

HR 2391

Intellectual Property Protection Act of 2004

Congress: 108 (2003–2005, Ended)

Chamber: House

Policy Area: Commerce

Introduced: Jun 9, 2003

Current Status: Placed on Senate Legislative Calendar under General Orders. Calendar No. 781.

Latest Action: Placed on Senate Legislative Calendar under General Orders. Calendar No. 781. (Oct 7, 2004)

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Sponsor

Name: Rep. Smith, Lamar [R-TX-21]
Party: Republican • **State:** TX • **Chamber:** House

Cosponsors (13 total)

Cosponsor	Party / State	Role	Date Joined
Rep. Baldwin, Tammy [D-WI-2]	D · WI		Jun 9, 2003
Rep. Berman, Howard L. [D-CA-28]	D · CA		Jun 9, 2003
Rep. Boucher, Rick [D-VA-9]	D · VA		Jun 9, 2003
Rep. Coble, Howard [R-NC-6]	R · NC		Jun 9, 2003
Rep. Conyers, John, Jr. [D-MI-14]	D · MI		Jun 9, 2003
Rep. Goodlatte, Bob [R-VA-6]	R · VA		Jun 9, 2003
Rep. Green, Mark [R-WI-8]	R · WI		Jun 9, 2003
Rep. Hart, Melissa A. [R-PA-4]	R · PA		Jun 9, 2003
Rep. Lofgren, Zoe [D-CA-16]	D · CA		Jun 9, 2003
Rep. Wexler, Robert [D-FL-19]	D · FL		Jun 9, 2003
Rep. Forbes, J. Randy [R-VA-4]	R · VA		Jun 19, 2003
Rep. Kind, Ron [D-WI-3]	D · WI		Sep 25, 2003
Rep. Hyde, Henry J. [R-IL-6]	R · IL		Jan 20, 2004

Committee Activity

Committee	Chamber	Activity	Date
Judiciary Committee	House	Reported by	Jul 22, 2003
Judiciary Committee	Senate	Reported By	Oct 8, 2004

Subjects & Policy Tags

Policy Area:

Commerce

Related Bills

Bill	Relationship	Last Action
108 S 2192	Related bill	Dec 10, 2004: Became Public Law No: 108-453.

Intellectual Property Protection Act of 2004 - **Title I: Cooperative Research and Technology Enhancement** - Cooperative Research and Technology Enhancement (CREATE) Act of 2004 - (Sec. 102) Amends Federal patent law to provide that patentability is not precluded on the basis of obviousness where subject matter which qualifies as prior art is developed by a person different from the person claiming the invention if: (1) the claimed invention was made by or on behalf of parties to a joint research agreement that was in effect on or before the date the claimed invention was made; (2) the claimed invention was made as a result of activities undertaken within the scope of the agreement; and (3) the application for patent for the claimed invention discloses or is amended to disclose the names of the parties to the agreement. Defines "joint research agreement" to mean a written contract, grant, or cooperative agreement entered into by two or more persons or entities for the performance of experimental, developmental, or research work in the field of the claimed invention.

Title II: Piracy Deterrence and Education - Piracy Deterrence and Education Act of 2004 - (Sec. 203) Authorizes the Attorney General (AG) to establish an 18-month program under which the Department of Justice (DOJ) would send warning letters to the Internet service providers of subscribers who appear to be engaging in copyright infringing conduct. Allows providers to forward the warning letters to such subscribers. Prohibits providers from disclosing any identifying information about such subscribers to DOJ except pursuant to court order or other applicable legal process that requires such disclosure.

(Sec. 204) Directs the AG to ensure that any DOJ unit responsible for investigating computer hacking or investigating intellectual property crimes is assigned at least one agent trained in the investigation and enforcement of such crimes.

(Sec. 205) Establishes an Internet Use Education Program within the Office of the Associate Attorney General of the United States to educate the public concerning: (1) the value of copyrighted works and the effects of their theft on their creators; and (2) the privacy, security, and other risks of using the Internet to obtain illegal copies of copyrighted works. Prohibits the use of DOJ funds allocated for criminal investigations or prosecutions or for the Civil Rights Division for such program.

