

---

H.R. \_\_\_\_

Intellectual Property Protection Act

109<sup>th</sup> Congress

1<sup>st</sup> Session

**H.R. \_\_\_\_**

To strengthen the protection of intellectual property, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

\_\_\_\_ \_\_\_\_, 2005

M\_\_\_\_\_ introduced the following bill, which was referred to the Committee on the Judiciary.

---

---

**A BILL**

To strengthen the protection of intellectual property, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE**

(a) SHORT TITLE- This Act may be cited as the “Intellectual Property Protection Act of 2005.”

**SECTION 2. REGISTRATION IN CIVIL INFRINGEMENT ACTIONS.**

(a) AMENDMENT- Section 411 of title 17, United States Code, is amended—

- (1) in the section heading, by inserting “civil” before “infringement”;
- (2) in subsection (a), by inserting “civil” before “action” the second time it appears; and
- (3) in subsection (b), by striking “506 and sections 509 and” and inserting “505 and section”.

---

### **SECTION 3. CIVIL REMEDIES FOR INFRINGEMENT.**

(a) AMENDMENT- Section 503 of title 17, United States Code, is amended—

(1) in subsection (a), by striking the final period and inserting “and records documenting the manufacture, sale, or receipt of things involved in such violation. The court shall enter an appropriate protective order with respect to discovery by the applicant of any records that have been seized. The protective order shall provide for appropriate procedures to assure that confidential information contained in such records is not improperly disclosed to the applicant.”

### **SECTION 4. CRIMINAL INFRINGEMENT**

(a) IN GENERAL- Section 506(a)(1) of title 17, United States Code, is amended—

(1) by inserting “or attempts to infringe” before “a copyright” and

(2) by striking the comma after “18” and inserting “-“;

(3) by striking subparagraph (A) and inserting “(A) if the infringement was committed or attempted for purposes of commercial advantage or private financial gain”;

(4) in subparagraph (B), by striking “by” and inserting “if”;

(5) in subparagraph (B), by inserting before “reproduction” “infringement was committed or attempted by”; and

(6) by inserting at the beginning of subparagraph (C) “if the infringement was committed”.

(b) FURTHER AMENDMENT- Section 506(b) of title 17, United States Code, is amended by striking that subsection and inserting the following:

“(b) Forfeiture and destruction; restitution.—

“(1) The following property is subject to forfeiture to the United States-

“(A) any copies or phonorecords manufactured, reproduced, distributed, sold, or otherwise used, intended for use, or possessed with intent to use in violation of section 506(a);

---

“(B) any property constituting or derived from any proceeds obtained directly or indirectly as a result of a violation of subsection (a); and

“(C) any property used, or intended to be used, in any manner or part, to commit or facilitate the commission of a violation of subsection (a), including any plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which the copies or phonorecords described in subparagraph (A) may be reproduced, and any electronic, mechanical, or other devices for manufacturing, reproducing, or assembling such copies or phonorecords.

“(2) The provisions of chapter 46 of title 18 relating to civil forfeitures shall extend to any seizure or civil forfeiture under this section. At the conclusion of the forfeiture proceedings, the court shall order that any forfeited infringing copies or phonorecords, as well as any plates, molds, matrices, masters, tapes, and film negatives by means of which such unauthorized copies or phonorecords may be made, be destroyed or otherwise disposed of according to law.

“(3)(A) The court, in imposing sentence on a person convicted of an offense under this section, shall order, in addition to any other sentence imposed, that the person forfeit to the United States-

“(i) any infringing copies or phonorecords manufactured, reproduced, distributed, sold, or otherwise used, intended for use, or possessed with intent to use in violation of section 506(a);

“(ii) any property constituting or derived from any proceeds obtained, directly or indirectly, as the result of the offense; and

“(iii) any property used, or intended to be used, in any manner or part, to commit or facilitate the commission of a violation of subsection (a), including any plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which the copies or phonorecords described in subparagraph (A) may be reproduced, and any electronic, mechanical, or other devices for manufacturing, reproducing, or assembling such copies or phonorecords.

“(B) The forfeiture of property under subparagraph (A), including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be governed by the procedures set forth in section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), other than subsection (d) of that section. At the conclusion of the forfeiture proceedings, the court shall order that any forfeited infringing copies or phonorecords, as well as any plates, molds, matrices, masters, tapes, and film

---

negatives by means of which such infringing copies or phonorecords may be made, be destroyed or otherwise disposed of according to law.

