

110TH CONGRESS
1ST SESSION

H. R. 4279

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

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 5, 2007

Mr. CONYERS (for himself, Mr. BERMAN, Mr. SMITH of Texas, Mr. SCHIFF, Mr. FEENEY, Mr. ISSA, Mr. CHABOT, Mr. COHEN, Mr. KELLER of Florida, Ms. JACKSON-LEE of Texas, and Mr. GOODLATTE) introduced the following bill; which was referred to the Committee on the Judiciary

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 “Prioritizing Resources and Organization for Intellectual
6 Property Act of 2007”.

7 (b) TABLE OF CONTENTS.—The table of contents is
8 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. Computation of statutory damages in copyright cases.
- Sec. 105. Treble damages in counterfeiting cases.
- Sec. 106. Statutory damages in counterfeiting cases.
- Sec. 107. Exportation of goods bearing infringing marks.
- Sec. 108. 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 of-
fenses.
- 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 Rep-
resentative.
- Sec. 302. Definition.

Subtitle B—Joint Strategic Plan

- Sec. 321. Joint Strategic Plan.
- Sec. 322. Reporting.
- Sec. 323. Other intellectual property activities.
- Sec. 324. Savings and repeals.
- Sec. 325. 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.

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,

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

5 **TITLE I—ENHANCEMENTS TO**
6 **CIVIL INTELLECTUAL PROP-**
7 **ERTY LAWS**

8 **SEC. 101. REGISTRATION OF CLAIM.**

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

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

13 (2) by inserting after subsection (b) the fol-
14 lowing:

15 “(c)(1) A certificate of registration satisfies the re-
16 quirements of section 411 and section 412 regardless of
17 any inaccurate information contained in the certificate,
18 unless—

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

22 “(B) the inaccuracy of the information, if
23 known, would have caused the Register of Copy-
24 rights to refuse registration.

1 “(2) In any case in which inaccuracies described
2 under paragraph (1) are alleged, the court shall request
3 the Register of Copyrights to advise the court whether the
4 inaccuracy of the information, if known, would have
5 caused the Register of Copyrights to refuse registration.

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

11 **SEC. 102. REGISTRATION AND INFRINGEMENT ACTIONS.**

12 (a) REGISTRATION IN CIVIL INFRINGEMENT AC-
13 TIONS.—Section 411(a) of title 17, United States Code,
14 is amended—

15 (1) in the section heading, by inserting “**civil**”
16 after “**and**” ; and

17 (2) in subsection (a), by striking “no action”
18 and inserting “no civil action”.

19 (b) TECHNICAL AND CONFORMING AMENDMENT.—

20 Section 411(b) of title 17, United States Code, is amended
21 by striking “506 and sections 509 and” and inserting
22 “505 and section”.

23 **SEC. 103. CIVIL REMEDIES FOR INFRINGEMENT.**

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

1 infringed works and the infringing conduct, including
2 whether the infringed works are distinct works having
3 independent economic value.”.

4 **SEC. 105. TREBLE DAMAGES IN COUNTERFEITING CASES.**

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

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

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

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

23 “(3) providing goods or services necessary to
24 the commission of a violation specified in paragraph
25 (1), with the intent that the recipient of the goods

1 or services would put the goods or services to use in
2 committing the violation.

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

10 **SEC. 106. STATUTORY DAMAGES IN COUNTERFEITING**
11 **CASES.**

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

14 (1) in paragraph (1)—

15 (A) by striking “\$500” and inserting
16 “\$1000”; and

17 (B) by striking “\$100,000” and inserting
18 “\$200,000”; and

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

21 **SEC. 107. EXPORTATION OF GOODS BEARING INFRINGING**
22 **MARKS.**

23 Title VII of the Trademark Act of 1946 (15 U.S.C.
24 1124) is amended—

1 (1) in the title heading, by inserting after “IM-
 2 PORTATION” the following: “OR EXPOR-
 3 TATION”; and

4 (2) in section 42—

5 (A) in the first sentence—

6 (i) by striking the word “imported”;

7 and

8 (ii) by inserting after “custom house
 9 of the United States” the following: “, nor
 10 shall any such article be exported from the
 11 United States”.

12 **SEC. 108. IMPORTATION AND EXPORTATION.**

13 (a) IN GENERAL.—The heading for chapter 6 of title
 14 17, United States Code, is amended to read as follows:

15 **“CHAPTER 6—MANUFACTURING REQUIRE-**
 16 **MENTS, IMPORTATION, AND EXPOR-**
 17 **TATION”.**

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

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

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

24 FRINGING IMPORTATION AND EXPORTATION.—

25 “(1) IMPORTATION.—”;

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

3 “(2) IMPORTATION OR EXPORTATION OF IN-
4 FRINGING ITEMS.—Importation into the United
5 States or exportation from the United States, with-
6 out the authority of the owner of copyright under
7 this title, of copies or phonorecords, the making of
8 which either constituted an infringement of copy-
9 right or would have constituted an infringement of
10 copyright if the copies or phonorecords had been
11 made in the United States, is an infringement of the
12 exclusive right to distribute copies or phonorecords
13 under section 106, actionable under sections 501
14 and 506.

15 “(3) EXCEPTIONS.—This subsection does not
16 apply to—”;

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

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

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

1 (B) by inserting “or departing from the
2 United States” after “United States”.

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

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

7 (B) in subsection (b)—

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

11 (ii) by striking “if this title had been appli-
12 cable” and inserting “if the copies or
13 phonorecords had been made in the United
14 States”.

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

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

18 **TITLE II—ENHANCEMENTS TO**
19 **CRIMINAL INTELLECTUAL**
20 **PROPERTY LAWS**

21 **SEC. 201. CRIMINAL INFRINGEMENT OF A COPYRIGHT.**

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

1 (1) in subsection (b)(2), by inserting “is a fel-
2 ony and” after “offense” and by striking “para-
3 graph (1)” and inserting “subsection (a)”;

4 (2) in subsection (c)(2), by inserting “is a fel-
5 ony and” after “offense”, and by striking “para-
6 graph (1)” and inserting “subsection (a)”;

7 (3) in subsection (d)(3), by inserting “is a fel-
8 ony and” after “offense”, and by inserting “under
9 subsection (a)” before the semicolon; and

10 (4) in subsection (d)(4), by inserting “is a fel-
11 ony and” after “offense”.

12 **SEC. 202. HARMONIZATION OF FORFEITURE PROCEDURES**
13 **FOR INTELLECTUAL PROPERTY OFFENSES.**

14 (a) **TRAFFICKING IN COUNTERFEIT LABELS.**—Sec-
15 tion 2318 of title 18, United States Code, is amended—

16 (1) by amending subsection (d) to read as fol-
17 lows:

18 “(d) **FORFEITURE AND DESTRUCTION; RESTITU-**
19 **TION.**—

20 “(1) **CIVIL FORFEITURE PROCEEDINGS.**—(A)

21 The following property is subject to forfeiture to the
22 United States:

23 “(i) Any counterfeit documentation or
24 packaging, and any counterfeit label or illicit
25 label and any article to which a counterfeit

1 label or illicit label has been affixed, or which
2 a counterfeit label or illicit label encloses or ac-
3 companies, or which was intended to have had
4 such label affixed, enclosing, or accompanying.

