

## Appendix N

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### Title 18 — Crimes and Criminal Procedure, U.S. Code

#### Part I — Crimes

#### Chapter 113 — Stolen Property

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#### § 2318 · *Trafficking in counterfeit labels, illicit labels, or counterfeit documentation or packaging*<sup>1</sup>

(a) (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)<sup>2</sup> 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 —

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

### § 2319 · *Criminal infringement of a copyright*<sup>3</sup>

(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 —

(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 felony and is a second or subsequent offense under subsection (a); 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)(1)(B) of title 17 —

(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 felony and is a second or subsequent offense under subsection (a); 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) Any person who commits an offense under section 506(a)(1)(C) of title 17—

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

(2) shall be imprisoned not more than 5 years, fined under this title, or both, if the offense was committed for purposes of commercial advantage or private financial gain;

(3) shall be imprisoned not more than 6 years, fined under this title, or both, if the offense is a felony and is a second or subsequent offense under subsection (a); and

(4) shall be imprisoned not more than 10 years, fined under this title, or both, if the offense is a felony and is a second or subsequent offense under paragraph (2).

(e) (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.

(f) 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;

(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;

(3) the term “financial gain” has the meaning given the term in section 101 of title 17; and

(4) the term “work being prepared for commercial distribution” has the meaning given the term in section 506(a) of title 17.

**§ 2319A · *Unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances*<sup>4</sup>**

(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 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) 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 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.

(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” has the same meaning as in section 2320(e)<sup>5</sup> of this title.

(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.<sup>6</sup>

**§ 2319B · Unauthorized recording of motion pictures in a motion picture exhibition facility<sup>7</sup>**

(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 facility 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.

### § 2319C · *Illicit digital transmission services*<sup>8</sup>

(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) 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

(iii) 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.

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**§ 2323 · Forfeiture, destruction, and restitution.<sup>9</sup>**

(a) **CIVIL FORFEITURE.** —

(1) **PROPERTY SUBJECT TO FORFEITURE.** — The following property is subject to forfeiture to the United States Government:

(A) Any article, the making or trafficking of which is, prohibited under section 506 of title 17, or section 2318, 2319, 2319A, 2319B, or 2320, or chapter 90, of this title.

(B) Any property used, or intended to be used, in any manner or part to commit or facilitate the commission of an offense referred to in subparagraph (A).

(C) Any property constituting or derived from any proceeds obtained directly or indirectly as a result of the commission of an offense referred to in subparagraph (A).

(2) **PROCEDURES.** — The provisions of chapter 46 relating to civil forfeitures shall extend to any seizure or civil forfeiture under this section. For seizures made under this section, the court shall enter an appropriate protective order with respect to discovery and use of any records or information that has been seized. The protective order shall provide for appropriate procedures to ensure that confidential, private, proprietary, or privileged information contained in such records is not improperly disclosed or used. At the conclusion of the forfeiture proceedings, unless otherwise requested by an agency of the United States, the court shall order that any property forfeited under paragraph (1) be destroyed, or otherwise disposed of according to law.

(b) **CRIMINAL FORFEITURE.** —

(1) **PROPERTY SUBJECT TO FORFEITURE.** — The court, in imposing sentence on a person convicted of an offense under section 506 of title 17, or section 2318, 2319, 2319A, 2319B, or 2320, or chapter 90, of this title, shall order, in addition to any other sentence imposed, that the person forfeit to the United States Government any property subject to forfeiture under subsection (a) for that offense.

(2) **PROCEDURES.** —

(A) **IN GENERAL.** — The forfeiture of property under paragraph (1), including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be governed by the procedures set forth in section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853), other than subsection (d) of that section.

(B) **DESTRUCTION.** — At the conclusion of the forfeiture proceedings, the court, unless otherwise requested by an agency of the United States shall order that any—

(i) forfeited article or component of an article bearing or consisting of a counterfeit mark be destroyed or otherwise disposed of according to law; and

(ii) infringing items or other property described in subsection (a)(1)(A) and forfeited under paragraph (1) of this subsection be destroyed or otherwise disposed of according to law.

(C) **RESTITUTION.** — When a person is convicted of an offense under section 506 of title 17 or section 2318, 2319, 2319A, 2319B, or 2320, or chapter 90, of this title, the court, pursuant to sections 3556, 3663A, and 3664 of this title, shall order the person to pay restitution to any victim of the offense as an offense against property referred to in section 3663A(c)(1)(A)(ii) of this title.

## Appendix N • Notes

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.

The Anti-counterfeiting Amendments Act of 2004 amended section 2318 by changing its title, by amending subsection 2318(a) in its entirety; and by amending paragraph 2318(c) (3) in its entirety. Pub. L. No. 108-482, 118 Stat. 3912-3913. It amended paragraph 2318(c)(4) by deleting “for a computer program” after “packaging.” *Id.* at 3914. It amended subsection 2318(d) by inserting “or illicit labels” after “counterfeit labels,” wherever it appears and by inserting the text at the end of the sentence, after “such labels affixed.” *Id.* The Act also added a new subsection (f). *Id.*

The Protecting American Goods and Services Act of 2005 amended section 2318(b)(2) in its entirety to make the definition for “traffic” the same as in 18 U.S.C. 2320(e). Pub. L. No. 109-181, 120 Stat. 285, 288. As explained in more detail in endnote 2, Congress later amended Title 18 to move the definition of “traffic” from section 2320(e)(2) to section 2320(f)(5) without amending the cross-reference in section 2318(b)(2) of Title 18.

