

in which the copyrighted work is transferred through file sharing. The proposed amendment builds on the current definition of "uploading" to include making an infringing item available on the Internet by storing an infringing item in an openly shared file. The proposed amendment also clarifies that uploading does not include merely downloading or installing infringing items on a hard drive of the defendant's computer unless the infringing item is in an openly shared file. By clarifying the definition of uploading in this manner, Application Note 3, which is a restatement of the uploading definition, is no longer necessary and the proposed amendment deletes the application note from the guideline.

Indeterminate Number

The proposed amendment addresses the final directive by amending Application Note 2, which sets forth the rules for determining the infringement amount. The proposed note provides that the court may make a reasonable estimate of the infringement amount using any relevant information including financial records in cases in which the court cannot determine the number of infringing items.

New Offense

Finally, the proposed amendment provides a reference in Appendix A (Statutory Index) for the new offense at 18 U.S.C. 2319B. This offense is proposed to be referenced to § 2B5.3.

2. *Amendment:* Section 2J1.2(b) is amended by striking subdivision (1) and inserting the following:

"(1) (Apply the greater):

(A) If the offense involved causing or threatening to cause physical injury to a person, or property damage, in order to obstruct the administration of justice, increase by 8 levels.

(B) If (i) defendant was convicted under 18 U.S.C. 1001 or 1505; and (ii) the statutory maximum term of imprisonment relating to international terrorism or domestic terrorism is applicable, increase by 12 levels."

The Commentary to § 2J1.2 captioned "Statutory Provisions" is amended by striking "18 U.S.C. 1503" and inserting the following:

"18 U.S.C. 1001 when the statutory maximum term of imprisonment relating to international terrorism or domestic terrorism is applicable, 1503".

The Commentary to § 2J1.2 captioned "Application Notes" is amended in Note 1 by inserting after "Definitions.—For purposes of this guideline:" the following:

"'Domestic terrorism' has the meaning given that term in 18 U.S.C. 2331(5).

'International terrorism' has the meaning given that term in 18 U.S.C. 2331(1)."

The Commentary to § 2J1.2 captioned "Application Notes" is amended by striking Note 2 and inserting the following:

"2. Chapter Three Adjustments.—

(A) Inapplicability of Chapter Three, Part C.—For offenses covered under this section, Chapter Three, Part C (Obstruction) does not apply, unless the defendant obstructed the investigation, prosecution, or sentencing of the obstruction of justice count.

(B) Interaction with Terrorism Adjustment.—If § 3A1.4 (Terrorism) applies, do not apply subsection (b)(1)(B)."

Appendix A (Statutory Index) is amended in the line referenced to "18 U.S.C. 1001" by inserting ", 2J1.2 when the statutory maximum term of imprisonment relating to international terrorism or domestic terrorism is applicable" after 2B1.1."

Reason for Amendment: This amendment implements section 6703 of the Intelligence Reform and Prevention Act of 2004 (the "Act"), Pub. L. 108-458. Section 6703(a) provides an enhanced penalty of not more than 8 years of imprisonment for offenses under sections 1001(a) and 1505 of title 18, United States Code, "if the offense involves international or domestic terrorism (as defined in section 2331)." Section 6703(b) requires the Sentencing Commission to amend the sentencing guidelines to provide for "an increased offense level for an offense under sections 1001(a) and 1505 of title 18, United States Code, if the offense involves international or domestic terrorism, as defined in section 2331 of such title." The Commission is directed under section 3 of the United States Parole Commission Extension and Sentencing Commission Authority Act of 2005, Pub. L. 109-76, to promulgate this amendment as an emergency amendment.

First, the amendment references convictions under 18 U.S.C. 1001 to 2J1.2 (Obstruction of Justice) "when the statutory maximum term of imprisonment relating to international or domestic terrorism is applicable." It also adds a new specific offense characteristic at § 2J1.2(b)(1)(B) providing for a 12 level increase for a defendant convicted under 18 U.S.C. 1001 and 1505 "when the statutory maximum term of imprisonment relating to international or domestic terrorism is applicable." This 12 level increase is applied in lieu of the current 8 level increase for injury or threats to persons or property. The increase of 12 levels is intended to provide parity with the treatment of federal crimes of terrorism within the limits of the 8 year statutory maximum penalty. It is also provided to ensure a 5 year sentence of imprisonment for offenses that involve international or domestic terrorism.

Second, the amendment adds to Application Note 1 definitions for "domestic terrorism" and "international terrorism," using the meanings given the terms at 18 U.S.C. 2331(5) and (1), respectively.

Third, the amendment adds to Application Note 2 an instruction that if § 3A1.4 (Terrorism) applies, do not apply § 2J1.2(b)(1)(B).

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BILLING CODE 2210-40-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Applications of Platinum Airlines, Inc. for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2005-10-13); Dockets OST-2005-21286 and OST-2005-21287.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders finding Platinum Airlines, Inc. fit, willing, and able, and awarding it certificates of public convenience and necessity to engage in interstate and foreign charter air transportation of persons, property and mail.

DATES: Persons wishing to file objections should do so no later than October 31, 2005.

ADDRESSES: Objections and answers to objections should be filed in Dockets OST-2005-21286 and OST-2005-21287 and addressed to U.S. Department of Transportation, Docket Operations, (M-30, Room PL-401), 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Vanessa R. Balgobin, Air Carrier Fitness Division (X-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721.

Dated: October 17, 2005.

Susan McDermott,

Deputy Assistant Secretary for Aviation and International Affairs.

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BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of U.S. Helicopter Corporation for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2005-10-12) Docket OST-2005-20405.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding U.S. Helicopter Corporation fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property, and mail.