5 “(ii) Any property constituting or derived
6 from any proceeds obtained directly or indi-
7 rectly as a result of a violation of subsection
8 (a).

9 “(iii) Any property used, or intended to be
10 used, to commit or facilitate the commission of
11 a violation of subsection (a) that is owned or
12 predominantly controlled by the violator or by a
13 person conspiring with or aiding and abetting
14 the violator in committing the violation.

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

1 “(C) In this paragraph, the term ‘aiding and
2 abetting’ means to knowingly provide aid to the vio-
3 lator with the intent to facilitate the violation.

4 “(2) CRIMINAL FORFEITURE PROCEEDINGS.—

5 (A) The court, in imposing sentence on a person
6 convicted of an offense under this section, shall
7 order, in addition to any other sentence imposed,
8 that the person forfeit to the United States the fol-
9 lowing property:

10 “(i) Any counterfeit documentation or
11 packaging, and any counterfeit label or illicit
12 label, that was used, intended for use, or pos-
13 sessed with intent to use in the commission of
14 an offense under subsection (a), and any article
15 to which such a counterfeit label or illicit label
16 has been affixed, which such a counterfeit label
17 or illicit label encloses or accompanies, or which
18 was intended to have had such label affixed, en-
19 closing, or accompanying.

20 “(ii) Any property constituting or derived
21 from any proceeds obtained directly or indi-
22 rectly as a result of an offense under subsection
23 (a).

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

4 “(B) The forfeiture of property under subpara-
5 graph (A), including any seizure and disposition of
6 the property and any related judicial or administra-
7 tive proceeding, shall be governed by the procedures
8 set forth in section 413 of the Comprehensive Drug
9 Abuse Prevention and Control Act of 1970 (21
10 U.S.C. 853), other than subsection (d) of that sec-
11 tion. At the conclusion of the forfeiture proceedings,
12 the court shall order that any counterfeit label or il-
13 licit label and any article to which a counterfeit label
14 or illicit label has been affixed, which a counterfeit
15 label or illicit label encloses or accompanies, or
16 which was intended to have had such label affixed,
17 enclosing, or accompanying, be destroyed or other-
18 wise disposed of according to law.

19 “(3) RESTITUTION.—When a person is con-
20 victed of an offense under this section, the court,
21 pursuant to sections 3556, 3663A, and 3664, shall
22 order the person to pay restitution to the owner of
23 the marks or copyrighted works involved in the of-
24 fense and any other victim of the offense as an of-

1 fense against property referred to in section
2 3663A(c)(1)(A)(ii).”;

3 (2) by striking subsection (e); and

4 (3) by redesignating subsection (f) as sub-
5 section (e).

6 (b) CRIMINAL INFRINGEMENT OF A COPYRIGHT.—

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

10 “(g) FORFEITURE AND DESTRUCTION; RESTITU-
11 TION.—

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

15 “(i) Any copies or phonorecords manufac-
16 tured, reproduced, distributed, sold, or other-
17 wise used, intended for use, or possessed with
18 intent to use in violation of section 506(a) of
19 title 17, and any plates, molds, matrices, mas-
20 ters, tapes, film negatives, or other articles by
21 means of which such copies or phonorecords
22 may be made and any devices for manufac-
23 turing, reproducing, or assembling such copies
24 or phonorecords.

1 “(ii) Any property constituting or derived
2 from any proceeds obtained directly or indi-
3 rectly as a result of a violation of section
4 506(a) of title 17.

5 “(iii) Any property used, or intended to be
6 used, to commit or facilitate the commission of
7 a violation of section 506(a) of title 17 that is
8 owned or predominantly controlled by the viola-
9 tor or by a person conspiring with or aiding and
10 abetting the violator in committing the viola-
11 tion.

12 “(B) The provisions of chapter 46 of title 18
13 relating to civil forfeitures shall extend to any sei-
14 zure or civil forfeiture under this section. At the con-
15 clusion of the forfeiture proceedings, the court shall
16 order that any forfeited infringing copies or
17 phonorecords, and any plates, molds, matrices, mas-
18 ters, tapes, and film negatives by means of which
19 such unauthorized copies or phonorecords may be
20 made, be destroyed or otherwise disposed of accord-
21 ing to law.

22 “(C) In this paragraph, the term ‘aiding and
23 abetting’ means to knowingly provide aid to the vio-
24 lator with the intent to facilitate the violation.

1 “(2) CRIMINAL FORFEITURE PROCEEDINGS.—

2 (A) The court, in imposing sentence on a person
3 convicted of an offense under subsection (a), shall
4 order, in addition to any other sentence imposed,
5 that the person forfeit to the United States the fol-
6 lowing property:

7 “(i) Any copies or phonorecords manufac-
8 tured, reproduced, distributed, sold, or other-
9 wise used, intended for use, or possessed with
10 intent to use in the commission of an offense
11 under subsection (a), and any plates, molds,
12 matrices, masters, tapes, film negatives, or
13 other articles by means of which the copies or
14 phonorecords may be reproduced, and any elec-
15 tronic, mechanical, or other devices for manu-
16 facturing, reproducing, or assembling such cop-
17 ies or phonorecords.

18 “(ii) Any property constituting or derived
19 from any proceeds obtained directly or indi-
20 rectly as a result of an offense under subsection
21 (a).

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

1 “(B) The forfeiture of property under subpara-
2 graph (A), including any seizure and disposition of
3 the property and any related judicial or administra-
4 tive proceeding, shall be governed by the procedures
5 set forth in section 413 of the Comprehensive Drug
6 Abuse Prevention and Control Act of 1970 (21
7 U.S.C. 853), other than subsection (d) of that sec-
8 tion. At the conclusion of the forfeiture proceedings,
9 the court shall order that any forfeited infringing
10 copies or phonorecords, and any plates, molds, mat-
11 rices, masters, tapes, and film negatives by means of
12 which such infringing copies or phonorecords may be
13 made, be destroyed or otherwise disposed of accord-
14 ing to law.

15 “(3) RESTITUTION.—When a person is con-
16 victed of an offense under this section, the court,
17 pursuant to sections 3556, 3663A, and 3664, shall
18 order the person to pay restitution to the copyright
19 owner and any other victim of the offense as an of-
20 fense against property referred to in section
21 3663A(c)(1)(A)(ii).”.

22 “(2) CONFORMING AMENDMENTS.—(A) Section
23 506(b) of title 17, United States Code, is amended
24 by striking all that follows “destruction” and insert-

1 ing the following: “of property as prescribed by sec-
2 tion 2319(g) of title 18.”.

3 (B) Section 509 of title 17, United States Code,
4 relating seizure and forfeiture, and the item relating
5 to section 509 in the table of sections at the begin-
6 ning of chapter 5 of title 17, United States Code,
7 are repealed.

8 (c) UNAUTHORIZED FIXATION AND TRAFFICKING.—

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

11 (A) by striking subsection (c) and redesign-
12 ating subsections (d), (e), and (f) as sub-
13 sections (c), (d), and (e), respectively; and

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

16 “(b) FORFEITURE AND DESTRUCTION; RESTITU-
17 TION.—

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

21 “(i) Any copies or phonorecords of a live
22 musical performance described in subsection
23 (a)(1) that are made without the consent of the
24 performer or performers involved, and any
25 plates, molds, matrices, masters, tapes, and

1 film negatives by means of which such copies or
2 phonorecords may be made.

