic-*
21 *ture. The limitations on liability in subparagraphs (A) and*
22 *(B) shall not apply to a manufacturer, licensee, or licensor*
23 *of technology that fails to comply with this paragraph.*

24 “(C) *The requirement under subparagraph (B) to pro-*
25 *vide notice shall apply only with respect to technology man-*

1 *ufactured after the end of the 180-day period beginning on*
2 *the date of the enactment of the Family Movie Act of 2004.”.*

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

9 **TITLE III—PROTECTING INTEL-**
10 **LECTUAL RIGHTS AGAINST**
11 **THEFT AND EXPROPRIATION**

12 **SEC. 301. SHORT TITLE.**

13 *This title may be cited as the “Protecting Intellectual*
14 *Rights Against Theft and Expropriation Act of 2004”.*

15 **SEC. 302. AUTHORIZATION OF CIVIL COPYRIGHT ENFORCE-**
16 **MENT BY ATTORNEY GENERAL.**

17 (a) *IN GENERAL.—Chapter 5 of title 17, United States*
18 *Code, is amended by inserting after section 506 the fol-*
19 *lowing:*

20 **“§ 506a. Civil penalties for violations of section 506**

21 *“(a) IN GENERAL.—In lieu of a criminal action under*
22 *section 506, the Attorney General may commence a civil*
23 *action in the appropriate United States district court*
24 *against any person who engages in conduct constituting an*
25 *offense under section 506. Upon proof of such conduct by*

1 *a preponderance of the evidence, such person shall be subject*
2 *to a civil penalty under section 504 which shall be in an*
3 *amount equal to the amount which would be awarded under*
4 *section 3663(a)(1)(B) of title 18 and restitution to the copy-*
5 *right owner aggrieved by the conduct.*

6 “(b) *OTHER REMEDIES.*—

7 “(1) *IN GENERAL.*—*Imposition of a civil penalty*
8 *under this section does not preclude any other crimi-*
9 *nal or civil statutory, injunctive, common law or ad-*
10 *ministrative remedy, which is available by law to the*
11 *United States or any other person;*

12 “(2) *OFFSET.*—*Any restitution received by a*
13 *copyright owner as a result of a civil action brought*
14 *under this section shall be offset against any award*
15 *of damages in a subsequent copyright infringement*
16 *civil action by that copyright owner for the conduct*
17 *that gave rise to the civil action brought under this*
18 *section.”.*

19 (b) *DAMAGES AND PROFITS.*—*Section 504 of title 17,*
20 *United States Code, is amended—*

21 (1) *in subsection (b)—*

22 (A) *in the first sentence—*

23 (i) *by inserting “, or the Attorney Gen-*
24 *eral in a civil action,” after “The copyright*
25 *owner”;* and

1 (ii) by striking “him or her” and in-
2 serting “the copyright owner”; and

3 (B) in the second sentence by inserting “, or
4 the Attorney General in a civil action,” after
5 “the copyright owner”; and

6 (2) in subsection (c)—

7 (A) in paragraph (1), by inserting “, or the
8 Attorney General in a civil action,” after “the
9 copyright owner”; and

10 (B) in paragraph (2), by inserting “, or the
11 Attorney General in a civil action,” after “the
12 copyright owner”.

13 (c) *TECHNICAL AND CONFORMING AMENDMENT.*—The
14 table of sections for chapter 5 of title 17, United States
15 Code, is amended by inserting after the item relating to
16 section 506 the following:

 “506a. Civil penalties for violation of section 506.”.

17 **SEC. 303. AUTHORIZATION OF FUNDING FOR TRAINING**
18 **AND PILOT PROGRAM.**

19 (a) *TRAINING AND PILOT PROGRAM.*—Not later than
20 180 days after enactment of this Act, the Attorney General
21 shall develop a program to ensure effective implementation
22 and use of the authority for civil enforcement of the copy-
23 right laws by—

24 (1) establishing training programs, including
25 practical training and written materials, for quali-

1 *fied personnel from the Department of Justice and*
2 *United States Attorneys Offices to educate and inform*
3 *such personnel about—*

4 (A) *resource information on intellectual*
5 *property and the legal framework established*
6 *both to protect and encourage creative works as*
7 *well as legitimate uses of information and rights*
8 *under the first amendment of the United States*
9 *Constitution;*

10 (B) *the technological challenges to pro-*
11 *tecting digital copyrighted works from online pi-*
12 *racy;*