“(4) When a person is convicted of an offense under this section, the court, pursuant to sections 3556, 3663A, and 3664 of Title 18, United States Code, shall order the person to pay restitution to the copyright owner and any other victim of the offense as an offense against property referred to in section 3663A(c)(1)(A)(ii).”

(c) SEIZURE AND FORFEITURE- Section 509 of title 17, United States Code, is repealed.

## **SECTION 5. IMPORTATION AND EXPORTATION**

(a) IN GENERAL- Chapter 6 of Title 17, United States Code, is amended to read “Manufacturing Requirements, Importation, and Exportation”

(b) AMENDMENT- Section 602(a) of Title 17, United States Code, is amended—

(1) By striking “(1)” and inserting “(A)”;

(2) By striking “(2)” and inserting “(B)”;

(3) By striking “(3)” and inserting “(C)”;

(4) By inserting before “Importation” “(1)”;

(5) By striking, “This subsection does not apply to—”;

(6) By inserting before subparagraph (A) the following:

“(2) Importation into the United States or exportation from the United States, without the authority of the owner of copyright under this title, of copies or phonorecords, the making of which either constituted an infringement of copyright or would have constituted an infringement of copyright if this title had been applicable, is an infringement of the exclusive right to distribute copies or phonorecords under section 106, actionable under sections 501 and 506.

“(3) Exceptions.—This subsection does not apply to—”

(7) By inserting “or exportation” before the first “of” in clause (A);

(8) By inserting in clause (B) “or exportation” before the first comma;

---

(9) By inserting in clause (B) “or exporter” before “and”;

(10) By inserting in clause (B) “or departing from the United States” before the second “with”;

(c) FURTHER AMENDMENT- Section 602 of Title 17, United States Code, is amended in the section heading by inserting “or exportation” before “of copies or phonorecords”.

## **SECTION 6. UNAUTHORIZED FIXATION AND TRAFFICKING**

(a) AMENDMENT- Section 1101(b) of title 17, United States Code, is amended to read as follows:

“Definition.—As used in this section, the term “traffic” means—

“(1) to transport, transfer, or otherwise dispose of, to another, for purposes of commercial advantage or private financial gain, or to make, import, export, obtain control of, or possess, with intent to so transport, transfer, or otherwise dispose of;

“(2) where the term “financial gain” includes the receipt, or expected receipt, of anything of value.”

## **SECTION 7. CIRCUMVENTION OF COPYRIGHT PROTECTION SYSTEMS**

(a) AMENDMENT- Section 1201 of title 17, United States Code, is amended—

(1) in subsection (a)(2), by striking “import,”;

(2) in subsection (a)(3)(A), by striking “and”;

(3) in subsection (a)(3)(B), by striking the period, inserting “; and”;

and by inserting the following:

“(C) the term ‘traffic’ means to transport, transfer, or otherwise dispose of, to another, or to make, import, export, obtain control of, or possess, with intent to so transport, transfer, or otherwise dispose of.”;

(4) in subsection (b)(1), by striking “import,”;

(5) in subsection (b)(2)(A), by striking “and”; and

(6) in subsection (b)(2)(B), by striking the period, inserting “; and” and by inserting the following:

---

“(C) the term ‘traffic’ means to transport, transfer, or otherwise dispose of, to another, or to make, import, export, obtain control of, or possess, with intent to so transport, transfer, or otherwise dispose of.”

## **SECTION 8. DIGITAL MILLENNIUM COPYRIGHT ACT**

(a) IN GENERAL- Section 1204 of title 17, United States Code, is amended by inserting at the end the following:

### **“(d) Forfeiture and destruction; restitution.--**

“(1) The following property is subject to forfeiture to the United States–

“(A) any property constituting or derived from any proceeds obtained directly or indirectly as a result of a violation of subsection (a); and

“(B) any property used or intended to be used in any manner or part to commit or facilitate the commission of a violation of subsection (a).

“(2) The provisions of chapter 46 of title 18 relating to civil forfeitures shall extend to any seizure or civil forfeiture under this section. At the conclusion of the forfeiture proceedings, the court shall order that any property forfeited pursuant to paragraph (1)(B) be destroyed or otherwise disposed of according to law.

“(3)(A) The court, in imposing sentence on a person convicted of an offense under this section, shall order, in addition to any other sentence imposed, that the person forfeit to the United States–

“(i) any property constituting or derived from any proceeds obtained, directly or indirectly, as the result of the offense; and

“(ii) any property used, or intended to be used, in any manner or part, to commit or facilitate the commission of the offense.

