

# Union Calendar No. 360

108TH CONGRESS  
2D SESSION

# H. R. 3632

[Report No. 108-600]

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

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 21, 2003

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

JULY 13, 2004

Additional sponsor: Mrs. BLACKBURN

JULY 13, 2004

Reported with an amendment, committed to the Committee of the Whole  
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on November 21, 2003]

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## 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,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Anti-counterfeiting*  
3 *Amendments Act of 2004”.*

4 **SEC. 2. PROHIBITION AGAINST TRAFFICKING IN COUNTER-**  
5 **FEIT COMPONENTS.**

6 (a) *IN GENERAL.*—Section 2318 of title 18, United  
7 States Code, is amended—

8 (1) *by striking the section heading and inserting*  
9 *the following:*

10 **“§2318. Trafficking in counterfeit labels, illicit labels,**  
11 **or counterfeit documentation or pack-**  
12 **aging”;**

13 (2) *by striking subsection (a) and inserting the*  
14 *following:*

15 “(a) *Whoever, in any of the circumstances described*  
16 *in subsection (c), knowingly traffics in—*

17 “(1) *a counterfeit label or illicit label affixed to,*  
18 *enclosing, or accompanying, or designed to be affixed*  
19 *to, enclose, or accompany—*

20 “(A) *a phonorecord;*

21 “(B) *a copy of a computer program;*

22 “(C) *a copy of a motion picture or other*  
23 *audiovisual work;*

24 “(D) *a copy of a literary work;*

25 “(E) *a copy of a pictorial, graphic, or*  
26 *sculptural work;*

1                   “(F) a work of visual art; or

2                   “(G) documentation or packaging; or

3                   “(2) counterfeit documentation or packaging,

4 shall be fined under this title or imprisoned for not more  
5 than 5 years, or both.”;

6                   (3) in subsection (b)—

7                   (A) in paragraph (2), by striking “and”  
8 after the semicolon;

9                   (B) in paragraph (3)—

10                   (i) by striking “and ‘audiovisual work’  
11 have” and inserting the following: “‘audio-  
12 visual work’, ‘literary work’, ‘pictorial,  
13 graphic, or sculptural work’, ‘sound record-  
14 ing’, ‘work of visual art’, and ‘copyright  
15 owner’ have”; and

16                   (ii) by striking the period at the end  
17 and inserting a semicolon; and

18                   (C) by adding at the end the following:

19                   “(4) the term ‘illicit label’ means a genuine cer-  
20 tificate, licensing document, registration card, or  
21 similar labeling component—

22                   “(A) that is used by the copyright owner to  
23 verify that a phonorecord, a copy of a computer  
24 program, a copy of a motion picture or other  
25 audiovisual work, a copy of a literary work, a

1           *copy of a pictorial, graphic, or sculptural work,*  
2           *a work of visual art, or documentation or pack-*  
3           *aging is not counterfeit or infringing of any*  
4           *copyright; and*

5           “(B) *that is, without the authorization of*  
6           *the copyright owner—*

7                   “(i) *distributed or intended for dis-*  
8                   *tribution not in connection with the copy,*  
9                   *phonorecord, or work of visual art to which*  
10                  *such labeling component was intended to be*  
11                  *affixed by the respective copyright owner; or*

12                   “(ii) *in connection with a genuine cer-*  
13                   *tificate or licensing document, knowingly*  
14                   *falsified in order to designate a higher num-*  
15                   *ber of licensed users or copies than author-*  
16                   *ized by the copyright owner, unless that cer-*  
17                   *tificate or document is used by the copy-*  
18                   *right owner solely for the purpose of moni-*  
19                   *toring or tracking the copyright owner’s dis-*  
20                   *tribution channel and not for the purpose of*  
21                   *verifying that a copy or phonorecord is*  
22                   *noninfringing;*

23           “(5) *the term ‘documentation or packaging’*  
24           *means documentation or packaging, in physical form,*  
25           *for a phonorecord, copy of a computer program, copy*

