

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

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

**IN THE SENATE OF THE UNITED STATES—108th Cong., 2d Sess.**

**H.R. 4077**

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

Referred to the Committee on \_\_\_\_\_  
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. HATCH (for himself and Mr. LEAHY)

Viz:

- 1 Strike all after the enacting clause and insert the fol-
- 2 lowing:
- 3 **SECTION 1. SHORT TITLE.**
- 4 This Act may be cited as the “Intellectual Property
- 5 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(e) 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  
15 subject matter and the claimed invention were, at the time  
16 the claimed invention was made, owned by the same per-  
17 son or subject to an obligation of assignment to the same  
18 person.

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

23 “(A) the claimed invention was made by or on  
24 behalf of parties to a joint research agreement that

1 was in effect on or before the date the claimed in-  
2 vention was made;

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

6 “(C) the application for patent for the claimed  
7 invention discloses or is amended to disclose the  
8 names of the parties to the joint research agree-  
9 ment.

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

16 **SEC. 103. EFFECTIVE DATE.**

17 (a) IN GENERAL.—The amendments made by this  
18 title shall apply to any patent granted on or after the date  
19 of the enactment of this Act.

20 (b) SPECIAL RULE.—The amendments made by this  
21 title shall not affect any final decision of a court or the  
22 United States Patent and Trademark Office rendered be-  
23 fore the date of the enactment of this Act, and shall not  
24 affect the right of any party in any action pending before  
25 the United States Patent and Trademark Office or a court

1 on the date of the enactment of this Act to have that par-  
2 ty's rights determined on the basis of the provisions of  
3 title 35, United States Code, in effect on the day before  
4 the date of the enactment of this Act.

## 5 **TITLE II—PIRACY DETERRENCE** 6 **IN EDUCATION**

### 7 **SEC. 201. SHORT TITLE.**

8 This title may be cited as the “Piracy Deterrence and  
9 Education Act of 2004”.

## 10 **Subtitle A—Piracy Deterrence**

### 11 **SEC. 202. FINDINGS.**

12 Congress finds as follows:

13 (1) The Internet, while changing the way our  
14 society communicates, has also changed the nature  
15 of many crimes, including the theft of intellectual  
16 property.

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

23 (3) The most popular peer-to-peer file trading  
24 software programs have been downloaded by com-  
25 puter users over 600,000,000 times. At any one time

1       there are over 3,000,000 users simultaneously using  
2       just one of these services. Each month, on average,  
3       over 2,300,000,000 digital-media files are trans-  
4       ferred among users of peer-to-peer systems.

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

8           (5) The security and privacy threats posed by  
9       certain peer-to-peer networks extend beyond users  
10       inadvertently enabling a hacker to access files. Mil-  
11       lions of copies of one of the most popular peer-to-  
12       peer networks contain software that could allow an  
13       independent company to take over portions of users'  
14       computers and Internet connections and has the ca-  
15       pacity to keep track of users' online habits.

16           (6) In light of these considerations, Federal law  
17       enforcement agencies should actively pursue crimi-  
18       nals who steal the copyrighted works of others, and  
19       prevent such activity through enforcement and  
20       awareness. The public should be educated about the  
21       security and privacy risks associated with being con-  
22       nected to certain peer-to-peer networks.

1 **SEC.203. VOLUNTARY PROGRAM OF DEPARTMENT OF JUSTICE.**  
2 **TICE.**

3 (a) VOLUNTARY PROGRAM.—The Attorney General is  
4 authorized to establish a program under which the De-  
5 partment of Justice, in cases where persons who are sub-  
6 scribers of Internet service providers appear to the De-  
7 partment of Justice to be engaging in copyright infringing  
8 conduct in the course of using such Internet service, would  
9 send to the Internet service providers warning letters that  
10 warn such persons of the penalties for such copyright in-  
11 fringement. The Internet service providers may forward  
12 the warning letters to such persons.

13 (b) LIMITATIONS ON PROGRAM.—

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

19 (2) PRIVACY PROTECTIONS.—No Internet serv-  
20 ice provider that receives a warning letter from the  
21 Department of Justice under subsection (a) may dis-  
22 close to the Department any identifying information  
23 about the subscriber that is the subject of the warn-  
24 ing letter except pursuant to court order or other  
25 applicable legal process that requires such disclo-  
26 sure.

1           (c) REIMBURSEMENT OF INTERNET SERVICE PRO-  
2 VIDERS.—The Department of Justice shall reimburse  
3 Internet service providers for all reasonable direct costs  
4 incurred by such service providers in identifying the prop-  
5 er recipients of the warning letters under subsection (a)  
6 and forwarding the letters.

7           (d) REPORTS TO CONGRESS.—The Attorney General  
8 shall submit to Congress a report on the program estab-  
9 lished under subsection (a) both at the time the program  
10 is initiated and at the conclusion of the program.

