To enhance criminal enforcement of the copyright laws, to educate the public about the application of copyright law to the Internet, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M. ________ introduced the following bill; which was referred to the Committee on ____________________________

A BILL

To enhance criminal enforcement of the copyright laws, to educate the public about the application of copyright law to the Internet, 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 “Piracy Deterrence and

5 Education Act of 2004”.

SEC. 2. FINDINGS.

The Congress finds as follows:

(1) The Internet, while changing the way our society communicates, has also changed the nature of many crimes, including the theft of intellectual property.

(2) Trafficking in infringing copyrighted works through increasingly sophisticated electronic means, including peer-to-peer file trading networks, Internet chat rooms, and news groups, threatens lost jobs, lost income for creators, lower tax revenue, and higher prices for honest purchasers.

(3) The most popular peer-to-peer file trading software programs have been downloaded by computer users over 200,000,000 times. At any one time there are over 3,000,000 users simultaneously using just one of these services. Each month, on average, over 2,300,000,000 digital-media files are transferred among users of peer-to-peer systems.

(4) Many computer users simply believe that they will not be caught or prosecuted for their conduct.

(5) The security and privacy threats posed by certain peer-to-peer networks extend beyond users inadvertently enabling a hacker to access files. Millions of copies of one of the most popular peer-to-
peer networks contain software that could allow an
independent company to take over portions of users’
computers and Internet connections and has the ca-
pacity to keep track of users’ online habits.

(6) In light of these considerations, Federal law
enforcement agencies should actively pursue crimi-
nals who steal the copyrighted works of others, and
prevent such activity through enforcement and
awareness. The public should be educated about the
security and privacy risks associated with being con-
ected to certain peer-to-peer networks.

SEC. 3. DETERRENCE AND COORDINATION.

(a) Program; Sharing of Information.—The Di-
rector of the Federal Bureau of Investigation, in consulta-
tion with the Register of Copyrights, shall—

(1) develop a program based on providing of in-
formation and notice to deter members of the public
from committing acts of copyright infringement
through the Internet; and

(2) facilitate the sharing among law enforce-
ment agencies, Internet service providers, and copy-
right owners of information concerning acts of copy-
right infringement described in paragraph (1).

The program under paragraph (1) shall include issuing
appropriate warnings to individuals engaged in acts of
copyright infringement described in paragraph (1) that they may be subject to criminal prosecution.

(b) CONSTRUCTION.—Nothing in this section shall be construed to expand the investigative or enforcement powers of the Federal Bureau of Investigation nor to affect the duty, if any, of Internet service providers to monitor their service, affirmatively seek facts indicating infringing activity, or share private information about the users of their systems.

(c) PROHIBITION ON USE OF CERTAIN FUNDS.—The program created under subsection (a)(1) shall not use funds or resources of the Department of Justice allocated for criminal investigation or prosecution.

SEC. 4. DESIGNATION AND TRAINING OF AGENTS IN COMPUTER HACKING AND INTELLECTUAL PROPERTY UNITS.

(a) DESIGNATION OF AGENTS IN CHIPS UNITS.—The Attorney General shall ensure that any unit in the Department of Justice responsible for investigating computer hacking or responsible for investigating intellectual property crimes is assigned at least one agent to support such unit for the purpose of investigating crimes relating to the theft of intellectual property.

(b) TRAINING.—The Attorney General shall ensure that each agent assigned under subsection (a) has received
training in the investigation and enforcement of intellectual property crimes.

SEC. 5. EDUCATION PROGRAM.

(a) ESTABLISHMENT.—There shall be established within the Office of the Associate Attorney General of the United States an Internet Use Education Program.

(b) PURPOSE.—The purpose of the Internet Use Education Program shall be to—

(1) educate the general public concerning the value of copyrighted works and the effects of the theft of such works on those who create them; and

(2) educate the general public concerning the privacy, security, and other risks of using the Internet to obtain illegal copies of copyrighted works.

(c) SECTOR SPECIFIC MATERIALS.—The Internet Use Educational Program shall, to the extent appropriate, develop materials appropriate to Internet users in different sectors of the general public where criminal copyright infringement is a concern. The Attorney General shall consult with appropriate interested parties in developing such sector-specific materials.

(d) CONSULTATIONS.—The Attorney General shall consult with the Register of Copyrights and the Secretary of Commerce in developing the Internet Use Education Program under this section.
(c) Prohibition on Use of Certain Funds.—The program created under this section shall not use funds or resources of the Department of Justice allocated for criminal investigation or prosecution.

