

110TH CONGRESS
2^D SESSION

S. 3325

AN ACT

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,*

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

2 (a) **SHORT TITLE.**—This Act may be cited as the
 3 “Prioritizing Resources and Organization for Intellectual
 4 Property Act of 2008”.

5 (b) **TABLE OF CONTENTS.**—The table of contents is
 6 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. Civil remedies for infringement.

Sec. 103. Treble damages in counterfeiting cases.

Sec. 104. Statutory damages in counterfeiting cases.

Sec. 105. Importation and exportation.

**TITLE II—ENHANCEMENTS TO CRIMINAL INTELLECTUAL
 PROPERTY LAWS**

Sec. 201. Criminal copyright infringement.

Sec. 202. Trafficking in counterfeit labels, illicit labels, or counterfeit docu-
 mentation or packaging for works that can be copyrighted.

Sec. 203. Unauthorized fixation.

Sec. 204. Unauthorized recording of motion pictures.

Sec. 205. Trafficking in counterfeit goods or services.

Sec. 206. Forfeiture, destruction, and restitution.

Sec. 207. Forfeiture under Economic Espionage Act.

Sec. 208. Criminal infringement of a copyright.

Sec. 209. Technical and conforming amendments.

**TITLE III—COORDINATION AND STRATEGIC PLANNING OF FED-
 ERAL EFFORT AGAINST COUNTERFEITING AND INFRINGE-
 MENT**

Sec. 301. Intellectual Property Enforcement Coordinator.

Sec. 302. Definition.

Sec. 303. Joint strategic plan.

Sec. 304. Reporting.

Sec. 305. Savings and repeals.

Sec. 306. Authorization of appropriations.

TITLE IV—DEPARTMENT OF JUSTICE PROGRAMS

Sec. 401. Local law enforcement grants.

Sec. 402. Improved investigative and forensic resources for enforcement of laws
 related to intellectual property crimes.

Sec. 403. Additional funding for resources to investigate and prosecute intellectual property crimes and other criminal activity involving computers.

Sec. 404. Annual reports.

TITLE V—MISCELLANEOUS

Sec. 501. GAO study on protection of intellectual property of manufacturers.

Sec. 502. GAO audit and report on nonduplication and efficiency.

Sec. 503. 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

1 individual or entity other than an individual or entity de-
2 scribed in paragraph (1), (2), or (3).

3 **TITLE I—ENHANCEMENTS TO**
4 **CIVIL INTELLECTUAL PROP-**
5 **ERTY LAWS**

6 **SEC. 101. REGISTRATION OF CLAIM.**

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

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

12 (2) in subsection (a)—

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

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

17 (3) by redesignating subsection (b) as sub-
18 section (c);

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

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

24 “(b)(1) A certificate of registration satisfies the re-
25 quirements of this section and section 412, regardless of

1 whether the certificate contains any inaccurate informa-
2 tion, unless—

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

6 “(B) the inaccuracy of the information, if
7 known, would have caused the Register of Copy-
8 rights to refuse registration.

9 “(2) In any case in which inaccurate information de-
10 scribed under paragraph (1) is alleged, the court shall re-
11 quest the Register of Copyrights to advise the court
12 whether the inaccurate information, if known, would have
13 caused the Register of Copyrights to refuse registration.

14 “(3) Nothing in this subsection shall affect any
15 rights, obligations, or requirements of a person related to
16 information contained in a registration certificate, except
17 for the institution of and remedies in infringement actions
18 under this section and section 412.”.

19 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

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

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

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

1 **SEC. 102. CIVIL REMEDIES FOR INFRINGEMENT.**

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

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

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

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

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

19 “(2) For impoundments of records ordered under
20 paragraph (1)(C), the court shall enter an appropriate
21 protective order with respect to discovery and use of any
22 records or information that has been impounded. The pro-
23 tective order shall provide for appropriate procedures to
24 ensure that confidential, private, proprietary, or privileged
25 information contained in such records is not improperly
26 disclosed or used.

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

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

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

1 contained in such records is not improperly disclosed
2 or used.”.

3 **SEC. 103. 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. 104. 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. 105. IMPORTATION AND EXPORTATION.**

20 (a) IN GENERAL.—The heading for chapter 6 of title
21 17, United States Code, is amended to read as follows:

1 **“CHAPTER 6—MANUFACTURING REQUIRE-**
2 **MENTS, IMPORTATION, AND EXPOR-**
3 **TATION”.**

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

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

9 (2) by striking “(a)” and inserting “(a) IN-
10 FRINGING IMPORTATION OR EXPORTATION.—

11 “(1) IMPORTATION.—”;

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

14 “(2) IMPORTATION OR EXPORTATION OF IN-
15 FRINGING ITEMS.—Importation into the United
16 States or exportation from the United States, with-
17 out the authority of the owner of copyright under
18 this title, of copies or phonorecords, the making of
19 which either constituted an infringement of copy-
20 right, or which would have constituted an infringe-
21 ment of copyright if this title had been applicable,
22 is an infringement of the exclusive right to distribute
23 copies or phonorecords under section 106, actionable
24 under sections 501 and 506.

1 “(3) EXCEPTIONS.—This subsection does not
2 apply to—”;

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

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

8 (A) by striking “importation, for the pri-
9 vate use of the importer” and inserting “import-
10 ation or exportation, for the private use of the
11 importer or exporter”; and

12 (B) by inserting “or departing from the
13 United States” after “United States”.

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

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

18 (B) in subsection (b)—

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

21 (ii) by striking “the United States Cus-
22 toms Service” and inserting “United States
23 Customs and Border Protection”; and

1 (iii) by striking “the Customs Service” and
 2 inserting “United States Customs and Border
 3 Protection”.

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

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

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

11 **TITLE II—ENHANCEMENTS TO**
 12 **CRIMINAL INTELLECTUAL**
 13 **PROPERTY LAWS**

14 **SEC. 201. CRIMINAL COPYRIGHT INFRINGEMENT.**

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

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

23 (b) SEIZURES AND FORFEITURES.—

1 relating to this section shall be subject to section 2323,
2 to the extent provided in that section, in addition to any
3 other similar remedies provided by law.”; and

4 (3) by striking subsection (e) and redesignating
5 subsection (f) as subsection (e).

