

# Calendar No. 964

110TH CONGRESS  
2D SESSION

# S. 3325

To enhance remedies for violations of intellectual property laws, and for other purposes.

---

## IN THE SENATE OF THE UNITED STATES

JULY 24 (legislative day, JULY 23), 2008

Mr. LEAHY (for himself, Mr. SPECTER, Mr. BAYH, Mr. VOINOVICH, Mrs. FEINSTEIN, Mr. CORNYN, Mr. WHITEHOUSE, Mr. CARDIN, and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

SEPTEMBER 15, 2008

Reported by Mr. LEAHY, with amendments

[Omit the part struck through and insert the part printed in *italic*]

---

## A BILL

To enhance remedies for violations of intellectual property laws, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Enforcement of Intellectual Property Rights Act of  
6       2008”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Reference.
- Sec. 3. Definition.

TITLE I—AUTHORIZATION OF CIVIL COPYRIGHT ENFORCEMENT  
 BY ATTORNEY GENERAL

- Sec. 101. Civil penalties for certain violations.

TITLE II—ENHANCEMENTS TO CIVIL INTELLECTUAL PROPERTY  
 LAWS

- Sec. 201. Registration of claim.
- Sec. 202. Civil remedies for infringement.
- Sec. 203. Treble damages in counterfeiting cases.
- Sec. 204. Statutory damages in counterfeiting cases.
- Sec. 205. Transshipment and exportation of goods bearing infringing marks.
- Sec. 206. Importation; ~~transshipment~~, and exportation.

TITLE III—ENHANCEMENTS TO CRIMINAL INTELLECTUAL  
 PROPERTY LAWS

- Sec. 301. Criminal copyright infringement.
- Sec. 302. Trafficking in counterfeit labels, illicit labels, or counterfeit documentation or packaging for works that can be copyrighted.
- Sec. 303. Unauthorized fixation.
- Sec. 304. Unauthorized recording of motion pictures.
- Sec. 305. Trafficking in counterfeit goods or services.
- Sec. 306. Forfeiture, destruction, and restitution.
- Sec. 307. Forfeiture under Economic Espionage Act.
- Sec. 308. Technical and conforming amendments.

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

- Sec. 401. Intellectual property enforcement coordinator.
- Sec. 402. Definition.
- Sec. 403. Joint strategic plan.
- Sec. 404. Reporting.
- Sec. 405. Savings and repeals.
- Sec. 406. Authorization of appropriations.

TITLE V—DEPARTMENT OF JUSTICE PROGRAMS

- Sec. 501. Local law enforcement grants.
- Sec. 502. Improved investigative and forensic resources for enforcement of laws related to intellectual property crimes.
- Sec. 503. Additional funding for resources to investigate and prosecute criminal activity involving computers.
- Sec. 504. International intellectual property law enforcement coordinators.
- Sec. 505. Annual reports.
- Sec. ~~506. Authorization of appropriations.~~

## TITLE VI—MISCELLANEOUS

*Sec. 601. GAO study on protection of intellectual property of manufacturers.*

*Sec. 602. Sense of Congress.*

1 **SEC. 2. REFERENCE.**

2 Any reference in this Act to the “Trademark Act of  
3 1946” refers to the Act entitled “An Act to provide for  
4 the registration of trademarks used in commerce, to carry  
5 out the provisions of certain international conventions,  
6 and for other purposes”, approved July 5, 1946 (15  
7 U.S.C. 1051 et seq.).

8 **SEC. 3. DEFINITION.**

9 In this Act, the term “United States person”  
10 means—

- 11 (1) any United States resident or national,  
12 (2) any domestic concern (including any perma-  
13 nent domestic establishment of any foreign concern),  
14 and  
15 (3) any foreign subsidiary or affiliate (including  
16 any permanent foreign establishment) of any domes-  
17 tic concern that is controlled in fact by such domes-  
18 tic concern,

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

1 **TITLE I—AUTHORIZATION OF**  
2 **CIVIL COPYRIGHT ENFORCE-**  
3 **MENT BY ATTORNEY GEN-**  
4 **ERAL**

5 **SEC. 101. CIVIL PENALTIES FOR CERTAIN VIOLATIONS.**

6 (a) IN GENERAL.—Chapter 5 of title 17, United  
7 States Code, is amended by inserting after section 506 the  
8 following:

9 **“SEC. 506a. CIVIL PENALTIES FOR VIOLATIONS OF SECTION**  
10 **506.**

11 “(a) IN GENERAL.—In lieu of a criminal action under  
12 section 506, the Attorney General may commence a civil  
13 action in the appropriate United States district court  
14 against any person who engages in conduct constituting  
15 an offense under section 506. Upon proof of such conduct  
16 by a preponderance of the evidence, such person shall be  
17 subject to a civil penalty under section 504 which shall  
18 be in an amount equal to the amount which would be  
19 awarded under section 3663(a)(1)(B) of title 18 and res-  
20 titution to the copyright owner aggrieved by the conduct.

21 “(b) OTHER REMEDIES.—

22 “(1) IN GENERAL.—Imposition of a civil pen-  
23 alty under this section does not preclude any other  
24 criminal or civil statutory, injunctive, common law,

1 or administrative remedy, which is available by law  
2 to the United States or any other person.

3 “(2) OFFSET.—Any restitution received by a  
4 copyright owner as a result of a civil action brought  
5 under this section shall be offset against any award  
6 of damages in a subsequent copyright infringement  
7 civil action by that copyright owner for the conduct  
8 that gave rise to the civil action brought under this  
9 section.”.

10 (b) DAMAGES AND PROFITS.—Section 504 of title 17,  
11 United States Code, is amended—

12 (1) in subsection (b)—

13 (A) in the first sentence—

14 (i) by inserting “, or the Attorney  
15 General in a civil action,” after “The copy-  
16 right owner”; and

17 (ii) by striking “him or her” and in-  
18 serting “the copyright owner”; and

19 (B) in the second sentence by inserting “,  
20 or the Attorney General in a civil action,” after  
21 “the copyright owner”; and

22 (2) in subsection (c)—

23 (A) in paragraph (1), by inserting “, or the  
24 Attorney General in a civil action,” after “the  
25 copyright owner”; and

1 (B) in paragraph (2), by inserting “, or  
 2 the Attorney General in a civil action,” after  
 3 “the copyright owner”.

4 (c) TECHNICAL AND CONFORMING AMENDMENT.—  
 5 The table of sections for chapter 5 of title 17, United  
 6 States Code, is amended by inserting after the item relat-  
 7 ing to section 506 the following:

“Sec. 506a. Civil penalties for violations of section 506.”.

8 **TITLE II—ENHANCEMENTS TO**  
 9 **CIVIL INTELLECTUAL PROP-**  
 10 **ERTY LAWS**

11 **SEC. 201. REGISTRATION OF CLAIM.**

12 (a) LIMITATION TO CIVIL ACTIONS; HARMLESS  
 13 ERROR.—Section 411 of title 17, United States Code, is  
 14 amended—

15 (1) in the section heading, by inserting “**CIVIL**”  
 16 before “**INFRINGEMENT**”;

17 (2) in subsection (a)—

18 (A) in the first sentence, by striking “no  
 19 action” and inserting “no civil action”; and

20 (B) in the second sentence, by striking “an  
 21 action” and inserting “a civil action”;

22 (3) by redesignating subsection (b) as sub-  
 23 section (c);

1           (4) in subsection (c), as so redesignated by  
2           paragraph (3), by striking “506 and sections 509  
3           and” and inserting “505 and section”; and

4           (5) by inserting after subsection (a) the fol-  
5           lowing:

6           “(b)(1) A certificate of registration satisfies the re-  
7           quirements of this section and section 412, regardless of  
8           whether the certificate contains any inaccurate informa-  
9           tion, unless—

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

13           “(B) the ~~inaccurate~~*inaccuracy of the* informa-  
14           tion, if known, would have caused the Register of  
15           Copyrights to refuse registration.