(Sec. 206) Authorizes the U.S. Government to bring actions for infringement of copyright before registration of the copyright claim.

(Sec. 207) Authorizes appropriations for investigation and prosecution of copyright infringement.

(Sec. 208) Prohibits the unauthorized, knowing use or attempted use of a video camera or similar device to transmit or make a copy of a motion picture or other copyrighted audiovisual work from a performance of such work in a movie theater. Sets forth penalties for such violations, which may include imprisonment for not more than three years for a first offense. Considers the possession of a recording device in a movie theater as evidence in any proceeding to determine whether that person committed such an offense, but shall not, by itself, be sufficient to support a conviction for such offense.

Requires the court to order the forfeiture and destruction or other disposition of all unauthorized copies of motion pictures or other copyrighted audiovisual works and any video camera or other equipment used in connection with the offense in addition to any other penalty.

Authorizes, with reasonable cause, the owner, lessee, authorized agent, or employee of a movie theater to detain, in a reasonable manner and for a reasonable time, any person suspected of committing such an offense for the purpose of

questioning that person or summoning a law enforcement officer.

Allows the victim of such an offense to submit a victim impact statement to the probation officer during the preparation of a presentence report.

(Sec. 209) Expresses the sense of Congress that: (1) responsible software developers should be commended; (2) the level of ongoing illegal and dangerous activity on publicly accessible peer-to-peer file sharing services is harmful to consumers, minors and the economy; and (3) Congress and the executive branch should consider all appropriate measures to protect consumers and children, and prevent such illegal activity.

(Sec. 210) Revises copyright infringement criminal provisions to prohibit any person who infringes a copyright by the knowing distribution, including by electronic means, with reckless disregard of the risk of further infringement, during any 180-day period, of: (1) 1,000 or more copies or phonorecords of any copyrighted work; (2) any copies or phonorecords of any copyrighted work with a total retail value of more than \$10,000; or (3) any copies or phonorecords of any copyrighted prerelease work. Provides that evidence of reproduction or distribution of a copyrighted work is not, by itself, sufficient to establish the necessary level of intent. Sets forth penalties for such violations.

Directs the Register of Copyrights to issue regulations to establish procedures for preregistration of a work that is being prepared for commercial distribution and has not been published. Requires such regulations to permit preregistration for any work that is in a class of works that the Register determines has had a history of infringement prior to authorized commercial distribution. Requires the applicant to submit, within three months after the work's first publication, an application for registration, a deposit, and the applicable fee. Directs that an application for infringement be dismissed, and prohibits any award of statutory damages or attorney fees, for a preregistered work if those items are not submitted to the Copyright Office in proper form within the earlier of: (1) three months after the work's first publication; or (2) one month after the copyright owner has learned of the infringement.

(Sec. 211) Requires the United States Sentencing Commission to review and amend, if appropriate, the sentencing guidelines and policy statements applicable to persons convicted of intellectual property rights crimes, including by: (1) taking measures to ensure that the guidelines and policy statements are sufficiently stringent to deter, and adequately reflect the nature of, such crimes; (2) determining whether to provide a sentencing enhancement for those convicted of such offenses if the conduct involves the display, performance, publication, reproduction, or distribution of a copyrighted work before it has been authorized; (3) determining whether the scope of "uploading" set forth in the sentencing guidelines is adequate to address the loss attributable to people who broadly distribute copyrighted works without authorization over the Internet; and (4) determining whether the guidelines and policy statements adequately reflect any harm to victims from copyright infringement if law enforcement authorities cannot determine how many times copyright material has been reproduced or distributed.

Family Movie Act of 2004 - (Sec. 212) Amends Federal copyright law to create an exemption from copyright infringement for: (1) the making imperceptible, by or at the direction of a private household, of limited portions of audio or video content of a motion picture during a performance in or transmitted to that household for private home viewing from an authorized copy of the motion picture; or (2) the creation or provision of technology that enables such editing, is designed and marketed for such use, creates no fixed copy of the altered version, and makes no changes, deletions or additions to commercial advertisements or promotional announcements that would otherwise be performed or displayed.

