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110TH CONGRESS 2d Session | HOUSE OF REPRESENTATIVES | REPORT 110–617

PRIORITIZING RESOURCES AND ORGANIZATION FOR INTELLECTUAL PROPERTY ACT OF 2008

MAY 5, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CONYERS, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 4279]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 4279) to enhance remedies for violations of intellectual property laws, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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THE AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Prioritizing Resources and Organization for Intellectual Property Act of 2008".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Reference.
Sec. 3. Definition.

TITLE I—ENHANCEMENTS TO CIVIL INTELLECTUAL PROPERTY LAWS

Sec. 101. Registration of claim.
Sec. 102. Registration and infringement actions.
Sec. 103. Civil remedies for infringement.
Sec. 104. Treble damages in counterfeiting cases.
Sec. 105. Statutory damages in counterfeiting cases.
Sec. 106. Exportation of goods bearing infringing marks.
Sec. 107. Importation and exportation.

TITLE II—ENHANCEMENTS TO CRIMINAL INTELLECTUAL PROPERTY LAWS

Sec. 201. Criminal infringement of a copyright.
Sec. 202. Harmonization of forfeiture procedures for intellectual property offenses.
Sec. 203. Directive to United States Sentencing Commission.
Sec. 204. Trafficking in counterfeit goods or services.

TITLE III—COORDINATION AND STRATEGIC PLANNING OF FEDERAL EFFORT AGAINST COUNTERFEITING AND PIRACY

Subtitle A—Office of the United States Intellectual Property Enforcement Representative

Sec. 301. Office of the United States Intellectual Property Enforcement Representative.
Sec. 302. Definition.

Subtitle B—Joint Strategic Plan

Sec. 321. Joint Strategic Plan.
Sec. 322. Reporting.
Sec. 323. Savings and repeals.
Sec. 324. Authorization of appropriations.

TITLE IV—INTERNATIONAL ENFORCEMENT AND COORDINATION

Sec. 401. Intellectual property attachés.
Sec. 402. Duties and responsibilities of intellectual property attachés.
Sec. 403. Training and designation of assignment.
Sec. 404. Coordination.
Sec. 405. Authorization of appropriations.

TITLE V—DEPARTMENT OF JUSTICE PROGRAMS

Subtitle A—Coordination

Sec. 501. Intellectual Property Enforcement Officer.

Subtitle B—Law Enforcement Resources

Sec. 511. Local law enforcement grants.
Sec. 512. CHIP units, training, and additional resources.
Sec. 513. Transparency of prosecutorial decisionmaking.
Sec. 514. Authorization of appropriations.

Subtitle C—International Activities

Sec. 521. International intellectual property law enforcement coordinators.
Sec. 522. International training activities of the computer crime and intellectual property section.

Subtitle D—Coordination, Implementation, and Reporting

Sec. 531. Coordination.
Sec. 532. Annual reports.

SEC. 2. REFERENCE.

Any reference in this Act to the "Trademark Act of 1946" refers to the Act entitled "An Act to provide for the registration of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes", approved July 5, 1946 (15 U.S.C. 1051 et seq.).

SEC. 3. DEFINITION.

In this Act, the term "United States person" means—

(1) any United States resident or national,

(2) any domestic concern (including any permanent domestic establishment of any foreign concern), and

(3) any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern that is controlled in fact by such domestic concern,

except that such term does not include an individual who resides outside the United States and is employed by an individual or entity other than an individual or entity described in paragraph (1), (2), or (3).

TITLE I—ENHANCEMENTS TO CIVIL INTELLECTUAL PROPERTY LAWS

SEC. 101. REGISTRATION OF CLAIM.

Section 410 of title 17, United States Code, is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(2) by inserting after subsection (b) the following:

"(c)(1) A certificate of registration satisfies the requirements of section 411 and section 412 regardless of any inaccurate information contained in the certificate, unless—

"(A) the inaccurate information was included on the application for copyright registration with knowledge that it was inaccurate; and

"(B) the inaccuracy of the information, if known, would have caused the Register of Copyrights to refuse registration.

"(2) In any case in which inaccuracies described under paragraph (1) are alleged, the court shall request the Register of Copyrights to advise the court whether the inaccuracy of the information, if known, would have caused the Register of Copyrights to refuse registration. The Register shall respond to the court's request within 45 days after the request is made.

"(3) Nothing in this subsection shall affect any rights, obligations, or requirements of a person related to information contained in a registration certificate except for the institution of and remedies in infringement actions under sections 411 and 412.".

SEC. 102. REGISTRATION AND INFRINGEMENT ACTIONS.

(a) REGISTRATION IN CIVIL INFRINGEMENT ACTIONS.—Section 411 of title 17, United States Code, is amended—

(1) in the section heading, by inserting "**civil**" after "**and**" ; and

(2) in subsection (a), by striking "no action" and inserting "no civil action".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 411(b) of title 17, United States Code, is amended by striking "506 and sections 509 and" and inserting "505 and section".

SEC. 103. CIVIL REMEDIES FOR INFRINGEMENT.

Section 503(a) of title 17, United States Code, is amended—

(1) by striking "and of all plates" and inserting "of all plates"; and

(2) by striking the period at the end and inserting the following: ", and records documenting the manufacture, sale, or receipt of things involved in such violation. The court shall enter an appropriate protective order with respect to discovery by the applicant of any records that have been seized. The protective order shall provide for appropriate procedures to assure that confidential information contained in such records is not improperly disclosed to the applicant.".

SEC. 104. TREBLE DAMAGES IN COUNTERFEITING CASES.

Section 35(b) of the Trademark Act of 1946 (15 U.S.C. 1117(b)) is amended to read as follows:

"(b) In assessing damages under subsection (a) for any violation of section 32(1)(a) of this Act or section 220506 of title 36, United States Code, in a case involving use of a counterfeit mark or designation (as defined in section 34(d) of this Act), the court shall, unless the court finds extenuating circumstances, enter judgment for three times such profits or damages, whichever amount is greater, together with a reasonable attorney's fee, if the violation consists of—

"(1) intentionally using a mark or designation, knowing such mark or designation is a counterfeit mark (as defined in section 34(d) of this Act), in connection with the sale, offering for sale, or distribution of goods or services;

"(2) intentionally inducing another to engage in a violation specified in paragraph (1); or

"(3) providing goods or services necessary to the commission of a violation specified in paragraph (1), with the intent that the recipient of the goods or services would put the goods or services to use in committing the violation.

In such a case, the court may award prejudgment interest on such amount at an annual interest rate established under section 6621(a)(2) of the Internal Revenue Code of 1986, beginning on the date of the service of the claimant's pleadings setting forth the claim for such entry of judgment and ending on the date such entry is made, or for such shorter time as the court considers appropriate.".

SEC. 105. STATUTORY DAMAGES IN COUNTERFEITING CASES.

Section 35(c) of the Trademark Act of 1946 (15 U.S.C. 1117) is amended—

(1) in paragraph (1)—

(A) by striking "$500" and inserting "$1,000"; and

(B) by striking "$100,000" and inserting "$200,000"; and

(2) in paragraph (2), by striking "$1,000,000" and inserting "$2,000,000".

SEC. 106. EXPORTATION OF GOODS BEARING INFRINGING MARKS.

Title VII of the Trademark Act of 1946 (15 U.S.C. 1124) is amended—

(1) in the title heading, by inserting after "IMPORTATION" the following: "OR EXPORTATION"; and

(2) in section 42—

(A) by striking the word "imported"; and

(B) by inserting after "customhouse of the United States" the following: ", nor shall any such article be exported from the United States".

SEC. 107. IMPORTATION AND EXPORTATION.

(a) IN GENERAL.—The heading for chapter 6 of title 17, United States Code, is amended to read as follows:

"CHAPTER 6—MANUFACTURING REQUIREMENTS, IMPORTATION, AND EXPORTATION".

(b) AMENDMENT ON EXPORTATION.—Section 602(a) of title 17, United States Code, is amended—

(1) by redesignating paragraphs (1) through (3) as subparagraphs (A) through (C), respectively, and moving such subparagraphs 2 ems to the right;

(2) by striking "(a)" and inserting "(a) INFRINGING IMPORTATION AND EXPORTATION.—

"(1) IMPORTATION.—";

(3) by striking "This subsection does not apply to—" and inserting the following:

"(2) IMPORTATION OR EXPORTATION OF INFRINGING ITEMS.—Importation into the United States or exportation from the United States, without the authority of the owner of copyright under this title, of copies or phonorecords, the making of which either constituted an infringement of copyright or would have constituted an infringement of copyright if this title had been applicable, is an infringement of the exclusive right to distribute copies or phonorecords under section 106, actionable under sections 501 and 506.

"(3) EXCEPTIONS.—This subsection does not apply to—";

(4) in paragraph (3)(A) (as redesignated by this subsection) by inserting "or exportation" after "importation"; and

(5) in paragraph (3)(B) (as redesignated by this subsection)—

(A) by striking "importation, for the private use of the importer" and inserting "importation or exportation, for the private use of the importer or exporter"; and

(B) by inserting "or departing from the United States" after "United States".

(c) CONFORMING AMENDMENTS.—(1) Section 602 of title 17, United States Code, is further amended—

(A) in the section heading, by inserting "**or exportation**" after "**importation**"; and

(B) in subsection (b)—

(i) by striking "(b) In a case" and inserting "(b) IMPORT PROHIBITION.—In a case";

(ii) by striking "the United States Customs Service" and inserting "U.S. Customs and Border Protection"; and

(iii) by striking "the Customs Service" and inserting "U.S. Customs and Border Protection".

(2) Section 601(b)(2) of title 17, United States Code, is amended by striking "the United States Customs Service" and inserting "U.S. Customs and Border Protection".

(3) The item relating to chapter 6 in the table of chapters for title 17, United States Code, is amended to read as follows:

"6. MANUFACTURING REQUIREMENTS, IMPORTATION, AND EXPORTATION ..... 601".

TITLE II—ENHANCEMENTS TO CRIMINAL INTELLECTUAL PROPERTY LAWS

SEC. 201. CRIMINAL INFRINGEMENT OF A COPYRIGHT.

Section 2319 of title 18, United States Code, is amended—

(1) in subsection (b)(2)—

(A) by inserting "is a felony and" after "offense" the first place such term appears; and

(B) by striking "paragraph (1)" and inserting "subsection (a)";

(2) in subsection (c)(2)—

(A) by inserting "is a felony and" after "offense" the first place such term appears; and

(B) by striking "paragraph (1)" and inserting "subsection (a)";

(3) in subsection (d)(3)—

(A) by inserting "is a felony and" after "offense" the first place such term appears; and

(B) by inserting "under subsection (a)" before the semicolon; and

(4) in subsection (d)(4), by inserting "is a felony and" after "offense" the first place such term appears.

SEC. 202. HARMONIZATION OF FORFEITURE PROCEDURES FOR INTELLECTUAL PROPERTY OFFENSES.

(a) TRAFFICKING IN COUNTERFEIT LABELS.—Section 2318 of title 18, United States Code, is amended—

(1) by amending subsection (d) to read as follows:

"(d) FORFEITURE AND DESTRUCTION; RESTITUTION.—

"(1) CIVIL FORFEITURE PROCEEDINGS.—(A) The following property is subject to forfeiture to the United States:

"(i) Any counterfeit documentation or packaging, and any counterfeit label or illicit label and any article to which a counterfeit label or illicit label has been affixed, which a counterfeit label or illicit label encloses or accompanies, or which was intended to have had such label affixed, enclosing, or accompanying.

"(ii) Any property constituting or derived from any proceeds obtained directly or indirectly as a result of a violation of subsection (a).

"(iii) Any property used, or intended to be used, to commit or facilitate the commission of a violation of subsection (a) that is owned or predominantly controlled by the violator or by a person conspiring with or aiding and abetting the violator in committing the violation, except that property is subject to forfeiture under this clause only if the Government establishes that there was a substantial connection between the property and the violation of subsection (a).

"(B) The provisions of chapter 46 relating to civil forfeitures shall extend to any seizure or civil forfeiture under subparagraph (A). At the conclusion of the forfeiture proceedings, the court shall order that any forfeited counterfeit labels or illicit labels and any article to which a counterfeit label or illicit label has been affixed, which a counterfeit label or illicit label encloses or accompanies, or which was intended to have had such label affixed, enclosing, or accompanying, be destroyed or otherwise disposed of according to law.

"(C) In this paragraph, the term 'aiding and abetting' means knowingly providing aid to the violator with the intent to facilitate the violation.

"(2) CRIMINAL FORFEITURE PROCEEDINGS.—(A) The court, in imposing sentence on a person convicted of an offense under this section, shall order, in addition to any other sentence imposed, that the person forfeit to the United States the following property:

"(i) Any counterfeit documentation or packaging, and any counterfeit label or illicit label, that was used, intended for use, or possessed with intent to use in the commission of an offense under subsection (a), and any article to which such a counterfeit label or illicit label has been affixed, which such a counterfeit label or illicit label encloses or accompanies, or which was intended to have had such label affixed, enclosing, or accompanying.

"(ii) Any property constituting or derived from any proceeds obtained directly or indirectly as a result of an offense under subsection (a).

"(iii) Any property used, or intended to be used, to commit or substantially facilitate the commission of an offense under subsection (a).

"(B) The forfeiture of property under subparagraph (A), 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. At the conclusion of the forfeiture proceedings, the court shall order that any counterfeit label or illicit label and any article to which a counterfeit label or illicit label has been affixed, which a counterfeit label or illicit label encloses or accompanies, or which was intended to have had such label affixed, enclosing, or accompanying, be destroyed or otherwise disposed of according to law.

"(3) RESTITUTION.—When a person is convicted of an offense under this section, the court, pursuant to sections 3556, 3663A, and 3664, shall order the person to pay restitution to the owner of the marks or copyrighted works involved in the offense and any other victim of the offense as an offense against property referred to in section 3663A(c)(1)(A)(ii).";

(2) by striking subsection (e); and

(3) by redesignating subsection (f) as subsection (e).

(b) CRIMINAL INFRINGEMENT OF A COPYRIGHT.—

(1) IN GENERAL.—Section 2319 of title 18, United States Code, is amended by adding at the end the following:

"(g) FORFEITURE AND DESTRUCTION; RESTITUTION.—

"(1) CIVIL FORFEITURE PROCEEDINGS.—(A) The following property is subject to forfeiture to the United States:

"(i) Any copies or phonorecords manufactured, reproduced, distributed, sold, or otherwise used, intended for use, or possessed with intent to use in violation of section 506(a) of title 17, any plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies or phonorecords may be made, and any devices for manufacturing, reproducing, or assembling such copies or phonorecords.

"(ii) Any property constituting or derived from any proceeds obtained directly or indirectly as a result of a violation of section 506(a) of title 17.

"(iii) Any property used, or intended to be used, to commit or facilitate the commission of a violation of section 506(a) of title 17 that is owned or predominantly controlled by the violator or by a person conspiring with or aiding and abetting the violator in committing the violation, except that property is subject to forfeiture under this clause only if the Government establishes that there was a substantial connection between the property and the violation of section 506(a) of title 17.

"(B) The provisions of chapter 46 relating to civil forfeitures shall extend to any seizure or civil forfeiture under this section. At the conclusion of the forfeiture proceedings, the court shall order that any forfeited infringing copies or phonorecords, and any plates, molds, matrices, masters, tapes, and film negatives by means of which such unauthorized copies or phonorecords may be made, be destroyed or otherwise disposed of according to law.

"(C) In this paragraph, the term 'aiding and abetting' means knowingly providing aid to the violator with the intent to facilitate the violation.

"(2) CRIMINAL FORFEITURE PROCEEDINGS.—(A) The court, in imposing sentence on a person convicted of an offense under subsection (a), shall order, in addition to any other sentence imposed, that the person forfeit to the United States the following property:

"(i) Any copies or phonorecords manufactured, reproduced, distributed, sold, or otherwise used, intended for use, or possessed with intent to use in the commission of an offense under subsection (a), any plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which the copies or phonorecords may be reproduced, and any electronic, mechanical, or other devices for manufacturing, reproducing, or assembling such copies or phonorecords.

"(ii) Any property constituting or derived from any proceeds obtained directly or indirectly as a result of an offense under subsection (a).

"(iii) Any property used, or intended to be used, to commit or substantially facilitate the commission of an offense under subsection (a).

"(B) The forfeiture of property under subparagraph (A), 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. At the conclusion of the forfeiture proceedings, the court shall order that any forfeited infringing copies or phonorecords, and any plates, molds, matrices, masters, tapes, and film nega-

tives by means of which such infringing copies or phonorecords may be made, be destroyed or otherwise disposed of according to law.

"(3) RESTITUTION.—When a person is convicted of an offense under this section, the court, pursuant to sections 3556, 3663A, and 3664, shall order the person to pay restitution to the copyright owner and any other victim of the offense as an offense against property referred to in section 3663A(c)(1)(A)(ii).".

(2) CONFORMING AMENDMENTS.—(A) Section 506(b) of title 17, United States Code, is amended by striking all that follows "destruction" and inserting the following: "of property as prescribed by section 2319(g) of title 18.".

(B) Section 509 of title 17, United States Code, relating seizure and forfeiture, and the item relating to section 509 in the table of sections at the beginning of chapter 5 of title 17, United States Code, are repealed.

(c) UNAUTHORIZED FIXATION AND TRAFFICKING.—

(1) IN GENERAL.—Section 2319A of title 18, United States Code, is amended—

(A) by striking subsection (c) and redesignating subsections (d), (e), and (f) as subsections (c), (d), and (e), respectively; and

(B) by amending subsection (b) to read as follows:

"(b) FORFEITURE AND DESTRUCTION; RESTITUTION.—

"(1) CIVIL FORFEITURE PROCEEDINGS.—(A) The following property is subject to forfeiture to the United States:

"(i) Any copies or phonorecords of a live musical performance described in subsection (a)(1) that are made without the consent of the performer or performers involved, and any plates, molds, matrices, masters, tapes, and film negatives by means of which such copies or phonorecords may be made.

"(ii) Any property constituting or derived from any proceeds obtained directly or indirectly as a result of a violation of subsection (a).

"(iii) Any property used, or intended to be used, to commit or facilitate the commission of a violation of subsection (a) that is owned or predominantly controlled by the violator or by a person conspiring with or aiding and abetting the violator in committing the violation, except that property is subject to forfeiture under this clause only if the Government establishes that there was a substantial connection between the property and the violation of subsection (a).

"(B) The provisions of chapter 46 relating to civil forfeitures shall extend to any seizure or civil forfeiture under paragraph (1). At the conclusion of the forfeiture proceedings, the court shall order that any forfeited unauthorized copies or phonorecords of live musical performances, and any plates, molds, matrices, maters, tapes, and film negatives by means of which such unauthorized copies or phonorecords may be made, be destroyed or otherwise disposed of according to law.

"(C) In this paragraph, the term 'aiding and abetting' means knowingly providing aid to the violator with the intent to facilitate the violation.

"(2) CRIMINAL FORFEITURE PROCEEDINGS.—(A) The court, in imposing sentence on a person convicted of an offense under this section, shall order, in addition to any other sentence imposed, that the person forfeit to the United States the following property:

"(i) Any unauthorized copies or phonorecords of a live musical performance that were used, intended for use, or possessed with intent to use in the commission of an offense under subsection (a), and any plates, molds, matrices, masters, tapes, and film negatives by means of which such copies or phonorecords may be made.

"(ii) Any property constituting or derived from any proceeds obtained directly or indirectly as a result of an offense under subsection (a).

"(iii) Any property used, or intended to be used, to commit or substantially facilitate the commission of an offense under subsection (a).

"(B) The forfeiture of property under subparagraph (A), 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. At the conclusion of the forfeiture proceedings, the court shall order that any forfeited unauthorized copies or phonorecords of live musical performances, and any plates, molds, matrices, masters, tapes, and film negatives by means of which such unauthorized copies of phonorecords may be made, be destroyed or otherwise disposed of according to law.