16           “(2) In any case in which inaccurate information de-  
17           scribed under paragraph (1) is alleged, the court shall re-  
18           quest the Register of Copyrights to advise the court  
19           whether the inaccurate information, if known, would have  
20           caused the Register of Copyrights to refuse registration.”.

21           (b) TECHNICAL AND CONFORMING AMENDMENTS.—

22           (1) Section 412 of title 17, United States Code,  
23           is amended by striking “411(b)” and inserting  
24           “411(c)”.

1           (2) The item relating to section 411 in the table  
 2           of sections for chapter 4 of title 17, United States  
 3           Code, is amended to read as follows:

“Sec. 411. Registration and civil infringement actions.”.

4 **SEC. 202. CIVIL REMEDIES FOR INFRINGEMENT.**

5           (a) **IN GENERAL.**—Section 503(a) of title 17, United  
 6 States Code, is amended—

7           (1) by striking “and of all plates” and inserting  
 8           “; of all plates”; and

9           (2) by striking the period and inserting “; and  
 10           of records documenting the manufacture, sale, or re-  
 11           ceipt of things involved in such violation. The court  
 12           shall enter, if appropriate, a protective order with re-  
 13           spect to discovery of any records that have been  
 14           seized. The protective order shall provide for appro-  
 15           priate procedures to ensure that confidential infor-  
 16           mation contained in such records is not improperly  
 17           disclosed to any party.”.

18           (b) **PROTECTIVE ORDERS FOR SEIZED RECORDS.**—  
 19           Section 34(d)(1)(A) of the Trademark Act (15 U.S.C.  
 20           1116(d)(1)(A)) is amended by adding at the end the fol-  
 21           lowing: “The court shall enter, if appropriate, a protective  
 22           order with respect to discovery of any records that have  
 23           been seized. The protective order shall provide for appro-  
 24           priate procedures to ensure that confidential information



1 contained in such records is not improperly disclosed to  
2 any party.”

3 (a) *IN GENERAL.*—Section 503(a) of title 17, United  
4 States Code, is amended to read as follows:

5 “(a)(1) *At any time while an action under this title*  
6 *is pending, the court may order the impounding, on such*  
7 *terms as it may deem reasonable—*

8 “(A) *of all copies or phonorecords claimed to*  
9 *have been made or used in violation of the exclusive*  
10 *right of the copyright owner;*

11 “(B) *of all plates, molds, matrices, masters,*  
12 *tapes, film negatives, or other articles by means of*  
13 *which such copies of phonorecords may be reproduced;*  
14 *and*

15 “(C) *of records documenting the manufacture,*  
16 *sale, or receipt of things involved in any such viola-*  
17 *tion, provided that any records seized under this sub-*  
18 *paragraph shall be taken into the custody of the court.*

19 “(2) *For impoundments of records ordered under para-*  
20 *graph (1)(C), the court shall enter an appropriate protec-*  
21 *tive order with respect to discovery and use of any records*  
22 *or information that has been impounded. The protective*  
23 *order shall provide for appropriate procedures to ensure*  
24 *that confidential, private, proprietary, or privileged infor-*

1 *mation contained in such records is not improperly dis-*  
2 *closed or used.*

3       “(3) *The relevant provisions of paragraphs (2) through*  
4 *(11) of section 34(d) of the Trademark Act (15 U.S.C.*  
5 *1116(d)(2) through (11)) shall extend to any impoundment*  
6 *of records ordered under paragraph (1)(C) that is based*  
7 *upon an ex parte application, notwithstanding the provi-*  
8 *sions of rule 65 of the Federal Rules of Civil Procedure.*  
9 *Any references in paragraphs (2) through (11) of section*  
10 *34(d) of the Trademark Act to section 32 of such Act shall*  
11 *be read as references to section 501 of this title, and ref-*  
12 *erences to use of a counterfeit mark in connection with the*  
13 *sale, offering for sale, or distribution of goods or services*  
14 *shall be read as references to infringement of a copyright.”.*

15       (b) *PROTECTIVE ORDER FOR SEIZED RECORDS.—Sec-*  
16 *tion 34(d)(7) of the Trademark Act (15 U.S.C. 1116(d)(7))*  
17 *is amended to read as follows:*

18               “(7) *Any materials seized under this subsection*  
19 *shall be taken into the custody of the court. For sei-*  
20 *zures made under this section, the court shall enter an*  
21 *appropriate protective order with respect to discovery*  
22 *and use of any records or information that has been*  
23 *seized. The protective order shall provide for appro-*  
24 *priate procedures to ensure that confidential, private,*

1        *proprietary, or privileged information contained in*  
2        *such records is not improperly disclosed or used.”.*

3        **SEC. 203. TREBLE DAMAGES IN COUNTERFEITING CASES.**

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

6        “(b) In assessing damages under subsection (a) for  
7 any violation of section 32(1)(a) of this Act or section  
8 220506 of title 36, United States Code, in a case involving  
9 use of a counterfeit mark or designation (as defined in  
10 section 34(d) of this Act), the court shall, unless the court  
11 finds extenuating circumstances, enter judgment for three  
12 times such profits or damages, whichever amount is great-  
13 er, together with a reasonable attorney’s fee, if the viola-  
14 tion consists of—

15                “(1) intentionally using a mark or designation,  
16                knowing such mark or designation is a counterfeit  
17                mark (as defined in section 34(d) of this Act), in  
18                connection with the sale, offering for sale, or dis-  
19                tribution of goods or services; or

20                “(2) providing goods or services necessary to  
21                the commission of a violation specified in paragraph  
22                (1), with the intent that the recipient of the goods  
23                or services would put the goods or services to use in  
24                committing the violation.

1 In such a case, the court may award prejudgment interest  
2 on such amount at an annual interest rate established  
3 under section 6621(a)(2) of the Internal Revenue Code of  
4 1986, beginning on the date of the service of the claim-  
5 ant’s pleadings setting forth the claim for such entry of  
6 judgment and ending on the date such entry is made, or  
7 for such shorter time as the court considers appropriate.”.

8 **SEC. 204. STATUTORY DAMAGES IN COUNTERFEITING**  
9 **CASES.**

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

12 (1) in paragraph (1)—

13 (A) by striking “\$500” and inserting  
14 “\$1,000”; and

15 (B) by striking “\$100,000” and inserting  
16 “\$200,000”; and

17 (2) in paragraph (2), by striking “\$1,000,000”  
18 and inserting “\$2,000,000”.

19 **SEC. 205. TRANSSHIPMENT AND EXPORTATION OF GOODS**  
20 **BEARING INFRINGING MARKS.**

21 Title VII of the Trademark Act of 1946 (15 U.S.C.  
22 1124) is amended—

23 (1) in the title heading, by inserting after “IM-  
24 PORTATION” the following: “TRANSSHIPMENT,  
25 OR EXPORTATION”; and

1 (2) in section 42—

2 (A) by striking “imported”; and

3 (B) by inserting after “customhouse of the  
4 United States” the following: “, nor shall any  
5 such article be transshipped through or ex-  
6 ported from the United States”.

7 **SEC. 206. IMPORTATION, ~~TRANSSHIPMENT~~, AND EXPOR-**  
8 **TATION.**

9 (a) IN GENERAL.—The heading for chapter 6 of title  
10 17, United States Code, is amended to read as follows:

11 **“CHAPTER 6—MANUFACTURING REQUIRE-**  
12 **MENTS, IMPORTATION, ~~TRANS-~~**  
13 **SHIPMENT, AND EXPORTATION”.**

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

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

19 (2) by striking “(a)” and inserting “(a) IN-

20 FRINGING IMPORTATION; ~~Transshipment~~, or Expor-

21 tation.—

22 “(1) IMPORTATION.—”;

23 (3) by striking “This subsection does not apply  
24 to—” and inserting the following:

1           “(2) IMPORTATION; ~~TRANSHIPMENT~~, OR EXPOR-  
 2           TATION OF INFRINGING ITEMS.—Importation into  
 3           the United States; ~~transshipment through the~~  
 4           ~~United States~~, or exportation from the United  
 5           States, without the authority of the owner of copy-  
 6           right under this title, of copies or phonorecords, the  
 7           making of which either constituted an infringement  
 8           of ~~copyright~~ *or copyright, or which* would have con-  
 9           stituted an infringement of copyright if this title had  
 10          been applicable, is an infringement of the exclusive  
 11          right to distribute copies or phonorecords under sec-  
 12          tion 106, actionable under sections 501 and 506.

