

Federal Criminal Intellectual Property Statutes

18 U.S.C. § 2318

Effective March 16, 2006; current as of March 1, 2007

- (a) Whoever, in any of the circumstances described in subsection (c), knowingly traffics in--
 - (1) a counterfeit label or illicit label affixed to, enclosing, or accompanying, or designed to be affixed to, enclose, or accompany--
 - (A) a phonorecord;
 - (B) a copy of a computer program;
 - (C) a copy of a 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) documentation or packaging; or
 - (2) 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(e) of this title;
 - (3) the terms "copy", "phonorecord", "motion picture", "computer program", and "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-

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- (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) 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.
- (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).
- (f) **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--
 - (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 section unless it is commenced within 3 years after the date on which the claimant discovers the violation of subsection (a).

<http://www.cybercrime.gov/18usc2318.htm>