11          (e) INADMISSIBILITY OF EVIDENCE.—The fact that  
12 an Internet service provider participated in the program  
13 under subsection (a), received a warning letter from the  
14 Department of Justice, was aware of the contents of the  
15 warning letter, or forwarded the warning letter to a sub-  
16 scriber, shall not be admissible in any legal proceeding  
17 brought against the Internet service provider.

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

1 **SEC. 204. DESIGNATION AND TRAINING OF AGENTS IN COM-**  
2 **PUTER HACKING AND INTELLECTUAL PROP-**  
3 **ERTY UNITS.**

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

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

15 **SEC. 205. EDUCATION PROGRAM.**

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

19 (b) PURPOSE.—The purpose of the Internet Use  
20 Education Program shall be to—

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

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

1 (c) SECTOR SPECIFIC MATERIALS.—The Internet  
2 Use Educational Program shall, to the extent appropriate,  
3 develop materials appropriate to Internet users in dif-  
4 ferent sectors of the general public where criminal copy-  
5 right infringement is a concern. The Attorney General  
6 shall consult with appropriate interested parties in devel-  
7 oping such sector-specific materials.

8 (d) CONSULTATIONS.—The Attorney General shall  
9 consult with the Register of Copyrights and the Secretary  
10 of Commerce in developing the Internet Use Education  
11 Program under this section.

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

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

22 **SEC. 206. ACTIONS BY THE GOVERNMENT OF THE UNITED**  
23 **STATES.**

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

1 and inserting “Except for an action brought by the Gov-  
2 ernment of the United States or by any agency or instru-  
3 mentality thereof, or” .

4 **SEC. 207. AUTHORIZED APPROPRIATIONS.**

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

9 **SEC. 208. CRIMINAL PENALTIES FOR UNAUTHORIZED RE-**  
10 **CORDING OF MOTION PICTURES IN A MO-**  
11 **TION PICTURE EXHIBITION FACILITY.**

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

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

17 “(a) OFFENSE.—Any person who, without the au-  
18 thorization of the copyright owner, knowingly uses or at-  
19 tempts to use an audiovisual recording device to transmit  
20 or make a copy of a motion picture or other audiovisual  
21 work protected under title 17, or any part thereof, from  
22 a performance of such work in a motion picture exhibition  
23 facility, shall—

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

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

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

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

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

1           “(d) IMMUNITY FOR THEATERS AND AUTHORIZED  
2 PERSONS.—With reasonable cause, the owner or lessee of  
3 a motion picture facility where a motion picture is being  
4 exhibited, the authorized agent or employee of such owner  
5 or lessee, the licensor of the motion picture being exhib-  
6 ited, or the agent or employee of such licensor—

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

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

15           “(e) VICTIM IMPACT STATEMENT.—

16           “(1) IN GENERAL.—During the preparation of  
17 the presentence report under rule 32(c) of the Fed-  
18 eral Rules of Criminal Procedure, victims of an of-  
19 fense under this section shall be permitted to submit  
20 to the probation officer a victim impact statement  
21 that identifies the victim of the offense and the ex-  
22 tent and scope of the injury and loss suffered by the  
23 victim, including the estimated economic impact of  
24 the offense on that victim.

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

3           “(A) producers and sellers of legitimate  
4 works affected by conduct involved in the of-  
5 fense;

6           “(B) holders of intellectual property rights  
7 in the works described in subparagraph (A);  
8 and

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

11       “(f) DEFINITIONS.—In this section:

12           “(1) AUDIOVISUAL WORK, COPY, ETC.—The  
13 terms ‘audiovisual work’, ‘copy’, ‘copyright owner’,  
14 ‘motion picture’, and ‘transmit’ have, respectively,  
15 the meanings given those terms in section 101 of  
16 title 17.

17           “(2) AUDIOVISUAL RECORDING DEVICE.—The  
18 term ‘audiovisual recording device’ means a digital  
19 or analog photographic or video camera, or any  
20 other technology or device capable of enabling the  
21 recording or transmission of a copyrighted motion  
22 picture or other audiovisual work, or any part there-  
23 of, regardless of whether audiovisual recording is the  
24 sole or primary purpose of the device.



1           (2) The vast majority of software products, in-  
2           cluding peer-to-peer technology, do not pose an in-  
3           herent risk. Responsible persons making software  
4           products should be encouraged and commended for  
5           the due diligence and reasonable care they take in-  
6           cluding by providing instructions, relevant informa-  
7           tion in the documentation, disseminating patches,  
8           updates, and other appropriate modifications to the  
9           software.

10           (3) Massive volumes of illegal activity, including  
11           the distribution of child pornography, viruses, and  
12           confidential personal information, and copyright in-  
13           fringement occur on publicly accessible peer-to-peer  
14           file sharing services every day. Some publicly acces-  
15           sible peer-to-peer file sharing services expose con-  
16           sumers, particularly children, to serious risks, in-  
17           cluding legal liability, loss of privacy, threats to com-  
18           puter security, and exposure to illegal and inappro-  
19           priate material.