1 of a motion picture or other audiovisual work, copy  
2 of a literary work, copy of a pictorial, graphic, or  
3 sculptural work, or work of visual art; and

4 “(6) the term ‘counterfeit documentation or  
5 packaging’ means documentation or packaging that  
6 appears to be genuine, but is not.”;

7 (4) in subsection (c)—

8 (A) by striking paragraph (3) and inserting  
9 the following:

10 “(3) the counterfeit label or illicit label is affixed  
11 to, encloses, or accompanies, or is designed to be af-  
12 fixed to, enclose, or accompany—

13 “(A) a phonorecord of a copyrighted sound  
14 recording or copyrighted musical work;

15 “(B) a copy of a copyrighted computer pro-  
16 gram;

17 “(C) a copy of a copyrighted motion picture  
18 or other audiovisual work;

19 “(D) a copy of a literary work;

20 “(E) a copy of a pictorial, graphic, or  
21 sculptural work;

22 “(F) a work of visual art; or

23 “(G) copyrighted documentation or pack-  
24 aging; or”;

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

3           (5) in subsection (d)—

4           (A) by inserting “or illicit labels” after  
5 “counterfeit labels” each place it appears; and

6           (B) by inserting before the period at the end  
7 the following: “, and of any equipment, device,  
8 or material used to manufacture, reproduce, or  
9 assemble the counterfeit labels or illicit labels”.

10       (b) *CIVIL REMEDIES*.—Section 2318 of title 18, United  
11 States Code, is further amended by adding at the end the  
12 following:

13       “(f) *CIVIL REMEDIES*.—

14           “(1) *IN GENERAL*.—Any copyright owner who is  
15 injured, or is threatened with injury, by a violation  
16 of subsection (a) may bring a civil action in an ap-  
17 propriate United States district court.

18           “(2) *DISCRETION OF COURT*.—In any action  
19 brought under paragraph (1), the court—

20           “(A) may grant 1 or more temporary or  
21 permanent injunctions on such terms as the  
22 court determines to be reasonable to prevent or  
23 restrain a violation of subsection (a);

24           “(B) at any time while the action is pend-  
25 ing, may order the impounding, on such terms

1           *as the court determines to be reasonable, of any*  
2           *article that is in the custody or control of the al-*  
3           *leged violator and that the court has reasonable*  
4           *cause to believe was involved in a violation of*  
5           *subsection (a); and*

6           “(C) *may award to the injured party—*

7                   “(i) *reasonable attorney fees and costs;*

8                   *and*

9                   “(ii) (I) *actual damages and any addi-*  
10                  *tional profits of the violator, as provided in*  
11                  *paragraph (3); or*

12                  “(II) *statutory damages, as provided*  
13                  *in paragraph (4).*

14           “(3) *ACTUAL DAMAGES AND PROFITS.—*

15                   “(A) *IN GENERAL.—The injured party is*  
16                  *entitled to recover—*

17                           “(i) *the actual damages suffered by the*  
18                           *injured party as a result of a violation of*  
19                           *subsection (a), as provided in subparagraph*  
20                           *(B) of this paragraph; and*

21                           “(ii) *any profits of the violator that*  
22                           *are attributable to a violation of subsection*  
23                           *(a) and are not taken into account in com-*  
24                           *puting the actual damages.*

1           “(B) *CALCULATION OF DAMAGES.*—*The*  
2 *court shall calculate actual damages by multi-*  
3 *plying—*

4           “(i) *the value of the phonorecords, cop-*  
5 *ies, or works of visual art which are, or are*  
6 *intended to be, affixed with, enclosed in, or*  
7 *accompanied by any counterfeit labels, il-*  
8 *licit labels, or counterfeit documentation or*  
9 *packaging, by*

10          “(ii) *the number of phonorecords, cop-*  
11 *ies, or works of visual art which are, or are*  
12 *intended to be, affixed with, enclosed in, or*  
13 *accompanied by any counterfeit labels, il-*  
14 *licit labels, or counterfeit documentation or*  
15 *packaging.*

