

107TH CONGRESS
2^D SESSION

H. R. 5057

To prevent and punish counterfeiting and copyright piracy, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 27, 2002

Mr. SMITH of Texas (for himself, Mr. KELLER, Mr. SCOTT, Mr. SCHIFF, Mr. ISSA, and Mr. DOGGETT) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To prevent and punish counterfeiting and copyright piracy,
and for other purposes.

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 “Intellectual Property
5 Protection Act of 2002”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) American innovation, and the protection of
9 that innovation by the government, has been a crit-

1 ical component of the economic growth of this Na-
2 tion throughout the history of the Nation;

3 (2) copyright-based industries represent one of
4 the most valuable economic assets of this country,
5 contributing over 5 percent of the gross domestic
6 product of the United States and creating significant
7 job growth and tax revenues;

8 (3) the American intellectual property sector
9 employs approximately 4,300,000 people, rep-
10 resenting over 3 percent of total United States em-
11 ployment;

12 (4) the proliferation of organized criminal coun-
13 terfeiting enterprises threatens the economic growth
14 of United States copyright industries;

15 (5) in 2001, the United States entertainment
16 software industry lost \$1,800,000,000 in revenue,
17 and the business software industry lost
18 \$11,000,000,000 worldwide, due to piracy;

19 (6) in 2001, the motion picture industry lost
20 \$3,000,000,000 in potential worldwide revenue, the
21 music industry lost \$4,300,000,000 worldwide, and
22 the publishing industry lost \$636,000,000 world-
23 wide, due to piracy, and these figures do not include
24 losses due to online piracy;

1 (7) the American intellectual property sector
2 has invested millions of dollars to develop highly so-
3 phisticated physical authentication features that as-
4 sist consumers and law enforcement in distin-
5 guishing genuine intellectual property products and
6 packaging from counterfeits;

7 (8) in order to thwart these industry efforts,
8 counterfeiters traffic in, and tamper with, genuine
9 physical authentication features, for example, by ob-
10 taining genuine physical authentication features
11 through illicit means and then commingling these
12 features with counterfeit software or packaging;

13 (9) Federal law does not provide adequate civil
14 and criminal remedies to combat tampering activities
15 that directly facilitate counterfeiting crimes; and

16 (10) in order to strengthen Federal enforce-
17 ment against counterfeiting of copyrighted works,
18 Congress must enact legislation that—

19 (A) prohibits trafficking in, and tampering
20 with, physical authentication features of copy-
21 righted works; and

22 (B) permits aggrieved parties an appro-
23 priate civil cause of action.

1 **SEC. 3. PROHIBITION AGAINST TRAFFICKING IN ILLICIT**
2 **PHYSICAL AUTHENTICATION FEATURES.**

3 (a) IN GENERAL.—Section 2318 of title 18, United
4 States Code, is amended—

5 (1) by striking the heading and inserting
6 **“TRAFFICKING IN COUNTERFEIT LABELS, IL-**
7 **LICIT PHYSICAL AUTHENTICATION FEATURES,**
8 **OR COUNTERFEIT DOCUMENTATION OR PACK-**
9 **AGING”;**

10 (2) by striking subsection (a) and inserting the
11 following:

12 “(a) Whoever, in any of the circumstances described
13 in subsection (c), knowingly traffics in—

14 “(1) a counterfeit label affixed to, or designed
15 to be affixed to—

16 “(A) a phonorecord;

17 “(B) a copy of a computer program;

18 “(C) a copy of a motion picture or other
19 audiovisual work; or

20 “(D) documentation or packaging;

21 “(2) an illicit physical authentication feature af-
22 fixed to or embedded in, or designed to be affixed
23 to or embedded in—

24 “(A) a phonorecord;

25 “(B) a copy of a computer program;

1 “(C) a copy of a motion picture or other
2 audiovisual work; or

3 “(D) documentation or packaging; or

4 “(3) counterfeit documentation or packaging,
5 shall be fined under this title or imprisoned for not more
6 than 5 years, or both.”;

7 (3) in subsection (b)—

8 (A) in paragraph (2), by striking “and” at
9 the end;

10 (B) in paragraph (3)—

11 (i) by striking “and ‘audiovisual work’
12 have” and inserting the following: “,
13 ‘audiovisual work’, ‘sound recording’, and
14 ‘copyright owner’ have”; and

15 (ii) by striking the period at the end
16 and inserting a semicolon; and

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

18 “(4) the term ‘physical authentication feature’
19 means any visually perceptible hologram, watermark,
20 certification, symbol, image, sequence of numbers or
21 letters, or other physical feature that either individ-
22 ually or in combination with another feature is used
23 by the respective copyright owner to verify that a
24 phonorecord, a copy of a computer program, a copy
25 of a motion picture or other audiovisual work, or

1 documentation or packaging is not counterfeit or
2 otherwise infringing of any copyright;

3 “(5) the term ‘documentation or packaging’
4 means documentation or packaging for a phono-
5 record, copy of a computer program, or copy of a
6 motion picture or other audiovisual work; and

7 “(6) the term ‘illicit physical authentication fea-
8 ture’ means a physical authentication feature,
9 that—

10 “(A) is genuine in origin, but, without the
11 authorization of the respective copyright owner,
12 has been tampered with or altered for the pur-
13 pose of inducing a third party to reproduce or
14 accept distribution of—

15 “(i) a phonorecord;

16 “(ii) a copy of a computer program;

17 “(iii) a copy of a motion picture or
18 other audiovisual work; or

19 “(iv) documentation or packaging;