13           “(3) EXCEPTIONS.—This subsection does not  
 14          apply to—”;

15           (4) in paragraph (3)(A) (as redesignated by  
 16          this subsection) by inserting “or exportation” after  
 17          “importation”; and

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

20           (A) by striking “importation, for the pri-  
 21          vate use of the importer” and inserting “import-  
 22          tation or exportation, for the private use of the  
 23          importer or exporter”; and

24           (B) by inserting “or departing from the  
 25          United States” after “United States”.

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

3 (A) in the section heading, by inserting “**or**  
4 **exportation**” after “**importation**”; and

5 (B) in subsection (b)—

6 (i) by striking “(b) In a case” and insert-  
7 ing “(b) IMPORT PROHIBITION.—In a case”;

8 (ii) by striking “the United States Cus-  
9 toms Service” and inserting “United States  
10 Customs and Border Protection”; and

11 (iii) by striking “the Customs Service” and  
12 inserting “United States Customs and Border  
13 Protection”.

14 (2) Section 601(b)(2) of title 17, United States Code,  
15 is amended by striking “the United States Customs Serv-  
16 ice” and inserting “United States Customs and Border  
17 Protection”.

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

“6. MANUFACTURING REQUIREMENTS, IMPORTATION, AND  
EXPORTATION ..... 601”.

1 **TITLE III—ENHANCEMENTS TO**  
 2 **CRIMINAL INTELLECTUAL**  
 3 **PROPERTY LAWS**

4 **SEC. 301. CRIMINAL COPYRIGHT INFRINGEMENT.**

5 (a) FORFEITURE AND DESTRUCTION; RESTITU-  
 6 TION.—Section 506(b) of title 17, United States Code, is  
 7 amended to read as follows:

8 “(b) FORFEITURE, DESTRUCTION, AND RESTITU-  
 9 TION.—Forfeiture, destruction, and restitution relating to  
 10 this section shall be subject to section 2323 of title 18,  
 11 to the extent provided in that section, in addition to any  
 12 other similar remedies provided by law.”.

13 (b) SEIZURES AND FORFEITURES.—

14 (1) REPEAL.—Section 509 of title 17, United  
 15 States Code, is repealed.

16 (2) TECHNICAL AND CONFORMING AMEND-  
 17 MENT.—The table of sections for chapter 5 of title  
 18 17, United States Code, is amended by striking the  
 19 item relating to section 509.

20 **SEC. 302. TRAFFICKING IN COUNTERFEIT LABELS, ILLICIT**  
 21 **LABELS, OR COUNTERFEIT DOCUMENTATION**  
 22 **OR PACKAGING FOR WORKS THAT CAN BE**  
 23 **COPYRIGHTED.**

24 Section 2318 of title 18, United States Code, is  
 25 amended—



1 (1) in subsection (a)—

2 (A) by redesignating subparagraphs (A)  
3 through (G) as clauses (i) through (vii), respec-  
4 tively;

5 (B) by redesignating paragraphs (1) and  
6 (2) as subparagraphs (A) and (B), respectively;  
7 and

8 (C) by striking “Whoever” and inserting  
9 “(1) Whoever”;

10 (2) by amending subsection (d) to read as fol-  
11 lows:

12 “(d) FORFEITURE AND DESTRUCTION OF PROPERTY;  
13 RESTITUTION.—Forfeiture, destruction, and restitution  
14 relating to this section shall be subject to section 2323,  
15 to the extent provided in that section, in addition to any  
16 other similar remedies provided by law.”; and

17 (3) by striking subsection (e) and redesignating  
18 subsection (f) as subsection (e).

19 **SEC. 303. UNAUTHORIZED FIXATION.**

20 (a) Section 2319A(b) of title 18, United States Code,  
21 is amended to read as follows:

22 “(b) FORFEITURE AND DESTRUCTION OF PROPERTY;  
23 RESTITUTION.—Forfeiture, destruction, and restitution  
24 relating to this section shall be subject to section 2323,

1 to the extent provided in that section, in addition to any  
 2 other similar remedies provided by law.”.

3 (b) Section 2319A(c) of title 18, United States Code,  
 4 is amended by striking the second sentence and inserting:  
 5 “The Secretary of Homeland Security shall issue regula-  
 6 tions by which any performer may, upon payment of a  
 7 specified fee, be entitled to notification by United States  
 8 Customs and Border Protection of the importation of cop-  
 9 ies or phonorecords that appear to consist of unauthorized  
 10 fixations of the sounds or sounds and images of a live mu-  
 11 sical performance.”.

12 **SEC. 304. UNAUTHORIZED RECORDING OF MOTION PIC-**  
 13 **TURES.**

14 Section 2319B(b) of title 18, United States Code, is  
 15 amended to read as follows:

16 “(b) FORFEITURE AND DESTRUCTION OF PROPERTY;  
 17 RESTITUTION.—Forfeiture, destruction, and restitution  
 18 relating to this section shall be subject to section 2323,  
 19 to the extent provided in that section, in addition to any  
 20 other similar remedies provided by law.”.

21 **SEC. 305. TRAFFICKING IN COUNTERFEIT GOODS OR SERV-**  
 22 **ICES.**

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

25 (1) in subsection (a)—

1 (A) by striking “WHOEVER” and inserting  
2 “OFFENSE.—”

3 “(1) IN GENERAL.—Whoever;”;

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

6 (C) by adding at the end the following:

7 “(2) SERIOUS BODILY HARM OR DEATH.—

8 “(A) SERIOUS BODILY HARM.—If the of-  
9 fender knowingly or recklessly causes or at-  
10 tempts to cause serious bodily injury from con-  
11 duct in violation of paragraph (1), the penalty  
12 shall be a fine under this title or imprisonment  
13 for not more than 20 years, or both.

14 “(B) DEATH.—If the offender knowingly  
15 or recklessly causes or attempts to cause death  
16 from conduct in violation of paragraph (1), the  
17 penalty shall be a fine under this title or im-  
18 prisonment for any term of years or for life, or  
19 both.”.

20 (b) FORFEITURE AND DESTRUCTION OF PROPERTY;  
21 RESTITUTION.—Section 2320(b) of title 18, United States  
22 Code, is amended to read as follows:

23 “(b) FORFEITURE AND DESTRUCTION OF PROPERTY;  
24 RESTITUTION.—Forfeiture, destruction, and restitution  
25 relating to this section shall be subject to section 2323,

1 to the extent provided in that section, in addition to any  
 2 other similar remedies provided by law.”.

3 **SEC. 306. FORFEITURE, DESTRUCTION, AND RESTITUTION.**

4 (a) IN GENERAL.—Chapter 113 of title 18, United  
 5 States Code, is amended by adding at the end the fol-  
 6 lowing:

7 **“SEC. 2323. FORFEITURE, DESTRUCTION, AND RESTITU-**  
 8 **TION.**

9 “(a) CIVIL FORFEITURE.—

10 “(1) PROPERTY SUBJECT TO FORFEITURE.—

11 The following property is subject to forfeiture to the  
 12 United States Government:

13 “(A) Any article, the making or trafficking  
 14 of which is, prohibited under section 506 or  
 15 ~~1204~~ of title 17, or section 2318, 2319, 2319A,  
 16 2319B, or 2320, or chapter 90, of this title.

