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104TH CONGRESS  
1ST SESSION

# S. 1122

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

AUGUST 4 (legislative day, JULY 10), 1995

Mr. LEAHY (for himself and Mr. FEINGOLD) 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 1995".

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 transmission, or assisting others in such re-  
14 production or distribution, of 1 or more copies, of 1  
15 or more copyrighted works, which have a total retail  
16 value of \$5,000 or more,

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

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

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

1 (1) in subsection (b)—

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

6 (B) in paragraph (1)—

7 (i) by inserting “including by trans-  
8 mission, or assisting others in such repro-  
9 duction or distribution,” after “if the of-  
10 fense consists of the reproduction or dis-  
11 tribution,”;

12 (ii) by striking out “with a retail  
13 value of more than \$2,500” and inserting  
14 in lieu thereof “which have a total retail  
15 value of more than \$5,000”; and

16 (iii) by adding “and” at the end  
17 thereof;

18 (C) by striking out paragraph (2); and

19 (D) by redesignating paragraph (3) as  
20 paragraph (2); and

21 (2) by redesignating subsection (c) as sub-  
22 section (f) and inserting after subsection (b) the fol-  
23 lowing:

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

1           “(1) shall be imprisoned not more than 5 years,  
2           or fined in the amount set forth in this title, or both,  
3           if the offense consists of the reproduction or dis-  
4           tribution, including by transmission, or assisting  
5           others in such reproduction or distribution, of 1 or  
6           more copyrighted works, which have a total retail  
7           value of more than \$10,000; and

8           “(2) shall be imprisoned not more than 1 year,  
9           or fined in the amount set forth in this title, or both,  
10          in any other case.

11          “(d) Any person who commits an offense under sub-  
12          section (a) shall be imprisoned not more than 10 years,  
13          or fined in the amount set forth in this title, or both, if  
14          the offense is a second or subsequent felony offense under  
15          that subsection.

16          “(e)(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 follow-  
13 ing:

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 vic-  
22 tim.

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 (e); and

12           (2) by inserting after subsection (c) the follow-  
13           ing:

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

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

1           “(A) producers and sellers of legitimate goods  
2           or services affected by conduct involved in the of-  
3           fense;

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

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

8           (g) DIRECTIVE TO SENTENCING COMMISSION.—(1)  
9           Under the authority of the Sentencing Reform Act of 1984  
10           (Public Law 98-473; 98 Stat. 1987) and section 21 of  
11           the Sentencing Act of 1987 (Public Law 100-182; 101  
12           Stat. 1271; 18 U.S.C. 994 note) (including the authority  
13           to amend the sentencing guidelines and policy state-  
14           ments), the United States Sentencing Commission shall  
15           ensure that the applicable guideline range for a defendant  
16           convicted of a crime against intellectual property (includ-  
17           ing offenses set forth at section 506(a) of title 17, United  
18           States Code, and sections 2319, 2319A and 2320 of title  
19           18, United States Code) is sufficiently stringent to deter  
20           such a crime, and to adequately reflect the additional con-  
21           siderations set forth in paragraph (2) of this subsection.

22           (2) In implementing paragraph (1), the Sentencing  
23           Commission shall ensure that the guidelines provide for  
24           consideration of the retail value of the legitimate items



- 1 that are infringed upon and the quantity of items so in-
- 2 fringed.

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## **Document No. 12**