3 “(ii) Any property constituting or derived
4 from any proceeds obtained directly or indi-
5 rectly as a result of a violation of subsection
6 (a).

7 “(iii) Any property used, or intended to be
8 used, to commit or facilitate the commission of
9 a violation of subsection (a) that is owned or
10 predominantly controlled by the violator or by a
11 person conspiring with or aiding and abetting
12 the violator in committing the violation.

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

23 “(C) In this paragraph, the term ‘aiding and
24 abetting’ means to knowingly provide aid to the vio-
25 lator with the intent to facilitate the violation.

1 “(2) CRIMINAL FORFEITURE PROCEEDINGS.—

2 (A) The court, in imposing sentence on a person
3 convicted of an offense under this section, shall
4 order, in addition to any other sentence imposed,
5 that the person forfeit to the United States the fol-
6 lowing property:

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

15 “(ii) Any property constituting or derived
16 from any proceeds obtained directly or indi-
17 rectly as a result of an offense under subsection
18 (a).

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

22 “(B) The forfeiture of property under subpara-
23 graph (A), including any seizure and disposition of
24 the property and any related judicial or administra-
25 tive proceeding, shall be governed by the procedures

1 set forth in section 413 of the Comprehensive Drug
2 Abuse Prevention and Control Act of 1970 (21
3 U.S.C. 853), other than subsection (d) of that sec-
4 tion. At the conclusion of the forfeiture proceedings,
5 the court shall order that any forfeited unauthorized
6 copies or phonorecords of live musical performances,
7 and any plates, molds, matrices, masters, tapes, and
8 film negatives by means of which such unauthorized
9 copies of phonorecords may be made, be destroyed
10 or otherwise disposed of according to law.

11 “(3) NOTIFICATION OF IMPORTATION.—The
12 Secretary of Homeland Security shall issue regula-
13 tions by which any performer may, upon payment of
14 a specified fee, be entitled to notification by U.S.
15 Customs and Border Protection of the importation
16 of copies or phonorecords that appear to consist of
17 unauthorized fixations of the sounds or sounds and
18 images of a live musical performance prohibited by
19 this section.

20 “(4) RESTITUTION.—When a person is con-
21 victed of an offense under this section, the court,
22 pursuant to sections 3556, 3663A, and 3664, shall
23 order the person to pay restitution to the performer
24 or performers involved, and any other victim of the

1 offense as an offense against property referred to in
2 section 3663A(c)(1)(A)(ii).”.

3 (2) APPLICABILITY.—Section 2319A(e), as re-
4 designated by paragraph (1) of this subsection, is
5 amended by inserting before the period the fol-
6 lowing: “, except that the forfeiture provisions under
7 subsection (b)(2), as added by the Prioritizing Re-
8 sources and Organization for Intellectual Property
9 Act, shall apply only in a case in which the under-
10 lying act or acts occur on or after the date of the
11 enactment of that Act”.

12 (d) UNAUTHORIZED RECORDING OF MOTION PIC-
13 TURES.—Section 2319B(b) of title 18, United States
14 Code, is amended to read as follows:

15 “(b) FORFEITURE AND DESTRUCTION; RESTITU-
16 TION.—

17 “(1) CIVIL FORFEITURE PROCEEDINGS.—(A)

18 The following property is subject to forfeiture to the
19 United States:

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

24 “(ii) Any property constituting or derived
25 from any proceeds obtained directly or indi-

1 rectly as a result of a violation of subsection
2 (a).

3 “(iii) Any property used, or intended to be
4 used, to commit or facilitate the commission of
5 a violation of subsection (a) that is owned or
6 predominantly controlled by the violator or by a
7 person conspiring with or aiding and abetting
8 the violator in committing the violation.

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

20 “(C) In this paragraph, the term ‘aiding and
21 abetting’ means to knowingly provide aid to the vio-
22 lator with the intent to facilitate the violation.

23 “(2) CRIMINAL FORFEITURE PROCEEDINGS.—
24 (A) The court, in imposing sentence on a person
25 convicted of an offense under this section, shall

1 order, in addition to any other sentence imposed,
2 that the person forfeit to the United States the fol-
3 lowing property:

4 “(i) Any unauthorized copies of a motion
5 picture or other audiovisual work protected
6 under title 17, or part thereof, that were used,
7 intended for use, or possessed with intent to use
8 in the commission of an offense under sub-
9 section (a).

10 “(ii) Any property constituting or derived
11 from any proceeds obtained directly or indi-
12 rectly as a result of an offense under subsection
13 (a).

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

17 “(B) The forfeiture of property under subpara-
18 graph (A), including any seizure and disposition of
19 the property and any related judicial or administra-
20 tive proceeding, shall be governed by the procedures
21 set forth in section 413 of the Comprehensive Drug
22 Abuse Prevention and Control Act of 1970 (21
23 U.S.C. 853), other than subsection (d) of that sec-
24 tion. At the conclusion of the forfeiture proceedings,
25 the court shall order that any forfeited unauthorized

1 copies or phonorecords of a motion picture or other
2 audiovisual work, or part thereof, and any plates,
3 molds, matrices, masters, tapes, and film negatives
4 by means of which such unauthorized copies or
5 phonorecords may be made, be destroyed or other-
6 wise disposed of according to law.

7 “(3) RESTITUTION.—When a person is con-
8 victed of an offense under this chapter, the court,
9 pursuant to sections 3556, 3663A, and 3664, shall
10 order the person to pay restitution to the owner of
11 the copyright in the motion picture or other audio-
12 visual work and any other victim of the offense as
13 an offense against property referred to in section
14 3663A(c)(1)(A)(ii).”

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

19 **SEC. 203. DIRECTIVE TO UNITED STATES SENTENCING**
20 **COMMISSION.**

21 (a) REVIEW AND AMENDMENT.—The United States
22 Sentencing Commission, pursuant to its authority under
23 section 994 of title 28, United States Code, shall review
24 and, if appropriate, amend the Federal sentencing guide-
25 lines and policy statements applicable in any case sen-

1 tenced under section 2B5.3 of the Federal sentencing
2 guidelines for exporting infringing items in violation of
3 section 602(a)(2) of title 17, United States Code, to deter-
4 mine whether a defendant in such case should receive an
5 upward adjustment in the offense level, on the grounds
6 that exportation introduces infringing items into the
7 stream of foreign commerce in a manner analogous to the
8 manner in which manufacturing, importing, and uploading
9 such items introduces them into the stream of commerce.

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

16 **SEC. 204. TRAFFICKING IN COUNTERFEIT GOODS OR SERV-**
17 **ICES.**

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

20 (1) in subsection (a)—

21 (A) by striking “Whoever” and inserting “

22 “(1) IN GENERAL.—Whoever”;

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

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

1 “(2) SERIOUS BODILY HARM OR DEATH.—

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

8 “(B) DEATH.—If the offender knowingly
9 or recklessly causes or attempts to cause death
10 from conduct in violation of paragraph (1), the
11 penalty shall be a fine under this title or im-
12 prisonment for any term of years or for life, or
13 both.”; and

14 (2) in subsection (b)(1)—

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

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

19 “(B) Any property constituting or derived
20 from any proceeds obtained directly or indi-
21 rectly as a result of a violation of subsection
22 (a).”.