Amends the Trademark Act of 1946 to protect from liability for trademark infringement: (1) persons who engage in the above-referenced conduct; and (2) manufacturers of technology that enables such editing if notice is provided that the

performance of the movie is altered from the director's or copyright holder's intended performance.

Title III: Protecting Intellectual Rights Against Theft and Expropriation -Protecting Intellectual Rights Against Theft and Expropriation Act of 2004 - (Sec. 302) Amends Federal copyright law to authorize the Attorney General (AG) to commence a civil action against any person who engages in conduct constituting copyright infringement and to collect a civil penalty equal to the sum of restitution to victims and restitution to the copyright owner upon proof of such conduct by a preponderance of the evidence.

Requires that any restitution received by a copyright owner as a result of such a civil action be offset against any award of damages in a subsequent civil action brought by the copyright owner.

Allows the AG to collect in such a civil suit either: (1) actual damages of the copyright owner and profits of the infringer; or (2) statutory damages.

(Sec. 303) Directs the AG to: (1) develop a program to ensure effective implementation and use of the authority for civil enforcement of the copyright laws, including training programs for qualified personnel from the Department of Justice (DOJ) and the U.S. Attorneys Offices; (2) participate in a pilot program designed to implement the civil enforcement authority of the AG; and (3) report annually to Congress on the use of such enforcement authority and on progress made in implementing the training programs. Authorizes appropriation for such training and pilot program for FY 2005.

Title IV: National Film Preservation Act of 2004 - Subtitle A: Reauthorization of the National Film Preservation Board - National Film Preservation Act of 2004 - (Sec. 402) Amends the National Film Preservation Act of 1996 to expand the use of the National Film Registry seal (which indicates that a film has been included in the Registry and is the Registry version of the film) for use on other approved copies of the Registry version of the film. Allows only the copyright owner or an authorized licensee of the copyright owner to place the seal on any film or other approved copy in the case of mass distributed, broadcast, or published works.

Directs the Librarian of Congress, in consultation with the National Film Registry Board, to: (1) carry out activities to make films included in the National Film Registry more broadly accessible for research and educational purposes and to generate public awareness and support of the Registry and the comprehensive national film preservation program; (2) review the comprehensive national film preservation plan and amend it to ensure that it addresses technological advances in preserving, storing, and accessing film collections in multiple formats; and (3) undertake expanded initiatives to ensure the preservation of the moving image heritage of the United States by supporting the work of the National Audio-Visual Conservation Center of the Library of Congress at Culpeper Virginia and other appropriate nonprofit archival and preservation organizations.

Increases the number of members on the National Film Preservation Board, the maximum number of members-at-large that the Librarian may appoint, and the number of members required for a quorum.

Directs the Librarian to utilize the National Audio-Visual Conservation Center to ensure that preserved films included in the Registry are stored in a proper manner and disseminated to researchers, scholars, and the public as appropriate in accordance with U.S. copyright law and the terms of any agreements between the Librarian and persons who hold copyrights to such audiovisual works.

Extends the prohibition on the unapproved use of the Registry seal to any format of such a film.

Authorizes appropriations to maintain and preserve films that are culturally, historically, or aesthetically significant.

Reauthorizes provisions regarding film preservation for four additional years.

Subtitle B: Reauthorization of the National Film Preservation Foundation - National Film Preservation Foundation Reauthorization Act of 2004 - (Sec. 412) Removes the limit on the number of terms that a director on the National Film Preservation Foundation may serve.

Allows the Foundation's board of directors to determine the location of its principal office.

Authorizes appropriations to the Library of Congress for the Foundation.

