

103-322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 419c, 419d (Aug. 18, 1941, ch. 366, §§ 4, 5, 55 Stat. 632).

Definitions of “cattle” and “interstate or foreign commerce”, contained in section 419a of title 18, U.S.C., 1940 ed., are incorporated in sections 10 and 2311 of this title.

Venue provision of said section 419d of title 18, U.S.C., 1940 ed., was omitted as completely covered by section 3237 of this title.

Minor changes were made in phraseology.

AMENDMENTS

1994—Pub. L. 103-322 substituted “fined under this title” for “fined not more than \$5,000”.

1984—Pub. L. 98-473 substituted “livestock” for “cattle” in section catchline and text.

§ 2318. Trafficking in counterfeit labels, illicit labels, or counterfeit documentation or packaging

(a)(1)¹ Whoever, in any of the circumstances described in subsection (c), knowingly traffics in—

(A) a counterfeit label or illicit label affixed to, enclosing, or accompanying, or designed to be affixed to, enclose, or accompany—

- (i) a phonorecord;
- (ii) a copy of a computer program;
- (iii) a copy of a motion picture or other audiovisual work;
- (iv) a copy of a literary work;
- (v) a copy of a pictorial, graphic, or sculptural work;
- (vi) a work of visual art; or
- (vii) documentation or packaging; or

(B) counterfeit documentation or packaging, shall be fined under this title or imprisoned for not more than 5 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” has the same meaning as in section 2320(f) of this title;

(3) the terms “copy”, “phonorecord”, “motion picture”, “computer program”, “audiovisual work”, “literary work”, “pictorial, graphic, or sculptural work”, “sound recording”, “work of visual art”, and “copyright owner” have, respectively, the meanings given those terms in section 101 (relating to definitions) of title 17;

(4) the term “illicit label” means a genuine certificate, licensing document, registration card, or similar labeling component—

(A) that is used by the copyright owner to verify that a phonorecord, a copy of a computer program, a copy of a motion picture or other audiovisual work, a copy of a literary work, a copy of a pictorial, graphic, or sculptural work, a work of visual art, or documentation or packaging is not counterfeit or infringing of any copyright; and

(B) that is, without the authorization of the copyright owner—

(i) distributed or intended for distribution not in connection with the copy, phonorecord, or work of visual art to which such labeling component was intended to be affixed by the respective copyright owner; or

(ii) in connection with a genuine certificate or licensing document, knowingly falsified in order to designate a higher number of licensed users or copies than authorized by the copyright owner, unless that certificate or document is used by the copyright owner solely for the purpose of monitoring or tracking the copyright owner’s distribution channel and not for the purpose of verifying that a copy or phonorecord is noninfringing;

(5) the term “documentation or packaging” means documentation or packaging, in physical form, for a phonorecord, copy of a computer program, copy of a motion picture or other audiovisual work, copy of a literary work, copy of a pictorial, graphic, or sculptural work, or work of visual art; and

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

(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 or illicit label is affixed to, encloses, or accompanies, or is designed to be affixed to, enclose, or accompany—

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

(B) a copy of a copyrighted computer program;

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

(D) a copy of a literary work;

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

(F) a work of visual art; or

(G) copyrighted documentation or packaging; or

(4) the counterfeited documentation or packaging is copyrighted.

(d) FORFEITURE AND DESTRUCTION OF PROPERTY; RESTITUTION.—Forfeiture, destruction, and restitution relating to this section shall be subject to section 2323, to the extent provided in that section, in addition to any other similar remedies provided by law.

(e) CIVIL REMEDIES.—

(1) IN GENERAL.—Any copyright owner who is injured, or is threatened with injury, by a violation of subsection (a) may bring a civil action in an appropriate United States district court.

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

¹ So in original. No par. (2) has been enacted.

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

(B) at any time while the action is pending, may order the impounding, on such terms as the court determines to be reasonable, of any article that is in the custody or control of the alleged violator and that the court has reasonable cause to believe was involved in a violation of subsection (a); and

(C) may award to the injured party—

(i) reasonable attorney fees and costs; and

(ii)(I) actual damages and any additional profits of the violator, as provided in paragraph (3); or

(II) statutory damages, as provided in paragraph (4).

(3) ACTUAL DAMAGES AND PROFITS.—

(A) IN GENERAL.—The injured party is entitled to recover—

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

(ii) any profits of the violator that are attributable to a violation of subsection (a) and are not taken into account in computing the actual damages.

