

1693

2011-2012 Regular Sessions

I N A S S E M B L Y

January 11, 2011

Introduced by M. of A. ORTIZ, PERRY, GALEF, TITONE, MAYERSOHN -- Multi-Sponsored by -- M. of A. CASTRO, HOOPER, JEFFRIES, MENG -- read once and referred to the Committee on Codes

AN ACT to amend the executive law and the penal law, in relation to the unlawful downloading of intellectual property

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. Section 63 of the executive law is amended by adding a new
2 subdivision 14 to read as follows:
3 14. PROSECUTE ANY PERSON FOR A VIOLATION OF UNLAWFUL DOWNLOADING OF
4 INTELLECTUAL PROPERTY AS SET FORTH IN SECTION 156.40 OF THE PENAL LAW.
5 IN ALL SUCH PROCEEDINGS, THE ATTORNEY GENERAL MAY APPEAR IN PERSON OR BY
6 HIS DEPUTY OR ASSISTANT BEFORE ANY COURT OR ANY GRAND JURY AND EXERCISE
7 ALL THE POWERS AND PERFORM ALL THE DUTIES NECESSARY OR REQUIRED TO BE
8 EXERCISED OR PERFORMED IN PROSECUTING ANY SUCH PERSON FOR SUCH OFFENSE.
9 S 2. Section 156.00 of the penal law is amended by adding a new subdi-
10 vision 10 to read as follows:
11 10. "INTELLECTUAL PROPERTY" MEANS A PRODUCT OF THE INTELLECT THAT HAS
12 COMMERCIAL VALUE, AND SHALL INCLUDE, BUT NOT BE LIMITED TO, MUSIC,
13 LITERARY WORKS AND OTHER ARTISTIC WORKS.
14 S 3. The penal law is amended by adding two new sections 156.40 and
15 156.41 to read as follows:
16 S 156.40 UNLAWFUL DOWNLOADING OF INTELLECTUAL PROPERTY.
17 A PERSON IS GUILTY OF UNLAWFUL DOWNLOADING OF INTELLECTUAL PROPERTY
18 WHEN SUCH PERSON, WITH ACTUAL KNOWLEDGE, WITH CONSCIOUS AVOIDANCE OF
19 ACTUAL KNOWLEDGE, OR WILLFULLY, DOWNLOADS INTELLECTUAL PROPERTY BY MEANS
20 OF A SHARED COMPUTER NETWORK, WITHOUT FIRST:
21 1. OBTAINING THE WRITTEN CONSENT OF THE HOLDER OF THE RIGHTS OF THE
22 INTELLECTUAL PROPERTY; OR
23 2. PURCHASING THE RIGHT TO DOWNLOAD SUCH INTELLECTUAL PROPERTY.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 UNLAWFUL DOWNLOADING OF INTELLECTUAL PROPERTY IS A VIOLATION AND SHALL
2 BE PUNISHABLE AS SET FORTH IN SECTION 156.41 OF THIS ARTICLE.
3 S 156.41 UNLAWFUL DOWNLOADING OF INTELLECTUAL PROPERTY; ENFORCEMENT.
4 UNLAWFUL DOWNLOADING OF INTELLECTUAL PROPERTY SHALL BE PUNISHABLE AS
5 FOLLOWS:
6 1. FOR A FIRST OFFENSE, THE DEFENDANT SHALL RECEIVE A WARNING IN THE
7 FORM OF AN EMAIL FROM THE ATTORNEY GENERAL VIA SUCH DEFENDANT'S BROAD-
8 BAND OR INTERNET SERVICE PROVIDER REQUIRING SUCH DEFENDANT TO CEASE SUCH
9 UNLAWFUL DOWNLOADING;
10 2. FOR A SECOND OFFENSE, THE DEFENDANT SHALL RECEIVE A WARNING IN THE
11 FORM OF A LETTER FROM THE ATTORNEY GENERAL REQUIRING SUCH DEFENDANT TO
12 CEASE SUCH UNLAWFUL DOWNLOADING;
13 3. FOR A THIRD OFFENSE, THE DEFENDANT SHALL BE PROHIBITED FROM MAIN-
14 TAINING AN INTERNET CONNECTION FOR A PERIOD OF ONE YEAR.
15 S 4. This act shall take effect on the first of November next succeed-
16 ing the date on which it shall have become a law.