20 where such reproduction or distribution violates
21 the rights of the copyright owner under title 17;

22 “(B) is genuine, but has been distributed,
23 or is intended for distribution, without the au-
24 thorization of the respective copyright owner
25 and not in connection with the lawfully made

1 copy or phonorecord to which such physical au-
2 thentication feature was intended to be affixed
3 or embedded by the respective copyright owner;
4 or

5 “(C) appears to be genuine, but is not.”;
6 (4) in subsection (c)—

7 (A) by striking paragraph (3) and insert-
8 ing the following:

9 “(3) the counterfeit label or illicit physical au-
10 thentication feature is affixed to, is embedded in, or
11 encloses, or is designed to be affixed to, to be em-
12 bedded in, or to enclose—

13 “(A) a phonorecord of a copyrighted sound
14 recording;

15 “(B) a copy of a copyrighted computer
16 program;

17 “(C) a copy of a copyrighted motion pic-
18 ture or other audiovisual work; or

19 “(D) copyrighted documentation or pack-
20 aging; or”; and

21 (B) in paragraph (4), by striking “for a
22 computer program”;

23 (5) in subsection (d)—

1 (A) by inserting “or illicit physical authen-
2 tication features” after “counterfeit labels”
3 each place it appears;

4 (B) by inserting “or illicit physical authen-
5 tication features” after “such labels”; and

6 (C) by inserting before the period at the
7 end the following: “, and of any equipment, de-
8 vice, or materials used to manufacture, repro-
9 duce, or assemble the counterfeit labels or illicit
10 physical authentication features”; and

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

12 “(f) CIVIL REMEDIES FOR VIOLATION.—

13 “(1) IN GENERAL.—Any copyright owner who
14 is injured by a violation of this section or is threat-
15 ened with injury, may bring a civil action in an ap-
16 propriate United States district court.

17 “(2) DISCRETION OF COURT.—In any action
18 brought under paragraph (1), the court—

19 “(A) may grant 1 or more temporary or
20 permanent injunctions on such terms as the
21 court determines to be reasonable to prevent or
22 restrain violations of this section;

23 “(B) at any time while the action is pend-
24 ing, may order the impounding, on such terms
25 as the court determines to be reasonable, of any

1 article that is in the custody or control of the
2 alleged violator and that the court has reason-
3 able cause to believe was involved in a violation
4 of this section; and

5 “(C) may award to the injured party—

6 “(i) reasonable attorney fees and
7 costs; and

8 “(ii)(I) actual damages and any addi-
9 tional profits of the violator, as provided
10 by paragraph (3); or

11 “(II) statutory damages, as provided
12 by paragraph (4).

13 “(3) ACTUAL DAMAGES AND PROFITS.—

14 “(A) IN GENERAL.—The injured party is
15 entitled to recover—

16 “(i) the actual damages suffered by
17 the injured party as a result of a violation
18 of this section, as provided by subpara-
19 graph (B); and

20 “(ii) any profits of the violator that
21 are attributable to a violation of this sec-
22 tion and are not taken into account in
23 computing the actual damages.

1 “(B) CALCULATION OF DAMAGES.—The
2 court shall calculate actual damages by
3 multiplying—

4 “(i) the value of the phonorecords or
5 copies to which counterfeit labels, illicit
6 physical authentication features, or coun-
7 terfeit documentation or packaging were
8 affixed or embedded, or designed to be af-
9 fixed or embedded; by

10 “(ii) the number of phonorecords or
11 copies to which counterfeit labels, illicit
12 physical authentication features, or coun-
13 terfeit documentation or packaging were
14 affixed or embedded, or designed to be af-
15 fixed or embedded,

16 unless such calculation would underestimate the
17 actual harm suffered by the copyright owner.

18 “(C) DEFINITION.—For purposes of this
19 paragraph, the term ‘value of the phonorecord
20 or copy’ means—

21 “(i) the retail value of an authorized
22 phonorecord of a copyrighted sound record-
23 ing;

1 “(ii) the retail value of an authorized
2 copy of a copyrighted computer program;
3 or

4 “(iii) the retail value of an authorized
5 copy of a copyrighted motion picture or
6 other audiovisual work.

7 “(4) STATUTORY DAMAGES.—The injured party
8 may elect, at any time before final judgment is ren-
9 dered, to recover, instead of actual damages and
10 profits, an award of statutory damages for each vio-
11 lation of this section in a sum of not less than
12 \$2,500 or more than \$25,000, as the court considers
13 appropriate.

14 “(5) SUBSEQUENT VIOLATION.—The court may
15 increase an award of damages under this subsection
16 by 3 times the amount that would otherwise be
17 awarded, as the court considers appropriate, if the
18 court finds that a person has subsequently violated
19 this section within 3 years after a final judgment
20 was entered against that person for a violation of
21 this section.

22 “(6) LIMITATION ON ACTIONS.—A civil action
23 may not be commenced under this section unless it
24 is commenced within 3 years after the date on which
25 the claimant discovers the violation.

1 “(g) OTHER RIGHTS NOT AFFECTED.—Nothing in
2 this section shall enlarge, diminish, or otherwise affect li-
3 ability under section 1201 or 1202 of title 17.”.

4 (b) TECHNICAL AND CONFORMING AMENDMENT.—
5 The item relating to section 2318 in the table of sections
6 at the beginning of chapter 113 of title 18, United States
7 Code, is amended to read as follows:

“2318. Trafficking in counterfeit labels, illicit authentication features, or coun-
terfeit documentation or packaging.”.

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