The Prioritizing Resources and Organization for Intellectual Property Act of 2008 amended section 2318 by revising the section designations for subpart (a), by revising subsection (d) in its entirety and by deleting (e) and redesignating (f) as the new (e). Pub. L. No. 110-403, 122 Stat. 4256, 4261. The Copyright Cleanup, Clarification, and Corrections Act of 2010 amended paragraph 2318(e)(6) by inserting “this” before “section.” Pub. L. No. 111-295, 124 Stat. 3180, 3182.

2. The Transnational Drug Trafficking Act of 2015 amended the definition of “traffic” in section 2318(b)(2) of Title 18 to incorporate by reference the definition of “traffic” in section 2320(f)(5) of Title 18. Pub. L. No. 114-154, 130 Stat. 387. Section 2320(f)(5) of Title 18 states: “the term ‘traffic’ means to transport, transfer, or otherwise dispose of, to another, for purposes of commercial advantage or private financial gain, or to make, import, export, obtain control of, or possess, with intent to so transport, transfer, or otherwise dispose of.”

3. 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 note 6, 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.

The Artists’ Rights and Theft Prevention Act of 2005 amended the beginning of the first sentence of 5 U.S.C. 2319(a) by substituting “Any person who” in lieu of “Whoever.” Pub. L. No. 109-9, 119 Stat. 218, 220–221. It amended subsection 2319(a) by substituting “subsections (b), (c) and (d)” in lieu of “subsections (b) and (c).” *Id.* at 221. It amended the first line of subsection 2319(b) by inserting “section 506(a)(1)(A)” in lieu of “section 506(a)(1).” *Id.* The Act amended the first line of subsection 2319(c) by inserting “section 506(a)(1)(B) of title 17” in lieu of “section 506(a)(2) of title 17, *United States Code*.” *Id.* It also amended subsection (e) by adding a new paragraph (3). *Id.* Finally, the Act amended section 2319 by adding a new subsection (d) and redesignating the following subsections accordingly, as (e) and (f). *Id.*

The Prioritizing Resources and Organization for Intellectual Property Act of 2008 amended paragraph 2319(b)(2) by inserting “is a felony” after “offense” and by deleting “subsection (a)” and inserting “paragraph (1).” Pub. L. No. 110-403, 122 Stat. 4256, 4263. It also amended paragraphs 2319(c)(2), (d)(3) and (d)(4) by making similar changes. *Id.* at 4263–64.

4. 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 note 3, *supra*, regarding the United States Sentencing Commission.

The Protecting American Goods and Services Act of 2005 amended section 2319A(e)(2) in its entirety to make the definition for “traffic” the same as in 18 U.S.C. 2320(e). Pub. L. No. 109-181, 120 Stat. 285, 288. As explained in more detail in note 2, Congress later amended Title 18 to move the definition of “traffic” from section 2320(e)(2) to section 2320(f)(5) without amending the cross-reference in section 2319A(e)(2) of Title 18.

The Prioritizing Resources and Organization for Intellectual Property Act of 2008 amended section 2319A by revising subsection (b) in its entirety and by substituting a new sentence for the last sentence in subsection (c). Pub. L. No. 110-403, 122 Stat. 4256, 4261.

5. The Protecting American Goods and Services Act of 2005 amended the definition of “traffic” in section 2319A(e)(2) of Title 18 to incorporate by reference the definition of “traffic” in section 2320(e)(2) of Title 18. Pub. L. No. 109-181, 120 Stat. 285, 288. But the definition is no longer contained in section 2320(e)(2) of Title 18 because the National Defense Authorization Act for Fiscal Year 2012, Pub. L. No. 112-81, 125 Stat. 1298, 1499, moved it to section 2320(f)(5) of Title 18 which states: “the term ‘traffic’ means to transport, transfer, or otherwise dispose of, to another, for purposes of commercial advantage or private financial gain, or to make, import, export, obtain control of, or possess, with intent to so transport, transfer, or otherwise dispose of.” The definition in section 2320(f)(5) is the same as it was in section 2320(e)(2).

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

7. The Artists' Rights and Theft Prevention Act of 2005 added a new section 2319B to Title 5 of the *United States Code*. Pub. L. No. 109-9, 119 Stat. 218.6. The Prioritizing Resources and Organization for Intellectual Property Act of 2008 amended subsection 2319(b)(2) in its entirety. Pub. L. No. 110-403, 122 Stat. 4256, 4261.

8. The Consolidated Appropriations Act, 2021 amended chapter 113 of Title 18, *United States Code*, by adding a new section 2319C, "Illicit digital transmission services." Pub. L. No. 116-260, 134 Stat. 1182, 2175-2176.

9. The Prioritizing Resources and Organization for Intellectual Property Act of 2008 amended chapter 113 of Title 18, *United States Code*, by adding a new section 2323, "Forfeiture, Destruction, and Restitution." Pub. L. No. 110-403, 122 Stat. 4256, 4262-63. Section 2323 replaces section 509 of Title 17, *United States Code*, which was repealed. *Id.* at 122 Stat. 4260.