

tion card, similar labeling component, or documentation or packaging described in paragraph (4) or (5) of section 2318(b) of title 18, United States Code, as amended by this title; and

“(B) in the case of a civil action under section 2318(f) of title 18, United States Code, to the electronic transmission of a counterfeit label or counterfeit documentation or packaging defined in paragraph (1) or (6) of section 2318(b) of title 18, United States Code.

“(b) FAIR USE.—The amendments made by this title shall not affect the fair use, under section 107 of title 17, United States Code, of a genuine certificate, licensing document, registration card, similar labeling component, or documentation or packaging described in paragraph (4) or (5) of section 2318(b) of title 18, United States Code, as amended by this title.”

### § 2319. Criminal infringement of a copyright

(a) Any person who violates section 506(a) (relating to criminal offenses) of title 17 shall be punished as provided in subsections (b), (c), and (d) and such penalties shall be in addition to any other provisions of title 17 or any other law.

(b) Any person who commits an offense under section 506(a)(1)(A) of title 17—

(1) shall be imprisoned not more than 5 years, or fined in the amount set forth in this title, or both, if the offense consists of the reproduction or distribution, including by electronic means, during any 180-day period, of at least 10 copies or phonorecords, of 1 or more copyrighted works, which have a total retail value of more than \$2,500;

(2) shall be imprisoned not more than 10 years, or fined in the amount set forth in this title, or both, if the offense is a second or subsequent offense under paragraph (1); and

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

(c) Any person who commits an offense under section 506(a)(1)(B) of title 17—

(1) shall be imprisoned not more than 3 years, or fined in the amount set forth in this title, or both, if the offense consists of the reproduction or distribution of 10 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of \$2,500 or more;

(2) shall be imprisoned not more than 6 years, or fined in the amount set forth in this title, or both, if the offense is a second or subsequent offense under paragraph (1); and

(3) shall be imprisoned not more than 1 year, or fined in the amount set forth in this title, or both, if the offense consists of the reproduction or distribution of 1 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of more than \$1,000.

(d) Any person who commits an offense under section 506(a)(1)(C) of title 17—

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

(2) shall be imprisoned not more than 5 years, fined under this title, or both, if the offense was committed for purposes of commercial advantage or private financial gain;

(3) shall be imprisoned not more than 6 years, fined under this title, or both, if the offense is a second or subsequent offense; and

(4) shall be imprisoned not more than 10 years, fined under this title, or both, if the offense is a second or subsequent offense under paragraph (2).

(e)(1) During preparation of the presentence report pursuant to Rule 32(c) of the Federal Rules of Criminal Procedure, victims of the offense shall be permitted to submit, and the probation officer shall receive, 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) Persons permitted to submit victim impact statements shall include—

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

(B) holders of intellectual property rights in such works; and

(C) the legal representatives of such producers, sellers, and holders.

(f) As used in this section—

(1) the terms “phonorecord” and “copies” have, respectively, the meanings set forth in section 101 (relating to definitions) of title 17;

(2) the terms “reproduction” and “distribution” refer to the exclusive rights of a copyright owner under clauses (1) and (3) respectively of section 106 (relating to exclusive rights in copyrighted works), as limited by sections 107 through 122, of title 17;

(3) the term “financial gain” has the meaning given the term in section 101 of title 17; and

(4) the term “work being prepared for commercial distribution” has the meaning given the term in section 506(a) of title 17.

(Added Pub. L. 97-180, § 3, May 24, 1982, 96 Stat. 92; amended Pub. L. 102-561, Oct. 28, 1992, 106 Stat. 4233; Pub. L. 105-80, § 12(b)(2), Nov. 13, 1997, 111 Stat. 1536; Pub. L. 105-147, § 2(d), Dec. 16, 1997, 111 Stat. 2678; Pub. L. 107-273, div. C, title III, § 13211(a), Nov. 2, 2002, 116 Stat. 1910; Pub. L. 109-9, title I, § 103(b), Apr. 27, 2005, 119 Stat. 220.)

#### REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (e)(1), are set out in the Appendix to this title.

#### AMENDMENTS

2005—Subsec. (a). Pub. L. 109-9, § 103(b)(1), substituted “Any person who” for “Whoever” and “, (c), and (d)” for “and (c) of this section”.

Subsec. (b). Pub. L. 109-9, § 103(b)(2), substituted “section 506(a)(1)(A)” for “section 506(a)(1)” in introductory provisions.