6 **SEC. 203. UNAUTHORIZED FIXATION.**

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

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

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

1 **SEC. 204. UNAUTHORIZED RECORDING OF MOTION PIC-**
 2 **TURES.**

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

5 “(b) FORFEITURE AND DESTRUCTION OF PROPERTY;
 6 RESTITUTION.—Forfeiture, destruction, and restitution
 7 relating to this section shall be subject to section 2323,
 8 to the extent provided in that section, in addition to any
 9 other similar remedies provided by law.”.

10 **SEC. 205. TRAFFICKING IN COUNTERFEIT GOODS OR SERV-**
 11 **ICES.**

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

14 (1) in subsection (a)—

15 (A) by striking “WHOEVER” and inserting
 16 “OFFENSE.—”

17 “(1) IN GENERAL.—Whoever;”;

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

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

21 “(2) SERIOUS BODILY HARM OR DEATH.—

22 “(A) SERIOUS BODILY HARM.—If the of-
 23 fender knowingly or recklessly causes or at-
 24 tempts to cause serious bodily injury from con-
 25 duct in violation of paragraph (1), the penalty

1 shall be a fine under this title or imprisonment
2 for not more than 20 years, or both.

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

9 (2) by adding at the end the following:

10 “(h) TRANSSHIPMENT AND EXPORTATION.—No
11 goods or services, the trafficking in of which is prohibited
12 by this section, shall be transshipped through or exported
13 from the United States. Any such transshipment or expor-
14 tation shall be deemed a violation of section 42 of an Act
15 to provide for the registration of trademarks used in com-
16 merce, to carry out the provisions of certain international
17 conventions, and for other purposes, approved July 5,
18 1946 (commonly referred to as the ‘Trademark Act of
19 1946’ or the ‘Lanham Act’).”.

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. 206. 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 of title
15 17, or section 2318, 2319, 2319A, 2319B, or
16 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).

21 “(C) Any property constituting or derived
22 from any proceeds obtained directly or indi-
23 rectly as a result of the commission of an of-
24 fense referred to in subparagraph (A).

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

16 “(b) CRIMINAL FORFEITURE.—

17 “(1) PROPERTY SUBJECT TO FORFEITURE.—
18 The court, in imposing sentence on a person con-
19 victed of an offense under section 506 of title 17, or
20 section 2318, 2319, 2319A, 2319B, or 2320, or
21 chapter 90, of this title, shall order, in addition to
22 any other sentence imposed, that the person forfeit
23 to the United States Government any property sub-
24 ject to forfeiture under subsection (a) for that of-
25 fense.

1 “(2) PROCEDURES.—

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

10 “(B) DESTRUCTION.—At the conclusion of
11 the forfeiture proceedings, the court, unless oth-
12 erwise requested by an agency of the United
13 States shall order that any—

14 “(i) forfeited article or component of
15 an article bearing or consisting of a coun-
16 terfeit mark be destroyed or otherwise dis-
17 posed of according to law; and

18 “(ii) infringing items or other prop-
19 erty described in subsection (a)(1)(A) and
20 forfeited under paragraph (1) of this sub-
21 section be destroyed or otherwise disposed
22 of according to law.

23 “(c) RESTITUTION.—When a person is convicted of
24 an offense under section 506 of title 17 or section 2318,
25 2319, 2319A, 2319B, or 2320, or chapter 90, of this title,

1 the court, pursuant to sections 3556, 3663A, and 3664
2 of this title, shall order the person to pay restitution to
3 any victim of the offense as an offense against property
4 referred to in section 3663A(c)(1)(A)(ii) of this title.”.

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

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

9 **SEC. 207. FORFEITURE UNDER ECONOMIC ESPIONAGE ACT.**

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

12 **“SEC. 1834. CRIMINAL FORFEITURE.**

13 “Forfeiture, destruction, and restitution relating to
14 this chapter shall be subject to section 2323, to the extent
15 provided in that section, in addition to any other similar
16 remedies provided by law.”.

17 **SEC. 208. CRIMINAL INFRINGEMENT OF A COPYRIGHT.**

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

20 (1) in subsection (b)(2)—

21 (A) by inserting “is a felony and” after
22 “offense” the first place such term appears;
23 and

24 (B) by striking “paragraph (1)” and in-
25 serting “subsection (a)”;

1 (2) in subsection (c)(2)—

2 (A) by inserting “is a felony and” after
3 “offense” the first place such term appears;
4 and

5 (B) by striking “paragraph (1)” and in-
6 serting “subsection (a)”;

7 (3) in subsection (d)(3)—

8 (A) by inserting “is a felony and” after
9 “offense” the first place such term appears;
10 and

11 (B) by inserting “under subsection (a)”
12 before the semicolon; and

13 (4) in subsection (d)(4), by inserting “is a fel-
14 ony and” after “offense” the first place such term
15 appears.

16 **SEC. 209. TECHNICAL AND CONFORMING AMENDMENTS.**

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

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

22 (2) Section 111 of title 17, United States Code,
23 is amended—

24 (A) in subsection (b), by striking “and
25 509”;

1 (B) in subsection (c)—

2 (i) in paragraph (2), by striking “and
3 509”;

4 (ii) in paragraph (3), by striking “sec-
5 tions 509 and 510” and inserting “section
6 510”; and

7 (iii) in paragraph (4), by striking
8 “and section 509”; and

9 (C) in subsection (e)—

10 (i) in paragraph (1), by striking “sec-
11 tions 509 and 510” and inserting “section
12 510”; and

13 (ii) in paragraph (2), by striking “and
14 509”.

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

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

19 (B) in paragraph (6), by striking “and
20 509”.

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

23 (A) in paragraph (6), by striking “sections
24 509 and 510” and inserting “section 510”;

1 (B) in paragraph (7)(A), by striking “and
2 509”;

3 (C) in paragraph (8), by striking “and
4 509”; and

5 (D) in paragraph (13), by striking “and
6 509”.