"(3) NOTIFICATION OF IMPORTATION.—The Secretary of Homeland Security shall issue regulations by which any performer may, upon payment of a specified fee, be entitled to notification by U.S. 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 prohibited by this section.

"(4) RESTITUTION.—When a person is convicted of an offense under this section, the court, pursuant to sections 3556, 3663A, and 3664, shall order the person to pay restitution to the performer or performers involved, and any other victim of the offense as an offense against property referred to in section 3663A(c)(1)(A)(ii).".

(2) APPLICABILITY.—Section 2319A(e), as redesignated by paragraph (1) of this subsection, is amended by inserting before the period the following: ", except that the forfeiture provisions under subsection (b)(2), as added by the Prioritizing Resources and Organization for Intellectual Property Act, shall apply only in a case in which the underlying act or acts occur on or after the date of the enactment of that Act".

(d) UNAUTHORIZED RECORDING OF MOTION PICTURES.—Section 2319B(b) of title 18, United States Code, is amended to read as follows:

"(b) FORFEITURE AND DESTRUCTION; RESTITUTION.—

"(1) CIVIL FORFEITURE PROCEEDINGS.—(A) The following property is subject to forfeiture to the United States:

"(i) Any copies of a motion picture or other audiovisual work protected under title 17 that are made without the authorization of the copyright owner.

"(ii) Any property constituting or derived from any proceeds obtained directly or indirectly as a result of a violation of subsection (a).

"(iii) Any property used, or intended to be used, to commit or facilitate the commission of a violation of subsection (a) that is owned or predominantly controlled by the violator or by a person conspiring with or aiding and abetting the violator in committing the violation, except that property is subject to forfeiture under this clause only if the Government establishes that there was a substantial connection between the property and the violation of subsection (a).

"(B) The provisions of chapter 46 relating to civil forfeitures shall extend to any seizure or civil forfeiture under this section. At the conclusion of the forfeiture proceedings, the court shall order that any forfeited unauthorized copies or phonorecords of a motion picture or other audiovisual work, or part thereof, and any plates, molds, matrices, masters, tapes, and film negatives by means of which such unauthorized copies or phonorecords may be made, be destroyed or otherwise disposed of according to law.

"(C) In this paragraph, the term 'aiding and abetting' means knowingly providing aid to the violator with the intent to facilitate the violation.

"(2) CRIMINAL FORFEITURE PROCEEDINGS.—(A) The court, in imposing sentence on a person convicted of an offense under this section, shall order, in addition to any other sentence imposed, that the person forfeit to the United States the following property:

"(i) Any unauthorized copies of a motion picture or other audiovisual work protected under title 17, or part thereof, that were used, intended for use, or possessed with intent to use in the commission of an offense under subsection (a).

"(ii) Any property constituting or derived from any proceeds obtained directly or indirectly as a result of an offense under subsection (a).

"(iii) Any property used, or intended to be used, to commit or substantially facilitate the commission of an offense under subsection (a).

"(B) The forfeiture of property under subparagraph (A), 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. At the conclusion of the forfeiture proceedings, the court shall order that any forfeited unauthorized copies or phonorecords of a motion picture or other audiovisual work, or part thereof, and any plates, molds, matrices, masters, tapes, and film negatives by means of which such unauthorized copies or phonorecords may be made, be destroyed or otherwise disposed of according to law.

"(3) RESTITUTION.—When a person is convicted of an offense under this chapter, the court, pursuant to sections 3556, 3663A, and 3664, shall order the person to pay restitution to the owner of the copyright in the motion picture or other audiovisual work and any other victim of the offense as an offense against property referred to in section 3663A(c)(1)(A)(ii).".

(e) APPLICABILITY.—The amendments made by this section shall apply only in a case in which the underlying act or acts occur on or after the date of the enactment of this Act.

SEC. 203. DIRECTIVE TO UNITED STATES SENTENCING COMMISSION.

(a) REVIEW AND AMENDMENT.—The United States Sentencing Commission, pursuant to its authority under section 994 of title 28, United States Code, shall review and, if appropriate, amend the Federal sentencing guidelines and policy statements applicable in any case sentenced under section 2B5.3 of the Federal sentencing guidelines for exporting infringing items in violation of section 602(a)(2) of title 17, United States Code, to determine whether a defendant in such case should receive an upward adjustment in the offense level, on the grounds that exportation introduces infringing items into the stream of foreign commerce in a manner analogous to the manner in which manufacturing, importing, and uploading such items introduces them into the stream of commerce.

(b) AUTHORIZATION.—The United States Sentencing Commission may amend the Federal sentencing guidelines under subsection (a) in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994 note) as though the authority under that section had not expired.

SEC. 204. TRAFFICKING IN COUNTERFEIT GOODS OR SERVICES.

(a) IN GENERAL.—Section 2320 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking "Whoever" and inserting "OFFENSE.—

"(1) IN GENERAL.—Whoever";

(B) by moving the remaining text 2 ems to the right; and

(C) by adding at the end the following:

"(2) SERIOUS BODILY HARM OR DEATH.—

"(A) SERIOUS BODILY HARM.—If the offender knowingly or recklessly causes or attempts to cause serious bodily injury from conduct in violation of paragraph (1), the penalty shall be a fine under this title or imprisonment for not more than 20 years, or both.

"(B) DEATH.—If the offender knowingly or recklessly causes or attempts to cause death from conduct in violation of paragraph (1), the penalty shall be a fine under this title or imprisonment for any term of years or for life, or both."; and

(2) in subsection (b)(l)—

(A) by redesignating subparagraph (B) as subparagraph (C); and

(B) by inserting after subparagraph (A) the following:

"(B) Any property constituting or derived from any proceeds obtained directly or indirectly as a result of a violation of subsection (a).".

TITLE III—COORDINATION AND STRATEGIC PLANNING OF FEDERAL EFFORT AGAINST COUNTERFEITING AND PIRACY

Subtitle A—Office of the United States Intellectual Property Enforcement Representative

SEC. 301. OFFICE OF THE UNITED STATES INTELLECTUAL PROPERTY ENFORCEMENT REPRESENTATIVE.

(a) ESTABLISHMENT WITHIN EXECUTIVE OFFICE OF THE PRESIDENT.—There is established within the Executive Office of the President the Office of the United States Intellectual Property Enforcement Representative (in this title referred to as "the Office").

(b) UNITED STATES INTELLECTUAL PROPERTY ENFORCEMENT REPRESENTATIVE.—The head of the Office shall be the United States Intellectual Property Enforcement Representative (in this title referred to as the "IP Enforcement Representative") who shall be appointed by the President, by and with the advice and consent of the Senate. As an exercise of the rulemaking power of the Senate, any nomination of the IP Enforcement Representative submitted to the Senate for confirmation, and referred to a committee, shall be referred to the Committee on the Judiciary.

(c) DUTIES OF IP ENFORCEMENT REPRESENTATIVE.—

(1) IN GENERAL.—The IP Enforcement Representative shall—

(A) have primary responsibility for developing the Joint Strategic Plan against counterfeiting and piracy under section 321 and facilitating the im-

plementation of the Joint Strategic Plan by the departments and agencies listed in subsection (d)(2)(A);

(B) serve as a principal advisor to the President on domestic and international intellectual property enforcement policy;

(C) assist the United States Trade Representative—

(i) concerning negotiations on behalf of the United States relating to international intellectual property enforcement, including negotiations on any intellectual property enforcement matter considered under the auspices of the World Trade Organization or in the course of commodity or direct investment negotiations in which the United States participates; and

(ii) in the programs of the United States Trade Representative to monitor and enforce intellectual property enforcement obligations of other countries under trade agreements with the United States;

(D) coordinate the issuance of policy guidance to departments and agencies on basic issues of policy and interpretation that arise in the exercise of domestic and international intellectual property enforcement functions, to the extent necessary to assure the coordination of intellectual property enforcement policy and consistency with any other law;

(E) act as a principal spokesperson of the President on domestic and international intellectual property enforcement matters;

(F) report directly to the President and the Congress regarding domestic and international intellectual property enforcement programs;

(G) advise the President and the Congress with respect to domestic and international intellectual property enforcement challenges and priorities;

(H) report to the Congress, as provided in section 322, on the implementation of the Joint Strategic Plan, and make recommendations to the Congress for improvements in Federal intellectual property enforcement efforts;

(I) chair the interagency intellectual property enforcement advisory committee established under subsection (d)(2), and consult with such advisory committee in the performance of the functions of the IP Enforcement Representative; and

(J) carry out such other functions as the President may direct.

(2) SENSE OF CONGRESS.—It is the sense of the Congress that the IP Enforcement Representative should—

(A) be a senior representative on any body that the President may establish for the purpose of providing to the President advice on overall policies in which intellectual property enforcement matters predominate; and

(B) be included as a participant in economic summit and other international meetings at which international intellectual property enforcement is a significant topic.

(3) DELEGATION.—The IP Enforcement Representative may—

(A) delegate any of the IP Enforcement Representative's functions, powers, and duties to such officers and employees of the Office as the IP Enforcement Representative may designate; and

(B) authorize such successive redelegations of such functions, powers, and duties to such officers and employees of the Office as the IP Enforcement Representative considers appropriate.

(d) COORDINATION OF INTELLECTUAL PROPERTY ENFORCEMENT ACTIONS.—

(1) IN GENERAL.—In carrying out the functions of the IP Enforcement Representative, the IP Enforcement Representative shall develop recommendations on the allocation of Federal resources for intellectual property enforcement.

(2) ADVISORY COMMITTEE.—

(A) ESTABLISHMENT.—There is established an interagency intellectual property enforcement advisory committee composed of the IP Enforcement Representative, who shall chair the committee, and senior representatives of the following departments and agencies who are involved in intellectual property enforcement, and are appointed by the respective heads of those departments and agencies:

(i) The Department of Justice (including the Intellectual Property Enforcement Officer appointed under section 501).

(ii) The United States Patent and Trademark Office and other relevant units of the Department of Commerce.

(iii) The Office of the United States Trade Representative.

(iv) The Department of State (including the United States Agency for International Development and the Bureau of International Narcotics Law Enforcement).

(v) The Department of Homeland Security (including U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement).

(vi) The United States International Trade Commission.

(vii) The Food and Drug Administration of the Department of Health and Human Services.

(viii) The United States Copyright Office.

(ix) Such other agencies as the IP Enforcement Representative determines to be substantially involved in the efforts of the Federal Government to combat counterfeiting and piracy.

(B) FUNCTIONS.—The advisory committee established under subparagraph (A) shall, under the guidance of the IP Enforcement Representative, develop the Joint Strategic Plan against counterfeiting and piracy under section 321.

(3) EXEMPTION FROM FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act shall not apply to the interagency intellectual property enforcement advisory committee established under paragraph (2) or to any of the activities conducted by the IP Enforcement Representative in developing the Joint Strategic Plan under section 321.

(e) IDENTIFICATION OF COUNTRIES THAT DENY ADEQUATE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS.—Section 182(b)(2)(A) of the Trade Act of 1974 (19 U.S.C. 2242(b)(2)(A)) is amended by inserting "the United States Intellectual Property Enforcement Representative," after "consult with".

(f) POWERS OF IP ENFORCEMENT REPRESENTATIVE.—In carrying out the responsibilities under this title, the IP Enforcement Representative may—

(1) select, appoint, employ, and fix the compensation of such officers and employees as may be necessary to carry out those responsibilities;

(2) request the head of a department, agency, or program of the Federal Government to place personnel of such department, agency, or program who are engaged in intellectual property enforcement activities on temporary detail to the Office of the IP Enforcement Representative to assist in carrying out those responsibilities;

(3) use, with the consent of the Federal, State, and local government agencies concerned, the available services, equipment, personnel, and facilities of such Federal, State, and local government agencies;

(4) procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, relating to the procurement of temporary and intermittent services, at rates of compensation for individuals not to exceed the daily equivalent of the rate of pay payable under level IV of the Executive Schedule under section 5315 of title 5, United States Code, and while such experts and consultants are so serving away from their homes or regular place of business, pay such employees travel expenses and per diem in lieu of subsistence at rates authorized by section 5703 of title 5, United States Code, for persons in Government service employed intermittently;

(5) issue such regulations as may be necessary to carry out the functions vested in the IP Enforcement Representative;

(6) enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of the work of the Office and on such terms as the IP Enforcement Representative considers appropriate, with any department, agency, or instrumentality of the United States, or with any public or private person, firm, association, corporation, or institution;

(7) accept voluntary and uncompensated services, notwithstanding the provisions of section 1342 of title 31, United States Code;

(8) adopt an official seal, which shall be judicially noticed; and

(9) accept, hold, administer, and use gifts, devises, and bequests of property, both real and personal, for the purpose of aiding or facilitating the work of the Office.

(g) COMPENSATION.—Section 5312 of title 5, United States Code, is amended by adding at the end the following:

"United States Intellectual Property Enforcement Representative.".

SEC. 302. DEFINITION.

For purposes of this title, the term "intellectual property enforcement" means matters relating to the enforcement of laws protecting copyrights, patents, trademarks, other forms of intellectual property, and trade secrets, both in the United States and abroad, including in particular matters relating to combating counterfeit and pirated goods.

Subtitle B—Joint Strategic Plan

SEC. 321. JOINT STRATEGIC PLAN.

(a) PURPOSE.—The objectives of the Joint Strategic Plan against counterfeiting and piracy that is referred to in section 301(c)(1)(A) (in this section referred to as the "joint strategic plan") are the following:

(1) Reducing counterfeit and pirated goods in the domestic and international supply chain.

(2) Identifying and addressing structural weaknesses, systemic flaws, or other unjustified impediments to effective enforcement action against the financing, production, trafficking, or sale of counterfeit or pirated goods.

(3) Assuring that information is identified and shared among the relevant departments and agencies, to the extent permitted by law and consistent with law enforcement protocols for handling information, to aid in the objective of arresting and prosecuting individuals and entities that are knowingly involved in the financing, production, trafficking, or sale of counterfeit or pirated goods.

(4) Disrupting and eliminating domestic and international counterfeiting and piracy networks.

(5) Strengthening the capacity of other countries to protect and enforce intellectual property rights, and reducing the number of countries that fail to enforce laws preventing the financing, production, trafficking, and sale of counterfeit and pirated goods.

(6) Working with other countries to establish international standards and policies for the effective protection and enforcement of intellectual property rights.

(7) Protecting intellectual property rights overseas by—

(A) working with other countries to ensure that such countries—

(i) have adequate and effective laws protecting copyrights, trademarks, patents, and other forms of intellectual property;

(ii) have legal regimes that enforce their own domestic intellectual property laws, eliminate counterfeit and piracy operations, and arrest and prosecute those who commit intellectual property crimes;

(iii) provide their law enforcement officials with the authority to seize, inspect, and destroy pirated and counterfeit goods, including at ports of entry; and

(iv) provide for the seizure of property used to produce pirated and counterfeit goods;

(B) exchanging information with appropriate law enforcement agencies in other countries relating to individuals and entities involved in the financing, production, trafficking, or sale of pirated or counterfeit goods;

(C) using the information described in subparagraph (B) to conduct enforcement activities in cooperation with appropriate law enforcement agencies in other countries; and

(D) building a formal process for consulting with companies, industry associations, labor unions, and other interested groups in other countries with respect to intellectual property enforcement.

(b) TIMING.—Not later than 12 months after the date of the enactment of this Act, and not later than December 31 of every third year thereafter, the IP Enforcement Representative shall submit the joint strategic plan to the President, to the Committee on the Judiciary and the Committee on Appropriations of the House of Representatives, and to the Committee on the Judiciary and the Committee on Appropriations of the Senate.

(c) RESPONSIBILITY OF THE IP ENFORCEMENT REPRESENTATIVE.—During the development of the joint strategic plan, the IP Enforcement Representative—

(1) shall consult and coordinate with the appropriate officers and employees of departments and agencies represented on the advisory committee appointed under section 301(d)(2) who are involved in intellectual property enforcement; and

(2) may consult with private sector experts in intellectual property enforcement.

(d) RESPONSIBILITIES OF OTHER DEPARTMENTS AND AGENCIES.—To assist in the development and implementation of the joint strategic plan, the heads of the departments and agencies identified under section 301(d)(2)(A) (including the heads of any other agencies identified by the IP Enforcement Representative under section 301(d)(2)(A)(ix)) shall—

(1) designate personnel with expertise and experience in intellectual property enforcement matters to work with the IP Enforcement Representative; and

(2) share relevant department or agency information with the IP Enforcement Representative, including statistical information on the enforcement activities of the department or agency against counterfeiting or piracy, and plans for addressing the joint strategic plan.

(e) CONTENTS OF THE JOINT STRATEGIC PLAN.—Each joint strategic plan shall include the following:

(1) A detailed description of the priorities identified for carrying out the objectives in the joint strategic plan, including activities of the Federal Government relating to intellectual property enforcement.

(2) A detailed description of the means and methods to be employed to achieve the priorities, including the means and methods for improving the efficiency and effectiveness of the Federal Government's enforcement efforts against counterfeiting and piracy.

(3) Estimates of the resources necessary to fulfill the priorities identified under paragraph (1).

(4) The performance measures to be used to monitor results under the joint strategic plan during the following year.

(5) An analysis of the threat posed by violations of intellectual property rights, including targets, risks, and threats of intellectual property infringement, the costs to the economy of the United States resulting from violations of intellectual property laws, and the threats to public health and safety created by counterfeiting and piracy.

(6) An identification of the departments and agencies that will be involved in implementing each priority under paragraph (1).

(7) A strategy for ensuring coordination between the IP Enforcement Representative and the departments and agencies identified under paragraph (6), including a process for oversight by the executive branch of, and accountability among, the departments and agencies responsible for carrying out the strategy.

(8) Such other information as is necessary to convey the costs imposed on the United States economy by, and the threats to public health and safety created by, counterfeiting and piracy, and those steps that the Federal Government intends to take over the period covered by the succeeding joint strategic plan to reduce those costs and counter those threats.

(f) ENHANCING ENFORCEMENT EFFORTS OF FOREIGN GOVERNMENTS.—The joint strategic plan shall include programs to provide training and technical assistance to foreign governments for the purpose of enhancing the efforts of such governments to enforce laws against counterfeiting and piracy. With respect to such programs, the joint strategic plan shall—

(1) seek to enhance the efficiency and consistency with which Federal resources are expended, and seek to minimize duplication, overlap, or inconsistency of efforts;

(2) identify and give priority to those countries where programs of training and technical assistance can be carried out most effectively and with the greatest benefit to reducing counterfeit and pirated products in the United States market, to protecting the intellectual property rights of United States persons and their licensees, and to protecting the interests of United States persons otherwise harmed by violations of intellectual property rights in those countries;

(3) in identifying the priorities under paragraph (2), be guided by the list of countries identified by the United States Trade Representative under section 182(a) of the Trade Act of 1974 (19 U.S.C. 2242(a)); and

(4) develop metrics to measure the effectiveness of the Federal Government's efforts to improve the laws and enforcement practices of foreign governments against counterfeiting and piracy.

(g) DISSEMINATION OF THE JOINT STRATEGIC PLAN.—The joint strategic plan shall be posted for public access on the website of the White House, and shall be disseminated to the public through such other means as the IP Enforcement Representative may identify.

SEC. 322. REPORTING.

(a) ANNUAL REPORT.—Not later than December 31 of each calendar year beginning in 2009, the IP Enforcement Representative shall submit a report on the activities of the Office during the preceding fiscal year. The annual report shall be submitted to the President and the Congress, and disseminated to the people of the United States, in the manner specified in subsections (b) and (g) of section 321.

(b) CONTENTS.—The report required by this section shall include the following:

(1) The progress made on implementing the strategic plan and on the progress toward fulfillment of the priorities identified under section 321(e), including an analysis of the performance measures used to monitor results described in section 321(e)(4).