20           (4) Several studies and reports demonstrate  
21           that pornography, including child pornography, is  
22           prevalent on publicly available peer-to-peer file shar-  
23           ing services, and children are regularly exposed to  
24           pornography when using such peer-to-peer file shar-  
25           ing services.

1           (5) The full potential of peer-to-peer technology  
2           to benefit consumers has yet to be realized and will  
3           not be achieved until these problems are adequately  
4           addressed.

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

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

11          (8) While some users use parental controls to  
12          protect children from pornography available on the  
13          Internet and search engines, not all such controls  
14          work on publicly accessible peer-to-peer networks.

15          (9) Businesses that run publicly accessible peer-  
16          to-peer file sharing services have openly acknowl-  
17          edged, and numerous studies and reports have estab-  
18          lished, that these services facilitate and profit from  
19          massive amounts of copyright infringement, causing  
20          enormous damage to the economic well-being of the  
21          copyright industries whose works are being illegally  
22          “shared” and downloaded.

23          (10) The legitimate digital music marketplace  
24          offers consumers a wide and growing array of  
25          choices for obtaining music legally, without exposure

1 to the risks posed by publicly accessible peer-to-peer  
2 file sharing services.

3 (11) The Federal Trade Commission issued a  
4 Consumer Alert in July of 2003 warning consumers  
5 that some file-sharing services contain damaging vi-  
6 ruses and worms and, without the computer user's  
7 knowledge or consent, install spyware to monitor a  
8 user's browsing habits and send data to third parties  
9 or automatically open network connections.

10 (12) Publicly available peer-to-peer file-sharing  
11 services can and should adopt reasonable business  
12 practices and use technology in the marketplace to  
13 address the existing risks posed to consumers by  
14 their services and facilitate the legitimate use of  
15 peer-to-peer file sharing technology and software.

16 (b) SENSE OF CONGRESS.—It is the sense of Con-  
17 gress that—

18 (1) responsible software developers should be  
19 commended, recognized, and encouraged for their ef-  
20 forts to protect consumers;

21 (2) currently the level of ongoing and persistent  
22 illegal and dangerous activity on publicly accessible  
23 peer-to-peer file sharing services is harmful to con-  
24 sumers, minors, and the economy; and



1                   “(A) 1,000 or more copies or phonorecords  
2                   of 1 or more copyrighted works,

3                   “(B) 1 or more copies or phonorecords of  
4                   1 or more copyrighted works with a total retail  
5                   value of more than \$10,000, or

6                   “(C) 1 or more copies or phonorecords of  
7                   1 or more copyrighted pre-release works,

8 shall be punished as provided under section 2319 of title  
9 18. For purposes of this subsection, evidence of reproduc-  
10 tion or distribution of a copyrighted work, by itself, shall  
11 not be sufficient to establish the necessary level of intent  
12 under this subsection.”; and

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

14                   “(g) LIMITATION ON LIABILITY OF SERVICE PRO-  
15 VIDERS.—No legal entity shall be liable for a violation of  
16 subsection (a)(3) by reason of performing any function de-  
17 scribed in subsection (a), (b), (c), or (d) of section 512  
18 if such legal entity would not be liable for monetary relief  
19 under section 512 by reason of performing such function.  
20 Except for purposes of determining whether an entity  
21 qualifies for the limitation on liability under subsection  
22 (a)(3) of this section, the legal conclusion of whether an  
23 entity qualifies for a limitation on liability under section  
24 512 shall not be considered in a judicial determination of  
25 whether the entity violates subsection (a) of this section.

1 “(h) DEFINITIONS.—In this section:

2 “(1) PRE-RELEASE WORK.—The term ‘pre-re-  
3 lease work’ refers to a work protected under this  
4 title which has a commercial and economic value and  
5 which, at the time of the act of infringement that is  
6 the basis for the offense under subsection (a)(3), the  
7 defendant knew or should have known had not yet  
8 been made available by the copyright owner to indi-  
9 vidual members of the general public in copies or  
10 phonorecords for sale, license, or rental.

11 “(2) RETAIL VALUE.—The ‘retail value’ of a  
12 copyrighted work is the retail price of that work in  
13 the market in which it is sold. In the case of an in-  
14 fringement of a copyright by distribution, if the re-  
15 tail price does not adequately reflect the economic  
16 value of the infringement, then the retail value may  
17 be determined using other factors, including but not  
18 limited to suggested retail price, wholesale price, re-  
19 placement cost of the item, licensing, or distribution-  
20 related fees.”.