16          “(C) *DEFINITION.*—*For purposes of this*  
17 *paragraph, the ‘value’ of a phonorecord, copy, or*  
18 *work of visual art is—*

19          “(i) *in the case of a copyrighted sound*  
20 *recording or copyrighted musical work, the*  
21 *retail value of an authorized phonorecord of*  
22 *that sound recording or musical work;*

23          “(ii) *in the case of a copyrighted com-*  
24 *puter program, the retail value of an au-*  
25 *thorized copy of that computer program;*

1           “(iii) in the case of a copyrighted mo-  
2           tion picture or other audiovisual work, the  
3           retail value of an authorized copy of that  
4           motion picture or audiovisual work;

5           “(iv) in the case of a copyrighted lit-  
6           erary work, the retail value of an author-  
7           ized copy of that literary work;

8           “(v) in the case of a pictorial, graphic,  
9           or sculptural work, the retail value of an  
10          authorized copy of that work; and

11          “(vi) in the case of a work of visual  
12          art, the retail value of that work.

13          “(4) *STATUTORY DAMAGES.*—The injured party  
14          may elect, at any time before final judgment is ren-  
15          dered, to recover, instead of actual damages and prof-  
16          its, an award of statutory damages for each violation  
17          of subsection (a) in a sum of not less than \$2,500 or  
18          more than \$25,000, as the court considers appro-  
19          priate.

20          “(5) *SUBSEQUENT VIOLATION.*—The court may  
21          increase an award of damages under this subsection  
22          by 3 times the amount that would otherwise be  
23          awarded, as the court considers appropriate, if the  
24          court finds that a person has subsequently violated  
25          subsection (a) within 3 years after a final judgment

1       *was entered against that person for a violation of that*  
 2       *subsection.*

3               “(6) *LIMITATION ON ACTIONS.*—*A civil action*  
 4       *may not be commenced under section unless it is com-*  
 5       *menced within 3 years after the date on which the*  
 6       *claimant discovers the violation of subsection (a).”.*

7       *(c) CONFORMING AMENDMENT.*—*The item relating to*  
 8       *section 2318 in the table of sections for chapter 113 of title*  
 9       *18, United States Code, is amended to read as follows:*

*“2318. Trafficking in counterfeit labels, illicit labels, or counterfeit documentation  
 or packaging.”.*

10   **SEC. 3. OTHER RIGHTS NOT AFFECTED.**

11       *(a) CHAPTERS 5 AND 12 OF TITLE 17; ELECTRONIC*  
 12       *TRANSMISSIONS.*—*The amendments made by this Act—*

13               *(1) shall not enlarge, diminish, or otherwise af-*  
 14       *fect any liability or limitations on liability under*  
 15       *sections 512, 1201 or 1202 of title 17, United States*  
 16       *Code; and*

17               *(2) shall not be construed to apply—*

18                       *(A) in any case, to the electronic trans-*  
 19       *mission of a genuine certificate, licensing docu-*  
 20       *ment, registration card, similar labeling compo-*  
 21       *nent, or documentation or packaging described*  
 22       *in paragraph (4) or (5) of section 2318(b) of*  
 23       *title 18, United States Code, as amended by this*  
 24       *Act; and*

1                   (B) *in the case of a civil action under sec-*  
2                   *tion 2318(f) of title 18, United States Code, to*  
3                   *the electronic transmission of a counterfeit label*  
4                   *or counterfeit documentation or packaging de-*  
5                   *finied in paragraph (1) or (6) of section 2318(b)*  
6                   *of title 18, United States Code.*

7           (b) *FAIR USE.—The amendments made by this Act*  
8           *shall not affect the fair use, under section 107 of title 17,*  
9           *United States Code, of a genuine certificate, licensing docu-*  
10           *ment, registration card, similar labeling component, or docu-*  
11           *mentation or packaging described in paragraph (4) or (5)*  
12           *of section 2318(b) of title 18, United States Code, as amend-*  
13           *ed by this Act.*

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108<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

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[Report No. 108-600]

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## **A BILL**

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JULY 13, 2004

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed