

votes for it, and these foreclosures continue to take place and individual families continue to be thrown out of their homes. It is not a tenable situation.

I hope, if anybody is listening at all, that in the negotiating team, they will make a real effort to mandate in some way that subprime foreclosures be renegotiated, that families, wherever possible, who have an ability to pay, have that ability to pay met with a renegotiated loan. I have done this now in cases with families who were taken advantage of. We called the CEO of the bank, and the bank has seen that the loan was renegotiated, in one case in Los Angeles down to 2 percent. That is better than foreclosing and running the uncertainty of the sale of the asset in a very depressed housing market.

These are my thoughts. Again, it is easy to come to the floor and give your thoughts. It is much more difficult to sit at that negotiating table.

I once again thank those Senators on both sides of the aisle who really understand the nature of this crisis—that it isn't only Wall Street, that it does involve Main Street, and if there is a serious crash, it will hurt tens of millions of Americans, many of them in irreparable ways. So we must do what we must do, and we must do it prudently and carefully.

I yield the floor. I suggest the absence of quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### MORNING BUSINESS

Mr. LEAHY. Mr. President, I ask unanimous consent that we go into morning business, with Senators to be recognized at 10-minute intervals.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS ACT OF 2008

Mr. LEAHY. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 964, S. 3325.

The PRESIDING OFFICER. The clerk will report the bill by title.

The bill clerk read as follows:

A bill (S. 3325) to enhance remedies for violations of intellectual property laws, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with amendments.

S. 3325

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

#### 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—AUTHORIZATION OF CIVIL COPYRIGHT ENFORCEMENT BY ATTORNEY GENERAL

##### SEC. 101. CIVIL PENALTIES FOR CERTAIN VIOLATIONS.

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

##### “SEC. 506a. CIVIL PENALTIES FOR VIOLATIONS OF SECTION 506.

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

“(b) OTHER REMEDIES.—

“(1) IN GENERAL.—Imposition of a civil penalty under this section does not preclude any other criminal or civil statutory, injunctive, common law, or administrative remedy, which is available by law to the United States or any other person.

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

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

(1) in subsection (b)—

(A) in the first sentence—

(i) by inserting “, or the Attorney General in a civil action,” after “The copyright owner”; and

(ii) by striking “him or her” and inserting “the copyright owner”; and

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

(2) in subsection (c)—

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

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

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

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

#### TITLE II—ENHANCEMENTS TO CIVIL INTELLECTUAL PROPERTY LAWS

##### SEC. 201. REGISTRATION OF CLAIM.

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

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

(2) in subsection (a)—

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

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