(B) CALCULATION OF DAMAGES.—The court shall calculate actual damages by multiplying—

(i) the value of the phonorecords, copies, or works of visual art which are, or are intended to be, affixed with, enclosed in, or accompanied by any counterfeit labels, illicit labels, or counterfeit documentation or packaging, by

(ii) the number of phonorecords, copies, or works of visual art which are, or are intended to be, affixed with, enclosed in, or accompanied by any counterfeit labels, illicit labels, or counterfeit documentation or packaging.

(C) DEFINITION.—For purposes of this paragraph, the “value” of a phonorecord, copy, or work of visual art is—

(i) in the case of a copyrighted sound recording or copyrighted musical work, the retail value of an authorized phonorecord of that sound recording or musical work;

(ii) in the case of a copyrighted computer program, the retail value of an authorized copy of that computer program;

(iii) in the case of a copyrighted motion picture or other audiovisual work, the retail value of an authorized copy of that motion picture or audiovisual work;

(iv) in the case of a copyrighted literary work, the retail value of an authorized copy of that literary work;

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

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

(4) STATUTORY DAMAGES.—The injured party may elect, at any time before final judgment

is rendered, to recover, instead of actual damages and profits, an award of statutory damages for each violation of subsection (a) in a sum of not less than \$2,500 or more than \$25,000, as the court considers appropriate.

(5) SUBSEQUENT VIOLATION.—The court may increase an award of damages under this subsection by 3 times the amount that would otherwise be awarded, as the court considers appropriate, if the court finds that a person has subsequently violated subsection (a) within 3 years after a final judgment was entered against that person for a violation of that subsection.

(6) LIMITATION ON ACTIONS.—A civil action may not be commenced under this subsection unless it is commenced within 3 years after the date on which the claimant discovers the violation of subsection (a).

(Added Pub. L. 87-773, §1, Oct. 9, 1962, 76 Stat. 775; amended Pub. L. 93-573, title I, §103, Dec. 31, 1974, 88 Stat. 1873; Pub. L. 94-553, title I, §111, Oct. 19, 1976, 90 Stat. 2600; Pub. L. 97-180, §2, May 24, 1982, 96 Stat. 91; Pub. L. 101-647, title XXXV, §3567, Nov. 29, 1990, 104 Stat. 4928; Pub. L. 103-272, §5(e)(10), July 5, 1994, 108 Stat. 1374; Pub. L. 103-322, title XXXIII, §330016(1)(U), Sept. 13, 1994, 108 Stat. 2148; Pub. L. 104-153, §4(a), (b)(1), July 2, 1996, 110 Stat. 1386, 1387; Pub. L. 108-482, title I, §102(a), (b), Dec. 23, 2004, 118 Stat. 3912, 3914; Pub. L. 109-181, §2(c)(2), Mar. 16, 2006, 120 Stat. 288; Pub. L. 110-403, title II, §202, Oct. 13, 2008, 122 Stat. 4260; Pub. L. 111-295, §6(i), Dec. 9, 2010, 124 Stat. 3182; Pub. L. 114-154, §3(1), May 16, 2016, 130 Stat. 387.)

AMENDMENTS

2016—Subsec. (b)(2). Pub. L. 114-154 substituted “section 2320(f)” for “section 2320(e)”.

2010—Subsec. (e)(6). Pub. L. 111-295 substituted “under this subsection” for “under section”.

2008—Subsec. (a). Pub. L. 110-403, §202(1), designated existing provisions as par. (1) and redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), and former subpars. (A) to (G) as cls. (i) to (vii), respectively, of subpar. (A).

Subsec. (d). Pub. L. 110-403, §202(2), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “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 or illicit labels and all articles to which counterfeit labels or illicit labels have been affixed or which were intended to have had such labels affixed, and of any equipment, device, or material used to manufacture, reproduce, or assemble the counterfeit labels or illicit labels.”

Subsecs. (e), (f). Pub. L. 110-403, §202(3), redesignated subsec. (f) as (e) and struck out former subsec. (e) which read as follows: “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).”

2006—Subsec. (b)(2). Pub. L. 109-181 added par. (2) and struck out former par. (2) which read as follows: “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;”.

2004—Pub. L. 108-482, §102(a)(1), substituted “Trafficking in counterfeit labels, illicit labels, or counterfeit documentation or packaging” for “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” in section catchline.

Subsec. (a). Pub. L. 108-482, §102(a)(2), added subsec. (a) and struck out former subsec. (a) which read as follows: “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.”

Subsec. (b)(2). Pub. L. 108-482, §102(a)(3)(A), struck out “and” after the semicolon at end.

Subsec. (b)(3). Pub. L. 108-482, §102(a)(3)(B), substituted “‘audiovisual work’, ‘literary work’, ‘pictorial, graphic, or sculptural work’, ‘sound recording’, ‘work of visual art’, and ‘copyright owner have’” for “‘and ‘audiovisual work’ have’” and a semicolon for the period at end.