17 “(B) Any property used, or intended to be  
 18 used, in any manner or part to commit or facili-  
 19 tate the commission of an offense referred to in  
 20 subparagraph (A), except that property is sub-  
 21 ject to forfeiture under this subparagraph only  
 22 if the United States Government establishes  
 23 that there was a substantial connection between  
 24 the property and the violation of an offense re-  
 25 ferred to in subparagraph (A).

1           “(C) Any property constituting or derived  
2           from any proceeds obtained directly or indi-  
3           rectly as a result of the commission of an of-  
4           fense referred to in subparagraph (A).

5           “(2) PROCEDURES.—The provisions of chapter  
6           46 relating to civil forfeitures shall extend to any  
7           seizure or civil forfeiture under this section. *For sei-*  
8           *zures made under this section, the court shall enter an*  
9           *appropriate protective order with respect to discovery*  
10          *and use of any records or information that has been*  
11          *seized. The protective order shall provide for appro-*  
12          *priate procedures to ensure that confidential, private,*  
13          *proprietary, or privileged information contained in*  
14          *such records is not improperly disclosed or used. At*  
15          the conclusion of the forfeiture proceedings, unless  
16          otherwise requested by an agency of the United  
17          States, the court shall order that any property for-  
18          feited under paragraph (1) be destroyed, or other-  
19          wise disposed of according to law.

20          “(b) CRIMINAL FORFEITURE.—

21           “(1) PROPERTY SUBJECT TO FORFEITURE.—  
22          The court, in imposing sentence on a person con-  
23          victed of an offense under section 506 or 1204 of  
24          title 17, or section 2318, 2319, 2319A, 2319B, or  
25          2320, or chapter 90, of this title, shall order, in ad-

1       dition to any other sentence imposed, that the per-  
2       son forfeit to the United States Government any  
3       property subject to forfeiture under subsection (a)  
4       for that offense.

5           “(2) PROCEDURES.—

6           “(A) IN GENERAL.—The forfeiture of  
7       property under paragraph (1), including any  
8       seizure and disposition of the property and any  
9       related judicial or administrative proceeding,  
10      shall be governed by the procedures set forth in  
11      section 413 of the Comprehensive Drug Abuse  
12      Prevention and Control Act of 1970 (21 U.S.C.  
13      853), other than subsection (d) of that section.

14          “(B) DESTRUCTION.—At the conclusion of  
15      the forfeiture proceedings, the court, unless oth-  
16      erwise requested by an agency of the United  
17      States shall order that any—

18           “(i) forfeited article or component of  
19      an article bearing or consisting of a coun-  
20      terfeit mark be destroyed or otherwise dis-  
21      posed of according to law; and

22           “(ii) infringing items or other prop-  
23      erty described in subsection (a)(1)(A) and  
24      forfeited under paragraph (1) of this sub-

1 section be destroyed or otherwise disposed  
2 of according to law.

3 “(c) RESTITUTION.—When a person is convicted of  
4 an offense under section 506 ~~or 1204~~ of title 17 or section  
5 2318, 2319, 2319A, 2319B, or 2320, or chapter 90, of  
6 this title, the court, pursuant to sections 3556, 3663A,  
7 and 3664 of this title, shall order the person to pay res-  
8 titution to any victim of the offense as an offense against  
9 property referred to in section 3663A(c)(1)(A)(ii) of this  
10 title.”.

11 (b) TECHNICAL AND CONFORMING AMENDMENT.—  
12 The table of sections for chapter 113 of title 18, United  
13 States Code, is amended by adding at the end the fol-  
14 lowing:

“Sec. 2323. Forfeiture, destruction, and restitution.”.

15 **SEC. 307. FORFEITURE UNDER ECONOMIC ESPIONAGE ACT.**

16 Section 1834 of title 18, United States Code, is  
17 amended to read as follows:

18 **“SEC. 1834. CRIMINAL FORFEITURE.**

19 “Forfeiture, destruction, and restitution relating to  
20 this chapter shall be subject to section 2323, to the extent  
21 provided in that section, in addition to any other similar  
22 remedies provided by law.”.

23 **SEC. 308. TECHNICAL AND CONFORMING AMENDMENTS.**

24 (a) AMENDMENTS TO TITLE 17, UNITED STATES  
25 CODE.—

1           (1) Section 109 (b)(4) of title 17, United States  
2 Code, is amended by striking “505, and 509” and  
3 inserting “and 505”.

4           (2) Section 111 of title 17, United States Code,  
5 is amended—

6           (A) in subsection (b), by striking “and  
7 509”;

8           (B) in subsection (c)—

9           (i) in paragraph (2), by striking “and  
10 509”;

11           (ii) in paragraph (3), by striking “sec-  
12 tions 509 and 510” and inserting “section  
13 510”; and

14           (iii) in paragraph (4), by striking  
15 “and section 509”; and

16           (C) in subsection (e)—

17           (i) in paragraph (1), by striking “sec-  
18 tions 509 and 510” and inserting “section  
19 510”; and

20           (ii) in paragraph (2), by striking “and  
21 509”.

22           (3) Section 115(e) of title 17, United States  
23 Code, is amended—

24           (A) in paragraph (3)(G)(i), by striking  
25 “and 509”; and



1 (B) in paragraph (6), by striking “and  
2 509”.

3 (4) Section 119(a) of title 17, United States  
4 Code, is amended—

5 (A) in paragraph (6), by striking “sections  
6 509 and 510” and inserting “section 510”;

7 (B) in paragraph (7)(A), by striking “and  
8 509”;

9 (C) in paragraph (8), by striking “and  
10 509”; and

11 (D) in paragraph (13), by striking “and  
12 509”.

13 (5) Section 122 of title 17, United States Code,  
14 is amended—

15 (A) in subsection (d), by striking “and  
16 509”;

17 (B) in subsection (e), by striking “sections  
18 509 and 510” and inserting “section 510”; and

19 (C) in subsection (f)(1), by striking “and  
20 509”.

21 (6) Section 411(b) of title 17, United States  
22 Code, is amended by striking “sections 509 and  
23 510” and inserting “section 510”.

1 (b) OTHER AMENDMENTS.—Section 596(c)(2)(c) of  
 2 the Tariff Act of 1950 (19 U.S.C. 1595a(c)(2)(c)) is  
 3 amended by striking “or 509”.

4 **TITLE IV—COORDINATION AND**  
 5 **STRATEGIC PLANNING OF**  
 6 **FEDERAL EFFORT AGAINST**  
 7 **COUNTERFEITING AND PI-**  
 8 **RACY INFRINGEMENT**

9 **SEC. 401. INTELLECTUAL PROPERTY ENFORCEMENT COOR-**  
 10 **DINATOR.**

11 (a) INTELLECTUAL PROPERTY ENFORCEMENT CO-  
 12 ORDINATOR.—The President shall appoint, by and with  
 13 the advice and consent of the Senate, an Intellectual Prop-  
 14 erty Enforcement Coordinator (in this title referred to as  
 15 the “IPEC”) to serve within the Executive Office of the  
 16 President. As an exercise of the rulemaking power of the  
 17 Senate, any nomination of the IPEC submitted to the Sen-  
 18 ate for confirmation, and referred to a committee, shall  
 19 be referred to the Committee on the Judiciary.

20 (b) DUTIES OF IPEC.—

21 (1) IN GENERAL.—The IPEC shall—

22 (A) chair the interagency intellectual prop-  
 23 erty enforcement advisory committee estab-  
 24 lished under subsection (b)(3)(A);

1 (B) coordinate the development of the  
 2 Joint Strategic Plan against counterfeiting and  
 3 ~~piracy~~*infringement* by the advisory committee  
 4 under section 403;

5 (C) assist in the implementation of the  
 6 Joint Strategic Plan by the departments and  
 7 agencies listed in subsection (b)(3)(A);

8 (D) *facilitate the issuance of policy guid-*  
 9 *ance to departments and agencies on basic issues*  
 10 *of policy and interpretation, to the extent nec-*  
 11 *essary to assure the coordination of intellectual*  
 12 *property enforcement policy and consistency*  
 13 *with other law;*

14 (DE) report directly to the President and  
 15 Congress regarding domestic and international  
 16 intellectual property enforcement programs;

17 (EF) report to Congress, as provided in  
 18 section 404, on the implementation of the Joint  
 19 Strategic Plan, and make recommendations to  
 20 Congress for improvements in Federal intellec-  
 21 tual property enforcement efforts; and

22 (FG) carry out such other functions as the  
 23 President may direct.