21 (b) PENALTIES.—Section 2319 of title 18, United  
22 States Code, is amended—

23 (1) by redesignating subsections (d) and (e) as  
24 subsections (e) and (f), respectively;

1           (2) by inserting after subsection (c) the fol-  
2           lowing:

3           “(d) Any person who commits an offense under sec-  
4           tion 506(a)(3) of title 17—

5           “(1) shall be imprisoned not more than 3 years,  
6           or fined in the amount set forth in this title, or both,  
7           or, if the offense was committed for purposes of  
8           commercial advantage or private financial gain, im-  
9           prisoned for not more than 5 years, or fined in the  
10          amount set forth in this title, or both; and

11          “(2) shall, if the offense is a second or subse-  
12          quent offense under paragraph (1), be imprisoned  
13          not more than 6 years, or fined in the amount set  
14          forth in this title, or both, or, if the offense was  
15          committed for purposes of commercial advantage or  
16          private financial gain, imprisoned for not more than  
17          10 years, or fined in the amount set forth in this  
18          title, or both.”; and

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

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

22                 (B) in paragraph (2), by striking the pe-  
23                 riod and inserting “; and”; and

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

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

4           (c) CIVIL REMEDIES FOR INFRINGEMENT OF A  
5           WORK BEING PREPARED FOR COMMERCIAL DISTRIBU-  
6           TION.—

7           (1) PREREGISTRATION.—Section 408 of title  
8           17, United States Code, is amended by adding at  
9           the end the following:

10          “(f) PREREGISTRATION OF WORKS BEING PRE-  
11          PARED FOR COMMERCIAL DISTRIBUTION.—

12           “(1) RULEMAKING.—Not later than 180 days  
13           after the date of enactment of this subsection, the  
14           Register of Copyrights shall issue regulations to es-  
15           tablish procedures for preregistration of a work that  
16           is being prepared for commercial distribution and  
17           has not been published.

18           “(2) CLASS OF WORKS.—The regulations estab-  
19           lished under paragraph (1) shall permit  
20           preregistration for any work that is in a class of  
21           works that the Register determines has had a his-  
22           tory of infringement prior to authorized commercial  
23           distribution.

24           “(3) APPLICATION FOR REGISTRATION.—Not  
25           later than 3 months after the first publication of the

1 work, the applicant shall submit to the Copyright  
2 Office—

3 “(A) an application for registration of the  
4 work;

5 “(B) a deposit; and

6 “(C) the applicable fee.

7 “(4) EFFECT OF UNTIMELY APPLICATION.—An  
8 action for infringement under this chapter shall be  
9 dismissed, and no award of statutory damages or at-  
10 torney fees shall be made for a preregistered work,  
11 if the items described in paragraph (3) are not sub-  
12 mitted to the Copyright Office in proper form within  
13 the earlier of—

14 “(A) 3 months after the first publication of  
15 the work; or

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

18 (2) INFRINGEMENT ACTIONS.—Section 411(a)  
19 of title 17, United States Code, is amended by in-  
20 sserting “preregistration or” after “shall be instituted  
21 until”.

22 (3) EXCLUSION.—Section 412 of title 17,  
23 United States Code, is amended by inserting “, an  
24 action for infringement of the copyright of a work  
25 that has been preregistered under section 408(f) be-

1 fore the commencement of the infringement,” after  
2 “section 106A(a)”.

3 **SEC. 211. AMENDMENT OF FEDERAL SENTENCING GUIDE-**  
4 **LINES REGARDING THE INFRINGEMENT OF**  
5 **COPYRIGHTED WORKS AND RELATED**  
6 **CRIMES.**

7 (a) AMENDMENT TO THE SENTENCING GUIDE-  
8 LINES.—Pursuant to its authority under section 994 of  
9 title 28, United States Code, and in accordance with this  
10 section, the United States Sentencing Commission shall  
11 review and, if appropriate, amend the sentencing guide-  
12 lines and policy statements applicable to persons convicted  
13 of intellectual property rights crimes, including sections  
14 2318, 2319, 2319A, 2319B, 2320 of title 18, United  
15 States Code, and sections 506, 1201, and 1202 of title  
16 17, United States Code.

17 (b) FACTORS.—In carrying out this section, the Sen-  
18 tencing Commission shall—

19 (1) take all appropriate measures to ensure that  
20 the sentencing guidelines and policy statements ap-  
21 plicable to the offenses described in subsection (a)  
22 are sufficiently stringent to deter and adequately re-  
23 flect the nature of such offenses;

24 (2) consider whether to provide a sentencing en-  
25 hancement for those convicted of the offenses de-

1       scribed in subsection (a) when the conduct involves  
2       the display, performance, publication, reproduction,  
3       or distribution of a copyrighted work before the time  
4       when the copyright owner has authorized the dis-  
5       play, performance, publication, reproduction, or dis-  
6       tribution of the original work, whether in the media  
7       format used by the infringing good or in any other  
8       media format;

9           (3) consider whether the definition of  
10       “uploading” contained in Application Note 3 to  
11       Guideline 2B5.3 is adequate to address the loss at-  
12       tributable to people broadly distributing copyrighted  
13       works over the Internet without authorization; and

14           (4) consider whether the sentencing guidelines  
15       and policy statements applicable to the offenses de-  
16       scribed in subsection (a) adequately reflect any harm  
17       to victims from infringement in circumstances where  
18       law enforcement cannot determine how many times  
19       copyrighted material is reproduced or distributed.