1 **TITLE III—COORDINATION AND**
2 **STRATEGIC PLANNING OF**
3 **FEDERAL EFFORT AGAINST**
4 **COUNTERFEITING AND PI-**
5 **RACY**

6 **Subtitle A—Office of the United**
7 **States Intellectual Property En-**
8 **forcement Representative**

9 **SEC. 301. OFFICE OF THE UNITED STATES INTELLECTUAL**
10 **PROPERTY ENFORCEMENT REPRESENTA-**
11 **TIVE.**

12 (a) ESTABLISHMENT WITHIN EXECUTIVE OFFICE OF
13 THE PRESIDENT.—There is established within the Execu-
14 tive Office of the President the Office of the United States
15 Intellectual Property Enforcement Representative (in this
16 title referred to as “the Office”).

17 (b) UNITED STATES INTELLECTUAL PROPERTY EN-
18 FORCEMENT REPRESENTATIVE.—The head of the Office
19 shall be the United States Intellectual Property Enforce-
20 ment Representative (in this title referred to as the “IP
21 Enforcement Representative”) who shall be appointed by
22 the President, by and with the advice and consent of the
23 Senate. As an exercise of the rulemaking power of the
24 Senate, any nomination of the IP Enforcement Represent-
25 ative submitted to the Senate for confirmation, and re-

1 referred to a committee, shall be referred to the Committee
2 on the Judiciary. The IP Enforcement Representative
3 shall hold office at the pleasure of the President, shall be
4 entitled to receive the same allowances as a chief of mis-
5 sion, and shall have the rank of Ambassador Extraor-
6 dinary and Plenipotentiary.

7 (c) DUTIES OF IP ENFORCEMENT REPRESENTA-
8 TIVE.—

9 (1) IN GENERAL.—The IP Enforcement Rep-
10 resentative shall—

11 (A) have primary responsibility for devel-
12 oping, coordinating, and facilitating the imple-
13 mentation, by the departments and agencies
14 listed in subsection (d)(2), the policies, objec-
15 tives, and priorities of the Joint Strategic Plan
16 against counterfeiting and piracy under section
17 321;

18 (B) serve as the principal advisor to the
19 President on domestic and international intel-
20 lectual property enforcement policy;

21 (C) assist the United States Trade Rep-
22 resentative in conducting negotiations on behalf
23 of the United States relating to international
24 intellectual property enforcement, including ne-
25 gotiations on any intellectual property enforce-

1 ment matter considered under the auspices of
2 the World Trade Organization or in the course
3 of commodity and direct investment negotia-
4 tions in which the United States participates;

5 (D) issue and coordinate policy guidance to
6 departments and agencies on basic issues of
7 policy and interpretation that arise in the exer-
8 cise of domestic and international intellectual
9 property enforcement functions to the extent
10 necessary to assure the coordination of inter-
11 national intellectual property enforcement policy
12 and consistent with any other law;

13 (E) act as the principal spokesperson of
14 the President on domestic and international in-
15 tellectual property enforcement matters;

16 (F) report directly to the President and
17 the Congress regarding, and be responsible to
18 the President and the Congress for the adminis-
19 tration of, intellectual property enforcement
20 programs;

21 (G) advise the President and the Congress
22 with respect to domestic and international intel-
23 lectual property enforcement challenges and pri-
24 orities;

1 (H) report to the Congress, as provided in
2 section 322, on the implementation of the Joint
3 Strategic Plan, and make recommendations to
4 the Congress for improvements in Federal intel-
5 lectual property enforcement efforts;

6 (I) chair the interagency intellectual prop-
7 erty enforcement advisory committee estab-
8 lished under subsection (d)(2), and consult with
9 such advisory committee in the performance of
10 the functions of the IP Enforcement Represent-
11 ative; and

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

14 (2) SENSE OF CONGRESS.—It is the sense of
15 the Congress that the IP Enforcement Representa-
16 tive should—

17 (A) be the senior representative on any
18 body that the President may establish for the
19 purpose of providing to the President advice on
20 overall policies in which intellectual property en-
21 forcement matters predominate; and

22 (B) be included as a participant in all eco-
23 nomic summit and other international meetings
24 at which international intellectual property en-
25 forcement is a major topic.

1 (3) DELEGATION.—The IP Enforcement Rep-
2 representative may—

3 (A) delegate any of the IP Enforcement
4 Representative’s functions, powers, and duties
5 to such officers and employees of the Office as
6 the IP Enforcement Representative may des-
7 ignate; and

8 (B) authorize such successive redelegations
9 of such functions, powers, and duties to such
10 officers and employees of the Office as IP En-
11 forcement Representative considers appropriate.

12 (d) COORDINATION OF INTELLECTUAL PROPERTY
13 ENFORCEMENT ACTIONS.—

14 (1) IN GENERAL.—In carrying out the func-
15 tions of the IP Enforcement Representative, the IP
16 Enforcement Representative shall coordinate the al-
17 location of interagency resources for intellectual
18 property enforcement, including identifying, and re-
19 ferring to the appropriate Federal department or
20 agency, for consideration with respect to action, vio-
21 lations of intellectual property laws.

22 (2) ADVISORY COMMITTEE.—For purposes of
23 assisting the IP Enforcement Representative in car-
24 rying out the functions of the IP Enforcement Rep-
25 resentative, there is established an interagency intel-

1 lectual property enforcement advisory committee
2 composed of the IP Enforcement Representative,
3 who shall chair the committee, and senior represent-
4 atives of the following departments and agencies who
5 are involved in intellectual property enforcement,
6 and are appointed by the respective heads of those
7 departments and agencies:

8 (A) The Department of Justice (including
9 the Intellectual Property Enforcement Officer
10 appointed under section 501).

11 (B) The United States Patent and Trade-
12 mark Office and other relevant units of the De-
13 partment of Commerce.

14 (C) The Office of the United States Trade
15 Representative.

16 (D) The Department of State (including
17 the United States Agency for International De-
18 velopment and the Bureau of International
19 Narcotics Law Enforcement).

20 (E) The Department of Homeland Security
21 (including U.S. Customs and Border Protection
22 and U.S. Immigration and Customs Enforce-
23 ment).

24 (F) The United States International Trade
25 Commission.

1 (G) The Food and Drug Administration of
2 the Department of Health and Human Services.

3 (H) The United States Copyright Office.

4 (I) Such other agencies as the IP Enforce-
5 ment Representative determines to be substan-
6 tially involved in the efforts of the Federal Gov-
7 ernment to combat counterfeiting and piracy.

8 (e) IDENTIFICATION OF COUNTRIES THAT DENY
9 ADEQUATE PROTECTION OF INTELLECTUAL PROPERTY
10 RIGHTS.—Section 182(b)(2)(A) of the Trade Act of 1974
11 (19 U.S.C. 2242(b)(2)(A)) is amended by inserting “the
12 United States Intellectual Property Enforcement Rep-
13 resentative,” after “shall consult with”.

