



CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

October 26, 2004

H.R. 2391
Intellectual Property Protection Act of 2004
As reported by the Senate Committee on the Judiciary on October 7, 2004

SUMMARY

H.R. 2391 would make several changes to current law regarding copyrighted and patented works. The bill would specifically authorize the appropriation of \$17 million in 2005 and about \$18 million over the 2005-2009 period, mostly for enforcement of copyright laws. Enacting the bill would not have a significant effect on revenues or direct spending.

H.R. 2391 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

H.R. 2391 would impose private-sector mandates as defined in UMRA. CBO estimates that the direct cost of the mandates would fall well below the annual threshold established by UMRA for private-sector mandates (\$120 million in 2004, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 2391 is shown in the following table. The costs of this legislation fall within budget function 750 (administration of justice) and 500 (education, training, employment, and social services).

	By Fiscal Year, in Millions of Dollars				
	2005	2006	2007	2008	2009

CHANGES IN SPENDING SUBJECT TO APPROPRIATION

Estimated Authorization Level	17	*	*	*	*
Estimated Outlays	15	2	*	*	*

NOTE: * = less than \$500,000.

BASIS OF ESTIMATE

S. 2391 would make several changes to laws affecting intellectual property. Assuming the appropriation of the specified and estimated amounts, CBO estimates that implementing the act would cost \$17 million in 2005 and \$18 million over the 2005-2009 period. Enacting this legislation would not have a significant effect on direct spending or revenues.

Spending Subject to Appropriation

Collaborative Work. Title I would make changes to patent law regarding collaborative work by researchers from multiple organizations. Based on information provided by the United States Patent and Trademark Office, CBO estimates that implementing this title would have an insignificant cost.

Enforcement of Copyright Laws. Title II would authorize the appropriation of \$15 million for fiscal year 2005 for the Attorney General to enforce copyright laws. Assuming appropriation of that amount, CBO estimates that this provision would cost \$13 million in 2005 and \$2 million in 2006. This title would direct the Attorney General to establish the Internet Use Education Program to increase awareness of copyright infringement issues. Based on information from the Department of Justice, CBO estimates that it would cost less than \$500,000 annually to establish and operate this program. Title II also would specify that technology used to filter certain material from movies for private viewing would not constitute a violation of copyright or trademark law. CBO estimates that this provision would have no effect on federal spending.

Training Program for Copyright Enforcement. Title III would authorize the appropriation of \$2 million for fiscal year 2005 for the Department of Justice (DOJ) to establish a training program regarding the civil enforcement of copyright laws. CBO estimates that implementing the training program would cost \$2 million in fiscal year 2005, subject to the appropriation of the specified amount.

Film Preservation. Title IV would increase amounts authorized to be appropriated over the 2005-2009 period to the Library of Congress for preserving films in the Library's collection by about \$1 million. It also would make technical changes to current law regarding film preservation. CBO estimates that implementing title IV would cost \$1 million over the 2005-2009 period.

Revenues and Direct Spending

Unauthorized Recording of Motion Pictures. Title II of H.R. 2391 would establish new federal crimes for the unauthorized recording of motion pictures in movie theaters or other venues and would provide for increased penalties for other acts relating to copyright infringement. Because those prosecuted and convicted under the act could be subject to criminal fines, the federal government might collect additional fines if the legislation is enacted. Collections of such fines are recorded in the budget as revenues (i.e., governmental receipts), which are deposited in the Crime Victims Fund and later spent. CBO expects that any additional revenues and direct spending would be less than \$500,000 annually because of the relatively small number of cases likely to be affected.

Civil Penalties for Copyright Violations. Title III would allow DOJ to bring a civil action in District Court against those who violate copyright laws and would allow the federal government to collect civil penalties for such violations. Collections of civil penalties are recorded in the budget as revenues. CBO expects, however, that any additional revenues as a result of enacting this provision would not be significant because of the relatively small number of cases and nominal penalties that are likely to be involved.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 2391 contains no intergovernmental mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 2391 would impose two private-sector mandates as defined in UMRA. CBO estimates that the direct cost of the mandates would fall well below the annual threshold established by UMRA for private-sector mandates (\$120 million in 2004, adjusted annually for inflation).