20       (c) PROMULGATION.—The Commission may promul-  
21       gate the guidelines or amendments under this section in  
22       accordance with the procedures set forth in section 21(a)  
23       of the Sentencing Act of 1987, as though the authority  
24       under that Act had not expired.

1 **SEC. 212. EXEMPTION FROM INFRINGEMENT FOR SKIPPING**  
2 **AUDIO AND VIDEO CONTENT IN MOTION PIC-**  
3 **TURES.**

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

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

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

12 (2) in paragraph (10), by striking the period at  
13 the end and inserting “; and”;

14 (3) by inserting after paragraph (10) the fol-  
15 lowing:

16 “(11) the making imperceptible, by or at the di-  
17 rection of a member of a private household, of lim-  
18 ited portions of audio or video content of a motion  
19 picture, during a performance in or transmitted to  
20 that household for private home viewing, from an  
21 authorized copy of the motion picture, or the cre-  
22 ation or provision of a computer program or other  
23 technology that enables such making imperceptible  
24 and that is designed and marketed for such use at  
25 the direction of a member of a private household,  
26 if—

1           “(A) no fixed copy of the altered version of  
2           the motion picture is created by such computer  
3           program or other technology; and

4           “(B) no changes, deletions or additions are  
5           made by such computer program or other tech-  
6           nology to commercial advertisements, or to net-  
7           work or station promotional announcements,  
8           that would otherwise be performed or displayed  
9           before, during or after the performance of the  
10          motion picture.”; and

11          (4) by adding at the end the following:

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

16          (c) EXEMPTION FROM TRADEMARK INFRINGE-  
17          MENT.—Section 32 of the Trademark Act of 1946 (15  
18          U.S.C. 1114) is amended by adding at the end the fol-  
19          lowing:

20          “(3)(A) Any person who engages in the conduct de-  
21          scribed in paragraph (11) of section 110 of title 17,  
22          United States Code, and who complies with the require-  
23          ments set forth in that paragraph is not liable on account  
24          of such conduct for a violation of any right under this Act.  
25          This subparagraph does not preclude liability of a person

1 for conduct not described in paragraph (11) of section 110  
2 of title 17, United States Code, even if that person also  
3 engages in conduct described in paragraph (11) of section  
4 110 of such title.

5 “(B) A manufacturer, licensee, or licensor of tech-  
6 nology that enables the making of limited portions of  
7 audio or video content of a motion picture imperceptible  
8 as described in subparagraph (A) is not liable on account  
9 of such manufacture or license for a violation of any right  
10 under this Act, if such manufacturer, licensee, or licensor  
11 ensures that the technology provides a clear and con-  
12 spicuous notice at the beginning of each performance that  
13 the performance of the motion picture is altered from the  
14 performance intended by the director or copyright holder  
15 of the motion picture. The limitations on liability in sub-  
16 paragraphs (A) and (B) shall not apply to a manufacturer,  
17 licensee, or licensor of technology that fails to comply with  
18 this paragraph.

19 “(C) The requirement under subparagraph (B) to  
20 provide notice shall apply only with respect to technology  
21 manufactured after the end of the 180-day period begin-  
22 ning on the date of the enactment of the Family Movie  
23 Act of 2004.”.

24 (d) DEFINITION.—In this section, the term “Trade-  
25 mark Act of 1946” means the Act entitled “An Act to

1 provide for the registration and protection of trademarks  
2 used in commerce, to carry out the provisions of certain  
3 international conventions, and for other purposes”, ap-  
4 proved July 5, 1946 (15 U.S.C. 1051 et seq.).

## 5 **Subtitle B—Miscellaneous**

### 6 **SEC. 221. DESIGNATION OF NATIONAL TREE.**

7 (a) DESIGNATION.—Chapter 3 of title 36, United  
8 States Code, is amended by adding at the end the fol-  
9 lowing:

#### 10 **“§ 305. National tree**

11 “The tree genus *Quercus*, commonly known as the  
12 oak tree, is the national tree.”.

13 (b) CONFORMING AMENDMENTS.—Such title is  
14 amended—

15 (1) in the table of contents for part A of sub-  
16 title I, by striking “, **and March**” and inserting  
17 **“March, and Tree”**;

18 (2) in the chapter heading for chapter 3, by  
19 striking “, AND MARCH” and inserting “MARCH,  
20 AND TREE”; and

21 (3) in the table of sections for chapter 3, by  
22 adding at the end the following:

“305. National tree.”.