13 (C) *guidance on and support for bringing*
14 *copyright enforcement actions against persons*
15 *engaging in infringing conduct, including model*
16 *charging documents and related litigation mate-*
17 *rials;*

18 (D) *strategic issues in copyright enforce-*
19 *ment actions, including whether to proceed in a*
20 *criminal or a civil action;*

21 (E) *how to employ and leverage the exper-*
22 *tise of technical experts in computer forensics;*

23 (F) *the collection and preservation of elec-*
24 *tronic data in a forensically sound manner for*
25 *use in court proceedings;*

1 (G) the role of the victim copyright owner
2 in providing relevant information for enforce-
3 ment actions and in the computation of dam-
4 ages; and

5 (H) the appropriate use of injunctions, im-
6 poundment, forfeiture, and related authorities in
7 copyright law;

8 (2) designating personnel from at least 4 United
9 States Attorneys Offices to participate in a pilot pro-
10 gram designed to implement the civil enforcement au-
11 thority of the Attorney General under section 506a of
12 title 17, United States Code, as added by this title;
13 and

14 (3) reporting to Congress annually on—

15 (A) the use of the civil enforcement author-
16 ity of the Attorney General under section 506a
17 of title 17, United States Code, as added by this
18 title; and

19 (B) the progress made in implementing the
20 training and pilot programs described under
21 paragraphs (1) and (2) of this subsection.

22 (b) ANNUAL REPORT.—The report under subsection
23 (a)(3) may be included in the annual performance report
24 of the Department of Justice and shall include—

1 (1) *with respect to civil actions filed under sec-*
2 *tion 506a of title 17, United States Code, as added*
3 *by this title—*

4 (A) *the number of investigative matters re-*
5 *ceived by the Department of Justice and United*
6 *States Attorneys Offices;*

7 (B) *the number of defendants involved in*
8 *those matters;*

9 (C) *the number of civil actions filed and the*
10 *number of defendants involved;*

11 (D) *the number of civil actions resolved or*
12 *terminated;*

13 (E) *the number of defendants involved in*
14 *those civil actions;*

15 (F) *the disposition of those civil actions, in-*
16 *cluding whether the civil actions were settled,*
17 *dismissed, or resolved after a trial;*

18 (G) *the dollar value of any civil penalty*
19 *imposed and the amount remitted to any copy-*
20 *right owner; and*

21 (H) *other information that the Attorney*
22 *General may consider relevant to inform Con-*
23 *gress on the effective use of the civil enforcement*
24 *authority;*

1 (2) *a description of the training program and*
2 *the number of personnel who participated in the pro-*
3 *gram; and*

4 (3) *the locations of the United States Attorneys*
5 *Offices designated to participate in the pilot program.*

6 (c) *AUTHORIZATION OF APPROPRIATIONS.—There are*
7 *authorized to be appropriated \$2,000,000 for fiscal year*
8 *2005 to carry out this section.*

9 ***TITLE IV—NATIONAL FILM***
10 ***PRESERVATION ACT OF 2004***
11 ***Subtitle A—Reauthorization of the***
12 ***National Film Preservation Board***

13 ***SEC. 401. SHORT TITLE.***

14 *This subtitle may be cited as the “National Film Pres-*
15 *ervation Act of 2004”.*

16 ***SEC. 402. REAUTHORIZATION AND AMENDMENT.***

17 (a) *DUTIES OF THE LIBRARIAN OF CONGRESS.—Sec-*
18 *tion 103 of the National Film Preservation Act of 1996 (2*
19 *U.S.C. 179m) is amended—*

20 (1) *in subsection (b)—*

21 (A) *by striking “film copy” each place that*
22 *term appears and inserting “film or other ap-*
23 *proved copy”;*

1 (B) by striking “film copies” each place
2 that term appears and inserting “film or other
3 approved copies”; and

4 (C) in the third sentence, by striking “copy-
5 righted” and inserting “copyrighted, mass dis-
6 tributed, broadcast, or published”; and

7 (2) by adding at the end the following:

8 “(c) COORDINATION OF PROGRAM WITH OTHER COL-
9 LECTION, PRESERVATION, AND ACCESSIBILITY ACTIVI-
10 TIES.—In carrying out the comprehensive national film
11 preservation program for motion pictures established under
12 the National Film Preservation Act of 1992, the Librarian,
13 in consultation with the Board established pursuant to sec-
14 tion 104, and in accordance with title 17, United States
15 Code, shall—

16 “(1) carry out activities to make films included
17 in the National Film registry more broadly accessible
18 for research and educational purposes, and to gen-
19 erate public awareness and support of the Registry
20 and the comprehensive national film preservation
21 program;