(2) The progress made in efforts to encourage Federal, State, and local government departments and agencies to accord higher priority to intellectual property enforcement.

(3) The progress made in working with foreign countries to investigate, arrest, and prosecute entities and individuals involved in the financing, production, trafficking, and sale of counterfeit and pirated goods.

(4) The manner in which the relevant departments and agencies are working together and sharing information to strengthen intellectual property enforcement.

(5) An assessment of the successes and shortcomings of the efforts of the Federal Government, including departments and agencies represented on the committee established under section 301(d)(2)(A), in fulfilling the priorities identified in the applicable joint strategic plan during the preceding fiscal year and in implementing the recommendations developed under section 301(d)(1).

(6) Recommendations for any changes in enforcement statutes, regulations, or funding levels that the IP Representative considers would significantly improve the effectiveness or efficiency of the effort of the Federal Government to combat counterfeiting and piracy and otherwise strengthen intellectual property enforcement, including through the elimination or consolidation of duplicative programs or initiatives.

(7) The progress made in strengthening the capacity of countries to protect and enforce intellectual property rights.

(8) The successes and challenges in sharing with other countries information relating to intellectual property enforcement.

(9) The progress of the United States Trade Representative in taking the appropriate action under any trade agreement or treaty to protect intellectual property rights of United States persons and their licensees.

SEC. 323. SAVINGS AND REPEALS.

(a) REPEAL OF COORDINATION COUNCIL.—Section 653 of the Treasury and General Government Appropriations Act, 2000 (15 U.S.C. 1128) is repealed.

(b) CURRENT AUTHORITIES NOT AFFECTED.—Except as provided in subsection (a), nothing in this title shall alter the authority of any department or agency of the United States (including any independent agency) relating to—

(1) investigating and prosecuting violations of laws protecting intellectual property rights;

(2) administratively enforcing, at the borders of the United States, laws protecting intellectual property rights; or

(3) international trade or the United States trade agreements program.

(c) REGISTER OF COPYRIGHTS.—Nothing in this title shall derogate from the duties and functions of the Register of Copyrights.

SEC. 324. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out this title.

(b) SUBMISSION OF PROJECTED BUDGET.—By not later than the date on which the President submits to the Congress the budget of the United States Government for a fiscal year, the IP Representative shall submit to the Committees on the Judiciary of the House of Representatives and the Senate the projected amount of funds for the succeeding fiscal year that will be necessary for the Office to carry out its functions.

TITLE IV—INTERNATIONAL ENFORCEMENT AND COORDINATION

SEC. 401. INTELLECTUAL PROPERTY ATTACHÉS.

The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (in this title referred to as the "Director"), in consultation with the Director General of the United States and Foreign Commercial Service, shall, within 2 years after the date of the enactment of this Act, appoint at least 10 intellectual property attachés to serve in United States embassies or other diplomatic missions. The appointments under this section shall be in addition to those individuals serving in the capacity of intellectual property attachés at United States embassies or other diplomatic missions on the date of the enactment of this Act. The Director shall provide such managerial, administrative, research, and other services as the Secretary of Commerce considers necessary to assist the intellectual property attachés in carrying out their responsibilities.

SEC. 402. DUTIES AND RESPONSIBILITIES OF INTELLECTUAL PROPERTY ATTACHÉS.

The intellectual property attachés appointed under section 401, as well as others serving as intellectual property attachés of the Department of Commerce, shall have the following responsibilities:

(1) To promote cooperation with foreign governments in the enforcement of intellectual property laws generally, and in the enforcement of laws against counterfeiting and piracy in particular.

(2) To assist United States persons holding intellectual property rights, and the licensees of such United States persons, in their efforts to combat counterfeiting and piracy of their products or works within the host country, including counterfeit or pirated goods exported from or transshipped through that country.

(3) To chair an intellectual property protection task force consisting of representatives from all other relevant sections or bureaus of the embassy or other mission.

(4) To coordinate with representatives of the embassies or missions of other countries in information sharing, private or public communications with the government of the host country, and other forms of cooperation for the purpose of improving enforcement against counterfeiting and piracy.

(5) As appropriate and in accordance with applicable laws and the diplomatic status of the attachés, to engage in public education efforts against counterfeiting and piracy in the host country.

(6) To coordinate training and technical assistance programs of the United States Government within the host country that are aimed at improving the enforcement of laws against counterfeiting and piracy.

(7) To assist in the coordination of the efforts of the United States Intellectual Property Enforcement Representative, Federal agencies, and private organizations engaged in the promotion of United States intellectual property interests abroad so as to maximize their effectiveness and minimize duplicative efforts.

(8) To identify and promote other means to more effectively combat counterfeiting and piracy activities under the jurisdiction of the host country.

SEC. 403. TRAINING AND DESIGNATION OF ASSIGNMENT.

(a) TRAINING OF ATTACHÉS.—The Director shall ensure that each attaché appointed under section 401 is fully trained for the responsibilities of the position before assuming duties at the United States embassy or other mission in question.

(b) PRIORITY ASSIGNMENTS.—In designating the embassies or other missions to which attachés are assigned, the Director shall give priority to those countries where the activities of an attaché can be carried out most effectively and with the greatest benefit to reducing counterfeit and pirated products in the United States market, to protecting the intellectual property rights of United States persons and their licensees, or to protecting the interests of United States persons otherwise harmed by violations of intellectual property rights in those countries.

SEC. 404. COORDINATION.

(a) IN GENERAL.—The activities authorized by this title shall be carried out in coordination with the United States Intellectual Property Enforcement Representative appointed under section 301.

(b) REPORT ON ATTACHÉS.—The Inspector General of the Department of Commerce shall perform yearly audits of the intellectual property attachés of the Department, and shall report to the Committees on the Judiciary of the House of Representatives and the Senate the results of each such audit. In addition to an overview of the activities and effectiveness of the intellectual property attaché operations, the audit shall include—

(1) an evaluation of the current placement of foreign-based personnel and recommendations for transferring such personnel in response to newly emerging intellectual property issues abroad; and

(2) an evaluation of the personnel system and its management, including the recruitment, assignment, promotion, and performance appraisal of personnel, and the use of limited appointees.

SEC. 405. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for each fiscal year such sums as may be necessary for the training and support of the intellectual property attachés appointed under section 401 and of other individuals serving as intellectual property attachés of the Department of Commerce.

TITLE V—DEPARTMENT OF JUSTICE PROGRAMS

Subtitle A—Coordination

SEC. 501. INTELLECTUAL PROPERTY ENFORCEMENT OFFICER.

(a) ESTABLISHMENT.—There is established within the Office of the Deputy Attorney General in the Department of Justice the "Intellectual Property Enforcement Division". The head of the Intellectual Property Enforcement Division shall be the Intellectual Property Enforcement Officer (in this title referred to as the "IP Officer"). The IP Officer shall be appointed by the Attorney General and shall report directly to the Deputy Attorney General.

(b) DUTIES.—The IP Officer shall—

(1) coordinate all efforts of the Department of Justice relating to the enforcement of intellectual property rights and to combating counterfeiting and piracy;

(2) serve as the lead representative of the Department of Justice on the advisory committee provided for in section 301(d)(2) and as the liaison of the Department of Justice with foreign governments with respect to training conducted under section 522; and

(3) carry out such other related duties that may be assigned by the Deputy Attorney General.

(c) TRANSFER OF FUNCTIONS.—

(1) CRIMINAL INTELLECTUAL PROPERTY ENFORCEMENT.—There are transferred to the Intellectual Property Enforcement Division those functions of the Computer Crime and Intellectual Property Section of the Criminal Division of the Department of Justice that relate to the enforcement of criminal laws relating to the protection of intellectual property rights and trade secrets, including the following:

(A) Sections 506 and 1204 of title 17, United States Code.

(B) Sections 2318 through 2320 of title 18, United States Code.

(C) Sections 1831 and 1832 of title 18, United States Code.

(D) Any other provision of law, including the following, to the extent such provision involves the enforcement of any provision of law referred to in subparagraphs (A) through (C) or comparable provision of law:

(i) Section 1341 of title 18, United States Code, relating to frauds and swindles.

(ii) Section 1343 of title 18, United States Code, relating to fraud by wire, radio, or television.

(iii) Section 2512 of title 18, United States Code, relating to trafficking in interception devices.

(iv) Section 633 of the Communications Act of 1934 (47 U.S.C. 553), relating to the unauthorized reception of cable service.

(v) Section 705 of the Communications Act of 1934 (47 U.S.C. 605), relating to the unauthorized publication or use of communications.

(2) INTELLECTUAL PROPERTY ENFORCEMENT COORDINATORS.—The Intellectual Property Law Enforcement Coordinators of the Department of Justice to whom section 521 applies shall also be in the Intellectual Property Enforcement Division.

Subtitle B—Law Enforcement Resources

SEC. 511. LOCAL LAW ENFORCEMENT GRANTS.

(a) AUTHORIZATION.—Section 2 of the Computer Crime Enforcement Act (42 U.S.C. 3713) is amended—

(1) in subsection (b), by inserting after "computer crime" each place it appears the following: ", including infringement of copyrighted works over the Internet"; and

(2) in subsection (e)(1), relating to authorization of appropriations, by striking "fiscal years 2001 through 2004" and inserting "fiscal years 2009 through 2013".

(b) GRANTS.—The Office of Justice Programs of the Department of Justice shall make grants to eligible State or local law enforcement entities, including law enforcement agencies of municipal governments and public educational institutions, for training, prevention, enforcement, and prosecution of intellectual property theft and infringement crimes (in this subsection referred to as "IP–TIC grants"), in accordance with the following:

(1) USE OF IP–TIC GRANT AMOUNTS.—IP–TIC grants may be used to establish and develop programs to do the following with respect to the enforcement of State and local true name and address laws and State and local criminal laws on anti-piracy, anti-counterfeiting, and unlawful acts with respect to goods by reason of their protection by a patent, trademark, service mark, trade secret, or other intellectual property right under State or Federal law:

(A) Assist State and local law enforcement agencies in enforcing those laws, including by reimbursing State and local entities for expenses incurred in performing enforcement operations, such as overtime payments and storage fees for seized evidence.

(B) Assist State and local law enforcement agencies in educating the public to prevent, deter, and identify violations of those laws.

(C) Educate and train State and local law enforcement officers and prosecutors to conduct investigations and forensic analyses of evidence and prosecutions in matters involving those laws.

(D) Establish task forces that include personnel from State or local law enforcement entities, or both, exclusively to conduct investigations and forensic analyses of evidence and prosecutions in matters involving those laws.

(E) Assist State and local law enforcement officers and prosecutors in acquiring computer and other equipment to conduct investigations and forensic analyses of evidence in matters involving those laws.

(F) Facilitate and promote the sharing, with State and local law enforcement officers and prosecutors, of the expertise and information of Federal law enforcement agencies about the investigation, analysis, and prosecution of matters involving those laws and criminal infringement of copyrighted works, including the use of multi-jurisdictional task forces.

(2) ELIGIBILITY.—To be eligible to receive an IP–TIC grant, a State or local government entity must provide to the Attorney General—

(A) assurances that the State in which the government entity is located has in effect laws described in paragraph (1);

(B) an assessment of the resource needs of the State or local government entity applying for the grant, including information on the need for reimbursements of base salaries and overtime costs, storage fees, and other expenditures to improve the investigation, prevention, or enforcement of laws described in paragraph (1); and

(C) a plan for coordinating the programs funded under this section with other federally funded technical assistance and training programs, including directly funded local programs such as the Edward Byrne Memorial Justice Assistance Grant Program authorized by subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.).

(3) MATCHING FUNDS.—The Federal share of an IP–TIC grant may not exceed 90 percent of the costs of the program or proposal funded by the IP–TIC grant, unless the Attorney General waives, in whole or in part, the 90 percent requirement.

(4) AUTHORIZATION OF APPROPRIATIONS.—

(A) AUTHORIZATION.—There is authorized to be appropriated to carry out this subsection the sum of $25,000,000 for each of fiscal years 2008 through 2012.

(B) LIMITATION.—Of the amount made available to carry out this subsection in any fiscal year, not more than 3 percent may be used by the Attorney General for salaries and administrative expenses.

SEC. 512. CHIP UNITS, TRAINING, AND ADDITIONAL RESOURCES.

(a) EVALUATION OF CHIP UNITS.—The Attorney General shall review the allocation and activities of the Computer Hacking and Intellectual Property (in this section referred to as "CHIP") units that have been established in various Federal judicial districts, with the goals of—

(1) improving the effectiveness of CHIP units in investigating and prosecuting criminal offenses arising from counterfeiting or piracy activities;

(2) ensuring that CHIP units are established and funded in every judicial district in which they can be effectively deployed;

(3) upgrading the training and expertise of Department of Justice personnel participating in CHIP units; and

(4) improving the coordination of the activities of CHIP units with corresponding efforts of State and local law enforcement agencies operating within the Federal judicial district in question.

(b) REQUIREMENTS.—In addition to any initiatives undertaken as a result of the review conducted under subsection (a), the Attorney General, in consultation with the Director of the Federal Bureau of Investigation, shall ensure that—

(1) each CHIP unit is supported by at least 2 additional agents of the Federal Bureau of Investigation for the purpose of investigating intellectual property crimes;

(2) each CHIP unit is assigned at least 1 additional assistant United States attorney to support such unit for the purpose of prosecuting intellectual property crimes or other crimes involved in counterfeiting or piracy activities;

(3) CHIP units are established and staffed in at least 10 Federal judicial districts in addition to those districts in which CHIP units exist on the date of the enactment of this Act; and

(4) an operational unit is created consisting of not less than 5 agents of the Federal Bureau of Investigation, attached to the headquarters of the Federal Bureau of Investigation in Washington, D.C., and dedicated to working with the Intellectual Property Enforcement Division established by section 501 on the development, investigation, and coordination of complex, multi-district, and international criminal intellectual property cases.

(c) COORDINATION WITH STATE AND LOCAL AUTHORITIES.—The United States attorney for each Federal judicial district in which a CHIP unit is in operation shall ensure that the activities of that unit are coordinated with the corresponding activities of State and local law enforcement agencies operating within that Federal judicial district in the investigation of intellectual property crimes and other crimes involved in counterfeiting or piracy, including by coordinating Federal, State, and local operations and intelligence sharing to the extent appropriate.

(d) ADDITIONAL RESPONSIBILITIES OF THE ATTORNEY GENERAL.—The Attorney General, in consultation with the Director of the Federal Bureau of Investigation as appropriate, shall ensure the following:

(1) All assistant United States attorneys who are assigned to CHIP units, and all agents of the Federal Bureau of Investigation who support those units, have received advanced training, on an annual basis, in the investigation and prosecution of intellectual property crimes and other crimes involved in counterfeiting and piracy.

(2) All relevant units of the Department of Justice are allocated sufficient funding and other resources as may be necessary to provide expert computer forensic assistance, including from nongovernmental entities, in investigating and prosecuting intellectual property crimes in a timely manner. For purposes of this paragraph, the term "all relevant units" includes those officers and employees assigned to carry out the functions transferred by section 501(c)(1), CHIP units, offices of the United States attorneys, and units of the Federal Bureau of Investigation that are engaged in the investigation of intellectual property crimes.

SEC. 513. TRANSPARENCY OF PROSECUTORIAL DECISIONMAKING.

(a) IN GENERAL.—The Attorney General shall direct each United States attorney—

(1) to review the formal or informal standards currently in effect in that Federal judicial district for accepting or declining prosecution of cases involving criminal violations of intellectual property laws;

(2) to consider whether the standards should be modified or applied more flexibly—

(A) to ensure that significant violations are not being declined for prosecution inappropriately; or

(B) in light of the broader impact of individual cases on the overall strategy to combat counterfeiting and piracy; and

(3) to review the practices and procedures currently in place for providing information to complainants and victims in cases and investigations involving criminal violations of intellectual property laws regarding the status of such cases and investigations, including the practices and procedures for apprising interested parties of the decision to decline prosecution of such cases.

(b) CONSTRUCTION.—

(1) PROSECUTORIAL MATTERS.—Nothing in this section shall be construed to impinge on the appropriate exercise of prosecutorial discretion with regard to cases involving criminal violations of intellectual property laws or to require the promulgation of formal standards or thresholds regarding prosecution of any cases.

(2) NO CLAIMS, ETC., MAY BE ASSERTED.—Nothing in the section shall give rise to any claim, cause of action, defense, privilege, or immunity that may be asserted by any party to Federal litigation.

SEC. 514. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out this subtitle.

Subtitle C—International Activities

SEC. 521. INTERNATIONAL INTELLECTUAL PROPERTY LAW ENFORCEMENT COORDINATORS.

(a) DEPLOYMENT OF ADDITIONAL COORDINATORS.—The Attorney General shall, within 180 days after the date of the enactment of this Act, deploy 5 Intellectual Property Law Enforcement Coordinators, in addition to those serving in such capacity on such date of enactment. Such deployments shall be made to those countries and regions where the activities of such a coordinator can be carried out most effectively and with the greatest benefit to reducing counterfeit and pirated products in the United States market, to protecting the intellectual property rights of United States persons and their licensees, and to protecting the interests of United States persons otherwise harmed by violations of intellectual property rights in those countries. The mission of all International Intellectual Property Law Enforcement Coordinators shall include the following:

(1) Acting as liaison with foreign law enforcement agencies and other foreign officials in criminal matters involving intellectual property rights.

(2) Performing outreach and training to build the enforcement capacity of foreign governments against intellectual property-related crime in the regions in which the coordinators serve.

(3) Coordinating United States law enforcement activities against intellectual property-related crimes in the regions in which the coordinators serve.

(4) Coordinating with the activities of the intellectual property attachés appointed under title IV in the countries or regions to which the coordinators are deployed.

(5) Coordinating the activities of the coordinators with the IP Officer.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year such sums as may be necessary for the deployment and support of all International Intellectual Property Enforcement Coordinators of the Department of Justice, including those deployed under subsection (a).

SEC. 522. INTERNATIONAL TRAINING ACTIVITIES OF THE COMPUTER CRIME AND INTELLECTUAL PROPERTY SECTION.

(a) INCREASED TRAINING AND TECHNICAL ASSISTANCE TO FOREIGN GOVERNMENTS.—The Attorney General shall increase the efforts of the Department of Justice to provide training and technical assistance to foreign governments, including foreign law enforcement agencies and foreign courts, to more effectively combat counterfeiting and piracy activities falling within the jurisdiction of such governments.

(b) CONDUCT OF PROGRAMS.—The increased training and technical assistance programs under subsection (a) shall be carried out by the Intellectual Property Enforcement Division established by section 501, as well as through such other divisions, sections, or agencies of the Department of Justice as the Attorney General may direct.

(c) PRIORITY COUNTRIES.—The Attorney General, in providing increased training and technical assistance programs under this section, shall give priority to those countries where such programs can be carried out most effectively and with the greatest likelihood of reducing counterfeit and pirated products in the United States market, of protecting the intellectual property rights of United States persons, or of protecting the interests of United States persons otherwise harmed by violations of intellectual property rights in those countries.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out this section.

Subtitle D—Coordination, Implementation, and Reporting

SEC. 531. COORDINATION.

The IP officer shall ensure that activities undertaken under this title are carried out in a manner consistent with the joint strategic plan developed under section 321.

SEC. 532. ANNUAL REPORTS.

Not later than 1 year after the date of the enactment of this Act, and annually thereafter, the Attorney General shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report on actions taken to carry out this title, including a report on the activities of the IP Officer.

