

Appendix VII

Selected Provisions of the U.S. Code Relating to Copyright

Title 18 — Crimes and Criminal Procedure

Part I — Crimes

Chapter 113 — Stolen Property

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§ 2318 · Trafficking in counterfeit labels for phonorecords, copies of computer programs or computer program documentation or packaging, and copies of motion pictures or other audio visual works, and trafficking in counterfeit computer program documentation or packaging.¹

(a) Whoever, in any of the circumstances described in subsection (c) of this section, knowingly traffics in a counterfeit label affixed or designed to be affixed to a phonorecord, or a copy of a computer program or documentation or packaging for a computer program, or a copy of a motion picture or other audiovisual work, and whoever, in any of the circumstances described in subsection (c) of this section, knowingly traffics in counterfeit documentation or packaging for a computer program, shall be fined under this title or imprisoned for not more than five years, or both.

(b) As used in this section —

(1) the term “counterfeit label” means an identifying label or container that appears to be genuine, but is not;

(2) the term “traffic” means to transport, transfer or otherwise dispose of, to another, as consideration for anything of value or to make or obtain control of with intent to so transport, transfer or dispose of; and

(3) the terms “copy”, “phonorecord”, “motion picture”, “computer program”, and “audiovisual work” have, respectively, the meanings given those terms in section 101 (relating to definitions) of title 17.

(c) The circumstances referred to in subsection (a) of this section are —

(1) the offense is committed within the special maritime and territorial jurisdiction of the United States; or within the special aircraft jurisdiction of the United States (as defined in section 46501 of title 49);

(2) the mail or a facility of interstate or foreign commerce is used or intended to be used in the commission of the offense;

(3) the counterfeit label is affixed to or encloses, or is designed to be affixed to or enclose, a copy of a copyrighted computer program or copyrighted documentation or packaging for a computer program, a copyrighted motion

picture or other audiovisual work, or a phonorecord of a copyrighted sound recording; or

(4) the counterfeited documentation or packaging for a computer program is copyrighted.

(d) When any person is convicted of any violation of subsection (a), the court in its judgment of conviction shall in addition to the penalty therein prescribed, order the forfeiture and destruction or other disposition of all counterfeit labels and all articles to which counterfeit labels have been affixed or which were intended to have had such labels affixed.

(e) Except to the extent they are inconsistent with the provisions of this title, all provisions of section 509, title 17, United States Code, are applicable to violations of subsection (a).

§ 2319 · Criminal infringement of a copyright²

(a) Whoever violates section 506(a) (relating to criminal offenses) of title 17 shall be punished as provided in subsections (b) and (c) of this section 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) 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)(2) of title 17, United States Code —

(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) (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) 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; and

(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.

§ 2319A · Unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances³

(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 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.

(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.⁴

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Title 28 — Judiciary and Judicial Procedure
Part IV — Jurisdiction and Venue
Chapter 85 — District Courts; Jurisdiction

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§ 1338 · *Patents, plant variety protection, copyrights, mask works, designs, trademarks, and unfair competition*⁵

(a) The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trademarks. Such jurisdiction shall be exclusive of the courts of the states in patent, plant variety protection and copyright cases.

(b) The district courts shall have original jurisdiction of any civil action asserting a claim of unfair competition when joined with a substantial and related claim under the copyright, patent, plant variety protection or trademark laws.

(c) Subsections (a) and (b) apply to exclusive rights in mask works under chapter 9 of title 17, and to exclusive rights in designs under chapter 13 of title 17, to the same extent as such subsections apply to copyrights.

Chapter 87 — District Courts; Venue

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§ 1400 · *Patents and copyrights, mask works, and designs*⁶

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(a) Civil actions, suits, or proceedings arising under any Act of Congress relating to copyrights or exclusive rights in mask works or designs may be instituted in the district in which the defendant or his agent resides or may be found.

(b) Any civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business.

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Chapter 91 — United States Court of Federal Claims

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§ 1498 · *Patent and copyright cases*⁷

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(b) Hereafter, whenever the copyright in any work protected under the copyright laws of the United States shall be infringed by the United States, by a corporation owned or controlled by the United States, or by a contractor, subcontractor, or any person, firm, or corporation acting for the Government and with the authorization or consent of the Government, the exclusive action which may be brought for such infringement shall be an action by the copyright owner against the United States in the Court of Federal Claims for the recovery of his reasonable and entire compensation as damages for such infringement, including the minimum statutory damages as set forth in section 504(c) of title 17, United States Code: Provided, That a Government employee shall have a right of action against the Government under this subsection except where he was in a position to order, influence, or induce use of the copyrighted work by the Government: Provided, however, That this subsection shall not confer a right of action on any copyright owner or any assignee of such owner with respect to any copyrighted work prepared by a person while in the employment or service of the United States, where the copyrighted work was prepared as a part of the official functions of the employee, or in the preparation of which Government time, material, or facilities were used: And provided further, That before such action against the United States has been instituted the appropriate corporation owned or controlled by the United States or the head of the appropriate department or agency of the Government, as the case may be, is authorized to enter into an agreement with the copyright owner in full settlement and compromise for the damages accruing to him by reason of such infringement and to settle the claim administratively out of available appropriations.