24 (2) LIMITATION ON AUTHORITY.—The IPEC  
 25 may not control or direct any law enforcement agen-

1 cy in the exercise of its investigative or prosecutorial  
2 authority.

3 (3) ADVISORY COMMITTEE.—

4 (A) ESTABLISHMENT.—There is estab-  
5 lished an interagency intellectual property en-  
6 forcement advisory committee composed of the  
7 IPEC, who shall chair the committee, and Sen-  
8 ate-confirmed representatives of the following  
9 departments and agencies who are involved in  
10 intellectual property enforcement, and who are,  
11 or are appointed by, the respective heads of  
12 those departments and agencies:

13 (i) The Office of Management and  
14 Budget.

15 (ii) The Department of Justice.

16 (iii) The United States Patent and  
17 Trademark Office and other relevant units  
18 of the Department of Commerce.

19 (iv) The Office of the United States  
20 Trade Representative.

21 (v) The Department of State, the  
22 United States Agency for International  
23 Development, and the Bureau of Inter-  
24 national Narcotics Law Enforcement.

1           (vi) The Department of Homeland Se-  
2           curity, United States Customs and Border  
3           Protection, and United States Immigration  
4           and Customs Enforcement.

5           (vii) The Food and Drug Administra-  
6           tion of the Department of Health and  
7           Human Services.

8           (viii) The United States Copyright Of-  
9           fice.

10          (ix) Any such other agencies as the  
11          President determines to be substantially  
12          involved in the efforts of the Federal Gov-  
13          ernment to combat counterfeiting and pi-  
14          racy.

15          (A) *ESTABLISHMENT.*—*There is established*  
16          *an interagency intellectual property enforcement*  
17          *advisory committee composed of the IPEC, who*  
18          *shall chair the committee, and—*

19                (i) *Senate-confirmed representatives of*  
20                *the following departments and agencies who*  
21                *are involved in intellectual property en-*  
22                *forcement, and who are, or are appointed*  
23                *by, the respective heads of those departments*  
24                *and agencies:*

1                   (I) *The Office of Management and*  
2                   *Budget.*

3                   (II) *The Department of Justice.*

4                   (III) *The United States Patent*  
5                   *and Trademark Office and other rel-*  
6                   *evant units of the Department of Com-*  
7                   *merce.*

8                   (IV) *The Office of the United*  
9                   *States Trade Representative.*

10                  (V) *The Department of State, the*  
11                  *United States Agency for International*  
12                  *Development, and the Bureau of Inter-*  
13                  *national Narcotics Law Enforcement.*

14                  (VI) *The Department of Home-*  
15                  *land Security, United States Customs*  
16                  *and Border Protection, and United*  
17                  *States Immigration and Customs En-*  
18                  *forcement.*

19                  (VII) *The Food and Drug Admin-*  
20                  *istration of the Department of Health*  
21                  *and Human Services.*

22                  (VIII) *The Department of Agri-*  
23                  *culture.*

24                  (IX) *Any such other agencies as*  
25                  *the President determines to be substan-*

1 *tially involved in the efforts of the Fed-*  
 2 *eral Government to combat counter-*  
 3 *feiting and piracy; and*

4 *(ii) the Register of Copyrights, or a*  
 5 *senior representative of the United States*  
 6 *Copyright Office appointed by the Register*  
 7 *of Copyrights.*

8 (B) FUNCTIONS.—The advisory committee  
 9 established under subparagraph (A) shall de-  
 10 velop the Joint Strategic Plan against counter-  
 11 feiting and ~~piracy~~*infringement* under section  
 12 403.

13 (c) COMPENSATION.—Section 5312 of title 5, United  
 14 States Code, is amended by adding at the end the fol-  
 15 lowing: “United States Intellectual Property Enforcement  
 16 Coordinator.”.

17 **SEC. 402. DEFINITION.**

18 For purposes of this title, the term “intellectual prop-  
 19 erty enforcement” means matters relating to the enforce-  
 20 ment of laws protecting copyrights, patents, trademarks,  
 21 other forms of intellectual property, and trade secrets,  
 22 both in the United States and abroad, including in par-  
 23 ticular matters relating to combating counterfeit and ~~pi-~~  
 24 ~~rated~~*infringed* goods.

1 **SEC. 403. JOINT STRATEGIC PLAN.**

2 (a) PURPOSE.—The objectives of the Joint Strategic  
3 Plan against counterfeiting and ~~piracy~~*infringement* that is  
4 referred to in section 401(b)(1)(B) (in this section re-  
5 ferred to as the “joint strategic plan”) are the following:

6 (1) Reducing counterfeit and ~~pirated~~*infringed*  
7 goods in the domestic and international supply  
8 chain.

9 (2) Identifying and addressing structural weak-  
10 nesses, systemic flaws, or other unjustified impedi-  
11 ments to effective enforcement action against the fi-  
12 nancing, production, trafficking, or sale of counter-  
13 feit or ~~pirated~~*infringed* goods.

14 (3) Ensuring that information is identified and  
15 shared among the relevant departments and agen-  
16 cies, to the extent permitted by law and consistent  
17 with law enforcement protocols for handling infor-  
18 mation, to aid in the objective of arresting and pros-  
19 ecuting individuals and entities that are knowingly  
20 involved in the financing, production, trafficking, or  
21 sale of counterfeit or ~~pirated~~*infringed* goods.

22 (4) Disrupting and eliminating domestic and  
23 international counterfeiting and ~~piracy~~*infringement*  
24 networks.

25 (5) Strengthening the capacity of other coun-  
26 tries to protect and enforce intellectual property



1 rights, and reducing the number of countries that  
2 fail to enforce laws preventing the financing, produc-  
3 tion, trafficking, and sale of counterfeit and ~~pirat-~~  
4 ~~ed~~*infringed* goods.

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

9 (7) Protecting intellectual property rights over-  
10 seas by—

11 (A) working with other countries and ex-  
12 changing information with appropriate law en-  
13 forcement agencies in other countries relating  
14 to individuals and entities involved in the fi-  
15 nancing, production, trafficking, or sale of ~~pi-~~  
16 ~~rated~~*infringed* or counterfeit goods;

17 (B) using the information described in sub-  
18 paragraph (A) to conduct enforcement activities  
19 in cooperation with appropriate law enforce-  
20 ment agencies in other countries; and

21 (C) building a formal process for con-  
22 sulting with companies, industry associations,  
23 labor unions, and other interested groups in  
24 other countries with respect to intellectual prop-  
25 erty enforcement.

1 (b) TIMING.—Not later than 12 months after the  
2 date of the enactment of this Act, and not later than De-  
3 cember 31 of every third year thereafter, the IPEC shall  
4 submit the joint strategic plan to the Committee on the  
5 Judiciary and the Committee on Appropriations of the  
6 Senate, and to the Committee on the Judiciary and the  
7 Committee on Appropriations of the House of Representa-  
8 tives.

9 (c) RESPONSIBILITY OF THE IPEC.—During the de-  
10 velopment of the joint strategic plan, the IPEC—

11 (1) shall provide assistance to, and coordinate  
12 the meetings and efforts of, the appropriate officers  
13 and employees of departments and agencies rep-  
14 resented on the advisory committee appointed under  
15 section 401(b)(3) who are involved in intellectual  
16 property enforcement; and

17 (2) may consult with private sector experts in  
18 intellectual property enforcement in furtherance of  
19 providing assistance to the members of the advisory  
20 committee appointed under section 401(b)(3).