Subsec. (c). Pub. L. 109-9, § 103(b)(3), substituted “section 506(a)(1)(B) of title 17” for “section 506(a)(2) of title 17, United States Code” in introductory provisions.

Subsecs. (d), (e). Pub. L. 109-9, § 103(b)(4), (5), added subsec. (d) and redesignated former subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 109-9, § 103(b)(4), (6), redesignated subsec. (e) as (f) and added pars. (3) and (4).

2002—Subsec. (e)(2). Pub. L. 107-273 substituted “107 through 122” for “107 through 120”.

1997—Subsec. (a). Pub. L. 105-147, § 2(d)(1), substituted “subsections (b) and (c)” for “subsection (b)”.

Subsec. (b). Pub. L. 105-147, § 2(d)(2)(A), substituted “section 506(a)(1) of title 17” for “subsection (a) of this section” in introductory provisions.

Subsec. (b)(1). Pub. L. 105-147, §2(d)(2)(B), inserted “including by electronic means,” after “if the offense consists of the reproduction or distribution,” and substituted “which have a total retail value of more than \$2,500” for “with a retail value of more than \$2,500”.

Pub. L. 105-80, substituted “at least 10 copies” for “at last 10 copies”.

Subsecs. (c) to (e). Pub. L. 105-147, §2(d)(3), added subsecs. (c) and (d) and redesignated former subsec. (c) as (e).

1992—Subsec. (b). Pub. L. 102-561, §1, amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “Any person who commits an offense under subsection (a) of this section—

“(1) shall be fined not more than \$250,000 or imprisoned for not more than five years, or both, if the offense—

“(A) involves the reproduction or distribution, during any one-hundred-and-eighty-day period, of at least one thousand phonorecords or copies infringing the copyright in one or more sound recordings;

“(B) involves the reproduction or distribution, during any one-hundred-and-eighty-day period, of at least sixty-five copies infringing the copyright in one or more motion pictures or other audiovisual works; or

“(C) is a second or subsequent offense under either of subsection (b)(1) or (b)(2) of this section, where a prior offense involved a sound recording, or a motion picture or other audiovisual work;

“(2) shall be fined not more than \$250,000 or imprisoned for not more than two years, or both, if the offense—

“(A) involves the reproduction or distribution, during any one-hundred-and-eighty-day period, of more than one hundred but less than one thousand phonorecords or copies infringing the copyright in one or more sound recordings; or

“(B) involves the reproduction or distribution, during any one-hundred-and-eighty-day period, of more than seven but less than sixty-five copies infringing the copyright in one or more motion pictures or other audiovisual works; and

“(3) shall be fined not more than \$25,000 or imprisoned for not more than one year, or both, in any other case.”

Subsec. (c). Pub. L. 102-561, §2, substituted “‘phonorecord’” for “‘sound recording’”, “‘motion picture’”, “‘audiovisual work’”, “‘phonorecord’”, in par. (1) and “‘120’” for “‘118’” in par. (2).

### § 2319A. Unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances

(a) OFFENSE.—Whoever, without the consent of the performer or performers involved, knowingly and for purposes of commercial advantage or private financial gain—

(1) fixes the sounds or sounds and images of a live musical performance in a copy or phonorecord, or reproduces copies or phonorecords of such a performance from an unauthorized fixation;

(2) transmits or otherwise communicates to the public the sounds or sounds and images of a live musical performance; or

(3) distributes or offers to distribute, sells or offers to sell, rents or offers to rent, or traffics in any copy or phonorecord fixed as described in paragraph (1), regardless of whether the fixations occurred in the United States;

shall be imprisoned for not more than 5 years or fined in the amount set forth in this title, or both, or if the offense is a second or subsequent offense, shall be imprisoned for not more than 10

years or fined in the amount set forth in this title, or both.

(b) FORFEITURE AND DESTRUCTION.—When a person is convicted of a violation of subsection (a), the court shall order the forfeiture and destruction of any copies or phonorecords created in violation thereof, as well as any plates, molds, matrices, masters, tapes, and film negatives by means of which such copies or phonorecords may be made. The court may also, in its discretion, order the forfeiture and destruction of any other equipment by means of which such copies or phonorecords may be reproduced, taking into account the nature, scope, and proportionality of the use of the equipment in the offense.