22 “(2) review the comprehensive national film
23 preservation plan, and amend it to the extent nec-
24 essary to ensure that it addresses technological ad-

1 *vances in the preservation and storage of, and access*
2 *to film collections in multiple formats; and*

3 *“(3) wherever possible, undertake expanded ini-*
4 *tiatives to ensure the preservation of the moving*
5 *image heritage of the United States, including film,*
6 *videotape, television, and born digital moving image*
7 *formats, by supporting the work of the National*
8 *Audio-Visual Conservation Center of the Library of*
9 *Congress, and other appropriate nonprofit archival*
10 *and preservation organizations.”.*

11 *(b) NATIONAL FILM PRESERVATION BOARD.—Section*
12 *104 of the National Film Preservation Act of 1996 (2*
13 *U.S.C. 179n) is amended—*

14 *(1) in subsection (a)(1), by striking “20” and in-*
15 *serting “22”;*

16 *(2) in subsection (a)(2), by striking “three” and*
17 *inserting “5”;*

18 *(3) in subsection (d), by striking “11” and in-*
19 *serting “12”; and*

20 *(4) by striking subsection (e) and inserting the*
21 *following:*

22 *“(e) REIMBURSEMENT OF EXPENSES.—Members of the*
23 *Board shall serve without pay, but may receive travel ex-*
24 *penses, including per diem in lieu of subsistence, in accord-*

1 *ance with sections 5702 and 5703 of title 5, United States*
2 *Code.”.*

3 *(c) NATIONAL FILM REGISTRY.—Section 106 of the*
4 *National Film Preservation Act of 1996 (2 U.S.C. 179q)*
5 *is amended by adding at the end the following:*

6 *“(e) NATIONAL AUDIO-VISUAL CONSERVATION CEN-*
7 *TER.—The Librarian shall utilize the National Audio-Vis-*
8 *ual Conservation Center of the Library of Congress at*
9 *Culpeper, Virginia, to ensure that preserved films included*
10 *in the National Film Registry are stored in a proper man-*
11 *ner, and disseminated to researchers, scholars, and the pub-*
12 *lic as may be appropriate in accordance with—*

13 *“(1) title 17 of the United States Code; and*

14 *“(2) the terms of any agreements between the Li-*
15 *brarian and persons who hold copyrights to such*
16 *audiovisual works.”.*

17 *(d) USE OF SEAL.—Section 107 (a) of the National*
18 *Film Preservation Act of 1996 (2 U.S.C. 179q) is*
19 *amended—*

20 *(1) in paragraph (1), by inserting “in any for-*
21 *mat” after “or any copy”; and*

22 *(2) in paragraph (2), by striking “or film copy”*
23 *and inserting “in any format”.*

24 *(e) AUTHORIZATION OF APPROPRIATIONS.—Section*
25 *112 of the National Film Preservation Act of 1996 (2*

1 *U.S.C. 179v) is amended by striking “\$250,000” and in-*
2 *serting “\$200,000”.*

3 (f) *EFFECTIVE DATE.*—*Section 113 of the National*
4 *Film Preservation Act of 1996 (2 U.S.C. 179w) is amended*
5 *by striking “7” and inserting “11”.*

6 ***Subtitle B—Reauthorization of the***
7 ***National Film Preservation***
8 ***Foundation***

9 ***SEC. 411. SHORT TITLE.***

10 *This subtitle may be cited as the “National Film Pres-*
11 *ervation Foundation Reauthorization Act of 2004”.*

12 ***SEC. 412. REAUTHORIZATION AND AMENDMENT.***

13 (a) *BOARD OF DIRECTORS.*—*Section 151703 of title*
14 *36, United States Code, is amended—*

15 (1) *in subsection (b)(2)(A), by striking “nine”*
16 *and inserting “12”; and*

17 (2) *in subsection (b)(4), by striking the second*
18 *sentence and inserting “There shall be no limit to the*
19 *number of terms to which any individual may be ap-*
20 *pointed.”.*

21 (b) *POWERS.*—*Section 151705 of title 36, United*
22 *States Code, is amended in subsection (b) by striking “Dis-*
23 *trict of Columbia” and inserting “the jurisdiction in which*
24 *the principal office of the corporation is located”.*

1 (c) *PRINCIPAL OFFICE.*—Section 151706 of title 36,
2 *United States Code*, is amended by inserting “, or another
3 *place as determined by the board of directors*” after “*Dis-*
4 *trict of Columbia*”.