21 (d) RESPONSIBILITIES OF OTHER DEPARTMENTS  
22 AND AGENCIES.—In the development and implementation  
23 of the joint strategic plan, the heads of the departments  
24 and agencies identified under section 401(b)(3) shall—

1           (1) designate personnel with expertise and expe-  
2           rience in intellectual property enforcement matters  
3           to work with the IPEC and other members of the  
4           advisory committee; and

5           (2) share relevant department or agency infor-  
6           mation with the IPEC and other members of the ad-  
7           visory committee, including statistical information  
8           on the enforcement activities of the department or  
9           agency against counterfeiting or ~~piracy~~*infringement*,  
10          and plans for addressing the joint strategic plan.

11          (e) CONTENTS OF THE JOINT STRATEGIC PLAN.—

12          Each joint strategic plan shall include the following:

13               (1) A detailed description of the priorities iden-  
14               tified for carrying out the objectives in the joint  
15               strategic plan, including activities of the Federal  
16               Government relating to intellectual property enforce-  
17               ment.

18               (2) A detailed description of the means and  
19               methods to be employed to achieve the priorities, in-  
20               cluding the means and methods for improving the  
21               efficiency and effectiveness of the Federal Govern-  
22               ment's enforcement efforts against counterfeiting  
23               and ~~piracy~~*infringement*.

24               (3) Estimates of the resources necessary to ful-  
25               fill the priorities identified under paragraph (1).

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

4           (5) An analysis of the threat posed by violations  
5 of intellectual property rights, including the costs to  
6 the economy of the United States resulting from vio-  
7 lations of intellectual property laws, and the threats  
8 to public health and safety created by counterfeiting  
9 and ~~piracy~~*infringement*.

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

13          (7) A strategy for ensuring coordination be-  
14 tween the IPEC and the departments and agencies  
15 identified under paragraph (6), including a process  
16 for oversight by the executive branch of, and ac-  
17 countability among, the departments and agencies  
18 responsible for carrying out the strategy.

19          (8) Such other information as is necessary to  
20 convey the costs imposed on the United States econ-  
21 omy by, and the threats to public health and safety  
22 created by, counterfeiting and ~~piracy~~*infringement*,  
23 and those steps that the Federal Government in-  
24 tends to take over the period covered by the suc-

1 ceeding joint strategic plan to reduce those costs and  
2 counter those threats.

3 (f) ENHANCING ENFORCEMENT EFFORTS OF FOR-  
4 EIGN GOVERNMENTS.—The joint strategic plan shall in-  
5 clude programs to provide training and technical assist-  
6 ance to foreign governments for the purpose of enhancing  
7 the efforts of such governments to enforce laws against  
8 counterfeiting and ~~piracy~~*infringement*. With respect to  
9 such programs, the joint strategic plan shall—

10 (1) seek to enhance the efficiency and consist-  
11 ency with which Federal resources are expended,  
12 and seek to minimize duplication, overlap, or incon-  
13 sistency of efforts;

14 (2) identify and give priority to those countries  
15 where programs of training and technical assistance  
16 can be carried out most effectively and with the  
17 greatest benefit to reducing counterfeit and ~~pirat-~~  
18 ~~ed~~*infringed* products in the United States market, to  
19 protecting the intellectual property rights of United  
20 States persons and their licensees, and to protecting  
21 the interests of United States persons otherwise  
22 harmed by violations of intellectual property rights  
23 in those countries;

24 (3) in identifying the priorities under paragraph  
25 (2), be guided by the list of countries identified by

1 the United States Trade Representative under sec-  
2 tion 182(a) of the Trade Act of 1974 (19 U.S.C.  
3 2242(a)); and

4 (4) develop metrics to measure the effectiveness  
5 of the Federal Government's efforts to improve the  
6 laws and enforcement practices of foreign govern-  
7 ments against counterfeiting and ~~piracy~~*infringement*.

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

13 **SEC. 404. REPORTING.**

14 (a) ANNUAL REPORT.—Not later than December 31  
15 of each calendar year beginning in 2009, the IPEC shall  
16 submit a report on the activities of the advisory committee  
17 during the preceding fiscal year. The annual report shall  
18 be submitted to Congress, and disseminated to the people  
19 of the United States, in the manner specified in sub-  
20 sections (b) and (g) of section 403.

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

23 (1) The progress made on implementing the  
24 strategic plan and on the progress toward fulfillment  
25 of the priorities identified under section 403(e)(1).

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

5           (3) The progress made in working with foreign  
6           countries to investigate, arrest, and prosecute enti-  
7           ties and individuals involved in the financing, pro-  
8           duction, trafficking, and sale of counterfeit and ~~pi-~~  
9           ~~rated~~*infringed* goods.

10          (4) The manner in which the relevant depart-  
11          ments and agencies are working together and shar-  
12          ing information to strengthen intellectual property  
13          enforcement.

14          (5) An assessment of the successes and short-  
15          comings of the efforts of the Federal Government,  
16          including departments and agencies represented on  
17          the committee established under section 401(b)(3).

18          (6) Recommendations for any changes in en-  
19          forcement statutes, regulations, or funding levels  
20          that the advisory committee considers would signifi-  
21          cantly improve the effectiveness or efficiency of the  
22          effort of the Federal Government to combat counter-  
23          feiting and ~~piracy~~*infringement* and otherwise  
24          strengthen intellectual property enforcement, includ-

1 ing through the elimination or consolidation of dupli-  
 2 cative programs or initiatives.

3 (7) The progress made in strengthening the ca-  
 4 pacity of countries to protect and enforce intellectual  
 5 property rights.

6 (8) The successes and challenges in sharing  
 7 with other countries information relating to intellec-  
 8 tual property enforcement.

9 (9) The progress made under trade agreements  
 10 and treaties to protect intellectual property rights of  
 11 United States persons and their licensees.

12 **SEC. 405. SAVINGS AND REPEALS.**

13 ~~(a) REPEAL OF COORDINATION COUNCIL.—Section~~  
 14 ~~653 of the Treasury and General Government Appropria-~~  
 15 ~~tions Act, 2000 (15 U.S.C. 1128) is repealed.~~

16 *(a) TRANSITION FROM NIPLECC TO IPEC.—*

17 *(1) REPEAL OF NIPLECC.—Section 653 of the*  
 18 *Treasury and General Government Appropriations*  
 19 *Act, 2000 (15 U.S.C. 1128) is repealed effective upon*  
 20 *confirmation of the IPEC by the Senate and publica-*  
 21 *tion of such appointment in the Congressional*  
 22 *Record.*

23 *(2) CONTINUITY OF PERFORMANCE OF DUTIES.—*  
 24 *Upon confirmation by the Senate, and notwith-*  
 25 *standing paragraph (1), the IPEC may use the serv-*



1        *ices and personnel of the National Intellectual Prop-*  
2        *erty Law Enforcement Coordination Council, for such*  
3        *time as is reasonable, to perform any functions or du-*  
4        *ties which in the discretion of the IPEC are necessary*  
5        *to facilitate the orderly transition of any functions or*  
6        *duties transferred from the Council to the IPEC pur-*  
7        *suant to any provision of this Act or any amendment*  
8        *made by this Act.*

9        (b) CURRENT AUTHORITIES NOT AFFECTED.—Ex-  
10       cept as provided in subsection (a), nothing in this title  
11       shall alter the authority of any department or agency of  
12       the United States (including any independent agency) that  
13       relates to—

14                (1) the investigation and prosecution of viola-  
15       tions of laws that protect intellectual property  
16       rights;

17                (2) the administrative enforcement, at the bor-  
18       ders of the United States, of laws that protect intel-  
19       lectual property rights; or

20                (3) the United States trade agreements pro-  
21       gram or international trade.

22        (c) REGISTER OF COPYRIGHTS.—Nothing in this title  
23       shall derogate from the duties and functions of the Reg-  
24       ister of Copyrights.