“(B) The forfeiture of property under subparagraph (A), including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be governed by the procedures set forth in section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), other than subsection (d) of that section. At the conclusion of the forfeiture proceedings, the court shall order that any implement, device, or

---

equipment used in any manner or part to commit or facilitate the commission of a violation of subsection (a), be destroyed or otherwise disposed of according to law.”

“(4) When a person is convicted of an offense under this section, the court, pursuant to sections 3556, 3663A, and 3664 of Title 18, United States Code, shall order the person to pay restitution to any copyright owner whose rights under this title were violated by the offense, as an offense against property referred to in section 3663A(c)(1)(A)(ii).”

## **SECTION 9. FRAUD IN AUTHENTICATION PROCEDURES**

(a) IN GENERAL- Section 1028(d)(12) of title 18, United States Code, is amended to read as follows:

“(12) the term ‘traffic’ means–

“(A) to transport, transfer, or otherwise dispose of, to another, for purposes of commercial advantage or private financial gain, or to make, import, export, obtain control of, or possess, with intent to so transport, transfer, or otherwise dispose of;

“(B) where the term ‘financial gain’ includes the receipt, or expected receipt, or anything of value.”

## **SECTION 10. FRAUD IN CONNECTION WITH ACCESS DEVICES**

(a) IN GENERAL- Section 1029(e)(5) of title 18, United States Code, is amended to read as follows:

“(5) the term ‘traffic’ means to transport, transfer, or otherwise dispose of, to another, or to make, import, export, obtain control of, or possess, with intent to so transport, transfer, or otherwise dispose of;”.

## **SECTION 11. FORFEITURE UNDER ECONOMIC ESPIONAGE ACT**

(a) IN GENERAL- Section 1834 of title 18, United States Code, is amended–

(1) by striking “(a)” and inserting “(c)”;

(2) by striking “(b)” and inserting “(d)”;

(3) in paragraph (d) as amended, by striking “this section” and inserting “paragraph (c)”;

(4) by inserting at the beginning the following:

---

“(a) The following property is subject to forfeiture to the United States:

“(1) any property that consists of or incorporates any trade secret that is the subject of a violation of this chapter;

“(2) any property constituting or derived from any proceeds obtained directly or indirectly as a result of a violation of this chapter; and

“(3) any property used, or intended to be used, in any manner or part, to commit or to facilitate the commission of a violation of this chapter.

“(b) The provisions of chapter 46 of this title relating to civil forfeitures shall extend to any seizure or civil forfeiture under paragraph (a).”; and

(5) by inserting at the end the following:

“(e) When a person is convicted of an offense under this section, the court, pursuant to sections 3556, 3663A, and 3664, shall order the person to pay restitution to the owner of the trade secret and any other victim of the offense as an offense against property referred to in section 3663A(c)(1)(A)(ii).”.

## **SECTION 12. TRAFFICKING IN COUNTERFEIT LABELS**

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

(1) by making subsection (b)(2) read as follows:

“(2) the term ‘traffic’ means—

“(A) to transport, transfer, or otherwise dispose of, to another, for purposes of commercial advantage or private financial gain, or to make, import, export, obtain control of, or possess, with intent to so transport, transfer, or otherwise dispose of;

“(B) where the term ‘financial gain’ includes the receipt, or expected receipt, of anything of value;”;

(b) AMENDMENT- Section 2318 of title 18, United States Code, is further amended—

(1) by making subsection (d) read as follows:

“(d) Forfeiture and destruction; restitution.

---

“(1) The following property is subject to forfeiture to the United States–

“(A) any counterfeit documentation or packaging, and any counterfeit label or illicit label and any article to which a counterfeit label or illicit label has been affixed, or which a counterfeit label or illicit label encloses or accompanies, or which was intended to have had such label affixed, enclosing, or accompanying;

“(B) any property constituting or derived from any proceeds obtained directly or indirectly as a result of a violation of subsection (a); and

“(C) any property used, or intended to be used, in any manner or part to commit or facilitate the commission of a violation of subsection (a).

“(2) The provisions of chapter 46 of this title relating to civil forfeitures shall extend to any seizure or civil forfeiture under paragraph (1). At the conclusion of the forfeiture proceedings, the court shall order that any forfeited counterfeit labels or illicit labels and any article to which a counterfeit label or illicit label has been affixed, or which a counterfeit label or illicit label encloses or accompanies, or which was intended to have had such label affixed, enclosing, or accompanying, be destroyed or otherwise disposed of according to law.