7 (5) Section 122 of title 17, United States Code,
8 is amended—

9 (A) in subsection (d), by striking “and
10 509”;

11 (B) in subsection (e), by striking “sections
12 509 and 510” and inserting “section 510”; and

13 (C) in subsection (f)(1), by striking “and
14 509”.

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

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

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

6 **SEC. 301. INTELLECTUAL PROPERTY ENFORCEMENT COOR-**
7 **DINATOR.**

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

17 (b) DUTIES OF IPEC.—

18 (1) IN GENERAL.—The IPEC shall—

19 (A) chair the interagency intellectual prop-
20 erty enforcement advisory committee estab-
21 lished under subsection (b)(3)(A);

22 (B) coordinate the development of the
23 Joint Strategic Plan against counterfeiting and
24 infringement by the advisory committee under
25 section 303;

1 (C) assist, at the request of the depart-
2 ments and agencies listed in subsection
3 (b)(3)(A), in the implementation of the Joint
4 Strategic Plan;

5 (D) facilitate the issuance of policy guid-
6 ance to departments and agencies on basic
7 issues of policy and interpretation, to the extent
8 necessary to assure the coordination of intellec-
9 tual property enforcement policy and consist-
10 ency with other law;

11 (E) report to the President and report to
12 Congress, to the extent consistent with law, re-
13 garding domestic and international intellectual
14 property enforcement programs;

15 (F) report to Congress, as provided in sec-
16 tion 304, on the implementation of the Joint
17 Strategic Plan, and make recommendations, if
18 any and as appropriate, to Congress for im-
19 provements in Federal intellectual property laws
20 and enforcement efforts; and

21 (G) carry out such other functions as the
22 President may direct.

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

1 cy, including the Department of Justice, in the exer-
2 cise of its investigative or prosecutorial 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 the
8 following members:

9 (i) Senate-confirmed representatives
10 of the following departments and agencies
11 who are involved in intellectual property
12 enforcement, and who are, or are ap-
13 pointed by, the respective heads of those
14 departments and agencies:

15 (I) The Office of Management
16 and Budget.

17 (II) Relevant units within the
18 Department of Justice, including the
19 Federal Bureau of Investigation and
20 the Criminal Division.

21 (III) The United States Patent
22 and Trademark Office and other rel-
23 evant units of the Department of
24 Commerce.

1 (IV) The Office of the United
2 States Trade Representative.

3 (V) The Department of State,
4 the United States Agency for Inter-
5 national Development, and the Bu-
6 reau of International Narcotics Law
7 Enforcement.

8 (VI) The Department of Home-
9 land Security, United States Customs
10 and Border Protection, and United
11 States Immigration and Customs En-
12 forcement.

13 (VII) The Food and Drug Ad-
14 ministration of the Department of
15 Health and Human Services.

16 (VIII) The Department of Agri-
17 culture.

18 (IX) Any such other agencies as
19 the President determines to be sub-
20 stantially involved in the efforts of the
21 Federal Government to combat coun-
22 terfeiting and infringement.

23 (ii) The Register of Copyrights, or a
24 senior representative of the United States

1 Copyright Office appointed by the Register
2 of Copyrights.

3 (B) FUNCTIONS.—The advisory committee
4 established under subparagraph (A) shall de-
5 velop the Joint Strategic Plan against counter-
6 feiting and infringement under section 303.

7 **SEC. 302. DEFINITION.**

8 For purposes of this title, the term “intellectual prop-
9 erty enforcement” means matters relating to the enforce-
10 ment of laws protecting copyrights, patents, trademarks,
11 other forms of intellectual property, and trade secrets,
12 both in the United States and abroad, including in par-
13 ticular matters relating to combating counterfeit and in-
14 fringing goods.

15 **SEC. 303. JOINT STRATEGIC PLAN.**

16 (a) PURPOSE.—The objectives of the Joint Strategic
17 Plan against counterfeiting and infringement that is re-
18 ferred to in section 301(b)(1)(B) (in this section referred
19 to as the “joint strategic plan”) are the following:

20 (1) Reducing counterfeit and infringing goods
21 in the domestic and international supply chain.

22 (2) Identifying and addressing structural weak-
23 nesses, systemic flaws, or other unjustified impedi-
24 ments to effective enforcement action against the fi-
25 nancing, production, trafficking, or sale of counter-

1 feit or infringing goods, including identifying dupli-
2 cative efforts to enforce, investigate, and prosecute
3 intellectual property crimes across the Federal agen-
4 cies and Departments that comprise the Advisory
5 Committee and recommending how such duplicative
6 efforts may be minimized. Such recommendations
7 may include recommendations on how to reduce du-
8 plication in personnel, materials, technologies, and
9 facilities utilized by the agencies and Departments
10 responsible for the enforcement, investigation, or
11 prosecution of intellectual property crimes.

12 (3) Ensuring that information is identified and
13 shared among the relevant departments and agen-
14 cies, to the extent permitted by law, including re-
15 quirements relating to confidentiality and privacy,
16 and to the extent that such sharing of information
17 is consistent with Department of Justice and other
18 law enforcement protocols for handling such infor-
19 mation, to aid in the objective of arresting and pros-
20 ecuting individuals and entities that are knowingly
21 involved in the financing, production, trafficking, or
22 sale of counterfeit or infringing goods.

23 (4) Disrupting and eliminating domestic and
24 international counterfeiting and infringement net-
25 works.

1 (5) Strengthening the capacity of other coun-
2 tries to protect and enforce intellectual property
3 rights, and reducing the number of countries that
4 fail to enforce laws preventing the financing, produc-
5 tion, trafficking, and sale of counterfeit and infring-
6 ing goods.