PURPOSE AND SUMMARY

The purpose of H.R. 4279, the "Prioritizing Resources and Organization for Intellectual Property Act of 2008" (PRO IP Act), is to improve intellectual property enforcement in the United States and abroad. Titles 1 and 2 of the PRO IP Act strengthen civil and criminal intellectual property laws. This includes providing stiffer penalties for piracy and counterfeiting activities, harmonizing forfeiture procedures for intellectual property offenses, making it illegal to export counterfeit goods, and eliminating loopholes that might prevent enforcement of otherwise validly registered copyrights. Title 3 establishes an Intellectual Property Enforcement Representative (IPER) responsible for coordinating all Federal Government IP enforcement efforts. The IPER will be established in the Executive Office of the President and, with the cooperation of all the relevant government agencies, will be responsible for producing a Joint Strategic Plan for national intellectual property enforcement. Titles 4 and 5 of the Act strengthen the Administration's ability to address intellectual property rights violations. It reorganizes intellectual property enforcement within the Department of Justice and provides additional resources to investigate and prosecute intellectual property crimes. It provides for intellectual property enforcement coordinators and additional intellectual property attachés to strengthen respect for intellectual property rights in foreign countries. And, it authorizes $25 million in grant money to help state and local law enforcement combat intellectual property crimes.

BACKGROUND AND NEED FOR THE LEGISLATION

The knowledge, creativity, and industry of American citizens are essential to the economic strength of our nation. Intellectual property law provides the principal incentives that stimulate the creation and production of new innovations, inventions, and works. Countless studies have shown that many United States businesses and entrepreneurs rely on intellectual property rights to protect the significant investments of time, resources, and creativity that result in copyrights, trademarks, and patents. According to a recent report on intellectual property-intensive manufacturing, "two-thirds of the value of America's large businesses can be traced back to intangible assets that embody ideas, especially . . . patents and trademarks."[1]

Another report, which focused solely on the copyright industries, found that their direct and indirect contributions to the United States economy amounted to $1.3 trillion in 2004 and $1.38 trillion in 2005.[2] In total, intellectual property-related businesses accounted for, on average, about 18 percent of the United States

[1] Robert Shapiro and Nam Pham, *Economic Effects of Intellectual Property-Intensive Manufacturing in the United States,* prepared for World Growth (July 2007).

[2] Stephen Siwek, *Copyright Industries in the U.S. Economy; The 2006 Report,* prepared for the International Intellectual Property Alliance (Nov. 2006).

Gross Domestic Product (GDP) from 1998 through 2003. Intellectual property-based industries employed 18 million workers, or about 13 percent of the United States labor force. Intellectual property-based industries are also estimated to have accounted for 26 percent of the annual real GDP growth rate from 1998 to 2003, and about 40 percent of United States exports of goods and services in 2003 through 2004.[3] The reliance by United States businesses on intellectual property has grown over time, and is expected to continue to grow as the United States further develops into a predominantly knowledge-based economy.

While intellectual property is the bedrock upon which United States businesses have grown and thrived, increasing intellectual property theft in the United States and globally threatens the future economic prosperity of our nation. Conservative estimates indicate that the United States economy loses between $200 and $250 billion per year, and has lost 750,000 jobs, due to intellectual property theft.[4] Some estimates indicate that counterfeit and pirated goods comprise six to nine percent of all world trade, the bulk of which violates the intellectual property rights of United States businesses and entrepreneurs.[5]

Intellectual property theft also poses major risks to public health and safety, as goods like prescription drugs, food products, electrical equipment and products, and automobile and airline parts increasingly become the targets of intellectual property thieves. Often, counterfeit and pirated products do not meet minimum regulatory or industry standards, are made with substandard parts, or contain harmful and in some cases potentially fatal ingredients. In June 2007, counterfeit toothpaste that contained diethylene glycol, a chemical used in antifreeze, was distributed and sold to American consumers.[6] In another incident, the United States Food and Drug Administration recalled 200,000 bottles of fake Lipitor, a drug used by millions to control high cholesterol.[7] In yet another high profile incident, investigators in New York City apprehended six auto parts dealers who were selling more than $700,000 worth of counterfeit ignition coils, sway bars, and brake pads.[8] Countless more news articles have documented the variety of counterfeit products that impact public health and safety.[9]

In recent years, the United States government has responded to the threats posed by the rise in intellectual property theft by in-

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[3] Government Accountability Office, *Intellectual Property: Federal Enforcement has Generally Increased, but Assessing Performance Could Strengthen Law Enforcement Efforts* (GAO-08-157), Report to Ranking Member, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, Committee on Homeland Security and Government Affairs, U.S. Senate (Mar. 2008) [hereinafter "GAO March 2008 Report"].

[4] International Anti-Counterfeiting Coalition, *Get Real - The Truth About Counterfeiting* (visited September 21, 2007), <http://www.iacc.org/counterfeiting/counterfeiting.php>.

[5] *Counterfeiting and Theft of Intellectual Property: Challenges and Solutions: Hearing Before the S. Comm. on the Judiciary,* 108th Cong. (2004) (statement of Thomas Donohue, President and CEO of the U.S. Chamber of Commerce).

[6] Mac Daniel, *Officials find contaminated toothpaste in Hub stores,* BOSTON GLOBE, July 12, 2007, at B7.

[7] David Schwab, *Phony Lipitor Scheme Detailed,* THE STAR-LEDGE, Oct. 16, 2003, at 25.

[8] Briefing, *Auto Bust,* NEWSDAY, Dec. 2, 2004, at A18.

[9] *Warning: Substandard Batteries Linked to Explosions,* U.S. NEWSWIRE, Apr. 3, 2008; *Fake Parts are Seeping Into Military Aircraft Maintenance Depots,* INSIDE THE AIR FORCE, Mar. 28, 2008, Vol. 19, No. 13; Sarah Netter, *More Counterfeit Extension Cords Found,* THE JOURNAL NEWS (New York), Dec. 30, 2007, at 6A; Peter Pitts, *Copycat Drugs Present Long-Term Threat to U.S.,* TAMPA TRIB., Nov. 29, 2007, at 13; David Kolman, *Suppliers Warn Fleets About Parts Deals That Seem Too Good to be True,* BULK TRANSPORTER, Nov. 1, 2007, at 26; *Fake Crane Parts Pose Danger to Contractors,* CONTRACT J., July 18, 2007, at 1; Kerry Burke & Dave Goldliner, *Bogus Condoms a Trojan Horse,* DAILY NEWS (New York), May 30, 2007, at 6.

creasing the resources available for intellectual property enforcement, and by developing new mechanisms to meet this challenge. The Department of Justice has increased the number of attorneys available for intellectual property prosecutions. The United States Patent and Trademark Office has established an intellectual property attaché program that places experts internationally where United States rights holders are encountering obstacles to effective intellectual property protection and enforcement.

While IP enforcement resources have increased, these increases unfortunately have not kept pace with the dramatic growth in the volume and proliferation of counterfeit and pirated goods produced and distributed globally. Further, growing evidence indicates that intellectual property thieves have become more sophisticated, employing loosely organized, decentralized multinational networks to facilitate the movement of illegal goods. These networks are designed to quickly adopt new technologies, strategies, suppliers, or distributors in order to adeptly evade detection, capture, and prosecution.[10] According to INTERPOL, intellectual property theft is so lucrative that international organized criminal syndicates have entered into and are profiting from trade in these illegal markets.

Given the substantial and rising importance of intellectual property to the United States economy, the threat that IP theft poses to United States businesses and to public health and safety, and the growing capabilities of intellectual property thieves, it is critical that IP enforcement be improved both domestically and internationally. To this end, a number of entities have recently released documents that provide detailed recommendations on the methods and mechanisms that the United States government can employ to strengthen intellectual property enforcement. These recommendations have been reviewed and were considered in the drafting of this Act. Among the most important of these documents are the Campaign to Protect America proposal from the Coalition Against Counterfeiting and Piracy,[11] the Department of Justice's Intellectual Property Protection Act legislative proposal, and a series of Government Accountability Office (GAO) reports and testimony before Congress.[12]

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[10] *See generally,* MOISES NAIM, ILLICIT: HOW SMUGGLERS, TRAFFICKERS, AND COPYCATS ARE HIJACKING THE GLOBAL ECONOMY (2005).

[11] The Coalition Against Counterfeiting and Piracy (CACP), *Intellectual Property Enforcement Initiative: Campaign to Protect America* (2007). The CACP is an initiative organized by the United States Chamber of Commerce. The CACP's members include over 500 companies and trade associations including 3M, Cargill, Gillette, Honeywell, Nike, Verizon, the National Association of Manufacturers, the Pharmaceutical Research and Manufacturers Association. The CACP's recommendations are also supported by major labor groups like the International Brotherhood of Teamsters, the Service Employee International Union, the American Federation of Music, and others.

[12] While a number of Government Accountability Office reports and testimony informed this Act, the most helpful include: *Finding and Fighting Fakes: Reviewing the Strategy Targeting Organized Piracy, before the S. Comm. on Homeland Security and Government Affairs, Subcomm.* 109th Cong. (June 2005) (statement of Loren Yager, Director of International Affairs and Trade, Government Accountability Office) [hereinafter "GAO June 2005 Testimony"]; Government Accountability Office, *Strategy for Targeting Organized Piracy (STOP) Requires Changes for Long-term Success,* Report to the Chairman, Committee on Government Reform, House of Representatives (Nov. 2006) [hereinafter "GAO November 2006 Report"]; *Pirating the American Dream: Intellectual Property Theft's Impact on America's Place in the Global Economy and Strategies for Improving Enforcement, before the S. Comm. on Banking, Housing and Urban Affairs, Subcomm. on Security and International Trade and Finance,* 110th Cong. (Apr. 2007) (Statement of Loren Yager, Director of International Affairs and Trade, Government Accountability Office) [hereinafter "GAO April 2007 Testimony"]; International Piracy: The Challenges of Protecting Intellectual Property in the 21st Century, before the H. Comm. on the Judiciary, Subcomm. on Courts, the Internet, and Intellectual Property, 110th Cong. (Mar. 2007) (state-

In summary, this Act will: 1) enhance civil and criminal penalties for intellectual property violations, to make commercial scale IP theft less profitable and easier to prosecute; 2) institutionalize key IP enforcement leadership within the Executive Office of the President and provide a mechanism by which the President can more effectively lead coordination of Federal IP enforcement efforts; and 3) provide greater resources for IP enforcement efforts, including increased resources and enhanced focus for the effort to investigate and prosecute domestic and international intellectual property crimes. The bill has received letters of support from key industries and associations, including the Consumer Electronics Association, Digital Media Association, Net Coalition, the Internet Commerce Coalition, Coalition for Consumers' Pictures Rights, and the Printing Industries of America. This is in addition to the support the bill has already received from the Teamsters, Directors Guild of America, SEIU, AFTRA, Unite Here, AFM, Laborers, OPEIU, the Coalition Against Counterfeiting and Piracy, the Motor Equipment Manufacturing Association, PhRMA, and NBC Universal.

ENHANCEMENTS TO CIVIL INTELLECTUAL PROPERTY LAW

Title I makes a number of changes to copyright and trademark law that will enhance the ability of intellectual property rights holders to enforce their rights. Title I also makes it easier for rights holders to secure judgments that deter infringing activities and reduce the incentives available to intellectual property thieves.

Under current law, registration of a copyright with the Copyright Office is a prerequisite for a United States right holder to seek statutory damages in a civil infringement action. According to the Department of Justice (DOJ), effective prosecution of criminal infringement of valuable works, especially those that have just been released or that have not yet been made available to the public, is sometimes hampered by uncertainties regarding the provision of current law that requires registration of U.S. works as a prerequisite of any "action for infringement of the copyright." [13] DOJ points out that it isn't clear whether the registration requirement for U.S. copyright holders has any effect on criminal prosecutions undertaken by DOJ.[14] This Act clarifies that copyright registration is not a prerequisite for DOJ to criminally prosecute copyright pirates.

While copyright registration benefits the public, it was never intended as a way for copyright pirates to evade prosecution. Prosecution of copyright crimes serves the public interest by punishing and deterring criminal activity. A prosecutor's ability to serve this public interest should not be hamstrung by the fact that a work has not yet been registered. The lack of a registration does not make the criminal activity any less egregious, especially in a case in which the target of the infringement is an unreleased or just-released work at the peak of its commercial value, or in which numerous works, some of them unregistered, are being infringed on

ment of Loren Yager, Director of International Affairs and Trade, Government Accountability Office)[hereinafter "GAO October 2007 Testimony"]; GAO March 2008 Report, supra note 3.

[13] 17 U.S.C. § 411(a).

[14] LETTER FROM THE OFFICE OF THE ASSISTANT ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE, TO HON. NANCY PELOSI, SPEAKER, HOUSE OF REPRESENTATIVES, concerning a legislative proposal titled "Intellectual Property Act of 2007," May 14, 2007, at 1.

the Internet. DOJ recommends, and the Committee agrees, that current law should be amended to make clear that the registration prerequisite affects civil actions only. The Committee does not intend for this language, found in section 102 of the bill, to have any effect on the enforcement authority of United States Customs and Border Protection under sections 602 or 603 of Title 17 of the United States Code.

It has also been argued in litigation that a mistake in the registration documents, such as checking the wrong box on the registration form, renders a registration invalid and thus forecloses the availability of statutory damages.[15] To prevent intellectual property thieves from exploiting this potential loophole, the Act makes clear that a registration containing inaccuracies will satisfy the registration requirements of the Copyright Act unless the mistake was knowingly made and the inaccuracy, if known, would have caused the Register of Copyrights to refuse the registration. And in cases where mistakes in a copyright registration are alleged, courts will be required to seek the advice of the Register of Copyrights as to whether the asserted mistake, if known at the time of application, would have caused the Copyright Office to refuse registration.

The Act contains a savings clause to protect and preserve the rights and interests of any person with respect to claims, including adverse claims, of authorship and ownership apart from the jurisdictional and remedial provisions of sections 411 and 412, at any time, in any judicial or administrative forum, and without any procedural or substantive limitation except as set forth in other provisions of the Copyright Act.

Under current copyright law, the ability of the court to order impoundment of evidence of infringement is restricted to the infringing copies themselves and the means by which they may be made, but does not extend to the records that document the violation. This gap may provide copyright pirates who have been sued a window of opportunity to destroy evidence. To address this problem, the Act gives courts authority to also impound records that document the manufacture, sale, or receipt of things involved in a copyright violation, providing a tool similar to that available for many years to trademark owners in counterfeiting cases.

Experts point out that counterfeiters have developed a "long value chain" in their operations, thus limiting the risk of each party being caught and the possible penalties if they are apprehended. Although under current law contributory trademark liability can be found against parties who intentionally induce others to commit acts of counterfeiting, or who intentionally provide goods or services to facilitate the commission of acts of counterfeiting, with the intent that the recipient of the goods or services would put them to use in committing the violation, the damages to which those parties are exposed may fall far short of deterrent levels. To remedy this, and to take into account the realities of today's counterfeiting environment, the Act directs courts to award treble damages and attorney's fees against such knowing participants in the value chain, just as is the case under current law with direct infringers engaged in counterfeit operations.

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[15] *See In re* Napster, Inc., Copyright Litigation, 191 F. Supp. 2d 1087, 1099 (N.D. Cal. 2002).

The level of statutory damages that can be assessed against counterfeiters has not been adjusted since 1996. In the ensuing 12 years, the profits of counterfeiters and the volume of their traffic has skyrocketed. The existing statutory damage levels no longer serve as an adequate deterrent in this more lucrative environment. Therefore, the Act doubles current statutory damages for use of a counterfeit mark, raising the minimum to from $500 to $1,000 and the maximum from to $100,000 to $200,000 per mark, with willful counterfeiting activity subject to a maximum statutory damage award of $2,000,000.

Lastly, to address reciprocity concerns, the Act explicitly makes it a violation of the Lanham Act and Copyright Act to export counterfeit or pirated goods from the United States, and also clarifies that the willful importation of pirated goods can constitute a criminal copyright offense.

ENHANCEMENTS TO CRIMINAL INTELLECTUAL PROPERTY LAW

Title II effectuates a number of enhancements to copyright and trademark law that will facilitate criminal prosecution of repeat copyright infringers, harmonize forfeiture laws related to intellectual property offenses, and increase penalties for counterfeiting violations that endanger public health and safety.

Under current law, penalties for the repeat offense of three major criminal copyright acts—infringement for commercial advantage or private financial gain, infringement for non-commercial purposes above a certain threshold, and infringement of pre-release works over a publicly accessible computer network—automatically subject the infringer to enhanced penalties. For enhanced penalties to apply under current law, however, the repeat offender must commit the same offense twice. DOJ recommends, and the Committee agrees, that if a person has been convicted for any one of these acts, a second conviction for any of these acts should be considered a repeat offense for purposes of enhanced damages.

Under current law, there are substantial variations among the civil and criminal forfeiture laws for violations of various criminal statutes prohibiting piracy and counterfeiting, as well as with regard to restitution orders. DOJ has recommended that this patchwork of provisions, enacted at various times over the past three decades, all be harmonized at the current standard adopted by Congress in 2006 with regard to trafficking in counterfeit goods. This would increase the consistency and predictability of the law, and would facilitate seizure of the proceeds of counterfeiting and piracy, and the tools used to carry out these crimes, in appropriate cases. Thus, the Act amends the forfeiture provisions of 18 U.S.C. §§ 2318, 2319, 2319A, and 2319B, to bring them closer in line with 18 U.S.C. § 2320. The Act adds safeguards, however, including in Chapter 46 of Title 18, to ensure that civil forfeiture of property involved in the commission of the offense is restricted to property owned or predominantly controlled by the violator, a co-conspirator, or an aider and abettor of the crime, and that the property has a substantial connection to the offense.

The Act also directs the U.S. Sentencing Commission to review the Sentencing Guidelines to consider whether the two-level enhancement that currently applies to criminal infringement involv-

ing manufacturing, importing, and uploading of infringing items should be expanded to include exportation of such items.

Lastly, to address the increasing dangers that counterfeit goods pose to public health and safety, the Act increases maximum penalties for trafficking in counterfeit goods where the defendant knowingly or recklessly causes or attempts to cause serious bodily injury or death.

ESTABLISH AND INSTITUTIONALIZE EFFECTIVE INTELLECTUAL PROPERTY ENFORCEMENT LEADERSHIP AND COORDINATION MECHANISMS

The Administration has made a number of efforts to address the threat of counterfeiting and piracy, which have led to increases in intellectual property enforcement activity. These increases, however, have not kept pace with the volume of counterfeit and pirated goods appearing in the United States and in other countries around the world. Thus, while enforcement has been aggressively pursued, the effect on IP crime has been insufficient to meet the challenges posed by IP thieves.

In recent reports and testimony to Congress, GAO identified a number of flaws in current Federal intellectual property enforcement efforts. One of the most significant deficiencies identified is the lack of permanent and effective leadership in coordinating these efforts. Federal enforcement actions have increased over the course of fiscal years 2001 through 2006, but the key agencies have not taken important steps necessary to assess their achievements. For example, most do not systematically analyze their IP enforcement statistics to inform management and resource allocation decisions, collect data on their efforts to address IP crimes that affect public health and safety, or establish IP-related performance measures or targets to assess their achievements. Also, GAO has pointed out, based on available information, that Customs and Border Protection's enforcement of exclusion orders, which stop certain IP-infringing goods from entering the country, has been limited in part due to certain procedural weaknesses. Finally, enforcement of intellectual property has not been a top priority within the agencies and thus has not received adequate resources.

Currently, there are programs to provide for interagency strategic planning and implementation of a national strategy. Many objective observers and participants, however, believe these processes have not resulted in a cohesive plan or in adequate assurances of accountability for implementation.

The challenges in coordinating Federal enforcement efforts in support of intellectual property rights are considerable. GAO has pointed out that eight different Federal agencies, and several entities within these agencies, play some role in supporting intellectual property rights. Among those agencies, five play a key role in IP enforcement efforts. Each of these bodies has its own mission and its own set of priorities; and thus, the protection and enforcement of IP rights does not have the same priority in each agency. GAO has classified government efforts into either policy initiatives, training and technical assistance programs, or law enforcement. Most agencies and offices involved in IP-related issues participate in at least two of these types of activities. Under current conditions, it is not surprising that most of these agencies undertake similar—and in some cases duplicative—activities and programs.

