

AMENDMENTS

2008—Subsec. (b). Pub. L. 110-403, §203(a), amended subsec. (b) generally. Prior to amendment, text read as follows: “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.”

Subsec. (c). Pub. L. 110-403, §203(b), substituted “The Secretary of Homeland Security shall issue regulations by which any performer may, upon payment of a specified fee, be entitled to notification by United States Customs and Border Protection 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.” for “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.”

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.

Statutory Notes and Related Subsidiaries

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. For establishment of U.S. Customs and Border Protection in the Department of Homeland Security, treated as if included in Pub. L. 107-296 as of Nov. 25, 2002, see section 211 of Title 6, as amended generally by Pub. L. 114-125, and section 802(b) of Pub. L. 114-125, set out as a note under section 211 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 fa-

cility 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 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.

(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; amended Pub. L. 110–403, title II, §204, Oct. 13, 2008, 122 Stat. 4261.)

Editorial Notes

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

2008—Subsec. (b). Pub. L. 110–403 amended subsec. (b) generally. Prior to amendment, text read as follows: “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.”

§ 2319C. Illicit digital transmission services

(a) **DEFINITIONS.**—In this section—

(1) the terms “audiovisual work”, “computer program”, “copies”, “copyright owner”, “digital transmission”, “financial gain”, “motion picture”, “motion picture exhibition facility”, “perform”, “phonorecords”, “publicly” (with respect to performing a work), “sound recording”, and “transmit” have the meanings given those terms in section 101 of title 17;

(2) the term “digital transmission service” means a service that has the primary purpose of publicly performing works by digital transmission;

(3) the terms “publicly perform” and “public performance” refer to the exclusive rights of a copyright owner under paragraphs (4) and (6) of section 106 (relating to exclusive rights in copyrighted works) of title 17, as limited by sections 107 through 122 of title 17; and

(4) the term “work being prepared for commercial public performance” means—

(A) a computer program, a musical work, a motion picture or other audiovisual work, or a sound recording, if, at the time of unauthorized public performance—

(i) the copyright owner has a reasonable expectation of commercial public performance; and

(ii) the copies or phonorecords of the work have not been commercially publicly performed in the United States by or with the authorization of the copyright owner; or

(B) a motion picture, if, at the time of unauthorized public performance, the motion picture—

(i)(I) has been made available for viewing in a motion picture exhibition facility; and

(II) has not been made available in copies for sale to the general public in the United States by or with the authorization of the copyright owner in a format intended to permit viewing outside a motion picture exhibition facility; or

(ii) had not been commercially publicly performed in the United States by or with the authorization of the copyright owner more than 24 hours before the unauthorized public performance.

(b) **PROHIBITED ACT.**—It shall be unlawful for a person to willfully, and for purposes of commercial advantage or private financial gain, offer or provide to the public a digital transmission service that—

(1) is primarily designed or provided for the purpose of publicly performing works protected under title 17 by means of a digital transmission without the authority of the copyright owner or the law;

(2) has no commercially significant purpose or use other than to publicly perform works protected under title 17 by means of a digital transmission without the authority of the copyright owner or the law; or

(3) is intentionally marketed by or at the direction of that person to promote its use in publicly performing works protected under title 17 by means of a digital transmission without the authority of the copyright owner or the law.

(c) **PENALTIES.**—Any person who violates subsection (b) shall be, in addition to any penalties provided for under title 17 or any other law—

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

(2) fined under this title, imprisoned not more than 5 years, or both, if—

(A) the offense was committed in connection with 1 or more works being prepared for commercial public performance; and

(B) the person knew or should have known that the work was being prepared for commercial public performance; and

(3) fined under this title, imprisoned not more than 10 years, or both, if the offense is a second or subsequent offense under this section or section 2319(a).

(d) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed to—

(1) affect the interpretation of any other provision of civil copyright law, including the limitations of liability set forth in section 512 of title 17, or principles of secondary liability; or

(2) prevent any Federal or State authority from enforcing cable theft or theft of service laws that are not subject to preemption under section 301 of title 17.

(Added Pub. L. 116–260, div. Q, title II, §211(a), Dec. 27, 2020, 134 Stat. 2175.)

§ 2320. Trafficking in counterfeit goods or services

(a) **OFFENSES.**—Whoever intentionally—

(1) traffics in goods or services and knowingly uses a counterfeit mark on or in connection with such goods or services,