5 (d) *AUTHORIZATION OF APPROPRIATIONS.*—Section
6 *151711 of title 36, United States Code*, is amended by strik-
7 *ing subsections (a) and (b) and inserting the following:*

8 “(a) *AUTHORIZATION OF APPROPRIATIONS.*—There
9 *are authorized to be appropriated to the Library of Con-*
10 *gress amounts necessary to carry out this chapter, not to*
11 *exceed \$250,000 for each of the fiscal years 2005 and 2006,*
12 *and not to exceed \$400,000 for fiscal year 2007. These*
13 *amounts are to be made available to the corporation to*
14 *match any private contributions (whether in currency, serv-*
15 *ices, or property) made to the corporation by private per-*
16 *sons and State and local governments.*

17 “(b) *LIMITATION RELATED TO ADMINISTRATIVE EX-*
18 *PENSES.*—*Amounts authorized under this section may not*
19 *be used by the corporation for management and general or*
20 *fundraising expenses as reported to the Internal Revenue*
21 *Service as part of an annual information return required*
22 *under the Internal Revenue Code of 1986.”.*

1 **TITLE V—PRESERVATION OF**
2 **ORPHAN WORKS**

3 **SEC. 501. SHORT TITLE.**

4 *This title may be cited as the “Preservation of Orphan*
5 *Works Act”.*

6 **SEC. 502. REPRODUCTION OF COPYRIGHTED WORKS BY LI-**
7 **BRARIES AND ARCHIVES.**

8 *Section 108(i) of title 17, United States Code, is*
9 *amended by striking “(b) and (c)” and inserting “(b), (c),*
10 *and (h)”.*

11 **TITLE VI—ENHANCING FEDERAL**
12 **OBSCENITY REPORTING AND**
13 **COPYRIGHT ENFORCEMENT**

14 **SEC. 601. SHORT TITLE.**

15 *This title may be cited as the “Enhancing Federal Ob-*
16 *scenity Reporting and Copyright Enforcement Act of 2004”.*

17 **SEC. 602. HARMLESS ERRORS IN REGISTRATION CERTIFI-**
18 **CATES.**

19 *(a) IN GENERAL.—Section 411 of title 17, United*
20 *States Code, is amended—*

21 *(1) by redesignating subsection (b) as subsection*
22 *(c); and*

23 *(2) inserting after subsection (a) the following:*

1 “(b)(1) A certificate of registration shall satisfy the re-
2 quirements of this section and section 412 irrespective of
3 any inaccurate information therein, unless—

4 “(A) the inaccurate information was included on
5 the application for copyright registration with knowl-
6 edge that it was inaccurate; and

7 “(B) the inaccuracy of the information, if
8 known, would have caused the Register of Copyrights
9 to refuse registration.

10 “(2) In any case in which inaccuracies described under
11 paragraph (1) are alleged, the court shall request the Reg-
12 ister of Copyrights to advise the court whether the inaccu-
13 racy of the information, if known, would have caused the
14 Register of Copyrights to refuse registration.”.

15 (b) *TECHNICAL AND CONFORMING AMENDMENT.*—Sec-
16 tion 412 of title 17, United States Code, is amended by
17 striking “section 411(b)” and inserting “section 411(c)”.

18 **SEC. 603. COMPUTATION OF STATUTORY DAMAGES.**

19 Section 504(c)(1) of title 17, United States Code, is
20 amended in the second sentence by inserting before the pe-
21 riod “, except that the court in its discretion may determine
22 that such parts are separate works if the court concludes
23 that they are distinct works having independent economic
24 value”.

1 **SEC. 604. REPORT TO CONGRESS.**

2 *The Attorney General shall include in the report of the*
3 *Attorney General to Congress on the business of the Depart-*
4 *ment of Justice, prepared under section 522 of title 28,*
5 *United States Code, the number of misdemeanor prosecu-*
6 *tions and the number of felony prosecutions under sections*
7 *1462, 1464, 1465, 1466, 1466A, 1470, 2252, 2252A, 2252B,*
8 *2260, 2318, 2319, 2319A, and 2320 of title 18, United*
9 *States Code, commenced and concluded during the last pre-*
10 *ceding fiscal year, including, in the case of those offenses*
11 *where applicable, detailed information concerning—*

12 (1) *the types of works involved;*

13 (2) *the tangible media of expression and means*
14 *of reproduction and distribution involved; and*

15 (3) *in the case of prosecutions concluded, the dis-*
16 *position of such prosecutions, such as the number of*
17 *convictions and acquittals, and the sentences imposed.*