14 (f) POWERS OF IP ENFORCEMENT REPRESENTA-
15 TIVE.—In carrying out the responsibilities under this title,
16 the IP Enforcement Representative may—

17 (1) select, appoint, employ, and fix the com-
18 pensation of such officers and employees as may be
19 necessary to carry out those responsibilities;

20 (2) request the head of a department, agency,
21 or program of the Federal Government to place per-
22 sonnel of such department, agency, or program who
23 are engaged in intellectual property enforcement ac-
24 tivities on temporary detail to the Office of the IP

1 Enforcement Representative to assist in carrying out
2 those responsibilities;

3 (3) use for administrative purposes, on a reim-
4 bursable basis, the available services, equipment,
5 personnel, and facilities of Federal, State, and local
6 government agencies;

7 (4) procure the services of experts and consult-
8 ants in accordance with section 3109 of title 5,
9 United States Code, relating to the procurement of
10 temporary and intermittent services, at rates of com-
11 pensation for individuals not to exceed the daily
12 equivalent of the rate of pay payable under level IV
13 of the Executive Schedule under section 5315 of title
14 5, United States Code, and while such experts and
15 consultants are so serving away from their homes or
16 regular place of business, to pay such employees
17 travel expenses and per diem in lieu of subsistence
18 at rates authorized by section 5703 of title 5, United
19 States Code, for persons in Government service em-
20 ployed intermittently;

21 (5) issue such regulations as may be necessary
22 to carry out the functions vested in the IP Enforce-
23 ment Representative;

24 (6) enter into and perform such contracts,
25 leases, cooperative agreements, or other transactions

1 as may be necessary in the conduct of the work of
2 the Office and on such terms as the IP Enforcement
3 Representative considers appropriate, with any de-
4 partment, agency, or instrumentality of the United
5 States, or with any public or private person, firm,
6 association, corporation, or institution;

7 (7) accept voluntary and uncompensated serv-
8 ices, notwithstanding the provisions of section 1342
9 of title 31, United States Code;

10 (8) adopt an official seal, which shall be judi-
11 cially noticed; and

12 (9) accept, hold, administer, and use gifts, de-
13 vises, and bequests of property, both real and per-
14 sonal, for the purpose of aiding or facilitating the
15 work of the Office.

16 (g) COMPENSATION.—Section 5312 of title 5, United
17 States Code, is amended by adding at the end the fol-
18 lowing:

19 “United States Intellectual Property Enforce-
20 ment Representative.”.

21 **SEC. 302. DEFINITION.**

22 For purposes of this title, the term “intellectual prop-
23 erty enforcement” means matters relating to the enforce-
24 ment of laws protecting copyrights, patents, trademarks,
25 other forms of intellectual property, and trade secrets,

1 both in the United States and abroad, including matters
2 relating to combating counterfeit and pirated goods.

3 **Subtitle B—Joint Strategic Plan**

4 **SEC. 321. JOINT STRATEGIC PLAN.**

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

9 (1) Eliminating counterfeit and pirated goods
10 from the international supply chain.

11 (2) Identifying individuals, financial institu-
12 tions, business concerns, and other entities involved
13 in the financing, production, trafficking, or sale of
14 counterfeit or pirated goods.

15 (3) Identifying and sharing information among
16 the relevant departments and agencies for the pur-
17 pose of arresting and prosecuting individuals and en-
18 tities that are knowingly involved the financing, pro-
19 duction, trafficking, or sale of counterfeit or pirated
20 goods.

21 (4) Disrupting and eliminating counterfeit and
22 piracy networks.

23 (5) Strengthening the capacity of other coun-
24 tries to protect and enforce intellectual property
25 rights, and reducing the number of countries that

1 fail to enforce laws preventing the financing, produc-
2 tion, trafficking, and sale of counterfeit and pirated
3 goods.

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

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

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

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

15 (ii) have legal regimes that enforce
16 their own domestic intellectual property
17 laws, eliminate counterfeit and piracy oper-
18 ations, and arrest and prosecute those who
19 commit intellectual property crimes;

20 (iii) provide their law enforcement of-
21 ficials with the authority to seize, inspect,
22 and destroy pirated and counterfeit goods,
23 including at ports of entry;

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

4 (v) are not on the Priority Watch List
5 issued by the United States Trade Rep-
6 resentative under section 182 of the Trade
7 Act of 1974 (19 U.S.C. 2242);

8 (B) exchanging information with appro-
9 priate law enforcement agencies in other coun-
10 tries relating to individuals and entities involved
11 in the financing, production, trafficking, or sale
12 of pirated or counterfeit goods;

13 (C) using the information described in sub-
14 paragraph (B) to conduct enforcement activities
15 in cooperation with appropriate law enforce-
16 ment agencies in other countries; and

17 (D) building a formal process for con-
18 sulting with companies, industry associations,
19 labor unions, and other interested groups in
20 other countries with respect to intellectual prop-
21 erty enforcement.

22 (b) TIMING.—Not later than 6 months after the date
23 of the enactment of this Act, and not later than December
24 31 of every third year thereafter, the IP Enforcement
25 Representative shall submit the joint strategic plan to the

1 President, to the Committee on the Judiciary and the
2 Committee on Appropriations of the House of Representa-
3 tives, and to the Committee on the Judiciary and the Com-
4 mittee on Appropriations of the Senate.

5 (c) RESPONSIBILITY OF THE IP ENFORCEMENT REP-
6 RESENTATIVE.—In developing the joint strategic plan, the
7 IP Enforcement Representative—

8 (1) shall consult and coordinate with the appro-
9 priate officers and employees of departments and
10 agencies represented on the advisory committee ap-
11 pointed under section 301(d)(2) who are involved in
12 intellectual property enforcement; and

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

15 (d) RESPONSIBILITIES OF OTHER DEPARTMENTS
16 AND AGENCIES.—To assist in the development and imple-
17 mentation of the joint strategic plan, the heads of the de-
18 partments and agencies identified under section 301(d)(2)
19 (including the heads of any other agencies identified by
20 the IP Enforcement Representative under section
21 (d)(2)(I)) shall—

22 (1) designate personnel with expertise and expe-
23 rience in intellectual property enforcement matters
24 to work with the IP Enforcement Representative;
25 and

1 (2) share relevant department or agency infor-
2 mation with the IP Enforcement Representative, in-
3 cluding statistical information on the enforcement
4 activities of the department or agency against coun-
5 terfeiting or piracy.

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

7 Each joint strategic plan shall include the following:

8 (1) A detailed description of the priorities iden-
9 tified for activities of the Federal Government relat-
10 ing to intellectual property enforcement.

11 (2) A detailed description of the means and
12 methods to be employed to achieve the priorities, in-
13 cluding the means and methods for improving the
14 efficiency and effectiveness of the Federal Govern-
15 ment's enforcement efforts against counterfeiting
16 and piracy.

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

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

22 (5) An analysis of the threat posed by violations
23 of intellectual property rights, including targets,
24 risks, and threats of intellectual property theft, and
25 the costs to the economy of the United States result-

1 ing from violations of intellectual property laws and
2 the threats to public health and safety created by
3 counterfeiting and piracy.

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

7 (7) A strategy for ensuring coordination be-
8 tween the IP Enforcement Representative and the
9 departments and agencies identified under para-
10 graph (6), including a process for oversight of, and
11 accountability among, the departments and agencies
12 carrying out the strategy.