“(3)(A) The court, in imposing sentence on a person convicted of an offense under this section, shall order, in addition to any other sentence imposed, that the person forfeit to the United States–

“(i) any counterfeit documentation or packaging, and any counterfeit label or illicit label and any article to which a counterfeit label or illicit label has been affixed, or which a counterfeit label or illicit label encloses or accompanies, or which was intended to have had such label affixed, enclosing, or accompanying;

“(ii) any property constituting or derived from any proceeds obtained, directly or indirectly, as the result of the offense; and

“(iii) any property used, or intended to be used, in any manner or part, to commit or facilitate the commission of the offense.

---

“(B) The forfeiture of property under subparagraph (A), including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be governed by the procedures set forth in section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), other than subsection (d) of that section. At the conclusion of the forfeiture proceedings, the court shall order that any counterfeit label or illicit label and any article to which a counterfeit label or illicit label has been affixed, or which a counterfeit label or illicit label encloses or accompanies, or which was intended to have had such label affixed, enclosing, or accompanying, be destroyed or otherwise disposed of according to law.

(4) When a person is convicted of an offense under this section, the court, pursuant to sections 3556, 3663A, and 3664, shall order the person to pay restitution to the owner of the marks or copyrighted works involved in the offense and any other victim of the offense as an offense against property referred to in section 3663(A)(c)(1)(A)(ii).”.

### **SECTION 13. CRIMINAL INFRINGEMENT OF A COPYRIGHT**

(a) IN GENERAL- Section 2319 of title 18, United States Code, is amended as follows—

(1) in subparagraph (b)(1), by inserting “or was intended to consist of” before “reproduction”;

(2) in subparagraph (b)(2), by inserting “felony” before “offense” and by striking “1” and inserting “a”;

(3) in subparagraph (c)(1), by inserting “or was intended to consist of” before “reproduction”;

(4) in subparagraph (c)(2), by inserting “felony” before “offense” and by striking “1” and inserting “a”;

(5) in subparagraph (d)(3), by inserting “felony” before “offense” and inserting “under paragraph (a)” before the semi-colon; and

(6) in subparagraph (d)(4), by inserting “felony” before “offense”.

### **SECTION 14 . UNAUTHORIZED FIXATION AND TRAFFICKING**

(a) IN GENERAL. Section 2319A of title 18, United States Code, is amended—

- 
- (1) by striking subsection (c);
  - (2) in subsection (d), by striking “(d)” and inserting “(c)”;
  - (3) in subsection (e), by striking “(e)” and inserting “(d)”;
  - (4) in subsection (f), by striking “(f)” and inserting “(e)”.

(b) FORFEITURE AND DESTRUCTION. Section 2319A(b) of title 18, United States Code, is amended to read as follows:

“(b) Forfeiture and destruction; restitution.--

“(1) The following property is subject to forfeiture to the United States--

“(A) any unauthorized copies or phonorecords of a live musical performance, as well as any plates, molds, matrices, masters, tapes, and film negatives by means of which such copies or phonorecords may be made;

“(B) any property constituting or derived from any proceeds obtained directly or indirectly as a result of a violation of subsection (a); and

“(C) any property used or intended to be used, in any manner or part, to commit or to facilitate the commission of a violation of subsection (a);

“(2) The provisions of chapter 46 of this title relating to civil forfeitures shall extend to any seizure or civil forfeiture under paragraph (1). At the conclusion of the forfeiture proceedings, the court shall order that any forfeited unauthorized copies or phonorecords of live musical performances, as well as any plates, molds, matrices, masters, tapes, and film negatives by means of which such unauthorized copies or phonorecords may be made, be destroyed or otherwise disposed of according to law.

“(3)(A) The court, in imposing sentence on a person convicted of an offense under this section, shall order, in addition to any other sentence imposed, that the person forfeit to the United States--

“(i) all unauthorized copies or phonorecords of live musical performances, as well as any plates, molds, matrices, masters, tapes, and film negatives by means of which such unauthorized copies or phonorecords may be made;

---

“(ii); any property constituting or derived from any proceeds obtained, directly or indirectly, as the result of the offense; and

“(iii) any property used, or intended to be used, in any manner or part, to commit or facilitate the commission of the offense.