Title V: Preservation of Orphan Works Act - Preservation of Orphan Works Act - (Sec. 502) Provides that the limitation on rights of reproduction and distribution of copyrighted works does not apply to the authority of libraries or archives, during the last 20 years of any term of copyright of a published work to reproduce, distribute, display, or perform in facsimile or digital form a copy or phonorecord of such work for purposes of preservation, scholarship, or research when certain conditions apply.

Title VI: Enhancing Federal Obscenity Reporting and Copyright Enforcement - Enhancing Federal Obscenity Reporting and Copyright Enforcement Act of 2004 - (Sec. 602) Provides that a certificate of registration shall satisfy registration requirements for purposes of initiating a copyright infringement action, irrespective of any inaccurate information on the registration application, unless: (1) the inaccurate information was included on the application with knowledge that it was inaccurate; and (2) the inaccurate information, if known, would have caused the Register of Copyrights to refuse registration.

Requires the court, in any case in which such inaccuracies are alleged, to request the Register to advise the court whether the inaccurate information, if known, would have caused the Register to refuse registration.

(Sec. 603) Allows a court, in computing statutory damages for copyright infringements, to determine that the parts of a compilation or derivative work are separate works if the court concludes that they are distinct works having independent economic value.

(Sec. 604) Requires the Attorney General (AG) to include in the report to Congress on the business of the Department of Justice the numbers of misdemeanor and felony prosecutions commenced and concluded during the preceding fiscal year relating to obscenity, sexual exploitation and other abuse of children, criminal copyright infringement, and counterfeiting, including detailed information concerning: (1) the types of works involved; (2) the tangible media of expression and means of reproduction and distribution involved; and (3) the disposition of any prosecutions and the sentences imposed.

Actions Timeline

- **Oct 7, 2004:** Committee on the Judiciary. Ordered to be reported with an amendment in the nature of a substitute favorably.
- **Oct 7, 2004:** Committee on the Judiciary. Reported by Senator Hatch with an amendment in the nature of a substitute. Without written report.
- **Oct 7, 2004:** Committee on the Judiciary. Reported by Senator Hatch with an amendment in the nature of a substitute. Without written report.
- **Oct 7, 2004:** Placed on Senate Legislative Calendar under General Orders. Calendar No. 781.
- **Mar 11, 2004:** Received in the Senate and Read twice and referred to the Committee on the Judiciary.
- **Mar 10, 2004:** Mr. Sensenbrenner moved to suspend the rules and pass the bill, as amended.
- **Mar 10, 2004:** Considered under suspension of the rules. (consideration: CR H944-946)
- **Mar 10, 2004:** DEBATE - The House proceeded with forty minutes of debate on H.R. 2391.
- **Mar 10, 2004:** Passed/agreed to in House: On motion to suspend the rules and pass the bill, as amended Agreed to by voice vote.(text: CR H944)
- **Mar 10, 2004:** On motion to suspend the rules and pass the bill, as amended Agreed to by voice vote. (text: CR H944)
- **Mar 10, 2004:** Motion to reconsider laid on the table Agreed to without objection.
- **Mar 10, 2004:** The title of the measure was amended. Agreed to without objection.
- **Feb 24, 2004:** Reported (Amended) by the Committee on Judiciary. H. Rept. 108-425.
- **Feb 24, 2004:** Reported (Amended) by the Committee on Judiciary. H. Rept. 108-425.
- **Feb 24, 2004:** Placed on the Union Calendar, Calendar No. 245.
- **Jan 21, 2004:** Committee Consideration and Mark-up Session Held.
- **Jan 21, 2004:** Ordered to be Reported (Amended) by Voice Vote.
- **Jul 22, 2003:** Subcommittee Consideration and Mark-up Session Held.
- **Jul 22, 2003:** Forwarded by Subcommittee to Full Committee (Amended) by Voice Vote.
- **Jun 10, 2003:** Subcommittee Hearings Held.
- **Jun 9, 2003:** Introduced in House
- **Jun 9, 2003:** Introduced in House
- **Jun 9, 2003:** Referred to the House Committee on the Judiciary.
- **Jun 9, 2003:** Referred to the Subcommittee on Courts, the Internet, and Intellectual Property.