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

11 (7) Protecting intellectual property rights over-
12 seas by—

13 (A) working with other countries and ex-
14 changing information with appropriate law en-
15 forcement agencies in other countries relating
16 to individuals and entities involved in the fi-
17 nancing, production, trafficking, or sale of
18 counterfeit and infringing goods;

19 (B) ensuring that the information referred
20 to in subparagraph (A) is provided to appro-
21 priate United States law enforcement agencies
22 in order to assist, as warranted, enforcement
23 activities in cooperation with appropriate law
24 enforcement agencies in other countries; and

1 (C) building a formal process for con-
2 sulting with companies, industry associations,
3 labor unions, and other interested groups in
4 other countries with respect to intellectual prop-
5 erty enforcement.

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

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

16 (1) shall provide assistance to, and coordinate
17 the meetings and efforts of, the appropriate officers
18 and employees of departments and agencies rep-
19 resented on the advisory committee appointed under
20 section 301(b)(3) who are involved in intellectual
21 property enforcement; and

22 (2) may consult with private sector experts in
23 intellectual property enforcement in furtherance of
24 providing assistance to the members of the advisory
25 committee appointed under section 301(b)(3).

1 (d) RESPONSIBILITIES OF OTHER DEPARTMENTS
2 AND AGENCIES.—In the development and implementation
3 of the joint strategic plan, the heads of the departments
4 and agencies identified under section 301(b)(3) shall—

5 (1) designate personnel with expertise and expe-
6 rience in intellectual property enforcement matters
7 to work with the IPEC and other members of the
8 advisory committee; and

9 (2) share relevant department or agency infor-
10 mation with the IPEC and other members of the ad-
11 visory committee, including statistical information
12 on the enforcement activities of the department or
13 agency against counterfeiting or infringement, and
14 plans for addressing the joint strategic plan, to the
15 extent permitted by law, including requirements re-
16 lating to confidentiality and privacy, and to the ex-
17 tent that such sharing of information is consistent
18 with Department of Justice and other law enforce-
19 ment protocols for handling such information.

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

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

1 (2) A description of the means to be employed
2 to achieve the priorities, including the means for im-
3 proving the efficiency and effectiveness of the Fed-
4 eral Government's enforcement efforts against coun-
5 terfeiting and infringement.

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

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

11 (5) An analysis of the threat posed by violations
12 of intellectual property rights, including the costs to
13 the economy of the United States resulting from vio-
14 lations of intellectual property laws, and the threats
15 to public health and safety created by counterfeiting
16 and infringement.

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

20 (7) A strategy for ensuring coordination among
21 the departments and agencies identified under para-
22 graph (6), which will facilitate oversight by the exec-
23 utive branch of, and accountability among, the de-
24 partments and agencies responsible for carrying out
25 the strategy.

1 (8) Such other information as is necessary to
2 convey the costs imposed on the United States econ-
3 omy by, and the threats to public health and safety
4 created by, counterfeiting and infringement, and
5 those steps that the Federal Government intends to
6 take over the period covered by the succeeding joint
7 strategic plan to reduce those costs and counter
8 those threats.

9 (f) ENHANCING ENFORCEMENT EFFORTS OF FOR-
10 EIGN GOVERNMENTS.—The joint strategic plan shall in-
11 clude programs to provide training and technical assist-
12 ance to foreign governments for the purpose of enhancing
13 the efforts of such governments to enforce laws against
14 counterfeiting and infringement. With respect to such pro-
15 grams, the joint strategic plan shall—

16 (1) seek to enhance the efficiency and consist-
17 ency with which Federal resources are expended,
18 and seek to minimize duplication, overlap, or incon-
19 sistency of efforts;

20 (2) identify and give priority to those countries
21 where programs of training and technical assistance
22 can be carried out most effectively and with the
23 greatest benefit to reducing counterfeit and infring-
24 ing products in the United States market, to pro-
25 tecting the intellectual property rights of United

1 States persons and their licensees, and to protecting
2 the interests of United States persons otherwise
3 harmed by violations of intellectual property rights
4 in those countries;

5 (3) in identifying the priorities under paragraph
6 (2), be guided by the list of countries identified by
7 the United States Trade Representative under sec-
8 tion 182(a) of the Trade Act of 1974 (19 U.S.C.
9 2242(a)); and

10 (4) develop metrics to measure the effectiveness
11 of the Federal Government's efforts to improve the
12 laws and enforcement practices of foreign govern-
13 ments against counterfeiting and infringement.

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

19 **SEC. 304. REPORTING.**

20 (a) ANNUAL REPORT.—Not later than December 31
21 of each calendar year beginning in 2009, the IPEC shall
22 submit a report on the activities of the advisory committee
23 during the preceding fiscal year. The annual report shall
24 be submitted to Congress, and disseminated to the people

1 of the United States, in the manner specified in sub-
2 sections (b) and (g) of section 303.

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

5 (1) The progress made on implementing the
6 strategic plan and on the progress toward fulfillment
7 of the priorities identified under section 303(e)(1).

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

12 (3) The progress made in working with foreign
13 countries to investigate, arrest, and prosecute enti-
14 ties and individuals involved in the financing, pro-
15 duction, trafficking, and sale of counterfeit and in-
16 fringing goods.

17 (4) The manner in which the relevant depart-
18 ments and agencies are working together and shar-
19 ing information to strengthen intellectual property
20 enforcement.

21 (5) An assessment of the successes and short-
22 comings of the efforts of the Federal Government,
23 including departments and agencies represented on
24 the committee established under section 301(b)(3).

1 (6) Recommendations, if any and as appro-
2 priate, for any changes in enforcement statutes, reg-
3 ulations, or funding levels that the advisory com-
4 mittee considers would significantly improve the ef-
5 fectiveness or efficiency of the effort of the Federal
6 Government to combat counterfeiting and infringe-
7 ment and otherwise strengthen intellectual property
8 enforcement, including through the elimination or
9 consolidation of duplicative programs or initiatives.

10 (7) The progress made in strengthening the ca-
11 pacity of countries to protect and enforce intellectual
12 property rights.

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

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

19 (10) The progress made in minimizing duplica-
20 tive efforts, materials, facilities, and procedures of
21 the Federal agencies and Departments responsible
22 for the enforcement, investigation, or prosecution of
23 intellectual property crimes.

