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105TH CONGRESS  
1ST SESSION

# S. 1044

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

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IN THE SENATE OF THE UNITED STATES

JULY 21, 1997

Mr. LEAHY (for himself and Mr. KYL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

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

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 "Criminal Copyright  
5 Improvement Act of 1997".

6 **SEC. 2. CRIMINAL INFRINGEMENT OF COPYRIGHTS.**

7 (a) DEFINITION OF FINANCIAL GAIN.—Section 101  
8 of title 17, United States Code, is amended by inserting

1 after the undesignated paragraph relating to the term  
2 “display”, the following new paragraph:

3 “The term ‘financial gain’ includes receipt of  
4 anything of value, including the receipt of other  
5 copyrighted works.”.

6 (b) CRIMINAL OFFENSES.—Section 506(a) of title  
7 17, United States Code, is amended to read as follows:

8 “(a) CRIMINAL INFRINGEMENT.—Any person who in-  
9 fringes a copyright willfully either—

10 “(1) for purposes of commercial advantage or  
11 private financial gain; or

12 “(2) by the reproduction or distribution, includ-  
13 ing by electronic means, during any 180-day period,  
14 of 10 or more copies, of 1 or more copyrighted  
15 works, and the total retail value of the copyrighted  
16 work or the total retail value of the copies of such  
17 work is \$5,000 or more,

18 shall be punished as provided under section 2319 of title  
19 18.”.

20 (c) LIMITATION ON CRIMINAL PROCEEDINGS.—Sec-  
21 tion 507(a) of title 17, United States Code, is amended  
22 by striking “three” and inserting “five”.

23 (d) CRIMINAL INFRINGEMENT OF A COPYRIGHT.—  
24 Section 2319 of title 18, United States Code, is  
25 amended—

1 (1) in subsection (b)—

2 (A) in the matter preceding paragraph (1),  
3 by striking “subsection (a) of this section” and  
4 inserting “section 506(a)(1) of title 17”;

5 (B) in paragraph (1)—

6 (i) by inserting “including by elec-  
7 tronic means,” after “if the offense con-  
8 sists of the reproduction or distribution,”;  
9 and

10 (ii) by striking “with a retail value of  
11 more than \$2,500” and inserting “which  
12 have a total retail value of more than  
13 \$5,000”; and

14 (C) in paragraph (3) by inserting before  
15 the semicolon “under this subsection”; and

16 (2) by redesignating subsection (c) as sub-  
17 section (e) and inserting after subsection (b) the  
18 following:

19 “(c) Any person who commits an offense under sec-  
20 tion 506(a)(2) of title 17—

21 “(1) shall be imprisoned not more than 3 years,  
22 or fined in the amount set forth in this title, or both,  
23 if the offense consists of the reproduction or dis-  
24 tribution, including by electronic means, during any  
25 180-day period, of 10 or more copies of 1 or more

1 copyrighted works, and the total retail value of the  
2 copyrighted work or the total retail value of the cop-  
3 ies of such work is \$10,000 or more;

4 “(2) shall be imprisoned not more than 1 year  
5 or fined in the amount set forth in this title, or both,  
6 if the offense consists of the reproduction or dis-  
7 tribution, including by electronic means during any  
8 180-day period, of 10 or more copies of 1 or more  
9 copyrighted works, and the total retail value of the  
10 copyrighted works or the total retail value of the  
11 copies of such works is \$5,000 or more; and

12 “(3) shall be imprisoned not more than 6 years,  
13 or fined in the amount set forth in this title, or both,  
14 if the offense is a second or subsequent felony of-  
15 fense under paragraph (1).

16 “(d)(1) During preparation of the presentence report  
17 pursuant to rule 32(c) of the Federal Rules of Criminal  
18 Procedure, victims of the offense shall be permitted to  
19 submit, and the probation officer shall receive, a victim  
20 impact statement that identifies the victim of the offense  
21 and the extent and scope of the injury and loss suffered  
22 by the victim, including the estimated economic impact of  
23 the offense on that victim.

