

108TH CONGRESS
1ST SESSION

H. R. 3632

To prevent and punish counterfeiting of copyrighted copies and phonorecords,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 21, 2003

Mr. SMITH of Texas (for himself, Mr. KELLER, Mr. WEXLER, Mr. GOODLATTE, Mr. GALLEGLY, and Mr. CARTER) introduced the following bill;
which was referred to the Committee on the Judiciary

A BILL

To prevent and punish counterfeiting of copyrighted copies
and phonorecords, 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 “Anti-counterfeiting
5 Amendments of 2003”.

6 **SEC. 2. PROHIBITION AGAINST TRAFFICKING IN ANTI-**
7 **COUNTERFEITING COMPONENTS.**

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

1 (1) by striking the section heading and insert-
2 ing the following:

3 **“§ 2318. Trafficking in counterfeit labels or counter-
4 feit documentation or packaging”;**

5 (2) by striking subsection (a) and inserting the
6 following:

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

9 “(1) a counterfeit label affixed to, enclosing, or
10 accompanying, or designed to be affixed to, enclose,
11 or accompany—

12 “(A) a phonorecord;

13 “(B) a copy of a computer program;

14 “(C) a copy of a motion picture or other
15 audiovisual work; or

16 “(D) documentation or packaging; or

17 “(2) counterfeit documentation or packaging,
18 shall be fined under this title or imprisoned for not more
19 than 5 years, or both.”;

20 (3) in subsection (b)—

21 (A) by striking paragraph (1) and insert-
22 ing the following:

23 “(1) the term ‘counterfeit label’ means—

24 “(A) an identifying label or container that
25 appears to be genuine, but is not; or

1 “(B) a genuine certificate, licensing docu-
2 ment, registration card, or similar labeling com-
3 ponent—

4 “(i) that is used by the copyright
5 owner to verify that a phonorecord, a copy
6 of a computer program, a copy of a motion
7 picture or other audiovisual work, or docu-
8 mentation or packaging is not counterfeit
9 or infringing of any copyright; and

10 “(ii) that is, without the authorization
11 of the copyright owner—

12 “(I) distributed or intended for
13 distribution not in connection with the
14 copy or phonorecord to which such la-
15 beling component was intended to be
16 affixed by the respective copyright
17 owner; or

18 “(II) in the case of a computer
19 program, altered or removed to falsify
20 the number of authorized copies or
21 users, type of authorized user, or edi-
22 tion or version of the computer pro-
23 gram;”;

24 (B) in paragraph (2), by striking “and” at
25 the end;

1 (C) in paragraph (3)—

2 (i) by striking “and ‘audiovisual work’
3 have” and inserting the following: “,
4 ‘audiovisual work’, ‘sound recording’, and
5 ‘copyright owner’ have”; and

6 (ii) by striking the period at the end
7 and inserting “; and” ; and

8 (D) by adding at the end the following:

9 “(4) the term ‘documentation or packaging’
10 means documentation or packaging for a phono-
11 record, copy of a computer program, or copy of a
12 motion picture or other audiovisual work.”;

13 (4) in subsection (c)—

14 (A) by striking paragraph (3) and insert-
15 ing the following:

16 “(3) the counterfeit label is affixed to, encloses,
17 or accompanies, or is designed to be affixed to, en-
18 close, or accompany—

19 “(A) a phonorecord of a copyrighted sound
20 recording;

21 “(B) a copy of a copyrighted computer
22 program;

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

1 “(D) copyrighted documentation or pack-
2 aging; or”); and

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

5 (5) in subsection (d), by inserting before the pe-
6 riod at the end the following: “, and of any equip-
7 ment, device, or material used to manufacture, re-
8 produce, or assemble the counterfeit labels”; and

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

10 “(f) CIVIL REMEDIES FOR VIOLATION.—

11 “(1) IN GENERAL.—Any copyright owner who
12 is injured, or is threatened with injury, by a viola-
13 tion of this section may bring a civil action in an ap-
14 propriate United States district court.

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

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

21 “(B) at any time while the action is pend-
22 ing, may order the impounding, on such terms
23 as the court determines to be reasonable, of any
24 article that is in the custody or control of the
25 alleged violator and that the court has reason-

1 able cause to believe was involved in a violation
2 of this section; and

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

4 “(i) reasonable attorney fees and
5 costs; and

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

9 “(II) statutory damages, as provided
10 in paragraph (4).

11 “(3) ACTUAL DAMAGES AND PROFITS.—

12 “(A) IN GENERAL.—The injured party is
13 entitled to recover—

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

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

22 “(B) CALCULATION OF DAMAGES.—The
23 court shall calculate actual damages by multi-
24 plying—

1 “(i) the value of the phonorecords or
2 copies which are, or are intended to be, af-
3 fixed with, enclosed in, or accompanied by
4 any counterfeit labels or counterfeit docu-
5 mentation or packaging, by

6 “(ii) the number of phonorecords or
7 copies which are, or are intended to be, af-
8 fixed with, enclosed in, or accompanied by
9 any counterfeit labels or counterfeit docu-
10 mentation or packaging.

11 “(C) DEFINITION.—For purposes of this
12 paragraph, the term ‘value of the phonorecord
13 or copy’ means—

14 “(i) in the case of a copyrighted
15 sound recording, the retail value of an au-
16 thorized phonorecord of that sound record-
17 ing;

18 “(ii) in the case of a copyrighted com-
19 puter program, the retail value of an au-
20 thorized copy of that computer program;
21 and

22 “(iii) in the case of a copyrighted mo-
23 tion picture or other audiovisual work, the
24 retail value of an authorized copy of that
25 motion picture or audiovisual work.

1 “(4) STATUTORY DAMAGES.—The injured party
2 may elect, at any time before final judgment is ren-
3 dered, to recover, instead of actual damages and
4 profits, an award of statutory damages for each vio-
5 lation of this section in a sum of not less than
6 \$2,500 or more than \$25,000, as the court considers
7 appropriate.

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

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

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

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