Subsec. (b)(4) to (6). Pub. L. 108-482, §102(a)(3)(C), added pars. (4) to (6).

Subsec. (c)(3). Pub. L. 108-482, §102(a)(4)(A), added par. (3) and struck former par. (3) which read as follows: “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”.

Subsec. (c)(4). Pub. L. 108-482, §102(a)(4)(B), struck out “for a computer program” after “packaging”.

Subsec. (d). Pub. L. 108-482, §102(a)(5), inserted “or illicit labels” after “counterfeit labels” in two places and inserted “, and of any equipment, device, or material used to manufacture, reproduce, or assemble the counterfeit labels or illicit labels” before period at end.

Subsec. (f). Pub. L. 108-482, §102(b), added subsec. (f).

1996—Pub. L. 104-153, §4(b)(1), substituted “‘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’” for “‘Trafficking in counterfeit labels for phonorecords and copies of motion pictures or other audiovisual works’” in section catchline.

Subsec. (a). Pub. L. 104-153, §4(a)(1), substituted “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,” for “a motion picture or other audiovisual work.”

Subsec. (b)(3). Pub. L. 104-153, §4(a)(2), inserted “‘computer program’,” after “‘motion picture’,”.

Subsec. (c)(2). Pub. L. 104-153, §4(a)(3)(A), struck out “or” at end.

Subsec. (c)(3). Pub. L. 104-153, §4(a)(3)(B), inserted “a copy of a copyrighted computer program or copyrighted documentation or packaging for a computer program,” after “enclose,” and substituted “; or” for period at end.

Subsec. (c)(4). Pub. L. 104-153, §4(a)(3)(C), added par. (4).

1994—Subsec. (a). Pub. L. 103-322 substituted “fined under this title” for “fined not more than \$250,000”.

Subsec. (c)(1). Pub. L. 103-272 substituted “section 46501 of title 49” for “section 101 of the Federal Aviation Act of 1958”.

1990—Pub. L. 101-647 struck out comma after “phonorecords” in section catchline.

1982—Pub. L. 97-180 substituted “Trafficking in counterfeit labels for phonorecords, and copies of motion

pictures or other audiovisual works” for “Transportation, sale or receipt of phonograph records bearing forged or counterfeit labels” in section catchline.

Subsec. (a). Pub. L. 97-180 substituted provision that violators of this section shall be fined not more than \$250,000 or imprisoned for not more than five years or both for provision that whoever knowingly and with fraudulent intent transported, caused to be transported, received, sold, or offered for sale in interstate or foreign commerce any phonograph record, disk, wire, tape, film, or other article on which sounds were recorded, to which or upon which was stamped, pasted, or affixed any forged or counterfeited label, knowing the label to have been falsely made, forged, or counterfeited would be fined not more than \$10,000 or imprisoned for not more than one year, or both, for the first such offense and would be fined not more than \$25,000 or imprisoned for not more than two years, or both, for any subsequent offense.

Subsecs. (b) to (e). Pub. L. 97-180 added subsecs. (b) and (c), redesignated former subsecs. (b) and (c) as (d) and (e), respectively, and in subsec. (d) as so redesignated struck out the comma after “judgment of conviction shall”.

1976—Pub. L. 94-553 designated existing provisions as subsec. (a) and substituted “\$10,000” for “\$25,000” and “\$25,000” for “\$50,000”, and added subsecs. (b) and (c).

1974—Pub. L. 93-573 substituted “not more than \$25,000 or imprisoned for not more than one year, or both, for the first offense and shall be fined not more than \$50,000 or imprisoned not more than 2 years, or both, for any subsequent offense” for “not more than \$1,000 or imprisoned not more than one year or both”.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-553 effective Jan. 1, 1978, see section 102 of Pub. L. 94-553, set out as a note preceding section 101 of Title 17, Copyrights.

OTHER RIGHTS NOT AFFECTED BY ANTI-COUNTERFEITING PROVISIONS

Pub. L. 108-482, title I, §103, Dec. 23, 2004, 118 Stat. 3915, provided that:

“(a) CHAPTERS 5 AND 12 OF TITLE 17; ELECTRONIC TRANSMISSIONS.—The amendments made by this title [amending this section]—

“(1) shall not enlarge, diminish, or otherwise affect any liability or limitations on liability under sections 512, 1201 or 1202 of title 17, United States Code; and

“(2) shall not be construed to apply—

“(A) in any case, to the electronic transmission 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; and

“(B) in the case of a civil action under section 2318(f) [now 2318(e)] 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—