13 (8) Such other information as the IP Enforce-
14 ment Representative considers important in con-
15 veying to the recipients of the report, and to the
16 people of the United States, the costs imposed on
17 the United States economy and the threats to public
18 health and safety created by counterfeiting and pi-
19 racy, and the steps that the Federal Government will
20 take over the period covered by the succeeding joint
21 strategic plan to reduce those costs and counter
22 those threats.

23 (f) ENHANCING ENFORCEMENT EFFORTS OF FOR-
24 EIGN GOVERNMENTS.—The joint strategic plan shall in-
25 clude programs to provide training and technical assist-

1 ance to foreign governments for the purpose of enhancing
2 the efforts of such governments to enforce laws against
3 counterfeiting and piracy. With respect to such programs,
4 the IP Enforcement Representative, in developing the
5 joint strategic plan, shall—

6 (1) seek to enhance the efficiency and consist-
7 ency with which Federal resources are expended,
8 and seek to minimize duplication, overlap, or incon-
9 sistency of efforts;

10 (2) identify and give priority to those countries
11 where programs of training and technical assistance
12 can be carried out most effectively and with the
13 greatest benefit to reducing counterfeit and pirated
14 products in the United States market, to protecting
15 the intellectual property rights of United States per-
16 sons and their licensees, and to protecting the inter-
17 ests of United States persons otherwise harmed by
18 violations of intellectual property rights in those
19 countries;

20 (3) in identifying the priorities under paragraph
21 (2), be guided by the countries identified by the
22 United States Trade Representative under section
23 182(a) of the Trade Act of 1974 (19 U.S.C.
24 2242(a)); and

1 (4) develop metrics to measure the effectiveness
2 of the Federal Government's efforts to improve the
3 laws and enforcement practices of foreign govern-
4 ments against counterfeiting and piracy.

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

10 **SEC. 322. REPORTING.**

11 (a) ANNUAL REPORT.—Not later than December 31
12 of each year, the IP Enforcement Representative shall
13 submit an report on the activities of the Office during the
14 preceding fiscal year. The annual report shall be sub-
15 mitted to the President and the Congress, and dissemi-
16 nated to the people of the United States, in the manner
17 specified in subsections (b) and (g) of section 321.

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

20 (1) The progress made on implementing the
21 strategic plan and on the progress toward fulfillment
22 of the priorities identified under section 321(e).

23 (2) The progress made toward efforts to en-
24 courage Federal, State, and local government de-

1 departments and agencies to accord higher priority to
2 intellectual property enforcement.

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

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

12 (5) An assessment of the successes and short-
13 comings of the efforts of the Federal Government,
14 including departments and agencies represented on
15 the committee appointed under section 301(d)(2), in
16 fulfilling the priorities identified in the applicable
17 joint strategic plan during the preceding fiscal year.

18 (6) Recommendations for any changes in stat-
19 utes, regulations, or funding levels that the IP Rep-
20 resentative considers would significantly improve the
21 effectiveness or efficiency of the effort of the Federal
22 Government to combat counterfeiting and piracy and
23 otherwise strengthen intellectual property enforce-
24 ment.

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

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

7 (9) The progress of the United States Trade
8 Representative in taking the appropriate action
9 under any trade agreement or treaty to protect intel-
10 lectual property rights of United States persons and
11 their licensees.

12 **SEC. 323. OTHER INTELLECTUAL PROPERTY ACTIVITIES.**

13 If in any other case in which the IP Representative
14 identifies other intellectual property initiatives of the Fed-
15 eral Government that include enforcement activities simi-
16 lar or identical to the activities described in this title, the
17 IP Representative shall consolidate those activities into
18 the work of the Office of the IP Representative in order
19 to prevent duplication. Other activities that may improve
20 intellectual property enforcement may continue outside of
21 the Office of the Intellectual Property Enforcement Rep-
22 resentative, including—

23 (1) capacity building in other countries (other
24 than activities to carry out the objectives described
25 in section 321(a)(7); and

1 (2) bilateral and multilateral cooperative ef-
2 forts.

3 **SEC. 324. SAVINGS AND REPEALS.**

4 (a) REPEAL OF COORDINATION COUNCIL.—Section
5 653 of the Treasury and General Government Appropria-
6 tions Act, 2000 (15 U.S.C. 1128) is repealed.

7 (b) CURRENT AUTHORITIES NOT AFFECTED.—Ex-
8 cept as provided in subsection (a), nothing in this title
9 shall alter the authority of any department or agency of
10 the United States to investigate and prosecute violations
11 of laws protecting intellectual rights.

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

15 **SEC. 325. AUTHORIZATION OF APPROPRIATIONS.**

16 There are authorized to be appropriated for each fis-
17 cal year such sums as may be necessary to carry out this
18 title. By not later than the date on which the President
19 submits to Congress the budget of the United States Gov-
20 ernment for a fiscal year, the IP Representative shall sub-
21 mit to the Committees on the Judiciary of the House of
22 Representatives and the Senate the projected amount of
23 funds for the succeeding fiscal year that will be necessary
24 for the Office to carry out its functions.

1 **TITLE IV—INTERNATIONAL EN-**
2 **FORCEMENT AND COORDINA-**
3 **TION**

4 **SEC. 401. INTELLECTUAL PROPERTY ATTACHÉS.**

5 The Under Secretary of Commerce for Intellectual
6 Property and Director of the United States Patent and
7 Trademark Office (in this title referred to as the “Direc-
8 tor”), in consultation with the Director General of the
9 United States and Foreign Commercial Service, shall ap-
10 point 10 intellectual property attachés to serve in United
11 States embassies or other diplomatic missions. The 10 ap-
12 pointments shall be in addition to personnel serving in the
13 capacity of intellectual property attaché at United States
14 embassies or other diplomatic missions on the date of the
15 enactment of this Act.

16 **SEC. 402. DUTIES AND RESPONSIBILITIES OF INTELLEC-**
17 **TUAL PROPERTY ATTACHÉS.**

18 The intellectual property attachés appointed under
19 section 401, as well as others serving as intellectual prop-
20 erty attachés of the Department of Commerce, shall have
21 the following responsibilities:

- 22 (1) To promote cooperation with foreign gov-
23 ernments in the enforcement of intellectual property
24 laws generally, and in the enforcement of laws
25 against counterfeiting and piracy in particular.

1 (2) To assist United States persons holding in-
2 tellectual property rights, and the licensees of such
3 United States persons, in their efforts to combat
4 counterfeiting and piracy of their products or works
5 within the host country, including counterfeit or pi-
6 rated goods exported from or transshipped through
7 that country.

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

12 (4) To coordinate with representatives of the
13 embassies or missions of other countries in informa-
14 tion sharing, private or public communications with
15 the government of the host country, and other forms
16 of cooperation for the purpose of improving enforce-
17 ment against counterfeiting and piracy.

18 (5) As appropriate and in accordance with ap-
19 plicable laws and the diplomatic status of the
20 attachés, to engage in public education efforts
21 against counterfeiting and piracy in the host coun-
22 try.

23 (6) To coordinate training and technical assist-
24 ance programs of the United States Government
25 within the host country that are aimed at improving

1 the enforcement of laws against counterfeiting and
2 piracy.