“(B) The forfeiture of property under subparagraph (A), including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be governed by the procedures set forth in section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), other than subsection (d) of that section. At the conclusion of the forfeiture proceedings, the court shall order that any forfeited unauthorized copies or phonorecords of live musical performances, as well as any plates, molds, matrices, masters, tapes, and film negatives by means of which such unauthorized copies of phonorecords may be made, be destroyed or otherwise disposed of according to law.

“(4) Notification of importation.— The Secretary of Homeland Security shall issue regulations by which any performer may, upon payment of a specified fee, be entitled to notification by United States Customs and Border Protection of the importation of copies or phonorecords that appear to consist of unauthorized fixations of the sounds or sounds and images of a live musical performance.

“(5) When a person is convicted of an offense under this chapter, the court, pursuant to sections 3556, 3663A, and 3664, shall order the person to pay restitution to the performer or performers, and any other victim of the offense as an offense against property referred to in section 3663A(c)(1)(A)(ii).”

(c) DEFINITIONS- Section 2319A(d)(2) of title 18, United States Code, as renumbered, is amended to read as follows:

“(2) the term ‘traffic’ means—

“(A) to transport, transfer, or otherwise dispose of, to another, for purposes of commercial advantage or private financial gain, or to make, import, export, obtain control of, or possess, with intent to so transport, transfer, or otherwise dispose of;

“(B) where the term ‘financial gain’ includes the receipt, or expected receipt, of anything of value.”

(d) APPLICABILITY. At the end of section 2319A(e), as renumbered, insert before the period the following:

---

“, except that the criminal forfeiture provisions in subparagraph (b)(3) shall apply only where the underlying act or acts occur on or after the effective date of that subparagraph”.

## **SECTION 15. UNAUTHORIZED RECORDING OF MOTION PICTURES**

(a) IN GENERAL. Section 2319B(b) of title 18, United States Code, is amended to read as follows:

“(b) Forfeiture and destruction; restitution.--

“(1) The following property is subject to forfeiture to the United States--

“(A) any unauthorized copies of a motion picture or other audiovisual work protected under title 17, or part thereof;

“(B) any property constituting or derived from any proceeds obtained directly or indirectly as a result of a violation of subsection (a); and

“(C) any property used, or intended to be used, in any manner or part, to commit or to facilitate the commission of a violation of subsection (a).

“(2) The provisions of chapter 46 of this title relating to civil forfeitures shall extend to any seizure or civil forfeiture under this section. At the conclusion of the forfeiture proceedings, the court shall order that any forfeited unauthorized copies or phonorecords of a motion picture or other audiovisual work, or part thereof, as well as any plates, molds, matrices, masters, tapes, and film negatives by means of which such unauthorized copies or phonorecords may be made, be destroyed or otherwise disposed of according to law.

“(3)(A) The court, in imposing sentence on a person convicted of an offense under this section, shall order, in addition to any other sentence imposed, that the person forfeit to the United States--

“(i) any unauthorized copies of motion pictures or other audiovisual works protected under title 17, or parts thereof;

“(ii) any property constituting or derived from any proceeds obtained, directly or indirectly, as a result of the offense; and

---

“(iii) any property used, or intended to be used, in any manner or part, to commit or facilitate the commission of the offense.

“(B) The forfeiture of property under subparagraph (A), including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be governed by the procedures set forth in section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), other than subsection (d) of that section. At the conclusion of the forfeiture proceedings, the court shall order that any forfeited unauthorized copies or phonorecords of a motion picture or other audiovisual work, or part thereof, as well as any plates, molds, matrices, masters, tapes, and film negatives by means of which such unauthorized copies or phonorecords may be made, be destroyed or otherwise disposed of according to law.

“(4) When a person is convicted of an offense under this chapter, the court, pursuant to sections 3556, 3663A, and 3664, shall order the person to pay restitution to the owner of the copyright in the motion picture or other audiovisual work and any other victim of the offense as an offense against property referred to in section 3663A(c)(1)(A)(ii).”

## **SECTION 16. TRAFFICKING IN COUNTERFEIT GOODS OR SERVICES**

(a) IN GENERAL- Section 2320 of title 18, United States Code, is amended—

(1) by striking subsection (b) and inserting the following:

**“(b) Forfeiture and destruction; restitution.**

“(1) The following property is subject to forfeiture to the United States—

“(A) any article that bears or consists of a counterfeit mark;

“(B) any property constituting or derived from any proceeds obtained directly or indirectly as a result of a violation of subsection (a); and

“(C) any property used, or intended to be used, in any manner or part, to commit or facilitate the commission of a violation of subsection (a).