With so many entities dedicated to different purposes, setting different priorities, and under different direct leadership, coordinated cross-agency planning and implementation is needed to optimize effectiveness and efficiency. GAO has identified two main mechanisms for the coordination of Federal intellectual property enforcement efforts—the National Intellectual Property Law Enforcement Coordination Council (NIPLECC) and the Strategy Targeting Organized Piracy ("STOP") initiative.[16]

NIPLECC was statutorily created in 1999 to coordinate domestic and international intellectual property enforcement activities. The Council's membership is dictated by statute, and includes the Director of the United States Patent and Trademark Office (USPTO), the Assistant Attorney General of the Department of Justice's Criminal Division, the Undersecretary of State for Economic and Agricultural Affairs, the Deputy United States Trade Representative, the Commissioner of Customs, and the Undersecretary of Commerce for International Trade. The USPTO Director and the Assistant Attorney General are designated co-chairs of the Council.

According to GAO, many in the intellectual property community believe that NIPLECC has been unsuccessful in its mission to serve as a facilitator of interagency coordination for domestic and international IP enforcement. NIPLECC has lacked consistent leadership for most of its existence and has struggled to define its mission.[17] In 2004, Congress passed amendments to clarify its role and provide additional funding. These amendments also created a Coordinator for International Intellectual Property Enforcement to head the Council. Further GAO analysis, however, concludes that NIPLECC continues to suffer from inactivity and ineffectiveness.[18]

In contrast to NIPLECC, GAO has found that the STOP initiative is perceived to have achieved a higher degree of success in its multi-agency IP protection and enforcement coordination mission.[19] STOP was created in 2004 as a presidential initiative led by the White House under the auspices of the National Security Council. The STOP initiative includes representatives of the Departments of Homeland Security, Commerce, Justice, and State, the Office of the United States Trade Representative (USTR), and the Food and Drug Administration (FDA). The STOP initiative is widely viewed as successful in increasing attention to intellectual property issues. Government officials have found that STOP has been an effective means of sharing ideas and supporting common goals. The private sector has praised the STOP initiative for improving communication between the business community and government agencies on intellectual property issues. GAO, however, has pointed out that the STOP initiative lacks several elements of an effective national strategic plan. Most importantly, GAO reports that the STOP initiative: 1) does not have defined performance measures such as a

[16] Another interagency IP enforcement coordination mechanism mentioned by GAO is the National Intellectual Property Rights Coordination Center. The Center was created by the Executive Branch in 2000 to serve as an interagency mechanism to coordinate Federal investigative efforts. The Center, however, has not achieved its mission, and staff levels have decreased. Currently, only one agency participates in the Center's activities, and the Center's focus is on private sector outreach. Agencies have lacked a common understanding of the Center's purpose and their role in its mission. GAO March 2008 Report, supra note 3, at 36-39.

[17] *Id.* at 35-37.

[18] GAO June 2005 Testimony, *supra* note 12, at 11; GAO November 2006 Report, *supra* note 12, at 26; GAO April 2007 Report, *supra* note 12, at 10.

[19] GAO April 2007 Testimony, supra note 12, at 9.

clear articulation of priorities or a process to monitor and report on the progress of its efforts; 2) does not provide a clear articulation of the resources needed to achieve its goals and from where these resources will come; and 3) lacks permanence and could cease existence with the end of the current Administration in January 2009.[20]

To address the need for permanent and effective leadership to prioritize and coordinate United States intellectual property enforcement efforts across agencies, Title III establishes an Intellectual Property Enforcement Representative (IPER) within the Executive Office of the President. The IPER's directive is to coordinate with all eight Federal agencies, and in some instances multiple entities within an agency. By placing the IPER in the Executive Office of the President, it is envisioned that the IPER will have the influence and credibility to serve as an effective coordinator of intellectual property enforcement efforts. The IPER will be a principal advisor to and a spokesperson for the President concerning IP enforcement issues. The IPER will also be responsible for advising Congress on the IP enforcement challenges the country faces, as well as reporting to Congress on the progress made towards implementing the Joint Strategic Plan (JSP).

It is envisioned that the JSP will serve as the framework for coordinating and assessing Federal efforts to combat piracy and counterfeiting. The JSP will include detailed information on the threats of piracy and counterfeiting to the United States economy and to public health and safety; outline the various roles and responsibilities that government agencies will have in tackling intellectual property enforcement efforts; provide priorities and goals that will guide IP enforcement efforts; provide an accounting of the resources that will be needed to carry out the plan; and provide performance measures to gauge the success of the JSP in curbing counterfeiting and piracy.

Title III also establishes an Intellectual Property Enforcement Advisory Committee (Advisory Committee) composed of, at least, representatives of the Departments of Homeland Security, Justice and State, the USPTO, the USTR, the Food and Drug Administration, the United States International Trade Commission, and the United States Copyright Office. It is envisioned that each member of the Advisory Committee will participate in the development of the JSP, which shall serve as the chief mechanism by which coordination of government efforts to combat piracy and counterfeiting will occur. The JSP is intended to be more than individual agency and department documents that are compiled by the IPER.

The primary function of the IPER is to produce a strategic plan for the United States in combating counterfeiting and piracy. In the rare event that there is a substantial dispute that can not be resolved among members of the Advisory Committee, it is envisioned that the IPER, as chair of the Advisory Committee, will seek resolution of the dispute by the President. The Committee believes that the need for Presidential resolution will be a rare occurrence,

[20] *Id.* at 14-15. GAO did note that in recent years NIPLECC has provided information concerning intellectual property enforcement efforts taken under the STOP initiative in its annual reports, but this exercise is merely a catalogue of activities and lacks any real evaluation of their effectiveness.

and will be triggered only when there is substantial disagreement among the Advisory Committee members.

Finally, although the IPER is expected to make recommendations to agencies for implementation of the JSP, it is not intended that the IPER have operational or other direct control over the everyday activities of United States intellectual property protection, enforcement actions, or other efforts. Activities the IPER is specifically prohibited from conducting include those directly affecting prosecutorial decisions. Additionally, the IPER's critical coordination and planning role should concentrate on the enforcement of IP laws and not on the development of underlying substantive laws. While the IPER is empowered to issue housekeeping regulations relevant to the IPER's activities, this legislation does not authorize the IPER to, for instance, undertake rule-making proceedings on matters of substantive intellectual property.

IMPROVING INTERNATIONAL INTELLECTUAL PROPERTY ENFORCEMENT EFFORTS

Federal efforts to protect and enforce intellectual property rights domestically and internationally are crucial to preventing billions of dollars in losses to the United States economy. Although improving, IP protection in many parts of the world is inadequate. According to the Organization for Economic Cooperation and Development, governments and private companies report a recent expansion in IP crimes, noting that organized criminal networks are increasingly moving into this domain due to high profit potential, ease of market entry, and relatively low risk.[21]

To counter this growing threat, Federal agencies and members of NIPLECC report they have taken steps to strengthen IP laws and enforcement globally. They assert that they have put IP protection and enforcement at the forefront of multilateral and bilateral relationships, have built effective global IP training and capacity-building programs, and have placed IP experts in American embassies overseas.

In October 2007, the Subcommittee on Courts, the Internet, and Intellectual Property held a hearing on international piracy at which GAO and others testified on IP risks and enforcement challenges. In December 2007, the Subcommittee held a hearing on H.R. 4279. These hearings demonstrated that while there has been an increased Federal effort to enforce IP rights, our domestic efforts alone will not effectively protect American businesses, our markets, or the U.S. economy, unless there is a corresponding effort overseas.

Title IV provides additional intellectual property attachés to promote stronger and more effective enforcement of intellectual property laws in key overseas markets. Currently, the Department of Commerce has placed eight attachés in six United States embassies or diplomatic missions around the world. This Act would expand that program by authorizing ten additional intellectual property attachés. The intellectual property attaché program will provide U.S. businesses intellectual property-related assistance in securing

[21] ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, THE ECONOMIC IMPACT OF COUNTERFEITING AND PIRACY, Executive Summary (2007).

and protecting their rights in an expanded number of countries than the current Department of Commerce program provides.

INCREASED RESOURCES FOR INTELLECTUAL PROPERTY-RELATED INVESTIGATIONS AND PROSECUTIONS

Increased investigation and prosecution activities at the Department of Justice in the last few years have yielded some successes. Specifically, the Department filed 217 intellectual property cases in FY 2007, representing a 7% increase over cases reported in FY 2006 (204), and a 33% increase over cases reported in FY 2005 (169). Also in FY 2007, 287 defendants were sentenced for intellectual property crimes, representing a 35% increase over FY 2006 (213) and a 92% increase over FY 2005 (149).[22]

Notwithstanding the increase in efforts by the Department of Justice to combat intellectual property crimes, there is a widespread perception among the stakeholders that additional resources and personnel are required to investigate, enforce, and prosecute infringers to the level that is needed to serve as a strong deterrent to future acts of piracy and counterfeiting. The data bears out that perception. Fewer than one in 300 Federal prosecutions, or less than one half of 1 percent of DOJ cases in FY 2006, were related to IP enforcement. This low number is not due to a lack of criminal activity to pursue. A recent study, conducted by the Gallup Organization at the request of the U.S. Chamber of Commerce, demonstrated the widespread availability of pirated material to the extent that 25% of the population of Los Angeles County admitted to knowingly purchasing, copying, or downloading illegal goods. The number of IP crime prosecutions is inadequate given the effect that such crimes have on this country's businesses, jobs, and overall economic well-being.[23]

To ensure DOJ's IP enforcement efforts keep better pace with the level of intellectual property theft domestically and abroad, this legislation provides DOJ with more resources to combat IP crimes. Currently, much of DOJ's intellectual property enforcement activities are carried out by Computer Hacking and Intellectual Property (CHIP) units assigned to various United States Attorney Offices. Title V will provide at least two additional FBI agents and one additional Assistant United States Attorney to each CHIP unit. Title V also authorizes the Attorney General to deploy an additional five International Intellectual Property Law Enforcement Coordinators to facilitate international IP criminal investigations and provide increased training and technical assistance to foreign law enforcement personnel.

Title V also provides grants to local and State law enforcement for activities directed at combating intellectual property violations. Encouraging increased cooperation and communication across jurisdictions and agencies is a primary goal of this legislation and the Committee believes that active participation of State and local authorities is critical to meaningfully address piracy and counter-

[22] *H.R. 4279, The Prioritizing Resources and Organization for Intellectual Property Act of 2007, before the H. Comm. on the Judiciary, Subcomm. on Courts, the Internet, and Intellectual Property,* 110th Cong. 3 (Dec. 2007) (statement of Sigal P. Mandelker, Deputy Assistant Attorney General, Criminal Division, Department of Justice).

[23] The International Intellectual Property Law Enforcement Coordinators act as liaisons with foreign law enforcement agencies and officials to assist U.S. right holders with enforcement of their intellectual property rights abroad.

feiting. Day-to-day piracy and counterfeiting enforcement operations often fall to State and local entities, thus the Federal Government should provide monetary assistance, especially in light of the fact that a local department's hierarchy of public safety priorities typically dictates that piracy and counterfeiting crimes do not receive the attention or resources they deserve. Moreover, counterfeiting investigations and operations are typically lengthy, trigger overtime for the participating officers, and require uncommon expenditures (such as evidence storage for vast quantities of confiscated contraband), cutting into a State or local agency's already lean budget. For these reasons, this legislation establishes a new grant program in the Department of Justice's Office of Justice Programs to assist State and local law enforcement entities engaged in anti-piracy and counterfeiting crime prevention, investigation, enforcement, or prosecution.

Lastly, to ensure that DOJ places a greater priority on investigating and prosecuting intellectual property crimes, this legislation reorganizes IP enforcement responsibilities within the Department. In addition to CHIPS units, DOJ's intellectual property enforcement efforts are also carried out by the Computer Crime and Intellectual Property Section at DOJ headquarters in Washington, D.C. Instead of combining intellectual property with computer crime, Title V establishes a separate division for intellectual property enforcement within DOJ headquarters. This division will be headed by an Intellectual Property Enforcement Officer who reports directly to the Deputy Attorney General, and who will be responsible for coordinating all DOJ efforts related to IP enforcement.

Many of these changes, particularly the reorganization of resources within DOJ, will increase the importance that DOJ places on intellectual property enforcement. In addition, these changes address GAO's concerns about a lack of sufficient institutionalized leadership and are consistent with GAO's recommendations as well as those provided by the CACP.

In developing the above changes, particularly to the organizational structure of intellectual property enforcement personnel, input from DOJ was actively sought. DOJ's responses have not been particularly substantive or responsive to the Committee's goal of increasing the effectiveness of DOJ's current IP enforcement mechanisms. The Committee believes that substantial changes are necessary to permanently elevate the priority of IP enforcement within DOJ.

ECONOMIC BENEFITS OF INCREASED INTELLECTUAL PROPERTY ENFORCEMENT

While the economic cost and the threat to American health and safety caused by counterfeiting and piracy are well documented, from a fiscal standpoint it is also important to quantify the benefits that can be expected from increased efforts to enforce intellectual property rights. A recent study conducted by Dr. Laura Tyson, with the respected economic firm of LECG, LLC, provides a cost-benefit analysis of the CACP initiative, from which many provisions of this Act were derived. The report conservatively estimates the expected budgetary costs of increasing enforcement on the high side of the

likely range, and estimates benefits of the initiative's implementation on the low side of the likely range.[24]

The report reaches the following conclusions about the costs and benefits of implementing the CACP initiative:

> [T]he CACP initiative is a sound investment for the Federal Government. Even under very conservative assumptions, it would produce sizeable reductions in business losses caused by piracy and counterfeiting, it would generate meaningful increases in output and employment levels in the US economy, and it would increase Federal Government revenues by substantially more than its costs.
>
> For every dollar spent prudently on the CACP initiative, Federal tax revenues would increase by at least $2.9 and by as much as $9.7 with an intermediate range of $4.9 to $5.7. These Federal tax revenue increases are due to the increase in U.S. output and employment that would occur as a result of implementing the CACP initiative. For every dollar spent on the CACP initiative, U.S. output would increase by at least $38 and would increase by as much as $127 with an intermediate range of $64 to $75.3. The increase in output due to implementing the CACP program will result in the creation of between 174,000 and 348,000 new jobs during the third year. Therefore, the return to the Federal Government and the economy of investing in the CACP initiative is very high. In addition, State and local governments can expect to receive incremental revenues between $1.25 billion and $1.50 billion, in present value terms, over 3 years, if the CACP initiative is implemented.
>
> Over time, by enabling the IP-intensive industries to earn a higher return, the CACP measures would encourage more investment and foster faster U.S. economic growth. In addition to these quantifiable benefits, enactment of the CACP initiative would increase the protection of American consumers against the health and safety risks of counterfeited and pirated goods. Finally, more effective policies to combat piracy and counterfeiting are an important complement to policies to combat organized crime and terrorism and to enhance national security.[25]

The Committee believes that enactment of H.R. 4279 will produce similar benefits to the United States economy.

HEARINGS

The Committee's Subcommittee on Courts, the Internet, and Intellectual Property held 1 day of hearings on H.R. 4279 on December 13, 2007. Testimony was received from Sigal P. Mandelker, Deputy Assistant Attorney General, Criminal Division, United States Department of Justice; James P. Hoffa, General President, International Brotherhood of Teamsters; Gigi B. Sohn, President and Co-Founder, Public Knowledge; and Rick Cotton, Executive

[24] Laura Tyson, Economic Analysis of the Proposed CACP Anti-Counterfeiting and Piracy Initiative, prepared for the Coalition Against Counterfeiting and Piracy (2007).

[25] *Id.* at v-vi.

Vice President and General Counsel, NBC Universal, New York, N.Y.

In addition to this hearing, the Subcommittee on Courts, the Internet, and Intellectual Property held 1 day of hearings on the subject of International Piracy: The Challenges of Protecting Intellectual Property in the 21st Century, on October 18, 2007. Testimony was received from Victoria A. Espinel, Assistant United States Trade Representative for Intellectual Property & Innovation, Office of the United States Trade Representative; Eric H. Smith, President, International Intellectual Property Alliance; Loren Yager, Director of International Affairs and Trade, United States General Accounting Office; Mark MacCarthy, Senior Vice President for Global Public Policy, Visa Incorporated.

COMMITTEE CONSIDERATION

On March 6, 2008, the Subcommittee on Courts, the Internet, and Intellectual Property met in open session and ordered the bill H.R. 4279 favorably reported, as amended, by voice vote, a quorum being present. On April 30, 2007, the Committee met in open session and ordered the bill H.R. 4279 favorably reported, as amended, by voice vote, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee's consideration of H.R. 4279.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 4279, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 5, 2008.

Hon. JOHN CONYERS, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4279, the Prioritizing Resources and Organization for Intellectual Property Act of 2008.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Leigh Angres.

Sincerely,

PETER R. ORSZAG,
DIRECTOR.

Enclosure

cc: Honorable Lamar S. Smith.
Ranking Member

H.R. 4279—Prioritizing Resources and Organization for Intellectual Property Act of 2008.

SUMMARY

H.R. 4279 would authorize additional resources for the Executive Office of the President, the Patent and Trademark Office (PTO), and the Department of Justice (DOJ) to enforce intellectual property laws and to reduce counterfeiting and piracy of protected intellectual property. CBO estimates that implementing the bill would cost $435 million over the 2009–2013 period, subject to the appropriation of the necessary amounts. The legislation could affect direct spending and revenues, but we estimate that any such effects would be less than $500,000 annually.

H.R. 4279 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 4279 is shown in the following table. The costs of this legislation fall within budget functions 750 (administration of justice), 370 (commerce and housing credit), and 800 (general government).

By Fiscal Year, in Millions of Dollars

	2009	2010	2011	2012	2013
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Title III: Executive Office of the President Enforcement Activities					
Estimated Authorization Level	10	15	20	25	30
Estimated Outlays	9	14	19	24	29
Title IV: PTO Enforcement Activities					
Estimated Authorization Level	12	18	18	20	20
Estimated Outlays	10	17	18	19	20
Title V: DOJ Enforcement Activities					
Estimated Authorization Level	62	67	72	72	47
Estimated Outlays	22	43	58	66	67
Total Changes					
Estimated Authorization Level	84	100	110	117	97
Estimated Outlays	41	74	95	109	116

1Note: PTO = Patent and Trademark Office; DOJ = Department of Justice.

BASIS OF ESTIMATE

For this estimate CBO assumes that the bill would be enacted by the beginning of fiscal year 2009.

Spending Subject to Appropriation

CBO estimates that implementing the bill would cost $435 million over the 2009–2013 period, subject to the appropriation of the necessary amounts. Those amounts would be used to enhance activities to enforce intellectual property rights by the Executive Office of the President, PTO, and DOJ.

Title III: Executive Office of the President Enforcement Activities. Title III would establish an Office of the United States Intellectual Property Enforcement Representative within the Executive Office of the President. The representative would be appointed by the President and confirmed by the Senate to advise the President and report to the Congress. The representative would develop, coordinate, and provide recommendations on government-wide policies for enforcing intellectual property rights, including the protection of copyrights, patents, and trademarks, both within the United States and abroad. In addition, the representative would chair an interagency committee and be primarily responsible for developing and implementing a plan for eliminating counterfeiting and piracy of intellectual property.

Based on the costs of similar offices and programs, CBO estimates that the new office would need about $30 million a year to carry out its responsibilities under title III. CBO expects that the office would steadily expand its staff over the next five years to reach that level of effort. We estimate that implementing title III would cost $95 million over the 2009–2013 period, assuming appropriation of the necessary amounts.

Title IV: PTO Enforcement Activities. Title IV would authorize the Department of Commerce to appoint at least 10 intellectual property attachés to serve in United States embassies or other diplomatic missions. The attachés would work with foreign governments to enforce intellectual property laws generally and to reduce counterfeiting and piracy of protected intellectual property. The Patent and Trademark Office (PTO) would be responsible for train-

ing the attachés and providing managerial and administrative support.