1 **TITLE III—PROTECTING INTEL-**  
2 **LECTUAL RIGHTS AGAINST**  
3 **THEFT AND EXPROPRIATION**

4 **SEC. 301. SHORT TITLE.**

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

7 **SEC. 302. AUTHORIZATION OF CIVIL COPYRIGHT ENFORCE-**  
8 **MENT BY ATTORNEY GENERAL.**

9 (a) IN GENERAL.—Chapter 5 of title 17, United  
10 States Code, is amended by inserting after section 506 the  
11 following:

12 **“§ 506a. Civil penalties for violations of section 506**

13 “(a) IN GENERAL.—In lieu of a criminal action under  
14 section 506, the Attorney General may commence a civil  
15 action in the appropriate United States district court  
16 against any person who engages in conduct constituting  
17 an offense under section 506. Upon proof of such conduct  
18 by a preponderance of the evidence, such person shall be  
19 subject to a civil penalty under section 504 which shall  
20 be in an amount equal to the amount which would be  
21 awarded under section 3663(a)(1)(B) of title 18 and res-  
22 titution to the copyright owner aggrieved by the conduct.

23 “(b) OTHER REMEDIES.—

24 “(1) IN GENERAL.—Imposition of a civil pen-  
25 alty under this section does not preclude any other

1 criminal or civil statutory, injunctive, common law or  
2 administrative remedy, which is available by law to  
3 the United States or any other person;

4 “(2) OFFSET.—Any restitution received by a  
5 copyright owner as a result of a civil action brought  
6 under this section shall be offset against any award  
7 of damages in a subsequent copyright infringement  
8 civil action by that copyright owner for the conduct  
9 that gave rise to the civil action brought under this  
10 section.”.

11 (b) DAMAGES AND PROFITS.—Section 504 of title 17,  
12 United States Code, is amended—

13 (1) in subsection (b)—

14 (A) in the first sentence—

15 (i) by inserting “, or the Attorney  
16 General in a civil action,” after “The copy-  
17 right owner”; and

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

20 (B) in the second sentence by inserting “,  
21 or the Attorney General in a civil action,” after  
22 “the copyright owner”; and

23 (2) in subsection (c)—

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

4 (B) in paragraph (2), by inserting “, or  
5 the Attorney General in a civil action,” after  
6 “the copyright owner”.

7 (c) **TECHNICAL AND CONFORMING AMENDMENT.**—  
8 The table of sections for chapter 5 of title 17, United  
9 States Code, is amended by inserting after the item relat-  
10 ing to section 506 the following:

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

11 **SEC. 303. AUTHORIZATION OF FUNDING FOR TRAINING**  
12 **AND PILOT PROGRAM.**

13 (a) **TRAINING AND PILOT PROGRAM.**—Not later than  
14 180 days after enactment of this Act, the Attorney Gen-  
15 eral shall develop a program to ensure effective implemen-  
16 tation and use of the authority for civil enforcement of  
17 the copyright laws by—

18 (1) establishing training programs, including  
19 practical training and written materials, for qualified  
20 personnel from the Department of Justice and  
21 United States Attorneys Offices to educate and in-  
22 form such personnel about—

23 (A) resource information on intellectual  
24 property and the legal framework established  
25 both to protect and encourage creative works as

1 well as legitimate uses of information and  
2 rights under the first amendment of the United  
3 States Constitution;

4 (B) the technological challenges to pro-  
5 tecting digital copyrighted works from online pi-  
6 racy;

7 (C) guidance on and support for bringing  
8 copyright enforcement actions against persons  
9 engaging in infringing conduct, including model  
10 charging documents and related litigation mate-  
11 rials;

12 (D) strategic issues in copyright enforce-  
13 ment actions, including whether to proceed in a  
14 criminal or a civil action;

15 (E) how to employ and leverage the exper-  
16 tise of technical experts in computer forensics;

17 (F) the collection and preservation of elec-  
18 tronic data in a forensically sound manner for  
19 use in court proceedings;

20 (G) the role of the victim copyright owner  
21 in providing relevant information for enforce-  
22 ment actions and in the computation of dam-  
23 ages; and

1 (H) the appropriate use of injunctions, im-  
2 poundment, forfeiture, and related authorities  
3 in copyright law;

4 (2) designating personnel from at least 4  
5 United States Attorneys Offices to participate in a  
6 pilot program designed to implement the civil en-  
7 forcement authority of the Attorney General under  
8 section 506a of title 17, United States Code, as  
9 added by this title; and

10 (3) reporting to Congress annually on—

11 (A) the use of the civil enforcement au-  
12 thority of the Attorney General under section  
13 506a of title 17, United States Code, as added  
14 by this title; and

15 (B) the progress made in implementing the  
16 training and pilot programs described under  
17 paragraphs (1) and (2) of this subsection.