3 (7) To identify and promote other means to
4 more effectively combat counterfeiting and piracy ac-
5 tivities under the jurisdiction of the host country.

6 **SEC. 403. TRAINING AND DESIGNATION OF ASSIGNMENT.**

7 (a) TRAINING OF ATTACHÉS.—The Director shall en-
8 sure that each attaché appointed under section 401 is fully
9 trained for the responsibilities of the position before as-
10 suming duties at the United States embassy or other mis-
11 sion in question.

12 (b) PRIORITY ASSIGNMENTS.—In designating the
13 embassies or other missions to which attachés are as-
14 signed, the Director shall give priority to those countries
15 where the activities of an attaché can be carried out most
16 effectively and with the greatest benefit to reducing coun-
17 terfeit and pirated products in the United States market,
18 to protecting the intellectual property rights of United
19 States persons and their licensees, and to protecting the
20 interests of United States persons otherwise harmed by
21 violations of intellectual property rights in those countries.

22 **SEC. 404. COORDINATION.**

23 (a) IN GENERAL.—The activities authorized by this
24 title shall be carried out in coordination with the United

1 States Intellectual Property Enforcement Representative
2 appointed under section 301.

3 (b) REPORT ON ATTACHÉS.—The Director shall sub-
4 mit to the Congress each year a report on the appoint-
5 ment, designation for assignment, and activities of all in-
6 tellectual property attachés of the Department of Com-
7 merce who are serving at United States embassies or other
8 diplomatic missions.

9 **SEC. 405. AUTHORIZATION OF APPROPRIATIONS.**

10 There are authorized to be appropriated for each fis-
11 cal year such sums as may be necessary for the training
12 and support of the intellectual property attachés appointed
13 under section 401 and of other personnel serving as intel-
14 lectual property attachés of the Department of Commerce.

15 **TITLE V—DEPARTMENT OF**
16 **JUSTICE PROGRAMS**
17 **Subtitle A—Coordination**

18 **SEC. 501. INTELLECTUAL PROPERTY ENFORCEMENT OFFI-**
19 **CER.**

20 (a) ESTABLISHMENT.—There is established within
21 the Office of the Deputy Attorney General in the Depart-
22 ment of Justice the “Intellectual Property Enforcement
23 Division”. The head of the Intellectual Property Enforce-
24 ment Division shall be the Intellectual Property Enforce-
25 ment Officer (in this title referred to as the “IP Officer”).

1 The IP Officer shall be appointed by the Attorney General
2 and shall report directly to the Deputy Attorney General.

3 (b) DUTIES.—The IP Officer shall—

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

8 (2) serve as the lead representative of the De-
9 partment of Justice on the advisory committee pro-
10 vided for in section 301(d)(2) and as the liaison of
11 the Department of Justice with foreign governments
12 with respect to training conducted under section
13 522; and

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

16 (c) TRANSFER OF FUNCTIONS.—

17 (1) CRIMINAL INTELLECTUAL PROPERTY EN-
18 FORCEMENT.—There are transferred to the Intellec-
19 tual Property Enforcement Division those functions
20 of the Computer Crime and Intellectual Property
21 Section of the Criminal Division of the Department
22 of Justice that relate to the enforcement of criminal
23 laws relating to the protection of intellectual prop-
24 erty rights and trade secrets, including the following:

1 (A) Section 506 and 1204 of title 17,
2 United States Code.

3 (B) Section 2318 through 2320 of title 18,
4 United States Code.

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

7 (D) Any other provision of law, including
8 the following, to the extent such provision in-
9 volves the enforcement of any provision of law
10 referred to in subparagraphs (A) through (C)
11 or comparable provision of law:

12 (i) Section 1341 of title 18, United
13 States Code, relating to frauds and swin-
14 dles.

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

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

21 (iv) Section 633 of the Communica-
22 tions Act of 1934 (47 U.S.C. 553), relat-
23 ing to the unauthorized reception of cable
24 service.

1 (v) Section 705 of the Communica-
2 tions Act of 1934 (47 U.S.C. 605), relat-
3 ing to the unauthorized publication or use
4 of communications.

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

10 **Subtitle B—Law Enforcement** 11 **Resources**

12 **SEC. 511. LOCAL LAW ENFORCEMENT GRANTS.**

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

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

19 (2) in subsection (e)(1), relating to authoriza-
20 tion of appropriations, by striking “fiscal years 2001
21 through 2004” and inserting “fiscal years 2008
22 through 2012”.

23 (b) GRANTS.—The Office of Justice Programs of the
24 Department of Justice shall make grants to eligible State
25 or local law enforcement entities, including law enforce-

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

6 (1) USE OF IP-TIC GRANT AMOUNTS.—IP-TIC
7 grants may be used to establish and develop pro-
8 grams to do the following with respect to the en-
9 forcement of State and local true name and address
10 laws and State and local criminal laws on anti-pi-
11 racy, anti-counterfeiting, and theft of goods pro-
12 tected by any copyright, patent, trademark, service
13 mark, trade secret, or other intellectual property
14 right under State or Federal 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 multi-jurisdictional task forces.

22 (2) ELIGIBILITY.—To be eligible to receive an
23 IP–TIC grant, a State or local government entity
24 must 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 Local Law Enforcement Block
17 Grant program (described under the heading
18 “Violent Crime Reduction Programs, State and
19 Local Law Enforcement Assistance” in title I
20 of the Departments of Commerce, Justice, and
21 State, the Judiciary, and Related Agencies Ap-
22 propriations Act, 1998 (Public Law 105–119)).

23 (3) MATCHING FUNDS.—The Federal share of
24 an IP–TIC grant may not exceed 90 percent of the
25 costs of the program or proposal funded by the IP–

1 TIC grant, unless the Attorney General waives, in
2 whole or in part, the 90 percent requirement.

3 (4) AUTHORIZATION OF APPROPRIATIONS.—

4 (A) AUTHORIZATION.—There is authorized
5 to be appropriated to carry out this subsection
6 the sum of \$25,000,000 for each of fiscal years
7 2008 through 2012.

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

13 **SEC. 512. CHIP UNITS, TRAINING, AND ADDITIONAL RE-**
14 **SOURCES.**

15 (a) EVALUATION OF CHIP UNITS.—The Attorney
16 General shall review the allocation and activities of the
17 Computer Hacking and Intellectual Property (in this sec-
18 tion referred to as “CHIP”) units that have been estab-
19 lished in various Federal judicial districts, with the goals
20 of—

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

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

4 (3) upgrading the training and expertise of De-
5 partment of Justice personnel participating in CHIP
6 units; and

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

11 (b) REQUIREMENTS.—In addition to any initiatives
12 undertaken as a result of the review conducted under sub-
13 section (a), the Attorney General, in consultation with the
14 Director of the Federal Bureau of Investigation, shall en-
15 sure that—

16 (1) each CHIP unit is assigned at least 2 addi-
17 tional agents of the Federal Bureau of Investigation
18 to support such unit for the purpose of investigating
19 intellectual property crimes;

20 (2) each CHIP unit is assigned at least 1 addi-
21 tional assistant United States attorney to support
22 such unit for the purpose of prosecuting intellectual
23 property crimes or other crimes involved in counter-
24 feiting or piracy activities;

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

5 (4) an operational unit is created consisting of
6 not less than 5 agents of the Federal Bureau of In-
7 vestigation, attached to the headquarters of the Fed-
8 eral Bureau of Investigation in Washington, DC,
9 and dedicated to working with the Intellectual Prop-
10 erty Enforcement Division established by section
11 501 on the development, investigation, and coordina-
12 tion of complex, multi-district, and international
13 criminal intellectual property cases.

