

Appendix I

Maximum Statutory Penalties, Forfeiture, and Restitution for Intellectual Property Crimes

Fines are determined by the substantive criminal statutes in conjunction with 18 U.S.C. § 3571 (“Sentence of fine”). The exact forfeiture procedures for each criminal offense, and the types of property those remedies reach, are listed in detail in Section VIII.D.2. of this Manual. Restitution procedures are described in detail in Section VIII.C. of this Manual.

	Commercial Purpose ¹ - 1 st Offense	Commercial Purpose - 2 nd Offense	No Commercial Purpose - 1 st Offense	No Commercial Purpose - 2 nd Offense
Copyright Infringement for Profit (Felony) ¹² 17 U.S.C. § 506(a)(1)(A) (formerly § 506(a)(1)) 18 U.S.C. § 2319(b)	<ul style="list-style-type: none"> • 5 years • \$250K or twice the gain/loss (individuals) • \$500K or twice the gain/loss (organizations) • Forfeiture—civ. & crim. • Restitution—mandatory 	<ul style="list-style-type: none"> • 10 years • \$250K or twice the gain/loss (individuals) • \$500K or twice the gain/loss (organizations) • Forfeiture—civ. & crim. • Restitution—mandatory 		

	Commercial Purpose ¹ - 1 st Offense	Commercial Purpose - 2 nd Offense	No Commercial Purpose - 1 st Offense	No Commercial Purpose - 2 nd Offense
<p>Copyright Large-Scale Infringement, No Profit Motive (Felony)</p> <p>17 U.S.C. § 506(a)(1)(B) (formerly § 506(a)(2))</p> <p>18 U.S.C. § 2319(c)</p>			<ul style="list-style-type: none"> • 3 years • \$250K or twice the gain/loss (individuals) • \$500K or twice the gain/loss (organizations) • Forfeiture–civ. & crim. • Restitution–mandatory 	<ul style="list-style-type: none"> • 6 years • \$250K or twice the gain/loss (individuals) • \$500K or twice the gain/loss (organizations) • Forfeiture–civ. & crim. • Restitution–mandatory
<p>Copyright Pre-Release Distribution Over a Publicly-Accessible Computer Network</p> <p>17 U.S.C. § 506(a)(1)(C)</p> <p>18 U.S.C. § 2319(d)</p>	<ul style="list-style-type: none"> • 5 years • \$250K or twice the gain/loss (individuals) • \$500K or twice the gain/loss (organizations) • Forfeiture–civ. & crim. • Restitution–mandatory 	<ul style="list-style-type: none"> • 10 years • \$250K or twice the gain/loss (individuals) • \$500K or twice the gain/loss (organizations) • Forfeiture–civ. & crim. • Restitution–mandatory 	<ul style="list-style-type: none"> • 3 years • \$250K or twice the gain/loss (individuals) • \$500K or twice the gain/loss (organizations) • Forfeiture–civ. & crim. • Restitution–mandatory 	<ul style="list-style-type: none"> • 6 years • \$250K or twice the gain/loss (individuals) • \$500K or twice the gain/loss (organizations) • Forfeiture–civ. & crim. • Restitution–mandatory

	Commercial Purpose ¹ - 1 st Offense	Commercial Purpose - 2 nd Offense	No Commercial Purpose - 1 st Offense	No Commercial Purpose - 2 nd Offense
Digital Millennium Copyright Act (DMCA) 17 U.S.C. § 1204	<ul style="list-style-type: none"> • 5 years • \$500K or twice the gain/loss (individuals & organizations) • Forfeiture–none • Restitution–none to circumvention victims; possible to copyright victims 	<ul style="list-style-type: none"> • 10 years • \$1M or twice the gain/loss (individuals & organizations) • Forfeiture–none • Restitution–none to circumvention victims; possible to copyright victims 		
Economic Espionage Act (EEA)– Trade Secret Theft to Benefit a Foreign Government, Instrumentality, or Agent ³ 18 U.S.C. § 1831			<ul style="list-style-type: none"> • 15 years • \$500K or twice the gain/loss (individuals) • \$10M or twice the gain/loss (organizations) • Forfeiture–crim. only • Restitution–mandatory 	
Economic Espionage Act (EECA)– Trade Secret Theft for Commercial Purposes 18 U.S.C. § 1832	<ul style="list-style-type: none"> • 10 years • \$250K or twice the gain/loss (individuals) • \$5M or twice the gain/loss (organizations) • Forfeiture–crim. only • Restitution–mandatory 			

	Commercial Purpose ¹ - 1 st Offense	Commercial Purpose - 2 nd Offense	No Commercial Purpose - 1 st Offense	No Commercial Purpose - 2 nd Offense
Counterfeit/ Illicit Labels and Counterfeit Documentation and Packaging for Copyrighted Works 18 U.S.C. § 2318	<ul style="list-style-type: none"> • 5 years • \$250K or twice the gain/loss (individuals) • \$500K or twice the gain/loss (organizations) • Forfeiture– civ. & crim. • Restitution– mandatory 			
Bootleg Recordings of Live Musical Performances 18 U.S.C. § 2319A	<ul style="list-style-type: none"> • 5 years • \$250K or twice the gain/loss (individuals) • \$500K or twice the gain/loss (organizations) • Forfeiture– civ. & crim. • Restitution– unclear 	<ul style="list-style-type: none"> • 10 years • \$250K or twice the gain/loss (individuals) • \$500K or twice the gain/loss (organizations) • Forfeiture– civ. & crim. • Restitution– unclear 		
Camcording 18 U.S.C. § 2319B			<ul style="list-style-type: none"> • 3 years • \$250K or twice the gain/loss (individuals) • \$500K or twice the gain/loss (organizations) • Forfeiture– crim. only • Restitution– mandatory 	<ul style="list-style-type: none"> • 6 years • \$250K or twice the gain/loss (individuals) • \$500K or twice the gain/loss (organizations) • Forfeiture– crim. only • Restitution– mandatory

	Commercial Purpose ¹ - 1 st Offense	Commercial Purpose - 2 nd Offense	No Commercial Purpose - 1 st Offense	No Commercial Purpose - 2 nd Offense
Counterfeit Trademarks, Service Marks, and Certification Marks 18 U.S.C. § 2320	<ul style="list-style-type: none"> • 10 years • \$2M or twice the gain/loss (individuals) • \$5M or twice the gain/loss (organizations) • Forfeiture– civ. & crim. • Restitution– mandatory 	<ul style="list-style-type: none"> • 20 years • \$5M or twice the gain/loss (individuals) • \$15M or twice the gain/loss (organizations) • Forfeiture– civ. & crim. • Restitution– mandatory 		

1. “Commercial purpose” here is used as a generic term applicable to criminal intellectual property statutes that variously require the government to prove either trafficking for “consideration”; commercial advantage or private financial gain; or engaging in a transaction for economic benefit. The terms of the specific statutes control.

2. The copyright crimes in 17 U.S.C. § 506(a)(1)(A) and (B) can also be charged as misdemeanors in certain circumstances.

3. Technically, to prove economic espionage to benefit a foreign government, instrumentality, or agent under 18 U.S.C. § 1831, the government need not prove that the benefit was economic, but in practice the benefit will often have economic consequences.