Except as otherwise provided by law, no recovery shall be had for any infringement of a copyright covered by this subsection committed more than three years prior to the filing of the complaint or counterclaim for infringement in the action, except that the period between the date of receipt of a written claim for compensation by the Department or agency of the Government or corporation owned or controlled by the United States, as the case may be, having authority to settle such claim and the date of mailing by the Government of a notice to the claimant that his claim has been denied shall not be counted as a part of the three years, unless suit is brought before the last-mentioned date.

(c) The provisions of this section shall not apply to any claim arising in a foreign country.

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(e) Subsections (b) and (c) of this section apply to exclusive rights in mask works under chapter 9 of title 17, and to exclusive rights in designs under chapter 13 of title 17, to the same extent as such subsections apply to copyrights.

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Title 44 — Public Printing and Documents

Chapter 21 — National Archives and Records Administration

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§ 2117 · *Limitation on liability*⁸

When letters and other intellectual productions (exclusive of patented material, published works under copyright protection, and unpublished works for which copyright registration has been made) come into the custody or possession of the Archivist, the United States or its agents are not liable for infringement of copyright or analogous rights arising out of use of the materials for display, inspection, research, reproduction, or other purposes.

Appendix VII · Endnotes

1. In 1962, section 2318, entitled “Transportation, sale, or receipt of phonograph records bearing forged or counterfeit labels,” was added to title 18 of the *United States Code*. Pub. L. No. 87-773, 76 Stat. 775. In 1974, section 2318 was amended to change the penalties. Pub. L. No. 93-573, 88 Stat. 1873. The Copyright Act of 1976 revised section 2318 with an amendment in the nature of a substitute. Pub. L. No. 94-553, 90 Stat. 2541, 2600. The Piracy and Counterfeiting Amendments Act of 1982 again revised section 2318 with an amendment in the nature of a substitute that included a new title, “Trafficking in counterfeit labels for phonorecords, and copies of motion pictures or other audiovisual works.” Pub. L. No. 97-180, 96 Stat. 91. The Crime Control Act of 1990 made a technical amendment to section 2318 to delete the comma after “phonorecords” in the title. Pub. L. No. 101-647, 104 Stat. 4789, 4928. In 1994, section 2318(c)(1) was amended by inserting “section 46501 of title 49” in lieu of “section 101 of the Federal Aviation Act of 1958. Pub. L. No. 103-272, 108 Stat. 745, 1374. The Violent Crime Control and Law Enforcement Act of 1994 amended section 2318(a) by inserting “under this title” in lieu of “not more than \$250,000.” Pub. L. No. 103-322, 108 Stat. 1796, 2148. (As provided in 18 U.S.C. §3571, the maximum fine for an individual is \$250,000, and the maximum fine for an organization is \$500,000.)

The Anticounterfeiting Consumer Protection Act of 1996 amended section 2318 by changing the title, by amending subsection (a) to insert “a computer program or documentation” through to “knowingly traffics in counterfeit documentation or packaging for a computer program” in lieu of “a motion picture or other audiovisual work” and by amending subsection (b)(3) to insert “computer program” after “motion picture.” Pub. L. No. 104-153, 110 Stat. 1386. The Act also amended section 2318(c) by inserting “a copy of a copyrighted computer program or copyrighted documentation or packaging for a computer program” into paragraph (3) and by adding paragraph (4). *Id.* at 1387.

2. The Piracy and Counterfeiting Amendments Act of 1982 added section 2319 to title 18 of the *United States Code*. This section was entitled “Criminal infringement of a copyright.” Pub. L. No. 97-180, 96 Stat. 91, 92. In 1992, section 2319 was amended by substituting a new subsection (b), by deleting “sound recording,” “motion picture” and “audiovisual work” from subsection (c)(1) and by substituting “120” for “118” in subsection (c)(2). Pub. L. No. 102-561, 106 Stat. 4233. In 1997, a technical amendment corrected the spelling of “last” in subsection (b)(1) to “least.” Pub. L. No. 105-80, 111 Stat. 1529, 1536.

In 1997, the No Electronic Theft Act amended section 2319 of title 18 as follows: 1) in subsection (a) by inserting “and (c)” after “subsection (b),”; 2) in subsection (b), in the matter preceding paragraph (1), by inserting “section 506(a)(1) of title 17” in lieu of “subsection (a) of this section,”; 3) in subsection (b)(1) by inserting “including by electronic means” and by inserting “which have a total retail value” in lieu of “with a retail value,” 4) by redesignating subsection (c) as subsection (e); and 5) by adding new subsections (c) and (d). Pub. L. No. 105-147, 111 Stat. 2678. The Act also directed the United States Sentencing Commission to “ensure that the applicable guideline range for a defendant convicted of a crime against intellectual property ... is sufficiently stringent to deter such a crime” and to “ensure that the guidelines provide for consideration of the retail value and quantity of the items with respect to which the crime against intellectual property was committed.” *Id.* See also endnote 5, chapter 5, *supra*.