24 (11) Recommendations, if any and as appro-
25 priate, on how to enhance the efficiency and consist-

1 ency with which Federal funds and resources are ex-
2 pended to enforce, investigate, or prosecute intellec-
3 tual property crimes, including the extent to which
4 the agencies and Departments responsible for the
5 enforcement, investigation, or prosecution of intellec-
6 tual property crimes have utilized existing personnel,
7 materials, technologies, and facilities.

8 **SEC. 305. SAVINGS AND REPEALS.**

9 (a) TRANSITION FROM NIPLECC TO IPEC.—

10 (1) REPEAL OF NIPLECC.—Section 653 of the
11 Treasury and General Government Appropriations
12 Act, 2000 (15 U.S.C. 1128) is repealed effective
13 upon confirmation of the IPEC by the Senate and
14 publication of such appointment in the Congres-
15 sional Record.

16 (2) CONTINUITY OF PERFORMANCE OF DU-
17 TIES.—Upon confirmation by the Senate, and not-
18 withstanding paragraph (1), the IPEC may use the
19 services and personnel of the National Intellectual
20 Property Law Enforcement Coordination Council,
21 for such time as is reasonable, to perform any func-
22 tions or duties which in the discretion of the IPEC
23 are necessary to facilitate the orderly transition of
24 any functions or duties transferred from the Council

1 to the IPEC pursuant to any provision of this Act
2 or any amendment made by this Act.

3 (b) CURRENT AUTHORITIES NOT AFFECTED.—EX-
4 cept as provided in subsection (a), nothing in this title
5 shall alter the authority of any department or agency of
6 the United States (including any independent agency) that
7 relates to—

8 (1) the investigation and prosecution of viola-
9 tions of laws that protect intellectual property
10 rights;

11 (2) the administrative enforcement, at the bor-
12 ders of the United States, of laws that protect intel-
13 lectual property rights; or

14 (3) the United States trade agreements pro-
15 gram or international trade.

16 (c) RULES OF CONSTRUCTION.—Nothing in this
17 title—

18 (1) shall derogate from the powers, duties, and
19 functions of any of the agencies, departments, or
20 other entities listed or included under section
21 301(b)(3)(A); and

22 (2) shall be construed to transfer authority re-
23 garding the control, use, or allocation of law enforce-
24 ment resources, or the initiation or prosecution of

1 individual cases or types of cases, from the respon-
2 sible law enforcement department or agency.

3 **SEC. 306. AUTHORIZATION OF APPROPRIATIONS.**

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

7 **TITLE IV—DEPARTMENT OF**
8 **JUSTICE PROGRAMS**

9 **SEC. 401. LOCAL LAW ENFORCEMENT GRANTS.**

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

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

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

20 (b) GRANTS.—The Office of Justice Programs of the
21 Department of Justice may make grants to eligible State
22 or local law enforcement entities, including law enforce-
23 ment agencies of municipal governments and public edu-
24 cational institutions, for training, prevention, enforce-
25 ment, and prosecution of intellectual property theft and

1 infringement crimes (in this subsection referred to as “IP–
2 TIC grants”), in accordance with the following:

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

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

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

22 (C) Educate and train State and local law
23 enforcement officers and prosecutors to conduct
24 investigations and forensic analyses of evidence

1 and prosecutions in matters involving those
2 laws.

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

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

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

21 (2) ELIGIBILITY.—To be eligible to receive an
22 IP–TIC grant, a State or local government entity
23 shall provide to the Attorney General, in addition to
24 the information regularly required to be provided
25 under the Financial Guide issued by the Office of

1 Justice Programs and any other information re-
2 quired of Department of Justice's grantees—

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

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

14 (C) a plan for coordinating the programs
15 funded under this section with other federally
16 funded technical assistance and training pro-
17 grams, including directly funded local programs
18 such as the Edward Byrne Memorial Justice
19 Assistance Grant Program authorized by sub-
20 part 1 of part E of title I of the Omnibus
21 Crime Control and Safe Streets Act of 1968
22 (42 U.S.C. 3750 et seq.).

23 (3) MATCHING FUNDS.—The Federal share of
24 an IP-TIC grant may not exceed 50 percent of the

1 costs of the program or proposal funded by the IP-
2 TIC grant.

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 2009 through 2013.

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. 402. IMPROVED INVESTIGATIVE AND FORENSIC RE-**
14 **SOURCES FOR ENFORCEMENT OF LAWS RE-**
15 **LATED TO INTELLECTUAL PROPERTY**
16 **CRIMES.**

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

22 (1) ensure that there are at least 10 additional
23 operational agents of the Federal Bureau of Inves-
24 tigation designated to support the Computer Crime
25 and Intellectual Property Section of the Criminal

1 Division of the Department of Justice in the inves-
2 tigation and coordination of intellectual property
3 crimes;

4 (2) ensure that any Computer Hacking and In-
5 tellectual Property Crime Unit in the Department of
6 Justice is supported by at least 1 agent of the Fed-
7 eral Bureau of Investigation (in addition to any
8 agent supporting such unit as of the date of the en-
9 actment of this Act) to support such unit for the
10 purpose of investigating or prosecuting intellectual
11 property crimes;

12 (3) ensure that all Computer Hacking and In-
13 tellectual Property Crime Units located at an office
14 of a United States Attorney are assigned at least 2
15 Assistant United States Attorneys responsible for in-
16 vestigating and prosecuting computer hacking or in-
17 tellectual property crimes; and

18 (4) ensure the implementation of a regular and
19 comprehensive training program—

20 (A) the purpose of which is to train agents
21 of the Federal Bureau of Investigation in the
22 investigation and prosecution of such crimes
23 and the enforcement of laws related to intellec-
24 tual property crimes; and

1 (B) that includes relevant forensic training
2 related to investigating and prosecuting intellec-
3 tual property crimes.