SEC. 6. ACTIONS BY THE GOVERNMENT OF THE UNITED STATES.

Section 411(a) of title 17, United States Code, is amended in the first sentence by striking “Except for” and inserting “Except for an action brought by the Government of the United States or by any agency or instrumentality thereof, or”.

SEC. 7. AUTHORIZED APPROPRIATIONS.

There are authorized to be appropriated to the Department of Justice for fiscal year 2005 not less than $15,000,000 for the investigation and prosecution of violations of title 17, United States Code.

SEC. 8. PREVENTION OF SURREPTITIOUS RECORDING IN MOTION PICTURE THEATERS.

(a) Short Title.—This section may be cited as the “Artists’ Rights and Theft Prevention Act of 2004” or the “ART Act”.

(b) Criminal Penalties for Unauthorized Recording of Motion Pictures in a Motion Picture Theater.—
(1) IN GENERAL.—Chapter 113 of title 18, United States Code, is amended by adding after section 2319A the following new section:

§ 2319B. Unauthorized recording of motion pictures in a motion picture theater

“(a) OFFENSE.—Whoever, without the authorization of the copyright owner, knowingly uses or attempts to use an audiovisual recording device in a motion picture theater to transmit or make a copy of a motion picture or other audiovisual work protected under title 17, or any part thereof, in a motion picture theater shall—

“(1) be imprisoned for not more than 3 years, fined under this title, or both; or

“(2) if the offense is a second or subsequent offense, be imprisoned for no more than 6 years, fined under this title, or both.

“(b) FORFEITURE AND DESTRUCTION.—When a person is convicted of a violation of subsection (a), the court in its judgment of conviction shall, in addition to any penalty provided, order the forfeiture and destruction or other disposition of all unauthorized copies of motion pictures or other audiovisual works protected under title 17, or parts thereof, and any audiovisual recording devices or other equipment used in connection with the violation.
“(c) AUTHORIZED ACTIVITIES.—This section does not prevent any lawfully authorized investigative, protective, or intelligence activity by an officer, agent, or employee of the United States, a State, or a political subdivision of a State, or by a person acting pursuant to a contract with the United States, a State, or a political subdivision of a State.

“(d) VICTIM IMPACT STATEMENT.—

“(1) IN GENERAL.—During the preparation of the presentence report pursuant to rule 32(c) of the Federal Rules of Criminal Procedure, victims of an offense under this section shall be permitted to submit to the probation officer a victim impact statement that identifies the victim of the offense and the extent and scope of the injury and loss suffered by the victim, including the estimated economic impact of the offense on that victim.

“(2) CONTENTS.—A victim impact statement submitted under this subsection shall include—

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

“(B) holders of intellectual property rights in the works described in subparagraph (A); and
“(C) the legal representatives of such producers, sellers, and holders.

“(e) DEFINITIONS.—In this section:

“(1) AUDIOVISUAL WORK, COPY, ETC.—The terms ‘audiovisual work’, ‘copy’, ‘copyright owner’, ‘motion picture’, and ‘transmit’ have, respectively, the meanings given those terms in section 101 of title 17.

“(2) AUDIOVISUAL RECORDING DEVICE.—The term ‘audiovisual recording device’ means a digital or analog photographic or video camera, or any other technology or device capable of enabling the recording or transmission of a copyrighted motion picture or other audiovisual work, or any part thereof, regardless of whether audiovisual recording is the sole or primary purpose of the device.

“(3) MOTION PICTURE THEATER.—The term ‘motion picture theater’ means a movie theater, screening room, or other venue that is being used primarily for public performance of a motion picture.”.

(2) CONFORMING AMENDMENT.—The table of sections for chapter 113 of title 18, United States Code, is amended by inserting after the item relating to section 2319A the following:
SEC. 9. SENSE OF THE CONGRESS ON NEED TO TAKE STEPS TO PREVENT ILLEGAL ACTIVITY ON PEER-TO-PEER SERVICES.

(a) FINDINGS.—The Congress finds as follows:

(1) The most popular publicly accessible peer-to-peer file sharing software programs combined have been downloaded worldwide over 600,000,000 times.

(2) The vast majority of software products, including peer-to-peer technology, do not pose an inherent risk. Responsible persons making software products should be encouraged and commended for the due diligence and reasonable care they take including by providing instructions, relevant information in the documentation, disseminating patches, updates, and other appropriate modifications to the software.