First, the act would impose a private-sector mandate on copyright owners. Section 212 would limit the right of copyright owners to collect compensation under copyright law from persons using or manufacturing a technology that enables making limited changes to a motion picture for a private home viewing. According to the Patent and Trademark Office and other sources, no such compensation is currently received by copyright owners. Therefore, CBO estimates that the direct cost of the mandate, measured as net income forgone, would be small or zero.

Second, section 212 also would impose a private-sector mandate on manufacturers, licensees, and licensors of technology that enables the making of limited portions of audio or video content of a motion picture imperceptible. Such manufacturers, licensees, or licensors would be required to ensure that the technology provides a clear and conspicuous notice at the beginning of each performance stating that the performance of the motion picture is altered from the performance intended by the director or copyright holder of the motion picture. Complying with the mandate would exempt such manufacturers, licensees, or licensors from liability under section 32 of the Trademark Act of 1946. The direct cost of the mandate on those private-sector entities would be the total cost of providing the notice less the direct savings achieved by limiting their liability. CBO has no basis for determining the direct savings for the exemption from trademark liability. However, according to government and other sources, the technology to provide the required notice is readily available and is currently used by some manufacturers. Thus, CBO expects that the direct cost to comply with the mandate, if any, would be minimal.

PREVIOUS CBO ESTIMATES

On February 4, 2004, CBO transmitted a cost estimate for H.R. 2391, the Cooperative Research and Technology Enhancement Act of 2004, as ordered reported by the House Committee on the Judiciary on January 21, 2004. H.R. 2391 as ordered reported by the House Committee on the Judiciary is identical to title I of this version of H.R. 2391, as are the estimates of no significant costs for those provisions.

On September 24, 2004, CBO transmitted a cost estimate for H.R. 4077, the Piracy Deterrence and Education Act of 2004, as ordered reported by the House Committee on the Judiciary on September 8, 2004. That legislation would authorize the appropriation of \$15 million for fiscal year 2005 for the enforcement of copyright laws, would direct the Attorney General to establish the Internet Use Education Program, would specify that technology used to filter certain material from movies for private viewing would not constitute a violation of copyright or trademark law, would establish new federal crimes for the unauthorized recording of motion pictures in movie theaters or other venues, and would provide for increased penalties for other acts relating to copyright infringement. H.R. 4077 and title II of H.R. 2391 are identical, as are the estimated costs.

On May 20, 2004, CBO transmitted a cost estimate for S. 2237, the Protecting Intellectual Rights Against Theft and Expropriation Act of 2004, as reported by the Senate Committee on the Judiciary on April 29, 2004. Title III of H.R. 2391 and S. 2237 are identical, as are the estimated costs.

On May 18, 2004, CBO transmitted a cost estimate for S. 1932, the Artists' Rights and Theft Prevention Act of 2004, as reported by the Senate Committee on the Judiciary on April 29, 2004. In addition, on May 28, 2004, CBO transmitted a cost estimate for S. 1933, the Enhancing Federal Obscenity Reporting and Copyright Enforcement Act of 2004, as reported by the Senate Committee on the Judiciary on May 20, 2004. Both of those bills would authorize the appropriation of \$5 million for each of fiscal years 2005 through 2009 for the investigation and prosecution of intellectual property offenses, and we estimated that implementing each bill would cost \$23 million over the 2005-2009 period, assuming appropriation of the necessary amounts.

On August 17, 2004, CBO transmitted a cost estimate for H.R. 4586, the Family Movie Act of 2004, as ordered reported by the House Committee on the Judiciary on July 21, 2004. Section 12 of H.R. 4077 and H.R. 4586 are identical, as are the estimated costs. The private-sector mandates contained in section 12 of H.R. 4077 are identical to the mandates in H.R. 4586 with direct costs well below UMRA's annual threshold for private-sector mandates. Those mandates are nearly identical to the mandates in the version of H.R. 2391 approved by the Senate Committee on the Judiciary, with direct costs well below UMRA's annual threshold for private-sector mandates.

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