1       (c) *RULE OF CONSTRUCTION.*—*Nothing in this title*  
 2 *shall derogate from the powers, duties, and functions of any*  
 3 *of the agencies, departments, or other entities listed or in-*  
 4 *cluded under section 401(b)(3)(A).*

5 **SEC. 406. AUTHORIZATION OF APPROPRIATIONS.**

6       (a) *IN GENERAL.*—There are authorized to be appro-  
 7 priated for each fiscal year such sums as may be necessary  
 8 to carry out this title.

9                   **TITLE V—DEPARTMENT OF**  
 10                   **JUSTICE PROGRAMS**

11 **SEC. 501. LOCAL LAW ENFORCEMENT GRANTS.**

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

14               (1) in subsection (b), by inserting after “com-  
 15 puter crime” each place it appears the following: “,  
 16 including infringement of copyrighted works over the  
 17 Internet”; and

18               (2) in subsection (e)(1), relating to authoriza-  
 19 tion of appropriations, by striking “fiscal years 2001  
 20 through 2004” and inserting “fiscal years 2009  
 21 through 2013”.

22       (b) *GRANTS.*—The Office of Justice Programs of the  
 23 Department of Justice shall make grants to eligible State  
 24 or local law enforcement entities, including law enforce-  
 25 ment agencies of municipal governments and public edu-

1 cational institutions, for training, prevention, enforce-  
2 ment, and prosecution of intellectual property theft and  
3 infringement crimes (in this subsection referred to as “IP-  
4 TIC grants”), in accordance with the following:

5 (1) USE OF IP-TIC GRANT AMOUNTS.—IP-TIC  
6 grants may be used to establish and develop pro-  
7 grams to do the following with respect to the en-  
8 forcement of State and local true name and address  
9 laws and State and local criminal laws on anti-pi-  
10 racy, anti-counterfeiting, and unlawful acts with re-  
11 spect to goods by reason of their protection by a pat-  
12 ent, trademark, service mark, trade secret, or other  
13 intellectual property right under State or Federal  
14 law:

15 (A) Assist State and local law enforcement  
16 agencies in enforcing those laws, including by  
17 reimbursing State and local entities for ex-  
18 penses incurred in performing enforcement op-  
19 erations, such as overtime payments and stor-  
20 age fees for seized evidence.

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

24 (C) Educate and train State and local law  
25 enforcement officers and prosecutors to conduct

1 investigations and forensic analyses of evidence  
2 and prosecutions in matters involving those  
3 laws.

4 (D) Establish task forces that include per-  
5 sonnel from State or local law enforcement enti-  
6 ties, or both, exclusively to conduct investiga-  
7 tions and forensic analyses of evidence and  
8 prosecutions in matters involving those laws.

9 (E) Assist State and local law enforcement  
10 officers and prosecutors in acquiring computer  
11 and other equipment to conduct investigations  
12 and forensic analyses of evidence in matters in-  
13 volving those laws.

14 (F) Facilitate and promote the sharing,  
15 with State and local law enforcement officers  
16 and prosecutors, of the expertise and informa-  
17 tion of Federal law enforcement agencies about  
18 the investigation, analysis, and prosecution of  
19 matters involving those laws and criminal in-  
20 fringement of copyrighted works, including the  
21 use of multijurisdictional task forces.

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

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

4 (B) an assessment of the resource needs of  
5 the State or local government entity applying  
6 for the grant, including information on the need  
7 for reimbursements of base salaries and over-  
8 time costs, storage fees, and other expenditures  
9 to improve the investigation, prevention, or en-  
10 forcement of laws described in paragraph (1);  
11 and

12 (C) a plan for coordinating the programs  
13 funded under this section with other federally  
14 funded technical assistance and training pro-  
15 grams, including directly funded local programs  
16 such as the Edward Byrne Memorial Justice  
17 Assistance Grant Program authorized by sub-  
18 part 1 of part E of title I of the Omnibus  
19 Crime Control and Safe Streets Act of 1968  
20 (42 U.S.C. 3750 et seq.).

21 (3) MATCHING FUNDS.—The Federal share of  
22 an IP-TIC grant may not exceed ~~90~~75 percent of  
23 the costs of the program or proposal funded by the  
24 IP-TIC grant, ~~unless the Attorney General waives,~~  
25 ~~in whole or in part, the 90 percent requirement.~~

1 (4) AUTHORIZATION OF APPROPRIATIONS.—

2 (A) AUTHORIZATION.—There is authorized  
3 to be appropriated to carry out this subsection  
4 the sum of \$25,000,000 for each of fiscal years  
5 2009 through 2013.

6 (B) LIMITATION.—Of the amount made  
7 available to carry out this subsection in any fis-  
8 cal year, not more than 3 percent may be used  
9 by the Attorney General for salaries and admin-  
10 istrative expenses.

11 **SEC. 502. IMPROVED INVESTIGATIVE AND FORENSIC RE-**  
12 **SOURCES FOR ENFORCEMENT OF LAWS RE-**  
13 **LATED TO INTELLECTUAL PROPERTY**  
14 **CRIMES.**

15 (a) IN GENERAL.—Subject to the availability of ap-  
16 propriations to carry out this subsection, the Attorney  
17 General, in consultation with the Director of the Federal  
18 Bureau of Investigation, shall, with respect to crimes re-  
19 lated to the theft of intellectual property—

20 (1) create an operational unit of the Federal  
21 Bureau of Investigation—

22 (A) to work with the Computer Crime and  
23 Intellectual Property section of the Department  
24 of Justice on the investigation and coordination  
25 of intellectual property crimes ~~that are complex,~~

1 committed in more than 1 judicial district, or  
 2 international;

3 (B) that consists of at least 10 agents of  
 4 the Bureau; and

5 (C) that is located at the headquarters of  
 6 the Bureau;

7 (2) ensure that any unit in the Department of  
 8 Justice responsible for investigating computer hack-  
 9 ing or intellectual property crimes is ~~as-~~  
 10 ~~signed~~*supported by* at least 2 agents of the Federal  
 11 Bureau of Investigation (in addition to any agent ~~as-~~  
 12 ~~signed~~ ~~to~~*supporting* such unit as of the date of the  
 13 enactment of this Act) to support such unit for the  
 14 purpose of investigating or prosecuting intellectual  
 15 property crimes; ~~and~~

16 (3) *ensure that all Computer Hacking and Intel-*  
 17 *lectual Property Crime Units located at an office of*  
 18 *a United States Attorney are assigned at least 2 As-*  
 19 *stant United States Attorneys responsible for inves-*  
 20 *tigating and prosecuting computer hacking or intel-*  
 21 *lectual property crimes; and*

22 (~~3~~) implement a comprehensive program—

23 (A) the purpose of which is to train agents  
 24 of the Federal Bureau of Investigation in the  
 25 investigation and prosecution of such crimes

1 and the enforcement of laws related to intellec-  
2 tual property crimes;

3 (B) that includes relevant forensic training  
4 related to investigating and prosecuting intellec-  
5 tual property crimes; and

6 (C) that requires such agents who inves-  
7 tigate or prosecute intellectual property crimes  
8 to attend the program annually.

9 (b) ORGANIZED CRIME TASK FORCE.—Subject to the  
10 availability of appropriations to carry out this subsection,  
11 and not later than 120 days after the date of the enact-  
12 ment of this Act, the Attorney General, through the  
13 United States Attorneys' Offices, the Computer Crime and  
14 Intellectual Property section, and the Organized Crime  
15 and Racketeering section of the Department of Justice,  
16 and in consultation with the Federal Bureau of Investiga-  
17 tion and other Federal law enforcement agencies, shall  
18 create ~~a Task Force to develop~~ and implement a com-  
19 prehensive, long-range plan to investigate and prosecute  
20 international organized crime syndicates engaging in or  
21 supporting crimes relating to the theft of intellectual prop-  
22 erty.

23 (c) AUTHORIZATION.—There are authorized to be ap-  
24 propriated to carry out this section \$12,000,000 for each  
25 of fiscal years 2009 through 2013.