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

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

1 (A) the number of investigative matters re-  
2 ceived by the Department of Justice and United  
3 States Attorneys Offices;

4 (B) the number of defendants involved in  
5 those matters;

6 (C) the number of civil actions filed and  
7 the number of defendants involved;

8 (D) the number of civil actions resolved or  
9 terminated;

10 (E) the number of defendants involved in  
11 those civil actions;

12 (F) the disposition of those civil actions,  
13 including whether the civil actions were settled,  
14 dismissed, or resolved after a trial;

15 (G) the dollar value of any civil penalty im-  
16 posed and the amount remitted to any copy-  
17 right owner; and

18 (H) other information that the Attorney  
19 General may consider relevant to inform Con-  
20 gress on the effective use of the civil enforce-  
21 ment authority;

22 (2) a description of the training program and  
23 the number of personnel who participated in the pro-  
24 gram; and

1           (3) the locations of the United States Attorneys  
2           Offices designated to participate in the pilot pro-  
3           gram.

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

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

11          **SEC. 401. SHORT TITLE.**

12          This subtitle may be cited as the “National Film  
13          Preservation Act of 2004”.

14          **SEC. 402. REAUTHORIZATION AND AMENDMENT.**

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

18                 (1) in subsection (b)—

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

22                         (B) by striking “film copies” each place  
23                         that term appears and inserting “film or other  
24                         approved copies”; and

1 (C) in the third sentence, by striking  
2 “copyrighted” and inserting “copyrighted, mass  
3 distributed, broadcast, or published”; and  
4 (2) by adding at the end the following:

5 “(c) COORDINATION OF PROGRAM WITH OTHER  
6 COLLECTION, PRESERVATION, AND ACCESSIBILITY AC-  
7 TIVITIES.—In carrying out the comprehensive national  
8 film preservation program for motion pictures established  
9 under the National Film Preservation Act of 1992, the  
10 Librarian, in consultation with the Board established pur-  
11 suant to section 104, and in accordance with title 17,  
12 United States Code, shall—

13 “(1) carry out activities to make films included  
14 in the National Film registry more broadly acces-  
15 sible for research and educational purposes, and to  
16 generate public awareness and support of the Reg-  
17 istry and the comprehensive national film preserva-  
18 tion program;

19 “(2) review the comprehensive national film  
20 preservation plan, and amend it to the extent nec-  
21 essary to ensure that it addresses technological ad-  
22 vances in the preservation and storage of, and access  
23 to film collections in multiple formats; and

24 “(3) wherever possible, undertake expanded ini-  
25 tiatives to ensure the preservation of the moving

1 image heritage of the United States, including film,  
2 videotape, television, and born digital moving image  
3 formats, by supporting the work of the National  
4 Audio-Visual Conservation Center of the Library of  
5 Congress, and other appropriate nonprofit archival  
6 and preservation organizations.”.

7 (b) NATIONAL FILM PRESERVATION BOARD.—Sec-  
8 tion 104 of the National Film Preservation Act of 1996  
9 (2 U.S.C. 179n) is amended—

10 (1) in subsection (a)(1), by striking “20” and  
11 inserting “22”;

12 (2) in subsection (a)(2), by striking “three”  
13 and inserting “5”;

14 (3) in subsection (d), by striking “11” and in-  
15 sserting “12”; and

16 (4) by striking subsection (e) and inserting the  
17 following:

18 “(e) REIMBURSEMENT OF EXPENSES.—Members of  
19 the Board shall serve without pay, but may receive travel  
20 expenses, including per diem in lieu of subsistence, in ac-  
21 cordance with sections 5702 and 5703 of title 5, United  
22 States Code.”.

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

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

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

9                   “(2) the terms of any agreements between the  
10 Librarian and persons who hold copyrights to such  
11 audiovisual works.”.

12           (d) USE OF SEAL.—Section 107 (a) of the National  
13 Film Preservation Act of 1996 (2 U.S.C. 179q) is  
14 amended—

15                   (1) in paragraph (1), by inserting “in any for-  
16 mat” after “or any copy”; and

17                   (2) in paragraph (2), by striking “or film copy”  
18 and inserting “in any format”.

19           (e) AUTHORIZATION OF APPROPRIATIONS.—Section  
20 112 of the National Film Preservation Act of 1996 (2  
21 U.S.C. 179v) is amended by striking “\$250,000” and in-  
22 serting “\$200,000”.

23           (f) EFFECTIVE DATE.—Section 113 of the National  
24 Film Preservation Act of 1996 (2 U.S.C. 179w) is amend-  
25 ed by striking “7” and inserting “11”.

1 **Subtitle B—Reauthorization of the**  
2 **National Film Preservation**  
3 **Foundation**

4 **SEC. 411. SHORT TITLE.**

5 This subtitle may be cited as the “National Film  
6 Preservation Foundation Reauthorization Act of 2004”.

7 **SEC. 412. REAUTHORIZATION AND AMENDMENT.**

8 (a) BOARD OF DIRECTORS.—Section 151703 of title  
9 36, United States Code, is amended—

10 (1) in subsection (b)(2)(A), by striking “nine”  
11 and inserting “12”; and

12 (2) in subsection (b)(4), by striking the second  
13 sentence and inserting “There shall be no limit to  
14 the number of terms to which any individual may be  
15 appointed.”.