(3) Massive volumes of illegal activity, including the distribution of child pornography, viruses, and confidential personal information, and copyright infringement occur on publicly accessible peer-to-peer file sharing services every day. Some publicly accessible peer-to-peer file sharing services expose consumers, particularly children, to serious risks, in-
including legal liability, loss of privacy, threats to computer security, and exposure to illegal and inappropriate material.

(4) The following studies and reports demonstrate that pornography, including child pornography, is prevalent on publicly available peer-to-peer file sharing services, and children are regularly exposed to pornography when using publicly available peer-to-peer file-sharing services:

(A) A February 2004 report by the General Accounting Office (GAO) states that children using peer-to-peer file-sharing technology can be exposed inadvertently to pornographic content. When searching for popular terms like “Britney”, “Pokemon”, and “Olsen twins”, more than half the files retrieved were pornographic, including 8 percent containing child pornography or child erotica.

(B) The GAO also found that when searching the most popular peer-to-peer service for keywords known to be associated with child pornography, 42 percent of the returns (543 out of 1,286 files) were associated with images of child pornography.
(C) From 2001, when the National Center for Missing and Exploited Children began to track peer-to-peer child pornography, until 2002, the number of reported incidents increased over 400 percent—compared to an increase of less than 100 percent for chat rooms, less than 32 percent for websites, and no increase for news groups and bulletin boards.

(5) The full potential of peer-to-peer technology to benefit consumers has yet to be realized and will not be achieved until these problems are adequately addressed.

(6) To date, the businesses that run publicly accessible file-sharing services have refused or failed to voluntarily and sufficiently address these problems.

(7) Many users of publicly available peer-to-peer file-sharing services are drawn to these systems by the lure of obtaining “free” music and movies.

(8) While some users use parental controls to protect children from pornography available on the Internet and search engines, not all such controls work on publicly accessible peer-to-peer networks.

(9) Businesses that run publicly accessible peer-to-peer file sharing services have openly acknowledged, and numerous studies and reports have estab-
lished, that these services facilitate and profit from massive amounts of copyright infringement, causing enormous damage to the economic well-being of the copyright industries whose works are being illegally “shared” and downloaded.

(10) The legitimate digital music marketplace offers consumers a wide and growing array of choices for obtaining music legally, without exposure to the risks posed by publicly accessible peer-to-peer file sharing services.

(11) The Federal Trade Commission issued a Consumer Alert in July of 2003 warning consumers that some file-sharing services contain damaging viruses and worms and, without the computer user’s knowledge or consent, install spyware to monitor a user’s browsing habits and send data to third parties or automatically open network connections.

(12) Publicly available peer-to-peer file-sharing services can and should adopt reasonable business practices and use technology in the marketplace to address the existing risks posed to consumers by their services and facilitate the legitimate use of peer-to-peer file sharing technology and software.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that—
(1) responsible software developers should be commended, recognized, and encouraged for their efforts to protect consumers;

(2) currently the level of ongoing and persistent illegal and dangerous activity on publicly accessible peer-to-peer file sharing services is harmful to consumers, minors, and the economy; and

(3) therefore, the Congress and the executive branch should consider all appropriate measures to protect consumers and children, and prevent such illegal activity.

SEC. 10. ENHANCEMENT OF CRIMINAL COPYRIGHT INFRINGEMENT.

(a) CRIMINAL INFRINGEMENT.—Section 506 of title 17, United States Code, is amended—

(1) by amending subsection (a) to read as follows:

“(a) CRIMINAL INFRINGEMENT.—Any person who—

“(1) infringes a copyright willfully and for purposes of commercial advantage or private financial gain,

“(2) infringes a copyright willfully by the reproduction or distribution, including by the offering for distribution to the public by electronic means, during any 180-day period, of 1 or more copies or
phonorecords of 1 or more copyrighted works, which
have a total retail value of more than $1,000, or
“(3) infringes a copyright by the knowing dis-
tribution, including by the offering for distribution
to the public by electronic means, with reckless dis-
regard of the risk of further infringement, during
any 180-day period, of—
“(A) 1,000 or more copies or phonorecords
of 1 or more copyrighted works,
“(B) 1 or more copies or phonorecords of
1 or more copyrighted works with a total retail
value of more than $10,000, or
“(C) 1 or more copies or phonorecords of
1 or more copyrighted pre-release works,
shall be punished as provided under section 2319 of title
18. For purposes of this subsection, evidence of reproduc-
tion or distribution of a copyrighted work, by itself, shall
not be sufficient to establish the necessary level of intent
under this subsection.”; and
(2) by adding at the end the following:
“(g) DEFINITIONS.—In this section:
“(1) PRE-RELEASE WORK.—The term ‘pre-re-
lease work’ refers to a work protected under this
title which has a commercial and economic value and
which, at the time of the infringement, the defend-
(2) Retail value.— The ‘retail value’ of a copyrighted work is the retail price of that work in the market in which it is sold. In the case of an infringement of a copyright by distribution, if the retail price does not adequately reflect the economic value of the infringement, then the retail value may be determined using other factors, including but not limited to suggested retail price, wholesale price, replacement cost of the item, licensing, or distribution-related fees.”.