4 (b) ORGANIZED CRIME PLAN.—Subject to the avail-
5 ability of appropriations to carry out this subsection, and
6 not later than 180 days after the date of the enactment
7 of this Act, the Attorney General, through the United
8 States Attorneys' Offices, the Computer Crime and Intel-
9 lectual Property section, and the Organized Crime and
10 Racketeering section of the Department of Justice, and
11 in consultation with the Federal Bureau of Investigation
12 and other Federal law enforcement agencies, such as the
13 Department of Homeland Security, shall create and imple-
14 ment a comprehensive, long-range plan to investigate and
15 prosecute international organized crime syndicates engag-
16 ing in or supporting crimes relating to the theft of intellec-
17 tual property.

18 (c) AUTHORIZATION.—There are authorized to be ap-
19 propriated to carry out this section \$10,000,000 for each
20 of fiscal years 2009 through 2013.

21 **SEC. 403. ADDITIONAL FUNDING FOR RESOURCES TO IN-**
22 **VESTIGATE AND PROSECUTE INTELLECTUAL**
23 **PROPERTY CRIMES AND OTHER CRIMINAL**
24 **ACTIVITY INVOLVING COMPUTERS.**

25 (a) ADDITIONAL FUNDING FOR RESOURCES.—

1 (1) AUTHORIZATION.—In addition to amounts
2 otherwise authorized for resources to investigate and
3 prosecute intellectual property crimes and other
4 criminal activity involving computers, there are au-
5 thorized to be appropriated for each of the fiscal
6 years 2009 through 2013—

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

9 (B) \$10,000,000 to the Attorney General
10 for the Criminal Division of the Department of
11 Justice.

12 (2) AVAILABILITY.—Any amounts appropriated
13 under paragraph (1) shall remain available until ex-
14 pended.

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

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

22 (A) investigate intellectual property crimes
23 and other crimes committed through the use of
24 computers and other information technology, in-
25 cluding through the use of the Internet; and

1 (B) assist in the prosecution of such
2 crimes; and

3 (2) enable relevant units of the Department of
4 Justice, including units responsible for investigating
5 computer hacking or intellectual property crimes, to
6 procure advanced tools of forensic science and expert
7 computer forensic assistance, including from non-
8 governmental entities, to investigate, prosecute, and
9 study such crimes.

10 **SEC. 404. ANNUAL REPORTS.**

11 (a) REPORT OF THE ATTORNEY GENERAL.—Not
12 later than 1 year after the date of the enactment of this
13 Act, and annually thereafter, the Attorney General shall
14 submit a report to Congress on actions taken to carry out
15 this title. The initial report required under this subsection
16 shall be submitted by May 1, 2009. All subsequent annual
17 reports shall be submitted by May 1st of each fiscal year
18 thereafter. The report required under this subsection may
19 be submitted as part of the annual performance report of
20 the Department of Justice, and shall include the following:

21 (1) With respect to grants issued under section
22 401, the number and identity of State and local law
23 enforcement grant applicants, the number of grants
24 issued, the dollar value of each grant, including a
25 break down of such value showing how the recipient

1 used the funds, the specific purpose of each grant,
2 and the reports from recipients of the grants on the
3 efficacy of the program supported by the grant. The
4 Department of Justice shall use the information pro-
5 vided by the grant recipients to produce a statement
6 for each individual grant. Such statement shall state
7 whether each grantee has accomplished the purposes
8 of the grant as established in section 401(b). Those
9 grantees not in compliance with the requirements of
10 this title shall be subject, but not limited to, sanc-
11 tions as described in the Financial Guide issued by
12 the Office of Justice Programs at the Department of
13 Justice.

14 (2) With respect to the additional agents of the
15 Federal Bureau of Investigation authorized under
16 paragraphs (1) and (2) of section 402(a), the num-
17 ber of investigations and actions in which such
18 agents were engaged, the type of each action, the
19 resolution of each action, and any penalties imposed
20 in each action.

21 (3) With respect to the training program au-
22 thorized under section 402(a)(4), the number of
23 agents of the Federal Bureau of Investigation par-
24 ticipating in such program, the elements of the

1 training program, and the subject matters covered
2 by the program.

3 (4) With respect to the organized crime plan
4 authorized under section 402(b), the number of or-
5 ganized crime investigations and prosecutions result-
6 ing from such plan.

7 (5) With respect to the authorizations under
8 section 403—

9 (A) the number of law enforcement officers
10 hired and the number trained;

11 (B) the number and type of investigations
12 and prosecutions resulting from the hiring and
13 training of such law enforcement officers;

14 (C) the defendants involved in any such
15 prosecutions;

16 (D) any penalties imposed in each such
17 successful prosecution;

18 (E) the advanced tools of forensic science
19 procured to investigate, prosecute, and study
20 computer hacking or intellectual property
21 crimes; and

22 (F) the number and type of investigations
23 and prosecutions in such tools were used.

24 (6) Any other information that the Attorney
25 General may consider relevant to inform Congress

1 on the effective use of the resources authorized
2 under sections 401, 402, and 403.

3 (7) A summary of the efforts, activities, and re-
4 sources the Department of Justice has allocated to
5 the enforcement, investigation, and prosecution of
6 intellectual property crimes, including—

7 (A) a review of the policies and efforts of
8 the Department of Justice related to the pre-
9 vention and investigation of intellectual prop-
10 erty crimes, including efforts at the Office of
11 Justice Programs, the Criminal Division of the
12 Department of Justice, the Executive Office of
13 United States Attorneys, the Office of the At-
14 torney General, the Office of the Deputy Attor-
15 ney General, the Office of Legal Policy, and any
16 other agency or bureau of the Department of
17 Justice whose activities relate to intellectual
18 property;

19 (B) a summary of the overall successes
20 and failures of such policies and efforts;

21 (C) a review of the investigative and pros-
22 ecution activity of the Department of Justice
23 with respect to intellectual property crimes, in-
24 cluding—

1 (i) the number of investigations initi-
2 ated related to such crimes;

3 (ii) the number of arrests related to
4 such crimes; and

5 (iii) the number of prosecutions for
6 such crimes, including—

7 (I) the number of defendants in-
8 volved in such prosecutions;

9 (II) whether the prosecution re-
10 sulted in a conviction; and

11 (III) the sentence and the statu-
12 tory maximum for such crime, as well
13 as the average sentence imposed for
14 such crime; and

15 (D) a Department-wide assessment of the
16 staff, financial resources, and other resources
17 (such as time, technology, and training) devoted
18 to the enforcement, investigation, and prosecu-
19 tion of intellectual property crimes, including
20 the number of investigators, prosecutors, and
21 forensic specialists dedicated to investigating
22 and prosecuting intellectual property crimes.