14 (c) COORDINATION WITH STATE AND LOCAL AU-
15 THORITIES.—The United States attorney for each Federal
16 judicial district in which a CHIP unit is in operation shall
17 ensure that the activities of that unit are coordinated with
18 the corresponding activities of State and local law enforce-
19 ment agencies operating within that Federal judicial dis-
20 trict in the investigation of intellectual property crimes
21 and other crimes involved in counterfeiting or piracy, in-
22 cluding by coordinating Federal, State, and local oper-
23 ations and intelligence sharing to the extent appropriate.

24 (d) ADDITIONAL RESPONSIBILITIES OF THE ATTOR-
25 NEY GENERAL.—The Attorney General, in consultation

1 with the Director of the Federal Bureau of Investigation
2 as appropriate, shall ensure the following:

3 (1) All agents of the Federal Bureau of Inves-
4 tigation, and all assistant United States attorneys,
5 who are assigned to CHIP units have received ad-
6 vanced training, on an annual basis, in the investiga-
7 tion and prosecution of intellectual property crimes
8 and other crimes involved in counterfeiting and pi-
9 racy.

10 (2) A comprehensive training program on the
11 development and investigation of criminal offenses
12 involved in counterfeiting and piracy is provided for
13 all agents of the Federal Bureau of Investigation.

14 (3) All relevant units of the Department of Jus-
15 tice are allocated sufficient funding and other re-
16 sources as may be necessary to provide expert com-
17 puter forensic assistance, including from nongovern-
18 mental entities, in investigating and prosecuting in-
19 tellectual property crimes in a timely manner. For
20 purposes of this paragraph, the term “all relevant
21 units” includes those officers and employees as-
22 signed to carry out the functions transferred by sec-
23 tion 502(a)(1), CHIP units, offices of the United
24 States attorneys, and units of the Federal Bureau of

1 Investigation that are engaged in the investigation of
2 intellectual property crimes.

3 **SEC. 513. TRANSPARENCY OF PROSECUTORIAL DECISION-**
4 **MAKING.**

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

7 (1) to review the formal or informal standards
8 currently in effect in that Federal judicial district
9 for accepting or declining prosecution of cases in-
10 volving criminal violations of intellectual property
11 laws;

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

14 (A) to ensure that significant violations are
15 not being declined for prosecution inappropri-
16 ately; or

17 (B) in light of the broader impact of indi-
18 vidual cases on the overall strategy to combat
19 counterfeiting and piracy; and

20 (3) to review the practices and procedures cur-
21 rently in place for providing information to com-
22 plainants and victims in cases and investigations in-
23 volving criminal violations of intellectual property
24 laws regarding the status of such cases and inves-
25 tigation, including the practices and procedures for

1 apprising interested parties of the decision to decline
2 prosecution of such cases.

3 (b) CONSTRUCTION.—(1) Nothing in this section
4 shall be construed to impinge on the appropriate exercise
5 of prosecutorial discretion with regard to cases involving
6 criminal violations of intellectual property laws or to re-
7 quire the promulgation of formal standards or thresholds
8 regarding prosecution of any cases.

9 (2) Nothing in the section shall give rise to any claim,
10 cause of action, defense, privilege, or immunity that may
11 be asserted by any party to Federal litigation.

12 **SEC. 514. AUTHORIZATION OF APPROPRIATIONS.**

13 There are authorized to be appropriated for each fis-
14 cal year such sums as may be necessary to carry out this
15 subtitle.

16 **Subtitle C—International Activities**

17 **SEC. 521. INTERNATIONAL INTELLECTUAL PROPERTY LAW**
18 **ENFORCEMENT COORDINATORS.**

19 (a) DEPLOYMENT OF ADDITIONAL COORDINATION.—
20 The Attorney General shall, within 180 days after the date
21 of the enactment of this Act, deploy 5 Intellectual Prop-
22 erty Law Enforcement Coordinators, in addition to those
23 serving in such capacity on such date of enactment. Such
24 deployments shall be made to those countries and regions
25 where the activities of such a coordinator can be carried

1 out most effectively and with the greatest benefit to reduc-
2 ing counterfeit and pirated products in the United States
3 market, to protecting the intellectual property rights of
4 United States persons and their licensees, and to pro-
5 tecting the interests of United States persons otherwise
6 harmed by violations of intellectual property rights in
7 those countries. The mission of all International Intellec-
8 tual Property Law Enforcement Coordinators shall in-
9 clude the following:

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

13 (2) Performing outreach and training to build
14 the enforcement capacity of foreign governments
15 against intellectual property-related crime in the re-
16 gions in which the coordinators serve.

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

20 (4) Coordinating with the activities of the intel-
21 lectual property attachés appointed under title IV in
22 the countries or regions to which the coordinators
23 are deployed.

24 (5) Coordinating the activities of the coordina-
25 tors with the IP Officer.

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

7 **SEC. 522. INTERNATIONAL TRAINING ACTIVITIES OF THE**
8 **COMPUTER CRIME AND INTELLECTUAL**
9 **PROPERTY SECTION.**

10 (a) INCREASED TRAINING AND TECHNICAL ASSIST-
11 ANCE TO FOREIGN GOVERNMENTS.—The Attorney Gen-
12 eral shall increase the efforts of the Department of Justice
13 to provide training and technical assistance to foreign gov-
14 ernments, including foreign law enforcement agencies and
15 foreign courts, to more effectively combat counterfeiting
16 and piracy activities falling within the jurisdiction of such
17 governments.

18 (b) CONDUCT OF PROGRAMS.—The increased train-
19 ing and technical assistance programs under subsection
20 (a) shall be carried out by the Intellectual Property En-
21 forcement Division established by section 501, as well as
22 through such other divisions, sections, or agencies of the
23 Department of Justice as the Attorney General may di-
24 rect.

1 (c) PRIORITY COUNTRIES.—The Attorney General, in
2 providing increased training and technical assistance pro-
3 grams under this section, shall give priority to those coun-
4 tries where such programs can be carried out most effec-
5 tively and with the greatest likelihood of reducing counter-
6 feit and pirated products in the United States market, of
7 protecting the intellectual property rights of United States
8 persons, and of protecting the interests of United States
9 persons otherwise harmed by violations of intellectual
10 property rights in those countries.

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

14 **Subtitle D—Coordination,**
15 **Implementation, and Reporting**

16 **SEC. 531. COORDINATION.**

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

20 **SEC. 532. ANNUAL REPORTS.**

21 Not later than 1 year after the date of the enactment
22 of this Act, and annually thereafter, the Attorney General
23 shall submit to the Committees on the Judiciary of the
24 Senate and the House of Representatives a report on ac-

- 1 tions taken to carry out the requirements of this title, in-
- 2 cluding a report on the activities of the IP Officer.

○