(b) Penalties.—Section 2319 of title 18, United States Code, is amended—

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

(2) by inserting after subsection (e) the following:

“(d) Any person who commits an offense under section 506(a)(3) of title 17—

“(1) shall be imprisoned not more than 3 years, or fined in the amount set forth in this title, or both, or, if the offense was committed for purposes of
commercial advantage or private financial gain, im-
prisoned for not more than 5 years, or fined in the
amount set forth in this title, or both; and

“(2) shall, if the offense is a second or subse-
quint offense under paragraph (1), be imprisoned
not more than 6 years, or fined in the amount set
forth in this title, or both, or, if the offense was
committed for purposes of commercial advantage or
private financial gain, imprisoned for not more than
10 years, or fined in the amount set forth in this
title, or both.”; and

(3) in subsection (f), as so redesignated—
(A) in paragraph (1), by striking “and”
after the semicolon;
(B) in paragraph (2), by striking the pe-
riod and inserting “; and”; and
(C) by adding at the end the following:
“(3) the term ‘financial gain’ has the meaning
given that term in section 101 (relating to defini-
tions) of title 17.”.

(c) CIVIL REMEDIES FOR INFRINGEMENT OF A COM-
MERCIAL PRE-RELEASE COPYRIGHTED WORK.—Section
504(b) of title 17, United States Code, is amended—
(1) by striking “The copyright owner” and in-
serting the following:
“(1) IN GENERAL.—The copyright owner”; and
(2) by adding at the end the following:

“(2) DAMAGES FOR PRE-RELEASE INFRINGEMENT.—

“(A) IN GENERAL.—In the case of any pre-release work, actual damages shall be presumed conclusively to be no less than $10,000 per infringement, if a person—

“(i) distributes such work by making it available on a computer network accessible to members of the public; and

“(ii) knew or should have known that the work was intended for commercial distribution.

“(B) DEFINITION.—For purposes of this subsection, the term ‘pre-release work’ has the meaning given that term in section 506(g). ”.

SEC. 11. AMENDMENT OF FEDERAL SENTENCING GUIDELINES REGARDING THE INFRINGEMENT OF COPYRIGHTED WORKS AND RELATED CRIMES.

(a) AMENDMENT TO THE SENTENCING GUIDELINES.—Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall
review and, if appropriate, amend the sentencing guidelines and policy statements applicable to persons convicted of intellectual property rights crimes, including sections 2318, 2319, 2319A, 2319B, 2320 of title 18, United States Code, and sections 506, 1201, and 1202 of title 17, United States Code.

(b) FACTORS.—In carrying out this section, the Sentencing Commission shall—

(1) take all appropriate measures to ensure that the sentencing guidelines and policy statements applicable to the offenses described in subsection (a) are sufficiently stringent to deter and adequately reflect the nature of such offenses;

(2) consider whether to provide a sentencing enhancement for those convicted of the offenses described in subsection (a) when the conduct involves the display, performance, publication, reproduction, or distribution of a copyrighted work before the time when the copyright owner has authorized the display, performance, publication, reproduction, or distribution of the original work, whether in the media format used by the infringing good or in any other media format;

(3) consider whether the definition of “uploading” contained in Application Note 3 to
Guideline 2B5.3 is adequate to address the loss attributable to people broadly distributing copyrighted works over the Internet without authorization; and

(4) consider whether the sentencing guidelines and policy statements applicable to the offenses described in subsection (a) adequately reflect any harm to victims from infringement in circumstances where law enforcement cannot determine how many times copyrighted material is reproduced or distributed.

(c) PROMULGATION.—The Commission may promulgate the guidelines or amendments under this section in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987, as though the authority under that Act had not expired.