24 “(2) Persons permitted to submit victim impact  
25 statements shall include—

1           “(A) producers and sellers of legitimate works  
2 affected by conduct involved in the offense;

3           “(B) holders of intellectual property rights in  
4 such works; and

5           “(C) the legal representatives of such produc-  
6 ers, sellers, and holders.”.

7           (e) UNAUTHORIZED FIXATION AND TRAFFICKING OF  
8 LIVE MUSICAL PERFORMANCES.—Section 2319A of title  
9 18, United States Code, is amended—

10           (1) by redesignating subsections (d) and (e) as  
11 subsections (e) and (f), respectively; and

12           (2) by inserting after subsection (c) the  
13 following:

14           “(d) VICTIM IMPACT STATEMENT.—(1) During prep-  
15 aration of the presentence report pursuant to rule 32(c)  
16 of the Federal Rules of Criminal Procedure, victims of the  
17 offense shall be permitted to submit, and the probation  
18 officer shall receive, a victim impact statement that identi-  
19 fies the victim of the offense and the extent and scope  
20 of the injury and loss suffered by the victim, including  
21 the estimated economic impact of the offense on that  
22 victim.

23           “(2) Persons permitted to submit victim impact  
24 statements shall include—

1           “(A) producers and sellers of legitimate works  
2           affected by conduct involved in the offense;

3           “(B) holders of intellectual property rights in  
4           such works; and

5           “(C) the legal representatives of such produc-  
6           ers, sellers, and holders.”.

7           (f) **TRAFFICKING IN COUNTERFEIT GOODS OR SERV-**  
8 **ICES.**—Section 2320 of title 18, United States Code, is  
9 amended—

10           (1) by redesignating subsection (d) as sub-  
11           section (f) and transferring such subsection to the  
12           end of the section;

13           (2) by redesignating subsection (e) as sub-  
14           section (d); and

15           (3) by inserting after subsection (d) (as redesign-  
16           ated by paragraph (2) of this subsection) the  
17           following:

18           “(e)(1) During preparation of the presentence report  
19           pursuant to rule 32(e) of the Federal Rules of Criminal  
20           Procedure, victims of the offense shall be permitted to  
21           submit, and the probation officer shall receive, a victim  
22           impact statement that identifies the victim of the offense  
23           and the extent and scope of the injury and loss suffered  
24           by the victim, including the estimated economic impact of  
25           the offense on that victim.

1       “(2) Persons permitted to submit victim impact  
2 statements shall include—

3               “(A) producers and sellers of legitimate goods  
4 or services affected by conduct involved in the  
5 offense;

6               “(B) holders of intellectual property rights in  
7 such goods or services; and

8               “(C) the legal representatives of such produc-  
9 ers, sellers, and holders.”.

10       (g) DIRECTIVE TO SENTENCING COMMISSION.—

11               (1) IN GENERAL.—Under the authority of the  
12 Sentencing Reform Act of 1984 (Public Law 98–  
13 473; 98 Stat. 1987) and section 21 of the Sentenc-  
14 ing Act of 1987 (Public Law 100–182; 101 Stat.  
15 1271; 18 U.S.C. 994 note) (including the authority  
16 to amend the sentencing guidelines and policy state-  
17 ments), the United States Sentencing Commission  
18 shall ensure that the applicable guideline range for  
19 a defendant convicted of a crime against intellectual  
20 property (including offenses set forth at section  
21 506(a) of title 17, United States Code, and sections  
22 2319, 2319A and 2320 of title 18, United States  
23 Code)—

24               (A) is sufficiently stringent to deter such a  
25 crime;



1           (B) adequately reflects the additional con-  
2           siderations set forth in paragraph (2) of this  
3           subsection; and

4           (C) takes into account more than minimal  
5           planning and other aggravating factors.

6           (2) IMPLEMENTATION.—In implementing para-  
7           graph (1), the Sentencing Commission shall ensure  
8           that the guidelines provide for consideration of the  
9           retail value of the legitimate items that are infringed  
10          upon and the quantity of items so infringed.

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# **Document No. 11**