The Intellectual Property and High Technology Technical Amendments Act of 2002 amended paragraph (2) of section 2319(e) by substituting sections “107 through 122” for “107 through 120.” Pub. L. No. 107-273, 116 Stat. 1758, 1910.

3. In 1994, the Uruguay Round Agreements Act added section 2319A to title 18 of the *United States Code*. This section was entitled “Unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances.” Pub. L. No. 103-465, 108 Stat. 4809, 4974. In 1997, the No Electronic Theft Act amended section 2319A by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, and by adding subsection (d). Pub. L. No. 105-147, 111 Stat. 2678. See also endnote 2, *supra*, regarding the United States Sentencing Commission.

4. The Uruguay Round Agreements Act was enacted on December 8, 1994.

5. In 1948, section 1338, entitled “Patents, copyrights, trademarks, and unfair competition,” was added to title 28 of the *United States Code*. Pub. L. No. 773, 62 Stat. 869, 931. In 1970, the title of section 1338 and the text of subsection (b) were amended to insert “plant variety protection” after “patent.” Pub. L. No. 91-577, 84 Stat. 1542, 1559. In 1988, the Judicial Improvements and Access to Justice Act amended section 1338 by adding “mask works” to the title and by adding subsection (c). Pub. L. No. 100-702, 102 Stat. 4642, 4671. In 1998, the Digital Millennium Copyright Act (DMCA) amended the title by inserting “designs,” after “mask works.” Pub. L. No. 105-304, 112 Stat. 2860, 2917. The DMCA also amended subsection (c) by inserting “, and to exclusive rights in designs under chapter 13 of title 17,” after “chapter 9 of title 17.”

Id. In 1999, the Anticybersquatting Consumer Protection Act amended section 1338 throughout to change “trade-mark” and “trade-marks” to “trademark” and “trademarks,” respectively. Pub. L. No. 106-113, 113 Stat. 1501, 1501A-551, Appendix I.

6. In 1948, section 1400, entitled “Patents and copyrights,” was added to title 28 of the *United States Code*. Pub. L. No. 773, 62 Stat. 869, 936. In 1988, the Judicial Improvements and Access to Justice Act amended subsection (a) by inserting “or exclusive rights in mask works” after “copyrights.” Pub. L. No. 100-702, 102 Stat. 4642, 4671. In 1998, the Digital Millennium Copyright Act (DMCA) amended subsection (a) to insert “or designs” after “mask works.” Pub. L. No. 105-304, 112 Stat. 2860, 2917. The DMCA also amended the heading to “Patents and copyrights, mask works, and designs.” This amendment included a period at the end, after “designs.” In 1999, a technical amendment deleted the period. Pub. L. No. 106-44, 113 Stat. 221, 223.

7. In 1960, section 1498 of the *United States Code* was amended to add subsections (b) and (c). Pub. L. No. 86-726, 74 Stat. 855. The Copyright Act of 1976 amended section 1498(b) to insert “section 504(c) of title 17” in lieu of “section 101(b) of title 17.” Pub. L. No. 94-553, 90 Stat. 2541, 2599. The Federal Courts Improvement Act of 1982 amended section 1498(a) to insert “United States Claims Court” in lieu of “Court of Claims” and, in subsections (b) and (d), to insert “Claims Court” in lieu of “Court of Claims,” wherever it appeared. Pub. L. No. 97-164, 96 Stat. 25, 40. In 1988, the Judicial Improvements and Access to Justice Act amended section 1498 by adding subsection (e). Pub. L. No. 100-702, 102 Stat. 4642, 4671. The Federal Courts Administration Act of 1992 amended section 1498 by inserting “United States Court of Federal Claims” in lieu of “United States Claims Court,” wherever it appeared, and by inserting “Court of Federal Claims” in lieu of “Claims Court,” wherever it appeared. Pub. L. No. 102-572, 106 Stat. 4506, 4516. In 1997, the No Electronic Theft (NET) Act amended section 1498(b) to insert “action which may be brought for such infringement shall be an action by the copyright owner” in lieu of “remedy of the owner of such copyright shall be by action.” Pub. L. No. 105-147, 111 Stat. 2678, 2680. The Digital Millennium Copyright Act amended subsection (e) by inserting, “, and to exclusive rights in designs under chapter 13 of title 17,” after “chapter 9 of title 17.” Pub. L. No. 105-304, 112 Stat. 2860, 2917.

8. In 1968, section 2113, entitled “Limitation on liability,” was added to title 44 of the *United States Code*. Pub. L. No. 90-620, 82 Stat. 1238, 1291. The 1976 Copyright Act amended section 2113 in its entirety. Pub. L. No. 94-553, 90 Stat. 2541, 2599. The National Archives and Records Administration Act of 1984 amended section 2113 by redesignating it as section 2117 and by inserting “Archivist” in lieu of “Administrator of General Services.” Pub. L. No. 98-497, 98 Stat. 2280 and 2286.