The bill would authorize the appropriation of such sums as necessary for both the intellectual property attachés authorized by title IV as well as other Department of Commerce personnel already serving as intellectual property attachés. Currently, eight attachés are working in Brazil, China, Egypt, India, Russia, and Thailand at a cost of about $8 million a year. Based on that cost, CBO estimates that implementing title IV of the bill would cost $84 million over the 2009–2013 period, assuming appropriation of the necessary amounts.

Title V: DOJ Enforcement Activities. Title V would reorganize DOJ's activities involving enforcement of intellectual property rights, authorize additional resources for attorneys and the Federal Bureau of Investigation (FBI), and authorize state grants to combat cyber-crime (crime related to computer and Internet activities). CBO estimates that implementing title V would cost $256 million over the 2009–2013 period, subject to the appropriation of the necessary amounts.

DOJ Intellectual Property Enforcement Division and FBI Unit. Title V would create an Intellectual Property Enforcement Division within DOJ. Existing DOJ activities relating to the criminal enforcement of intellectual property rights and trade secrets would be transferred to the new division. Under the bill, the head of the division would be the Intellectual Property Enforcement Officer, who would be responsible for coordinating efforts at DOJ for combating counterfeiting and piracy of intellectual property and serving as the DOJ liaison to the Office of the United States Intellectual Property Representative. Because most of the activities of the new division are being performed under current law, CBO estimates that the cost for creating this new division would be less than $500,000 a year over the 2009–2013 period, subject to the availability of appropriated funds. Most of that amount would be for hiring the Enforcement Officer and for other administrative costs.

Title V also would create an operational unit of not less than five agents at the FBI headquarters to work with the new DOJ division to coordinate complex, multidistrict, and international intellectual property cases. CBO estimates that hiring five new agents would cost about $5 million over the 2009–2013 period.

Expansion of Computer Hacking and Intellectual Property (CHIP) Units. The bill would create 10 new CHIP units in different Federal judicial districts in addition to the 25 existing units. CHIP units, currently staffed by approximately 80 Assistant United States Attorneys (AUSAs) nationwide, are located in regions that experience a high incidence of intellectual property and cyber-crime. Enforcement activities are supported by FBI agents. CBO estimates that creating the new CHIP units would involve hiring 40 new AUSAs, 20 new FBI agents, and 10 additional support staff.

The bill also would expand the size of the existing CHIP units by adding at least 25 AUSAs and 50 supporting FBI agents. Based on personnel cost information provided by DOJ, CBO estimates that the cost to create and expand CHIP operations would total $77 million over the 2009–2013 period.

State Grants for Cyber-Crime. Title V would authorize the appropriation of $25 million annually over the 2009–2013 period for DOJ to make grants to states for programs to combat computer crime. Title V also would authorize the appropriation of $25 million annually over the 2009–2012 period for grants to state and local governments for programs to combat intellectual property crimes. Assuming appropriation of the authorized amounts, CBO estimates that implementing those provisions would cost $162 million over the 2009–2013 period.

International Intellectual Property Law Enforcement Coordinators. The bill would require the deployment of five additional coordinators in addition to those serving under current law. The coordinators manage U.S. law enforcement activities to combat intellectual property crimes in foreign countries. Based on information provided by DOJ, increasing the number of coordinators would cost $12 million over the 2009–2013 period.

Direct Spending and Revenues

H.R. 4279 would increase civil damages and penalties for certain intellectual property offenses. Criminal fines are recorded as revenues, deposited into the Crime Victims Fund, and later spent. In addition, proceeds from forfeited cash and the sale of assets are recorded as revenues, deposited into the Assets Forfeiture Fund, and spent mostly in the same year. Thus, enacting H.R. 4279 could increase revenues and direct spending; however, CBO expects that any such impact would not be significant.

Title III would allow the Office of the United States Intellectual Property Enforcement Representative to accept and use gifts, and therefore, the legislation could increase revenues and direct spending. However, CBO estimates that any revenues from contributions and subsequent direct spending would be less than $500,000 annually.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 4279 contains no intergovernmental or private-sector mandates as defined in UMRA. The bill would benefit state and local law enforcement agencies by authorizing grants for enforcement and prosecutorial activities.

ESTIMATE PREPARED BY:

Federal Costs: Leigh Angres, Mark Grabowicz, Susan Willie, and Matthew Pickford
Impact on State, Local, and Tribal Governments: Melissa Merrell
Impact on the Private Sector: Paige Piper/Bach

ESTIMATE APPROVED BY:

Theresa Gullo
Deputy Assistant Director for Budget Analysis

PERFORMANCE GOALS AND OBJECTIVES

The Committee states, pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 4279 will strengthen civil and criminal intellectual property laws to better address commercial-scale intellectual property theft, strengthen the organi-

zation of Federal intellectual property enforcement efforts, and provide greater resources to law enforcement agencies so that they can investigate and prosecute more intellectual property crimes.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clauses 3 and 8 of the Constitution.

ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 4279 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short Title; Table of Contents. Section 1 sets forth the short title of the bill as the "Prioritizing Resources and Organization for Intellectual Property Act of 2008." It also includes a table of contents for the bill.

Sec. 2. Reference. Section 2 clarifies that any reference in the bill to the "Trademark Act of 1946" is intended to refer to "An Act to provide for the registration of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes," approved July 5, 1946.[26]

Sec. 3. Definition. Section 3 sets out for United States person as used in this Act.

TITLE I. ENHANCEMENTS TO CIVIL INTELLECTUAL PROPERTY LAWS

Sec. 101. Registration of Claim. Section 101 amends 17 U.S.C. § 410, which sets forth the duties of the Register of Copyrights in registering and issuing to an applicant a certificate of registration. Under current law, section 410(b) requires the Register to refuse registration if the material deposited does not constitute copyrighted material or if the claim is invalid for any other reason. Section 101 of the bill amends this provision by adding a new subsection (c), to provide that a certificate of registration shall satisfy the registration requirements regardless of any inaccurate information on the registration application, unless the incorrect information was included on the application with the knowledge that it was incorrect, and unless the inaccurate information, if known, would have caused the Register of Copyrights to refuse registration. In any case in which inaccuracies in the application are alleged, the legislation requires the court to request the Register of Copyrights to advise the court as to whether the inaccuracy would have resulted in a refusal of the registration application.

The savings clause stating that "Nothing in this section shall affect any rights, obligations, or requirements of a person related to information contained in a registration certificate except for the institution of and remedies for infringement actions under §§ 411 and 412 of Title 17 of the United States Code" is intended, in part, to protect and preserve the rights and interests of any person with re-

[26] 15 U.S.C. §§ 1051 et seq. (2007).

spect to claims, including adverse claims, of authorship and ownership apart from the jurisdictional and remedial provisions of sections 411 and 412, at any time, in any judicial or administrative forum, and without any procedural or substantive limitation except as set forth in other provisions of the Copyright Act.

Sec. 102. Registration and Infringement Actions. Section 102 of the bill amends 17 U.S.C. § 411, which provides that "[n]o action for infringement of the copyright in any United States work shall be instituted until registration of the copyright claim has been made." Section 102 amends this provision to clarify that this rule only applies to civil infringement actions and not to criminal prosecutions. This provision is consistent with established DOJ policy.[27] It makes no change in existing practices of how and when prosecutors prove the existence of a copyright in an infringement case, and it does not affect any pending cases. The Committee does not believe that this clarification will exacerbate the problem of orphan works, nor will it reduce the incentives for creators and authors to register their works. A copyright holder would not give up his or her ability to file a civil suit, collect statutory damages, and get attorney's fees on the hope that a prosecutor will prosecute an infringer of the copyrighted work. On the other hand, some small, individual copyright holders, such as photographers or journalists who often do not have sufficient resources to register their works or to pursue expensive litigation, would benefit from this change because it clarifies that DOJ is still able to prosecute the violation in these circumstances. Section 102 does not have any effect on the enforcement authority of United States Customs and Border Protection under sections 602 or 603 of title 17 of the United States Code.

Sec. 103. Civil Remedies for Infringement. Section 103 of the bill amends 17 U.S.C. § 503(a) to authorize a court to order the impounding of records documenting manufacture, sale, or receipt of things involved in infringing activity. This section also directs the court to enter a protective order to provide appropriate procedures to assure that confidential information contained in the records is not improperly disclosed. A similar provision exists in the Lanham Act, which authorizes a court to issue an *ex parte* order for the seizure not only of counterfeit goods and marks and the means of making them, but also of "records documenting the manufacture, sale or receipt of things involved in such violation."[28] Since copyright pirates are just as likely to destroy evidence as trademark counterfeiters (indeed, it is not uncommon for the same violator to be engaged in both activities), it is appropriate to update the list of items subject to impoundment under the Copyright Act.

Sec. 104. Treble Damages in Counterfeiting Cases. Section 104 amends 15 U.S.C. § 1117 to direct courts to award treble damages and attorney's fees, absent extenuating circumstances, when someone is found to have intentionally induced another to engage in an act that violates the anti-counterfeiting prohibitions of the Lanham Act or to have supplied goods or services necessary to the commission of such a violation of the Lanham Act, with the intent that the recipient of the goods or services would put the goods or services

[27] *See* Computer Crime and Intellectual Property Section, U.S. Dept. Of Justice, Prosecuting Intellectual Property Crime § II.B.1.d (3d ed. 2006).
[28] 15 U.S.C. § 1116(d)(1)(A) (2007).

to use in committing the violation. Under section 1117 as amended, proof of intent is required only for the mandatory imposition of treble damages (and attorney's fees) on a party contributing to counterfeiting. Section 104 does not change the standards the courts have applied to determine liability for contributory trademark infringement. Nor would it restrict in any way the courts' existing discretion, under section 35(a) of the Lanham Act, to impose treble damages in any case involving infringement of a registered mark, or a false designation of origin in violation of section 43(a).

Sec. 105. Statutory Damages in Counterfeiting Cases. Section 105 increases statutory damages in counterfeiting cases, by raising the minimum award from $500 to $1000, and the maximum award from $100,000 to $200,000 for use of a counterfeit mark, and raises the maximum from $1,000,000 to $2,000,000 for willful use of a counterfeit mark.

Sec. 106. Exportation of Goods Bearing Infringing Marks. Section 106 amends the Lanham Act to provide that exportation of counterfeit merchandise is in violation of the law, similar to importation under current law.

Sec. 107. Importation and Exportation. Section 107 amends 17 U.S.C. § 602, which currently only addresses infringing importations, to specify that exportation of infringing copies is also prohibited and considered an infringement of the exclusive right to distribute copies or phonorecords to the public. This section also makes importation and exportation of infringing copies a criminal copyright violation, prosecutable under 17 U.S.C. § 506, and makes conforming changes to section 602(b). The language used in section 107 to describe the goods whose importation or exportation may attract criminal liability—"where the making of copies or phonorecords would have constituted an infringement of copyright if this title had been applicable"—was chosen to conform to current language already in section 602(b). Section 107 is not intended to alter, amend, or otherwise change current law, regulation, or practice relating to the manufacture, importation, exportation, or distribution of genuine products, made under authority of the United States intellectual property rights holder or its designee.

TITLE II. ENHANCEMENTS TO CRIMINAL INTELLECTUAL PROPERTY LAWS

Sec. 201. Criminal Infringement of a Copyright. Section 201 addresses repeat offender penalties for the three major criminal acts contained in the criminal copyright statute: infringement for commercial advantage or private financial gain; infringement for noncommercial purposes above a certain threshold; and infringement of pre-release works over a publicly-accessible computer network. Currently, to be a repeat offender, an individual must be convicted of committing the same criminal act twice. If an individual commits an act of infringement for commercial advantage or private financial gain first, and then releases a pre-release work over a computer network, and was convicted of felony criminal copyright infringement on both occasions, the individual currently would not be considered for repeat offender penalties. This section amends 18 U.S.C. § 2319 to allow the felony violations to be interchangeable for repeat offender enhanced penalties.

Sec. 202. Harmonization of Forfeiture Procedures for Intellectual Property Offenses. Section 202 harmonizes all forfeiture and restitution laws for intellectual property offenses by amending 18 U.S.C. §§ 2318, 2319, 2319A, 2319B to bring these provisions substantially in line with 18 U.S.C. § 2320, which was enacted into law last year. The new provisions contain additional safeguards, such as the requirement that property involved in the commission of an offense be owned or predominantly controlled by the violator, a co-conspirator, or an aider and abettor of the violation in order to be seized under the civil forfeiture provisions. The definition of aiding and abetting is taken from *Central Bank of Denver, NA. v. First Interstate Bank of Denver, N.A.*[29] Furthermore, such property is not subject to seizure unless a substantial connection between the property and the offense is proven. Use by a violator (or co-conspirator or aider or abetter) of commercially valuable digital communications or e-commerce services for, *e.g.*, electronic mail or data storage, absent extraordinary circumstances, would not constitute predominant control of the servers and similar facilities used to provide the services. If, however, a computer were used by a violator (or co-conspirator or aider or abetter) primarily to store data used to further the infringement, the violator could be held to have substantially controlled the property and the computer would be subject to forfeiture. Another safeguard contained in this Act is the requirement that, for seizure under a criminal facilitation theory, the property be used to substantially facilitate the crime.

Sec. 203. Directive to United States Sentencing Commission. Section 203 directs the U.S. Sentencing Commission to review the Sentencing Guidelines to consider whether the two-level enhancement that already applies under 2B5.3 of the Guidelines to criminal infringement that involves manufacturing, importing, and uploading of infringing items should be expanded to also include exporting such items.

Sec. 204. Trafficking in Counterfeit Goods or Services. Section 204 provides enhanced maximum statutory penalties for counterfeiting offenses that endanger public health and safety. It increases maximum penalties for 18 U.S.C. § 2320 offenses from 10 years imprisonment to 20 years where the defendant knowingly or recklessly causes or attempts to cause serious bodily injury. It increases the maximum penalty to life imprisonment where the defendant knowingly or recklessly causes or attempts to cause death.

TITLE III. COORDINATION AND STRATEGIC PLANNING OF FEDERAL EFFORT AGAINST COUNTERFEITING AND PIRACY

Sec. 301. Office of the United States Intellectual Property Enforcement Representative. Section 301 establishes within the Executive Office of the President, the Office of the United States Intellectual Property Enforcement Representative and the position of the United States Intellectual Property Enforcement Representative (IPER). The IPER is appointed by the President of the United States with the advice and consent of the Senate. The IPER will serve as a principal advisor to the President on domestic and international intellectual property enforcement policy and will report and provide advice to the President and to Congress. In order to

[29] 511 U.S. 164 (1994).

carry out these efforts, the IPER will chair an interagency Intellectual Property Enforcement Advisory Committee ("Advisory Committee"), formed pursuant to this section, which includes senior representatives from every Federal department and agency involved in the protection and enforcement of intellectual property rights. The Advisory Committee, under the guidance of the IPER, develops the Joint Strategic Plan (JSP). The Advisory Committee is specifically exempted from the Federal Advisory Committee Act.

Sec. 302. Definition. Section 302 defines intellectual property enforcement as relating to the enforcement of laws protecting copyrights, patents, trademarks, and other forms of intellectual property and trade secrets, both within the United States and abroad.

Sec. 321. Joint Strategic Plan. Section 321 specifies the objectives and content of the JSP against counterfeiting and piracy that shall be developed by the interagency Advisory Committee, under the guidance of the IPER.

Sec. 322. Reporting. Section 322 requires the Office of the United States Intellectual Property Enforcement Representative to submit an annual report to the President and to the House and Senate Committees on the Judiciary regarding the activities of the Office during the preceding fiscal year, and to also disseminate that report to the public. The report will provide progress updates on the implementation of the JSP, including the manner in which the relevant departments and agencies of the U.S. government are working together and sharing information toward advancing the recommendations, goals, and priorities contained within the JSP. This section also provides for the IPER to provide recommendations for the consolidation of Federal intellectual property activities to prevent duplicative efforts and to ensure maximum efficiency and effectiveness of governments efforts.

Sec. 323. Savings and Repeals. Section 323 abolishes NIPLECC, which is superseded by the structure created by this Act, and preserves the existing authority of the agencies in areas such as criminal investigation and prosecution, administrative enforcement at U.S. borders, and international trade. The purpose of this section is to ensure cross-agency cooperation, consolidation, and implementation with regard to enforcement of the laws concerning intellectual property laws.

Sec. 324. Authorization of Appropriations. Section 324 authorizes the appropriation of such funds as may be necessary to carry out title III of the bill. It also contains a requirement that the United States Intellectual Property Enforcement Representative submit a proposed budget annually for the projected amount of funds for the succeeding fiscal year.

TITLE IV. INTERNATIONAL ENFORCEMENT AND COORDINATION

Sec. 401. Intellectual Property Attachés. Section 401 directs the Undersecretary of Commerce for Intellectual Property and the Director of the United Stated Patent and Trademark Office, in consultation with the Director General of the U.S. Foreign Commercial Service, to appoint, within the next 2 years, ten intellectual property attachés to serve in U.S. embassies. These personnel are intended to be in addition to persons already serving in a similar capacity as the intellectual property attachés as of the date of enactment.

Sec. 402. Duties and Responsibilities of Intellectual Property Attachés. Section 402 specifies the duties and responsibilities of the intellectual property attachés. Specifically, the attachés are responsible for promoting cooperation with foreign governments in enforcement of IP laws; assisting U.S. persons in efforts to combat counterfeiting and piracy in the host countries; chairing IP task forces; coordinating with embassies or missions of other countries in information sharing and other forms of cooperation; engaging in public education efforts; coordinating training and technical assistance of U.S. government expertise with host countries; assisting in the coordination of the efforts of the IPER, Federal agencies, and private organizations; and identifying and promoting other means of combating counterfeiting and piracy. This section also provides the Undersecretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office with the authority to provide such managerial, administrative, research, and other services as the Secretary of Commerce considers necessary to assist the intellectual property attachés in carrying out their responsibilities.

Sec. 403. Training and Designation of Assignment. Section 403 requires the Director of the USPTO to ensure that attachés are fully trained and, when considering in which countries to deploy attachés, to give priority to countries where the attaché can be most effective and offer the greatest benefit in reducing counterfeit and pirated products in the United States.

Sec. 404. Coordination. Section 404 specifies that the activities of title IV of the bill must be carried out in coordination with the IPER appointed under section 301. This section also requires the submission of an annual report to Congress on the activities of all Department of Commerce attachés serving at United States embassies or other diplomatic missions.

Sec. 405. Authorization of Appropriations. Section 405 authorizes to be appropriated each fiscal year such sums as may be necessary for the training and support of the intellectual property attachés.

TITLE V. DEPARTMENT OF JUSTICE PROGRAMS

Sec. 501. Intellectual Property Enforcement Officer. Section 501 establishes within the Office of the Deputy Attorney General in the Department of Justice the Intellectual Property Enforcement Division. The head of the Intellectual Property Enforcement Division will be the Intellectual Property Enforcement Officer, who will be appointed by the Attorney General and will report directly to the Deputy Attorney General. The functions of the existing Computer Crime and Intellectual Property Section (CCIPS), currently part of the Criminal Division of the Department of Justice, are divided, with the intellectual property law enforcement functions moving to the new Intellectual Property Enforcement Division. In addition, the current and newly added International Intellectual Property Law Enforcement Coordinators (IIPLEC), specified in section 521, will also become part of the Intellectual Property Enforcement Division. The Intellectual Property Enforcement Officer will head the new division, and will be responsible for: 1) coordinating all efforts at the Department of Justice relating to combating counterfeiting and piracy; 2) serving on the Advisory Committee as the Department of Justice liaison with the Office of the United States Intellec-

tual Property Enforcement Representative established under Title III of this Act; and 3) undertaking any other related duties that may be assigned by the Deputy Attorney General.