(c) SEIZURE AND FORFEITURE.—If copies or phonorecords of sounds or sounds and images of a live musical performance are fixed outside of the United States without the consent of the performer or performers involved, such copies or phonorecords are subject to seizure and forfeiture in the United States in the same manner as property imported in violation of the customs laws. The Secretary of the Treasury shall, not later than 60 days after the date of the enactment of the Uruguay Round Agreements Act, issue regulations to carry out this subsection, including regulations by which any performer may, upon payment of a specified fee, be entitled to notification by the United States Customs Service 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.

(d) VICTIM IMPACT STATEMENT.—(1) During preparation of the presentence report pursuant to Rule 32(c) of the Federal Rules of Criminal Procedure, victims of the offense shall be permitted to submit, and the probation officer shall receive, 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) Persons permitted to submit victim impact statements shall include—

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

(B) holders of intellectual property rights in such works; and

(C) the legal representatives of such producers, sellers, and holders.

(e) DEFINITIONS.—As used in this section—

(1) the terms “copy”, “fixed”, “musical work”, “phonorecord”, “reproduce”, “sound recordings”, and “transmit” mean those terms within the meaning of title 17; and

(2) the term “traffic” has the same meaning as in section 2320(e) of this title.

(f) APPLICABILITY.—This section shall apply to any Act or Acts that occur on or after the date of the enactment of the Uruguay Round Agreements Act.

(Added Pub. L. 103-465, title V, §513(a), Dec. 8, 1994, 108 Stat. 4974; amended Pub. L. 105-147, §2(e), Dec. 16, 1997, 111 Stat. 2679; Pub. L. 109-181, §2(c)(1), Mar. 16, 2006, 120 Stat. 288.)

#### REFERENCES IN TEXT

The date of the enactment of the Uruguay Round Agreements Act, referred to in subsecs. (c) and (f), is

the date of enactment of Pub. L. 103-465, which was approved Dec. 8, 1994.

The Federal Rules of Criminal Procedure, referred to in subsec. (d)(1), are set out in the Appendix to this title.

#### AMENDMENTS

2006—Subsec. (e)(2). Pub. L. 109-181 added par. (2) and struck out former par. (2) which read as follows: “the term ‘traffic in’ means transport, transfer, or otherwise dispose of, to another, as consideration for anything of value, or make or obtain control of with intent to transport, transfer, or dispose of.”

1997—Subsecs. (d) to (f). Pub. L. 105-147 added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

#### TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

### § 2319B. Unauthorized recording of Motion pictures in a Motion picture exhibition facility

(a) OFFENSE.—Any person who, without the authorization of the copyright owner, knowingly uses or attempts to use an audiovisual recording device to transmit or make a copy of a motion picture or other audiovisual work protected under title 17, or any part thereof, from a performance of such work in a motion picture exhibition facility, 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.

The possession by a person of an audiovisual recording device in a motion picture exhibition facility may be considered as evidence in any proceeding to determine whether that person committed an offense under this subsection, but shall not, by itself, be sufficient to support a conviction of that person for such offense.

(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 offense.

(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 under a contract with the United States, a State, or a political subdivision of a State.

(d) IMMUNITY FOR THEATERS.—With reasonable cause, the owner or lessee of a motion picture exhibition facility where a motion picture or other audiovisual work is being exhibited, the

authorized agent or employee of such owner or lessee, the licensor of the motion picture or other audiovisual work being exhibited, or the agent or employee of such licensor—

(1) may detain, in a reasonable manner and for a reasonable time, any person suspected of a violation of this section with respect to that motion picture or audiovisual work for the purpose of questioning or summoning a law enforcement officer; and

(2) shall not be held liable in any civil or criminal action arising out of a detention under paragraph (1).

(e) VICTIM IMPACT STATEMENT.—

(1) IN GENERAL.—During the preparation of the presentence report under 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.

(f) STATE LAW NOT PREEMPTED.—Nothing in this section may be construed to annul or limit any rights or remedies under the laws of any State.

(g) DEFINITIONS.—In this section, the following definitions shall apply:

(1) TITLE 17 DEFINITIONS.—The terms “audiovisual work”, “copy”, “copyright owner”, “motion picture”, “motion picture exhibition facility”, 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.

(Added Pub. L. 109-9, title I, §102(a), Apr. 27, 2005, 119 Stat. 218.)

#### REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (e)(1), are set out in the Appendix to this title.

### § 2320. Trafficking in counterfeit goods or services

(a) Whoever intentionally traffics or attempts to traffic in goods or services and knowingly uses a counterfeit mark on or in connection with such goods or services, or intentionally