“(2) The provisions of chapter 46 of this title relating to civil forfeitures shall extend to any seizure or civil forfeiture under this section. At the

---

conclusion of the forfeiture proceedings, the court shall order that any forfeited article bearing or consisting of a counterfeit mark be destroyed or otherwise disposed of according to law.

“(3)(A) The court, in imposing sentence on a person convicted of an offense under this section, shall order, in addition to any other sentence imposed, that the person forfeit to the United States–

“(i) any article that bears or consists of a counterfeit mark used in committing the offense;

“(ii) any property constituting or derived from any proceeds obtained, directly or indirectly, as the result of the offense; and

“(iii) any property used, or intended to be used, in any manner or part, to commit or facilitate the commission of the offense.

“(B) The forfeiture of property under subparagraph (A), including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be governed by the procedures set forth in section 413 of the Comprehensive Drug Abuse and Prevention and Control Act of 1970 (21 U.S.C. 853), other than subsection (d) of that section. At the conclusion of the forfeiture proceedings, the court shall order that any forfeited article or component of an article bearing or consisting of a counterfeit mark be destroyed or otherwise disposed of according to law.

“(4) When a person is convicted of an offense under this section, the court, pursuant to sections 3556, 3663A, and 3664, shall order the person to pay restitution to owner of the mark and any other victim of the offense as an offense against property referred to in section 3663A(c)(1)(A)(ii).”

(b) AMENDMENT- Section 2320 of title 18, United States Code, is further amended–

(1) by striking subsection (e)(2) and inserting the following:

“(2) the term ‘traffic’ means–

“(A) to transport, transfer, or otherwise dispose of, to another, for purposes of commercial advantage or private financial gain, or to make, import, export, obtain control of, or possess, with intent to so transport, transfer, or otherwise dispose of;

---

“(B) where the term ‘financial gain’ includes the receipt, or expected receipt, of anything of value; and”.

## **SECTION 17. INTERCEPTION OF WIRE, ORAL, OR ELECTRONIC COMMUNICATIONS**

(a) IN GENERAL- Section 2516(1)(c) of title 18, United States Code, is amended–

(1) by striking “sections 2312, 2313, 2314, and 2315 (interstate transportation of stolen property,” and inserting “section 1831 (relating to economic espionage to benefit any foreign government, instrumentality, or agent), sections 2312, 2313, 2314, and 2315 (relating to interstate transportation of stolen property), section 2319 (relating to criminal infringement of a copyright), section 2320 (relating to trafficking in counterfeit goods or services),”.

## **SECTION 18. DIRECTIVE TO UNITED STATES SENTENCING COMMISSION**

(a) REVIEW AND AMENDMENT.–Not later than 180 days after the date of enactment of this Act, the United States Sentencing Commission, pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this section, shall review and, if appropriate, amend the Federal sentencing guidelines and policy statements applicable to persons convicted of any offense under–

(1) section 1204 of title 17, United States Code; or

(2) section 2318 or 2320 of title 18, United States Code.

(b) AUTHORIZATION.– The United States Sentencing Commission may amend the Federal sentencing guidelines in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994 note) as though the authority under that section had not expired.

(c) RESPONSIBILITIES OF UNITED STATES SENTENCING COMMISSION.–In carrying out this section, the United States Sentencing Commission shall determine whether

(1) the definition of “infringement amount” set forth in application note 2 of section 2B5.3 of the Federal sentencing guidelines is adequate to address situations in which the defendant has been convicted of one of the offenses listed in subsection (a) and the item in which the defendant trafficked was not an infringing item but rather was intended to facilitate infringement, such as a circumvention device, or the item in which the defendant trafficked was infringing and also was intended to facilitate infringement in another good or service, such as a counterfeit label, documentation, or packaging, taking into account cases such as *U.S. v. Sung*, 87 F.3d 194 (7<sup>th</sup> Cir. 1996); and

---

(2) the act of exporting infringing items, in any case sentenced under section 2B5.3 of the Federal sentencing guidelines, should receive an upward adjustment in the offense level, on the grounds that exportation introduces infringing items into the stream of foreign commerce in a manner analogous to the manner in which manufacturing, importing, and uploading such items introduces them into the stream of commerce.