Sec. 511. Local Law Enforcement Grants. Section 511 authorizes grants to State and local law enforcement entities for training, prevention, enforcement, and prosecution of intellectual property theft and infringement cases. Grants may be used to assist State and local law enforcement agencies in enforcing IP-related crimes, including to reimburse State and local entities for expenses incurred from enforcement operations; to assist State and local agencies in educating the public to prevent, deter, and identify IP-related crimes; to educate and train State and local entities to conduct investigations and forensic analyses of evidence; to establish dedicated task forces to conduct investigations; to assist police and prosecutors in acquiring computer and other equipment to conduct investigations; and to facilitate and promote sharing of Federal law enforcement expertise with State and local agencies. The eligibility requirements that must be met for receipt of such a grant are specified in this section.

Sec. 512. CHIP Units, Training, and Additional Resources. Section 512 requires DOJ to review established Computer Hacking and Intellectual Property (CHIP) units to improve effectiveness; ensure they are established and funded in every judicial district in which they can be effectively deployed; upgrade training and expertise of DOJ personnel participating in CHIP units; and improve coordination of CHIP unit activities with corresponding State and local entities. This Act provides for CHIP units to be establish and staffed in at least ten Federal judicial districts in addition to those districts in which CHIP units exist on the date of the enactment of this Act. In addition, section 512 requires the Attorney General to establish and staff at least ten additional CHIP units, and ensure that each is supported by at least two additional FBI agents and at least one additional assistant United States Attorney (AUSA) for the specific purpose of investigating or prosecuting intellectual property crimes. An operational unit at FBI headquarters is created consisting of five FBI agents dedicated to working with CCIPS on the development, investigation and coordination of complex, multi-district and international criminal IP cases. The AUSAs will ensure coordination with State or local law enforcement. Section 512 also sets additional standards for training and funding of DOJ personnel involved in investigating and prosecuting intellectual property crimes.

Sec. 513. Transparency of Prosecutorial Decision-Making. Section 513 specifies that all U.S. Attorneys must review their current standards for accepting or declining prosecution of criminal IP cases, consider whether the current standards should be modified, and review their procedures for advising complainants and victims of intellectual property violations that are declined for prosecution.

Sec. 514. Authorization of Appropriations. Section 514 authorizes such sums as may be necessary to carry out the subtitle.

Sec. 521. International Intellectual Property Law Enforcement Coordinators. Section 521 requires the Attorney General to deploy five IIPLECs, in addition to those serving in that capacity on the date of enactment of this Act, to countries and regions where the IIPLECs can be best utilized. The IIPLECs will act as liaisons with

foreign law enforcement agencies and officials, perform outreach and training to build enforcement capacity of foreign governments, coordinate U.S. law enforcement activities against intellectual property crimes in the regions, coordinate with the intellectual property attachés specified in Title IV, and report to the Department of Justice Intellectual Property Enforcement Officer.

Sec. 522. International Training Activities of the Computer Crime and Intellectual Property Section. Section 522 directs the Attorney General to increase the Department of Justice's efforts to provide training and technical assistance to foreign governments to more effectively combat counterfeiting and piracy activities. This section specifies that priority shall be given to countries where programs can be carried out effectively and with the greatest likelihood of reducing counterfeit and pirated products.

Sec. 531. Coordination. Section 531 states that all activities of title V of the bill must be carried out in a manner consistent with the JSP developed under section 321.

Sec. 532. Annual Reports. Section 532 specifies that the Attorney General shall ensure that the requirements set forth in title V are met no later than 1 year after enactment. Annually thereafter, the Attorney General must submit a report to the House and Senate Judiciary Committees on actions taken to carry out those requirements.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic existing law in which no change is proposed is shown in roman):

TITLE 17, UNITED STATES CODE

Chapter	Sec.
1. SUBJECT MATTER AND SCOPE OF COPYRIGHT	101
* * * * * * *	
[6 MANUFACTURING REQUIREMENTS AND IMPORTATION	601]
6. MANUFACTURING REQUIREMENTS, IMPORTATION, AND EXPORTATION	*601*
* * * * * * *	

CHAPTER 4—COPYRIGHT NOTICE, DEPOSIT, AND REGISTRATION

* * * * * * *

§ 410. Registration of claim and issuance of certificate

(a) * * *

* * * * * * *

(c)(1) A certificate of registration satisfies the requirements of section 411 and section 412 regardless of any inaccurate information contained in the certificate, unless—

(A) the inaccurate information was included on the application for copyright registration with knowledge that it was inaccurate; and

(B) the inaccuracy of the information, if known, would have caused the Register of Copyrights to refuse registration.

(2) In any case in which inaccuracies described under paragraph (1) are alleged, the court shall request the Register of Copyrights to advise the court whether the inaccuracy of the information, if known, would have caused the Register of Copyrights to refuse registration. The Register shall respond to the court's request within 45 days after the request is made.

(3) Nothing in this subsection shall affect any rights, obligations, or requirements of a person related to information contained in a registration certificate except for the institution of and remedies in infringement actions under sections 411 and 412.

[(c)**]** *(d)* In any judicial proceedings the certificate of a registration made before or within five years after first publication of the work shall constitute prima facie evidence of the validity of the copyright and of the facts stated in the certificate. The evidentiary weight to be accorded the certificate of a registration made thereafter shall be within the discretion of the court.

[(d)**]** *(e)* The effective date of a copyright registration is the day on which an application, deposit, and fee, which are later determined by the Register of Copyrights or by a court of competent jurisdiction to be acceptable for registration, have all been received in the Copyright Office.

§ 411. Registration and *civil* infringement actions

(a) Except for an action brought for a violation of the rights of the author under section 106A(a), and subject to the provisions of subsection (b), no *civil* action for infringement of the copyright in any United States work shall be instituted until preregistration or registration of the copyright claim has been made in accordance with this title. In any case, however, where the deposit, application, and fee required for registration have been delivered to the Copyright Office in proper form and registration has been refused, the applicant is entitled to institute an action for infringement if notice thereof, with a copy of the complaint, is served on the Register of Copyrights. The Register may, at his or her option, become a party to the action with respect to the issue of registrability of the copyright claim by entering an appearance within sixty days after such service, but the Register's failure to become a party shall not deprive the court of jurisdiction to determine that issue.

(b) In the case of a work consisting of sounds, images, or both, the first fixation of which is made simultaneously with its transmission, the copyright owner may, either before or after such fixation takes place, institute an action for infringement under section 501, fully subject to the remedies provided by sections 502 through **[**506 and sections 509 and**]** *505 and section* 510, if, in accordance with requirements that the Register of Copyrights shall prescribe by regulation, the copyright owner—

(1) * * *

* * * * * * *

CHAPTER 5—COPYRIGHT INFRINGEMENT AND REMEDIES

Sec.
501. Infringement of copyright.
* * * * * * *
[509. Seizure and forfeiture.]
* * * * * * *

* * * * * * *

§ 503. Remedies for infringement: Impounding and disposition of infringing articles

(a) At any time while an action under this title is pending, the court may order the impounding, on such terms as it may deem reasonable, of all copies or phonorecords claimed to have been made or used in violation of the copyright owner's exclusive rights, [and of all plates] *of all plates*, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies or phonorecords may be reproduced[.]*, and records documenting the manufacture, sale, or receipt of things involved in such violation. The court shall enter an appropriate protective order with respect to discovery by the applicant of any records that have been seized. The protective order shall provide for appropriate procedures to assure that confidential information contained in such records is not improperly disclosed to the applicant.*

* * * * * * *

§ 506. Criminal offenses

(a) * * *

(b) FORFEITURE AND DESTRUCTION.—When any person is convicted of any violation of subsection (a), the court in its judgment of conviction shall, in addition to the penalty therein prescribed, order the forfeiture and destruction [or other disposition of all infringing copies or phonorecords and all implements, devices, or equipment used in the manufacture of such infringing copies or phonorecords.] *of property as prescribed by section 2319(g) of title 18.*

* * * * * * *

[§ 509. Seizure and forfeiture

[(a) All copies or phonorecords manufactured, reproduced, distributed, sold, or otherwise used, intended for use, or possessed with intent to use in violation of section 506(a), and all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies or phonorecords may be reproduced, and all electronic, mechanical, or other devices for manufacturing, reproducing, or assembling such copies or phonorecords may be seized and forfeited to the United States.

[(b) The applicable procedures relating to (i) the seizure, summary and judicial forfeiture, and condemnation of vessels, vehicles, merchandise, and baggage for violations of the customs laws contained in title 19, (ii) the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from the sale thereof, (iii) the remission or mitigation of such forfeiture, (iv) the compromise

of claims, and (v) the award of compensation to informers in respect of such forfeitures, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions of this section; except that such duties as are imposed upon any officer or employee of the Treasury Department or any other person with respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the provisions of the customs laws contained in title 19 shall be performed with respect to seizure and forfeiture of all articles described in subsection (a) by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General.]

* * * * * * *

[CHAPTER 6—MANUFACTURING REQUIREMENTS AND IMPORTATION]

CHAPTER 6—MANUFACTURING REQUIREMENTS, IMPORTATION, AND EXPORTATION

* * * * * * *

§ 601. Manufacture, importation, and public distribution of certain copies

(a) * * *

(b) The provisions of subsection (a) do not apply—

(1) * * *

(2) where [the United States Customs Service] *U.S. Customs and Border Protection* is presented with an import statement issued under the seal of the Copyright Office, in which case a total of no more than two thousand copies of any one such work shall be allowed entry; the import statement shall be issued upon request to the copyright owner or to a person designated by such owner at the time of registration for the work under section 408 or at any time thereafter;

* * * * * * *

§ 602. Infringing importation *or exportation* of copies or phonorecords

[(a)] *(a) INFRINGING IMPORTATION AND EXPORTATION.—*

(1) IMPORTATION.—Importation into the United States, without the authority of the owner of copyright under this title, of copies or phonorecords of a work that have been acquired outside the United States is an infringement of the exclusive right to distribute copies or phonorecords under section 106, actionable under section 501. [This subsection does not apply to—]

(2) IMPORTATION OR EXPORTATION OF INFRINGING ITEMS.—Importation into the United States or exportation from the United States, without the authority of the owner of copyright under this title, of copies or phonorecords, the making of which either constituted an infringement of copyright or would have constituted an infringement of copyright if this title had been applicable, is an infringement of the exclusive right to distribute copies or phonorecords under section 106, actionable under sections 501 and 506.

(3) EXCEPTIONS.—This subsection does not apply to—

[(1)] *(A)* importation *or exportation* of copies or phonorecords under the authority or for the use of the Government of the United States or of any State or political subdivision of a State, but not including copies or phonorecords for use in schools, or copies of any audiovisual work imported for purposes other than archival use;

[(2) importation, for the private use of the importer] *(B) importation or exportation, for the private use of the importer or exporter* and not for distribution, by any person with respect to no more than one copy or phonorecord of any one work at any one time, or by any person arriving from outside the United States *or departing from the United States* with respect to copies or phonorecords forming part of such person's personal baggage; or

[(3)] *(C)* importation by or for an organization operated for scholarly, educational, or religious purposes and not for private gain, with respect to no more than one copy of an audiovisual work solely for its archival purposes, and no more than five copies or phonorecords of any other work for its library lending or archival purposes, unless the importation of such copies or phonorecords is part of an activity consisting of systematic reproduction or distribution, engaged in by such organization in violation of the provisions of section 108(g)(2).

[(b) In a case] *(b) IMPORT PROHIBITION.—In a case* where the making of the copies or phonorecords would have constituted an infringement of copyright if this title had been applicable, their importation is prohibited. In a case where the copies or phonorecords were lawfully made, [the United States Customs Service] *U.S. Customs and Border Protection* has no authority to prevent their importation unless the provisions of section 601 are applicable. In either case, the Secretary of the Treasury is authorized to prescribe, by regulation, a procedure under which any person claiming an interest in the copyright in a particular work may, upon payment of a specified fee, be entitled to notification by [the Customs Service] *U.S. Customs and Border Protection* of the importation of articles that appear to be copies or phonorecords of the work.

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TRADEMARK ACT OF 1946

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TITLE VI—REMEDIES

* * * * * * *

SEC. 35.(a) * * *

[(b) In assessing damages under subsection (a), the court shall, unless the court finds extenuating circumstances, enter judgment for three times such profits or damages, whichever is greater, together with a reasonable attorney's fee in the case of any violation of section 32(1)(a) of this Act (15 U.S.C. 1114(1)(a)) or section 220506 of title 36, United States Code, that consists of intentionally using a mark or designation, knowing such mark or des-

ignation is a counterfeit mark (as defined in section 34(d) of this Act (15 U.S.C. 1116(d)), in connection with the sale, offering for sale, or distribution of goods or services. In such cases, the court may in its discretion award prejudgment interest on such amount at an annual interest rate established under such 6621(a)(2) of the Internal Revenue Code of 1986, commencing on the date of the service of the claimant's pleadings setting forth the claim for such entry and ending on the date such entry is made, or for such shorter time as the court deems appropriate.]

(b) In assessing damages under subsection (a) for any violation of section 32(1)(a) of this Act or section 220506 of title 36, United States Code, in a case involving use of a counterfeit mark or designation (as defined in section 34(d) of this Act), the court shall, unless the court finds extenuating circumstances, enter judgment for three times such profits or damages, whichever amount is greater, together with a reasonable attorney's fee, if the violation consists of—

(1) intentionally using a mark or designation, knowing such mark or designation is a counterfeit mark (as defined in section 34(d) of this Act), in connection with the sale, offering for sale, or distribution of goods or services;

(2) intentionally inducing another to engage in a violation specified in paragraph (1); or

(3) providing goods or services necessary to the commission of a violation specified in paragraph (1), with the intent that the recipient of the goods or services would put the goods or services to use in committing the violation.

In such a case, the court may award prejudgment interest on such amount at an annual interest rate established under section 6621(a)(2) of the Internal Revenue Code of 1986, beginning on the date of the service of the claimant's pleadings setting forth the claim for such entry of judgment and ending on the date such entry is made, or for such shorter time as the court considers appropriate.

(c) In a case involving the use of a counterfeit mark (as defined in section 34(d) (15 U.S.C. 1116(d)) in connection with the sale, offering for sale, or distribution of goods or services, the plaintiff may elect, at any time before final judgment is rendered by the trial court, to recover, instead of actual damages and profits under subsection (a), an award of statutory damages for any such use in connection with the sale, offering for sale, or distribution of goods or services in the amount of—

(1) not less than [$500] *$1,000* or more than [$100,000] *$200,000* per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just; or

(2) if the court finds that the use of the counterfeit mark was willful, not more than [$1,000,000] *$2,000,000* per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just.

* * * * * * *

TITLE VII—IMPORTATION *OR EXPORTATION* FORBIDDEN OF GOODS BEARING INFRINGING MARKS OR NAMES

SEC. 42. Except as provided in subsection (d) of section 526 of the Tariff Act of 1930, no article of [imported] merchandise which shall copy or simulate the name of any domestic manufacture, or manufacturer, or trader, or of any manufacturer or trader located in any foreign country which, by treaty, convention, or law affords similar privileges to citizens of the United States, or which shall copy or simulate a trademark registered in accordance with the provisions of this Act or shall bear a name or mark calculated to induce the public to believe that the article is manufactured in the United States, or that it is manufactured in any foreign country or locality other than the country or locality in which it is in fact manufactured, shall be admitted to entry at any customhouse of the United States*, nor shall any such article be exported from the United States*; and, in order to aid the officers of the customs in enforcing this prohibition, any domestic manufacturer or trader, and any foreign manufacturer or trader, who is entitled under the provisions of a treaty, convention, declaration, or agreement between the United States and any foreign country to the advantages afforded by law to citizens of the United States in respect to trademarks and commercial names, may require his name and residence, and the name of the locality in which his goods are manufactured, and a copy of the certificate of registration of his trademark, issued in accordance with the provisions of this Act, to be recorded in books which shall be kept for this purpose in the Department of the Treasury, under such regulations as the Secretary of the Treasury shall prescribe, and may furnish to the Department facsimiles of his name, the name of the locality in which his goods are manufactured, or of his registered trademark, and thereupon the Secretary of the Treasury shall cause one or more copies of the same to be transmitted to each collector or other proper officer of customs.

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TITLE 18, UNITED STATES CODE

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PART I—CRIMES

* * * * * * *

CHAPTER 113—STOLEN PROPERTY

* * * * * * *

§ 2318. Trafficking in counterfeit labels, illicit labels, or counterfeit documentation or packaging

(a) * * *

* * * * * * *

[(d) When any person is convicted of any violation of subsection (a), the court in its judgment of conviction shall in addition to the

penalty therein prescribed, order the forfeiture and destruction or other disposition of all counterfeit labels or illicit labels and all articles to which counterfeit labels or illicit labels have been affixed or which were intended to have had such labels affixed, and of any equipment, device, or material used to manufacture, reproduce, or assemble the counterfeit labels or illicit labels.

[(e) Except to the extent they are inconsistent with the provisions of this title, all provisions of section 509, title 17, United States Code, are applicable to violations of subsection (a).**]**

(d) FORFEITURE AND DESTRUCTION; RESTITUTION.—

(1) CIVIL FORFEITURE PROCEEDINGS.—(A) The following property is subject to forfeiture to the United States:

(i) Any counterfeit documentation or packaging, and any counterfeit label or illicit label and any article to which a counterfeit label or illicit label has been affixed, which a counterfeit label or illicit label encloses or accompanies, or which was intended to have had such label affixed, enclosing, or accompanying.

(ii) Any property constituting or derived from any proceeds obtained directly or indirectly as a result of a violation of subsection (a).

(iii) Any property used, or intended to be used, to commit or facilitate the commission of a violation of subsection (a) that is owned or predominantly controlled by the violator or by a person conspiring with or aiding and abetting the violator in committing the violation, except that property is subject to forfeiture under this clause only if the Government establishes that there was a substantial connection between the property and the violation of subsection (a).

(B) The provisions of chapter 46 relating to civil forfeitures shall extend to any seizure or civil forfeiture under subparagraph (A). At the conclusion of the forfeiture proceedings, the court shall order that any forfeited counterfeit labels or illicit labels and any article to which a counterfeit label or illicit label has been affixed, which a counterfeit label or illicit label encloses or accompanies, or which was intended to have had such label affixed, enclosing, or accompanying, be destroyed or otherwise disposed of according to law.

(C) In this paragraph, the term "aiding and abetting" means knowingly providing aid to the violator with the intent to facilitate the violation.

(2) CRIMINAL FORFEITURE PROCEEDINGS.—(A) The court, in imposing sentence on a person convicted of an offense under this section, shall order, in addition to any other sentence imposed, that the person forfeit to the United States the following property:

(i) Any counterfeit documentation or packaging, and any counterfeit label or illicit label, that was used, intended for use, or possessed with intent to use in the commission of an offense under subsection (a), and any article to which such a counterfeit label or illicit label has been affixed, which such a counterfeit label or illicit label encloses or accompanies, or which was intended to have had such label affixed, enclosing, or accompanying.

(ii) Any property constituting or derived from any proceeds obtained directly or indirectly as a result of an offense under subsection (a).

(iii) Any property used, or intended to be used, to commit or substantially facilitate the commission of an offense under subsection (a).

(B) The forfeiture of property under subparagraph (A), 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. At the conclusion of the forfeiture proceedings, the court shall order that any counterfeit label or illicit label and any article to which a counterfeit label or illicit label has been affixed, which a counterfeit label or illicit label encloses or accompanies, or which was intended to have had such label affixed, enclosing, or accompanying, be destroyed or otherwise disposed of according to law.

(3) RESTITUTION.—When a person is convicted of an offense under this section, the court, pursuant to sections 3556, 3663A, and 3664, shall order the person to pay restitution to the owner of the marks or copyrighted works involved in the offense and any other victim of the offense as an offense against property referred to in section 3663A(c)(1)(A)(ii).