1 **SEC. 503. ADDITIONAL FUNDING FOR RESOURCES TO IN-**  
2 **VESTIGATE AND PROSECUTE CRIMINAL AC-**  
3 **TIVITY INVOLVING COMPUTERS.**

4 (a) **ADDITIONAL FUNDING FOR RESOURCES.**—

5 (1) **AUTHORIZATION.**—In addition to amounts  
6 otherwise authorized for resources to investigate and  
7 prosecute criminal activity involving computers,  
8 there are authorized to be appropriated for each of  
9 the fiscal years 2009 through 2013—

10 (A) \$10,000,000 to the Director of the  
11 Federal Bureau of Investigation; and

12 (B) \$10,000,000 to the Attorney General  
13 for the Criminal Division of the Department of  
14 Justice.

15 (2) **AVAILABILITY.**—Any amounts appropriated  
16 under paragraph (1) shall remain available until ex-  
17 pended.

18 (b) **USE OF ADDITIONAL FUNDING.**—Funds made  
19 available under subsection (a) shall be used by the Direc-  
20 tor of the Federal Bureau of Investigation and the Attor-  
21 ney General, for the Federal Bureau of Investigation and  
22 the Criminal Division of the Department of Justice, re-  
23 spectively, to—

24 (1) hire and train law enforcement officers to—

25 (A) investigate crimes committed through  
26 the use of computers and other information

1 technology, including through the use of the  
2 Internet; and

3 (B) assist in the prosecution of such  
4 crimes; and

5 (2) procure advanced tools of forensic science to  
6 investigate, prosecute, and study such crimes.

7 **SEC. 504. INTERNATIONAL INTELLECTUAL PROPERTY LAW**  
8 **ENFORCEMENT COORDINATORS.**

9 (a) DEPLOYMENT OF ADDITIONAL COORDINA-  
10 TORS.—Subject to the availability of appropriations to  
11 carry out this section, the Attorney General shall, within  
12 180 days after the date of the enactment of this Act, de-  
13 ploy 5 Intellectual Property Law Enforcement Coordina-  
14 tors, in addition to those serving in such capacity on such  
15 date of enactment. Such deployments shall be made to  
16 those countries and regions where the activities of such  
17 a coordinator can be carried out most effectively and with  
18 the greatest benefit to reducing counterfeit and ~~pirat-~~  
19 ~~ed~~*infringed* products in the United States market, to pro-  
20 tecting the intellectual property rights of United States  
21 persons and their licensees, and to protecting the interests  
22 of United States persons otherwise harmed by violations  
23 of intellectual property rights in those countries. The mis-  
24 sion of all International Intellectual Property Law En-  
25 forcement Coordinators shall include the following:

1           (1) Acting as liaison with foreign law enforce-  
2           ment agencies and other foreign officials in criminal  
3           matters involving intellectual property rights.

4           (2) Performing outreach and training to build  
5           the enforcement capacity of foreign governments  
6           against intellectual property-related crime in the re-  
7           gions in which the coordinators serve.

8           (3) ~~Coordinating~~ *Assisting in the coordination of*  
9           United States law enforcement activities against in-  
10          tellectual property-related crimes in the regions in  
11          which the coordinators serve.

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

18          **SEC. 505. ANNUAL REPORTS.**

19          Not later than 1 year after the date of the enactment  
20          of this Act, and annually thereafter, the Attorney General  
21          shall submit to the Committees on the Judiciary of the  
22          Senate and the House of Representatives a report on ac-  
23          tions taken to carry out this title.

1 **SEC. 506. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated for each fis-  
3 cal year such sums as may be necessary to carry out this  
4 title.

5 **TITLE VI—MISCELLANEOUS**

6 **SEC. 601. GAO STUDY ON PROTECTION OF INTELLECTUAL**  
7 **PROPERTY OF MANUFACTURERS.**

8 (a) *STUDY.*—*The Comptroller General of the United*  
9 *States shall conduct a study to help determine how the Fed-*  
10 *eral Government could better protect the intellectual prop-*  
11 *erty of manufacturers by quantification of the impacts of*  
12 *imported and domestic counterfeit goods on—*

13 (1) *the manufacturing industry in the United*  
14 *States; and*

15 (2) *the overall economy of the United States.*

16 (b) *CONTENTS.*—*In conducting the study required*  
17 *under subsection (a), the Comptroller General shall exam-*  
18 *ine—*

19 (1) *the extent that counterfeit manufactured*  
20 *goods are actively being trafficked in and imported*  
21 *into the United States;*

22 (2) *the impacts on domestic manufacturers in*  
23 *the United States of current law regarding defending*  
24 *intellectual property, including patent, trademark,*  
25 *and copyright protections;*

1           (3) *the nature and scope of current statutory law*  
2           *and case law regarding protecting trade dress from*  
3           *being illegally copied;*

4           (4) *the extent which such laws are being used to*  
5           *investigate and prosecute acts of trafficking in coun-*  
6           *terfeit manufactured goods;*

7           (5) *any effective practices or procedures that are*  
8           *protecting all types of intellectual property; and*

9           (6) *any changes to current statutes or rules that*  
10          *would need to be implemented to more effectively pro-*  
11          *tect the intellectual property rights of manufacturers.*

12          (c) *REPORT.—Not later than 1 year after the date of*  
13          *the enactment of this Act, the Comptroller General shall*  
14          *submit to Congress a report on the results of the study re-*  
15          *quired under subsection (a).*

16          **SEC. 602. SENSE OF CONGRESS.**

17          *It is the sense of Congress that—*

18                 (1) *the United States intellectual property indus-*  
19                 *tries have created millions of high-skill, high-paying*  
20                 *United States jobs and pay billions of dollars in an-*  
21                 *annual United States tax revenues;*

22                 (2) *the United States intellectual property indus-*  
23                 *tries continue to represent a major source of cre-*  
24                 *ativity and innovation, business start-ups, skilled job*

1        *creation, exports, economic growth, and competitive-*  
2        *ness;*

3            (3) *counterfeiting and infringement results in*  
4        *billions of dollars in lost revenue for United States*  
5        *companies each year and even greater losses to the*  
6        *United States economy in terms of reduced job*  
7        *growth, exports, and competitiveness;*

8            (4) *the growing number of willful violations of*  
9        *existing Federal criminal laws involving counter-*  
10       *feiting and infringement by actors in the United*  
11       *States and, increasingly, by foreign-based individuals*  
12       *and entities is a serious threat to the long-term vital-*  
13       *ity of the United States economy and the future com-*  
14       *petitiveness of United States industry;*

15           (5) *effective criminal enforcement of the intellec-*  
16       *tual property laws against such violations in all cat-*  
17       *egories of works should be among the highest priorities*  
18       *of the Attorney General; and*

19           (6) *with respect to criminal counterfeiting and*  
20       *infringement of computer software, the Attorney Gen-*  
21       *eral should give priority to cases—*

22                (A) *involving the willful theft of intellectual*  
23                *property for purposes of commercial advantage*  
24                *or private financial gain;*

1           (B) where the theft of intellectual property  
2           is central to the sustainability and viability of  
3           the commercial activity of the enterprise (or sub-  
4           sidiary) involved in the violation;

5           (C) where the counterfeited or infringing  
6           goods or services enables the enterprise to un-  
7           fairly compete against the legitimate rights hold-  
8           er;

9           (D) where there is actual knowledge of the  
10          theft of intellectual property by the directors or  
11          officers of the enterprise; and

12          (E) where the enterprise involved in the  
13          theft of intellectual property is owned or con-  
14          trolled by a foreign enterprise or other foreign  
15          entity.

Calendar No. 964

110<sup>TH</sup> CONGRESS  
2<sup>D</sup> Session

**S. 3325**

---

---

**A BILL**

To enhance remedies for violations of intellectual property laws, and for other purposes.

---

---

SEPTEMBER 15, 2008

Reported with amendments