23 (8) A summary of the efforts, activities, and re-
24 sources that the Department of Justice has taken
25 to—

1 (A) minimize duplicating the efforts, mate-
2 rials, facilities, and procedures of any other
3 Federal agency responsible for the enforcement,
4 investigation, or prosecution of intellectual
5 property crimes; and

6 (B) enhance the efficiency and consistency
7 with which Federal funds and resources are ex-
8 pended to enforce, investigate, or prosecute in-
9 tellectual property crimes, including the extent
10 to which the Department has utilized existing
11 personnel, materials, technologies, and facilities.

12 (b) INITIAL REPORT OF THE ATTORNEY GEN-
13 ERAL.—The first report required to be submitted by the
14 Attorney General under subsection (a) shall include a
15 summary of the efforts, activities, and resources the De-
16 partment of Justice has allocated in the 5 years prior to
17 the date of enactment of this Act, as well as the 1-year
18 period following such date of enactment, to the enforce-
19 ment, investigation, and prosecution of intellectual prop-
20 erty crimes, including—

21 (1) a review of the policies and efforts of the
22 Department of Justice related to the prevention and
23 investigation of intellectual property crimes, includ-
24 ing efforts at the Office of Justice Programs, the
25 Criminal Division of the Department of Justice, the

1 Executive Office of United States Attorneys, the Of-
2 fice of the Attorney General, the Office of the Dep-
3 uty Attorney General, the Office of Legal Policy,
4 and any other agency or bureau of the Department
5 of Justice whose activities relate to intellectual prop-
6 erty;

7 (2) a summary of the overall successes and fail-
8 ures of such policies and efforts;

9 (3) a review of the investigative and prosecution
10 activity of the Department of Justice with respect to
11 intellectual property crimes, including—

12 (A) the number of investigations initiated
13 related to such crimes;

14 (B) the number of arrests related to such
15 crimes; and

16 (C) the number of prosecutions for such
17 crimes, including—

18 (i) the number of defendants involved
19 in such prosecutions;

20 (ii) whether the prosecution resulted
21 in a conviction; and

22 (iii) the sentence and the statutory
23 maximum for such crime, as well as the
24 average sentence imposed for such crime;
25 and

1 (4) a Department-wide assessment of the staff,
2 financial resources, and other resources (such as
3 time, technology, and training) devoted to the en-
4 forcement, investigation, and prosecution of intellec-
5 tual property crimes, including the number of inves-
6 tigators, prosecutors, and forensic specialists dedi-
7 cated to investigating and prosecuting intellectual
8 property crimes.

9 (c) REPORT OF THE FBI.—Not later than 1 year
10 after the date of the enactment of this Act, and annually
11 thereafter, the Director of the Federal Bureau of Inves-
12 tigation shall submit a report to Congress on actions taken
13 to carry out this title. The initial report required under
14 this subsection shall be submitted by May 1, 2009. All
15 subsequent annual reports shall be submitted by May 1st
16 of each fiscal year thereafter. The report required under
17 this subsection may be submitted as part of the annual
18 performance report of the Department of Justice, and
19 shall include—

20 (1) a review of the policies and efforts of the
21 Bureau related to the prevention and investigation
22 of intellectual property crimes;

23 (2) a summary of the overall successes and fail-
24 ures of such policies and efforts;

1 (3) a review of the investigative and prosecution
2 activity of the Bureau with respect to intellectual
3 property crimes, including—

4 (A) the number of investigations initiated
5 related to such crimes;

6 (B) the number of arrests related to such
7 crimes; and

8 (C) the number of prosecutions for such
9 crimes, including—

10 (i) the number of defendants involved
11 in such prosecutions;

12 (ii) whether the prosecution resulted
13 in a conviction; and

14 (iii) the sentence and the statutory
15 maximum for such crime, as well as the
16 average sentence imposed for such crime;
17 and

18 (4) a Bureau-wide assessment of the staff, fi-
19 nancial resources, and other resources (such as time,
20 technology, and training) devoted to the enforce-
21 ment, investigation, and prosecution of intellectual
22 property crimes, including the number of investiga-
23 tors, prosecutors, and forensic specialists dedicated
24 to investigating and prosecuting intellectual property
25 crimes.

1 (d) INITIAL REPORT OF THE FBI.—The first report
2 required to be submitted by the Director of the Federal
3 Bureau of Investigation under subsection (c) shall include
4 a summary of the efforts, activities, and resources the
5 Federal Bureau of Investigation has allocated in the 5
6 years prior to the date of enactment of this Act, as well
7 as the 1-year period following such date of enactment to
8 the enforcement, investigation, and prosecution of intellec-
9 tual property crimes, including—

10 (1) a review of the policies and efforts of the
11 Bureau related to the prevention and investigation
12 of intellectual property crimes;

13 (2) a summary of the overall successes and fail-
14 ures of such policies and efforts;

15 (3) a review of the investigative and prosecution
16 activity of the Bureau with respect to intellectual
17 property crimes, including—

18 (A) the number of investigations initiated
19 related to such crimes;

20 (B) the number of arrests related to such
21 crimes; and

22 (C) the number of prosecutions for such
23 crimes, including—

24 (i) the number of defendants involved
25 in such prosecutions;

1 (ii) whether the prosecution resulted
2 in a conviction; and

3 (iii) the sentence and the statutory
4 maximum for such crime, as well as the
5 average sentence imposed for such crime;
6 and

7 (4) a Bureau-wide assessment of the staff, fi-
8 nancial resources, and other resources (such as time,
9 technology, and training) devoted to the enforce-
10 ment, investigation, and prosecution of intellectual
11 property crimes, including the number of investiga-
12 tors, prosecutors, and forensic specialists dedicated
13 to investigating and prosecuting intellectual property
14 crimes.