16 (b) POWERS.—Section 151705 of title 36, United  
17 States Code, is amended in subsection (b) by striking  
18 “District of Columbia” and inserting “the jurisdiction in  
19 which the principal office of the corporation is located”.

20 (c) PRINCIPAL OFFICE.—Section 151706 of title 36,  
21 United States Code, is amended by inserting “, or another  
22 place as determined by the board of directors” after “Dis-  
23 trict of Columbia”.

24 (d) AUTHORIZATION OF APPROPRIATIONS.—Section  
25 151711 of title 36, United States Code, is amended by

1 striking subsections (a) and (b) and inserting the fol-  
2 lowing:

3       “(a) AUTHORIZATION OF APPROPRIATIONS.—There  
4 are authorized to be appropriated to the Library of Con-  
5 gress amounts necessary to carry out this chapter, not to  
6 exceed \$250,000 for each of the fiscal years 2005 and  
7 2006, and not to exceed \$400,000 for fiscal year 2007.  
8 These amounts are to be made available to the corporation  
9 to match any private contributions (whether in currency,  
10 services, or property) made to the corporation by private  
11 persons and State and local governments.

12       “(b) LIMITATION RELATED TO ADMINISTRATIVE EX-  
13 PENSES.—Amounts authorized under this section may not  
14 be used by the corporation for management and general  
15 or fundraising expenses as reported to the Internal Rev-  
16 enue Service as part of an annual information return re-  
17 quired under the Internal Revenue Code of 1986.”.

18       **TITLE V—PRESERVATION OF**  
19                   **ORPHAN WORKS**

20       **SEC. 501. SHORT TITLE.**

21       This title may be cited as the “ Preservation of Or-  
22 phan Works Act”.

1 **SEC. 502. REPRODUCTION OF COPYRIGHTED WORKS BY LI-**  
2 **BRARIES AND ARCHIVES.**

3 Section 108(i) of title 17, United States Code, is  
4 amended by striking “(b) and (c)” and inserting “(b), (c),  
5 and (h)”.

6 **TITLE VI—ENHANCING FEDERAL**  
7 **OBSCENITY REPORTING AND**  
8 **COPYRIGHT ENFORCEMENT**

9 **SEC. 601. SHORT TITLE.**

10 This title may be cited as the “Enhancing Federal  
11 Obscenity Reporting and Copyright Enforcement Act of  
12 2004”.

13 **SEC. 602. HARMLESS ERRORS IN REGISTRATION CERTIFI-**  
14 **CATES.**

15 (a) IN GENERAL.—Section 411 of title 17, United  
16 States Code, is amended—

17 (1) by redesignating subsection (b) as sub-  
18 section (c); and

19 (2) inserting after subsection (a) the following:

20 “(b)(1) A certificate of registration shall satisfy the  
21 requirements of this section and section 412 irrespective  
22 of any inaccurate information therein, unless—

23 “(A) the inaccurate information was included  
24 on the application for copyright registration with  
25 knowledge that it was inaccurate; and

1           “(B) the inaccuracy of the information, if  
2           known, would have caused the Register of Copy-  
3           rights to refuse registration.

4           “(2) In any case in which inaccuracies described  
5           under paragraph (1) are alleged, the court shall request  
6           the Register of Copyrights to advise the court whether the  
7           inaccuracy of the information, if known, would have  
8           caused the Register of Copyrights to refuse registration.”.

9           (b) TECHNICAL AND CONFORMING AMENDMENT.—  
10          Section 412 of title 17, United States Code, is amended  
11          by striking “section 411(b)” and inserting “section  
12          411(c)”.

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

14          Section 504(c)(1) of title 17, United States Code, is  
15          amended in the second sentence by inserting before the  
16          period “, except that the court in its discretion may deter-  
17          mine that such parts are separate works if the court con-  
18          cludes that they are distinct works having independent  
19          economic value”.

20          **SEC. 604. REPORT TO CONGRESS.**

21          The Attorney General shall include in the report of  
22          the Attorney General to Congress on the business of the  
23          Department of Justice, prepared under section 522 of title  
24          28, United States Code, the number of misdemeanor pros-  
25          ecutions and the number of felony prosecutions under sec-

1 tions 1462, 1464, 1465, 1466, 1466A, 1470, 2252,  
2 2252A, 2252B, 2260, 2318, 2319, 2319A, and 2320 of  
3 title 18, United States Code, commenced and concluded  
4 during the last preceding fiscal year, including, in the case  
5 of those offenses where applicable, detailed information  
6 concerning—

7 (1) the types of works involved;

8 (2) the tangible media of expression and means  
9 of reproduction and distribution involved; and

10 (3) in the case of prosecutions concluded, the  
11 disposition of such prosecutions, such as the number  
12 of convictions and acquittals, and the sentences im-  
13 posed.