[(f)**]** *(e)* CIVIL REMEDIES.—

(1) * * *

* * * * * * *

§ 2319. Criminal infringement of a copyright

(a) * * *

(b) Any person who commits an offense under section 506(a)(1)(A) of title 17—

(1) * * *

(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 **[**paragraph (1)**]** *subsection (a)*; and

* * * * * * *

(c) Any person who commits an offense under section 506(a)(1)(B) of title 17—

(1) * * *

(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 **[**paragraph (1)**]** *subsection (a)*; and

* * * * * * *

(d) Any person who commits an offense under section 506(a)(1)(C) of title 17—

(1) * * *

* * * * * * *

(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).

* * * * * * *

(g) FORFEITURE AND DESTRUCTION; RESTITUTION.—

(1) CIVIL FORFEITURE PROCEEDINGS.—(A) The following property is subject to forfeiture to the United States:

(i) Any copies or phonorecords manufactured, reproduced, distributed, sold, or otherwise used, intended for use, or possessed with intent to use in violation of section 506(a) of title 17, any plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such copies or phonorecords may be made, and any devices for manufacturing, reproducing, or assembling such copies or phonorecords.

(ii) Any property constituting or derived from any proceeds obtained directly or indirectly as a result of a violation of section 506(a) of title 17.

(iii) Any property used, or intended to be used, to commit or facilitate the commission of a violation of section 506(a) of title 17 that is owned or predominantly controlled by the violator or by a person conspiring with or aiding and abetting the violator in committing the violation, except that property is subject to forfeiture under this clause only if the Government establishes that there was a substantial connection between the property and the violation of section 506(a) of title 17.

(B) The provisions of chapter 46 relating to civil forfeitures shall extend to any seizure or civil forfeiture under this section. At the conclusion of the forfeiture proceedings, the court shall order that any forfeited infringing copies or phonorecords, and any plates, molds, matrices, masters, tapes, and film negatives by means of which such unauthorized copies or phonorecords may be made, be destroyed or otherwise disposed of according to law.

(C) In this paragraph, the term "aiding and abetting" means knowingly providing aid to the violator with the intent to facilitate the violation.

(2) CRIMINAL FORFEITURE PROCEEDINGS.—(A) The court, in imposing sentence on a person convicted of an offense under subsection (a), shall order, in addition to any other sentence imposed, that the person forfeit to the United States the following property:

(i) Any copies or phonorecords manufactured, reproduced, distributed, sold, or otherwise used, intended for use, or possessed with intent to use in the commission of an offense under subsection (a), any plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which the copies or phonorecords may be reproduced, and any electronic, mechanical, or other devices for manufacturing, reproducing, or assembling such copies or phonorecords.

(ii) Any property constituting or derived from any proceeds obtained directly or indirectly as a result of an offense under subsection (a).

(iii) Any property used, or intended to be used, to commit or substantially facilitate the commission of an offense under subsection (a).

(B) The forfeiture of property under subparagraph (A), 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. At the conclusion of the forfeiture proceedings, the court shall order that any forfeited infringing copies or phonorecords, and any plates, molds, matrices, masters, tapes, and film negatives by means of which such infringing copies or phonorecords may be made, be destroyed or otherwise disposed of according to law.

(3) RESTITUTION.—When a person is convicted of an offense under this section, the court, pursuant to sections 3556, 3663A, and 3664, shall order the person to pay restitution to the copyright owner and any other victim of the offense as an offense against property referred to in section 3663A(c)(1)(A)(ii).

§ 2319A. Unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances

(a) * * *

[(b) FORFEITURE AND DESTRUCTION.—When a person is convicted of a violation of subsection (a), the court shall order the forfeiture and destruction of any copies or phonorecords created in violation thereof, as well as any plates, molds, matrices, masters, tapes, and film negatives by means of which such copies or phonorecords may be made. The court may also, in its discretion, order the forfeiture and destruction of any other equipment by means of which such copies or phonorecords may be reproduced, taking into account the nature, scope, and proportionality of the use of the equipment in the offense.

[(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 the Treasury shall, not later than 60 days after the date of the enactment of the Uruguay Round Agreements Act, issue regulations to carry out this subsection, including regulations by which any performer may, upon payment of a specified fee, be entitled to notification by the United States Customs Service 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.**]**

(b) FORFEITURE AND DESTRUCTION; RESTITUTION.—

(1) CIVIL FORFEITURE PROCEEDINGS.—(A) The following property is subject to forfeiture to the United States:

(i) Any copies or phonorecords of a live musical performance described in subsection (a)(1) that are made without the consent of the performer or performers involved, and any plates, molds, matrices, masters, tapes, and film nega-

tives by means of which such copies or phonorecords may be made.

(ii) Any property constituting or derived from any proceeds obtained directly or indirectly as a result of a violation of subsection (a).

(iii) Any property used, or intended to be used, to commit or facilitate the commission of a violation of subsection (a) that is owned or predominantly controlled by the violator or by a person conspiring with or aiding and abetting the violator in committing the violation, except that property is subject to forfeiture under this clause only if the Government establishes that there was a substantial connection between the property and the violation of subsection (a).

(B) The provisions of chapter 46 relating to civil forfeitures shall extend to any seizure or civil forfeiture under paragraph (1). At the conclusion of the forfeiture proceedings, the court shall order that any forfeited unauthorized copies or phonorecords of live musical performances, and any plates, molds, matrices, maters, tapes, and film negatives by means of which such unauthorized copies or phonorecords may be made, be destroyed or otherwise disposed of according to law.

(C) In this paragraph, the term "aiding and abetting" means knowingly providing aid to the violator with the intent to facilitate the violation.

(2) CRIMINAL FORFEITURE PROCEEDINGS.—(A) The court, in imposing sentence on a person convicted of an offense under this section, shall order, in addition to any other sentence imposed, that the person forfeit to the United States the following property:

(i) Any unauthorized copies or phonorecords of a live musical performance that were used, intended for use, or possessed with intent to use in the commission of an offense under subsection (a), and any plates, molds, matrices, masters, tapes, and film negatives by means of which such copies or phonorecords may be made.

(ii) Any property constituting or derived from any proceeds obtained directly or indirectly as a result of an offense under subsection (a).

(iii) Any property used, or intended to be used, to commit or substantially facilitate the commission of an offense under subsection (a).

(B) The forfeiture of property under subparagraph (A), 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. At the conclusion of the forfeiture proceedings, the court shall order that any forfeited unauthorized copies or phonorecords of live musical performances, and any plates, molds, matrices, masters, tapes, and film negatives by means of which such unauthorized copies of phonorecords may be made, be destroyed or otherwise disposed of according to law.

(3) NOTIFICATION OF IMPORTATION.—The Secretary of Homeland Security shall issue regulations by which any performer

may, upon payment of a specified fee, be entitled to notification by U.S. 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 prohibited by this section.

(4) RESTITUTION.—When a person is convicted of an offense under this section, the court, pursuant to sections 3556, 3663A, and 3664, shall order the person to pay restitution to the performer or performers involved, and any other victim of the offense as an offense against property referred to in section 3663A(c)(1)(A)(ii).

[(d)**]** *(c)* VICTIM IMPACT STATEMENT.—(1) * * *

* * * * * * *

[(e)**]** *(d)* DEFINITIONS.—As used in this section—

(1) * * *

* * * * * * *

[(f)**]** *(e)* 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*, except that the forfeiture provisions under subsection (b)(2), as added by the Prioritizing Resources and Organization for Intellectual Property Act, shall apply only in a case in which the underlying act or acts occur on or after the date of the enactment of that Act*.

§ 2319B. Unauthorized recording of Motion pictures in a Motion picture exhibition facility

(a) * * *

[(b) FORFEITURE AND DESTRUCTION.—When a person is convicted of a violation of subsection (a), the court in its judgment of conviction shall, in addition to any penalty provided, order the forfeiture and destruction or other disposition of all unauthorized copies of motion pictures or other audiovisual works protected under title 17, or parts thereof, and any audiovisual recording devices or other equipment used in connection with the offense.**]**

(b) FORFEITURE AND DESTRUCTION; RESTITUTION.—

(1) CIVIL FORFEITURE PROCEEDINGS.—(A) The following property is subject to forfeiture to the United States:

(i) Any copies of a motion picture or other audiovisual work protected under title 17 that are made without the authorization of the copyright owner.

(ii) Any property constituting or derived from any proceeds obtained directly or indirectly as a result of a violation of subsection (a).

(iii) Any property used, or intended to be used, to commit or facilitate the commission of a violation of subsection (a) that is owned or predominantly controlled by the violator or by a person conspiring with or aiding and abetting the violator in committing the violation, except that property is subject to forfeiture under this clause only if the Government establishes that there was a substantial connection between the property and the violation of subsection (a).

(B) The provisions of chapter 46 relating to civil forfeitures shall extend to any seizure or civil forfeiture under this section. At the conclusion of the forfeiture proceedings, the court shall

order that any forfeited unauthorized copies or phonorecords of a motion picture or other audiovisual work, or part thereof, and any plates, molds, matrices, masters, tapes, and film negatives by means of which such unauthorized copies or phonorecords may be made, be destroyed or otherwise disposed of according to law.

(C) In this paragraph, the term "aiding and abetting" means knowingly providing aid to the violator with the intent to facilitate the violation.

(2) CRIMINAL FORFEITURE PROCEEDINGS.—(A) The court, in imposing sentence on a person convicted of an offense under this section, shall order, in addition to any other sentence imposed, that the person forfeit to the United States the following property:

(i) Any unauthorized copies of a motion picture or other audiovisual work protected under title 17, or part thereof, that were used, intended for use, or possessed with intent to use in the commission of an offense under subsection (a).

(ii) Any property constituting or derived from any proceeds obtained directly or indirectly as a result of an offense under subsection (a).

(iii) Any property used, or intended to be used, to commit or substantially facilitate the commission of an offense under subsection (a).

(B) The forfeiture of property under subparagraph (A), 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. At the conclusion of the forfeiture proceedings, the court shall order that any forfeited unauthorized copies or phonorecords of a motion picture or other audiovisual work, or part thereof, and any plates, molds, matrices, masters, tapes, and film negatives by means of which such unauthorized copies or phonorecords may be made, be destroyed or otherwise disposed of according to law.

(3) RESTITUTION.—When a person is convicted of an offense under this chapter, the court, pursuant to sections 3556, 3663A, and 3664, shall order the person to pay restitution to the owner of the copyright in the motion picture or other audiovisual work and any other victim of the offense as an offense against property referred to in section 3663A(c)(1)(A)(ii).

* * * * * * *

§ 2320. Trafficking in counterfeit goods or services

(a) [Whoever] *OFFENSE.—*

(1) IN GENERAL.—Whoever intentionally traffics or attempts to traffic in goods or services and knowingly uses a counterfeit mark on or in connection with such goods or services, or intentionally traffics or attempts to traffic in labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation, or packaging of any type or nature, knowing that a counterfeit mark has been applied thereto, the use of which is likely to cause confusion, to cause mistake, or to deceive, shall, if an individual, be

fined not more than $2,000,000 or imprisoned not more than 10 years, or both, and, if a person other than an individual, be fined not more than $5,000,000. In the case of an offense by a person under this section that occurs after that person is convicted of another offense under this section, the person convicted, if an individual, shall be fined not more than $5,000,000 or imprisoned not more than 20 years, or both, and if other than an individual, shall be fined not more than $15,000,000.

(2) SERIOUS BODILY HARM OR DEATH.—

(A) SERIOUS BODILY HARM.—If the offender knowingly or recklessly causes or attempts to cause serious bodily injury from conduct in violation of paragraph (1), the penalty shall be a fine under this title or imprisonment for not more than 20 years, or both.

(B) DEATH.—If the offender knowingly or recklessly causes or attempts to cause death from conduct in violation of paragraph (1), the penalty shall be a fine under this title or imprisonment for any term of years or for life, or both.

(b)(1) The following property shall be subject to forfeiture to the United States and no property right shall exist in such property:

(A) Any article bearing or consisting of a counterfeit mark used in committing a violation of subsection (a).

(B) Any property constituting or derived from any proceeds obtained directly or indirectly as a result of a violation of subsection (a).

[(B)**]** *(C)* Any property used, in any manner or part, to commit or to facilitate the commission of a violation of subsection (a).

* * * * * * *

SECTION 182 OF THE TRADE ACT OF 1974

* * * * * * *

SEC. 182. IDENTIFICATION OF COUNTRIES THAT DENY ADEQUATE PROTECTION, OR MARKET ACCESS, FOR INTELLECTUAL PROPERTY RIGHTS.

(a) * * *

(b) SPECIAL RULES FOR IDENTIFICATIONS.—

(1) * * *

(2) In identifying priority foreign countries under subsection (a)(2), the Trade Representative shall—

(A) consult with *the United States Intellectual Property Enforcement Representative,* the Register of Copyrights, the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, other appropriate officers of the Federal Government, and

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TITLE 5, UNITED STATES CODE

* * * * * * *

PART III—EMPLOYEES

* * * * * * *

SUBPART D—PAY AND ALLOWANCES

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CHAPTER 53—PAY RATES AND SYSTEMS

* * * * * * *

SUBCHAPTER II—EXECUTIVE SCHEDULE PAY RATES

§ 5312. Positions at level I

Level I of the Executive Schedule applies to the following positions for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Secretary of State.

* * * * * * *

United States Intellectual Property Enforcement Representative.

* * * * * * *

TREASURY AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 2000

* * * * * * *

TITLE VI—GENERAL PROVISIONS

DEPARTMENTS, AGENCIES, AND CORPORATIONS

* * * * * * *

[SEC. 653. (a) ESTABLISHMENT.—There is established the National Intellectual Property Law Enforcement Coordination Council (in this section referred to as the "Council"). The Council shall consist of the following members—

[(1) The Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, who shall serve as co-chair of the Council.

[(2) The Assistant Attorney General, Criminal Division, who shall serve as co-chair of the Council.

[(3) The Under Secretary of State for Economic and Agricultural Affairs.

[(4) The Ambassador, Deputy United States Trade Representative.

[(5) The Commissioner of Customs.

[(6) The Under Secretary of Commerce for International Trade.

[(7) The Coordinator for International Intellectual Property Enforcement." after "Under Secretary of Commerce for International Trade.

[(b) DUTIES.—The Council established in subsection (a) shall coordinate domestic and international intellectual property law enforcement among federal and foreign entities.

[(c) CONSULTATION REQUIRED.—The Council shall consult with the Register of Copyrights on law enforcement matters relating to copyright and related rights and matters.

[(d) NON-DEROGATION.—Nothing in this section shall derogate from the duties of the Secretary of State or from the duties of the United States Trade Representative as set forth in section 141 of the Trade Act of 1974 (19 U.S.C. 2171), or from the duties and functions of the Register of Copyrights, or otherwise alter current authorities relating to copyright matters.

[(e) REPORT.—The Council shall report annually on its coordination activities to the President, and to the Committees on Appropriations and on the Judiciary of the Senate and the House of Representatives.

[(f) FUNDING.—Notwithstanding section 1346 of title 31, United States Code, or section 610 of this Act, funds made available for fiscal year 2000 and hereafter by this or any other Act shall be available for interagency funding of the National Intellectual Property Law Enforcement Coordination Council.]

* * * * * * *

COMPUTER CRIME ENFORCEMENT ACT

* * * * * * *

SEC. 2. STATE GRANT PROGRAM FOR TRAINING AND PROSECUTION OF COMPUTER CRIMES.

(a) * * *

(b) USE OF GRANT AMOUNTS.—Grants under this section may be used to establish and develop programs to—

(1) assist State and local law enforcement agencies in enforcing State and local criminal laws relating to computer crime*, including infringement of copyrighted works over the Internet*;

(2) assist State and local law enforcement agencies in educating the public to prevent and identify computer crime*, including infringement of copyrighted works over the Internet*;

(3) educate and train State and local law enforcement officers and prosecutors to conduct investigations and forensic analyses of evidence and prosecutions of computer crime*, including infringement of copyrighted works over the Internet*;

* * * * * * *

(e) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated to carry out this section $25,000,000 for each of [fiscal years 2001 through 2004] *fiscal years 2009 through 2013*.

* * * * * * *

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BRETT LOPER,
MINORITY STAFF DIRECTOR

May 5, 2008

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing regarding H.R. 4279, the "Prioritizing Resources and Organization for Intellectual Property Act of 2008."

As you know, several provisions in H.R. 4279 fall within the jurisdiction of the Committee on Ways and Means. These provisions relate to the regulation of international trade, and to the administration of the Office of the U.S. Trade Representative, U.S. Customs and Border Protection, and U.S. Immigration and Customs Enforcement. For example, section 301(e) amends the Trade Act of 1974 by imposing an additional consultation requirement on the U.S. Trade Representative. As another example, section 322(b)(9) would require the newly created IP Enforcement Representative to report to Congress and the President on "[t]he progress of the United States Trade Representative in taking the appropriate action under any trade agreement or treaty to protect intellectual property rights of United States persons and their licensees."

Moreover, four of the eight agencies that will serve on the Advisory Committee tasked with developing a "Joint Strategic Plan" to combat counterfeiting and piracy are within the jurisdiction of Ways and Means (the Office of the U.S. Trade Representative, U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, and the U.S. International Trade Commission), and several elements of the "Joint Strategic Plan" envisioned in section 321 of the bill relate to the work of these four agencies.

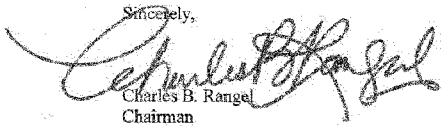
For example, today the Office of the U.S. Trade Representative is responsible for (quoting from section 321) "working with other countries to establish international standards and policies for the effective protection and enforcement of intellectual property rights," and "working with other countries to ensure that such countries have adequate and effective laws

protecting copyrights, trademarks, patents, and other forms of intellectual property." Similarly, U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement help in (again quoting from section 321) "reducing counterfeit and pirated goods in the domestic and international supply chain."

As you know, my staff expressed concerns over several provisions of the bill as originally introduced. In particular, there was a need for the Office of the U.S. Trade Representative and other trade agencies to participate in the development of the Joint Strategic Plan, as members of the Advisory Committee. Similarly, other provisions of the bill as introduced were changed to ensure that they do not impact the above trade agencies' functions. For example, these changes reflect that, today, the Office of the U.S. Trade Representative serves the role of principal advisor to the President in the area of international trade, including international trade-related intellectual property policy. Similarly, these changes make clear that sections 102 and 107 of the bill do not alter the administrative enforcement authority of U.S. Customs and Border Protection. I appreciate the willingness of your staff to address these and other concerns, as reflected in the amended bill and the accompanying committee report.

To expedite this legislation for floor consideration, the Committee will forgo action on this bill. This is being done with the understanding that it does not in any way prejudice the Committee with respect to its jurisdictional prerogatives on this bill or similar legislation in the future. I would appreciate your response to this letter, confirming this understanding with respect to H.R. 4279, and would ask that a copy of our exchange of letters on this matter be included in the *Congressional Record* during consideration of the bill.

Sincerely,



Charles B. Rangel
Chairman

cc: The Honorable Nancy Pelosi
The Honorable Steny Hoyer
The Honorable John Boehner
The Honorable Lamar Smith
The Honorable Jim McCrery
John Sullivan, Parliamentarian

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May 5, 2008

The Honorable Charles B. Rangel
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter regarding your committee's jurisdictional interest in H.R. 4279, The Prioritizing Resources and Organization for Intellectual Property Act of 2008.

I appreciate your willingness to support expediting floor consideration of this important legislation today. I understand and agree that this is without prejudice to your Committee's jurisdictional interests in this or similar legislation in the future. In the event a House-Senate conference on this or similar legislation is convened, I would support your request for an appropriate number of conferees.

I will include a copy of your letter and this response in the report on the bill. Thank you for your cooperation as we work towards enactment of this legislation.

Sincerely,

John Conyers, Jr.
Chairman

cc: The Honorable Lamar Smith
The Honorable Jim McCrery

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