15 **TITLE V—MISCELLANEOUS**

16 **SEC. 501. GAO STUDY ON PROTECTION OF INTELLECTUAL** 17 **PROPERTY OF MANUFACTURERS.**

18 (a) STUDY.—The Comptroller General of the United
19 States shall conduct a study to help determine how the
20 Federal Government could better protect the intellectual
21 property of manufacturers by quantification of the im-
22 pacts of imported and domestic counterfeit goods on—

23 (1) the manufacturing industry in the United
24 States; and

25 (2) the overall economy of the United States.

1 (b) CONTENTS.—In conducting the study required
2 under subsection (a), the Comptroller General shall exam-
3 ine—

4 (1) the extent that counterfeit manufactured
5 goods are actively being trafficked in and imported
6 into the United States;

7 (2) the impacts on domestic manufacturers in
8 the United States of current law regarding defend-
9 ing intellectual property, including patent, trade-
10 mark, and copyright protections;

11 (3) the nature and scope of current statutory
12 law and case law regarding protecting trade dress
13 from being illegally copied;

14 (4) the extent which such laws are being used
15 to investigate and prosecute acts of trafficking in
16 counterfeit manufactured goods;

17 (5) any effective practices or procedures that
18 are protecting all types of intellectual property; and

19 (6) any changes to current statutes or rules
20 that would need to be implemented to more effec-
21 tively protect the intellectual property rights of man-
22 ufacturers.

23 (c) REPORT.—Not later than 1 year after the date
24 of the enactment of this Act, the Comptroller General shall

1 submit to Congress a report on the results of the study
2 required under subsection (a).

3 **SEC. 502. GAO AUDIT AND REPORT ON NONDUPLICATION**
4 **AND EFFICIENCY.**

5 Not later than 2 years after the date of enactment
6 of this Act, the Comptroller General shall conduct an audit
7 and submit a report to the Committee on the Judiciary
8 of the Senate and to the Committee on the Judiciary of
9 the House of Representatives on—

10 (1) the efforts, activities, and actions of the In-
11 tellectual Property Enforcement Coordinator and the
12 Attorney General in achieving the goals and pur-
13 poses of this Act, as well as in carrying out any re-
14 sponsibilities or duties assigned to each such indi-
15 vidual or agency under this Act;

16 (2) any possible legislative, administrative, or
17 regulatory changes that Comptroller General rec-
18 ommends be taken by or on behalf of the Intellectual
19 Property Enforcement Coordinator or the Attorney
20 General to better achieve such goals and purposes,
21 and to more effectively carry out such responsibil-
22 ities and duties;

23 (3) the effectiveness of any actions taken and
24 efforts made by the Intellectual Property Enforce-
25 ment Coordinator and the Attorney General to—

1 (A) minimize duplicating the efforts, mate-
2 rials, facilities, and procedures of any other
3 Federal agency responsible for the enforcement,
4 investigation, or prosecution of intellectual
5 property crimes; and

6 (B) enhance the efficiency and consistency
7 with which Federal funds and resources are ex-
8 pended to enforce, investigate, or prosecute in-
9 tellectual property crimes, including whether
10 the IPEC has utilized existing personnel, mate-
11 rials, technologies, and facilities, such as the
12 National Intellectual Property Rights Coordina-
13 tion Center established at the Department of
14 Homeland Security; and

15 (4) any actions or efforts that the Comptroller
16 General recommends be taken by or on behalf of the
17 Intellectual Property Enforcement Coordinator and
18 the Attorney General to reduce duplication of efforts
19 and increase the efficiency and consistency with
20 which Federal funds and resources are expended to
21 enforce, investigate, or prosecute intellectual prop-
22 erty crimes.

23 **SEC. 503. SENSE OF CONGRESS.**

24 It is the sense of Congress that—

1 (1) the United States intellectual property in-
2 dustries have created millions of high-skill, high-pay-
3 ing United States jobs and pay billions of dollars in
4 annual United States tax revenues;

5 (2) the United States intellectual property in-
6 dustries continue to represent a major source of cre-
7 ativity and innovation, business start-ups, skilled job
8 creation, exports, economic growth, and competitive-
9 ness;

10 (3) counterfeiting and infringement results in
11 billions of dollars in lost revenue for United States
12 companies each year and even greater losses to the
13 United States economy in terms of reduced job
14 growth, exports, and competitiveness;

15 (4) the growing number of willful violations of
16 existing Federal criminal laws involving counter-
17 feiting and infringement by actors in the United
18 States and, increasingly, by foreign-based individuals
19 and entities is a serious threat to the long-term vi-
20 tality of the United States economy and the future
21 competitiveness of United States industry;

22 (5) terrorists and organized crime utilize piracy,
23 counterfeiting, and infringement to fund some of
24 their activities;

1 (6) effective criminal enforcement of the intel-
2 lectual property laws against violations in all cat-
3 egories of works should be among the highest prior-
4 ities of the Attorney General;

5 (7) with respect to all crimes related to the
6 theft of intellectual property, the Attorney General
7 shall give priority to cases with a nexus to terrorism
8 and organized crime; and

9 (8) with respect to criminal counterfeiting and
10 infringement of computer software, including those
11 by foreign-owned or foreign-controlled entities, the
12 Attorney General should give priority to cases—

13 (A) involving the willful theft of intellectual
14 property for purposes of commercial advantage
15 or private financial gain;

16 (B) where the theft of intellectual property
17 is central to the sustainability and viability of
18 the commercial activity of the enterprise (or
19 subsidiary) involved in the violation;

20 (C) where the counterfeited or infringing
21 goods or services enables the enterprise to un-
22 fairly compete against the legitimate rights
23 holder; or

1 (D) where there is actual knowledge of the
2 theft of intellectual property by the directors or
3 officers of the enterprise.

Passed the Senate September 26 (legislative day,
September 17), 2008.

Attest:

Secretary.

110TH CONGRESS
2^D SESSION

S. 3325

AN ACT

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